



FRAMEWORK AGREEMENT PROVISIONS

FAST RESCUE BOAT

4501122721

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1 Introduction

1.1 General

This Framework Agreement (“Contract”) is entered into by and between The Norwegian Defence Logistics Organisation – Naval System (“Purchaser”) and “CONTRACTOR” (“Contractor”).

The Purchaser and the Contractor are jointly called the “Parties”.

1.2 Purpose of Contract

The purpose of this Contract is to meet the Purchasers needs for Fast Rescue Boat with instrumentation, supplementary equipment, and logistic support throughout the system's lifetime related to maintenance, re-certification and spare parts delivery.

The nature of operations imposes severe stress to the Scope of Supply. In order to maintain a high degree of operational security, the Scope of Supply must have high degree of reliability, performance and quality. These elements shall be kept in mind during planning, design and production.

1.3 Non-exclusivity

The Contractor acknowledges that, in entering this Contract, no form of exclusivity or volume guarantee has been granted by the Purchaser for Goods and/or Services from the Contractor and that the Purchaser is at all times entitled to enter into other contracts and agreements with other providers for the provision of any or all goods or services, or both, which are the same as or similar to the Goods and Services described in the Scope of Supply.

1.4 Guarantee for fulfilment of Contract

(TBD) The Contractor’s parent company [COMPANY] has given a Parent Company Guarantee for the full performance of the Contractor’s obligations under the Contract and in accordance with Annex H Parent Company Guarantee.

(TBD) The Contractor has provided a guarantee for fulfilment of the Contract from a first class bank/financial institution.

1.5 Document Overview and Precedence of Documents

In the event of any conflict between the provisions of the Contract documents, they shall be given priority in the following order:

1. Signed Negotiated Contract (Form 5151)
2. Framework Agreement Provisions (this document)
3. System Segment Specifications, Annex E
4. Subcontractors, Annex J
5. Standard Forms, Annex M
6. Other annexes specified and “List of annexes”.
7. Proposal in response to ITT 4501122721 from the Contractor.

Annexes E state the requirements to the goods and services which are to be delivered as well as the requirements to how the work is to be performed and how it is to be verified. If conflicts arise between the requirements to the goods or services on the one side, and requirements to the work or verification on the other side, the requirements to the goods and services shall always have precedence.

If technical specifications are done both in drawings and in writing, the text shall have precedence.

1.6 Communication

All communication shall be routed through the personnel appointed as points of contact by the Parties, according to Annex D Points of Contact. All formal correspondence concerning this Contract shall be in writing in Norwegian or English and labelled with the contract number unless otherwise agreed upon.

If there are any changes in points of contact for the two parties, they are obliged to immediately notify the other party in writing.

1.7 Visiting routines

The Contractor is obligated to follow the Purchaser's prevailing visiting routines while visiting Norwegian Armed Forces facilities. Foreign citizens shall complete the form Request for Visit in accordance with Annex O Guide for clearance of foreign citizens visiting Norway.

2 Use of the Contract

2.1 Users of the Contract

The following departments at the Purchaser can call-off under the Contract:

1. NDLO – Naval Systems / Contracting dept.
2. NDLO – Supply Division / Procurement dept.

If the Contractor is in any doubt regarding the validity of any Order issued it shall notify the Commercial Contact immediately and shall not proceed with execution of the Order until the Purchaser provides written authorisation.

2.2 Duration of Contract

2.2.1 Main period

This Contract shall commence on the Commencement Date, and shall remain in force for an initial period of three (3) years from the Commencement Date.

2.2.2 Renewal of contract

2.2.2.1 Optional period

The Contract may be renewed at the end of the Main Period for a further period of two (2) + two (2) years ("Optional Period") by the Purchaser giving written notice of renewal to the Contractor no later than 6 months prior to the expiry of the Main or Optional Period.

2.2.2.2 Logistic support period

The part of the Contract comprising on-site logistic support, including delivery of spare parts, may be renewed for additional two (2) year periods throughout the System's lifetime ("CLS Period"), by the Purchaser giving written notice of renewal to the Contractor no later than 6 months prior to expiry of the Optional Period or subsequent CLS Period currently in force (as appropriate). Notwithstanding anything to the contrary in 2.2.1 or 2.2.2.1 and irrespective of whether the Main Period or Optional Period have expired, during any CLS period, the contract will still be in full force and effect to the extent it relates solely to such CLS period.

2.2.2.3 Terms

Prior to any renewal of this Contract the Contractor shall submit, within 3 months after the written notice of renewal, data that the Purchaser may request, such as but not limited to, the data required by the Basis for Price Negotiation.

Notwithstanding the receipt of the aforementioned data, prices for the renewal period may be subject to negotiation and the Purchaser may request the Contractor to furnish current cost and pricing data on any item where its price is found susceptible to negotiation. If the price is accepted by the Purchaser it will be effective on the first day of the renewal period or on the acceptance date, whichever is later. If an agreement cannot be reached between the Purchaser and the Contractor on any proposed price, the price is subject to Cost Control, c.f. clause 17.

2.2.3 Cancellation

This Contract shall terminate automatically without notice at the end of the Main Period or, if it is renewed, at the end of the Optional or CLS period (subject to renewal facility included at 2.2.2.2).

2.3 Statistics

The Contractor is responsible for keeping records of all call-offs pursuant to this Contract. The summary shall be prepared each year, and submitted to the Purchaser by the end of January the following year. The summary shall include:

- Annual quantity and value of each item comprised by the Contract.

The Purchaser has the right to access and inspect the data used as the basis for reporting.

3 Call-off under the Contract

3.1 General

All Orders for Services and/or Goods shall be in the form set out in Annex M-3, Purchase Order, signed by an Authorised Representative of NDLO and shall be sent by fax or e-mail to the Contractor. The parties agree that any document or communication (including any document or communication in the apparent form of an Order) which is not in the form prescribed by this clause shall not constitute an Order under this Contract.

3.2 Ordering Procedure

If the Purchaser decides to source Goods and/or Services through the Contract, then it may at any time during the duration of the Contract order Goods and/or Services within the Scope of Supply, by serving a Purchase Order to the Contractor for the provision of such Goods and/or Services.

Authorised Representatives according to clause 2.1 shall be entitled to submit Purchase Orders to the Contractor.

Following receipt of the Order, the Contractor shall promptly and within three (3) Working Days of the date of the Order, acknowledge receipt of the Order. For inquiries with respect to Logistic Support, the Contractor shall confirm when the Logistic Support can take place, and quote a price on the scope.

The Contractor shall enter a legally binding contractual obligation with the Purchaser for the provision of Goods or Services referred to in that Order in accordance with the terms of this Contract.

3.2.1 Content of Order

A purchase order under the framework agreement shall contain:

- Reference to contract **TBD**
- Purchase order number 45xxxxxxxx
- Authorized Demanders employee number
- Part number and description
- Quantity
- Unit price according to the Contract and total cost
- Time and place of delivery
- Point of contact at place of delivery
- Invoicing address

3.2.2 Service Log

The Contractor is responsible for keeping a service log including, but not limited:

- Reference to Purchase Order
- Description of service provided
- Specified list of hours worked
- Test results
- List of spare parts used
- Recommendation of further action with a quote on scope
- Advice and recommendations to avoid the same errors
- Other relevant information

4 Scope of Supply

The Contractor shall source the Scope of Supply as listed in Annex A, as further specified in Annex E System Segment Specifications, and as further specified in these special provisions and the annexes to this Contract.

The purchaser reserves itself the right to modify and add items to the Scope of Supply as set out in Annex A. All changes shall be in accordance to clause 15 Changes to the Contract.

5 System responsibility

5.1 General

The Contractor has the total system responsibility for the complete Scope of Supply under this Contract. This means that the Scope of Supply and each part thereof shall be perceived and shall function independently and together as one total system hereunder in compliance with the requirements in Annex E, and that all subsystems and components are and shall be fully functional and operable as parts of the system ("the System").

It is the Contractor's responsibility that all subsystems and components fits their purpose as specified in this Contract and supports the System in compliance with the requirements in this Contract. Subsystems and components include, but are not limited to spare parts, special tools and test equipment, training devices, training courses, training documentation and technical documentation as specified in this Contract.

5.2 Design Responsibility

The Contractor shall have the total design responsibility for the Scope of Supply, c.f. clause 2 Scope of supply for a period of 15 years counting from the commencement date of Contract, even if design suggestions are put forward by the Purchaser and accepted by the Contractor.

Design responsibility implies that the Contractor assumes total responsibility for any development or change of the deliverables of this Contract performed by the Contractor or at the Contractor's premises, as well as development of new items performed by the Contractor or approved by the Contractor.

5.3 System Expertise Responsibility

5.3.1 General

The Contractor shall possess system expertise regarding production of the system and spare parts, maintenance, development and training in order to let the Purchaser utilize this expertise later. The Contractor is committed to maintain system expertise for 15 years counting from commencement date of Contract. The Purchaser's use of this system expertise is not regulated by this Contract, meaning that the use of the system expertise will be regulated by changes to the Contract or separate Contracts.

5.3.2 Changed configuration of Scope of Supply and spare parts

If Scope of Supply or spare parts are changed prior to expiry of the warranty period as described in clause 8.2 Warranty Period, and such change has an influence on form, fit or function on already delivered Scope of Supply or spare parts, the Purchaser has the right to return the applicable Scope of Supply and spare parts without incurring any liability towards Contractor or make any payments or provide any form of compensation whatsoever to the Contractor. Spare parts and Scope of Supply compatible with the changed deliverable shall be rectified at no additional cost for the Purchaser.

6 Test, verification and Purchaser's approvals

6.1 Test and verification

In order to verify that the requirements in Annex E System Segment Specifications are met, the Contractor shall perform verification in accordance with Annex E System Segment Specifications. Verification procedures, such as testing, analyses and inspections are more detailed defined in Annex E System Segment Specifications.

6.2 The Purchaser's approvals and participation

The Contractor shall remain fully responsible and liable for the fulfilment of all his obligations under this Contract, whether or not the Purchaser has participated or provided support. This means that any support or participation from the Purchaser in form of approval, acceptance or similar confirmation during the design, production, test, verification and delivery does not relieve the Contractor of any of his obligations. Any progress payment entails no approval on the basis of the invoice or of the amount of the claim.

The obligations of the Contractor stated in this Contract may only be changed by the use of the procedures in clause 15 Changes to the Contract.

7 Time and Terms of Delivery

7.1 General

At delivery the deliverables shall meet all the requirements of the Contract. All deliverables shall be brand new, and if relevant – cleaned – and equipped with all necessary certificates.

At delivery all deliverables shall be free and clear of all liens, claims, mortgages and other encumbrances.

7.2 Time of Delivery

The Contractor shall deliver the Scope of Supply in accordance with the delivery times as defined below and in Annex C Time and Terms of Delivery.

7.3 Terms of Delivery

The Contractor shall deliver the Scope of Supply in accordance with terms of delivery as defined below and in Annex C Time and Terms of Delivery.

7.3.1 Purchaser's acceptance control

The Purchaser shall, within three weeks after delivery in accordance with clause 7.2 has taken place, control and notify the Contractor in writing whether the delivery are considered to be in accordance with the contract or not, and thereby decide whether the delivery is to be accepted. In the event that the Purchaser does not accept the delivery any justified reason for not accepting the delivery shall be presented the Contractor. In the event that any justified reason for not accepting the delivery can not be presented to the Contractor within three weeks, Approved delivery, c.f. clause 7.3.1.1 shall be considered to have taken place.

7.3.1.1 Approved Delivery

Approved delivery has taken place when

- the Scope has been delivered in accordance with the terms and conditions set forth in this contract, and
- the deliveries has been controlled and accepted by the Purchaser (c.f. clause 7.3.1).

7.3.1.2 Non Acceptance of Delivery

In the event that delivery is not accepted and the Purchaser has informed the Contractor about this in accordance with 7.3.1, the following shall apply:

- the Purchaser shall store the rejected materiel in a quarantine area until further notice is received by the Contractor authorizing the return and providing the necessary return instructions
- the Contractor shall inform the Purchaser how they intend to rectify the rejected part of the delivery.

7.4 Early or Partial Deliveries

The Contractor cannot deliver earlier than agreed upon in Purchase Order according to clause 3.2 without the Purchaser's written approval. A partial delivery without the Purchaser's written approval will not be accepted.

7.5 Obligation to notify in case of delay

If the Contractor has reason to believe that the Contractor may not meet the provision of Annex C Time and Terms of Delivery, the Contractor shall promptly notify the Purchaser accordingly.

Without undue delay after serving such notice as set forth above, the Contractor shall also notify the Purchaser of the cause and length of the delay, and the measures which the Contractor proposes to implement to avoid, recover or limit the delay. The Purchaser shall without undue delay after receiving such detailed notification, notify the Contractor of its comments, if any, to the proposed measures. The Purchaser may order the Contractor to implement additional measures if the Purchaser considers the proposed measures to be insufficient or otherwise inadequate with respect to the delay in question. If the delay notified is not caused by the Purchaser, the Contractor is responsible of the delay, and shall implement all necessary measures to avoid, recover or limit the delay.

If the delay notified in accordance with this clause has been caused by the Purchaser, and the contract price or the delivery times has been affected by the delay or the implemented measures, the Contractor may claim an adjustment of the contract price or the delivery times in accordance with clause 15 Changes to the Contract. If the Contractor fails to adhere to the provisions of clause 15 Changes to the Contract, it shall not be entitled to any adjustment of the contract price or the delivery times. Nor shall the Contractor be entitled to any such adjustment if the delay, or its consequences, could have been avoided, recovered or limited if the Contractor had fulfilled all its obligations under the Contract.

7.6 Storage of Delivered Goods

If the Purchaser understands, or has reasons to believe that he may not be able to take delivery according to the agreed time and place according to this Contract, he shall notify the Contractor in writing without undue delay.

Purchaser may decide that Contractor shall store the goods for a period of up to 2 months from the agreed time of delivery upon Purchaser's risk and account.

Provided that Contractor could have delivered according to the agreed time of delivery, Purchaser shall pay Contractor as if delivery has taken place according to the Contract. In case of delay in delivery on Contractor's side, Purchaser shall pay when Contractor could have made delivery.

The Contractor shall, as soon as title to the Scope of Supply has been transferred according to clause 10 Transfer of title, mark the delivered goods as “Property of the Norwegian Armed Forces”. The goods shall be stored separately from other deliveries, equipment, and goods.

8 Warranty

8.1 Scope of warranty

The Contractor warrants that all Deliverables will conform to all specifications and requirements in the Contract throughout the applicable warranty periods set out in clause 8.2 Warranty Period. This warranty covers defects in material and workmanship. This means that to the extent any functional or quality defect or deficiency arises during the said Warranty Period, they shall be corrected by the Contractor; unless the Contractor can document that the defect or deficiencies is caused by improper use, improper storage, improper maintenance or normal wear and tear.

8.2 Warranty Period

The warranty is effective from actual date of delivery of each deliverables and spare parts for **TBD** (**TBD**) months.

From the complaint according to clause 20.2 Purchaser’s complaint, or notification according to clause 20.3 Contractor’s notification of warranty defect, the warranty period shall be suspended with regard to all parts affected by a defect in such a manner that they can not be used according to their purpose until the rectification has been completed.

In any case there shall be a minimum warranty period of 12 months after rectification has been completed with regard to the replaced or repaired parts or systems and the performance of the rectification work.

8.3 Defective Log

The Purchaser should label and report the following data for defective items:

- Item identification (P/N, NSN, description)
- Date and time the defect occurred
- The nature of the defect
- Conditions at the time the defect occurred
- Attempts on operators level and workshop level to correct the defect

9 Price and Payment

9.1 Contract Type

This is a Fixed Price Contract subject to price escalation, according to Annex B Pricing and Payment Conditions.

9.2 Unit Prices

The contract price for the Scope of Supply as defined in Annex A Scope of Supply are stated in Annex B Pricing and Payment Conditions.

9.3 Payment conditions

The Contractor shall invoice the Purchaser in accordance with the payment conditions as described in Annex B Pricing and Payment Conditions.

9.4 Invoicing

The Contractor shall invoice the Purchaser in accordance with the invoice provisions in Annex B Pricing and Payment Conditions.

9.5 Retention of payment

In case of breach of contract, the Purchaser may withhold payment to secure the Purchaser's claim resulting from the breach of contract.

9.6 Transfer of Claims

The Contractor cannot transfer any outstanding claims pursuant to this Contract to any third party without the Purchaser's prior written approval.

The Contractor remains responsible for all his obligations under the Contract even if the Purchaser has given such approval.

10 Transfer of title and risk

Title to the Scope of Supply shall be transferred (or shall be deemed to have been transferred) to the Purchaser either when the Purchaser pays for the Scope of Supply, or receives the Scope of Supply, whichever occurs first.

If title passes upon receipt of the Scope of Supply and the Purchaser subsequently fails to pay for the Scope of Supply in accordance with clause 9, Title shall revert to the Contractor.

The transfer of title implies that the Purchaser acquires full de facto and legal rights to the Scope of Supply.

Any part of the Scope of Supply still in the Contractor's possession when transfer of title has taken place shall clearly be identified as the Purchaser's property and adequately separated in such a manner to ensure defeat of creditors.

Transfer of title to the Scope of Supply shall be unconditional and shall not be subject to any security for unpaid purchases.

The risk for the Scope of Supply transfers in accordance with the agreed INCOTERMS, c.f. Annex C Time and Terms of Delivery

11 Subcontractors

11.1 Contractor's right to subcontract

The Contractor shall not assign parts of the work related to the Scope of Supply to subcontractors without the Purchaser's prior written consent. Subcontractors listed in Annex J Subcontractors have already been approved by the Purchaser.

The Purchaser has the right to attend any negotiations and progress meetings between the Contractor and any subcontractor as observer. The Contractor shall give the Purchaser notice in due time of any relevant negotiation or progress meeting with the subcontractors.

The Contractor may not amend in any substantial technical manner, any subcontract between the Contractor and a subcontractor that has been approved by the Purchaser, without the prior written consent by the Purchaser. Such consent cannot be unreasonably withheld.

The contractor shall not be liable for any schedule delay caused by the exercise by the purchaser of the rights granted in this clause 11.1.

11.2 Transfer of terms and requirements to subcontractors

Where reasonably possible and subject to the responses included against this clause within the proposal document referenced in Section 1.5 of this Contract, the Contractor shall, in addition to communicating technical requirements and specifications, ensure that Subcontractors are cognisant of terms and conditions regarding:

- Codification
- Quality assurance
- Changes
- Right of inspection
- Termination of the Contract
- Advertising and public information
- Cost Control

11.3 Status of subcontractors

The Contractor shall remain fully responsible and liable for the fulfilment of all its obligations under the Contract, whether the Contractor has subcontracted any part of the work or not.

11.4 Assignment of subcontracts

Each subcontract shall, where possible, include provisions whereby the Purchaser has the right to request that the subcontract shall be assigned to the Purchaser if a situation arises where the Contractor is not able to fulfil its obligations under this Contract.

12 Contractor's social responsibility

12.1 Prudence

Throughout the procurement process the Contractor shall ensure that former or present Armed Forces personnel do not encounter situations that place the former or present Armed Forces personnel at risk of violating non-disclosure agreements (with their former or present employer) or situations where conflicts of interest can arise. The Contractor is requested to inform the Purchaser with regards to whether such conflicts may arise. The Purchaser has the prerogative to request changes regarding which personnel that may contribute in the Contractors performance under the Contract.

The Purchaser is bound by the Public Administration Act regarding conflict of interest.

12.2 Basic conditions for social responsibility

Where reasonably possible and subject to the responses against clause 11.2 included within the proposal document referenced in Section 1.5 of this Contract the Contractor shall fulfil the basic conditions for social responsibility as defined in Annex L Corporate Responsibility.

13 Quality Assurance and Configuration Management

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.

Quality Assurance requirements are described in Annex Q.

14 NATO Codification

The Contractor is responsible for NATO Codification according to requirements specified in Annex E-2A Form 5054 Codification clause.

15 Changes to the Contract

15.1 General

The Contract may only be changed by either a:

- Supplemental Agreement on Form 5156 - “Agreement of Change”, or
- “Change Order” on Form 5157 issued by the Purchaser.

15.1.1 The content of a Supplemental Agreement

The Supplemental Agreement shall include any and all consequences of the change to the Parties obligations under the Contract. The Parties may not invoke any consequences of the change not included in the Supplemental Agreement. In addition the Supplemental Agreement shall include the accumulated effect on the Contract Price and Delivery Schedule of all Supplemental Agreements at that point of time.

15.1.2 Foundation of change

Neither the Purchaser nor the Contractor may invoke any other statement, action or lack of action by any other Party or its representatives, as a foundation for a change. This means that any statement that affects the Contract Requirements and/or Contract Price, given by representatives of either Party orally in meetings, telephone conversations etc., or in writing in Minutes of Meetings, correspondence between the Parties or in similar documents, has no effect on the Parties’ rights or obligations under the Contract until they have been agreed in a Supplemental Agreement.

15.2 Changes and Deviations initiated by the Contractor

15.2.1 The Contractors obligation to initiate a change process

The Contractor is obligated to propose a change to the Contract when he considers that such a change will cause reduced costs, earlier delivery and/or technical improvements subject to relevant authorities’ approvals when applicable.

15.2.2 Procedures

If the Contractor wants to propose changes to the Contract, the Contractor shall complete and submit Form 5159 “Request for Change” to the Purchaser. The reason for the proposed change and the consequences regarding costs, progress/delivery time and for the deliverable item shall be described.

The Contractor shall not implement the changes before they are formalised in accordance with clause 15.1 General.

If the Contractor wants to deliver a limited number of units with deviation(s) to the Contract requirements, or deviations to mutually agreed Baseline(s), he shall complete and submit Form 5353 “Request for Acceptance of Deviation” to the Purchaser through the Purchaser’s Quality Assurance Representative.

The Purchaser is not financially responsible for changes and deviations that are not in accordance with this Contract’s procedures.

15.2.3 Acceptance of Deviation

Deviations are binding for the Purchaser when the Purchaser has accepted and returned to the Contractor, Form 5353 “Request for Acceptance of Deviation”.

15.3 The Purchaser's Right to Demand Changes

15.3.1 General

The Purchaser has the right to at any time propose changes to the Contract.

15.3.2 Change order

The Purchaser may at any time make changes to the Contract by issuing Form 5157 "Change Order".

The Contractor shall immediately perform according to the Change Order, even if the Parties have not signed a Supplemental Agreement. Dispute of the consequences of the Change Order does not relieve Contractor of the obligation to perform according to the Change Order.

If the Change Order has any consequences to the obligations of any of the Parties under the Contract, the Contractor shall notify the Purchaser within 20 Working days after the receipt of the Change Order, and herein present a complete description of such impact. If the change has any consequences for the Contract Price, the Contractor shall specify a claim by using the form 5351 "Specification of Pricing Proposal". Calculation of the cost shall be according to form 5055 "General Terms for Cost Control" in Annex M-1.

The Parties shall within 15 Working days after the Purchaser's receipt of the descriptions of consequences start negotiations for a corresponding Supplemental Agreement.

If the Parties do not agree upon a Supplemental Agreement, clause 25 will apply.

15.4 Dispute regarding the existence of a change

If the Purchaser claims that the Contractor has an obligation under the Contract, and Contractor disputes such an obligation, or if Contractor issues a "Request for Change" and the Purchaser is of the opinion that the scope of the "Request for Change" is already covered by the obligations under the Contract, then a dispute related to the obligations under the Contract is established.

After receipt of a notice from the Purchaser stating that any matter in question is considered to be part of the obligations under the Contract, the Contractor shall within 10 Working days substantiate its position on the matter.

The Purchaser shall within reasonable time after receipt of Contractor's position present its view on the matter, and may issue a "Change Order in Dispute" describing the obligations of the Contractor according to the view of the Purchaser.

The Contractor shall immediately perform according to the Change Order in Dispute, even if the Parties are in dispute whether the obligation is part of the Contract. A dispute of the possible consequences of the Change Order in Dispute will not relieve Contractor of the obligation to perform according to the Change Order in Dispute.

The Contractor shall without undue delay present to the Purchaser its opinion of the price for the Change Order in Dispute. The price is subject to Cost Control, c.f. clause 17.

The Change Order in Dispute is subject to dispute resolution under clause 25.

16 Right of inspection

The Contractor shall, on request from the Purchaser, provide access to personnel from or authorized by the Purchaser to all information, documents etc, that this personnel consider to be of importance for performing its work in relation with the execution of this procurement. Further, the Contractor shall provide access to relevant personnel, production equipment and locations when necessary in order for the Purchaser's personnel to perform its work.

The Purchaser may request inspection in relation with quality assurance, cost control, contractor assessment, codification, security and inspection of technical progress and/or materiel owned by the Purchaser. The Purchaser will request inspection in the Contractor's in case of possible financial irregularities or similar situations. Notwithstanding anything in this clause 16 to the contrary, the Purchaser shall not be granted access to financial or cost control data except in accordance with clause 17. Furthermore, any access granted by Contractor to Purchaser in relation to Contractor facilities, will be subject to the stipulations against clause 16 set forth in the Proposal document referenced in clause 1.5 hereto.

17 Cost Control

The Contractor shall, give Purchaser's Regulatory Agency, see Annex D, access to cost control in the following situations:

- Any changes to the Scope of Supply, such as reductions, expansions, extensions, or additional deliveries which is not already priced in the Contract
- Renewal of the Contract or parts of it
- Termination and/or Cancellation of the Contract or parts of it

The cost control shall be made in accordance with Form 5351 Specification of Pricing Proposal, and Form 5055 General terms for cost control, ref. Annex M-1.

18 Confidentiality

18.1 Secrecy

The Contractor shall not disclose the contents of this Contract to third parties unless this should be necessary for the performance of the Contract, and then only after the Purchaser's written approval.

Unless explicitly agreed in writing by the Purchaser, the Contractor may not under any circumstances, even if the Contract has been cancelled for any reason whatsoever, consider himself free from obligations of secrecy unless otherwise stated by law.

18.2 Advertising

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

19 Intellectual Property Rights

19.1 General

The Purchaser shall have a free of charge, full and irrevocable right to use, duplicate, change and transfer any and all concepts and documentation developed, delivered or used by the Contractor under this Contract. Such right shall include a right to maintain a satisfactory logistic support.

The Purchaser may only transfer its user right under this Article to a third party in order to maintain a satisfactory logistic support (use, maintenance, repairs and improvement of the materiel and services), if nothing else is stated in this Contract. The Purchaser can also use the technical publications delivered under this Contract in Invitations to Tender in order to describe interfaces and functionality in connection with the purchase of adjacent systems/materiel. The Purchaser or the relevant third party in respect of such transfer of rights shall pay no royalty or other fee.

19.2 Use of Patents and Intellectual Property Rights

No special compensation shall be paid for the use of patents or other Intellectual Property Rights for the fulfilment of the Contract.

19.3 Violation of Patents and Rights

The Contractor shall indemnify the Purchaser against all claims arising from violation of patents or immaterial rights in connection with manufacturing or use of the materiel and services. The Purchaser shall indemnify the Contractor against claims for compensation resulting from the use of the Purchaser's Government Furnished Equipment, drawings, specifications, or licences.

The Parties shall notify each other of any claims relating to violation of patents or other immaterial rights in connection with manufacturing or use of the materiel and services.

20 Contractor's breach of contract

20.1 Breach of contract

There is a breach of Contract if the Contractor does not fulfil his obligations under the Contract and this is not due to circumstances caused by the Purchaser. The Contractor holds the burden of proof if the Contractor is to claim that the non-fulfilment under the Contract is caused by the Purchaser.

The Purchaser's remedies according to the Contract shall not be in lieu of any other remedies whether in law or otherwise.

20.2 Purchaser's complaint

The Purchaser shall submit a written complaint within thirty (30) days after a breach of contract has been discovered. If the complaint is not made within thirty (30) days, the Purchaser loses the right to put forward a claim in respect of the breach of contract.

The Purchaser may in no event, make complaints later than the warranty periods stated in clause 8.2 Warranty Period. The same time limit applies in respect of any replaced or repaired parts, calculated from the time the replacement or repair took place. The time limit for making a notice of complaint does not commence as long as rectification work or other activities necessary to comply with the contractual requirements are performed.

The stated time limits for complaints do not apply if the Contractor has acted with gross negligence, dishonestly or in bad faith. Nor does the claims period apply if the Contractor through a guarantee or other agreement has assumed liability for defects for a longer period.

20.3 Contractor's notification of warranty defect

If the Contractor, or its subcontractors, after delivery of any deliverables, becomes aware of a defect or deficiency within the scope of the warranty, the Purchaser shall be notified without undue delay and not later than 14 calendar days after the detection of the defect or deficiency. The defect or deficiency shall be rectified without undue delay.

20.4 Purchaser's right to reject defective deliveries

In case of defect, the Purchaser can reject the defective part of the delivery, as well as those parts of the delivery that are affected by the defects, in accordance with clause 7.3.1. The rejection shall be made in writing. Rejected deliveries shall be regarded as not delivered.

20.5 Purchaser's remedies for breach of contract

20.5.1 Penalty

If agreed Times of Delivery according to clause 7 Time and terms of delivery are not met, there is a delay on the part of the Contractor which entitles the Purchaser to day penalties.

The daily penalty shall accumulate automatically. The day penalty shall amount to 0,1 % per calendar day of the value of the delayed deliverable and any other part of the Scope of Supply which cannot be used as intended due to the delay. The daily penalty is limited to 100 calendar days for each delayed part.

20.5.2 Rectification

Upon receipt of a complaint according to clause 20.2 Purchaser's complaint, or notification according to clause 20.3 Contractor's notification of warranty defect, the Contractor shall rectify the breach, including all parts damaged due to the breach of contract. The Contractor shall cover all costs related to the rectification and shall be initiated without undue delay, or as agreed.

If the Contractor fails or refuses to commence rectification as described above, or it is essential that rectification shall be performed more rapidly than is possible for the Contractor, the Purchaser may perform such work itself, or assign it to others. Such work shall in any case not be commenced by the Purchaser before 30 calendar days after a written notification has been given to the Contractor. The Contractor shall cover all costs in connection with the rectification performed by the Purchaser or assignee, unless the Purchaser or assignee has failed to act in a diligent manner in this respect.

The Contractor is obligated to render all necessary information and the right to use such information to the Purchaser immediately, including a third party on the Purchaser's behalf, in order for the Purchaser to exercise its right under this clause.

The contractor shall cover all costs related to the rectification.

The Purchaser may require reworked or new acceptance tests and/or procedures to qualify or re-qualify the rectified Scope of Supply at the Contractor's expense to ensure the fulfilment of the specifications and requirements under the Contract.

The Contractor's rectification does not deprive the Purchaser of his other remedies under clause 20.5 Purchaser's remedy for breach of contract.

20.5.3 Systemic Defect

20.5.3.1 General

Should any defect or deficiency occur before the end of the last warranty period, and the defect or deficiency is to be regarded as a systemic defect or deficiency in accordance with clause 20.5.3.2, the Contractor is responsible to rectify such defects or deficiencies regardless whether the warranty period for the deliverables affected is expired or not, and regardless whether the defects or deficiencies have materialised or not.

Warranty coverage is invoked when the Contractor receives notification of the systemic defect, ref. clause 8.2.

20.5.3.2 Defect or Deficiency Regarded as a Systemic Defect or Deficiency

General

Should any defect or deficiency occur, and the Purchaser has reason to believe that this defect or deficiency influences all such delivered deliverables, the Purchaser shall provide all relevant technical information on which the Purchaser has based his conclusion, to the Contractor.

Unless the Contractor is able to demonstrate the probability that the defect or deficiency is a single occurrence, the defect or deficiency is regarded as a systemic defect or deficiency.

Quantity

If the same defect occurs on three – 3 units, the defect or deficiency is regarded as a systemic defect or of deficiency.

20.5.3.3 Procedure

When a defect or deficiency is determined to be a systemic defect or deficiency, the Purchaser shall notify the Contractor within 30 days.

After receipt of the notification, the Contractor shall within two months prepare a Corrective Action Plan. This plan shall include all necessary verification.

Upon Purchaser's "Authorisation to Proceed" in accordance with the Corrective Action Plan, the Contractor shall perform the rectification work. The Purchaser shall have the opportunity to witness verification work and give "Authorisation to Proceed" for the rectification work. Issuance of Certificate of Conformity may also be required.

20.5.3.4 Systemic Defect or Deficiency that Occurs After the Last Warranty Period

If a systemic defect or deficiency occurs after the end of warranty period, the Contractor shall be responsible for performing a technical analysis of the defect or deficiency, forwarding a suggestion to rectify it, and in cooperation with the Purchaser generating an acceptable solution. The Contractor shall be responsible for performing such technical analysis for 10 years after the end of the warranty period.

20.5.4 Delivery Procedure for Rectified Deliverables

For rectified deliverables, the Purchaser can require reworked or new acceptance tests and/or procedures to qualify or re-qualify the deliverables at the Contractor's expense to ensure the fulfilment of the requirements is according to the Contract.

20.5.5 Purchaser's right to attend rectification work

The Purchaser has the right to attend any rectification work as observers.

20.5.6 Price reduction

Should the Contractor fail to rectify a breach of contract without undue delay, or if he does not succeed in rectifying such a breach, the Purchaser may claim a proportionate price reduction.

The price reduction shall compensate for the reduced value of what has been delivered, and shall be independent of any damages.

20.5.7 Termination

20.5.7.1 Termination for breach

The Purchaser has the right to terminate the Contract (other than during period of liquidated damages being assessed) entirely and partially with immediate effect if the Contractor is in substantial breach. Prior to termination, the Contractor shall be given a reasonable thirty (30) calendar days to rectify the breach (from date of receipt of notice for breach).

Each of the following shall always be considered as substantial breach:

- A delivery of a Deliverable is delayed with the consequence that liquidated damages reach their maximum limit (c.f. clause 20.5.1), or
- The Contractor has been found guilty in a legally and enforceable judgment of the participation in a criminal organisation, corruption, fraud, money laundering, or of a punishable offence relating to his professional conduct, or
- The Contractor's business should become subject to debt negotiations, debt settlement proceedings, bankruptcy or any other type of creditor proceedings, or
- The Contractor's business should be discontinued, suspend its operations or are in a similar process based on applicable law.

If the Purchaser terminates the Contract in respect of a single delivery, the Purchaser may at the same time terminate the Contract in respect of future deliveries if, by reason of their interdependence, those deliveries could not be used for the purpose contemplated by the Parties at the time of entering into this Contract.

20.5.7.2 Consequences of termination

Upon receipt of a notification of termination, both Parties shall immediately suspend their performance of the Contract, and order all of their subcontractors to do the same. The parties and any of their subcontractors shall however complete, or secure, work necessary in order to avoid damages to property or personnel.

The Purchaser has the right to terminate the Contract entirely and partially with prospective effect.

20.5.8 Compensation

Compensation for breach of contract is limited to an amount corresponding to the contract price.

No compensation may be claimed in respect of indirect loss.

The said limitations on compensation shall not apply in the case of gross negligence or wilful misconduct on the part of the Contractor or anyone for whom he is responsible.

20.5.9 Anticipatory breach of Contract

The Purchaser may suspend the performance of his obligations if it becomes apparent that the Contractor will not perform a substantial part of his contractual obligations.

If it is clear prior to Date of Delivery that the Contractor will be in such breach of the Contract that this would give the Purchaser the right to terminate the Contract, the Purchaser may terminate the contract prior to Date of delivery with immediate effect.

The Purchaser shall notify the Contractor promptly in case of such suspension or termination. The Contractor can avoid termination by providing adequate security that his obligations will be fulfilled.

20.5.10 Breach of social responsibility conditions

If the Contractor does not comply with the basic conditions for social responsibility as defined in clause 12.2 Basic conditions for social responsibility, the remedies stated in Annex L Corporate responsibility shall apply, in addition to the remedies in clause 20.5 Purchaser's remedy for breach of contract. The contractor shall not be responsible for the breach of any social responsibility conditions by any subcontractor.

21 Purchaser's breach of Contract

21.1 Breach of Contract

There is a breach of Contract if the Purchaser does not fulfil all his obligations under the Contract and this is not due to circumstances caused by the Contractor.

21.2 Notification obligation

The Contractor shall give written notice within reasonable time after the breach of Contract has been discovered or ought to have been discovered. If the complaint is not made within reasonable time, the Contractor loses the right to put forward a claim in respect of the breach of Contract.

Should the Purchaser be prevented from fulfilling his obligations under this Contract within the agreed time, he shall notify the Contractor without undue delay about the event giving cause to the delay and the effects it could have on his ability to fulfil his obligations.

21.3 Contractor's remedies for breach of Contract

21.3.1 General

The remedies listed below, are the sole remedies available to the Contractor for breach of contract by the Purchaser.

The Contractor shall not suspend any performance as a result of breach of contract on the part of the Purchaser, unless the breach is material and the Purchaser has acknowledged the breach of Contract in writing or the breach of contract has been established through one of the dispute resolution mechanisms in clause 25 Disputes and Governing Law.

Failure of the Purchaser to pay for supplies delivered in accordance with the terms of this contract shall be considered a de facto material breach of contract.

21.3.2 Termination for breach

In the case of other material breaches of Contract, the Contractor may send written notice to the Purchaser that the Contract will be terminated for breach unless the Purchaser has discontinued the breach of contract within thirty (30) calendar days of receiving the notice. Termination for breach shall not take place if the Purchaser ends the breach of Contract situation before the expiry of the time limit.

21.3.3 Compensation

The Contractor may claim compensation in respect of any direct loss that can reasonably be attributed to the breach of Contract. The compensation is limited to an amount corresponding to the Contract price.

No compensation may be claimed in respect of indirect loss.

The said limitations on compensation shall not apply in the case of gross negligence or wilful misconduct on the part of the Purchaser or anyone for whom he is responsible.

22 Indemnification

The Contractor shall defend, indemnify, and hold the Purchaser harmless from and against all direct losses, expenses, and claims of any kind that should arise in connection with the Contractor's and his subcontractor's performance of this Contract, to the limits of the value of the contract.

The Contractor shall be solely liable for all loss, expenses and claims:

- a) for death of or injury to personnel or damage to or loss of property of the Contractor or its subcontractors, or death of or injury to personnel or damage to or loss of property of the Purchaser arising out of or in connection with the Contractor's performance of the work.
- b) for death of or injury to personnel or damages to or loss of property of any third party arising out of or in connection with the performance of the Scope of Supply under the Contract.
- c) in relation to pollution and other environmental damages arising out of or in connection with the performance of the Scope of Supply under the Contract.

A Party shall immediately notify the other Party of any claims, which may form the basis for indemnification as set forth in this clause.

23 Termination for Convenience

The Purchaser has, on justifiable basis, the right to terminate the Contract or and individual Order (without prejudice to its other rights and remedies) immediately (or following such notice period of no less than 30 calendar days), by giving written notice to the Contractor. The termination notice shall state the reasons for the termination and the date on which it will take effect, and the notice shall instruct the Contractor how to proceed under the circumstances.

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. Cost control shall be made in accordance with clause 17 Cost Control.

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 the Contractor in the final settlement shall be reduced accordingly.

24 Force Majeure

Force Majeure is defined as an obstacle caused by extraordinary events beyond the control of the Parties which makes it impossible for the Parties to fulfil their agreed obligations, provided that the Party could not have avoided or overcome the obstacle or its effect, or the Party did not foresee or should have foreseen the obstacle when the agreement was entered into. Such situations may be war, rebellion, national unrest, labour conflicts, natural disasters, infrastructure breakdown, or other circumstances of similar severe nature.

Obligations that cannot be fulfilled due to Force Majeure are suspended. The other Party's reciprocal services are suspended during the same period.

Each Party shall cover all its own costs resulting from a Force Majeure.

In connection with Force Majeure, the Parties have a mutual obligation to keep each other informed regarding all conditions that ought to be considered relevant to the other party. Such information shall be passed on without undue delay.

25 Disputes and Governing Law

The Contract shall be governed by and interpreted in accordance with Norwegian law. The formal language of the contract shall be English (UK)

Any disputes that arise in connection with the Contract shall be solved by negotiations between the Parties. In the event that such negotiations do not solve the dispute, a Party may bring the case before the courts with Oslo City Court as legal venue, unless the Parties agree on arbitration. If the Parties agree on arbitration, such arbitration shall take place in Norway, and the rules according to the Norwegian arbitration act (no. 25, 2004) shall prevail.

The fact that a dispute has been brought to court or referred to arbitration does not in itself relieve the Parties of their obligations under the Contract.

26 Commencement Date and Validity of the Contract

This Contract becomes valid when signed by authorised representatives of both Parties, and valid guarantees in accordance with clause 1.4 Guarantee for fulfilment of Contract have been presented to the Purchaser. The Commencement date of the Contract shall be the date of the last signature.

This Contract has been issued in – 3 – three – original copies with one each for the Parties and one for filing at the Norwegian Defence Registry and Archives Office.