
GENERAL PROVISIONS FOR FIXED-PRICE CONTRACTS
(MATERIEL)

(19 October 2005)

Clause I - DEFINITIONS

As used throughout this contract, the following terms shall have the meaning set forth below:

1.1 The term "NAMSA" means "NATO Maintenance and Supply Agency",
L - 8302 Capellen, Grand Duchy of Luxembourg.

1.2 All correspondence and contacts concerning contracts for materiels shall be with the Contracting Officer/Buyer unless otherwise directed.

1.3 The term "NAMSO Member State" means a member state of the NATO Maintenance and Supply Organization (NAMSO).

1.4 The term "Customer Country" means that particular NAMSO member state for which NAMSA is obtaining the materiels called for under this contract, or a part thereof.

1.5 The term "Contractor" means the party who has entered into this contract with NAMSA.

1.6 The term "Contract" means the contractual instrument to which these General Provisions apply.

1.7 The term "Subcontract" means, except as otherwise provided in this contract, any agreement, contract or subcontract or order made by the Contractor with any other party in fulfilment of any part of this contract, and any agreement, contract or subcontract or order thereunder.

Clause 2 - CHANGES

2.1 Except as otherwise provided in this contract, NAMSA may at any time within the general scope of this contract, by a written order make changes in any one or more of the following:

2.1.1 stock numbers, part numbers or descriptions, if erroneous, or if a superseding part is desired by NAMSA;

2.1.2 marking, method of shipment or packing;

2.1.3 place of delivery; and

2.1.4 place of inspection and acceptance.

2.2 If any such change causes an increase or decrease in the cost of, or the time required for, the performance of this contract or of any part of the work under this contract, whether changed or not changed by any such order, an equitable adjustment shall be made and the contract shall be modified in writing accordingly. Any claim by the Contractor for adjustment under this Clause must be asserted within thirty (30) days from the date of receipt by the Contractor of the notification of change, provided, however, that NAMSA, if it decides that the facts justify such action may receive and act upon any such claim asserted at any time prior to final payment under this contract. Failure to agree to any adjustment shall be considered a dispute within the meaning of the Clause entitled "Disputes" in these General Provisions. Pending arbitration the Contractor shall proceed with the contract as changed, without delay.

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

2.4 Any other change in the terms of this contract, including but not limited to, changes in price, quantity, delivery schedules, or performance schedules, may be made only by agreement in writing executed by both parties.

Clause 3 - ASSIGNMENT

Except as otherwise provided in this contract, this contract shall not be assignable by the Contractor or operation of law without the prior approval of NAMSA in writing. No such assignment shall become effective until the assignee has received written approval from NAMSA. Any request for such approval shall be accompanied by a true copy of the intended instrument of assignment. NAMSA will not unreasonably withhold any such approval of assignment.

Clause 4 - PATENT INDEMNITY

Except as otherwise provided in this contract, the Contractor agrees to assume all liability for the infringement, if any, of patents in force in the countries where the items will be manufactured, under this contract and in other countries where the patents are in force; and will be responsible for obtaining any patent licenses necessary for the performance of this contract and for making any other arrangements required to protect NAMSA from any liability for patent infringement in said countries. The Contractor will notify NAMSA of any claims of which it has knowledge, or may be notified, of patent infringement pertaining thereto.

Clause 5 - SECURITY

If any plans, specifications or other similar documents relating to the contract or the performance of same are marked "Cosmic Top Secret", "NATO Secret", "NATO Confidential", or "NATO Restricted", the Contractor shall safeguard NATO security by:

- ensuring that no such document is accessible to any person not entitled to knowledge of such document;
- complying with the national security regulations currently in force in its country;
- complying with any special NATO or NAMSA security regulations which may be supplied by NAMSA.

Clause 6 - TAXES AND DUTIES

6.1 NAMSA, as a subsidiary body of NATO is, by application of the Ottawa Agreement, dated 20 September 1951, exempt from all taxes and duties.

6.2 Goods and services sold to or through NAMSA are to be considered as exports. Consequently, the Contractor is responsible for obtaining any documentation required to permit NAMSA and its customers to benefit from the fiscal regime applicable to exports.

6.3 However, if the Contractor is compelled by application of any governmental law or regulation to pay any readily identifiable tax or duty in relation to this contract, he will indicate such tax or duty as a separate item of cost on his invoice(s). Any such tax or duty shall be fully identified by reference to the governmental law or regulation pursuant to which such tax or duty is enforced.

6.4 Following payment by NAMSA of the amount(s) for taxes and/or duties pursuant to paragraph 6.3 above, should the Contractor receive a rebate or rebates, of any part or all of the said amount(s) so paid by NAMSA, the Contractor shall notify NAMSA promptly and the amount(s) of such rebate(s) shall be credited or paid over by the Contractor to NAMSA at NAMSA's option. The Contractor shall take any action that could be reasonably required in order to obtain such rebate(s) whenever he is aware of the possibility of obtaining it (them).

6.5 The submission of an invoice for taxes and/or duties under the provisions of this Clause shall constitute the Contractor's guarantee that such taxes have or will be paid. If for any reason, the taxes and/or duties are not paid, they shall be refunded in full with any interest earned while the funds for such payment(s) were held by the Contractor.

NOTE: If the contract is to be performed in Luxembourg, the foregoing clause is to be made inapplicable to the contract by mention to that effect in the terms and conditions and the following clause added in lieu thereof :

"Taxes and Duties

The Agreement between NAMSA and the Government of Luxembourg, dated 19 June 1968, entitled 'Agreement regarding exemption from taxes, duties and rates granted to NAMSO by the Luxembourg Authorities' is applicable to this contract and is made a part hereof by reference."

Clause 7 - SPECIAL AREAS

7.1 Except as otherwise provided in this contract, the Contractor shall not acquire for use in the performance of this contract materials originating from sources in countries which are :

- 7.1.1 subject to a formal trade embargo to be observed by NATO;
- 7.1.2 known to disregard international trade conventions in respect of copyright;
- 7.1.3 under communist control:
 - China (PRC)
 - Cuba
 - Laos
 - North Korea
 - Vietnam.

7.2 Except as otherwise provided in this contract, the Contractor agrees to insert the provisions of this clause in subcontracts hereunder.

Clause 8 - WARRANTY

8.1 Except as otherwise provided in this contract, the items called for by this contract shall be unused and in new condition, of the latest production, and conform to the latest applicable specifications, drawings, and other descriptions, if any, of appropriate military and/or civilian agencies, and, if any, of the Contractor and shall be free from defects in material, design and/or workmanship.

8.2 The provisions of this clause are equally applicable to any item replaced under warranty.

8.3 The warranty period shall be extended by a period equal to the time taken by the Contractor to repair or replace the item under warranty. This warranty is only applicable insofar as

NAMSA shall have complied with such conditions of storage, preservation, removal from storage, use and operation, and maintenance of the item as have been reasonably recommended by the Contractor.

8.4 In the event that all or any of the defects enumerated in paragraph 8.1 shall be confirmed in respect of an item covered by the warranty, whenever discovered, the Contractor shall at its own expense, including any transportation costs between the place where replacement or correction will take place and the original point of delivery (INCOTERMS) of material specified in the contract, replace or correct the item, or lots of such item, which is/are defective in material or workmanship or otherwise not in conformity with the requirements of this contract, provided the Contractor is given written notice within six (6) months after acceptance and provided furthermore that the Contractor is not otherwise in this contract relieved from this responsibility.

8.5 Alternatively, the Contractor shall, if NAMSA so wishes, credit or reimburse it with the value of the item at the purchase price paid by NAMSA, plus any costs incurred by it for the delivery of the defective item and its return to the Contractor.

8.6 Within thirty days of the receipt of a warranty claim, or as otherwise agreed, on the item in respect of which the claim is made, the Contractor shall assess the validity of the claim. The repaired or replaced item shall be sent to NAMSA with the minimum of delay and in any case not later than six weeks after receipt of the defective item, or as otherwise agreed. In the event that the Contractor shall not have disputed the validity of the claim within the said thirty days, the claim shall be considered as accepted by the Contractor.

8.7 NAMSA shall have the right, without invalidating the warranty, to repair a defective item in accordance with the overhaul manual or other written instructions of the Contractor. This right shall not prejudice the possibility on the part of the Contractor to dispute the validity of the claim under warranty. To this end all reasonable facilities shall be granted to the Contractor or his representatives.

8.8 The Contractor expressly authorizes that NAMSA may offer the whole or part of these warranty conditions to third parties with the intent that such third parties and the Contractor shall be bound thereby as if both were parties to a contract made between them in which this warranty were expressly set forth.

Clause 9 - DEFAULT

If the Contractor fails to deliver the materiel within the time specified, becomes bankrupt, or otherwise fails to comply with his obligations under this contract, NAMSA may by written Notice of Default to the Contractor terminate the whole or any part of this contract at no cost to NAMSA. Thereafter, NAMSA may procure or otherwise obtain the items so terminated, and the Contractor shall be liable for any damages and/or extra costs incurred by NAMSA and/or its customer(s) as a direct consequence of the Contractor's failure to comply with his obligations under this contract, unless Contractor's failure to perform is due to causes beyond his control and without his fault or negligence. The Contractor shall continue to perform under this contract to the extent not terminated hereunder.

Clause 10 - TERMINATION FOR CONVENIENCE OF NAMSA

In the event NAMSA determines that an item, or items, ordered is (are) no longer required, the Contractor undertakes to use its best endeavours to cancel the supply of such item, or items, on terms as favourable to NAMSA as can be granted or obtained, as more fully set forth in this contract.

Clause 11 - DISPUTES

11.1 Any dispute arising out of this contract shall be settled by arbitration.

11.2 The party instituting the arbitration proceedings shall advise the other party by registered letter, with official notice of delivery, of his desire to have recourse to arbitration. Within a period of thirty days from the date of receipt of this letter, the parties shall jointly appoint an arbitrator. In the event of failure to appoint an arbitrator, the dispute or disputes shall be submitted to an Arbitration Tribunal consisting of three arbitrators, one being appointed by NAMSA, another by the other contracting party, and the third, who shall act as President of the Tribunal, by these two arbitrators. Should one of the parties fail to appoint an arbitrator during the fifteen days following the expiration of the first period of thirty days, or should the two arbitrators be unable to agree on the choice of the third member of the Arbitration Tribunal, within thirty days following the expiration of the said first period, the appointment shall be made, within twenty one days, at the request of the party instituting the proceeding, by the Secretary General of the Permanent Court of Arbitration in the Hague.

11.3 Regardless of the procedure concerning the appointment of this Arbitration Tribunal, the third arbitrator will have to be of a nationality different from the nationality of the other two members of the Tribunal.

11.4 Any arbitrator must be of the nationality of any of the member states of NATO and shall be bound by the rules of security in force within NATO.

11.5. Any person appearing before the Arbitration Tribunal in the capacity of an expert witness shall, if he is of the nationality of one of the member states of NATO, be bound by the rules of security in force within NATO, if he is of another nationality, no NATO classified documents or information shall be communicated to him.

11.6 An arbitrator who, for any reason whatsoever, ceases to act as an arbitrator shall be replaced under the procedure laid down in the first paragraph of this article.

11.7 The Arbitration Tribunal will take its decisions by a majority vote. It shall decide where it will meet and, unless it decides otherwise, shall follow the arbitration procedures of the International Chamber of Commerce in force at the date of the signature of the present contract.

11.8 The awards of the arbitrator or of the Arbitration Tribunal shall be final and there shall be no right of appeal or recourse of any kind. These awards shall determine the apportionment of the arbitration expenses.

Clause 12 - DISCREPANT SHIPMENTS

12.1 The Contractor recognizes that the materiel of this contract has been ordered by NAMSA for the purpose of eventual delivery by NAMSA to one or more of the NAMSA customers. For this reason the Contractor agrees that where shipments of materiel susceptible to complete and immediate inspection at the place and time of delivery are concerned, submission by NAMSA of claims to it in the form of Discrepancy Reports relating to (a) overages, (b) shortages, (c) condition, (d) misidentification and, (e) damages will not be protested solely on the basis of failure of timely notification if they are submitted within twelve (12) months of the date of delivery to NAMSA of the said materiel. However, where sealed shipments are concerned, i.e. shipments of materiel which because of their nature must remain in sealed containers until required for use, the Contractor agrees not to protest such Discrepancy Reports solely on the basis of failure of timely submission if submitted within eighteen (18) months of the date of delivery to NAMSA of the said materiel. This provision shall in no way be interpreted so as to modify in any way any guaranty or warranty of any type concerning the said materiel and given by the Contractor elsewhere in this contract or applicable to identical materiel in the normal course of the Contractor's sales to other customers.

12.2 The submission of Discrepancy Reports by NAMSA to the Contractor under the provisions of this clause requires the Contractor to investigate such Discrepancy Reports if submitted within the above-mentioned time limits, but does not imply that the Contractor will accept responsibility for them.

Clause 13 - GOVERNING LAW

Except as otherwise provided in this contract, this contract shall be governed, interpreted and construed in accordance with French law and such law shall govern in the event of arbitration.

Clause 14 - EXAMINATION OF RECORDS

14.1 This clause is applicable to this contract only:

14.1.1 if the price, or any of the prices, to be paid for the materiel to be furnished hereunder is/are other than (a) firm fixed price(s); or

14.1.2 if this contract is terminated by NAMSA, in whole or in part, and the Contractor submits a termination claim as a result thereof; or

14.1.3 in the event a dispute arises between the parties and arbitration proceedings are instituted pursuant to the clause of this contract entitled "Disputes".

14.2 The Contractor agrees that NAMSA or any of its duly authorized representatives shall, until the expiration of three (3) years after final payment under this contract, have access to and the right to examine any pertinent books, documents, papers, and records of the Contractor involving transactions related to this contract.

14.3 The Contractor further agrees to include in all his subcontracts hereunder a provision substantially as set forth in this clause, including this paragraph. In addition a provision is to be added in such subcontracts to the effect that the auditing of the subcontractors' books, documents, papers and records involving transactions related to the subcontract may be performed by the subcontractors' national auditing services.

14.4 The period of access and examination described in 14.2. and 14.3 above for records which relate to either appeals under the "Disputes" clause of this contract or litigation, or the settlement of claims arising out of the performance of this contract, shall continue until such appeals, litigation or claims have been disposed of.

Clause 15 - MISCELLANEOUS

15.1 The entire agreement between the contracting parties is contained in this contract and is not affected by any oral understanding or representation whether made previous to or subsequent to this contract.

15.2 The Contractor is considered to have fully read all terms, clauses, specifications and detailed special conditions stipulated in this contract. He unreservedly accepts all the terms thereof.

15.3 In the event of any disagreement between the original text of this contract and any translation into another language, the original text will govern.

15.4 All written correspondence and reports by the Contractor to NAMSA shall be in the language in which this contract is written.