



GENERAL COMMAND FOR SUPPORT
AERONAUTICAL LOGISTICS CENTER
BRAZILIAN AERONAUTICAL COMMISSION IIN WASHINGTON



**PROJECT KC-X3
CONTRACT**

Nº XXX/CABW/2022

**AERONAUTICAL COMMAND
AND THE COMPANY**

XXXXXXXXXXXXXXXXXX

**Acquisition of 02 (two) A330-200 model aircrafts,
manufactured on a date after January 01, 2014,
compatible with the conversion to the Military A330
MRTT Flight Resupply Version, as specified in the
BASIC PROJECT and its Annexes, in compliance with
ROP EMAER 118**

Sumário

FIRST PART – PREAMBLE AND QUALIFICATION	3
SECOND PART – CLAUSES	3
1. FIRST CLAUSE – OBJECT	3
2. SECOND CLAUSE – TERM OF VALIDITY	4
3. THIRD CLAUSE – PRICE	4
4. FOURTH CLAUSE – BUDGET ALLOCATION	5
5. FIFTH CLAUSE – PAYMENT	5
6. SIXTH CLAUSE – CONTRACT PRICE ADJUSTMENT	8
7. SEVENTH CLAUSE – CONTRACT GUARANTEE	8
8. EIGHTH – DELIVERY AND RECEIPT OF THE OBJECT	10
9. NINTH CLAUSE – CONTRACT MONITORING	10
10. TENTH CLAUSE – THE CONTRACTING PARTY’S OBLIGATIONS	10
11. ELEVENTH CLAUSE – THE CONTRACTED PARTY’S / CONTRACTED PARTY’S OBLIGATIONS	11
12. TWELFTH CLAUSE – ADMINISTRATIVE SANCTIONS	14
13. THIRTEENTH CLAUSE – CONTRACT TERMINATION	16
14. FOURTEENTH CLAUSE – PERMISSIONS AND VETO	18
15. FIFTEENTH CLAUSE – SUBCONTRACTING	18
16. SIXTEENTH CLAUSE – CONTRACT MODIFICATIONS	18
17. SEVENTEENTH CLAUSE – SUBJECTIVE MODIFICATIONS	20
18. EIGHTEENTH - OMISSIONS	21
19. NINETEENTH CLAUSE – CONTRACTUAL EFFECTIVENESS	21
20. TWENTIETH CLAUSE – JURISDICTION	21
21. TWENTY-FIRST CLAUSE – EXECUTION REGIME AND FORM OF DELIVERY	21
22. TWENTY-SECOND CLAUSE – TECHNICAL WARRANTY	22
23. TWENTY- THIRD CLAUSE – CERTIFICATION	22
24. TWENTY- FOURTH CLAUSE – AIRWORTHINESS	22
25. TWENTY- FIFTH CLAUSE – CORRESPONDENCES	22
26. TWENTY-SIX CLAUSE – ACTS OF GOD AND FORCE MAJEURE	23
27. TWENTY- SEVENTH CLAUSE – IMPORTATION CONDITIONS	23
28. TWENTY- EIGHTH CLAUSE – GENERAL PROVISIONS	23
29. TWENTY- NINTH CLAUSE – IDIOM	24
30. THIRTY– EXEMPLARIES	24
31. THIRTY-FIRST CLAUSE – INTEGRATED DOCUMENTS	24
32. THIRTY- SECOND CLAUSE – ANNEXES	24
THIRD PART – CONCLUSION	24
FOURTH PART - SIGNATURES	24

TERM OF CONTRACT**PURCHASE**

**TERM OF EXPENSE CONTRACT No.//CABW/2022,
QUE IN WHICH ENTER INTO AGREEMENT THE
BRAZILIAN AERONAUTICAL COMMISSION IN
WASHINGTON AND THE COMPANY**

.....

FIRST PART – PREAMBLE AND QUALIFICATION

The Union, through the Brazilian Aeronautical Commission in Washington (BACW), headquartered at 1701 22nd Street, NW ZIP: 20008 - Washington, DC, in the city of Washington, in the District of Columbia, registered with the CNPJ under n° 00.394.429 /0041-06, herein represented by the Head of the BACW, **Roberto Martire Pires Coronel Aviador**, appointed by Ordinance No. **2,072/GC1, of December 12, 2018**, published in the DOU of December 14, 2018, bearer of the registration number **472,744/COMAER**, hereinafter referred to as the CONTRACTING PARTY, and the registered with the CNPJ/MF under No., headquartered at, in hereinafter referred to as the CONTRACTED PARTY, herein represented by Mr., bearer of Identity Card No., issued by, and S.S. No., in view of the provisions of Case No. 67101.003320/2020-14 and in compliance with the principles of the Brazilian Federal Law No. 8,666, of June 21, 1993, resolve to enter into this Contract Agreement, subject to the following clauses and conditions.

SECOND PART – CLAUSES**1. FIRST CLAUSE – OBJECT**

- 1.1. The purpose of this Contract is the acquisition of 02 (two) A330-200 model aircraft, MANUFACTURED ON A DATE AFTER JANUARY 01, 2014 COMPATIBLE WITH THE CONVERSION TO THE MILITARY A330 MRTT FLIGHT RESUPPLY VERSION, as specified in the PROJECT BÁSICO and its annexes, in compliance with ROP EMAER 118, according to the conditions, quantities and requirements established in the Notice and its annexes.
- 1.2. This Bidding Process will be carried out in a single lot, according to Basic Project No. 001/CELOG/2022. The aircrafts must be “sisterships”, that is, similar in all equipment and configuration.
- 1.3. The evaluation criterion adopted will be the Lowest Global Price, observing the requirements contained in this Notice and its Annexes regarding the specifications of the object.
- 1.4. The aircraft must be delivered in accordance with the conditions established in Annex 02 to the Basic Project 001/CELOG/2022 – Delivery and Receipt of Aircraft.
- 1.5. This Term of Agreement is linked to the Bidding Notice, whose process number was identified in the preamble and to the winning proposal, regardless of transcription.
- 1.6. Object breakdown:

ITEM	DESECRPTION SPECS	CATMAT IDENTIFICATION	UNIT OF MEASURE MENT	QUANTITY	MAXIMUM ACCEPTABL E VALUE
1	Acquisition of 02 (two) A330-200 model	16080	UN	2	US\$ XXXX,XX

	aircraft, MANUFACTURED ON A DATE AFTER JANUARY 01, 2014 COMPATIBLE WITH THE CONVERSION TO THE MILITARY A330 MRTT FLIGHT RESUPPLY VERSION, as specified in the BASIC PROJECT and its annexes, in compliance with the ROP EMAER 118, according to the conditions, quantities and requirements established in this instrument and its annexes.				
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2. SECOND CLAUSE – TERM OF VALIDITY

2.1. The term of validity of this Term of Contract is 12 (twelve) months, counted from its signature, starting on the date of ___/___/___ and ending on ___/___/___, extendable pursuant to art. 57, §1, of the Brazilian Federal Law No. 8,666, of 1993.

3. THIRD CLAUSE – PRICE

3.1. The value of this Contract is US\$ (.....), firm and fixed, determined by the sum of the following items:

AIRCRAFT KC-X3	PRICE
BASIC AIRCRAFT	US\$ XXXXX
Customs Cost	US\$ XXXXX
Brazil Transfer Insurance	US\$ XXXXX
Crew Transfer Brazil	US\$ XXXXX
Other Costs (certification, ANAC registration or other applicable)	US\$ XXXXX

3.2. The above price includes all direct and indirect ordinary expenses arising from the performance of the contract, including taxes and/or taxes, fees, fees, social, labor, social security, tax and commercial charges, administration fee, freight, insurance and others necessary to fully comply with the purpose of the contract and issuance of the Final Receipt Term.

3.3. Pursuant to article 65, § 5, of the Brazilian Federal Law No. 8,666/93, any taxes or legal charges created, amended or extinguished, as well as the supervenience of legal provisions, when occurring after the deadline for

submission of the proposal, with proven repercussions on the contracted prices, will imply the revision of these for more or less, as the case may be.

4. FOURTH CLAUSE – BUDGET ALLOCATION

4.1. The expenses resulting from this Contract are programmed in its own budget allocation, provided for in the Union budget, for the year 2022, in the classification below:

Management/Unit: 00001/120090

Source: Aeronautical Fund

Programmatic Functional: 05 151 6012 15XX 0001

Expense Elements: 449052

4.2. This contract may be funded by another Source, Work Program and Action made available by the COMAER, whose purpose is compatible with the Object of this Contract.

5. FIFTH CLAUSE – PAYMENT

5.1. The payment will be made in US dollars by BACW after receipt of the Invoice or Invoice related to the stage, by means of a bank order, for credit in the bank, branch and current account indicated by the Contracted Party, according to the Physical-Financial Schedule, in accordance with the system described in this clause.

5.2. The contracted OBJECT will be paid in 02 (two) installments. Each installment will be paid within 30 (thirty) calendar days after the end of the final receipt of each aircraft.

5.3. The first aircraft must be presented for delivery within 90 (ninety) days, when the provisional receipt will begin, followed by the transfer and definitive receipt. At the end of the final receipt, the Final Receipt Report will be issued, and at this time the CONTRACTED shall issue the Invoice for payment of the installment related to this aircraft. Upon receipt of the Invoice, the CONTRACTING PARTY will have a maximum of 30 (thirty) days to make the payment of the stage, counting from the delivery of the Invoice from the CONTRACTED PARTY to the CONTRACTING PARTY.

5.4. The second aircraft must be presented for delivery within 150 (one hundred and fifty) days, when the provisional receipt will begin, followed by the transfer and definitive receipt. At the end of the final receipt, the Final Receipt Report will be issued, and at this time the CONTRACTED shall issue the Invoice for payment of the installment related to this aircraft. Upon receipt of the Invoice, the CONTRACTING PARTY will have a maximum of 30 (thirty) days to make the payment of the stage, counting from the delivery of the Invoice from the CONTRACTED PARTY to the CONTRACTING PARTY.

5.5. The first installment will be related to the value of the first aircraft delivered, and will have a maximum value of 50% (fifty) percent of the total value of the CONTRACT. The second installment will have the complementary value of the total value of the contract.

5.6. The receipt of the invoice or invoice is considered to have occurred when the contracting agency certifies the execution of the object of the contract.

5.7. The Contracted Party will only be authorized to issue the respective Invoice after drawing up and signing the Final Receipt Term of the respective stage, which will occur upon delivery of the aircraft and transfer of its ownership and risks.

5.7.1. The original Invoice must be presented together with 2 (two) copies on behalf of COMAER.

5.7.2. In the appropriate field of the Invoice, the description of the stage delivered and the contract number must appear.

5.8. The Contracted Party is only authorized to issue the Invoice referring to the last pending stage of the contract, after the occurrence of all the events listed in sub-clause 5.13 of this contract.

5.9. Once the final receipt has been made and the Invoice has been received by the Contracting Party, the Administration will have a period of 5 (five) business days, counted from the date of receipt of the Invoice, to verify its correction and proceed with the payment process.

5.9.1. If errors or nonconformities are found, the Invoice will be returned to the Contracted Party for the necessary corrections and the period of 5 (five) business days for verification will be applicable again.

5.9.2. If the information contained in the Invoice is correct, the Contracting Party will arrange for the payment, so that it is effected within 30 (thirty) days, counted from the date of presentation of the Invoice corresponding to the stage, once the necessary conditions for the issuance are met. of the Invoice.

5.10. Payments will be made by bank credit order in favor of:

For credit of: XXXXXXXXXXXX

Bank: XXXXXXXXXXXX

Bank Code: XXXXXXXXXXXX

Bank Agency: XXXXXXXXXXXX

Current Account: XXXXXXXXXXXX

5.11. The date of payment shall be deemed to be the day on which the bank order for payment appears as issued, corresponding to the date of debiting the amount of the Invoice to the Contracting Party's account in favor of the Contracted Party.

5.12. Prior to the issuance of a commitment note and each payment, the Administration must consult the SICAF, or other register used by the BACW, to identify possible temporary suspension of participation in bidding, within the scope of the body or entity, prohibition of contracting with the Public, as well as indirect impeding occurrences, observing the provisions of art. 29, of Normative Instruction No. 3, of April 26, 2018.

5.13. In the event of any delay in payment, provided that the Contracted Party has not contributed in any way, for this purpose, the amount due must be increased by a financial update, and its calculation will be made from the due date until the date of effective payment, in which late payment interest will be calculated at the rate of 0.5% (half percent) per month, or 6% (six percent) per year, by applying the following formulas:

EM = I x N x VP, where:

EM = Late payment charges;

N = Number of days between the expected payment date and the actual payment date;

VP = Amount of the installment to be paid.

I = Financial compensation index = 0.00016438, calculated as follows:

$$I = (TX) \quad I = \frac{(6 / 100)}{365} \quad I = 0,00016438$$

TX = Annual Percentage Rate = 6%

5.14. The delay of more than 90 (ninety) days of payments due by the Contracting Party, related to the steps already received, except in cases of unforeseeable circumstances and force majeure, guarantees the Contracted Party the right to suspend its work provided for in this Contract until the situation is normalized, without prejudice to the possibility of termination of the Agreement.

5.14.1. The suspension of the Contract must be subject to prior and formal notification to the Contracting Party.

5.15. Payment for the aircraft, finalized and definitively received before the date provided for in the Physical-Financial Schedule, may be made, at the Contracting Party's discretion, provided that this occurs in the same financial year for which it had been planned and budgeted by the Contracting Party.

5.16. The presentation, by the Contracted Party, of the aircraft before the date provided for in the Physical-Financial Schedule is only allowed in the cases provided for in sub-clause 5.15 of this clause. In this case, the amount to be paid by the Contracting Party shall be discounted upon written request from the Contracted Party, as detailed below:

D = N x VP x I, where:

D = discount to be applied to the value of the stage delivered in advance;

VP = value of the step to be paid;

N = number of days between the date of presentation of the stage provided for in the Physical-Financial Schedule and the date of the effective presentation of the stage; and

I = Financial compensation index = 0.00016438, calculated as follows:

$$I = (\text{TX}) \quad I = \frac{(6 / 100)}{365} \quad I = 0,00016438$$

TX = Annual Percentage Rate = 6%

5.17. It is hereby agreed between the Parties that the payment of the last stage, included in the Physical-Financial Schedule, will only be made after:

5.17.1. That the Terms of Final Receipt/Terms of Receipt, Transfer of Ownership and Risks of the aircraft have been drawn up and signed by the Parties;

5.17.2. Any nonconformities found during the receipt of the aircraft have been resolved; and

5.17.3. All other contractual provisions have been complied with, except for the technical guarantee provided.

5.18. Upon payment, ownership of the asset will be transferred to the Contracting Party.

5.19. For companies based in Brazil:

5.19.1. The Invoice must be accompanied by proof of fiscal regularity, verified by means of an online consultation with the SICAF or, in the impossibility of accessing said System, by consulting the official electronic sites or the documentation mentioned in art. 29 of Law No. 8,666 of 1993.

5.19.2. If, with the SICAF, the situation of irregularity of the contracted supplier is verified, the measures provided for in art. 31 of Normative Instruction No. 3, of April 26, 2018.

5.19.3. If there is an error in the presentation of the Invoice or documents relevant to the contract, or, even, a circumstance that prevents the settlement of the expense, such as, for example, pending financial obligation, resulting from an imposed penalty or default, the payment will be deferred until the Contracted Party provide remedial measures. In this case, the payment period will begin after proof of the regularization of the situation, not causing any burden to the Contracting Party.

5.19.4. Before payment to the Contracted Party, a consultation with the SICAF will be carried out to verify the maintenance of the qualification conditions required in the public notice.

5.19.5. If, with the SICAF, the Contracted Party is found to be in a situation of irregularity, it will be notified, in writing, so that, within 5 (five) business days, it will regularize its situation or, within the same period, present its defense. The term may be extended once, for an equal period, at the discretion of the contracting party.

5.19.6. If there is no regularization or if the defense is considered unfounded, the contracting party must communicate to the bodies responsible for the inspection of tax regularity regarding the default of the Contracted Party, as well as the existence of payment to be made, so that the relevant and necessary means are activated to guarantee receipt of your credits.

5.19.7. If the irregularity persists, the contracting party must adopt the necessary measures to terminate the contract in the records of the corresponding administrative proceeding, ensuring the contracted party a full defense.

5.19.8. If the object is effectively executed, payments will be made normally, until the termination of the contract is decided, if the Contracted Party does not regularize its situation with the SICAF.

5.19.9. The contract in execution with the defaulting Contracted Party at SICAF will be terminated, except for reasons of economy, national security or other highly relevant public interest, duly justified, in any case, by the highest authority of the contracting party.

5.19.10. Upon payment, the tax withholding provided for in the applicable legislation will be made.

5.19.10.1. The Contracted Party regularly opting for Simples Nacional, under the terms of Complementary Law No. 123, of 2006, will not suffer withholding tax on taxes and contributions covered by that regime. However, the payment will be conditioned to the presentation of proof, by means of an official document, that you are entitled to the favored tax treatment provided for in the aforementioned Complementary Law.

5.20. For companies based abroad:

5.20.1. Companies headquartered abroad must observe the local peculiarities arising from the legislation of the place where the bidding takes place, as well as the country where it is headquartered.

6. SIXTH CLAUSE – CONTRACT PRICE ADJUSTMENT

6.1. The contracted prices are firm, fixed and non-adjustable over the 12 (twelve) months, unless there is a demonstrated occurrence of an unforeseeable event that has an impact on the contractual relationship.

7. SEVENTH CLAUSE – CONTRACT GUARANTEE

7.1. The successful bidder, within 10 (ten) business days after signing the Contract Term or accepting the equivalent instrument, will provide a guarantee in the amount corresponding to 2% (two percent) of the total value of the Contract, equivalent to **US\$ XXX (XXX)**, which will be released in accordance with the conditions set forth in the Public Notice, provided that all contractual obligations are fulfilled.

7.2. Financial guarantees relating to this Agreement must be presented in US Dollars. The beneficiary of the contractual/financial guarantees will be the Brazilian Aeronautical Commission in Washington (BACW), headquartered at 1701 22nd Street, N.W. ZIP: 20008 - Washington, D.C., in the city of Washington, in the District of Columbia.

7.3. The terms and conditions of the financial guarantee for the performance of the contract will be subject to acceptance by the Contracting Party, within 10 (ten) business days, from its presentation by the Contracted Party. In the event of an error in the issuance, the guarantee will be returned to the Contracted Party, and the period provided for in this sub-clause will be applied, again, from its resubmission.

7.3.1. If the financial guarantee is refused, the Contracting Party will consider it as undelivered, and the company will be liable to the sanctions provided for in clause **12**, except in fortuitous cases or force majeure duly justified and proven.

7.4. The Contracted Party will be responsible for choosing one of the following types of guarantee:

- 7.4.1. Collateral in cash or in public debt securities, which must have been issued in book-entry form, upon registration in a centralized settlement and custody system authorized by the Central Bank of Brazil and valued at their economic values, as defined by the Ministry of Finance;
- 7.4.2. Surety bond;
- 7.4.3. Bank guarantee.
- 7.5. The cash guarantee shall be made in favor of the Contracting Party, in a bank indicated by the Contracting Party, with monetary correction, in favor of the Contracting Party, and must be valid for at least three months beyond the term of the contract.
- 7.6. In the event of a change in the value of the contract, or extension of its term, the guarantee must be readjusted or renewed under the same conditions within a maximum period of 10 (ten) business days, counted from the date of signature of the amendment or the communication of apostille.
- 7.7. If the value of the guarantee is used in whole or in part to pay any obligation, the Contracted Party undertakes to make the respective replacement within a maximum period of 10 (ten) business days, counted from the date on which it is notified.
- 7.8. The Contracting Party shall execute the guarantee in the manner provided for in the legislation governing the matter, in particular:
- 7.8.1. If this contract is terminated by the Contracting Party based on items I to XI and/or XVIII of art. 78 of Law No. 8,666/93, the value of the financial guarantee for the performance of the contract will revert to the Contracting Party. The provisions of this paragraph shall apply only if, within 30 (thirty) days of the final notification of the administrative process, the Contracted Party does not pay the amount corresponding to the Contracting Party;
- 7.8.2. If the Final Receipt Term of the object of the contract is not issued by the Receipt Committee within 90 (ninety) days after the date of presentation of the last pending stage, provided for in the Physical-Financial Schedule, due to reasons attributable to the Contracted Party and /or SubContracted Partys, the value of the financial guarantee for the performance of the contract will revert to the Contracting Party, unless the Contracting Party accepts the justifications presented by the Contracted Party, in writing, about its delay and/or non-performance. The provisions of this paragraph shall apply only if, within 30 (thirty) days of the final notification of the administrative process, the Contracted Party does not pay the amount corresponding to the Contracting Party;
- 7.8.3. If the Contracted Party does not pay the fines imposed on it, after the regular calculation through an administrative process, the amount of said fine will be deducted from the financial guarantee for the execution of the contract; and
- 7.8.4. If the Contracted Party does not reimburse the Contracting Party, within 30 (thirty) days from the date of the Contracted Party's notification, of the costs and expenses borne by the Contracting Party, due to any breach of a contractual obligation or due to non-compliance with any procedure provided for in this contract and its annexes by the Contracted Party, necessary to carry out its obligations and responsibilities.
- 7.9. The guarantee provided by the Contracted Party will be released or refunded after the execution of the contract and, when in cash, monetarily restated. (Article 56, §4 of the Law No. 8666/93).
- 7.10. The costs of obtaining the financial guarantee for the performance of the contract will be borne exclusively by the Contracted Party.
- 7.11. The parties agree that, if it is necessary to provide information to the guarantor institution to contract the financial guarantee provided for in this clause, the Contracted Party is authorized to provide this information, provided that it is limited to the content of this contract and the Physical-Financial Schedule, excluding all the other annexes to this contract and any other documents.

8. EIGHTH – DELIVERY AND RECEIPT OF THE OBJECT

8.1. The term of execution of the contract will be of 12 (twelve) months, counted from the date of signature of the Service Order, in accordance with the Physical-Financial Schedule.

8.2. The criteria for delivery and receipt of the object of the contract are those contained in the Basic Project and its Annexes.

9. NINETH CLAUSE – CONTRACT MONITORING

9.1. A representative will be appointed to monitor and inspect the delivery of the goods, recording all occurrences related to the execution and determining what is necessary to correct any failures or defects observed.

9.1.1. The receipt of material worth more than BRL 176,000.00 (one hundred and seventy-six thousand reais) will be entrusted to a committee of at least 3 (three) members, designated by the competent authority.

9.2. The inspection referred to in this item does not exclude or reduce the Contracted Party's liability, including towards third parties, for any irregularity, even if resulting from technical imperfections or redhibitory defects, and, in the event of this, does not imply co-responsibility of the Administration or its agents. and agent.

9.3. The Federal Administration representative will record in his own record all occurrences related to the execution of the contract, indicating the day, month and year, as well as the name of the employees eventually involved, determining what is necessary to regularize the failures or defects observed and forwarding the notes to the competent authority for the appropriate measures.

9.4. The Contracting Party, acting through the management structure and the technical staff of its representatives, will analyze the documents presented by the Contracted Party with respect to each stage, and shall have access to as much technical data as necessary for the monitoring and inspection of the corresponding stage, being able to request any additional information that it deems necessary regarding the activities performed in the corresponding step.

9.5. The monitoring and inspection by the Contracting Party referred to in this clause will also include verification of the compliance of the Contracted Party's technical procedures with the rules contained in the documents that make up this contract.

9.6. The Contracting Party or its representatives shall be granted access to the Contracted Party's facilities during normal working hours, upon written notice at least 10 (ten) business days in advance. The Contracted Party must also ensure that the Contracting Party or its representatives have access to the subContracted Parties' facilities. Access will be restricted to those facilities related to the execution of the contract and will be subject to governmental authorizations, under the responsibility of the Contracted Party, and applicable security and regulations, provided that previously communicated and with the follow-up of the Contracted Party.

9.7. The monitoring and inspection provided for in this clause by the Contracting Party's representative(s) shall not represent or create any employment relationship between the Contracted Party and such representatives of the Contracting Party, the latter remaining fully responsible for them, including payment of per diems, accommodation, food, transportation, insurance, among other applicable obligations. The Contracted Party is exempt from any liens and/or responsibilities arising from such inspection.

9.8. If the person responsible for monitoring and supervising the contract deems it necessary, meetings may be held with the Contracted Party whenever requested and previously agreed by the parties, in order to resolve any doubts arising from the execution of the object. All meetings must have the content of the discussions recorded in minutes, which must be attached to the PAG.

10. TENTH CLAUSE – THE CONTRACTING PARTY'S OBLIGATIONS

10.1. The Contracting Party's obligations are:

- 10.1.1. To receive the object within the term and conditions established in the Notice and its annexes;
- 10.1.2. To reject the receipt of a step in disagreement with the object of the contract;
- 10.1.3. To thoroughly verify, within the established period, the conformity of the goods provisionally received with the specifications contained in the Public Notice and the proposal, for the purpose of acceptance and final receipt;
- 10.1.4. To communicate to the Contracted Party, in writing, about imperfections, failures or irregularities verified in the supplied object, so that it can be replaced, repaired or corrected;
- 10.1.5. To monitor and supervise the performance of the Contracted Party's obligations, through a specially designated commission/server;
- 10.1.6. To make the payment to the Contracted Party in the amount corresponding to the supply of the object, within the term and form established in the Notice and its annexes;

10.2. The Administration will not be liable for any commitments assumed by the Contracted Party with third parties, even if linked to the performance of the contract, as well as for any damage caused to third parties as a result of the Contracted Party's act, its employees, agents, subordinates or subContracted Partys.

10.3. The Contracting Party will not be liable, even if subsidiarily, for any problems related to the Contracted Party's personnel, since during the entire term of the contract, there will be no employment relationship or obligation between the Contracted Party's service providers and the Contracting Party.

11. ELEVENTH CLAUSE – THE CONTRACTED PARTY'S / CONTRACTED PARTY'S OBLIGATIONS

11.1. The Contracted Party must comply with all the obligations contained in the Notice, its annexes and its proposal, assuming as its sole responsibility the risks and expenses arising from the good and perfect execution of the object, and also:

- 11.1.1. To deliver the object in perfect condition, according to the specifications, deadline and location contained in the Basic Project and its annexes, accompanied by the respective invoice, which will contain the indications referring to: brand, manufacturer, model, origin and warranty period of the aircraft and its components;
- 11.1.2. The object must be accompanied by up-to-date, complete manuals, records, notebooks and maintenance records in English or Portuguese.

11.2. To be responsible for defects and damages arising from the object, in accordance with the following prescriptions:

11.2.1. The manufacturer, the producer, the builder, national or foreign, and the importer are liable, regardless of the existence of fault, for the repair of damages caused to consumers by defects arising from design, manufacture, construction, assembly, formulas, handling, presentation or packaging. of its products, as well as insufficient or inadequate information about their use and risks.

11.2.1.1. A product is defective when it does not provide the security that is legitimately expected of it, taking into account the relevant circumstances, including:

- 11.2.1.1.1. your presentation;
- 11.2.1.1.2. the use and risks reasonably expected of it;
- 11.2.1.1.3. the time it was put into circulation.

11.2.1.2. The product is not considered defective because another of better quality has been placed on the market.

- 11.2.1.3. The manufacturer, constructor, producer or importer will not be held liable only when he proves:
- 11.2.1.3.1. that it did not place the product on the market;
 - 11.2.1.3.2. that, although the product has been placed on the market, the defect does not exist;
 - 11.2.1.3.3. the sole fault of the consumer or third parties.
- 11.2.2. The merchant is also responsible, under the terms of the previous items, when:
- 11.2.2.1. the manufacturer, constructor, producer or importer cannot be identified;
 - 11.2.2.2. the product is supplied without clear identification of its manufacturer, producer, builder or importer;
 - 11.2.2.3. not properly storing perishable products.
- 11.2.3. Suppliers of durable or non-durable consumer products are jointly and severally liable for defects in quality or quantity that make them unsuitable or unsuitable for the consumption for which they are intended or reduce their value, as well as for those resulting from the disparity, with the indications contained in the container, packaging, labeling or advertising message, respecting the variations resulting from their nature, and the consumer may demand the replacement of defective parts.
- 11.2.3.1. If the defect is not remedied within a maximum period of thirty days, the consumer may demand, alternatively and at his choice:
- 11.2.3.1.1. the replacement of the product by another of the same species, in perfect conditions of use;
 - 11.2.3.1.2. immediate refund of the amount paid, monetarily updated, without prejudice to possible losses and damages;
 - 11.2.3.1.3. the proportional reduction of the price.
- 11.2.3.2. The parties may agree to reduce or extend the period provided for in the previous paragraph, which may not be less than seven or more than one hundred and eighty days.
- 11.2.3.3. The consumer may immediately use the alternatives in sub-item 11.2.3.1 whenever, due to the extension of the defect, the replacement of defective parts may compromise the quality or characteristics of the product, reduce its value or be an essential product.
- 11.2.3.4. They are unsuitable for use and consumption:
- 11.2.3.4.1. items whose expiration dates are expired;
 - 11.2.3.4.2. deteriorated, altered, adulterated, damaged, falsified, corrupted, defrauded, harmful to life or health, dangerous products or even those that do not comply with regulatory standards of manufacture, distribution or presentation;
 - 11.2.3.4.3. products that, for whatever reason, prove to be unsuitable for the purpose for which they are intended.
- 11.2.4. Suppliers are jointly and severally liable for defects in the quantity of the product whenever, respecting the variations resulting from its nature, its net content is lower than the indications contained in the container, packaging, labeling or advertising message, and the consumer may demand, alternatively and at his choice:
- 11.2.4.1. the proportional abatement of the price;
 - 11.2.4.2. weight or measure complementation;

- 11.2.4.3. the replacement of the product by another of the same type, brand or model, without the aforementioned defects;
- 11.2.4.4. immediate refund of the amount paid, monetarily updated, without prejudice to possible losses and damages.
- 11.2.5. The service provider is liable for quality defects that make them unsuitable for consumption or reduce their value, as well as for those resulting from the disparity with the indications contained in the offer or advertising message, the consumer being able to demand, alternatively and at his choice:
- 11.2.5.1.1. the re-performance of services, at no additional cost and when applicable;
 - 11.2.5.1.2. immediate refund of the amount paid, monetarily updated, without prejudice to possible losses and damages;
 - 11.2.5.1.3. the proportional reduction of the price.
- 11.2.5.2. Services that prove to be inadequate for the purposes that are reasonably expected of them, as well as those that do not meet the regulatory standards of serviceability, are inappropriate.
- 11.2.6. In the provision of services aimed at repairing any product, the supplier's obligation to use suitable and new original replacement components, or that maintain the manufacturer's technical specifications, will be considered implicit, unless, in the latter, authorization contrary to the consumer.
- 11.2.7. The supplier's ignorance of quality defects due to inadequacy of products and services does not exempt him from liability.
- 11.2.8. The legal guarantee of suitability of the product or service does not depend on an express term, the supplier's contractual exemption is prohibited.
- 11.2.9. The contractual stipulation of a clause that makes it impossible, exonerates or mitigates the obligation to indemnify is prohibited.
- 11.2.10. If there is more than one person responsible for causing the damage, all will be jointly and severally liable for the reparation provided for in this and previous sections.
- 11.2.11. If the damage is caused by a component or part incorporated into the product or service, its manufacturer, builder or importer and the person who made the incorporation are jointly liable.
- 11.3. To be responsible for damages that may occur in the items that make up the object of the contract while they are stored in its own premises, as well as for damages that occur during transport and handling, in accordance with the adopted INCOTERMS;
- 11.4. To replace, repair or correct, at its own expense, within the period established in the Basic Project, the object with damages or defects;
- 11.5. To communicate to the Contracting Party, within a maximum period of 24 (twenty-four) hours prior to the delivery date, the reasons that make it impossible to meet the stipulated deadline, with due evidence;
- 11.6. Notify the Contracting Party of any abnormality or impediment to the perfect execution of the object of this contract;
- 11.7. Maintain, during the entire execution of the contract, in compliance with the obligations assumed, all the qualification and qualification conditions required in the bidding process;
- 11.8. Appoint an agent to represent it during the performance of the contract.
- 11.9. Promote environmentally appropriate final disposal, whenever the legislation so requires, as in the case of tires, batteries, etc.
- 11.10. Allow the access of representatives of the Contracting Party, designated to inspect and monitor the contract, at the Contracted Party's premises;

- 11.11. Be responsible for all social security, social, tax or labor obligations of its employees, for which the Contracting Party is not responsible under any circumstances;
- 11.12. Be responsible for all legal measures and obligations as a result of work accidents that occur with its employees, even if they happen outside its facilities;
- 11.13. Respond for all charges related to criminal, civil or labor claims related to the performance of this contract and to the Contracted Party, originally or linked by prevention, connection or contiguity;
- 11.14. Respond for all tax and/or commercial charges resulting from this contract;
- 11.15. Respond for damages caused by you to the Public Administration or third parties as a result of the performance of this contract;
- 11.16. Fulfill all obligations assumed as a result of this contract;
- 11.17. Provide the necessary documentation for customs clearance resulting from the import of the aircraft, if applicable;
- 11.18. Respond for any civil damages that may be caused directly to the Contracting Party and/or third parties, by the Contracted Party's personnel.
- 11.19. Guide its employees so that they do not interfere with the activities of the Contracting Party's personnel;
- 11.20. Guide its employees so that they respect and comply with all internal and safety rules in force at the Contracting Party's facilities.
- 11.21. Exempt and release the Contracting Party from any and all liability and any liens directly related to any violations of third-party rights by the Contracted Party, including, but not limited to, any rights to use patents, copyrights, industrial designs and trademarks registered or, yet, misappropriation, misuse of information or documents from third parties.
- 11.22. Be liable for any actions by third parties against the Contracting Party, including any procedural costs, in the event of an allegation of infringement, committed by the Contracted Party, of third-party rights, as a result of the accomplishment of the object of this contract, provided that the Contracting party gives prior and immediate notification to the Contracted Party, and allows it to defend itself in court, as well as promote any agreements.
- 11.23. Be responsible for damages caused directly to the Contracting Party or to third parties, resulting from its fault or intent in the performance of the contract, not excluding or reducing this responsibility to the supervision or monitoring by the Contracting Party.
- 11.24. Be responsible for the prices, ensuring that the supply values are fair and reasonable in relation to the market and the obligations of this contract.

12. TWELFTH CLAUSE – ADMINISTRATIVE SANCTIONS

- 12.1. The Contracted Party commits an administrative infraction if:
- 12.1.1. fails to perform the contract, due to the total or partial non-performance of any of the obligations assumed in the contract;
 - 12.1.2. causes the delay of the execution of the object;
 - 12.1.3. defrauds in the performance of the contract;
 - 12.1.4. to behave in a disreputable way; or
 - 12.1.5. commit tax fraud.
- 12.2. For the total or partial unjustified non-performance of the object of this contract, the Administration will apply the following sanctions to the CONTRACTED PARTY:

12.2.1. **Written warning**, less serious sanction, applicable in situations that deserve a mild disapproval, when non-fulfillment of any of the contractual obligations considered minor faults, understood as those that do not cause significant damage to the contracted service;

12.2.2. **Fine:**

12.2.2.1. moratorium of 0.05% (five hundredths percent) per day of unjustified delay on the amount of the defaulted installment, up to a limit of 60 (sixty) days;

12.2.2.1.1. In the event of an unjustified contractual delay in the delivery of the stage, in accordance with the deadlines defined in the Physical-Financial Schedule, the Contracting Party will apply, after regular administrative process, a late payment fine, according to the following formula:

$$M = P \times \frac{5}{10000} \times D, \text{ where:}$$

M = amount of the fine;

P = value related to the stage in delay established in the Physical-Financial Schedule of the contract or of the installment in arrears in case of partial delivery duly authorized by the Expense Authorization of the contract; and

D = number of days from the date of presentation of the stage provided for in the Physical-Financial Schedule of the contract, up to and including the date of effective presentation or re-presentation of the stage, up to a limit of 60 (sixty) days.

12.2.2.2. compensation of 10% (ten percent) of the total value of the contract, in the case of total non-performance of the object.

12.2.2.2.1. A delay of more than 60 (sixty) days will be considered as total non-execution of the object. In this case, the Contracting Party may terminate the contract, without prejudice to the sanctions applicable to the contracted party.

12.2.2.2.2. If the total or partial non-performance does not lead to the termination of the contract, the fine to be applied will be proportional to the seriousness of the fault committed and the consequences caused, up to a limit of 5% of the value of the stage.

12.2.2.2.3. The contractual non-performance is not associated with a stage, the Contracting Party may apply a fine, proportional to the seriousness of the fault committed and the consequences caused, up to a limit of 5% of the value of the largest stage provided for in the contract, per event.

12.3. The application of any of the penalties provided for will be carried out in an administrative irregularity investigation process (PAAI) that will ensure the contradictory and ample defense to the Contracted Party, observing the procedure provided for in the Instruction of the Air Force Command ICA 12-23/ 2019, available at < <https://www.sislaer.fab.mil.br/terminalcendoc/Busca/Download?codigoArquivo=3968>>, following the precepts of the Brazilian Laws on Bidding and Contracts and the Administrative Process.

12.4. The fines owed and/or damages caused to the Contracting Party will be deducted from the amounts to be paid, or collected in favor of the Union, or deducted from the guarantee, or even, when applicable, will be registered in the Active Debt of the Union and charged in court.

12.5. The payment of fines does not exempt the Contracted Party from complying with the obligations assumed in the contract, including indemnities, lawsuits, costs and expenses, as well as compensation for any damages, losses and losses that its act may cause to the Contracting Party, without prejudice to any other right Contracted Party provided for in this contract or in law.

12.6. If the Contracting Party determines, the fine must be collected within a maximum period of 15 (fifteen) days, counting from the date of receipt of the communication sent by the competent authority.

12.7. If the amount of the fine is not sufficient to cover the damages caused by the bidder's conduct, the Union or Entity may collect the remaining amount in court.

12.8. The competent authority, in the application of sanctions, will take into account the seriousness of the offender's conduct, the educational nature of the penalty, as well as the damage caused to the Administration, observing the principle of proportionality.

12.9. If, during the penalty application process, there are indications of an administrative infraction typified as an act harmful to the national or foreign public administration, copies of the administrative process necessary to determine the company's responsibility must be sent to the competent authority, with a reasoned order, for knowledge and decision on the possible initiation of a preliminary investigation or Administrative Accountability Process - PAR.

12.10. The investigation and judgment of other administrative infractions not considered as harmful acts to the national or foreign Public Administration will follow their normal rite in the administrative unit.

12.11. PAR processing does not interfere with the regular follow-up of specific administrative processes to determine the occurrence of damages and losses to the Federal Public Administration resulting from a harmful act committed by a legal entity, with or without the participation of a public agent.

12.12. Penalties must be registered in the Unified Supplier Registration System (SICAF), as well as any other registration used by BACW.

12.13. The Contracted Party, once notified of the application of the administrative sanction of warning, fine and/or temporary suspension, provided for in this contract, has the right to file an appeal, which must be addressed to the higher authority, through which the contested act was carried out, which may reconsider its decision, within 5 (five) business days, or within the same period, send it up, duly informed, pursuant to art. 109, § 4, of Law No. 8,666/93. The higher authority must decide on the appeal within 5 (five) business days from the receipt of the appeal, under penalty of liability.

13. THIRTEENTH CLAUSE – CONTRACT TERMINATION

13.1. This Contract Agreement may be terminated:

13.1.1. by unilateral and written act of the Administration, according to the following situations:

13.1.1.1. non-compliance with contractual clauses, specifications, projects or deadlines;

13.1.1.2. irregular compliance with contractual clauses, specifications, projects and deadlines;

13.1.1.3. the slowness of its fulfillment, leading the Administration to prove the impossibility of completing the supply, within the stipulated deadlines;

13.1.1.4. unwarranted delay in commencing service or delivery;

13.1.1.5. the interruption of the service or supply, without just cause and prior communication to the Administration;

13.1.1.6. the total or partial subcontracting of its object, the association of the contracted party with others, the assignment or transfer, in whole or in part, as well as the merger, spin-off or incorporation, not admitted in the public notice and in the contract;

13.1.1.7. failure to comply with the regular determinations of the designated authority to monitor and supervise its execution, as well as those of their superiors;

13.1.1.8. the repeated commitment of faults in its execution;

13.1.1.9. the declaration of bankruptcy or the establishment of civil insolvency;

13.1.1.10. the dissolution of the company or the death of the Contracted Party;

- 13.1.1.11. the social change or modification of the purpose or structure of the company, which jeopardizes the performance of the contract;
- 13.1.1.12. reasons of public interest, of high relevance and broad knowledge, justified and determined by the highest authority of the administrative sphere to which the contracting party is subordinated and recorded in the administrative process to which the contract refers;
- 13.1.1.13. the occurrence of a fortuitous event or force majeure, duly proven, preventing the execution of the contract.
- 13.1.2. The termination referred to in the previous sub-item entails the following consequences, without prejudice to the sanctions provided for in the Term of Contract:
- 13.1.2.1. immediate assumption of the object of the contract, in the state and place in which it is found, by an act of the Administration;
- 13.1.2.2. occupation and use of the site, facilities, equipment, material and personnel employed in the execution of the contract, necessary for its continuity;
- 13.1.2.3. execution of the contractual guarantee, for reimbursement of the Administration, and of the amounts of the fines and indemnities owed to it;
- 13.1.2.4. retention of credits arising from the contract up to the limit of losses caused to the Administration.
- 13.1.3. amicably, by agreement between the parties, reduced to term in the bidding process, provided it is convenient for the Administration.
- 13.1.4. The cases of contractual termination will be formally motivated, assuring the Contracted Party the right to prior and full defense.
- 13.1.5. The Contracted Party recognizes the Contracting Party's rights in the event of administrative termination, in cases of total or partial non-performance of the contract.
- 13.1.6. The termination term will be preceded by a Report indicating the following aspects, as the case may be:
- 13.1.6.1. Balance of contractual events already fulfilled or partially fulfilled;
- 13.1.6.2. List of payments already made and still due;
- 13.1.6.3. Compensation and fines.
- 13.1.7. The Contracting Party's decision to unilaterally terminate the contract must be notified to the Contracted Party at least 30 (thirty) days in advance.
- 13.1.8. In the event of termination of this contract, the accounts will be settled regarding the rights and obligations of the parties, to be carried out within a maximum period of 60 (sixty) days, counting from the date on which the party that decides to terminate communicate the fact to the other party, when the debit or credit balances of each party and the respective settlement conditions will be determined.
- 13.1.9. In any case of termination, the following must be observed:
- 13.1.10. the Contracting Party shall pay the Contracted Party, before the date of termination, the value of all steps formally received definitively;
- 13.1.11. the Contracted Party shall pay the Contracted Party the amount of any administrative sanctions imposed by virtue of this contract. Otherwise, the Contracting Party may execute the financial guarantee for the performance of the contract in the amounts due; and
- 13.1.12. the document of the financial guarantee for the performance of the contract, held by the Contracted Party, may be returned to the Contracted Party, upon request, except in cases of termination

attributable to the Contracted Party, in which case it will be retained until the rescission settlement is completed.

13.1.13. In the event of termination, based on items XII to XVII of art. 78 of Law No. 8.666/93, the Contracted Party will be compensated for regularly proven losses that it has suffered, and will also be entitled to the return of all financial guarantees, payments due for the performance of the contract until the date of termination and payment of the cost of demobilization, if there is. The Contracted Party shall deliver to the Contracted Party all finished or semi-finished supplies that have been paid for by the Contracted Party.

14. FOURTEENTH CLAUSE – PERMISSIONS AND VETO

14.1. The CONTRACTED PARTY is prohibited from interrupting the performance of the services on the grounds of default by the CONTRACTING PARTY, except in the cases provided for by law.

14.2. The CONTRACTED PARTY is allowed to pledge or use this Term of Agreement for any financial transaction, under the terms and in accordance with the procedures provided for in Normative Instruction SEGES/ME No. 53, of July 8, 2020.

14.2.1. The assignment of credit, to be made through the execution of an amendment, will depend on proof of the assignee's fiscal and labor regularity, as well as the certification that the assignee is not prevented from bidding and contracting with the Government, in accordance with the legislation in force, pursuant to Opinion JL-01, of May 18, 2020.

14.2.2. The credit to be paid to the assignee is exactly the one that would be destined to the assignor (Contracted Party) for the execution of the contractual object, with the discount of any fines, disallowances and losses caused to the Administration, without prejudice to the use of institutes such as those of the linked account and direct payment provided for in IN SEGES/ME n° 5, of 2017, if applicable.

15. FIFTEENTH CLAUSE – SUBCONTRACTING

15.1. Subcontracting the entire or the principal portion of the obligation is prohibited.

15.2. The main part of the obligation is the supply of the aircraft.

15.3. The permitted cases foreseen are listed in item 9 of the Basic Project, Annex I of the Public Notice.

16. SIXTEENTH CLAUSE – CONTRACT MODIFICATIONS

16.1. Any contractual changes will be governed by the discipline of art. 65 of the Brazilian Federal Law No. 8,666 of 1993.

16.2. The CONTRACTED PARTY is obliged to accept, under the same contractual conditions, the additions or deletions that may be necessary, up to the limit of 25% (twenty-five percent) of the updated initial value of the contract.

16.3. Deletions resulting from an agreement entered into between the contracting parties may exceed the limit of 25% (twenty-five percent) of the updated initial value of the contract.

16.4. Any modification or extension of the term of this contract must be requested in writing by the Contracted Party, at least 3 (three) months before the end of the term of the contract, for due analysis by the Contracting Party, except in the cases of extension provided for in art. 57, § 1, of Law No. 8,666/93.

16.5. The parties agree that the deadlines set for the beginning, completion or delivery of the maturing stages of this contract may be extended, at the request of the Contracted Party and at the discretion of the Contracting Party, if any of the reasons listed below, listed in art. 57, § 1, of Law No. 8.666/93, duly notified in the process, not caused directly or indirectly by negligent or intentional acts attributable to the Contracted Party and that prevent it from respecting the deadlines set out in the Physical-Financial Schedule:

- 16.5.1. Change of design or specifications by the Contracting Party;
 - 16.5.2. Supervenience of an exceptional or unpredictable fact, foreign to the will of the parties, which fundamentally alters the conditions of performance of the contract;
 - 16.5.3. Interruption of the performance of the contract or reduction of the pace of work by order and in the interest of the Contracting Party;
 - 16.5.4. Increase in the quantities initially provided for in the Agreement, within the limits allowed by Law No. 8,666/93;
 - 16.5.5. Impediment of performance of the Contract due to a fact or act of a third party recognized by the Contracting Party in a document contemporaneous with its occurrence; and
 - 16.5.6. Omission or delay of measures under the responsibility of the Contracting Party, including the expected payments that directly result in impediment or delay in the performance of the contract.
- 16.6. The Contracted Party shall notify the Contracting Party of the occurrence of any cause justifying the extension of the stage, among those described above, within 5 (five) business days of its beginning, duly accompanied by all supporting documentation that justifies the claim and demonstrates the relationship of causality between the alleged reason and the potential delay in meeting the deadline(s) of the step(s), requesting the necessary extension, explaining, in a reasoned manner, the requested extension deadline and specifying the step(s) that will be subject to this extension.
- 16.7. In the event of the cases provided for in sub-clauses 16.4.1, 16.4.3 or 16.4.6 above, the period of 5 (five) business days will start from the receipt by the Contracted Party of the official communication, issued in writing by the Contracting Party, which determines the measures therein described.
- 16.8. The Contracting Party will analyze the reason presented by the Contracted Party in its request for an extension of time and, if it deems the causal link between the event and the impossibility of complying with the indicated step(s) to be proven, it will define, through a notification to the Contracted Party, issued by the Expense Authorization of the contract, new deadline for the fulfillment of the referred step(s).
- 16.9. If the Contracted Party does not meet the new deadline stipulated by the Contracting Party, it will be subject to the sanctions provided, and its delay will be counted from the new date defined for the fulfillment of said extended stage.
- 16.10. Prior to delivery of the aircraft, the Contracted Party may incorporate modifications aimed at correcting defects, improving the aircraft design or to ensure compliance with the terms of this contract, provided that such modifications do not affect, to the detriment of the Contracting Party, the prices, the delivery schedule of the aircraft and/or other supplies of goods or services.
- 16.10.1. All costs directly or indirectly related to any proposed or incorporated modifications to correct defects, or even to modifications that incorporate improvements in conditions, will be borne by the Contracted Party.
 - 16.10.2. The changes proposed by the Contracted Party shall be analyzed and decided by the Contracting Party within 10 (ten) business days.
 - 16.10.3. The Contracting Party may also request improvements in the aircraft design due to new operational requirements or new technical choices.
 - 16.10.4. For changes arising from improvements requested by the Contracting Party, all expenses corresponding to studies, projects, drawings, manufacturing plans, flight and ground tests, technical documentation, reports and others, will be the responsibility of the Contracting Party.
- 16.11. If the economic-financial balance of the contract is impaired, the contract may be amended, provided that it is duly justified, to re-establish the conditions that the parties initially agreed upon in the relationship between the Contracted Party's charges and the fair remuneration by the Contracting Party. This may occur in the event

of unforeseeable or predictable events, but with incalculable consequences, delaying or impeding the execution of the agreement, or even, in the event of unforeseeable circumstances and force majeure or fact of the prince, configuring extraordinary and extra-contractual economic allegiances.

16.12. Any taxes or legal charges created, amended or extinguished, as well as the occurrence of legal provisions, when they occur after the date of submission of the proposal, with proven impact on the contracted prices, will imply a revision of these for more or less.

16.13. The request for review must be made, in writing, by the interested PARTY and must bring, in its wake, supporting documents that demonstrate:

16.13.1. the occurrence of the variation of the contracted charges (increase or reduction, as the case may be);

16.13.2. the existence of a causal link between the event that occurred and the change in the contracted charges;

16.13.3. the absence of fault on the part of the interested party for the alteration of its contracted charges;

16.13.4. that the event occurred after the deadline for submission of the proposal; and

16.13.5. that the occurrence of the event was unpredictable or predictable, but with incalculable consequences.

16.14. The interested party must submit a request for review to the other party accompanied by all supporting documentation, which justifies the claim and demonstrates the potential need for economic and financial rebalancing.

16.15. The requested party will analyze the reason presented by the interested party in its request and, if it deems the fact to be proven, will formalize the change.

16.16. The changes referred to in this clause must be formalized by means of a Contract Amendment.

17. SEVENTEENTH CLAUSE – SUBJECTIVE MODIFICATIONS

17.1. The Contracted Party may, at any time, join, participate in or be the object of a merger, spin-off or incorporation, provided that everything is previously notified to the Contracting Party and provided that this fact does not affect any of the Contracting Party's rights and Contracted Party's obligations provided for in this contract, does not alter the technical, economic-financial, legal and tax qualifications and does not result in any loss to the Treasury.

17.2. In the event that the Contracted Party undergoes a Corporate Restructuring, provided that such restructuring does not affect any rights of the Contracting Party and the Contracted Party's obligations provided for in this contract, the Contracted Party shall notify such Corporate Restructuring to the Contracting Party, in writing.

17.2.1. The term "Corporate Restructuring" shall be understood as the restructuring of the Contracted Party, with the purpose of transferring or legal succession over all or a substantial part of its assets and liabilities, rights and obligations, including those existing in this agreement, to a third party (the "Successor"), subject to the control of the last controlling shareholder of the Contracted Party at the time of said restructuring, with the purpose of the Successor continuing the business practiced by the Contracted Party at the time of said restructuring.

17.3. If it is found that the merger, spin-off, incorporation or social change/corporate restructuring resulted in a decrease in any of the company's capabilities and that affect the performance of the contract, at the Contracting Party's discretion, the contract may be terminated pursuant to art. 78, of Law No. 8,666/93.

17.4. The Contracted Party may assign or transfer, in whole or in part, its rights and obligations under this contract to a third party, provided that it is formally and expressly authorized by the contracting party and observing the following requirements:

- 17.4.1. that the new legal entity complies with all the qualification and qualification requirements required in the Public Notice and its annexes;
- 17.4.2. that the other clauses and conditions of the contract are maintained;
- 17.4.3. that there is no prejudice to the performance of the object of the contract; and
- 17.4.4. that there is the express consent of the Contracting Party to the continuity of the contract.

18. EIGHTEENTH - OMISSIONS

18.1. The omissions will be decided by the Administration, according to the provisions contained in the Brazilian bidding and administrative contracts law and, alternatively, according to the provisions contained in the Consumer Defense Code, or similar, as well as in the general rules and principles of the contracts.

19. NINETEENTH CLAUSE – CONTRACTUAL EFFECTIVENESS

19.1. The effectiveness of this contract will take place after the publication of its extract in the Official Press, which will take place after completing the following steps:

- 19.1.1. acceptance, by the Contracting Party, of the financial guarantee for the performance of the contract;
- 19.1.2. presentation, by the Contracted Party to the Contracting Party, of the provisional (temporary) export license, necessary for the export of the aircraft, issued by a competent government authority or, in the absence thereof, of a declaration by the Contracted Party that there are no impediments to obtaining the definitive export license;

19.2. It will be incumbent upon the Contracting Party to arrange for the registration of the contract in governmental systems, as well as to arrange for its publication in the Official Gazette of the Union;

19.3. Only after completing the steps listed in the previous sub-clause will the issuance of the Service Order be authorized, authorizing the start of the contractual execution.

20. TWENTIETH CLAUSE – JURISDICTION

20.1. This CONTRACT AGREEMENT will follow the principles of the Brazilian law of bidding and contracts and the peculiarities of the local legislation of Washington D.C.

20.2. Any disputes arising from this contract, which cannot be resolved amicably, will be brought before the Courts. To this end, the Washington - D.C. Court of Justice is elected to settle disputes arising from the execution of this Agreement that cannot be settled by conciliation.

20.3. All those directly or indirectly involved in the process of executing the CONTRACT must comply with the provisions of the Law No. 12,846, of August 1, 2013, regulated by Decree No. 8,420, of March 18, 2015, and in the Law No. 12,813, of May 16, 2013, with special attention to its art. 5th and 6th.

21. TWENTY-FIRST CLAUSE – EXECUTION REGIME AND FORM OF DELIVERY

21.1. The Parties declare for all legal purposes that the supply will take place in installments in two stages, according to the Physical-Financial Schedule, as provided in art. 6, III, of Law No. 8,666, of June 21, 1993, and that the services will be performed indirectly, under the integral contract regime, in accordance with the provisions of art. 6, VIII, item “e”, and in art. 10, II, item “e”, both of Law No. 8,666/93.

21.2. The object of this contract will be executed within 150 (one hundred and fifty) days, counted from the issuance of the Service Order, which will occur after all the conditions of contractual effectiveness, provided for in clause 18, have been met.

21.3. This contract will be considered executed after the issuance of the Final Receipt Term.

22. TWENTY-SECOND CLAUSE – TECHNICAL WARRANTY

22.1. The technical warranty conditions are those contained in the Basic Project 001/CELOG/2022, item 16.

22.2. The legal or contractual guarantee of the object has its own term and is not linked to that established in the contract, allowing the possible application of penalties in case of non-compliance with any of its conditions, even after the contractual term has expired.

22.3. The cost of transporting the equipment covered by the warranty will be the responsibility of the Contracted Party.

23. TWENTY- THIRD CLAUSE – CERTIFICATION

23.1. Issues related to product certification are included in the Basic Project 001/CELOG/2022.

24. TWENTY- FOURTH CLAUSE – AIRWORTHINESS

24.1. Issues related to airworthiness are contained in the Basic Project 001/CELOG/2022.

25. TWENTY- FIFTH CLAUSE – CORRESPONDENCES

25.1. All notices and requests necessary or authorized under the terms of this contract must be made in writing, either by personal delivery to the authorized legal representative of the party to whom it is given, or by registered mail (with receipt protocol), express mail (tracking number – required) or facsimile, to be confirmed by subsequent registered mail.

25.2. Correspondence will be considered received on the date it is personally delivered; or if made by registered mail, on the date on the acknowledgment of receipt; or even if by facsimile, on the date it was sent, provided that the confirmation is printed correctly. In all such cases, any term will begin to run on the first subsequent business day.

25.3. Correspondence will be considered delivered on the date indicated on the receipt, delivery notice, receipt protocol, mail tracking system operated by the carrier or courier company, facsimile emission proof or date of dispatch contained in the electronic message system, as the case may be.

25.4. The recipient addresses to be used in administrative correspondence will be the following:

CONTRACTING PARTY:

C/O Expense Orderer
Brazilian Aeronautical Commission in Washington (BACW)
1701 22nd Street, N.W.
ZIP: 20008 - Washington, D.C.

CONTRACTED PARTY:

XXXXXXXXXXXXXXXXXXXXX
XXXXXXXXXXXXX
XXXXXXXXXXXXX
XXXXXXXXXXXXX
XXXXXXXXXXXXX

26. TWENTY-SIX CLAUSE – ACTS OF GOD AND FORCE MAJEURE

26.1. Acts of God and force majeure are considered, for the purposes of this contract, any event of nature, or any other event resulting from human action outside the will of the parties that happens after the beginning of the performance of this contract, which is unpredictable or inevitable and creates for the parties insurmountable impossibility of normal execution of this contract, under the terms of the sole paragraph of art. 393 of the Civil Code.

26.2. The occurrence of acts of God and force majeure may give rise to:

26.2.1. request for contractual amendment by means of an addendum;

26.2.2. extension request; or

26.2.3. termination, if the effects of the fortuitous event and force majeure definitely make the execution of the object of this contract unfeasible.

26.3. Extension of deadlines will not be granted if the event of unforeseeable circumstances and force majeure occurs after the beginning of the default of the installment.

27. TWENTY- SEVENTH CLAUSE – IMPORTATION CONDITIONS

27.1. If the aircraft is not registered in the Brazilian Aeronautical Registry (RAB), the Contracted Party will be responsible for providing the documentation to enable its import, clearance, transport and delivery at Tom Jobim International Airport, in Rio de Janeiro.

27.2. The presentation for delivery of the aircraft, transfer of responsibilities and risks will follow the INCOTERMS 2020 FCA - Tom Jobim International Airport, in Rio de Janeiro or as agreed between the parties.

27.3. The aircraft must be presented with all export customs procedures already carried out.

27.4. If there is a need for warranty repair, the item will be shipped in accordance with INCOTERMS 2020 - FCA - Galeão Air Base. The return of the repaired item will be in accordance with INCOTERMS 2020 DAP - Galeão Air Base.

27.5. All costs involved in the import process, if necessary, will be borne by the Contracted Party, including taxes, charges and costs related to port/airport operations.

28. TWENTY- EIGHTH CLAUSE – GENERAL PROVISIONS

28.1. In the event of a request for a price review for the contract or termination, the Contracting Party may request the information necessary to investigate the costs related to the object of this contract and the Contracted Party shall provide such information, strictly related to the order, to the extent necessary to meet the Contracted Party's requests. Under no circumstances will the Contracted Party be obliged to provide confidential or strategic information, however the Contracted Party must consider that the failure to provide any information may impair the fulfillment of requests for price review or settlement of accounts, in cases of contractual termination.

28.2. The CONTRACTING PARTY reserves the right to obtain, from the CONTRACTED PARTY, audited income statements for the year, for any fiscal year ended during the validity of this CONTRACT. The fact that the requested income statements for the year are not yet complete or approved will not be a justification for not complying with the CONTRACTING PARTY's request under the terms of this Sub-Clause, if a period of more than 9 (nine) months has elapsed after the end of the relevant fiscal year.

28.3. The Contracting Party's acceptance, omission, or tolerance in relation to the Contracted Party's failure to comply with a clause or condition of this contract will be considered mere liberality, not releasing the Contracted Party in any way from fulfilling all obligations assumed therein, which will remain unchanged, as if no acceptance, omission or tolerance had occurred, not constituting in any case a rule to be followed or novation.

29. TWENTY- NINTH CLAUSE – IDIOM

- 29.1. This contract instrument is written in the English language.
- 29.2. The parties agree to use the English language in all acts related to the contract.

30. THIRTY– EXEMPLARIES

32.1. This contract is entered into in 2 (two) original copies, of equal content and form, with the following destination:

- a) An original copy for the Contracting Party;
- b) An original copy for the Contracted Party.

31. THIRTY-FIRST CLAUSE – INTEGRATED DOCUMENTS

31.1. All documents that may be produced by the parties, duly acknowledged and signed, as a result of the execution of this instrument of agreement, and also the documents listed below will form part of this agreement, regardless of transcription:

- 31.1.1. DCA 800-2/2019: Quality and Safety Assurance of COMAER Systems and Products, available at <<https://www.sislaer.fab.mil.br>>;
- 31.1.2. Minutes and other documents signed between the PARTIES, arising from meetings and other definitions taken;
- 31.1.3. ICA 57-21/2017: Military Airworthiness Regulation – Procedures for Aeronautical Product Certification, available at <<https://www.sislaer.fab.mil.br>>;

31.2. If there is a discrepancy between this contract and any of its annexes or integral documents, the content of the contract, the content of the annexes and, then, the provisions of the aforementioned integral documents, in the order of priority in which are listed, except in cases where the disagreement is accepted by the parties and the agreement is formalized in writing.

32. THIRTY- SECOND CLAUSE – ANNEXES

- 32.1. The following documents are attached to this contract:
- 32.1.1. Annex A - Basic Project XXX;
- 32.1.2. Annex B - Contracted Party's Proposal;
- 32.1.3. Annex D - Physical-Financial Schedule.

THIRD PART – CONCLUSION

In witness whereof, the parties have executed this CONTRACT in two (2) equal counterparts, of equal content, in the presence of the witnesses subscribed below.

FOURTH PART - SIGNATURES

Washington, DC,/....., 2022.

BACW's Comanding Officer

CONTRACTED PARTY's Legal Representative

WITNESSES:

Internal Control Agent - CELOG

Contract's Monitor

MINUTA