

CUSTOMER CONTRACT REQUIREMENTS
SUPPORT FOR SWISS F/A-18
CUSTOMER CONTRACT 704042

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. Packaging, Preservation and Markings

1.1 Packaging, preservation and markings of the items shall be made in accordance with common commercial practice for overseas air-

/sea-shipment, unless otherwise required in the respective PO.

1.2 Special packing, such as for long term storage, shall be available on request and at additional costs.

1.3 Each packaging box shall contain an itemized packing list, with appropriate shipping information on the outside.

1.4 In case the packaging box (or its content) requires special handling care, BOEING, or the subcontractor, will ensure that the packing box is sufficiently and clearly visibly marked to this effect.

2. Title and Risk of Loss

2.1 Spare Parts

Title and Risk of Loss shall pass from SELLER to BOEING when the consignment is taken into charge by the freight forwarder.

2.2 Repair and Overhaul

Title of goods in transit for Repair and Overhaul shall remain with BOEING and/or the Government of Switzerland (GoS) respectively at all times. SELLER shall bear the Risk of Loss from the moment when such goods are received at its own or its subcontractors' facilities until such goods are taken into charge by the freight forwarder after repair/overhaul, in line with the INCOTERMS 2010 for the mode of delivery as stipulated in this order. In the event that such goods are lost at SELLER'S or its subcontractor's facility, SELLER will replace these goods at no charge for RA or the GoS within the agreed lead-time for new component.

3. Warranty Statement

3.1 Subject to the provisions of this Article, SELLER warrants that, at time of delivery, the Goods shall be free from defects in material and workmanship.

3.2 The warranties set forth above shall not apply to any BOEING furnished material or to any accessory, component, assembly, subassembly or part purchased by SELLER which was not manufactured to SELLER's detailed design, except that any defect solely attributable to SELLER's workmanship in the installation of said items in the Goods, including any failure by SELLER to conform to the manufacturer's installation instructions so as to void any manufacturer's warranty, shall constitute a defect in workmanship.

3.3 The warranties set forth ABOVE shall be subject to the following conditions and limitations:

(i) SELLER having received written notice of the defect from BOEING at the earliest practical time after the defect becomes apparent to BOEING, but in no event later than one (1) year after delivery of the Goods; and

(ii) BOEING'S return, as soon as practical, and in accordance with SELLER's instructions, of the Goods or part thereof claimed to be defective. BOEING must submit to SELLER a description of the claimed defect and circumstances, including if requested by SELLER, proof that the claimed defect is due to a matter within the warranty as set forth in this Article and that such defect did not result from any act or omission of BOEING or of any third party, including but not limited to any failure to operate or maintain the Goods involved in accordance with SELLER's written instructions, handbooks, and manuals, or unauthorized repairs, alterations, modifications or use of spare parts from sources not approved by SELLER.

(iii) SELLER will perform a warranty claim investigation and provide a written disposition of its findings to BOEING. If SELLER rejects BOEING's warranty claim, SELLER will provide reasonable substantiation of its rejection with the disposition. If SELLER determines that BOEING's warranty claim is valid, SELLER shall proceed with corrective action. If SELLER accepts the Warranty, SELLER will reimburse BOEING the transportation cost for that particular warranty item. BOEING shall be responsible for the cost of removal of the defective part, transportation of the defective part to the SELLER, and reinstallation of the repaired or replacement part.

3.4 BOEING's remedy and SELLER's obligation and liability under this Article, with respect to each valid warranty claim, are limited to the following: At SELLER's sole option, (1) to repair such Goods or, (2) to replace such Goods or part thereof with similar Goods free from defect in material and workmanShip.

3.5 All repairs and replacements for valid warranty claims described in this Article shall be performed by SELLER at SELLER's expense at SELLER's plant or such other location as SELLER may designate. Return to BOEING of repaired or replaced Goods or parts thereof shall be at SELLER's expense. Risk of loss of the goods shall remain with BOEING until such time the part is back in the

custody of SELLER. Title to the goods shall at all times remain with BOEING except that title to such Goods or part shall pass to Boeing concurrently with SELLER's shipment of a replacement therefore. SELLER shall have only such responsibility for damage to Goods or parts in the SELLER's possession occasioned by SELLER's wilful acts or ordinary negligence. SELLER shall not be liable for loss of use, lost income, revenue, or profit, or any other incidental, indirect, or consequential damages.

3.6 Normal wear and tear and the need for regular maintenance and overhaul shall not constitute a defect under this Article. SELLER acknowledges that some of the Goods delivered under this Contract, though without defects when delivered, may have a normal service life expectancy shorter than the warranty period. Such Goods shall bear no warranties other than the special hours of use or other warranties extended at the time of delivery.

4. Liability and Limitation of Liability

4.1 Both parties shall be liable for the full performance of their obligations under this Agreement or PO's placed subsequently.

4.2 Exclusion of Liabilities:

4.2.1.1 Disclaimer and Release: The warranties, 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 all other warranties and other obligations and liabilities of SELLER, and any other rights, claims and remedies of BOEING against SELLER, express or implied, arising by law or otherwise, with respect to any nonconformance or defect if any deliverables or services or other things provided under this agreement, including but not limited to:

4.2.1.1.1 Any implied warranty of merchantability or fitness;

4.2.1.1.2 Any implied warranty arising from course of performance, course of dealing or usage of trade;

4.2.1.1.3 Any obligation, liability, claim or remedy in tort, whether or not arising from the negligence of SELLER;

and

4.2.1.1.4 Any obligation, liability, right, claim or remedy for loss of or damage to any property of BOEING, including without limitation any deliverables or aircraft.

4.2.2 Definitions: For the purpose of this section, "Boeing" includes The Boeing Company, its divisions, subsidiaries, the assignees of each, subcontractors, suppliers and affiliates, and their respective directors, officers, employees and agents.

4.2.3 Exclusion of Consequential and Other Damages: SELLER shall have no obligation or liability, 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 deliverables, contract items, spare parts, equipment, any services, including technical assistance, consulting and all data and documentation or other things provided under this agreement.

5. Intellectual Property

Interpretation. In this Article:

"Intellectual Property Right" means any intellectual property right recognized by the law of Switzerland, including any intellectual property right protected through legislation or arising from protection of information as a trade secret or as confidential information;

"Invention" means any new and useful art, process, machine, manufacture or composition of matter, or any new and useful improvement in any art, process, machine, manufacture or composition of matter;

5. Joint Inventions

Each Party shall have an equal, undivided interest in all Intellectual Property conceived or reduced to practice jointly by employees of both Parties during the performance of this Contract, and in the related copyright, patent, trade secret, and other proprietary rights therein. Each Party shall have the right to independently exploit jointly owned patents without the requirement to account to the other Party. Each Party shall have the right to independently exploit jointly owned copyrighted works with the requirement to account to the other Party. Both Parties shall share equally in all costs related to obtaining and maintaining any such patents or intellectual property

rights, including any costs relating to preparation and prosecution of applications, annual taxes, or annuities, or the litigation of the patentability, validity, or enforceability of any such patents or other intellectual property rights in any and all countries. If, at any time, a Party declines to share in the costs described above, in a particular country, the Party so declining shall assign its ownership rights in the patents or other intellectual property rights in the particular country to the other Party: subject, however, to the retention of a fullypaid, non-exclusive, non-assignable license, without the right to sublicense, in favor of the relinquishing Party and its subsidiaries, to make, have made, use, lease, sell, or otherwise dispose of apparatus or practice methods under the intellectual property rights in the particular country.

6. Non-Disclosure

Subject to the Parties' compliance with applicable laws, and subject to SELLER's and Boeing's rights under this Contract, each Party shall protect as set forth herein any information received from the other Party under or in connection with this Contract that the disclosing Party considers proprietary or confidential ("Proprietary Information") and that, if disclosed in tangible form, has been marked with an appropriate proprietary legend such as PROPRIETARY or CONFIDENTIAL, or another restrictive legend allowed under this Contract, and if disclosed in some other form (e.g., orally or visually), has been identified as proprietary at the time of original disclosure and summarized in a writing conspicuously marked with an such a legend and delivered to the receiving Party within 30 days of original disclosure. Each Party shall protect such information except to the extent disclosure is required by law, by any governmental or other regulatory authority or by a court or other authority of competent jurisdiction. Where this exception applies, the receiving Party shall, to the extent legally permitted to do so, provide prompt written notice to the disclosing Party prior to proceeding with such disclosure and shall afford the disclosing Party the right to resist such release. The receiving Party shall, at the disclosing Party's written request, return to the disclosing Party all such Proprietary Information of the disclosing Party when no longer needed for completion of this Contract, or shall, at the disclosing Party's option, destroy all such information and certify as to such destruction to the disclosing Party. The receiving Party may use and copy the disclosing Party's Proprietary Information solely for the purpose of performing the receiving Party's obligations under this Contract, and such information shall remain the property of the disclosing Party or a third party as applicable. The receiving Party may disclose the disclosing Party's Proprietary Information to employees of the receiving Party who have a need-to-know the Proprietary Information for the purposes of performing the receiving Party's obligations under this Contract. Notwithstanding the restrictions set forth ABOVE, SELLER may disclose to a subcontractor Proprietary Information of RA as may be necessary to perform the subcontract, on the condition that the subcontractor agrees that such information will be used solely for the purposes of such subcontract. In addition, each receiving Party may disclose the other Party's Proprietary Information to the receiving Party's advisers, agents and contract labor for the purpose of performing the receiving Party's obligations under this Contract, provided that such advisers, agents and contract labor are subject to written obligations of confidentiality no less stringent than those set forth above. Neither Party's obligations under this 21 .3 apply to any information that:

- I. The receiving Party knew and held without restriction as to further disclosure when the disclosing Party disclosed the information under this Contract; or
- II. Is publicly available from a source other than the disclosing Party other than as a result of the receiving Party's breach of its obligations under this Article; or
- III. Is or becomes known to the receiving Party from a source other than the disclosing Party, except any source that is under an obligation not to disclose the information; or
- IV. Is independently developed by the receiving Party without use of the information of the disclosing Party.

7. Agents / Relationship of the Parties

7.1 SELLER herewith certifies that it will not employ or retain any company or person other than a fulltime bona fide employee working solely for SELLER or a firm that is retained on a non-commission basis to solicit or secure this Agreement.

7.2 This Agreement does not make either party the employee, agent or legal representative of the other party for any purpose whatsoever. Neither party is granted any right or authority to assume or to create any obligation or responsibility, expressed or implied, on behalf of or in the name of the other party. In fulfilling its obligations pursuant to this Agreement each party shall be acting as an independent contractor.