



**BRAZILIAN ARMY COMMISSION**  
4632 Wisconsin Avenue N.W., Washington, D.C. 20016-4622  
Phone: (202) 244-5010 Fax: (202) 895-6395

**PURCHASE ORDER**

01. Contract Number: 1013/2015	02. Date: September 10, 2015
03. Firm (EX1605102)  Nexans Norway AS Innspurten 9 Oslo, 0663 - Norway Tel: +47 22886100  Contact Name: Merete Caubet Title/Position: Sales Manager E-Mail: merete.caubet@nexans.com Fax: Mob: +47 41424294	
04. Request for Quotation Number RFQ-0027/2015	05. Seller's Quotation Quotation No. 15-040 TMS11-03, dated Aug 07, 2015
06. Condition of Price CIF Port of Manaus, AM - Brazil	07. Delivery Dates 1st Partial - Factory Acceptance Test by December 05, 2015. 2nd and Last Partial - Material Delivery on January 05, 2016.
08. Terms of Payment a. Letter of Credit b. Partial payment permitted	09. Documents for Payment See instructions in Clause 10 and 12 of the enclosed Terms & Conditions.
10. Marking, Delivery Address, and Final Consignee  BA AP LOG EX/DIEM - (CNPJ: 00.394.452/0475-92) Av. Brasil, 25540 - Vila Militar - Deodoro Rio de Janeiro, RJ 21615-331-Brazil Tel: 55-21-2457-4302 - Fax: 55-21-2457-4918 PC Nr 1013/2015 OMD: 4° C T A  DELIVERY PLACE: PORT OF MANAUS, AM - BRAZIL	
11. Shipping Instructions See Instructions in Clauses 6, 9, 10 and 11 of the enclosed Terms & Conditions.	
We are ordering the following for the Brazilian Army Commission (BAC). Both, the above firm (hereinafter called the SELLER), and the BAC (hereinafter called the BUYER) agree to the terms and conditions as set forth in the attached TERMS and CONDITIONS. Please return the signed Contract and Acknowledgement within 10 business days.	

12. List of Items					
Item	Part Number, NSN and Description	Unit	Quantity	Unit Price - USD	Total Price - USD
1	PN: SUBMARINE OPTICAL CABLE-24 fibers G.652 standard. 0,21 dB/km max attenuation submarine optical cable, double armored or single armored (preferred) with minimum NTTS of 150 kN and maximum copper tube ohmic resistance of 7 ohms/km. Cable shall be already fully qualified for universal quick jointing. Cable shall be supplied in continuous sections of at least 70 km BAC Ref. DCT-046/2015, Item No: 1	m	220000	5,2200	1,148,400.00
2	PN: UNIVERSAL QUICK JOINT - Qualified joint by the Universal Consortium fully compatible with the submarine cable type	UN	7	7,332.0000	51,324.00

# BRAZILIAN ARMY COMMISSION

Firm: Nexans Norway AS	Contract Nr.: 1013/2015	Date: Sep 10, 2015
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## 12. List of Items

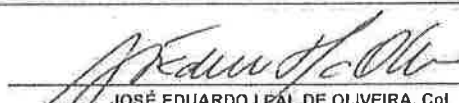
Item	Part Number, NSN and Description	Unit	Quantity	Unit Price - USD	Total Price - USD
	BAC Ref. DCT-046/2015, Item No: 2				
3	PN: LAND OPTICAL CABLE - 24 fibers G.652 standard. 0,21 dB/km max attenuation land cable for ducts or aerial installation. ELECTRICAL CONTINUITY CABLE - Electrical cable with one or more flexible conductors, with total ohmic resistance lower than 57 ohms/km and electrical insulation of 1KV. Suitable for duct or aerial installation. BAC Ref. DCT-046/2015, Item No: 3	m	5000	4.1800	20,900.00
4	PN: Packaging and Handling (special items for packaging and handling of items 1 to 3 above). BAC Ref. DCT-046/2015, Item No: 4	UN	1	144,000.0000	144,000.00

<b>TOTAL ITEMS IN THIS CONTRACT: 4</b>	<b>SUB-TOTAL</b>	<b>1,364,624.00</b>
	<b>Discount</b>	<b>0.00</b>
	<b>Estimated Freight/Delivery Charges</b>	<b>393,751.00</b>
	<b>Estimated Insurance Charges</b>	<b>included</b>
	<b>TOTAL AMOUNT</b>	<b>1,758,375.00</b>

Notes:  
Cargo Insurance is included in the CIF Port of Manaus transportation price.

## Points of Contact

Contract Issuance in the USA	Request Issuance in Brazil
Edgar Borges Tel: 202 895-6272 Email: edgar@cebw.org	3° Sgt Carlos Tel: 860-7964 / 3415-7964 Email: carlos@citex.eb.mil.br
Contract Follow-up in the USA	Contract Follow-up in Brazil
Mirela Lima Tel: 202 895-6262 Email: mirela@cebw.org	Cap Luciano Sales Tel: (061) 3415-7906 Email: lucianosales@citex.eb.mil.br

  
JOSÉ EDUARDO LEAL DE OLIVEIRA, Col  
Chief, Brazilian Army Commission

  
KRISTER GRANLIE  
Executive VP, Nexans Norway AS

## For Use of the Brazilian Army Commission Only

Processo Administrativo Nr. 0027/2015 - CEBW		
QI-DCT-046/2015-DCT/C I T E X		
Lei Nr. 10520/02		
Modalidade de Licitação: 8 - Pregão Eletrônico		
Contrato de Câmbio/ROF	Data:	Tipo:



**MINISTRY OF DEFENSE  
BRAZILIAN ARMY  
BRAZILIAN ARMY COMMISSION IN WASHINGTON**

**CONTRACT 1013/2015  
Terms and Conditions**

**BUYER:** GOVERNMENT OF THE FEDERATIVE REPUBLIC OF BRAZIL  
through the BRAZILIAN ARMY COMMISSION

**SELLER:** NEXANS NORWAY AS

**OBJECT:** SUBMARINE OPTICAL CABLES

**VALUE OF THE CONTRACT:** US\$ 1,758,375.00

The Government of the Federative Republic of Brazil, acting through its Ministry of Defense and the Brazilian Army Commission in Washington (BAC), located at 4632 Wisconsin Avenue, NW - 20016 Washington, DC - USA is herein referred to as the **BUYER**.

NEXANS NORWAY AS, registered in Norway, is herein referred to as the **SELLER**.

The Object of this Contract, **Submarine Optical Cables**, is collectively herein referred to as **Defense Materiel** or **Materiel**; individual components of the Object of this Contract are herein referred to as **item(s)**.

WHEREAS the **BUYER** wishes to buy, and the **SELLER** wishes to sell the Object of this Contract on the terms and conditions set forth herein; and

WHEREAS the **SELLER** acknowledges that the **BUYER** needs the Defense Materiel for use in missions and operations by the Brazilian Army, for which is necessary its reliable operation; and

WHEREAS the **SELLER** represents that its equipment could meet the **BUYER's** needs, resulting in the **BUYER's** selection of the **SELLER** to be its supplier of the Defense Materiel, and its reliance on the **SELLER's** recommendation of the **Submarine Optical Cables** that the **SELLER** sells hereunder;

THEREFORE, the **BUYER** and the **SELLER** hereby agree to the execution of this Contract and the full and faithful performance of the terms and conditions herein.

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## CLAUSE 1 - OBJECT

The purpose of this Contract is to acquire newly-manufactured *Submarine Optical Cables*, in accordance with *Nexan's Proposal Number 15-040 of August 07, 2015*, Annex A of this Contract. This Contract will come into force on the latest date when all of the following events have occurred:

- a) Signature of the Contract by both the **SELLER** and the **BUYER**
- b) Receipt of the Financial Guarantee (Performance Bond) specified in Clause 11 by the **BUYER**

## CLAUSE 2 – CONFIDENTIALITY

- 2.1 - This Contract, as well as any information related to it provided by the **BUYER** to the **SELLER**, shall be treated by the **SELLER** as confidential. The **SELLER** shall take all reasonable measures to prevent the disclosure of any information related to this Contract to any third party.

## CLAUSE 3 – CONTRACT FORMATION AND REFERENCE NUMBERS

- 3.1 - After reviewing the **SELLER's** quotation, the **BUYER** has signed this Contract and sent a copy of it to the **SELLER** by email, thereby expressing the **BUYER's** offer to purchase certain item(s) from the **SELLER** in accordance solely with the terms and conditions herein. To accept this Contract, the **SELLER** shall make a timely acceptance by having one of its authorized officers sign this Contract without making any changes to it and returning the duly-signed Contract to the **BUYER** by email and/or mail (as requested by the **BUYER**) within ten business days. Should the **SELLER** fail to sign the Contract within ten business days, no Contract exists between the parties, unless the **BUYER** waives the **SELLER's** late signature of the Contract.
- 3.2 - If the **SELLER** wishes to change any of the terms and conditions of this Contract as a condition of the **SELLER's** agreement to the Contract, then the **SELLER** shall send to the **BUYER**, by email, a request which includes (i) the text of any provisions it proposes to be added to this Contract; and/or (ii) any text it proposes to be deleted from this Contract. The **BUYER** and the **SELLER** may then negotiate whether any of the proposed changes will be incorporated into this Contract. Even with the **BUYER's** agreement to any proposed changes, no Contract will exist between the **BUYER** and the **SELLER** until the signatures of both parties are affixed to this Contract.
- 3.3 - Once signed by both the **BUYER** and the **SELLER**, this Contract will remain legally binding until July 30, 2018, except in the case of Force Majeure where Clause 17 will apply.
- 3.4 - All documents pertaining to this Contract (such as invoices, packing lists, or any other correspondence) must contain the Contract number. The Contract number must also be included on any and all Ocean Bills of Lading, whenever possible.

## CLAUSE 4 – VALUE OF CONTRACT

- 4.1 - The maximum value of this Contract is **US\$ 1,758,375.00 (one million, seven hundred fifty-eight thousand, three hundred seventy-five US Dollars)**, of which:
  - a) The price for the Defense Materiel is firm and fixed at **US\$ 1,220,624.00**.
  - b) The price for the *Packing and Handling* is firm and fixed at **US\$ 144,000.00**

- c) The estimated maximum value of the delivery expenses is estimated at **US\$ 393,751.00**. The **BUYER** will pay **only the actual costs** as listed in the corroborating documents from the freight forwarder, carrier, insurance company, etc., which cannot exceed the above estimate. This estimated maximum value for delivery expenses includes 15% service charge for Nexan's delivery management.
- d) **INCOTERMS: CIF Port of Manaus, AM - Brazil**, as defined by INCOTERMS 2010, ICC Publication N° 715E.
- e) The maximum value of the Contract is for the full performance by the **SELLER** of all of its contractual obligations herein, including: the cost of the items ordered in this Contract, packaging, packing, handling, freight, cargo insurance, storage, taxes due in the country of origin and any country other than Brazil, terminal and cargo unloading charges in Brazil and any other applicable expenses incurred during delivery, and post delivery obligations, such as provision of spares and technical assistance.

4.2 - Item prices must be exempt from sales taxes, as the Defense Materiel is to be exported to Brazil.

4.3 - The Defense Materiel purchased under this Contract is exempt from the Industrialized Products Tax (Imposto de Produtos Industrializados - IPI) and Import Tax (Imposto de Importação - II), as per the terms of Art. 2, Section I and Art. 3, Section I of Brazilian Law N° 8.032, dated April 12, 1990; and Art. 1, Section VII of Brazilian Law N° 8.402, dated January 8, 1992.

4.4 - The **BUYER** has the right to increase or decrease the amount of Defense Materiel requested in the Contract at any time, so long as the value of that increase or decrease does not exceed 25% (twenty-five percent) of the original maximum Contract value. For any such increase, the **SELLER** shall maintain the same unit price for each item as noted in Item 12 – List of Items in the Purchase Order. Any changes in obligations or requirements as a result of an increase or decrease in Defense Materiel will take the form of an Amendment, following the procedures in Clause 13 – Amendments; otherwise, all obligations and requirements will remain as elaborated in this Contract.

#### **CLAUSE 5 - ORIGIN OF FUNDS**

5.1 - The financial resources for the acquisition of the Object of this Contract will be provided through credits allocated to the Brazilian Army by the Brazilian Ministry of Defense.

5.2 - The expenses for the execution of this Contract will be settled with resources from Project 2000 – Army Unity Administration, Nature of Expenses 44.90.30 and 44.90.39 – Acquisition of Submarine Optical Cables and Services.

#### **CLAUSE 6 - TAXES, DUES, FEES, INSURANCE AND FREIGHT**

6.1 - All taxes, duties, fees and any other expenses related to the execution of this Contract in the country of the **SELLER** will be at the expense of the **SELLER**.

6.2 - All taxes, dues and fees related to the execution of this Contract in Brazil will be at the expense of the **SELLER**.

6.3 - As per CIF - INCOTERMS 2010, the **SELLER** is also responsible for covering all expenses related to inland freight, loading the cargo in Norway, international freight charges and insurance premiums during transportation to the Port of Manaus.

6.4- The **SELLER** shall obtain an insurance policy in the amount of 110% (one hundred and ten percent) of the maximum Contract value, which shall cover "All Risks", as per INCOTERMS 2010, issued in favor of the Brazilian Army Commission. **SELLER's** group has an overall umbrella - All Risk Transport Insurance Policy - and will provide an Insurance Certificate in favor of the **BUYER**.

6.5- The **SELLER** shall bear all risks of loss or damage to the Defense Materiel shipped, as well as its packaging and packing until its arrival at Port of Manaus, AM, Brazil; then the risk of loss shall be determined in accordance with INCOTERMS 2010 as long as it does not conflict with any other provision, clause or sentence of this Contract.

6.6- In the event of any conflict, the terms of this Contract shall prevail over any contrary provision in INCOTERMS 2010.

#### **CLAUSE 7 - ASSURANCE OF QUALITY CONTROL**

7.1- The **SELLER** shall execute its work in fulfillment of this Contract in accordance to its quality control manual, the International ISO 9001 standard, and the ETSI (European Telecommunications Standards Institute) standard. Upon the **BUYER's** request, the **SELLER** shall present to the **BUYER** a copy of its certificates/qualifications, as well as its quality control manual.

#### **CLAUSE 8 – BENEFITS TO BRAZILIAN ARMY PERSONNEL**

8.1- The **SELLER** warrants that it has not and will not pay, and has not and will not give any promise, service, or thing of value to any Brazilian military organization or personnel for the purpose of helping the **SELLER** obtain this Contract or perform its obligations required under this Contract. The **SELLER** further warrants that it does not employ any Brazilian military personnel or extended family members of Brazilian military personnel and their spouse (children, parents, grandparents, uncles, aunts, first cousins), and that those personnel and their immediate family members do not sell or promote any of the **SELLER's** Products or serve as an agent or shareholder of the **SELLER**.

8.2- For the purposes of this Clause 8, "Brazilian military personnel" means any member of the Brazilian Armed Forces currently serving or who has retired 2 (two) years prior to the effective date of this Contract.

#### **CLAUSE 9 – IMPORT AND EXPORT LICENSES**

9.1- All Materiel for this Contract is exempt from a Brazilian import license in accordance with Brazilian law Nº 4731 of July 14, 1965.

9.2- The **SELLER** is obligated to inform the **BUYER** whether any Materiel is subject to an export license; the **SELLER** shall also provide the **BUYER** with the Export Control Commodity Number (ECCN) the commodities code, and the PDR (for computer materials). Any items subject to an export license cannot be sent to the address indicated in Block 10 (Marking, Delivery Address and Final Consignee) of the Purchase Order until an export license has been granted. The **SELLER**



shall send all items not subject to an export license to the designated address in Block 10, along with a declaration by the **SELLER** stating that those items do not require an export license.

9.3 - The **SELLER** is responsible to apply for any export licenses. Should the **SELLER** be in error as to whether or not any item requires an export license, the **SELLER** shall be responsible for paying any fines incurred for the unlicensed export of the Defense Materiel.

9.4 - If necessary, the **BUYER** will provide the **SELLER** with an End-User Certificate for the purpose of obtaining an export license. **SELLER** will, if necessary, undertake to file an application for export license with the Ministry of Foreign Affairs.

9.5 - All the Defense Materiel purchased hereunder must be shipped to Brazil from Norway. If a shipment of the Defense Materiel is transshipped through any other country, or transported by any means or route that would require export or re-export permits, licenses, or other approvals from any governments other than that of Norway, it will be the sole responsibility of the **SELLER** to acquire the necessary documentation and permits. The **SELLER** is under no liability if the export license from the Government of Norway is refused, or is withdrawn, provided that the refusal or withdrawal occurs prior to shipment. Should the Government of Norway refuse or withdraw the export license, this Contract will be deemed rescinded and neither party is under any obligation to the other, except in regards to Clause 17 – Force Majeure.

9.6 - Should the Government of Norway withdraw the export license after shipment, the parties agree that the withdrawal would prevent the **BUYER** from the full use of the Defense Materiel as intended herein, and that a partial delivery of the Defense Materiel would constitute a breach of the terms and conditions of this Contract. In that event, the **BUYER** is entitled to return all the Defense Materiel received back to the **SELLER**, who shall send a full refund to the **BUYER** within 15 (fifteen) days of the return of the Defense Materiel. This refund must include all costs associated with the packing, packaging, and shipment of the Defense Materiel to Brazil. The withdrawal of an export license by the Government of Norway after shipment of the Materiel does *not* qualify as an event of Force Majeure, unless the withdrawal was precipitated by an event outlined in Clause 17 – Force Majeure.

9.7 - Compliance with the agreed delivery schedule is contingent upon the **SELLER**'s timely acquisition of all necessary permits, authorizations, and licenses. The **SELLER** shall exert reasonable effort to obtain necessary permits, authorizations, and licenses as early as possible. The **BUYER** shall promptly deliver to the **SELLER** any supporting documentation related to the delivery schedule when requested to do so by the **SELLER**.

## **CLAUSE 10 – SHIPPING DOCUMENTATION**

10.1 - In order to comply with Brazilian law, the **SELLER** shall send the following to [procurement@cebw.org](mailto:procurement@cebw.org), at least 15 (fifteen) days prior to shipment:

a) Commercial invoice or pro forma invoice (1 copy)

10.2 - Brazilian law requires that the **BUYER**'s receiving agent in Brazil expeditiously present certain documents to Brazilian customs. In order to assist in this process, the **SELLER** shall send a copy of all listed documents to [procurement@cebw.org](mailto:procurement@cebw.org). The **SELLER** shall send the original versions of these documents via express mail to the Brazilian Army Commission **within 72 (seventy-two) hours of the shipment of the Defense Materiel**: **SELLER** understands this to mean that the documents shall be sent from **SELLER** within 72 hours of the shipment of the Defense Material.

- a) **COMMERCIAL INVOICE:** The **SELLER's** invoice must conform strictly to this Contract and amendments hereto and include the following: Contract number, corresponding item number in the Purchase Order, part numbers, item description as written in the Purchase Order, quantity shipped, unit prices, and total price (original + 2 copies)
- b) **PACKING LIST** (original + 2 copies)
- c) **INVOICE FOR DELIVERY CHARGES:** The **SELLER's** invoice showing actual delivery charges may not exceed the estimated amount of **US\$ 393,751.00** shown in this Contract. The **BUYER** shall **pay only the actual costs**, which cannot exceed the above estimate. The **SELLER** shall attach the corroborating documents from the freight forwarder, carrier, and insurance company for each delivery. This estimated maximum value for delivery expenses includes 15% service charge for NEXAN's delivery management. (original + 2 copies)
- d) **CLEAN ON BOARD MASTER OCEAN BILL OF LADING** consigned to the order of **MINISTÉRIO DA DEFESA-EXÉRCITO BRASILEIRO – BA AP LOG EX/DIEM** (CNPJ: 00.394.452/0475-92) Avenida Brasil, 25.540, Deodoro, Rio De Janeiro - RJ CEP: 21615-331 – Brazil, Contract 1013/2015, OMD: 4° CTA, marked "Freight Prepaid" and "Notify consignee at Tel+55-21-2457-4302 Fax +55-21-2457-4918". The B/L must show the Nomenclatura Comum do Mercosul code number as follows: **NCM: 8544**. The Ocean Bill of Lading must be submitted in (original + 2 copies)
- e) **INSURANCE CERTIFICATE** in the amount of 110% (one hundred ten percent) of the value of the contract including freight and insurance charges, covering all risks, issued *in favor of* the Brazilian Army Commission (original + 2 copies).
- f) **VALIDATED EXPORT LICENSE** issued by the Government of Norway (1 copy) **OR a DECLARATION** issued by the **SELLER** or original manufacturer stating that the Materiel in this Contract does not require an export license (original + 2 copies)
- g) **LETTER FROM THE SELLER** stating that it has forwarded to the Brazilian Army Commission, via express mail and per Clause 12 – Payment Conditions, the originals of all the required documents for the Letter of Credit

10.3 - The mailing address for the Brazilian Army Commission is as follows:

**BRAZILIAN ARMY COMMISSION**  
**Procurement Department**  
4632 Wisconsin Avenue, NW  
Washington, D.C. 20016  
PC-1013/2015 - OMD: 4° CTA

10.4 - If the **BUYER** does not receive the above documents from the **SELLER** within 72 (seventy-two) hours of the shipment of the Materiel, or if the Materiel cannot be cleared through customs by the Brazilian Army and must be kept in storage due to negligence on the part of the **SELLER** regarding shipping documentation, the **SELLER** shall bear responsibility for any warehousing fees charged by the airport/port authorities.

10.5 - Intermediate consignee in Brazil:

**MINISTÉRIO DA DEFESA – EXÉRCITO BRASILEIRO**  
**BA AP LOG EX/DIEM - (CNPJ: 00.394.452/0475-92)**  
Av. Brasil, 25540 – Vila Militar – Deodoro  
21615-331 – Rio de Janeiro, RJ – Brazil  
Tel: 55-21-2457-4302 – Fax: 55-21-2457-4918  
Purchase Order No. 1013/2015, OMD: 4º CTA

**Documents to be express mailed to consignee in Brazil - IMPORTANT:**

In order to expedite the Customs clearance process in Brazil, **SELLER** shall **express mail** the documents listed below to the final consignee in Rio de Janeiro (see above-mentioned address):

1. **COMMERCIAL INVOICE (1 copy).**
2. **PACKING LIST (1 copy).**
3. **CLEAN ON BOARD MASTER OCEAN BILL OF LADING, (2 originals),**

**CLAUSE 11 - DELIVERY CONDITIONS; PROVISIONAL AND DEFINITIVE RECEIVING, FACTORY ACCEPTANCE TESTS**

- 11.1 - The items and respective quantities of the Defense Materiel identified in the List of Items in the Purchase Order must be delivered in **01 (one)** shipment by the **SELLER** to the address indicated in Block 10 of the Purchase Order – The Port of Manaus, AM - Brazil.
- 11.2 - Time is of the essence for Delivery of all Defense Materiel and performance of all contractual obligations of **SELLER** (including warranty). The Defense Materiel must be delivered at the Port of Manaus, AM – Brazil no later than **January 05, 2016**, and shall be shipped by the **SELLER** directly to the **BUYER**'s receiving agent in the location indicated in Block 10 of the Purchase Order. The Factory Acceptance Test (FAT) must be executed no later than **December 05, 2015**. The exact dates for the FAT and DAT will be agreed upon between the parties.
- 11.3 - If **SELLER** fails to Deliver or otherwise Complete fulfillment of its obligations by the scheduled delivery date(s), or if **BUYER** causes that to occur, and such delay by either Party causes either Party to incur additional expenses, such as, but not limited to:
- a. Bank charges (as, for example, because such delay requires a Letter of Credit to be maintained longer or to be extended), all such bank charges must be paid promptly by the Party most responsible for causing such delay.
  - b. Port/vessel charges, related to the delivery in Manaus only (as, for example,
    - b1. if **SELLER**'s transport vessel does not arrive at the Port of Manaus by the delivery date, but the **BUYER**'s installation vessel is there on time and has to wait for the cargo, any additional charges incurred by the installation vessel must be paid promptly by the **SELLER**.
    - b2. if **BUYER**'s installation vessel is not available at the Port of Manaus by the delivery date, and the **SELLER**'s transport vessel arrive at the Port of Manaus on time and it has to wait for installation vessel, any additional charges incurred by the transport vessel must be paid promptly by the **BUYER**.
  - c. Customs/storage charges (as, for example, if the Defense Materiel cannot be cleared through Customs due to negligence of the **SELLER** concerning the shipping documentation and has to be kept in storage incurring in storage charges. Any additional charges incurred by the installation vessel must be paid promptly by the **SELLER**.

If Seller fails to successfully complete this Contract within the Contract's delivery schedule, or any extension of it by amendment of this Contract, Seller shall be deemed to have failed to make delivery as required by this Contract, entitling Buyer to terminate this Contract for Seller's default.

Expenses not related to delivery of the cables, but related to other damages (as, for example, equipment/vessel break down, other cargoes onboard, etc) are excluded, and either party must bear its own expenses.

**11.4 - The use of any courier service (DHL, UPS, FedEx, etc.) for direct shipment to Brazil is strictly prohibited.**

**11.5 - The Defense Materiel must be packaged, packed, and crated in accordance with the highest standards for international transportation (not merely common carrier requirements) to ensure its safe arrival at its final destination. The shipment must have a single Master Bill of Lading consigned to the MINISTÉRIO DA DEFESA (see full name/address in 10.2 (d) above).**

**11.6 - If wooden pallets/boxes are used for cargo originating in China, Japan, South Korea, Taiwan or Hong Kong, the wood must be fumigated. Wooden pallets/boxes originating from countries that have adopted the International Standard for Phytosanitary Measures or that have been treated and identified with the mark IPPC (International Plant Protection Convention) will be accepted and certified after inspection in Brazil.**

**11.7 - The SELLER's packing list must include: total net and total gross weight of the shipment, number of pieces, and handling information (shipping marks, Contract number, part numbers and method of packing).**

**11.8 - The SELLER shall properly mark any hazardous materials requiring special identification markings from any agency of the US government or a foreign government.**

**11.9 - The Defense Materiel must be marked in bold letters with the following consignee address:**

**MINISTÉRIO DA DEFESA – EXÉRCITO BRASILEIRO  
BA AP LOG EX/DIEM (CNPJ: 00.394.452/0475-92)  
Avenida Brasil, 25.540 - Deodoro  
Rio De Janeiro – RJ - CEP: 21.615-331 - BRASIL  
PC 1013/2015 OMD: 4º CTA**

**11.10 - Notwithstanding the provisions of INCOTERMS 2010, all cargo-unloading charges in Brazil, including the release of documentation, are the responsibility of the SELLER or its representative in Brazil.**

**11.11 - The Brazilian Army, in performance of its obligations to protect the national security of Brazil, must receive the Defense Materiel at the earliest date and in full conformance with the requirements and obligations set forth in this Contract; the failure to deliver in accordance with the delivery date set forth herein will cause additional costs to the Brazilian Army that cannot be immediately quantified. For this reason, the parties agree to a liquidated damage provision in the event of late deliveries. This provision is outlined in Clause 12 – Payment Conditions; Financial Guarantee.**

**11.12 - The SELLER shall promptly notify the BUYER of any change in the expected delivery date. Any delay in the expected delivery date will only be deemed acceptable under the terms of this**

Contract upon the **SELLER's** receipt of a written extension from the **BUYER**, which must take the form of an amendment, following the procedures laid out in Clause 13 – Amendments. Should the **SELLER** fail to notify the **BUYER** of any delay in the expected delivery date, or if the **SELLER** fails to complete delivery in accordance with the delivery schedule, the **SELLER** will be in breach of the Contract, and the **BUYER** may terminate the Contract under the provisions of Clause 18 – Contract Termination.

11.13 - Unless the **BUYER** has extended the Contract's delivery date in writing, the **SELLER** shall submit the Proposed Revised Delivery Schedule within 10 (ten) business days of receipt of the **BUYER's** written request, which the **BUYER** may issue any time it has reason to doubt the **SELLER's** ability to meet the current delivery schedule. The **BUYER's** willingness to take into consideration the proposal will not constitute a waiver of any existing delivery schedule nor a commitment to grant an extension. The **BUYER** will have up to 30 (thirty) business days after receiving the **SELLER's** proposal to decide whether to approve or disapprove the request. If the new proposed schedule is approved, the **BUYER** shall submit a draft amendment reflecting the changes to the **SELLER**, which will take effect upon signature by both parties. If the **BUYER** declines the new proposed schedule, which the **BUYER** may do for any reason, no amendment or modification shall be made, and the **SELLER** must proceed diligently to complete the Contract within the existing delivery schedule.

11.14 - The **BUYER** will inspect all Defense Materiel within 05 (five) days of its arrival at its final destination, per Brazilian Army regulations. During this inspection, the **BUYER** will determine whether the Materiel shipped conforms to its technical specifications and other requirements in this Contract. If any item in the Materiel is found to not conform to its technical specifications or other requirements in this Contract, the **BUYER** has the right to reject all or part of the Defense Materiel, and shall notify the **SELLER** of its intention to do so in a **Discrepancy Report**. The **Discrepancy Report** must be issued within 60 (sixty) days of the termination of the **BUYER's** inspection of the Materiel

11.15 - Should any Materiel be rejected by the **BUYER**, the **SELLER** shall bear the responsibility and costs of the return of that Materiel. In the event of rejection of Materiel for non-conformity, the **BUYER** has the right to receive repair or replacement of the Material per Clause 14 – Warranty, or may request a refund of the full price of the rejected Defense Materiel.

#### **FACTORY ACCEPTANCE TEST (Sub-clauses 11.16 – 11.26)**

11.16 - The Defense Materiel, including any Materiel ordered through the Additional Materiel Option, will be subject to a **Factory Acceptance Test (FAT)**, which will take place at the **SELLER's** plant or factory, in accordance with the **FAT** procedures and schedule, to ensure that the Defense Materiel strictly conforms to the manufacturer's specifications and all other requirements herein. The **SELLER** shall submit, for approval by the **BUYER**, the **FAT** procedures and schedule at least 04 (four) weeks prior to the starting date. The **BUYER** is allowed to send a Witness Team composed of up to 03 (three) representatives to witness the **FAT**. Representative(s) from the installation company (company that will lay the cables in the Amazon River) will also be present. The **SELLER** shall provide an office space for each member of the **FAT** team to work at a separate desk with access to a secure computer with internet access, fax and phone, allowing them to confer with privacy and confidentiality when needed.

11.17 - All expenses related to the Army's **FAT** Witness Team (international and local travel, accommodations, meals, etc.) will be the responsibility of the **BUYER**. The expenses which result from the extension of the **FAT** due to delays for which the Seller is responsible will be at the

expense of the Seller on the value of a daily allowance per day and per person of the FAT Witness Team. Travel expenses for FAT attendance for up to three (3) participants, consisting of:

- International round-trip airfare (Economy Class) Brasilia-factory-Brasilia;
- Hotel accommodation for duration o FAT, in factory country (minimum 3-star hotel);
- Transportation in country between hotel, airport, factory;
- Food; and
- Travel and health insurance.

11.18 - The **SELLER** shall notify the **BUYER** in writing when the Defense Materiel is ready for the **FAT**. The date for performing the **FAT** shall be agreed upon by the parties in writing no later than 30 (thirty) days prior to its scheduled starting date. If for any reason the **BUYER's** **FAT** Witness Team cannot be present on the date proposed by the **SELLER**, then the parties shall agree upon a new date for the performance of the **FAT** that is mutually convenient for both parties. In case where the delivery date is within 03 (three) days of its scheduled date and the **FAT** witness team is not able to be present at the **SELLER's** premises during the **FAT**, then **SELLER** shall perform the **FAT** exactly as if the witness team were present and send the results for approval of **BUYER**. No shipment shall be made before **BUYER's** approval of the **FAT** results.

11.19 - The duration of the **FAT** will be determined by the **SELLER**. The **FAT** must take at least 2 (two) full business days, unless the **SELLER** or the **BUYER** notifies the other in writing that, due to an unsuccessful result in the **FAT**, it is in both parties' best interest to cease the **FAT** to enable the **SELLER** to promptly start replacing and/or repairing the Defense Materiel, and subsequently conduct a complete **FAT** on the replaced or repaired Materiel.

11.20 - Once the **FAT** has begun, the **SELLER** may not make any change in any hardware, software, firmware or other items of the Defense Materiel. Should an item or feature of the Defense Materiel not pass inspection during the **FAT**, the following steps shall be taken:

- (i) The **SELLER** shall perform an analysis to determine the cause of the non-conformance to the manufacturer's specifications as indicated by the test failure, and the **SELLER** shall promptly deliver a written statement with the findings of the analysis for review and approval by the **BUYER**.
- (ii) The **BUYER** shall perform a diagnosis of what caused the Defense Materiel to fail the test and indicate whether the **SELLER** is to correct or repair the Materiel before re-performing the **FAT**.
- (iii) If the **SELLER** determines that correcting the item or feature of the Defense Materiel would require a design change(s), the **SELLER** shall describe in writing the proposed design change(s) and the time it would take for the **SELLER** to implement those change(s). The **BUYER** and the **SELLER** shall discuss and decide whether those design change(s) shall be implemented before shipment of the Materiel, or whether the **SELLER** shall implement those design change(s), in the form of a modification kit that to be included in the Defense Materiel as soon as possible after the shipment. All costs associated with any design change(s) and their implementation will be at the sole expense of the **SELLER**.

11.21 - After completing the **FAT**, the **SELLER** shall issue a duly-signed **FAT Results Report** certifying (i) whether the **FAT** procedures were adhered to; (ii) if there were any deviations; (iii) the results observed during each test; (iv) whether the results found the Defense Materiel to have passed or failed each test, and for any tests that the Defense Materiel did not pass; (v) the information

required by this sub-clause. If, in the **SELLER's** judgment, the Defense Materiel has passed the **FAT**, the **SELLER** shall deliver to the **BUYER** a signed Certificate of Complete Conformance along with a signed copy of the **FAT Results Report**. The **BUYER**, after consulting with the **FAT Witness Team**, shall notify the **SELLER** in writing within 05 (five) days of receipt of the **FAT Results Report** whether it concurs or not with the report. In the event the **BUYER** concurs with the **FAT Results Report**, the **BUYER** shall return to the **SELLER** a signed copy of the **FAT Results Report** along with a Certificate of Conformity issued by the CITEx (Center of Integrated Telematics of the Brazilian Army). However, if the **BUYER** does not concur with the **SELLER's FAT Results Report**, the parties shall enter into negotiations to try and reach an agreement on the results of the **FAT**, provided that unless or until an agreement is reached and signed by both parties, the **SELLER** will have no right to ship the Defense Materiel to Brazil.

11.22 - The **BUYER** has the right to reject any Defense Materiel that is found to be defective or does not strictly conform to the technical description and performance specifications of Annex A. The **SELLER**, at its sole discretion, has the right to decide whether to replace, repair, or correct the design of any of the rejected Defense Materiel at its own expense. If in the **SELLER's** judgment the Defense Materiel has passed the **FAT**, in part or in its entirety, and the **BUYER** in its judgment does not concur, the parties shall, within 10 (ten) days of receipt of a written notice from either party requesting negotiations of the subject, enter into negotiations to resolve their disagreement, provided that unless and until the negotiations result in an agreement, the **FAT Results Agreement**, the **SELLER** may not modify, prepare for shipment, or ship any Defense Materiel to Brazil. Should the parties fail to reach an agreement within 15 (fifteen) days after the negotiations commence, then the Defense Materiel will be deemed to have failed to pass the **FAT**, and the **SELLER**, at its sole discretion, may replace it, excluding any items which have failed, and subject the new Materiel to a new **FAT** in accordance to the requirements herein, or repair the items that failed and perform a new **FAT** in accordance with the requirements herein.

11.23 - The **SELLER** and the **FAT Witness Team** shall sign the **FAT Results Report** promptly after the successful completion of the **FAT**.

11.24 - The **BUYER** will not consider the failure of any Defense Materiel to pass any component test of the **FAT** and the resulting delay in delivery (for example, until the Defense Materiel has passed a new **FAT** after its replacement or repair), a reason for the application of the **BUYER's** remedies under Clause 12.10 – Liquidated Damages, as long as the Materiel is repaired or replaced within 15 (fifteen) days of the date of failure. Furthermore, if the parties enter into negotiations that result in an agreement, the time accrued from the time notice requesting the negotiations was given until their successful conclusion will not be a reason for the application of those remedies. However, if the negotiations do not result in an agreement, the time accrued since the cessation of the negotiations will be considered a reason for the application of the **BUYER's** remedies under Clause 12.10, unless the Materiel is corrected within 15 (fifteen) days of the date of failure. In case of breach of the deadlines set forth in this sub-clause, the **BUYER** may also use the remedies provided in Clause 12.10.

11.25 - The **SELLER** shall maintain a quality control system with standards equivalent to the highest standards the **SELLER** applies to the design, manufacturing, and testing of its best and most-advanced products. In addition to the **FAT**, the **BUYER** has the right, at its own cost and within normal business hours, to conduct scheduled inspections of the work and materials used in the production and assembly of any of the Defense Materiel. If the **BUYER** finds any materials to be defective or otherwise not in strict conformity with this Contract, the **BUYER** has the right either to reject the defective Defense Materiel or to require that it be replaced or repaired, whichever the **SELLER** decides to do.

11.26 - In order to carry out the above-mentioned inspections, the CITEx shall notify the **SELLER** at least 10 (ten) days prior to the proposed inspection date, requesting that the **SELLER** confirms its availability for those inspections on the proposed date. All inspections must be performed in such a manner as to not disrupt or delay the **SELLER**'s work. Furthermore, the **SELLER** may not limit the **BUYER**'s access or time to conduct the inspections to its satisfaction, and shall provide the necessary personnel to assist the **BUYER** with the authorized access to the places necessary to conduct the inspections as well as to provide comprehensive answers to any questions the **BUYER**'s representatives may have. The **BUYER** reserves the right to charge the **SELLER** with any additional cost to the **BUYER** for the inspections when materials, work, or partially completed or completed Defense Materiel (or its component parts, without limitation), are not ready for a scheduled inspection. No inspection(s) by the **BUYER** will relieve the **SELLER** of any of its obligations under this Contract to produce Defense Materiel that strictly conforms to the technical description and performance specifications of Annex A. Regardless of any inspection performed by the **BUYER**, the **SELLER** remains liable for the strict conformance of all the Defense Materiel with the technical description and performance specifications of Annex A verified by the **FAT** and the **DAT**.

#### PROVISIONAL AND DEFINITIVE RECEIVING (Sub-clauses 11.27 – 11.32)

11.27 - The **BUYER**, acting through a team of 03 (three) representatives appointed by the CITEx, Provisional Receiving Team, has the right to inspect the Defense Materiel after its delivery in order to verify the conformity of the quantities delivered to the accompanying shipping documents and provisionally receive the Materiel for later verification of its conformity with the Contract specifications. This procedure will be followed by the Definitive Acceptance Tests (**DAT**) and Definitive Receiving.

11.28 - The Provisional Receiving will take place in Manaus, AM - Brazil; the **SELLER** or its representative, at its own expense, is allowed to witness the inspection. During the Provisional Receiving the Provisional Receiving Team will check the quantity delivered against the accompanying shipping documents and inspect the packaging for signs of damage or any other irregularities. If no delays occur in the customs clearance of the Defense Materiel caused by the negligence of the **SELLER**, and if no discrepancies are found in the Materiel, the Provisional Receiving team will issue a Provisional Receiving Certificate (**PRC**) within 5 (five) business days of the date of Customs clearance of the Defense Materiel.

11.29 - If upon inspection the Provisional Receiving Team finds the volumes delivered to not contain the quantities specified in the accompanying shipping documents, or that packaging or packing shows any signs of damage that suggest that the contents are likely damaged or any other irregularities, the Provisional Receiving Team, shall give written notice to the **SELLER** by delivery of a **Discrepancy Report** requesting the replacement or repair of those items. After receiving the report, the **SELLER** shall have up to 60 (sixty) days to correct, or arrange for correction, of all items identified in the **Discrepancy Report**, and all costs associated with any correction shall be at the expense of the **SELLER**. The provisional receiving team will not be required to issue a **PRC** until it is satisfied that the **SELLER** or its representative has corrected all discrepancies identified in the report.

11.30 - The Definitive Acceptance Tests will take place at Manaus, AM - Brazil. During the Definitive Acceptance Tests the Definitive Receiving Team will verify and test the quality, quantity and conformity of the material with the performance and technical specifications as well as any other contractual terms and requirements. If no delays occur in the customs clearance of the Defense



Materiel caused by the negligence of the **SELLER**, and if no discrepancies are found in the Materiel, the Provisional Receiving Team will issue a Definitive Receiving Certificate (**DRC**) within 20 (twenty) business days of the date of Customs clearance of the Defense Materiel stating that the **BUYER** accepts all or part of the Defense Materiel identified in the **DRC**.

- 11.31 - If the Definitive Receiving Team finds that any Defense Materiel, or component thereof, does not strictly conform to the technical specifications in Annex A, it will issue a **Discrepancy Report** detailing the non-conformance. The **SELLER** shall correct, by repair or replacement, any non-conformities in the Defense Materiel within 60 (sixty) business days of the issuance of the **Discrepancy Report** by the Definitive Receiving Team. All costs associated with the repair or replacement of non-complying Materiel will be of the responsibility of the **SELLER**. No adjustments or replacement of the Defense Materiel will be allowed during the Definitive Receiving.
- 11.32 - After the Definitive Receiving has been completed, the CITEx, after consulting with the BAC, shall notify the **SELLER** of whether it accepts all, part, or none of the Defense Materiel. If the **BUYER** accepts all or part of the Defense Materiel, then within 30 (thirty) business days following the completion of the Definitive Receiving, the CITEx shall issue and deliver to the **SELLER** a Definitive Receiving Certificate (**DRC**) stating its acceptance, which will be considered final and conclusive, except for any latent defects or fraud that may be subsequently discovered. In that case, the **BUYER** reserves the right to revoke its acceptance and to pursue all remedies provided by law or under this Contract. If the **BUYER** decides to accept only part of the Defense Materiel, the **SELLER** shall diligently replace or repair the rejected Defense Materiel within 60 (sixty) business days, by the end of which time the **SELLER** shall have delivered the corrected Defense Materiel to the **BUYER** for inspection. The **BUYER** is not obligated to issue the **DRC** until all discrepancies are resolved. Both parties shall enter into negotiations to determine what portion of the unpaid maximum value of the Contract that the **SELLER** will receive for any accepted Defense Materiel that the **BUYER** accepts after the Definitive Receiving.



## **CLAUSE 12 - PAYMENT CONDITIONS; FINANCIAL GUARANTEE**

- 12.1 - Payment will be made by the **BUYER** via an Irrevocable Letter of Credit (ILC) upon receipt from the **SELLER** of an invoice and all the documents mentioned in Clause 10 – Shipping Documentation; these documents must be sent by the **SELLER** to the address indicated in Sub-clause 10.3. It is **BUYER**'s responsibility to open a L/C which is according to the contract.
- 12.2 - Brazilian law prohibits advance payments to any supplier.
- 12.3 - For payment to be processed via wire transfer, the **SELLER** shall send to the **BUYER** via email all necessary instructions for the execution of payment; these instructions must include the bank name and address, IBAN, BIC code, Swift Code, account name, and number. Should the **SELLER** fail to send the **BUYER** the required information in a timely manner, then for each day of delay by the **SELLER**, the **BUYER** will be entitled to an equal extension of the time within which the **BUYER** is required to make the payment.
- 12.4 - Payment will be made by the **BUYER** through an Irrevocable Letter of Credit (ILC) issued by Banco do Brasil in the United States. Should the **SELLER** request the ILC be advised through or confirmed by another bank, the **SELLER** shall bear the cost of any transactions with that bank.
- 12.5 - For payment via ILC, the **SELLER** shall submit to the **BUYER** all original documents required in Clause 10 – Shipping Documentation. These original documents for payment must be sent to the **BUYER**'s address indicated in Sub-clause 10.3. As required by the Application for Commercial

Credit (Annex E), all pages must be marked with this Contract number and the Letter of Credit number. The **SELLER** shall also submit the draft, along with copies of all the required documents, to the bank mentioned in the Application for Commercial Credit.

**12.6 - Payment will be executed as follows:**

**1<sup>st</sup> INSTALLMENT** - after **Shipment of the Defense Materiel** (Items 01 – 03 in Block 12 of the Purchase Order), in the amount of US\$ **1,220,624.00**, representing the total value of those items and including the actual shipping and insurance expenses not to exceed US\$ **393,751.00**, upon the **SELLER's** presentation of the following documents (a full description of the requirements of each document is included in Clause 10 – Shipping Documentation):

- a) **COMMERCIAL INVOICE**
  - b) **PACKING LIST**
  - c) **INVOICE FOR DELIVERY CHARGES**
  - d) **CLEAN ON BOARD MASTER OCEAN BILL OF LADING**
  - e) **INSURANCE CERTIFICATE**
  - f) **VALIDATED EXPORT LICENSE OR DECLARATION**
  - g) **FACTORY ACCEPTANCE TEST CERTIFICATE** issued by CITEx.
  - h) **LETTER FROM SELLER**
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**2<sup>nd</sup> INSTALLMENT** - after **Acceptance of the Defense Materiel in Manaus** (Items 04 in Block 12 of the Purchase Order), in the amount of US\$ **144,000.00**, representing the total value of this item upon the **SELLER's** presentation of the following documents (a full description of the requirements of each document is included in Clause 10 – Shipping Documentation):

- a) **COMMERCIAL INVOICE**
- b) **DEFINITIVE RECEIVING CERTIFICATE** issued by CITEx.
- c) **LETTER FROM SELLER**

**12.7 - The SELLER's invoice must strictly conform to Box 12 – List of Items in the Purchase Order, as well as and any associated amendment with regard to the Contract number, item numbers, part numbers and/or NATO Stock Numbers, item description as written in the Purchase Order, quantity shipped, unit prices, and total price. No deviation in the invoice will be accepted by the BUYER unless it has been approved and processed in writing by the BUYER.**

**12.8 - The SELLER's full performance of all of its contractual obligations, including without limitation its payment (if required) of any liquidated damages for failure to perform those obligations, will be guaranteed by the provision of a Performance Bond (Annex D), in the amount of US\$ 87,918.75 (eighty-seven thousand, nine hundred and eighteen US Dollars and seventy-five cents), corresponding to 5% (five percent) of the maximum value of this Contract.**

**12.9 - In case of delay, the BUYER shall forward to the SELLER a certified letter with a return receipt giving notice of the delay, as well as an invoice in the amount of the corresponding liquidated damage.**

**12.10 - For each day of delay in delivery (unless caused by an event of Force Majeure as defined in Clause 17 – Force Majeure), the SELLER shall pay the BUYER credit in the amount of 0.10% (one tenth of one percent) of the price of the undelivered Defense Materiel per day, up to a maximum of 05% (five percent) of the total price of the undelivered Materiel in this Contract. The SELLER shall pay the BUYER the total credit amount in full within 15 (fifteen) days after the BUYER has notified**

the **SELLER** about the related delayed delivery. The **BUYER** has the option to issue a written warning in lieu of penalties if the **SELLER** presents relevant and acceptable reasons for the delay of the Defense Materiel.

12.11 - The Financial Guarantee shall be provided by the **SELLER** to the **BUYER** no later than 30 (thirty) days after the signature of this Contract by both parties, and shall be valid until April 05, 2016. Failure to deliver a valid Financial Guarantee in accordance with the terms herein will cause this Contract to be considered null and void, unless the **BUYER** agrees to the new date supplied by the **SELLER** for the delivery of the Financial Guarantee.

12.12 - The **BUYER** shall issue a Notice of Release of Guarantee signed by the Chief of the BAC no later than 15 (fifteen) days after the issuance of the **DRC**.

12.13 - The **SELLER** shall not allow the Financial Guarantee to expire prior to receiving the Notice of Release of Guarantee from the **BUYER**. In the event that the **SELLER** cannot meet the delivery of the Defense Materiel in accordance with the delivery schedule provided in this Contract, or requests and is granted an extension of the delivery date by the **BUYER**, the **SELLER** is responsible for extending the Financial Guarantee or providing a new one before its expiration, in the same amount and terms and conditions as the original.

12.14 - The execution of the Financial Guarantee will not exhaust or exclude any other rights or remedies the **BUYER** has under this Contract, in addition to all other rights and remedies permitted by law

### **CLAUSE 13 - AMENDMENTS**

13.1 - Any alteration in the terms and conditions of this Contract will take the form of an amendment, which must be signed by both the **SELLER** and the **BUYER**.

13.2 - The **BUYER** may propose an amendment at any time, issuing additional instructions, requiring modified work or services within the general scope of work of this Contract, increasing or decreasing quantities of items, or changing methods of shipment. Any increase or decrease in the amount of Defense Materiel ordered in any proposed amendment will be subject to the restrictions in Clause 4 – Value of the Contract.

13.3 - If the **SELLER** is of the opinion that any proposed change requires a change in the delivery schedule, Defense Materiel quality, or in the maximum value of this Contract, the **SELLER** shall inform the **BUYER** in writing no later than 15 (fifteen) days from receipt of a proposed amendment; the document must specify all changes in the **SELLER**'s proposal. If the **BUYER** does not accept the **SELLER**'s proposal within 30 (thirty) days of receiving it, then the Proposed Amendment and proposal change will be deemed void.

13.4 - If the **SELLER** informs the **BUYER** that the proposed amendment does not require a change in the delivery schedule, Defense Materiel quality, or in the maximum value of this Contract, then the **SELLER** shall promptly implement the proposed changes, and thereby irrevocably waive any right thereafter to claim any increase in the maximum value of the Contract, extension in delivery schedule, or demand any waiver to the technical specifications, quality or testing requirements hereunder.

13.5 - If the **BUYER** does accept at least part of the **SELLER**'s proposed amendment, then the parties shall enter into negotiation to agree on equitable adjustments to the delivery schedule, maximum value of the Contract, or technical specifications, as applicable. No change in this Contract

altering the delivery schedule, maximum value of the Contract, or technical specifications of the Defense Materiel will become effective unless accompanied by an amendment, signed by the authorized representatives from the **BUYER** and the **SELLER**. The **SELLER** may not proceed with the change order pending the amendment unless otherwise instructed in writing by the **BUYER**.

- 13.6 - Unless or until the **BUYER** and the **SELLER** agree upon a Contract Amendment to implement the proposed amendment and related proposal change, the **SELLER** shall diligently proceed to perform this Contract as it was originally agreed.

#### **CLAUSE 14 - WARRANTY; GUARANTEE OF TECHNICAL ASSISTANCE**

- 14.1 - The **SELLER** shall provide a **24 (twenty-four)** months Warranty for products, parts, services and accessories sold by the **SELLER**, starting from the date the final inspection and acceptance are completed, or 3 (three) months after customs clearance of the Defense Materiel (whichever is sooner), in which the **SELLER** warrants that the Materiel being supplied under this Contract must:

- a) be new or new surplus- unused, not remanufactured, modified, or refurbished, or be previously delivered by the **SELLER** to any other customer;
- b) be free from material defect, be manufactured and perform in strict conformance with the **SELLER**'s technical specifications for the Materiel, and contain no substituted parts.

- 14.2 - The **SELLER** shall also include with the Defense Materiel any additional warranties provided by either the original equipment manufacturer or a third-party supplier of an item, part, or component thereof.

- 14.3 - For each item of Defense Materiel, the **SELLER** shall supply a Warranty Certificate containing the following information:

- a) the duration and conditions of warranty in accordance with this Contract;
- b) the date and number of the invoice referring to the Defense Materiel;
- c) the addresses of local representatives and/or parent companies where the **BUYER** or the End User will request and receive technical assistance.

- 14.4 - Should any defects or non-conformities to the technical description and performance specifications be found prior to the expiration of the Technical Warranty, the **BUYER** shall send the **SELLER** a written notice within 30 (thirty) days of the discovery of the nonconformance, and the **SELLER** will be given the opportunity to have the alleged defects or non-conformities inspected by a technician of the **SELLER**'s choice; the **SELLER** will be responsible for all costs associated with the inspection.

- 14.5 - The **SELLER** shall deliver a written notice to the **BUYER** no later than 5 (five) business days after the **SELLER**'s appointed technician starts its inspection with its assessment of whether or not it concurs with:

- a) the **BUYER**'s claim of alleged defect or non-conformity of the Defense Materiel to its technical specifications
- b) the extent, severity, and consequences of the alleged defects or non-conformities
- c) the practicality of making the required replacements or corrections to the Defense Materiel at the End-User's location

- 14.6 - The **BUYER's** team responsible for monitoring maintenance activities shall have access to all the information and equipment related to the maintenance of equipment already acquired by the **BUYER** from the **SELLER**.
- 14.7 - If the technician concurs with the **BUYER's** claim of defect or non-conformity of the Defense Materiel with the technical description and performance specifications of Annex A (even if it does not concur with its extent or severity), and the technician determines that it would be impracticable to correct the defect or non-conformity at the location where the Defense Materiel was delivered, the **BUYER** shall return the defective parts to the **SELLER's** representative in Brazil at the **SELLER's** expense. The **SELLER's** representative shall return the repaired parts to the **BUYER** at the **SELLER's** expense.
- 14.8 - Within 30 (thirty) days after the **SELLER's** appointed technician has conducted its inspection and delivered the written assessment to the **BUYER**, the **SELLER** must receive from the **BUYER** a notification containing all the details concerning the **BUYER's** claim under the Technical Warranty, in accordance with the provisions hereunder.
- 14.9 - Within 7 (seven) days of the receipt of the **BUYER's** claim, the **SELLER** shall deliver a signed written notice to the **BUYER** informing where the **SELLER** shall make the required corrections to the Defense Materiel or whether it shall be replaced, as well as advise the **BUYER** of what actions, if any, it shall take to ensure the timely release and transfer of the Defense Materiel to the **SELLER** for correction. The **SELLER** shall then have a period of 30 (thirty) days from date of return to the **SELLER** of the defective or non-conforming Defense Materiel in which to make the required repairs or replacements; this period may be extended upon a signed written agreement between the parties.
- 14.10 - The **SELLER's** obligations under this clause will not apply to any Defense Materiel or part thereof, or to any part or accessory sold by the **SELLER**, which (i) has been modified or otherwise altered other than according to the **SELLER's** written instructions or written approval; (ii) is normally consumed in operation; (iii) is not properly stored, installed, used, maintained or repaired; (iv) has been subjected to any other kind of misuse or detrimental exposure or has been involved in an accident; or (v) has been disabled or adversely affected by any vendor product (other than a vendor product sold or supplied by the **SELLER**).
- 14.11 - Should the **BUYER** request that the **SELLER** replace or repair any defective or deficient item(s) in accordance with this Clause 14, the warranty period for the repaired or replaced items will begin after the repaired or replaced item is inspected by the end-user.
- 14.12 - Should the **SELLER's** technical assessment conclude that the equipment must be sent to the factory, the **SELLER** must provide the **BUYER** with new equipment to be used during the maintenance period. The delivery of the substitute equipment to the End-User should be within 30 (thirty) days of the **SELLER's** technical assessment indicating the need for maintenance at its factory. In this case, the **SELLER** will bear all costs for the shipment, customs clearance and associated duties, and delivery of the new equipment to the End-User.
- 14.13 - The **SELLER's** Warranty will have precedence over other warranties or guarantees expressed or implied, and will constitute the sole liability of the **SELLER** with respect to any defects in Defense Materiel discovered during the warranty period. The Warranty will be interrupted should the Defense Materiel become unserviceable after the **SELLER** has been officially informed of a problem or discrepancy with the Materiel.

14.14 - Upon expiration of the Technical Warranty referred to in this Clause 14, the **SELLER** affirms that it shall provide to the **BUYER** for an additional 04 (four) year period with:

- a) continued technical assistance as set herein;
- b) the execution of maintenance and repair services for the Defense Materiel;
- c) the guarantee of the supply of similar or interchangeable items that fulfill the same functions without loss of quality in the event the manufacturing of the original items is interrupted and/or the impossibility of repair.

Excluded from the maintenance and repair services will be any marine service including works under the water line. **SELLER's** provision under Article 14.14 is limited to supply of additional equipment as provided under the contract, and also assist **BUYER** technically according to need.

14.15 - The services mentioned in Sub-clause 14.14 will be the responsibility of the **SELLER**. The price and conditions for the purchase of spares for the equipment purchased in this Contract will be agreed upon between the parties.

14.16 - Notwithstanding anything to the contrary in the Contract, Contractor is under no circumstances liable for any costs or to perform any work relating to:

- a) dismantling of any objects including the ~~Junior~~ Optical Submarine Cable and Purchaser Provided Items to provide access to the defective parts of the Junior Optical Submarine Cable or the System,
- b) board and lodging offshore,
- c) transportation between to, from and at the offshore location
- d) heavy lift operations offshore
- e) extra costs associated with guarantee work performed below the water line
- f) the retrieval, recovery, dismantling and subsequent re-installation of the Junior Optical Submarine Cable or the System

## CLAUSE 15 - TECHNICAL LITERATURE

15.1 - The **SELLER** shall, upon request of the **BUYER**, provide one set of technical documentation in Portuguese, Spanish, or English, in this order of preference per system. The technical documentation shall include system design, installation, operation, management software and maintenance of all components used in the system.

15.2 - The **BUYER** reserves the right to reproduce, translate or adapt all the documentation supplied by the **SELLER** pursuant to this Contract for its own use. The software and documentation may only be copied for archive purposes or for purposes expressly authorized by **SELLER** in writing. All copies must bear the same copyright marks as the originals. The **BUYER** agrees that the materials will not be made available, in whole or in part, to third parties and that the programs and documentation will be used and safeguarded in such a way that they can be accessed only by personnel who require the programs and/or documentation in order to perform their tasks. The above provisions apply to any modifications or supplements made to the software or accompanying documentation.

## CLAUSE 16 - CATALOGUING

16.1 - The **SELLER** shall, upon request of the **BUYER**, and within a maximum period of 150 (one hundred fifty) days from the date of signature of this Contract, provide a list of all the Defense

Materiel items and components of this Contract, including a short description of each item. The list must be provided in digital media as an Excel spreadsheet (\*.xls).

#### **CLAUSE 17 - FORCE MAJEURE**

17.1 - Neither party will be in default or assume any liability or responsibility if the full performance of this Contract is interrupted as a result of events including:

- a) Natural disasters;
- b) Epidemics;
- c) Acts of the governments of Brazil, Norway, or any other country acting in its sovereign capacity;
- d) Acts of war (declared or undeclared);
- e) Acts of terrorism;
- f) Civil unrest or insurrections;
- g) Conditions that adversely affect the safety of the personnel and/or equipment involved;
- h) Restrictions due to quarantines, blockades, or embargoes;
- i) Accidents causing disruptions to the **SELLER's** premises that are not the result of negligence on the part of the **SELLER** (explosions, fires, breakdown of equipment, etc.);
- j) Loss of the Materiel in transport due to circumstances beyond the control of the **SELLER** (accidents, explosions, breakdowns, etc.);
- k) Sabotage, strikes, go-slows, lockouts, or any other type of labor dispute resulting in work destruction on the **SELLER's** or **BUYER's** premises;
- l) Delay of payment due to failure by the **SELLER** to provide instructions for the wire transfer payments at the time the invoice is issued to the **BUYER**;
- m) Any of the above events which disrupt the work of the **SELLER's** sub-contractors, provided that the event is not the result of negligence on the part of the **SELLER** or one of the **SELLER's** sub-contractors.

17.2 - In order to invoke Force Majeure, the above event cited must **directly impede the SELLER's performance of its duties and obligations as detailed in this Contract**. Any event of Force Majeure will be referred to as an excusable delay.

17.3 - The party whose performance will be delayed by such an event shall notify the other party of an event of Force Majeure in writing no later than 10 (ten) days after the event. The **SELLER** shall include in its written notification to the **BUYER** evidence supporting its claim of Force Majeure. The **BUYER** has the right to reject the **SELLER's** declaration of Force Majeure.

17.4 - The **SELLER** shall still be held responsible for not fulfilling its contractual obligations if notice of an event of Force Majeure is delivered by the **SELLER** at a time when the **SELLER** is already behind in either production or delivery of the Defense Materiel.

#### **CLAUSE 18 - CONTRACT TERMINATION**

18.1 - Either the **BUYER** or the **SELLER** shall have the right to terminate this Contract upon failure of the other party to perform its contractual obligations hereunder if the aggrieved party has sent a written notice specifying the failure and the correction required, giving the party at fault a period of 60 (sixty) days to correct that failure, and the correction is not implemented within that period. In order to terminate the Contract, the aggrieved party must send the other party a notice of Termination for Default, detailing the default. The aggrieved party may then pursue all remedies

available under this Contract and, in addition, under New York law to the extent not inconsistent with this Contract.

18.2 - The **BUYER** shall have the right to terminate this Contract due to the **SELLER's** default if (i) the **SELLER** seeks protection of a bankruptcy court or other court; (ii) seeks judicial protection based on the **SELLER's** representation that it qualifies to be declared or to declare itself insolvent; or (iii) the **SELLER** is declared by a court to be insolvent or bankrupt.

18.3 - The **SELLER** shall have the right to terminate this Contract if the **BUYER** fails to make a required payment for a period of 30 (thirty) consecutive days for the supply, in whole or in part, of the Defense Materiel received, and the **BUYER** fails to pay within 30 (thirty) days of the receipt of notice from the **SELLER** requesting payment.

18.4 - The termination of this Contract in the event of default by the **SELLER** will result in the following consequences, which do not exhaust the **BUYER's** remedies under law or this Contract:

- a) Blocking of credits related to the payment of the maximum value of the Contract, up to the limit of the damages incurred by the **BUYER**;
- b) Payment to the **BUYER** in the amount of the **SELLER's** Financial Guarantee for liquidated damages; and/or
- c) Release of the **BUYER** from any obligation to proceed further with performance, including the issuance of any certificates otherwise required hereunder.

18.5 - The right to terminate this Contract (in part or whole) for convenience belongs solely to the **BUYER**, who, in order to do so, shall deliver a Notice of Termination for Convenience to the **SELLER**. The Notice must specify the extent of the work terminated or the quantity of Defense Materiel not to be delivered by the **SELLER**. The **SELLER** shall diligently continue performance of all obligations not terminated, and shall minimize costs for those obligations. The **BUYER**, through a written notice, may also require the **SELLER** to transfer title and deliver to the **BUYER** within 30 (thirty) days, in the quantity and manner directed by the **BUYER**: (i) any completed Defense Materiel and/or partially completed Defense Materiel or components thereof that the **SELLER** has produced or acquired before Contract termination; (ii) all documentation necessary to convey proper and full title of the Materiel to the **BUYER**; and (iii) a memorandum detailing all defects in the Materiel or other non-compliances with this Contract or the **SELLER's** technical specifications that the **SELLER** knows, or has reason to know exist.

18.6 - In the event of termination for convenience and delivery of the requested Defense Materiel, the **BUYER** is entitled to conduct an inspection of all shipped Defense Materiel as provided in Clause 11 herein, as if the delivery were the final delivery of Defense Materiel. The **BUYER** also maintains the right to reject any non-conforming item or later revoke its acceptance of any non-conforming item and exercise its full rights under Clause 14 – Warranty herein for all the items. For any items that the **BUYER** accepts and does not reject nor later revoke its acceptance of, the **BUYER** shall pay the **SELLER** the corresponding amount of the Contract value for the item(s). Any outstanding issues after the **BUYER's** termination for convenience will be resolved according to Clause 22 – Arbitration and Applicable Law.

## **CLAUSE 19 - LIABILITY**

19.1 - No party will be liable under any circumstances towards the other party, its officers, agents, employees, successors and assigns, for any punitive, special, consequential and incidental/indirect damage of any nature, including without limitation: any losses, costs, damages, loss of use or



covering purchase incurred or suffered by the other party or any third party as a result of, or arising out of any lack or loss of use of any Defense Materiel or information delivered under this Contract, or part thereof or any other property for any reason whatsoever.

19.2 - The foregoing will not affect the right of any party to claim for compensation against the other party with respect to direct damage that the claiming party may suffer as a result of the gross negligence of the other party.

19.3 - "Gross negligence" means an action or omission implying an obvious lack of care of any party (which considering the seriousness of the consequences a cautious man of the art would have anticipated) or an action or omission leading to the presumption of a deliberate refusal to take into consideration these consequences and not only any kind of lack of care or lack of skill.

19.4 - To the extent permitted by applicable law, the **SELLER's** overall liability for any claims including any indemnity obligations arising by reason of or connection with this Contract is limited to a maximum amount of 100% of the maximum value of the Contract.

19.5 - The total liability of the **SELLER**, including its subcontractors and suppliers, on any claim of any kind, whether in the Contract, warranty, tort (including negligence or patent infringement), strict liability, equity, quasi-contract or otherwise, arising out of, related to, or resulting from the performance or breach of any agreement resulting here from the manufacture, sale, delivery, resale, repair, replacement or use of any part or product or the furnishing of any service, may not exceed the price corresponding to the part or product or service which gives rise to the claim. Except as to title, any such liability terminates upon the expiration of the warranty period specified in Clause 14.


## CLAUSE 20 – INTELLECTUAL PROPERTY


20.1 - In order to protect the **SELLER's** proprietary information, the **BUYER** will not disclose, except to its personnel and advisors, any data, specifications or technical documentation furnished by the **SELLER** in its performance of this Contract that are not known to the general public and that contain a label which clearly identifies the document or media as the **SELLER's** confidential and proprietary information. However, the **SELLER** hereby grants the **BUYER** permission to disclose and release any of the **SELLER's** information bearing a proprietary rights mark to a support contractor retained by the **BUYER** for the maintenance or repair of the Defense Materiel, provided the **BUYER** cannot obtain support from the **SELLER** or one of its agents, and provided further that the support contractor will be prohibited from further releasing, disclosing or otherwise using any data except solely in support of the **BUYER** in its use, maintenance, and repair of the Defense Materiel. The **BUYER** is not liable for the disclosure of the **SELLER's** information that:

- a) is or becomes available to the public from a source other than the **BUYER** before or during the period of this Contract;
- b) is lawfully obtained by the **BUYER** from a third party or parties;
- c) the **BUYER** reasonably believes, on the basis of written evidence, was known by the **BUYER** prior to having been furnished by the **SELLER** to the **BUYER**; or
- d) is at any time developed by the **BUYER** or any third party completely independent of this Contract and without breaching any obligation of confidentiality.

20.2 - In order to protect the **BUYER's** confidential and sensitive information, the **SELLER** shall not disclose any information about the **BUYER**, its purchase and intended or actual use of the Defense Materiel, or the existence of or any terms and conditions contained in this Contract without the

**BUYER's** permission. However, the **SELLER** does have the right to reveal sensitive information to any of its affiliated companies, on a need-to-know basis, without the express written consent of the **BUYER**. "Affiliated company" means any entity that directly or indirectly controls the **SELLER** to the extent of at least 50% related to the shareholder or voting rights. The **SELLER** must inform the affiliated company of the restrictions placed on the sensitive information and be bound to keep that information likewise confidential.

20.3 - The **SELLER** herein grants the **BUYER** a non-exclusive irrevocable right in the country of use to make copies of the software necessary for the programming of the Defense Materiel (management of keys, frequencies) to be distributed to Brazilian Army units designated to receive the Defense Materiel. 

20.4 - The **SELLER** represents that the Defense Materiel and its constituent components are free from infringement of any patent, copyright, or trademark. The **SELLER** shall indemnify the **BUYER** against any losses and liabilities relating to any infringement or claim of infringement, and, at its own expense, defend any proceedings arising out of any infringement or claimed infringement of any patent, copyright, or trademark registered against the **BUYER**. The **SELLER** shall pay in full any judgments entered in respect to the proceedings, within 30 (thirty) days from the date the judgment is entered. 

20.5 - The **SELLER's** defense and payments under Sub-clause 20.4 are conditioned upon the following:

- a) The **BUYER's** written notification to the **SELLER** of any claim(s) entered;
- b) The **SELLER's** control of the defense of any action of the claim and all negotiations for its settlement or compromise, provided, however, that if the Government of Brazil is a named defendant, the **BUYER** will have the right to approve counsel and to cooperate in the defense;
- c) The **BUYER's** provision of all reasonably required assistance to the **SELLER** in connection with any defense or negotiations.

20.6 - Should the **BUYER's** use of any Defense Materiel be enjoined, the **SELLER** shall, at its own expense, either (i) substitute fully-equivalent, non-infringing Defense Materiel in the same quantity of the enjoined Materiel; (ii) modify the Defense Materiel so that is no longer infringes but remains fully equivalent; (iii) obtain for the **BUYER**, at the expense of the **SELLER** or its nominee, the right of continued use of the Defense Materiel; or (iv) refund to the **BUYER** the amount paid to the **SELLER** for the infringing Defense Materiel.

20.7 - With respect to any Defense Materiel or component thereof sold by the **SELLER** which is not manufactured by the **SELLER**, only the patent indemnity of the other manufacturer, if any, will apply. The patent warranty and indemnity obligations previously mentioned are in lieu of all other patent warranties and indemnities whatsoever, whether oral, written, expressed, implied or statutory.

20.8 - The provisions of this clause will remain enforced after the expiration, realization or termination of the Contract.

20.9 - The **BUYER** hereby agrees not to sell, lend, or deliver the Defense Materiel or any component thereof (including manuals and information related to this Contract) to any third party (under any

conditions whatsoever) under any circumstance without the prior written agreement of the Government of Norway and the **SELLER's** written agreement for its proprietary data.

#### **CLAUSE 21 – COMMUNICATIONS; REPRESENTATIVE IN BRAZIL**

- 21.1 - All communications between the parties related to this Contract will be in writing, in English, and will be considered effective at the moment at which the correspondence is delivered to the other party. The addresses for the **BUYER** and **SELLER** are found in the letterhead and Box 3, respectively of the Purchase Order. The **BUYER's** points of contact are found on the last page of the Purchase Order. Additional contact information for other parties are as follows:

**Seller:**

**NEXANS NORWAY AS**

**Visiting Address:**

**Innspurten 9, NO-0663 – Oslo**

**Postal Address:**

**P.O. Box 6450 Etterstad**

**N-0605 Oslo – Norway**

**Tel: +47-2288-6100**

**Fax: +47-7569 2212**

**Mr. Tor Kulseth, Project Manager**

**Email: [tor.kulseth@nexans.com](mailto:tor.kulseth@nexans.com)**

**Nexan's Representative In Brazil:**

**Mr. Nelson Albano**

**Tel (W): 55-21-3559-6001**

**Tel (Cell): 55 12 9 9159 5508**

**E-mail: [nelson.albano@nexans.com](mailto:nelson.albano@nexans.com)**

**End User Contact Information:**

**Center of Integrated Telematics of the Army (CITEx)/4º CTA**

**Brasília, DF – Brazil**

**Cap Luciano Sales**

**Tel: +55-61-3415-7906**

**E-mail: [lucianosales@citex.eb.mil.br](mailto:lucianosales@citex.eb.mil.br)**

- 21.2 - The **SELLER** shall maintain a representative legally domiciled in Brazil with power of attorney to receive summons and answer in an administrative and judicial capacity during the validity of this Contract.
- 21.3 - The **SELLER's** point of contact will be NEXANS NORWAY AS branch in Brazil, managed by Mr. Nelson Albano, domiciled in Brazil.

#### **CLAUSE 22 - ARBITRATION AND APPLICABLE LAW**

- 22.1 - The parties shall endeavor to amicably solve any differences that might arise during the execution and interpretation of this Contract. The attempt to reach an amicable settlement will be considered to have failed when one party notifies the other in writing of the failure.
- 22.2 - All claims between the parties regarding any alleged breach of any substantive obligations created hereunder shall be finally settled by an arbitrator (the "**Board**"), who must be a US citizen

and member of the Bar of the State of New York actively engaged in the practice of law or a retired member of the Federal judiciary, pursuant to the rules and regulations of the American Arbitration Association. Arbitration proceedings conducted hereunder shall be confidential, subject to this Contract's security provisions, and conducted in the English language in New York, New York. In rendering its judgment, the Board shall determine the rights and obligations according to the substantive laws of the State of New York (excluding conflict of law principles and doctrine of "constructive change") as though the Board were a court of the State of New York. Any arbitration award must be based on and accompanied by findings of fact and conclusions of law, shall be conclusive as to facts so found and be confirmable by the US District Court for the Southern District of New York, if that award correctly applies the substantive laws of the State of New York (excluding conflict of laws, principles and doctrine of "constructive change"). Unless otherwise directed by the **BUYER**, pending the final disposition of any dispute hereunder, the **SELLER** must proceed diligently to perform this Contract, including delivery of the Defense Materiel in accordance with the **BUYER**'s instructions, provided that the **BUYER** pays the **SELLER** amounts due in accordance with this Contract, subject to adjustment based on final disposition of the dispute.

- 22.3 - The U.N. Convention on Contracts for the International Sale of Goods does not apply to this Contract. This Contract will be governed, construed, interpreted and applied in accordance with the laws of the State of New York, without reference to its choice of law rules or constructive change doctrine since the **BUYER** has consular offices in New York, and shall pay the **SELLER** with funds drawn from its account with a bank in New York City. Furthermore, the **BUYER** and the **SELLER** seek to take advantage of the stable and sophisticated commercial laws of the State of New York and of their interpretation by its Federal and State Courts. For all purposes with regards to any proceeding arising from or related to this contract, the **SELLER** irrevocably consents to both the personal jurisdiction of the Board pursuant to this clause for its enforcement, as well as to the personal jurisdiction of the US District Court for the Southern District of New York for any matter arising out of that arbitration. The **SELLER** irrevocably waives any objection (including forum non conveniens) to any proceedings as detailed in this clause.

#### **CLAUSE 23 - ATTACHMENTS AND ORDER OF PRECEDENCE**



- 23.1 - The following annexes are integrated herein and made an integral part of this Contract:



- a) Annex A - Price and Technical Proposal;
- b) Annex B - Provisional Receiving Certificate (PRC);
- c) Annex C - Definitive Receiving Certificate (DRC);
- d) Annex D - Financial Guarantee (sample)
- e) Annex E - Letter of Credit (draft)
- f) Annex F - List of Additional Activities

- 23.2 - In the event of apparent inconsistency between the documents and instruments that constitute the agreement between the **BUYER** to buy and the **SELLER** to sell the Defense Materiel, the following order of precedence set forth from highest to lowest will govern, and the text of the document or instrument with the higher order of precedence will prevail over the text of a document or instrument with a lower order of precedence and be considered the definitive expression of the agreement between the parties with respect to the apparent inconsistency:

- a) This Contract, No. 1013/2015
- b) Annexes A and F

## CLAUSE 24 - OTHER PROVISIONS

- 24.1 - The Brazilian Army's computers are compatible with Windows XP, Windows Vista, and Windows 7.
- 24.2 - This Contract is not subject to any specific legislation regarding the Financial Compensation Agreement (Offset) as long as its cumulative value is less than 5 million US dollars.
- 24.3 - No cancellation, modification, amendment, deletion, addition or other change in this Contract or any provision hereof, or waiver of any right or remedy herein provided, will be effective for any purpose unless specifically set forth in a written document signed by the party to be bound thereby. No waiver of any right or remedy in respect of any occurrence or event on one occasion will be deemed a waiver of that right or remedy with respect to the occurrence or event on any other occasion.
- 24.4 - This Contract supersedes all other agreements, oral or written, heretofore made with respect to the subject hereof and the transactions contemplated hereby, and contains the entire agreement between the parties. 
- 24.5 - Any provision hereof prohibited by, or that is unlawful or unenforceable under any applicable law of any jurisdiction, will as to that jurisdiction be ineffective without affecting any other provision in this Contract provided, however, that if the provisions of the applicable law may be waived, they are hereby waived until this Contract be deemed to be a valid and binding agreement enforceable in accordance with its terms. 
- 24.6 - The **SELLER** is not entitled to assign, transfer, or in any other way relieve itself or delegate any of its obligations under this Contract or any portion or interest herein, or to substitute any successor, without prior written consent of the **BUYER**, which the **BUYER** can withhold for any reason. This prohibition on assignment and transfer applies to any manner by which the **SELLER** seeks to assign or transfer, including assignment or transfer of the **SELLER**'s obligations hereunder by transferring this Contract to a subsidiary that the **SELLER** subsequently spins off and sells, or sale of the **SELLER**'s assets or sale of its shares of stock.
- 24.7 - The provisions of this Contract are binding upon the **BUYER** and the **SELLER** and their respective successors and assigns, but this provision will not expand or otherwise affect the limitation on assignment and transfers set forth in Sub-clause 24.6 herein, and no party is intended to or has any right or interest under this Contract, except as provided above.
- 24.8 - All requirements mentioned on the RFQ-0027/2015 and **SELLER**'S offer for the material and services of this RFQ are integral part of this contract.
- 24.9 - The **SELLER**'s ship transporting the cables and accessories object of this RFQ, must remain at the Port of Manaus, at **SELLER**'s cost, until all items are transferred to the receiving ship that will lay the cables in the Amazon River. In order to lower these operation costs and the number of days that the vessel stays at the Port, the **SELLER** may send its own technician and special equipment to speed up the transfer operation. Any cost, if applicable, for this operation must be included in Item 4 of the list of items – Packaging and Handling
- 24.10 - Any cost for docking, demurrage and other expenses of the **SELLER**'s ship during transshipment from Seller's ship to **BUYER**'s ship are **SELLER**'s responsibility.

- 24.11 - Any cost associated to the **BUYER**'s receiving ship will be the responsibility of the **BUYER**.
- 24.12 - Any delay(s) caused by the Brazilian Army or the Brazilian Army's contracted installation company, during unloading of the cargo, will be the responsibility of the **BUYER** and extra costs associated to this delay shall be paid by the **BUYER**. However, any delay caused by the **SELLER**, during unloading of the cargo, will be the responsibility of the **SELLER** and extra costs associated to this delay(s) shall be paid by the **SELLER**.
- 24.13 - The **SELLER** shall allow for testing of the material in the factory before shipment and at the Port of Manaus upon arrival.
- 24.14 - Before the transshipment of the cables to the **BUYER**'s ship, **SELLER** shall allow **BUYER**'s personnel aboard its ship and assure that the 02 (two) extremities of each cable are exposed, visible and accessible for the completion of the following tests: visual inspection and photo registration of the places and packages where the cables and accessories are located, Optical Time-domain Reflectometer test (OTDR), impedance tests of the copper conductors of the submarine cables for the assurance that no damages were done to the cables during transportation.
- 24.15 - In case the **BUYER** (Brazilian Army) itself is not able to execute the tests, reports must be produced after each test and contain proper signatures of the **SELLER** and the people responsible for the tests. A copy of the tests report must be delivered immediately to the **BUYER**. 
- 24.16 - The **SELLER** shall make sure that his representative is present in Manaus during the tests.
- 24.17 - The **BUYER** (Brazilian Army) will be responsible for Customs Clearance at the Port of Manaus. 
- 24.18 - In case there are any packaging items or equipment that must be returned to the **SELLER**, it is the **SELLER**'s responsibility to arrange and pay for the return of said material from the Port of Manaus to **SELLER**'s designated destination.
- 24.19 - Receipt and transportation of items 01 to 03 from the Port of Origin to the Port of Manaus is only acceptable via **coiled** onboard a freighter vessel. The Port of Manaus does not have a crane capable of lifting the whole cargo at once. **Baskets are not accepted.**
- 24.20 - Item 2 - UNIVERSAL QUICK JOINT - Qualified joint by the Universal Consortium fully compatible with the submarine cable type. As implied on its description, must be qualified/certified by an international consortium and said Certificate must be presented to CITEx before shipment of the items of this contract.
- 24.21 - During the FAT, representatives from the Seller, CITEx (End User) and the Installation company shall have a meeting to put together, in writing, an *Executive Project*, describing all additional logistics and tests activities and their respective responsible parties, along with the dates for all events of the contract. This Executive Project shall be created in order for all parties to have a smooth transition of the cables from the Seller's factory to the Installation company. Please see Annex F with a Table of additional Activities that must be mentioned on the *Executive Project*.
- 24.22 - All items of this contract can only be shipped after approval of the FAT.
- 24.23 - The **SELLER** must inform the end user of its intention to ship at least 15 days in advance. See Clause 10 for additional information.

24.24 - All expenses at the Port of Manaus in connection with the SELLER's vessel are SELLER'S responsibility.

#### CLAUSE 25 - TEXT, COPIES AND SIGNATURES


This Contract has been read, approved, and subsequently signed by Colonel José Eduardo Leal de Oliveira, Chief of the Brazilian Army Commission, fully representing the **BUYER**, and by Mr. Krister Granlie, Executive Vice President and Mrs. Merete Caubet, Sales Manager of Nexans Norway AS, representing the **SELLER**.


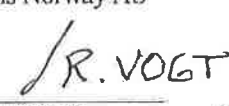
Washington, D.C., September 10<sup>th</sup>, 2015

For the **BUYER**

  
JOSÉ EDUARDO LEAL DE OLIVEIRA, Col.  
Chief, Brazilian Army Commission

For the **SELLER**

  
Mr. KRISTER GRANLIE  
Executive VP - Nexans Norway AS

   
for Mrs. MERETE CAUBET  
Sales Manager - Nexans Norway AS

DIRECTOR

**ANNEX A**

**PRICE AND TECHNICAL PROPOSAL**

*(Please refer to Proposal Number 15-040, dated August 07, 2015  
Presented by Nexans Norway AS in response to RFQ-0027/2015)*

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ANNEX B

PROVISIONAL RECEIVING CERTIFICATE  
(SAMPLE)

Provisional Receiving Certificate (PRC) N° \_\_\_\_\_

1. We have received from \_\_\_\_\_, the Defense Materiel listed below, object of Contract N° \_\_\_\_\_.

ITEM	P/N or NSN	DESCRIPTION	QUANTITY	UNIT PRICE

2. Defense Materiel received according to INVOICE N° \_\_\_\_\_, dated \_\_\_\_/\_\_\_\_/\_\_\_\_

3. Remarks:

Manaus, AM, \_\_ of \_\_\_\_\_ of 2016

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

ANNEX C

DEFINITIVE RECEIVING CERTIFICATE  
(SAMPLE)

Definitive Receiving Certificate (DRC) N° \_\_\_\_\_

1. We have received, according to Art N° \_\_\_\_\_, of the Administrative Army Regulations (RAE-3), the Defense Materiel listed below, object of Contract N° \_\_\_\_\_, signed between the GOVERNMENT OF THE FEDERATIVE REPUBLIC OF BRAZIL, through its MINISTRY OF DEFENSE represented by the BRAZILIAN ARMY COMMISSION IN WASHINGTON.

ITEM	P/N or NSN	DESCRIPTION	QUANTITY	UNIT PRICE

2. Defense Materiel received according to INVOICE N° \_\_\_\_\_, dated \_\_\_\_/\_\_\_\_/\_\_\_\_ or with the Provisional Receiving Certificate N° \_\_\_\_\_, dated \_\_\_\_/\_\_\_\_/\_\_\_\_.

3. Discrepancies:

Manaus, AM, \_\_\_\_ of \_\_\_\_\_ of 2016

\_\_\_\_\_  
President

\_\_\_\_\_  
Member

\_\_\_\_\_  
Member

ANNEX D

FINANCIAL GUARANTEE  
(SAMPLE)

ON OFFICIAL BANK STATIONARY

Ministry of Defense  
Brazilian Army  
Brazilian Army Commission  
4632 Wisconsin Ave, NW  
Washington, DC 20016

Your Ref:  
Our Ref:  
Date: \_\_/\_\_/2015

Dear Sirs,

Our Financial Guarantee N°: \_\_\_\_\_

We understand that you have entered into Contract 1013/2015 with NEXANS NORWAY AS for the supply of *Submarine Optical Cables* and that the maximum Contract value is **US\$ 1,758,375.00**.

The provisions set forth in Clause 12 of the Contract establish that the **SELLER** shall provide the **BUYER** with a Financial Guarantee in the amount of 5% (five percent) of the maximum Contract value.

In consideration of said provisions, we, (*Bank's Name*), hereby guarantee to refund to you, within **15 (fifteen)** days of receipt of your notification, up to 5% (five percent) of the maximum Contract value, equal to **US\$ 87,918.75 (eighty-seven thousand, nine hundred and eighteen US Dollars and seventy-five cents)** to ensure the full performance of all contractual obligations undertaken by the **SELLER**, in the event of your statement that the **SELLER** has failed to fulfill the Contract. Our maximum liability hereunder does not exceed 5% of the maximum Contract value.

This Financial Guarantee will remain valid until close of banking hours at this office on **April 05, 2016 ("EXPIRY")** and any claim hereunder must be received in writing at this office before Expiry, accompanied by your signed statement that the **SELLER** has failed to fulfill the Contract. Such claim and statement shall be accepted as conclusive evidence that the amount claimed is due to you under this Financial Guarantee.; however, such claims and statements must bear the dated confirmation of your Bankers that the signatories thereon are authorized so to sign.

This Financial Guarantee will become operative upon issue of our amendment making it effective, which will be issued upon receipt by us of written confirmation from the **SELLER** that the Contract has come into force.

Our obligation to pay hereunder does not arise if the **SELLER** informs us in writing within **5 (five)** business days after receipt by us of the claim for payment that it has referred the case to the arbitral tribunal provided for regarding the contractual obligations of the **SELLER** under the above-mentioned Contract. This notification must be accompanied by a copy of a written statement from the arbitral tribunal confirming that arbitration proceedings in connection with the above-referenced Contract N° **1013/2015** of *date* have been initiated.

However, upon presentation to us of a verified copy of the final arbitral award confirming the default of the **SELLER** under the Contract and the amount to be paid by the **SELLER** to the **BUYER** under the **SELLER's** contractual obligations, we shall effect payment without delay; the payment will not

exceed the maximum amount of US\$ 87,918.75 (eighty-seven thousand, nine hundred and eighteen US Dollars and seventy-five cents).

Upon Expiry, this Financial Guarantee will become null and void, whether returned to us for cancellation or not and any claim or statement received after Expiry shall be ineffective. This Financial Guarantee is personal to yourselves and is not transferable or assignable.

This Financial Guarantee will be governed by and construed in accordance with the Laws of the State of New York, and will be subject to the exclusive jurisdiction of the Courts of the State of New York.

Yours faithfully,

---

A handwritten signature in black ink, consisting of a stylized, cursive 'M' followed by a smaller, less distinct mark.

ANNEX E

APPLICATION FOR COMMERCIAL CREDIT  
(SAMPLE)

BRAZILIAN ARMY COMMISSION  
4632 WISCONSIN AVENUE, NW  
WASHINGTON, DC 20016

Telephone: (202) 244-5010

Fax: (202) 362-0034

APPLICATION FOR COMMERCIAL CREDIT

TO: BANCO DO BRASIL S/A  
USA Servicing Center  
8325 South Park Circle, Suite 140  
Orlando, Florida 32819  
Tel: (407) 608-1716 - Fax: (407) 608-1852

Washington, DC  
Date: Aug 2015  
Ref. PC-1013/2015

PLEASE ISSUE AND EITHER,

- a) NOTIFY THROUGH YOUR CORRESPONDENT BY ☐ MAIL/AIRMAIL ☐ WIRE IN FULL ☐ WIRE BRIEFLY, DETAILS BY AIRMAIL; OR  
b) ☐ RETURN TO US FOR TRANSMISSION TO BENEFICIARY; OR  
c) ☒ MAIL DIRECTLY TO BENEFICIARY; OR  
d) ☐ WIRE IN FULL TO THE BENEFICIARY'S BANK AS INDICATED UNDER SPECIAL INSTRUCTIONS,

YOUR IRREVOCABLE CREDIT (THE "CREDIT") AS FOLLOWS:

IN FAVOR OF **NEXANS NORWAY AS**  
Innspurten 9, NO-0663 - Oslo  
Tel: +47-2288-6100, Fax: +47-2288-6260  
E-mail: merete.caubet@nexans.com  
Mrs. Merete Caubet, Sales Manager

UP TO THE AGGREGATE AMOUNT OF US\$ 1,758,375.00 (one million, seven hundred fifty-eight thousand, three hundred seventy-five US Dollars).

FOR ACCOUNT OF BRAZILIAN ARMY COMMISSION, 4632 Wisconsin Avenue, NW - Washington, DC 20016.

AVAILABLE DRAFTS AT SIGHT DRAWN AT YOUR OPTION ON YOU OR ANY OF YOUR CORRESPONDENTS FOR 100% OF INVOICE VALUE WHEN ACCOMPANIED BY THE FOLLOWING DOCUMENTS:

**1<sup>st</sup> INSTALLMENT** - after **Shipment of the Defense Materiel** (Items 01 - 03 in Block 12 of the Purchase Order), in the amount of US\$ 1,220,624.00, representing the total value of those items and including the actual shipping expenses not to exceed US\$ 393,751.00 upon the **SELLER's** presentation of the following documents (a full description of the requirements of each document is included in Clause 10 - Shipping Documentation):

- a) **COMMERCIAL INVOICE:** The **SELLER's** invoice must conform strictly to this Contract and amendments hereto and include the following: Contract number, corresponding item number in the Purchase Order, part numbers, item description as written in the Purchase Order, quantity shipped, unit prices, and total price (2 copies)

b) **PACKING LIST** (2 copies)

c) **INVOICE FOR DELIVERY CHARGES:** The **SELLER's** invoice showing actual delivery charges may not exceed the estimated **US\$ 393,751.00** shown in this Contract. The **BUYER** shall **pay only the actual costs**, which cannot exceed the above estimate. The **SELLER** shall attach the corroborating documents from the freight forwarder, carrier, and insurance company for each delivery. This estimated maximum value for delivery expenses includes 15% service charge for Nexan's delivery management . (2 copies)

d) **CLEAN ON BOARD MASTER OCEAN BILL OF LADING** consigned to the order of **MINISTÉRIO DA DEFESA-EXÉRCITO BRASILEIRO – BA AP LOG EX/DIEM (CNPJ: 00.394.452/0475-92) Avenida Brasil, 25.540, Deodoro, Rio De Janeiro - RJ CEP: 21615-331 – Brazil, Contract 1013/2015, OMD: 4º CTA, marked "Freight Prepaid" and "Notify consignee" at Tel+55-21-2457-4302 Fax +55-21-2457-4918".** The B/L must show the Nomenclatura Comum do Mercosul code number as follows: **NCM: 8544.** (2 copies)

e) **INSURANCE CERTIFICATE** in the amount of 110% (one hundred ten percent) of the value of the contract including freight and insurance charges, covering all risks, issued *in favor of* the Brazilian Army Commission (2 copies).

f) **VALIDATED EXPORT LICENSE** issued by the Government of Norway (1 copy) **OR a DECLARATION** issued by the **SELLER** or original manufacturer stating that the Materiel in this Contract does not require an export license (2 copies)

g) **FACTORY ACCEPTANCE TEST CERTIFICATE** issued by CITEx (2 copies).

h) **LETTER FROM THE SELLER** stating that it has forwarded to the Brazilian Army Commission, via express mail and per Clause 12 – Payment Conditions, the originals of all the required documents for the Letter of Credit.

**2<sup>nd</sup> INSTALLMENT** - after **Acceptance of the Defense Materiel in Manaus** (Items 04 in Block 12 of the Purchase Order), in the amount of **US\$ 144,000,00**, representing the total value of this item upon the **SELLER's** presentation of the following documents (a full description of the requirements of each document is included in Clause 10 – Shipping Documentation):

a) **COMMERCIAL INVOICE:** The **SELLER's** invoice must conform strictly to this Contract and amendments hereto and include the following: Contract number, corresponding item number in the Purchase Order, part numbers, item description as written in the Purchase Order, quantity shipped, unit prices, and total price (2 copies)

b) **DEFINITIVE RECEIVING CERTIFICATE** issued by CITEx (2 copies).

c) **LETTER FROM THE SELLER** stating that it has forwarded to the Brazilian Army Commission, via express mail and per Clause 12 – Payment Conditions, the originals of all the required documents for the Letter of Credit.

**RELATING TO SHIPMENT(S) OF:**

- a. 220000 m of Submarine Fiber Optical Cable;
- b. 07 Universal Quick Joints;
- c. 5000 m of Land Optical Cable;
- d. Packing and Handling.

FROM Any port of Norway TO Port of Manaus, AM - Brazil

[x] BILL OF LADING MUST BE DATED ON BOARD NO LATER THAN 05 January 2016

[x] PARTIAL SHIPMENT NOT PERMITTED [x] TRANSHIPMENT NOT PERMITTED

DRAFTS MUST BE DRAWN AND NEGOTIATED NOT LATER THAN 05 February 2016

**SPECIAL INSTRUCTIONS:**

1. On this Contract No. 1013/2015, price condition is CIF Port of Manaus, AM - Brazil.
2. Material FOB cost cannot exceed US\$ 1,220,624.00 and Packing and Handling cannot exceed US\$ 144,000.00
3. Freight and insurance charges cannot exceed US\$ 393,751.00, which is estimated only. Beneficiary shall invoice only the actual costs based on the carrier's corroborating document.
4. Shipment cannot be consolidated with another cargo.
5. Presentation of documents to the Bank: within 30 (thirty) days from shipment date, but not exceeding the expiry date of the letter of credit.
6. If any of the required documents are issued in a language other than English, it must be presented accompanied by a certified translation into the English language.
7. This Letter of Credit shall be advised through, confirmed by and payable with:

Advising Bank: NORDEA BANK, Norway.  
Middelstunsgt.17. P.Box 1166, Sentrum, 0107  
Oslo, Norway.  
SWIFT: NDEANOKK  
Place of expiry: Advising Bank, Norway

All bank charges related to these transactions and any other charges outside the counters of Banco do Brasil are for the beneficiary's account

8. This letter of credit is subject to the Uniform Customs and Practice for Documentary Credit (2007 Edition), International Chamber of Commerce Publication No. 600.

We warrant that no shipment involved in this application is in violation of the U.S. Treasury Foreign Assets Control or Cuban Assets Control Regulations.

This application is made subject to the Continuing Letter of Credit Agreement heretofore executed by us and delivered to you, the provisions of which are hereby made applicable to this Application and the Credit.

ELTON R. ALVES ARRAIS, Lt Col  
Chief, Finance Division  
Brazilian Army Commission

ACELIO FERREIRA DA SILVA JUNIOR, Lt Col  
Chief, Procurement Division  
Brazilian Army Commission

# ANNEX F

## LIST OF ADDITIONAL ACTIVITIES (Executive Project)

Activities & Responsibilities	Brazilian Army	Installation Company	Seller	Observations
Develop the Executive Project for the receiving of the cables in the Port of Manaus	C	R	A/R	The two contractors (Seller and Installation Company) with the assistance of representatives of the Army will develop together the Executive Project for the receiving of the cables at the Port of Manaus. This document shall help avoid possible delays and additional costs due to last-minute surprises. The Brazilian Army will send representatives to discuss the executive project.
Load the newly manufactured cables from the factory to the transportation vessel	I	C	A/R	The installation company shall accompany the loading operation.
FAT tests before shipment to the Porto of Manaus	I	R	R	The cables can only be shipped to Brazil after approval in the FAT with Certificate signed also by representatives of the Army and the installation company.
Travel to the Port of Manaus	I	I	A/R	The Seller must notify CITEx and the Installation Company with an advanced notice of at least 15 (fifteen) days of the date of arrival of the vessel at the Porto of Manaus in order to expedite preparations to receive the cables and Customs Clearance. Buyer must be notified 15 days in advance as mentioned in Clause 10.
Prepare the logistics to receive the cables	I	A/R	I	The Installation company must prepare all the logistics and its personnel, as per the Executive Project, in order to receive the cables.
Customs Clearance	A/R	I	I/R	Customs Clearance will be done by the Brazilian Army.



Transfer of the cables from the vessel to an installation barge	I	R	A/R	The cable transfer process must be conducted by the <b>SELLER</b> of cables with support by the installation company. The supplier of the cables shall be concerned with the form and materials involved in transfer of cables from its vessel to the installation vessel, being responsible for the acquisition of all means needed for this activity.
Perform tests in the cable segments (to confirm that it arrived with no travel discrepancies)	I	A/R	R	Tests according to Clause 19 of the RFQ and Clause 24 above.
Perform the transfer of the cables, via LCE, to the basket of the installation company	I	R	A/R	Any discrepancies during the transfer of the cables will be the Seller's responsibility.
Perform joints, if needed, at the end of each segment of the transferred cables	I	R	A/R	All costs with needed joints at the end of each cable segment will be responsibility of the Seller. 7 UQJ jointing kits will be supplied as part of <b>SELLER's</b> scope of supply. Actual use of the jointing kits are outside the scope except for discrepancies found during the tests to be done aboard Seller's vessel and installation vessel in Manaus or for warranty reasons.
Perform final tests in all cable items after cables are at the basket of the installation company	A/R	R	R	The Definitive Receiving Certificate will be issued by the <b>BUYER</b> only after approval in a final test to be done after cables are fully received and are at the installation ship. It should be understood that the overall responsibility of issuing the Definitive Receiving Certificate is the responsibility and approval of the <b>BUYER</b> .

A = Responsible party

R = Executor

C = Party that must be consulted prior to service

I = Party that must be informed of each service