

**CUSTOMER CONTRACT REQUIREMENTS  
AWACS  
CUSTOMER CONTRACT C8018**

**CUSTOMER CONTRACT REQUIREMENTS**

The following prime contract special provisions apply to this purchase order:

**A. NO CHARGE USE OF U.S. GOVERNMENT PROPERTY**

1. The Seller and its subcontractors are authorized to use on a no-charge, non-interference basis U.S. Government-owned facilities, special test equipment, special tooling and other equipment in its possession under a subcontract issued under any of the following contracts;

F19628-82-C-0003, F19628-79-C-0054, F19628-83-C-0004, F19628-80-C-0083, F19628-80-C-0007,

F19628-79-C-0091, F19628-81-C-0040, F19628-75-C-0162, F19628-79-C-0052, F19628-70-C-0218,

F19628-79-C-0053, F19628-83-C-0424

In the event Seller, or one of its subcontractors, needs the use of Government-owned equipment in its possession under contracts other than those listed above, the Seller shall include the pertinent information in its quote to Buyer (e.g. contract number, name and address of ACO).

2. If the U.S. Government-owned facilities or tooling provided to the Seller, as set forth above, are increased or decreased or do not remain available during the performance of this contract, or if any change is made in the conditions under which they are made available, such equitable adjustment as may be appropriate will be made in the contract price.

3. The Seller agrees that it will not directly, or indirectly through overhead charges or otherwise, include in the price of this contract, or seek reimbursement under this contract, for any rental charge paid by the Seller for the use on other contracts of the U.S Government-owned facilities or tooling referred to herein.

4. The Seller will include a similar provision in all subcontracts or purchase orders.

**B. QUALITY ASSURANCE**

Quality Assurance shall be in accordance with the provisions R of MIL-I-45208A Inspection System Requirements dated 24 July 1981, and MIL-STD-45662, Calibration System Requirements dated 10 June 1980 with Notice No. 1 dated 5 January 1983, or AQAP-4 and AQAP-6, or AQAP-9 at Seller's discretion.

**C. MARKING, PACKAGING AND SHIPPING INSTRUCTIONS**

If Seller will be making direct shipments to NAMSA, the following instructions shall apply:

**1. MARKING FOR SHIPMENT**

a. All items, or a tag attached thereto, will bear the complete Stock Number and/or Part Number and the number of the Prime Contract and other information as may be specified by the Buyer.

b. If the exterior container contains more than one item, the exterior container will quote the first Customer Requisition and indicate how many others are included.

c. All interior and exterior containers will show the Customer Requisition Number, and the exterior container will also show the number of the Prime Contract and other information as may be specified by the Buyer.

d. If material to be supplied hereunder constitutes hazardous or potentially-hazardous cargo, the item(s) or a tag attached thereto, as well as the exterior container, shall be conspicuously marked with the following information:

(1) Freight classification code(s) for air and surface transport in accordance with International Air Transport Association (IATA) Regulations and International Regulations for the transport of

dangerous cargo/Reglement International concordant le transport des marchandises dangereuses (RID).

- (2) Full commercial description (as opposed to trademark nomenclature).
- (3) Flash point (when applicable).
- (4) Any other essential marking(s).

## 2. PRESERVATION, PACKAGING AND PACKING

- a. Unless otherwise indicated by special request herein, or other official methods, preservations, packaging and packing shall be performed in accordance with commercial practice. Seller's price for any such special preservation, packaging or packing request shall be added to the invoice.
- b. If the Seller pays transportation costs, they shall be invoiced together with the supplies delivered.

## 3. SHIPPING INSTRUCTIONS

### a. Delivery in the USA:

- (1) For all items delivered to NAMSA in the United States of America, the Seller will, unless otherwise stated herein, contact the NAMSA Shipping Agent at the address given, who will arrange shipment on behalf of NAMSA. The Seller will notify the Shipping Agent as soon as anticipated date of shipment and other shipping data is known, but a minimum of four days before shipment. In doing this, the Seller will provide the Shipping Agent with the number of the prime contract and the call thereunder (and whether the shipment is the first, second, final, etc., as appropriate), the document number, weight, volume, the number of containers, value and any other pertinent details.
- (2) Three (3) copies of DD Form 250 or NSC Form 194 duly completed will be provided to the Shipping Agent at the time of shipment.
- (3) The NAMSA Shipping Agent will obtain the necessary export licenses and provide evidence thereof to Seller.
- (4) Unless provided otherwise, Seller will ship using a commercial collect bill of lading to be paid by NAMSA Shipping Agent. (The NAMSA shipping Agent will be paid by NAMSA as provided by its contract with NAMSA.)

### b. Delivery Outside the USA:

No deliveries will be made outside the USA unless authorized by the Buyer.

## D. TECHNICAL DATA

### 1. For purposes of this contract, the following definitions shall apply:

- a. "Technical Data" means recorded information, regardless of form or characteristic, of a scientific or technical nature which may be delivered to NAMSA. It may be, for example, document research, experimental, developmental or engineering work; or be usable or used to define a design or process or to procure, produce, support, maintain, or operate material. The data may be graphic or pictorial delineation's in media such as drawings or photographs; text in specifications or related performance or design type documents; or computer printouts. Examples of Technical Data include research and engineering data, engineering drawings and associated lists, specifications, standards, process sheets, manuals, technical reports, catalog item identifications and related information and computer software.
- b. "Unlimited Rights" means rights to use, duplicate, or disclose Technical Data in whole or in part, in any manner and for any purpose whatsoever, and to have or permit others to do so.
- c. "Limited Rights" means rights to use or duplicate Technical Data, in whole or in part, with the express limitation that such Technical Data shall not, without the prior written permission of Contractor be (a) released or disclosed in whole or in part outside NATO; (b) used in whole or in part by NAMSA/NATO for any manufacturing purpose, or in the case of computer software or computer software documentation, for preparing the same or similar computer software, or (c) used by a party other than NAMSA/NATO except for emergency repair of the NATO E-3A aircraft system where such repair is performed for NAMSA/NATO and where the information concerned is not otherwise reasonably available to enable timely performance of the repair, provided that the release or disclosure thereof outside NAMSA/NATO shall be made subject to a prohibition against further use, release or disclosure.
- d. "Restricted Rights" applies only to computer software and means rights to: (a) use computer software with the computer for which or with which it was acquired, including use at any NAMSA/NATO

installation to which the computer may be transferred; (b) use computer software with a backup computer if the computer for which or with which it was acquired is inoperative; (c) make a reasonable number of copies of computer programs for safekeeping (archives) or backup purposes; (d) modify computer software provided that the modified software is subject to Restricted Rights.

2. Rights in Technical Data

a. NAMSA/NATO shall have Unlimited Rights in: (a) Technical Data resulting directly from performance of developmental work (if any) which may be specified as an element of performance hereof; (b) Technical Data developed under contracts with the U.S. Government and which the U.S. Government agrees may be furnished to NAMSA/NATO with "Unlimited Rights"; (c) Technical Data which is in the public domain, or has been or is normally released or disclosed by Seller or its subcontractors without restriction or further disclosure; and (d) Technical Data listed or described in an agreement incorporated herein which the parties have predetermined and agreed will be furnished with Unlimited Rights.

b. NAMSA/NATO shall have Restricted Rights in computer software delivered hereunder and marked with a "Restricted Rights" legend.

c. NAMSA/NATO shall have Limited Rights in all other Technical Data delivered hereunder, whether or not such Technical Data has been specified for delivery to NAMSA/NATO.

d. Nothing contained in this agreement shall imply a license to NAMSA/NATO under any patent or be construed as affecting the scope of any license or other right otherwise granted to NAMSA/NATO under any patent.

E. INTERNATIONAL TRAFFIC IN ARMS REGULATIONS

If any export of equipment or technical data will take place under this contract, Seller shall comply with all applicable requirements of the United States International Traffic in Arms Regulations.

F. AUTHORIZATION AND CONSENT BY THE UNITED STATES

Pursuant to the authority granted to NAPMO by the Assistant Secretary of the Air Force for Research, Development and Logistics in his letter 19 January 1979, NAMSA hereby grants the authorization and consent of the United States to the Seller for the use or manufacture in the performance of this contract or any part hereof or any amendment hereto or any subcontract hereunder (including any lower-tier subcontract), of any invention described in and covered by a patent of the United States (i) embodied in the structure or composition of any article, the delivery of which is accepted by NAMSA under this contract, or (ii) utilized in the machinery, tools, or methods the use of which necessarily results from compliance by the Seller or the using subcontractor with (a) specifications or written provision now or hereafter forming a part of this contract, or (b) specific written instructions given by NAMSA directing the manner of performance. This authorization and consent is given without prejudice to and subject to any rights the United States may have to contribution or indemnification from other participating Governments or the Seller under any other provisions of this contract.

G. PATENT INFRINGEMENT AND INDEMNIFICATION

1. In the event of delay in contract performance by issuance of injunctive order (by a court of competent jurisdiction) based on actual or alleged infringement of any patent or in the event of NAMSA delay or failure to comply promptly with its obligations under paragraph D. below, the contract schedule shall be adjusted. No such adjustment shall be allowed, however, to the extent that the Seller has failed to provide prompt notice of each notice of claim of patent infringement. The Seller shall have the right to have the contract schedule adjusted in the event a U.S. patent infringement problem causes a delay.

2. The Seller shall employ all reasonable efforts to obtain required license agreements as to patents for which a NAMSA license does not exist. Resulting royalty cost shall be subject to payment under this contract.

3. NAMSA has agreed to indemnify the Seller and its subcontractors against liability, including costs and expenses of (i) defense of all claims or actions, (ii) settlement of all claims or actions, either before or after litigation thereon is commenced, (iii) amounts payable under a judgment as a result of all claims or actions, and (iv) acquisition of rights in or title to patents, in case of any actual or alleged infringement of any patent issued under the laws of any country other than the United States arising out of their performance of this contract or any part thereof, or amendment thereto or any subcontract thereunder, including any lower-tier subcontract.

4. NAMSA shall assume or direct the defense and/or settlement of all claims or actions against the Seller or its subcontractors for actual or alleged infringement of any patent issued under the laws of any country other than the United States arising out of their performance of this contract or any part thereof, or amendment thereto or any subcontract. NAMSA shall assume or control the defense of all claims or actions against NAMSA for patent infringement. The Seller may at its option assume or direct the defense of all claims or actions for patent infringement in which the Seller and/or any of its subcontractors are named or joined as co-defendants with NAMSA. NAMSA shall exercise all available defenses to the benefit of itself, the Seller and all subcontractors in connection with all claims or actions under this clause.

5. The indemnity, obligations, and liabilities of the Seller and remedies of NAMSA set forth in this provision are exclusive and in substitution for, and NAMSA hereby waives, releases, and renounces all other indemnities, warranties, obligations, and liabilities of the Seller and its subcontractors or any assignee of the Seller, express or implied, arising by law or otherwise, with respect to any actual or alleged infringements or the like arising from performance of this contract or any part thereof, any amendment thereto or any subcontract thereunder, or use of the items delivered hereunder by NATO or the participating Governments. No other indemnity against patent infringement liability express or implied, arising by law or otherwise, shall be granted by the Seller or its subcontractors to any other party.

6. The Seller and its subcontractors shall have the right to cure any infringement subject to this provision by substitution of non-infringing equipment that fulfills their obligations under this contract and subcontracts, respectively. Such substitution shall be considered a change under the "Changes" clause hereof and may require an equitable adjustment.

7. For purposes of this clause, the term "patents" shall include, but not be limited to, utility patents, patents of addition or improvement, petty patents or utility models, and design patents.

8. NAMSA shall defend the Seller and its subcontractors against all claims and proceedings alleging infringement of any United States or foreign patent by any goods delivered and/or services performed under this contract and NAMSA shall hold them harmless from any resulting liabilities and losses, providing NAMSA is reasonably notified of such claims and proceedings.

#### H. SECURITY

If any plans, specifications or similar documents relating to this contract or the performance thereof are marked "Cosmic Top Secret", "NATO Secret", "NATO Confidential", or "NATO Restricted", the Seller shall safeguard NATO security by:

1. Ensuring that no such document be accessible to any person not entitled to knowledge of such document.
2. Complying with the national security regulations currently in force in its country.
3. Complying with any special NATO or NAMSA Security regulations which may be supplied by NAMSA. If any change in applicable security requirements for performance already priced increases the cost of such performance, then such performance shall be described in a separately priced change under the "Changes" clause hereof. Seller will promptly advise Buyer if such a circumstance is noted by the Seller and will promptly provide a description of the added performance tasks.

#### I. TAXES AND DUTIES

1. NAMSA, as a subsidiary body of NATO, is, by application of the Ottawa Agreement, dated 20 September 1951, generally exempt from all taxes and customs duties. NAMSA shall be responsible for assuring that no such taxes or customs duties are imposed on Seller, and if such taxes or customs duties are imposed the provisions of Section B below shall apply.

2. In addition to all charges set forth herein, NAMSA through the Buyer shall pay to Seller upon demand the amount of any sales, use, value-added or similar taxes or customs duties imposed by any federal, state or local taxing authority within the United States, and the amount of all taxes or customs duties imposed by any taxing authority outside the United States, required to be paid by Seller as a result of any sale, use, delivery, storage or transfer of any supplies hereunder. If Seller has reason to believe that any such tax or customs duty is applicable, Seller shall separately state the amount of such tax or customs duty in its invoice. If claim is made

against Seller for any such tax or customs duty, Seller shall promptly notify Buyer. If reasonably requested by Buyer in writing, Seller shall, at Buyer's expense, take such action as Buyer may reasonably direct with respect to such claim, and any payment by Seller of such tax or customs duty shall be made under protest, if protest is necessary and proper. If payment is made, Seller shall, at Buyer's expense, take such action as Buyer may reasonably direct to recover such payment and shall, if requested, permit NAMSA in Seller's name to file a claim or prosecute an action to recover such payment.

3. Following payment by Buyer of the amount(s) for taxes or customs duties pursuant to Section B above, should Seller receive a rebate or rebates, of any part or all of the said amount(s) so paid by Buyer, Seller shall notify Buyer promptly, and the amount(s) of such rebate(s) shall be credited or paid over by Seller to Buyer, at Buyer's option.

#### J. SPECIAL AREAS

1. Except as otherwise provided in this contract, the Seller shall not acquire for use in the performance of this contract any supplies and/or services originating from the following sources, without the written approval of Buyer:

Albania, Bulgaria, China, excluding Taiwan (Formosa), but including Manchuria, Inner Mongolia, the provinces of Tsinghai and Sikang, Sinkiang, Tibet, the former Kwantung Leased Territory, the present Port Arthur Naval Base Area and Liaoning Province, Communist controlled area of Viet Nam, and Communist controlled area of Laos, Cuba, Czechoslovakia, Estonia, Free City of Danzig, Hungary, Latvia, Lithuania, North Korea, Outer Mongolia, Poland, Rumania, Soviet Zone of Germany, the Soviet Sector of Berlin, and the Eastern region of Germany and the Union of Soviet Socialist Republics.

2. Except as otherwise provided in this contract, the Seller agrees to insert the provisions of this clause, including the areas listed above in subcontracts hereunder.

#### K. EXAMINATION OF RECORDS

If the price of this contract exceeds \$500,000, the following shall apply:

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, or (ii) if this contract is terminated, in whole or in part, and the Seller submits a termination claim as a result thereof, or (iii) in the event a dispute arises between the parties.

2. The Seller agrees that NAMSA or any of its duly authorized representatives 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 Seller involving transactions related to this contract. For U.S. suppliers such examination shall be conducted by the DCAA; for other suppliers, the national audit agency shall conduct the examination.

3. The Seller agrees to include this provision in all subcontracts of any tier which are priced at or above \$500,000. If Seller fails to obtain a subcontractors consent to include this clause in a subcontract, the Buyer shall be promptly advised.

4. The period of access and examination described above for records which relate to either appeals, 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.

5. "Pertinent" data means data directly related to cost and pricing information R pertaining to specific orders. However, for catalog and price history items "pertinent" data means confirming the quoted catalog or price history is the current price.

#### L. MODIFICATION OF GENERAL PROVISIONS (GP FORMS)

1. The provision entitled "Patent Indemnity", is deleted in its entirety.

2. The provision entitled "Termination for Convenience", is deleted and the following substituted in lieu thereof:

"Buyer may terminate this contract in whole or in part, effective as of the date specified by the Buyer. Seller shall be paid termination charges calculated as follows: The flow time for each supply from order placement to delivery shall be divided into ten (10) equal segments. The termination charges shall be the amount resulting from applying the percentage applicable to the time segment during which the Notice of Termination is received by the Seller to the applicable price of each item terminated:

Termination charges in percent of

Segment the price of the supplies terminated

- 1 10 percent
- 2 20 percent
- 3 30 percent
- 4 40 percent
- 5 50 percent
- 6 60 percent
- 7 70 percent
- 8 80 percent
- 9 90 percent
- 10 100 percent