

**CUSTOMER CONTRACT REQUIREMENTS**  
**ARROW 3**  
**CUSTOMER CONTRACT H722-1100**

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

**H722-1100 ARROW 3 .**

**H722-1100 – ARROW 3**

**ARTICLE 1 - QUALITY CONTROL, PROGRAM MANAGEMENT, TESTING, ACCEPTANCE AND DELIVERY**

- 1.1 Seller shall, subject to reasonable security considerations and applicable laws, regulations and export licenses, grant BOEING/IAI access to its and its subcontractors' premises in accordance with the provisions of the SOW. Seller and its subcontractors shall provide, at no additional cost, all reasonable facilities and assistance for the safety and convenience of BOEING/IAI in accordance with the provisions of the SOW. Seller shall provide BOEING/IAI's personnel, upon request, with written and other information required for performance of Contract-required reviews, tests, meetings, etc.

**ARTICLE 2 – BOEING/IAI AND ARROW3 PROPERTY AND INFORMATION**

2.1 Title and Use

- (a) Seller hereby acknowledges and agrees that:

(i) it has no right, title or interest in BOEING/IAI Property and Information and/or ARROW3 Property and Information other than the rights to possess and use such property and information for the purposes of performing this Contract;

(ii) BOEING/IAI is the owner and/or sole authorized representative of the owner/s of the BOEING/IAI Property and Information and the ARROW3 Property and Information. Without derogating from the foregoing, title to ARROW3 Property and Information shall vest in IMOD upon the earliest to occur of acquisition, manufacture, creation, construction, obtaining, compilation, or establishment (as applicable) of the relevant item of the ARROW3 Property and Information by Seller and/or its subcontractors;

(iii) it shall look to and follow BOEING/IAI's directions with respect to all matters relating to the BOEING/IAI Property and Information and ARROW3 Property and Information (including, but not limited to, its use, handling, transfer and safeguarding);

(iv) it shall not create or permit to be created, suffer any lien upon or encumber, and shall discharge promptly at Seller's sole expense, any liens, charges, pledges, claims or demands that may attach to

any of the BOEING/IAI Property and Information and ARROW3 Property and Information while such BOEING/IAI Property and Information and ARROW3 Property and Information is in the possession or control of Seller and/or its subcontractors;

(v) title to BOEING/IAI Property and Information and/or ARROW3 Property and Information shall not be affected by their incorporation into or attachment to any property not owned by BOEING/IAI, nor shall any item of the BOEING/IAI Property and Information and/or ARROW3 Property and Information that is personal property become a fixture or lose its identity as personal property by being attached to any real property; and

(vi) none of the BOEING/IAI Property and Information and/or ARROW3 Property and Information shall be used for any purpose other than performance by Seller and its subcontractors of this Contract and/or production of Seller Items pursuant to a serial production agreement between BOEING/IAI and Seller.

- (b) Facilities modified (fixed improvements or structural alterations that cannot be removed without loss of value or damage to the premises) to accommodate the ARROW3 Program will be the property of Seller and its sub-contractors, provided that (i) Seller provides BOEING/IAI with a written facility item list detailing such planned modifications and obtains BOEING/IAI's written approval that title shall vest in Seller, and (ii) such change is necessary to the performance of the Contract.

2.2 Notice of Loss - Seller shall be responsible for the risk of loss, destruction or damage (as set forth in Article 22) to the BOEING/IAI Property and Information and ARROW3 Property and Information while in Seller's or its subcontractors' care, custody or control. Seller shall obtain and maintain insurance coverage for the BOEING/IAI Property and Information and ARROW3 Property and Information as set forth in Article 22 below. In the event of any loss of or destruction or damage to the BOEING/IAI Property and Information and/or the ARROW3 Property and Information (or any part thereof), Seller shall immediately notify BOEING/IAI in writing of any such loss, destruction or damage.

2.3 (a) Marking - Seller shall clearly mark and identify each item of BOEING/IAI Property and ARROW3 Property as such (including, if applicable, the provider of such items) and Seller and its subcontractors shall only use BOEING/IAI Property and Information and ARROW3 Property and Information for the purpose of performing its obligations under this Contract. Seller and its subcontractors shall maintain written records of all BOEING/IAI Property and Information and ARROW3 Property and Information that is in its care, custody or control.

(b) Maintenance - Seller shall perform normal maintenance, as applicable, on the BOEING/IAI Property and Information and ARROW3 Property and Information in accordance with sound industrial practice, including protection, preservation, and repair and normal parts replacement. Seller shall perform any maintenance work directed by BOEING/IAI in writing.

(c) Transfer - Seller and its subcontractors shall not sell, lease, lend or otherwise transfer title to or possession of, or disclose, (as applicable) any of the BOEING/IAI Property and Information and ARROW3 Property and Information to any third party except as authorized by BOEING/IAI. BOEING/IAI shall have the sole authority for permitting such transfers of BOEING/IAI Property and Information and ARROW3 Property and Information, as applicable, specifying the methods and conditions for implementing such transfers. Seller shall, in accordance with BOEING/IAI's instructions, return the BOEING/IAI Property and Information and ARROW3 Property and Information to BOEING/IAI or transfer the BOEING/IAI Property and Information and ARROW3 Property and Information to another entity or location as directed by BOEING/IAI, in the condition in which same was received, acquired or manufactured, except for normal wear and tear. Costs for transfer/disposition of BOEING/IAI Property and Information and ARROW3 Property and Information shall be borne by BOEING/IAI and reimbursed to Seller and or its subcontractors, to the extent such transfer/disposition occurs in the context of a termination. However, if such termination occurs pursuant to this agreement, then BOEING/IAI shall have the right to draw on the Performance Bond defined therein and to apply the proceeds thereof to the costs of such transfer/disposition.

(d) License - BOEING/IAI, in its own right and as the sole authorized representative of the owner/s, hereby grants Seller a royalty-free license to use the BOEING/IAI Information and ARROW3 Information for the purposes of performing its obligations under this Contract. Seller may, subject to obtaining BOEING/IAI's prior written approval, sub-license such BOEING/IAI Information and ARROW3 Information to its subcontractors.

(e) Warranties – Seller shall ensure that any purchased item for the Arrow3 Program which has a standard warranty from its subcontractors, Seller shall pass the benefit of such warranties to BOEING/IAI.

2.4 Without derogating from the foregoing provisions of this Article, Seller's responsibilities under this Article with respect to BOEING/IAI Property and Information and ARROW3 Property and Information shall also include those obligations set forth in FAR 45.505 to and including 45.505-14; 45.506; 45.507; 45.508 to and including 45.508-3; 45.509 to and including 45.509-2; 45.510; 45.511, as applicable.

2.5 The Parties recognize the importance of the protection and preservation of IMOD's rights in ARROW3 Property and Information and BOEING/IAI's rights in BOEING/IAI Property and Information. Accordingly, Seller (and its subcontractors holding such property and information) shall provide BOEING/IAI with any and all assistance that BOEING/IAI may reasonably request in order to register and demonstrate the rights and interests of IMOD and BOEING/IAI in and to the ARROW3 Property and Information, and the BOEING/IAI Property and Information, respectively (including, without limitation, UCC-1 filings, and registrations with the United States Patent and Trademark Office).

### **ARTICLE 3 - CONFIDENTIALITY AND SECURITY**

- 3.1 Seller shall act in accordance with the security and confidentiality provisions established set forth in the ASIP Agreement clauses, and the security guidelines and classifications formulated on the basis of these provisions.
- 3.2 All classified information or material (as determined under the relevant laws/regulations of Israel and the United States of America) transferred or provided to, or generated by, either Party with respect to this Contract shall be stored, handled, transmitted, and safeguarded in accordance with the relevant security agreements between the Governments of Israel and the United States of America.
- 3.3 Classified information and material shall be transferred only through official government-to-government channels or through channels approved by the relevant governmental security authorities. Such information and material shall bear a label designating the level of classification; denote the country of origin, the conditions of release, and the fact that the information relates to this Contract.
- 3.4 Seller shall take all steps to ensure that all classified information and materials transferred or provided to, or generated by, it with respect to this Contract shall be used only in accordance with the relevant laws/regulations, for the purposes permitted in this Contract and shall ensure that access to such classified information and materials is limited to those persons who possess the requisite security clearances and have a specific need for access to such information and materials in order to participate in the ARROW3 Program. Seller shall flow down to its subcontractors and vendors these measures for safeguarding the use, handling, disclosure, storage, and transmittal of information and materials
- 3.5 Seller shall not disclose or transfer classified information and/or materials to any third part whatsoever without the prior written approval of BOEING/IAI and the relevant governmental authorities.
- 3.6 The Parties shall jointly establish a secured Electronic Data Exchange (EDE) channel for the transfer of classified information. Use of the said EDE shall be subject to the approval of appropriate governmental authorities.
- 3.7 Controlled Unclassified Information provided or generated under this Contract shall be handled in accordance with the provisions of the NDA and controlled as follows:
- Such information shall be used only for the purposes provided in this Contract.

- Access to such information shall be limited to personnel whose access is necessary in order to participate in the ARROW3 Program.
- Seller shall not further disclose such information unless BOEING/IAI consents to such disclosure.
- Nothing contained herein shall be construed to derogate in any way the obligations or responsibilities of the Parties as set forth in the NDA.

**ARTICLE 4 - CONTRACT DELIVERIES AND CONTRACT COMPLETION CERTIFICATES**

4.1 Upon completion of services and/or deliveries under this contract, a Certificate of Completion shall be submitted by Seller to BOEING/IAI as a part of or attached to the Contract Completion Form.

4.2 Contract CLIN Closeout for Supplies/Hardware Certification

I certify that on \_\_\_\_\_ [insert date], the \_\_\_\_\_ [insert Contractor's name] furnished the supplies or services called for by Contract No. \_\_\_\_\_ via \_\_\_\_\_ [Carrier] on \_\_\_\_\_ [identify the bill of lading or shipping document] in accordance with all applicable requirements. I further certify that the supplies or services are of the quality specified and conform in all respects with the contract requirements, including specifications, drawings, preservation, packaging, packing, marking requirements, and physical item identification (part number), and are in the quantity shown on this or on the attached acceptance document.

Date of Execution: \_\_\_\_\_

Signature: \_\_\_\_\_

Title: \_\_\_\_\_

4.3 Upon completion of all services and/or deliveries under this contract, a Certificate of Contract Completion shall be submitted by Seller to BOEING/IAI as a part of or attached to the Contract Completion Form. Upon submittal of the Contract Completion Certificate and final payment the contract will be complete.

4.4 Contract Completion Certification

I certify that on \_\_\_\_\_ [insert date], the \_\_\_\_\_ [insert Contractor's name] furnished the supplies or completed the services called for by Contract No. \_\_\_\_\_ via \_\_\_\_\_ [insert final billing and or services documentation] in accordance with all applicable contractual requirements. I further certify that the supplies or services are of the quality specified and conform in all respects with the contract requirements, including specifications, drawings, preservation, packaging, packing, marking requirements, and physical item identification (part number), and are in the quantity shown on this or on the attached acceptance document.

Date of Execution: \_\_\_\_\_

Signature: \_\_\_\_\_

Title: \_\_\_\_\_

**ARTICLE 5 – TERMINATION FOR CONVENIENCE**

5.1 BOEING/IAI shall have the right, at its convenience and discretion, to terminate this Contract, in whole or in part, from time to time, by giving Seller a Notice of Termination for Convenience given in accordance with the provisions of this contract, specifying the extent to which this Contract is terminated, and the date upon which such termination shall become effective. Such termination for convenience shall be subject to the terms and

procedures for termination set forth below. Costs included in Seller's termination claim may be verified by the Auditor and/or the U.S. Government. In addition, in the event of such termination, any licenses granted to Seller and its subcontractors hereunder shall be automatically revoked and cancelled, as applicable.

- 5.2 Seller shall not have any contention and/or claim (other than as set forth in this Article) against BOEING/IAI, IMOD and/or the United States Government in respect of the termination, for any reason whatsoever, of the ASIP Agreement, and/or the ARROW3 Program, and/or the ARROW3 Agreement between the U.S. Government and IMOD, and/or this Contract and/or any purchase order canceled in consequence thereof.
- 5.3 Seller acknowledges that BOEING/IAI and the IMOD do not warrant that production by Seller will take place. Seller shall not have any claim and/or contention against BOEING/IAI, the IMOD and/or the United States Government for the absence of such production.
- 5.4 After receipt of the Notice of Termination, Seller shall act immediately according to the provisions in the Notice of Termination for Convenience. Following such Notice, Seller shall not enter into any additional commitments/engagements in the framework of this Contract without BOEING/IAI's prior written authorization and except as directed by BOEING/IAI, Seller shall immediately proceed with the following obligations, regardless of any delay in determining or adjusting any amounts due under this Article:
  - (a) Stop work as specified in the notice.
  - (b) Place no further subcontracts or orders (referred to as "subcontracts" in this Article), except as necessary to complete the continued portion of the Contract (if applicable).
  - (c) Terminate all subcontracts to the extent they relate to the work terminated.
  - (d) Assign to BOEING/IAI, as directed by BOEING/IAI, all right, title, and interest of Seller under the subcontracts terminated, in which case BOEING/IAI shall have the right to settle or to pay any termination settlement proposal arising out of those terminations.
  - (e) With approval of BOEING/IAI, settle all outstanding liabilities and termination settlement proposals arising from the termination of subcontracts, the cost of which would be reimbursable in whole or in part, under this Contract.
  - (f) Transfer title (if not already transferred) and, as directed by BOEING/IAI, deliver to BOEING/IAI:
    - (i) the fabricated or unfabricated parts, work in process, completed work, supplies, and other material produced or acquired for the work terminated;
    - (ii) the completed or partially completed plans, drawings, information, and other property that, if the Contract had been completed, would be required to be furnished to BOEING/IAI; and
    - (iii) the jigs, dies, fixtures, and other special tools and tooling acquired or manufactured for this Contract, the cost of which Seller has been or will be reimbursed under this Contract.
    - (iv) For the avoidance of doubt, to the extent not covered in (i) to (iii) above, Seller's obligations under the provisions of this contract shall also apply to all items of BOEING/IAI Property and Information and all ARROW3 Property and Information.
  - (g) Complete performance of the work not terminated.
  - (h) Take any action that may be necessary, or that BOEING/IAI may direct, for the protection and preservation of the BOEING/IAI Property and Information and ARROW3 Property and Information that is in the possession of Seller (and/or its subcontractors).
  - (i) Use its best efforts to sell, as, and to the extent, directed or authorized by BOEING/IAI, any property

of the types referred to in this contract; provided, however, that Seller (i) is not required to extend credit to any purchaser and (ii) may acquire the property under the conditions prescribed by, and at prices approved by, BOEING/IAI. The proceeds of any transfer or disposition will be applied to reduce any payments to be made by BOEING/IAI under this Contract, credited to the price or cost of the work, or paid in any other manner directed by BOEING/IAI.

- 5.5 Seller shall submit complete termination inventory schedules no later than 120 days from the effective date of termination, unless extended in writing by BOEING/IAI upon written request of Seller within such 120-day period.
- 5.6 After termination, Seller shall submit a final termination settlement proposal to BOEING/IAI in the form and with the certification prescribed by the United States Government for termination of cost-reimbursement contracts. Seller shall submit the proposal promptly, but no later than 180 days from the effective date of termination, unless extended in writing by BOEING/IAI upon written request of Seller within this 180-day period. However, if BOEING/IAI determines that the facts justify it, a termination settlement proposal may be received and acted on after 180 days or any extension. If Seller fails to submit the proposal within the time allowed, BOEING/IAI may determine, on the basis of information available, the amount, if any, due Seller because of the termination and shall pay the amount determined.
- 5.7 Subject to the above, BOEING/IAI and Seller may agree on the whole or any part of the amount to be paid (including an allowance for the Fee) because of the termination. In such event, the Contract shall be amended, and Seller paid the agreed amount.
- 5.8 If Seller and BOEING/IAI fail to agree in whole or in part on the amount of costs and/or Fee to be paid because of the termination of work, BOEING/IAI shall determine, on the basis of information available, the amount, if any, due Seller, and shall pay that amount, which shall include the following:
  - (a) All costs reimbursable under this Contract, not previously paid, for the performance of this Contract (excluding costs reimbursable under this clause below) before the effective date of the termination, and those costs that may continue for a reasonable time with the approval of or as directed by BOEING/IAI; however, Seller shall discontinue these costs within 75 days of the effective date of termination.
  - (b) The cost of settling and paying termination settlement proposals under terminated subcontracts that are properly chargeable to the terminated portion of the Contract if not included above.
  - (c) The reasonable costs of settlement of the work terminated, including --
    - (i) Accounting, legal, clerical, and other expenses reasonably necessary for the preparation of termination settlement proposals and supporting data;
    - (ii) The termination and settlement of subcontracts (excluding the amounts of such settlements); and
    - (iii) Storage, transportation, and other costs incurred, reasonably necessary for the preservation, protection, or disposition of the termination inventory.
  - (d) A portion of the Fixed Fee payable under the Contract equal to the percentage of completion of work contemplated under the Contract, but excluding any portion of the fee allocable to costs to be reimbursed in accordance with this clause, less previous payments for fee.
- 5.9 The cost principles and procedures in Part 31 of the Federal Acquisition Regulation, in effect on the date of this Contract, shall govern all costs claimed, agreed to, or determined under this Article.
- 5.10 Seller shall have the right of dispute, under the Disputes clause, from any determination made by BOEING/IAI under this clause, except that if Seller failed to submit the termination settlement proposal within the time provided and failed to request a time extension, there is no right to dispute. If the BOEING/IAI has made a

determination of the amount due under this clause, BOEING/IAI shall pay Seller (1) the amount determined by BOEING/IAI if there is no right to dispute or if no timely dispute has been commenced, or (2) the amount finally determined after the dispute is resolved.

- 5.11 In arriving at the amount due Seller under this Article 9, there shall be deducted --
- (a) All unliquidated advance or other payments to Seller, under the terminated portion of this Contract;
  - (b) Any claim which BOEING/IAI has against Seller under this Contract; and
  - (c) The agreed price for, or the proceeds of sale of materials, supplies, or other things acquired by Seller or sold under this Article and not recovered by or credited to BOEING/IAI.
- 5.12 Seller and BOEING/IAI must agree to any equitable adjustment in the Fixed Fee for the continued portion of the Contract when there is a partial termination. BOEING/IAI shall amend the Contract to reflect such agreement.
- 5.13 (a) BOEING/IAI shall, under the terms and conditions prescribed herein, make partial payments and payments against costs incurred by Seller for the terminated portion of the Contract, if BOEING/IAI believes the total of these payments will not exceed the amount to which Seller will be entitled.
- (b) If the total payments exceed the amount finally determined to be due, Seller shall repay the excess to BOEING/IAI upon demand, together with interest computed at the rate of then annual LIBOR plus 2%. Interest shall be computed for the period from the date the excess payment is received by Seller to the date the excess is repaid. Interest shall not be charged on any excess payment due to a reduction in the Seller's termination settlement proposal because of retention or other disposition of termination inventory until 10 days after the date of the retention or disposition, or a later date determined by the BOEING/IAI because of the circumstances.
- 5.14 If following the payment of the costs referred to in this clause, Seller acquires any asset or right, the title to such asset or right shall be vested in BOEING/IAI.
- 5.15 To eliminate doubt, it is emphasized that Seller shall not be entitled to any remedy, compensation and/or additional payment due to the termination of the Contract according to this clause, apart from the payments specified in this clause.

#### **ARTICLE 6 - TERMINATION FOR DEFAULT**

- 6.1 (a) BOEING/IAI may terminate this Contract, in whole or in part, from time to time, by giving Seller a Notice of Termination for Default, specifying the nature of Seller's default, that correction has not been made within the cure period, the extent to which this Contract is terminated, and the date upon which such termination shall become effective. Such termination for default shall be subject to the terms and procedures set forth below. In all such cases, within five (5) days of BOEING/IAI's issuance of the notice of default/cure the Parties ExCom shall meet (in person or by telephone) to discuss possible solutions to resolve the default. If the Parties fail to meet or reach an agreed resolution within the applicable cure period or mutually agreed extension of such period, then the termination for default shall become effective.
- (b) BOEING/IAI may terminate this Contract for Seller's default in any of the following circumstances:
- (i) If Seller fails to perform one or more of its material obligations under this Contract in strict compliance with the terms of this Contract; or

- (ii) If Seller fails to deliver any item or to achieve any milestone or to perform any services required by this Contract within the time specified herein; or
- (iii) If Seller so fails to make progress of its performance under this Contract as to endanger performance of this Contract in accordance with its terms; or
- (iv) In the event of suspension of Seller's business, Seller's insolvency, institution of bankruptcy, liquidation proceedings by or against Seller, appointment of a trustee or receiver for Seller's property or business, or any assignment, reorganization or arrangement by Seller for the benefit of creditors.

and in any of the circumstances listed in (i) to (iii) above, Seller does not cure such default within thirty (30) days after receipt of such written notice from BOEING/IAI.

6.2 In the event of termination of this Contract by BOEING/IAI for Seller's default:

- (a) The provisions of Article 5 shall apply (as if BOEING/IAI had terminated this Contract for convenience) except that:
  - (i) Article 5.8(c)(i) shall not apply and BOEING/IAI shall not pay any of the costs/expenses incurred by Seller for the preparation of Seller's termination settlement proposal; and
  - (ii) Article 5.8(d) shall be modified to provide that BOEING/IAI shall pay that portion of the Fixed Fee that corresponds to the ratio of the amount/number of Seller Items and services actually delivered/performed and accepted by BOEING/IAI to the total amount/number of Seller Items/services required to be delivered/performed under the Contract;
- (b) BOEING/IAI shall be entitled to draw upon the performance bond described below in the event of an uncorrected material breach by Seller. The proceeds of the performance bond will be used to complete performance and/or correct any failure to perform or other deficient performance;
- (c) All licenses granted to Seller and its subcontractors hereunder shall be automatically revoked and cancelled; and
- (d) Any costs paid to Seller (e.g. pre-termination costs) may be verified by the Auditor and/or the U.S. Government.

6.3 The subject matter of this Contract is of critical importance to the national security of the State of Israel. Accordingly, in the event BOEING/IAI terminates this Contract for Seller's default and/or for convenience, then, in addition to, and without prejudice to, any other rights BOEING/IAI may have, BOEING/IAI shall have the right, at BOEING/IAI's expense (subject to Section 10.2(b) if the termination is for default), to direct Seller (and Seller shall undertake) to transfer and/or preserve, protect and deliver to BOEING/IAI (and/or a third party in the U.S. designated by BOEING/IAI) all (i) BOEING/IAI Property and Information, (ii) ARROW3 Property and Information, and (iii) work in process, raw materials, supplies, components, and equipment as Seller shall have manufactured or acquired and for which it has not yet been paid (and for which it will be paid).

6.4 Seller's responsibilities and obligations under this Article shall also apply to BOEING/IAI Property and Information and ARROW3 Property and Information that is in the possession or control of its subcontractors.

6.5 Upon written request within thirty (30) days after the Effective Date of this Contract, Seller shall provide BOEING/IAI a corporate guaranty, in alternative amounts of 10%, 15% and 20% of the total Contract Cost and Fixed Fee,). If BOEING/IAI notifies Seller in writing that BOEING/IAI elects to have the corporate guaranty issued to BOEING/IAI, then Seller shall cause corporate guaranty to be issued to BOEING/IAI in the amount specified by BOEING/IAI in its notice (i.e., 10%, 15% or 20%) within 30 days. The corporate



guaranty shall be extended if Seller has not completed performance of its obligations in this Contract by such date. If BOEING/IAI elects to receive the corporate guaranty, then the costs of opening and maintaining the corporate guaranty shall be included in the costs allowed under this Contract in accordance with Article 28. However, if BOEING/IAI draws upon the corporate guaranty in the event that Seller defaults under this Contract, then BOEING/IAI shall be entitled to recover such costs from Seller.

- 6.6 BOEING/IAI and Seller agree that the remedies set forth in this Contract shall be the sole and exclusive remedy of the Parties in the event of default by either of the Parties and the Parties shall have no other claims against each other. However, Seller reserves the right to challenge any default determination and/or to challenge BOEING/IAI's draw against the Performance Bond.

#### **ARTICLE 7 – SURVIVAL OF CERTAIN PROVISIONS**

- 7.1 The following Articles of this Contract (and Seller's obligations thereunder) shall survive its termination (whether for convenience or default), expiration and/or conclusion:

2	BOEING/IAI and ARROW3 Property and Information
3	Confidentiality and Security
5	Termination for Convenience
6	Termination for Default
8	Payment of Costs and Fee
9	Audit Rights
10	Government Management, Oversight and Control

#### **ARTICLE 8 - PAYMENT OF COSTS AND FIXED FEE**

- 8.1 (a) Cost Accounting Standards: Unless exempt, Cost Accounting Standards ("CAS") shall apply to this Contract and the provisions of FAR 52.230-2 (4/98) are hereby incorporated into this Contract, with the following change:

(i) In section 52-230-2(b), delete "Contract Disputes Act (41 U.S.C. 601)" and replace with "Article 18".

- (b) Where there is a conflict between the CAS and the terms of this Contract with respect to the recognition, determination, calculation, allowability, and/or allocability of costs, the terms of this Contract shall supersede the CAS.

- (c) Reimbursement of costs

(i) For the purpose of reimbursing allowable costs (except as provided in this Article below, with respect to pension, deferred profit sharing, and employee stock ownership plan contributions), the term *costs* includes only --

(A) Those recorded costs that, at the time of the request for reimbursement, Seller has paid by cash, check, or other form of actual payment for items or services purchased directly for the Contract;

(B) When Seller is not delinquent in paying costs of Contract performance in the ordinary course of business, costs incurred, but not necessarily paid, for --

- (1) Supplies and services purchased directly for the Contract and associated financing payments to subcontractors, provided payments will be made --
    - (aa) In accordance with the terms and conditions of a subcontract or invoice; and
    - (bb) Ordinarily prior to the submission of Seller's next invoice to BOEING/IAI;
  - (2) Materials issued from Seller's inventory and placed in the production process for use on the Contract;
  - (3) Direct labor;
  - (4) Direct travel;
  - (5) Other direct in-house costs; and
  - (6) Properly allocable and allowable indirect costs, as shown in the records maintained by Seller for purposes of obtaining reimbursement under U.S. Government contracts; and
- (C) The amount of financing payments that have been paid by cash, check, or other forms of payment to subcontractors in accordance with FAR subpart 32.5.
- (ii) Accrued costs of Seller's contributions under employee pension plans shall be excluded until actually paid unless --
    - (A) Seller's practice is to make contributions to the retirement fund quarterly or more frequently; and
    - (B) The contribution does not remain unpaid 30 days after the end of the applicable quarter or shorter payment period (any contribution remaining unpaid shall be excluded from Seller's indirect costs for payment purposes).
  - (iii) Notwithstanding the audit and adjustment of invoices and/or vouchers under the audit clause, allowable indirect costs under this Contract shall be obtained by applying indirect cost rates established in accordance with below.

## 8.2 Indirect cost rates:

- (a) Seller hereby represents and warrants as follows (the "Consistency Requirement"):
  - (i) That its indirect costs rates applied to this Contract are and will be throughout performance of this Contract the same in all manners (e.g. allocation method, types of costs included, amount of costs allocated, etc.) as the indirect costs rates it applies to all of its other contracts with the United States Government.
  - (ii) That its subcontractors' indirect costs rates applied to their subcontracts in support of this Contract are and will be throughout performance of this Contract the same in all manners (e.g. allocation method, types of costs included, amount of costs allocated, etc.) as the indirect costs rates they apply to all of their other contracts with the United States Government.
- (b) Final annual indirect cost rates and the appropriate bases shall be established in accordance with FAR subpart 42.7 in effect for the period covered by the indirect cost rate proposal.

- (i) Seller shall submit an adequate final indirect cost rate proposal to the Auditor within the 6-month period following the expiration of each of its fiscal years. Reasonable extensions, for exceptional circumstances only, may be requested in writing by Seller and granted in writing by BOEING/IAI. Seller shall support its proposal with adequate supporting data.
  - (ii) The proposed rates shall be based on Seller's actual cost experience for that period. The Auditor will verify that the proposed rates conform to the Consistency Requirements as promptly as practical after receipt of Seller's proposal.
  - (iii) Within 120 days (or longer period if approved in writing by BOEING/IAI) after settlement of the final annual indirect cost rates for all years of a physically complete contract, Seller shall submit a completion invoice or voucher to reflect the settled amounts and rates.
  - (iv) (A) If Seller fails to submit a completion invoice or voucher within the time specified in this Article, BOEING/IAI may --
    - (1) Determine the amounts due to Seller under the Contract; and
    - (2) Record this determination in a unilateral modification to the Contract.
- (c) Billing rates - Until final annual indirect cost rates are established for any period, BOEING/IAI shall reimburse Seller at billing rates established by Seller for its U.S. Government contracts, generally, in accordance with the Consistency Requirements, subject to adjustment when the final rates are established. These billing rates --
- (i) Shall be the anticipated final rates; and
  - (ii) May be prospectively or retroactively revised by mutual agreement, at either party's request, to prevent substantial overpayment or underpayment.
- 8.3 (a) Seller shall invoice on a monthly basis the incurred costs plus Fixed Fee earned. Seller shall send BOEING/IAI three copies of each invoice as follows:
- (i) One copy to:

Israel Aerospace Industries Ltd.  
MLM Division  
P.O. Box 45,  
Beer Yaacov, 70350 Israel  
Attention: ARROW3 Contracts Manager
  - (iii) One copy to:

Arrow Program Office  
P.O. Box 1500  
Huntsville, AL  
Attention: Dr. Mike Holtcamp
- (b) Each invoice shall be accompanied by a detailed monthly cost and work progress report setting forth the information required by. Such work/cost report shall be organized by sections and each such Section shall be sub-divided by functions (e.g. engineering, administration, etc.).
  - (c) BOEING/IAI will pay Seller's invoice in U.S. currency, in amounts determined to be allowable by BOEING/IAI in accordance with FAR subpart 31.2 (Seller can bill for unallowable cost normally

allowed on commercial contracts) in effect on the date of this Contract and the terms of this Contract, within ten (10) working days after the later of (i) receipt of such invoice by MLM's Finance Department and (ii) MLM's receipt from IMOD of the amount due to Seller in respect of such invoice, within thirty (30) days). The invoice receipt date shall be determined as the invoice date or the actual date of receipt by MLM's Finance Department if transmitted electronically or by facsimile.

- (d) Each Seller invoice shall be subject to audit/verification in accordance with the Audit article. In the event that the Auditor performs an audit or other review of a specific invoice to ensure compliance with the terms and conditions of the Contract, then BOEING/IAI shall not be obligated to make payment on such invoice by the due date calculated according to above. Such invoices shall be paid within fifteen (15) days after the completion of the audit and in accordance with the results of the audit. Any payment may be (i) reduced by amounts found by the auditor not to constitute allowable costs or (ii) adjusted for prior overpayments or underpayments.

- 8.4 Seller shall pay to BOEING/IAI any refunds, rebates, credits, or other amounts (including interest, if any) accruing to or received by Seller or any assignee under this Contract, to the extent that those amounts are properly allocable to costs for which Seller has been reimbursed by the BOEING/IAI. Reasonable expenses incurred by the Seller for securing refunds, rebates, credits, or other amounts shall be allowable costs if approved by BOEING/IAI. Before final payment under this Contract, Seller and each assignee whose assignment is in effect at the time of final payment shall execute and deliver an assignment to BOEING/IAI, in form and substance satisfactory to the BOEING/IAI, of refunds, rebates, credits, or other amounts (including interest, if any) properly allocable to costs for which Seller has been reimbursed by BOEING/IAI under this Contract and, at such time, BOEING/IAI will release the balance of the withheld Fixed Fee.

8.5 Late payments will carry interest charges at the rate of annual LIBOR plus 2% on the value of the late payment starting from the due date of the payment, but no such payment of interest shall relieve BOEING/IAI from liability for failure to remit payments when due. Notwithstanding the foregoing, no payment shall be considered late nor shall any interest accrue on such payments until after thirty (30) days have passed from the due date as calculated under this Article.

- 8.6 Seller is to invoice BOEING/IAI in accordance with this Article. Thereafter Seller shall invoice BOEING/IAI for any and all payments due under the contract in accordance with this Article. Seller may submit two separate invoices during the month at which the xxx is reached in cost and fee. During said month, Seller may segregate the invoice amounts so as to deplete the aforementioned total and invoice separately for the remaining amount due. For purposes of Audit/Accounting, these two invoices do not have to be supported with detailed segregation of charging, accounting, etc data rather the supporting data shall be only for the total month billing.

- 8.7 (a) Seller shall invoice on a monthly basis the incurred costs plus Fixed Fee earned. Seller shall send BOEING/IAI four (4) copies of each invoice as follows:

**(i) One original invoice to BOEING/IAI as follows:**

Israel Aerospace Industries Ltd.  
MLM Division  
P.O. Box 45,  
Beer Yaacov, 70350 Israel  
Attention: Yael Leitner  
MLM Finance Dept.

With a copy of the invoice and set of documentation (as described below) to:

Israel Aerospace Industries Ltd.

MLM Division  
P.O. Box 45,  
Beer Yaacov, 70350 Israel  
Attention: Alon Kahana  
Arrow3 Program Manager

- (ii) One copy of the invoice and a signed COMA directly to the Arrow Program Office as follows:

MDA Israeli Cooperative Program Office  
P.O. Box 1500  
Huntsville, AL  
Attention: Dr. Mike Holtcamp

- (iii) One original invoice directly to Israel Aircraft Industries International Inc. (BOEING/IAI) as follows:

Israel Aerospace Industries International Inc.  
(BOEING/IAI)  
50 West 23<sup>rd</sup> Street, 4<sup>th</sup> Floor  
New York, New York 10010 USA  
Attention: Albert Shachar  
Assistant Vice-President  
Tel. (212) 620-4480  
Fax (212) 337-5319  
Email: ashachar@Boeing/IAIny.com

- (b) Invoices shall have the following reference numbers on them:
- (i) BOEING/IAI/MLM Reference No. H72xxx;
- (ii) GOI/MOD reference number: xxxxx.
- (c) Each invoice sent to BOEING/IAI shall be supported by a separate monthly cost and work progress report setting forth the information required by the SOW.
- (d) BOEING/IAI will pay Seller's invoice in U.S. currency, in amounts determined to be allowable by BOEING/IAI in accordance with FAR subpart 31.2 in effect on the Effective Date of this Contract and the terms of this Contract, within ten (10) working days after the later of (i) receipt of such invoice by MLM's Finance Department and (ii) BOEING/IAI's receipt from IMOD of the amount due to Seller in respect of such invoice, but in any case within thirty (30) days following BOEING/IAI's receipt of such invoice data. The invoice receipt date shall be determined as the invoice date plus 15 Working Days when mailed by regular mail, or plus 5 Working Days for express mail, or the actual date of receipt by MLM's Finance Department if transmitted electronically or by facsimile.
- (e) Payment of the Fixed Fee shall be made as specified in Article 28.1(b),
- (f) Each Seller invoice shall be subject to audit/verification in accordance with Article 30. Any payment may be (i) reduced by amounts found by the auditor not to constitute allowable costs or (ii) adjusted for prior overpayments or underpayments.
- (g) Payment shall be deemed made on the date BOEING/IAI's check is mailed or payment is otherwise tendered. Unless freight or other charges are itemized,

BOEING/IAI may take any offered discount on the full amount of the invoice

(h) Payment Mechanism

For the purpose of this Article, BOEING/IAI and IMOD have adopted the following procedure for effecting payment to Seller. Seller shall submit its invoices in accordance as stated above. BOEING/IAI will review, approve and forward same to the BOEING/IAI and IMOD, and payment instructions will be given to IMOD's mission in New York (GOI-MOD), and GOI-MOD will effect payment to Seller.

Nothing contained in this paragraph shall be construed to create a direct contract between IMOD and Seller or to add or modify the terms and conditions of this Contract. Nothing contained herein shall be construed to limit BOEING/IAI's obligation to pay Seller for the performance of the Contract, except that Seller agrees to comply with the above procedure for effecting such payments. Notwithstanding the foregoing, any payments received by Seller from GOI-MOD for invoices submitted under this Contract shall be deemed as if paid by BOEING/IAI in accordance with this Contract.

#### **ARTICLE 9 - AUDIT RIGHTS**

- 9.1 Seller shall maintain complete and accurate cost records regarding Seller's performance of all of its obligations hereunder. Such records shall be capable of verification through audit and analysis, and shall be made available to the Auditor for examination and audit at all reasonable times from the date of signature of this Contract until three (3) years after conclusion of the Contract. Seller agrees that the Auditor (which may be MDA or the DoD Contract Audit Agency (DCAA) if designated by BOEING/IAI), shall have the right to perform complete and comprehensive audits of Seller's records.
- 9.2 To the extent the DCAA performs such audit, then the ascertainment of costs, price investigation and pricing shall be carried out in accordance with the DCAA Regulations and Practices applicable. The auditing entity shall be entitled to prepare notes and prepare extracts from the documents submitted.
- 9.3 Seller's Subcontractors shall provide the Auditor the relevant information, permit examination of applicable records, such as calculations and accounts and observations of applicable business operations.

#### **ARTICLE 10 – GOVERNMENT MANAGEMENT, OVERSIGHT AND CONTROL**

- 10.1 The IMOD and U.S. Government Arrow Program Office ("APO") have management, oversight and control powers with respect to the ARROW3 Program, by virtue of the provisions of the ASIP Agreement, the ARROW3 Agreement and the BOEING/IAI-IMOD ARROW3 Contract, and by virtue of any purchase orders that may be signed between the IMOD and BOEING/IAI and/or Seller in the future. Seller undertakes to extend to the IMOD any assistance required for the exercise of its management, oversight and control powers.
- 10.2 For said purpose IMOD's representative in all that pertains to and derives from this Contract shall be the director of the "Homa" Program Administration (IMOD) or anyone acting on his behalf. Seller undertakes to cooperate with the IMOD representatives and to aid them in the performance of their function.
- 10.3 Seller undertakes to enable IMOD to perform any act that is required, in IMOD's judgment, for fulfilling IMOD's undertakings to the U.S. Government and/or for verifying Seller and/or BOEING/IAI's compliance with its undertakings to the IMOD according to this Contract. Without derogating from the general nature of the foregoing, Seller shall place at IMOD's disposal, for this purpose, all the information and/or documents and/or data (excluding accounting records required by IMOD).

- 10.4 (a) Seller undertakes to include suitable provisions in its contractual engagements with the Subcontractors in the framework of the ARROW3 Program, enabling the DoD PM and his representatives to exercise their powers and functions also vis-à-vis the Subcontractors.
- (b) Implementation of Seller's undertakings according to this clause is subject to the security directives and guidelines to be issued by IMOD and U.S. Department of State Technical Assistance Agreement, TA 0099-02 dated Mar 28, 2002, paragraph 8.
- 10.5 Without derogating from the other provisions of this Contract, Seller shall include in its agreements with the Subcontractors provisions establishing that any right granted to BOEING/IAI/IMOD and/or to the DoD by virtue of this Contract vis-à-vis Seller, shall vest in the BOEING/IAI/IMOD and/or in the DoD vis-à-vis Seller's Subcontractors. Seller shall incorporate in its agreements with non-Principal Subcontractors provisions establishing that any right granted to the BOEING/IAI/IMOD and/or to the DoD by virtue of this clause vis-à-vis Seller, shall vest in BOEING/IAI/IMOD and/or in the DoD vis-à-vis those non-Principal Subcontractors of Seller.
- 10.6 Without derogating from the foregoing IMOD and DoD shall have the following rights with regard to this Contract:
- (a) to review performance, technical, cost and schedule aspects of this Contract, including receiving copies of technical data, engineering drawings, computer software and listing and test data.
- (b) to approve, monitor and update the Contract Master Plan.
- (c) to manage and control transfer of BOEING/IAI and/or ARROW3 Property whether furnished by BOEING/IAI or acquired.
- (d) to maintain an oversight of the security aspects of the Contract, including reviewing and obtaining approval for transfer of Classified Information.
- (e) full access and insight to Seller and Seller's sub contractor's facilities, subject to Seller's and Seller's sub contractor's security policies and U.S. law relating to the export of Defense Articles and/or Services. This access is limited to Seller's major suppliers and will be limited to only that area where work for this Contract is performed.
- (f) DoD shall have access to all financial data related to this Contract.
- 10.7 IMOD shall be entitled, at its discretion, to send a representative as an observer at any material meeting between BOEING/IAI and Seller, including meetings for the purpose of negotiations.
- rial meeting between BOEING/IAI and Seller, including meetings for the purpose of negotiations.

**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 (NISPO)).