

**CUSTOMER CONTRACT REQUIREMENTS  
SPARES FOR KOREAN ARMY  
CUSTOMER CONTRACT KFX-DAPA-01AM07D52**

**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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**Section 1: Liquidated Damages for Delayed Delivery**

a. If Seller fails to make delivery within forty-five (45) working days of the stipulated delivery date , liquidated damages shall be levied at the rate of fifteen hundredths of one percent (0.15%) of the contract line item value of the applicable item per day, and deducted

from the money payable by the Buyer.

b. Total amount of the liquidated damages shall not exceed ten percent (10%) of the price of the item.

#### Section 2: Maintenance of Secrecy

a. The Seller hereby warrants that any data or information concerning or relating to this Contract shall not be disclosed without the prior permission in writing of Buyer except as necessary to obtain U.S. or Korean Government licenses, permits or approvals, as may be necessary for the performance of this Contract. Seller shall protect data or information concerning or relating to this Contract.

b. Any documents, cables or E-mails in relation to and in connection with this Contract, whether marked "Confidential" herein, shall not be divulged in any way and shall not be disclosed or released to any other unauthorized person or corporation.

#### Section 3: Intellectual Property Rights

a. The Seller warrants that the Repair supplied pursuant to this Contract does not infringe on the patent or other proprietary rights of the current existing vendors. The Seller further warrants that the Repair supplied pursuant to this Contract does not infringe on any third party's patent or other proprietary rights in Korea or the United States. The Seller will work in good faith with them to resolve any issues that may arise from intellectual property issues originating in other countries. In case of any claim, suit or action of a third party alleging that the Repair constitutes an infringement of any patent, design or copyright registered under the Korean Intellectual Property Office,

1. The Buyer shall promptly inform the Seller of such claim, suite or action; and

2. The Seller, at its own expense, shall have the sale control and the full authority for the defense of the claim; and

3. The Buyer shall cooperate with the Seller to the extent reasonably necessary in such defense.

b. In case the claim introduced by a third party for such an infringement results in an injunction or in a court decision prohibiting the work because the Repair is in infringement of a third party right, the Seller shall;

1. Attempt to procure for the Buyer, the right to continue using the infringing Repair during its life time; or

2. Replace or modify the infringing Repair in compliance of the conditions and specifications of this Contract, so that the infringement is discontinued.

If damages are awarded to a third party arising out of Seller's infringement of any patent, design, or copyright registered under the Korean Intellectual Property Office, Seller shall indemnify the Buyer against any such damages and all reasonable legal expenses incurred by the Buyer. The provisions of this clause shall constitute the sole remedy of the Buyer and the sole liability of the Seller in relation to patent, industrial property or copyright infringement.

c. Notwithstanding the above, in case the above court has determined that the Spare is in infringement of a third party right the Seller shall not be responsible for the infringement of third party rights in case the Buyer has, without the Seller's prior written consent, modified or used the said non-infringing Repair in conjunction with any other equipment which results in infringement of that third party right.

d. The actions listed above shall not apply to patent infringement claims on Buyer Furnished Equipment (BFE). Buyer shall indemnify and hold harmless Seller from and against all claims, suits actions, liabilities, damages and cost in case of any actual or infringement arising out of the installation, sale or use of Buyer Furnished Equipment (BFE) by the Seller,

f. The Seller shall retain title and all rights to all Intellectual Property produced, developed, or used in performance of this contract. The Seller grants to the Buyer a license in such Intellectual Property needed to use, operate, and maintain the Commodity. The Buyer shall not disclose such Intellectual Property to any third party and shall not use such data for any improper purpose.

#### Section 4: Exclusion of Liabilities

a. PROVIDED THAT THERE IS NO GROSS NEGLIGENCE OR WILLFUL MISCONDUCT BY BOEING. THE WARRANTIES, CONDITIONS, REPRESENTATIONS, OBLIGATION AND LIABILITIES OF BOEING AND REMEDIES OF THE BUYER SET FORTH IN THIS AGREEMENT, ARE EXCLUSIVE AND IN SUBSTITUTION FOR, AND THE BUYER HEREBY WAIVES,

RELEASES AND RENOUNCES ALL OTHER WARRANTIES AND OTHER OBLIGATIONS AND LIABILITIES OF BOEING, AND ANY OTHER RIGHTS, CLAIMS AND REMEDIES OF THE BUYER AGAINST BOEING, EXPRESS OR IMPLIED, ARISING BY LAW OR OTHERWISE, WITH RESPECT TO ANY NONCONFORMANCE OR DEFECT IN ANY F-15K REPAIRS OR OTHER THINGS PROVIDED UNDER THIS AGREEMENT, INCLUDING BUT NOT LIMITED TO:

(A) ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS;

(B) ANY IMPLIED WARRANTY ARISING FROM COURSE OF PERFORMANCE, COURSE OF DEALING OR USAGE OF TRADE;

(C ) ANY OBLIGATION, LIABILITY, RIGHT, CLAIM OR REMEDY IN TORT, WHETHER OR NOT ARISING FROM THE NEGLIGENCE OF BOEING; AND

(D) ANY OBLIGATION, LIABILITY, RIGHT, CLAIM OR REMEDY FOR LOSS OF OR DAMAGE TO ANY PROPERTY OF THE BUYER.

(b) EXCLUSION OF CONSEQUENTIAL AND OTHER DAMAGES. PROVIDED THAT THERE IS NO GROSS NEGLIGENCE OR WILLFUL MISCONDUCT BY BOEING, BOEING SHALL HAVE NO OBLIGATION OR LIABILITY, WHETHER ARISING IN CONTRACT (INCLUDING WARRANTY), TORT (WHETHER OR NOT ARISING FROM THE NEGLIGENCE OF BOEING), 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 F-15K REPAIRS OR OTHER ITEMS PROVIDED UNDER THIS AGREEMENT.