

GENERAL TERMS AND CONDITIONS

APPLICABLE TO CONTRACTS CONCLUDED BY

THE EUROPEAN DEFENCE AGENCY

CHAPTER I: GENERAL PROVISIONS

Article 1 - Scope of these General Conditions

- 1.1 These General Terms and Conditions (“GTC”) are an annex of the Contract between the European Defence Agency (hereinafter: “the Agency”) and the Contractor. They form an integral part of the Contract, together with the Special Conditions, the Specifications and the Contractor’s tender, in the order specified in the Contract.
- 1.2 These General Terms and Conditions shall apply to the supply contracts, works contracts and services contracts awarded by the Agency as a result of its procurement procedures except as otherwise provided in the Specifications or in the Contract.
- 1.3 The general terms and conditions of the Contractor shall not apply to the Contract or any order thereunder.

Article 2 - Entry into Force

- 2.1 Subject to any conditions precedent or other terms agreed therein, the Contract shall enter into force as from the date when both parties have signed the Contract (the Contractor signing first, the Agency signing thereafter). It shall remain in force until it is either totally performed by the Contractor or until its termination pursuant to the provisions below.
- 2.2 Subject to any conditions precedent or other terms agreed therein, the obligations of the Contractor and of the Agency hereunder shall start to run as from the date of their signature of the Contract, the Agency’s obligations being subject to the condition precedent that the Contractor signs the Contract first.

Article 3 – Languages and Measurement Units

- 3.1 The ruling language of the Contract shall be the language in which it has been signed. As long as the Council has not established the language regime of the Agency, the working languages of the Agency shall be English.
- 3.2 All studies, drawings, instruction sheets, invoices and all documents of any kind to be handed over by the Contractor to the Agency, as well as all correspondence between the Agency and the Contractor under the Contract or in relation thereto, shall be in the language of the Contract (except as otherwise authorised by the Agency on a case by case basis, in which case the Agency shall be entitled to request a translation in English).
- 3.3 All drawings, spreadsheets, codes, standards and all documents prepared or submitted

by the Contractor to the Agency during performance of the Contract shall be drawn up and made in accordance with the internationally used measurement units of the metric system and dated in accordance with the Gregorian calendar.

Article 4 - Joint and Several Liability in Case of Consortium

- 4.1 If the Contractor is a joint venture or consortium of two or more entities, all such entities shall be jointly and severally liable to the Agency for the fulfilment of the terms of the Contract. Such entities shall designate one of them to act as leader and point of contact with full authority to bind the joint venture or the consortium and each of its members. The composition and constitution of the joint venture or consortium shall not be altered without the prior written consent of the Agency.

Article 5 – Contractor’s Obligations

- 5.1 The Contractor shall perform the Contract with all due skill, care and diligence, including, but not limited to good industry practice, by utilising appropriately experienced, qualified and trained personnel. The Contractor shall have sole responsibility for complying with any legal obligations incumbent on him, notably those resulting from employment, tax and social legislation.
- 5.2 The Contractor shall have sole responsibility for taking the necessary steps to obtain any permit or licence required for performance of the Contract under the laws and regulations in force at the place where the tasks assigned to him are to be executed.
- 5.3 Except where the context otherwise requires, any reference made to the Contractor’s staff in the Contract shall relate exclusively to individuals involved in the performance of the Contract.
- 5.4 The Contractor must ensure that any staff performing the Contract have the professional qualifications and experience required for the execution of the tasks assigned to him.
- 5.5 The Contractor shall neither represent the Agency nor behave in any way that would give such an impression. The Contractor shall always make it clear to third parties that he does not belong to the European public service.
- 5.6 The Contractor guarantees that all his works, supplies or services under the Contract will satisfy entirely the requirements of the Contract, including the consequences that normally result thereof in order to meet their purpose and destination, in accordance with sound professional practices, even if not expressly mentioned in the Specifications or elsewhere in the Contract.

5.7 The Contractor shall have sole responsibility for the staff who execute the tasks assigned to him. The Contractor shall make provision for the following employment or service relationships with his staff:

- staff executing the tasks assigned to the Contractor may not be given orders direct by the Agency;
- the Agency may not under any circumstances be considered to be the staff's employer and the said staff shall undertake not to invoke in respect of the Agency any right arising from the contractual relationship between the Agency and the Contractor.

5.8 In view of the controlled access to the Agency's building, all persons requiring access and all deliveries must be announced at least one working day in advance. The Contractor's personnel are only authorised to enter the areas where they are to perform their works, the semi-public areas of the buildings, and the proximity of the Agency departments responsible for following up the Contract concerned. The internal rules applicable to the staff of the Agency (concerning, for example, those relating to hygiene and safety/emergencies, tobacco/alcohol, driving in the parking areas, closing days, etc.) shall apply also to the Contractor's personnel.

5.9 The Contractor shall notify the Agency any modification in the financial, technical, legal or organisational situation which could have an effect on the performance of this Contract.

5.10 The Contractor shall notify the Agency within two weeks by registered letter any judgment concerning his professional conduct, penal or administrative, which has the force of res judicata and which could adversely affect the good performance of the Contract. This obligation concerns in particular, but is not restricted to, sanctions in the field of the obligations relating to the payment of social security contributions, the payment of taxes or other regulations to which the Contractor is subjected.

Article 6 – Contractor's Employees

6.1 The Agency shall be entitled to object to and require in writing the Contractor to remove forthwith from the team working on the Contract any person employed by the Contractor or its subcontractors, who, in the opinion of the Agency, misconducts himself, or is incompetent or negligent in the performance of his duties, or whose employment is otherwise considered by the Agency to be undesirable and such person shall not be again employed in the performance of the Contract without the written

permission of the Agency. Any person so removed from the works shall be replaced as soon as possible by a competent substitute approved by the Agency.

- 6.2 The Contractor shall bear all the consequences resulting from the replacement of a staff member in accordance with paragraph 1, including in case of delay in performance of the Contract.
- 6.3 The Contractor's staff designated and committed to perform the Contract is expected to be available for the whole performance of the Contract. Any change that the Contractor wishes to make to the staff employed to execute and manage the Contract must obtain the prior written approval of the Agency. In such case, the Contractor shall submit to the Agency the curriculum vitae's of suitably qualified and experienced staff for consideration and approval prior to their engagement on the Contract. Notwithstanding the Agency's approval of such employees, the Contractor shall remain solely responsible and liable for the acts or omissions by such staff and for the proper performance of the Contract.

Article 7 - Conflict of interests

- 7.1 The Contractor shall take all necessary measures to prevent any situation that could compromise the impartial and objective performance of the Contract. Such conflict of interests could arise in particular as a result of economic interest, political or national affinity, family or emotional ties, or any other relevant connection or shared interest. Any conflict of interests which could arise during performance of the Contract must be notified to the Agency in writing without delay. In the event of such conflict, the Contractor shall immediately take all necessary steps to resolve it.
- 7.2 The Agency reserves the right to verify that such measures are adequate and may require additional measures to be taken, if necessary, within a time limit which it shall set. The Contractor shall ensure that his staff and its subcontractors are not placed in a situation which could give rise to conflict of interests. Without prejudice to Article 5, the Contractor shall forthwith replace, without compensation from the Agency, any member of his staff exposed to such a situation.
- 7.3 The Contractor shall abstain from any contact likely to compromise his independence.
- 7.4 The Contractor declares:
- that he has not made and will not make any offer of any type whatsoever from which an advantage can be derived under the Contract,

- that he has not granted and will not grant, has not sought and will not seek, has not attempted and will not attempt to obtain, and has not accepted and will not accept, any advantage, financial or in kind, to or from any party whatsoever, where such advantage constitutes an illegal practice or involves corruption, either directly or indirectly, inasmuch as it is an incentive or reward relating to performance of the Contract.

Article 8 – Prohibition of Bribes

8.1. The Contractor warrants that

- a. No bribe, gift or other inducement has been nor shall be paid, given, promised or offered to any employee of the Agency or official connected with it for or with a view to obtaining this or any other contract for the Contractor or any sub-contractor;
- b. It has not employed any person to solicit or secure this or any other order upon any agreement for a commission, percentage, brokerage or contingent fee, except bona fide commercial or selling agents maintained by the supplier for the purposes of securing business.

8.2 Without prejudice to any legal proceedings which may arise from such acts, the Agency may, on discovery of any breach of this warranty, terminate the Contract and recover from the Contractor the amount of any loss resulting from such termination and/or the amount or value of any such bribe, gift or other inducement. In addition, the Agency shall be entitled to apply the sanctions and penalties provided elsewhere in the Contract.

Article 9 – Time limits for delivery and performance

9.1 The Contractor shall perform the Contract within the time limits for delivery and performance laid down in the Specifications, the Contract or the documents based on these. In the absence of any such provision in these documents, the time limits for performance shall run from the date of entry into force of the Contract, subject to conditions precedent (if any).

9.2 Should any unforeseen event, action or omission directly or indirectly hamper execution of the tasks, either partially or totally, the Contractor shall immediately and on his own initiative record it and report it to the Agency. The report shall include a description of the problem and an indication of the date on which it started and of the remedial action taken by the Contractor to ensure full compliance with his obligations under the Contract. In such event the Contractor shall give priority to solving the problem rather

than determining liability. Without prejudice to any sanction provided in these General Terms and Conditions or elsewhere in the Contract, the Contractor shall as soon as possible propose a new date for delivery and performance.

- 9.3** The time limits shall be extended in cases of *force majeure* provided the Contractor complies with the Article 23 regarding Force Majeure.

Article 10 – Liquidated Damages

10.1 Should the Contractor fail to perform his obligations under the Contract within the time limits set by the Contract, then, without prejudice to the Contractor's actual or potential liability incurred in relation to the Contract or to the Agency's right to terminate the Contract in accordance with Article 24.1(i), the Agency may decide to impose liquidated damages in the amount equal to 0.2% (zero point two percent) of the Contract Price per calendar day of delay. Payment by the Contractor as herein provided shall be in full and final satisfaction of the Contractor's liability for delay (without prejudice to Article 24). These liquidated damages shall not be imposed where the Contract contains a provision for interest for late completion. The Agency and the Contractor expressly acknowledge and agree that any sums payable under this Article are in the nature of liquidated damages and not penalties, and represent a reasonable estimate of fair compensation for the losses that may be reasonably anticipated from such failure to perform obligations.

10.2 Amounts due hereunder to the Agency may be set off from any amount due by the Agency to the Contractor.

Article 11 – Provisions Concerning Invoices and Payments

11.1 Payments shall be executed only if the Contractor has fulfilled all his contractual obligations by the date on which the invoice concerned is submitted.

11.2 Invoices and accounts shall indicate the nature and quantities of the supplies, services or works provided, referring clearly to the items in the Contract to which they relate, and the unit and total prices.

11.3 Payments shall be made against invoices drawn up by the Contractor in euro or, where the Contract specifies otherwise, in that currency. These invoices may be drawn up once the supplies, services or works have been accepted by the Agency. A separate invoice for each consignment or part-consignment shall be addressed to the Agency. Where so authorised under the Contract, the Contractor may submit invoices covering part of the Contract

amount upon partial completion of the Contract. In all cases, invoices shall be established in accordance with the conditions set out in the purchase letter or order, the specifications or in the Contract.

11.4 Invoices must bear the following references:

- the Contractor’s full name and trade name;
- number of identification in the business register and VAT number
- details of the Contractor’s bank account number;
- reference to the date and number of the Agency’s order;
- supplies, services or works giving rise to the payment;
- the calculation of the amounts due and, where appropriate, the calculation for the price review;
- the reference «*For the official use of the European Defence Agency*» and “*Exonération de la TVA, article 42 § 3.3 du code de la TVA*”. The Contractor shall comply with the Agency’s instructions for the purposes of application of the provisions of Articles 3 and 4 of the Decision of the Member States of 10 November 2004 on the Privileges and Immunities of the European Defence Agency and the Additional Protocol between the Kingdom of Belgium and the European Defence Agency, dated 2 September 2005;
- date of the invoice and signature by a duly authorised person, with a reference to its status
- copy of the acceptance certificate or acceptance report duly signed by an authorised representative of the Agency.

11.5 Payments shall be made within forty five days of receipt by the Agency of the request for payment, provided this is sent to the address indicated in the Contract and provided its departments establish that the services have been rendered in accordance with the Contract and that the debt has been confirmed and quantified and is due. If the Agency disagrees with an invoice, it shall nonetheless settle, within this time limit, the undisputed amount due and notify the Contractor within 10 working days following the submission of the invoice.

11.6 Payments made on account shall not prejudice the existence or the amount of the Agency’s obligation. Such payments shall be recorded in the final statement of account.

- 11.7 Reimbursable travel and subsistence expenses incurred within the limits and under the conditions as agreed in advance shall be paid, where appropriate, on production of supporting documents, including receipts and used tickets.
- 11.8 A Contractor whose registered office or residence is situated within the territory of one of the Member States of the European Union shall indicate a banking institution in the territory of that country for the payment of sums due to him under the Contract. Payments shall be deemed to have been made on the date on which the Agency's account is debited.
- 11.9 The payment period stipulated in the Contract or in the purchase order may be suspended by the Agency at any time if it informs the Contractor that his payment request is not admissible, either because the amount is not due or because the necessary supporting documents have not been properly produced. The Agency shall notify the Contractor accordingly. Suspension shall take effect from the date of dispatch of the letter. The remainder of the period shall begin to run again once the suspension has been lifted.
- 11.10 In the event of late payment, except where the Agency's failure to issue the payment is due to Contractor's failure to comply with his obligations under this Contract, the Contractor may claim interest within two months of receiving the payment. Interest shall be calculated at the rate applied by the European Central Bank to its most recent main refinancing operations ("*the reference rate*") plus seven percentage points ("*the margin*"). The reference rate in force on the first day of the month in which the payment is due shall apply. Such interest rate is published in the C series of the Official Journal of the European Union. Interest shall be payable for the period elapsing from the calendar day following expiry of the time limit for payment up to the day of payment. Suspension of payment by the Agency as per paragraph 9 here above may not be deemed to constitute late payment.
- 11.11 In the event that, for whatever reason, the annual budget of the Agency has not been approved and the Agency is obliged to resort to monthly payments limited to one-twelfth of the expenses of the preceding year, it shall be entitled, after notifying Contractor by registered mail at the latest on 10 January of the year concerned, to pay the amounts due under this Contract in monthly instalments. In such an event, the total amount of each monthly instalment shall not exceed one-twelfth of the payment made for the same purpose during the preceding year. These monthly instalments shall be

payable within forty-five days after receipt of the invoice. This payment system shall continue until such time that the Agency informs the Contractor that he can resume his normal payment schedule. Following such notification, the Contractor may invoice the Agency for the balance of the amounts that have not been paid due to the application of this paragraph. The application of this paragraph shall not give rise to the payment of interests for delayed payment.

- 11.12 If so specified in the Contract, the Agency may pay the Contractor an advance payment equal to maximum thirty per cent of the amount due on completion of the Contract. Payment of the advance may be made conditional upon the furnishing by the Contractor of proof that he has lodged a deposit equal to the amount of the advance payment. The advance payment shall be deducted from subsequent payments in such a manner that it is fully recovered on exhaustion of the funds provided for such payments.

Article 12 - Recovery

- 12.1. If total payments made exceed the amount actually due under the Contract or if recovery is justified in accordance with the terms of the Contract, the Contractor shall reimburse the appropriate amount in euro on receipt of the debit note, in the manner and within the time limits set by the Agency.
- 12.2. In the event of failure to pay by the deadline specified in the request for reimbursement, the sum due shall bear interest at the rate indicated in Article 11.10. Interest shall be payable from the calendar day following the due date up to the calendar day on which the debt is repaid in full.
- 12.3. The Agency shall be entitled to automatically deduct from payments to Contractor amounts which the Contractor owes the Agency for whatever reason.

Article 13 - Taxation

- 13.1. The Contractor shall have sole responsibility for compliance with the tax laws which apply to him. Failure to comply shall make the relevant invoices invalid.
- 13.2. The Contractor recognises that the Agency is, as a rule, exempt from all taxes and duties, including value added tax (VAT), pursuant to the provisions of Articles 3 and 4 of the Decision of the Member States of 10 November 2004 on the Privileges and Immunities of the European Defence Agency and the Additional Protocol between the Kingdom of Belgium and the European Defence Agency, dated 2 September 2005.

- 13.3. The Contractor shall accordingly complete the necessary formalities with the relevant authorities to ensure that the goods and services required for performance of the Contract are exempt from taxes and duties, including VAT. If it is impossible for the Contractor not to apply VAT on the payments received under the Contract, the Agency shall pay the VAT amount to the Contractor and forthwith request reimbursement thereof from the competent national authorities on the basis of the supporting documents that the Contractor shall be required to supply. To that end, the Contractor must submit to the Agency an invoice complying with the relevant national provisions concerning VAT. The invoice must show clearly that the services have been supplied to the Agency and must indicate separately the amount payable for the services, works or supplies and the amount of VAT due.
- 13.4. Invoices presented by the Contractor shall indicate his place of taxation for VAT purposes and shall specify separately the amounts not including VAT and the amounts including VAT.

Article 14 – Intellectual Property Rights

- 14.1. Any results, patent, copyright or other intellectual property generated by the Contractor in performance of the Contract shall become the exclusive property of the Agency, which may use them as it sees fit, except where industrial or intellectual property rights already exist before the conclusion of the Contract.
- 14.2. On the date of acceptance of the documents, drawings and similar like and subject solely to the exception referred to in paragraph 1 above, all rights in respect of those items and documents, including amongst others the right to use, print, publish and sell all or part thereof in any manner and in any language whatsoever, shall be acquired for all countries by the Agency, which may transfer all or part of such rights to third parties on its own terms.
- 14.3. The Contractor shall specify any parts of manuscripts or drawings, including illustrations, maps and graphs, on which copyright or any other right of ownership already exists and by signing the Contract affirms that he has obtained permission to use and grant free user rights to third parties any such parts from the titular holder(s) of such rights or from his or their legal representatives. Any costs for which the Contractor may become liable in respect of such permission shall be paid by him.
- 14.4. The Contractor hereby authorizes the Agency to process, use, distribute and publish, for whatever purpose, by whatever means and on whatever medium, any data contained in or

relating to the Contract, in particular the identity of the Contractor, the subject matter, the duration, and the amount paid. The Agency shall not be required to publish manuscripts or documents supplied in performance of the Contract. If it decides not to publish the manuscript or documents supplied, the Contractor shall not have them published elsewhere without the written approval of the Agency.

Article 15 – Infringement of Third Parties Intellectual Property Rights

- 15.1. In case the execution of the Contract involves the use of patents, registered designs, trademarks or brand names, or industrial designs or models belonging to third parties and this leads to claims or litigation, the Contractor shall indemnify and hold harmless the Agency against any claim or action for infringement which may be brought against it. Indemnification shall be for all damages awarded by a court of law against the Agency for infringements of third party rights within the performance of this Contract.
- 15.2. The Agency and the Contractor shall communicate to each other any information indicating that an industrial property right could impede performance of the Contract.
- 15.3. At the first indication of any action by a third party, in particular the lodging of a claim, even after performance of the Contract, the party implicated shall notify the other party without delay, whereupon both parties shall cooperate and shall exchange all information and evidence which they may possess or obtain. The Agency shall use reasonable efforts to mitigate the costs of defence and settlement of any claim against it by such third party and the Contractor shall provide reasonable assistance to the Agency under terms to be agreed with the Agency.
- 15.4. The fact that the supplies or any part thereof are covered by an industrial property right owned by the Contractor or in respect of which he possesses a licence shall not prevent the Agency from repairing them or having them repaired by whoever it may think fit, save where the Contractor himself possesses an industrial property right in respect of the repair process and, after having been consulted first, offers to effect the repairs within a reasonable time limit and at a reasonable price.

Article 16 – Confidentiality

- 16.1 Without prejudice to the legal publicity requirements under the Procurement Rules applicable to the Agency, the Agency and the Contractor shall (i) treat in confidence any information received from the other party to the Contract unless that party expressly qualified it as non-confidential; (ii) not further disclose any of that information to any

third party without the prior written consent of the disclosing party; (iii) take no action that may lead to such information being disclosed or exploited to the detriment of the disclosing party; (iv) not use any of that information otherwise than for the purpose of the contract. Information in the public domain at the time it is divulged, or which is made public by a third party without the Agency or the Contractor having violated the Contract, or which is legitimately obtained from a third party without that party having acted inconsistently with the object of this Contract, shall not be considered to be confidential.

- 16.2 The Contractor shall not copy any of that information except to the extent necessary for performance under this Contract. The Contractor shall take all reasonable precautions necessary to ensure that all Information disclosed to the Contractor or any sub-contractor under or in connection with the contract: (i) is disclosed to its employees, only to the extent necessary for the performance of the contract; (ii) is treated in confidence by them and not disclosed except with prior written consent or used otherwise than for the purpose of performing work or having work performed for EDA; (iii) his employees are aware of his arrangements for discharging the obligations under this Contract before they receive information and take such steps as may be reasonably practical to enforce such arrangements.
- 16.3 Upon the Agency's first request, the Contractor shall forthwith return to the Agency any confidential document or information provided by the latter, without retaining any copy thereof.
- 16.4 The Parties shall continue to be bound by this undertaking after completion of the tasks under the Contract.
- 16.5 Save to the extent required under the Procurement Rules applicable to the Agency, the Contractor shall keep confidential and not divulge to third parties (except as required by law or court order) the existence and execution of the Contract and shall make no advertisement of whatever nature about its business relation with the Agency without the prior written authorisation of the Agency.

Article 17 – Security Provisions

- 17.1 The Contractor and its sub-contractor(s) and their respective personnel involved in the performance of the Contract shall comply with the Agency's applicable security rules and regulations and any additional security requirements stated by the Agency or its competent security personnel.

Any failure by the Contractor or its personnel or sub-contractors or their personnel to comply with the security requirements shall entitle the Agency to terminate the Contract in accordance with clause 24 hereof and to immediately exclude the personnel concerned from any further work under this Contract or the sub-contract.

- 17.2 In cases where the Contractor and/or its subcontractor(s) has access to the Agency's premises or to EU or other classified information, the Contractor and its subcontractor(s), as appropriate, and their respective personnel performing under the Contract may be required to hold a security clearance issued by the Contractor's responsible national security. The Contractor shall notify the Agency within a period of time stipulated by the Agency in advance about its personnel or that of its subcontractors having access to the Agency's premises or otherwise to EU or other classified information.
- 17.3 If the Contract or the Specifications require all or some Contractor's employees, directors, agents, representatives or subcontractors (to the extent authorised), their employees, directors, agents or representatives, as the case may be, involved in the performance of the Contract, to have a valid security clearance in force, the Contractor shall not start or authorise the commencement of the tasks under the Contract before such persons have such a security clearance in force. The Contractor shall forthwith inform the Agency (attn : Security Officer) (i) that the persons involved in the performance of the Contract who need a security clearance have obtained it, together with a copy thereof; (ii) if the security clearance of persons involved in the performance of the Contract has been withdrawn or suspended whereupon the Contractor shall immediately withdraw such person from the team working on the Contract. The Contractor shall as soon as possible inform the Agency of the measures it intends to take in order to guarantee continuous performance of the Contract, in particular replacing the person(s) by (a) person(s) fulfilling the same requirements as specified in the Contract.

Article 18 – Warranty

- 18.1. The Contractor warrants that the works, supplies or services under the Contract shall be performed in a good and workmanlike manner, in accordance with all requirements, whether expressed or implied under the Contract. Any equipment or spare parts supplied to the Agency under the Contract shall be unused and in good condition, of the latest production and according to the latest applicable standards.

- 18.2. Save as otherwise provided in the Specifications or the Contract, the Contractor shall be required to replace, repair and/or adjust as soon as possible after receipt of the warranty claim (and not later than fifteen days thereafter), the defective supplies or work for a guarantee period of two years commencing on the date of acceptance.
- 18.3. In the event of defective supplies or work being replaced or repaired, a further guarantee period of two years shall run from the date of such replacement or repair.
- 18.4. The Contractor shall bear the cost of the guarantee (including transportation costs), and shall reimburse to the Agency all the costs incurred. The Contractor shall, at his own expense, adjust the service, as decided by the Agency, which does not meet the conditions laid down in this Contract. If the adjustment of the service is not carried out satisfactorily, the Agency may reject the work, service or supply (as the case may be) delivered.
- 18.5. If so provided in the Special Conditions of the Contract, an amount equivalent to ten per cent of the contract price may be reserved by the Agency as guarantee until the period of guarantee has expired.

Article 19 - Audits

- 19.1 The Contractor shall keep, and shall cause its subcontractors (if any) to keep, any pertinent books, documents, papers and records relating to the Contract (or subcontract, as the case may be) up to at least twelve months after payment of the balance of the price paid by the Agency to the Contractor. During performance of the Contract and until the end of such twelve months period, the Contractor shall (and shall cause its subcontractors to) allow access within its main premises to such documents to the Agency's representatives or auditors during business hours and with reasonable prior written notice. The Agency's representatives or auditors shall be entitled to take copies of such documents at their costs. Such documents shall be treated confidentially by the Agency's representatives or auditors;

Article 20 – Liability

- 20.1. Without prejudice to other provisions in these General Conditions, the Contractor shall bear the sole responsibility for any damage resulting from his failure or the failure of his personnel or sub-contractors to perform the obligations under the Contract. The Contractor shall indemnify the Agency in respect of any action brought or judgment given against it for damage, whether to persons or to property, caused to third parties as a result of or during performance of the Contract or as a result of defects in the services, work or supplies. The total and cumulated liability of the Contractor under the Contract (other than

in cases of gross negligence or wilful default) will be limited to the Contract Price.

- 20.2 The Contractor shall be liable in the event of loss of or damage to any materials, components, appliances, designs, samples, types of supply, models, templates and software belonging to the Agency which he holds with a view to performance of the Contract, whether delivered to him for that purpose or purchased by him on behalf of the Agency. Compensation shall be effected, according to the preference expressed by the Agency after consulting the Contractor, either in kind (replacement or repair) or by payment of a sum equivalent to the replacement cost on the date of the loss or damage, plus any duties or indirect taxes demanded by the national authorities. Where the items are subject to depreciation, account shall be taken of their residual value only.
- 20.3 The Contractor shall in all cases be liable for any act, error or negligence caused by him or by his personnel resulting directly or indirectly in death or bodily injury.
- 20.4 The Contractor shall not be liable for nor be required to hold the Agency harmless from or indemnify the Agency against any loss of use or any indirect or consequential loss or damage whether arising as a result of breach of the Contract, negligence or other tort, breach of statutory duty or otherwise; except in case the Contractor must indemnify the Agency for damages awarded to a third party by a Court of law against the Agency which include any of such indirect damages.
- 20.5 The Agency shall not be liable for damage sustained by the Contractor in performance of the Contract except in the event of wilful misconduct or gross negligence on the part of the Agency nor shall the Agency be liable for any act or default on the part of the Contractor or its subcontractors during the performance of the Contract.

Article 21 - Insurances

- 21.1 The Contractor shall have in place and maintain in force with first class insurers until the end of its contractual obligations appropriate and sufficient insurance coverage against risks and damage relating to performance of the Contract to the extent required by the relevant applicable legislation, by good industry practice or by the Contract. If appropriate for the good performance of the Contract, the Contractor shall take out supplementary insurance as reasonably required by standard practice in the field in which the Contractor operates under the Contract. Upon the Agency's first request, the Contractor shall provide the Agency with a recent broker's certificate evidencing that appropriate and sufficient insurance coverage is in place.
- 21.2 In the case of policies taken out specifically for performance of the Contract, the policy

may not be cancelled by the insurer without giving thirty (30) Days, except in the case of non-payment of premiums, in which case it will be ten (10) Days, prior written notice to the Agency.

Article 22- Sub-contracting and assignment

22.1. The Contractor shall not, without the prior and express approval of the Agency, assign the rights and obligations arising out of the Contract in whole or in part, nor sub-contract any part of it, nor cause it to be performed in fact by third parties.

22.2 Even where the Agency authorises the Contractor to sub-contract all or part of the supplies, services or works to third parties, he shall nonetheless remain solely responsible towards the Agency for the performance of the obligations under the Contract.

22.2. The Contractor shall ensure that any sub-contractors comply at all time with the obligations of the Contractor under this Contract.

Article 23 - Force majeure

23.1 Force majeure shall mean any unforeseeable and exceptional situation or event beyond the control of the contracting parties which prevents either of them from performing any of its obligations under the Contract, was not due to error or negligence on its part or on the part of a subcontractor, and could not have been avoided by the exercise of due diligence. Defects in equipment or material or delays in making it available, labour disputes, strikes or financial problems cannot be invoked as force majeure unless they stem directly from a relevant case of force majeure.

23.2 Without prejudice to the provisions of Article 9.2, if either party is faced with force majeure, it shall notify the other party without delay by registered letter with acknowledgement of receipt or equivalent, stating the nature, likely duration and foreseeable effects.

23.3 Neither party shall be held in breach of its contractual obligations if it has been prevented from performing them by force majeure. Where the Contractor is unable to perform his contractual obligations owing to force majeure, he shall have the right to remuneration only for tasks actually executed.

23.4 The parties shall take the necessary measures to reduce damage to a minimum.

23.5 In case of force majeure, notified in accordance with the above, the non affected party may terminate the Contract, where performance thereof cannot be ensured for a period corresponding to at least to one fifth of the period laid down in the Contract or in the

purchase order thereunder.

Article 24 – Termination

24.1. The Agency may terminate the Contract by written notice to the Contractor with immediate effect in the following circumstances:

(a) where the Contractor is declared bankrupt or being wound up, is having his affairs administered by the courts, has entered into an arrangement with creditors, has suspended business activities, is the subject of proceedings concerning those matters, or is in any analogous situation arising from a similar procedure provided for in national legislation or regulations;

(b) where the Contractor has been convicted of an offence concerning his professional conduct by a judgment which has the force of *res judicata*;

(c) where the Contractor has been guilty of grave professional misconduct proven by any means which the Agency can justify;

(d) where the Contractor has not fulfilled obligations relating to the payment of social security contributions or the payment of taxes in accordance with the legal provisions of the country in which he is established or with those of the country applicable to the Contract or those of the country where the Contract is to be performed;

(e) where the Contractor is sentenced by a court as being guilty of fraud, corruption, involvement in a criminal organization or any other illegal activity detrimental to the Communities' or European Union's or the Agency's financial interests;

(f) where the Contractor is in breach of his obligations under the Conflict of Interest, Confidentiality or Security provisions of the Contract;

(g) where the Contractor was guilty of misrepresentation in supplying the information required by the Agency as a condition of participation in the Contract procedure or failed to supply this information;

(h) where a change in the Contractor's legal, financial, technical or organizational situation could, in the Agency's opinion, have a significant negative effect on the performance of the Contract;

(i) where performance of any Contractor's obligation under the Contract is delayed by more than one fifth of the delivery or performance period set forth in the Contract or in a purchase order thereunder for such Contractor's obligation;

(j) where the Contractor is unable, through his own fault, to obtain any permit or license required for performance of the Contract;

(k) where the Contractor, after receiving formal notice in writing to comply with its obligations (other than those listed here above from (a) to (j)), specifying the nature of the alleged failure, and after being given the opportunity to remedy the failure within thirty days following receipt of the formal notice, remains in serious breach of his contractual obligations.

24.2 Termination shall take effect on the date on which a registered letter terminating the Contract is deemed received by the Contractor under Article 28 hereof, or on any other later date indicated in the letter of termination.

24.3 In the event of the Agency terminating the Contract in accordance with the above sub-clauses and without prejudice to any other measures provided for in the Contract or by applicable laws in favor of the Agency, the Contractor shall not be entitled to any claim for consequential damages, including any loss of anticipated profits for uncompleted work. The Agency may claim compensation for any damage suffered (within the limits set forth in Article 20) and recover any sums paid to the Contractor under the Contract. On termination the Agency may engage any other contractor to complete the services or works or supplies under the Contract, at the Contractor's costs and risks. The Agency shall be entitled to claim from the Contractor all extra costs incurred in making good and completing the services, works or supplies, within the limits set forth in Article 20, without prejudice to any other rights or guarantees it has under the Contract.

Article 25 - Suspension – Termination of the Contract at Agency's Convenience or for Agency's Default

25.1 Without prejudice to the Agency's right to terminate the Contract in accordance with the provisions thereof, the Agency may at any time suspend the performance of the Contract where there is a serious suspicion of fraud, corruption, involvement in a criminal organisation or any other illegal activity detrimental to the European Union's or Agency's financial interests in relation to the Contractor or the Contract, or in any other similar exceptional circumstances. Suspension may not take effect before the date on which the Contractor receives notification thereof by registered letter with acknowledgement of receipt or by express courier hand delivered to the Contractor ; the reasons must be stated in the notification. If the suspicions prove to be unjustified, the Agency shall immediately ask the Contractor to carry out the suspended work. The

Contractor shall not be entitled to claim compensation.

25.2 The Agency may at any time terminate the Contract for its own convenience by giving the Contractor a notice of termination. The Contract shall terminate with effect from the date indicated in such notice and paragraph 4 hereunder shall apply.

25.3 In the event of the Agency failing to pay to the Contractor the amount (or the undisputed portion of the amount) due under the Contract at the due date subject to any deduction that the Agency is entitled to make under the Contract and provided that the Contractor shall have then given not less than 15 days' notice in writing and payment shall not have been made within this period (except only to the extent that the Agency is challenging the amount or a portion thereof in good faith), the Contractor shall be entitled, without prejudice to any rights or remedies under the Contract, to terminate the Contract by 60 days' written notice to the Agency (provided that the said notice shall have no effect if the default shall have been remedied or resolved within such period). Paragraph 4 hereunder shall apply.

25.4 In the event of termination of the Contract under paragraphs 2 or 3 here above, the Agency shall pay to the Contractor:

- a) the total sum then due to the Contractor as of the date of termination;
- b) the amount of any other expenditure which in the circumstances was effectively and reasonably incurred by the Contractor in the expectation of completing the whole of the works, services or supplies under the Contract. The Contractor shall transfer to the Agency, the property or such other rights, title and interests in and to the equipment or materials which the Agency is required to pay for according to this paragraph;
- c) an amount, not to exceed 0,5 % of the Contract Price, covering any loss or damage, including loss of profit which the Contractor may have suffered in consequence of termination (subject to appropriate evidencing documents),

less any sums which the Contractor is liable to pay to the Agency under or by virtue of the Contract.

Article 26 - Applicable law and Settlement of Disputes

26.1. Except as otherwise provided in the Contract, the Contract shall be governed, applied and construed by the substantive laws of Belgium (without application of the conflict of laws provisions).

26.2. If a dispute related to the execution of the Contract cannot be settled amicably, the procedure hereunder may be followed by mutual agreement before any party resorts to legal action.

Either party may request an expert's report. To this end, the most diligent party shall inform the other party in writing of the subject of the dispute and shall propose the name of an expert. The other party shall indicate within fifteen working days whether or not it accepts the proposed expert and, if it does not, shall either make a counter proposal, which must be replied to within fifteen working days, or notify that it is unwilling to follow this procedure (in which case either party may initiate the procedure set forth in paragraph 3 hereunder). Such correspondence shall be conducted by registered letter. If the two parties fail to reach an agreement on the name of the expert, the expert shall be appointed, at the request of the party first applying for it, by the President of the Court of Brussels. The expert thus chosen or appointed shall have every power to request all documents, of any type, and to ask parties for all explanations necessary to determine the nature and causes of the dispute. The expert's task shall be to produce and notify to the parties, by registered letter, within one month (or such other period as mutually acceptable to the parties) of his appointment, a report examining the origin and nature of the dispute and proposing an objective solution in full compliance with law and equity.

26.3 Except as otherwise provided in the Special Conditions of the Contract, any dispute, controversy, or claim arising out of or relating to this contract, or the breach, termination, or invalidity thereof, which could not be settled amicably by the parties, shall be settled by arbitration in accordance with the UNCITRAL Arbitration Rules in effect on the date of this Contract. The appointing authority shall be the Secretary-General of the Permanent Court of Arbitration. The number of arbitrators shall be three except if the parties in dispute agree, within fifteen days after the receipt by the respondent of the notice of arbitration, that there shall be only one arbitrator. The place of arbitration shall be Brussels. The language to be used in the arbitral proceedings shall be English except if the parties in dispute agree within fifteen days after the receipt by the respondent of the notice of arbitration that the language in the arbitral proceedings shall be French.

Article 27 – Amendments to the Contract

27.1. The Agency shall be entitled to demand, within the scope of the Contract, any modifications which it may deem appropriate and compatible with the stage reached in the performance thereof. Subject to the same restrictions, it may also accept modifications proposed by the Contractor. Any consequences which may ensue shall be

the subject of an agreement in writing between the parties.

27.2 Any amendments to the Contract (including additions or deletions) shall be in writing.

Article 28 – Notices

28.1 Except as otherwise expressly provided in the Contract, all notices or other communications to be given or made thereunder shall be in writing, shall be addressed at the address and for the attention of the persons indicated in the Contract and shall either be delivered personally or sent by courier, registered or certified mail or facsimile.

28.2 All notices shall be deemed delivered (a) when delivered and presented personally, (b) if received on a working day for the receiving Party, when transmitted by facsimile to the receiving Party's facsimile number specified in the Contract and, if received on a day that is not a working day for the receiving Party, on the first working day following the date transmitted by facsimile to the receiving Party's facsimile number; provided, however, that a notice that is dispatched by facsimile after 5:00 p.m. local time at the place of receipt shall be deemed made on the next working day, (c) one (1) working day after being delivered to a courier company for overnight delivery, addressed to the receiving Party, or (d) five (5) days after being deposited in a regularly maintained receptacle for the Postal Service in the country of the delivering Party, postage prepaid, registered or certified, return receipt requested, addressed to the receiving Party. Any notice given by facsimile shall be confirmed in writing delivered personally or sent by registered or certified mail, but the failure to so confirm shall not void or invalidate the original notice if it is in fact received by the Party to which it is addressed.

CHAPTER II: ADDITIONAL PROVISIONS APPLICABLE TO SUPPLY CONTRACTS

Article 29 – Scope of application of this Chapter

29.1. Without prejudice to articles 1 up to 28 of these GTC, the obligations in this Chapter shall apply to all contracts qualifying as supply contracts within the meaning of Article 1 of the Procurement Rules applicable to the European Defence Agency¹.

¹ See Council Decision 2007/643/CFSP of 18 September 2007 on the financial rules of the European Defence Agency and on the procurement rules and rules on financial contributions from the operational budget of the European Defence Agency and available from the internet address: <http://www.eda.europa.eu/procurement.aspx>

Article 30 – Quality of Supply

30.1 The items shall be supplied in accordance with, and be equal in all respects to the samples, patterns, drawings and specifications stipulated in the Contract. Where no samples or patterns are exhibited or specifications mentioned, the items delivered and services rendered shall be of the best quality and workmanship for the given task and the decision of the Agency thereon shall be binding and conclusive. If items fail to meet the agreed standards of quality, dimensions, tolerances, specifications, etc., the Agency reserves the right, without prejudice to any other rights, to return such items at the supplier's expense and risk and to terminate the order.

Article 31 - Inspection

31.1 Materials and supplies may be subject to inspection by the Agency or its representatives prior to despatch to and/or receipt by the Agency.

Article 32 – Shipping and carriage/Terms of delivery

32.1. The packaging, shipping and carriage of supplies shall be the responsibility of the Contractor who shall bear all liability until the delivery has been accepted by the Agency.

32.2. Deliveries shall be made to the address indicated in the Contract or the purchase order and failing specific indication, to the main offices of the Agency. The Agency reserves the right to change the address with a reasonable prior written notice to the Contractor. Cost of carriage shall then, where appropriate, be adjusted by mutual agreement.

32.3. The Contractor shall provide the Agency department designated in the Contract or purchase order, eight days before dispatch of the supplies and not later than two days before shipment, with the following information:

- (a) reference of the purchase order or letter;
- (b) nature of the goods;
- (c) number, weight and nature of the packages;
- (d) value of the non-packaged supply, upon dispatch from the works, in the known currency;
- (e) means of transport;
- (f) possibly: approximate date and scheduled place of entry into the country of destination (customs post, port or airport);
- (g) date and precise time of delivery in the case of transport by road.

32.4. The packing materials shall remain the property of the Agency. No charge shall be

allowed for containers and packing materials. Contractor shall be responsible for ensuring that the items are sufficiently and properly packed to guard against loss, damage or deterioration during transport and subsequent storage at destination. Packages must be numbered consecutively and bare the order number or other appropriate indication as required. Packing must be carried out with due regard to economy of space for shipping and transport purposes.

32.5 All items shall be delivered “DDP (delivered duty prepaid), VAT unpaid” (according to INCOTERMS 2000) to the destination specified in the Contract. The Contractor shall insure the items against all risks “warehouse to warehouse” so as to enable the Agency to claim for any loss or damage within sixty days after delivery.

Article 33 – Acceptance of Supplies

33.1. Acceptance of the supplies shall be effected at the place of delivery, in the presence of the Contractor if so requested by him.

33.2 Should the supplies prove to be damaged, defective or not as ordered, a report shall be drawn up and forwarded to the Contractor, who shall be requested to verify the facts (possibly on the spot) and to notify his findings within fifteen days.

33.3. The Contractor shall, at his own expense, repair or replace, as decided by the Agency, supplies which do not meet the conditions laid down in the Contract. Delivery shall only take place following repair or replacement. If the repair or replacement is not carried out satisfactorily, the Agency may reject the supplies, which shall be returned to the Contractor.

33.4. Acceptance shall be effected once the Contractor has stated that the operation is completed and the Agency has checked that the terms and conditions of Contract have been complied with. The Agency shall then issue an acceptance certificate as from which the warranty period shall start to run.

33.5. Save as otherwise expressly provided in the Contract, all risks relating to the supplies and to the carriage thereof shall be borne by the Contractor until provisional acceptance at the place of delivery.

CHAPTER III : ADDITIONAL PROVISIONS APPLICABLE TO WORKS CONTRACTS

Article 34 – Scope of application of this Chapter

Without prejudice to articles 1 up to 28 of these GTC, the obligations in this Chapter

shall apply to all contracts qualifying as works contracts within the meaning of Article 1 of the Procurement Rules of the European Defence Agency¹.

Article 35 - Quality of Materials

35.1 All materials, products and components used during performance of the works shall be brand new and unused and the best in quality of their respective kinds and shall in any event be in accordance with the standards set forth in the Specifications and be free from defects in design or workmanship. The Agency may at any time request samples and test certificates of any material to check the compliance with the contractual requirements.

Article 36 – Supervision of performance of the works

36.1. The Contractor shall employ duly qualified personnel in the number required for the proper execution of the works. It must make available to the Agency documents proving that neither it nor its personnel is in breach of applicable social legislation.

36.2. At the start of the works the Agency and the Contractor shall inform each other of the names of their respective on-site authorised representatives.

36.3. The Agency's representatives specifically designated for the purpose shall supervise performance of the works, checking compliance with the terms and conditions of the Contract and the persons, materials and equipment used. They shall have access to the site at all times. The Contractor shall provide them with every facility — administrative and technical — they need to supervise the works.

36.4. The Agency's representatives may demand the partial or complete interruption of the works if they find that they are not being carried out in accordance with the terms and conditions of the Contract. The Agency shall lay down in writing the terms on which the works may be continued. The supervision provided for in the preceding subparagraphs shall in no way affect the liability of the Contractor as regards the proper execution of the works, nor release him from his obligations and liabilities under the laws and regulations currently in force.

¹ See Council Decision 2007/643/CFSP of 18 September 2007 on the financial rules of the European Defence Agency and on the procurement rules and rules on financial contributions from the operational budget of the European Defence Agency and available from the internet address: <http://www.eda.europa.eu/procurement.aspx>

Article 37 – Acceptance

- 37.1 The acceptance procedure is intended to check, in accordance with the provisions in the special terms and conditions or equivalent documents, that the works have been executed in compliance with the terms and conditions of the Contract, and in particular with the technical specifications.
- 37.2. Acceptance shall be effected at the initiative of the Contractor in consultation with the Agency. As a rule, it shall be effected in the presence of the Contractor and shall be recorded in a report drawn up by both parties and signed by the Contractor and the Agency representatives specifically designated for the purpose. However, if the Contractor has been asked to attend - by registered letter at least ten days before the date set for acceptance - acceptance may be effected in the absence of the Contractor if he fails to arrive on the day and at the time specified. The acceptance report shall be sent to the Contractor immediately thereafter. The warranty period shall run from the date of the acceptance report.
- 37.3. Acceptance shall not be effected if the unfinished works are such as to prevent the subject of the Contract from being used in its entirety.
- 37.4. Acceptance shall entail the transfer to the Agency of all risks except those covered by the guarantee.

Article 38 – Long Term Guarantee

- 38.1 In the case of construction works, the provisions of the Contract shall be without prejudice to the long-term guarantee provided for in the national laws applicable to the Contract.

Article 39 – Authorisations required - Site

- 39.1. Before the start of the works or services under the Contract, the Contractor shall have obtained the administrative authorisations required for their performance.
- 39.2. In the event of the Contractor, through its own fault, being unable to obtain the administrative authorisations required for performance of the Contract, the Contract may be terminated by the Agency under the terms laid down in Article 24.
- 39.3. The Contractor, who shall abide by the law applicable at the place of performance of the works, shall have sole responsibility for ensuring compliance with safety and prevention rules and maintaining order on the site.

Article 40 - Wastes, Hazardous Materials and Environmental Liabilities

40.1. During performance of the works, the Contractor shall keep the site free from accumulation of wastes, rubbish and hazardous materials caused by or used during the works and other operations and acts or omissions by the Contractor and shall, in compliance with applicable laws and permits, clean up the site and dispose of any such materials, on a regular basis and as soon as possible after acceptance of the works by the Agency.

40.2. The Contractor shall at all times act so as not to create any environmental liabilities, whether before or after termination of the Contract, and shall indemnify and hold the Agency harmless from any such liabilities.

Article 41 - Contractor's Equipment and Utilities

41.1. The Contractor shall, at his own cost, provide all the equipment necessary to execute and complete the works, in a safe and efficient way. Such equipment shall be of high quality, in good shape and in sufficient quantity and appropriate to execute and complete the works in the conditions set forth in the Contract.

41.2. If and as agreed in the Contract or the Specifications, the Contractor shall be entitled to use for the purpose of the works such supplies of electricity, water and/or gas as may be available on the site where the works are to be performed, and shall, at his own expense, provide any apparatus necessary for such use including meters and pay to the Agency (or such other third party owning the site) all charges made for such use of these supplies, as applicable. If these supplies are not available on site, the Contractor shall make all arrangements for connection and distribution at its own cost.

CHAPTER IV : ADDITIONAL PROVISIONS APPLICABLE TO SERVICES CONTRACTS

Article 42 – Services Contracts

42.1 Save as the context otherwise requires, the provisions of the previous chapters of these GTC shall apply *mutatis mutandis* to all contracts qualifying as service contracts within the meaning of Article 1 of the Procurement Rules applicable to the European Defence Agency¹. In case of discrepancy between the provisions of those chapters, chapter I and chapter II shall prevail.

¹ See Council Decision 2007/643/CFSP of 18 September 2007 on the financial rules of the European Defence Agency and on the procurement rules and rules on financial contributions from the operational budget of the European Defence Agency and available from the internet address: <http://www.eda.europa.eu/procurement.aspx>