



NATO UNCLASSIFIED

BASIC ORDERING AGREEMENT

NCIA/BOA( ..... )

Between

NATO COMMUNICATIONS AND INFORMATION AGENCY

Represented by

THE GENERAL MANAGER, NCI AGENCY

And

[THE BOA COMPANY ]

For

PROVISION OF COTS PRODUCTS AND SERVICES

Current as of February 2024

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EXHIBIT A - ORDERING INFORMATION ..... 32  
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**Instructions to the BOA Company**

1. The areas marked with *THE BOA COMPANY* are to be completed.  
These areas are in:  
The Cover Page and in Pages 1, 2 (paragraph 2.1) and 7 (paragraph 11.6.1)
2. The Table on page 33 (titled “Broad List of Categories of COTS Products and Services”) shall be completed.

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### BASIC ORDERING AGREEMENT WITH THE NCI AGENCY

[THE BOA COMPANY] (Company) and NATO COMMUNICATIONS AND INFORMATION AGENCY represented by the General Manager agree that the Terms and Conditions contained in this Agreement (Agreement), shall govern the sale or licensing of Products and Engineering Services (as later defined) ordered under this Agreement.

[THE BOA COMPANY] has entered into this Agreement for and on behalf of itself. The geographic scope of this Agreement shall extend to the current member countries of the North Atlantic Treaty.

This Agreement establishes the Terms and Conditions under which commercial-off-the-shelf (COTS) supplies and services may be sold or licensed to Eligible Purchasers (as later defined), but does not obligate the Company to sell or license or Eligible Purchasers to buy or license any COTS supplies and services. The following Sections and Exhibits contained in the Agreement form an integral part thereof.

- Part I -- Special Provisions
- Part II -- General Provisions
- Exhibit A -- Ordering Information
- Exhibit B -- Broad List of Categories of COTS Products and Services

Company and the NCI Agency have read this Agreement, understand it, and agree to be bound by its Terms and Conditions. The NCI Agency and Company further agree that this Agreement constitutes the entire agreement between the Parties with respect to its subject matter and supersedes all prior proposals, negotiations, and communications, oral and written between the Parties or their representatives. Deviations from this Agreement shall be binding only when mutually agreed to in writing by the Authorised Representatives of the NCI Agency and Company.

Orders placed referencing this Agreement are subject exclusively to its terms which may only be amended or supplemented by written agreement of Company and Eligible Purchasers.

The NCI Agency  
Boulevard Leopold III  
B-1110 Brussels, Belgium

[THE BOA COMPANY ]  
[ADDRESS]

\_\_\_\_\_  
Title:

\_\_\_\_\_  
Title:

The effective date of this agreement is the date of The NCI Agency's signature.

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## PART I - SPECIAL PROVISIONS

### 1. TERM

- 1.1 This Agreement is effective for three years from the effective date given on page 1, unless one Party gives to the other a written thirty (30) day notice of its intention to terminate.
- 1.2 The Company will be notified 90 days prior to the expiration date. Upon notification it is the responsibility of the Company to initiate renewal of the agreement through a new Agreement.
- 1.3 Any expiration or termination of this Agreement will not alter the rights, duties and obligations of Company or Purchaser, or any discounts granted, for any Orders accepted by Company under this Agreement prior to the date of expiration or termination of the Agreement.

### 2. DEFINITIONS

- 2.1 "Authorised Representative of Company" means [ THE BOA COMPANY TO SPECIFY POSITION ]
- 2.2 "Authorised Representative of NATO, NATO Body or NATO Member Nation" means the General Manager, the Chief of Acquisition of The NCI Agency and any designated representative of an Eligible Purchaser.
- 2.3 "Commercial-Off-The-Shelf (COTS) supplies or services" means (a) any item (supplies, products, goods) that is of a type customarily used for non-governmental purposes and that has been sold, leased, or licenced to the general public, (b) services of a type offered and sold competitively in substantial quantities in the commercial marketplace.
- 2.4 "Contract" means a mutually binding legal relationship obligating the Company to furnish the supplies or services and the Purchaser to pay for them. A contract, except as otherwise authorised, is in writing. In addition to bilateral instruments, contracts include (but are not limited to) awards and notices of awards; job orders or task letters issued under basic ordering agreements; letter contracts; orders, such as purchase, task or delivery orders, under which the contract becomes effective by written acceptance or performance; and bilateral contract modifications.
- 2.5 "Company" means any entity working on a project for any Eligible Purchaser.
- 2.6 "Deliverable" means any and all goods (including movable and immovable goods) to be delivered pursuant to the terms of this Contract including, without limitation components, intermediate assemblies, parts, end products, hardware, documentation, data, software.
- 2.7 "Effective Date" is the date specified on the signature page when the Initial Term of this Agreement begins.
- 2.8 "Eligible Purchaser" or "Purchaser" means the entity identified in paragraph 3 which may benefit of the Terms and Conditions of this agreement, if they express so in any subsequent agreement between them and Company.

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- 2.9** “Governmental Agency” means any governmental agency, including military forces, of a NATO Member Nation.
- 2.10** “Member Nation” means any of the Member Nations of NATO.
- 2.11** “NATO” means the North Atlantic Treaty Organisation.
- 2.12** “NATO Body” means any entity created by the North Atlantic Council (or Defence Planning Committee) and to which either the Agreement on the Status of the North Atlantic Treaty Organisation, National Representatives and International Staff (20 September 1951) or the Protocol on the Status of International Military Headquarters set up pursuant to the North Atlantic Treaty (28th August 1952) applies.
- 2.13** “Order” means any instrument or document, e.g. Purchase Order, Task or Delivery Order, used to procure COTS supplies or services under this Agreement.
- 2.14** “Parties” means NCI Agency and Company.
- 2.15** “Partnership for Peace (PfP) Countries” means those countries who are signatories to the Partnership for Peace Agreement dated 10 January 1994.
- 2.16** “Services” means an action that directly engages the time and effort of a Company to perform an identifiable task rather than to furnish an end item of supply.
- 2.17** “Standard Terms and Conditions” are the terms and conditions contained in this agreement.
- 2.18** “Sub-contract” means any agreement, contract or order made by Company with any other party in order to fulfil any part of an order.
- 2.19** “Sub-contractor” means any party directly or indirectly under a “sub-contract”.
- 2.20** “Supplies” means all things (including specially manufactured goods), products, equipment, software and related goods and services, including training and documentation, that are movable at the time of identification to the Company for sale, other than the money in which the price is to be paid.
- 2.20.1** “Equipment” shall mean the hardware components of products.
- 2.20.2** “Software” shall mean each software program provided by Company in machine readable, object, printed or interpreted form.

**3. ELIGIBLE PURCHASERS**

- 3.1** The following entities are eligible to reference and use the terms and conditions of this Agreement, subject to the provisions specified in paragraph 4:
- 3.1.1** All NATO Bodies
- 3.1.2** Governmental Agencies of NATO Member Nations as per paragraph 2.9.

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3.2 Partnership for Peace Countries may be eligible to the Terms and Conditions of this Agreement, subject to a case-by-case agreement between NCI Agency and Company.

4. **ORDERING PROCEDURE**

4.1 All Orders under this Agreement shall contain, as a minimum, the information detailed in Exhibit A, and shall be subject to acceptance by Company.

4.1.1 Orders may be placed with Company for the products or services identified in Exhibit B. Orders may be placed hereunder for products or services not included herein, subject to determination of availability and price by Company.

4.1.2 Company accepts that NCI Agency shall not be liable in any form for any Order issued and concluded between a Purchaser, other than by NCI Agency itself, and Company.

4.2 In the case of the Purchaser being a Governmental Agency or a Company performing work on behalf of NATO, NATO Bodies or NATO Member Nations, Company may request the Authorised Representative of NATO, NATO Bodies or NATO Member Nations, to verify that the Purchaser is eligible to use the Agreement.

4.3 Assignment: Authorised Representatives of NATO, NATO Bodies or NATO Member Nations may assign Orders at their discretion provided there is no further change to the terms of the Order, especially as regards payment. Company reserves the right to approve any assignment.

5. **DELIVERY**

5.1 Company is authorised to accelerate the delivery schedule or to complete the performance of each Order issued hereunder prior to the time set forth therein, provided, however that nothing contained herein, or in any said Order obligates the Purchaser to perform any of its obligations at an earlier date than would otherwise be the case.

6. **PRICES**

6.1 Unless otherwise stated in the Order, the total price shall be Firm Fixed Price. The price shall include all costs in respect to identification, preservation, packaging, marking, quality assurance and inspection.

7. **WARRANTY**

7.1 Hardware Warranty. Unless otherwise agreed between the Purchaser and Company, or as otherwise specified, Company warrants its Equipment against defects in workmanship of materials for one (1) year from the date of either shipment or Company-performed installation. Any further details on Hardware Warranty shall be specified in the Order.

7.2 Software Warranty. Company warrants that each Software delivered will conform to all requirements specified in the Order. This will also include software design specifications, including software configuration. Regardless of the Purchaser initiation of or participation in developing software design or specifications, each software

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delivered under the Order will conform to the essential performance requirements set forth in the Order, as those essential performance requirements measured, tested, and verified by tests and procedures set forth in the Order. For each software delivered the, Company warranties shall extend to all defects discovered within 12 (twelve) months from the date of acceptance of the software by the Purchaser.

- 7.3** People Warranty. Company warrants to provide qualified personnel, as specified in the Order. Should the person(s) be unable or unwilling to perform the tasks specified in the Order, as determined by the Purchaser within a reasonable timeframe, the Purchaser shall notify the Company of the performance issue, and the Company shall have 15 (fifteen) calendar days (or as specified in the Order) to correct the issue with the incumbent. If the Company is unable to correct the performance issue within this time period, the Company warrants to provide a suitable replacement within 30 (thirty) days (or as specified in the Order). Nothing in this clause shall prevent the Purchaser from requiring the immediate removal of Company personnel for misconduct or security concerns.

## **8. PAYMENTS**

- 8.1** Valid invoices (properly supported and certified) may be submitted to the Purchaser upon acceptance and payment will be made within 30 days from receipt of such invoices, unless otherwise agreed to between Company and the Purchaser. The payment terms for Engineering Services shall be specified on each Task Order.
- 8.2** Payment of invoices shall be made to the Company's designated financial institution.

## **9. SUPPLEMENTAL AGREEMENTS**

- 9.1** Company shall submitted all relevant draft supplemental agreement(s), documents and permissions prior to award of the Order, the execution of which by the Purchaser is required by national law or regulation. If any supplemental agreements, documents and permissions are introduced after award of the Order, and it is determined that the Company failed to disclose the requirement for the execution of such agreement from the Purchaser prior to contract signature, the Purchaser may terminate the Order for Default, in accordance with paragraph [30](#).
- 9.2** Supplemental agreement(s), documents and permissions, the execution of which by the Purchaser is required by national law or regulation and that have been identified by the Company prior to the signature of the Order, but have not yet been finalised 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 Order between the Parties, and the Purchaser and the appropriate governmental authority cannot reach a mutual satisfactory resolution of the contradictions, the Purchaser reserves the right to terminate the Order 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 Company from the Purchaser will be refunded to the Purchaser by the Company.

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## **10. CYBER INCIDENT REPORTING**

- 10.1** The Contractor shall report to Purchaser without delay and take remedial action upon discovery or awareness of cyber incidents.
- 10.2** Cyber incident means actions taken directly or indirectly through the use of computer networks that result in a compromise or a potential compromise, or an actual or potentially adverse effect, on an information system and/or the information residing therein.
- 10.3** Compromise means disclosure of information to unauthorized persons, or a violation of the security policy of a system, in which unauthorized intentional or unintentional disclosure, modification, destruction, or loss of an object, or the copying of information to unauthorized media or external networks may have occurred.
- 10.4** Cyber incidents are considered cybersecurity issues. The Contractor shall establish and maintain a process for identifying, tracking, reviewing, reporting, and resolving cybersecurity issues. The Contractor shall provide all relevant information on cybersecurity issues from this process to Purchaser without delay. Without delay for the purposes of this article means one working day or as soon as possible under the circumstances.
- 10.5** This clause is in addition to any other requirements placed upon the Contractor, and does not replace or modify any other requirement

## **11. MISCELLANEOUS**

- 11.1** Failure by either Party to enforce any provision shall not be deemed a waiver of future enforcement of that or any other provision. In the event that any portion or provision of this Agreement shall be held unenforceable or one is declared void, the remaining portions or provisions of this Agreement shall remain in full force and effect.
- 11.2** Company may re-assign any Order under this Agreement to a third party after prior written approval by the Purchaser, which will not be unreasonably withheld. Company or their legal successor shall always be responsible for their obligations under this Agreement and for actions of their assigned representatives.
- 11.3** Company may sub-contract its responsibilities in relation to this Agreement with the understanding that Company shall remain responsible for all obligations under this Agreement.
- 11.4** Purchaser shall have the right to take possession of and to use any partial delivery of an Order for products and such possession or use shall not of itself constitute acceptance of the products.
- 11.5** All notice and communications between Company and the Purchaser shall be written and conducted in English.
- 11.6** Formal communications shall be can be via registered mail, email, courier or other delivery service to the following official point of contact:

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**11.6.1** The BOA Company

Name: [To BE COMPLETED BY THE BOA COMPANY ]  
Department: [To BE COMPLETED BY THE BOA COMPANY ]  
Address: [To BE COMPLETED BY THE BOA COMPANY ]  
e-mail: [To BE COMPLETED BY THE BOA COMPANY ]

**11.6.2** The NCI Agency

Name: Acquisition Office  
Department: BOA Programme  
Address: NATO HQ  
Boulevard Léopold III  
B-1110 Brussels, Belgium  
e-mail: [BOA@ncia.nato.int](mailto:BOA@ncia.nato.int)

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## **PART II - GENERAL PROVISIONS**

### **12. NOTICE OF SHIPMENT AND CUSTOMS DOCUMENTATION**

#### **12.1 Notice of Shipment and Customs Clearance (only applicable for imports or exports crossing National Borders):**

**12.1.1** The Company shall be responsible for customs clearance of all shipments into the destination countries. It is the Company's responsibility to take into account delays at customs.

**12.1.2** The Company shall be responsible for the timely request of Custom Forms 302, required for duty free import/export of NATO supplies. However, this duty free status does not include any admin charges that may incur during the customs clearance depending on the Host Nation (HN) regulations. Therefore, the Company shall be fully responsible for handling such admin charges without any additional cost to the Purchaser.

**12.1.3** The written request for a 302 form shall be sent to the Purchaser's Point of Contact (POC) clearly stating the Consignor's and Consignee's name and address, POC to receive the original Form 302. This request shall be accompanied by one packing list.

**12.1.4** The Company shall ensure that forwarding agents are fully informed of the availability of Form 302 and how this form is utilised to avoid the payment of Customs Duties. Form 302 shall be added to the shipment documents to be provided to the carrier.

**12.1.5** Following receipt of the request by the Purchaser, normally ten (10) business days are required for the issue of the form.

**12.1.6** These forms shall be originals and must be mailed or delivered by mail/express courier to the Company. If an express courier has to be used by the Purchaser to ensure that the form is available on time before shipment, all associated costs shall be reimbursed by the Company.

**12.1.7** If a Country refuses to accept the Form 302 and requires the payment of custom duties, the Company shall immediately inform the Purchaser by the fastest means available and obtain from the Custom Officer a written statement establishing that its country refuses to accept the Custom Form 302. Only after having received Purchaser's approval, shall the Company pay these customs duties.

**12.1.8** The Company shall add the Custom Form 302 to the shipping documentation. It shall be noted that documents have to be originals which need to be available for the goods to be cleared from Customs. Any unused Form 302 shall be returned to the Purchaser.

### **13. PACKAGING**

**12.1.** Packaging shall be adequate to protect hardware, equipment or supplies from any damage during transport fulfilling as a minimum the requirements of STANAG 4280

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“NATO Levels of Packaging”, NATO packaging level 4, giving due consideration to shipping and other hazards associated with the transportation of consignments overseas even in case of:

- 12.1.1. OEMs use of commercial packaging
- 12.1.2. Electrostatic Discharge (ESD) sensitive devices
- 12.1.3. hazardous/dangerous goods and goods requiring safety test reports and certificates and/or export licenses.
- 12.2. Packaging and any standard or special packaging materials and containers (boxes, pallets, shipping containers) required for the shipment of items shall be the responsibility of the Company at no extra cost to the Purchaser.
- 12.3. The packing list shall include the following information as a minimum:
  - 12.3.1. The Shipping Address
  - 12.3.2. Package Number
  - 12.3.3. Contract Number and CLIN as per Schedule of Supplies and Services (SSS)
  - 12.3.4. Item Description
  - 12.3.5. Part Number and Serial Number
  - 12.3.6. Quantity
  - 12.3.7. Method of shipment and destination
  - 12.3.8. Weight and Volume details
  - 12.3.9. Number of pallets/boxes
  - 12.3.10. Name and address of the Company, Purchaser and Consignor
  - 12.3.11. Name and address of the freight forwarder

#### **14. COMPANY PERSONNEL WORKING AT PURCHASER'S FACILITIES**

- 14.1 The term “Purchaser Facilities” as used in this clause shall be deemed to include sites, property, utilities, ships or vessels owned or controlled by NATO, NATO Bodies or NATO Member Nations or NATO Company and the term “Facility Representative” shall be deemed to refer to the authority designated by the representative responsible for such site, property, utility, ship or vessel.
- 14.2 The Facility Representative shall provide such available administrative and technical facilities for Company’s personnel working at the Purchaser's Facilities for the purpose of the Agreement as in the opinion of the Facility Representative may be necessary for the effective and economical discharge of work under this Agreement. These facilities may be provided at no cost at the discretion of the Facility Representative. Company shall be responsible for ascertaining what necessary facilities may be provided and whether they will be provided free of charge, or determining what charges are payable.

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**14.3** Company shall, except as otherwise provided for in the Agreement, make good or, at the option of the Purchaser, pay compensation for all damage occurring to any Purchaser's Facilities occasioned by Company or by their servants, agents or subcontractors, arising from their presence on Purchaser Facilities in connection with the Agreement; provided that this condition shall not apply to the extent that is able to show that any such damage was not caused by "Company's" neglect or default, or the neglect or default of "Company's" servants, agents or subcontractors.

**14.4** All property of "Company" while at a Purchaser Facility shall be at risk of "Company" and the Purchaser shall accept no liability for any loss or damage, except to the extent that any loss or damage is the result of a wilful act or gross negligence on the part of the Purchaser's employees or agents.

## **15. PURCHASER FURNISHED PROPERTY**

**15.1** The term "Purchaser Furnished Property" as used in this clause refers to items of equipment, material or property furnished by the Purchaser to "Company" which shall be subject to overhaul, repair, modification, test, embodiment or other work as specified in any Order under this Agreement to be performed by "Company".

**15.2** The Purchaser shall deliver to "Company", for use only in connection with any Order under this Agreement, the property described in the schedule or specifications (hereinafter referred to as "Purchaser Furnished Property"), at the times and locations stated therein. In the event that Purchaser Furnished Property is not delivered by such time or times stated in the schedule, or if not so stated, in sufficient time to enable "Company" to meet such delivery or performance dates the Purchaser shall, upon timely written request made by "Company", and if the facts warrant such action, equitably adjust any affected provision of the Order pursuant to the procedures of the "Changes" clause hereof.

**15.3** In the event that Purchaser Furnished Property is received by "Company" in a condition not suitable for its intended use, "Company" shall immediately notify the Purchaser. The Purchaser shall within a reasonable time of receipt of such notice replace, re-issue, authorise repair or otherwise issue instructions for the disposal of Purchaser Furnished Property agreed to be unsuitable. The Purchaser shall, upon timely written request by "Company", equitably adjust any affected provision of the Order pursuant to the procedures of the "Changes" clause hereof.

**15.4** Title to Purchaser Furnished Property shall remain in the Purchaser. "Company" shall maintain adequate property control records of Purchaser Furnished Property in accordance with sound industrial practice.

**15.5** Unless otherwise provided in the Order, "Company", upon delivery to them of any Purchaser Furnished Property, assumes the risk of, and shall be responsible for, any loss thereof or damage thereof except for reasonable wear and tear, and except to the extent that such property is consumed in the performance of the Order.

**15.6** Upon completion of the Order, or at such earlier dates as may be specified by the Purchaser, "Company" shall submit, in a form acceptable to the Purchaser, inventory schedules covering all items of Purchaser Furnished Property not consumed in the performance of the Order or not theretofore returned to the Purchaser. "Company" shall prepare for shipment, deliver Freight on Board (FOB) origin, or otherwise dispose

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of Purchaser Furnished Property as may be directed or authorised by the Purchaser. The net proceeds of any such disposal shall be credited to the contract price or paid in such other manner as the Purchaser may direct.

- 15.7 "Company" shall not modify any Purchaser Furnished Property unless specifically authorised by the Purchaser or directed by the terms of the Order.

## 16. INDEMNIFICATION

- 16.1 "Company" shall indemnify and hold the Purchaser harmless against claims for injury to "Company" employees, agents, or subcontractors, or damages to property of "Company" or others arising from "Company's" possession or use of Purchaser Furnished Property or Facilities in the performance of work as specified in an Order; except to the extent that "Company" is able to show any such injury or damage was caused by Purchaser's wilful act or negligence.

## 17. TITLE AND RISK OF LOSS

- 17.1 Unless the Order specifically provides for earlier passage of title, title to supplies covered by the Order shall pass to the Purchaser upon acceptance as specified in the Order, regardless of when or where the Purchaser takes physical possession.

- 17.2 Unless the Order specifically provides otherwise, risk of loss or damage to supplies covered by this Agreement and any Order shall remain with "Company" until, and shall pass to the Purchaser upon:

17.2.1 delivery of supplies as specified in accordance with the Agreement; or

17.2.2 acceptance by the Purchaser or receipt of supplies by the Purchaser at the destination specified in the Order, whichever is the later.

- 17.3 Notwithstanding paragraph 17.2 above, the risk of loss or damage to supplies which fail to conform to the requirements of the Order shall remain with "Company" until cure or acceptance, at which time paragraph 17.2 above shall apply.

- 17.4 Notwithstanding paragraph 17.2 above "Company" shall not be liable for the loss of or damage to supplies caused by the negligence of officers, agents or employees of the Purchaser acting within the scope of their employment under the terms and conditions of this Agreement.

## 18. TRANSFER REQUIREMENTS

- 18.1 "Company" shall not give, bargain, sell, assign, sub-let or otherwise dispose of any order under this Agreement or any part thereof or the benefit or advantage of the Order or any part thereof without the previous consent in writing of the Purchaser.

## 19. INSPECTION, ACCEPTANCE AND REJECTION

- 19.1 Unless otherwise specifically provided for in the Order, all supplies or services covered by this Agreement 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 Agreement. All workmanship shall be as required

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under the Order or, if not specified, best commercial (National and International) standard.

- 19.2** All supplies (which term throughout this clause includes without limitation raw materials, components, intermediate assemblies, end products, data including software and firmware) or services may be subject to inspection and test by the Purchaser, or their authorised representative to the extent practicable at all times and places prior to acceptance, including the period of manufacture, or after delivery, or as otherwise specified in the Order. For the purposes of inspection and testing the Purchaser may delegate as his representative the authorised National Quality Assurance Representative (NQAR) in accordance with STANAG 4107.
- 19.3** No representative or NQAR appointed by the Purchaser for the purpose of determining the Contractor's compliance with the technical requirements of the Order 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 Agreement entitled "Changes" (paragraph 23).
- 19.4** The presence or absence of an NQAR or other Purchaser representative shall not relieve "Company" from any of the requirements of this Agreement.
- 19.5** 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 the order, including any characteristic or condition which is or becomes at variance to the performance specifications and to the intended function of the supplies, the Purchaser shall have the right either to reject them (with or without instructions as to their disposition) or to require their correction or replacement. Supplies, or lots thereof or services which have been rejected or required to be corrected or replaced shall, at the expense of "Company", be removed, or, if permitted or required by the Contracting Authority, corrected in place by "Company" promptly after notice, and shall not thereafter be tendered for acceptance by "Company" unless the former rejection or requirement of correction or replacement is disclosed. If "Company" fails promptly to remove, replace or correct such supplies or lots thereof, or services, the Purchaser either:
- 19.5.1** may by Order or otherwise return, replace or correct such supplies or services and charge "Company" the cost incurred by the Purchaser, or
- 19.5.2** may terminate this Agreement for default as provided in the clause of this Agreement entitled "Termination for Default".
- 19.6** Unless "Company" 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 Agreement entitled "Disputes".
- 19.7** If any inspection or test is made by the Purchaser's representatives on the premises of "Company" or sub-contractor, "Company", 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 "Company's"

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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 "Company" or sub-contractor, it shall be at the expense of the Purchaser except as otherwise provided in this Agreement; 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 "Company" 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 "Company" 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 the Order, but failure to inspect and accept or reject supplies or services shall neither relieve Company from responsibility for such supplies or services as are not in accordance with the Order requirements nor impose liability on the Purchaser thereof.

- 19.8** The inspection and test by the Purchaser of any supplies or lots thereof, or services does not relieve "Company" from any responsibility regarding defects or other failures to meet the contract requirements which may be discovered prior to acceptance. Except as otherwise provided in the Order, acceptance shall be conclusive except as regards latent defects, fraud, or such gross mistakes as amount to fraud.
- 19.9** Acceptance of supplies or services shall take place when the Purchaser confirms acceptance of the supplies or services in accordance with the procedure specified in the Order, or if none is so specified then the Purchaser 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:
- 19.9.1** The Purchaser has taken the supplies or services into use;
- 19.9.2** The Purchaser has not exercised its right of rejection of the supplies or services within any period specified for that purpose in the Order;
- 19.9.3** There being no period of exercising the right of rejection specified in the Order, a reasonable time, all the circumstances having been taken into account, has elapsed since delivery of the supplies or services was effected in accordance with the Order.
- 19.10** Unless otherwise specified in this Agreement, "Company" shall have or establish, implement and maintain an effective and economical quality control system, planned and developed in conjunction with other contractor functions necessary to satisfy the contract requirement. The system shall be acceptable to the Purchaser and its authorised representatives. 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 authorised representatives. Records of all inspection and testing work by "Company" shall be kept complete and available to the Purchaser's representatives during the performance of any Order under this Agreement and for such longer periods as may be specified elsewhere in the Order.
- 19.11** Product acceptance shall be accomplished by using test procedures and/or programs established by Company which are applicable to the Products, unless otherwise

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agreed in writing by the Purchaser and Company. Such acceptance shall be at the time of completion of final tests at Company's facilities, except as otherwise specified below. If Purchaser has conveyed in writing its intention to witness final tests in the Order, Company will give Purchaser prior notice of the date of such tests. Purchaser shall be responsible for any charges that may be associated with witnessing said tests. If installation by Company is included in the purchase price, acceptance will be at any installation site specified by the Purchaser, when Company demonstrates that the applicable diagnostic and/or verification programs work properly. If Company's demonstration of the programs at the installation site is delayed for more than fifteen (15) calendar days, except due to the fault of Company, the Products will be deemed accepted.

## **20. PRICE FIXING**

**20.1** Offers for sole source procurement, changes, modifications, and claims in excess of €500,000 (EUR Five Hundred Thousand) shall be priced in accordance with this provision and the Purchaser's Pricing Principles as set out in the National Government Pricing Rules and Regulations for Company's own country where in force.

**20.1.1** For the purposes of verifying that cost or pricing data submitted in conjunction with paragraph [20.1](#) above are accurate, complete and current, the Purchaser shall, until the expiration of 3 (three) years from the date of final payment of all sums due under the Agreement, have the right of access to the Company's facilities to examine those books, records, documents and other supporting data. This may permit adequate evaluation and verification of the cost or pricing data submitted along with the computations and projections used therein which were available to the Company as of the date of the Company's price proposal.

**20.2** Price Reduction for Defective Cost or Pricing Data.

**20.2.1** If any price, including profit or fee, negotiated in connection with this Agreement or any cost reimbursable under this Agreement was increased by any significant sums because:

**20.2.1.1** Company furnished cost or pricing data that was not complete, accurate and current as certified in Company's Certificate of Current Cost or Pricing Data provided in accordance with paragraph [20.1](#).

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

**20.3** Certificate of Current Cost or Pricing Data.

**20.3.1** At the time of negotiating any price, including profit or fee, Company shall be required to submit a Certificate of Current Cost or Pricing Data as required by paragraph [20.3.3](#) below.

**20.3.2** Such Certificate will certify that, to the best of the Company'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.

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- 20.3.3** All such certificates shall be in the format shown below and shall be dated and signed by a responsible officer of the Company. It is the Company's responsibility to ensure a responsible officer is designated.

**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 their representative in support of \_\_\_\_\_ are accurate, complete and current as of \_\_\_\_\_.

Day/ month/ year

Firm \_\_\_\_\_

Name \_\_\_\_\_

Title \_\_\_\_\_

\_\_\_\_\_  
Date of Execution

**21. TAXES AND DUTIES**

- 21.1** NATO, NATO Bodies and certain other Eligible Purchasers are exempt from all taxes and all customs duties on Products and Services imported or exported hereunder. Company therefore, certifies that the prices stipulated under this Agreement do not include amounts to cover such taxes or customs duties. Company shall be responsible for determining whether such exemptions apply for other Eligible Purchasers.
- 21.2** In cases where taxes and duties are levied, Company should seek reimbursement directly from the authorities concerned in compliance with the applicable procedures. The Purchaser shall provide reasonable assistance in claiming reimbursement.
- 21.3** In the event that reimbursement is not made by the authorities concerned, and providing that Company has complied with applicable procedures, Purchaser shall reimburse the full amount of the payments upon receipt of Company's invoice indicating such tax or duty as a separate item or cost and fully identified by reference to any governmental law, regulation and/or instruction pursuant to which such tax or duty is enforced.
- 21.4** Following payment by the Purchaser of the taxes or duties pursuant to paragraph [21.3](#) above, should Company receive a rebate of any amount paid by Purchaser, Company shall immediately notify Purchaser, and the amount of such rebate shall be credited or reimbursed to the Purchaser, as directed. Company shall be responsible for taking any and all action that could reasonably be required in order to obtain such rebate.

**22. INVOICES**

- 22.1** Invoices shall be prepared and submitted electronically by the Company in the manner described in the Order, and shall contain: BOA number, Order number (if any), description of products or services, sizes, quantities, unit prices, and extended totals (exclusive of taxes and duties for which relief is available). Details of Bills of Landing

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or freight warrant numbers and weight of shipment shall be identified on each invoice as appropriate.

**22.2** In addition, where applicable and on request by Purchaser, documentary evidence of acceptance (as defined in the Agreement) shall be submitted together with each invoice.

**22.3** All invoices shall be addressed to the designated authority specified by Purchaser.

## **23. CHANGES**

**23.1** The Purchaser may at any time, by written order designated or indicated to be a change order, and without notice to the sureties, if any, make changes within the scope of any Order, in any one or more of the following:

**23.1.1** Specifications (including drawings and designs) except to commercial products;

**23.1.2** Method and manner of performance of the work;

**23.1.3** Marking, method of shipment and packing;

**23.1.4** Time and place of delivery; and

**23.1.5** Purchaser Furnished Property and Facilities (including Equipment, materials, services or sites).

**23.2** Any other written or oral order (which, as used in this paragraph [23.2](#), includes direction, instruction, interpretation, or determination) from the Purchaser that causes a change shall be treated as a change order under this clause, provided, that Company gives the Purchaser written notice within thirty (30) days after receipt of such change order stating:

**23.2.1** the date, circumstances, and source of the order and

**23.2.2** that Company regards the order as a change order, and that the order is accepted in writing by the Purchaser as a change order. The timely written notice requirement, as detailed above, remains in force in all cases, even where, for example, the Purchaser has positive knowledge of the relevant facts.

**23.3** Except as provided in this clause, no order, statement, or conduct of the Purchaser shall be treated as a change order under this clause or entitle Company to an equitable adjustment.

**23.4** If any such change order causes an increase or decrease in Company's cost of, or the time required for the performance of any part of the work under the Order, whether or not changed by any such order, the Purchaser shall make an equitable adjustment and modify the Order in writing accordingly. However, except for a "proposal for adjustment" (hereafter referred to as "proposal") based on defective specifications, no proposal for any change under paragraph 23.2 above shall be allowed for any costs incurred more than thirty (30) days before Company gives written notice as required. In the case of defective specifications for which the Purchaser is responsible, the equitable adjustment shall include any increased cost reasonably incurred by

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Company in attempting to comply with the defective specifications. Where the cost of property made obsolete or excess as a result of a change is included in the Company's claim for adjustment, the Purchaser shall have the right to prescribe the manner of disposition of such property. Failure to agree to any adjustment shall be a dispute within the meaning of the clause of this Agreement entitled "Disputes." However, nothing in this clause shall excuse Company from proceeding with the Order as changed.

**23.5** Company must submit any proposal under this clause within thirty (30) days after

**23.5.1** receipt of a written change order under paragraph [23.1](#) above or

**23.5.2** the furnishing of a written notice under paragraph [23.2](#), by submitting to the Purchaser a written statement describing the general nature and amount of the proposal, unless this period is extended by the Purchaser. The statement of proposal for adjustment may be included in the notice under paragraph [23.2](#) above.

**23.6** No proposal by Company for an equitable adjustment shall be allowed if asserted after final payment and acceptance under the Order.

## **24. PURCHASER DELAY OF WORK**

**24.1** If the performance of all or any part of the work is delayed or interrupted by an act of the Purchaser in the administration of the Order, which act is not expressly or implicitly authorized by the Order, or by their failure to act within the time specified in the Order (or within a reasonable time if not time is specified), an adjustment shall be made for any increase in the cost of performance of the Order caused by such a delay or interruption and the Order modified in writing accordingly. Adjustments shall be made also in the delivery or performance dates and any other contractual provision affected by such delay or interruption. However, no adjustment shall be made under this clause for any delay or interruption:

**24.1.1** to the extent that performance would have been delayed or interrupted by any other clause, including the fault or negligence of Company; or

**24.1.2** for which an adjustment is provided under any other provision of this Agreement.

**24.2** No claim under this clause shall be allowed:

**24.2.1** for any costs incurred more than twenty (20) days before Company shall have notified the Purchaser in writing of the act or failure to act involved; and

**24.2.2** unless the claim, in an amount stated, is asserted in writing as soon as practicable after the termination of such delay or interruption, but not later than the date of final payment under the Order.

## **25. STOP WORK ORDER**

**25.1** The Purchaser may, at any time, by written order to Company, require Company to stop all, or any part, of the work called for by the Order for a period of ninety (90) days after the order is delivered to Company, and for any further period to which the Parties may agree. Any such order shall be specifically identified as a Stop Work Order issued

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pursuant to this clause. Upon receipt of such an order, Company shall forthwith comply with its terms and take all reasonable steps to minimise costs incurred allocable to the work covered by the order during the period of work stoppage. Within a period of ninety (90) days after a stop work order is delivered to Company, or within any extension of that period to which the Parties shall have agreed, the Purchaser shall either:

- 25.1.1** cancel the stop work order, or
- 25.1.2** terminate the work covered by such order in accordance with paragraph [31](#), Termination for Convenience of the Purchaser.
- 25.2** If a stop work order issued under this clause is cancelled or the period of the order or any extension thereof expires, Company shall resume work. An equitable adjustment shall be made in the delivery schedule or contract price, or both, and the Order shall be modified in writing accordingly, if:
  - 25.2.1** the stop work order results in an increase in the time required for, or in Company's cost properly allocable to, the performance of any part of the Order, and
  - 25.2.2** Company asserts a claim for such adjustment within thirty (30) days after the end of the period of work stoppage; provided that, if the Purchaser decides the facts justify such action, he may receive and act upon any such claim asserted at any time prior to final payment under any Order.
- 25.3** If a stop order is not cancelled and the work covered by such order is terminated for the convenience of the Purchaser, the reasonable costs resulting from the stop work order shall be allowed in arriving at the termination settlement.

## **26. ORDER OF PRECEDENCE**

- 26.1** In the case of any inconsistencies herein, the order of precedence of the contractual documents is as follows:
  - 26.1.1** the Special Provisions
  - 26.1.2** the General Provisions
  - 26.1.3** Exhibits and Appendices,
- 26.2** Except where inconsistency between the terms of this Agreement and those contained in any Order have been expressly agreed between the Purchaser and Company, the terms of this Agreement shall take precedence.

## **27. APPLICABLE LAW**

- 27.1** This Agreement and each subsequent Order under this Agreement between NCI Agency and Company shall be governed by and construed in accordance with the private contract law of the Kingdom of Belgium. Orders signed between Company and any other Purchaser under this Agreement shall be governed by the laws applicable to the country of the Purchaser, unless otherwise agreed between the Purchaser and Company.

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## **28. DISPUTES AND ARBITRATION**

- 28.1** In the event of a dispute under this Agreement or any Order issued hereunder, the Parties shall attempt to settle their difference in an amicable manner. However, in the event that a settlement cannot be made under this Agreement within a reasonable period of time, the Parties agree to institute arbitration proceedings in the manner provided in the following Arbitration provision and such disputes shall finally be settled thereby, unless otherwise agreed between the Purchaser and Company.
- 28.1.1** Company agrees to submit to the Arbitration Tribunal only such issues, facts, evidence and proof which Company had beforehand identified and submitted to the Purchaser for decision. 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 Purchaser.
- 28.1.2** The party instituting the arbitration proceedings shall advise the other party by registered letter, with official notice of delivery, of his desire to have recourse to arbitration. Within a period of thirty days from the date of receipt of this letter, the parties shall jointly appoint an arbitrator. In the event of failure to appoint an arbitrator the dispute or disputes shall be submitted to an Arbitration Tribunal consisting of three arbitrators, one being appointed by the Purchaser, another by Company 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.
- 28.1.3** Regardless of the procedure concerning the appointment of this Arbitration Tribunal, the third arbitrator will have to be of a nationality different from the nationality of the other two members of the Tribunal.
- 28.1.4** Any arbitrator must be of the nationality of any one of the NATO Member Nations and shall be bound by the rules of security in force within NATO.
- 28.1.5** Any person appearing before the Arbitration Tribunal in the capacity of an expert witness shall, if he is of the nationality of one of the NATO Member Nations, 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.
- 28.1.6** An arbitrator who, for any reason whatsoever, ceases to act as an arbitrator, shall be replaced under the procedure laid down in paragraph [28.1.2](#) above.
- 28.1.7** The Arbitration Tribunal will take its decisions by a majority vote. It shall decide where it will meet and, unless it decides otherwise, shall follow the arbitration procedures of the International Chamber of Commerce in force at the date of signature of the present Agreement.
- 28.1.8** The awards of the arbitrator or of the Arbitration Tribunal shall be final and there shall be no right of appeal or recourse of any kind. These awards shall determine the apportionment of the arbitration expenses.

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**28.2** The place of arbitration shall be Brussels, Belgium, in the case of dispute under this Agreement or under any subsequent Order between Company and NCIA, and shall be the country of the Purchaser in the case of a dispute between Company and any other Purchaser, unless otherwise agreed between the Purchaser and Company.

**29. DELAYS IN DELIVERY**

**29.1** Company agrees to notify Purchaser in the event that it anticipates difficulty in meeting a delivery schedule. Receipt of such notice shall not be deemed to be a waiver by the Purchaser of rights or remedies which it may have for failure to meet an agreed delivery date. Notwithstanding the above Company shall be deemed to be in delay without notice from the Purchaser and only by simple expiry of the due delivery date.

**30. TERMINATION FOR DEFAULT**

**30.1** The Purchaser may, subject to the provisions of paragraph [30.3](#) below, by written notice of default to Company, terminate the whole or any part of an Order in any one of the following circumstances:

**30.1.1** if Company fails to make delivery of the supplies or to perform the services within the time specified herein or any extension thereof; or

**30.1.2** if Company fails to perform any of the other provisions of this Agreement, or so fails to make progress as to endanger performance of an Order in accordance with its terms, and in either of these two circumstances does not cure such failure within a period of ten days (or such longer period as the Purchaser may authorise in writing) after receipt of notice in writing from the Purchaser specifying such failure.

**30.2** In the event the Purchaser terminates an Order in whole or in part, as provided in paragraph [30.1](#) of this clause, the Purchaser may procure, upon such terms and in such manner as the Purchaser may deem appropriate, supplies or services similar to those so terminated, and Company shall be liable to the Purchaser for any excess costs for such similar supplies or services. However, Company shall continue the performance of an Order to the extent not terminated under the provisions of this clause.

**30.3** Except with respect to defaults of sub-contractors, Company shall not be liable for any excess costs if the failure to perform the Order arises out of causes beyond the control and without the fault or negligence of Company. Such causes may include, but are not restricted to, acts of God, or of the public enemy, acts of the Purchaser in its contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, and unusually severe weather; but in every case the failure to perform must be beyond the control and without the fault or negligence of Company. If the failure to perform is caused by the default of a sub-contractor, and if such default arises out of causes beyond the control of both Company and sub-contractor, without the fault or negligence of either of them, Company shall not be liable for any excess costs for failure to perform unless the supplies or services to be furnished by the sub-contractor were obtainable from other sources in sufficient time to permit Company to meet the required delivery schedule.

**30.4** If an Order is terminated as provided in paragraph [30.1](#) of this clause, the Purchaser, in addition to any other rights provided in this clause, may require Company to transfer

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title and deliver to the Purchaser, in the manner and to the extent directed by the Purchaser:

- 30.4.1** any completed supplies, and
- 30.4.2** such partially completed supplies and materials, parts, tools, jigs, fixtures, plans, drawings, information, and contract rights (hereinafter called "manufacturing materials") as Company has specifically produced or specifically acquired for the performance of such part of an Order as has been terminated;

and Company shall, upon direction of the Purchaser, protect and preserve property in the possession of Company in which the Purchaser has an interest. Payment for completed supplies delivered to and accepted by the Purchaser shall be at the contract price. Payment for manufacturing materials delivered to and accepted by the Purchaser and for the protection and preservation of property shall be in an amount agreed upon by Company and Purchaser. Failure to agree to such amount shall be a dispute within the meaning of the clause of this agreement entitled "Disputes and Arbitration". The Purchaser may withhold from amounts otherwise due to Company for such completed supplies or manufacturing materials such sum as the Purchaser determines to be necessary to protect the Purchaser against loss because of outstanding liens or claims of former lien holders.

- 30.5** If, after notice of termination of an Order under the provisions of this clause, it is determined for any reason that Company was not in default under the provisions of this clause, or that the default was excusable under the provisions of this clause, the rights and obligations of the Parties, shall be the same as if the notice of termination had been issued pursuant to a clause providing for termination of convenience of the Purchaser. If after such notice of termination of an Order under the provisions of this clause, it is determined for any reason that Company was not in default under the provisions of this clause and if the Order does not contain a clause providing for termination for convenience of the Purchaser the Order shall be equitably adjusted to compensate for such termination and the Order modified accordingly. Failure to agree to any such adjustment shall be a dispute within the meaning of the clause of this Agreement entitled "Disputes".
- 30.6** The rights and remedies of the Purchaser provided in this clause shall not be exclusive and are in addition to any other rights and remedies provided by law or under this Agreement or any Order issued against the Agreement.

### **31. TERMINATION FOR CONVENIENCE OF THE PURCHASER**

- 31.1** The performance of work under an Order may be terminated by the Purchaser in accordance with this clause in whole, or from time to time in part, whenever the Purchaser shall determine that such termination is in the best interest of the Purchaser. Any such termination shall be effected by delivery to the Company of a Notice of Termination specifying the extent to which performance of work under an Order is terminated, and the date upon which such termination becomes effective.
- 31.2** After receipt of a Notice of Termination and except as otherwise directed by the Purchaser, the Company shall:

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- 31.2.1** stop work under the Order on the date and to the extent specified in the Notice of Termination;
  - 31.2.2** place no further orders or sub-contracts for products or services except as may be necessary for completion of such portion of the work under the Order as is not terminated;
  - 31.2.3** terminate all orders and sub-contracts to the extent that they relate to the performance of work terminated by the Notice of Termination;
  - 31.2.4** complete performance of such part of the work as shall not have been terminated by the Notice of Termination; and
  - 31.2.5** take such action as may be necessary, or as the Purchaser may direct, for the protection and preservation of the property related to an Order which is in the possession of the Company and in which the Purchaser has or may acquire an interest.
- 31.3** After receipt of a Notice of Termination, the Company shall submit to the Purchaser their termination claim, in the form and with certification prescribed by the Purchaser. Such claim shall be submitted promptly but in no event later than 6 (six) months from the effective date of termination, unless one or more extensions in writing are granted by the Purchaser, upon request of the Company made in writing within such six-month period or authorised extension thereof. However, if the Purchaser determines that the facts justify such action, they may receive and act upon any such termination claim at any time after such six-month period or any extension thereof. Upon failure of the Company to submit their termination claim within the time allowed, the Purchaser may determine based on information available to them, the amount, if any, due to the Company by reason of the termination and shall thereupon, pay to the Company the amount so determined.
- 31.4** Subject to the provisions of paragraph [31.2](#), the Company and the Purchaser may agree upon the whole or any part of the amount or amounts to be paid to Company by reason of the total or partial termination of work pursuant to this clause, which amount or amounts may include a reasonable allowance for profit on work done; provided that such agreed amount or amounts exclusive of settlement costs shall not exceed total contract price as reduced by the amount of payments otherwise made and as further reduced by the contract price of the work not terminated. The Order shall be amended accordingly and the Company shall be paid the amount agreed. Nothing in paragraph [31.6](#) of this clause, prescribing the amount to be paid to the Company in the event of failure of the Company and the Purchaser to agree upon the whole amount to be paid to the Company by reason of the termination of work pursuant to this clause, shall be deemed to limit, restrict, or otherwise determine or affect the amount or amounts which may be agreed upon to be paid to the Company pursuant to this paragraph [31.4](#).
- 31.5** In the event of the failure of the Company and the Purchaser to agree as provided in paragraph [31.4](#) upon the whole amount to be paid to the Company by reason of the termination of work pursuant to this clause, the Purchaser shall pay to the Company the amounts determined by the Purchaser as follows, but without duplication of any amounts agreed upon in accordance with paragraph [31.4](#):
- 31.5.1** for completed products or services accepted by the Purchaser, and not therefore

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paid for, a sum equivalent to the aggregate price for such Products computed in accordance with the price or prices specified in the Order, appropriately adjusted for any saving of freight or other charges;

**31.5.2** the total of:

**31.5.2.1** the costs incurred in the performance of the work terminated including initial costs and preparatory expense allocable thereto, but exclusive of any costs attributable to products or services paid or to be paid for under paragraph [31.5.1](#);

**31.5.2.2** the cost of settling and paying claims arising out of the termination of work under sub-contracts or orders, which are properly chargeable to the terminated portion of the Order, exclusive of amounts paid or payable on account of products delivered or services furnished by sub-contractors or vendors prior to the effective date of the Notice of Termination, which amounts shall be included in the costs payable under paragraph [31.5.2.1](#) above; and

**31.5.2.3** a sum, as profit on paragraph [31.5.2.1](#) above, determined by the Purchaser to be fair and reasonable; provided, however, that if it appears the Company would have sustained a loss on the entire Order, had it been completed, no profit shall be included or allowed and an appropriate adjustment shall be made reducing the amount of the settlement to reflect the indicated rate of loss; and

**31.5.3** the reasonable costs of settlement, including accounting, legal, clerical and other expenses reasonably necessary for the preparation of settlement claims and supporting data with respect to the terminated portion of the Order and for the termination and settlement of sub-contracts thereunder, together with reasonable storage, transportation, and other costs incurred in connection with the protection, or disposition of property allocable to the Order.

**31.6** The total sum to be paid to the Company under paragraphs [31.5.1](#) and [31.5.2](#) 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. Except for normal spoilage, and except to the extent that the Purchaser shall have otherwise expressly assumed the risk of loss, there shall be excluded from the amounts payable to the Company, as provided in paragraphs [31.5.1](#) and [31.5.2.1](#), the fair value, as determined by the Purchaser, of property which is destroyed, lost, stolen, or damaged so as to become undeliverable to the Purchaser or to a buyer.

**31.7** The Company shall have the right of appeal, under the clause of this Agreement entitled "Disputes", from any determination made by the Purchaser under paragraphs [31.4](#) or [31.6](#), except that if the Company has failed to submit their claim within the time provided in paragraph [31.3](#) above and has failed to request extension of such time, they shall have no such right of appeal. In the case where the Purchaser has made a determination of the amount due under paragraphs [31.4](#) or [31.6](#), the Purchaser shall pay the Company the following:

**31.7.1** if there is no right of appeal hereunder or if no timely appeal has been taken, the amount so determined by the Purchaser, or

**31.7.2** if an appeal has been taken, the amount finally determined on such appeal.

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- 31.8** In arriving at the amount due to the Company under this clause there shall be deducted:
- 31.8.1** all unliquidated advance or other payments on account theretofore made to the Company, applicable to the termination portion of the Order;
  - 31.8.2** any claim which the Purchaser may have against the Company in connection with the Order; and
  - 31.8.3** the agreed price for, or the proceeds of the sale of, any materials, supplies, or other things acquired by the Company or sold, pursuant to the provisions of this clause, and not otherwise recovered by or credited to the Purchaser.
- 31.9** If the termination hereunder is partial, prior to the settlement of the terminated portion of the Order, the Company may file with the Purchaser a request in writing for an equitable adjustment of the price or prices specified in the Order relating to the continued portion of the Order (the portion not terminated by the Notice of Termination), and such equitable adjustment as may be agreed upon shall be made in such price or prices.
- 31.10** The Purchaser may from time to time, under such terms and conditions as it may prescribe, make partial payments and payments on account against costs incurred by the Company in connection with the terminated portion of an Order whenever in the opinion of the Purchaser the aggregate of such payments shall be within the amount to which the Company will be entitled hereunder. If the total of such payment is in excess of the amount finally agreed or determined to be due under this clause, such excess shall be payable by the Company to the Purchaser upon demand, together with interest calculated using the average of the official base rate(s) per annum as notified by the Banque Nationale de Belgique or such other official source as may be determined by the Purchaser, for the period from the date the excess is received by the Company to the date such excess is repaid to the Purchaser, provided, however, that no interest shall be charged with respect to any such excess payment attributed to a reduction in the Company's claim by reason of retention or other disposition of termination inventory until 10 (ten) days after the date of such retention or disposition or such later date as determined by the Purchaser by reason of the circumstances.
- 31.11** Unless otherwise provided for in the Order, the Company, from the effective date of termination and for a period of 3 (three) years after final settlement under the Order, shall preserve and make available to the Purchaser at all reasonable times at the office of the Company, but without direct charge to the Purchaser, all their books, records, documents, and other evidence bearing on the costs and expenses of the Company under an Order and relating to the work terminated hereunder, or, to the extent approved by the Purchaser, photographs, micro-photographs, or other authentic reproductions thereof.

**32. SUB-CONTRACTS**

- 32.1** Unless specified otherwise in the corresponding Order, the Company is not allowed to sub-contract the work contracted under the Order, in whole or in part.

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### **33. INTELLECTUAL PROPERTY**

**33.1** The term “IP”, as used in this Agreement, shall mean all intellectual property, including any invention, discovery, development, method, process, composition, work of authorship, concept, trade secret, and know how (whether or not patentable or copyrightable) that is or has been conceived, made, created, authored, developed, or reduced to practice, and therefore:

**33.1.1** “Background IP” shall be deemed to refer to all right, title, and interest in and to any pre-existing intellectual property, including all IP owned, conceived, made, created, authored, developed, or reduced to practice by either the Purchaser or the Company, respectively, prior to the commencement of this Agreement; whereas

**33.1.2** “Foreground IP” shall be deemed to refer to any IP that is conceived, made, created, authored, and/ or developed in the course of this Agreement.

#### **33.2 PURCHASER BACKGROUND IP**

**33.2.1** The Company is licensed to use, non-exclusively and royalty-free, any Purchaser Background IP that is or will be made available for the sole purpose of carrying out the Work and until completion of the Work.

**33.2.2** The Company shall not use any Purchaser Background IP other than for carrying out the Work without the prior written agreement of the Purchaser. Any such agreement shall include the terms relating to such use.

**33.2.3** The Purchaser gives no warranty as to the validity of any Purchaser Background IP. The Company shall not do anything or act in any way that is inconsistent with or prejudicial to the ownership by the Purchaser of any Purchaser Background IP.

#### **33.3 COMPANY BACKGROUND IP**

**33.3.1** Any use of the Company Background IP for carrying out the Work pursuant to the Contract shall be free of any charge to Purchaser. The Company hereby grants to NATO a non-exclusive, royalty-free, and irrevocable licence to use and authorise others to use any Company Background IP for the purpose of exploiting or otherwise using the Foreground IP.

**33.3.2** Any use of the Company Background IP is not limited to the number of users or the number of licenses required by the Contract for the use of system. The Purchaser reserves the right to use the Company Background IP for any number of users and number of licenses as required, at no additional cost to the Purchaser.

#### **33.4 FOREGROUND IP**

**33.4.1** All Foreground IP is the property of the Company. NATO shall ensure that a suitable arrangement is in place between its employees, agents, consultants, and itself regarding the Company’s Foreground IP to fulfil its obligations under this clause.

**33.4.2** The Company hereby immediately grants to NATO, all NATO commands, agencies and organizations, and all NATO nations, a worldwide, non-exclusive, royalty free,

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perpetual, and irrevocable license to use and authorize others to use any Company Foreground IP for NATO mission purposes.

- 33.4.3** The Company may not distribute any deliverable developed by the Company under this Agreement that embodies, incorporates, or is a derivative work of Purchaser's Background IP without Purchaser's prior written consent.
- 33.4.4** For the avoidance of doubt, nothing in this clause [33.4](#) shall relieve the Company of its obligations under this Agreement to protect from unauthorized use and disclosure all Purchaser Background IP and other confidential information belonging to or furnished by Purchaser.
- 33.4.5** The Company shall provide the Purchaser, at the latest upon delivery of the Work and thereafter for the duration of the warranty and any purchased CLS agreement period, with full documented records of information in relation to the Work, including but not limited to, all drawings, specifications and other data that is necessary or useful to maintain and operate the Work.

**33.5 THIRD PARTY IP**

- 33.5.1** Any use of Third Party IP for the purpose of carrying out the Work pursuant to the Contract shall be free of any charge to the Purchaser. The Company hereby grants to NATO a non-exclusive, royalty-free, and irrevocable licence to use and authorise others to use any Third Party IP for the purpose of exploiting or otherwise using the Foreground IP.
- 33.5.2** Any use of Third Party IP is not limited to the number of users or the number of licenses required by the Contract for the use of system. The Purchaser reserves the right to use the Third Party IP for any number of users and number of licenses as required, at no additional cost to the Purchaser.
- 33.5.3** Where Third Party IP is the subject of a licence or other agreement between the third party and the Purchaser or the Company, the Company shall not use any Third Party IP for the purposes of carrying out work pursuant to the Contract without the prior written approval of the Purchaser. The Company shall inform Purchaser in advance of any restrictions on the Purchaser's use.
- 33.5.4** If, after the award of the Contract, the Company becomes aware of the existence of any Third Party IP which the Company is using or believes is needed for the performance of the Contract, the Company shall immediately give the Purchaser a written report identifying such IP and if they are compliant with the other provisions in the contract. Any Third Party IP under this clause is subject to the prior written approval by the Purchaser.
- 33.5.5** The Purchaser may consider open source solutions alongside proprietary ones in developments provided that such solutions are fully compliant with the requirements of this Contract. The Company 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).

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**34. CLAIMS**

**34.1** Company shall assert claims in writing and by registered mail, and in accordance with the terms set out below:

**34.2** Claims shall be submitted within:

**34.2.1** the time specified in the Clause or Article under which Company alleges to have a claim. If no time is specified in the clause or Article under which Company intends to base its claim, the time limit shall be forty-five (45) days from the date Company has knowledge or should have had knowledge of the facts on which it bases its claim;

**34.2.2** three (3) months after final payment, release of guarantees or performance bond provided under the Order, whichever occurs last. This shall only apply to those claims for which Company could not have had earlier knowledge and were not foreseeable.

**34.3** Company shall be foreclosed unless it presents complete documentary evidence, justification and cost for each of its claims within three months from the assertion date of such claims. Claims shall be supported by specifically identified evidence (including applicable historical and planned cost and production data from Company's books and records). Opinions, conclusions or judgmental assertions not supported by such evidence shall be rejected.

**34.3.1** An individual breakdown of cost is required for each element of Company's claims at the time of claim submission or for any material revision of the claim.

**34.4** Company shall present, at the time of submission of a claim, an attestation as follows:

"I ..... the responsible senior company official authorised to commit the ..... with respect to its claims dated ..... being duly sworn, do hereby depose and say that: (i) the facts described in the claim are current, complete and accurate; and (ii) the conclusions in the claim accurately reflect the material damages or contract adjustments for which the Purchaser is allegedly liable."

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SIGNATURE

**34.5** Failure to comply with any of the above requirements shall result in automatic forfeiture of the claim. This foreclosure takes effect in all cases and also where, for example, the claim is based on additional orders, where the facts are known to the Purchaser, where the claim is based on defective specifications of the Purchaser or an alleged negligence in the pre-contractual stage.

**34.6** No claim arising under this Agreement may be assigned by Company without prior approval of the Purchaser.

**35. RELEASE OF CLAIMS**

**35.1** Prior to final payment under this Agreement, Company and each assignee under this Agreement shall execute and deliver a release discharging the Purchaser, its officers,

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agents and employees from all liabilities, obligations and claims arising out of or under this Agreement subject only to the following exceptions:

- 35.1.1** Specified claims in stated amounts or in estimated amounts where the amounts are not susceptible to exact statement by Company;
- 35.1.2** Claims for reimbursement of costs (other than expenses of Company by reason of its indemnification of the Purchaser against patent liability) including reasonable expenses incidental thereto, incurred by Company under the provisions of this Agreement relating to patents.
- 35.1.3** An infringement resulting from specific written instructions from the Purchaser under the Order.
- 35.1.4** An infringement resulting from changes or additions to the goods and services subsequent to final delivery and acceptance under the Order.

**36. EXTRAS**

- 36.1** Except as otherwise provided in an Order, no payment for extras shall be made unless such extras and the price therefore have been authorised in writing by the Purchaser.

**37. LANGUAGE**

- 37.1** In the event of any inconsistency between the original English text of this Agreement and any translation into another language, the original English text will govern.
- 37.2** All written correspondence and reports provided by and to Company shall be, as a minimum, in English.

**38. SECURITY**

- 38.1** Company 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 Member Nations in which the Agreement is being performed. Company shall be responsible for the safeguarding of classified information, documentation, material and equipment entrusted to him or generated by him in connection with the performance of an Order.
- 38.2** In particular Company undertakes to:
  - 38.2.1** appoint an official responsible for supervising and directing security measures in relation to the Order and communicating details of such measures to the Purchaser on request;
  - 38.2.2** 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 or National classified information involved in the Order is properly safeguarded;

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- 38.2.3** abstain from copying by any means, without the authorisation of the Purchaser, the National Security Authority or designated Security Agency, any classified documents, plans, photographs or other classified material entrusted to Company;
- 38.2.4** 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 or National classified information;
- 38.2.5** maintain at the work site a current record of its employees at the site who have been cleared for access to NATO or National classified information. The record should show the date and level of clearance;
- 38.2.6** deny access to NATO or National classified information to any person other than those persons authorised to have such access by the National Security Authority or designated Security Agency;
- 38.2.7** limit the dissemination of NATO or National classified information to the smallest number of persons as is consistent with the proper execution of the Order;
- 38.2.8** comply with any request from the National Security Authority or designated Security Agency that persons entrusted with NATO or National 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 Member Nations in which they may have access to classified information;
- 38.2.9** report to the National Security Authority or designated Security Agency any breaches or suspected breaches of security, suspected sabotage, or other matters of security significance which would include any changes that may occur in the ownership, control or management of the facility or any changes that affect the security arrangements and security status of the facility and to make such other reports as may be required by the National Security Authority or designated Security Agency, e.g. reports on the holdings of NATO or National classified information;
- 38.2.10** apply to the Purchaser for approval before subcontracting any part of the work, if the subcontract would involve the sub-contractor in access to NATO or National classified information, and to place the sub-contractor under appropriate security obligations no less stringent than those applied to its own contract;
- 38.2.11** undertake not to utilise, other than for the specific purpose of the Order, without the prior written permission of the Purchaser or its authorised representative, any NATO or National classified information furnished to him, including all reproductions thereof in connection with the Order, and to return all NATO or National classified information referred to above as well as that developed in connection with the Order, unless such information has been destroyed, or its retention has been duly authorised with the approval of the Purchaser. Such NATO or National classified information will be returned at such time as the Purchaser or its authorised representative may direct;
- 38.2.12** classify any produced document with the highest classification of the NATO or National classified information disclosed in that document.

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

- 39.1** If the Purchaser notifies Company in writing of any non-compliance in the performance of the Order, with safety and health rules and requirements prescribed on the date of the Order by applicable national or local laws, ordinances and codes, and Company fails to take immediate corrective action, the Purchaser may order Company to stop all or part of the work until satisfactory corrective action has been taken. Such an order to stop work shall not entitle Company to an adjustment of the contract price or other reimbursement for resulting increased costs, or to an adjustment of the delivery or performance schedule.

### **40. RELEASE OF INFORMATION**

- 40.1** Except as otherwise specified elsewhere in the Order, and to the extent that it is demonstratively unavoidable and without prejudice to the "Security" Clause, Company or its employees shall not, without prior authorisation from the Purchaser, release any information pertaining to the Order, its subject matter, performance thereunder or any other aspect thereof.

### **41. FORCE MAJEURE**

- 41.1** If the performance of this Agreement, or any obligation hereunder is prevented, restricted or interfered with by reason of fire, flood, earthquake, explosion or other casualty or accident, strikes or labour disputes, war or other violence, including acts of terrorism, any law, order, proclamation, regulation, ordinance, demand or requirement of any governmental agency, or any other act, event or condition whatsoever beyond the reasonable control of the affected Party, the Party so affected, upon giving prompt notice to the other Party, shall be excused from such performance to the extent of such prevention, restriction or interference, provided, however, that the Party so affected shall take all reasonable steps to avoid or remove such cause of non-performance and shall resume performance hereunder with dispatch whenever such causes are removed.

### **42. RIGHTS IN TECHNICAL DATA**

- 42.1** Subject to the rights of third parties and to existing rights of Company arising otherwise than by virtue of the Order, and with due regard to national security regulations, all rights in the results of work undertaken by or on behalf of the Purchaser for the purposes of the Order, including any technical data specifications, report, drawings, computer software data, computer programmes, computer databases, computer software, documentation including software documentation, design data, specifications, instructions, test procedures, training material produced or acquired in the course of such work and, in particular, all rights, including copyright therein, shall vest in and shall be the sole and exclusive property of the Purchaser.

### **43. COMPANY'S RESPONSIBILITY ON ACCURACY OF ITS' DATA**

- 43.1** In case of change of any nature in Company's data including, but not limited to change(s) in name, ownership, address, and other changes of similar nature, Company is obliged to inform NCI Agency about the change(s) at the earliest possible moment that Company becomes aware of the change(s).

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- 43.2** Information about all changes shall be presented in the form of official registered letter, addressed to NCI Agency Point Of Contact (POC), indicated in Clause 10 - Miscellaneous of the Part I - Special Provisions of the BOA.
- 43.3** If the NCI Agency becomes aware of the change(s) described in paragraph [43.1](#) above from any other source than official registered letter received from the Organisation, the NCI Agency reserves the right to suspend the Company's Agreement immediately after The NCI Agency becomes aware of the change(s) and until the issue is fully clarified.
- 43.4** In case of change(s) the NCI Agency reserves the right to re-assess the eligibility of the Company's Agreement.

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## EXHIBIT A - ORDERING INFORMATION

### A ORDERING INFORMATION REQUIRED:

1. All orders submitted under this Agreement shall contain, as applicable, the following information:
  - a. Reference to the BOA.
  - b. Identification and details of the Purchaser.
  - c. Any special Terms and Conditions applicable to the Order (e.g. Payment, Warranty, etc.)
  - d. Description of the Products to be delivered and/or of the Engineering Services to be performed (including labour categories, labour rates, people's names).
  - e. Specification of the Requested Products Delivery Schedule and/or of the Engineering Services Period of Performance.
  - f. Specification of the Products Delivery Location and/or of the Engineering Services Place of Performance.
  - g. Shipping instructions.
  - h. Security requirements.
  - i. Completion of "Non-Transfer and Use Certificate" (e.g. DSP 83), Export License or equivalent, as applicable.
  - j. Testing and Acceptance criteria and provisions.

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## EXHIBIT B – BROAD LIST OF CATEGORIES OF COTS PRODUCTS AND SERVICES

**BOA Company should indicate their ability to provide any of the following COTS products and services**

#	Description	Indication
<b>A</b>	<b>Education and Training Services</b>	<input type="checkbox"/>
1	Alternative educational systems	<input type="checkbox"/>
2	Educational facilities	<input type="checkbox"/>
3	Vocational training	<input type="checkbox"/>
<b>B</b>	<b>Engineering and Research and Technology-Based Services</b>	<input type="checkbox"/>
1	Computer services	<input type="checkbox"/>
2	Earth science services	<input type="checkbox"/>
3	Information technology service delivery	<input type="checkbox"/>
4	Manufacturing technologies	<input type="checkbox"/>
5	Statistics	<input type="checkbox"/>
6	Professional engineering services	<input type="checkbox"/>
<b>C</b>	<b>Information Technology Broadcasting and Telecommunications</b>	<input type="checkbox"/>
1	Communications devices and accessories	<input type="checkbox"/>
2	Components for information technology or broadcasting or telecommunications	<input type="checkbox"/>
3	Computer equipment and accessories	<input type="checkbox"/>
4	Software	<input type="checkbox"/>
5	Data voice or multimedia network equipment or platforms and accessories	<input type="checkbox"/>
<b>D</b>	<b>Management and Business Professionals and Administrative Services</b>	<input type="checkbox"/>
1	Business administration services	<input type="checkbox"/>
2	Human resources services	<input type="checkbox"/>
3	Management advisory services	<input type="checkbox"/>
<b>E</b>	<b>Office Equipment and Accessories and Supplies</b>	<input type="checkbox"/>
1	Office and desk accessories	<input type="checkbox"/>
2	Office machines and their supplies and accessories	<input type="checkbox"/>
3	Office supplies	<input type="checkbox"/>

**The full list is available on the Document and Resources section of the Agency's website**

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