

CUSTOMER CONTRACT REQUIREMENTS
Korean 737 AEW&C
CUSTOMER CONTRACT KFX-DAPA-63AA59D39

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

A. KFX-DAPA-63AA59D39 Special Provisions

The clauses contained herein are required by the Prime Contract with Government of the Republic of Korea

1. NEW EQUIPMENT

Unless set forth in this contract or otherwise expressly agreed to, the equipment and any part thereof to be delivered shall be new and unused. For the purposes of this clause "new and unused" means an item of the supplies in good repair that has no operating times or cycles, except for time/cycles accrued during the conduct of installation, modification, maintenance, operations, and/or testing performed in connection with the contract.

2. SPARES SUPPORT

Seller shall provide components, spare parts, tools and accessories for the equipment under this contract for three (3) years from the final delivery of the goods and/or services or its full life cycle, whichever is later, at the Buyer's request there for. The cost to provide such components, spare parts, tools and accessories beyond the three years is not considered under this contract and shall be the subject of follow-on support contracts. The pricing of the components, spare parts, tools and accessories under the follow-on contracts shall be at the same price as provided to Seller's other customers adjusted for quantity and period of performance.

3. NOTICE OF OBSOLESCENCE

When Seller becomes aware that any part of the equipment procured hereunder will become unavailable in the future, Seller shall promptly notify Buyer, giving Buyer time to place sufficient orders for the items so affected to cover anticipated needs. Seller shall assist and work together with Buyer to obtain items (supplies and services) so affected from other sources at reasonable cost to Buyer.

4. Intellectual Property Rights

- a. The Buyer and the Korean Government shall have the license rights to use Intellectual Property embodied in data delivered to the Buyer for the purposes as set out in this Section and except for such license rights, the Seller or other owner of the Intellectual Property shall retain all right, title and interest, including ownership, in such Intellectual Property and data. All rights granted in this are subject to prior approval of this contract by export control authorities of the Seller's Government, and the U.S. Government as applicable.

- b. The Seller grants to the Buyer and the Korean Government for use by or for the Buyer and the Korean Government, a paid up and royalty free, world-wide, non-exclusive, nontransferable license, without the right to grant sublicenses, in Intellectual Property embodied in data that is delivered under this Contract but that did not result from new development work under this Contract, for purposes of the Korean Government's operation, maintenance, and repair of the Commodity delivered under this Contract, and for purposes of the Buyer in designing, manufacturing, selling, and supporting the 737 AEW&C System. Buyer and the Korean Government are authorized to make copies of such data (except for data bearing the copyright or restrictive legend of a third party), and all copies of such data shall belong to Seller or other party as identified thereon and shall be subject to an obligation of confidentiality under this Contract, whether the data bears a restrictive legend or not, and regardless of the terms of any restrictive legend appearing thereon. Buyer shall preserve all restrictive legends, and all copyright notices on all delivered data and insure the inclusion of those restrictive legends and copyright notices on all copies of such data.
- c. For Intellectual Property embodied in data resulting from new development work under this Contract, the Seller or other originator of the Intellectual Property retains the entire right, title and interest in such Intellectual Property and data, and the Seller grants to the Buyer and the Korean Government a world-wide, paid up and royalty-free, irrevocable, non-exclusive, non-transferable license in data that is delivered to the Buyer embodying such Intellectual Property, for use by or for the Buyer and/or the Korean Government for any purpose including modification of the Commodity
- d. Rights to use the Seller's Intellectual Property and data that did not result from new development work funded under this Contract, for purposes of modification are not granted by this clause. Requests for such rights in data shall be considered by the Seller on a case by case basis once the nature of the modification can be defined. Such rights may be granted to the Buyer or to the Buyer's contractors in appropriate circumstances under mutually acceptable terms and conditions which may include the payment of a reasonable royalty fee. Derivative data associated with or depicting design details of the modification as it relates to Seller's product shall in any event be made available to Seller upon Seller's request. Such mutually acceptable terms and conditions may provide title in such derivative data to Seller, or as a minimum, Seller shall have an immediate, worldwide, paid-up and royalty free, irrevocable, nonexclusive licence, including the right to grant sublicenses, to use or have used such derivative data in the design, manufacture, use, sale, installation and product support of any aircraft.

5. ANTIBRIBERY PROVISIONS RELATING TO THE REPUBLIC OF KOREA

1. The Seller hereby affirms that no individual, officer, director, employee, or agent of the Seller, or any person acting for or on behalf of the Seller has made any payment prohibited by Korean Law to any official for the purpose of obtaining award of this Contract.
2. The Seller further ensures that any bribery shall not be made or promised by the Seller or any person acting for and on behalf of the Seller for the purpose of improperly performing its contractual obligations.
3. If the Seller violates the provisions of the preceding Paragraph 1 and/or 2 the Buyer shall have the right to terminate the contract or any part thereof in accordance with the default clause of this agreement.
4. The Seller fully recognizes that the Seller's violation of the provisions of the above Paragraph 1 and/or Paragraph 2 shall be the subject of criminal enforcement actions under the Criminal Law of the Republic of Korea .

5. The term “any payment” used in the above Paragraph 1 means paying, offering, or promising to pay money or anything of value. And the term “bribery” used in the above Paragraph 2 is the act of offering a bribe prescribed in Article 133 of the Criminal Law of the Republic of Korea .

6. LIQUIDATED DAMAGES FOR DELAYED DELIVERY

- a. In case the Seller fails to deliver any Goods and/or services within the stipulated delivery date, the Buyer shall levy liquidated damages at the rate of one-fifteenth of one percent (0.15%) of the contract value of the delayed item, or if a partial delivery is authorized, then only on the late portion of the delivery per day.
- b. The liquidated damages assessed above shall not exceed ten percent (10%) of the contract value of the delayed item.
- c. Notwithstanding the paragraph above delayed delivery by the Seller shall not exceed 180 days under this contract, unless mutually agreed by both parties.
- d. The Buyer shall calculate the number of delayed days, as stipulated in paragraph (a) above. The amount of the liquidated damages shall be deducted from the payment due to the Seller.
- e. Unless this Contract has been amended with respect to a delay of performance or delivery of a particular Goods and/or services, (i) the Buyer shall not be entitled to levy liquidated damages if the Buyer terminates this Contract for default and (ii) in the event the Buyer levies liquidated damages, this shall constitute the sole liability of the Seller and the exclusive remedy of the Buyer for late delivery.

7 MAINTENANCE OF SECRECY

- a. The Seller shall warrant that any data or information, except for classified data, related to this Contract shall be held and preserved as "Confidential Matters of the Republic of Korea ". The Parties warrant that any classified document provided to the other Party in relation to this Contract shall be protected in accordance with the equivalent or Korean security classification at the level the document is marked.
- b. Neither Party shall disclose any documents or communications in relation to this Contract in any way to anyone outside the Program without the other Party's prior consent, regardless of whether any document is marked "Confidential", except when required by either the Republic of Korea or US Government.
- c. The Seller's and Buyer's obligations provided in this Article shall survive termination or completion of this Contract.
- d. This Contract shall not restrict disclosure of information which:
 - 1) Was in the public domain at the time of disclosure or thereafter enters the public domain through no breach of this Contract by the receiving party; or
 - 2) Was otherwise known to the receiving party at the time of disclosure without restrictions as to disclosure or use; or

- 3) Becomes known to the receiving party from a source other than the disclosing party without breach of this Contract by the receiving party; or
- 4) Is developed independently by the receiving party without reliance upon Contractor owned and protected information disclosed under this Contract.

8. REPAYMENT OF UNUSED ADVANCED PAYMENTS.

2. In the event any portion of the contract is terminated for default, that part of any Advance Payments corresponding to the terminated portion shall be paid by the Seller to Buyer within thirty (30) days, together with interest equal to LIBOR one-year rate, plus two percent (2%) per annum, for the time period from the date such excess payment is received by Seller until the date such excess payment is returned by Seller to Buyer. Buyer may deduct such amount from further payments, if any.
2. In the case of termination for convenience, if the total payments made by Buyer exceed the amount finally determined to be due, the Seller shall repay the excess to Buyer, together with interest equal to LIBOR one-year rate, plus two percent (2%) per annum, for the time period from the date such excess payment is received by Seller until the date such excess payment is returned by Seller to Buyer. Interest shall not be charged on any excess payment due to a reduction in the Seller's termination settlement proposal because of retention or other disposition of termination inventory until ten (10) days after the date of the retention or disposition, or a later date determined by Buyer because of the circumstances.

9. FORCE MAJEURE

- a. The Seller shall not be responsible for any failure of delivery or any delay in delivery of the Goods and/or services or any part thereof which may arise from acts of God, fires, explosions, strikes, lockouts, riots, civil commotion, acts of terrorism, mobilizations, threat or existence of war, any act of government, blockades, embargoes, requisition of vessels, epidemics, changes in the relevant laws and regulations made after this Contract is signed, acts or omissions of Buyer, delay in delivery of Buyer Furnished Equipment, delay in performance of a Sub-Contractor due to a force majeure event unless subcontract supplies or services were reasonably obtainable from other sources in sufficient time for the Seller to meet the scheduled delivery date, or other causes (i) which are similar in nature as the above listed causes and (ii) which are unforeseeable at the time of entering into the Contract, and beyond the reasonable control of the Seller and without its fault or negligence. In each instance enumerated above, the failure to perform must be beyond the control and without the fault or negligence of the Seller. In such case, the Contract shall be modified to account for the required schedule extension. In the event the Republic of Korea experiences civil commotion, mobilization, or threat or existence of war, Seller shall exercise all reasonable efforts to deliver Commodities in accordance with the Contract; however, in the event that it is impractical or unreasonable to deliver in accordance with the Contract, the Parties shall mutually agree to a substitute delivery location outside of the Republic of Korea.
- b. In order to invoke Force Majeure, the Seller shall notify the Buyer of the occurrence of the Force Majeure cause within seven (7) days from the occurrence of such cause. The notification shall be attached by a written confirmation of the occurrence of the Force Majeure event issued by the Chamber of Commerce or a similar independent 3rd party in the location where the event occurred.
- c. If prior to delivery any Goods and/or services is lost, destroyed or damaged beyond repair due to Force Majeure or any other event, Seller shall provide Buyer notice within seven

(7) days after such event indicating what has occurred with the Goods and/or services. Within twenty-five (25) days of such event Seller shall provide Buyer with written notice specifying the earliest date, consistent with Seller's other contractual commitments and production capabilities, by which Seller would be able to deliver a replacement for such Goods and/or services. If the Buyer fails to give Seller written notice, within Forty-five (45) days of Seller's notice, that Buyer desires Seller to manufacture and deliver to Buyer a replacement for such Goods and/or services, the Seller may, in writing, notify the Buyer of its intent to terminate the Contract as to such Goods and/or services. If Buyer does not respond to Seller's termination notice within one hundred and twenty (120) days after receipt of notice, the Contract shall terminate as to the Goods and/or services. If the Buyer provides timely notice, Seller shall manufacture and deliver to Buyer at the earliest date reasonably consistent with Seller's other contractual commitments, a Goods and/or services to replace the Goods and/or services lost, destroyed or damaged beyond repair, and the parties shall execute an amendment to this Contract to evidence the delivery date for such replacement Goods and/or services. The terms and conditions of this Contract shall apply to the replacement Goods and/or services unless otherwise agreed to in writing.

- d. If the force majeure cause continues for more than 90 days, and the Buyer or its customer judges the purpose of this contract to be unattainable, the Buyer may terminate this contract in whole or part pursuant to the Termination for Convenience clause. In this case, neither party of this contract shall make any claim for compensation of any loss by such termination and the advance payment received by the Seller before delivery of the Goods and/or services shall be repaid to the Buyer.
- e. In the event of any conflict with any other Force Majeure clause this clause shall take precedence.

B. PURCHASER FURNISHED SUPPLIES AND SERVICES (PFM)

- a. Buyer shall provide the Supplies and/or Services, documents and information defined in contract which shall be referred to as Purchaser Furnished Material (PFM)).
PFM is defined as:
PFE -Purchaser Furnished Equipment is equipment provided by the Republic of Korea
PFD -Purchaser Furnished Data is data provided by the Republic of Korea
GFE -Government Furnished Equipment that is obtained (from the United States Government) via an Foreign Military Sale (FMS) and provided to the Seller
GFD - Government Furnished Data that is obtained (from the United States Government) via an Foreign Military Sale (FMS) and provided to the Seller

All requirements and responsibilities of both the Buyer and Seller, regarding PFM shall be documented in this clause or as otherwise called out in this contract.

- 1) When Buyer supplies any PFM to the Seller, the directives of the Seller shall include at least the following:
 - (i) Inspection, at the time of Delivery, for any damages that occurred during transportation,
 - (ii) Inspection for completeness and conformity and verification of the quantity,

- (iii) Sufficient protection from damages that may occur during transportation and from deterioration that may arise because of storage,
 - (iv) Regular control of the storage conditions,
 - (v) Sufficient inspection before and after usage, assembling and integration and functional verification,
 - (vi) Obtaining the approval of Seller for the action to be taken in case of any noncompliance.
- b. When PFM is delivered to the Seller's facility, the Seller shall check its quantity and condition and shall notify Buyer of its receipt within one (1) working day indicating the delivery date. Additionally, in such Notice the Seller shall notify Buyer of any damage or shortage in the PFM at the time of receipt. If the PFM received by the Seller is not appropriate or sufficient condition for its intended use within the scope of the Contract, the Seller shall ascertain this at the time of delivery receipt and shall notify Buyer, in detail, within one (1) working day of delivery. In the case of PFM whose performance cannot be readily ascertained by a simple visual inspection (such as electronic equipment), notification is required within one (1) working day after discovery of completing installation in the AEW&C System and all related system level testing if performed by Seller. Such PFM shall have been installed in accordance with Seller's manufacturing plans. The Notice shall indicate all the details of the damage or deficiency, and shall recommend repair or replacement. The Seller shall act in accordance with the instructions of the Buyer. As directed by Buyer and at Buyer's expense, the Seller shall repair, modify, return or otherwise dispose of the equipment. If the Seller deems necessary, the Seller shall ask for a price and/or schedule adjustment under the Changes Clause. If the Seller does not provide a required notification of non-conformance, damage or deficiency within one (1) working day following the delivery or verification, or after completing installation thereof in the AMS and all related system level testing as applicable, the Seller shall be responsible of the damages and deficits of the equipment. At a minimum, Seller will maintain PFM based on Seller's U.S. Government approved Property Management system or as directed by Buyer.
- c. The Seller will provide written notification to the Buyer of PFM delivery requirements 3 months prior to the scheduled delivery date or as soon as possible. If PFM is not delivered to the Seller by the delivery dates specified in the PFM schedule, upon the written request of the Seller, and if the Seller determines that there will be a delay in the Delivery Schedule and therefore a negative impact upon the Seller, the Buyer and Seller will mutually agree to an equitable price and/or schedule adjustment to the Contract.
- d. Buyer's Customer shall retain ownership of all PFM.
 - 1) The warranty for PFM items shall be the responsibility of the owner.
 - 2) The Buyer or Buyer's Customer shall provide all spares for PFM items.
 - 3) PFM spares are exempt from consideration for Seller buy back.
- e. The Seller shall store, handle, and operate all PFM delivered to the Seller under the scope of this Contract with appropriate care. If PFM, while in the possession

of the Seller, is damaged due to the negligence of the Seller, the Seller shall compensate the Buyer or its Customer for the cost of repairing or replacing the PFM and the Seller will be responsible for any resulting Delivery delays and any Seller costs.

- f. The Seller shall prepare and apply a procedure in accordance with the applicable standards of the Seller for the usage, maintenance, repair, protection and preservation of PFM, at the Seller's facilities.
- g. The Seller shall be responsible for the operational level maintenance of PFM during the term in which PFM is at the facilities of the Seller. All costs related to the repair of PFM, including the procurement of spare parts, shall be the responsibility of Buyer or its Customer except as detailed in paragraph f above from the time of procurement through the life of the System.
- h. If any loss, harm or damage occurs in PFM provided by Buyer or Buyer's Customer within the scope of this Contract, the Seller shall notify to Buyer within 15 (fifteen) days after being informed of such situation. The Seller shall take all the necessary precautions in order to protect PFM from any further damages, shall separate the damaged and undamaged PFM from each other and shall put in order all the affected PFM and shall send a Notice to Buyer including the following issues:
 - 1) Identification of the lost, harmed or damaged PFM item, part number, serial number,
 - 2) The time and the description of the loss, harm or damage,
 - 3) Insurance covering a part of the goods or benefits on such goods, if any,
 - 4) The Seller shall notify Buyer of any effect of the lost, harmed or damaged PFM on the Seller's ability to perform its obligations under this Contract.
 - 5) The Seller shall not perform any act, which will negatively affect the right to request compensation for the loss, harm or damage that occurs in PFM by third parties. Upon the request of Buyer, the Seller shall provide all necessary assistance and shall cooperate with Buyer for the reimbursement of the damages. In addition, in cases where loss, harm or damage occurs in PFM due to the negligence of third parties, the Seller, in favor of itself, Buyer and Buyer's Customer, shall initiate proceedings against the third parties regarding compensation associated with the impact of such loss, harm or damage.
- i. The Seller may raise a contract amendment, in accordance with the Changes Clause for:
 - 1) Any delay in the delivery of PFM,
 - 2) Delivery of PFM in a situation which is not in compliance with the intended usage, or
 - 3) PFM for which Buyer or Buyer's Customer has not accomplished adequate repair or change for which Buyer or Buyer's Customer has responsibility.
- j. Items to be delivered to the Boeing Company shall be shipped to the following addresses:
Ship PFM (except COMSEC) to:

The Boeing Company
20403 68th Ave S
Bldg. 18-62, Door S-3 Government Stores
Kent, WA 98032-2316
Attn: Mike Lehmann, M/C 8J-01

Phone: 253-773-0485
Fax: 253-773-0284

Contract KFX-DAPA-63AA59D39 (Korean E-X Project)

Cage Code: 81205
Facility security clearance level: Top Secret
Level of safeguarding: Top Secret

SPECIAL INSTRUCTIONS:

COMSEC MATERIAL

Ship To:
Boeing Integrated Defense Systems EY8018 Building 18-62, Door S3
20403 68th Ave South Kent, WA 98032
Mark For: Bill Carter Phone: 206-662-1457

Registered Mail:

The Boeing Company
P. O. Box 3707
Attn: C/A 870514 M/C 4J-23
Seattle, WA 98124-2207

Contract: KFX-DAPA-63AA59D39 (Korean E-X Project)

Federal Express (FedEx):

The Boeing Company
Attn: Facility Security Manager
C/A 870514 M/C 4J-23
8002 South 212th Street Bldg. 7-48-02 Door 22
Kent, WA 98032

Contract KFX-DAPA-63AA59D39 (Korean E-X Project)

The following contractor representatives at The Boeing Company are authorized to arrange the transfer of, sign receipts for, and assume security responsibilities for the COMSEC material:

Rodney C. Morrow, Facility Security Officer (FSO)
Security Clearance Level: Top Secret
P.O. Box 3707 M/C 89-22
Seattle WA 98124

COMSEC Custodian: William T. Carter, Jr.
Security Clearance Level: Top Secret
Alternate COMSEC Custodian: John P. Lamirande
Security Clearance Level: Top Secret
Phone: (206) 544-2709
Account Number: 870514
Defense Courier Address:
870514 MC50
HKP141 TCM023

Data (PFD) and/or Information (GFI) shall be delivered to the following:

Classified Data:

The Boeing Company
Facility Security Manager
8002 South 212th Street
Bldg 7-48-02 Door 22
Kent, WA 98032

Mark For: Korea E-X Project, Security Focal
Contract KFX-DAPA-63AA59D39 (Korean E-X Project)

Unclassified Data:

The Boeing Company
ATTN: PFM Manager
BLDG 18-28, M/C 87-02
20403 68th Ave South
Kent, WA 98032

Mark For: Korea E-X Project, Property Focal
Contract KFX-DAPA-63AA59D39 (Korean E-X Project)

Classified Mailing Address:

US Registered Mail/US Postal Express Mail (Overnight):
The Boeing Company
P. O. Box 3707
Seattle, WA 98124-2207

Attn: (inside box/package only)

Contract KFX-DAPA-63AA59D39 (Korea E-X Project)