
**GENERAL PROVISIONS FOR FIXED-PRICE CONTRACTS
(SERVICES)**

(1st July 2012)

Clause 1 - DEFINITIONS

As used throughout this contract, the following terms shall have the meaning set forth below:

- 1.1 The term "NSPA" means "NATO Maintenance and Support Agency",
L - 8302 Capellen, Grand Duchy of Luxembourg.
- 1.2 All correspondence and contacts concerning contracts for services shall be with the Contracting Officer/buyer unless otherwise directed.
- 1.3 The term "NSPO Member State" means a member state of the NATO Support Organization (NSPO).
- 1.4 The term "Customer Country" means that particular NSPO member state for which NSPA is obtaining the services called for under this contract, or a part thereof.
- 1.5 The term "Contractor" means the party who has entered into this contract with NSPA.
- 1.6 The term "Contract" means the contractual instrument to which these General Provisions apply.
- 1.7 The term "Subcontract" means, except as otherwise provided in this contract, any agreement, contract or subcontract made by the Contractor with any other party in fulfilment of any part of this contract, and any agreement, contract or subcontract thereunder.

Clause 2 - CHANGES

- 2.1 Except as otherwise provided in this contract, NSPA may at any time, within the general scope of this contract, by a written order make changes in any one or more of the following:
 - 2.1.1 specifications, or make additions thereto, issue additional instructions, require modified or additional services, within the scope of this contract; or change the amount of NSPA furnished property;
 - 2.1.2 marking, method of shipment or packing;
 - 2.1.3 place of delivery; and
 - 2.1.4 place of inspection and acceptance.
- 2.2 If any such change causes an increase or decrease in the cost of, or the time required for, the performance of this contract or of any part of the work under this contract, whether changed or not changed by any such order, an equitable adjustment shall be made and the contract shall be modified in writing accordingly. Any claim by the Contractor for adjustment under this Clause must be asserted within thirty (30) days from the date of receipt by the Contractor of the notification of change, provided, however, that NSPA, if it decides that the facts justify such action may receive and act upon any such claim asserted at any time prior to final payment under this contract. Failure to agree to any adjustment shall be considered a dispute within the meaning of the Clause entitled "Disputes" in these General Provisions. Pending arbitration the Contractor shall proceed with the contract as changed, without delay.
- 2.3 Where the cost of property made obsolete or excess as a result of a change is included in the Contractor's claim for adjustment, NSPA shall have the right to prescribe the manner of disposition of such property.

2.4 Any other change in the terms of this contract, including but not limited to, changes in price, quantity, delivery schedules, or performance schedules, may be made only by agreement in writing executed by both parties.

Clause 3 - ASSIGNMENT

Except as otherwise provided in this contract, this contract shall not be assignable by the Contractor or operation of law without the prior approval of NSPA in writing. No such assignment shall become effective until the assignee has received written approval from NSPA. Any request for such approval shall be accompanied by a true copy of the intended instrument of assignment. NSPA will not unreasonably withhold any such approval of assignment.

NSPA shall have the right to assign in part or in full to another NATO Subsidiary Body, NATO Agency or any other entity acting on behalf of NATO the rights, obligations, title and interest in and to this Contract. Such assignment will not entitle the contractor to any additional payments or any other consideration. NSPA will notify such assignment in writing to the Contractor.

Clause 4 - PATENT INDEMNITY

Except as otherwise provided in this contract, the Contractor agrees to assume all liability for the infringement, if any, of patents in force in the countries where the services will be performed under this contract and in other countries where the patents are in force; and will be responsible for obtaining any patent licenses necessary for the performance of this contract and for making any other arrangements required to protect NSPA from any liability for patent infringement in said countries. The Contractor will notify NSPA of any claim of which it has knowledge, or may be notified, of patent infringement pertaining thereto.

Clause 5 - SECURITY

If any plans, specifications or other similar documents relating to the contract or the performance of same are marked "Cosmic Top Secret", "NATO Secret", "NATO Confidential", or "NATO Restricted", the Contractor shall safeguard NATO security by:

- 5.1 ensuring that no such document is accessible to any person not entitled to knowledge of such document;
- 5.2 complying with the national security regulations currently in force in its country;
- 5.3 complying with any special NATO or NSPA security regulations which may be supplied by NSPA.

Clause 6 - IMPORT AND EXPORT FORMALITIES

The Contractor shall be responsible for compliance with all applicable national import and export customs regulations and formalities, including payment of fees incident thereto and the posting of a customs bond, if required, and further, including all required licenses, customs declarations and other documentation, concerning the entry to and the exit from the Contractor's facility, including delivery to final destination, of all items or material pertinent to the Contractor's performance under this contract except as otherwise provided herein.

Clause 7 - TAXES AND DUTIES

7.1 NSPA, as a subsidiary body of NATO is, by application of the Ottawa Agreement, dated 20 September 1951, exempt from all taxes and duties.

7.2 Services sold to or through NSPA are to be considered as exports. Consequently, the Contractor is responsible for obtaining any documentation required to permit NSPA and its customers to benefit from the fiscal regime applicable to exports.

7.3 However, if the Contractor is compelled by application of any governmental law or regulation to pay any readily identifiable tax or duty in relation to this contract, he will indicate such tax or duty as a separate item of cost on his invoice(s). Any such tax or duty shall be fully identified by reference to the governmental law or regulation pursuant to which such tax or duty is enforced.

7.4 Following payment by NSPA of the amount(s) for taxes and/or duties pursuant to paragraph 7.3 above, should the Contractor receive a rebate or rebates, of any part or all of the said amount(s) so paid by NSPA, the Contractor shall notify NSPA promptly and the amount(s) of such rebate(s) shall be credited or paid over by the Contractor to NSPA at NSPA's option. The Contractor shall take any action that could be reasonably required in order to obtain such rebate(s) whenever he is aware of the possibility of obtaining it (them).

7.5 The submission of an invoice for taxes and/or duties under the provisions of this Clause shall constitute the Contractor's guarantee that such taxes have or will be paid. If for any reason, the taxes and/or duties are not paid, they shall be refunded in full with any interest earned while the funds for such payment(s) were held by the Contractor.

NOTE: If the contract is to be performed in Luxembourg, the foregoing clause is to be made inapplicable to the contract by mention to that effect in the Terms and Conditions and the following clause added in lieu thereof :

"Taxes and Duties

The Agreement between NSPA and the Government of Luxembourg, dated 19 June 1968, entitled 'Agreement regarding exemption from taxes, duties and rates granted to NSPO by the Luxembourg Authorities' is applicable to this contract and is made a part hereof by reference."

Clause 8 - SPECIAL AREAS

8.1 Except as otherwise provided in this contract, the Contractor shall not acquire for use in the performance of this contract any materiel and/or services originating from sources in countries which are:

- 8.1.1 subject to a formal trade embargo to be observed by NATO;
- 8.1.2 known to disregard international trade conventions in respect of
copyright;
- 8.1.3 under communist control:
 - China (PRC)
 - Cuba
 - Laos
 - North Korea
 - Vietnam.

8.2 Except as otherwise provided in this contract, the Contractor agrees to insert the provisions of this clause in subcontracts hereunder.

Clause 9 - WARRANTY

9.1 Contractor hereby guarantees that he will perform all services under this contract in a good and workmanlike manner, in accordance with any technical orders or other instructions as specified in this contract and that the items on which the work is performed will be guaranteed for the period of time specified in the contract.

9.2 If Contractor supplies any spare parts hereunder, unless otherwise specified in this contract, such items shall be unused and in new condition, of the latest production, and conform to the latest applicable specifications, drawings, and other descriptions, if any, of appropriate military and/or civilian agencies, and, if any, of the Contractor and shall be free from defects in material, design and/or workmanship.

9.3 If any equipment incident to services or component thereof to which this guarantee applies, fails to provide such service due to defective services of the Contractor or defective spare parts furnished by the Contractor, the Contractor agrees either to repair the equipment, or component, at its own expense, including any transportation costs, or reach an agreement with NSPA for an equitable settlement. The Contractor shall undertake, if he chooses to carry out the repair work, to grant the same guarantee for the repaired equipment as was applied to the original equipment. Failure to reach such an agreement shall be a dispute within the meaning of the clause entitled "Disputes" in these General Provisions.

Clause 10 - DEFAULT

If the Contractor fails to perform the services within the time specified, becomes bankrupt, or otherwise fails to comply with his obligations under this contract, NSPA may by written Notice of Default to the Contractor terminate the whole or any part of this contract at no cost to NSPA. Thereafter, NSPA may procure or otherwise obtain the services so terminated, and the Contractor shall be liable for any damages and/or extra costs incurred by NSPA and/or its customer(s) as a direct consequence of the Contractor's failure to comply with his obligations under this contract, unless Contractor's failure to perform is due to causes beyond his control and without his fault or negligence. The Contractor shall continue to perform under this contract to the extent not terminated hereunder.

Clause 11 - TERMINATION FOR CONVENIENCE OF NSPA

In the event NSPA determines that services ordered hereunder are no longer required, the Contractor agrees to cease its work hereunder and cancel any subcontracts hereunder and will use its best endeavours to effect such stoppage and/or cancellation on terms as favourable to NSPA as can be granted or obtained, or as may be more fully set forth in this contract.

Clause 12 - NSPA FURNISHED PROPERTY

12.1 It is the policy of NSPA that the Contractor shall furnish all property, including spare parts, necessary for the successful and timely performance of the services required under its maintenance contracts. Therefore, the following provisions are applicable to this contract only if NSPA furnishes NSPA property to the Contractor for his use in the performance of this contract, or requires the Contractor to acquire property, to which NSPA will assume title, for such use.

12.2 NSPA Furnished Property

NSPA shall deliver to the Contractor, for use in connection with and under the terms of this contract, the property described as NSPA furnished property in the contract, together with such related data and information as the Contractor may request and as may reasonably be required for the intended use of such property (hereinafter referred to as "NSPA furnished property"). The delivery or performance dates for the material or services to be furnished by the Contractor under this contract are based upon the expectation that NSPA furnished property suitable for use will be delivered to the Contractor at the times stated in the contract, or, if not so stated, in sufficient time to enable the Contractor to meet such delivery or performance dates. In the event that NSPA furnished property is not delivered to the Contractor by such time or times, NSPA shall, upon timely written request made by the Contractor, make a determination of the delay, if any, occasioned the Contractor hereby, and shall equitably adjust the delivery or performance dates or the contract price, or both, and any other contractual provision affected by any such delay, in accordance with the procedures provided for in the clause of this contract entitled "Changes". In the event NSPA furnished property is received by the Contractor in a condition not suitable for the intended use the Contractor shall, upon receipt thereof, notify NSPA of such fact and, as directed by NSPA, either (i) return such property at the NSPA expense or otherwise dispose of the property, or (ii) effect repairs or

modifications. Upon the completion of (i) or (ii) above, NSPA upon written request of the Contractor shall equitably adjust the delivery or performance dates or the contract price, or both, and any other contractual provision affected by the rejection or disposition, or the repair or modification, in accordance with the procedures provided for in the clause of this contract entitled "Changes". The foregoing provisions for adjustment are exclusive and NSPA shall not be liable for breach of contract by reason of any delay in delivery of NSPA furnished property or delivery of such property in a condition not suitable for its intended use.

12.3 Changes in NSPA Furnished Property

12.3.1 By notice in writing, NSPA may (i) decrease the property provided or to be provided by NSPA under this contract, or (ii) substitute other NSPA property for property to be provided by NSPA, or to be acquired by the Contractor for NSPA under this contract. The Contractor shall promptly take such actions as NSPA may direct with respect to the removal and shipment of property covered by such notice.

12.3.2 In the event of any decrease in or substitution of property pursuant to paragraph 12.3.1 above, or any withdrawal of authority to use property provided under any other contract, which property NSPA had agreed in the contract to make available for the performance of this contract, NSPA, upon the written request of the Contractor (or, if the substitution of property causes a decrease in the cost of performance, on his own initiative), shall equitably adjust such contractual provisions as may be affected by the decrease, substitution or withdrawal, in accordance with the procedures provided for in the "Changes" clause of this contract.

12.4 Title

12.4.1 Title to all property furnished by NSPA shall remain in NSPA. In order to define the obligations of the parties under this clause, title to each item of facilities, special test equipment, and special tooling acquired by the Contractor for NSPA pursuant to this contract shall pass to and vest in NSPA when it has been fully paid for by NSPA either through amortization under this contract or otherwise.

12.4.2 All NSPA furnished property, together with all property acquired by the Contractor title to which vests in NSPA under this paragraph, is subject to the provisions of this clause and is hereinafter collectively referred to as "NSPA property". Title to NSPA property shall not be affected by the incorporation or attachment thereof to any property owned or leased by the Contractor, nor shall such NSPA property or any part thereof be or become a fixture or lose its identity as a personality by reason of affixation to any realty. For the purposes of this clause, it shall be assumed that title to property furnished under this contract is vested in NSPA even though it may, in actuality, be owned by one or more NSPA customers or NATO member countries.

12.5 Property Administration

The Contractor shall comply with the provisions of this contract identified as "Property Administration".

12.6 Use of NSPA Property

NSPA property shall, unless otherwise provided herein or approved by NSPA be used only for the performance of this contract.

12.7 Utilization, Maintenance and Repair of NSPA Property

The Contractor shall maintain and administer, in accordance with sound industrial practice, and in accordance with any other applicable provision as may be specified in the contract, a program for the utilization, maintenance, repair, protection and preservation of NSPA property, until disposed of by the Contractor, in accordance with this clause. In the event that any damage occurs to NSPA property the risk of which had been assumed by NSPA under this contract, NSPA shall replace such items or the Contractor shall make such repair of the property as NSPA directs; provided, however, that if the Contractor cannot effect such repair within the time required, the Contractor shall dispose of such property in the manner directed by NSPA. The contract price includes no compensation to the Contractor for the performance of any repair or replacement for which NSPA is responsible and an equitable adjustment will be

made in any contractual provisions affected by such repair or replacement of NSPA property made at the direction of NSPA, in accordance with the procedures provided for in the "Changes" clause of this contract. Any repair or replacement for which the Contractor is responsible under the provisions of this contract shall be accomplished by the Contractor at his own expense.

12.8 Risk of Loss

12.8.1 Except for losses, destruction or damage resulting from a failure of the Contractor due to willful misconduct or lack of good faith of any of the Contractor's managerial personnel as defined herein, to maintain and administer the program for the maintenance, repair, protection and preservation of NSPA property as required by paragraph 12.7 hereof, and except as specifically provided in this contract, the Contractor shall not be liable for loss or destruction or damage to the NSPA property provided under this contract:

12.8.1.1 caused by any peril while the property is in transit off the Contractor's premises; or

12.8.1.2 caused by any of the following perils while the property is on the Contractor's or subcontractor's premises or on any premises where such property may properly be located, or by removal therefrom because of any of the following perils, called "excepted perils":

- fire, lightning, windstorm, cyclone, tornado, hails; explosion; riot, riot attending a strike, civil commotion; vandalism and malicious mischief; sabotage; aircraft or objects falling therefrom; vehicles running on land or tracks; excluding vehicles owned or operated by the Contractor or any agent or employee of the Contractor; smoke; sprinkler leakage; earthquake or volcanic eruption; flood, meaning thereby rising of a body of water; nuclear reaction, nuclear radiation or radioactive contamination; hostile or warlike action, including action in hindering, combating, or defending against an actual, impending or expected attack by any government or sovereign power (de jure or de facto), or by any authority using military, naval, or air forces; or by an agent of any such government, power, authority or forces; or,

- other peril, of a type not listed above, as may be specified in the contract.

12.8.2 If the Contractor transfers NSPA property to the possession and control of a subcontractor, the transfer shall not affect the liability of the Contractor for loss or destruction of or damage to the property as set forth above. However, the Contractor shall require the subcontractor to assume the risk of, and be responsible for, any loss or destruction of or damage to the property while in the latter's possession or control, except to the extent that the subcontract, with the prior approval of NSPA, provides for the relief of the subcontractor from such liability. In the absence of such approval, the subcontract shall contain appropriate provisions requiring the return of all NSPA property in as good condition as when received, except for reasonable wear and tear or for the utilization of the property in accordance with the provisions of the prime contract.

12.8.3 The term "Contractor's managerial personnel" as used herein means the Contractor's directors, officers and any of his managers, superintendents, or other equivalent representatives who have supervision or direction of:

- all or substantially all of the Contractor's business;
- all or substantially all of the Contractor's operation at any one plant or separate location at which the contract is being performed;
- a separate and complete major industrial operation in connection with the performance of this contract.

12.8.4 The Contractor represents that he is not including in the price hereunder, and agrees that he will not hereafter include in any price to NSPA, any charge or reserve for insurance (including any self insurance funds or reserve) covering loss or destruction of or damage to the NSPA property caused by any excepted peril.

12.8.5 Upon the happening of loss or destruction of or damage to any NSPA property caused by an excepted peril, the Contractor shall notify NSPA thereof and shall take all reasonable steps to protect the NSPA property from further damage, separate the damaged and undamaged NSPA property, put all the NSPA property in the best possible order, and furnish to NSPA a statement of:

- the lost, destroyed and damaged NSPA property;
- the time and origin of the loss, destruction, or damage;
- all known interests in commingled property of which the NSPA property is a part; and
- the insurance, if any, covering any part of or interest in such commingled property.

12.8.6 The Contractor shall be entitled to an equitable adjustment in the contract price for the expenditures made by him in performing his obligations under this subparagraph 12.8.5 in accordance with the procedures provided for in the "Changes" clause of this contract.

12.8.7 With the approval of NSPA after loss or destruction of or damage to NSPA property, and subject to such conditions and limitations as may be imposed by NSPA, the Contractor may, in order to minimize the loss to NSPA or in order to permit resumption of business or the like, sell for the account of NSPA any item of NSPA property which has been damaged beyond practicable repair, or which is so commingled or combined with property of others, including the Contractor's, that separation is impracticable.

12.8.8 Except to the extent of any loss or destruction of or damage to NSPA property for which the Contractor is relieved of liability under the foregoing provisions of this clause, and except for reasonable wear and tear or depreciation, or the utilization of the NSPA property in accordance with the provisions of this contract, the Contractor assumes the risk of, and shall be responsible for, any loss or destruction of or damage to NSPA property, and such property (other than that which is permitted to be sold) shall be returned to NSPA in as good condition as when received by the Contractor in connection with this contract, or as repaired under paragraph 12.7 above.

12.8.9 In the event the Contractor is reimbursed or compensated for any loss or destruction of or damage to the NSPA property, caused by an excepted peril, he shall equitably reimburse NSPA. The Contractor shall do nothing to prejudice NSPA's rights to recover against third parties for any such loss, destruction or damage and, upon the request of NSPA, shall at NSPA's expense, furnish to NSPA all reasonable assistance and cooperation (including the prosecution of suit and the execution of instruments of assignment in favour of NSPA) in obtaining recovery. In addition, where a subcontractor has not been relieved from liability for any loss or destruction of or damage to NSPA property, the Contractor shall enforce the liability of the subcontractor for such loss or destruction of or damage to the NSPA property, for the benefit of NSPA.

12.9 Access

NSPA and any person designated by it, shall at all reasonable times have access to the premises wherein any NSPA property is located, for the purpose of inspecting the NSPA property.

12.10 Final Accounting and Disposition of NSPA Property

Upon the completion of this contract, or at such earlier dates as may be fixed by NSPA, the Contractor shall submit, in a form acceptable to NSPA inventory schedules covering all items of NSPA property not consumed in the performance of this contract (including any resultant scrap) or not theretofore delivered to NSPA, and shall prepare for shipment, deliver f.o.b. origin, or dispose of the NSPA property, as may be directed or authorized by NSPA. The net proceeds of any such disposal shall be credited to the contract price or shall be paid in such other manner as NSPA may direct.

12.11 Restoration of Contractor's Premises and Abandonment

Unless otherwise provided herein, NSPA:

12.11.1 may abandon any NSPA property in place, and thereupon all obligations of NSPA regarding such abandoned property shall cease; and

12.11.2 has no obligation to the Contractor with regard to restoration or rehabilitation of the Contractor's premises, neither in case of abandonment of property, disposition thereof on completion of need of the Contractor, nor otherwise, except for restoration or rehabilitation costs which are properly included in an equitable adjustment under paragraph 12.8.5 above.

12.12 Communications

All communications issued pursuant to this clause shall be in writing.

Clause 13 - DISPUTES

13.1 Any dispute arising out of this contract shall be settled by arbitration.

13.2 The party instituting the arbitration proceedings shall advise the other party by registered letter, with official notice of delivery, of his desire to have recourse to arbitration. Within a period of thirty days from the date of receipt of this letter, the parties shall jointly appoint an arbitrator. In the event of failure to appoint an arbitrator, the dispute or disputes shall be submitted to an Arbitration Tribunal consisting of three arbitrators, one being appointed by NSPA, another by the other contracting party, and the third, who shall act as President of the Tribunal, by these two arbitrators. Should one of the parties fail to appoint an arbitrator during the fifteen days following the expiration of the first period of thirty days, or should the two arbitrators be unable to agree on the choice of the third member of the Arbitration Tribunal, within thirty days following the expiration of the said first period, the appointment shall be made, within twenty one days, at the request of the party instituting the proceedings, by the Secretary General of the Permanent Court of Arbitration in the Hague.

13.3 Regardless of the procedure concerning the appointment of this Arbitration Tribunal, the third arbitrator will have to be of a nationality different from the nationality of the other two members of the Tribunal.

13.4 Any arbitrator must be of the nationality of any one of the member states of NATO and shall be bound by the rules of security in force within NATO.

13.5 Any person appearing before the Arbitration Tribunal in the capacity of an expert witness shall, if he is of the nationality of one of the member states of NATO, be bound by the rules of security in force within NATO, if he is of another nationality, no NATO classified documents or information shall be communicated to him.

13.6 An arbitrator who, for any reason whatsoever, ceases to act as an arbitrator shall be replaced under the procedure laid down in the first paragraph of this article.

13.7 The Arbitration Tribunal will take its decisions by a majority vote. It shall decide where it will meet and, unless it decides otherwise, shall follow the arbitration procedures of the International Chamber of Commerce in force at the date of the signature of the present contract.

13.8 The awards of the arbitrator or of the Arbitration Tribunal shall be final and there shall be no right of appeal or recourse of any kind. These awards shall determine the apportionment of the arbitration expenses.

Clause 14 - GOVERNING LAW

Except as otherwise provided in this contract, this contract shall be governed, interpreted and construed in accordance with French law and such law shall govern in the event of arbitration.

Clause 15 - EXAMINATION OF RECORDS

15.1 This clause is applicable to this contract only:

15.1.1 if the price, or any of the prices, to be paid for the supplies and/or services to be furnished hereunder is/are other than (a) firm fixed price(s);

15.1.2 if this contract is terminated by NSPA, in whole or in part, and the Contractor submits a termination claim as a result thereof, or

15.1.3 in the event a dispute arises between the parties and arbitration proceedings are instituted pursuant to the clause of this contract entitled "Disputes".

15.2 The Contractor agrees that NSPA or any of its duly authorized representatives shall, until the expiration of three (3) years after final payment under this contract, have access to and the right to examine any pertinent books, documents, papers, and records of the Contractor involving transactions related to this contract.

15.3 The Contractor further agrees to include in all his subcontracts hereunder a provision substantially as set forth in this clause, including this paragraph. In addition a provision is to be added in such subcontracts to the effect that the auditing of the subcontractors' books, documents, papers and records involving transactions related to the subcontract may be performed by the subcontractors' national auditing services.

15.4 The period of access and examination described in paragraphs 15.2 and 15.3 above for records which relate to either appeals under the "Disputes" clause of this contract or litigation, or the settlement of claims arising out of the performance of this contract, shall continue until such appeals, litigation or claims have been disposed of.

Clause 16 - MISCELLANEOUS

16.1 The entire agreement between the contracting parties is contained in this contract and is not affected by any oral understanding or representation whether made previous to or subsequent to this contract.

16.2 The Contractor is considered to have fully read all terms, clauses, specifications and detailed special conditions stipulated in this contract. He unreservedly accepts all the terms thereof.

16.3 In the event of any disagreement between the original text of this contract and any translation into another language, the original text will govern.

16.4 All written correspondence and reports by the Contractor to NSPA shall be in the language in which this contract is written.