

CUSTOMER CONTRACT REQUIREMENTS
DAPA R. O. K. AIR FORCE PERFORMANCE BASED LOGISTICS
CUSTOMER CONTRACT KFX-DAPA-13AH04159

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)).

KFX-DAPA-13AH04159 PERFORMANCE BASED LOGISTICS .

1. Maintenance of Secrecy

- a. The Seller shall warrant that any data or information related to this Contract will be held and preserved as "Confidential Matters of the Republic of Korea" in strict compliance with the relevant laws and regulations of the Republic of Korea.

- b. Regardless of whether marked with "Confidential", all documents and communications by teletransmission in relation to this Contract shall not be disclosed in any way without the Buyer's prior consent.
- c. The Seller's obligations provided in this Article shall survive termination or completion of this Contract.

2. Intellectual Property Rights

If the Buyer receives a claim that the Commodity or any part thereof is in infringement of an intellectual property right, the Seller shall, at its own expense and option, conduct the following actions:

- a. Settle the claim in an amicable way such as reconciliation with the claimant;
- a. Procure for the Buyer the right to use such Commodity in a manner intended in this Contract;
- b. Replace or modify the Commodity with an equivalent but non-infringing alternative commodity that conforms to the specifications of this Contract; or
- c. Defend against such claims. If any court of competent jurisdiction holds such Commodity to constitute infringement, the Seller shall take at its own option one of the actions described under a. through c. above.

3. Maintenance of Secrecy

- a. The Seller shall warrant that any data or information related to this Contract, originally developed by the Republic of Korea, shall be held and preserved as "Confidential Matters of the Republic of Korea". The Buyer shall warrant that any data or information related to this Contract, originally developed by the Boeing Company and its Suppliers shall be held and preserved as "Confidential Matters of The Boeing Company". The Parties warrant that any document provided to the other Party in relation to this Contract shall be protected in accordance with the equivalent U.S. or Korean security classification.
- b. Neither Party shall disclose any documents or communications in relation to this Contract in any way without the other Party's prior consent, regardless of whether any document is marked "Confidential", except when required by either the Republic of Korea or US Government or for the purpose of a Boeing Corporate audit.
- c. The Seller's and Buyer's obligations provided in this Article shall survive termination or completion of this Contract.
- d. This Contract shall not restrict disclosure of proprietary information which:
 - i. Was in the public domain at the time of disclosure or thereafter enters the public domain through no breach of this Contract by the receiving Party; or
 - ii. Was otherwise known to the receiving Party at the time of disclosure without restrictions as to disclosure or use; or
 - iii. Becomes known to the receiving Party from a source other than the disclosing Party without breach of this Contract by the receiving Party; or
 - iv. Is developed independently by the receiving Party without reliance upon proprietary information disclosed under this Contract.
 - v. Is used for future Contractual framework development.

4. Intellectual Property

4.1 "Goods" are the goods and services to be delivered to Buyer under this Contract.

4.2 "Intellectual Property Right" means all rights with respect to copyright, registered and unregistered patents, registered and unregistered trademarks, service marks, registered and unregistered designs and circuit

layouts, and all other rights in relation to inventions or rights resulting from intellectual activity in industrial, scientific, literary or artistic fields (that is recognized in the domestic law of any country of the world), including any intellectual property right protected through legislation or arising from protection of information as a trade secret or as confidential information;

- 4.3 “Software” means computer programs, including those stored in integrated circuits, read-only memory or similar devices, computer program documentation, and computer databases, including modifications to any of the foregoing; and
- 4.4 “Technical Information” means information required to be delivered under this Contract of a scientific or technical nature relating to the Goods, including information related to Inventions, designs, methods, processes, techniques, interfaces, data structures, architectures, analysis tools, modeling or simulation, models, prototypes, patterns, samples, schematics, experimental data, test data, reports, drawings, plans, specifications, photographs, collections of information, manuals, and Software. Technical Information does not include data concerned with the administration of the Contract, such as financial data, business processes, or management information. Technical Information also does not include any data systems, tools or applications that are developed using non-Buyer funding and that may be used to generate, modify or deliver Goods under this Contract.
- 4.5 The Seller shall own the Intellectual Property Rights attached to the design, development, manufacturing, assembling and testing process of the Goods or to any part thereof. The provision of any Technical Information or documentation under this Contract shall neither imply, nor permit, nor provide any right to manufacture or have manufactured any part, component, system or element of the Goods through licensing or otherwise. Buyer may not use, and may not license or permit others to use Intellectual Property or any Technical Information in commercial exploitation in competition with Seller. The Buyer shall have the right to use copy and reproduce Technical Information as necessary for the use, maintenance and repair of Goods.
- 4.6 If the Buyer receives a claim that any service or part provided by Seller under this Contract infringes a United States or South Korean patent right, the Seller shall, at its own expense and option, conduct the following actions, provided that Seller is notified promptly in writing of the claim, Buyer has not reached any compromise or settlement of such claim or made any admissions in respect of the same, and Seller is given the option, at its expense, to control the claim and all requested reasonable assistance from Buyer regarding same:
- a. Settle the claim in an amicable way such as reconciliation with the claimant;
 - b. Procure for the Buyer the right to use such service part or provided Seller in a manner specified in this Contract;
 - c. Replace or modify the service or part with an equivalent but non-fringing alternative that conforms to the specifications of this Contract; or
 - d. Defend against such claims. If any court of competent jurisdiction holds such service or part to constitute such infringement, the Seller shall take at its own option one of the actions described under a through c above.

Notwithstanding the foregoing provisions, Seller will have no obligation under this with regard to any infringement arising from (i) the compliance of Seller's service or part with formal specifications issued by Buyer where infringement could not be avoided in complying with such specifications, (ii) use of the service or part for other than their intended application, or (iii) the combination of such service or part with other item(s) when such infringement would not have occurred from the use of such service or part solely for the purpose for which they were designed or sold by Seller.

5. Import and Export of the Service)

5.1 The import, export and re-export of items to be delivered under this Contract are subject to U.S. Government import, export and re-export laws and regulations. The Parties shall comply with such laws and regulations and the Seller shall assist the Buyer to comply with such laws and regulations. As the U.S.

importer/exporter of record, Seller shall obtain and properly utilize any required U.S. import, export or re-export authorization. Buyer shall assist in obtaining such authorization, as requested by Seller. If such U.S. Government authorization is not available, cannot be obtained, or is subsequently revoked, items to be delivered under this Contract shall not be imported, exported or re-exported. A mutually agreed to temporary support concept will be established until a long-term solution is in place or the contract is terminated. And metric relief shall be granted. It shall be the Buyer's responsibility to obtain from the Korean Government any required permission to import the Contract items and to pay any charges associated with the importation of said items. Resale or other transfer of hardware delivered under this Contract shall be in accordance with these provisions.

5.2 Information furnished under this Contract may contain technical data, defense services, and defense articles subject to U.S. Export Laws and Regulations. The Parties are advised that such technical data, defense services, and defense articles may not be retransferred or re-exported to foreign persons, employed by or associated with, or under Contract to [Republic of Korea MND or ROKAF] lower-tier subcontractors, without the prior written consent of Boeing and U.S. Department of State approval.

5.3 Parties should be aware that Boeing and Seller must obtain required U.S. export authority prior to implementing work packages. The Parties may be required to sign an export agreement prior to beginning work. The agreement will include contractually binding requirements imposed by the U.S. Department of State as part of their approval process.