

**CUSTOMER CONTRACT REQUIREMENTS
Flywheel-Based Energy Storage System
CUSTOMER CONTRACT 24412**

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. The following contract clauses are incorporated by reference from the Federal Acquisition Regulation and apply to the extent indicated. In all of the following clauses, "Contractor" and "Offeror" mean Seller.

52.203-6 Restrictions on Subcontractor Sales to the Government (JUL 1995). This clause applies only if this contract exceeds \$100,000.

52.203-7 Anti-Kickback Procedures (excluding subparagraph (c)(1)) (JUL 1995). Buyer may withhold sums owed Seller the amount of any kickback paid by Seller or its subcontractors at any tier if (a) the Contracting Officer so directs, or (b) the Contracting Officer has offset the amount of such kickback against money owed Buyer under the prime contract. This clause applies only if this contract exceeds \$100,000.

52.203-11 Certification and Disclosure Regarding Payments to Influence Certain Federal Transactions (APR 1991). This clause applies only if this contract exceeds \$100,000.

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 Boeing) directly to the PCO for the prime contract. Boeing will identify the cognizant Government PCO at Seller's request. Each subcontractor certification will be retained in the subcontract file of the awarding contractor.

52.215-2 Audit and Records - Negotiation (JUN 1999). This clause applies only if this contract exceeds \$100,000 and (i) is cost-reimbursement, incentive, time-and-materials, labor-hour, or price-redeterminable type or any combination of these types: (ii) Seller was required to provide cost or pricing data, or (iii) Seller is required to furnish reports as discussed in paragraph (e) of the referenced clause.

52.215-10 Price Reduction For Defective Cost or Pricing Data (OCT 1997). This clause applies only if this contract exceeds \$550,000 and is not otherwise exempt. In subparagraph (3) of paragraph (a), insert "of this contract" after "price or cost." In Paragraph (c), "Contracting Officer" shall mean "Contracting Officer or Buyer." In Paragraphs (c)(1), (c)(1)(ii), and (c)(2)(i), "Contracting Officer" shall mean "Contracting Officer or Buyer." In Subparagraph (c)(2)(i)(A), delete "to the Contracting Officer." In Subparagraph (c)(2)(ii)(B), "Government" shall mean "Government or Buyer." In Paragraph (d), "United States" shall mean "United States or Buyer."

52.215-12 Subcontractor Cost or Pricing Data (OCT 1997). This clause applies only if this contract exceeds \$550,000 and is not otherwise exempt. The certificate required by paragraph (b) of the referenced clause shall be modified as follows: delete "to the Contracting Officer or the Contracting Officer's representative" and substitute in lieu thereof "The Boeing Company or any of its wholly owned subsidiaries."

52.215-15 Pension Adjustments and Asset Reversions (DEC 1998). This Clause applies to this contract if it meets the requirements of FAR 15.408(g).

52.219-8 Utilization of Small Business Concerns (OCT 2000).

52.219-9 Small Business Subcontracting Plan (OCT 2000). In paragraph (c), "Contracting Officer" shall mean Buyer. This clause applies only if this contract exceeds \$500,000. and Seller is not a small business concern.

52.222-1 Notice to Government of Labor Disputes (FEB 1997). "Contracting Officer" shall mean Buyer.

52.222-4 Contract Work Hours and Safety Standards Act — Overtime Compensation (SEP 2000). This clause applies only if this contract exceeds \$100,000. Buyer may withhold or recover from Seller the amount of any sums the Contracting Officer withholds or recovers from Buyer because of liabilities of Seller or its subcontractors under this clause.

52.222-20 Walsh-Healy Public Contracts Act (DEC 1996). This clause applies only if this contract exceeds \$10,000.

52.222-21 Prohibition of Segregated Facilities (FEB 1999).

52.222-26 Equal Opportunity (subparagraph (b)(1) through (11)) (FEB 1999).

52.222-27 Affirmative Action Compliance Requirements for Construction (FEB 1999). This clause applies only if this contract exceeds \$10,000.

52.222-35 Equal Opportunity for Special Disabled, Veterans of the Vietnam Era, and Other Eligible Veterans (APR 1998). This clause applies only if this contract exceeds \$25,000.

52.222-36 Affirmative Action for Workers With Disabilities (JUN 1998). This clause applies only if this contract exceeds \$ 10,000.

52.222-37 Employment Reports on Special Disabled Veterans, Veterans of the Vietnam Era, and Other Eligible Veterans (JAN 1999). This clause applies only if this contract exceeds \$25,000.

52.222-41 Service Contract Act of 1965, As Amended (MAY 1989). This clause only applies to contracts which are subject to this act.

52-233-2 Clean Air and Water (APR 1984). This clause applies if this contract exceeds \$100,000.

52.223-3 Hazardous Material Identification and Material Safety Data (JAN 1997). This clause applies only if Seller delivers hazardous material under this contract.

52.225-11 Restrictions on Certain Foreign Purchases (AUG 1998).

52.227-1 Authorization and Consent (JUL 1995).

52.227-2 Notice and Assistance Regarding Patent and Copyright Infringement (AUG 1996). A copy of each notice sent to the Government will be sent to Buyer. "Contracting Officer" shall mean "Buyer". This clause applies only if this contract exceeds \$100,000.

52.227-14 Rights in Data — General (JUN 1987). This clause applies only if data will be produced, furnished or acquired under this contract.

52.227-16 Additional Data Requirements (JUN 1987). This clause applies only if this contract involves experimental, developmental, research, or demonstration work.

52.229-10 State of New Mexico Gross Receipts and Compensating Tax (OCT 1988). This clause applies only if (1) this contract is a cost-reimbursement contract; (2) this contract directs or authorizes Seller to acquire tangible personal property as a direct cost under a contract and title to such property passes directly to and vests

in the United States upon delivery of the property by the subcontractor, and (3) this contract is for services to be performed in whole or in part in the State of New Mexico.

52.230-6 Administration of Cost Accounting Standards (NOV 1999). Add "Buyer and the" before "Contracting Officer in paragraph (f). This provision applies if Clause H001, H002 or H004 is included in Buyer's contract.

52.242-15 Stop Work Order (AUG 1989). Change "90 days" and "30 days" to "100 days" and "20 days" respectively. The terms "Contracting Officer" and "Government" shall mean Buyer.

52.244-5 Competition in Subcontracting (DEC 1996)

52.244-6 Subcontracts for Commercial Items (MAY 2001)

52.245-2 Government Property (Fixed Price Contracts) (DEC 1989). This clause is not applicable if this contract incorporates Form GP4. "Government" shall mean Government throughout except the first time it appears in paragraph (f) when "Government" shall mean the Government or the Buyer.

52.247-63 Preference for U.S.-Flag Air Carriers (JAN 1997). This clause only applies if this contract involves international air transportation.

52.247-64 Preference for Privately-Owned U.S. Flag Commercial Vessels (FEB 2006), Alternate I (JUN 2000). In paragraph (C)(2) "20" and "30" are changed to 10 and 20 respectively.

2. DoE Contracts. This Contract is placed under a Department of Energy Contract and the following contract clauses are incorporated by reference from the Department of Energy Federal Acquisition Regulation Supplement and apply to the extent indicated. In all of the following clauses, "Contractor" and "Offeror" mean Seller except as otherwise noted.

952.204-2 Security (SEP 1997)

952.204-70 Classification/Declassification (SEP 1997).

952.204-74 Foreign Ownership, Control or Influence Over Contractor (APR 1984).

952.227-11 Patent Rights - Retention by the Contractor (Short Form) (FEB 1995). This clause only applies if this Contract is for experimental, developmental, or research work and Seller is a small business firm or nonprofit organization.

952.227-13 Patent Rights - Acquisition by the Government (SEP 1997). This clause only applies if this Contract is for experimental, developmental, or research work and Seller is other than a small business firm or nonprofit organization.

952.250-70 Nuclear Hazards Indemnity Agreement (JUN 1996). This clause does not apply to the Seller if the Seller is subject to Nuclear Regulatory Commission (NRC) financial protection requirements under section 170b. of the Act or NRC agreements of indemnification under section 170c. or k. of the Act for the activities under the subcontract.

970.5204-2 (now 970.5223-1) Integration of Environmental, Safety, and Health Into Work Planning and Execution (DEC 2000). This clause applies if this contract involves complex or hazardous work on site at a DOE-owned or -leased facility.

970.5204-9 (now 970.5232-3) Accounts, Records, and Inspection (DEC 2000). This clause applies to this contract if the costs incurred by Seller are a factor in determining the amount payable to the seller.

3. If goods or services being procured under this contract are commercial items and Clause H203 is set forth in the purchase order, the foregoing Government clauses in Sections 1 and 2 above are deleted and the following FAR/DFARS clauses are inserted in lieu thereof:

52.219-8 Utilization of Small Business Concerns (OCT 2000). Include in all subcontracts that offer further subcontracting opportunities. If a subcontract (except subcontracts to small business concerns) exceeds \$500,000 (\$1,000,000 for construction of any public facility), Seller and any lower tier subcontractor must include 52.219-8 in lower tier subcontracts that offer subcontracting opportunities.

52.222-26 Equal Opportunity (subparagraph (b)(1) through (11)) (FEB 1999).

52.222-35 Affirmative Action for Special Disabled and Vietnam Era Veterans (APR 1998). This clause applies only if this contract exceeds \$25,000.

52.222-36 Affirmative Action for Handicapped Workers (JUN 1998). This clause applies only if this contract exceeds \$10,000.

4. Cost Accounting Standards

(1) (Applicable if this contract incorporates clause H001). The version of FAR 52.230-2, Cost Accounting Standards, incorporated by clause H001 is the version dated April 1998.

(2) (Applicable if this contract incorporates clause H002). The version of FAR 52.230-3, Disclosure and Consistency of Cost Accounting Practices, incorporated by clause H002 is the version dated April 1998.

(3) (Applicable if this contract incorporates clause H004). The version of FAR 52.230-5, Cost Accounting Standards – Educational Institution, incorporated by clause H004 is the version dated April 1998.

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

A. KEYWORDS:

SCR means Sandia Contracting Representative

SDR means Sandia Delegated Representative

B. ACCESS TO SANDIA COMPUTERS

Seller and Seller personnel who are granted access to Sandia computers and word processors are subject to the computer security procedures outlined in this clause. The procedures are applicable to Seller and Seller personnel located at a Sandia facility or at any Buyer facility. If the Seller does not comply with the provisions of this clause, Sandia and Buyer may withdraw Seller's access to Sandia computers and may also terminate the purchase contract. Misuse of Sandia computers may be a violation of law and could result in appropriate action including prosecution.

Sandia computers may be used only to perform work authorized in the purchase contract. Computer software or documentation developed on or for Sandia computer systems is the property of the Government unless provided otherwise in the purchase contract. Information or data furnished by Sandia or obtained from a Sandia computer by Seller or Seller personnel must be protected by the Seller to prevent disclosure to any person other than Seller's employees having a need to know unless such disclosure is authorized in advance in writing by the SCR. Classified material or information shall be protected in accordance with the security provisions of the purchase contract. If this purchase contract does not include security provisions and the Seller is furnished or comes in contact with classified material or information, it

shall be reported immediately to the SCR. Files of any other user shall not be accessed without specific permission from that user. Sandia monitors all use of all Sandia computers. Computer passwords are issued to individuals and must not be shared. Computer passwords must be protected by each Seller employee to prevent disclosure to any other persons. If a computer password is disclosed or potentially disclosed, the Seller must notify the SCR immediately so that a new password can be issued. Any Seller who is granted access to a Sandia computer shall be required to complete initial and refresher "Computer Security Training" (COM100), to be provided by Sandia.

C. CITIZENSHIP STATUS

All personnel of the Seller and its subcontractor who require access must be United States citizens, or foreign nationals who are legal aliens or have the required authorization to perform work in the United States.

D. CLASSIFIED INVENTIONS

(1) The Seller shall not file or cause to be filed on any invention or discovery conceived or first actually reduced to practice in the course of or under this purchase contract in any country other than the United States, an application or registration for a patent without obtaining written approval of the Contracting Officer.

(2) When filing a patent application in the United States on any invention or discovery conceived of or first actually reduced to practice in the course of or under this purchase contract, the subject matter of which is classified for reasons of security, the Seller shall observe all applicable security regulations covering the transmission of classified subject matter. When transmitting the patent application to the United States Patent and Trademark Office, the Seller shall by separate letter identify by agency and number, the purchase contract(s) which require security classification markings to be placed on the application.

(3) The substance of this clause shall be included in subcontracts which cover or are likely to cover classified subject matter.

E. CONTRACTOR OR SUBCONTRACTOR USE OF GOVERNMENT-OWNED VEHICLES

The following provisions apply if work under this purchase contract requires Seller or Seller personnel to operate Government-owned vehicles either on or off Government sites. Seller shall maintain, at Seller's expense, during the period of performance of work under this purchase contract, third-party vehicle liability insurance which shall cover the use of such Government-owned vehicles with limits of at least \$200,000/\$500,000 public liability and \$20,000 property damage. Medical payments coverage, comprehensive and collision insurance, uninsured motorist, and personal injury protection will not be required under this clause unless required by state statute. All Seller's agents, employees and subcontractors of any tier shall obey all rules and regulations pertaining to the use of Government-owned vehicles. In the event of a motor vehicle accident, the Seller shall submit a completed Motor Vehicle Accident Reporting Form SF 91 to the SCR together with any additional supplemental forms required by instructions given on the GSA Form Packet 1627. A GSA Form Packet 1627 normally is located either in the headliner or glovebox of the GSA vehicle. Seller's personnel shall assure that a GSA Form Packet 1627 is available in a GSA vehicle prior to accepting and driving a GSA vehicle.

F. ES&H TRAINING

Seller or subcontractor personnel who will enter a Government site to perform work shall have completed all of the ES&H training required by the purchase contract prior to any attempts to enter a Government site as shown by written records of such training furnished to the SDR or to the Requester if no SDR is named. Seller shall certify to Sandia through Buyer's Procurement Agent completion of all required training on the Completion Record for Contractor Administered Training form. Seller shall provide the completion record form for the initial ESH100 training to the SDR and the Buyer's Procurement Agent on the first day of work. Seller shall provide the completion records for any other training required above to the SDR and the Buyer's Procurement Agent before starting the affected work activity.

G. NOTICE OF POTENTIAL DELAY

Seller shall strictly comply with the delivery requirements of this purchase contract. Whenever the Seller has knowledge of any actual or potential delay or threatened delay in the timely performance of this purchase contract, the Seller shall immediately give notice thereof, confirmed in writing, including all relevant information with respect thereto, to Sandia and the Buyer's Procurement Agent. The Seller agrees to insert the substance of this provision, including this sentence, in any subcontract hereunder, except that each such subcontract shall require the subcontractor to notify his next higher tier contractor of all relevant information with respect to such delays. Such notice is for informational purposes only and shall not be construed to relieve the Seller of Seller's obligation to comply with the purchase contract delivery requirements.

H. PROTECTION OF GOVERNMENT PROPERTY

All facilities, property, equipment and materials at Sandia are Government-owned. Acts of theft, illegal possession and unlawful destruction or use of Government property are violations punishable under Federal law, and may also result in administrative action. The Federal Bureau of Investigation is the investigative authority for all such incidents including cases involving the personal property of individuals when the incident occurs at a Government-owned installation. Every user of Government property is responsible for its physical protection and for reporting immediately the loss, theft, destruction, or damage of such property.

I. PROVIDED INFORMATION

Any and all physical forms of designs, design data, specifications, technical, scientific data, and other information furnished to the Seller shall remain the property of the Government. Any and all such information provided to the Seller shall be used only for the purpose of enabling performance of this purchase contract and the Seller shall use its best efforts to prevent disclosure to others except when necessary in the performance of this purchase contract.

J. RELEASE OF INFORMATION

No information relating to this purchase contract shall be released other than to Seller and Seller's employees or those of Seller's subcontractors requiring the information for the performance of the purchase contract, without advance written approval of the SCR. In no event shall the interest of Sandia or the DOE or the Government in this purchase contract be indicated in any advertising or publicity without advance written approval of the SCR.

K. REPORTING OF ROYALTIES

If any royalty payments are directly involved in the purchase contract or are reflected in the purchase contract price to Sandia, the Seller agrees to report in writing to the SCR and the Buyer's Procurement Agent with notification by the SCR to the DOE Patent Counsel during performance of this purchase contract and prior to its completion or final settlement of any amounts or other payments paid or to be paid by the Seller to others in connection with the performance of this purchase contract together with the names and addresses of licensors to whom such payments are made and either the patent numbers involved or such other information as shall permit the identification or the patents or other basis on which the royalties are to be paid. The approval of the DOE of any individual payments or royalties shall not stop the Government at any time from contesting the enforceability, validity or scope of, or title to, any patent under which a royalty or payments are made. The provisions of this clause, appropriately modified as to parties, shall be included in all subcontracts that exceed \$100,000, unless otherwise approved by the SCR and the Buyer's Procurement Agent.

L. REQUIREMENTS FOR ACCESS TO GOVERNMENT SITES

Permission to enter Government sites shall at all times be subject to all laws, regulations, and site access rules for the site. The Government requirements include but are not limited to, all of the requirements set forth in this section for any work to be performed on a Government site. To obtain access to such premises, the Seller shall write a letter to the SDR or the SCR and the Buyer's Procurement Agent stating the company designation to be used by the Seller and each subcontractor and furnishing the following information on each individual requiring access to such premises: name, date of birth, and citizenship status, completed ES&H training requirements set forth in the purchase contract. Access will be granted for

the period of performance of the work only. Seller shall withdraw and replace any individual, including any subcontractor employee, assigned to perform work under this purchase contract, who in the judgment of Sandia or the DOE is to be denied access to any Government site. Seller shall submit to the SDR or the SCR and the Buyer's Procurement Agent proposed working schedules for its personnel and the personnel of each of its subcontractors. The schedules will show proposed daily working hours and proposed workweeks. Schedules that deviate from Sandia's normal workday or workweek must be approved by the responsible SDR. In the absence of a written authorization from the SCR or DOE, use of Government sites by the Seller and its subcontractors of any tier, pursuant to access granted under this clause, shall be limited to work required by this purchase contract to be performed on such premises. THE USE OF THE ACCESS PRIVILEGE FOR ANY PURPOSE OTHER THAN TO PERFORM WORK UNDER THIS PURCHASE CONTRACT IS PROHIBITED AND MAY BE GROUNDS FOR TERMINATING THIS PURCHASE CONTRACT FOR DEFAULT OR FOR FINDING THAT AN INDIVIDUAL IS UNACCEPTABLE FOR FUTURE ACCESS.

M. SANDIA PROVIDED INFORMATION

Any and all physical forms of designs, design data, specifications, technical, scientific data, and other information furnished by Sandia to the Seller shall remain the property of the Government. Any and all such information provided by Sandia to the Seller shall be used only for the purpose of enabling performance of this purchase contract and the Seller shall use its best efforts to prevent disclosure to others except when necessary in the performance of this purchase contract.

N. VEHICLE INSURANCE

All vehicles, owned or operated by the Seller or its subcontractors or their agents and employees, having access to Government sites shall be covered by at least \$200,000/\$500,000 public liability and \$20,000 property damage insurance.

O. VEHICLE MARKINGS

All vehicles used by the Seller or its subcontractors on a Government site shall be clearly marked to indicate company name of user. Vehicles which do not bear permanent markings may be temporarily marked as follows: (1) Signs, no longer than the vehicle door is wide, with a white or lighter background, showing the Seller's or subcontractor's name in one inch high, or larger, dark colored letters, may be made from sheet metal, cardboard or other suitable material and temporarily attached to the vehicle's front door panels so that the signs appear in the approximate center of each door panel. Words such as "Company," "Corporation" or "Division" may be abbreviated. (2) No signs shall be attached to the vehicle's glass area for safety reasons.