

# NCI Agency (former NCSA) GENERAL PROVISIONS for SUPPLIES AND SERVICES CONTRACTS

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# 1. ACRONYMS – DEFINITIONS

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

- a. "Bidder" shall refer to the bidding entity that has submitted a bid in response to an IFB, RFP, IFIB or IFIP.
- b. "CNAFS" refers to Centralised NATO Financial Management System.
- c. "Contracting Officer" or the "Purchasing & Contracting Officer" or "P&C" or the "Contracting Authority" means the person executing and managing this contract or IF(I)B on behalf of NCI AGENCY (FORMER NCSA). Only duly designated Contracting Officers have the authority to obligate NCI AGENCY (FORMER NCSA).
- d. "Contractor" means the entity (firm or person) to whom the contract is awarded and on whose behalf duly authorised persons shall execute it.
- e. "CSD" shall refer to the Contract performance Start Date.
- f. "COTR" is the Contracting Officer (Technical) Representative or his designated alternate.
- g. "Days" shall be interpreted as meaning calendar days.
- h. "EDC" or "CED" shall refer to the Effective Date of Contract. The effective date of the Contract is the date of last signature by the Parties, or a specific date set forth in the Contract.
- i. "IT" shall refer to Information Technology.
- j. "NCI AGENCY (FORMER NCSA)" means the NATO COMMUNICATION & INFORMATION SYSTEMS SERVICES AGENCY located at B-7010 SHAPE-BELGIUM.
- k. "NCI AGENCY (FORMER NCSA) HQ" shall refer to the NCI AGENCY (FORMER NCSA) Headquarters located at SHAPE.
- l. "North Atlantic Treaty Organisation" is hereafter referred to as "NATO".
- m. "Potential Bidder" or "Prospective Bidder" shall refer to the entity that has completed and returned the Enclosure of the transmittal letter of an IFB, RFP, IFIB or IFIP, and has indicated there on its intention, without commitment, to participate in the bidding.
- n. "Purchaser" is the legal entity awarding the Contract (i.e. NCI AGENCY (FORMER NCSA)) represented by the Contracting Authority.
- o. "Quality Assurance Evaluator (QAE)". Upon the award of a contract, the QAE is charged with monitoring the daily performance of contractors. QAEs are generally appointed by the technical/receiving organisation and assigned to the contract by the Contracting Officer.
- p. "SHAPE" shall refer to the Supreme Headquarters Allied Powers Europe, located at 7010 SHAPE, Belgium.
- q. "SOW" shall refer to Statement Of Work.
- r. "TOR" stands for Terms Of Reference

## **2. ACCEPTANCE OF THE CONTRACT OR CONTRACT MODIFICATION BY THE SUPPLIER**

a. The Supplier's acceptance is expressly limited to the written terms of this order. No additional or different terms shall be binding. NCI AGENCY (FORMER NCSA) hereby objects to any additional or different terms contained in Supplier's acceptance.

b. Any of the following acts by the Supplier will constitute acceptance:

Signing and returning a copy of the purchase order;

Commencing performance of any effort required to complete this purchase order;

Informing NCI AGENCY (FORMER NCSA) of commencement of any effort required to complete the order; or

Shipping of any products in performance of the purchase order or of the contract.

## **3. ACCEPTANCE AND INSPECTION**

a. Acceptance (when applicable, after inspection in accordance with the "Inspection clause" of this contract) shall be subject to, and shall be construed in a manner that is fully in accordance with all the terms and conditions of the Contract.

b. The Contractor shall only tender for acceptance items conforming to the requirements of this contract.

c. Acceptance or rejection of the supplies or works shall be made as promptly as practicable after delivery or completion, except as otherwise provided in this contract.

d. NCI AGENCY (FORMER NCSA) reserves the right to inspect or test any supplies or services tendered for acceptance

e. Acceptance shall be conclusive, except for latent defects, fraud, gross mistakes amounting to fraud, or otherwise stated in the Contract. It is the action by which NCI AGENCY (FORMER NCSA) acknowledges that the Contractor has fully demonstrated that the deliveries or works are complete and operational. The formal acceptance will take place when the following requirements have been met:

Availability at final destination of all deliverables or completion of all the works

Successful completion of acceptance testing or inspection.

Verification of the inventory or of all required certificates and Technical documents.

Satisfactory completion of all training or other services, if any, required by that date.

Agreement between the Contracting Officer and the Contractor on a discrepancy list (if necessary) and corresponding clearance dates.

f. When discrepancies exist and if these do not prevent satisfactory use or operation of the supplies, the Contracting Officer may declare the acceptance provisional. In this case he will withhold from payment an amount commensurate with the importance of the discrepancies but in any case not less than ten (10) percent of the total contract value and this until all discrepancies have been cleared; at that time the acceptance becomes final.

g. NCI AGENCY (FORMER NCSA) may require repair or replacement of nonconforming supplies or re-performance of nonconforming services at no increase in contract price. NCI AGENCY (FORMER NCSA) must exercise its post acceptance right:

Within a reasonable time after the defect was discovered or should have been discovered; and,

Before any substantial change occurs in the condition of the item, unless the change is due to the defect in the item.

#### **4. APPLICABLE LAW**

Except as otherwise provided in this contract, this contract shall be governed, interpreted and construed in accordance with the private contract law of the Kingdom of Belgium. When performing at NATO Installations the Contractor and his personnel (including also the sub-contractor's personnel, if any) shall comply with all applicable laws of the host nation and all relevant official NATO, NCI AGENCY (FORMER NCSA) and local installation Directives.

#### **5. ASSIGNMENT OF CLAIM**

No assignment of claim will be made by the Contractor without prior written authorisation from the Contracting Officer.

#### **6. AUDITING AND ACCOUNTING**

a. Normal Contractor's national accounting and auditing procedures shall apply.

b. All Contractor expenditures incurred on the programme will be subject to audit.

c. The invoicing and payment procedures for the amount payable to the Contractor shall be in accordance with "Payments and Invoices" hereunder.

d. The Contractor shall maintain comprehensive records of costs incurred in carrying out this Contract, in accordance with his national established accounting procedures. This record and relevant supporting documentation shall be made available for review as requested by the International Board of Auditors for NATO or authorised representatives of the NCI AGENCY (FORMER NCSA) Financial Controller

e. In the event of this Contract being terminated in accordance with the clause "Termination for Convenience of NCI AGENCY (FORMER NCSA)" hereunder, the Contractor shall provide within ninety days of the formal date of termination a detailed statement of all costs incurred since the initiation of the programme, together with the statement of all outstanding commitments for which the Contractor is legally liable.

## **7. CONFIGURATION MANAGEMENT**

Configuration Management will be implemented by the Contractor for all configuration items that will include hardware, software and documentation. Configuration Management is to be carried out by the Contractor within the firm fixed price of the contract, up to the end of the warranty period or the time when all discrepancies have been cleared, whichever is the later.

## **8. CONSUMER RIGHTS AND PROTECTION**

NCI AGENCY (FORMER NCSA) is a non-profit international organisation that will use the goods and services ordered through this contract for its own self-consumption and not for sale. Therefore, the Supplier agrees that NCI AGENCY (FORMER NCSA) must be treated as a consumer for the purposes of the application of any benefits derived from prevailing regulations on consumer protection (e.g., EU Directives like 1999/44/EC and 93/13/ECC). Specifically, the Supplier agrees to extend to NCI AGENCY (FORMER NCSA) the same guarantees and protection applicable to consumers in accordance with any of the stated regulations.

## **9. CONTRACT ADMINISTRATION AND COMMUNICATIONS**

- a. The Contractor shall direct all inquiries, notices and communications regarding this Contract to the Contracting Officer, which may be personally delivered, mailed, or copied to the following address:
- b. All inquiries, notices and communications between the Contractor and NCI AGENCY (FORMER NCSA) shall be written in English and in all correspondence the Contract number shall be mentioned.

## **10. CONTRACT CHANGES AND MODIFICATIONS**

- a. The NCI AGENCY (FORMER NCSA) Contracting Officer may at any time, by a written order, submit changes, within the general scope of the contract, for consideration by the Contractor.
- b. All changes, modifications, additions or deletions to the contract are considered to be modifications hereto, must be prepared in writing as formal amendments and must be agreed and signed by both parties in the same manner as the contract.
- c. If any such change causes an increase or decrease in the cost of, or the time required for the performance of any part of the work under the contract, a negotiated adjustment shall be made to the contract, which shall be modified in writing accordingly as part of the process of agreeing upon the amendment.
- d. Failure to agree to any adjustment shall be a dispute concerning a question of fact within the meaning of the Clause titled "DISPUTES – RESOLUTION OF DISAGREEMENTS - ARBITRATION" herein. However, nothing in this clause shall excuse the Contractor from proceeding with the Contract as changed.

## **11. CONTRACT DURATION**

The duration of this Contract is stated in the Part I of the contract. However, notwithstanding the above, NCI AGENCY (FORMER NCSA) may terminate this Contract immediately without compensation or advance notice if it is unable by reason of Force Majeure to perform its obligations under this Contract, or if NATO were to undergo a major reorganisation or cease to occupy the current premises in its actual location.

## **12. CONTRACT REASSIGNMENT**

NCI AGENCY (FORMER NCSA) reserves the right to assign this contract, in whole or in part, to another authorized NATO body, agency or representative. In such a case, NCI AGENCY (FORMER NCSA) shall notify the Contractor in writing.

## **13. CONTRACTOR NOTICE OF DELAY**

a. In the event the Contractor encounters difficulty in meeting performance requirements, or when it anticipates difficulty in complying with the Contract delivery schedule or date, it shall immediately notify the Contracting Officer in writing, giving pertinent details. This data shall be deemed to be information only in character and this provision shall not be construed as a waiver by NCI AGENCY (FORMER NCSA) of any delivery schedule or date, or of any rights or remedies provided by law or under this Contract.

b. When such delay has been caused by the occurrence of any cause constituting Force Majeure and as soon as possible, the Contractor shall give notice and full particulars in writing to the Contracting Officer of such occurrence, as well as its claim for a reasonable extension in time for completion of its obligations under this Contract. If the Contractor, in despite of that extension, remains unable by reason of Force Majeure to perform its obligations and meet its responsibilities under this Contract, NCI AGENCY (FORMER NCSA) has the right to suspend or terminate this Contract on the same terms and conditions as are provided for in the clause titled "DEFAULT" herein.

c. Notice of Labour Disputes: Whenever the Contractor has knowledge that an actual or potential labour dispute is delaying or threatens to delay the timely performance of this contract, the Contractor shall immediately give notice thereof, including all relevant information with respect thereto, to the Contracting Officer.

## **14. CORRUPTION AND ILLICIT GRATUITIES**

a. The Contractor certifies that neither it nor its agents or representatives have offered or given any gratuity whatsoever to any NCI AGENCY (FORMER NCSA) personnel, with a view to securing a contract or favourable treatment with regard to the award, modification or execution of this Contract.

b. NCI AGENCY (FORMER NCSA) may, by registered letter, terminate this Contract without notice if it is found, after an investigation instituted by NCI AGENCY (FORMER NCSA), that gratuities (in the form of entertainment, gifts or others) were offered or given by the Contractor to NCI AGENCY (FORMER NCSA) personnel with respect to the award of this Contract or to the taking of any decision regarding its execution.

## 15. DEFAULT AND TERMINATION FOR DEFAULT

a. NCI AGENCY (FORMER NCSA) may, subject to the provisions of paragraphs below, by Contracting Officer's written notice of default to the Contractor, terminate the whole or any part of this Contract in any one of the following circumstances:

(1) if the Contractor fails to provide or perform the services or to delivered the supplies within the time and as specified herein or in any extension thereof; or

(2) if the Contractor fails to perform any of the other provisions of this Contract, or so fails to make progress as to endanger performance of this Contract in accordance with its terms and in either of these two circumstances does not cure such failure within a period of 10 days (or such longer period as the Contracting Officer may authorize in writing) after receipt of notice from the Contracting Officer specifying such failure, the Contracting Officer may, terminate the whole or any part of the contract by written Notice of Default to the Contractor.

b. In the event that NCI AGENCY (FORMER NCSA) terminates this Contract in whole or in part as provided in the paragraph above, NCI AGENCY (FORMER NCSA) may procure services similar to those so terminated and the Contractor shall be liable to NCI AGENCY (FORMER NCSA) for any excess costs for such similar services. The Contractor shall continue the performance of this Contract to the extent not terminated under the provisions of this Clause. In such cases, NCI AGENCY (FORMER NCSA) shall pay to the Contractor the contract price for completed supplies or services delivered and accepted less any excess costs.

c. Except with respect to defaults of Sub-contractors, the Contractor shall not be liable for any excess costs if the failure to perform the Contract arises from causes beyond the control and without the fault or negligence of the Contractor. If the failure to perform is caused by the default of a Sub-contractor, and if such default arises from causes beyond the control of both the Contractor and Sub-contractor, without the fault or negligence of either of them, the Contractor shall not be liable for any excess costs for failure to perform unless the services to be provided by the Sub-contractor were obtainable from other sources in sufficient time to permit the Contractor to perform the Contract.

d. If this contract is terminated as provided in the first paragraph of this clause, NCI AGENCY (FORMER NCSA), in addition to any other rights provided in the clause, may require the Contractor to transfer title and deliver to NCI AGENCY (FORMER NCSA) in the manner and to the extent directed by the Contracting Officer:

(1) any completed supplies and

(2) such partially completed supplies and materials, parts, tools, dies, jigs, fixtures, plans, drawings, information and contract rights (hereinafter called "manufacturing materials") as the Contractor has specifically produced or specifically acquired for the performance of such part of this contract as has been terminated; and the Contractor shall, upon direction of the Contracting Officer, protect and preserve property in the possession of the Contractor in which NCI AGENCY (FORMER NCSA) has an interest. Payment for completed supplies delivered to and accepted by NCI AGENCY (FORMER NCSA) shall be at the contract price. Payment for manufacturing materials delivered to and accepted by NCI AGENCY (FORMER NCSA) and for the protection and preservation of property shall be in an amount agreed upon by the Contractor and Contracting Officer; failure to agree

such amount shall be a dispute concerning a question of fact within the meaning of the clause of this contract entitled "Dispute". NCI AGENCY (FORMER NCSA) may withhold from amounts otherwise due the Contractor for such completed supplies or manufacturing materials such sum as the Contracting Officer determines to be necessary to protect NCI AGENCY (FORMER NCSA) against loss because of outstanding liens or claims of former lien holders.

e. If after notice of termination of this Contract under the provisions of this Clause, it is determined for any reason that the Contractor was not in default under the provisions of this Clause, or that the default was excusable under the provisions of this Clause, the rights and obligations of the Parties shall, if the Contract contains a clause providing for termination for convenience of NCI AGENCY (FORMER NCSA), be the same as if the notice of termination had been issued pursuant to such Clause.

f. Failure to agree on a termination settlement shall be considered a dispute subject to the "DISPUTES – RESOLUTION OF DISAGREEMENTS - ARBITRATION" clause.

## **16. DISCLAIMER CLAUSE**

In accordance with Paragraph "Contract changes and modifications" of these NCI AGENCY (FORMER NCSA) GENERAL CONTRACT PROVISIONS any modifications, including changes, additions or deletions and instructions under the contract shall not be binding unless issued in writing by the NCI AGENCY (FORMER NCSA) Contracting Officer. Should the Contractor follow directions other than from the NCI AGENCY (FORMER NCSA) Contracting Officer in the performance of the contract, the risk taken will be solely that of the Contractor.

## **17. DISPUTES - RESOLUTION OF DISAGREEMENTS – ARBITRATION**

Any disagreements regarding the interpretation or application of this Contract shall be resolved by negotiations and, in case no resolution is found, through binding arbitration in accordance with the following:

a. Except to the extent to which special provision is made elsewhere in the Contract, all disputes, differences or questions which are not disposed of by agreement between the parties to the Contract with respect to any matter arising out of or relating to

the Contract, other than a matter as to which the decision of the Purchaser under the Contract is to be final and conclusive, shall be decided by the Contracting Authority. The Contracting Authority shall reduce his decision to writing and mail or otherwise furnish a copy thereof to the Contractor(s).

b. The Contracting Authority shall not proceed with the evaluation and decision in respect of any claim until and unless the Contractor(s) has submitted an attestation that states as follows:

"I certify that the claim is made in good faith; that the supporting data are accurate and complete to the best of my knowledge and belief; that the amount requested accurately reflects the contract adjustment for which the contractor believes NATO is liable; and that I am duly authorized to certify the claim on behalf of the contractor." as well as the

complete proof and evidence of the claim (either by submission or by identification of the relevant documentation).

c. The Contracting Authority's decision shall be final and conclusive unless, within 30 days from the date of receipt of the notification letter of such a decision, the Contractor(s) mails or otherwise furnishes to the Contracting Authority a notification of his decision to open arbitration proceedings in accordance with the arbitration provisions at paragraph 25.d. through 25.l. below. The burden of proof for both receipt and delivery of such documentation shall be by signed and dated registered mail receipt or by hand receipt as provided by the Purchaser.

d. Pending final decision of a dispute, the Contractor(s) shall proceed diligently with rendering the services of the Contract, unless otherwise authorised to do so by the Purchaser.

e. The Contractor(s) agrees to submit to the Arbitration Tribunal only such issues, facts, evidence and proof which the Contractor(s) had beforehand identified and submitted to the Contracting Authority for decision in accordance with paragraph 25.a. above. The jurisdictional authority of the Arbitration Tribunal shall be restricted to consider only those identical issues, facts, evidence and proof so identified and submitted to the Contracting Authority.

f. Within a period of thirty days from the date of receipt of the Contractor's notification at paragraph 25.c. above, 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 the Purchaser, 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 at The Hague.

g. 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.

h. 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.

i. 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.

j. An arbitrator, who, for any reason whatsoever, ceases to act as an arbitrator, shall be replaced under the procedure laid down in paragraph 28.f. above.

k. 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 signature of the present contract.

I. 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.

## **18. DOCUMENTATION**

a. Any document which is required to be submitted for NCI AGENCY (FORMER NCSA) review and approval shall be categorised by NCI AGENCY (FORMER NCSA) as follows:

(1) Approved

(2) Conditionally approved subject to the incorporation by the Contractor of NCI AGENCY (FORMER NCSA) comments

(3) Not approved for the reasons stated by NCI AGENCY (FORMER NCSA)

b. No contractual relief shall be granted for documents not approved.

c. All documents to be submitted by the contractor, unless specified differently in the contract, shall be submitted in three (3) hardcopies and on machine readable magnetic media (one copy), the latter if available in a form to be agreed between the Contractor and NCI AGENCY (FORMER NCSA).

d. NCI AGENCY (FORMER NCSA) reserves the right without further payment to reproduce and/or translate, in whole or in part, for sole use in NCI AGENCY (FORMER NCSA), any or all documentation supplied by the Contractor under the contract.

e. The applicability of the clauses "CONFIGURATION MANAGEMENT" is extended to include information submitted in a machine readable form e.g. on magnetic media.

## **19. EXPORT LICENSING**

The Contractor shall be responsible for obtaining any export license required with respect to the goods, products or technologies including software, sold, delivered, licensed or otherwise provided to the NCI AGENCY (FORMER NCSA) under the contract. The Contractor shall procure any such export license in an expeditious manner. Subject to and without any waiver of the privileges and immunities to the NCI AGENCY (FORMER NCSA), The NCI AGENCY (FORMER NCSA) shall lend the Contractor all reasonable assistance required for obtaining any such export license, the Contractor shall promptly consult with the NCI AGENCY (FORMER NCSA) to enable the NCI AGENCY (FORMER NCSA) to take appropriate measures to resolve the matter.

## **20. FORCE MAJEURE**

Neither party shall be responsible for any failure to perform or delay in performing any of the provisions of the contract where such failure or delay arises due to causes (such as any acts of God, war, floods, epidemics, etc.) outside the reasonable control of the party required to perform such provisions.

## **21. FURNITURE AND EQUIPMENT**

The Contractor may furnish, install and maintain its own furniture and equipment without any cost or expense to NCI AGENCY (FORMER NCSA). Approval from the Contracting Officer or his representatives is required prior to the installation of any major item of Contractor equipment. The equipment, furniture and fixtures provided by the Contractor shall not be removed without prior written

approval of NCI AGENCY (FORMER NCSA) and, in the event of removal all costs and expenses thereof shall be borne by the Contractor.

## **22. HEALTH, SAFETY AND ACCIDENT PREVENTION**

- a. The Contractor shall comply with applicable European Union and/or Host Nation laws and regulations on safety at work, health protection and hygiene.
- b. If the Contracting Officer notifies the Contractor in writing of any non-compliance in the performance of this Contract, with regard to safety and health rules and requirements prescribed by applicable national or local laws, ordinances and codes, and the Contractor fails to take immediate corrective action, then the Contracting Officer may order the Contractor to stop all or part of the work until satisfactory corrective action has been taken. Such an order to stop work shall not entitle the Contractor to an adjustment of the Contract price or other reimbursement for resulting increased costs or losses.
- c. At any time, the NCI AGENCY (FORMER NCSA) Safety Officer and Host Nation labour inspection authorities will be entitled to inspect any Contractor's activities in order to guarantee that this clause is enforced.

## **23. INCONSISTENCE BETWEEN ENGLISH VERSION AND TRANSLATION OF CONTRACT**

In the event of inconsistency between any terms of this Contract and any translation thereof into another language, the English language meaning shall prevail.

## **24. INSPECTION**

- a. All equipment, materials and supplies incorporated in the work covered by this Contract are to be new and of the most suitable grade of their respective kinds for the purpose, notwithstanding the requirements for testing, inspection and performance as required under this Contract. All workmanship shall be as required under the Contract or, if specified, best commercial (National and International) standard as provided under 40.2 hereafter.
- b. All supplies (which term throughout this clause includes without limitation raw materials, components, intermediate assemblies, end products, data including software and firmware) and services may be subject to inspection and test by the Purchaser, or his authorised representative to the extent practicable at all times and places prior to acceptance, including the period of manufacture, or after delivery, or as otherwise specified in the Contract.
- c. To that purpose QAEs are generally appointed by the technical/receiving organisation and assigned to the contract by the Contracting Officer. The QAE will be involved early in the procurement process and the development of a quality assurance plan. Upon the award of a contract, the QAE will be charged with monitoring the daily performance of the contractor. Depending on the complexity of contracts the COTR may also perform QAE-equivalent duties.

d. Alternatively the Purchaser may delegate, within the terms of STANAG 4107 and 4108, the inspection and the witnessing of acceptance testing to the Purchaser's Quality Assurance Representative (NQAR)

e. No representative (QAE or COTR) or NQAR appointed by the Purchaser for the purpose of determining the Contractor's compliance with the technical requirements of the Contract shall have the authority to change any of the specifications. Such changes may only be made by the Contracting Officer in writing.

f. In the event that any supplies, or lots thereof, or services are defective in design, material, workmanship or manufacturing quality, or as a result of undue wear and tear or otherwise not in conformity with the requirements of this Contract, including any characteristic or condition which is or becomes at variance to the performance specifications and to the intended function of the supplies, the Purchaser shall have the right either to reject them (with or without instructions as to their disposition) or to require their correction or replacement. Supplies, or lots thereof or services which have been rejected or required to be corrected or replaced shall, at the expense of the Contractor, be removed, or, if permitted or required by the Contracting Authority, corrected in place by the Contractor promptly after notice, and shall not thereafter be tendered for acceptance by the Contractor unless the former rejection or requirement of correction or replacement is disclosed.

g. If the Contractor fails promptly to remove, replace or correct such supplies or lots thereof, or services, the Purchaser either:

May by Contract or otherwise return, replace or correct such supplies or services and charge to the Contractor the cost incurred by the Purchaser; or

May terminate this Contract for default as provided in Article 24 of this Contract entitled "DEFAULT AND TERMINATION FOR DEFAULT".

h. Unless the Contractor corrects or replaces such supplies or services within the delivery schedule, the Purchaser may require the delivery of such supplies or services at a reduction in price, which is equitable under the circumstances. Failure to agree to such reduction of price shall be a dispute within the meaning of the clause "DISPUTES - RESOLUTION OF DISAGREEMENTS - ARBITRATION CLAUSE"

i. If any inspection or test is made by the Purchaser's representatives on the premises of the Contractor or sub-contractor, the Contractor, without additional charge, shall provide all reasonable facilities and assistance for the safety and convenience of the Purchaser's representatives in the performance of their duties. The NQAR or other Purchaser representatives shall have the right of access to any area of the Contractor's or his sub-contractor's premises where any part of the contractual work is being performed. If Purchaser inspection or test is made at a point other than the premises of the Contractor, it shall be at the expense of the Purchaser except as otherwise provided in this Contract; provided, that in case of rejection the Purchaser shall not be liable for any reduction in value of samples used in connection with such inspection or test. All inspections and tests by the Purchaser shall be performed in such a manner as not to unduly delay the work. The Purchaser reserves the right to charge to the Contractor any additional cost of Purchaser inspection and test when supplies or services are not ready at the time such inspection and test is requested by the Contractor or when re-inspection or retest is necessitated by prior rejection. Acceptance or rejection of the supplies or services shall be made as promptly as practicable after delivery, except as otherwise provided in this

Contract, but failure to inspect and accept or reject supplies or services shall neither relieve the Contractor from responsibility for such supplies or services as are not in accordance with the Contract requirements nor impose liability on the Purchaser thereof.

j. The inspection and test by the Purchaser of any supplies or lots therefore, or services, does not relieve the Contractor from any responsibility regarding defect or other failures to meet the Contract requirements which may be discovered prior to acceptance.

## **25. LEGAL STATUS OF THE PARTIES**

The NATO CIS Agency and the Contractor shall also each be referred to as a “Party” hereunder, and:

a. NCI AGENCY (FORMER NCSA), including its subsidiary organs, has full juridical personality and enjoys privileges and immunities as are necessary for the independent fulfilment of its purpose.

b. The Contractor shall have the legal status of an independent contractor and nothing contained in or relating to the Contract shall be construed as establishing or creating between the Parties the relationship of employer and employee or of principal and agent. The officials, representatives, employees, or subcontractors of each of the Parties shall not be considered in any respect of being the employees or agents of the other Party and each Party shall be solely responsible for all claims arising out of or relating to its engagement of such persons or entities.

## **26. LICENSES AND PERMITS - AUTHORISATION TO PERFORM**

The Contractor warrants that:

it and its Sub-contractors have been duly authorised to provide the required services and do business in Belgium.

it and its Sub-contractors have obtained or will obtain all necessary licenses and permits required in connection with the Contract.

it and its Sub-contractors will fully comply with all the laws, decrees, labour standards and regulations of Belgium during the performance of this Contract, and that

no claim for additional moneys with respect to any authorisations to perform will be made upon NCI AGENCY (FORMER NCSA).

## **27. LIQUIDATED DAMAGES**

a. For each calendar day of delay in the performance of any relevant task or duty under the contract, and in lieu of actual damage, the Contractor shall pay to NCI AGENCY (FORMER NCSA) as fixed, agreed, and liquidated damages of 0.1% of the total contract price, less handling, transportation and taxes, to a maximum of 10% of the contract price.

b. Alternatively, NCI AGENCY (FORMER NCSA) may terminate this contract in whole or in part as provided in the first paragraph of the “DEFAULT AND TERMINATION FOR

DEFAULT” clause HEREIN and in that event the Contractor shall be liable, in addition to the excess costs provided in second paragraph of the “DEFAULT AND TERMINATION FOR DEFAULT” clause, for such liquidated damages accruing until such time as NCI AGENCY (FORMER NCSA) may reasonably obtain delivery or performance of similar supplies or services.

c. The Contractor shall not be charged with liquidated damages when the delay arises out of causes beyond the control and without the fault or negligence of the Contractor, as defined in third paragraph of the “DEFAULT AND TERMINATION FOR DEFAULT” clause and in such event, subject to the “DISPUTES - RESOLUTION OF DISAGREEMENTS - ARBITRATION” clause, the Contracting Officer shall ascertain the facts and extent of the delay and shall extend the time for performance of the contract when in his judgement the findings of fact justify an extension.

## **28. MAINTENANCE OF NCI AGENCY (FORMER NCSA) PREMISES AND FIXTURES**

a. The Contractor undertakes to maintain the premises in a clean and attractive state to a level specified by the Contracting Officer or such other supervisory authority as the Contracting Officer may designate; it shall also assume all expenses of repair caused by its negligence, that of its employees, or any other deed for which he may be held responsible.

b. Maintenance of fixtures and facilities is a responsibility of NCI AGENCY (FORMER NCSA). The Contractor will not bear any charge regarding this matter, except in case of negligence or improper use as stated in paragraph above.

c. The premises shall be available for inspection at any time by NCI AGENCY (FORMER NCSA) authorized representatives.

d. The Contractor shall not make any alterations to the premises and fixtures without prior written approval of NCI AGENCY (FORMER NCSA). This does not prohibit the Contractor from providing suitable decoration for the facility at his own expense, with the previous approval of NCI AGENCY (FORMER NCSA).

e. Failure by the Contractor to fulfil any of the provisions in the above paragraphs, after appropriate written notice by the Contracting Officer, shall give NCI AGENCY (FORMER NCSA) the right to cause these provisions to be fulfilled to NCI AGENCY (FORMER NCSA)'s requirements and to pass the full costs of such fulfilment to the Contractor for immediate reimbursement to NCI AGENCY (FORMER NCSA) without regard to any actions the Contractor may plan to take to obtain reimbursement from any other party or parties.

## **29. MARKING SHIPMENTS**

a. At a minimum, each parcel is to be marked with the contract number, delivery address and NCI AGENCY (FORMER NCSA) point of contact, if provided.

b. Unless otherwise specified in the Contract the Contractor shall be solely liable for making all transport arrangements and for payment of freight and insurance costs for the shipment and delivery of the goods in accordance with the requirements of the Contract.

c. The Contractor shall ensure that NCI AGENCY (FORMER NCSA) receives all necessary transport documents in a timely manner so as to enable NCI AGENCY (FORMER NCSA) to take delivery of the goods in accordance with the requirements of the Contract.

### **30. MATERIAL AND WORKMANSHIP**

a. Unless otherwise specifically provided for in the specifications, all equipment, materials and articles incorporated in the work covered by this contract are to be new and of the most suitable grade of their respective kinds for the purpose and all workmanship shall be first class.

b. Where equipment, materials or articles are referred to in the specifications as "equal to" any particular standard, the Contracting Officer shall decide the question of equality.

c. The Contractor shall furnish to the Contracting Officer for his approval the name of the manufacturer of machinery, mechanical and other equipment, which he contemplates incorporating in the work together with their performance capacities and other pertinent information.

d. When required by the specification, or when called for by the Contracting Officer, the Contractor shall furnish to the Contracting Officer for approval full information concerning the materials or articles, which he contemplates incorporating in the work. Samples of materials shall be submitted for approval when so directed. Machinery, equipment, materials and articles installed or used without such approval shall be at the risk of subsequent rejection.

e. The contracting Officer may, in writing, require the Contractor to remove from the work such employees as the Contracting Officer deems incompetent, careless, insubordinate or otherwise objectionable, or whose continued employment on the work is contrary to the interest of NCI AGENCY (FORMER NCSA).

### **31. MISCELLANEOUS - ENTIRE AGREEMENT**

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

b. The Contractor has fully read all terms, clauses, specifications and detailed General and any Special conditions stipulated in this order. He unreservedly accepts all terms thereof.

c. If any term of this contract is held to be invalid or unenforceable for any reason, the validity and enforceability of the remaining provisions shall not be affected.

d. The Contractor shall comply with all laws, ordinances, rules and regulations bearing upon the performance of its obligations under the Contract. In additions, the Contractor shall maintain compliance with all obligations relating to its registration as qualified vendor

of goods or services to the NCI AGENCY (FORMER NCSA); as such obligations are set forth in the NCI AGENCY (FORMER NCSA) vendor registration procedures.

e. Nothing in or relating to the Contract shall be deemed a waiver, express or implied, of any of the privileges and immunities of the NCI AGENCY (FORMER NCSA), including its subsidiary organs.

### **32. NCI AGENCY (FORMER NCSA) DELAY OF WORK**

a. If the performance of all or any part of the work is delayed or interrupted by an act of NCI AGENCY (FORMER NCSA) in the administration of this contract, which act is not expressly or implicitly authorized by this contract, or by his failure to act within the time specified in this contract (or within a reasonable time if no time is specified), an adjustment shall be made for any increase in the cost of performance of this contract caused by such delay or interruption and the contract modified in writing accordingly. Adjustment shall be made also in the delivery or performance dates and any other contractual provision affected by such delay or interruption. However, no adjustment shall be made under this clause for any delay or interruption (i) to the extent that performance would have been delayed or interrupted by any other cause, including the fault or negligence of the Contractor; or (ii) for which an adjustment is provided or excluded under any other provision of this contract.

b. No claim under this clause shall be allowed (i) for any costs incurred more than twenty (20) days before the Contractor shall have notified the Contracting Officer in writing of the act or failure to act involved; and (ii) unless the claim in an amount stated, is asserted in writing as soon as practicable after the termination of such delay or interruption, but not later than the date of final payment under the contract.

c. No claim under this clause shall be allowed for any delay resulting from the restriction of access to NCI AGENCY (FORMER NCSA) facilities as a consequence of the conduct of security or safety exercises provided that such restrictive measures do not exceed five (5) working days over a year period, and that the access restrictions are notified by the Contracting Officer, in writing, to the Contractor at least 7 days prior to their implementation.

### **33. NCI AGENCY (FORMER NCSA) FURNISHED PROPERTY**

a. NCI AGENCY (FORMER NCSA) shall deliver to the Contractor, for the use only in connection with this contract, the property (if any) stated in the Part II or III of this contract (hereinafter referred as "NCI AGENCY (FORMER NCSA) furnished property"), at the times and locations stated therein.

b. Title to NCI AGENCY (FORMER NCSA) furnished property shall remain vested in NCI AGENCY (FORMER NCSA). The Contractor shall maintain adequate property control records of NCI AGENCY (FORMER NCSA) furnished property.

c. Contractor, upon delivery to him of any NCI AGENCY (FORMER NCSA) furnished property shall assume the risk of, and shall be responsible for, any loss thereof or damage thereto, except for reasonable wear and tear, and except to the extent that such property is consumed in the performance of this contract.

d. The Contractor shall not modify any NCI AGENCY (FORMER NCSA) furnished property unless specifically authorised by the Contracting Officer.

### **34. NCI AGENCY (FORMER NCSA) REGULATIONS**

The Contractor shall comply with the applicable provisions of NCI AGENCY (FORMER NCSA) and NCI AGENCY (FORMER NCSA) regulations and directives as communicated to it by the Contracting Officer.

### **35. NON DISCLOSURE AGREEMENT**

a. Contractor's performance under this Contract may require access to third party data and information. The Contractor shall exercise the same degree of care for such third party data and information that it undertakes to preserve and protect its own data and information.

b. The Contractor and all Sub-contractors may be required to sign non disclosure agreements or certificates for access to specific information to complete tasks. Any such requirements will be indicated in the Contract Special provisions.

c. The Contractor shall ensure that its officers, employees, agents and Sub-contractors shall have been made aware of the requirements of confidentiality and shall not cause or permit the data and/or information to be either totally or partially disclosed to any third party.

d. Notwithstanding to above all officers, employees, agents and subcontractors working on-site at NATO or, under circumstances where the TOR warrants, shall sign a Non Disclosure Agreement (NDA).

e. The Contractor shall be liable for all damages resulting from the non-authorized use of the data and/or information.

### **36. NOTICE AND ASSISTANCE REGARDING PATENT AND COPYRIGHT INFRINGEMENT**

a. The Contractor shall report to the Contracting Officer, promptly and in reasonable written detail, each notice or claim of patent or copyright infringement based on the performance of this contract of which the Contractor has knowledge.

b. In the event of any claim or suit against NCI AGENCY (FORMER NCSA) on account of any alleged patent or copyright infringement arising out of the performance of this contract or out of the use of any supplies furnished or work or services performed hereunder, the Contractor shall furnish to NCI AGENCY (FORMER NCSA), when requested by the Contracting Officer, all evidence and information in possession of the Contractor pertaining to such suit or claim. Such evidence and information shall be furnished at the expense of NCI AGENCY (FORMER NCSA) except where the Contractor has agreed to indemnify NCI AGENCY (FORMER NCSA).

c. This clause shall be included in all sub-contracts.

## **37. ORDER OF PRECEDENCE**

In the event of any inconsistency in this contract, unless otherwise provided herein, the inconsistency shall be resolved giving precedence in the following descending order:

- 1st The Part I of the Contract.
- 2nd The Special Provisions (Part II – Section A) (if provided).
- 3rd The General Provisions (Part II – Section B).
- 4th The Statement Of Work (Part III).
- 5th The Contractor's Bid or Proposal accepted by NCI AGENCY (FORMER NCSA).

The documents listed above form the entirety of the contract.

## **38. PATENT INDEMNITY**

a. 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 items will be manufactured, 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 NCI AGENCY (FORMER NCSA) from any liability for patent infringement in said countries. The Contractor will notify NCI AGENCY (FORMER NCSA) of any claims of which it has knowledge, or may be notified, of patent infringement pertaining thereto.

b. The Contractor shall indemnify NCI AGENCY (FORMER NCSA) and its officers, agents and employees against liability, including costs, for infringement of any letters patent (except letters patent issued upon an application which is now or may hereafter be kept secret or otherwise withheld from issue by order of the government which issued the letters patent) arising out of the manufacture or delivery of supplies under this contract, or out of the use or disposal by or for the account of NCI AGENCY (FORMER NCSA) of such supplies. The foregoing indemnity shall not apply unless the Contractor shall have been informed as soon as practicable by NCI AGENCY (FORMER NCSA) of the suit or action alleging such infringement and shall have been given such opportunity as is afforded by applicable laws, rules, or regulations to participate in the defence thereof; and further, such indemnity shall not apply to:

- (1) an infringement resulting from compliance with specific written instructions of the Contracting Officer directing a change in the supplies to be delivered or in the materials or equipment to be used or directing a manner of performance of the Contract not normally used by the Contractor;
- (2) an infringement resulting from an addition to, or change in, such supplies or components furnished which addition or change was made subsequent to delivery or performance by the Contractor; or
- (3) a claimed infringement which is settled without the consent of the Contractor, unless required by a court of competent jurisdiction.

### **39. PAYMENTS AND INVOICES**

a. Payment shall be made within 30 days from receipt of a proper invoice i.e. :

(1) Certified and duly signed by a duly authorised company official.

Each copy of the invoice shall contain the following certificate "I certify that the above invoice is true and correct and that payment therefore has not been received".

(2) Supported by a Certificate of Receipt, Inspection and Acceptance duly signed by the Authority to whom the goods/services were delivered and by a Certificate of Inspection and Acceptance duly signed by the Authority assigned by the Contracting Officer to carry out Inspection and testing as specified in the "Inspection" clause here above (COTR, QAE or NQAR).

(3) Including remittance details.

b. No payment shall be made with respect to undelivered supplies, work not performed and/or services not rendered under this contract.

c. Payment will be effected in the currency or currencies of the contract and the Contractor shall bear all related charges.

d. NCI AGENCY (FORMER NCSA) shall not bear any cost related to financial guarantees, which the Contractor is required to provide under this Contract.

e. Invoices will be submitted in duplicate and give the following information:

(1) Its reference and issue date.

(2) The name, address of NCI AGENCY (FORMER NCSA).

(3) The Contract number.

(4) Purchase Order number (if applicable)

(5) The description of services or deliverables

(6) The quantities and unit prices (exclusive of taxes and duties).

(7) The total amount to be paid.

(8) The bank account details where the Contractor will receive the payment

f. For partial payments, indicate the payment number by noting "Partial Payment Number ...".

g. Invoices shall be sent to the address listed in the "Bill to" block of the contract.

## **40. PENALTY FOR UNSATISFACTORY PERFORMANCE**

- a. When unsatisfactory performance or late completion exists the Contracting Officer will send the Contractor a "Show Cause" letter.
- b. The Contractor will have 5 (five) days to refute the unsatisfactory performance or late completion or correct the unsatisfactory performance or make deliveries.
- c. Failure to refine or correct the situation will result in a penalty equal to one tenth of 10% of the original amount, transportation, loading and unloading fees excluded, for each day of delay after the delivery term date specified in the contract. The total amount of penalty will not exceed the said 10%.
- d. In addition, at the option of the Contracting Officer may decide for a termination for default and the Contractor may be excluded from the supplier list as being a non-responsible and/or a delinquent Contractor. Debarred bidders shall neither be offered NATO solicitations for contracts from this Agency.

## **41. PREFERRED CUSTOMER STATUS**

- a. For all supplemental agreements made for supplies and services furnished to NCI AGENCY (FORMER NCSA) without competition, the Contractor shall offer prices on a "Preferred Customer" basis.
- b. The Contractor shall offer prices as favourable as those extended to any Government, Agency, and Company, Organization or individual purchasing or handling like quantities of supplies or services covered by the contract under similar conditions.
- c. In the event that prior to complete delivery under this contract the Contractor offers any of such items in substantially similar quantities to any customer at prices lower than those set forth herein, the Contractor shall so notify NCI AGENCY (FORMER NCSA) and the prices of such items shall be correspondingly reduced by a contract modification.
- d. Price in this sense means "Base Price" prior to applying any bonus, export tax reduction, turn-over tax exemptions and other reductions based on National policies.

## **42. PRICES**

- a. Prices to be paid for the services performed under the contract are stated in the Part I of the contract. The referred prices include all the expenses in connection with this contract; therefore, no additional sums will be paid to the Contractor for any cost that it could deem as necessary for the performance of the contract, unless otherwise specified in the contract.
- b. Contract Prices are valid for the execution periods specified in the contract.
- c. Unless differently specified in the Special Contract provisions, all prices are firm and fixed and there will be no price revision for the base contract or for the options.

### **43. PROTECTION AND INDEMNIFICATION OF NCI AGENCY (FORMER NCSA)**

- a. The Contractor shall at all times hold NCI AGENCY (FORMER NCSA), its agents, representatives and employees harmless from any and all suits, claims, charges and expenses which arise from acts or omissions of the Contractor, its agents, representatives, employees or Sub-contractors.
- b. The Contractor shall indemnify and hold NCI AGENCY (FORMER NCSA) harmless against claims for injury to persons or damages to property of the Contractor or others arising from the Contractor's possession or use of NCI AGENCY (FORMER NCSA) furnished property, including facilities and utilities.
- c. The Contractor shall pay compensation for all damage occurring to any NCI AGENCY (FORMER NCSA)'s property, facilities and utilities, occasioned by the Contractor, its agents, representatives, employees or Sub-contractors, arising from its or their presence on NCI AGENCY (FORMER NCSA)'s premises in connection with the Contract.
- d. All property of the Contractor while at NCI AGENCY (FORMER NCSA)'s premises shall be at the risk of the Contractor, and NCI AGENCY (FORMER NCSA) shall accept no liability for any loss or damage, except to the extent that any loss or damage is the result of a wilful act or gross negligence on the part of NCI AGENCY (FORMER NCSA)'s agents, representatives or employees.

### **44. RELEASE OF NEWS/INFORMATION**

- a. No news release (including photographs and films, public announcements, etc.) on any part of the subject matter of this Contract shall be made by the Contractor without prior written approval by the Contracting Officer.
- b. Furthermore the Contractor shall, in no other manner whatsoever use the name, emblem or official seal of NATO, and/or NCI AGENCY (FORMER NCSA) in connection with its business or otherwise.

### **45. RESPONSIBILITY OF THE COTR (OR DESIGNATED ALTERNATE)**

The COTR, acting on behalf of the Contracting Officer, is responsible for and has the authority to:

- a. Verify the Contractor performs the technical requirements of the contract in accordance with the contract terms, conditions, and specifications and assure that the work stays within the set of technical bounds.
- b. Perform, or cause to be performed, inspections necessary in connection with Para 1. above and verify that the Contractor has corrected all deficiencies. Perform provisional acceptance for NCI AGENCY (FORMER NCSA) of services delivered under this contract subject to concurrence by the contracting officer.
- c. Maintain liaison and direct communication with the Contractor. Written communications with the Contractor and other documents pertaining to the contract shall

be signed as "Contracting Officer's (Technical) Representative" with a copy furnished to the Contracting Officer.

d. Monitor the Contractor's performance and notify the Contracting Officer of deficiencies observed during surveillance. Record and report to the Contracting Officer incidents of faulty or non-conforming work, delays, or problems.

e. Coordinate site entry for Contractor personnel and ensure that any NCI AGENCY (FORMER NCSA)- furnished property is available when required.

f. For Consultant services contracts:

(1) Liaise between the Consultants and any NATO personnel.

(2) Assess and co-ordinate the Consultants requirements for the performance of their tasks.

(3) Approve Consultants leave and/or absences from NCI AGENCY (FORMER NCSA).

(4) Certify the Consultants timesheets.

Limitations:

g. The COTR is not empowered to award, agree to, or sign any contract (including delivery orders) or modifications thereto, or in any way to obligate the payment of money by NCI AGENCY (FORMER NCSA).

h. The COTR may not take any action that may impact on the contractor delivery schedules, funds, or scope. You may not make any contractual agreements, commitments, or delivery schedules.

Duration of the COTR mission:

i. The designation as a COTR shall remain in effect through the life of the contract, unless sooner revoked or terminated by the Contracting Officer. Such termination of the designation shall be in writing. If the COTR designation is revoked for any reason before completion of this contract a successor COTR will be designated in writing by the Contracting officer. Accordingly there will be no re-delegation of the COTR authority between the old and the new COTR's.

## **46. RIGHTS IN TECHNICAL DATA AND COMPUTER SOFTWARE**

a. Ownership: as between the parties, the parties agree that that portion of the work product as created by operation of this Agreement relating to NCI AGENCY (FORMER NCSA)'s information shall belong exclusively to NCI AGENCY (FORMER NCSA).

b. That portion of the work product as created by operation of this Agreement relating to Contractor's information, pre-existing work or which is generic to Contractor's software products shall belong exclusively to Contractor.

c. Pre-Existing Materials: the Contractor may include in the supplies pre-existing work or materials.

d. The Contractor grants to NCI AGENCY (FORMER NCSA) a non-exclusive, non-transferable, non-assignable, worldwide, royalty-free right and license to use, execute, reproduce, display, perform, and distribute (internally) copies of, and prepare derivative works based upon, such work and materials and the right to authorize others to do any of the foregoing solely for NCI AGENCY (FORMER NCSA)'s purposes and benefit under the applicable statement of work.

## **47. SECURITY**

a. Unless otherwise specified in the Special Contract provisions, the Contractor shall assign to this contract personnel who currently hold a valid NATO Secret security clearance, confirmed to the Purchaser by the relevant National Security Authority at Contract signature. If this is not possible, the Contractor shall assign personnel who have already submitted an application for a security clearance. This requirement applies to all Sub-contracts issued by the Contractor for effort under this prime Contract. If during the performance of the Contract, Contractor's Technical Support Personnel need to be escorted because of the non-availability of the security clearance required by the Site, only the actual work time (as recorded) will be considered for payment.

b. The Contractor shall comply with all security measures as are prescribed by the Purchaser and the National Security Authority or designated security Agency of each of the NATO countries in which the Contract is being performed. He shall be responsible for the safeguarding of classified information, documentation, material and equipment entrusted to him or generated by him in connection with the performance of the Contract. In particular the Contractor undertakes to:

(1) Appoint an official responsible for supervising and directing security measures in relation to the Contract and communicating details of such measures to the Purchaser on request;

(2) Maintain, preferably through the official responsible for security measures, a continuing relationship with the National Security Authority or designated security agency charged with ensuring that all NATO classified information involved in the Contract is properly safeguarded;

(3) Abstain from copying by any means, without the authorisation of the Purchaser, the National Security Authority or designated security agency, any classified documents, plans, photographs or other classified material entrusted to him;

(4) Furnish, on request, information to the National Security Authority or designated security agency pertaining to all persons who will be required to have access to NATO classified information;

(5) Maintain at the work site a current record of his employees at the site who have been cleared for access to NATO classified information. The record should show the date and level of clearance;

(6) Deny access to NATO classified information to any person other than those persons authorised to have such access by the National Security Authority or designated security agency;

(7) Limit the dissemination of NATO classified information to the smallest number of persons as is consistent with the proper execution of the Contract;

(8) Comply with any request from the National Security Authority or designated security agency that persons entrusted with NATO classified information sign a statement undertaking to safeguard that information and signifying their understanding both of their obligations under national legislation affecting the safeguarding of classified information, and of their comparable obligations under the laws of the other NATO nations in which they may have access to classified information;

(9) Report to the Purchaser or designated Security Agency any breaches or suspected breaches of security, suspected sabotage, or other matters of security significance which would include any changes that may occur in the ownership, control or management of the facility or any changes that affect the security arrangements and security status of the facility and to make such other reports as may be required by the National Security Authority or designated Security Agency, e.g. reports on the holdings of NATO classified information;

(10) Apply to the Purchaser for approval before sub-contracting any part of the work, if the Sub-Contract would involve the sub-contractor in access to NATO classified information, and to place the sub-contractor under appropriate security obligations no less stringent than those applied to his own Contract;

(11) Undertake not to utilise, other than for the specific purpose of the Contract, without the prior written permission of the Purchaser or his authorised representative, any NATO classified information furnished to him, including all reproductions thereof in connection with the Contract, and to return all NATO classified information referred to above as well as that developed in connection with the Contract, unless such information has been destroyed, or its retention has been duly authorised with the approval of the Purchaser. Such NATO classified information will be returned at such time as the Purchaser or his authorised representative may direct; and

(12) Classify any produced document with the highest classification of the NATO classified information disclosed in that document.

## **48. SOFTWARE RELEASES AND UPDATES**

a. All software implemented on or delivered with the supplies shall be at the start of the provisional acceptance, the most recent versions or releases as available.

b. The Contractor shall for duration of minimum five (5) years after acceptance, and upon their availability, offer to NCI AGENCY (FORMER NCSA) all software changes, fixes and new releases. These shall be offered at no cost when they are offered free of charge on the commercial market.

## 49. SPECIAL TERMINATION CLAUSE

a. If at any time while this Contract is in force either party find itself in one of the following situations:

- (1) Death, supervened incapacity or extinction of its legal entity;
- (2) Declaration of bankruptcy, reorganisation of debts, take over by a trusty, or any other legal status implying lack of capacity to enter new financial liabilities,
- (3) Change of activity in such a manner that it becomes incompatible with the purpose of this Contract,

b. Then the other party shall be entitled to terminate this Contract upon giving written notice of termination under the provisions of this clause to the other party. Such termination shall not be considered as termination for convenience and shall be effective on the date stated on that notice of termination.

c. The settlement of such a special termination shall be in line with the "TERMINATION FOR CONVENIENCE" clause hereafter.

## 50. STOP WORK ORDER

a. The Contracting Officer may, at any time, by written order to the Contractor, require the Contractor to stop all, or any part, of the work called for by this contract for a period of ninety (90) days after the order is delivered to the Contractor and for any further period to which the parties may agree. Any such order shall be specifically identified as Stop Work Order issued pursuant to this clause. Upon receipt of such an order, the Contractor shall forthwith comply with its terms and take all reasonable steps to minimise the incidence of costs allocable to the work covered by the order during the period of work stoppage. Within a period of ninety (90) days after a stop work order is delivered to the Contractor, or within any extension of the period to which the parties shall have agreed, the Contracting Officer shall either:

- (1) cancel the stop work order and determine under which terms the work may be resumed, or
- (2) terminate the work covered by such order as provided in the "Termination for Convenience" or the "Termination for default" clause of this contract.

b. If a stop work order issued under this clause is cancelled, or the period of the order or any extension thereof expires, without a decision by the Purchaser, the portion of work related to the stop work order shall be resumed by the Contractor.

c. In any of the above situations, the Contractor shall be entitled to an equitable adjustment if it is found that the reason for the suspension did not arise do to actions attributable to the Contractor but was for the convenience of the Purchaser alone. This equitable adjustment shall be made in the delivery schedule or contract price, or both, and the contract shall be modified in writing accordingly, if:

- (1) the stop work order results in an increase in time required for, or in the Contractor's cost properly allowable to, the performance of any part of this contract and

(2) the Contractor asserts a claim for such adjustment within thirty (30) days after the end of the period of work stoppage; provided that, if the Contracting Officer decides the facts justify such action, he may receive and act upon any such claim asserted at any time prior to final payment under this contract.

d. If a stop work order is not cancelled and the work covered by such order is terminated for the convenience of NCI AGENCY (FORMER NCSA) the reasonable costs resulting from the stop work order shall be allowed in arriving at the termination settlement.

## **51. SUB-CONTRACTS**

a. The Contractor shall be responsible for the execution of all terms of this Contract delegate, transfer or assign its rights or obligations under the Contract without the prior permission of the Contracting Officer. The Contractor shall consequently apply for Contracting Officer approval prior to subcontracting any part of the work. Such approval, and subsequent performance, is subject to the Clause titled "EMPLOYEES" herein.

b. Even if a sub-contract is placed, the Contractor the Contractor shall be solely responsible for all services and obligations performed by its subcontractors under this Contract.

c. In the event that the Contractor requires the services of subcontractors to perform any obligations under the Contract, the Contractor shall obtain the prior written approval of the NCI AGENCY (FORMER NCSA). The NCI AGENCY (FORMER NCSA) shall be entitled, in its sole discretion, to review the qualifications of any subcontractors and to reject any proposed subcontractor that the NCI AGENCY (FORMER NCSA) reasonably considers is not qualified to perform obligations under the Contract. The NCI AGENCY (FORMER NCSA) shall have the right to require any subcontractor's removal from NCI AGENCY (FORMER NCSA) premises without having to give any justification therefore. Any such rejection or request for removal shall not, in and of itself, entitle the Contractor to claim any delays in the performance, or to assert any excuse for the non-performance, of any of its obligations under the Contract, and the Contractor shall be solely responsible for all services and obligations performed by its subcontractors.

d. The NCI AGENCY (FORMER NCSA) shall be entitled, in its sole discretion, to review the qualifications of any subcontractors and to reject any proposed subcontractor that the NCI AGENCY (FORMER NCSA) reasonably considers is not qualified to perform obligations under the Contract. The NCI AGENCY (FORMER NCSA) shall have the right to require any subcontractor's removal from NCI AGENCY (FORMER NCSA) premises without having to give any justification therefore. Any such rejection or request for removal shall not, in and of itself, entitle the Contractor to claim any delays in the performance, or to assert any excuse for the non-performance, of any of its obligations under the Contract.

e. Sub-contractors shall be limited to persons and firms of member nations of NATO, participating in the funding of this requirement, unless specifically authorised by the Contracting Officer. The list of participating countries is specified in the Special Provisions.

f. The Sub-contractor, if any, shall procure all permits and licenses necessary for the execution of the Contract, at no cost to NCI AGENCY (FORMER NCSA).

g. Cancellation of the present Contract shall automatically terminate all sub-contracts, unless agreed otherwise between NCI AGENCY (FORMER NCSA) and the Sub-contractors.

## **52. TAXES AND DUTIES**

a. The contract price, including the prices in any sub-contracts hereunder, shall not include any customs charges, taxes or other charges levied by the member nations of NATO, or any political subdivision thereof, from which NCI AGENCY (FORMER NCSA) is exempt, on the work performed by the Contractor or his sub-contractors under this contract.

b. To the extent NCI AGENCY (FORMER NCSA) is not exempt from such charges by virtue of law, regulation or international agreement, payment for all such charges shall be made directly to the concerned member nations of NATO or any political subdivision thereof by NCI AGENCY (FORMER NCSA) and NCI AGENCY (FORMER NCSA) shall hold the Contractor and his sub-contractors harmless there from. In the event such charges are levied against, and must be paid directly by, the Contractor to his sub-contractors, NCI AGENCY (FORMER NCSA) shall reimburse the Contractor the full amount of the charges upon receipt of the Contractor's invoice and appropriate documentation.

c. The present Contract is exempted of V.A.T. according to following regulations:

(1) For Belgian firms : Article 42, §3, 3° du code de la TVA.;

(2) For firms from the EEC countries: Article 15.10 from the EEC Council Directive 77/388/EEC;

(3) For firms from non-EEC countries: Article VIII of Paris Protocol, dated 28 August 1952 and Articles IX and X of the Ottawa Convention of 1951.

## **53. TERMINATION FOR CONVENIENCE OF NCI AGENCY (FORMER NCSA)**

a. The performance of work under this Contract may be terminated by NCI AGENCY (FORMER NCSA) in accordance with this Clause, in whole or in part, whenever the Contracting Officer shall determine that such termination is in the best interest of NCI AGENCY (FORMER NCSA). Any such termination shall be effected by delivery to the Contractor of a Notice of Termination specifying the extent to which performance of work under the Contract is terminated and the date upon which such termination becomes effective.

b. After receipt of a Notice of Termination and except as otherwise directed by the Contracting Officer, the Contractor shall:

(1) stop work under the Contract on the date and to the extent specified in the Notice of Termination;

(2) place no further orders or sub-contracts for material, services or facilities, except as may be necessary for completion of such portion of the work under the Contract as is not terminated;

(3) terminate all orders and sub-contracts to the extent that they relate to the performance of work terminated by the Notice of Termination;

(4) settle all liabilities and all claims arising from such termination of orders and sub-contracts, with the approval or ratification of the Contracting Officer, to the extent he may require, which approval or ratification shall be final for all the purposes of this Clause;

(5) transfer title of property and deliver to NCI AGENCY (FORMER NCSA) in the manner, at the times, and to the extent, if any, directed by the Contracting Officer:

(a) The fabricated parts, work in process, completed work, and

(b) The completed or partially completed plans, drawings, information, and other property which, if the contract has been completed, would have been required to be furnished to NCI AGENCY (FORMER NCSA);

(6) complete performance of such part of the work as shall not have been terminated by the Notice of Termination.

c. After receipt of a Notice of Termination, the Contractor shall submit to the Contracting Officer its termination claim, in the form and with certification prescribed by the Contracting Officer. Such claim shall be submitted promptly but in no event later than three months from the effective date of termination. Upon failure of the Contractor to submit its termination claim within the time allowed, the Contracting Officer may determine, on the basis of information available to him, the amount, if any, due to the Contractor by reason of the termination and shall thereupon pay to the Contractor the amount so determined.

d. When such claim has been submitted, and the Contractor and the Contracting Officer agree upon the whole amount to be paid, the Contracting Officer shall thereupon pay to the Contractor the amount so determined. In the event of failure to agree upon that amount, the Contracting Officer shall pay to the Contractor the amount determined by him. The Contractor will immediately submit any outstanding invoices for supplies or services delivered and accepted prior to termination date for payment.

e. Unless otherwise provided for in this Contract, or by applicable statute, the Contractor, from the effective date of termination and for a period of three years after final settlement under this Contract, shall preserve and make available to NCI AGENCY (FORMER NCSA) at all reasonable times at the office of the Contractor but without direct charge to NCI AGENCY (FORMER NCSA), all its books, records, documents and other evidence bearing on the costs and expenses of the Contractor under this Contract and relating to the work terminated hereunder, or to the extent approved by the Contracting Officer, photographs, micro-photographs, or other authenticated reproductions thereof.

## **54. TITLE OF PROPERTY AND RISK OF LOSS**

a. The Contractor warrants and represents that the goods delivered under the contract are unencumbered by any third party's title or other property rights, including, but not limited to, any liens or security interests.

b. Unless otherwise expressly provided in the Contract, title in and to the goods shall pass from the contractor to the NCI AGENCY (FORMER NCSA) upon delivery of the goods and their acceptance by NCI AGENCY (FORMER NCSA) in accordance with the requirements of the Contract.

c. Acceptance is regardless of when or where NCI AGENCY (FORMER NCSA) takes physical possession.

(1) Risk of loss or of damage to supplies covered by this contract will remain with the Supplier until, and will pass to NCI AGENCY (FORMER NCSA) upon, acceptance by NCI AGENCY (FORMER NCSA) at the destination specified in this contract.

(2) Risk of loss of or damage to supplies that so fail to conform to the contract as to give a right of rejection will remain with the Supplier until cure or acceptance, at which time (1) above shall apply.

d. Notwithstanding the above, the Supplier must not be liable for loss of or damage to supplies caused by the negligence of officers, agents or employees of NCI AGENCY (FORMER NCSA).

## **55. VARIATION IN QUANTITY**

a. No variation in quantity of any item called for by this contract will be accepted unless such variation has been caused by conditions of loading, shipping, packing, or allowances in manufacturing process.

b. In such cases, variations will only be permitted to the extent, if any, specified elsewhere in the contract.

## **56. WARRANTY**

a. Notwithstanding inspection and acceptance by NCI AGENCY (FORMER NCSA) of supplies furnished or work performed under the contract or any provision of this contract concerning the conclusiveness thereof, the Contractor warrants, in accordance with EU Consumer Law Sets Warranty Standard and without prejudice to possible longer warranty periods offered by the manufacturers or importers, that for a period of minimum two (2) years following the date of acceptance, all supplies furnished and work performed under this contract will be free from defects in material or workmanship and will conform with the specifications and all other requirements of this contract.

b. The Contracting Officer shall give written notice to the Contractor of any breach of the warranties in the first paragraph of this clause within thirty (30) days after discovery of any defect.

c. Within a reasonable time after such notice, the Contracting Officer may either:

(1) by written notice require the prompt correction or replacement of any supplies or part thereof (including preservation, packaging, packing and marking) that do not conform with requirements of this contract within the meaning of the first paragraph of this clause; or

(2) retain such supplies, whereupon the contract price thereof shall be reduced by an amount equitable under the circumstances and the Contractor shall promptly make appropriate payment.

d. When return, correction or replacement is required, the Contracting Officer shall return the supplies and transportation charges and responsibility for such supplies while in transit shall be borne by the Contractor. However, the Contractor's liability for such transportation charges shall not exceed an amount equal to the cost of transportation by the usual commercial method of shipment between the designated destination point under this contract and the Contractor's plant and return.

e. If the Contractor does not agree as to his responsibility to correct or replace the supplies delivered, he shall nevertheless proceed in accordance with the written request issued by the Contracting Officer per the third paragraph of this clause to correct or replace the defective or nonconforming supplies.

f. In the event it is later determined that such supplies were not defective or nonconforming within the provisions of this clause, the contract price will be equitably adjusted. Failure to agree to such an equitable adjustment of price shall be a dispute concerning a question of fact within the meaning of the clause of this contract entitled "DISPUTES – RESOLUTION OF DISAGREEMENT AND ARBITRATION"

g. Any supplies or parts thereof furnished in replacement pursuant to this clause shall also be subject to all the provisions of this clause to the same extent as supplies initially delivered. Corrected parts will be warranted for a period not less than six (6) months starting at the time the part is received back at the user's location.

h. In case of a provisional acceptance the warranty period starts at the date of provisional acceptance and ends two (2) years after the date of provisional acceptance.

i. Failure to agree upon any determination to be made under this clause shall be a dispute concerning a question of fact within the meaning of the "DISPUTES – RESOLUTION OF DISAGREEMENT AND ARBITRATION" clause of this contract.

j. The word "supplies" as used herein includes related services.

k. The rights and remedies of NCI AGENCY (FORMER NCSA) provided in this clause are in addition to and do not limit any rights afforded to NCI AGENCY (FORMER NCSA) by any other clause of the contract.

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