PART 2

SPECIAL CONTRACT PROVISIONS

(DRAFT Contract)

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# Introduction

## General

The following Contract has been entered into by and between Norwegian Defence Materiel Agency, hereinafter referred to as the Purchaser, and <COMPANYNAME herein referred to as the Contractor.

## Document Overview

This Contract consists of the following documents:

* Signed Negotiated Contract
* Special contracts provision (this document)
* Annex A – Scope of Delivery
* Annex B – Pricing and Payment Conditions
* Annex C – Terms and time of Delivery
* Annex D – Points of Contact
* Annex E-1 – System Segment Specification
* Annex E-3 – Codification Specification
* Annex E-3, Appendix 1 – Codification
* Annex F-1 – Statement of Work (SOW)
* Annex F-1, Appendix F-1 – CDRL
* Annex G – Provided Items (GFE)
* Annex H – N/A
* Annex I – Definition Catalogue
* Annex J – Subcontractors
* Annex K – N/A
* Annex L – Norwegian Defence Materiel Agency – Ethical Requirements to all Contractors
* Annex M – Forms
* Annex N – Quality Assurance and Configuration Management
* Annex O Visitors

## Definitions

Purchaser means Norwegian Defence Materiel Agency

Contract means the documents listed in 1.2 Document Overview

Contractor means <COMPANYNAME

Parties means the Purchaser and the Contractor

# Scope of Delivery

In accordance with the terms and conditions of the Contract, the Contactor shall deliver the materiel and services specified in Annex A Scope of Delivery.

# Options

## Materiel and Services

The Contractor is obliged to deliver materiel and services according to the below listed options if the Purchaser releases the options.

Options can be released by the issuance of a: Supplemental Agreement, Change Order, Purchase order, or a Contract.

The Contract’s terms and conditions shall apply for all optional deliveries.

# Delivery

## Terms of delivery

### General

Delivery shall be FCA (Incoterms 2010).

### Licences

The Contractor is responsible for obtaining export licence and any other necessary licences.

### Early Delivery

The Contractor cannot deliver earlier than specified in Annex C Delivery Schedule without a written approval by the Purchaser.

### Storage of Delivered Materiel

If the Purchaser cannot receive the materiel at the agreed time of delivery, the Contractor shall, upon request by the Purchaser, arrange for storage of the materiel at the Purchaser’s risk and expense for a period of up to three months.

If the other criteria for delivery are met, the Purchaser must accept delivery and make payments.

### Rejection of Defective Deliveries

If the delivery or part thereof is found to suffer from a substantial defect, the Purchaser shall have the right to reject the delivery of the defective part or parts. If the defective parts are of such nature that they are essential for all the delivered materiel to work according to the Purchasers requirements and intentions, the Purchaser has the right to reject the entire delivery. If the Purchaser wishes to reject the whole, or a part of delivery, the Purchaser shall immediately notify the Contractor in writing.

Materiel and services, which have been rejected, are considered as not being delivered. If the delivery is accepted, the provisions concerning Responsibility for Faults and Defects shall apply for the delivery.

## Time of Delivery

The Contractor shall deliver the materiel and services according to Annex C Delivery Schedule.

## Delayed Deliveries

### Notification of Delayed Delivery

As soon as the Contractor understands that a delivery will be delayed, the Contractor shall notify the Purchaser in writing. The notification shall include:

- the reason for the potential delay,   
- which efforts that have been made to relieve the situation,   
- estimated new date of delivery.

### Penalty

#### Delayed Delivery

In the event of delay in delivery, which is not caused by the Purchaser and which cannot be attributed to Force Majeure, the Purchaser shall impose a penalty, without any obligation to prove that any loss has been incurred. The penalty shall amount to 1 - one - per mille per working day after the agreed date of delivery, calculated on that part of the agreed price which concerns the part of the delivery that cannot be put into use as intended as a result of the delay. In this connection, "price" shall be understood to mean the basic price with all agreed extras and discounts.

The time penalty shall be limited to 10% of that part of the price, which concerns the part of delivery that cannot be put into use as intended.

### Compensation and Cancellation of the Contract

It the Contractor has not notified the Purchaser about the delay according to 4.3.1 Notification of Delayed Delivery, the Purchaser can claim compensation for incurred losses in excess of the penalty although the Purchaser is not entitled to maximum penalty. This compensation can however not exceed 10 % of the value of the delivery that cannot be put into use as intended.

If the Purchaser has been entitled to the maximum amount of penalty for any part of the delivery according to 4.3.2 Penalty, and this part has still not been delivered, the Purchaser may present the Contractor with a final, reasonable time limit for the delivery. If the Contractor has still not made the delivery at the expiry of this time limit, the Purchaser shall have the right to cancel the agreement for that part of the delivery which cannot be put into use as intended, and to claim compensation for incurred losses in excess of the maximum amount for penalty.

However, this compensation may not exceed 10% of that part of the price, which concerns the cancelled part of the delivery. The 10% limitation shall not apply if the Contractor is guilty of gross negligence.

### Force Majeure

The following circumstances shall be considered as Force Majeure, and thus reason for exemption of penalty and compensation, when they occur after signing of the Contract and hinder its fulfilment: War, rebellion or national unrest, decisions by public authorities, natural disasters, interruptions in the public electricity supply or in general transport and communications, major industrial disputes or fires, and other circumstances of a similar nature having consequence to the Contract.

A delay will be accepted as an instance of Force Majeure only if the Contractor has taken all reasonable actions to minimise/alleviate the effects of the delay.

# Responsibility for Faults and Defects

The Contractor is responsible for ensuring that the delivery is in accordance with the technical specifications and requirements of the contract. He is obliged to correct faults, replace defective parts, and otherwise remedy defects and deficiencies as soon as possible and at his own expense to make the delivery meet the agreed specifications, etc.

The Contractor's obligations comprise defects in design, materials and manufacturing for a period of 12 months from the date when the product are put into use (under ordinary operating conditions); however, they shall not extend beyond 24 months from the date when delivery has taken place.

The Contractor's obligations for defects and deficiencies shall apply only for defects and deficiencies that arise when the product are correctly stored and that are not caused by normal wear and tear. They shall not comprise defects and deficiencies that arise in products acquired (delivered) by the Purchaser, or as a result of insufficient or faulty maintenance by the Purchaser. Nor shall they comprise defects that arise, or as a result of faulty constructions carried out or prescribed by the Purchaser; nor changes made to the product without prior to written consent from the Contractor, or repairs carried out incorrectly by the Purchaser.

For parts that have been replaced or repaired, the Contractor undertakes the same responsibility as for the original product, from the date of replacement or repair. For the remaining equipment the warranty period shall be prolonged by the length of time equal to that during which the equipment has been inoperative as a result of replacement or repair. However, the Contractor's warranty responsibilities shall not extend beyond 24 months from completion of the first warranty repair or replacement of the part in question.

If, after a reasonable period of time, the Contractor has not taken the necessary steps to correct the defect or the deficiency, the Purchaser shall have the right to cancel the purchase if the defect or the deficiency substantially affects the fulfilment of the agreement. If the agreement is not cancelled, the Purchaser shall have the right either to have the defect corrected at the Contractor's expense and risk or to demand a price reduction.

The Contractor shall normally not be liable for damage resulting from a defect beyond that caused to the products delivered by him. However, if the Contractor is guilty of a major oversight or of gross negligence, he shall cover any consequential losses or damages and to compensate the Purchaser in full, hereunder also for indirect damage.

# Price

The Prices for the scope of delivery are stated in Annex B Pricing and Payment Conditions.

# Payment

## Transfer of Claims

The Contractor cannot transfer any outstanding claim/account pursuant to this Contract to any third party without the Purchaser’s written approval.

The Contractor is still responsible to the Purchaser for complaint or recourse claim if the Purchaser has approved transfer of such outstanding claim/account.

## Terms of Payment

Terms of payment are stated in Annex B Pricing and Payment Conditions.

## Invoicing

Invoicing requirements are stated in Annex B Pricing and Payment Conditions.

# Contract Administration

## Communication

All communication shall be routed through the personnel appointed as points of contact by the Parties. Communication concerning technical topics shall be routed to the technical points of contact, and communication concerning commercial topics shall be routed to the commercial point of contacts.

All correspondence concerning this Contract shall be in writing in the Norwegian or English language and labelled with the contract number unless otherwise agreed upon. Points of contact are defined in Annex D Administrative Requirements.

## Changes

Changes to the Contract’s terms and requirements are only valid if both Parties signs a Supplemental Agreement (Annex M-6). The Purchaser is not responsible for any changes, which has not been formalised according to this procedure.

# Quality Assurance

The Contractor is responsible for ensuring that the delivered product and services are in accordance with the Contract, and the Purchaser shall have right to carry out quality assurance at his own expense and after reasonable notice.

Quality control and approval by the Purchaser shall not relieve Contractor of obligations undertaken by him according to the Contract. Failure by the Purchaser to initiate or carry out quality control shall in no manner whatsoever reduce his rights.

# Codification

Codification requirements are described in Annex E-3.

# Health, Safety and Environment

The Contractor is committed to follow all applicable laws and regulations concerning health, environment and safety concerning the fulfilment of the Contract.

# Insurance

The Purchaser carries its own risks, and no special insurance shall therefore be taken out at the Purchaser’s expense to cover these risks.

# Advertising

The Contractor must obtain written permission from the Purchaser in advance if he desires to disclose information about the Contract to the public, for advertising purposes or otherwise. The Contractor undertakes to include a similar clause in all sub-contracts.

# Precedence of Documents

In the event that the documents of the Contract should contain mutually contradictory provisions, their order of precedence shall be as follows:

1. Special contracts provision (this document)
2. Signed Negotiated Contract
3. Annex A – Scope of Delivery
4. Annex B – Pricing and Payment Conditions
5. Annex C – Terms and time of Delivery
6. Annex D – Points of Contact
7. Annex E-1 – System Segment Specification
8. Annex E-3 – Codification Specification
9. Annex E-3, Appendix 1 – Codification
10. Annex F-1 – Statement of Work (SOW)
11. Annex F-1, Appendix F-1 – CDRL
12. Annex G – Provided Items (GFE)
13. Annex I – Definition Catalogue
14. Annex J – Subcontractors
15. Annex L – Norwegian Defence Materiel Agency – Ethical Requirements to all Contractors
16. Annex M – Forms
17. Annex N – Quality Assurance and Configuration Management
18. Annex O-1 – Request for Visit
19. Annex O-2 – Guide for Clearance of Foreign Citizens Visiting Norway

# Substantial Breach of Contract

The Purchaser has the right to cancel the Contract in whole or in part if the Contractor is in substantial breach of the Contract. Insolvency, bankruptcy, breach of major financial agreements or other similar problems of the Contractor or his parent company, is considered to be a substantial breach of Contract.

# Disputes

The Parties shall try to solve by negotiations any disputes that arise in connection with the Contract. In the event that it is impossible to solve the dispute by negotiations, it shall be brought before the courts, unless the parties agree on arbitration. The fact that a dispute has been brought before a court or referred to arbitration does not in itself relieve the Parties of their obligations under the Contract. The laws and jurisprudence of Norway shall be the basis for the settlement of disputes. The District Court of Oslo shall be the venue unless otherwise agreed.

# Termination

In case it should become necessary, the Purchaser shall have the right to terminate the Contract in whole or in part by written notice to the Contractor. The termination notice shall state the reasons for termination and the date on which it will take effect, and shall instruct the Contractor how to proceed under the circumstances.

In cases where such termination is not caused by breech of Contract by the Contractor which gives the Purchaser the right to cancel the Contract, the Purchaser shall, within a reasonable period of time, pay a proportionate part of the agreed Contract price, covering all work that has been carried out, materials, administrative costs, etc. The Purchaser shall cover demonstrable costs and losses incurred by the Contractor as a result of the termination of the contract as well as a proportionate share of the profit.

Any part of the delivery which is included in the settlement, but which has not been delivered, shall be delivered to the Purchaser in accordance with the provisions of the contract when agreement on the final settlement has been reached.

If the Contractor fails to take reasonable steps to minimize the costs incurred in connection with the termination of the Contract, the amount paid to him in the final settlement shall be reduced accordingly.

# Validity and Effective Date of Contract

The Contract will become effective after signature by both Parties.

This Contract has been issued in two original copies – one for each of the Parties.

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