

**CUSTOMER CONTRACT REQUIREMENTS
NETHERLANDS C-47 PROGRAM
CUSTOMER CONTRACT DMKLu/S JRB/2002/01**

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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ARTICLE 1 – Security

A. All classified material and Information exchanged or generated in connection with this Agreement will be used, transmitted, stored, handled and safeguarded in accordance with national security laws and regulations and with the procedures as agreed in the bilateral

general security of Information Agreement between the government of the United States and the Government of the Netherlands, entered into August 18th 1960, as amended April 6, 1981, and the security procedures for industrial operations between the ministry of Defense of the Netherlands and the Department of Defense of the United States (Security Protocol), effective on April 9 1982.

B. The Parties shall use their best reasonable efforts to assure that their employees do not disclose the terms or conditions of this Agreement, except as required by the Parties in the performance of this Agreement or any Order Issued thereunder.

C. Each Party agrees to notify the other Party In writing of any such disclosure it intends to make at least five (5) days in advance of the date it is required to make the disclosure.

2. Warranties

The prime contract contains warranty and correction of deficiencies provisions which provides for an extended warranty from the date of delivery of each unit. Be sure to obtain the proper supplier warranty requirements from Product Support.

A. Supplier warrants that the Goods/Processed Goods manufactured to the Supplier's detail design, exclusive of Technical Data, shall at the time of delivery be free from any defects in material and workmanship Services and Data shall bear no warranties, express or implied, whether arising by operation of law or otherwise.

B. The warranties set forth above shall survive delivery only upon the conditions and subject to the limitations set forth herein.

C. The State's remedy and Supplier's obligations and liability with respect to each defect are conditioned upon (i) the defect of a serialized part having become apparent to the State within the applicable warranty period, and (ii) Supplier's warranty administrator having received written notice of the defect within THIRTY (30) Days after defect become apparent, and (iii) when authorized by the Supplier's Warranty Administrator, the item claimed under the warranty clause is received by Supplier no later than THIRTY (30) Days after notice. The warranty notification period for Goods is one (1) year after delivery of the Goods. The warranty notification period for Processed Goods is ninety (90) days after delivery of the Processed Goods. Such notification periods exclude the passage of any time from the return of the defective Goods to the Supplier until receipt of the repaired or replaced Goods.

D. The Buyer's remedy and Supplier's obligation and liability with respect to each defect, are also conditioned upon:

i. The return by the Buyer as soon as practicable and at the Buyer's expense, with all shipping and insurance charges prepaid to Supplier.

ii. The submission by the Buyer to Supplier's Warranty Administrator of reasonable proof that the claimed defect is due to a matter embraced within the warranty and that such defect did not result from any act or omission of the Buyer, including but not limited to any failure to operate or maintain the Goods in accordance with the Supplier's applicable handbooks, manuals or instructions.

E. The Buyer's remedy and Supplier's obligation and liability under this Article, with respect to each defect, are limited to the following:

i. The repair of such defect in the Goods/Processed Goods in which the defect appears, or, at the Supplier's option, to the replacement of such Goods/Processed Goods with similar Goods free from defect in material workmanship; and

ii. As to any Goods/Processed Goods repaired or replaced by the Supplier for any further defect in material or workmanship; provided: such further defect becomes apparent to the State within the remainder of warranty notification period specified above computed from the initial delivery of the Goods/Processed Goods repaired or replaced, and ii. Supplier's warranty administrator receives written notice of such further defect from the Buyer within one (1) month after it becomes apparent to the Buyer.

F. In the event a defect or failure becomes apparent within the applicable warranty periods, Seller is obligated to correct such a defect or failure, Seller shall also make such correction in any Materials purchased under this Agreement which have not yet been delivered to Buyer which exhibit the same defect or failure. However, rather than to be confronted with a possible delay in delivery, Buyer may elect to accept delivery and thereafter assert a claim for a warranty correction as though the defect or failure had become apparent immediately after delivery. If such action should occur the parties shall mutually agree in writing as to the period that such resolution of corrective action shall be completed.

G. All repairs and replacements for valid warranty claims described above will be performed by Supplier at its expense at Supplier's plant, or such other place as may be mutually agreeable. Return to the Buyer of repaired or replaced Goods/Processed Goods to the

Buyer's Freight Forwarder shall be at Supplier's expense. Title to and risk of loss of Goods returned to Supplier pursuant to this article shall at all times remain with the Buyer, except title to a returned Goods/Processed Goods shall pass to Supplier concurrently with shipment by Supplier to the State of any Goods/Processed Goods furnished by Supplier to the Buyer of a replacement therefor. Supplier shall have only such responsibility for such Goods/Processed Goods as is chargeable by law to a bailee for hire, but shall not be chargeable for loss of use.

H. Normal wear and tear and the need for regular maintenance and overhaul shall not constitute a defect under this warranty. The Buyer acknowledges that some of the Goods/Processed Goods delivered, though without defects when delivered may have a normal service life expectancy shorter than the warranty period.

I. For non-serialised Goods, Supplier will pass any vendor warranty, if available, to the Buyer.

J. The warranty periods as mentioned above shall be suspended for the period necessary to carry out the corrective measures, and it shall again be in effect upon completion of such corrective measures so as to ensure the Buyer of a total warranty period as specified in the respective paragraphs hereof.

3. - QUALITY ASSURANCE

A. The Supplier shall have an ISO 9001 -1994 Approval or equivalent approval. The Supplier shall notify the Buyer at the earliest opportunity about any change to the extent of the approvals.

B. Additionally, for software development services under this Agreement, the Supplier shall use MIL-Std-2168 as a guide.

C. Additionally, and where applicable, for all repair and maintenance services, maintenance records, Goods, and all design and development services under this Agreement, shall be performed utilizing the same procedures and processes contained in the Suppliers Quality System and the U.S. Government as applicable.

D. This Agreement is subject to Government Quality Assurance (GQA). The Buyer may delegate GQA to the U.S. Government's Defense Contract Management Agency in accordance with STANAG 4107 (reference only), or to another nation in accordance with a Memorandum Of Understanding (MOU). GQA will be accomplished by and is the sole responsibility of the Government Quality Assurance Representative (GQAR). GQA will consist of verifications of Goods and Services, and of process and/or quality system audits. GQA may extend to subcontractor facilities. The Supplier shall provide any assistance required for the proper accomplishment of GQA.

E. After having been informed in writing by the GQAR that the quality/airworthiness assurance does not or no longer meet the requirements laid down in preceding paragraphs, the Supplier shall take remedial measures as soon as possible, but in any case shall document a corrective action plan within two weeks.

F. After the Goods or Services have passed the Supplier's final inspection satisfactorily, the Supplier shall issue a Certificate of Conformity (COC) or Certificate of Services (COS). The COC or COS shall be of the format as specified by Buyer. In case of aircraft components, the Supplier shall add the following statement to the COC: "Certifies that in respect to the specified work that has been accomplished, the component is considered ready for release to service." In case of on-aircraft maintenance, the Supplier shall add the following statement to the COC: "Certifies that in respect to the specified work that has been accomplished, the aircraft is considered ready for release to service." The COC shall be signed by the Supplier's quality assurance representative and thereafter countersigned by the GQAR. The countersign of the GQAR certifies that the Goods or Services have been subjected to GQA. The countersigning by the GQAR implies that the Goods are accepted by the Buyer, provided that the Supplier shall arrange for the protection of the quality of the Goods until actual delivery Ex works (Incoterms 2000), Supplier's facilities. The fact that the GQAR has countersigned the COC will not relieve the Supplier from the responsibility for furnishing Goods or Services that meet all specifications of the Agreement. If the GQAR cannot agree with the COC, the GQAR will not countersign the COC and the State shall inform the Supplier thereof in writing, stating the reasons therefore. The Supplier shall take remedial measures and shall subject the Goods or Services to a new final inspection. If final inspection is to be performed at a location other than the Supplier's facilities, the Parties may agree otherwise to COC requirements on an individual Order basis.

G. The Supplier shall point out to the Buyer any unsuitability or defects of Goods and/or Processed Goods furnished and/or prescribed by or on behalf of the State in so far as the Supplier was or reasonably should have been aware thereof.

4 - CLAUSE RELATING TO THE SUPPLY OF TECHNICAL DATA FOR IDENTIFYING ITEMS OF SUPPLY WITHIN THE NATO CODIFICATION SYSTEM

- A. "Codification Authority" means the National Codification Bureau (NCB) or Authorized Agency of the producing country. "Technical Data" means the engineering drawings, specifications, and technical documentation of those items designated by the Buyer to support the equipment covered by the agreement and/ or Order, and required to fully identify the items, and if applicable, draft item identifications to the extent and in the form to be agreed between the Codification Authority and the Supplier.
- B. In order to ensure the orderly identification of equipment the Supplier shall furnish at the request of the Codification Authority the Technical Data required for the identification of the items of supply to the NATO Codification System in the timescale stated in the Order.
- C. A recommended spare parts list or a similar data carrier -prepared in accordance with instructions provided by the State as the basis for codification- shall be supplied by the Supplier by the date established in the Order.
- D. The Supplier shall supply or require his sub-contractor(s)/supplier(s) to supply on request for the period of time specified in the Order the relevant Technical Data for all items and sub-contracted items to the Codification Authority. The Supplier shall require that each sub-contractor/supplier shall include identical conditions in any subsequent order which he may place.
- E. The engineering drawings, specifications, related documentation and, if applicable draft item identifications, prepared when possible by the true manufacturer of the item, shall be supplied by the Supplier or his sub-contractor(s)/supplier(s) direct to the Codification Authority as and when they become available or, at the latest within the time limits specified in the Order. The Supplier shall inform the Codification Authority within 21 days of receipt of the request if the required Technical Data are not immediately available, and shall impose a similar obligation upon his subcontractor(s)/ supplier(s).
- F. Except as hereinafter provided, the Supplier shall require the subcontractor(s)/supplier(s) to furnish on request the information direct to the Codification Authority in the sub-contractor(s)/supplier(s) country, but the Supplier shall remain responsible for ensuring that the information is so furnished. In the event of a sub-contract order being placed with a manufacturer in a non-NATO country, the Supplier shall be responsible for obtaining data from the subcontractor/ supplier and furnishing it to the Buyer.
- G. Technical Data relating to any sub-contractor(s)/supplier's items shall include but not be limited to the name and address of the true manufacturer(s), hid their true reference number(s), drawing or item part number(s) and applicable data in addition to any part or reference number(s) allocated by the Supplier, plus draft item identification(s) if required by the Codification Authority.
- H. The Supplier shall provide the Technical Data required for codification of those items ordered under this agreement and also for the pertaining support items ordered with future contracts, including updating information regarding all agreed modifications, design or drawing changes made to the equipment or detailed parts.
- I. If the Supplier has previously supplied Technical Data (for the purpose stated in this Clause), he is to state this fact and indicate to whom they were supplied and he shall not under normal circumstances be required to make a further supply of the data already provided. The technical Data furnished by the Supplier and sub-contractor(s)/supplier(s) are to be presented in accordance with the requirements for the preparation of item identification(s) as outlined in the Guide for Industry provided by the Codification Authority.
- J. The Supplier should contract the Codification Authority for any information concerning the NATO Codification System.

ARTICLE 5 - INTELLECTUAL PROPERTY

- A. The Goods to be delivered by the Supplier under this Agreement shall be free of all restrictions, also in combination with other Goods and/or Services, arising from patents, copyrights or other intellectual property rights, with the exception of the restrictions that have been expressly accepted by the Buyer in writing. The Supplier shall indemnify and hold the Buyer harmless against any claims of Third Parties in respect thereof.
- B. The preceding paragraph does not apply to restrictions inherent in a design furnished by the Buyer which must be followed by the Supplier. The Buyer shall indemnify and hold the Supplier harmless against any claims of Third Parties in respect thereof.
- C. The indemnification referred to above shall apply subject to the condition that neither verbally nor in writing the Buyer make any statement, promise, admission of rights or facts, or give any undertaking to or enter into any arrangement with the third party alleging the intellectual property infringement. The preceding sentence shall not apply to statements which must be made as a witness in court proceedings by or in behalf of the Buyer or the party to which the Buyer has granted the use of the Goods. The indemnification by the Buyer under this clause shall be subject to the same conditions.

D. The Supplier grants the Buyer and Buyer's customer a non-exclusive, non-transferable right of use for Defense Purposes, free of charge, of the information made available to the Buyer in connection with this Agreement, including data, software and documentation.

E. The Supplier gives an undertaking that it will use any knowledge contributed by the Buyer for the purposes of this Agreement, for instance technical information, exclusively in the context of agreements to be concluded with the Buyer, unless such knowledge is public knowledge or can be obtained from other sources without any restrictions on the disposal thereof.