

## DRAFT TERMS AND CONDITIONS

SCOPE OF PURCHASE ORDER: Supply of BATTERY, EXPLOSIVE ACTUATED, GUIDED MISSILE (NSN 6135004848556) in accordance with the List of Items.

The Contractor represents that it operates as ☐ an individual ☐ a non-profit organization ☐ a corporation incorporated in .....

The Contractor agrees to deliver all the materiel set forth in the list of items attached to the Terms and Conditions for the consideration stated herein. The rights and obligations of the parties to this purchase order shall be subject to and governed by the Terms and Conditions and the General Provisions. To the extent of any inconsistency between the Terms and Conditions or the General Provisions and any specifications or other provisions which are made a part of this purchase order, by reference or otherwise, the Terms and Conditions and the General Provisions shall control. To the extent of any inconsistency between the Terms and Conditions and the General Provisions, the Terms and Conditions shall control.

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This purchase order consists of:

- Terms and Conditions containing 21 Parts
- NSPA General Provisions for Fixed Price Contracts (Materiel)
- Termination for Convenience of NSPA
- [NSPA Supplier Code of Conduct](#)
- NSPA Materiel Inspection and Shipping Report (MISR) NSPA Form 194
  - Shipping notification form
  - Request for exemption of value added tax

all of which are hereby made a part of the purchase order and incorporated herein by reference.

## TERMS AND CONDITIONS

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**Part 1 - Materiel to be furnished**

1. The Contractor will supply to the NATO Maintenance and Supply Agency in the quantity, at the unit and total price indicated, and on the delivery dates specified, the items described in the attached "List of Items".
2. The prices include all costs in respect of identification, preservation, packaging, packing, marking, quality assurance and inspection incurred by the Contractor.
3. Condition of materiel must be new of current production.

**Part 2 - Prices**

The prices of this purchase order are firm fixed prices.

**Part 3 - Pricing Warrant**

The Contractor warrants that the prices included in this purchase order are for comparable quantities, terms and conditions equal to or less than those proposed or that would be proposed to the Contractor's most favored customer, including any other international organization or NATO member state government bodies.

**Part 4 - Point of Delivery and Passage of Title**

1. The Contractor will deliver the materiel:
  - FCA Contractor's facility (INCOTERMS 2020)
2. Title to the materiel will pass to NSPA at the point of delivery. Claims based on latent defects, fraud, gross negligence, or such gross mistakes to amount to fraud, shall not be prejudiced thereby nor shall the guarantees applicable to the materiel or issuance of discrepancy reports be affected by the said passage of title or acceptance of the materiel.

**Part 5 - Contractor Notice Regarding Late Delivery**

In the event that the Contractor encounters difficulty in meeting the time limits specified for any materiel, it shall immediately notify NSPA in writing, giving pertinent details. However, this data shall be for information only and shall not be construed as a waiver by NSPA of any time limit or of any rights or remedies provided under this Purchase Order.

**Part 6 - Invoicing and Payment**

1. The materiel delivered against this purchase order shall be invoiced within 45 days after delivery.
2. One original invoice shall be submitted to the following address :

As PDF- document to:

[CIMA@nspa.nato.int](mailto:CIMA@nspa.nato.int)

OR as Hardcopy to :

NSPA  
CIMO OFFICE  
11 rue de la Gare  
L-8302 CAPELLEN

accompanied by the NSPA MISR and the Certificate of Conformity (CoC) duly completed as contractually called for and an evidence of delivery. Each invoice submitted and the attached MISR and COC shall bear the purchase order reference number, and shall refer to the line items delivered. Faxed invoices will not be accepted for payment.

3. If the Contractor ships the materiel to the final destination, the only acceptable evidence of delivery shall be a document bearing proof of the transportation charges paid by the Contractor. If not shipped by the Contractor, the only acceptable evidence of delivery shall be a receipt document signed by the authorized Shipping Agent or his duly designated representative. The receipt document must clearly indicate the authorized Shipping Agent's name and address, the printed name of the Shipping Agent's Representative and its signature for the receipt of the materiel. In the event the Contractor incurs any transportation charges from the point of delivery to the place indicated by the NSPA Shipping Agent, the charges are to be billed directly to NSPA, duly supported by a price voucher covering the amount paid.

4. The following certificate shall be affixed to each invoice submitted:

*"I certify that this invoice is correct and just, that payment has not been received and that the price is exclusive of all taxes and duties from which NSPA is exempted."*

5. Payment

- a. Payment will be made within ..... (...) days with .. % prompt payment discount or thirty (30) days net **\*\*will be completed at the time of contract award\*\*** following receipt by NSPA of the Contractor's original invoice (2 copies) drawn for payment in the currency in which the contract is established, and containing the following information: contract number and item number, purchase order number and item number, description of the item, unit of issue, quantity, unit price and total price.
- b. NSPA will pay the net invoice amount and support the charges of its bank. All other charges will be for the Contractor.

- c. The payments will be made to the account identified by the Contractor at time of registration to the NSPA Source file.

**OR**

The payment will be made by NSPA as follows:

- i. Full name and address of banker(s)
  - ii. Detailed bank account information as follows:
  - iii.
    - For EU countries: IBAN code plus BIC
    - For USA: bank account number(s) + ABA code (or SWIFT code)
    - For Canada: bank account number(s) + bank code (5 digits) and branch code (3 digits)
- For any other country: bank account number(s) plus any country-specific codes, if applicable.

## **Part 7 - Liquidated Damages**

1. If the Contractor fails to deliver within the time specified in the purchase order, he shall pay NSPA liquidated damages at the rate of 1 % for each full week of such delay but not more than a total of 10 % of the total price of the materiel not delivered on time.
2. Without prejudice to the final decision regarding the liquidated damages, NSPA shall be entitled to deduct imposed liquidated damages when paying invoices, even in the event that claims deriving from submitted invoices have been assigned or otherwise transferred to third parties. The total of the deductions made by NSPA pursuant to this clause will be considered as full and final satisfaction of all claims received out of late delivery of any item.
3. During a period of one year after delivery and acceptance of the items, NSPA shall have the right to claim liquidated damages even if such right is not reserved at the time when delivery is accepted.
4. The liquidated damages will not apply if the Contractor's failure to perform is due to causes beyond its control and without his fault or negligence.
5. Such causes may include but are not limited to: Acts of God or of the public enemy, acts of Government in its sovereign or contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, unusually severe weather and failure of subcontractors to perform due to such causes. If the Contractor is responsible for obtaining necessary export licenses / permits / DSP forms, it has to ensure that such requests are made in a timely manner so as to not delay shipment. Failure to do so will NOT be considered Force Majeure.
6. The foregoing provisions of this part apply only to delinquencies in deliveries and do not prejudice NSPA's rights under the provisions of the clause entitled "Default" of the General Provisions for Fixed Price Purchase Orders (Materiel).

**Part 8 - Quality Assurance Requirements**

1. The Contractor is responsible for maintaining effective control of the quality of materiel. If the Contractor himself is not the manufacturer of the contracted materiel, he shall impose these quality requirements upon his subcontractor.
2. In case where an AQAP is specified, the Contractor shall meet its requirements. The Contractor must provide a CoC. In case he is not the manufacturer, he shall provide a copy of the COC received from the original manufacturer.
3. The MISR shall not be used in lieu of a CoC.

**Part 9 - Completion and Distribution of the NSPA Materiel Inspection Shipping Report (MISR)**

1. Completion.
  - a. The MISR is printed on Form 194. The MISR is available in the Internet. United States Contractors may use DD Form 250, or a modification thereof in lieu of the MISR.

The Contractor shall complete all blocks, except blocks 22 and 27, which are reserved for use by NSPA Block 19 of form 194 must also be completed with the relevant Document Number(s).
2. Distribution.
  - a. Four copies inside the exterior container in which materiel is packed for shipment and four copies inserted in a waterproof envelope attached to the outside of the exterior container. If the shipment consists of more than one exterior container, the copies should accompany container n° 1.
  - b. One (1) copy to be attached to the Contractor's invoice.
3. If the Contractor is requested to use the services of a NSPA Shipping Agent, it shall provide the NSPA Shipping Agent with three (3) copies of the MISR.

**Part 10 - Item Identification**

1. Whenever circumstances require the substitution of an item or part thereof ordered under this purchase order, the Contractor must refer the proposed substitute to NSPA for approval, together with the NATO Stock Number (if available), Part Number of the proposed substitute, and if applicable, drawing built standard for the part number, including revision details and all major and minor waivers and deviations incorporated
2. When both NATO Stock Number and Part Number identify an item, the NATO Stock Number will govern.

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**Part 11 - Marking for Shipment**

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**1. General**

Each unit pack, intermediate package or shipping container shall be marked as prescribed below by means to be decided by the Contractor provided that such marking cannot be torn away from the surface of the container and remains clearly legible and indelible in transit and during the storage period with the Consignee. The use of labels attached with a flexible strap is not allowed.

**2. Unit pack**

- a. Whatever the type of unit pack, the marking shall show the following information:
  - i. NATO Stock Number – NSN, if applicable
  - ii. NATO HAWK Part Number – P/N
  - iii. Name of item
  - iv. Serial number, if applicable
  - v. Quantity contained in the package (expressed in the contractual unit of measure)
  - vi. Manufacturing date, assembly date, cure date, if prescribed in the technical specifications
  - vii. Purchase order number and purchase order item number
- b. If the unit pack is the shipping container, the marking shall also show the information mentioned in paragraph 4 below.
- c. If applicable the unit pack shall bear the control stamp testifying technical acceptance of the contents of the unit pack. This is also applicable if the unit pack is the shipping container.
- d. In addition, for type “A” unit packs (see Part 13 hereof), the marking shall show the following:
  - i. Packaging method, using letter “A”
  - ii. Date of packaging (month and year e.g. 02/04)
  - iii. Preferably in red, and very conspicuously, the mention:  
**“Do not open before use”**
- e. Any bulky and/or heavy unit pack shall be marked on at least two of its sides (top and one side)
- f. The surface of each unit pack on which all the data mentioned in sub-paragraphs a to c above are to be marked shall be at least 6.35 x 6.35 mm

**3. Intermediate package**

The marking of the intermediate package shall allow reading the NATO Stock Number (NSN) and NATO Hawk Part Number of the item, without opening the package.

**4. Shipping container**

- a. The following information shall be shown on each shipping container:
  - i. Call number of the container, followed by the total number of containers shipped (e.g. "container 2 of 5")
  - ii. Number of the corresponding delivery document (to include the purchaser order number, purchase order item number and the contractor's shipping notification number)
  - iii. Complete addresses of the Contractor and Consignee
  - iv. Weight of the container in kilograms
  - v. Volume of the container in cubic meters
- b. These marking requirements are also applicable to bulky and/or heavy unit packs. The marking should at least be on the top and one side of the containers.

**Note: This requirement is very urgent.**

To facilitate identification during transit, please ensure that shipping documents and shipping labels/containers are clearly marked "**high priority - very urgent**".

<b>Part 12 - Preservation, Packaging and Packing, Destination and Shipping Instructions</b>
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1. Unit pack

Any item delivered under the contract shall be protected by a "unit pack", the type of which ("A" or "E") is specified in the list of items attached hereto.

- a. The unit pack, type "A" will be in accordance with the following general description:

Long time packaging, military type, shall afford adequate protection against corrosion, deterioration and physical damages during shipments, handling and storage for a period of two years, as well as reshipments by whatever means of transportation and regardless of storage conditions.

- b. The unit pack, type "E", or commercial type packaging will be left entirely to the Contractor's initiative and shall be such to assure safe arrival at the final destination, and shall be capable to withstanding extended storage for at least one year under normal, unheated, inside storage conditions. Depending on the weight, volume and nature, the items should normally be delivered on euro pallet(s) at no cost to NSPA
- c. In all cases, the Contractor shall be responsible for any loss or damage due to inadequate or defective packaging.

2. Delivery package

- a. Intermediate package:  
Unit packs of the same item destined to the same customer shall be grouped together, using adequate means (clip, strap, bag, cardboard box, etc...) to make up the intermediate package.



- b. Shipping container:  
Small or medium size unit pack (or corresponding intermediate packages) shall be placed in shipping containers, the type of which shall be decided by the Contractor. Such container shall afford adequate protection against any physical damages during transit until receipt at the final destination, and shall allow easy handling (palletization, stacking, sling-hooking possibilities). The following maximum unit volume and weight are recommended:

Volume:	1 cubic meter
Total weight:	100 to 120 kilograms

3. If materiel to be supplied under this purchase order constitutes hazardous or potentially hazardous cargo, the materiel and related shipping and commercial documentation must be processed (this includes but is not necessarily limited to packaging, packing, marking, notices of availability, documentation, emergency response information, etc. etc.), in accordance with applicable national and international transportation rules and regulations pertaining to hazardous or potentially hazardous cargo. A Safety Data Sheet (SDS) must accompany each exterior container (one copy attached outside and one copy inside). One copy of the SDS must also be enclosed with the Dangerous Goods declaration. The Contractor shall be liable for any loss or damage that might occur arising from an incident or accident due to the absence of a correctly completed SDS.
4. Depending on the type of materiel and mode of transport to be engaged the following are some examples of documentary requirements: Shippers Declaration for Dangerous Goods; Dangerous Goods Transport Document; Safety Data Sheet; Dangerous Goods Declaration; Transport Emergency Card (TREM Card) - European Road Transport, etc.
5. The following are examples of the various regulations in force: International Air Transport Association (IATA) Regulations; International Maritime Dangerous Goods Code (IMDG); International Regulations concerning rail transport (Europe); Accord Européen relatif au transport international des marchandises dangereuses par route (Europe); Transportation of Dangerous Goods Regulations (Canada).
6. Shipping notification

When the materiel is ready for shipment, the Contractor shall use the form attached for this purpose to this purchase order to submit a shipping notification to NSPA, indicating the following information:

- per shipment: contractor's shipment notification number, expected date of delivery of shipment at destination;
- per materiel of the shipment: purchase order number, purchase order line item number, delivered quantity and, in case of partial delivery, the text "partial delivery".

### **Part 13 - Warranty**

1. Clause 8 of the NSPA General Provisions for Fixed Price Contracts (Materiel) is supplemented to include the following:

- a. The Contractor grants a warranty of two (2) years starting from the date of passage of title of the materiel to NSPA.
- b. In case a defective item is accepted by the Contractor for return and replacement / repair under the warranty conditions of this contract, the transportation costs for the defective item from NSPA's customer to the place where replacement and correction will be made and back to NSPA's customer, will be borne by the Contractor.

#### **Part 14 - Intellectual Property Rights, Royalties and License Rights**

1. The Contractor guarantees that it is in possession of all the necessary intellectual property rights in force in the countries where the items will be manufactured and / or services will be performed, under this contract and in other countries where the intellectual property rights are in force. The contractor possesses any licenses necessary for the performance of this contract and made any other arrangements required to protect NSPA from any liability for intellectual property rights infringement in said countries. The Contractor will at its expense hold NSPA harmless and fully indemnify NSPA against all damages, costs, charges, expenses and the like arising from or incurred by any reason of any infringement or alleged infringement of intellectual property rights in consequence of the provision of the service and / or materiel.
2. The Contractor agrees to assure itself that the Original Equipment Manufacturer(s) (OEM) or any entitled third party have not retained any intellectual property rights, before it provides services and / or manufactures items under the contract. NSPA shall not be liable for intellectual property rights infringements as may be caused by the Contractor.
3. The Contractor confirms that no payments of royalties or fees for intellectual property rights will be claimed by the OEM or any entitled third party for the services performed and / or materiel provided under this contract. In the event that such fees are claimed, the Contractor will bear any and all responsibility.

#### **Part 15 - Termination for Convenience of NSPA**

The provisions applicable to "Termination for Convenience of NSPA" are attached hereafter.

#### **Part 16 - Notification of Changes**

1. If at any time during the performance of this purchase order, the Contractor considers that it has been directed to change or deviate from, in any way, the terms and conditions and/or the scope of this purchase order, it shall notify the contracting officer immediately. This notification shall as a minimum contain a cost breakdown of the additional costs to be incurred by the Contractor if it would implement the change/deviation and the related impacts on the terms and conditions. This information must be provided to such level of detail to allow the Contracting Officer

to provide a comprehensive response within 14 days after receipt of the notification from the Contractor.

2. Following the submission of this notification, the Contractor shall diligently continue performance of this purchase order to the maximum extent possible in accordance with its terms and conditions as originally agreed.
3. NSPA shall not bear any responsibility for work performed by the Contractor outside the purchase order scope and NSPA shall not compensate the Contractor in either time or money for such work not specifically authorized or requested by the Contracting Officer in writing and subsequently included in the purchase order through a Supplemental Agreement.
4. Consequently, the Contractor cannot claim additional money and/or time for work performed during the performance of the purchase order, which has not been identified as part of the scope of this purchase order.

#### **Part 17 - Performance of the Contractor in Time of Alert or War**

The Contractor warrants that on the basis of information available to him, he is not aware of any national law or regulation, or any circumstances that might prevent him from fulfilling his obligations under this purchase order in time of alert or war.

#### **Part 18 - Correspondence**

1. The Contractor will return a signed copy of the purchase order without delay to the address indicated below.
2. All **correspondence** except invoices should be addressed to:

NSPA  
Attn: .....  
L - 8302 CAPELLEN  
GR. D. Luxembourg

Contact point : .....  
Tel : +352 3063 Ext : .....  
Fax: +352 3063 4300  
email: .....@NSPA.nato.int

***\*\*Will be completed at award stage\*\****

3. Deliveries of materiel to NSPA installations on Friday afternoon, weekends and national holidays cannot be accepted without prior agreement.

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**Part 19 - Publicity and Public Relations**

1. The Contractor shall not make any press release or public statement concerning this contract without the prior written approval of NSPA.
2. The Contractor agrees that, upon request NSPA may provide copies of the signed contract to officials of NSPA's customer nation who are or were directly involved in the procurement of the goods and / or services ordered hereunder.
3. The Contractor shall not use the name, emblem or official seal of NSPA / NSPO or any abbreviation of the name of NSPA / NSPO in connection with its business or otherwise, unless prior authorized in writing by NSPA.

**Part 20 - NSPA Supplier Code of Conduct**

1. The Contractor, its employees, subsidiary or affiliate entities and subcontractors, shall adhere to the minimum standards set forth in the NSPA Supplier Code of Conduct.
2. If the Agency establishes that any of the provisions of the NSPA Supplier Code of Conduct are not complied with, NSPA may terminate this purchase order at no cost to NSPA and your firm may be removed from the Agency's source file after the Agency has informed the relevant national authorities.

**Part 21 - Information Technology- Cyber Security**

1. The Contractor shall adhere to NSPA's information security practices as detailed in this Contract and to IT-/cyber security best practices as detailed in the latest version of the SANS's CIS Controls or alternate framework accepted by NSPA (ISO 27001 series, UK NCSC Cyber Essentials, US DOD Cybersecurity Maturity Model Certification - CMMC, NIST Cybersecurity Framework, AICPA Trust Services Criteria Certification - SOC 2 Framework) or alternate framework approved by NSPA under this Contract. The Contractor shall immediately notify NSPA of any situation when this adherence becomes no longer achievable.
2. The NATO policy on The Management of Non-Classified NATO Information (C-M(2002)60) sets forth the basic principles and minimum standards the Contractor must comply with when handling non-classified NATO information. Any breach of this policy must be reported as an incident to the points of contact identified in paragraph 5 below.
3. The Contractor shall use its best endeavour to furnish deliverables under this Contract free of defects and vulnerabilities to IT-/cyber security. To that end, the Contractor shall employ adequate means such as penetration testing, code review, unit testing and other methods as appropriate, and shall provide the results of such means upon NSPA request at no additional cost.
4. The Contractor shall inform the NSPA of any IT-/cyber security incident or suspicion of, occurring in its area of responsibility that may adversely impact its obligations

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under this Contract, or adversely affect NSPA or its Customer Country with regard to their activities, their property, the integrity of their IT-systems, the integrity of data provided by them to the Contractor or by the Contractor to them, their reputation or to any of their readily recognizable interests.

5. This Contractor notification shall occur immediately after discovery of the suspicion as a warning notification to the points of contact identified at [Part 18](#) and the NSPA Cyber Team via email at [security-notifications@nspa.nato.int](mailto:security-notifications@nspa.nato.int) and shall include at a minimum: type of incident, affected data, incident timeline/summary, projected impact, mitigation measures and current status. As soon as possible after the IT-/cyber security incident is averred and under no circumstances later than 48 hours after the warning notification was issued to NSPA, the Contractor shall provide NSPA with a comprehensive update notification. The Contractor shall at any time provide further details regarding the suspected or averred incident upon NSPA request and duly take into account any advice provided by NSPA to the Contractor with a view to adequately manage the incident in all involved parties' best interest.
6. NSPA will endeavour to notify the Contractor when NATO security policy permits, if it becomes aware of any possible IT-/cyber security incident that may adversely impact the Contractor or its supply chain with regard to their activities, their property, the integrity of their IT-systems, the integrity of data provided by NSPA to the Contractor or by the Contractor to NSPA, their reputation or to any of their readily recognizable interests.