

**CUSTOMER CONTRACT REQUIREMENTS  
TECHNOLOGICAL DEMONSTRATION OF D2A  
CUSTOMER CONTRACT N4769**

**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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**1. INTELLECTUAL PROPERTY RIGHTS**

Subject to End Customer and/or third parties' rights, the following principles shall apply:

- 1.1 Jointly developed technical data, computer software, trade secrets, inventions or other intellectual property rights will be jointly owned. Subject to the rights of the Customer, either Party shall have the unlimited right to use such joint intellectual property for any purpose whatsoever free of charge with the possibility of sub-licensing, provided that such Party informs the other.
- 1.2 Pre-existing intellectual property or intellectual property developed exclusively by one Party in performance of any activity under Sub-contract will remain the exclusive property of the developing Party.
- 1.3 For avoidance of doubt, it is understood that the Customer may use the results, even partial, of the studies performed by the Parties under the Sub-contract, only for its own needs, and disclose the results thereof to its customer.

## 2. WARRANTY

### Contractual warranty

Seller warrants that the deliverables delivered hereunder shall, at the time of their delivery to TSA, comply with the provisions of this order.

Should the deliverables not comply with this order, the expenses of the shipment of the corrected deliverable, if any, to Boeing's facility shall be borne by Seller.

“THE WARRANTY, CONDITIONS, REPRESENTATIONS, OBLIGATIONS AND LIABILITIES OF SELLER AND REMEDIES OF BOEING SET FORTH IN THIS AGREEMENT ARE EXCLUSIVE AND IN SUBSTITUTION FOR, AND BOEING HEREBY WAIVES, RELEASES AND RENOUNCES, TO THE FULL EXTENT PERMITTED BY LAW, ALL OTHER WARRANTIES, OBLIGATIONS AND LIABILITIES OF BOEING AND ANY OTHER 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 NONCONFORMANCE OR DEFECT IN ANY CONTRACT ITEM, SERVICES, DATA, DOCUMENTATION OR OTHER THINGS PROVIDED UNDER THIS ORDER, INCLUDING BUT NOT LIMITED TO

(A) ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS,

(B) ANY IMPLIED WARRANTY ARISING FROM COURSE OF PERFORMANCE, COURSE OF DEALING OR USAGE OF TRADE,

(C) ANY WARRANTY AGAINST PATENT INFRINGEMENT, AND

(E) ANY OBLIGATION, LIABILITY, RIGHT, CLAIM OR REMEDY FOR LOSS OF OR DAMAGE TO ANY PROPERTY OF BOEING, INCLUDING WITHOUT LIMITATION ANYTHING INSTALLED ON OR USED IN CONJUNCTION WITH ANY AIRCRAFT.;

Seller shall not be liable to Boeing under any circumstances to the fullest extent permitted by Law for any indirect losses of whatsoever kind or nature which shall include, but not limited to loss of use, loss of profits (whether direct or indirect), revenues, contracts, opportunities or any other indirect or consequential losses or damages.

Notwithstanding the provisions here above and for the avoidance of doubt, the liability of the Parties to one another for third party

death or bodily injury as a result of negligence shall not be limited.

### **3. PUBLICITY**

Neither Party shall make disclosures or releases to the news media or general public relating to this Sub-contract without the prior written approval of the other Party and, if required, the Customer.