

CUSTOMER CONTRACT REQUIREMENTS
In Service Support Contract
CUSTOMER CONTRACT AEW-012

CUSTOMER CONTRACT REQUIREMENTS

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

1. Deed of Commerciality

- (a) "Commercial-In Confidence Information" means information including (without limitation) trade secrets, know-how, and any information comprised in Technical Information that:

- (i) is by its nature confidential, or
- (ii) the receiving party knows or ought to know is confidential

But does include information which:

- (i) is or becomes public knowledge other than by breach of an obligation of confidentiality;
- (ii) is in the possession of a party without restriction in relation to disclosure before the date of receipt; or
- (iii) has been independently developed or acquired without obligation of confidentiality by the receiving party.

- (b) "Technical Information" means all technical know-how and information reduced to material form produced, acquired, or used by Seller or its subcontractors in relation to this contract and includes all data, databases. Manuals, handbooks, designs, standards, specifications, reports, writings, models, sketches, plans, drawings, calculations, software, source code, in accordance with ITAR, software design data, in accordance with ITAR. Test results, software updates and other items describing or providing information relating to this contract. This includes data relating to training.

- (c) Seller shall require its personnel that have access to Commercial-In-Confidence Information to enter into deeds of confidentiality for the protection of Commercial-In-Confidence Information. A copy of the required deed of confidentiality is available from Buyer's Authorized Procurement Representative upon request.

2. Negation of Employment and Agency

- (a) Seller shall not represent itself, and shall ensure that its officers, employees, agents, and subcontractors do represent themselves, as being employees, partners, or agents of the Commonwealth of Australia.
- (b) Seller, its officers, employees, agents, and subcontractors shall not by virtue of this contract be, or for any purpose be deemed to be, an employee, partner, or agent of the Commonwealth of Australia.

3. Seller's Acknowledgment of Buyer's Obligation

Seller acknowledges that if this contract is terminated, repudiated, or rescinded, whether for breach of its terms or as a result of bankruptcy, liquidation, or appointment of a receiver for Seller's property or business, Buyer is obligated to promptly notify the Commonwealth of Australia and to complete the subcontract work or subcontract the work to another subcontractor.

4. Security

(This clause applies only if this contract requires Seller to have access to security classified information. Seller's communication with the Commonwealth Representative shall be through Buyer.)

- (a) If Seller requires access to any Commonwealth of Australia (Commonwealth) place, area or facility under the control or responsibility of the Department of Defence, or the Australian Defence Force (ADF), Seller shall:
 - (i) comply with any security requirements notified to Seller by the Commonwealth Representative from time to time; and
 - (ii) ensure that its officers, employees, agents and subcontractors are aware of and comply with the Commonwealth's security requirements.
- (b) Seller shall:
 - (i) ensure that its officers, employees, agents and subcontractors, undertake any security checks or clearances as required by the Commonwealth or US Government, as appropriate;
 - (ii) notify the Commonwealth of any changes to circumstances which may affect Seller's capacity to perform this contract in accordance with the Commonwealth's security requirements; and
 - (iii) if required, provide a written undertaking in respect of security or access to the Commonwealth place, area or facility in the form required by the Commonwealth.
- (c) The security classification of work to be performed under this contract will be up to and including SECRET level.
- (d) Seller shall possess a facility clearance at SECRET level for document storage, information systems, equipment and COMSEC, or equivalent, issued by the relevant government industrial security authority, and shall comply with the relevant government industrial security policy.
- (e) Seller's personnel requiring physical access to the TOP SECRET facility within the 2 Squadron Headquarters shall possess a TOP SECRET (Negative Vet) clearance.
- (f) Subject paragraph (p), below, Seller shall classify all information in its possession relating to the performance of this contract according to the Security Classification Grading Document Issue 5.1 and shall ensure that such information is safeguarded and protected according to its level of security classification.
- (g) All security classified information furnished or generated under this contract shall not be released to a third party, including a representative of a country other than Australia or the United States of America, without prior written approval of the originator through the Commonwealth Representative.
- (h) Seller shall promptly report to the Commonwealth Representative any instance in which it is

known or suspected that security classified information furnished or generated under this contract has been lost or disclosed to unauthorised parties, including a representative of a country other than Australia or the United States of America.

- (i) All security classified information transmitted between the parties or a party and a subcontractor, in Australia, whether generated in Australia or overseas, shall be subject to the terms of Defence industrial security policy, as set out in Part I of the Defence Security Manual (DSM), as amended from time to time.
- (j) All COMSEC material transmitted between the parties or a party and a subcontractor, in Australia, shall in addition to the terms of paragraph (i), above, be subject to the special security provisions of ACSI 53, as amended from time to time.
- (k) All security classified information transmitted between the parties or a party and a subcontractor located overseas, whether generated in Australia or by another country, shall be subject to the laws of the overseas country regarding the custody and protection of security classified information, and to any bilateral security instrument between Australia and the overseas country.
- (l) All COMSEC material transmitted between the parties or a party and a subcontractor located overseas shall be subject to approval in the first instance by the Director Defence Signals Directorate (DSD), in respect of Australian COMSEC material, and by the respective COMSEC authorities in other countries in respect of COMSEC material originating from those countries. Once approved for release, the material shall be subject to the laws of the overseas country regarding the custody and protection of COMSEC material as determined by the Director DSD and to any bilateral security instrument between Australia and the overseas country.
- (m) If there has been a breach by Seller or a subcontractor, or any of their officers, employees or agents, of this clause, Buyer may give Seller a notice requiring Seller to take action to remedy the breach or be considered in default.
- (n) Seller shall ensure that, where a subcontractor is required to have access to security classified information, the subcontractor possesses Defence Industrial Security Program accreditation of the appropriate type and level of classification, issued by the Defence Security Authority in the case of an Australian based Subcontractor or the relevant government industrial security authority in the case of an overseas based subcontractor where Australia has a bilateral security agreement in place.
- (o) Seller shall ensure the requirements of this clause are included in all subcontracts where the subcontractor requires access to security classified information in order to perform its obligations under the subcontract.

5. Policy Requirements

Seller shall comply with and require its officers, employees and agents to comply with the following Commonwealth of Australia policies of general application relevant or applicable to this contract*:

- (a) Conflict of Interest policy as detailed in the Defence Procurement Policy Manual;

- (b) Defence Equity and Diversity policy as detailed in the Defence plain-English guide to Managing and Eliminating Unacceptable Behaviour in the Workplace, May 2000 and Departmental Personnel Instruction No 1/2001 and DI (G) PERS 35-3;
- (c) Fraud Control Policy as detailed in the Defence Procurement Policy Manual;
- (d) Equal Opportunity for Women in the Workplace policy as detailed in Defence Procurement Policy Manual;
- (e) Defence Stocktaking policy as detailed in DI(G) LOG 07-15;
- (f) Hazardous Substance policy as detailed in Defence Procurement Policy Manual;
- (g) Information Management policy as detailed in *Defence Information Management Policy Instruction No 4/2001* and Defence Information Environment Provision of Defence Email and Internet Services detailed in *Defence Information Management Policy Instruction No 5/2001*;
- (h) Information Privacy Principles of the *Privacy Act 1988*;
- (i) Maximising Employment Opportunities for Aboriginal and Torres Strait Islanders policy as detailed in Defence Procurement Policy Manual;
- (j) Ozone Depleting Substances policy as detailed in Defence Procurement Policy Manual,;
- (k) Environment policy as detailed in *Defence Environmental Policy*, December 2001; and
- (l) Company ScoreCard policy as detailed in the *Defence Company ScoreCard Policy Statement*, July 2001.

*Should Seller determine that the policies referred to in this clause are not relevant or applicable to this contract, Seller shall notify Buyer seeking a waiver for such policy. Any such request for waiver shall include Seller's rationale for any policy not being relevant or applicable.

6. Privacy

(This clause does not apply to a subcontract where the work of the subcontractor under the subcontract is wholly carried out outside Australia (which for this purpose includes the external Territories of Australia). The terms "Personal Information," "Privacy Principle," "National Privacy Principle," "Information Privacy Principle," "Approved Privacy Code," and "Privacy Commissioner" are defined in the Privacy Act 1988.)

- (a) Seller shall:
 - (i) use or disclose Personal Information obtained during the course of providing Services under the Contract, only for the purposes of the Contract;
 - (ii) not do any act, or engage in any practice during the course work under this contract that would breach an Information Privacy Principle contained in section 14 of the *Privacy Act 1988*, which if done or engaged in by an agency, would be a breach of that Information Privacy Principle;
 - (iii) not use or disclose Personal Information, or engage in an act or practice that would breach section 16F of the Act, or a National Privacy Principle, particularly National Privacy Principles 7 through to 10 or an Approved Privacy Code during the course

of work under this contract, unless:

- (A) in the case of section 16F, the use or disclosure is necessary, directly or indirectly, to discharge an obligation under this contract; or
 - (B) in the case of a National Privacy Principle or an Approved Privacy Code, if the activity or practice is engaged in for the purpose of performing, directly or indirectly, an obligation under this contract, and the activity or practice is inconsistent with the National Privacy Principle or Approved Privacy Code;
- (iv) notify individuals whose Personal Information is held by Seller or a subcontractor, as the case may be, of the complaints mechanism outlined in the Act that may apply to Seller;
 - (v) disclose in writing to any person who asks, the content of the provisions of this contract (if any) that are inconsistent with a National Privacy Principle or an Approved Privacy Code binding a party to this contract;
 - (vi) carry out and discharge the obligations contained in the Information Privacy Principles as if it were an agency under the Act;
 - (vii) ensure that any officer, employee or agent of Seller who is required to deal with Personal Information for the purposes of this contract, is made aware of the obligations of Seller as set out in this clause, and
 - (viii) promptly notify the Commonwealth Representative, through Buyer, where:
 - (A) it becomes aware of a breach or possible breach of any of the obligations contained in, or referred to in, this clause, whether by Seller or a subcontractor;
 - (B) it becomes aware that a disclosure of Personal Information may be required by law; or
 - (C) it is approached by the Privacy Commissioner, or by any individual to whom any Personal Information relates.
- (b) Seller shall ensure that any subcontract entered into for the purposes of fulfilling its obligations under this contract contains provisions to ensure that the subcontractor has the same awareness and obligations as Seller has under this clause, including obligations in relation to subcontracts.