

**Common Terms and Conditions Guide**  
**Section 5 – Government Contract Requirements**

**Clause Number: 5028**  
**Effective: 10/15/2002**  
**Page: 1 of 6**

**F04701-98-D-0002**  
**EELV - INITIAL LAUNCH SERVICES**

- (a) The following contract clauses are incorporated by reference from the Federal Acquisition Regulation and apply to the extent indicated. Unless provided for elsewhere in this contract, only subparagraphs (7), (8), and (9) of this paragraph (a) shall apply to any portion of this contract that is for commercial items or commercial components, as those terms are defined at FAR 52.202-1. In all of the following clauses, "Contractor" and "Offeror" shall mean Seller.
- (1) 52.203-6 Restrictions on Subcontractor Sales to the Government (JUL 1995). This clause applies only if this contract exceeds \$100,000.
  - (2) 52.203-11 Certification and Disclosure Regarding Payments to Influence Certain Federal Transactions (APR 1991)
  - (3) 52.203-12 Limitation on Payments to Influence Certain Federal Transactions (JUN 1997). This clause applies only if this contract exceeds \$100,000. Paragraph (c) (4) is modified to read as follows: "(c) (4) Seller will promptly submit any disclosure required (with written notice to Buyer) directly to the PCO for the prime contract. Buyer will identify the cognizant Government PCO at Seller's request. Each subcontractor certification will be retained in the subcontract file of the awarding contractor."
  - (4) 52.204-2 Security Requirements (AUG 1996) (excluding any reference to the Changes clause of this contract). This clause applies only if access to classified information is required.
  - (5) 52.211-15 Defense Priority and Allocation Requirements (SEP 1990)
  - (6) 52.219-8 Utilization of Small, Small Disadvantaged and Women-Owned Small Business Concerns (JUN 1997)
  - (7) 52.222-26 Equal Opportunity (APR 1984) [subparagraphs (b)(1) through (11)]
  - (8) 52.222-35 Affirmative Action for Special Disabled and Vietnam Era Veterans (APR 1998). This clause applies only if this contract is for \$10,000 or more.
  - (9) 52.222-36 Affirmative Action for Handicapped Workers (JUN 1998). This clause applies only if this contract exceeds \$2,500.
  - (10) 52.222-37 Employment Reports on Special Disabled Veterans and Veterans of the Vietnam Era (APR 1998). This clause applies only if this contract is for \$10,000 or more.
  - (11) 52.227-1 Authorization and Consent (JUL 1995)

**Common Terms and Conditions Guide**  
**Section 5 – Government Contract Requirements**

**Clause Number: 5028**  
**Effective: 10/15/2002**  
**Page: 2 of 6**

- (12) 52.227-2 Notice and Assistance Regarding Patent and Copyright Infringement (AUG 1996). This clause applies only if this contract exceeds \$100,000. A copy of each notice sent to the Government will be sent to Buyer.
- (13) 52.228-5 Insurance - Work on a Government Installation (JAN 1997). This clause applies only if this contract requires work on a Government installation.
- (b) The following contract clauses are incorporated by reference from the Department of Defense Federal Acquisition Regulation Supplement and apply to the extent indicated. In all of the following clauses, "Contractor" and "Offeror" shall mean Seller.
- (1) 252.205-7000 Provision of Information to Cooperative Agreement Holders (DEC 1991)
- (2) 252.225-7001 Buy American Act and Balance of Payments Program (MAR 1998)
- (3) 252.225-7012 Preference for Certain Domestic Commodities (SEP 1997)
- (4) 252.225-7014 Preference for Domestic Specialty Metals (MAR 1998)
- (5) 252.227-7037 Validation of Restrictive Markings on Technical Data (NOV 1995). This clause applies only if the delivery of technical data is required under this contract and the contract is not for commercial items or commercial components.
- (c) Compliance with laws unique to Government contracts. Seller agrees to comply with 40 U.S.C. 327, et seq., Contract Work Hours and Safety Standards Act (in accordance with FAR 12.504(b), certain requirements of this law have been eliminated for subcontracts at any tier for the acquisition of commercial items or commercial components) and 41 U.S.C. 51-58, Anti-Kickback Act of 1986.
- (d) Delays
- (1) Except as set forth below, Seller shall not be held responsible for delays in performance, if the delay or nonperformance is caused by an occurrence beyond the reasonable control of Seller and without its fault or negligence, such as, acts of God or the public enemy, acts of government, fires, floods, epidemics, quarantine restrictions, strikes, unusual severe weather, and delays of common carriers. Similarly, Seller shall not be responsible for delays or nonperformance caused by an occurrence beyond the reasonable control and without the fault or negligence of its subcontractors. In addition, any explosions occurring at or around Vandenberg Air Force Base or Cape

**Common Terms and Conditions Guide**  
**Section 5 – Government Contract Requirements**

**Clause Number: 5028**  
**Effective: 10/15/2002**  
**Page: 3 of 6**

Canaveral Air Station, not caused by Seller's actions or omissions, which interferes with or interrupts Seller's use of the launch site, shall be conclusively presumed to be an excusable delay under this clause. Seller shall notify Buyer in writing as soon as it is reasonably possible (usually within five working days or less) after commencement of any excusable delay, setting forth the full particulars in connection therewith, shall remedy such occurrence with all reasonable dispatch, and shall promptly give written notice to Buyer of the cessation of such occurrence.

- (2) In the event Seller elects to use foreign technology, including but not limited to that of the Former Soviet Union (FSU), it is expressly understood that Seller accepts all risks associated with such an international transaction. Specifically, neither the United States Government, as a sovereign, nor Buyer has any obligation to negotiate agreements with a foreign government. Any impacts, to include cost or schedule impacts, of such agreements on Seller will be borne entirely by Seller on this effort. Therefore, any delays or nonperformance caused by use of foreign technology shall not be excused and Buyer may, if appropriate, terminate this agreement for default. However, the parties may elect to modify this contract, including the milestone or delivery schedule, to accommodate any delays caused by the use of foreign technology. DoD policies on FSU propulsion and other foreign technology will be adhered to by Seller.
- (3) In no event shall Seller be entitled to an equitable adjustment under this contract or any other claims for any lost time or costs incurred by Seller due to any disruption of its activities at the launch sites/ranges, regardless of frequency or duration of any such interruptions, including disruptions of commercial activities, or for any delay in entry, temporary loss of access, barring of individual employees from the base under federal laws authorizing such actions, limitation or withdrawal of an employee's on-base driving privileges, or any other security action that may cause employees to be late to or unavailable at their work stations, or any delay in arrival of parts or supplies.
- (4) In the event the performance of all or any part of the work of this contract is delayed or interrupted by an act of Buyer that is not expressly or implicitly authorized by this contract, Buyer and Seller shall mutually agree to a modified schedule and/or an equitable adjustment pursuant to the Changes clause, subject to the following:
  - (A) An adjustment (excluding profit) shall be made for any increase in the cost of performance of this contract caused by the delay or interruption and the contract shall be modified in writing accordingly.
  - (B) An adjustment shall be made in the delivery or performance dates and any other contractual term or condition affected by the delay or interruption.

**Common Terms and Conditions Guide**  
**Section 5 – Government Contract Requirements**

**Clause Number: 5028**  
**Effective: 10/15/2002**  
**Page: 4 of 6**

- (C) No adjustment shall be made under this contract for any delay or interruption to the extent that it would have been delayed or interrupted by any other cause, including the fault or negligence of Seller, an occurrence beyond the reasonable control of Buyer and without its fault or negligence, such as, acts of God or the public enemy, sovereign acts of government, fires, floods, epidemics, quarantine restrictions, strikes, unusually severe weather, and delays of common carrier, or for which adjustment is provided or excluded under any other term or condition of this contract.
- (D) A claim under this clause shall not be allowed for any costs incurred more than 20 calendar days before Seller shall have notified Buyer in writing of the act or failure to act involved, and unless the claim, in an amount stated, is asserted in writing as soon as practicable after termination of the delay or interruption, but not later than the date of the launch affected by the delay.
- (5) If Buyer determines that Seller has an inexcusable delay under the terms of the contract, Buyer shall promptly notify Seller of the noncompliance. The notification shall contain a statement of the discrepancy. Seller shall respond within seven calendar days following receipt of notice with a written reply addressing how it will become compliant with the terms of the contract. In the event Seller cannot cure the noncompliance, Buyer may terminate the contract in accordance with the Cancellation for Default or Termination for Convenience clause, whichever is applicable.
- (6) Nothing in subparagraphs (1), (2), or (3) of this clause creates any liability on the part of Buyer for additional costs arising from the delays caused by the events described in this clause.
- (e) Elimination of Use of Class I Ozone Depleting Substances (ODS)
  - (1) It is Air Force policy to preserve mission readiness while minimizing dependency on Class I Ozone Depleting Substances (ODS), and their release into the environment, to help protect the Earth's stratospheric ozone layer.
  - (2) Unless a specific waiver has been authorized, Air Force procurements:
    - (A) May not include any specification, standard, drawing, or other document that requires the use of a Class I ODS in the design, manufacture, test, operation, or maintenance of any system, subsystem, item, component, or process;

**Common Terms and Conditions Guide**  
**Section 5 – Government Contract Requirements**

**Clause Number: 5028**  
**Effective: 10/15/2002**  
**Page: 5 of 6**

- (B) May not include any specification, standard, drawing or other document that establishes a requirement that can only be met by use of a Class I ODS; and
  - (C) May not require the delivery of any item of supply that contains a Class I ODS or any service that includes the use of a Class I ODS.
- (3) For the purposes of the Air Force policy, the following are Class I ODS:
- (A) Halons: 1011, 1202, 1211, 1301, and 2402
  - (B) Chlorofluorocarbons (CFC): CFC-11, CFC-12, CFC-13, CFC-111, CFC-112, CFC-113, CFC-114, CFC-115, CFC-211, CFC-212, CFC-213, CFC-214, CFC-215, CFC-216, CFC-217, and the blends R-500, R-501, R-502, and R-503.
  - (C) Other controlled substances: carbon tetrachloride, methyl chloroform, and methyl bromide.
- (4) The Air Force has reviewed the requirements specified in this contract to reflect this policy. Where considered essential, specific approval has been obtained to require use of the following substances: NONE.
- (5) To assist the Air Force in implementing this policy, Seller is required to notify Buyer if any Class I ODS not specifically listed above is required in the performance of this contract.
- (f) Environmental Requirements. Seller's work under this contract will be performed, and goods delivered will operate, within applicable laws and regulations without waivers and will minimize the use and generation of hazardous materials at all sites to include launch and manufacturing sites.
- (g) Hazardous Materials Management.
- (1) In performing work under this contract, Seller shall not use Class I Ozone-Depleting Substances (ODSs) in manufacturing. Further, Seller shall avoid any design feature that will require the use of ODSs in maintenance, launch processing, or system disposal.
  - (2) Seller's design shall either: (i) identify, justify, and minimize, or (ii) eliminate, requirements for the usage of Class II ODSs and EPCRA Section 313 chemicals.
  - (3) Upon written request by Buyer, Seller will provide usage data for Class II ODSs and EPCRA Section 313 chemicals. Buyer's request may include copies of Seller's then-current environmental plans, reports, or other like

**Common Terms and Conditions Guide**  
**Section 5 – Government Contract Requirements**

**Clause Number: 5028**  
**Effective: 10/15/2002**  
**Page: 6 of 6**

documentation that supports its efforts to minimize the use and generation of hazardous materials.

- (h) Subcontracts. Seller agrees to incorporate the substance of paragraphs (f) and (g) and this paragraph (h) in all subcontracts under this contract.