

**Date: January 2003**

# **EXHIBIT A**

## **PROVISIONS APPLICABLE TO PRIME CONTRACT 41-102**

The clauses contained in the following are taken from the prime contract and are incorporated by reference. Clauses cited elsewhere in the contract shall be those in effect December 20, 2002.

### **1. DEFINITIONS (Clause 1 of the prime contract)**

As used throughout this Purchase Contract, the following terms shall have the meaning set forth below:

1. "NAPMO" means NATO AEW&C Programme Management Organisation and includes the NATO AEW&C Programme Management Agency (NAPMA); NATO Maintenance & Supply Agency (NAMSA); the NATO AEW&C Force Command (NAEWFC); and the NATO E-3A Component.
2. "NAPMA" means NATO AEW&C Programme Management Agency, the executive management agency for NAPMO requiring services and supplies to be provided under the Purchase Contract, and includes its designated representatives, successors or assignees.
3. "Purchaser" means NAPMO represented by its executive agency NAPMA.
4. "Boeing" means The Boeing Company.
5. "Buyer" means the procurement agent on behalf of The Boeing Company.
6. The "Purchase Contract" means the agreement made between the Buyer and the Seller containing this Purchase Contract in its entirety and any other document incorporated by reference, for the provision of work required therein.
7. The "Work" means supplies and services to be provided by the Seller including the submission of data.
8. "Seller" means the Contractor who has entered into this Purchase Contract with Buyer for the performance of the work as ordered under the Purchase Contract.
9. "Subcontractor" means a contractor, or any other party at any tier, with whom the Seller has negotiated an agreement to perform part of the work required under the Purchase Contract.
10. "Subcontract" means, except as otherwise provided in this Purchase Contract, any agreement, Contract, or Purchase Order made by the Seller with any subcontractor for fulfillment of any part of this Purchase Contract, and any agreement, contract or purchase order thereunder.
11. "Ottawa Agreement" means the Agreement on the Status of the North Atlantic Treaty Organisation, National Representatives and International Staff signed in Ottawa on 20 September 1951.
12. MMOU means the Multilateral Memorandum of Understanding on the NATO E-3A Cooperative Programme signed on 06 December 1978 by the Ministers of Defence of the participating governments.
13. "Contracting Officer" (CO) means the individual fully authorised by NAPMA to negotiate, to make decisions and to

enter into an agreement on behalf of NAPMA for the purposes of carrying out the Purchase Contract.

14. "Seller's Representative" (CR) means the individual fully authorised by the Seller to negotiate, to make decisions and to enter into an agreement on behalf of the Seller for the purposes of carrying out the Purchase Contract.
15. "Technical Data" means recorded information regardless of the form or method of the recording, of a scientific or technical nature (including computer software or software documentation). The term does not include computer software or data incidental to Purchase Contract administration such as financial and/or management information.
16. "Technical Assistance" means technical data and know-how provided for the purpose of performing this Purchase Contract.
17. "Computer Software" means computer programs and computer databases including applicable documentation concerning its description and/or use.
18. "NATO Member country" for the purposes of this Purchase Contract, means a member country of NATO participating in the E-3 AEW&C Programme, i.e., Belgium, Canada, Denmark, France, Germany, Greece, Italy, Luxembourg, The Netherlands, Norway, Portugal, Spain, Turkey, The United Kingdom and the United States of America
19. "Seller Affiliates" means the Seller's Company and any wholly owned subsidiary, and any subcontractor or assignee of either of them.
20. "Cost" means all direct and indirect expenses caused by an event and allocable to that event according to the Seller's standard accounting principles.
21. "Data" means all recorded information, whether written or otherwise, provided to Buyer by Seller. Data includes Computer Software.
22. "Proprietary Information" means Data and other information provided to Buyer pursuant to this Purchase Contract and that is properly identified as proprietary by markings.

Any other definition or expression mentioned in the Purchase Contract shall have the meaning assigned to it in the relevant section where it is used.

## **2. IMMUNITY OF NAPMO PROPERTY AND ASSETS (Clause 2 of the prime contract)**

1. The Seller is aware that according to the Ottawa Agreement dated 20 September 1951, (5UST 1087, TIAS 2992, 200 UNTS 3), any NAPMO documentation, information, data of whatever kind, any other NAPMO assets used or to be used in the performance of the Purchase Contract, in the possession of the Seller and/or his Subcontractors and by whomsoever held, wheresoever located, is immune from search, requisition, confiscation, expropriation or any other form of interference.
2. The Seller agrees that in cases of any such interference:
  - a. Seller will take all reasonable actions necessary to prevent the above- mentioned NAPMO property and assets becoming subject of such interference, and if the interference has taken place, to take all necessary actions provided for under national or international law to prevent NAPMO from losing its rights (for this purpose the Seller is authorised to act on behalf of NAPMO until the time NAPMO is in the position to pursue his rights himself or by authorised responsibility).
  - b. Seller will inform NAPMA and Buyer by the quickest means available; and
  - c. Seller will include in its contracts with any of its subcontractors clauses which reflect the responsibilities outlined at Paragraphs a. and b. above.

**3. MOST FAVOURED CUSTOMER (Clause 3 of the prime contract)**

1. The Seller guarantees that the prices stated in this Purchase Contract will not be less favourable than the prices recalculated to comparable conditions quoted, obtained, or to be obtained for any other customer. The Seller is obligated to render reasonable evidence required thereto. If the Seller has quoted or will quote more favourable prices to any other customer, he will so notify the Buyer, and these more favourable prices will be applicable to this Purchase Contract. Overpayments will be reimbursed.

2. If the Buyer wants to have investigated the compliance with the guarantee in Paragraph 1 above and this cannot be determined by the Buyer on the basis of market prices or competition, the Buyer may request the government of the Supplier Nation to investigate the reasonableness of the prices offered in accordance with the pricing regulations for government military orders in force in the Supplier Nation. The Seller agrees to cooperate in such investigation and undertakes to furnish to the authorities concerned all reasonable information required. The Buyer cost of such investigation is not to be an expense of the Seller.

**4. INVOICING AND PAYMENT (Clause 4 of the prime contract)**

Each invoice for effort expended by the Seller and endorsed by the NAPMA must detail actual costs incurred and must be supported by a breakdown of the man hours expended, at a standard such that it is readily auditable by the National Audit Agency. The basis for the costs will be the applicable T&M rates for the year in which the effort was expended.

1. Invoices must be signed and certified by the Seller's responsible accounting representative whose name and company position shall be clearly stated on the invoice. The certification shall read as follows:

*"I certify that this invoice is correct, that payment has not been received and that the price is exclusive of all taxes and duties of which the Seller is aware and from which NAPMO and Boeing are exempt.*

2. Payment for work furnished by a Seller's non-US Subcontractor under this Purchase Contract shall be effected directly by NAPMA to the respective party in national currency. The Seller shall forward a copy of each subcontractor invoice to the NAPMA Contracting Office with a certification as follows:

I certify that this invoice is consistent with the requirements of the contract between ..... and ..... (name Subcontractor) and that the supplies/services detailed on this invoice have been received and that payment of this invoice is requested to be made by NAPMA directly to .....(name Subcontractor) by no later than thirty (30) days after receipt of this invoice by NAPMA. Furthermore, I certify that this is a true copy of the only existing original invoice on file at .....

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

Full Name: \_\_\_\_\_

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

3. The Seller shall forward by facsimile a copy of the certified non-US Subcontractor invoice to NAPMA Contracts office. Concurrently, the Seller will forward to NAPMA by wire transfer a payment in US Dollars equivalent to the converted amount of the non-US Subcontractor invoice using the exchange rate in the clause of this Purchase Contract entitled "Currency Conversion for Non-US Subcontractors". Payment by NAPMA of the non-US Subcontractor will be contingent upon receipt of the payment in US Dollars equivalent to the converted amount of the non-US Subcontractor invoice and receipt of the certified invoice described in paragraph 2 above. Payments to non-US Subcontractors shall be made by wire transfer as follows:

Bank Name:

Bank Address:

BLZ:

Account No:

SWIFT Code:

6. NAPMA shall notify the Seller when payment of a subcontractor invoice has been made.

7. Payment details e.g. Bank name, address, code, account details etc., must appear on every invoice submitted by the Seller. Payments to the Seller shall be made by wire transfer as follows:

Chase Manhattan Bank

World Headquarters

Global Aerospace Group

270 Park Avenue 10<sup>th</sup> Floor

New York, NY 10017

Bank Routing #: 021000021

Boeing Defense and Space Group Account #: 9102776599

## **5. TAXES AND DUTIES (Clause 7 of the prime contract)**

1. NAPMO, as a subsidiary body of NATO is by application of the Ottawa Agreement dated 20 September 1951, exempt from all taxes and duties.

2. Goods and services sold to NAPMO are exempt from taxes and customs duties under paragraph 1 above. The Seller is responsible for obtaining and preparing any documentation required to facilitate this exemption.

3. However, if the Seller is compelled to pay any readily identifiable tax or duty in relation to this Purchase Contract, he will provide written notification to the Buyer when such tax or duty is levied upon him and seek reimbursement of such tax or duty in accordance with the Changes clause. Reimbursement shall be limited to those Seller incurred costs, excluding profit. The Seller shall identify the law or governmental regulation pursuant to which such tax or duty is enforced.

## **6. DEFAULT (Clause 8 of the prime contract)**

1. The Buyer may, subject to the provisions below, by written notice of default to the Seller, terminate the whole or any part of this Purchase Contract if either of the following two circumstances is not cured within a period of fifteen (15) working days (or such longer period as the Buyer may authorise in writing) after receipt of written notice from the Buyer specifying such failure. A working day means a day of business of both Buyer and Seller and excludes holidays normally observed by either party.

a. If the Seller fails to perform the Work within the time specified herein or any extension thereof and is not due to Force Majeure; or,

b. If the Seller fails to perform any of the other requirements of this Purchase Contract;

2. In the event the Buyer terminates this Purchase Contract in whole or in part, the Buyer may procure, upon such terms

and in such manner as may be deemed appropriate, supplies or services similar to those so terminated and the Seller shall be liable to the Buyer for any reasonable excess costs for such similar supplies or services, provided that the Seller shall continue the performance of this Purchase Contract to the extent not terminated under the provisions of this Clause.

3. The Seller shall be liable for excess costs, unless the failure to perform the Purchase Contract arises out of causes beyond his control. If the failure to perform is caused by the default of a subcontractor, the Seller is also liable for excess costs, unless he can demonstrate that he has taken all reasonable action to seek other sources and means for assuring contractual performance.

4. If this Purchase Contract is terminated, the Buyer, in addition to any other rights provided in this Clause, may require the Seller to transfer title and deliver to the Buyer in the manner and to the extent so directed.

a. Any completed supplies, and,

b. Such partially completed supplies and materials, plans, information and contract rights (hereinafter called "materials") as the Seller has specifically produced or specifically acquired for the performance of such part of this Purchase Contract as has been terminated; and the Seller shall protect and preserve property in possession of the Seller in which the Boeing and NAPMO have an interest.

c. Payment for completed supplies delivered to and accepted by the Buyer shall be at the contract price. Materials delivered to and accepted by the Buyer and for the protection and preservation of property shall be in an amount agreed upon by the Seller and the Buyer; failure to agree to such amount shall constitute a dispute concerning a question of fact within the meaning of the clause of this Purchase Contract entitled "Disputes."

5. If, after notice of termination of this Purchase Contract under the provisions of this Clause, it is determined for any reason that the Seller was not in default under the provisions of this Clause, the rights and obligations of the parties shall be the same as if the notice of termination had been issued pursuant to the clause entitled "Termination for Convenience of NAPMO".

## **7. TERMINATION FOR CONVENIENCE OF NAPMO AND BOEING (Clause 9 of the prime contract)**

1. In the event NAPMO and/or Boeing determines, by issuing a formal written notice to that effect, that the work ordered hereunder is no longer required, the Seller agrees to immediately cease its work hereunder and cancel any subcontracts hereunder and will use its best endeavours to effect such stoppage and/or cancellation on terms as favourable to NAPMO and/or Boeing as can be granted or obtained.

2. Any termination exercised under the provisions of this Clause, will entitle the Seller to submit to NAPMO and Boeing a claim for reimbursement of cost and expenses incurred by the Seller for the terminated portion of the Purchase Contract. Work in hand will be paid for in accordance with the terms and conditions of the Purchase Contract and with the work order. The reimbursement of all other costs and expenses associated with the terminated work will be the subject of negotiation. These reimbursable costs include but are not limited to, the following:

a. The total of the costs incurred in the performance of the work terminated, including initial costs and preparatory expense allocable thereto, but excluding any costs attributable to supplies or services paid or to be paid under Paragraph 2 above, for work in hand.

b. The total of the cost of settling and paying termination settlement proposal under terminated subcontracts that are properly chargeable to the terminated portion of the Purchase Contract is not included in Paragraph a. above.

c. The total of a fair and reasonable profit/fee.

d. The reasonable costs of settlement of the work terminated including:

(1) Accounting, legal, clerical, administrative and other expenses reasonably necessary for the preparation

of termination settlement proposals and supporting data;

(2) The termination and settlement of subcontracts (excluding the amounts of such settlements); and

(3) Storage, transportation, and other costs incurred, reasonably necessary for the preservation, protection, and/or disposition of the terminated inventory.

Such claim will be submitted to NAPMO and Boeing not later than three (3) months after receipt of NAPMO's and/or Boeing's notice of termination. The Seller's claim will be fully documented, substantiated and justified. Its settlement will be negotiated between NAPMO, Boeing, and the Seller.

Failure to reach agreement on the settlement of the Seller's claim shall constitute a dispute within the meaning of the Clause hereof entitled "Disputes".

## **8. DISPUTES (Clause 10 of the prime contract)**

1. The NAPMO is an integral part of the North Atlantic Treaty Organisation (NATO). NAPMO shares in the international personality of NATO as well as in the juridical personality possessed by NATO by virtue of Article 4 of the Ottawa Agreement. The juridical personality of NAPMO is subsumed in that of NATO and cannot be distinguished from it. Rights and privileges that apply to NATO and that are specifically addressed in Article 4 to 11 and 24 of the Ottawa Agreement apply to NAPMO.

2. Therefore, any dispute arising out of the Purchase Contract shall be settled according to the following arbitration clause:

a. The party instituting the arbitration proceedings shall advise the other party by registered letter, with official notice of delivery, of his desire to have recourse to arbitration. Within a period of thirty (30) days from the date of receipt of this letter, the parties shall jointly appoint an arbitrator. In the event of failure to appoint an arbitrator, the dispute or disputes shall be submitted to an Arbitration Tribunal consisting of three arbitrators, one being appointed by NAPMO, another by the other party, and the third, who shall act as President of the Tribunal, by these two arbitrators. Should one of the parties fail to appoint an arbitrator during the fifteen (15) days following the expiration of the first period of thirty (30) days, or should the two arbitrators be unable to agree on the choice of the third member of the Arbitration Tribunal, within thirty (30) days following the expiration of the said first period, the appointment shall be made, within twenty-one (21) days, at the request of the party instituting the proceedings, by the Secretary General of Permanent Court of Arbitration at The Hague.

b. Regardless of the procedure concerning the appointment of this Arbitration Tribunal, the third arbitrator will have to be of a nationality different from the nationality of the other two members of the Tribunal.

c. Any arbitrator must be of the nationality of any one of the member states of NATO and shall be bound by the rules of security in force within NATO.

d. Any person appearing before the Arbitration Tribunal in the capacity of an expert witness shall, if he is of the nationality of one of the member states of NATO, be bound by the rules of security in force within NATO, if he is of another nationality, no NATO classified documents or information shall be communicated to him.

e. An arbitrator who, for any reason whatsoever, ceases to act as an arbitrator shall be replaced under the procedure laid down in the first Paragraph of this clause.

f. The Arbitration Tribunal will take its decisions by a majority vote. It shall decide where it will meet and, unless it decides otherwise, shall follow the arbitration procedures of the International Chamber of Commerce in force at the date of the signature of the present Purchase Contract.

g. The awards of the arbitrator or of the Arbitration Tribunal shall be final and there shall be no right of appeal or recourse of any kind. These awards shall determine the apportionment of the arbitration expenses.

## 9. SECURITY (Clause 14 of the prime contract)

1. The Seller will comply with all the security requirements prescribed by NATO and the National Security Authority (NSA) or Designated Security Agency (DSA) of each NATO country in which the Purchase Contract is performed. He will be responsible for the safeguarding of NATO classified information, material and equipment entrusted to him or generated by him in connection with the performance of the Purchase Contract.
2. If the Buyer issues instructions which, in the opinion of the Seller and his Subcontractors, are not in accordance with the national implementation instructions, the Buyer shall be informed accordingly without delay and the Seller shall then await instructions from the Buyer on how to proceed. The Seller shall not be held liable for delay while waiting for these instructions.

## 10. LIABILITY (Clause 16 of the prime contract)

1 NAPMO will retain the risk of loss of or damage to the Aircraft including material and equipment used therein for loss of use thereof.

2 The Seller and its subcontractors shall only be responsible for loss or destruction of, or damage to the NAPMO property provided under this Purchase Contract that results from:

- a. willful misconduct or lack of good faith on the part of the Seller and its subcontractor's managerial personnel
- b. failure on the part of the Seller and its subcontractors, due to willful misconduct or lack of good faith on the part of the Seller and its subcontractor's managerial personnel, to establish and administer a program or system for the control, use, protection, preservation, maintenance, and repair of NATO property as required by this Purchase Contract.

### 3. EXCLUSION OF LIABILITIES.

a. Disclaimer and Release. The warranties, conditions, representations, obligations and liabilities of the Seller and its subcontractors and remedies of NAPMO set forth in this agreement, are exclusive and in substitution for, and NAPMO hereby waives, releases and renounces all other warranties and other obligations and liabilities of the Seller and its subcontractors, any other rights, claims and remedies of NAPMO against the Seller and its subcontractors, express or implied, arising by law or otherwise, with respect to any nonconformance or defect in any hardware/services provided under this agreement, including but not limited to:

- (1) any implied warranty of merchantability or fitness;
- (2) any implied warranty arising from course of performance, course of dealing or usage of trade;

(3) any obligation, liability, right, claim or remedy in tort, whether or not arising from the negligence of the Seller and its subcontractors and

(4) any obligation, liability, right, claim or remedy for loss of or damage to any property of NAPMO, including without limitation any NATO E-3A aircraft.

b. Exclusion of Consequential and other Damages. The Seller and its subcontractors shall have no obligation or liability, whether arising in contract (including warranty), tort (whether or not arising from the negligence of the Seller and its subcontractors), 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 items or services delivered under this Purchase Contract or other things provided under this Purchase Contract.

c. Definitions. For the purpose of this Clause, the term "the Seller" includes the Seller's Company, its divisions, subsidiaries, the assignees of each, and its subcontractors, suppliers and affiliates, and their respective directors, officers, employees and agents.

**11. EXAMINATION OF RECORDS (Clause 17 of the prime contract)**

1. This clause is applicable to this Purchase Contract only (i) if the price, or any of the prices, to be paid for the supplies and/or services to be furnished hereunder is/are other than (a) firm fixed price(s), or (ii) if this Purchase Contract is terminated by the Buyer, in whole or in part, and the Seller submits a termination claim as a result thereof, or (iii) in the event a dispute arises between the parties and arbitration proceedings are instituted pursuant to the clause of this Purchase Contract entitled "Disputes".
2. The Seller agrees that the respective national audit agency shall, until the expiration of three (3) years after final payment under this Purchase Contract have access to and the right to examine any pertinent books, documents, papers, and records of the Seller/subcontractor involving transactions related to this Purchase Contract.
3. The period of access and examination described above for records which relate to either appeals under the "Disputes" clause of this Purchase Contract or litigation, or the settlement of claims arising out of the performance of this Purchase Contract, shall continue until such appeals, litigation or claims have been disposed of.
4. No examination of subcontractor records is required for subcontracts less than US \$100,000 or equivalent Euros.
5. The Seller shall include this Clause in all subcontracts priced at or above US \$100,000 or equivalent Euros. Examination with respect to such subcontractor effort shall be limited to the Seller in accordance with Paragraph 4 above.

**12. EXPORT LICENSING AND DISCLOSURE REVIEW (Clause 19 of the prime contract)**

1. The Seller is aware that according to the Multinational Memorandum of Understanding on the NATO E-3A Cooperative Program all participating Governments have agreed to arrange for the grant of any export licenses necessary for the program. In implementation of this program principle, it shall be the Seller's responsibility to obtain any export license(s) as may be required under this Purchase Contract.
2. The Seller shall prepare technical data in accordance with the Statement of Work of this Purchase Contract and such technical data may be subject to the Export Administration Act of 1979 (50 USC App. 2401-2420) and the Arms Export Control Act (22 USC 2751, et seq.) and the International Traffic in Arms Regulation (22 CFR, Subchapter M, 120-128, 130). For purposes of this Purchase Contract, delivery of such data to foreign addressees is contingent upon release authorization by the USAF FDPO.
3. In the event any Government does not provide to the Seller written approval of Technical Assistance Agreements and any other licenses, export or import licenses, visas, residence permits, work permits, non-transfer and end use certificate or other similar government actions or approvals necessary: (1) to perform this Purchase Contract; (2) to export from or to deliver to NAPMO any items involved in the performance of this Purchase Contract; or (3) to permit the Seller and its subcontractors to contract with their Euro-Canadian subcontractors (at any tier) consistent with the performance and delivery schedules of this Purchase Contract, an equitable adjustment shall be negotiated. Failure to reach agreement will constitute a dispute as laid down in the clause entitled "Disputes."

**13. RIGHTS IN TECHNICAL DATA (Clause 22 of the prime contract)**

1. NAPMA shall have the full and absolute rights to use, duplicate and disclose all technical data developed and provided under this Purchase Contract, in whole or in part, to NATO Organisations, participating NAPMO Governments and those NAPMO Nations' Industries that hold an executed Non-Disclosure Agreement (NDA)/Proprietary Information Agreement (PIA) for the sole purpose of supporting the NATO AWACS Re-Platforming study effort and any resulting efforts.
2. Use of this technical data and or deliverables by Boeing outside the scope of this Purchase Contract for and to the benefit of other Customers of Boeing will be subject to equitable recoupment of the NAPMA funded study costs.
- 3.a. All Seller proprietary data supplied under this Purchase Contract shall be clearly marked with the appropriate proprietary legend(s).
- 3.b. The Buyer agrees and undertakes to use his best efforts not to divulge any of the Seller's proprietary information

outside NATO Organisations, participating NAPMO Governments and NAPMO Nations' Industry holding an executed NDA/PIA and further to protect said proprietary information in accordance with it's associated marking(s).

3.c. Should the Buyer deem it necessary to disclose any of the Seller's proprietary information to any third parties, other than those stated in 3b above, then the Buyer shall obtain the Seller's prior written consent to disclose such data. Parties receiving such information will be subject to the same limitation for further release.

4. This clause shall survive the expiration, completion or termination of this specific order.

**14. CURRENCY CONVERSION FOR NON-US SUBCONTRACTORS (Clause 27 of the prime contract)**

1. This requirement, in combination with Clause 4 "INVOICING AND PAYMENT" will protect the Seller and subcontractors from financial loss or gain due to currency exchange rate fluctuations.

2. The following fixed rate of exchange that was published in the Wall Street Journal as of \_\_\_\_\_ (date of Seller's signature of the Contract) applies to this contract:

Currency      Per U.S. Dollar

Euro

3. Changes in the national currency mix shall not change the equivalent U.S. Dollar value of the project.

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A = ADDED

D = DELETED

R = REVISED