

CUSTOMER CONTRACT REQUIREMENTS
NATO AWACS CNS/ATM Planning and Risk Reduction
CUSTOMER CONTRACT 41-159 TRN 004

CUSTOMER CONTRACT REQUIREMENTS

The following customer contract requirements apply to this contract to the extent indicated below.

1. Prime Contract Special Provisions The following prime contract special provisions apply to this purchase order

1. Definitions

As used throughout this Contract, the following terms shall have the meaning set forth below:

- a. "NAPMO" or "Buyer's Customer" means NATO AEW&C Programme Management Organisation and includes the NATO AEW&C Programme Management Agency (NAPMA); NATO Supply Agency (NSPA); the NATO AEW&C Force Command (NAEWFC); and the NATO E-3A Component.
- b. "Contract" means Buyer's Purchase Contract.
- c. "Technical Data" means recorded information regardless of the form or method of the recording, of a scientific or technical nature (including computer software or software documentation). The term does not include computer software or data incidental to contract administration such as financial and/or management information.
- d. "Computer Software" means computer programs and computer databases including applicable documentation concerning its description and/or use.
- e. "Data" means all recorded information, whether written or otherwise, provided to Buyer by Seller. Data includes Computer Software.
- f. "Proprietary Information" means Data and other information provided to Buyer pursuant to this Contract and that is properly identified by Seller as proprietary by markings. Any other definition or expression mentioned in the Contract shall have the meaning assigned to it in the relevant section where it is used.
- g. "Ottawa Agreement" means the Agreement on the Status of North Atlantic Treaty Organisation, National Representatives and International Staff signed in Ottawa on 20 September 1951.
- h. "Buyer's Affiliates" means Buyer, any wholly owned subsidiary of Buyer, and any subcontractor or assignee of either of them.

2. Immunity Of NAPMO Property And Assets

- a. Seller is aware that according to the Ottawa Agreement, (5UST 1087, TIAS 2992, 200 UNTS 3), any NAPMO documentation, information, data of whatever kind, any other NAPMO assets used or to be used in the performance of this Contract, in the possession of Seller and/or its Subcontractors and by whomsoever held, wheresoever located, is immune from search, requisition, confiscation, expropriation or any other form of interference.
- b. Seller agrees that in cases of any such interference:
 - (i) Seller will take all reasonable actions necessary to prevent the above mentioned NAPMO property and assets becoming subject of such interference, and if the interference has taken place, to take all necessary actions provided for under national or international law to prevent NAPMO losing its rights (for this purpose Seller is authorized to act on behalf of NAPMO until the time NAPMO is in the position to pursue its rights itself or by authorized responsibility).
 - (ii) Seller will inform Buyer by the quickest means available; and

c. Seller will include in its contracts with any of its subcontractors clauses which reflect the responsibilities outlined at Paragraphs a. and b. above.

3. Most Favored Customer

a. Seller guarantees that the prices under this Contract will not be less favorable than the prices recalculated to comparable conditions quoted, obtained, or to be obtained for any other customer. Seller is obligated to render reasonable evidence required thereto. If Seller has quoted or will quote more favorable prices to any other customer, it will so notify Buyer, and these more favorable prices will be applicable to this Contract. Overpayments will be reimbursed.

b. If Buyer or Buyer's Customer wants to have investigated the compliance with the guarantee in Paragraph a. above and this cannot be determined by Buyer or Buyer's Customer on the basis of market prices or competition, Buyer's Customer or Buyer may request Seller's government's agencies responsible for auditing costs and pricing to investigate the reasonableness of the prices offered in accordance with the pricing regulations for government military orders in force in Seller's Nation. Seller agrees to co-operate in such investigation and undertakes to furnish to the authorities concerned all reasonable information required. Buyer or Buyer's Customer's cost of such investigation is not to be an expense of Seller.

4. Taxes And Duties

a. Buyer's Customer enjoys the privileges of exemption from taxes, customs duties and quantitative restrictions on imports and exports in respect of any item or aspect of the NATO Airborne Early Warning & Control Programme.

b. Seller is informed of these exemptions and agrees not to incorporate any taxes or custom duties in its price, or otherwise charge Buyer or Buyer's Customer for taxes or customs duties.

c. Seller is responsible for obtaining and preparing any documentation required to effect the exemptions.

d. If Seller receives any information on a circumstance that could prevent it from implementing the above stated, it shall report on such information to Buyer's Customer, through Buyer, immediately in writing, with the necessary substantiation. After verification of the impediment concerned, Buyer's Customer will address the impediment with the Government of Seller's Country.

e. If, despite of the foregoing, Seller is compelled to pay any readily identifiable tax or duty in relation to this Contract, it will provide written notification to Buyer when such tax or duty is levied upon it and seek reimbursement of such tax or duty in accordance with the clause entitled "Changes." Reimbursement shall be limited to those Seller incurred costs, excluding profit. Seller shall identify the law or governmental regulation pursuant to which the duty or tax is enforced.

5. Security

a. Seller will comply with all the security requirements prescribed by NATO and the National Security Authority (NSA) or Designated Security Agency (DSA) of each NATO country in which the Contract is performed. It will be responsible for the safeguarding of NATO classified information, material and equipment entrusted to it or generated by it in connection with the performance of the Contract.

b. If Buyer issues instructions which, in the opinion of Seller and its Subcontractors, are not in accordance with the national implementation instructions, Buyer shall be informed accordingly without delay and Seller shall then await instructions from Buyer on how to proceed. Seller shall not be held liable for delay while waiting for these instructions.

6. Liability

Paragraphs a, b, and c.(i)(4) below only apply to the extent Seller will have care, custody, or control of NAPMO property in the performance of this Contract.

a. NAPMO will retain the risk of loss of or damage to the Aircraft including material and equipment used therein for loss of use thereof.

b. Seller shall only be responsible for loss or destruction of or damage to the NAPMO property provided to Seller under this Contract that results from:

- (i) Willful misconduct or lack of good faith on the part of Seller
- (ii) Failure on the part of Seller due to willful misconduct or lack of good faith on the part of Seller to establish and administer a program or system for the control, use, protection, preservation, maintenance, and repair of NATO property as required by this Contract.

c. Exclusion Of Liabilities

(i) Disclaimer and Release. The warranties, conditions, representations, obligations and liabilities of Seller and remedies of Buyer set forth in this Contract, are exclusive and in substitution for, and Buyer hereby waives, releases and renounces all other warranties and other obligations and liabilities of Seller, any other rights, claims and remedies of Buyer against Seller, express or implied, arising by law or otherwise, with respect to any nonconformance or defect in any hardware/services provided under this Contract, including but not limited to:

- (1) Any implied warranty of merchantability or fitness;
- (2) Any implied warranty arising from course of performance, course of dealing or usage of trade;
- (3) Any obligation, liability, right, claim or remedy in tort, whether or not arising from the negligence of Seller and
- (4) Any obligation, liability, right, claim or remedy for loss of or damage to any property of NAPMO, including without limitation any NATO E-3A aircraft.

(ii) Exclusion of Consequential and Other Damages. Seller shall have no obligation or liability to Buyer, whether arising in contract (including warranty), tort (whether or not arising from the negligence of Seller), or otherwise, for loss of use, revenue or profit or for any other incidental or consequential damages with respect to any nonconformance or defect in any items or services delivered under this Contract or other things provided under this Contract. Notwithstanding the foregoing, claims by Buyer against Seller for contribution (or indemnity) toward third-party injury, damage, or loss are not limited, waived, released, or disclaimed.

(iii) Definitions. For the purpose of this Clause, the term "Seller" includes Seller's Company, its divisions, subsidiaries, the assignees of each, suppliers and affiliates, and their respective directors, officers, employees and agents.

7. Export Licensing And Disclosure Review

a. Seller is aware that, according to the Multinational Memorandum of Understanding on the NATO E-3A Cooperative Program, all participating Governments have agreed to arrange for the grant of any export licenses necessary for the program. In implementation of this program principle, it shall be Seller's responsibility to obtain any export license(s) as may be required under this Contract.

b. Seller shall prepare Technical Data in accordance with the Statement of Work of each TRN issued under this Contract and such Technical Data may be subject to the Export Administration Act of 1979 (50 USC App. 2401-2420) and the Arms Export Control Act (22 USC 2751, et seq.) and the International Traffic in Arms Regulation (22 CFR, Subchapter M, 120-128, 130). For purposes of this Contract, delivery of such Data to foreign addressees is contingent upon release authorization by the USAF Foreign Disclosure Policy Office (FDPO).

c. In the event any Government does not provide to Seller written approval of Technical Assistance Agreements and any other licenses, export or import licenses, visas, residence permits, work permits, nontransfer and end use certificate or other similar government actions or approvals necessary: (1) to perform this Contract; (2) to export from or to deliver to NAPMO any items involved in the performance of this Contract; consistent with the performance and delivery schedules of this Contract, an equitable adjustment shall be negotiated. Failure to reach agreement will constitute a dispute under the Contract's Disputes clause.

8. Rights In Technical Data

a. All Technical Data and deliverables, including software, developed and funded under this Contract shall be the legal and absolute property of Buyer or Buyer's Customer with the exception of that data covered by Paragraph b. below. Use of this Technical Data by Seller outside the scope of this Contract is subject to the explicit written approval of Buyer or Buyer's Customer.

b. All Data delivered or disclosed under this Contract, but not originally developed under this Contract, and validated as

Proprietary Information to Seller or its Subcontractor shall be clearly marked with the appropriate proprietary legend(s).

c. If Data, on legitimate grounds, is identified as Proprietary Information, then the restrictions imposed below shall apply to that Data:

(i) Buyer agrees not to divulge any of Seller's Proprietary Information, and further to protect said Proprietary Information in accordance with its associated marking(s). Buyer agrees to provide immediate notification to Seller upon discovery that Seller's Proprietary Information was improperly released or disclosed. Buyer's notification shall include the name of recipient(s) to whom said Data was disclosed and the steps taken for recovery of said Data by Buyer.

(ii) Should Buyer deem it necessary to release any of Seller's Proprietary Information to any third parties, other than NATO Organizations and participating NAPMO Governments and their industries performing maintenance, repair and support within the NATO AWACS program, then Buyer shall first obtain Seller's prior written consent to release such Data in accordance with Paragraph a. above. Buyer or Buyer's customer will ensure that parties receiving such information are subject to the same limitation for further release. Such Proprietary Information may be used by Buyer or Buyer's customer but only for purposes of operation and maintenance of Goods delivered under this Contract.

(iii) Except as may be otherwise provided herein, Proprietary Information will in no event be used for any design or manufacturing purpose without Seller's prior written consent. Buyer will not be precluded from disclosing or using any Data or information marked as proprietary which:

(1) Is known to Buyer at the time of receipt from Seller or is received from a source other than Seller without a restriction on further disclosure;

(2) Is or subsequently becomes freely available to the public without breach of the provisions of this Clause;

(3) Is subsequently developed by Buyer through means independent of the information provided by Seller.

(iv) Nothing contained herein or in any subsequent communication made pursuant to this Contract will be construed as a waiver of any of Buyer's, Buyer's Affiliates, or any third party's, rights in Proprietary Information. All Proprietary Information delivered hereunder will remain the property of the originator.

(v) Trademarks. Buyer will not use trademarks of Seller without the express written approval of Seller.

(vi) Copyright. Delivery of Data under this Contract does not convey the copyright in that Data to Buyer.

d. This Clause shall survive the expiration, completion or termination of this Contract.

9. Subcontracts

Seller shall include in all subcontracts provisions that are appropriate to the specific type of subcontract, imposing the same obligations as those which it has assumed towards Buyer in this Contract. These provisions shall include but shall not be limited to the clauses in this CCR:

- 1 Definitions
- 2 Immunity of NAPMO Property and Assets
- 3 Most Favored Customer
- 4 Taxes and Duties
- 5 Security
- 6 Liability
- 7 Export Licensing and Disclosure Review
- 8 Rights in Technical Data

ADDITIONAL SPECIAL PROVISIONS

Warranty

When NAPMO accepts the CNS/ATM installation into a NE-3A, any warranty Seller has provided to Buyer will be transferred to

NAPMO, who will administer warranty claims under a separate contract between Seller and NAPMO. If Seller refuses the assignment of the warranty to NAPMO (or its designee), Buyer will continue to exercise its rights under the warranty for the benefit of NAPMO.

Financial Management

a. Definitions

- (1) Billing Limitations (BL) means funds required to satisfy Seller's anticipated billings in the performance of this contract. BL will be adjusted as appropriate to pay all allowable and allocable costs in accordance with the provisions of this clause. The Billing Limitation Tables shall define the extent of NAPMA's capability to make payments.
- (2) Termination Liability (TL) is the maximum cost that will be incurred if Buyer terminates this contract for its convenience.

b. Billing Limitations (BL)

- (1) NAPMO will obtain funds and funding commitments from the participating nations sufficient to meet the BL requirement contained in the Billing Limitation Tables (BLT) submitted by Seller in accordance with this contract clause. Since funding for NAPMO contracts is planned in the participating National Capitals at least one year in advance of need, it is Seller's responsibility to ensure that the BLT provides the best possible estimates of anticipated billings by CLIN and by currency, to include the associated TL. The BLT shall also contain a roll-up table displaying the cumulative amounts for all CLINs. In the event that NAPMO is unable to make timely payments caused by accelerated performance of Seller which exceeds the current year's contract cumulative BLT for the total of all CLINs, Seller agrees to continue performance and to accept such compensation as is available pursuant to the Changes clause of this subcontract. Seller's forecasts shall be for the periods JAN-APR, MAY-AUG, and SEP-DEC for each CLIN and the roll-up of all CLINs. Seller shall provide for each CLIN a separate BLT that shows the total amount of equivalent US dollars as well as the payments for each subcontractor in national currencies. These detailed BLTs will be used by NAPMA to call the required currency mix for the Currency Clearing House in a timely manner. Seller's BLTs should be in the format Buyer has provided Seller.
- (2) To ensure maximum alignment between the European Subcontractors' BLT forecast and the NAPMO funding, if Seller is a European Subcontractor, Seller shall allow NAPMA direct involvement in the establishment of these BLT/TL forecasts. This involvement shall only pertain to establishment of the said forecasts and shall in no way interfere with Buyer's subcontractor management. NAPMA shall provide timely notification to Buyer and Seller of any planned communications with Seller to allow Buyer's participation and will make best efforts to schedule such communications/meetings to coincide with Buyer's planned program reviews/meetings at Seller's facilities.
- (3) Changes in the BLT proposed by Seller shall be submitted 120 days in advance of the BLT period affected. Negotiation of the BLT will be concluded within 30 days. If agreement is not reached within 30 days, the on-contract BLT will continue to be in effect. Buyer shall issue a contract amendment which establishes revised BLT within 30 days of agreement on BLTs.
- (4) If Seller is requested to submit a proposal for a contract change not covered by paragraph c. of this requirement, it shall include a stand-alone BLT for that project with its proposal. These tables will be updated to reflect negotiated prices and will be added to this requirement as a stand-alone table. Subsequent revisions will be as described above.

c. Contract Changes. Seller shall propose updated BL/TL values for any contract amendment that affects the BLT on contract prior to the change.

d. Currency Exchange Rates. Exchange rate variations shall not affect the values of this contract. For the purpose of administration of this contract, national currencies shall be shown separately as well as converted into equivalent U.S. dollars at the exchange rates stated in the Currency Conversion For European Subcontractors contract clause. The resultant values shall be totaled in the "Equivalent Dollar" column of the BLT.

e. Seller agrees to continue performance under conditions of insufficient BL/TL, and agrees to accept such compensation as is available pursuant to the Changes clause of this subcontract.

Invoicing and Payment

a. RESERVED

b. First and second tier subcontractors performing under this Contract with currencies different than their direct principal should fall under the procedures of the Clearing House Process in order to eliminate the exchange rate fluctuation risk for Buyer and its subcontractors.

(Note: This process applies only to European first tier subcontractors and to those second tier subcontractors that have a different currency than the first tier subcontractors they work for). The following procedures, which are presented below in subparagraphs (1) through (12), below, exactly as they appear in Buyer's Prime Contract, apply to these "Clearing House Subcontractors."

- (1) Clearing House subcontracts will be priced and all invoices for payment will be in the first or second tier subcontractor's national currency. Clearing House subcontractors will be paid in their national currency by NAPMA. Requirements for payments beyond the amounts indicated on the BLT for the European and U.S. currencies are subject to the provisions of the Financial Management contract clause.
- (2) Payments to Clearing House subcontractors may be based on the completion of contract milestones or progress payments.
- (3) When a second tier European or U.S. subcontractor has completed a contract milestone or can submit a progress payment request in accordance with its contract, the second tier subcontractor will submit an invoice or progress payment request to the first tier subcontractor, who will verify that the invoice/progress payment request is consistent with the requirements of the subcontract.
- (4) When a first tier subcontractor has completed a contract milestone or can submit a progress payment request in accordance with its contract, the first tier subcontractor will submit an invoice or progress payment request to the National Government Representative or designated NAPMA representative. The invoice must contain.
 - (A) The amount of the invoice in first and second tier subcontractor currency(s)
 - (B) The total price of the subcontract broken out by currency for both the first tier subcontract and the second tier subcontract, i.e. separate prices
 - (C) The cumulative amount invoiced to date by currency for both subcontracts
- (5) The National Government Representative, or designated NAPMA representative, will certify that the first tier European subcontractor has met the milestone completion requirements or that the first tier European subcontractor is authorized to submit a progress payment request, and that the invoiced amount is correct. After validation by the National Government Representative, or designated NAPMA representative, the first tier European subcontractor will forward the invoice/progress payment request to the Prime Contractor.
- (6) Upon receipt of an invoice/progress payment request from a first tier subcontractor, the Prime Contractor shall verify that the invoice/progress payment request is consistent with the requirements of the contract and that the request for payment, both in first and second tier subcontractor's national currency, does not exceed the Billing Limitation Table amount by currency. If the invoice/progress payment request exceeds the Billing Limitation Table amount, the Prime Contractor shall notify the NAPMA Contracting Officer, and the provisions of the Deferred Payments contract clause shall apply. The Prime Contractor shall convert the amount of the invoice/progress payment request from the national currency of the first and second tier subcontractor to U.S. dollars based on the currency exchange rates specified in the Currency Conversion for European Subcontractors contract clause. In addition, the Prime Contractor shall provide traceability to prime contract CLINs on the invoice by annotating the amount by CLIN being invoiced by the subcontractor.
- (7) The Prime Contractor shall forward a copy of the invoice/progress payment request to the NAPMA Financial Controller and shall forward to NAPMA payment in U.S. dollars equivalent to the converted amounts of the invoice/progress payment request. This payment shall be made to the NAPMA Programme Investment Account Number 200.001.066.7703 at the Wells Fargo Bank, NA, Global Government Banking Group, 1300 I Street, N.W., 11th Floor, Washington, DC 200005, ABA/Routing Number: 054.001.220. The Prime Contractor shall forward the original certified first tier European subcontractor invoice/progress payment request to the NAPMA Financial Controller for filing with the actual payment records.
- (8) Following receipt of the complete and certified invoice/progress payment request and payment in U.S. dollars from the Prime Contractor, NAPMA will initiate direct payment to the Clearing House subcontractor. However, in accordance with NAPMA Financial Regulations, final payment will not be made to vendors until original certified invoices/progress payment requests have been received by NAPMA. Certified invoices are required for the first tier subcontracts only.
- (9) The normal process for NAPMA will be to initiate payment of European and U.S. dollar invoices/progress payment requests once per month or within 30 days of receiving a complete and certified invoice. The submittal of invoices and associated payments shall be based on the mutually agreed payment schedule for the current year.
- (10) NAPMA and the Prime Contractor will compose a mutually agreed to payment schedule for each subsequent year, considering the NAPMA holiday schedule.
- (11) In the event NAPMA fails to pay Clearing House Subcontractors' invoices/progress payment requests as contemplated by paragraph b. of this clause, the Contractor shall notify NAPMA within five (5) calendar days of becoming aware of such event. Such notification shall identify the invoices by number and date, which have not been paid and shall state the monetary value of said invoices payment requests. If NAPMA determines the complete and certified invoice was received, but not paid within the contract's timeline, the contract price shall be reasonably and equitably adjusted for all damages or costs incurred, including costs associated with any subcontractor claims, suits, actions, liabilities, and damages, occasioned by failure of NAPMA to pay Clearing House Subcontractors' invoices as contemplated by paragraph b. of this clause.
- (12) The Prime Contractor and NAPMA will electronically transfer funds as specified in the agreed to payment schedule. The Prime Contractor's and NAPMA's responsibility for each electronic funds transfer ceases upon initiating the electronic funds transfer and is not dependent upon receipt of funds by payee's and recipient's bank. In the event the Prime Contractor does not initiate the electronic funds transfer on the specified date, NAPMA may delay its payment one day for each day of delay of the Prime Contractor's initiation of the electronic funds transfer.

Currency Conversion for European Subcontractors

- a. Seller shall not price currency exchange risk under this contract. NAPMA has implemented procedures to protect Buyer and subcontractors from such risk through implementation of this clause in concert with Invoicing and Payment and Financial Management contract clauses. These clauses will protect Buyer and subcontractors from financial loss or gain due to currency exchange rate fluctuations.
- b. Seller shall provide forecasts of its need for the required currencies for this Contract in accordance with the Billing Limitations Tables. Reports shall also state the actual currency amounts which were invoiced to NAPMA for payment in all prior periods.
- c. The face value of this contract will be expressed in total equivalent United States dollars (hereafter called Equivalent Dollars) for purpose of determining total price using the appropriate fixed rates of exchange expressed below. The following fixed rates of exchange that were published in the Wall Street Journal on 8 July 2010 apply to this contract:

Country	Currency	Per US\$
Denmark	Krone	5.8720
Norway	Krone	6.3694
Turkey	Lira	1.5494
UK	Pound	0.6597
Belgium/Luxembourg	Euro	0.7879
Germany	Euro	0.7879
Greece	Euro	0.7879
Italy	Euro	0.7879
Netherlands	Euro	0.7879
Portugal	Euro	0.7879
Spain	Euro	0.7879
Hungary	Forint	220.6500
Poland	Zloty	3.2165
Romania	Leu	3.3328
Czech Republic	Koruna	20.0320

Changes in the national currency mix shall not change the equivalent U.S. dollar value of this contract.