



TERMS OF REFERENCE FOR SUPPLY OF GOODS AND SERVICES

- 1. SOURCE OF INSTRUCTIONS:** The Contractor shall neither seek nor accept instructions from any authority external to FJDP in connection with the performance of its obligations under the Contract. Should any authority external to FJDP seek to impose any instructions concerning or restrictions on the Contractor's performance under the Contract, the Contractor shall promptly notify FJDP in writing and provide all reasonable assistance required by FJDP. The Contractor shall not take any action in respect of the performance of its obligations under the Contract that may adversely affect the interests of FJDP, and the Contractor shall perform its obligations under the Contract with the fullest regard to the interests of FJDP.
- 2. ASSIGNMENT:**

 - 2.1 Except as provided in Article 1., below, the Contractor may not assign, transfer, pledge or make any other disposition of the Contract, of any part of the Contract, or of any of the rights, claims or obligations under the Contract except with the prior written authorization of FJDP. Any such unauthorized assignment, transfer, pledge or other disposition, or any attempt to do so, shall not be binding on FJDP. Except as permitted with respect to any approved subcontractors, the Contractor shall not delegate any of its obligations under the Contract, except with the prior written consent of FJDP. Any such unauthorized delegation, or attempt to do so, shall not be binding on FJDP.
 - 2.2** The Contractor may assign or otherwise transfer the Contract to the surviving entity resulting from a reorganization of the Contractor's operations provided that:

 - 2.2.1** Such reorganization is not the result of any bankruptcy, receivership or other similar proceedings; and,
 - 2.2.2** Such reorganization arises from a sale, merger, or acquisition of all or substantially all of the Contractor's assets or ownership interests; and,
 - 2.2.3** The Contractor promptly notifies FJDP about such assignment or transfer at the earliest opportunity; and,

2.2.4 The assignee or transferee agrees in writing to be bound by all of the terms and conditions of the Contract, and such writing is promptly provided to FJDP following the assignment or transfer.

3. SUBCONTRACTING: In the event that the Contractor requires the services of subcontractors to perform any obligations under the Contract, the Contractor shall obtain the prior written approval of FJDP. FJDP shall be entitled, in its sole discretion, to review the qualifications of any subcontractors and to reject any proposed subcontractor that FJDP reasonably considers is not qualified to perform obligations under the Contract. FJDP shall have the right to require any subcontractor's removal from FJDP premises without having to give any justification therefore. Any such rejection or request for removal shall not, in and of itself, entitle the Contractor to claim any delays in the performance, or to assert any excuses for the non-performance, of any of its obligations under the Contract, and the Contractor shall be solely responsible for all services and obligations performed by its subcontractors. The terms of any subcontract shall be subject to, and shall be construed in a manner that is fully in accordance with, all of the terms and conditions of the Contract.

4. OFFICIALS NOT TO BENEFIT: The Contractor warrants that it has not and shall not offer any direct or indirect benefit arising from or related to the performance of the Contract or the award thereof to any representative, official, employee, or other agent of FJDP. The Contractor acknowledges and agrees that any breach of this provision is a breach of an essential term of the Contract.

5. PURCHASE OF GOODS: The following conditions shall apply;

DELIVERY OF GOODS: The Contractor shall hand over or make available the goods, and FJDP shall receive the goods, at the place for the delivery of the goods and within the time for delivery of the goods specified in the Contract. The Contractor shall provide to FJDP such shipment documentation (including, without limitation, bills of lading, airway bills, and commercial invoices) as are specified in the Contract or, otherwise, as are customarily utilized in the trade. All manuals, instructions, displays and any other information relevant to the goods shall be in the English language unless otherwise specified in the Contract. Unless otherwise stated in the Contract the entire risk of loss, damage to, or destruction of the goods shall be borne exclusively by the Contractor until

physical delivery of the goods to FJDP in accordance with the terms of the Contract. Delivery of the goods shall not be deemed in itself as constituting acceptance of the goods by FJDP.

6. INSPECTION OF THE GOODS: If the Contract provides that the goods may be inspected prior to delivery, the Contractor shall notify FJDP when the goods are ready for pre-delivery inspection. Notwithstanding any pre-delivery inspection, FJDP or its designated inspection agents may also inspect the goods upon delivery in order to confirm that the goods conform to applicable specifications or other requirements of the Contract. All reasonable facilities and assistance, including, but not limited to, access to drawings and production data, shall be furnished to FJDP or its designated inspection agents at no charge therefore. Neither the carrying out of any inspections of the goods nor any failure to undertake any such inspections shall relieve the Contractor of any of its warranties or the performance of any obligations under the Contract.

6.1 PACKAGING OF THE GOODS: The Contractor shall package the goods for delivery in accordance with the highest standards of export packaging for the type and quantities and modes of transport of the goods. The goods shall be packed and marked in a proper manner in accordance with the instructions stipulated in the Contract or, otherwise, as customarily done in the trade, and in accordance with any requirements imposed by applicable law or by the transporters and manufacturers of the goods. The packing, in particular, shall mark the Contract or Purchase Order number and any other identification information provided by FJDP as well as such other information as is necessary for the correct handling and safe delivery of the goods. Unless otherwise specified in the Contract, the Contractor shall have no right to any return of the packing materials.

6.2 TRANSPORTATION & FREIGHT: Unless otherwise specified in the Contract, the Contractor shall be solely liable for making all transport arrangements and for payment of freight and insurance costs for the shipment and delivery of the goods in accordance with the requirements of the Contract. The Contractor shall ensure that FJDP receives all necessary transport documents in a timely manner so as to enable FJDP to take delivery of the goods in accordance with the requirements of the Contract.

6.3 WARRANTIES: Unless otherwise specified in the Contract, in addition to and without limiting any other warranties, remedies or rights of FJDP stated in or arising under the Contract, the Contractor warrants and represents that:

6.3.1 The goods, including all packaging and packing thereof, conform to the specifications of the Contract, are fit for the purposes for which such goods are ordinarily used and for any purposes expressly made known in writing in the Contract, and shall be of even quality, free from faults and defects in design, material, manufacturer and workmanship;

6.3.2 The goods are of the quality, quantity and description required by the Contract, including when subjected to conditions prevailing in the place of final destination;

6.3.3 The goods are free from any right of claim by any third-party, including claims of infringement of any intellectual property rights, including, but not limited to, patents, copyright and trade secrets;

6.3.4 The goods are new and unused;

6.3.5 All warranties will remain fully valid following any delivery of the goods and for a period of not less than one (1) year following acceptance of the goods by FJDP in accordance with the Contract;

6.3.6 During any period in which the Contractor's warranties are effective, upon notice by FJDP that the goods do not conform to the requirements of the Contract, the Contractor shall promptly and at its own expense correct such non-conformities or, in case of its inability to do so, replace the defective goods with goods of the same or better quality or, at its own cost, remove the defective goods and fully reimburse FJDP for the purchase price paid for the defective goods; and,

6.3.7 The Contractor shall remain responsive to the needs of FJDP for any services that may be required in connection with any of the Contractor's warranties under the Contract.

6.4 ACCEPTANCE OF GOODS: Under no circumstances shall FJDP be required to accept any goods that do not conform to the specifications or requirements of the Contract. FJDP may condition its acceptance of the goods upon the successful completion of acceptance tests as may be specified in the Contract or otherwise agreed in writing by the Parties. In no case shall FJDP be obligated to accept any goods unless and

until FJDP has had a reasonable opportunity to inspect the goods following delivery. If the Contract specifies that FJDP shall provide a written acceptance of the goods the goods shall not be deemed accepted unless and until FJDP in fact provides such written acceptance. In no case shall payment by FJDP in and of itself constitute acceptance of the goods.

6.5 REJECTION OF GOODS: Notwithstanding any other rights of, or remedies available to FJDP under the Contract, in case any of the goods are defective or otherwise do not conform to the specifications or other requirements of the Contract, FJDP, at its sole option, may reject or refuse to accept the goods, and within thirty (30) days following receipt of notice from FJDP of such rejection or refusal to accept the goods, the Contractor shall, in sole option of FJDP:

6.5.1 Provide a full refund upon return of the goods, or a partial refund upon a return of a portion of the goods, by FJDP; or,

6.5.2 Repair the goods in a manner that would enable the goods to conform to the specifications or other requirements of the Contract; or,

6.5.3 Replace the goods with goods of equal or better quality; and,

6.5.4 Pay all costs relating to the repair or return of the defective goods as well as the costs relating to the storage of any such defective goods and for the delivery of any replacement goods to FJDP.