

**CUSTOMER CONTRACT REQUIREMENTS  
NATO MAINTENANCE AND SUPPLY AGENCY  
CUSTOMER CONTRACT LBC0001B0-EX379**

**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)).

**ARTICLE 1: LIQUIDATED DAMAGES**

1.1. Supplies and services: if the PO provides a Required Delivery Date (RDD) and in

the event that BOEING defaults, after a thirty (30) day grace period, in respect of any PO

with a total value above USD twenty five thousand (25,000.00) for supplies and services either wholly or partly, Seller shall pay (thereafter) to Boeing liquidated damages at the following rate:

Supplies:

One percent for the 1st month

One percent for the 2nd month

One percent for the 3rd month

Two percent for the 4th month

Two percent for the 5th month

Services:

One percent for the 1st month

Two percent for the 2nd month

Four percent for the 3rd month

but not more than a total of seven percent (7 %) of the price of performance not completed in time.

1.2. Seller will exercise all reasonable efforts to minimize risk of late delivery

failures. When appropriate, Seller shall advise Buyer as soon as possible of such identified risk situations.

1.3. Without prejudice on the final judgment regarding the liquidated damages claim,

Boeing shall be entitled to deduct imposed liquidated damages when paying invoices, even in the event that claims deriving from submitted invoices have been assigned or otherwise transferred to third parties, unless Seller has notified Boeing that it disagrees

with the liquidated damages and will seek resolution under the terms of the order, in which case imposed liquidated damages shall not be withheld.

1.4. Boeing shall have the right to claim liquidated damages even if such right is not reserved at the time when deliveries are accepted.

1.5. Liquidated damages will not apply if Seller's failure to perform is due to causes beyond his control and without his fault or negligence.

1.6. The foregoing provisions of this Article do not prejudice Boeing's right under the "DEFAULT AND TERMINATION", except that Boeing agrees it shall not

terminate any PO for default due to non-delivery prior to the accrual of the maximum liquidated damages set forth above.

**ARTICLE 2: GOVERNMENT QUALITY ASSURANCE AND ACCEPTANCE**

2.1 All specified requirements of this order are subject to NATO Stanag 4107 Quality Assurance standards and ISO9000. Seller agrees that, unless otherwise agreed to by all parties, all items supplied hereunder will be new and manufactured in accordance with Seller's specifications and Engineering drawing requirements to the satisfaction of the Government Quality Assurance Authority in the country of the contractor, unless specifically directed otherwise by Boeing. The GQAR performance will be in accordance with practices and procedures agreed to between DCMA and Seller. Seller must take prompt action to contact the Government Quality Assurance Representatives (GQAR) with whom arrangements for quality assurance services must be made.

2.2 **If** Government Selective Evaluation has been invoked on any PO based on periodic review and assessment of the quality program, inspection system and manufacturing processes by authorized cognizant government representatives, evidence of acceptance must be delivered to Boeing with the shipments and invoices.

2.3 Seller shall be responsible for maintaining effective control of the quality of materiel and services in accordance with the requirements as indicated in the PO. Seller shall certify that the materiel and/or services conform to the requirements of the PO.

2.4 Unless specifically directed otherwise by Boeing, the necessity for Government Quality Assurance at the facility of a subcontractor and the level of quality assurance requirements to be applied to such sub-contractor, shall be determined by the GQAR in consultation with Seller.

2.5 Quality Inspection on behalf of Boeing will be by the GQAR who shall sign the DD250 form (or TSA). Signature of the DD250 (or TSA) by the GQAR shall mean that Boeing acknowledges and agrees that the supplies and/or services conform with the contractual requirement. However, claims based on latent defects in material and workmanship, fraud, gross negligence, or such gross mistakes to amount to fraud, shall not be prejudiced by the said acceptance, nor shall the guarantees applicable to the materiel or issuance of discrepancy reports be affected by the said acceptance.

2.6 The Government Quality Assurance Representative (GQAR) may elect to conduct

source inspection/acceptance either on a random basis or to the extent of 100%.

Seller will be notified if Boeing inspection is to be conducted on specific shipments.

2.7 No shipments are to be held for source and/or GQAR inspection/acceptance unless notification is received prior to, or at the time of, material being ready for shipment.

Acceptance criteria for deliverable items will be in conformance to the PO specifications, drawings, preservation, packaging, packing, marking requirements in the quantity ordered.

2.8 Whenever the Boeing Po's do not require Government Quality Assurance Inspection, Seller will provide his normal quality, shipping and certification documentation (Original Certificate of Compliance, in accordance with FAR 52.246-1 5 - FAA Form 8130, JAA Form 0242 - Form One or similar).

### **ARTICLE 3: SPECIAL AREAS**

3.1, Seller shall not acquire for use in the performance of a PO any supplies and/or services from sources not authorized by the U.S. Government, and will use same terms as currently applicable to any U.S. Government contract (at date of signature FAR 52.225-13 Restriction on Certain Foreign Purchases (Jul 2000) and DFAR 252.225-7017).

3.2. For PO for supplies and/or services , Seller will not acquire parts and services from sources:

- InChinaPRC / Cuba / Laos / NorthKorea / Vietnam
- In countries subject to a formal trade embargo to be observed by NATO
- In countries known to disregard international trade conventions in respect of copyright and will make those sources restrictions applicable also to any subcontract thereof.

### **ARTICLE 4: PATENT INDEMNITY**

4.1 Seller shall indemnify and hold harmless Boeing from and against all claims, suits, actions, liabilities, damages and costs (excluding any incidental or consequential damages and excluding any liabilities, costs, loss of revenue or loss of profit resulting from loss of use), but including costs of, at Seller's option, (i) replacing the infringing item or (ii) otherwise curing any infringement on account of which use of supplies by Boeing is

prevented in case of any actual or alleged infringement by supplies (including any accessory, equipment or part installed therein that was manufactured to Seller's detailed design with Seller's authorization) of any United States patent or patent issued under the laws of Boeing's customer countries, until infringement claims are resolved, such other country and Boeing's country shall each have been a Party to the International Convention for the Protection of Industrial Property (Paris Convention).

4.2 This indemnity shall not apply to Boeing furnished equipment, engines, nor to any accessory, equipment or part that was not manufactured to Seller's detailed design. Seller's obligation under this Article shall not apply to the extent any equipment or part thereof is manufactured pursuant to detailed designs furnished by Boeing or to any infringement arising from the use or sale of any equipment or part thereof in combination with items not furnished by Seller if such infringement would not have occurred from the use or sale of such equipment or part thereof solely for the purpose for which they were designed or delivered to Boeing. In no event shall Seller's liability under this Article exceed the aggregate sum paid to Seller by Boeing for the allegedly infringing supplies or part thereof.

4.3 Boeing's remedy and Seller's obligations and liability under this Article are conditioned upon Boeing giving Seller written notice within thirty (30) days after Seller receives notice of a suit or action against Boeing alleging infringement or within thirty (30) days after Boeing receives notice of a claim of infringement. Seller may at its option conduct negotiations with any party claiming infringement and may intervene in any suit or action. Whether or not Seller intervenes, it shall be entitled at any stage of the proceeding to assume or control the defense. Boeing's remedy and Seller's obligation and liability hereunder are further conditioned upon Boeing promptly furnishing to Seller all data, records and assistance within Boeing's control, material to any such claim, suit or action, and (except as to amounts payable under a judgment) upon Seller's prior approval of Boeing's payment or assumption of any liabilities, damages, royalties or costs for which Seller is asked to respond.

4.4 THE INDEMNITY, OBLIGATIONS AND LIABILITY OF SELLER AND REMEDIES OF BOEING SET FORTH IN THIS ARTICLE ARE EXCLUSIVE

AND IN SUBSTITUTION FOR, AND BOEING HEREBY WAIVES, RELEASES AND RENOUNCES, ALL OTHER INDEMNITIES, WARRANTIES, OBLIGATIONS AND LIABILITIES OF SELLER AND ANY ASSIGNEE OF SELLER AND RIGHTS, CLAIMS AND REMEDIES OF BOEING AGAINST SELLER OR ANY ASSIGNEE OF SELLER, EXPRESS OR IMPLIED, ARISING BY LAW OR OTHERWISE, WITH RESPECT TO ANY ACTUAL OR ALLEGED INFRINGEMENT OR THE LIKE BY ANY SUPPLIES DELIVERED HEREUNDER.

4.5 Seller shall use reasonable efforts to obtain from vendors or manufacturers of parts not manufactured to Seller's detailed design, adequate indemnities against patent infringement enforceable by Boeing. Seller shall take all reasonable steps to enforce any such indemnity which is secured.

4.6 BOEING shall indemnify and hold harmless Seller from and against all claims, suits, actions, liabilities, damages and cost in case of any actual or alleged infringement arising out of the installation, sale or use of Boeing furnished equipment by Seller.

#### **ARTICLE 5: GOVERNING LAW AND LANGUAGE**

5.1. The formation, validity, construction and performance of the PO shall be governed by the laws of the State of New York, U.S.A. exclusive of its conflict *of* laws provisions.

BY EXCEPTION TO THE ABOVE, PARTIES RECOGNIZE AND AGREE THAT "DISCLAIMER, RELEASE AND EXCLUSION OF CONSEQUENTIAL AND OTHER DAMAGES" MAY REQUIRE INTERPRETATION, VALIDITY AND LIMITATION OF THAT ARTICLE TO THE APPLICABLE NATIONAL LAW AND LEGISLATION OF THE COUNTRY OF DESTINATION OF THE MATERIAL AND SERVICES OF EACH INDIVIDUAL PO.

**5.2** Convention on Contracts for the International Sale of Goods.

The Parties expressly agree to exclude the application of the United Nations Convention on Contracts for the International Sale of Goods.

#### **ARTICLE 6: DIS CLAIMER, RELEASE AND EXCLUSION OF CONSEQUENTIAL AND OTHER DAMAGES**

6.1. BOEING SHALL BE LIABLE ONLY TO THE EXTENT EXPRESSLY PROVIDED FOR IN THE WARRANTIES OF THIS ORDER. SELLER HEREBY WAIVES, RELEASES AND RENOUNCES ALL WARRANTIES AND OTHER OBLIGATIONS AND LIABILITIES OF SELLER, AND ANY OTHER RIGHTS, CLAIMS AND REMEDIES OF BOEING AGAINST SELLER, EXPRESS OR IMPLIED, WHETHER ARISING IN CONTRACT, TORT (INCLUDING NEGLIGENCE OF SELLER), OR OTHERWISE, WITH RESPECT TO ANY NONCONFORMANCE OR DEFECT IN ANY GOODS, SERVICES OR OTHER THINGS PROVIDED PURSUANT TO THIS ORDER, INCLUDING ANY CLAIM FOR LOSS OR DAMAGE TO ANY BOEING CUSTOMER OWNED OR OPERATED AIRCRAFT OR OTHER GOVERNMENT PROPERTY.

6.2. NOTWITHSTANDING ANY OTHER PROVISIONS OF THIS ORDER, SELLER'S CUMULATIVE LIABILITY RELATING TO THIS ORDER SHALL IN NO EVENT EXCEED THE VALUE OF THE DEFECTIVE GOODS, SERVICES OR OTHER ITEMS PROVIDED UNDER THIS ORDER.

6.3 SELLER SHALL NOT BE LIABLE, WHETHER ARISING IN CONTRACT, TORT (INCLUDING NEGLIGENCE OF SELLER), OR OTHERWISE, FOR ANY DIRECTLY OR INDIRECTLY FROM THE PERFORMANCE OR CONSEQUENTIAL LOSS SUFFERED BY THE BOEING END USER RESULTING DIRECTLY OR INDIRECTLY FROM THE PERFORMANCE OR NONPERFORMANCE UNDER THIS ORDER.

6.4. THE LIMITATIONS ABOVE WILL NOT BE APPLICABLE IN CASE OF SELLER'S GROSS NEGLIGENCE OR WILLFUL MISCONDUCT.