

**CUSTOMER CONTRACT REQUIREMENTS
CHINOOK MODIFICATIONS ENABLING CONTRACT
CUSTOMER CONTRACT CON2A/4004**

CUSTOMER CONTRACT REQUIREMENTS

If Form GP1 is applicable to this procurement, this Attachment constitutes the Government clauses contemplated by Article 29. If Form GP2 is applicable to this procurement, this Attachment constitutes the Government clauses contemplated by Article 28. If Form GP3 is applicable to this procurement, this Attachment constitutes the Government clauses contemplated by Article 41. If Form GP4 is applicable to this procurement, this Attachment constitutes the Government clauses contemplated by Article 31.

The following customer contract articles/clauses apply to this contract.

Marking Of Articles

Each task authorised under the Contract which requires the supply of Articles shall include instructions as to the required marking of such Articles.

Supply of Documentation for NATO Codification Purposes

The Authority reserves the right, where necessary, to seek information for NATO codification purposes in respect of any Article which may be supplied under the Contract, and the Contractor agrees to enter into negotiations for the provision of such information.

Supply of Information about Substances referred to in the Montreal Protocol

As a signatory to the Montreal Protocol on substances that deplete the ozone layer, Her Majesty's Government is committed to the reduction of the production and consumption of those substances controlled under the Protocol. Therefore, Her Majesty's Government wishes to know which substances detailed in Annex X are contained in the Articles which are the subject of the Contract. Accordingly, the requirements for such information, where the need arises, will be detailed in individual task SORs.

Supply of Hazardous Articles and Substances /Use of Asbestos

In the event that any hazardous Articles or substances are to be supplied under any task authorised as part of this Contract, the Contractor shall immediately notify the Authority and seek instructions.

Place of Work

Any change to the Contractor's or major sub-contractors' places of work during the currency of the Contract shall be notified in writing to the Contracts Branch, with a copy to the Project Manager.

Access and Facilities to be Provided by the Contractor

a. The Contractor's progress and quality standards in performing the work under the Contract may be monitored by the Authority. The Contractor shall provide to the Authority's Representatives all reasonable access to his premises for these purposes subject to the restrictions contained in the applicable Export License/Technical Assistance Agreement.

b. The Contractor shall provide, at no additional direct cost to the Authority, such temporary office accommodation and facilities for representatives of the Authority as the Authority may reasonably require. All accommodation provided shall be adequately furnished, lit, heated and ventilated and shall include suitable cloakroom and limited communication facilities.

c. The Authority agrees to indemnify the Contractor and hold the Contractor harmless from and against all claims arising from the injury to (including the death of) the Authority's representatives which may occur on the premises of the Contractor, or damage to property of any such representative of the Authority, except to the extent such claims result from the negligence of the Contractor, its directors, officers, employees, agents, and representatives.

Data Rights

NOTE The provisions of either of Part I and II hereof or of Part II only as applicable to the security grading of individual tasks authorised under the Contract shall apply in relation to any invention or design made in the course of or resulting from work carried out by the Contractor under the relevant tasks (hereinafter respectively referred to as "the invention" and the "design").

PART I - TASKS FOR WORK CLASSIFIED AS UK RESTRICTED OR HIGHER

a. The Contractor shall ensure that he and any Patent Agent or Attorney engaged by him shall treat the invention or design as bearing a Security Classification at least as high as the work to which it relates pending formal determination of its appropriate classification.

b. The preparation and filing of applications to which this clause relates shall be handled by the Contractor's own Patent Department under the conditions of security applicable under the Contract. If the Contractor does not have his own Patent Department he shall, before initiating the preparation of any application, secure the written Agreement of the Authority (**Note 2**) as to the Patent Agent or Attorney that he proposes to employ for the preparation and filing of such an application.

c. Every application to which this clause relates, whether filed by the Contractor or by a Patent Agent or Attorney engaged by him, shall be filed direct with the Security Section of the UK Patent Office, who shall be notified at the time of filing that the invention or design forming the subject of the application is related to classified Government work. The notification shall also quote the number of the Contract and the name and address of the Authority.

PART II - ALL CONTRACTS

d. The Contractor shall ensure, to the extent he is legally able to do so, that any invention to which this condition relates and made by an employee of the Contractor in the course of duties as defined in Section 39(1) of the Patents Act 1977 and any design to which this condition relates and made by an employee of the Contractor shall vest in the Contractor.

e. The Contractor shall within 60 days of filing a first patent application or any subsequent patent application claiming priority from a first patent application and directed towards obtaining protection in the UK (including a European Patent Application or an International Patent Application designating the UK) for the invention or any application for registration of the design provide the Authority (**Notes 1 and 2**) with a copy of that application together with the number of the Contract.

ii. The Contractor shall promptly notify the Authority if he becomes aware of any application as aforesaid by any person who is, or has been an employee or agent of the Contractor or a sub-contractor and provide the Authority with relevant particulars insofar as he can obtain them and has the right to provide them.

f. If an employee of the Crown is a joint inventor of the invention or part author of the design to which any application as is referred to in clause e. above relates and the portion of or share in the invention or design made by that employee belongs to the Crown and neither the Crown nor that employee is the person, or one of the persons, making the application, the Contractor shall if so requested by the Authority take all such steps and do all such things as are in his power and as may be necessary to ensure either that the Authority or the employee concerned joins in the application or, at the option of the Contractor, and if the application is one for a patent, that it is either withdrawn or amended by the deletion from the application of any reference to that part of the invention made by the employee of the Crown, or, if the application is one for a Registered Design, that it is withdrawn.

g. If an employee of the Crown is a party to any such application as is mentioned in clauses e. and f. above and the Authority so requests, the Contractor shall at the expense of the Authority take such reasonable steps as are in his power and may from time to time be necessary to ensure that the Authority is substituted for the employee of the Crown as co-applicant and shall give all such consents and do all such things as may from time to time be necessary to enable:

i. the employee of the Crown to assign to the Authority his interest in the application and in any Patent or Registered Design granted pursuant thereto,
and

ii. the Authority to assign its own interest therein to the National Research Development Corporation.
Provided that the Contractor is not required by this condition to consent to any assignment other than that specifically referred to herein.

h. Subject to the provisions of clauses f. and g. above and to the rights of the Authority as set out in clause i. below the invention or design shall belong to the Contractor.

i. Any Government Department and any person authorised by a Government Department may in any part of the world, use the invention or design for the services of the Government of the United Kingdom or for services performed by the Government of the United Kingdom for other Governments on a non – profit basis.

j. Subject to clause q. the Contractor shall not be entitled to any payment whatsoever in respect of anything done in accordance with clause i. above (whether by the Authority, a Government Department or any person whomsoever) and if any directions relating to the invention are given under Section 22(1) or 22(2) of the Patents Act 1977 the Contractor shall not have any claim for any such compensation as is mentioned in Section 22(7)(b).

k. If any question under this Condition shall arise between the Contractor and the Authority as to whether an employee of the Crown is a joint inventor of the invention or a part author of the design or as to whether the invention or design was made in the course of or resulted from work carried out by the Contractor under the Contract, that question shall be referred for decision to such person as may be agreed upon between the Contractor and the Authority or in default of such agreement as may be appointed by the President for the time being of the Chartered Institute of Patent Agents, and the decision of any such person on that question shall be final and conclusive.

l. The Contractor shall at the request and expense of the Authority take all such reasonable steps as are within his power and may from time to time be necessary to enable the Authority to register in the UK Patent Office or elsewhere its interest in the invention or design. **(Note 3)**

m. The rights conferred by this Condition shall be in addition to and not in derogation of the rights exercisable by virtue of Sections 55 to 59 of the Patents Act 1977 and Section 12 of the Registered Designs Act 1949.

n. In this condition references to a Government Department are references to a Department of Her Majesty's Government in the United Kingdom.

o. The foregoing provisions of this condition shall have effect both during the period the Contractor is carrying out the other provisions of the Contract and at all times thereafter.

p. The Contractor shall in all sub-contracts, secure from it's sub-contractors the same benefits for the Authority in inventions and designs arising under the sub-contract as the Contractor grants to the Authority under this clause.

q. Nothing herein shall prejudice the rights of either party arising otherwise than by virtue of this condition.

Notes

(1) The agreement of the Authority is to be sought from and the information addressed to:

IPR-SY
Defence Procurement Agency
Mod Abbey Wood #2218
BRISTOL BS34 8JH

(2) If an extra copy of the Patent Application or the application for registration of the design has been provided to the Patent Office for onward transmission to the Authority then that copy will be regarded as having been provided for the purpose of this condition and no separate copy need be sent to the Authority direct provided that the Contractor indicates on the copy sent to the Patent Office for onward transmission to the Authority the number of the Contract.

(2) Any communication from the Authority to the Contractor on the subject of clause 1 is to be addressed to the Contractor's address for service for the application

Copyright

a. The Contractor shall ensure as far as possible that the copyright in any work produced under this Contract shall vest in the Contractor.

b. The Contractor agrees not to publish any such copyright work without the consent in writing of the Authority. The Authority will not normally raise objection to publication of any of the copyright work unless delay or limited publication only is considered to be necessary in the Authority's national interest. The Authority will review periodically any restrictions on publication and will inform the Contractor as soon as the restriction can be removed.

c. The Authority will have a right to free licence to copy any copyright work produced or furnished by the Contractor under this Contract, the copyright of which vests in the Contractor, and circulate or use the copies for any United Kingdom governmental purpose whatsoever, subject to the restrictions in clause 23 of this Contract.

Vesting

a. This condition shall apply to any task authorised under the Contract in respect of which the Authority has agreed to make payment as work progresses, in accordance with condition 7 - Payment. For the purposes of this condition 26, "Article" shall also be construed as meaning any deliverable to be delivered by the Contractor under the relevant task. Subject to the following provisions of this condition:

i. each Article as it is constructed together with its component parts and equipment so far as incorporated in the Articles; and

ii. all materiel which the Contractor allocates for incorporation in any of the Articles,

shall vest in and become the absolute property of the Authority, as from the time the construction of the Article begins or the materiel is acquired specifically for or is allocated for incorporation in any of the Articles and shall from that time be in the possession of the Contractor for the sole purpose of completing the Articles and delivering them when completed to the Authority, and shall not be within the control or disposition of the Contractor other than for that purpose.

b. Neither the Contractor, nor a sub-contractor, nor any other person shall have a lien on any Article or materiel which have vested in the Authority under clause a. of this condition for any sum due to the Contractor, sub-contractor or other person. The Contractor shall take all reasonable steps necessary to ensure that the provisions of this condition are brought to the notice of all sub-contractors and other persons dealing with any such Articles or materiel.

- c. Without prejudice to clause a. of this condition, the Contractor shall ensure that from the time when the construction of any Article begins, or as soon as practicable thereafter, or when any materiel is acquired specifically for or is allocated for incorporation in any of the Articles, they are marked or recorded so that they are readily identifiable as the property of the Authority. The Contractor shall comply with any direction given by the Authority in this respect.
- d. Any Article or materiel which is rejected by the Authority shall immediately re-vest in the Contractor. e. If the Authority terminates the Contract otherwise than under Contract condition 37 – Break (Termination for Convenience), any Article which has not been accepted in accordance Contract condition 8 – Acceptance, and any materiel which has not been incorporated in any Article which has been accepted in accordance with Contract condition 8 shall re-vest in the Contractor. Such re-vesting shall occur on the expiry of thirty days from the date on which that termination shall take effect, unless the Authority has given the Contractor notice, prior to that expiry, that the Authority elects to retain the property in the Article or materiel.
- f. Any payment made by the Authority in respect of any Article or materiel which re-vest in the Contractor under clauses d. or e. of this condition shall be recoverable from the Contractor.
- g. The Contractor shall hand over to the Authority any Article or materiel in which the Authority has elected to retain the property under clause e. of this condition. If the Contractor fails to do so, the Authority shall have the right to enter the Contractor's premises and remove the Article or materiel and recover the cost of doing so from the Contractor.
- h. The Authority shall pay a fair and reasonable price for any Article or materiel in which it has elected to retain the property under clause e. of this condition and which are handed over to it by the Contractor or otherwise come into his possession.
- i. Where any Article or materiel in the Authority's possession or control has re-vested in the Contractor in accordance with clauses d. or e. of this condition, the Contractor shall bear the cost of resuming possession and control of them from the place of delivery in the UK as specified in the Contract. If the Article or materiel is on the premises of the Authority or the premises of any Government Department (including any agencies thereof), the Contractor shall remove them within fourteen days of their re-vesting.

Delivery

- a. The Contractor shall deliver the Articles and or Service deliverables in accordance with the terms of the Contract.
- b. Unless otherwise agreed, delivery of Articles shall occur upon the Articles being handed over by the Contractor to the Authority or to the Representative of the Authority as detailed in Contract condition 31 – Shipping and Invoicing.
- c. Unless otherwise agreed, where:
- i) the Contractor is required under the Contract to carry out any Service in connection with any Issued Property; or
 - ii) the results of a Service which the Contractor is required to deliver are to be received by the Authority in the form of a deliverable, such as a report or in the form of computer software,
- delivery of the Service, or the relevant part of the Service, shall occur upon the Issued Property or the deliverable being handed over by the Contractor to the Authority or to the Representative of the Authority.
- d. Unless otherwise agreed and subject to the provisions of condition 26 - Vesting where applicable, the property in the Articles shall pass from the Contractor to the Authority upon delivery in accordance with this condition.

- e. Until delivery, the risk of loss or damage to the Articles shall be with the Contractor.
- f. The Contractor shall ensure that the Articles are packed and secured for overseas shipment in accordance with best commercial practice.
- g. If packaging is found to be unsuitable subsequent to delivery, the Authority may, at its option, either (1) return the items to the Contractor for repackaging, or (2) repackage the items by contract or otherwise. All costs associated with either option shall be charged to the Contractor.
- h. The Authority may from time to time issue instructions that vary the transport or consignment arrangements in the Contract. These instructions will be included in individual tasks or will be the subject of a Contract or task amendment, which shall also provide for any resulting change in the Contract Price, or delivery, or both.

Transport of Restricted or Hazardous Material

In the event that any Articles to be delivered under this Contract which are destined for ultimate consignees outside the continental USA are Restricted or Hazardous under the terms of the International Air Transport Association Regulations (IATA), or the International Maritime Dangerous Goods Code (IMDG), the Contractor is to notify the Authority and seek instructions with regard to shipping arrangements, documentation, packing, marking, detailing and identification.

Corrupt Gifts and Payment of Commission

- a. The Contractor warrants that no gift or consideration has been made nor will be made to any person in the Authority's service in connection with the solicitation or performance of this Contract.
- b. Except as expressly disclosed by the Contractor in his offer, no person or selling agency has been employed or retained to solicit or secure this bid upon an agreement or understanding for a commission, percentage, brokerage or contingent fee other than authorised bona fide employees of the Contractor.
- c. Any breach of this warranty shall entitle the Authority to terminate this Contract and to recover from the Contractor the amount of any loss resulting directly from such cancellation.

Waiver

- a. No act or omission of either party shall by itself amount to a waiver of any right or remedy unless expressly stated by that party in writing. In particular, no reasonable delay in exercising any right or remedy, shall by itself constitute a waiver of that right or remedy.
- b. No waiver in respect of any right or remedy shall operate as a waiver in respect of any other right or remedy.

Amendments to Contract

- a. The Contract, including tasks authorised thereunder, may not be amended except by the written agreement of the duly authorised representatives of the parties.
- b. The written agreement of the parties shall be obtained only by:
 - i. a serially numbered amendment being issued to the Contractor by the Authority. The amendment shall come into force only when the Contractor has despatched to the Authority an unqualified acknowledgement copy of the amendment.
 - ii. the despatch by the Authority of a serially numbered amendment letter as an unqualified acceptance of an offer from the Contractor.
- c. Any purported amendment to the Contract which does not satisfy the terms of this condition shall be of no effect.

d. Where an amendment to Contract covering changed or additional requirements involves a change in Contract Price, the Price shall be agreed prior to authorisation to proceed being given by the Authority. However, in exceptional circumstances where the Authority wishes to add to the Contract requirements or work which are not priced, the Authority shall have the right to add such requirements or work and negotiate prices subsequently. To assist price negotiations in all cases, the Contractor shall provide pricing information in accordance with the UKDPO/Boeing Memorandum of Agreement dated 18 July 2003 or as subsequently amended.