

CUSTOMER CONTRACT REQUIREMENTS
UK Apache ATIL
CUSTOMER CONTRACT ATIL-98-001

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

1. Definitions

- a. Authority: the UK Secretary of State for Defence acting on behalf of the Government of the United Kingdom (or its successors for the purposes of the Prime Contract.)
- b. Buyer's Customer: Aviation Training International Limited (ATIL)
- c. Crown: the Authority and all Ministers of the Crown, government departments and Crown agencies and authorities for the time being.
- d. Facility: the buildings, structures, and Training Equipment on the Land and each and any of their component parts and existing on the Land, and all works which Seller is required to carry out under this Contract on or off the Land, together with any extensions and changes thereto existing from time to time, within which Facility, Buyer's Customer is to provide a Training Service, and save as otherwise requires, shall mean all of the foregoing located at all the Sites.
- e. Intellectual Property Rights: moral rights, performing rights, and rights relating to design, goodwill, patent, copyright, trademark (whether registered or unregistered), performance, databases, registered design, data, source codes, reports, drawings, unregistered design rights, specifications, know-how, software designs and/or other material, and any application for any of the foregoing.
- f. Land: the leasehold land at Arborfield, Berkshire, Middle Wallop, Hampshire, Dishforth, North Yorkshire and Wattisham, Suffolk to be demised by the Authority.
- g. Legislation: any Act of parliament or subordinate legislation within the meaning of Section 21(1) of the Interpretation Act of 1978, any exercise of the Royal Prerogative, and any enforceable community rights within the meaning of Section 2 of the European Communities Act of 1972.
- h. Technical Advisor: the representative of the financial institution(s) providing project financing to Buyer's Customer who will act as the technical advisor advising the financial institution(s) as to its opinion related to the technical progress of Buyer's Customer.
- i. Technical Data: proprietary or non-proprietary technical documentation and executable computer software, in respect of the design, development, production, processing, manufacture, assembly,

installation, use and integration of the WAH-62 Training Equipment and Services

- j. Training Service: all services provided by Buyer's Customer for the WAH-64 Helicopter to the UK Secretary of State for Defence.
- k. WAH-62 Training Equipment or Training Equipment: suite of training devices delivered to Buyer's customer.

2. Subcontracting

Seller not make any change, to those parties previously disclosed to Buyer's customer (through Buyer) as actual or prospective subcontractors, unless the replacement subcontractor is another of the subcontractors previously so disclosed. Seller shall not enter into any contract with any overseas sub-contractors or suppliers where the value of work or goods to be provided is likely to exceed £5 million, or for a subcontractor whose principal place of business is in the USA, \$8 million USD (to be indexed) without the prior written consent of Buyer's customer, which will be obtained through Buyer. No such consent shall relieve Seller from any of its obligations under this Contract.

3. Access

- a. Subject to any required security requirements, at a reasonable frequency, and upon reasonable notice and at all reasonable times, Seller shall permit Buyer, Buyer's Customer, or the Technical Advisor (and any person designated by any of them), at no additional charge to Buyer, reasonable access, to the premises where work under this Contract is being perform, to support WAH-64 Training Equipment Program meetings, to witness tests and inspections, and the related test and inspection documentation and to monitor the performance requirements, PROVIDED ALWAYS that any such access for the above purposes shall not hinder or impede Seller or it subcontractors in the performance of their work.
- b. Seller shall use reasonable endeavors to include similar rights in their subcontracts.

4. Proprietary Information and Intellectual Property Rights

This clause applies if Seller will be providing Intellectual Property Rights and Technical Data necessary for the purposes of maintaining the Facility and operating the Training Service.

- a. Seller grants Buyer, Buyer's Customer, or a new contractor appointed by Buyer, an irrevocable, royalty-free, worldwide, non-exclusive, perpetual license to use all Intellectual Property Rights and Technical Data owned by Seller, which are necessary for the purposes of maintaining the Facility and operating the Training Service to the extent required by the Contract, provided that Buyer, Buyer's Customer, the Authority, or the new contractor shall not exercise such right to use until such time as the Contract is terminated or such new contractor is appointed. Seller shall use reasonable efforts to procure from those of its suppliers who are providing Intellectual Property Rights and Technical Data necessary for the purposes of maintaining the Facility and operating the Training Service, a license in favor of Buyer, Buyer's Customer, the Authority, and the new contractor, co-extensive with the license granted by Seller in accordance with this clause.
- b. In the event that Seller is unable to procure licenses from the suppliers referred to in 4.a., after having used all reasonable efforts to do so, Seller shall notify Buyer in writing of such license that is unable to procure together with the name of the relevant third party and other relevant information which demonstrates the efforts used by

Seller to obtain such license pursuant to this clause.

5. Compliance with Official Secrets Acts 1911-1989

- a. Seller will note and comply with the provisions of the Official Secrets Acts 1911-1989, and Seller shall also comply with the following provisions of this Clause:
 - i. Seller shall take all reasonable steps, by instruction, display of notices or other appropriate means, to ensure that all persons (including staff or subcontractors) employed on any work in connection with this Contract have notice that these statutory provisions apply to them and will continue to apply to them.

6. Confidence

Seller shall ensure that all staff, whether employed by it, or by a subcontractor, or self-employed, are under an obligation of confidence owed not only to Buyer but also to Buyer's customer, not to disclose any information acquired during the course of their employment otherwise than in the proper discharge of their duties or as authorized by Buyer or Buyer's customer.

7. Security Requirements

- a. To the extent that Technical Data to be disclosed under this Contract or subcontracts, is assigned a security classification, each party shall prior to transfer obtain whatever the appropriate government approvals it requires to disclose or as appropriate to receive Technical Data and shall safeguard such classified Technical Data and maintain a system of security control within their own organizations in accordance with applicable UK.G and USG regulations.
- b. The parties and their employees shall not disclose any Technical Data or transfer title to, or possession of any Goods furnished, or supply or transfer Goods delivered hereunder, or supply services in any manner contrary to the laws of the United States of America or England or contrary to the regulations of the USG or UK.G, or any agency thereof, including, but not limited to, the International Traffic in Arms Regulations of the US Department of State, and the National Industrial Security Program Operating Manual of the US Department of Defense.
- c. Employees of both parties shall obey all pertinent rules and regulations of the other while on the premises of the other party, including those relating to the safeguarding of classified Technical Data. The number and identity of visiting personnel shall be agreed between the parties in advance of any visit. If classified visits are required, each party shall arrange in advance of visits and through the official channels, the necessary security clearance for its personnel according to the relevant government regulations. The host party shall provide, when necessary, suitable and adequate working facilities for visiting personnel as required by this Contract.
- d. The following provisions of the USG National Industrial Security Program Operating Manual shall apply:
 - i. All classified information or material furnished or generated pursuant to this Contract shall be protected as follows:
 - a. The parties shall not release such information or material to a third-country government, person, or firm without the prior written approval of the releasing government;
 - b. The parties shall afford such information or material a degree of protection equivalent to that afforded it by the releasing government; and
 - c. The parties shall not use such information and material for a purpose other than that for which it was furnished or generated without the prior written

consent of the releasing government.

- ii. Classified information or material furnished or generated pursuant to this Contract shall be transferred through government channels or other channels specified in writing by the Governments of the United States and the United Kingdom, and only to persons who have an appropriate security clearance and an official need for access to such information or material in order to perform this Contract.
- iii. The recipient with its government's equivalent security classification markings shall re-mark classified information or material furnished under this Contract.
- iv. Classified information or material generated under this Contract shall be assigned a security classification as specified by the USG National Industrial Security Program Operating Manual.
- v. All cases in which it is known or there is a reason to believe that classified information or material furnished or generated pursuant to this Contract has been lost or disclosed to unauthorized persons by a party shall be reported promptly and fully by the cognizant Party to its government's security authorities.
- vi. Classified information or material furnished or generated pursuant to this Agreement shall not be further provided to another potential contractor or subcontractor unless:
 - a. such potential contractor or subcontractor located in the United States or the United Kingdom has been approved for access to classified information or material by the US or UK security authorities; and
 - b. such potential contractor or subcontractor not located in the US or UK has been granted prior written consent from the USG.
- vii. Upon completion of this Contract, all classified material furnished or generated pursuant to this Contract shall (i) be destroyed (ii) if furnished, be returned to the party furnishing it, or (iii) if generated, become Seller property. This paragraph does not apply to classified material that (i) will reside on the training devices, and (ii) is required for full operational of the training devices. Classified information that resides on the Goods after delivery will be protected in accordance with conditions of this Clause.
- viii. The parties shall insert terms that substantially conform to this Article in all subcontracts pursuant to this Contract that involve access to classified information or material furnished or generated under this Agreement.

8. Health and Safety

All Goods delivered and Services provided shall comply with all Legislation relating to health and safety in force at the time of acceptance (in the case of Goods) or provision to Buyer's customer (in the case of Services). Seller shall be responsible for the observance by itself, its staff and subcontractors of all current and relevant;

- a. health and safety precautions necessary for the protection of itself: its staff subcontractors and any other persons invited onto or visiting the Land, including all precautions required to be taken by or under any Legislation; and
- b. rules, regulations and requirements or statutory or regulatory authorities concerning building works and fire prevention.

9. Security Measures

- a. Throughout the Contract, Seller shall ensure that Seller and any servant, agent, representative, contractor or subcontract of Seller, comply with all MoD security requirements in force at the time including any local Unit Security Orders relevant to the siting of equipment or training services.
- b. Seller shall before entering into any subcontract for the carrying out of anything to be done under this Contract, where the work to be carried out under the subcontract includes, or will involve the disclosure of information about a secret matter, submit to Buyer for approval, a statement of the work to be carried out under that subcontract and the name (with such other particulars as Buyer may require) of the proposed subcontractor, and Seller shall, if directed by Buyer, include in the subcontract provisions in such terms as Buyer may consider appropriate for placing the subcontractor under obligations in relation to secrecy and security corresponding to those placed on Buyer, but with such variations (if any) as Buyer may consider necessary. Further, Seller shall:
 - i. give such notices, directions, requirements and decisions to subcontractors as may be necessary to bring the provisions relating to secrecy and security which are included in subcontracts under this paragraph into operation in such cases and to such extent as Buyer may direct;
 - ii. if there comes to his notice any breach by subcontractors of the obligations of secrecy and security included in their subcontracts in pursuance of this paragraph, notify such breach forthwith to Buyer; and
 - iii. if and when so required by Buyer, exercise his power to terminate the subcontract under the provisions in that subcontract.

10. Warranty

This clause applies in addition to the requirements in the General Provisions.

- a. Latent Defects
 - i. Seller warrants, that at the time of acceptance, the Goods are free from Latent Defects.
 - ii. In the event of a breach of the warranty contained in Clause 10.a.i., Seller shall, at no increase in contract price, promptly repair, replace or otherwise remedy any Goods bearing a Latent Defect. Buyer shall notify Seller in writing of a breach of the warranty contained in Clause 10.a.i. within six (6) years after acceptance of the defective Goods. Failure by Buyer to notify Seller of breach within the time specified above constitutes a waiver of any remedies that Buyer might otherwise have for breach of warranty contained in 10.a.i.
- b. Title and Risk of Loss or Damage
 - i. Risk of loss or damage to Goods or components returned for repair to Seller under this Warranty will be retained by Buyer. Seller shall exercise reasonable care in respect of the custody of any such Goods or components as if they were its own property. In the event that replacement parts are provided to Buyer in exchange for the defective Goods or components, title and risk of loss or damage to Goods or

components will pass to Buyer when it takes possession of the replacement Goods or components. Title to defective Goods or components will pass to Seller upon receipt.

c. Repaired Equipment

- i. Any repaired original or replacement Goods, Buyer shall be entitled to the balance of the original warranty period or six (6) months, whichever is greater on delivery of the repair concerned.

11. Taxes and Duties

- a. Buyer shall bear all the costs of taxes and export and import duties, levied on Training Equipment, Services and Technical Data by any UK national, or any international organization of which the United Kingdom is or may become a member, including but not limited to sales tax, excise tax, customs duties, Value Added Tax, and other similar transfer tax, and all other fees or withholdings. If Seller is properly requested to and makes any payments pursuant to this Clause 11.a., Buyer shall compensate Seller for any payments made within thirty (30) days of such payment.
- b. Seller shall bear all costs of any taxes and export and import duties, other than those stated in Clause 11.a, levied on AFI, Training Equipment, Services and Technical Data by national, state or local authorities or any international organization of which the United States of America is or may become a member including but not limited to sales tax, use tax, personal property tax, income tax, consumption tax, customs duties, excise tax and any other similar transfer tax and all other fees or withholdings. Should any Value Added Tax or other similar transfer tax be levied on AFI, Training Equipment, Services and Technical Data by the US federal, state or local authorities, they shall be paid by Seller. If Buyer is properly requested to and makes any payments pursuant to this Clause 11.b, Seller shall compensate Buyer for any payments made within thirty (30) days of such payment. At the request of Seller, Buyer shall execute a Sales Tax Exemption Certificate in order to certify that all Training Equipment procured under this Agreement is for use outside the states of Missouri, USA, or Arizona, USA. Seller prices for the W AH-64 Training Equipment and Services do not contain any costs for Missouri or Arizona Sales Tax.
- c. Each party shall bear, on its own, any costs including income taxes, wealth taxes, or any other levy imposed on salaries of its personnel working on the premises of the other party.

12. Corrupt Gifts and Payments

- a. Seller shall not do and warrants that in entering this Contract, it has not done any of the following (hereafter referred to as “prohibited acts”):
- i. offer, give, or agree to give any secret servant of the Crown any gift or consideration of any kind as an inducement or reward:
- a. for doing or not doing (or for having done or not having done) any act in relation to the obtaining or performance of this Contract or any contract with the Crown; or
- b. for showing or not showing favor or disfavor to any person in relation to this or any Contract with the Crown;

- ii. enter into this Contract or any contract with the Crown in connection with which commission has been paid or has been agreed to be paid by it or on his behalf, or to his knowledge, unless before the relevant contract is made, the details of any such commission and of the terms and conditions of any such agreement or payment thereof have been disclosed in writing to Buyer.