

CONTRACT GENERAL TERMS AND CONDITIONS

1. Applicable Law
2. Authority
3. Inspection/Acceptance
4. Assignment
5. Changes
6. Disputes
7. Excusable Delays
8. Invoice
9. Indemnity
10. Patent and Copyrights
11. Rights in Technical Data and Computer Software
12. Payment
13. Risk of Loss
14. Taxes and Custom Charges
15. Termination for Convenience of the JALLC
16. Termination for Cause
17. Title
18. Warranty
19. Limitation of Liability
20. Enforcement
21. Liquidated Damages
22. Order of Precedence
23. Entire Agreement
24. Publicity, Public Relations, and Branding
25. Prohibition of Sexual Exploitation and Abuse, and Sexual Harassment
26. Organisational Conflicts of Interest (OCI)

1. APPLICABLE LAW

Except as otherwise provided in this contract, this contract shall be governed, interpreted and construed in accordance with the laws of Republic of Portugal. When performing at NATO Installations the Contractor and his personnel shall comply with all applicable laws of the host nation and all relevant official NATO and local installation Directives. Failure to comply with the terms of this contract, the Republic of Portugal, and regulations may lead to Termination for Default.

2. AUTHORITY

The Contracting Officer has the authority to enter into, administer, or terminate contracts and make related determinations and findings. The Contracting Officer may bind the legal entity of ACT HQs to the extent of the authority delegated by his/her warrant. Any modifications, including changes, additions or deletions and instructions under this contract shall not be binding unless issued in writing by the Contracting Officer.

3. INSPECTION/ACCEPTANCE

The Contractor shall only tender for acceptance supplies and services ("items") that conform to the contract requirements. The JALLC reserves the right to inspect or test any supplies or services that have been tendered for acceptance. The JALLC may require repair or replacement of nonconforming supplies or re-performance of nonconforming services at no increase in contract price. The JALLC must exercise its post-acceptance rights (1) within a reasonable time after the defect was discovered or should have been discovered, and (2) before any substantial change occurs in the condition of the item, unless the change is due to the defect in the item.

4. ASSIGNMENT

This agreement is not assignable by the Contractor either in whole or in part.

5. CHANGES

Changes in the terms and conditions of this contract may be made only by written agreement of the parties.

6. DISPUTES.

All disputes arising out of the performance of this contract will be resolved through amicable settlement between the Contracting Officer and the Contractor. Except as otherwise provided in this contract, any dispute arising under this contract which is not disposed of by agreement shall be decided by the Contracting Officer, who shall reduce his decision to writing and mail or otherwise furnish a copy thereof to the Contractor. Written Decisions shall include a description of the claim or dispute, reference to the pertinent contract terms, statement regarding factual areas of agreement and disagreement, and statement of the Contracting Officer's decision, with supporting rationale. The decision of the Contracting Officer shall be final and conclusive unless, within thirty (30) days from the date of receipt of such copy, the Contractor mails or otherwise furnishes to the Contracting Officer a written decision to open arbitration proceedings. All contractors should note that before opening arbitration proceedings all disputed decisions shall be appealed to the ACT (via ACT FC). Once this final appeal is placed arbitration proceedings may occur. The costs arising out of the arbitration will be proportionally apportioned between parties. Pending final decision of a dispute, the

Contractor shall proceed diligently with the performance of this contract, unless otherwise authorized by the Purchasing and Contracting Officer. By accepting this contract the Contractor agrees to use arbitration as the final option to settle all claims and forego any and all judicial reviews.

Binding Arbitration shall be the means of settling a dispute if a resolution cannot be reached between the Contracting Officer and Contractor. The rules for Binding Arbitration, with regards to this requirement, are based off of the International Chamber of Commerce Publication Number 808, "Rules of Arbitration", dated October 2004. This clause merely supplements and informs the Contractor of the method used for Arbitration. All specifications in the "Rules of Arbitration" take precedence. However, it should be noted that the sub-bullets below (i. – iv.) are several key factors of worth with regards to the Arbitration process.

- a. The party instituting the arbitration proceedings shall advise the other party by registered letter, with official notice of delivery, of its desire to have recourse to arbitration.
- b. Within thirty days from the date of the receipt of this letter, each party shall appoint an arbitrator (or panel of arbitrators), who will have to be of a nationality of one of the member States of NATO. These arbitrators in turn shall jointly appoint a chief arbitrator for the following proceedings.
- c. The decision of the arbitrator shall be final and there shall be no right of appeal or recourse of any kind.
- d. The costs arising out of the arbitration will be proportionally apportioned between the parties.

Additional information on the specific Articles for the Arbitration process can be seen via the International Chamber of Commerce website: www.iccwbo.org.

7. EXCUSABLE DELAYS

The Contractor shall be liable for default unless non-performance is caused by an occurrence beyond the reasonable control of the Contractor and without its fault or negligence such as, acts of God or the public enemy, acts of the JALLC in either its sovereign or contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, unusually severe weather, and delays of common carriers. The Contractor shall notify the contracting Officer in writing as soon as is reasonably possible after the commencement of any excusable delay, setting forth the full particulars in connection therewith, shall remedy such occurrence with all reasonable dispatch, and shall promptly give written notice to the Contracting Officer of the cessation of such occurrence.

8. INVOICE

The contractor shall submit an original invoice and three (3) copies (or electronic invoice, if authorized) to the address designated in the contract to received invoices. An invoice must include: 1) Name and address of the Contractor; 2) Invoice date; 3) Purchase Order number and Purchase Order line item number; 4) Description, quantity, unit of measure, unit price and extended price of the items delivered; 5) Shipping number and date of shipment including the bill of lading number and weight of shipment if shipped on a bill of lading; 6) Terms of any prompt payment discount offered; 7) Name and address of official to whom payment is to be sent: and 8) Name, title, and phone number of person to be notified in event of defective invoice.

9. INDEMNITY

The contractor shall indemnify the JALLC and its officers, employees and agents against liability, including costs for actual or alleged direct or contributory infringement of or

inducement to infringe, any patent, trademark, copyright, or other intellectual property right, arising out of the performance of this contract, provided the Contractor is reasonably notified of such claims and proceedings.

10. PATENTS AND COPYRIGHTS

According to arrangements made by some NATO countries, certain patents and copyrights may be utilized by member nations of NATO and by NATO Organizations free of charge. For reference purposes, Contractor will provide to the JALLC, to the best of knowledge, a list of such patents and/or copyrights associated with any hardware/software to be provided under this contract. Patents/copyrights listed shall be annotated as to whether or not any royalty costs for their use have been included in or excluded from Contractor's corresponding price quotation.

11. RIGHTS IN TECHNICAL DATA AND COMPUTER SOFTWARE

These rights for technical data and software supplied and installed within the scope of the contract are required: (1) unlimited rights for all technical data and software, including related documentation, developed for this contract, (2) limited rights for all other deliverables, in accordance with commercial practices for off-the-shelf deliverables and proprietary products. Contractor shall provide separate listings delineating the technical data and computer software for which limited and unlimited rights are conveyed in accordance with the above stated requirements, and Contractor represents that it has included in its proposal prices for all license fees, royalties and all other fees in order to provide these rights. All written material (reports, studies, presentation materials, etc.) that is produced as a result of this contract will be the sole and exclusive property of the JALLC free from any claim(s) or retention rights thereto on the part of the Contractor. The JALLC has the exclusive rights to use this material as it deems fit.

12. PAYMENT

Payment shall be made for items accepted by the JALLC that have been delivered to the delivery destinations set forth in this contract. Payments under this contract may be made by the JALLC either by check or electronic funds transfer payments and shall submit this designation to the contracting officer as directed.

In the event the Contractor, during the performance of this contract, elects to designate a different financial institution for receipt of any payment made using electronic funds transfer procedures, notification of such change and the required information must be obtained by the JALLC thirty (30) days prior to the date such change is to become effective. The documents furnishing the information required in this clause must be dated and contain the signature, title, and telephone number of the Contractor official authorized to provide it, as well as the Contractor's name and Purchase Order number. Contractor failure to properly designate a financial institution or to provide appropriate payee bank account information may delay payments of amounts otherwise properly due.

Discount time will be computed from date of delivery at place of acceptance or from receipt of correct invoice at the office specified by the JALLC, whichever is later. For the purpose of computing the discount earned, payment shall be considered to have been made on the date which appears on the payment check or the specified payment date if an electronic funds transfer payment is made.

13. RISK OF LOSS

Unless the contract specifically provides otherwise, risk of loss or damage to the supplies provided under this contract shall remain with the Contractor until, and shall pass to the JALLC upon: 1) Delivery of the supplies to a carrier, if transportation is f.o.b. origin; or 2) Delivery of the supplies to the JALLC at the destination specified in the contract, if transportation is f.o.b. destination.

14. TAXES AND CUSTOM CHARGES

According to the NATO agreements, performance under the contract is exempt from taxes, duties and similar charges. Where notwithstanding, these are imposed by national regulations, bidders will enclose the list and the amounts of taxes (to include the VAT—Value Added Tax), duties and similar charges which have been included in their bid, with a justification. Authority for this tax and customs exempt status is include the Paris Protocol (Article VIII) “Protocol on the Status of International Military HQs Set Up Pursuant to the North Atlantic Treaty”, and the relevant Host Nation agreements drawn up in the application of Article XVI of the referred Protocol. In addition, it should be noted that all contractors shall note the appropriate convention (or protocol) between the government of the state where the contractor resides and the Portuguese Republic for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income.

15. TERMINATION FOR CONVENIENCE OF THE JALLC

Performance under this contract may be terminated whenever the Contracting Officer determines that such action is required. The contractor will be notified in writing (registered letter) at least thirty days (30) prior to the date of termination, at which time, the contract will be automatically cancelled. The contractor will immediately submit any outstanding invoices for supplies or services delivered and accepted prior to the termination date for payment.

16. TERMINATION FOR CAUSE

The JALLC may terminate this contract, or any part hereof, for cause in the event of any default by the Contractor, or if the Contractor fails to comply with any contract terms and conditions, or fails to provide the JALLC, upon request, with adequate assurances of future performance. In the event of termination for cause, the JALLC shall not be liable to the Contractor for any amount for supplies or services not accepted, and the Contractor shall be liable to the JALLC for any amount for supplies or services not accepted, and the Contractor shall be liable to the JALLC for any all rights and remedies provided by law. If it is determined that the JALLC improperly terminated this contract for default, such termination shall be deemed a termination for convenience.

17. TITLE

Unless specified elsewhere in this contract, title to supplies furnished under this contract shall pass to the JALLC upon acceptance, regardless of when or where the JALLC takes physical possession.

18. WARRANTY

The Contractor warrants and implies that the supplies delivered hereunder are merchantable and fit for use for the particular purpose described in this contract. Contractor warrants that the performance of services hereunder will be provided in a professional and workmanlike manner in accordance with the industry accepted standards and the terms of this contract.

19. LIMITATION OF LIABILITY

Except as otherwise provided by an express or implied warranty, the Contractor will not be liable to the JALLC for consequential damages resulting from any defects or deficiencies in accepted items.

20. ENFORCEMENT

Failure by either party to enforce any contract provision will not be deemed a waiver of future enforcement of that or other provision. The invalidity or unenforceability of any provision shall not affect other provisions, and this contract shall be construed in all respects if such invalid or unenforceable provisions were omitted.

21. LIQUIDATED DAMAGES

When authorized by contract terms, the Contracting Officer may protect the interests of the ACT HQ through exercise of contractual right to recover liquidated damages. The Contracting Officer shall provide the contractor written notification of this intention, and invite the contractor to provide justifications for his/her actions, or lack thereof, by registered mail within a reasonable amount of time, per contract requirement, after the receipt of the "Show Cause Notice." This declaration will be considered final if the contractor fails to remedy the situation or adequately defend his/her actions in response to the Contracting Officer's letter.

With regards to this requirement and in lieu of actual damage, the Contractor shall pay to JALLC as fixed, agreed, liquidated damages for each calendar day of delay, 0.1% of the total delivery order price, less handling, transportation and taxes, to a maximum of 10% of the delivery order price. Alternatively, JALLC may terminate the contract in whole or in part as provided in Default paragraph. The Contractor shall be liable, in addition to the excess costs provided in paragraph (b) of the DEFAULT paragraph, for such liquidated damages accruing until such time as JALLC may reasonably obtain delivery or performance of similar supplies or services. The Contractor shall not be charged with liquidated damages when the delay arises out of causes beyond the control and without fault or negligence of the Contractor. The Contracting Officer shall ascertain the facts and extent of the delay and shall extend the time for performance of the contract when in his judgment the findings of fact justify an extension.

22. ORDER OF PRECEDENCE

Any inconsistencies in the solicitation or contract shall be resolved by giving precedence in this order: 1) the purchase order; 2) any Special Contract Terms and Conditions; 3) the General Contract Terms and Conditions; 4) solicitation provisions if this is a solicitation; 5) the specification/statement of work; 6) other the JALLC documents, exhibits and attachments; and 7) addenda to this solicitation or contract, including any license agreements for computer software, or other Contract agreements.

23. ENTIRE AGREEMENT

This contract sets for the entire agreement between the parties with respect to the subject matter hereof, and supersedes all prior agreements or representations, oral or written, regarding such subject matter. The JALLC shall not be bound by, and specifically objects to any term, condition, or other provision inconsistent with or in addition to any provision of this contract that is submitted by Contractor in any correspondence or any document unless the JALLC specifically agrees to such provision in a written instrument signed by an authorized representative of the JALLC.

24. PUBLICITY, PUBLIC RELATIONS, AND BRANDING

- a. Unless authorized in writing by the Contracting Officer, the Contractor shall not advertise or otherwise make public, including but not limited to photographs and films or public statements concerning this Contract, the fact that it is a contractor to JALLC, or use the name, emblem, logo, official seal or any abbreviation of the JALLC. This obligation shall survive the completion, expiration, cancellation or termination of the Contract.
- b. The Contractor shall ensure that all deliverables in support of the contract are consistent with NATO Approved Branding.

25. PROHIBITION OF SEXUAL EXPLOITATION AND ABUSE, AND SEXUAL HARASSMENT

- a. The Contractor shall take all appropriate measures to prevent and respond to sexual exploitation or sexual abuse (“SEA”) and sexual harassment (“SH”) of anyone by its employees or any other persons engaged and controlled by the Contractor to perform any services under the Contract”) including but not limited to vetting its potential employees. In the performance of the Contract, the Contractor shall comply with the standards of conduct set forth in the “The NATO Policy on Preventing and Responding to Sexual Exploitation and Abuse” of 20 November 2019.
- b. In particular, the Contractor and Contractor’s Employees shall not engage in any conduct that would constitute sexual exploitation or sexual abuse:
 - 1) Sexual Exploitation is any actual or attempted abuse of a position of vulnerability, differential power, or trust, for sexual purposes, including, but not limited to, profiting monetarily, socially or politically from the sexual exploitation of another. Acts that constitute sexual exploitation include, but are not limited to, the exchange of money, goods or other commodities and or services, employment or any exchange of assistance that is due to the local population in exchange for sex, including sexual favours or other forms of humiliating, degrading or exploitative behaviour. All such transactional sex, including the exploitation of the prostitution of others, is a form of sexual exploitation. Sexual relationships based on inherently unequal power dynamics are a form of sexual exploitation.
 - 2) Sexual abuse is any actual or threatened physical intrusion of a sexual nature, whether by force or under unequal or coercive conditions. Acts that constitute sexual abuse include, but are not limited to, any action or behaviour of a sexual nature that coerces, threatens or forces a person to engage in a sexual activity, or any unlawful sexual activity with a person under the age of 18.
- c. Contractor and Contractor’s Employees will also not engage in any conduct that would constitute sexual harassment:
 - 1) SH is any unwelcome and unwanted behaviour of a sexual nature, whether verbal or physical that is offensive and creates a hostile or intimidating work environment.
 - 2) SH may include unwelcome sexual advances, unsolicited requests for sexual favours, or any other behaviour of a sexual nature that might reasonably be expected or be perceived to intimidate, cause offense or humiliation to another, when such conduct interferes with work or is made a condition of

employment. SH is particularly egregious when it is linked with direct or implied threats or promises about career prospects (“quid pro quo” harassment).

- 3) SH may occur between persons of any gender who can be either the target or the perpetrators of SH
- d. Contractor and Contractor’s Employees will also not engage in any conduct that would constitute workplace discrimination (i.e. gender, race or ethnic origin, religion or belief, disability, age or sexual orientation, etc.) and others counter to JALLC and NATO's code of conduct policies.
- e. In the performance of the Contract, should sufficient information of conduct described above against the Contractor or Contractor’s Employees be brought to JALLC’s attention, JALLC shall commence a review into the Contractor’s or Contractor’s Employees’ conduct in this regard in accordance with JALLC regulations, rules, policies and procedures.
- f. The Contractor acknowledges and agrees that any breach of any of the provisions set forth in this Clause, shall constitute a breach of an essential term of the Contract, and, in addition to any other legal rights or remedies available to any person, may give rise to grounds for suspension or termination of the Contract. In addition, nothing herein shall limit the right of JALLC to refer any alleged breach of the foregoing standards of conduct or any other terms of the Contract to the relevant national authorities for appropriate legal action.

26. ORGANISATIONAL CONFLICTS OF INTEREST (OCI)

- a. Organisational conflicts of interest may occur when factors create an actual or potential conflict of interest on an instant contract, or when the nature of the work performed on the instant contract creates an actual or potential conflict of interest on a future acquisition. In the latter case, some restrictions on future activities of the contractor may result.
- b. Contractors must implement a programme to monitor, detect, and mitigate/remediate organisational conflicts of interest. While Contracting Officers retain authority to approve mitigation or remediation measures once organizational conflicts of interest are identified, the primary burden of detecting, identifying and disclosing organisational conflicts of interest to the contracting officer and proposing suitable mitigation or remediation measures falls on the contractor.
- c. The two underlying principles regarding organisational conflicts of interest are:
 - 1) Proprietary information that was obtained from a NATO official, staff member, or NATO contractor without proper authorisation; or
 - 2) Information that is relevant to the contract but is not available to all competitors, where such information would assist that contractor in obtaining the contract.
- d. Contracting officers and potential bidders shall analyse planned acquisitions in order to:

- 1) Identify and evaluate potential organisational conflicts of interest as early in the acquisition process as possible; and
 - 2) Avoid, neutralise, or mitigate significant potential conflicts before contract award, where possible, or post award when the organizational conflict of interest is not revealed prior to award.
- e. The contracting officer shall award the contract to the apparent successful bidder unless a conflict of interest is determined to exist that cannot be avoided or mitigated. Before determining to withhold award based on conflict of interest considerations, the contracting officer shall notify the contractor, provide the reasons therefor, and allow the contractor a reasonable opportunity to respond. If the contracting officer finds that it is in the best interest of the JALLC to award the contract notwithstanding a conflict of interest, the Contracting Officer will issue a waiver and disclose the award and the existence of the organisational conflict of interest to the Financial Controller. The waiver request and decision shall be included in the contract file.
- f. Obligations of the Parties:
- 1) When a Contractor or Prospective Contractor becomes aware of the existence or potential for an organisational conflict of interest, the Contractor is obligated to disclose the existence, nature, and supporting evidence of the conflict. Contractors or Prospective Contractors will be deemed to be aware of the existence or potential for an organisational conflict of interest when the Contractor or Prospective Contractor actually knows or reasonably should know of the existence of the actual or potential organisational conflict of interest.
 - 2) If the Contracting Officer becomes reasonably aware that the award of a contract will restrict the contractor's eligibility for future contract work, the Contracting Officer will disclose this fact in writing to the Contractor prior to the award, where practicable, and will permit the Contractor or prospective Contractor 7 days to make an election regarding award, discontinuing performance, or submitting an OCI mitigation plan for the Contracting Officer's approval. The sufficiency of the OCI mitigation plan is in the Contracting Officer's sole discretion.

Date: _____

Signature: _____

Printed Name: _____