

**CUSTOMER CONTRACT REQUIREMENTS
JGB ENTERPRISES BOA
CUSTOMER CONTRACT BA-61125-0001M**

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

TBD NOTIFICATION OF DEBARMENT/SUSPENSION AND EXPORT DATA CONTROL (AUG 2009). Seller shall provide immediate notice to Buyer in the event of being debarred suspended, or proposed for debarment by any Federal Agency during the performance of this contract.

(1) For the purpose of this clause,

(A) Foreign person is any person who is not a citizen of the or lawfully admitted to the for permanent residence under the Immigration and Nationality Act, and includes foreign corporations, foreign organizations, and foreign governments;

(B) Foreign representative is anyone, regardless of nationality or citizenship, acting as an agent, representative, official, or employee of a foreign government, a foreign-owned or influenced firm, corporation, or person; and

(C) Foreign sources are those sources (vendors, subcontractors, and suppliers) owned and controlled by a foreign person.

(2) Seller shall place a clause in subcontracts containing appropriate export control restrictions, set forth in this clause.

(3) Nothing in this clause waives any requirement imposed by any other U.S. Government agency with respect to employment of foreign nationals or export-controlled data and information.

(4) Equipment and technical data generated or delivered in the performance of this contract are controlled by the International Traffic in Arms Regulation (ITAR), 22 CFR Sections 121 through 128. An export license is required before assigning any foreign source to perform work under this contract or before granting access to foreign persons to any equipment and technical data generated or delivered during performance (see 22 CFR Section 125). Seller shall notify Buyer and obtain the written approval of Buyer prior to assigning or granting access to any work, equipment, or technical data generated or delivered in the performance of this contract to foreign persons or their representatives. This notification shall include the name and country of origin of the foreign person or representative, the specific work, equipment, or data to which the person will have access, and whether the foreign person is cleared to have access to technical data (DoD 5220.22-M, National Industrial Security Program Operating Manual (NISPOM)).

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1. WARRANTY

1.1 Subject to the provisions of this Article, Seller warrants that, at time of delivery, the Goods shall be free from defects in material and workmanship. (THIS WARRANTY IS BUYER'S EXCLUSIVE REMEDY FOR DEFECTS IN MATERIALS AND

WORKMANSHIP.)

11.2 The warranties set forth in herein shall not apply to any Buyer furnished material or to any accessory, component, assembly, subassembly or part purchased by Seller which was not manufactured to Seller's detailed design, except that any defect solely attributable to Seller's workmanship in the installation of said items in the Parts, including any failure by Seller to conform to the manufacturer's installation instructions so as to void any manufacturer's warranty, shall constitute a defect in workmanship. The warranties set forth shall be subject to the following conditions and limitations:

a. Seller having received written notice of the defect from Buyer at the earliest practical time after the defect becomes apparent to Buyer, but in no event later than one (1) year after delivery of the Goods; and **b.** Buyer's return, as soon as practical, and in accordance with Seller's instructions, of the Goods or part thereof claimed to be defective. All freight charges will be borne by the Buyer.

1.3 Buyer must submit to Seller a description of the claimed defect and circumstances, including if requested by Seller, proof that the claimed defect is due to a matter within the warranty as set forth in this Article and that such defect did not result from any act or omission of Buyer or of any third party, including but not limited to any failure to operate or maintain the Goods involved in accordance with Seller's written instructions, handbooks, and manuals, or unauthorized repairs, alterations, modifications or use of spare parts from sources not approved by Seller.

1.4 Buyer's remedy and Seller's obligation and liability under this Article, with respect to each valid warranty claim, are limited to the following: At Seller's sole option, (1) to repair such Goods or, (2) to replace such Goods or part thereof with similar Goods free from defect in material and workmanship.

1.5 Title to and risk of loss of the Goods or part returned shall at all times remain with Buyer, except that title to such Goods or part shall pass to Seller concurrently with Seller's shipment of a replacement therefore. Seller shall have only such responsibility for damage to Goods or parts in the Seller's possession occasioned by Seller's willful acts or ordinary negligence. Seller shall not be liable for loss of use, lost income, revenue, or profit, or any other incidental, indirect, or consequential damages.

1.6 Normal wear and tear and the need for regular maintenance and overhaul shall not constitute a defect under this Article. Buyer acknowledges that some of the Parts delivered under this Contract, though without defects when delivered, may have a normal service life expectancy shorter than the warranty period. Such Parts shall bear no warranties other than the special hours of use or other warranties extended at the time of delivery.

2.0 EXCLUSION OF LIABILITIES

2.1 DISCLAIMER AND RELEASE. THE WARRANTIES, CONDITIONS, REPRESENTATIONS, OBLIGATIONS AND LIABILITIES OF SELLER AND REMEDIES OF BUYER SET FORTH IN THIS AGREEMENT, ARE EXCLUSIVE AND IN SUBSTITUTION FOR, AND BUYER HEREBY WAIVES, RELEASES AND RENOUNCES ALL OTHER WARRANTIES AND OTHER OBLIGATIONS AND LIABILITIES OF BOEING, AND 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 SPARE PARTS OR OTHER THINGS PROVIDED UNDER THIS AGREEMENT, INCLUDING BUT NOT LIMITED TO:

A) ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS;

B) ANY IMPLIED WARRANTY ARISING FROM COURSE OF PERFORMANCE, COURSE OF DEALING OR USAGE OF TRADE;

C) ANY OBLIGATION, LIABILITY, RIGHT, CLAIM OR REMEDY IN TORT, WHETHER OR NOT ARISING FROM THE NEGLIGENCE OF BOEING; AND

D) ANY OBLIGATION, LIABILITY, RIGHT, CLAIM OR REMEDY FOR LOSS OF OR DAMAGE TO ANY PROPERTY OF BUYER, INCLUDING WITHOUT LIMITATION ANY SPARE PARTS

2.2 EXCLUSION OF CONSEQUENTIAL AND OTHER DAMAGES. SELLER SHALL HAVE NO OBLIGATION OR LIABILITY, 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 SPARE PARTS OR OTHER THINGS PROVIDED UNDER THIS AGREEMENT.

3. PATENT INDEMNITY

3.1 Intellectual Property Indemnity

3.1.1 In case of any claim, suit or action by a third party against Buyer alleging that any Goods infringe any patent or copyright in the country of Buyer

- A) Buyer shall promptly inform Seller in writing of such claim, suit or action, and
- B) At its own expense, Seller shall have the sole control and the full authority to defend the claim, including the rights to modify the Parts and to settle the claim without the consent of Buyer, and
- C) Buyer shall cooperate with Seller to the extent reasonably necessary in such defense by providing relevant and material information, documents, and witnesses in the possession or control of Buyer.

3.1.2 If Seller defends a claim, suit or action, and such claim, suit or action results in a permanent injunction or court decision prohibiting the use of part or all of the Parts because such Parts infringe a third party right, Seller shall:

- A) Attempt to procure for Buyer the right to continue using the infringing Goods during their service life; or
- B) Replace or modify the infringing Goods with substantially equivalent non-infringing Goods; or
- C) Modify them so they become non infringing but equivalent, or
- D) Remove them and refund the purchase price (less reasonable allowance for use, damage and obsolescence); and
- E) Indemnify Buyer against any monetary damages awarded to the third party as a result of the infringement.

3.1.3 This Article states the sole and exclusive remedy of Buyer and the sole liability of Seller in relation to intellectual property infringement.

3.1.4 Notwithstanding the above, Seller shall have no obligation hereunder if, without Seller's prior written consent, Buyer has modified the Goods or used the Goods in combination with any other equipment or software in a manner which results in infringement of the third party right, provided that the Goods would not separately infringe such right.

3.2 Compliance with Laws: Buyer will at all times comply with laws, regulations and executive orders of the United States of America applicable to this Contract, including the Export Arms Control Act and its International Traffic in Arms Regulations (the ITAR).