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**NAMSA GENERAL PROVISIONS**  
**FOR FIXED PRICE TRANSPORT CONTRACTS**

(1 July 2004)

***Clause 1 - 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. All correspondence and contacts concerning contracts for transportation services shall be with the Procurement Division, unless otherwise directed.

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

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

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

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

***Clause 2 - EXAMINATION OF RECORDS***

2.1 It is agreed that any time during a period of three years after the final payment is made against this contract, the duly authorized representative(s) of NAMSA shall have access to, and the right to examine, all registers, carrier invoices, documents and records relative to the transactions concerning this contract.

2.2 The period of access and examination described 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 3 - RESPONSIBILITY***

3.1 The Contractor shall be responsible for the delivery to the point of destination of materiel received by him at the designated supply delivery point.

3.2 The Contractor shall be financially responsible for any loss or damage to items shipped or loaded by him, or his subcontractors, where his or their negligence in any degree is the cause of such loss or damage.

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3.3 However, in case of loss or damage resulting from the negligence of carriers, the responsibility of the Contractor shall be limited to that of the carriers, as laid down by applicable national and/or international agreements.

3.4 If shipments are sent to improper destinations through the fault or negligence of the Contractor, he shall be financially responsible to NAMSA for the difference between the costs incurred and the amount which would have been paid if shipment to proper destinations had been made. Furthermore, the Contractor shall be responsible for completing the shipment to the right destination at his own cost.

3.5 The Contractor shall take all necessary precautions and security measures to avoid pilferage of materiel in transit at his warehouse/point of consolidation.

3.6 Notwithstanding the limitations imposed above, if NAMSA deems that the Contractor has been so deficient in his performance under this Contract that materiel losses have occurred through his mis-management, NAMSA reserves the right to claim full reimbursement of the materiel value for such losses.

#### **Clause 4 - CLAIMS**

The Contractor shall be responsible for taking immediate steps to recover materiel in case of damage to shipments or loss or pilferage of items during transit. Such action shall include, but not be limited to:

4.1 Making immediate reservations as are necessary to safeguard the interests of NAMSA.

4.2 Inspecting the condition of the packaging of the materiel during all loading and unloading operations to ensure the materiel is adequately protected.

4.3 Securing statements from witnesses and officials in order to establish facts and circumstances.

4.4 Advising NAMSA immediately of the occurrence and of the measures that the Contractor proposes to take.

4.5 Submitting claims to carriers or other firms and obtaining reimbursement on behalf of NAMSA.

4.6 Reporting to NAMSA on progress of claims actions and forwarding to NAMSA any sum received in connection with these claims.

#### **Clause 5 - DEFAULT**

5.1 If the Contractor fails to perform properly the services specified in this Contract or any extension thereof 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 services so terminated, and the Contractor shall be liable to NAMSA for any excess costs for such services, unless the Contractor's failure to perform is due to causes

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beyond his control and without his fault or negligence. The Contractor shall continue to perform under this contract to the extent not terminated hereunder.

5.2 The Contractor shall not be in default by reason of any failure in performance of this contract in accordance with its terms (including any failure by the Contractor to make progress in the prosecution of the work hereunder which endangers such performance) if such failure arises out of causes beyond the control and without the fault or negligence of the Contractor. Such causes include, but are not restricted to : acts of God or of the public enemy, acts of NAMSA, fires, floods, epidemics, quarantine restrictions, strikes, freight embargos, unusually severe weather, and failure of subcontractors to perform or make progress due to such causes. Upon request of the Contractor, NAMSA shall ascertain the facts and extent of such failure and, if NAMSA shall determine that such failure was occasioned by one or more of the said causes, the delivery schedule shall be revised accordingly.

#### ***Clause 6 - TERMINATION FOR CONVENIENCE OF NAMSA***

In the event NAMSA determines that services rendered are no longer required, the Contractor agrees to cease his work hereunder, will cancel any transportation sub-contracts and will use its best endeavours to effect such cancellation in terms as favorable to NAMSA as can be granted or obtained.

#### ***Clause 7 - 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.

#### ***Clause 8 - IMPORT AND EXPORT FORMALITIES, TAXES AND DUTIES***

8.1 The Contractor shall be responsible for compliance with all applicable national import and export customs regulations and formalities, including payment of fees incident thereto and the posting of a customs bond, if required, including all required licenses, customs declarations and other documentation, concerning the entry to and the exit from the Contractor's facility, including delivery to final destination, of all items or materiel pertinent to the Contractor's performance under this contract except as otherwise provided herein.

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

8.3 Following payment by NAMSA of the amount(s) for taxes and/or duties pursuant to paragraph 8.2 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

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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).

### **Clause 9 - CHANGES**

9.1 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 by requiring modified or additional services within the scope of this contract.

9.2 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.

### **Clause 10 - AMENDMENTS**

All amendments to this contract, shall be in writing in the form of Supplemental Agreements, and signed by the Parties to this contract.

### **Clause 11 - MISCELLANEOUS**

11.1 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.

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

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

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

### **Clause 12 - DISPUTES**

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

12.2 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

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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 proceedings, by the Secretary General of the Permanent Court of Arbitration in the Hague.

12.3 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.

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

12.5 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.

12.6 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.

12.7 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.

12.8 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 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 - PERFORMANCE OF THE CONTRACTOR IN TIME OF ALERT OR WAR***

The Contractor warrants that on the basis of information available to him the Contractor is not aware of any national law or regulation, or any circumstances, that might prevent him from fulfilling his obligations under this contract in time of alert or war.

### ***Clause 15 - SPECIAL AREAS***

15.1 Except as otherwise provided in this contract, the Contractor shall not acquire for use in the performance of this contract any supplies and/or services originating from sources in countries which are:

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

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