

CUSTOMER CONTRACT REQUIREMENTS
Next Fighter II
CUSTOMER CONTRACT KFX-DAPA83AA59A01

CUSTOMER CONTRACT REQUIREMENTS

The following customer contract requirements apply to this contract to the extent indicated below.

1. The following prime contract special provisions apply to this purchase order:

A. Special Provisions

The clauses contained herein are required by the Prime Contract with Government of the Republic of Korea.

1. NEW EQUIPMENT

Unless set forth in this contract or otherwise expressly agreed to, the equipment and any part thereof to be delivered shall be new and unused. For the purposes of this clause "new and unused" means an item of the supplies in good repair that has no operating times or cycles, except for time/cycles accrued during the conduct of installation, modification, maintenance, operations, and/or testing performed in connection with the contract.

2. SPARES SUPPORT

Seller shall provide components, spare parts, tools and accessories for the equipment under this contract for three (3) years from the final delivery of the goods and/or services or its full life cycle, whichever is later, at the Buyer's request there for. The cost to provide such components, spare parts, tools and accessories beyond the three years is not considered under this contract and shall be the subject of follow-on support contracts. The pricing of the components, spare parts, tools and accessories under the follow-on contracts shall be at the same price as provided to Seller's other customers adjusted for quantity and period of performance.

3. NOTICE OF OBSOLESCENCE

When Seller becomes aware that any part of the equipment procured hereunder will become unavailable in the future, Seller shall promptly notify Buyer, giving Buyer time to place sufficient orders for the items so affected to cover anticipated needs. Seller shall assist and work together with Buyer to obtain items (supplies and services) so affected from other sources at reasonable cost to Buyer.

4. Intellectual Property Rights

- a. The Buyer and the Korean Government shall have the license rights to use Intellectual Property embodied in data delivered to the Buyer for the purposes as set out in this Section and except for such license rights, the Seller or other owner of the Intellectual Property shall retain all right, title and interest, including ownership, in such Intellectual Property and data. All rights granted in this are subject to prior approval of this contract by export control authorities of the Seller's Government, and the U.S. Government as applicable.
- b. The Seller grants to the Buyer and the Korean Government for use by or for the Buyer and the Korean Government, a paid up and royalty free, world-wide, non-exclusive, nontransferable license, without the right to grant sublicenses, in Intellectual Property embodied in data that is delivered under this Contract but that did not result from new development work under this Contract, for purposes of the Korean Government's operation, maintenance, and repair of the Commodity delivered under this Contract, and for purposes of the Buyer in designing, manufacturing, selling, and supporting the 737 AEW&C System. Buyer and the Korean Government are authorized to make copies of such data (except for data bearing the copyright or restrictive legend of a third party), and all copies of such data shall belong to Seller or other party as identified thereon and shall be subject to an obligation of confidentiality under this Contract, whether the data bears a restrictive legend or not, and regardless of the terms of any restrictive legend appearing thereon. Buyer shall preserve all restrictive legends, and all copyright notices on all delivered data and insure the inclusion of those restrictive legends and copyright notices on all copies of such data.
- c. For Intellectual Property embodied in data resulting from new development work under this Contract, the Seller or other originator of the Intellectual Property retains the entire right, title and interest in such Intellectual Property and data, and the Seller grants to the Buyer and the Korean Government a world-wide, paid up and royalty-free, irrevocable, non-exclusive, non-transferable license in data that is delivered to the Buyer embodying such Intellectual Property, for use by or for the Buyer and/or the Korean Government for any purpose including modification of the Commodity
- d. Rights to use the Seller's Intellectual Property and data that did not result from new development work funded under this Contract, for purposes of modification are not granted by this clause. Requests for such rights in data shall be considered by the Seller on a case by case basis once the nature of the modification can be defined. Such rights may be granted to the Buyer or to the Buyer's contractors in appropriate circumstances under mutually acceptable terms and conditions which may include the payment of a reasonable royalty fee. Derivative data associated with or depicting design details of the modification as it relates to Seller's product shall in any event be made available to Seller upon Seller's request. Such mutually acceptable terms and conditions may provide title in such derivative data to Seller, or as a minimum, Seller shall have an immediate, worldwide, paid-up and royalty free, irrevocable, nonexclusive licence, including the right to grant sublicenses, to use or have used such derivative data in the design, manufacture, use, sale, installation and product support of any aircraft.

5. ANTIBRIBERY PROVISIONS RELATING TO THE REPUBLIC OF KOREA

1. The Seller hereby affirms that no individual, officer, director, employee, or agent of the Seller, or any person acting for or on behalf of the Seller has made any payment prohibited by Korean Law to any official for the purpose of obtaining award of this Contract.

2. The Seller further ensures that any bribery shall not be made or promised by the Seller or any person acting for and on behalf of the Seller for the purpose of improperly performing its contractual obligations.
3. If the Seller violates the provisions of the preceding Paragraph 1 and/or 2 the Buyer shall have the right to terminate the contract or any part thereof in accordance with the default clause of this agreement.
4. The Seller fully recognizes that the Seller's violation of the provisions of the above Paragraph 1 and/or Paragraph 2 shall be the subject of criminal enforcement actions under the Criminal Law of the Republic of Korea .
5. The term "any payment" used in the above Paragraph 1 means paying, offering, or promising to pay money or anything of value. And the term "bribery" used in the above Paragraph 2 is the act of offering a bribe prescribed in Article 133 of the Criminal Law of the Republic of Korea .

6. LIQUIDATED DAMAGES FOR DELAYED DELIVERY

- a. In case the Seller fails to deliver any Goods and/or services within the stipulated delivery date, the Buyer shall levy liquidated damages at the rate of one-fifteenth of one percent (0.15%) of the contract value of the delayed item, or if a partial delivery is authorized, then only on the late portion of the delivery per day.
- b. The liquidated damages assessed above shall not exceed ten percent (10%) of the contract value of the delayed item.
- c. Notwithstanding the paragraph above delayed delivery by the Seller shall not exceed 180 days under this contract, unless mutually agreed by both parties.
- d. The Buyer shall calculate the number of delayed days, as stipulated in paragraph (a) above. The amount of the liquidated damages shall be deducted from the payment due to the Seller.
- e. Unless this Contract has been amended with respect to a delay of performance or delivery of a particular Goods and/or services, (i) the Buyer shall not be entitled to levy liquidated damages if the Buyer terminates this Contract for default and (ii) in the event the Buyer levies liquidated damages, this shall constitute the sole liability of the Seller and the exclusive remedy of the Buyer for late delivery.

7 MAINTENANCE OF SECRECY

- a. The Seller shall warrant that any data or information, except for classified data, related to this Contract shall be held and preserved as "Confidential Matters of the Republic of Korea ". The Parties warrant that any classified document provided to the other Party in relation to this Contract shall be protected in accordance with the equivalent or Korean security classification at the level the document is marked.
- b. Neither Party shall disclose any documents or communications in relation to this Contract in any way to anyone outside the Program 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.
- 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 information which:
 - 1) 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
 - 2) Was otherwise known to the receiving party at the time of disclosure without restrictions as to disclosure or use; or
 - 3) Becomes known to the receiving party from a source other than the disclosing party without breach of this Contract by the receiving party; or
 - 4) Is developed independently by the receiving party without reliance upon Contractor owned and protected information disclosed under this Contract.

8. REPAYMENT OF UNUSED ADVANCED PAYMENTS.

2. In the event any portion of the contract is terminated for default, that part of any Advance Payments corresponding to the terminated portion shall be paid by the Seller to Buyer within thirty (30) days, together with interest equal to LIBOR one-year rate, plus two percent (2%) per annum, for the time period from the date such excess payment is received by Seller until the date such excess payment is returned by Seller to Buyer. Buyer may deduct such amount from further payments, if any.
2. In the case of termination for convenience, if the total payments made by Buyer exceed the amount finally determined to be due, the Seller shall repay the excess to Buyer, together with interest equal to LIBOR one-year rate, plus two percent (2%) per annum, for the time period from the date such excess payment is received by Seller until the date such excess payment is returned by Seller to Buyer. 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 ten (10) days after the date of the retention or disposition, or a later date determined by Buyer because of the circumstances.

9. **FORCE MAJEURE**

- a. The Seller shall not be responsible for any failure of delivery or any delay in delivery of the Goods and/or services or any part thereof which may arise from acts of God, fires, explosions, strikes, lockouts, riots, civil commotion, acts of terrorism, mobilizations, threat or existence of war, any act of government, blockades, embargoes, requisition of vessels, epidemics, changes in the relevant laws and regulations made after this Contract is signed, acts or omissions of Buyer, delay in delivery of Buyer Furnished Equipment, delay in performance of a Sub-Contractor due to a force majeure event unless subcontract supplies or services were reasonably obtainable from other sources in sufficient time for the Seller to meet the scheduled delivery date, or other causes (i) which are similar in nature as the above listed causes and (ii) which are unforeseeable at the time of entering into the Contract, and beyond the reasonable control of the Seller and without its fault or negligence. In each instance enumerated above, the failure to perform must be beyond the control and without the fault or negligence of the Seller. In such case, the Contract shall be modified to account for the required schedule extension. In the event the Republic of Korea experiences civil commotion, mobilization, or threat or existence of war, Seller shall exercise all reasonable efforts to deliver Commodities in accordance with the Contract; however, in the event that it is impractical or unreasonable to deliver in accordance with the Contract, the Parties shall mutually agree to a substitute delivery location outside of the Republic of Korea.
- b. In order to invoke Force Majeure, the Seller shall notify the Buyer of the occurrence of the Force Majeure cause within seven (7) days from the occurrence of such cause. The notification shall be attached by a written confirmation of the occurrence of the Force Majeure event issued by the Chamber of Commerce or a similar independent 3rd party in the location where the event occurred.
- c. If prior to delivery any Goods and/or services is lost, destroyed or damaged beyond repair due to Force Majeure or any other event, Seller shall provide Buyer notice within seven (7) days after such event indicating what has occurred with the Goods and/or services. Within twenty-five (25) days of such event Seller shall provide Buyer with written notice specifying the earliest date, consistent with Seller's other contractual commitments and production capabilities, by which Seller would be able to deliver a replacement for such Goods and/or services. If the Buyer fails to give Seller written notice, within Forty-five (45) days of Seller's notice, that Buyer desires Seller to manufacture and deliver to Buyer a replacement for such Goods and/or services, the Seller may, in writing, notify the Buyer of its intent to terminate the Contract as to such Goods and/or services. If Buyer does not respond to Seller's termination notice within one hundred and twenty (120) days after receipt of notice, the Contract shall terminate as to the Goods and/or services. If the Buyer provides timely notice, Seller shall manufacture and deliver to Buyer at the earliest date reasonably consistent with Seller's other contractual commitments, a Goods and/or services to replace the Goods and/or services lost, destroyed or damaged beyond repair, and the parties shall execute an amendment to this Contract to evidence the delivery date for such replacement Goods and/or services. The terms and conditions of this Contract shall apply to the replacement Goods and/or services unless otherwise agreed to in writing.

- d. If the force majeure cause continues for more than 90 days, and the Buyer or its customer judges the purpose of this contract to be unattainable, the Buyer may terminate this contract in whole or part pursuant to the Termination for Convenience clause. In this case, neither party of this contract shall make any claim for compensation of any loss by such termination and the advance payment received by the Seller before delivery of the Goods and/or services shall be repaid to the Buyer.
- e. In the event of any conflict with any other Force Majeure clause this clause shall take precedence.

10. Governing Law

THE TERMS OF THIS CONTRACT SHALL BE GOVERNED BY, AND SHALL BE CONSTRUED AND ENFORCED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF NEW YORK (EXCLUSIVE OF ANY RULES AS TO CONFLICT OF LAWS) AND THE LAWS OF THE UNITED STATES APPLICABLE THEREIN.