

**CUSTOMER CONTRACT REQUIREMENTS**  
**NATO AWACS Final Lifetime Extension Programme (FLEP) EMD/PAR**  
**CUSTOMER CONTRACT 41-222 TRN 001**

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**

- a. **Buyer's Customer:** NATO Early Warning and Control Programme Management Agency (NAPMA), as entrusted by NAPMO to prepare, negotiate, execute, and administer the prime contract.
- b. **Intellectual Property Rights (IPR):** any intellectual property rights of any qualification irrespective of their stage of development or finalization, including but not limited to patents, trademarks (registered or not), designs and models (registered or not) and applications for the same, copyright (including on computer software), rights in databases, know-how, confidential information and rights in records (whether or not stored on computer) which includes technical and other data and documents;
- c. **MMOU:** the Multilateral Memorandum of Understanding on the NATO E-3A Cooperative Programme originally signed on 06 December 1978 by the Ministers of Defence of the participating governments, as amended and addended.
- d. **NAPMA:** NATO AEW&C Programme Management Agency, the executive management agency for NAPMO;
- e. **NAPMO:** NATO AEW&C Programme Management Organization;
- f. **Ottawa Agreement:** the Agreement on the Status of the North Atlantic Treaty Organisation, National Representatives and International Staff signed in Ottawa on 20 September 1951;
- g. **Proprietary Information:** Data and any other information or know-how properly identified as proprietary by appropriate markings.
- h. **Purchaser:** NAPMA as entrusted by NAPMO to prepare, negotiate, execute, and administer the prime contract.
- i. **Technical Assistance:** technical data and know-how provided for the purpose of performing the Contract
- j. **Work:** any deliverable or service to be performed by Seller under the terms of this Contract.

**2. Most Favored Customer**

- a. If at any time during the course of this Contract, Seller enters into a definitive agreement with the United States Government (USG) for the firm sale of goods and services for which Buyer subsequently seeks prices quotes under this Contract, Seller warrants that the prices under this Contract will be no less favorable than the prices previously established with The United States Government (USG)(on active contracts), after accounting for all relevant circumstances, including but not limited to quantities, specifications, aggregate terms and conditions for the sale, date of the sale, escalation (inflation or deflation as applicable), updating expired supplier quotes or converting to these factors.
- b. Buyer and Buyer's Customer reserve the right to have DCMA and/or US support contractors verify compliance with this requirement on Buyer's or Buyer's Customer's behalf.

**3. Authorization to Perform/Conformance to National Laws and Regulations**

- a. Seller warrants that it and its subcontractors, if applicable, are duly authorized to operate and do business in the country or countries in which this Contract is to be performed and its subcontractors have obtained or will obtain all necessary licenses and permits required in connection with the Contract and that no claim with respect to any costs to obtain the authorizations to perform will be made upon the Buyer or Buyer's Customer.
- b. Seller acknowledges that it and its subcontractors are responsible during the period of performance of this Contract for ascertaining and complying with all the national and local laws, decrees, labor standards, environmental laws and health and safety regulations of such country or countries, in effect at the time of Contract signature or scheduled to go into effect during the period of Contract performance. Failure to fully ascertain and comply with such laws, decrees, regulations or standards shall not be the basis for claims for change to any element of this Contract. Ignorance will not be accepted as a rationale for failure to comply and, depending on the severity of the non-compliance, may lead to termination of the Contract in whole or part in accordance with the General Provisions.
- c. NAPMA will not accept any liability for any non-compliance on behalf of Seller except where such liability is the result of an act or omission by the Purchaser or liability is mandatory by law.

#### **4. Immunity of Purchaser Property**

- a. Seller is aware that according to the Ottawa Agreement dated 20 September 1951, (5UST 1087, TIAS 3092, 200 UNTS 3), any Purchaser (Buyer's Customer) documentation, information, data of whatever kind, and any other Purchaser assets used or to be used in the performance of the Contract, in the possession of Seller and/or his subcontractors and by whomsoever held, wherever located, is immune from search, requisition, confiscation, expropriation or any other form of interference.
- b. Seller agrees that in cases of any such interferences:
  - i. Seller will take all reasonable actions necessary to prevent above mentioned Purchaser property and assets becoming subject of such interference, and if the interference has taken place, to take all reasonable necessary actions provided for under national or international law to prevent Purchaser losing its rights (for this purpose Seller is authorized to act on behalf of the Purchaser until the time the Purchaser is in the position to pursue his rights himself or by authorized responsibility);
  - ii. Seller will inform Purchaser (through Buyer) by the quickest means available;
  - iii. Seller will include in its Contracts with any of its subcontractors, clauses which reflect the responsibilities outlined at paragraphs a. and b. above.

#### **5. Taxes and Duties**

- a. Buyer's Customer, by virtue of his status under the terms of Article IX and X of the Ottawa Agreement, is exempt from all direct taxes (incl. VAT) and all customs duties on merchandise imported or exported and is exempted by the Netherlands from all taxes on services provided. Seller, therefore, certifies that the prices stipulated under this Contract do not include amounts to cover such taxes or customs duties.
- b. Seller shall be responsible for ensuring that his respective subcontractors are aware that Buyer's Customer is exempt from taxes and customs duties. Seller (and his respective subcontractors) shall be responsible for complying with all applicable national and local legal and administrative procedures to ensure that authorities do not attempt to assess taxes and customs duties on goods and property imported or exported through NATO member nation frontiers under this Contract nor assess direct taxation (VAT) on goods sold to Buyer's Customer under this Contract. Any non-compliance with the applicable national and local legal and administrative procedures (in force at the award of any subsequent orders) shall be considered as the direct responsibility of Seller.
- c. If, after complying with all national and local legal and administrative procedures, the authorities persist in attempting to impose taxes or duties on goods provided under this Contract, Seller shall inform Buyer providing the particulars of the situation, the procedures which have been followed and the point of contact at the national authority which is attempting to impose taxation or duty. Buyer and Buyer's Customer will examine the situation and attempt to clarify the legal and administrative basis of the difficulty. If Buyer's Customer so directs (through Buyer), Seller shall pay the required taxes and duties and file for reimbursement or rebate from the national authorities in accordance with national legislative and administrative procedures.
- d. In the event that the petition for reimbursement or rebate is denied by the national authorities concerned and providing that Seller and/or his subcontractor have complied with the national legislative and administrative procedures, Buyer's Customer, through

Buyer, shall reimburse the full amount of the payment(s) upon receipt of the Seller's invoice indicating such tax or duty as a separate item of cost and fully identified by reference to any governmental law, regulation and/or instruction pursuant to which such tax or duty is enforced. Seller shall offer assistance and execute any such document that may be useful or required to ensure that Buyer's Customer obtains the reimbursement of any tax or duty retained by a national authority.

- e. In the event of Seller and/or Seller's subcontractors do not comply with national legislative or administrative procedures, taxes and duties paid by Seller and/or Seller's subcontractors shall not be reimbursed by Buyer or Buyer's Customer.
- f. Following payment by Buyer's Customer, through Buyer, of the taxes and/or duties pursuant to this Clause, should Seller subsequently receive a rebate of any amount paid by Buyer's Customer, Seller shall immediately notify Buyer and the amount of such rebate shall be credited or reimbursed to Buyer, as directed. Seller shall be responsible for taking any and all action that could reasonably be required in order to obtain such rebate.
- g. Seller shall be liable for all other taxes, assessments, fees, licenses, administrative charges or other government assessments or charges which are applicable to the performance of this Contract. It is Seller's responsibility to inform himself of his liability in each country where such liability may arise.

## **6. Security**

- a. Seller and Seller's subcontractors shall comply with NATO security regulations as implemented by the National Security Authority (NSA) or Delegated Security Authority (DSA) of the nation in which the work is performed. Particularly, Seller shall be responsible for the safeguarding of classified information, documentation, material and equipment entrusted to him or generated by him in connection with the performance of the Contract.
- b. Prior to any Seller's subcontractors being given access to any classified information, the Seller shall ensure that any subcontractor that has a need to access classified information for the performance of any part of this Contract has been granted the appropriate Facility and Personnel Security Clearances (FSCs/PSCs) by its NSA/DSA and that such security clearances are in effect at the time the information is disclosed and remain in effect throughout the performance of the work to be carried out under the relevant Contract/subcontract. Provided that this Contract or lower-tier subcontract does not involve information classified higher than NATO RESTRICTED, FSCs and PSCs shall not be required.
- c. Regarding the handling of NATO UNCLASSIFIED (NU) information, which is marked to limit its dissemination only for official NATO purposes, Seller and Seller's subcontractors undertake to limit access only to individuals, bodies and organizations having the need-to-know this information.
- d. Access to NATO premises is subject to the NATO International Visit Control Procedures (IVCPs). For all types of visits, Seller ensure that the standard Request For Visit (RFV) is received by the NAPMA Security Office at least three (3) working days prior to every visit, to obtain all necessary access and badges. If the required RFV has not been submitted in due time, visitor(s) might not be granted access to the facilities. Buyer will not accept liability for any costs for periods during which Seller personnel were not allowed access due to Seller/Seller's personnel failure to submit the standard RFV in a timely manner.
- e. Seller agrees that assigned personnel will be responsible to abide by all regulations, procedures, and standards of conduct in place at the NATO facilities. Failure to do so will result in corresponding corrective measures being taken.
- f. Any breach on the part of the assigned personnel will be regarded as a breach by the Seller which, could lead to Cancellation/ Termination of all or part of the Contract.
- g. Specific NATO security provisions may be addressed to Seller through a DD254 attached to the Contract.

## **7. Export Licensing and Disclosure Review**

- a. Seller is aware that according to the Multinational Memorandum of Understanding (MMOU) on the NATO E-3A Program, all participating governments have agreed to arrange for the grant of any export licenses necessary for the Programme. 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 export articles and services as may be applicable in accordance with the Statement of Work of this Contract and such may be subject to export restrictions. Delivery to foreign addressees is contingent upon release authorization by the respective government agency.

- c. In the event any government does not provide to Seller written approval of Technical Assistance Agreements and any other applicable licenses, export or import licenses, visas, residence permits, work permits, non-transfer 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; or 3) to permit Seller and its subcontractors to execute consistent with the performance and delivery schedules of this Contract, an equitable adjustment may be requested. Failure to reach agreement will constitute a dispute in accordance with the Disputes Clause of the General Provisions.

## **8. Rights in Data**

- a. Buyer and NAPMO shall have the right to use, duplicate, and disclose all Data and Deliverables provided under this Contract, in whole or in part, for NATO purposes, pursuant to export restrictions and respective of valid proprietary markings, throughout the lifetime of the NAEW&C fleet. Such rights shall remain in effect until the aircraft are disposed and shall survive the termination, or close-out of this Contract.
- b. All data delivered or disclosed under this Contract, but not originally developed under this Contract, and validated as Proprietary Information to Seller or Seller's subcontractors belongs to Seller or Seller's subcontractors and shall be clearly marked with the appropriate proprietary legend(s). Seller is also entitled to apply a copyright legend to the data. The below data markings apply to this Contract, as applicable:

### Proprietary Data:

ALL CONTENT CONTAINED HEREIN IS PROPRIETARY TO AND BELONGS TO [Insert Seller's or Seller's subcontractor's name]. IT IS PROVIDED FOR NATO PURPOSE USE AND MAY BE USED, DUPLICATED, OR DISCLOSED, IN WHOLE OR IN PART, SOLELY TO NATO ORGANIZATIONS, PARTICIPATING NAPMO NATIONS AND INDUSTRIES IN SUPPORT OF THE NATO AIRBORNE EARLY WARNING AND CONTROL PROGRAMME. IT MAY NOT BE OTHERWISE RELEASED WITHOUT THE EXPRESS WRITTEN AUTHORIZATION OF [Insert Seller's or Seller's subcontractor's name] FOR EACH INSTANCE.

- c. If data, on legitimate grounds, is identified as Proprietary Information, then the restrictions imposed by the paragraphs below shall apply to that Data.
- d. Buyer's Customer 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's Customer, through Buyer, agrees to provide immediate notification to the Seller upon discovery that Seller's proprietary information was improperly released or disclosed. Buyer's notification shall include the name of recipient(s) such data was disclosed to and the steps taken for recovery of said Data by Buyer or Buyer's Customer.
- e. Should Buyer or Buyer's Customer deem it necessary to release any of Seller's proprietary information to any partners, other than NATO Organisations and participating NAPMO Governments and their industries performing maintenance, repair, and support within the NATO AWACS program, then Buyer shall first obtain the Seller's prior written consent to release such data. Parties receiving such information are subject to the same limitation for further release. Such Proprietary Information may be used by Buyer and Buyer's Customer, but only for purposes of operation and maintenance of the Contract Items.
- f. All Export Controlled Data and Seller Proprietary Data supplied under this Contract shall be clearly marked with the appropriate legend(s).
- g. The below data markings apply to this Contract, unless modified as a result of individual USG Technical Assistance Agreements (TAA) and export licenses. If so modified, the markings shall be reflected in Special Provisions of respective orders issued under this Contract:

### Export Controlled Data:

U.S. GOVERNMENT INFORMATION IS FURNISHED TO NAPMO AND NATO NATIONS PARTICIPATING IN THE NATO E-3A PROGRAM UPON THE CONDITION THAT IT WILL NOT BE RELEASED TO ANOTHER NATION WITHOUT SPECIFIC AUTHORITY; THAT IT WILL BE USED FOR MILITARY OR GOVERNMENT PURPOSES ONLY; THAT INDIVIDUAL OR CORPORATE RIGHTS ORIGINATING IN THE INFORMATION, WHETHER PATENTED OR NOT, WILL BE RESPECTED; THAT THE RECIPIENT WILL REPORT PROMPTLY TO THE UNITED STATES ANY KNOWN OR SUSPECTED COMPROMISE; AND THAT THE INFORMATION WILL BE PROVIDED SUBSTANTIALLY THE SAME DEGREE OF SECURITY AFFORDED IT BY THE DEPARTMENT OF DEFENSE OF THE UNITED STATES. NAPMO MAY FURNISH EXPORT-CONTROLLED INFORMATION TO NAPMO CONTRACTORS, SUBCONTRACTORS, PROSPECTIVE CONTRACTORS, AND PROSPECTIVE

**SUBCONTRACTORS IN SUPPORT OF THE NAEW&C NE-3A PROGRAM.**

- h. Buyer's Customer will not be precluded from disclosing or using any Data or Information marked as proprietary which:
  - i. Is known to Buyer's Customer at the time of receipt from Seller or is received from a source other than Seller without a restriction on further disclosure;
  - ii. Is improperly marked, or subsequently becomes freely available to the public without breach of the provisions of this Clause;
  - iii. Is subsequently developed Buyer's Customer through means independent of the information provided by Seller.
- i. Nothing contained herein or in any subsequent communication made pursuant to this Contract will be construed as a waiver of any Seller Affiliate's rights or any third Party's rights in Proprietary Information. All Proprietary Information delivered hereunder will remain the property of the originator.
- j. Proprietary firmware and software provided under the contract shall be licensed for disclosure and used for NATO in accordance with clause 8.b. to include the operations, maintenance, repair, and overhaul of the NAEW&C fleet.
- k. This Clause shall survive the expiration, completion or termination of this Contract.

**9. Disputes**

This clause applies in addition to the Disputes article of the General Provisions.

- a. Buyer's Customer is an integral part of the North Atlantic Treaty Organisation (NATO). Buyer's Customer shares in the international personality of NATO as well as in the juridical personality possessed by NATO by virtue of Article 4 of the Ottawa Agreement. The juridical personality of Buyer's Customer is subsumed in that of NATO and cannot be distinguished from it. Rights and privileges that apply to NATO and that are specifically addressed in Article 4 to 11 and 24 of the Ottawa Agreement apply to Buyer's Customer.

**10. Examination of Records**

- a. This clause is applicable to the Contract only if;
  - i. the price, or any of the prices, to be paid for the work to be furnished hereunder is/are other than Firm Fixed Price, or
  - ii. The Contract is terminated by Buyer's Customer and Seller submits a termination claim as a result, or
  - iii. In the event a dispute arises between the Parties and arbitration proceedings are instituted pursuant to the clause 9, "Disputes," of this CCR.
- b. In addition to the Financial Records and Audit article in the General Provisions, Seller agrees that authorized representatives of its national government, shall, until the expiration of three (3) years after final payment under this Contract, have access to and the right to examine any pertinent books, documents, papers and records of Seller involving transactions related to this Contract. Notwithstanding any other provision of this Contract, the examination and audit of Seller's financial books and records shall be limited to authorized representatives of its national government, or Seller or Seller's subcontractor's national auditing services.
- c. Seller further agrees to include in its subcontracts hereunder a provision substantially as set for in this clause, including this paragraph. In addition, a provision is to be added in such subcontracts to the effect that the audit of the subcontractor's books, documents, papers and records involving transactions related to the subcontract may be performed by the subcontractor's national auditing services.
- d. The period of access and examination described above for records which relate to litigation, or the settlement of claims arising out of the performance of this Contract, shall continue until such appeals, litigation or claims have been resolved.

**11. Quality Management System**

- a. The Quality management requirements to this Contract shall be in accordance with the provisions of AQAP 2210, NATO Supplementary Software Quality Assurance Requirements, AQAP 2310 NATO Quality Assurance Requirements for Aviation, Space and Defense Suppliers, ISO 10012 International Standard Measurement Management Systems-Requirements for measurement processes and measuring equipment, and ISO 9001:2015, Quality systems-Requirements, when applicable. All workmanship shall be as required under the contract or, if specified, best commercial (National and International) standard.

- b. No representative or appointee by the Purchaser for the purpose of determining the Seller's compliance with the technical requirements of the contract shall have the authority to change any of the specifications. Such changes may only be made by Buyer in writing in accordance with the Changes clause of the General Provisions.
- c. The presence or absence of a NQAR or other Buyer or Buyer's Customer representative shall not relieve Seller from any of the requirements of this Contract.
- d. If any inspection is made by Buyer or Buyer's Customer representatives on the premises of the Seller or subcontractor, Seller without additional charge, shall provide all reasonable facilities and assistance for the safety and convenience of the Buyer or Buyer's Customer's representatives in the performance of their duties. The NQAR or other Buyer or Buyer's Customer's representatives shall have the right of access to any area of Seller's or his subcontractor's premises where any part of the contractual work is being performed. All inspections by Buyer or Buyer's Customer shall be performed in such a manner as not to unduly delay the work.

## **12. Invoicing and Payment via Clearing House**

This process applies only to Currency Clearing House (CCH) Subcontractors, which are defined as first- tier European subcontractors performing under the Contract in either EUR or NOK currencies. The process for CCH is used in order to eliminate the exchange rate fluctuation risk for the prime and major subcontractors. The following procedures apply if Seller is considered a "CCH Subcontractors."

- a. The contract will be priced and all invoices for payment will be in the Seller's national currency (Euro or NOK). Seller will be paid in Euro or NOK directly by Buyer's Customer. Payments to Seller may be based on the completion of contract milestones or progress payments.
- b. When Seller has completed a contract milestone or can submit a payment request in accordance with its contract, Seller will submit an invoice request via Buyer. The invoice must be submitted in the payment currency.
- c. If applicable, the designated NAPMA representative, will certify that Seller has met the milestone completion requirements or that Seller is authorized to submit a progress payment request, and that the invoiced amount is correct. After validation, Seller will forward the invoice/progress payment request to Buyer.
- d. Upon receipt of an invoice/payment request from Seller, Buyer shall verify that the invoice/progress payment request is consistent with the requirements of the contract and that the request for payment, in national currency, does not exceed the Billing Limitation Table amount by currency. Buyer shall convert the amount of the invoice/progress payment request in Euros or NOK of Seller to U.S. dollars based on the currency exchange rates specified in the Currency Conversion for CCH Subcontractors below. In addition, Buyer shall provide traceability to prime contract CLINs on the invoice by annotating the amount by CLIN being invoiced by Seller, and will submit the invoice/progress payment request to Buyer's Customer and concurrently will forward to Buyer's Customer payment in U.S. dollars equivalent to the converted amounts of the invoice/progress payment request.

### Currency Conversion for CCH Subcontractors

For the purpose of determining total price the appropriate fixed rates of exchange, based on the US Federal Reserve Bank database were set at the 4<sup>th</sup> of January 2016 as follows:

1 USD = .9257 EUR

1 USD = 8.9246 NOK

- e. Following receipt of the complete and certified invoice/progress payment request and equivalent payment in U.S. dollars from Buyer, Buyer's Customer will initiate direct payment to Seller.
- f. The normal process for Buyer's Customer will be to initiate payment of Euro and NOK invoices once per month or within 30 days of receiving a complete and certified invoice and the U.S. dollar equivalent payments. The submittal of invoices and associated payments shall be based on the mutually agreed payment schedule for the current year.
- g. In the event Buyer's Customer fails to make timely payment of a Seller's Clearing House invoice(s), Seller shall notify Buyer 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.
- h. In order to comply with the CCH process outlined above and to avoid issues with concurrent invoicing under different contracts,

Seller is required to have a unique/different BEST code for this Contract. Contact Buyer’s Authorized Procurement Representative if more information is needed.

**13. Health, Safety, and Accident Prevention**

- a. If Buyer notifies Seller in writing of any non-compliance in the performance of this Contract with safety and health rules and requirements prescribed on the date of this Contract by applicable national or local laws, ordinances and codes, and Seller fails to take prompt corrective action, Buyer may order Seller to stop all or part of the work until satisfactory corrective action has been taken. Such an order to stop work shall not entitle Seller to an adjustment of the Contract price or other reimbursement for resulting increased costs, or to an adjustment of the delivery or performance schedule.
- b. Buyer and Buyer’s Customer shall in no way be responsible for any accident or disease occurring to Seller personnel during performance of work or travel under this Contract, except where such accident or disease is the result of a willful act or gross negligence on the part of Buyer or Buyer’s Customer or if responsibility is mandatory by law.

**14. Recoupment**

- a. In the event Seller or its Subcontractors, intends to enter into future sales or license agreements for the items and data specifically developed under this contract and unencumbered by pre-existing or essentially similar items (essentially similar is characterized as 75% identical to the items delivered on technological and system parts/components), it shall promptly notify Buyer. Seller agrees that it will collect from the customer of a future sale an amount or amounts determined by the NAPMO Board of Directors for the non-recurring costs paid by Buyer’s Customer, through Buyer. Non-recurring costs include such costs as research and development, test, evaluation, pre-production, facilities, special tooling, special test equipment, production engineering, product improvement, destructive testing and pilot model production, testing and evaluation.
- b. Buyer’s Customer acknowledges the limitations surrounding the aspects of this contract that are subject to recoupment. Furthermore, Buyer’s Customer acknowledges that FLEP architecture is leveraged largely from previous development efforts.
- c. For each future sale or license agreement the amount to be reimbursed to the NAPMO for the NAPMO non-recurring costs shall be determined by dividing the total NATO portion of the non-recurring contract price by the total production quantity of the item, past and projected, including the production quantity for the NAPMO and multiplying the results by the quantity involved in each such sale or license agreement. That item costs will be multiplied by new sale quantity to obtain the reimbursement amount to NAPMA. There is no cap to the recoupment NAPMA may recover under this provision. The following is a notional example of a recoupment:

NAPMA development price: \$50,000 over 6 items = \$8,333 per item paid

<u>New sale of 4 items</u>	6 items (original NAPMA procurement)
	<u>4 new items</u>
	10 total items sold

\$50,000 / 10 = \$5,000 per new item

New sale: 4 X \$5,000 = \$20,000

To be reimbursed to NAPMA from sales = \$20,000 to NAPMA

<u>Subsequent sales of 15 items:</u>	6 items (original NAPMA procurement)
	4 new items (1st sale)
	15 new items (2nd sale)
	25 total items sold

\$50,000 / 25 = \$2,000 per new item

New sale: 15 X \$2,000 = \$30,000

To be reimbursed to NAPMA from sales = \$30,000 to NAPMA

- d. Seller agrees that his rights to enter into production for future sales of the items or essentially similar items are expressly contingent upon compliance with the provisions of this clause.
- e. Seller further agrees to flow-down this clause, substantially as written, in all subcontracts with the Buyer's Customer as beneficiary. The recoupment requirement shall also be applicable for future sales by Seller and Seller's subcontractors for their component part design contributions. Seller's obligations in regards to subcontractors will be limited to reporting to Buyer such foreign commercial sales or license agreements that applicable subcontractors enter into. The NAPMO will be responsible for recoupment of any amount or amounts due directly from such subcontractors.

## **15. Warranty**

This clause applies in addition to the Warranty article of the General Provisions.

a. Software (CLIN 001, EMD). Any problem with software identified during the warranty period commencing from conclusion of FCA/PCA for a period of 12 months, that is classified as Severity Level 1 or 2 in accordance with the following definitions as adapted from Mil-STD-498, Appendix C, Table 5 shall be warranted for correction by Seller. The applicable Severity Levels for this warranty are defined as follow:

- i. Severity Level 1. Prevents the accomplishment of an operational or mission essential capability; or prevents the operator's accomplishment of an operational or mission essential capability; or jeopardizes personnel safety; or has a high potential for equipment damage.
- ii. Severity Level 2. Adversely affects the accomplishment of an operational or mission essential capability so as to degrade performance and for which there is no workaround solution available; or adversely affects the operator's accomplishment of an operational or mission essential capability so as to degrade performance and no reasonable workaround solution is known.

b. Seller warrants to resolve any software defect with a Severity of 1 or 2, as defined above, unless the cause is due to the failure of NAPMO Furnished Data (NFD). Any deficiency with a Severity of 3, 4, or 5 will be placed on an Enhancement or Maintenance list for NAPMA consideration to implement a fix, if available, as additional scope.

## **16. Supplier Hazardous Materials Checklist**

For NATO FLEP delivered hardware, a Supplier Hazardous Materials Checklist is required to be completed by Seller to declare for each assembly and sub-assembly whether the following materials are present:

-Prohibited Materials

-EPA 17 Hazardous Materials

-Materials restricted by Registration, Evaluation, Authorisation and Restriction of Chemicals Regulation (REACH)

Seller shall obtain the latest Checklist version from Buyer's Authorized Procurement Agent and complete within 60 days of receiving purchase contract authorization.

2.

### **Customer Contract Requirements (Direct Commercial Sales)**

In addition to the requirements set forth in the Boeing General Provisions and other terms and conditions in or attached to this Contract, the Goods to be delivered under this Contract may be common to items delivered to a U.S. Government customer. Accordingly, the following terms supporting technical conformance of the Goods apply to this Contract to the extent indicated below. In all of the following clauses, "Contractor" and "Offeror" mean Seller. Certain clauses below may be deemed inapplicable if the parts being purchased under this Contract previously had commercial item determinations (CIDs) completed and approved for identical parts.

**52.204-23 Prohibition on Contracting for Hardware, Software, and Services Developed or Provided by Kaspersky Lab and Other Covered Entities**(JUL 2018). In paragraph (c) (1), the term "Government" means "Government or Buyer" and the term "Contracting Officer" means "Buyer." All reporting required by paragraph (c) shall be reported through Buyer. Seller shall report the information in paragraph (c) (2) to Buyer.



**52.211-5 Material Requirements**(AUG 2000). Any notice will be given to Buyer rather than the Contracting Officer.

**252.209-7010 Critical Safety Items** (AUG 2011). Delete the second sentence in paragraph (b) and substitute the following sentence in lieu thereof: Items delivered under the Contract are considered critical safety items if they have previously been designated as critical safety items under a prior contract. Delete paragraph (c) and insert the following in lieu thereof: Heightened quality assurance surveillance. Items considered critical safety items in accordance with paragraph (b) of this clause are subject to heightened, risk-based surveillance by Buyer and/or the Government.

**252.223-7003 Change in Place of Performance-Ammunition and Explosives**(DEC 1991). The clause is revised as follows: (a) Seller shall identify in their offer, the place of performance of all ammunition and explosives work that would be covered by 252.223-7002. Failure to furnish this information with the offer may result in rejection of the offer. (b) Seller agrees not to change the place of performance of any portion of the offer that would be covered by 252.223-7002 after the date set for receipt of offers without the written approval of the Contracting Officer, which shall be obtained through Buyer. The Contracting Officer shall grant approval only if there is enough time for the Government to perform the necessary safety reviews on the new proposed place of performance. (c) If a contract results from this offer, Seller agrees not to change any place of performance previously cited without the advance written approval of the Contracting Officer, which shall be obtained through Buyer.

**252.223-7008 Prohibition of Hexavalent Chromium**(JUN 2013). "Contracting Officer" shall mean Buyer.

**252.225-7001 Buy American and Balance of Payments Program** (DEC 2017). In paragraph (c), the phrase "in the Buy American Balance of Payments Program Certificate provision of the solicitation" is deleted and the word "certified" is deleted and replaced with the word "specified."

**252.225-7007 Prohibition on Acquisition of Certain Items from Communist Chinese Military Companies**(DEC 2018). This clause applies to items covered by the United States Munitions List or the 600 series of the Commerce Control List.

**252.225-7009 Restriction on Acquisition of Certain Articles Containing Specialty Metals**(OCT 2014). Paragraphs (d) and (e) (1) of this clause are excluded. In paragraph (e) (2) "Government" means Buyer. Paragraph (c) (6) is revised as follows:

(c)(6) End items of the prime contract containing a minimal amount of otherwise noncompliant specialty metals (*i.e.*, specialty metals not melted or produced in the United States, an outlying area, or a qualifying country, that are not covered by one of the other exceptions in this paragraph (c)), if the total weight of such noncompliant metals does not exceed 2 percent of the total weight of all specialty metals in that end item. This exception does not apply to high performance magnets containing specialty metals. If the Seller will furnish goods that contain otherwise noncompliant specialty metals (*i.e.*, specialty metals not melted or produced in the United States, an outlying area, or a qualifying country, that are not covered by one of the other exceptions in this paragraph (c)), then the Seller shall disclose to the Buyer (i) the total weight of all specialty metals in each of the goods of this contract, and (ii) the total weight of the noncompliant specialty metals in each of those goods. In the calculation of total weight of noncompliant specialty metals in each of the goods, exclude the weight of specialty metals covered by other exemptions in this paragraph (c).

**252.225-7011 Restriction on Acquisition of Supercomputers**(JUN 2005).

**252.225-7012 Preference for Certain Domestic Commodities** (DEC 2017).

**252.225-7015 Restriction on Acquisition of Hand or Measuring Tools**(JUN 2005).

**252.225-7016 Restriction on Acquisition of Ball and Roller Bearings**(JUN 2011). This clause does not apply to contracts for commercial items or items that do not contain ball or roller bearings.

**252.225-7025 Restriction on Acquisition of Forgings** (DEC 2009). This clause applies if the Contract is for forging items or for other items that contain forging items.

**252.225-7030 Restriction on Acquisition of Carbon, Alloy, and Armor Steel Plate**(DEC 2006).

**252.225-7036 Buy American-Free Trade Agreements-Balance of Payments Program-Basic** (DEC 2017). In paragraph (c), the phrase "in the Buy American-Free Trade Agreements-Balance of Payments Program Certificate-Basic provision of the solicitation" is deleted, and the word "certified" is deleted and replaced with the word "specified."

**252.246-7007 Contractor Counterfeit Electronic Part Detection and Avoidance System**(AUG 2016). This clause applies to contracts for electronic parts or assemblies containing electronic parts or for contracts for the performance of

authentication testing. The term "Contractor" means "Buyer" in the first sentence. In paragraph (c) (6), "Contracting Officer" means "Buyer." The introductory text at the beginning of the clause is deleted and only paragraphs (a) through (e) apply.

**252.246-7008 Sources of Electronic Parts** (MAY 2018). This clause applies if the Contract is for electronic parts or assemblies containing electronics parts, unless Seller is the original manufacturer of the electronic parts. The term "Contractor" means Seller and the term "subcontractor" means Seller's lower-tier suppliers. In paragraph (b) (3) (ii) (A), the term "Contracting Officer" means "Buyer's Authorized Procurement Representative." Seller's notification shall include, at a minimum, identification of the electronic parts being procured, identification of Seller's lower-tier supplier providing such electronic parts, Seller's rationale on acceptability of procuring such parts (including risk mitigation), and identification of the product using such parts (by lot or serial numbers).