

CUSTOMER CONTRACT REQUIREMENTS
NATO AWACS (AEW
CUSTOMER CONTRACT 41-119

CUSTOMER CONTRACT REQUIREMENTS

The following customer contract requirements apply to this contract to the extent indicated below. If this contract is for the procurement of commercial items under a Government prime contract, as defined in FAR Part 2.101, see Section 3 below.

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

CLAUSE 1 - DEFINITIONS

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

1. "NAPMO" means NATO AEW&C Programmed Management Organization and includes the NATO AEW&C Programmed Management Agency (NAPMA); NATO Maintenance & Supply Agency (NAMSA); the NATO AEW&C Force Command (NAEWFC); and the NATO E-3A Component
2. "NAPMA" means NATO AEW&C Programmed Management Agency, the executive management agency for NAPMO requiring services and supplies to be provided under the Contract, and includes its designated representatives, successors Or assignees.
3. "Purchaser" means NAPMO represented by its executive agency APMA.
4. The "Contract" means the agreement made between the Purchaser and the Contractor containing this Contract in its entirety and any other document incorporated by reference and any TRN issued under this Contract, for the provision of work required therein.
5. The "Work" means supplies and services identified in Exhibit B, Statement of Work to be provided by the Contractor including the submission of data.
6. "Contractor" means the Contractor who has entered into this Contract with Purchaser for the performance of the work as ordered under the Contract.
7. "Subcontractor" means a contractor, or any other party at any tier, with whom the Contractor has negotiated an agreement to perform part of the work required under the Contract
8. "Subcontract" means, except as otherwise provided in this Contract, any agreement, Contract, or Purchase Order made by the Contractor with any subcontractor for fulfillment of any part of this Contract, and any agreement, contract or purchase order there under.
9. "Ottawa Agreement" means the Agreement on the Status of the North Atlantic Treaty Organization, National Representatives and International Staff signed in Ottawa on 20 September 1951.
10. MMOU means the Multilateral Memorandum of Understanding on the NATO E-3A Cooperative Programmed signed on 06 December 1978 by the Ministers of Defense of the participating governments.
11. "Contracting Officer" (CO) means the individual fully authorized by NAPMA to negotiate, to make decisions and to enter into an agreement on behalf of NAPMA for the purposes of carrying out the Contract.

12. "Contractor's Representative" (CR) means the individual fully authorized by the Contractor to negotiate, to make decisions and to enter into an agreement on behalf of the Contractor for the purposes of carrying out the Contract.
13. "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.
14. "Technical Assistance" means technical data and know-how provided for the purpose of performing this Contract.
15. "Computer Software" means computer programs and computer databases including applicable documentation concerning its description and/or use.
16. "NATO Member country" for the purposes of this contract, means a member country of NATO participating in the E-3 AEW&C Programmed. i.e. Belgium, Canada, Denmark, France, Germany, Greece, Italy, Luxembourg, the Netherlands, Norway, Portugal, Spain, Turkey, the United Kingdom and the United States of America
17. "Contractor Affiliates" means The Contractor's Company and any wholly-owned subsidiary, and any subcontractor or assignee of either of them.
18. "Cost" means all direct and indirect expenses caused by an event and allocable to that event according to the Contractor's standard accounting principles.
19. "Data" means all recorded information, whether written or otherwise, provided to Purchaser by Contractor. Data includes Computer Software.
20. "Proprietary Information" means Data and other information provided to Purchaser pursuant to this Contract and that is properly identified as proprietary by markings.
21. "Purchaser" means Buyer, Buyer's customer, and/or the Prime Customer

Any other definition or expression mentioned in the Contract shall have the meaning assigned to it in the relevant section where it is used.

CLAUSE 2 - IMMUNITY OF PURCHASER PROPERTY AND ASSETS

1. The Contractor is aware that according to the Ottawa Agreement dated 20 September 1951, (5U8T 1087, TIAS 2992, 200 UNTS 3), any Purchaser documentation, information, data of whatever kind, any other Purchaser assets used or to be used in the performance of the Contract, in the possession of the Contractor and/or his Subcontractors and by whomsoever held, wheresoever located, is immune from search, requisition, confiscation, expropriation or any other form of interference.
2. The Contractor agrees that in cases of any such interference:
 - a. Contractor will take all reasonable actions necessary to prevent the above mentioned Purchaser 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 Purchaser losing its rights (for this purpose the Contractor 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).
 - b. Contractor will inform the Purchaser by the quickest means available; and
 - c. Contractor will include in its contracts with any of its subcontractors clauses which reflect the responsibilities outlined at Paragraphs a. and b. above.

CLAUSE 3 - MOST FAVOURED CUSTOMER

1. The Contractor 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. The Contractor is obligated to render reasonable evidence required thereto. If the Contractor has quoted or will quote more favorable prices to any other customer, he will so notify the Purchaser, and these more favorable prices will be applicable to this Contract. Overpayments will be reimbursed.

2. If the Purchaser wants to have investigated the compliance with the guarantee in Paragraph 1 above and this cannot be determined by the Purchaser on the basis of market prices or competition, the Purchaser may request the government of the Supplier Nation to investigate the reasonableness of the prices offered in accordance with the pricing regulations for government military orders in force in the Supplier Nation. The Contractor agrees to co-operate in such investigation and undertakes to furnish to the authorities concerned all reasonable information required. The Purchaser cost of such investigation is not to be an expense of the Contractor.

CLAUSE 4 - DELETED

CLAUSE 5 - DELETED

CLAUSE 6 - DELETED

CLAUSE 7 - DELETED

], The Purchaser, as a subsidiary body of NATO is by application of the Ottawa Agreement dated 20 September 1951, exempt from all taxes and duties,

2. Goods and services sold to the Purchaser are exempt from taxes and customs duties under paragraph I above. The Contractor is responsible for obtaining and preparing any documentation required to facilitate this exemption.

3. However, if the Contractor is compelled to pay any readily identifiable tax or duty in relation to this Contract, he will provide written notification to the Purchaser when such tax or duty is levied upon him and seek reimbursement of such tax or duty in accordance with the Clause entitled "Changes". Reimbursement shall be limited to those Contractor incurred costs, excluding profit. The Contractor shall identify the law or governmental regulation pursuant to which such tax or duty is enforced.

CLAUSE 8 - DEFAULT

.1. The Purchaser may, subject to the provisions below, by written notice of default to the Contractor, terminate the whole or any part of this Contract if either of the following two circumstances is not cured within a period of 30 working days (or such longer period as the Purchaser may authorize in writing) after receipt of written notice from the Purchaser specifying such failure. A working day means a day of business of both Purchaser and Contractor and excludes holidays normally observed by either party.

a. If the Contractor fails to perform the Work within the time specified herein or any extension thereof and is not due to Force Majeure; or,

b. If the Contractor fails to perform any of the other requirements of this Contract;

2. In the event the Purchaser terminates this Contract in whole or in part, the Purchaser may procure, upon such terms and in such manner as may be deemed appropriate, supplies or services similar to those so terminated and the Contractor shall be liable to the Purchaser for any reasonable excess costs for such similar supplies or services, provided that the Contractor shall continue the performance of this Contract to the extent not terminated under the provisions of this Clause.

3. The Contractor shall be liable for excess costs, unless the failure to perform the Contract arises out of causes beyond his control. If the failure to perform is caused by the default of a subcontractor, the Contractor is also liable for excess costs, unless he can demonstrate that he has taken all reasonable action to seek other sources and means for assuring contractual performance.

4. If this Contract is terminated, the Purchaser, in addition to any other rights provided in this Clause, may require the

Contractor to transfer title and delivery to the Purchaser in the manner and to the extent so directed.

- a. Any completed supplies, and,
- b. Such partially completed supplies and materials, plans, information and contract rights (hereinafter called "materials") as the Contractor has specifically produced or specifically acquired for the performance of such part of this Contract as has been terminated; and the Contractor shall protect and preserve property in possession of the Contractor in which the Purchaser has an interest.
- c. Payment for completed supplies delivered to and accepted by the Purchaser shall be at the contract price. Materials delivered to and accepted by the Purchaser and for the protection and preservation of property shall be in an amount agreed upon by the Contractor and the Purchaser; failure to agree to such amount shall constitute a dispute concerning a question of fact within the meaning of the clause of this contract entitled "Disputes".

5. If, after notice of termination of this Contract under the provisions of this Clause, it is determined for any reason that the Contractor was not in default under the provisions of this Clause, the rights and obligations of the parties shall be the same as if the notice of termination had been issued pursuant to the clause entitled "Termination for Convenience of the Purchaser".

CLAUSE 9 - TERMINATION FOR CONVENIENCE OF THE PURCHASER

1. In the event the Purchaser determines, by issuing a formal written notice to that effect, that the work ordered hereunder is no longer required the Contractor agrees to immediately cease its work hereunder and cancel any subcontracts hereunder and will use its best endeavors to effect such stoppage and/or cancellation on terms as favorable to the Purchaser as can be granted or obtained.

2. Any termination exercised under the provisions of this Clause, will entitle the Contractor to submit to the Purchaser a claim for reimbursement of cost and expenses incurred by the Contractor for the terminated portion of the Contract. Work in hand will be paid for in accordance with the terms and conditions of the Contract and with the work order. The reimbursement of all other costs and expenses associated with the terminated work will be the subject of negotiation. These reimbursable costs include but are not limited to, the following:

- a. The total of the costs incurred in the performance of the work terminated, including initial costs and preparatory expense allocable thereto, but excluding any costs attributable to supplies or services paid or to be paid under Paragraph 2 above, for work in hand.
- b. The total of the cost of settling and paying termination settlement proposal under terminated subcontracts that are properly chargeable to the terminated portion of the Contract is not included in Paragraph a. above.
- c. The total of a fair and reasonable profit/fee.
- d. The reasonable costs of settlement of the work terminated including:
 - (1) Accounting, legal, clerical, administrative and other expenses reasonably necessary for the preparation of termination settlement proposals and supporting data:
 - (2) The termination and settlement of subcontracts (excluding the amounts of such settlements); and
 - (3) Storage, transportation, and other costs incurred, reasonably necessary for the preservation, protection, and/or disposition of the terminated inventory.

Such claim will be submitted to the Purchaser not later than six (6) months after receipt of the Purchaser's notice of termination. The Contractor's claim will be fully documented, substantiated and justified. Its settlement will be negotiated between the Purchaser and the Contractor.

Failure to reach agreement on the settlement of the Contractor's claim shall constitute a dispute within the meaning of the Clause hereof entitled "Disputes".

CLAUSE 10 - DISPUTES

1. The Purchaser is an integral part of the North Atlantic Treaty Organization (NATO). The Purchaser 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 the Purchaser 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 II and 24 of the Ottawa Agreement apply to the Purchaser.

2. Therefore, any dispute arising out of the Contract shall be settled according to the following arbitration clause:

a. The party instituting the arbitration proceedings shall advise the other party by registered letter, with official notice of delivery, of his desire to have recourse to arbitration. Within a period of thirty days from the date of receipt of this letter, the parties shall jointly appoint an arbitrator. In the event of failure to appoint an arbitrator, the dispute or disputes shall be submitted to an Arbitration Tribunal consisting of three arbitrators, one being appointed by the Purchaser, another by the other party, and the third, who shall act as President of the Tribunal, by these two arbitrators. Should one of the parties fail to appoint an arbitrator during the fifteen days following the expiration of the first period of thirty days, or should the two arbitrators be unable to agree on the choice of the third member of the Arbitration Tribunal, within thirty days following the expiration of the said first period, the appointment shall be made, within twenty-one days, at the request of the party instituting the proceedings, by the Secretary General of Permanent Court of Arbitration at The Hague.

b. Regardless of the procedure concerning the appointment of this Arbitration Tribunal, the third arbitrator will have to be of a nationality different from the nationality of the other two members of the Tribunal.

c. Any arbitrator must be of the nationality of anyone of the member states of NATO and shall be bound by the rules of security in force within NATO.

d. Any person appearing before the Arbitration Tribunal in the capacity of an expert witness shall, if he is of the nationality of one of the member states of NATO, be bound by the rules of security in force within NATO, if he is of another nationality, no NATO classified documents or information shall be communicated to him.

e. An arbitrator who, for any reason whatsoever, ceases to act as an arbitrator shall be replaced under the procedure laid down in the first Paragraph of this clause.

f. The Arbitration Tribunal will take its decisions by a majority vote. It shall decide where it will meet and, unless it decides otherwise, shall follow the arbitration procedures of the International Chamber of Commerce in force at the date of the signature of the present Contract.

g. The awards of the arbitrator or of the Arbitration Tribunal shall be final and there shall be no right of appeal or recourse of any kind. These awards shall determine the apportionment of the arbitration expenses.

CLAUSE 11 - DELETED**CLAUSE 12 - DELETED****CLAUSE 13 - DELETED****CLAUSE 14 - SECURITY**

1. The Contractor 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. He will be responsible for the safeguarding of NATO classified information, material and equipment entrusted to him or generated by him in connection with the performance of the Contract.

2. If the Purchaser issues instructions which, in the opinion of the Contractor and his Subcontractors, are not in accordance with the national implementation instructions, the Purchaser shall be informed accordingly without delay

and the Contractor shall then await instructions from the Purchaser on how to proceed. The Contractor shall not be held liable for delay while waiting for these instructions.

CLAUSE 15 - DELETED

CLAUSE 16 - LIABILITY

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

2. The Contractor shall only be responsible for loss or destruction of, or damage to the NAPMO property provided under this Contract that results from:

a. willful misconduct or lack of good faith on the part of the Contractor

b. failure on the part of the Contractor due to willful misconduct or lack of good faith on the part of the Contractor 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.

3. EXCLUSION OF LIABILITIES.

a. Disclaimer and Release. The warranties, conditions, representations, obligations and liabilities of the Contractor and its subcontractors and remedies of NAPMO set forth in this agreement, are exclusive and in substitution for, and NAPMO hereby waives, releases and renounces all other warranties and other obligations and liabilities of the Contractor and its subcontractors, any other rights, claims and remedies of NAPMO against the Contractor and its subcontractors, express or implied, arising by law or otherwise, with respect to any nonconformance or defect in any hardware/services provided under this agreement, 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 the Contractor 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.

b. Exclusion of Consequential and other Damages. The Contractor shall have no obligation or liability, whether arising in contract (including warranty), tort (whether or not arising from the negligence of the Contractor), 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.

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

CLAUSE 17 - EXAMINATION OF RECORDS

1. This clause is applicable to this Contract only (i) if the price, or any of the prices, to be paid for the supplies and/or services to be furnished hereunder is/are other than (a) firm fixed price(s), or (ii) if this Contract is terminated by the Purchaser, in whole or in part, and the Contractor submits a termination claim as a result thereof, or (iii) in the event a dispute arises between the parties and arbitration proceedings are instituted pursuant to the clause of this Contract entitled "Disputes".

2. The Contractor agrees that the respective national audit agency 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 the Contractor/subcontractor involving transactions related to this Contract.

3. The period of access and examination described above for records which relate to either appeals under the "Disputes" clause of this Contract or litigation, or the settlement of claims arising out of the performance of this Contract, shall continue until such appeals, litigation or claims have been disposed of.

4. No examination of subcontractor records is required for subcontracts less than US \$100,000 or equivalent Euros.

5. The Contractor shall include this Clause in all subcontracts priced at or above US \$100,000 or equivalent Euros. Examination with respect to such subcontractor effort shall be limited to the Contractor in accordance with Paragraph 4 above.

CLAUSE 18 - DELETED

CLAUSE 19 - EXPORT LICENSING AND DISCLOSURE REVIEW

1. The Contractor 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 the Contractor's responsibility to obtain any export license(s) as may be required under this Contract.

2. The Contractor 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 FOPO.

3. In the event any Government does not provide to the Contractor written approval of Technical Assistance Agreements and any other 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; consistent with the performance and delivery schedules of this Contract, an equitable adjustment shall be negotiated. Failure to reach agreement will constitute a dispute as laid down in the clause entitled "Disputes".

CLAUSE 20 - DELETED

CLAUSE 21 - RIGHTS IN TECHNICAL DATA

1. All technical data and deliverables, including software, developed and funded under this contract shall be the legal and absolute property of the Purchaser with the exception of that data covered by paragraph 2 below. Use of this technical data by the Contractor outside the scope of this Contract IS subject to the explicit written approval of the Purchaser.

2. All data delivered or disclosed under this Contract, but not originally developed under this Contract, and validated as Proprietary Information to the Contractor or his Subcontractor shall be clearly marked with the appropriate proprietary legend(s). If data, on legitimate grounds, is identified as Proprietary Information, then the restrictions imposed by paragraph 3 below shall apply to that Data.

3. a. The Purchaser agrees not to divulge any of the Contractor's proprietary information, and further to protect said proprietary information in accordance with its associated marking(s). The Purchaser agrees to provide immediate notification to the Contractor upon discovery that Contractor's proprietary information was improperly released or disclosed. Purchaser's notification shall include the name of recipient(s) to whom said Data was disclosed to and the steps taken for recovery of said Data by the Purchaser.

b. Should the Purchaser deem it necessary to release any of the Contractor'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 the Purchaser shall first obtain

the Contractor's prior written consent to release such data in accordance with paragraph 1 above. Parties receiving such information are subject to the same limitation for further release. Such Proprietary Information may be used by the Purchaser but only for purposes of operation and maintenance of the Contract Items.

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

(1) Is known to Purchaser at the time of receipt from Contractor or is received from a source other than Contractor 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 Purchaser through means independent of the information provided by Contractor.

d. Nothing contained herein or in any subsequent communication made pursuant to this Contract will be construed as a waiver of any Boeing Affiliate's rights or any third party's rights in Proprietary Information. All Proprietary Information delivered hereunder will remain the property of the originator.

e. Trademarks. Purchaser will not use the trademark "Boeing" or its equivalent, or any other trademarks of Boeing, without the express written approval of Boeing's Authorized Representative.

f. Copyright. Delivery of Data under this Contract does not convey the copyright in that Data to Purchaser.

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

CLAUSE 22 - DELETED

CLAUSE 23 - DELETED

CLAUSE 24 - ENABLING CLAUSE BETWEEN CONTRACTOR AND SERVICE CONTRACTORS

1. In parallel with this contract, NAPMA has established contracts with EADS Vim, Kongsberg Defense & Aerospace, General Dynamics Canada and Thales Communications Belgium for similar technical support. The Contractor therefore agrees to cooperate with these contractors in the performance of their contracted tasks if and when required. In performance of this contract, the Contractor agrees to cooperate with the above described support contractors by engaging in technical discussions with their personnel and favorably responding to their activities as specified above.

CLAUSE 25 - WARRANTY

1. Unless otherwise stated in any TRN issued under this contract, the Contractor warrants that the work and deliverables under this Contract shall be free from defect in material and workmanship at the time of delivery and acceptance by the Purchaser. The Purchaser shall notify the Contractor of a defect in writing within fourteen (14) days after the defect is discovered, and the notice shall thoroughly describe the defect. For the warranty period as stipulated in the applicable TRN, the Contractor shall, on receipt of written notice of a defect from the Purchaser, at the Contractor's option repair, or replace without delay, any deliverables or work that prove to be defective. Transportation and insurance costs for defective parts returned to the Contractor shall be at the Purchaser's charge and transportation and insurance costs for parts replaced or repaired by the Contractor shall be at the Contractor's charge.

2. In the event of the Contractor's failure to fulfill his obligation to repair or replace the defective item within the time stipulated in each TRN, or as extended in accordance with subparagraph 3 below, the Purchaser shall have the right to have the defective item repaired or replaced by a third party and to recover the direct and demonstrated cost from the Contractor.

3. Should the Contractor be aware from the outset that the stipulated turn-around-time for a repair or replacement is not

achievable, then the Contractor should formally request the Purchaser to grant an extension of the response time. The request should contain a detailed rationale why the response time cannot be achieved and should specify the extension required. Each request will be assessed on its merits and the Purchaser will not refuse any reasonable request.

4. Repaired items will be warranted for either the remaining period against the original warranty or three (3) months whichever is greater, commencing from the date of return to the Purchaser. Replaced items will be warranted for the same duration as the original warranty, commencing from the date of return to the Purchaser.

5. This warranty shall not apply to consumable and expendable items (such as batteries, fuses ...) and to defects arising from or connected with Purchaser's failure to operate or maintain the supplies in accordance with the Contractor's specifications and documentation and generally with standard practices of equipment operations and shall not be applicable to defects arising from or connected with (i) any combinations of the supplies with equipment not approved by the Contractor (ii) or any modification of the supplies performed by others but the Contractor (iii) or any accident of the supplies (iv) or normal wear and tear (v) or defective installation, maintenance or storage (vi) or inadequate energizing.

6. This clause sets forth Contractor's exclusive warranties and liabilities, express or implied, for defective work and equipment and, as provided for in the clause of this contract entitled "Liability"

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