

**CUSTOMER CONTRACT REQUIREMENTS
AIR COMMAND
CUSTOMER CONTRACT IFB-CO-12556-AirC2IS**

CUSTOMER CONTRACT REQUIREMENTS

The following customer contract requirements apply to this contract to the extent indicated below. If this contract is for the procurement of commercial items under a Government prime contract, as defined in FAR Part 2.101, see Section 3 below.

1. Prime Contract Special Provisions The following prime contract special provisions apply to this purchase order

**IFB-CO-12556-AirC2IS IFB-CO-12556-AirC2IS (JUL 2009).
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AIR COMMAND

CUSTOMER CONTRACT IFB-CO-12556-AirC2IS

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The following customer contract requirements apply to this contract to the extent indicated below.

Prime Contract Special Provisions The following prime contract special provisions apply to this purchase order.

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NATIONAL LAWS & REGULATIONS

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1. – AUTHORIZATION TO PERFORM/CONFORMANCE TO NATIONAL

LAWS & REGULATIONS

1.1. The Contractor warrants that he and his Sub-contractors are duly authorized to operate and do business in the country or countries in which this Contract is to be performed and that he and his Sub-contractors have obtained or will obtain all necessary licenses and permits required in connection with the Contract and that no claim for additional monies with respect to any costs to obtain the authorizations to perform will be made upon the Purchaser.

1.2. The Contractor acknowledges that he and his Sub-contractors are responsible during the performance of this Contract for ascertaining and complying with all the national and local laws, decrees, labor standards, environmental laws and health and safety regulations of such country or countries, in effect at the time of Contract signature or scheduled to go into effect during Contract performance. Failure to fully ascertain and comply with such laws, decrees, regulations or standards shall not be the basis for claims for change to the specifications, terms, conditions or monetary value of this Contract.

2. PARTICIPATING COUNTRIES

2.1. Unless prior written authorization of the Purchaser has been obtained, none of the work, including project design, labor and services, shall be performed other than by firms from and within NATO member countries that are financing the effort.

2.2. Unless prior written authorization of the Purchaser has been obtained, no material or items of equipment down to and including identifiable Sub-Assemblies shall be manufactured or assembled by a firm other than from and within a NATO Member Nation.

2.3. Unless prior written authorization of the Purchaser has been obtained, the intellectual

property rights for all software and documentation incorporated by the Contractor and/or its Sub-contractors into the deliverables of the Contract shall vest with firms from and within NATO member nations and no royalties or license fees for such software and documentation shall be paid by the Contractor to any source that does not reside within a

NATO member nation.

2.4. Any modification in the nationality, ownership, shareholding and/or change of control of the Contractor and its Sub-contractor shall be immediately notified in writing to the Purchaser with all necessary details to allow the Purchaser to determine whether or not the Contractor and/or its Sub-contractors continue to comply with 11.1 and 11.2 above. Non compliance with 11.1 and 11.2 by the Contractor and/or its Subcontractor shall constitute ground for termination of this Contract under the Clause "Termination for Default".

3. SUBCONTRACTS

3.1. The Contractor shall place and be responsible for the administration and performance of all Sub-contracts including terms and conditions which he deems necessary to meet the

requirements of this Contract in full.

3.2. The Contractor shall not place any Sub-contracts outside the NATO Participating

Countries without the prior written authorization of the Purchaser. Unless prior authorization of the Purchaser has been obtained, none of the work to be carried out under any Sub-contract, including project design, labor and services, shall be performed other than by firms from and within NATO member countries. No material or items of equipment down to and including identifiable Sub-Assemblies shall be manufactured or

assembled by a firm other than from and within a Participating Country. The intellectual property rights for all software and documentation incorporated by the Sub-contractor into the deliverables of the Contract shall vest with firms from and within NATO member nations and no royalties or license fees for such software and documentation shall be paid by the Sub-contractor to any source that does not reside within a NATO member nation.

3.3. Prior to the Sub-contractors being given access to any classified information, the

Contractor shall ensure that any Sub-contractor proposed by him for the furnishing of Work which will involve, in whole or in part, access to classified information in the Contractor's custody has been granted the appropriate facility and personnel security clearances by the Subcontractor's national authorities and that such clearances are still in

effect at the time the Sub-Contract is executed and remain in effect throughout the performance of the work to be carried out under the Sub-contract.

3.4. The Contractor shall submit to the Purchaser one (1) copy of each Sub-Contract or order over a value of EUR 50,000 (or other currency equivalent) within thirty (30) calendar days from the execution of such Sub-Contract or order.

3.5. The Contractor shall seek the approval in writing of the Purchaser prior to the placing of any Sub-Contract if:

3.5.1. The value of the Sub-Contract is known or estimated to exceed EUR 250,000.00 (or other currency equivalent),

3.5.2. The Sub-Contract is one of a number of Sub-contracts with a single Sub-contractor for the same or related Work under this Contract that in the aggregate are known or expected to exceed EUR 250,000.00 (or other currency equivalent)

3.6. The Contractor shall submit a copy of any such proposed Sub-Contract when seeking

approval to the Contracting Authority but such approval by the Contracting Authority shall in no way relieve the Contractor of his responsibilities to fully achieve the contractual and technical requirements of this Contract.

3.7. The Contractor shall, as far as practicable, select Sub-contractors on a competitive basis consistent with the objectives and requirements of the Contract.

4. SECURITY

4.1. 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. The Contractor shall be responsible for the safeguarding of classified or confidential information, documentation, material and equipment entrusted to him or generated by him in connection with the performance of the Contract.

4.2. In particular the Contractor undertakes to:

4.2.1. 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;

4.2.2. 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;

4.2.3. abstain from copying by any means, without the authorization of the Purchaser, the national security authority or designated security agency, any classified documents, plans, photographs or other classified material entrusted to him;

4.2.4. 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;

4.2.5. 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 of issue, the date of expiration and the level of clearance;

4.2.6. deny access to NATO classified information to any person other than those persons authorized to have such access by the national security authority or designated security agency;

4.2.7. limit the dissemination of NATO classified information to the smallest number of

persons ("need to know basis") as is consistent with the proper execution of the Contract;

4.2.8. 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;

4.2.9. report to the national security authority or designated security agency any breaches,

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 material;

4.2.10. 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;

4.2.11. undertake not to utilize, other than for the specific purpose of the Contract, without the prior written permission of the Purchaser or his authorized 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 authorized with the approval of the Purchaser. Such NATO classified information will be returned at such time as the Purchaser or his authorized representative may direct;

4.2.12. classify any produced document with the highest classification of the NATO

classified information disclosed in that document.

5. WARRANTY OF SUPPLIES

5.1. Definitions.

5.1.1. "Acceptance," as used in this Clause, means the act of an authorized representative

of the Purchaser by which the Purchaser assumes title and ownership of delivered Supplies rendered as partial or complete performance of the Contract. "Acceptance" in this regard, unless specifically provided otherwise in the Contract Special Provisions,

means final Acceptance where the Contract provides for Provisional or Partial Acceptance.

5.1.2. "Correction," as used in this Clause, means the elimination of a defect.

5.1.3. "Defect", as used in this Clause, means any condition or characteristic in any

Supplies furnished by the Contractor under the Contract that is not in compliance with the requirements of the Contract.

5.1.4. "Failed Component", as used in this Clause, means any Assembly, Sub-Assembly,

component or Part which ceases to perform in a manner consistent with its intended use and specifications of the Contract.

5.1.5. "Manufacturing Defect", as used in this Clause, means a Defect attributable to improper manufacturing processes, testing or quality control procedures.

5.1.6. "Design Defect", as used in this Clause, means a Defect attributable to

incompatibility, unsuitability or erroneous application, theory, drawings or formulae. 5.1.7. "Supplies" as used in this Clause, means the end items furnished by the Contractor and related services required under this Contract. Supplies also mean "data".

5.2. Contractors obligations. The following are the obligations of the Contractor under this clause:

5.2.1. The Contractor warranties under this Clause shall apply only to those Defects discovered by either the Purchaser or the Contractor. Unless another period of time is indicated in the Contract Special Provisions, the duration of this warranty shall be twelve (12) months from the date of Acceptance under this Contract as notified in writing by the Contracting Authority. If the Contract provides for Provisional and Final acceptance procedures, the Warranty shall begin upon Final Acceptance.

5.2.2. If the Contractor becomes aware at any time before Acceptance by the Purchaser (whether before or after tender to the Purchaser) or at a later time, that a Defect exists in any Supplies or services, the Contractor shall either promptly correct the Defect or promptly notify the Purchaser, in writing, of the Defect, using the same procedures prescribed in paragraph 5.5 of this Clause.

5.3. The Purchaser will notify in writing the Contractor of the existence of a Failed component and return to the Contractor the Failed component within thirty (30) days of the discovery of such failure. The transport of the Failed component will be at the expense of the Purchaser. The notification of the failure will include as much information as practicable about the circumstances and operating environment at the time of the failure. Upon receipt of such notification by the Purchaser (which may precede receipt of the Failed component), the Contractor shall ship to the location of the Failed component an identical component for installation by Purchaser personnel. The Contractor shall ship such replacement component(s) Delivery Duty Paid. Such transportation and replenishment charges are included in the cost of line item of the Contract identified as the warranty.

5.4. In such rare cases where the Failed component is either too large to be easily transported or the Failed component can not be readily identified and isolated within the larger entity, the Contractor shall be notified by the Purchaser of the failure immediately by telephone, fax, or email. The Contractor shall provide technical support to the Purchaser personnel in identifying the Failed component so as to afford the Purchaser the

opportunity to return the component. In such a case where the Failed component can not be identified or is not cost effective or practical to ship to the Contractor's facility, the

Contractor may elect to send field service personnel to the site of the failure and repair such equipment on location. In this event, such field service personnel shall be dispatched to the site of the failure within 48 hours of initial notification. The expense of the technical support and field service shall be borne by the Contractor.

5.5. The Contractor shall conduct analyses of all Failed components and Parts which are

returned to him by the Purchaser or repaired in the field by Contractor field service personnel to determine the cause of the failure. The Contractor shall issue a report to the Purchaser within 30 days of receipt of a returned item or field repair which contains the results of the analysis. The report shall contain the conclusion of the Contractor as to whether the cause of the failure was due to a Manufacturing Defect or a Design Defect and declare what course of remedial action the Contractor shall implement to prevent further failures of a similar nature. Repetitive failures of the same component may be grounds for a de facto determination by the Purchaser that a Design Defect exists.

5.6. If the Purchaser determines that a Design Defect exists in any of the Supplies or services accepted by the Purchaser under this Contract, the Purchaser will promptly notify the Contractor of the Defect, in writing, within 90 days after discovery of the Defect. Upon timely notification of the existence of a Defect, or if the Contractor independently discovers a Design Defect or Manufacturing Defect in accepted Supplies or services, the Contractor shall submit to the Purchaser, in writing within 30 days, a recommendation for corrective actions, together with supporting information in sufficient detail for the Purchaser to determine what corrective action, if any, shall be undertaken.

5.7. The Contractor shall also prepare and furnish to the Purchaser data and reports applicable to any Correction required under this Clause (including revision and updating of all other affected data called for under this Contract) at no increase in the Contract price.

5.8. In the event of timely notice of a decision not to correct or only to partially correct, the Contractor shall submit a technical and cost proposal within 45 days to amend the Contract to permit Acceptance of the affected Supplies or services in accordance with the revised requirement, and an equitable reduction in the Contract price shall promptly be negotiated by the Parties and be reflected in a supplemental agreement to this Contract.

5.9. Any Supplies or parts thereof corrected or furnished in replacement and any services reformed shall also be subject to the conditions of this Clause to the same extent as Supplies or services initially accepted. The warranty, with respect to these Supplies, Parts or services, shall be equal in duration to that set forth in paragraph 5.2.1 of this Clause, and shall run from the date of delivery of the corrected or replaced Supplies or services.

5.10. The Contractor shall not be responsible under this Clause for the Correction of Defects in Purchaser Furnished Property, except for defects in Contractor performed installation, unless the Contractor performs, or is obligated to perform, any modifications or other work on such property. In that event, the Contractor shall be responsible for Correction of Defects that result from the modifications or other Work.

5.11. All implied warranties of merchantability and "fitness for a particular purpose" are excluded from any obligation under this Contract.

5.12. Remedies available to the Purchaser.

5.12.1. The rights and remedies of the Purchaser provided in this Clause shall not be

affected in any way by any terms or conditions of this Contract concerning the

conclusiveness of inspection and Acceptance and are in addition to, and do not limit, any

rights afforded to the Purchaser by any other Clause of this Contract.

5.12.2. Within 30 days after receipt of the Contractor's recommendations for corrective

action and adequate supporting information in accordance with paragraph 5.6 of this

clause, the Purchaser using sole discretion, shall give the Contractor written notice not to

correct any Defect, or to correct or partially correct any Defect within a reasonable time.

5.12.3. The Contractor shall promptly comply with any timely written direction from the

Purchaser to correct or partially correct a manufacturing or Design Defect, at no increase in the Contract price.

5.13. The Purchaser shall give the Contractor a written notice specifying any failure or refusal of the Contractor to:

5.13.1. Conduct analyses of Failed components and implement a course of remedial action as required by paragraphs 5.5 and 5.6 of this Clause;

5.13.2. Provide replacement components, technical support or on-location field repair service in accordance with paragraph 5.3 and 5.4 of this Clause; or

5.13.3. Prepare and furnish data and reports as required by paragraph 5.7 of this Clause.

5.14. The notice shall specify a period of time following receipt of the notice by the Contractor in which the Contractor must remedy the failure or refusal specified in the notice.

5.15. If the Contractor does not comply with the Purchaser's written notice in paragraph 5.13 of this Clause, the Purchaser may by Contract or otherwise:

5.15.1. Obtain detailed recommendations for corrective action from its own resources or third parties and either:

5.15.1.1. Correct the Supplies; or

5.15.1.2. Replace the Supplies, and if the Contractor fails to furnish timely disposition

instructions, the Purchaser may dispose of the non confirming Supplies for the Purchaser's account in a reasonable manner, in which case the Purchaser is entitled to reimbursement from the Contractor, or from the proceeds, for the reasonable expenses of care and disposition, as well as for excess costs incurred or to be incurred;

5.15.2. Obtain applicable data and reports; and

5.15.3. Charge the Contractor for the costs incurred by the Purchaser.

5.16. In no event shall the Purchaser be responsible for any extension or delays in the scheduled deliveries or periods of performance under this Contract as a result of the Contractor's obligations to correct Defects, nor shall there be any adjustment of the delivery schedule or period of performance as a result of the Correction of Defects unless provided by a supplemental agreement with adequate consideration.

5.17. This Clause shall in no way be construed as obligating the Purchaser to increase the Contract price.

6. RIGHT OF ACCESS, EXAMINATION OF

6.1. In connection with the clauses of the Contract relating to Security, Inspection and

Acceptance and Pricing of Changes, Modifications and Claims, the Contractor shall give to the Purchaser and/or his representative(s) full and free access to his premises as and when required for the purpose of this Contract and shall ensure the same right of access to the premises of his Sub-contractors, by the inclusion in any such Sub-contracts of a provision substantially as set forth in this clause.

6.2. The Purchaser and/or his representatives will continue to have such right of access and examination of records as set forth in 6.1 above until final payment under the Contract or the

end of the warranty provisions under the Contract, whichever occurs later.

6.3. The expiration of the Purchaser's rights as set forth in 6.2 is further subject to the provisions of "Pricing of Changes, Amendments and Claims", where a three (3) year right is established following the agreement of contractual amendments or the settlement of claims based upon the submission of cost and pricing data.

6.4. The period of access and examination described in 6.1 above for records not related to cost aspects of a dispute or claim but which relate to issues of fact arising under either proceedings under the "Disputes" clause of this Contract or arbitration, or the settlement of claims made by either Party pursuant to the performance of this Contract, shall continue until such appeals, litigation or claims have been disposed of.

7. INTELLECTUAL PROPERTY

7.1. Definitions

7.1.1. "IPR" shall mean any intellectual property rights of any qualification irrespective of their stage of development or finalization, including (but without prejudice to the generality of the foregoing) patents, trade marks (registered or not), designs and models (registered or not) and applications for the same, copyright (including on computer software), rights in databases, know-how, confidential information and rights in records (whether or not stored on computer) which includes technical and other data and documents.

7.1.2. "Purchaser Background IPR" shall mean any IPR owned by the Purchaser which is not Foreground IPR.

7.1.3. "Contractor Background IPR" shall mean any IPR owned by the Contractor or licensed by a third party to the Contractor which is not created in the course of or as the result of work undertaken for any purpose contemplated by the Contract, but which is needed for the performance of the Contract or for the exploitation of Foreground IPR.

7.1.4. "Third Party IPR" shall mean any IPR owned by a third party not being the Purchaser or the Contractor or its subcontractor, which is needed for the performance of the Contract or for the exploitation of Foreground IPR.

7.1.5. "Foreground IPR" shall mean any IPR created by the Contractor or any subcontractor of the Contractor in the course of or as the result of work undertaken for any purpose contemplated by the Contract.

7.2. Background IPR

7.2.1. Purchaser Background IPR

7.2.1.1. The Contractor is licensed to use, non-exclusively and royalty-free any Purchaser Background IPR that is or will be made available for the sole purpose of carrying out work pursuant to the Contract. 7.2.1.2. The Contractor shall not use any Purchaser Background IPR other than for the purpose of carrying out work pursuant to the Contract without the prior written agreement of the Purchaser. Any such agreement will include the terms relating to such use.

7.2.1.3. The Purchaser gives no warranty as to the validity of any Purchaser Background IPR. The Contractor shall not do anything or act in any way which is inconsistent with or prejudicial to the ownership by the Purchaser of any Purchaser Background IPR.

7.2.2. Contractor Background IPR

7.2.2.1. Any use of Contractor Background IPR for the purpose of carrying out work pursuant to the Contract shall, subject to any obligation on the part of the Contractor to make payments to any third party in respect of IPR which is licensed from such third party, be free of any charge to Purchaser. The Contractor hereby grants to the Purchaser a nonexclusive, royalty-free and irrevocable license throughout NATO, NATO operations

(including out of area operations) and its member nations to use and authorize others to use on the Purchaser's behalf any Contractor Background IPR for the purpose of exploiting or otherwise using the Foreground IPR for any defense purpose.

7.2.2.2. Nothing in the Contract shall be deemed to restrict the Contractor's right to use its own Background IPR for purposes other than work in pursuance of the Contract.

7.3. Foreground IPR

7.3.1. All Foreground IPR is the property of the Purchaser. Consequently, no statement shall be made restricting the rights of the Purchaser. All Foreground IPR are immediately and exclusively transferred and assigned to the Purchaser as from their coming into existence or, as the case may be, as from the conclusion of this Contract for rights already in existence at the time of execution of this Contract.

7.3.2. The Contractor undertakes to ensure that suitable arrangements are in place as between its employees and itself regarding Foreground IPR generated by employees to allow the Contractor to fulfill its obligations under Clause 7.3.1 above.

7.3.3. The Contractor shall be entitled to use Foreground IPR on a non-exclusive, royalty free basis solely for the purpose of carrying out the Work.

7.3.4. The Contractor shall not use any Foreground IPR other than for the purpose of carrying out work pursuant to the Contract without the Purchaser's prior written agreement. Any such agreement will include terms relating to such use.

7.3.5. The Contractor shall, as requested and at the expense of the Purchaser, do all things necessary to enable the Purchaser to obtain patent or similar protection or registration of a design as the Purchaser may require and to execute any formal assignment or other documents as may be necessary to vest title to any Foreground IPR in the Purchaser.

7.3.6. The Contractor undertakes to notify the Purchaser promptly of any invention or improvement to an invention or any design conceived or made by the Contractor and to provide the Purchaser with such information as the Purchaser may reasonably request in order to determine the patentability of such invention or improvement or the registrability of such design and the potential value to the Purchaser of such a patent or registration if issued.

7.3.7. If the Purchaser determines that it wishes to apply for one or more patents for the

disclosed invention or improvement or for a registration for the disclosed design, it will

prosecute such application(s) at its own expense. The Contractor undertakes to provide the Purchaser, at the Purchaser's expense, with such information and assistance as the Purchaser shall reasonably require to prosecute such application(s).

7.4. Third Party IPR

7.4.1. Where Third Party IPR is the subject of a license or other agreement between the third party and the Purchaser or the Contractor, the Contractor shall not use any Third Party IPR for the purposes of carrying out work pursuant to the Contract without the approval of the Purchaser. Contractor shall inform Purchaser in advance of any restrictions on the Purchaser's use.

7.4.2. If, after the award of the Contract, the Contractor becomes aware of the existence of any Third Party IPR which the Contractor is using or believes is needed for the performance of the Contract, the Contractor shall immediately give the Purchaser a written report identifying such IPR.

7.5. Subcontractor IPR

7.5.1. When placing a Sub-Contract which is concerned with or involves the creation of IPR, the Contractor shall ensure that the Sub-contractor enters into the same agreement for the use of the IPR as stipulated in this Contract in such a way that the Purchaser will be entitled to use the IPR as agreed between the Purchaser and the Contractor. The Contractor shall include in the Sub-Contract the content of the provisions of this Clause.

8. POST PRODUCTION SUPPORT

8.1. By entering into this Contract, the Contractor agrees to support the delivered equipment for a period of ten (10) years following the expiration of the warranty under the Contract by performing the following activities:

8.1.1. Render provisioning assistance including organizing provisioning conferences necessary for the selection of spare parts to be provisioned;

8.1.2. Advise the Purchaser when production is to stop and enable him to procure adequate quantities of spare parts during the production period (life-of-type buy);

8.1.3. Enter into provisioning contracts with the Purchaser to provide as required spare parts for 10 years after Acceptance;

8.1.4. Enter into maintenance contracts with the Purchaser to maintain, repair and overhaul equipment, components and accessories, including on-site activities, and provide the Purchaser with copies of relevant overhaul specifications and procedures, including technical documentation for all levels of maintenance. The Purchaser reserves the right to contact other sources and to provide them with the necessary specifications and procedures to accomplish the Work;

8.1.5. Enter into agreements with the Purchaser to conduct studies of technical problems, if requested, investigate abnormal operating conditions, provide answers to technical questions, make proposals for improvement and for the provision of replacements of obsolescent spare parts, etc.;

8.1.6. Designate a department in the company which shall act as the prime point of contact with the Purchaser concerning post-delivery services. The post-delivery services which the department shall perform shall comprise:

8.1.6.1. Investigation of failures and defects at the Purchaser's request and expense,

including, where necessary, the design of prototype modification kits required to rectify

defects, improve reliability or provide additional facilities where practicable;

8.1.6.2. Notification to the Purchaser of information relating to modification or design

changes sponsored by the Company and provision of those modifications or changes required by the Purchaser;

8.1.6.3. Preparation of modification leaflets and special drawings to enable the modifications to be incorporated by the user personnel;

8.1.6.4. Amendment of all documentation held by the Purchaser including handbooks, servicing instructions, spares, schedules and drawings to reflect the current modification state of the system equipment and software.

8.2. The Contractor shall enter into Sub-contracts for Post Delivery and Post Production Support with Subcontractors and containing substantially the same applicable clauses and conditions as set forth in this Contract.

9. NATO CODIFICATION

9.1. For the purposes of this clause "Technical Data" means the drawings, specifications and technical documentation of those items designated by the Purchaser to support the equipment covered by the Contract, and required to fully identify the items and, if applicable, draft item identifications to the extent and in the form to be agreed between the Codification Authority and the Contractor.

9.2. In order to ensure the orderly identification of equipment, the Contractor shall furnish at the request of the Codification Authority the Technical Data required for the identification of the items of supply to the NATO Codification System in the time scale stated in this Contract.

9.3. A recommended spare parts list or a similar data carrier prepared in accordance with instructions provided by the Purchaser as the basis for codification shall be supplied by the Contractor by the date established in this Contract.

9.4. The Contractor shall supply or require his Sub-contractor(s)/supplier(s) to supply on request for the period of time specified in the Contract the relevant Technical Data for all items and sub-contracted items to the Codification Authority and the Purchaser. The Contractor shall require that each Sub-contractor/supplier shall include identical conditions in any subsequent order which he may place.

9.5. The drawings, specifications, related documentation and, if applicable, draft item identifications, prepared when possible by the true manufacturer of the item, shall be supplied by the Contractor or his Subcontractor(s)/supplier(s) direct to the Codification Authority and, if required, to the Purchaser as and when they become available or, at the latest within the time limits specified in the Contract. The Contractor shall inform the Codification Authority and Purchaser within 21 days of receipt of the request if the required Technical Data are not immediately available, and shall impose a similar obligation upon his Subcontractor(s)/supplier(s)

9.6. Except as hereinafter provided, the Contractor shall require the Sub-contractor(s)/supplier(s) to furnish on request the information direct to the Codification Authority in the Sub-contractor(s)/supplier(s)' country, but the Contractor shall remain responsible for ensuring that the information is so furnished. In the event of a Sub-Contract order being placed with a manufacturer in a non-NATO country, the Contractor shall be responsible for obtaining Technical Data from the Sub-contractor/supplier and furnishing it to the Purchaser.

access to the Contractor's facilities to examine (i) those books, records, documents and other supporting data which will permit adequate evaluation and verification of the cost or pricing data submitted; and (ii) the computations and projections used therein which were available to the Contractor as of the date of the Contractor price proposal, until the expiration of three (3) years from the date of final payment of all sums due under the Contract,.

10.5. The Contractor, subject to the provisions of this Clause, shall require Subcontractors to provide to the Purchaser, either directly or indirectly: (i) cost or pricing data, (ii) access to Sub-contractor's facilities and records for the purposes of verification of such cost or pricing data; and (iii) a Certificate of Current Cost or Pricing Data when required.

10.6. Price Reduction for Defective Cost or Pricing Data

10.6.1. If any price, including profit or fee, negotiated in connection with this Contract or any cost reimbursable under this Contract was increased by any significant sums because,

10.6.1.1. The Contractor furnished cost or pricing data which was not complete, accurate and current as certified in the Contractor's Certificate of Current Cost or Pricing Data provided in accordance with 10.7 below;

10.6.1.2. A Sub-contractor, pursuant to 10.5 above or any Sub-Contract clause therein required, furnished cost or pricing data which was not complete, accurate and current as certified in the Sub-contractor's Certificate of Current Cost or Pricing Data;

10.6.1.3. A Sub-contractor or prospective Sub-contractor furnished cost or pricing data which was required to be complete, accurate and current and to be submitted to support a Sub-Contract cost estimate furnished by the Contractor but which was not complete, accurate and current as of the date certified in the Contractor's Certificate of Current Cost or Pricing Data; or

10.6.2. The Contractor or a Sub-contractor or prospective Sub-contractor furnished any data, not within 10.6.1.1 through 10.6.1.3 above, which was not accurate as submitted.

10.7. Then the price or cost shall be reduced accordingly and the Contract shall be modified in writing as may be necessary to reflect such reductions.

10.8. Certificate of Current Cost or Pricing Data

10.8.1. At the time of negotiating any price, including profit or fee, which is based upon the submission of cost or pricing data by the Contractor, the Contractor shall be required to submit a certificate of current cost or pricing data ("Certificate").

10.8.2. Such Certificates will certify that, to the best of the Contractor's knowledge and belief, cost or pricing data submitted to the Purchaser in support of any proposal for a price, price adjustment or claim, are accurate, complete and current, as per the completion of the negotiations or, in the case of a claim, as per the submission date of the claim.

10.8.3. All such Certificates shall be in the format shown below and shall be dated and signed by a responsible officer of the company:

CERTIFICATE OF CURRENT COST OR PRICING DATA This is to certify that, to the best of my knowledge and belief, cost or pricing data as submitted, either actually or by specific identification in writing to the Purchaser or his representative in support of.....(Claim, Amendment, ECP#, etc.) are accurate, complete and current as of(Date).

_____ *Name of Company*

Signature

_____ *Printed Name of Signatory*

_____ *Title of Signatory*

_____ *Date of*

Signature

10.9. Contractor's pricing proposals for Changes, Amendments and Claims shall be priced in accordance with the schedules of forward labor rates and forward prices of COTS components, which were submitted in the Contractor's

bid incorporated in the Contract by reference. The Contractor shall be bound by the stated labor rates and COTS components prices for the whole duration of this Contract. 10.10. The Contractor shall insert the substance of this Clause in each Sub-contract.

11. ACTIVATION OF WORK PACKAGES

11.1. This Contract shall be executed through a staged approach. The scope of work is structured into a series of Work Packages associated with critical project milestones.

11.2. The Effective Date of Contract activates Work Packages 1 and 2. The activation of the remaining Work Packages shall automatically occur on the dates specified in the most current Purchaser's approved Project Master Schedule.

11.3. If a Contractor fails to meet a critical milestone on which activation of one or more succeeding Work Packages depends, the Purchaser is not obligated to extend the dates of the milestones contained in the succeeding Work Packages in order to accommodate such delay, if the failure to meet the critical milestone is attributable solely to the Contractor.

11.4. The Contractor is advised that if the Contractor elects to begin work on a Work Package prior to the activation of this Work Package, the Purchaser bears no liability for costs incurred by the Contractor for work conducted prior to activation in the case that the Contract is terminated.

12. SCHEDULE OF SITE INSTALLATIONS

12.1. The sequential order of any performance to be rendered at any NATO sites may be changed by the Purchaser on the basis of sites availability at no cost for the Purchaser provided that the notification of change is provided to the contractor 20 days prior to the scheduled date of site activity as illustrated in the most current Purchaser Approved Project Master Schedule.

13. ACCEPTANCE PROCEDURES

13.1. Acceptance is the action by which the Purchaser formally acknowledges that the Contractor has fully demonstrated that Contract Deliverables are complete or have been performed according to the requirements set in the contract.

13.2. Acceptance procedures are described in the SOW and elsewhere in these provisions, and are supplemented as follows: 13.2.1. In accordance with the

implementation procedures stated in the SOW, any hardware, software, documentation, or any other Deliverables provided as part of a site installation shall not be subject to Acceptance until Site Activation is satisfactorily completed.

13.2.2. Where a delivered or performed Contract Line Item (CLIN) fails to meet all Contract requirements but such a failure is not material or fundamental, the Purchaser may, at its sole discretion, declare the Acceptance provisional. In this case, the Purchaser will make an assessment of the nature of the deficiencies and may pay the Contractor an amount commensurate with the importance of the stated deficiencies. This amount shall be between 50 % and 90 % of the total price of the CLIN that covers the deficient services or deliverables and this until all deficiencies have been cleared; at that time the Acceptance shall become final.

14. COTS PRODUCTS REPLACEMENT

14.1. If any COTS products specified in the Contract are discontinued by their original providers for commercial or technological reasons, the Contractor shall propose their substitution by the new versions that are intended as market replacement of the

original products. The proposed items shall provide at least equivalent performance with lower prices and/or life-cycle

support costs, or enhanced performance without a price or cost increase.

14.2. The Contractor shall provide price and performance data to support an improvement in performance and/or a reduction in price and/or life-cycle support costs. If necessary for evaluation by the Purchaser, the Contractor shall provide a demonstration of the

proposed items. Should the Purchaser decide that the proposed item(s) should be included in the contract, an equitable price adjustment will be negotiated and the proposed item(s) shall be added to the Contract by bilateral modification under the authority of this Clause.

15. LOCAL STANDARDISATION

15.1. For reasons of efficiency, some Purchaser sites have standardized some or their entire computer baseline on a specific suite of hardware from one or more particular vendors. As the process of site standardization will continue as the prospective Contract is being executed, the Purchaser reserves the right to require the Contractor to substitute, for one or more system components, an equivalent item compatible with a site-specified

standard.

15.2. The requirement for local standardization shall be addressed during site surveys and shall be reflected by the Contractor in the corresponding site survey report as specified in Section 4 of the SOW.

15.3. Pricing proposed for the substituted equipment shall be fair and reasonable and consistent with the market prices reserved for large buyers and/or Governmental

Institutions.

15.4. In the event the Purchaser chooses to exercise this right, the required substitutions will be negotiated through a bilateral Contract amendment issued under the authority of this clause.

16. LIQUIDATED DAMAGES

16.1. Clause 24 is supplemented as follows:

16.1.1. The amount of Liquidated Damages due by the Contractor shall be recovered by the Purchaser in the following order of priority:

16.1.1.1. By deducting such damages from the amounts due to the Contractor

against the Contractor's invoices.

16.1.1.2. By drawing from the performance guarantee.

16.1.1.3. By reclaiming such damages through appropriate

legal remedies.

16.1.2. The Contractor acknowledges that any sums payable under this clause are in the nature of liquidated damages and not penalties, and represent a reasonable estimate of fair compensation for the losses that may be reasonably anticipated from such failure to perform obligations.

17. CONTRACTOR'S EMPLOYEES

17.1. The Contractor shall provide and pay, as required, qualified personnel as needed for the proper performance of the services required under this Contract; it shall strictly comply with all Host Nation Labor Laws, tariffs and social security and other regulations applicable to the employment of its personnel.

17.2. The Purchaser shall not be responsible for securing work permits, lodging, leases nor tax declarations, driving

permits, etc., with national or local authorities. Contractor's employees, agents, or representatives are not eligible for any diplomatic privileges nor NATO employee benefits.

17.3. The Contractor shall inform his employees, agents, and representatives under this Contract of the terms of the Contract and the conditions of the working environment.

18. KEY PERSONNEL

18.1. Contractor's employees or agents specifically identified in this contract shall be considered as key personnel for the performance of the contract. Without prejudice to other applicable stipulations of the contract, key personnel shall be subject to the terms

and conditions specified below.

18.2. A key personnel assigned to this Contract shall remain working on the Contract for as long as required by the terms of the present Contract.

18.3. The Contractor shall guarantee that suitable backup personnel will be available to

promptly remedy situations of key personnel non-availability that may endanger the performance of services or deliverables set in the contract.

18.4. The Purchaser reserves the right to reject a Contractor's staff member after prior acceptance if the Purchaser determines during Contract performance that the individual is not providing the required level of support. The Purchaser will inform the Contractor in writing in case such a decision is taken, and the Contractor shall propose a replacement within thirty (30) working days after the Purchaser's written notification.

18.5. The Purchaser shall approve any replacement or additional key personnel according to the following procedure:

18.5.1. The Contractor shall provide the name(s) and qualifications statement(s) of a nominee(s) for review by the Purchaser a least 20 days before the intended date of replacement or the date when the nominee(s) is/are required to start work under the contract. If the Purchaser accepts the nominations, this acceptance will be notified in writing to the Contractor, who will be authorized to assign the nominated personnel to the Contract on the date(s) established in the stated notification.

18.5.2. If the Purchaser considers a nominee or nominees to be inappropriate for the required services, the Contractor will be so notified and shall have not more than twenty (20) days to submit alternate nominees.

18.6. If the Contractor fails to provide in due time a compliant candidate, the Purchaser may terminate this Contract in whole or in part as provided in the first paragraph of the clause entitled "Default" of the NC3O General Contract Provisions, and in that event the Contractor shall be liable, in addition to the excess costs provided in second paragraph of the "Default" clause, for such liquidated damages accruing until such time as the Purchaser may reasonably obtain delivery or performance of similar services.

18.7. The delay stated above shall be counted from the day the Purchaser notifies the Contractor, in accordance with paragraph 18.5.2 above, that the alternate nominees are

considered to be non-compliant or inappropriate for the required services according to the requirements of the Contract.

19. BACKGROUND IPR

19.1. The Contractor intends to use the Background IPR stated in attachments to the contract for the purpose of carrying out work pursuant to this Contract.

19.2. The Contractor warrants, undertakes, and represents that any derivative products that may be created under this Contract from the stated Background IPR shall be considered as Foreground IPR and, therefore, shall be governed by the terms and conditions specified in Clause 40.4 of the NC3O General Contract Provisions.

19.3. The Purchaser shall consider open source solutions alongside proprietary ones in developments provided that such solutions are fully compliant with the requirements of this Contract. Contractor shall disclose in advance the open source license associated with the contemplated open source solution. The Purchaser reserves the right to refuse the incorporation of open source solutions that are deemed inadequate for incorporation in a NATO application (e.g., post-back obligations).

20. PERMISSIBLE SCOPE OF USE FOR SOFTWARE LISTED AS BACKGROUND IPR

20.1. Unless otherwise stated in this Contract, software provided by the Contractor as part of the AirC2IS and included in the Contract as Background IPR, shall be subject to a non-exclusive, royalty-free and irrevocable license throughout NATO, NATO operations, and its individual or collective (e.g., NATO BICES Agency) member nations to use and authorize others to use on the Purchaser's behalf any such software for the purpose of exploiting or otherwise using AirC2IS for any defense purpose.

21. CONFIDENTIALITY AND NON-DISCLOSURE

21.1. For purposes of this clause, "Confidential Information" shall include all information pertaining to any part of this Contract or any program related to this Contract that is not marked "Non-Confidential".

21.2. Confidential Information does not include information that is: (a) publicly known at the time of disclosure or subsequently becomes publicly known through no fault of the

Contractor; (b) discovered or created by the Contractor before disclosure by the Purchaser; (c) learned by the Contractor through legitimate means other than from the Purchaser or its representatives; or (d) is disclosed by the Contractor with the Purchaser's prior written approval.

21.3. Without prejudice to other obligations imposed by NATO Security regulations, the Contractor shall hold and maintain the Confidential Information in strictest confidence for the sole and exclusive benefit of the Purchaser. The Contractor shall carefully restrict access to Confidential Information to employees, sub-contractors and third parties as is reasonably required and shall require those persons to sign nondisclosure restrictions at least as protective as those in this contract. The Contractor shall not, without prior written approval of the Purchaser, use for the Contractor's own

benefit, publish, copy, or otherwise disclose to others, or permit the use by others for their benefit or to the detriment of the Purchaser, any Confidential Information. The Contractor shall return to the Purchaser any and all records, notes, and other written,

printed, or tangible materials in its possession pertaining to Confidential Information immediately if the Purchaser requests it in writing.

21.4. The provisions of this clause and the associated Contractor's duties shall survive the termination of this Contract and remain in effect until the Purchaser sends the Contractor written notice releasing the Contractor from the obligations imposed by this clause, or for a further period of three (3) years after Contract close-out, whichever occurs first, and without prejudice to other obligations imposed by applicable NATO Security regulations. 21.5. The contractor shall include the substance of the language of this clause in any subcontract/Contract issued for the purpose of the fulfillment of the obligations contracted under this Contract regardless of the legal nature of the entity subscribing such subcontract. Additionally, Contractor's key personnel mentioned in clause 20 (KEY PERSONNEL) above shall be required to sign the Non-Disclosure Certificate.

21.6. The Contractor agrees that compliance with the obligations imposed by the terms of this clause is of the essence and that failure to abide to these terms shall constitute sufficient grounds for the termination of the Contract for default.

22. Conflict of Interest

22.1. A conflict of interest means that because of other activities or relationships with other persons or entities, a Contractor is unable, or potentially unable to render impartial assistance or advice to the Purchaser, or the Contractor's objectivity in performing the Contract work is, or might be otherwise impaired, or the Contractor has an unfair competitive advantage. Conflict of interest includes situations where the capacity of a Contractor (including the Contractor's executives, directors, consultants, subsidiaries, parent companies or subcontractors) to give impartial,

23.1.11. Other software and material as identified in this order shall be added to any resulting contract) subject to the prescriptions and limitation contained therein.

23.1.12. Configuration control for Purchaser-provided prototype software baseline.

24. SUPPLEMENTAL AGREEMENTS

24.1. The Contractor has submitted all relevant draft supplemental agreement(s), documents and permissions prior to Contract award, the execution of which by the Purchaser is/are required by National Law or regulation. If any supplemental agreements,

documents and permissions are introduced after Contract award, and it is determined that the Contractor failed to disclose the requirement for the execution of such agreement from the Purchaser prior to Contract signature, the Purchaser may terminate this Contract for Default, in accordance with the clause "Default".

24.2. Supplemental agreement(s), documents and permissions, the execution of which by the Purchaser is/are required by National Law or regulation and that have been identified by the Contractor prior to the signature of this contract, but have not yet been finalized and issued by the appropriate governmental authority, are subject to review by the Purchaser. If such supplemental agreement(s), documents and permissions are contrary to cardinal conditions of the signed Contract between the Parties, and the Parties and the appropriate governmental authority can not reach a mutual satisfactory resolution of the contradictions, the Purchaser reserves the right to terminate this Contract and the Parties agree that in such case the Parties mutually release each other from claim for damages and costs of any kind, and any payments received by the Contractor from the Purchaser will be refunded to the Purchaser by the Contractor.

25. ENGINEERING CHANGE PROPOSALS (ECP)

25.1. Engineering Change Proposals (ECP) as defined in this Clause are proposals for changes relevant to tasks, deliverables, technical requirements, processes, schedules or any other term of the contract which are submitted in written form by the Contractor upon request from the Purchaser or independently when such changes are necessary in light of varied facts or circumstances which prevent the execution of the contract in its form.

25.2. Any Engineering Change Proposal (ECP) submitted by the Contractor to the Purchaser in a format compatible with any Contractor's internal change management methodology standards or forms, shall in any case, contain as a minimum the following elements:

25.2.1. A sequential number of ECP identification

25.2.2. Rationale for the changes being proposed

25.2.3. Illustration of any relevant impact to the performance being rendered including but not limited to those relevant to schedules, technical solutions, requirements and delivery time.

25.2.4. List of contract documents affected by the changes being proposed.

25.2.5. Revised copy of the contract documents in native electronic format edited to incorporate the changes being proposed in a way that changes are immediately identifiable.

25.2.6. Total Firm Fix Price of the ECP and illustration of cost impacts with respect to the total contract Firm Fixed Price and the single CLINs affected.

25.2.7. A detailed price breakdown of all costs to identify single elements of cost contributing to the total.

25.2.8. All labor costs quoted as part of any ECP shall be consistent with those stipulated in the Contract

25.3. The Purchaser shall assess the ECP being proposed by the Contractor and subject to its sole judgment and without recourse by the Contractor approve or reject the ECP by the mean of written communication to be dispatched solely by the Purchaser's Contracting Authority.

- 25.4. In case of ECP rejection, the Contractor shall proceed with the performance in accordance with the Contract.
- 25.5. Formally approved ECPs shall be treated as interim authorization to proceed with the changes proposed strictly and limited to the scope, content and price as specified in the approved ECP.
- 25.6. The Purchaser shall not be liable for any cost incurred by the Contractor for performance rendered, regardless of the nature or time, associated to ECPs not formally approved by the Purchaser's Contracting Authority.
- 25.7. All formally approved ECPs will be incorporated in the Contract via the issuance of a formal Contract Amendment at the earliest practical time after their issuance.
- 25.8. The production of any ECP regardless of its final approval or rejection shall be at no cost for the Purchaser.

26. CHANGES

26.1. The Purchaser may at any time, by written order of the Contracting Authority designated or indicated to be a change order ("Change Order") make changes within the general scope of this Contract, in any one or more of the following:

26.1.1. Specifications (including drawings and designs) when the Supplies to be delivered are to be specially manufactured for the Purchaser in accordance with the specifications.

26.1.2. Method and manner of performance of the work, including engineering standards, quality assurance and configuration management procedures;

26.1.3. Marking and method of shipment and packing;

26.1.4. Place of delivery;

26.1.5. Amount, availability and condition of Purchaser Furnished Property.

26.2. If any such Change Order causes an increase in the Contractor's cost of, or the time required for, the performance of any part of the Work under this Contract, whether or not changed by any such order, the Contractor shall submit a written proposal for adjustment to the Purchaser describing the general nature and amount of the proposal for adjustment. The Contractor shall submit this proposal for adjustment within thirty (30) days after receipt of a written Change Order under 16.1 above unless this period is extended by the Purchaser.

26.3. If any such Change Order causes a decrease in the Contractor's cost of, or the time required for, the performance of any part of the Work under this Contract, whether or not changed by any such order, the Purchaser shall submit a proposal for adjustment within thirty (30) days from the issuance of the Change Order by submitting to the Contractor a written statement describing the general nature and amount of the proposal for adjustment.

26.4. Where the cost of property made obsolete or excess as a result of a change is included in the Contractor's claim for adjustment, the Purchaser shall have the right to prescribe the manner of disposition of such property.

26.5. Failure to agree to any requested adjustment shall be a dispute within the meaning of the clause of this Contract entitled "Disputes". However, nothing in this clause shall excuse the Contractor from proceeding with the Contract as changed.

26.6. No proposal for adjustment by the Contractor for an equitable adjustment shall be allowed if asserted after final payment and acceptance under this Contract.

27. USE AND POSSESSION PRIOR TO ACCEPTANCE

27.1. Except as otherwise provided in the Special Contract Provisions, in the case of military or civil exigency notified in writing by the Contracting Authority, the Purchaser shall have the right to take possession of or use any completed

or partially completed Work under the Contract but such possession or use shall not constitute Acceptance by the Purchaser, as defined in the Contract.

27.2. If such prior possession or use by the Purchaser delays the progress of the Work or causes additional expense to the Contractor, an equitable adjustment in the Contract price or the time of delivery will be made, and the Contract shall be modified in writing accordingly.

27.3. While the Purchaser has such use or is in such possession, the Contractor shall be relieved of the responsibility for loss or damage to the Work concerned other than that resulting from the Contractor's fault or negligence.

28. PRICING OF CHANGES, AMENDMENTS AND CLAIMS

28.1. Contractor's pricing proposals for Changes, amendments and Claims shall be priced in accordance with the Purchaser's Pricing Principles or the national government pricing rules and regulations for the Contractor's own country, where in force. The Contractor shall provide cost information accompanied by appropriate substantiation as required by the Purchaser in accordance with Purchaser's Pricing Principles, or such other format as may be agreed between the Contractor and the Purchaser.

28.2. This provision shall also apply to follow-on contracts of any nature including maintenance and supply of spare parts. Should such contracts be placed by SHAPE, NAMSA, other NATO Authorities or National Authorities of the Participating Countries, such organizations shall be entitled to all rights, powers and privileges that the Purchaser has under this Contract.

28.3. With respect to 28.1 and 28.2 above, when the price or price adjustment is based on adequate price competition, established catalogue or market price of commercial items sold in substantial quantities to the general public, or prices set by law or regulation, the Contractor shall be responsible for substantiation of such cases to the satisfaction of the Purchaser.

28.4. For the purposes of verifying that the cost or pricing data submitted in conjunction with 28.1 and 28.2 above are accurate, complete and current, the Purchaser or any Purchaser authorized representative shall have the right of access to the Contractor's facilities to examine (i) those books, records, documents and other supporting data which will permit adequate evaluation and verification of the cost or pricing data submitted; and (ii) the computations and projections used therein which were available to the Contractor as of the date of the Contractor price proposal, until the expiration of three (3) years from the date of final payment of all sums due under the Contract.

28.5. The Contractor, subject to the provisions of this Clause, shall require Sub-contractors to provide to the Purchaser, either directly or indirectly: (i) cost or pricing data, (ii) access to Sub-contractor's facilities and records for the purposes of verification of such cost or pricing data; and (iii) a Certificate of Current Cost or Pricing Data when required.

28.6. Price Reduction for Defective Cost or Pricing Data

28.6.1. If any price, including profit or fee, negotiated in connection with this Contract or any cost reimbursable under this Contract was increased by any significant sums because,

28.6.1.1. The Contractor furnished cost or pricing data which was not complete, accurate and current as certified in the Contractor's Certificate of Current Cost or Pricing Data provided in accordance with 28.7 below;

28.6.1.2. A Sub-contractor, pursuant to 28.5 above or any Sub-Contract clause therein required, furnished cost or pricing data which was not complete, accurate and current as certified in the Sub-contractor's Certificate of Current Cost or Pricing Data;

28.6.1.3. A Sub-contractor or prospective Sub-contractor furnished cost or pricing data which was required to be complete, accurate and current and to be submitted to support a Sub-Contract cost estimate furnished by the Contractor but which was not complete, accurate and current as of the date certified in the Contractor's Certificate of Current Cost or Pricing Data; or

28.6.2. The Contractor or a Sub-contractor or prospective Sub-contractor furnished any data, not within 28.6.1.1 through 28.6.1.3 above, which was not accurate as submitted.

28.7. Then the price or cost shall be reduced accordingly and the Contract shall be modified in writing as may be necessary to reflect such reductions.

28.8. Certificate of Current Cost or Pricing Data

28.8.1. At the time of negotiating any price, including profit or fee, which is based upon the submission of cost or pricing data by the Contractor, the Contractor shall be required to submit a certificate of current cost or pricing data ("Certificate").

28.8.2. Such Certificates will certify that, to the best of the Contractor's knowledge and belief, cost or pricing data submitted to the Purchaser in support of any proposal for a price, price adjustment or claim, are accurate, complete and current, as per the completion of the negotiations or, in the case of a claim, as per the submission date of the claim.

28.8.3. All such Certificates shall be in the format shown below and shall be dated and signed by a responsible officer of the company:

CERTIFICATE OF CURRENT COST OR PRICING DATA This is to certify that, to the best of my knowledge and belief, cost or pricing data as submitted, either actually or by specific identification in writing to the Purchaser or his representative in support of.....(Claim, Amendment, ECP#, etc..) are accurate, complete and current as of.....(Date). _____ Name of Company _____ Signature

_____ *Printed Name of Signatory*

_____ *Title of Signatory*

_____ *Date of Signature*

28.8.4. The Contractor shall insert the substance of this Clause in each Sub-contract.

29. PREFERRED CUSTOMER

29.1. For all supplemental agreements which are made for Work which are furnished to the Purchaser without competition, the Contractor shall offer prices on a "Preferred Customer" basis, that is offer prices which are as favorable as those extended to any Government, Agency, Company, Organization or individual purchasing or handling like

quantities of equipment and/or Parts covered by the Contract under similar conditions. In the event that prior to completing 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 the Purchaser and the prices of such items shall be correspondingly reduced by a supplement to this Contract.

29.2. 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

30. TAXES AND DUTIES

30.1. The Purchaser, by virtue of his status stipulated in the provisions of the NC30 Charter, Article 67(c)(3), is exempt from all direct taxes (incl. VAT), and all customs duties on merchandise imported or exported. This text of the applicable provision reads as follows:

"Each participating member state shall, according to the terms of the Ottawa Agreement: [...] grant to the NC30 under the terms of Articles IX and X of the Ottawa Agreement,, exemption from all direct taxes (except rates, taxes and dues which are no more than charges for public utility services) from the taxes on the sale of movable and immovable

certified document and is serially numbered before issue and will be used for the duty free clearance through the Customs Authorities regardless of the mode of transportation for the release of shipments that arrive at destination under customs bonds or which are to be released from a custom bonded warehouse for actual delivery to the final destination.

31.5. The Notice of Shipment and request for Form 302 or equivalent document shall contain the following information:

31.5.1. Purchaser's Contract Number;

31.5.2. Contract Item Number, Designation and Quantities;

31.5.3. Destination;

31.5.4. Number and Description of the Packages (gross and net weight);

31.5.5. Consignor's Name and Address;

31.5.6. Consignee's Name and Address;

31.5.7. Method of Shipment (i.e. road, rail, sea, air, etc.);

31.5.8. Name and Address of Freight Forwarder

31.6. Forwarding Agents, Carriers or other responsible organizations shall be informed by the Contractor of the availability of Form 302 or equivalent document and how the form shall be utilized to avoid the payment of custom duties. Form 302 or equivalent document shall be incorporated in all shipping documents provided to the carrier.

31.7. Upon receipt of the Notice of Shipment from the Contractor, the Purchaser may require the Contractor to send copies of the Notice of Shipment to the receiving parties and the Contractor shall comply with this requirement.

32. INSPECTION AND ACCEPTANCE OF SUPPLIES AND

SERVICES

32.1. Unless otherwise specifically provided for in the Contract, all equipment, materials and Supplies incorporated in the Work 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

specified under the Contract or, if no workmanship standards are specified, best commercial (National and International) standards.

32.2. All Supplies and services may be subject to inspection and test by the Purchaser, or his authorized 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. For the purposes of inspection and testing the Purchaser may

delegate as his representative the authorized National Quality Assurance Representative (NQAR) in accordance with STANAG 4107.

32.3. No representative 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 Authority in writing in accordance with the clause of this Contract entitled "Changes".

32.4. The presence or absence of an NQAR or other Purchaser representative shall not relieve the Contractor from conforming to the requirements of this Contract.

32.5. 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, to the intended function of the Supplies or the function to which it could reasonably be expected that the Supplies would perform, 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 withdrawn. If the Contractor fails promptly to remove, replace or correct such Supplies or lots thereof, or services, the Purchaser either:

32.5.1. may by Contract or otherwise return, replace or correct such Supplies or services and charge to the Contractor the cost incurred by the Purchaser; and/or

32.5.2. may terminate this Contract for default as provided in the clause of this Contract entitled "Default".

32.6. 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 of this Contract entitled "Disputes".

32.7. If any inspection or test is made by the Purchaser's representatives on the premises of the Contractor or Subcontractor, 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 or Sub-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.

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

32.9. Acceptance of Supplies or services shall take place when the Contracting Authority confirms acceptance of the Supplies or services in accordance with the procedure specified in the Contract, or if none is so specified then the Contracting Authority shall be deemed to have accepted the Supplies or services without prejudice to any other remedies, when and as soon as any of the following events have occurred:

32.9.1. The Purchaser has taken the Supplies or services into use (except as specifically provided by the clause of the General Provisions entitled "Use and Possession Prior to Acceptance");

32.9.2. The Purchaser has not exercised its right of rejection of the Supplies or services within any period specified for that purpose in the Contract;

32.9.3. There being no period for exercising the right of rejection specified in the Contract, a reasonable time, all the circumstances having been taken into account, has elapsed since inspection of the Supplies or services was effected in accordance with the Contract.

32.10. Except as otherwise provided in this Contract, acceptance shall be conclusive except as regards latent defects, fraud, or such gross mistakes as amount to fraud.

32.11. Unless otherwise specified in this Contract, the Contractor shall have or establish, implement and maintain an

effective and economical quality control system necessary to satisfy the Contract requirement. The system shall provide for the early and prompt detection of deficiencies, trends and conditions which could result in unsatisfactory

quality and for timely and effective corrective action. Objective evidence that the system is effective shall be readily available to the Purchaser and its authorized representatives. Records of all inspection and testing work by the Contractor shall be kept complete and available to the Purchaser's representatives during the performance of this Contract and for such longer periods as may be specified elsewhere in this Contract.

33. LIQUIDATED DAMAGES

33.1. If the Contractor fails to deliver and obtain acceptance of the Supplies or to acceptably perform the services at the time specified in the schedule of Supplies and services to this Contract, or any extension thereof, the actual damage to the Purchaser for the delay will be difficult or impossible to determine. Therefore, in lieu of actual damages the Contractor shall pay to the Purchaser fixed and agreed liquidated damages of 1.0% (one per cent) per day of the total Contract value of the unaccepted Contract line item(s) as set forth in the Schedule, or, if there is no discrete line items set forth in the Schedule, 1.0% (one per cent) of the total Contract price until full delivery and/or acceptable

performance of the services.

33.2. In addition, the Purchaser may terminate this Contract in whole or in part, and in that event the Contractor shall be liable to pay the excess costs .

33.3. 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. In such event, subject to the provisions of the Disputes Clause, the Purchaser shall ascertain the facts and extent of the delay and shall extend the time for performance of the Contract when in his judgment the findings of the fact justify an extension.

33.4. Liquidated damages shall be payable to the Purchaser from the first day of delinquency and shall accrue at the rate specified in paragraph 33.1 to 15% of the value of each line item individually and an aggregate sum of all delinquent items not to exceed 15% of the value of the total Contract. These liquidated damages shall accrue automatically and without any further notice being required.

33.5. The rights and remedies of the Purchaser under this clause are in addition to any other rights and remedies provided by law or under this CContract.

34. NATO SECURITY

34.1. Contractor's personnel working at the Purchaser's facilities shall possess a valid security clearance up to the level of "NATO SECRET" so as to be able to have unescorted access to classified security areas where work will be performed. Also, the Contractor must fulfill the reporting requirements set in Section 4 of the SOW regarding the submission of personal details security clearance data of Contractor's personnel.

34.2. Without prejudice to other Purchaser's rights, failure to comply with the requirements stated in 34.1 above shall constitute grounds for Contract termination under the clause "Default" and entitle the Purchaser to collect liquidated damages in case of delay as specified elsewhere in these terms.

34.3. Notwithstanding paragraph 34.2 above, if the Contractor fails to comply with the requirement stated in paragraph 34.1 of this clause, the Purchaser may opt for providing escorts to allow Contractor's personnel to perform work in a classified area without being in possession of the prerequisite security clearance. In such cases, the Contractor agrees that the Purchaser shall be entitled to collect an amount equivalent to € 800 per escort assigned to supervise Contractor's personnel and per day of escorting. This compensation shall be collected through the same mechanisms established above for the case of liquidated damages.

34.4. Contractor's staff members shall hold a valid passport and are required to maintain its validity for the duration of the contract. 34.5. The Contractor shall note that there are restrictions regarding the carriage and use of electronic