

CUSTOMER CONTRACT REQUIREMENTS
NATO IFF Mode 5/EHS Engineering and Manufacturing Development (EMD)
CUSTOMER CONTRACT 41-178

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

- a. **Buyer's Customer:** NATO Early Warning And Control Programme Management Agency (NAPMA)
- b. **Intellectual Property Rights (IPR):** any intellectual property rights of any qualification irrespective of their stage of development or finalisation, including but not limited to patents, trademarks (registered or not), designs and models (registered or not) and applications for the same, copyright (including on computer software), rights in databases, know-how, confidential information and rights in records (whether or not stored on computer) which includes technical and other data and documents;
- c. **MMOU:** the Multilateral Memorandum of Understanding on the NATO E-3A Cooperative Programme originally signed on 06 December 1978 by the Ministers of Defence of the participating governments, as currently amended and added.
- d. **NAPMA:** NATO AEW&C Programme Management Agency, the executive management agency for NAPMO;
- e. **NAPMO:** NATO AEW&C Programme Management Organization;
- f. **Ottawa Agreement:** the Agreement on the Status of the North Atlantic Treaty Organisation, National Representatives and International Staff signed in Ottawa on 20 September 1951;
- g. **Proprietary Information:** Data and any other information or know-how properly identified as proprietary by markings.
- h. **Purchaser:** NAPMA as entrusted by NAPMO to prepare, negotiate, execute, and administer the prime contract.

2. 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, he will so notify Buyer, and these more favorable prices will be applicable to this Contract. Overpayments will be reimbursed.
- b. If NAPMA, through Buyer, wants to have investigated the compliance with the guarantee in paragraph 2.a above and this cannot be determined on the basis of market prices or competition, NAPMA, through Buyer, may request the government of Seller nation to investigate the reasonableness of the prices offered in accordance with the pricing regulations for government military orders in force in the Seller nation. Seller agrees to co-operate in such investigation and undertakes to furnish to the authorities concerned all reasonable information required. The cost of such investigation is not to be an expense of Seller.

3. Immunity of Purchaser Property

- a. Seller is aware that according to the Ottawa Agreement dated 20 September 1951, (5UST 1087, TIAS 3092, 200 UNTS 3), any Purchaser (Buyer's Customer) documentation, information, data of whatever kind, and any other Purchaser assets used or to be used in the performance of the Contract, in the possession of Seller and/or his subcontractors and by whomsoever held, wherever located, is immune from search, requisition, confiscation, expropriation or any other form of interference.
- b. Seller agrees that in cases of any such interferences:
 - i. Seller will take all reasonable actions necessary to prevent above mentioned Purchaser 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 Purchaser losing its rights (for this purpose Seller is authorized to act on behalf of the Purchaser until the time the Purchaser is in the position to pursue his rights himself or by authorized responsibility);
 - ii. Seller will inform Purchaser (through Buyer) by the quickest means available;
 - iii. Seller will include in its Contracts with any of its subcontractors, clauses which reflect the responsibilities

outlined at paragraphs i. and ii. above.

4. Taxes and Duties

- a. The Purchaser by virtue of his status under the terms of Article IX and X of the Ottawa Agreement, is exempt from all direct taxes (incl. VAT) and all customs duties on merchandise imported or exported. Seller, therefore, certifies that the prices stipulated under this Contract do not include amounts to cover such direct taxes or customs duties.
- b. Seller shall be responsible for ensuring that his respective subcontractors are aware that the Purchaser is exempt from taxes and customs duties. Seller (and his respective subcontractors) shall be responsible for complying with all applicable national and local legal and administrative procedures to ensure that authorities do not attempt to assess taxes and customs duties on goods and property imported or exported through NATO member nation frontiers under this Contract nor assess direct taxation (VAT) on goods sold to the Purchaser under this Contract.
- c. If, after complying with all national and local legal and administrative procedures, the authorities persist in attempting to impose taxes or duties on goods provided under this Contract, Seller shall inform Buyer providing the particulars of the situation, the procedures which have been followed and the point of contact at the national authority which is attempting to impose taxation or duty. Buyer and Buyer's Customer will examine the situation and attempt to clarify the legal and administrative basis of the difficulty. If Buyer's Customer do directs (through Buyer), Seller shall pay the required taxes and duties and file for reimbursement or rebate from the national authorities in accordance with national legislative and administrative procedures.
- d. In the event that the petition for reimbursement or rebate is denied by the national authorities concerned and providing that Seller and/or his subcontractor have complied with the national legislative and administrative procedures, Buyer shall reimburse the full amount of the payment(s) upon receipt of the Seller's invoice indicating such tax or duty as a separate item of cost and fully identified by reference to any governmental law, regulation and/or instruction pursuant to which such tax or duty is enforced. Seller shall offer assistance and execute any such document that may be useful or required to ensure that Buyer's Customer obtains the reimbursement of any tax or duty retained by a national authority.
- e. In the event of Seller and/or Seller's subcontractors not complying with national legislative or administrative procedures, taxes and duties paid by Seller and/or Seller's subcontractors shall not be reimbursed by the Purchaser.
- f. Following payment by Buyer of the taxes and/or duties pursuant to this Clause, should Seller subsequently receive a rebate of any amount paid by Buyer, Seller shall immediately notify Buyer and the amount of such rebate shall be credited or reimbursed to Buyer, as directed. Seller shall be responsible for taking any and all action that could reasonably be required in order to obtain such rebate.
- g. Seller shall be liable for all other taxes, assessments, fees, licenses, administrative charges or other government assessments or charges which are applicable to the performance of this Contract. It is Seller's responsibility to inform himself of his liability in each country where such liability may arise.

5. Security

- a. Seller shall comply with all security measures as are prescribed by Buyer, Buyer's Customer, and the national security authority or designated security agency of each of the NATO countries in which the Contract is being performed. Seller shall be responsible for the safeguarding of classified information, documentation, material and equipment entrusted to him or generated by him in connection with the performance of the Contract.
- b. Prior to any Seller's subcontractors being given access to any classified information, the Seller shall ensure that any subcontractor that has a need to access classified information for the performance of any part of this Contract has been granted the appropriate facility and personnel security clearances by Seller's or Seller's subcontractor's national authorities and that such security clearances are in effect at the time the information is disclosed and remains in effect throughout the performance of the work to be carried out under the concerned Contract/subcontract.
- c. The assigned Seller/Seller's subcontractor personnel are required to provide a copy of their National Security Clearances "Secret" (with additional briefing for NATO) which should be valid for at least six (6) months, after start of the performance date of the Contract and a signed copy of the Non-Disclosure Agreement .
- d. Prior to commencing Work under the Contract, Seller shall contact the relevant authorities at the sponsoring organization where the Services will be delivered to obtain all necessary passes/access badges for persons who will require access to the installation. Personnel without appropriate passes will not be granted access to the facilities. Buyer will not accept liability for any costs for periods during which Seller/Seller subcontractor personnel were not allowed access to either NATO Airbase, Geilenkirchen, or MSEG due to lack of appropriate access passes arising out of negligence on the part of the Seller/Seller's subcontractor personnel.
- d. Seller agrees that assigned personnel will be responsible to abide by all regulations, procedures, and standards of conduct in place where Services will be delivered. Failure to do so will result in corresponding penalties being imposed.
- e. Any breach on the part of the assigned personnel will be regarded as a breach by the Seller which, could lead to Cancellation/Termination of all or part of the Contract.

6. Export Licensing and Disclosure Review

- a. Seller is aware that according to the Multinational Memorandum of Understanding (MMOU) on the NATO E-3A Cooperative Program, all participating governments have agreed to arrange for the grant of any export licenses necessary for

the Programme. 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 Statements of Work of this Contract and such technical data may be subject to export restrictions. Delivery of such data to foreign addressees is contingent upon release authorization by the respective government agency.

c. In the event any government does not provide to Seller written approval of Technical Assistance Agreements and any other applicable licenses, export or import licenses, visas, residence permits, work permits, non-transfer 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; or 3) to permit Seller and its subcontractors to 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 as laid down in Disputes Clause.

7. Rights in Technical Data and Computer Software

a. All technical data and deliverables, including software, developed and funded under this Contract shall be the legal and absolute property of Buyer's Customer.

b. Buyer and NAPMO shall have the right to use, duplicate, or disclose Technical Data provided under this Contract, in whole or in part, for NATO purposes. This includes, but is not limited to maintenance, repair and support within the NATO AWACS program by NAPMO.

c. All data delivered or disclosed under this Contract, but not originally developed under this Contract, and validated as Proprietary Information to Seller or Seller's subcontractors shall be clearly marked with the appropriate proprietary legend(s).

The below data markings apply to this Contract:

Proprietary Data:

ALL CONTENT CONTAINED HEREIN IS PROPRIETARY TO AND BELONGS TO [Insert Seller's Name]. NEITHER THE DOCUMENT NOR ANY INFORMATION OR DATA CONTAINED IN IT, SHALL BE USED, DUPLICATED, OR DISCLOSED, IN WHOLE OR IN PART, OUTSIDE OF NATO ORGANIZATIONS, PARTICIPATING NAPMO NATIONS AND INDUSTRIES IN SUPPORT OF THE NATO AIRBORNE EARLY WARNING AND CONTROL PROGRAMME WITHOUT THE PRIOR WRITTEN AUTHORIZATION OF [Insert Seller's Name] AS IN EACH INSTANCE.

d. If data, on legitimate grounds, is identified as Proprietary Information, then the restrictions imposed by the paragraphs below shall apply to that Data.

e. Buyer's Customer agrees and undertakes to use his best efforts not to divulge any of Seller's proprietary information, and further to protect said proprietary information in accordance with its associated marking(s). Buyer's Customer, through Buyer, agrees to provide immediate notification to the Seller upon discovery that Seller's proprietary information was improperly released or disclosed. Buyer's notification shall include the name of recipient(s) said Data was disclosed to and the steps taken for recovery of said Data by Buyer or Buyer's Customer.

f. Should Buyer or Buyer's Customer deem it necessary to release any of Seller's proprietary information to any partners, other than NATO Organisations and participating NAPMO Governments and their industries performing maintenance, repair, and support within the NATO AWACS program, then Buyer shall first obtain the Seller's prior written consent to release such data. Parties receiving such information are subject to the same limitation for further release. Such Proprietary Information may be used by Buyer and Buyer's Customer, but only for purposes of operation and maintenance of the Contract Items.

g. All Export Controlled Data and Seller Proprietary Data supplied under this Contract shall be clearly marked with the appropriate proprietary legend(s).

The below data markings apply to this TRN:

Export Controlled Data:

U.S. GOVERNMENT INFORMATION IS FURNISHED TO NAPMO AND NAPMO NATIONS PARTICIPATING IN THE NATO E-3A PROGRAM UPON THE CONDITION THAT IT WILL NOT BE RELEASED TO ANOTHER NATION WITHOUT SPECIFIC AUTHORITY; THAT IT WILL BE USED FOR MILITARY OR GOVERNMENT PURPOSES ONLY; THAT INDIVIDUAL OR CORPORATE RIGHTS ORIGINATING IN THE INFORMATION, WHETHER PATENTED OR NOT, WILL BE RESPECTED; THAT THE RECIPIENT WILL REPORT PROMPTLY TO THE UNITED STATES ANY KNOWN OR SUSPECTED COMPROMISE; AND THAT THE INFORMATION WILL BE PROVIDED SUBSTANTIALLY THE SAME DEGREE OF SECURITY AFFORDED IT BY THE DEPARTMENT OF DEFENSE OF THE UNITED STATES. NAPMO MAY FURNISH EXPORT-CONTROLLED INFORMATION TO NAPMO CONTRACTORS, SUBCONTRACTORS, PROSPECTIVE CONTRACTORS, AND PROSPECTIVE SUBCONTRACTORS IN SUPPORT OF THE NAEW&C NE-3A PROGRAM.

h. Buyer's Customer will not be precluded from disclosing or using any Data or Information marked as proprietary which:

i. Is known to Buyer's Customer at the time of receipt from Seller or is received from a source other than Seller

without a restriction on further disclosure;

- ii. Is or subsequently becomes freely available to the public without breach of the provisions of this Clause;
 - iii. Is subsequently developed Buyer's Customer through means independent of the information provided by Seller.
- i. Nothing contained herein or in any subsequent communication made pursuant to this Contract will be construed as a waiver of any Seller Affiliate's rights or any third Party's rights in Proprietary Information. All Proprietary Information delivered hereunder will remain the property of the originator
 - j. Trademarks- Buyer's Customer will not use the trademark "Contractor" or its equivalent, or any other trademarks of Seller without the express written approval of Seller.
 - k. This Clause shall survive the expiration, completion or termination of this Contract.

8. Liability and Indemnity

- a. Seller shall in advance waive all claims he could have with regard to NAPMO, NATO and NATO personnel or personnel under NATO command, or personnel controlled by NAPMO (hereinafter referred to as "NATO" purely for the purposes of this Clause) for any damage, death or injury caused in any connection with the performance and work provided, unless the damage, death or injury are caused by intent or gross negligence of NATO.
- b. Seller shall indemnify and hold harmless NATO against the financial consequences of claims whosoever could have against them on account of damage, death or injury caused in any connection with the performance of the work provided, unless the damage, death or injury are caused by intent or gross negligence of NATO.
- c. In the case that NATO property has been damaged by Seller employees, then such event shall be reported to Buyer without delay. Seller shall be responsible to reimburse to NATO (through Buyer) for all costs associated with damage to any item of property that occurs during performance hereunder where such damage is attributable to any fault or negligence on the part of Seller and his employees. Such costs shall include, but are not limited to, the cost to repair the property, the depreciated value of any property that is damaged beyond economic repair, costs to repair any other involved item of property and/or third Party items or property, recovery costs.
- d. Buyer's Customer shall in no way be responsible for any accident or disease occurring to Seller personnel during performance of work or travel under this Contract, except where such accident or disease is the result of a willful act or gross negligence on the part of Buyer's Customer or if responsibility is mandatory by law.

9. Disputes

- a. Buyer's Customer is an integral part of the North Atlantic Treaty Organisation (NATO). Buyer's Customer shares in the international personality of NATO as well as in the juridical personality possessed by NATO by virtue of Article 4 of the Ottawa Agreement. The juridical personality of Buyer's Customer is subsumed in that of NATO and cannot be distinguished from it. Rights and privileges that apply to NATO and that are specifically addressed in Article 4 to 11 and 24 of the Ottawa Agreement apply to Buyer's Customer.

10. Examination of Records-

- a. This clause is applicable to the Contract only if;
 - i. the price, or any of the prices, to be paid is/are other than Firm Fixed Price, or
 - ii. the Contract is terminated by Buyer's Customer and Seller submits a termination claim as a result,.
- b. In addition to the Financial Records and Audit article in the General Provisions, Seller agrees that authorized representatives of its national government, shall, until the expiration of three (3) years after final payment under this Contract, have access to and the right to examine any pertinent books, documents, papers and records of Seller involving transactions related to this Contract. Notwithstanding any other provision of this Contract, the examination and audit of the Contractor's financial books and records shall be limited to authorized representatives of its national government, or Seller or Seller's subcontractor's national auditing services.
- c. The period of access and examination described above for records which relate to the litigation, or the settlement of claims arising out of the performance of this Contract, shall continue until such appeals, litigation or claims have been disposed of.