

DEFENSE

Mutual Logistic Support

**Agreement Between the
UNITED STATES OF AMERICA
and SUPREME HEADQUARTERS
ALLIED POWERS EUROPE**

Signed at SHAPE Casteau and
Stuttgart-Vaihingen January 18 and 31, 1995

with

Annexes



NOTE BY THE DEPARTMENT OF STATE

Pursuant to Public Law 89—497, approved July 8, 1966
(80 Stat. 271; 1 U.S.C. 113)—

“ . . . the Treaties and Other International Acts Series issued under the authority of the Secretary of State shall be competent evidence . . . of the treaties, international agreements other than treaties, and proclamations by the President of such treaties and international agreements other than treaties, as the case may be, therein contained, in all the courts of law and equity and of maritime jurisdiction, and in all the tribunals and public offices of the United States, and of the several States, without any further proof or authentication thereof.”

**SUPREME HEADQUARTERS
ALLIED POWERS EUROPE**

Defense: Mutual Logistic Support

*Agreement signed at SHAPE Casteau and
Stuttgart-Vaihingen
January 18 and 31, 1995;
Entered into force January 31, 1995.
With annexes.*

AGREEMENT

BETWEEN THE

DEPARTMENT OF DEFENSE OF THE UNITED STATES OF AMERICA

AND

SUPREME HEADQUARTERS ALLIED POWERS EUROPE

CONCERNING

MUTUAL LOGISTIC SUPPORT

PREAMBLE

The Department of Defense of the United States of America (US DOD) and the Supreme Headquarters Allied Powers Europe (SHAPE) hereinafter referred to as the "Parties," desiring to further the rationalization, interoperability, readiness, and effectiveness of their respective military forces through increased logistic cooperation, have resolved to conclude this Mutual Logistic Support Agreement (the "Agreement").

ARTICLE I

PURPOSE

1. This Agreement is entered into for the purpose of acquisition and transfer of logistic support, supplies and services. It establishes basic terms, conditions, and procedures for the provision of mutual logistic support, supplies and services as defined in Article III, paragraph 1a., of this Agreement.

2. The US DOD and SHAPE conclude this Agreement on the basis of their cooperation within NATO and in consideration of United States Public Law 96-323, "NATO Mutual Support Act of 1979."

ARTICLE II

APPLICABILITY

1. This Agreement applies to the provision of logistic support, supplies and services to the military forces of one Party by the other Party in return for either cash payment or the reciprocal provision of logistic support, supplies and services to the military forces of the other Party. Logistic support, supplies and services is limited to that normally provided to the Armed Forces of the supplying Party.

2. The Parties understand this Agreement shall not be employed in a manner to serve as a routine and normal source of supplies and services reasonably available from United States or SHAPE commercial sources or acquirable from the United States through Foreign Military Sales procedures under the Arms Export Control Act. Acquisitions and transfers under this Agreement are subject to the annual acquisition and transfer (sales) monetary limitations established by the laws of the United States.

3. The following items are not eligible for transfer by the United States under this Agreement and are excluded from its coverage: major end-items of equipment, initial quantities of replacement parts and spares associated with the initial order quantity of major items of organizational equipment covered in tables of allowances and distribution, tables of organization and equipment or equivalent documents. Further, specifically exclud-

ed from United States transfer under this Agreement are guided missiles; naval mines and torpedoes; nuclear ammunition and included items such as warheads, warhead sections, projectiles, demolition munitions, and training ammunition; cartridge and propellant-actuated devices; chaff and chaff dispensers; guidance kits for bombs or other ammunition; chemical ammunition (other than riot control); and source, byproduct, or special nuclear materials or any other material, article, data or thing of value the transfer of which is subject to the Atomic Energy Act of 1954 (Title 42, United States Code 2201 et seq.).

4. Excluded from transfer under this Agreement by either Party are items the transfer of which is prohibited by laws or policy.

ARTICLE III

DEFINITIONS

1. As used in this Agreement and in any implementing arrangements which provide specific procedures, the following definitions apply:

a. Logistic Support, Supplies and Services. Food, billeting, transportation, petroleum, oils, lubricants, clothing, communication services, medical services, ammunition, base operations support, (and construction incident to base operations support), storage services, use of facilities, operational training services (except training covered by NATO Standardization Agreement (STANAG) 6002), spare parts and components, repair and maintenance services, and airport and seaport services.

b. Implementing Arrangement. An implementing arrangement is a written supplementary agreement related to specific logistic support, supplies, services or events, which sets forth the additional details, terms and conditions which further define and carry out this Agreement.

c. Order. An order, when in its proper form and signed by an authorized official, per Article IV, paragraphs 2 and 3, is a request for the provision of specific logistic support, supplies or services pursuant to this Agreement and an applicable implementing arrangement, if any.

d. Invoice. Invoices are those documents from the supplying Party which request reimbursement or payment for specific logistic support, supplies and services rendered pursuant to this Agreement and the applicable implementing arrangement, if any.

e. United States European Command (USEUCOM) Component Commands. United States Army, Europe (USAREUR); United States Naval Forces, Europe (USNAVEUR); Fleet Marine Forces Europe (FMFEUR); and United States Air Forces in Europe (USAFE).

f. Major End Item. A final combination of significant end products and/or materials which is ready for its intended use, such as a ship, tank, mobile machine shop, aircraft or vehicle.

g. Supreme Headquarters Allied Powers Europe (SHAPE). The headquarters of the Supreme Allied Commander Europe.

ARTICLE IV

BASIC TERMS AND CONDITIONS

1. Each Party shall make its best efforts, consistent with national priorities, not only in peacetime but also in periods of emergency or active hostilities, to satisfy requests of the other Party under this Agreement for logistic support, supplies and services. When an implementing arrangement contains a stricter standard for satisfying such requests, it shall apply over this paragraph.

2. The Parties agree the transfer of logistic support, supplies and services between the Parties shall be accomplished by orders issued and accepted under this Agreement and any applicable implementing arrangements.

a. Orders shall be issued against this Agreement alone without an implementing arrangement only in cases set forth in Annex A.

b. Orders obligating both Parties funds shall be placed by authorized organizations of that Party in accordance with the laws and regulations of that Party and terms and conditions of this Agreement; obligations of both Parties are subject to availability of funds.

c. Implementing arrangements to this Agreement may be negotiated for the Parties by their Executive Agents or other officials designated by the Parties.

3. Whether the transfer is accomplished by orders under this Agreement alone or in conjunction with implementing arrangements, the documents taken together must set forth all necessary details, terms and conditions to carry out the transfer including the data elements in Annex B. The Parties shall endeavor to adopt a standard order form, which when agreed to by the Parties shall become an annex to this Agreement. Implementing arrangements shall generally identify those personnel authorized to issue and accept orders under the implementing arrangement(s). The Parties to this Agreement shall notify each other of specific

authorizations or limitations placed on organizations or personnel authorized to issue or accept orders pursuant to this Agreement or under an implementing arrangement. In the case of the United States, these notifications shall go directly to, and come from, the applicable USEUCOM Component Command or other organization/agency authorized by HQ USEUCOM to request logistic support in accordance with the terms of this Agreement. Notifications of requested logistic transfers involving non-USEUCOM military forces shall be forwarded to the United States Secretary of Defense or designated subordinate authorities. In the case of the SHAPE, these notifications shall go directly to: ACE Resources Division .

4. For any logistic support, supplies or services, the Parties may negotiate for payment either in cash in the currency specified by the supplying Party (a "reimbursable transaction"), payment in-kind (an "exchange transaction"), or payment in "equal value" to be defined only in monetary terms at the time the transaction is approved. Accordingly the receiving Party shall pay the supplying Party in conformance with paragraph 4a., 4b. or 4c. below.

a. Reimbursable Transaction. The supplying Party shall submit invoices to the receiving party after delivery or performance of the logistic support, supplies or services. Both Parties shall maintain records of all transactions, and the Parties shall provide for the liquidation of outstanding accounts not less frequently than quarterly. Bills should be accompanied by necessary support documentation and paid 30 days from the date prepared. Each party will price in accordance with its own regulations.

b. Exchange Transactions. Both Parties shall maintain records of all transactions, and the receiving Party shall pay the supplying Party in-kind by transferring to the supplying Party logistic support, supplies or services that are of equal value to the logistic support, supplies or services delivered or performed by the supplying Party and which are satisfactory to the supplying Party. If the receiving Party does not pay with logistic support, supplies or services of equal value within the terms of a replacement schedule, agreed to or in effect at the time of the original transaction with time frames which may not exceed one (1) year from the date of the original transaction, the transaction shall be deemed a reimbursable transaction and governed by paragraph 4a., except the price shall be established based upon the date the replacement was to take place.

c. Equal Value. The term "equal value" means logistic support, supplies or services defined in monetary terms using actual or estimated prices in effect at the time a transaction is approved. Both Parties shall maintain records of all transactions, and the receiving Party shall pay the supplying Party by transferring to the supplying Party logistic support, supplies or services that are equal in value to the logistic support, sup-

plies or services delivered or performed by the supplying Party and which are satisfactory to the supplying Party. If the receiving Party does not pay in "equal value" within the terms of an exchange schedule, agreed to or in effect at the time of the original transaction with time frames which may not exceed twelve (12) months from the date of the original transaction, the transaction shall be deemed a reimbursable transaction and governed by paragraph 4a.

5. When a definitive price is not agreed to in advance of an order, the order shall set forth a maximum limitation of liability for the requesting Party pending an agreement on a final price. The Parties shall promptly enter into negotiations to establish the final price.

ARTICLE V

INVOICES AND ACCESS TO RECORDS

1. All invoices shall reference this Agreement and the applicable implementing arrangement(s) and shall be in the format set forth by the supplying organization. The invoice shall be accompanied by evidence of receipt by the Party receiving the logistic support, supplies or services. All invoices shall reference the provisions of laws, governmental decisions, or policies which exempt the relevant transactions from taxes or duties. The supplying Party will submit all invoices under this Agreement directly to the receiving Party. Payments will be provided directly to the supplying Party.

2. Nothing herein shall serve as a basis for an increased charge for logistic support, supplies or services if such logistic support, supplies or services would be available without charge or at a lesser charge under the terms of another agreement.

3. In all transactions involving the transfer of logistic support, supplies or services, the receiving Party agrees such logistic support, supplies or services shall not be retransferred, either temporarily or permanently, by any means, to other than the forces of the receiving Party without prior written consent from the supplying Party.

ARTICLE VI

EXCLUDED CHARGES

1. Provisions of tax and customs relief agreements applicable to the acquisition of material, services, supplies and equipment by the receiving Party shall apply to logistic support, supplies and services transferred under this Agreement. The Parties assume mutual responsibility to exchange information on exemptions from tax, duties, fees and charges, which otherwise would have been

levied by the Government or by the National legislation of the Parties, especially in the context of the common NATO cause in terms of the transactions covered by this Agreement.

2. The mutual obligation for the exchange of information covers also any specific duty/tax arrangements (reduced charges, refund of tax and duties in lieu of direct exemption etc). Any implementing arrangement or other transaction referencing this Agreement will include the procedures required by the Parties to obtain exemptions or reductions and more specifically should include the following:

- a. Lead time for the submission of requests for exemption.
- b. Standardized formats if applicable.
- c. The competent authority to which the request should be submitted.
- d. Any documents that should be submitted with requests, such as invoices, detailed lists of items to be sold, certificates of services provided or certifications of projects accomplished, other applicable certificates, Powers of Attorney.

3. In the case where taxes or customs duties have already been paid by the supplying Party and cannot be recovered, the supplying Party shall advise the receiving Party prior to agreeing to the transaction. The receiving Party may, if possible, replace the supplies as an exchange transaction in lieu of reimbursement for the supplies. If replacement of equal value is not possible, the price paid by the receiving Party shall include the tax or customs duties not recoverable by the supplying Party.

ARTICLE VII

EXECUTIVE AGENTS

This Agreement shall be administered by Executive Agents. The Executive Agent for the US DOD is the United States European Command. The Executive Agent for the SHAPE is ACE Resources Division .

ARTICLE VIII

INTERPRETATION AND REVISION

1. Each Party agrees to make a good faith effort to resolve disagreements between the parties with respect to the interpretation or application of this Agreement. In the case of an implementing arrangement or transaction, the Parties shall make a good faith effort to resolve any disagreements with respect to interpretation or application of the arrangement or transaction. Resolution of all disagreements regarding the interpretation or

application of this Agreement or implementing arrangements shall be resolved through consultation between the Parties and shall not be referred to an international tribunal or third party for settlement.

2. Either Party may, at any time, request revision of this Agreement. In the event such a request is made, the two Parties shall promptly discuss the proposed revision. This Agreement may be amended by written agreement between the Parties.

ARTICLE IX

DURATION, TERMINATION, AND ENTRY INTO FORCE

1. This Agreement, which consists of a Preamble, Articles I - IX and Annexes A, B, and C shall enter into force on the date of the last signature affixed below and shall remain in force until terminated by the Parties, provided that it may be terminated by either Party upon 180 days written notice of its intention to do so to the other Party.

2. In witness whereof, the undersigned, being duly authorized by their respective Parties, have signed this Agreement in two (2) originals in the English language.


Done at Stuttgart-Vaihingen,
Germany

Done at SHAPE Casteau,
Belgium

13 JAN 1995

DATE:

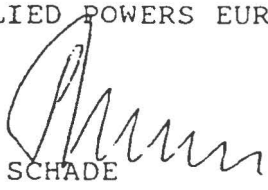
FOR THE DEPARTMENT OF DEFENSE
THE UNITED STATES OF AMERICA


PAUL J. VANDERPLOOG
Major General, U. S. Army
Director of Logistics and
Security Assistance

18 January 1995

DATE:

FOR THE SUPREME HEADQUARTERS
ALLIED POWERS EUROPE


W. SCHADE
Major General, GE A
Assistant Chief of Staff
ACE Resources Division

MUTUAL LOGISTIC SUPPORT
BETWEEN THE DEPARTMENT OF DEFENSE OF THE UNITED STATES
AND THE SUPREME HEADQUARTERS ALLIED POWERS EUROPE

ANNEX - A

1. Pursuant to Article IV, paragraph 2a., orders (without an implementing arrangement) may be issued against the Agreement alone in the following circumstances:

a. Orders placed during times of tension and active hostilities.

b. Orders for logistic support, supplies and services covered by both this Agreement and by a NATO standardization agreement (STANAG) (e.g., STANAG 1200, 2034, 2135, 3113 and 3381).

c. Orders for logistic support, supplies and services urgently required and not covered by an implementing arrangement, provided the Parties to the transaction (or designated representatives) agree.

2. However, if there is an applicable implementing arrangement, it may be used if desired.

MUTUAL LOGISTIC SUPPORT
BETWEEN THE DEPARTMENT OF DEFENSE OF THE UNITED STATES
AND THE SUPREME HEADQUARTERS ALLIED POWERS EUROPE

ANNEX - B

MINIMUM ESSENTIAL DATA ELEMENTS

- (1) Support Agreement or implementing arrangement, if any.
- (2) Date of order.
- (3) Country, ministry, department, or command to be billed.
- (4) Numerical listing of stock numbers of items, if any.
- (5) Quantity and description of material and/or services requested.
- (6) Quantity furnished.
- (7) Unit of measure/issue.
- (8) Unit price.
- (9) Quantity furnished (as at number 6), multiplied by unit price (as specified at number 8).
- (10) Currency of the billing country.
- (11) Total order amount expressed in currency of billing country.
- (12) Name (typed or printed) and signature and title of authorized ordering or requisitioning representative.
- (13) Payee to be designated on remittance.
- (14) Designation and address of office to which remittance is to be sent.
- (15) Recipient's signature acknowledging services or supplies received on the requisition, order or separate supplementary document.
- (16) Document number of order or requisition.
- (17) Receiving organization.
- (18) Issuing organization.
- (19) Transaction type.

- (20) Fund citation or certification of availability of funds when applicable under the Parties' procedures.
- (21) Date and place of original transfer and, in the case of an exchange transaction or equal value transaction, a replacement schedule including time and place of the replacement transfer.
- (22) Signature, name and title of authorized acceptance official.
- (23) Additional special requirements, if any, such as transportation, packaging, handling, etc.
- (24) Limitation of government liability.
- (25) Name, signature, date and title of official for the supplying party who actually issues logistic support, supplies or services.

MUTUAL LOGISTIC SUPPORT
BETWEEN THE DEPARTMENT OF DEFENCE OF THE UNITED STATES
AND THE SUPREME HEADQUARTERS ALLIED POWERS EUROPE

ANNEX - C

ACCEPTABLE TRANSACTION DOCUMENTS

Form DD 1155, ORDER FOR SUPPLIES OR SERVICES (attached)

ACE form 97, PURCHASE ORDER (attached)

ORDER FOR SUPPLIES OR SERVICES

(Contractor must submit four copies of invoice.)

Form Approved
OMB No. 0704-0187
Expires Aug 31, 1992

PAGE 1 OF

Public reporting burden for this collection of information is estimated to average 1 hour per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to Department of Defense, Washington Headquarters Services, Directorate for Information Operations and Reports, 1215 Jefferson Davis Highway, Suite 1204, Arlington, VA 22202-4302, and to the Office of Management and Budget, Paperwork Reduction Project (0704-0187), Washington, DC 20503.

**PLEASE DO NOT RETURN YOUR FORM TO EITHER OF THESE ADDRESSES.
SEND YOUR COMPLETED FORM TO THE PROCUREMENT OFFICIAL IDENTIFIED IN ITEM 6.**

1. CONTRACT / PURCH ORDER NO.		2. DELIVERY ORDER NO.		3. DATE OF ORDER (YYMMDD) 940704		4. REQUISITION / PURCH REQUEST NO.		5. PRIORITY	
6. ISSUED BY CODE				7. ADMINISTERED BY (If other than 6) CODE				8. DELIVERY FOB <input type="checkbox"/> DEST <input type="checkbox"/> OTHER (See Schedule if oth.	
9. CONTRACTOR NAME AND ADDRESS CODE				FACILITY CODE		10. DELIVER TO FOB POINT BY (YYMMDD)		11. MARK IF BUSINESS <input type="checkbox"/> SMALL <input type="checkbox"/> SMALL DISAD VANTAGED <input type="checkbox"/> WOMEN-OWN	
12. DISCOUNT TERMS				13. MAIL INVOICES TO					
14. SHIP TO CODE				15. PAYMENT WILL BE MADE BY CODE					
MARK ALL PACKAGES AN PAPERS WITH CONTRACT O: ORDER NUMBE									

16. DELIVERY		This delivery order is issued on another Government agency or in accordance with and subject to terms and conditions of above numbered contract.							
16. TYPE OF ORDER		Reference your							
		lurnish the following on terms specified her							
		ACCEPTANCE. THE CONTRACTOR HEREBY ACCEPTS THE OFFER REPRESENTED BY THE NUMBERED PURCHASE ORDER AS IT MAY PREVIOUSLY HAVE BEEN OR IS N MODIFIED. SUBJECT TO ALL OF THE TERMS AND CONDITIONS SET FORTH, AND AGREES TO PERFORM THE SAME.							

NAME OF CONTRACTOR		SIGNATURE		TYPED NAME AND TITLE		DATE SIGNED (YYMMDD)	
If this box is marked, supplier must sign Acceptance and return the following number of copies:							
ACCOUNTING AND APPROPRIATION DATA / LOCAL USE							

18. ITEM NO.	19. SCHEDULE OF SUPPLIES / SERVICE	20. QUANTITY ORDERED / ACCEPTED *	21. UNIT	22. UNIT PRICE	23. AMOUNT
<p>*If quantity accepted by the Government is same as quantity ordered, indicate by X. If different, enter actual quantity accepted below quantity ordered and encircle.</p>					
24. UNITED STATES OF AMERICA		25. TOTAL			
BY:		29. DIFFERENCES			
26. QUANTITY IN COLUMN 20 HAS BEEN <input type="checkbox"/> INSPECTED <input type="checkbox"/> RECEIVED <input type="checkbox"/> ACCEPTED, AND CONFORMS TO THE CONTRACT EXCEPT AS NOTED		27. SHIP. NO. <input type="checkbox"/> PARTIAL <input type="checkbox"/> FINAL		28. D.O. VOUCHER NO.	
DATE		31. PAYMENT <input type="checkbox"/> COMPLETE <input type="checkbox"/> PARTIAL <input type="checkbox"/> FINAL		30. INITIALS	
36. I certify this account is correct and proper for payment.		32. PAID BY		33. AMOUNT VERIFIED CORRECT F	
DATE		SIGNATURE AND TITLE OF CERTIFYING OFFICER		34. CHECK NUMBER	
37. RECEIVED AT		38. RECEIVED BY (Print)		35. BILL OF LADING NO	
39. DATE RECEIVED (YYMMDD)		40. TOTAL CONTAINERS		41. S/R ACCOUNT NUMBER	
				42. S/R VOUCHER NO	

SUPREME HEADQUARTERS ALLIED POWERS EUROPE

7010 SHAPE - BELGIUM - TELEPHONE (065) 44 50 00

PURCHASE ORDER - BON DE COMMANDE

Issuing Office Bureau d'émission		Date of order Date de la commande		Order No. Commande N°	
Delivery address Adresse de livraison		PR. N°		Page 1/	
		Supplier Fournisseur			
Time of delivery Délai de livraison					
Terms of delivery Conditions de livraison					
Terms of payment Conditions de paiement		Supplier's acceptance of this order Accord du fournisseur			
		Date		Stamp and signature - Cachet et signature	

Item No. d'Ordre	Supplies or services Fournitures ou travaux	Quantity Quantité demandée	Unit. Unité	Unit price Prix unitaire	Amount Prix global	Quantity accepted Quantité acceptée

If the original amount of this contract exceeds 251.000 FB or equivalent, or if it is subsequently raised due to modifications, the validity of the contract will be contingent upon the countersignature of the Controller.

La validité du contrat, si son montant original est supérieur à 251.000 FB (ou somme équivalente) ou s'il devait le devenir du fait de modifications ultérieures, est subordonnée au contre-seing du Contrôleur.

Grand Total
Total Général

Controller

Contracting Officer

Commitment N°

C

INSTRUCTIONS FOR SUPPLIER

- Unless otherwise stated in the contract the General Provisions printed at the back of this contract remain in full force.
- If copy No 2 is attached it must be signed by an official of your firm in the space marked "Supplier's Acceptance" and returned immediately to the Issuing Office.
- Submit invoices in quadruplicate and give the following information thereon: Number of the order, the contract (if any) and the item; description of supplies or services, sizes, quantities, prices, etc. For partial payments submit invoices in quadruplicate marked "Partial Payment" No 1, No 2, etc.
For U.K. Firms, indicate:
"RELIEF FROM UNITED KINGDOM VALUE ADDED TAX"
I hereby certify that the goods and/or services covered by this order are being purchased for official use by the North Atlantic Treaty Organisation and may be installed free of VAT in accordance with the agreement with the United Kingdom Customs and under reference PRIV 59/16
- When submitting invoices please indicate:
Name of Bank, Branch address, Bank or Postal Account number

INSTRUCTIONS POUR LE FOURNISSEUR

- Les Conditions Générales imprimées au verso de ce contrat sont d'application sauf stipulation contraire dans le contrat.
- Quand l'exemplaire No 2 est joint il doit être signé par un représentant qualifié de votre entreprise dans la case désignée sous le titre "Accord du fournisseur" et immédiatement renvoyé au bureau d'émission.
- Présentez vos factures en quatre exemplaires avec les indications suivantes:
EXONÉRATION DE LA TVA, Article 42, § 3.3° du code; circulaire n° 2/1978 et/ou exemption des droits d'accises/accises spéciaux DL 1/76 979 du 4/10/83.
La facture indiquera:
Numéro de la commande, du contrat (le cas échéant), de l'article, désignation des fournitures ou services, dimensions, quantités, prix, etc. Pour les paiements partiels présentez vos factures en quatre exemplaires avec la mention "Paiement Partiel" N°1, N°2, etc. Le fournisseur est tenu de se conformer aux prescriptions fiscales. Production d'une déclaration d'exportation si la valeur excède 10.000 francs belges.
- Lors de l'envoi de vos factures, prière d'indiquer
Nom de la banque, adresse de l'agence, numéro du compte, bancaire ou postal

1. DISPUTES

a. Except as otherwise provided in this contract, any disputes arising in connection with the performance thereof which cannot be settled by agreement shall be submitted in writing by the contractor to the Contracting Officer. The latter shall inform the contractor of his decision in writing within thirty (30) days.

b. In the event of disagreement, the dispute will be submitted to the Belgian jurisdiction. The latter court will have jurisdiction at all instances.

c. In all cases, the contractor shall proceed diligently with the performance of this contract in accordance with the decisions of the Contracting Officer.

2. TERMINATION FOR DEFAULT. — a. If the Contractor

1) Fails to make delivery of the supplies or to perform the services within the time specified herein or any extension thereof;

2) Does not cure such failure within a period of 10 days (or such longer period as the Contracting Officer may authorize in writing) after receipt of notice from the Contracting Officer specifying such failure;

the Contracting Officer may, subject to the provisions of paragraph b. below, by written Notice of Default to the Contractor:

1) Terminate the whole or any part of the contract when its amounts have been officially estimated as likely to be less than 500,000 BF or equivalent;

2) Decide to apply the penalty clause when such clause has been inserted in the contract.

b. The Contractor shall not be liable for any excess costs if any failure to perform the contract arises out of causes beyond the control and without the fault or negligence of the Contractor. SHAPIE will be informed of the occurrence (and of the termination) of such causes as promptly as possible.

c. In the event the Contracting Officer terminates this contract in whole or in part as provided in paragraph a. of this clause, the Contracting Officer may procure supplies or services similar to those so terminated, in compliance with the rules and procedures established by the Headquarters and the Contractor shall be liable for any excess costs for such similar supplies or services. In such cases the Headquarters shall pay to the Contractor the contract price for completed supplies or services delivered and accepted less the excess costs if any as stated above. Failure to agree shall be a dispute concerning the clause of this contract entitled "Disputes".

d. If, after notice of termination of this contract under the provisions of paragraph a. of this clause, it is determined that the failure to perform this contract is due to causes beyond the control and without the fault or negligence of the Contractor pursuant to the provisions of paragraph b. of this clause, such Notice of Default shall be deemed to have been issued pursuant to the clause of this contract entitled "Termination for Convenience", and the rights and obligations for the parties hereto shall in such event be governed by such clause.

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

4. MATERIALS AND WORKMANSHIP. — Unless otherwise specifically provided for in the specifications, all equipment, materials and articles incorporated in the work covered by this contract are to be new and of the most suitable grade of their respective kinds for the purpose and all workmanship shall be first class. Where equipment, materials, or articles are referred to in the specifications as "equal to" any particular standard, the Contracting Officer shall decide the question of equality. The Contractor shall furnish to the contracting officer for his approval the name of the manufacturer of machinery, mechanical and other equipment which he contemplates incorporating in the work together with their performance capacities and other pertinent information. When required by the specification, or when called for by the Contracting Officer, the contractor shall furnish the Contracting Officer for approval full information concerning the materials or articles which he contemplates incorporating in the work. Samples of materials shall be submitted for approval when so directed. Machinery, equipment, materials, and articles, installed or used without such approval, shall be at the risk of subsequent rejection. The Contracting Officer may, in writing, require the Contractor to remove from the work such employees as the Contracting Officer deems incompetent, careless, irresponsible or otherwise objectionable, or whose continued employment on the work is contrary to the interest of the Headquarters.

5. INCONSISTENCY BETWEEN THE ENGLISH VERSION AND TRANSLATION OF CONTRACT. — In the event of inconsistency between any terms of this contract and translation thereof into another language, the English language version shall control.

1. LITIGES

a. Sauf s'il en est disposé autrement, dans le présent contrat, tous les litiges survenant dans le cadre de l'exécution de ce contrat qui n'auront pas été résolus à l'amiable, seront soumis par écrit par adjudicataire à l'Officier des Achats et Marchés. Ce dernier informera sa décision par écrit l'adjudicataire dans un délai de trente (30) jours.

b. En cas de désaccord le litige sera soumis à la juridiction belge. Les tribunaux de Mons seront les seuls compétents.

c. Dans tous les cas, l'adjudicataire poursuivra avec diligence l'exécution du contrat conformément aux décisions de l'Officier des Achats et Marchés.

2. RESILIATION POUR DEFAILLANCE. — a. Au cas où il serait relevé à l'encontre de l'adjudicataire les éléments de défaillance suivants:

1) Défaut de livraison des fournitures ou d'exécution des services aux délais spécifiés ou présent document ou dans toute prolongation de ces délais;

2) Défaut de correction d'une telle carence dans les 10 jours (ou dans telle période plus longue que l'Officier des Achats et Marchés peut accorder par écrit) de la réception d'une note émanant de l'Officier des Achats et Marchés et spécifiant une telle carence;

l'Officier des Achats et Marchés aura la faculté de prendre les décisions suivantes, sous réserve des dispositions du paragraphe b. ci-dessous, en communiquant par écrit à l'adjudicataire une notification de carence:

1) Résilier la totalité du contrat ou une partie seulement de celui-ci lorsque son montant a été officiellement évalué comme devant probablement être inférieur à 500.000 FB ou à une somme équivalente;

2) Décider d'appliquer la clause de pénalité lorsque une telle clause aura été insérée au contrat.

b. L'adjudicataire ne sera pas tenu pour responsable de dépenses supplémentaires si un défaut quelconque d'exécution du contrat résulte de causes échappant au contrôle du dit adjudicataire ou ne provient ni d'une faute ni d'une négligence de sa part. Le SHAPIE sera informé dans les plus brefs délais possibles de l'occurrence (et de la disparition) de causes semblables.

c. Au cas où l'Officier des Achats et Marchés résiliera le présent contrat en totalité ou en partie, conformément aux dispositions du paragraphe a. de la présente clause, ledit Officier aura le droit de se procurer des fournitures ou des prestations de service semblables à celles ainsi frappées de résiliation, conformément aux règles et procédures établies par le quartier général, et l'adjudicataire sera responsable de toutes dépenses supplémentaires engendrées par l'obtention de fournitures ou prestations de service semblables. En de telles éventualités, le quartier général paiera à l'adjudicataire la contrepartie fixée au contrat pour les fournitures effectuées et pour les prestations de service accomplies et dûment acceptées, avec retenue des dépenses supplémentaires s'il s'en est produit, comme dit plus haut. En cas de différend à ce sujet, cette divergence de vue sera considérée comme sujette à l'application de la clause au présent contrat intitulée "Litiges".

d. Si, après notification de résiliation de ce contrat, effectuée conformément aux dispositions du paragraphe a. de cette clause, il est établi que le défaut d'exécution du contrat résulte de causes échappant au contrôle de l'adjudicataire ou ne provient ni d'une faute ni d'une négligence de sa part, telles qu'elles sont prévues au paragraphe b. de la présente clause, une telle notification de carence sera considérée comme ayant été rédigée en erreur et la clause au présent contrat intitulée "Résiliation à la convenance du Q.G.", dans ce cas les droits et obligations des parties au présent contrat seront régis par les termes de cette clause.

3. RESILIATION A LA CONVENANCE DU Q.G. — Il peut être mis fin à l'exécution du présent contrat dans tous les cas où l'Officier des Achats et Marchés aura établi qu'une telle action est nécessaire. L'adjudicataire recevra notification écrite, par lettre recommandée, trente (30) jours au moins avant la date de résiliation, à laquelle le contrat sera "ipso facto" annulé. L'adjudicataire soumettra immédiatement toutes ses factures non encore payées, relatives à des fournitures ou à des prestations de service effectuées et acceptées avant la date de résiliation, aux fins de règlement.

4. MATERIAUX ET QUALITES DU TRAVAIL. — Sauf mention contraire expresse dans les spécifications, tous les matériaux, machines et articles incorporés dans les travaux prévus aux termes de ce marché doivent être neufs et de la qualité la plus adéquate dans leurs genres respectifs pour leur utilisation, et la qualité du travail devra être de première classe. Lorsque le matériel, les matériaux ou les articles sont portés dans les spécifications comme devant être "équivalents à" une norme particulière quelconque, l'Officier des Achats et Marchés décidera de l'équivalence. Le fournisseur devra soumettre à l'Officier des Achats et Marchés, pour approbation, le nom du fabricant des machines, du matériel mécanique et autres qu'il envisage d'utiliser dans ses travaux, ainsi que les performances de fonctionnement et toute autre documentation utile. Lorsque les spécifications l'exigent, ou sur la demande de l'Officier des Achats et Marchés, le fournisseur remettra à l'Officier des Achats et Marchés, pour approbation, toute la documentation concernant les matériaux ou articles qu'il envisage d'utiliser dans ses travaux. Des échantillons des matériaux seront soumis pour approbation sur demande. Les machines, matériels, matériaux et articles installés ou utilisés sans avoir reçu cette approbation entraîneront le risque d'un rejet ultérieur. L'Officier des Achats et Marchés peut, par écrit, demander au fournisseur de retirer du chantier les ouvriers que l'Officier des Achats et Marchés juge incompetents, négligents, indisciplinés ou incapables pour toute autre raison similaire ou dont le maintien de la présence sur le chantier est jugé contraire aux intérêts du Quartier Général par l'Officier des Achats et Marchés.

5. DIVERGENCES ENTRE LA VERSION ANGLAISE ET LA TRADUCTION DU CONTRAT. — Dans le cas de divergences entre des termes quelconques de ce contrat et leur traduction dans une autre langue, la version anglaise du contrat sera la version définitive.