

**CUSTOMER CONTRACT REQUIREMENTS**  
**NATO AWACS CNS/ATM Planning and Risk Reduction**  
**CUSTOMER CONTRACT 41-159**

**CUSTOMER CONTRACT REQUIREMENTS**

The following customer contract requirements apply to this contract to the extent indicated below.

**1. Prime Contract Special Provisions** The following prime contract special provisions apply to this purchase order

**1. Definitions**

As used throughout this Contract, the following terms shall have the meaning set forth below:

- a. "NAPMO" or "Buyer's Customer" means NATO AEW&C Programme Management Organisation and includes the NATO AEW&C Programme Management Agency (NAPMA); NATO Supply Agency (NSPA); the NATO AEW&C Force Command (NAEWFC); and the NATO E-3A Component.
- b. "Contract" means Buyer's Purchase Contract.
- c. "Technical Data" means recorded information regardless of the form or method of the recording, of a scientific or technical nature (including computer software or software documentation). The term does not include computer software or data incidental to contract administration such as financial and/or management information.
- d. "Computer Software" means computer programs and computer databases including applicable documentation concerning its description and/or use.
- e. "Data" means all recorded information, whether written or otherwise, provided to Buyer by Seller. Data includes Computer Software.
- f. "Proprietary Information" means Data and other information provided to Buyer pursuant to this Contract and that is properly identified by Seller as proprietary by markings. Any other definition or expression mentioned in the Contract shall have the meaning assigned to it in the relevant section where it is used.
- g. "Ottawa Agreement" means the Agreement on the Status of North Atlantic Treaty Organisation, National Representatives and International Staff signed in Ottawa on 20 September 1951.
- h. "Buyer's Affiliates" means Buyer, any wholly owned subsidiary of Buyer, and any subcontractor or assignee of either of them.

**2. Immunity Of NAPMO Property And Assets**

- a. Seller is aware that according to the Ottawa Agreement, (5UST 1087, TIAS 2992, 200 UNTS 3), any NAPMO documentation, information, data of whatever kind, any other NAPMO assets used or to be used in the performance of this Contract, in the possession of Seller and/or its Subcontractors and by whomsoever held, wheresoever located, is immune from search, requisition, confiscation, expropriation or any other form of interference.
- b. Seller agrees that in cases of any such interference:
  - (i) Seller will take all reasonable actions necessary to prevent the above mentioned NAPMO property and assets becoming subject of such interference, and if the interference has taken place, to take all necessary actions provided for under national or international law to prevent NAPMO losing its rights (for this purpose Seller is authorized to act on behalf of NAPMO until the time NAPMO is in the position to pursue its rights itself or by authorized responsibility).
  - (ii) Seller will inform Buyer by the quickest means available; and

c. Seller will include in its contracts with any of its subcontractors clauses which reflect the responsibilities outlined at Paragraphs a. and b. above.

### **3. Most Favored Customer**

a. Seller guarantees that the prices under this Contract will not be less favorable than the prices recalculated to comparable conditions quoted, obtained, or to be obtained for any other customer. Seller is obligated to render reasonable evidence required thereto. If Seller has quoted or will quote more favorable prices to any other customer, it will so notify Buyer, and these more favorable prices will be applicable to this Contract. Overpayments will be reimbursed.

b. If Buyer or Buyer's Customer wants to have investigated the compliance with the guarantee in Paragraph a. above and this cannot be determined by Buyer or Buyer's Customer on the basis of market prices or competition, Buyer's Customer or Buyer may request Seller's government's agencies responsible for auditing costs and pricing to investigate the reasonableness of the prices offered in accordance with the pricing regulations for government military orders in force in Seller's Nation. Seller agrees to co-operate in such investigation and undertakes to furnish to the authorities concerned all reasonable information required. Buyer or Buyer's Customer's cost of such investigation is not to be an expense of Seller.

### **4. Taxes And Duties**

a. Buyer's Customer enjoys the privileges of exemption from taxes, customs duties and quantitative restrictions on imports and exports in respect of any item or aspect of the NATO Airborne Early Warning & Control Programme.

b. Seller is informed of these exemptions and agrees not to incorporate any taxes or custom duties in its price, or otherwise charge Buyer or Buyer's Customer for taxes or customs duties.

c. Seller is responsible for obtaining and preparing any documentation required to effect the exemptions.

d. If Seller receives any information on a circumstance that could prevent it from implementing the above stated, it shall report on such information to Buyer's Customer, through Buyer, immediately in writing, with the necessary substantiation. After verification of the impediment concerned, Buyer's Customer will address the impediment with the Government of Seller's Country.

e. If, despite of the foregoing, Seller is compelled to pay any readily identifiable tax or duty in relation to this Contract, it will provide written notification to Buyer when such tax or duty is levied upon it and seek reimbursement of such tax or duty in accordance with the clause entitled "Changes." Reimbursement shall be limited to those Seller incurred costs, excluding profit. Seller shall identify the law or governmental regulation pursuant to which the duty or tax is enforced.

### **5. Security**

a. Seller will comply with all the security requirements prescribed by NATO and the National Security Authority (NSA) or Designated Security Agency (DSA) of each NATO country in which the Contract is performed. It will be responsible for the safeguarding of NATO classified information, material and equipment entrusted to it or generated by it in connection with the performance of the Contract.

b. If Buyer issues instructions which, in the opinion of Seller and its Subcontractors, are not in accordance with the national implementation instructions, Buyer shall be informed accordingly without delay and Seller shall then await instructions from Buyer on how to proceed. Seller shall not be held liable for delay while waiting for these instructions.

### **6. Liability**

Paragraphs a, b, and c.(i)(4) below only apply to the extent Seller will have care, custody, or control of NAPMO property in the performance of this Contract.

a. NAPMO will retain the risk of loss of or damage to the Aircraft including material and equipment used therein for loss of use thereof.

b. Seller shall only be responsible for loss or destruction of or damage to the NAPMO property provided to Seller under this Contract that results from:

- (i) Willful misconduct or lack of good faith on the part of Seller
  - (ii) Failure on the part of Seller due to willful misconduct or lack of good faith on the part of Seller to establish and administer a program or system for the control, use, protection, preservation, maintenance, and repair of NATO property as required by this Contract.
- c. Exclusion Of Liabilities
- (i) Disclaimer and Release. The warranties, conditions, representations, obligations and liabilities of Seller and remedies of Buyer set forth in this Contract, are exclusive and in substitution for, and Buyer hereby waives, releases and renounces all other warranties and other obligations and liabilities of Seller, any other rights, claims and remedies of Buyer against Seller, express or implied, arising by law or otherwise, with respect to any nonconformance or defect in any hardware/services provided under this Contract, including but not limited to:
    - (1) Any implied warranty of merchantability or fitness;
    - (2) Any implied warranty arising from course of performance, course of dealing or usage of trade;
    - (3) Any obligation, liability, right, claim or remedy in tort, whether or not arising from the negligence of Seller and
    - (4) Any obligation, liability, right, claim or remedy for loss of or damage to any property of NAPMO, including without limitation any NATO E-3A aircraft.
  - (ii) Exclusion of Consequential and Other Damages. Seller shall have no obligation or liability to Buyer, whether arising in contract (including warranty), tort (whether or not arising from the negligence of Seller), or otherwise, for loss of use, revenue or profit or for any other incidental or consequential damages with respect to any nonconformance or defect in any items or services delivered under this Contract or other things provided under this Contract. Notwithstanding the foregoing, claims by Buyer against Seller for contribution (or indemnity) toward third-party injury, damage, or loss are not limited, waived, released, or disclaimed.
  - (iii) Definitions. For the purpose of this Clause, the term "Seller" includes Seller's Company, its divisions, subsidiaries, the assignees of each, suppliers and affiliates, and their respective directors, officers, employees and agents.

## **7. Export Licensing And Disclosure Review**

- a. Seller is aware that, according to the Multinational Memorandum of Understanding on the NATO E-3A Cooperative Program, all participating Governments have agreed to arrange for the grant of any export licenses necessary for the program. In implementation of this program principle, it shall be Seller's responsibility to obtain any export license(s) as may be required under this Contract.
- b. Seller shall prepare Technical Data in accordance with the Statement of Work of each TRN issued under this Contract and such Technical Data may be subject to the Export Administration Act of 1979 (50 USC App. 2401-2420) and the Arms Export Control Act (22 USC 2751, et seq.) and the International Traffic in Arms Regulation (22 CFR, Subchapter M, 120-128, 130). For purposes of this Contract, delivery of such Data to foreign addressees is contingent upon release authorization by the USAF Foreign Disclosure Policy Office (FDPO).
- c. In the event any Government does not provide to Seller written approval of Technical Assistance Agreements and any other licenses, export or import licenses, visas, residence permits, work permits, nontransfer and end use certificate or other similar government actions or approvals necessary: (1) to perform this Contract; (2) to export from or to deliver to NAPMO any items involved in the performance of this Contract; consistent with the performance and delivery schedules of this Contract, an equitable adjustment shall be negotiated. Failure to reach agreement will constitute a dispute under the Contract's Disputes clause.

## **8. Rights In Technical Data**

- a. All Technical Data and deliverables, including software, developed and funded under this Contract shall be the legal and absolute property of Buyer or Buyer's Customer with the exception of that data covered by Paragraph b. below. Use of this Technical Data by Seller outside the scope of this Contract is subject to the explicit written approval of Buyer or Buyer's Customer.
- b. All Data delivered or disclosed under this Contract, but not originally developed under this Contract, and validated as

Proprietary Information to Seller or its Subcontractor shall be clearly marked with the appropriate proprietary legend(s).

c. If Data, on legitimate grounds, is identified as Proprietary Information, then the restrictions imposed below shall apply to that Data:

(i) Buyer agrees not to divulge any of Seller's Proprietary Information, and further to protect said Proprietary Information in accordance with its associated marking(s). Buyer agrees to provide immediate notification to Seller upon discovery that Seller's Proprietary Information was improperly released or disclosed. Buyer's notification shall include the name of recipient(s) to whom said Data was disclosed and the steps taken for recovery of said Data by Buyer.

(ii) Should Buyer deem it necessary to release any of Seller's Proprietary Information to any third parties, other than NATO Organizations and participating NAPMO Governments and their industries performing maintenance, repair and support within the NATO AWACS program, then Buyer shall first obtain Seller's prior written consent to release such Data in accordance with Paragraph a. above. Buyer or Buyer's customer will ensure that parties receiving such information are subject to the same limitation for further release. Such Proprietary Information may be used by Buyer or Buyer's customer but only for purposes of operation and maintenance of Goods delivered under this Contract.

(iii) Except as may be otherwise provided herein, Proprietary Information will in no event be used for any design or manufacturing purpose without Seller's prior written consent. Buyer will not be precluded from disclosing or using any Data or information marked as proprietary which:

(1) Is known to Buyer at the time of receipt from Seller or is received from a source other than Seller without a restriction on further disclosure;

(2) Is or subsequently becomes freely available to the public without breach of the provisions of this Clause;

(3) Is subsequently developed by Buyer through means independent of the information provided by Seller.

(iv) Nothing contained herein or in any subsequent communication made pursuant to this Contract will be construed as a waiver of any of Buyer's, Buyer's Affiliates, or any third party's, rights in Proprietary Information. All Proprietary Information delivered hereunder will remain the property of the originator.

(v) Trademarks. Buyer will not use trademarks of Seller without the express written approval of Seller.

(vi) Copyright. Delivery of Data under this Contract does not convey the copyright in that Data to Buyer.

d. This Clause shall survive the expiration, completion or termination of this Contract.

## **9. Subcontracts**

Seller shall include in all subcontracts provisions that are appropriate to the specific type of subcontract, imposing the same obligations as those which it has assumed towards Buyer in this Contract. These provisions shall include but shall not be limited to the clauses in this CCR:

- 1 Definitions
- 2 Immunity of NAPMO Property and Assets
- 3 Most Favored Customer
- 4 Taxes and Duties
- 5 Security
- 6 Liability
- 7 Export Licensing and Disclosure Review
- 8 Rights in Technical Data