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NCI AGENCY PURCHASE ORDER GENERAL TERMS AND CONDITIONS

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Disclaimer Clause.

Any modification, including changes, additions or deletions and instructions under the NCI Agency contract shall not be binding unless issued in writing by the NCI Agency Contracting Officer. Should the contractor follow any other directions than from the NCI Agency Contracting Officer in the performance of this contract, it will be at the risk of the contractor.

Clause 1 - Prices.

All prices are firm fixed price. All taxes and customs shall be excluded.

Clause 2 - Language.

All written correspondence related to this order shall be in English. In the event of any disagreement between the original text (in English) of this order and any translation into another language, the original English text shall prevail.

Clause 3 - Modifications.

Any modifications to this Purchase Order shall not be binding unless issued in writing by a duly authorized NCI AGENCY Contracting Officer.

Clause 4 - Assignment.

NCI AGENCY 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 shall notify the Contractor in writing.

Clause 5 - Inspection and Acceptance.

The Contractor shall only tender for acceptance items conforming to the requirements of this contract. NCI AGENCY reserves the right to inspect or test any supplies or services tendered for acceptance. NCI AGENCY may require repair or replacement of nonconforming supplies or re-performance of nonconforming services at no increase in contract price. NCI AGENCY must exercise its post acceptance rights:

- i. Within a reasonable time after the defect was discovered or should have been discovered; and,
- ii. Before any substantial change occurs in the condition of the item, unless the change is due to the defect in the item.

Clause 6 - Material and Workmanship.

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. 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. 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. 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. 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.

Clause 7 - Warranty

7.1 Notwithstanding inspection and acceptance by NCI AGENCY of supplies furnished or work performed under the contract or any provision of this contract concerning the conclusiveness thereof, the Contractor warrants, without prejudice to possible longer warranty periods offered by the manufacturers or importers, that for a period of a minimum of 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.

7.2 When return, correction or replacement of supplies is required, the Contracting Officer shall return the supplies to the Contractor at the Contractor's expense. 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.

Clause 8 - Variation in Quantity.

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

Clause 9 - Marking Shipments.

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

Clause 10 - Payments and Invoices.

Payment shall be made within 30 days from receipt of a proper invoice. Invoices shall be supported by a Certificate of Inspection and Acceptance duly signed by the Authority to whom the goods/services were delivered. No payment shall be made with respect to undelivered supplies, work not performed and/or services not rendered under this contract. Payment will be effected in the currency or currencies of the contract. Invoices will be submitted in triplicate and give the following information: Purchase Order Number, description of supplies and/or services, quantities, units and prices. For partial payments, indicate the payment number by noting "Partial Payment Number ...". Invoices shall be sent to the address listed in the "Bill to" block of the contract.

Clause 11 - Taxes and Duties.

11.1 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 is exempt, on the work performed by the Contractor or his sub-contractors under this contract.

11.2 To the extent NCI AGENCY 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 and NCI AGENCY 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 shall reimburse the Contractor the full amount of the charges upon receipt of the Contractor's invoice and appropriate documentation.

Clause 12 - Preferred Customer Status.

For all supplemental agreements made for supplies and services furnished to NCI AGENCY without competition, the Contractor shall offer prices on a "Preferred Customer" basis. The Contractor shall offer prices as favourable as those extended to any Government, Agency, Company, Organization or individual purchasing or handling like quantities of supplies or services covered by the contract under similar conditions. 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 and the prices of such items shall be correspondingly reduced by revision to the contract. 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.

Cause 13 - 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, in accordance with the following:

13.1. 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).

13.2. 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).

13.3. The Contracting Authority's decision shall be final and conclusive unless, within 30 calendar 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 13.4. through 13.12. below. The burden of proof for both receipt or delivery of such documentation shall be by signed and dated registered mail receipt or by hand receipt as provided by the Purchaser.

13.4. 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.

13.5. 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 13.1. 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.

13.6. Within a period of thirty days from the date of receipt of the Contractor's notification at paragraph 13.3. 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.

13.7. 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.

13.8. 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.

13.9. 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.

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

13.11. 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.

13.12. 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 - Termination for Convenience of NCI AGENCY.

14.1 In the event NCI AGENCY determines goods or 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 NCI AGENCY as can be granted or obtained.

14.2 The Contractor and the Contracting Officer may agree upon the amount or amounts to be paid to the Contractor by reason of the total or partial termination of work pursuant to this clause. The amount or amounts may include a reasonable allowance for profit on services provided or supplies delivered provided such agreed amount or amounts exclusive of settlement costs shall not exceed the total contract price as reduced by the amount of payments otherwise made and as further reduced by the contract price of work not terminated.

14.3 The Contractor will immediately submit any outstanding invoices for supplies or services delivered and accepted prior to termination date for payment

14.4 In the event of the failure of the Contractor and the Contracting Officer to agree as provided in paragraph 14.2 upon the whole amount to be paid to Contractor by reason of the termination of work pursuant to this clause, the Contracting Officer shall authorize payment to the Contractor the amounts determined by the Contracting Officer. Any further disagreement between the parties shall constitute a "Dispute" and shall be resolved as provided in the "DISPUTES - RESOLUTION OF DISAGREEMENTS - ARBITRATION" clause.

Clause 15 - Termination for Default.

15.1 If the Contractor:

- i. Fails to make delivery of the supplies or to perform the service within the time specified herein or any extension thereof;
- ii. 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, subject to the provisions of paragraph 15.2, terminate the whole or any part of the contract by written Notice of Default to the Contractor.

15.2 The Contractor shall not be liable for any excess costs if any failure to perform the contract arises out of causes beyond the control and without fault or negligence of the Contractor. The Contractor shall inform NCI AGENCY of the occurrence (and of the termination) of such causes as promptly as possible.

15.3 In the event the Contracting Officer terminates this contract in whole or part as provided in paragraph 15.1 of this clause and the Contracting Officer procures supplies or services similar to those so terminated in compliance with the rules and procedures established by NCI AGENCY, the Contractor shall be liable for any excess costs for such similar supplies or services.

In such cases, NCI AGENCY shall pay to the Contractor the contract price for completed supplies or services delivered and accepted less any excess costs. Failure to agree on a termination settlement shall be considered a dispute subject to the "DISPUTES - RESOLUTION OF DISAGREEMENTS - ARBITRATION " clause.

15.4 If after notice of termination of this contract under the provisions of paragraph 15.1 of this clause, it is determined the failure to perform this contract is due to causes beyond the control and without the fault or negligence of the Contractor pursuant to the provisions of paragraph 15.2. of this clause, such Notice of Default shall be deemed to have been issued pursuant to the "Termination for Convenience of NCI AGENCY " clause, and the rights and obligations for the parties hereto shall in such event be governed by such clause.

Clause 16 - 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 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 from any liability for patent infringement in said countries.

The Contractor will notify NCI AGENCY of any claims of which it has knowledge, or may be notified, of patent infringement pertaining thereto.

Clause 17 - Miscellaneous.

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

17.2 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.

17.3 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.