

**CUSTOMER CONTRACT REQUIREMENTS**

**P331**

**CUSTOMER CONTRACT 40-0151**

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If Form GP1 is applicable to this procurement, this Attachment constitutes the Government clauses contemplated by Article 29. If Form GP2 is applicable to this procurement, this Attachment constitutes the Government clauses contemplated by Article 28. If Form GP3 is applicable to this procurement, this Attachment constitutes the Government clauses contemplated by Article 41. If Form GP4 is applicable to this procurement, this Attachment constitutes the Government clauses contemplated by Article 31. If this contract is for the procurement of commercial items, 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.

52.203-10 Price or Fee Adjustment for Illegal or Improper Activity (JAN 1997). This clause applies only if this contract exceeds \$100,000. If the Government reduces Buyer's price or fee for violations of the Act by Seller or its subcontractors at any tier, Buyer may withhold from sums owed Seller the amount of the reduction.

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 2003). 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.

52.204-2 Security Requirements (AUG 1996). "Changes clause" means the changes clause of this contract. This clause applies only if access to classified material is required.

52.208-8 Helium Requirement Forecast and Required Sources of Supply for Helium (JUN 1997). This clause only applies if helium is required.

52.211-5 Material Requirements (AUG 2000). Any notice will be given to Buyer rather than the Contracting Officer.

52.211-15 Defense Priority and Allocation Requirements (SEP 1990). This clause is applicable if a priority rating is noted in this contract.

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."

52.215-14 Integrity of Unit Prices (excluding subparagraph (b)) (OCT 1997). This clause applies except for contracts at or below \$100,000; construction or architect-engineer services under FAR Part 36; utility services under FAR Part 41; services where supplies are not required; commercial items; and petroleum products.

52.215-15 Pension Adjustments and Asset Reversions (JAN 2004). This Clause applies to this contract if it meets the requirements of FAR 15.408(g).

52.215-19 Notification of Ownership Changes (OCT 1997). This Clause applies to this contract if it meets the requirements of FAR 15.408(k).

52.215-21 Requirements for Cost or Pricing Data or Information Other Than Cost or Pricing Data - Modifications (OCT 1997). This clause applies only if this contract exceeds the threshold set forth in FAR 15.403-4. The term "Contracting Officer" shall mean Buyer.

52.219-8 Utilization of Small Business Concerns (MAY 2004).

52.219-9 Small Business Subcontracting Plan (JAN 2002). 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.

52.222-20 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)) (APR 2002).

52.222-35 Equal Opportunity for Special Disabled, Veterans of the Vietnam Era, and Other Eligible Veterans (DEC 2001). 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 (DEC 2001). This clause applies only if this contract exceeds \$25,000.

52.223-2 Clean Air and Water (APR 84). This clause applies only 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.

52.223-13 Certification of Toxic Chemical Release Reporting (AUG 2003). Except for commercial items as defined in FAR Part 2, this clause applies to competitive procurements expected to exceed \$100,000 (including all options). If Seller is not subject to the Form R filing and reporting requirements, Seller shall inform Buyer which exemption or exemptions in subparagraph (b)(2) of this clause apply.

52.223-14 Toxic Chemical Release Reporting (excluding subparagraph (e)) (JUN 2003). This clause applies only if this contract is not for commercial items as defined in FAR Part 2, was competitively awarded, and exceeds \$100,000 (including all options).

52.225-8 Duty-free Entry (FEB 2000). This clause applies only if this contract identifies supplies to be afforded duty-free entry or if foreign supplies in excess of \$10,000 may be imported into the customs territory of the United States. For the purposes of this clause, the blanks in paragraph (g)(3) are completed as follows: UNITED STATES GOVERNMENT, DEPARTMENT OF DEFENSE, Duty-free entry is claimed pursuant Section XXII, Chapter 98, Subchapter VIII, Item No. 9808.00.30 of the Harmonized Tariff Schedule of the United States. Upon arrival of shipment at port of entry, the importer or authorized agent will notify Commander, Defense Contract Management Area Operations (DCMAO, New York, 201 Varick Street, New York, New York, 10014-4811, Attention DCRN-NCT) for execution of Customs Forms 7501, 7501-A, or 7506 and required duty free entry certificates.

52.225-13 Restrictions on Certain Foreign Purchases (JAN 2004).

52.227-1 Authorization and Consent (JUL 1995).

52.227-1 Alternate I (APR 1984).

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.

52.227-10 Filing of Patent Applications - Classified Subject Matter (APR 1984). This clause applies only if this contract will involve access to classified information.

52.227-11 Patent Rights - Retention by the Contractor (Short Form) (JUN 1997). This clause only applies if this Contract is for experimental, developmental, or research work and Seller is a small business firm or nonprofit organization.

52.227-12 Patent Rights - Retention by the Contractor (Long Form) (JAN 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.

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

52.230-6 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.

52.237-2 Protection of Government Buildings, Equipment, and Vegetation (APR 1984). This clause applies only if work will be performed on a Government installation. "Contracting Officer" shall mean Buyer.

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 (Apr 2003)

52.245-2 Government Property (Fixed Price Contracts) (MAY 2004). 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.

52.245-17 Special Tooling (MAY 2004). This clause applies only if tooling is acquired for or furnished by the Government and to be retained for use by the Seller.

52.245-18 Special Test Equipment (FEB 1993). Change "30 days" to "45 days" in paragraph (b) and (c). The notice of intent to procure special test equipment required by this clause shall be forwarded to the Buyer.

52.247-63 Preference for U.S.-Flag Air Carriers ( JUN 2003). This clause only applies if this contract involves international air transportation.

52.247-64 Preference for Privately-Owned U.S. Flag Commercial Vessels ( APR 2003), Alternate I (APR 2003).. In paragraph (C)(2) "20" and "30" are changed to 10 and 20 respectively.

2. DoD Contracts. 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" mean Seller except as otherwise noted. Unless otherwise provided, the clauses are those in effect as of the date of this contract.

252.203-7001 Prohibition on Persons Convicted of Fraud or Other Defense-Contract Related Felonies (excluding paragraph (g)) (DEC 2004). This clause applies only if this contract exceeds \$100,000 and does not apply to the purchase of commercial items or commercial components. "Contractor" and "contract" are not changed in paragraphs (a) and (b). In paragraph (e), "Government" shall mean Government or Buyer. In paragraph (f), "through the Buyer" is inserted after "Contracting Officer". Paragraph (g) is deleted and "Contracting Officer" shall mean Contracting Officer.

252.223-7001 Hazard Warning Labels (DEC 1991). This clause applies only if Seller delivers hazardous material under this contract.

252.227-7013 Rights in Technical Data - Noncommercial Items (NOV 1995). This clause applies only if the delivery of data is required for noncommercial items under this contract.

252.227-7014 Rights in Noncommercial Computer Software and Noncommercial Computer Software Documentation (JUN 1995). This clause applies only if the delivery of noncommercial computer software or noncommercial computer documentation may be originated, developed or delivered under this contract.

252.227-7015 Technical Data - Commercial Items (NOV 1995). This clause applies only if the delivery of data is required for commercial items under this contract.

252.227-7016 Rights in Bid or Proposal Information (JUN 1995).

252.227-7018 Rights in Noncommercial Technical Data and Computer Software - Small Business Innovation Research (SBIR) Program (JUN 1995). This clause applies only if the delivery of noncommercial technical data or computer software to the Government is required under Buyer's prime contract.

252.227-7027 Deferred Ordering of Technical Data or Computer Software (APR 1988). This clause applies only if technical data or computer software may be generated as part of the performance of this contract.

252.227-7036 Declaration of Technical Data Conformity (JAN 1997). This clause applies only if the delivery of data is required by this contract.

252.227-7037 Validation of Restrictive Markings on Technical Data (SEP 1999). This clause applies only if the delivery of data is required by this contract.

3. If goods or services being procured under this contract are for 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)) (APR 2002).

52.222-35 Affirmative Action for Special Disabled and Vietnam Era Veterans (Dec 2001). 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.

52.247-64 Preference for Privately Owned U.S.-Flag Commercial Vessels (APR 2003). This clause only applies if this contract is (i) a contract or agreement for ocean transportation services; or a construction contract; or (ii) the supplies being transported are (a) Items the Contractor is reselling or distributing to the Government without adding value (generally, the Contractor does not add value to the items when it subcontracts items for f.o.b. destination shipment); or (b) shipped in direct support of U.S. military (1) contingency operations; (2) exercises; or (3) forces deployed in connection with United Nations or North Atlantic Treaty Organization humanitarian or peacekeeping operations.

#### 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 H003). The version of FAR 52.230-4, Consistency in Cost Accounting Practices, incorporated by clause H003 is the version dated August 1992.

(4) (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. NOTIFICATION OF DEBARMENT/SUSPENSION STATUS

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.

**B. INSPECTION**

Buyer's Contract contains Inspection Clauses which provide Government's rights regarding inspection. These inspection rights are extended to inspection of Seller's work. Should the Government or its designated contractor(s) wish to inspect Seller's work at Seller's facility, Seller is required to furnish all reasonable facilities and assistance for the safe and convenient performance of such inspection duties by the Government or its designated contractor(s) under this purchase order. In furtherance of this requirement, the following information and detailed requirements are provided:

(1) The Government has entered into contracts with various contractors for the services of a technical group(s) which will support the project management organization by performing general system engineering, appraising contractor performance and submitting recommendations on a continuing basis as to the technical guidance which should be given the contractor. This clause applies to all levels of subcontractors.

(2) Terms Defined:

(A) "General Systems Engineering" is defined as that portion of system engineering dealing with the overall integration of a system, design compromises among subsystems, definitions of interfaces, analysis of subsystems and supervision of system testing, all to the extent required to assure that the system concept and objectives are being met in an economical and timely manner. (B) "Technical guidance" is restricted to scientific, engineering, or other technical field-of discipline matters directly related to the work to be performed. Such guidance may be provided for the purposes of filling in details, clarifying, interpreting or otherwise serving to accomplish the technical objectives and requirements of the contract.

(3) In the performance of this Order, the Seller agrees to cooperate with the Government and designated Government support contractors by responding to invitations from authorized personnel to meetings, by providing access to technical information and research and development planning data as requested, and by discussing technical matters related to this Order. The Seller further agrees to accept technical guidance as follows:

(A) Technical guidance under this Order will be given to the Seller solely by the Buyers' Authorized Purchasing Representative. While the designated Government support contractors are responsible for recommending technical guidance, neither these personnel or Government personnel are authorized to direct Seller in any manner.

(B) Whenever the process of technical guidance generates a need for a Purchase Order modification, this will be accomplished by the issuance of Change Orders or Modifications to this Order by the Buyers' Authorized Purchasing Representative.

The Seller further agrees to include in each subcontract a clause requiring compliance by lower-tier subcontractors and succeeding levels of subcontractors with the response and access provisions outlined above, subject to coordination with the Seller. This agreement does not relieve the Seller of responsibility to manage the subcontracts effectively and efficiently, nor is it intended to establish privity of contract between the Government or its designated support contractors.

Under this clause, the Seller may require the Government support contractors to sign a "Proprietary Information Agreement / Non-Disclosure Agreement" when proprietary or confidential information is required in the performance of their duties. It is expressly understood that the operations of this clause will not be the basis for an equitable adjustment.

**C. CHANGE ORDER ACCOUNTING**

The buyer may require change order accounting. The Seller, for each change or series of changes, shall, if specifically directed by the Buyer, maintain separate accounts, by job order or other suitable accounting procedure, of all incurred segregable, direct costs (less allocable credits) of work, allocable to the change(s). If so directed, the Seller shall maintain such accounts until the parties agree to an equitable adjustment for the changes ordered by the Buyer or the matter is conclusively disposed of in accordance with the disputes resolution provisions of this Order.

**D. RIGHT TO USE TECHNICAL INFORMATION**

Seller hereby grants and agrees to grant the Buyer and its customers at all higher tiers the right to reproduce and disclose the specifications, records, data, and any other technical information to be delivered by Seller to Buyer under this Order; provided, however, that nothing contained in this clause will be deemed to grant a license under any patent or copyright now or hereafter issued. The substance of this clause, including this sentence, will be included in all lower tier subcontracts hereunder. This clause will not diminish any rights granted to Buyer under any other provisions of this Order.

All specifications, records, drawings, data and other technical information furnished to Seller under this Purchase Order will be returned to Buyer upon request. Notwithstanding the foregoing, Seller may utilize any such information for the manufacture by Seller of goods for end use by the United States Government to the extent that the U.S. Government has the right to the use of such information.

**E. AUDIT RIGHTS**

When certified cost or pricing data is required, the following requirements apply:

- (1) Seller will maintain adequate books, records, documents, other supporting data, sufficient to properly reflect all work performed under this Order of whatever nature claimed to have been incurred and anticipated to be incurred for the performance of the work hereunder.
- (2) Seller's books, records, documents, other supporting data will be made available to the Government, or its authorized representative, for inspection and audit as required by Buyer in conjunction with the negotiation of this contract and any prospective changes, including termination claims, and in the event the Buyer elects to exercise an option for the purchase of additional quantities or requests a price quotation for follow-on orders for the same goods and services.
- (3) In any of the above-mentioned circumstances, Seller will, upon request of the Government, furnish a statement of related historical cost experience by cost element or in such form as stipulated by the Government, together with applicable projections and supporting data. Such statements will be based on current, accurate and complete cost information and will be so certified by a responsible officer.
- (4) Seller agrees to include this clause, including this paragraph (d), in all lower-tier subcontracts when certified cost or pricing is required.

**F. INSURANCE**

The following kinds and minimum amounts of insurance are applicable in the performance of the work under this Purchase Order.

**(1) WORKMEN'S COMPENSATION AND EMPLOYER'S LIABILITY INSURANCE:**

The Seller shall comply with applicable Federal and State worker's compensation and occupational disease statutes. If occupational diseases are not compensable under those statutes, they shall be covered under the employer's liability section of the insurance policy, except when contract operations are so commingled with Seller commercial operations that it would not be practical to require this coverage. Employer liability coverage of at least \$100,000 is required, except in States with exclusive or monopolistic funds that do not permit workers compensation to be written by private carriers.

**(2) GENERAL LIABILITY INSURANCE:**

Bodily injury liability insurance coverage written on the comprehensive form of policy shall be at least \$500,000 per occurrence is required.

**(3) AUTOMOBILE LIABILITY INSURANCE:**

Automobile liability insurance written on the comprehensive form of policy is required. The policy shall provide for bodily injury and property damage liability covering the operation of all automobiles used in connection with performing the contract. Policies covering automobiles operated in the United States shall provide coverage of at least \$200,000 per person and \$500,000 per occurrence of bodily injury and \$20,000 per occurrence for property damage. The amount of liability coverage on other policies shall be

commensurate with any legal requirements of the locality and sufficient to meet normal and customer claims.

**(4) AIRCRAFT PUBLIC AND PASSENGER LIABILITY INSURANCE:**

When aircraft are used in connection with performing the contract, aircraft public and passenger liability insurance coverage shall be at least \$200,000 per person and \$500,000 per occurrence for bodily injury, other than passenger liability, and \$200,000 per occurrence for property damage. Coverage for passenger liability bodily injury shall be at least \$200,000 multiplied by the number of seats or passengers, whichever is greater.

**G. RELEASE OR NEWS INFORMATION**

It is a material condition of this Purchase Order that the Seller shall not release information, including photographs and films, public announcements or confirmation of same, or advertisements on any part of the subject matter of this Purchase Order without the prior written consent of the Buyer. Unauthorized disclosure shall constitute a material breach of this subcontract. It is further understood that this obligation shall not expire upon completion or termination of this Purchase Order, but will continue until rescinded by Buyer. The Seller may request a waiver or release from the foregoing, but shall not deviate therefrom unless authorized to do so in

writing by the Buyer. The Seller is not prohibited from identifying the existence of this Purchase Order pursuant to federal statute or regulation, e.g. Securities Exchange Commission filings.

**H. SAFETY AND ACCIDENT PREVENTION**

In performing work under this Purchase Order on a Government installation, Seller will (i) conform to the specific safety requirements contained in this contract, (ii) for those related activities not directly addressed by this contract, conform to the applicable safety rules prescribed by the Government installation, and (iii) take such additional precautions as Buyer or Government may reasonably require for safety and accident prevention purposes. Any violation of such rules and requirements, unless promptly corrected as directed by Buyer or the Contracting Officer, will be grounds for termination of this Purchase Order in accordance with the default provisions hereof. Buyer may by written order, direct additional safety and accident standards as may be required under Buyer's higher-tier contract, and any adjustments resulting from such direction will be in accordance with the Changes clause of this Purchase Order.

**I. PERSONAL CONDUCT**

(1) The Seller, its employees, and its sub-tier subcontractors shall comply with the conduct requirements in effect at the Government's work site. The Government reserves the right to exclude or remove from the work site any employee of the subcontractor or of a sub-tier subcontractor whom the Government deems careless, uncooperative, or whose continued employment on the work site is deemed by the Government to be contrary to the public interest.

(2) The seller shall inform its employees that the Government has a zero tolerance policy for harassing behavior. Any Seller or sub-tier subcontractor employee determined by the Government to have engaged in harassing behavior shall be immediately escorted from the premises and denied further access to the worksite. The Seller shall emphasize this requirement to its employees.

(3) Exclusion from the worksite under the circumstances described in this clause shall not relieve the Seller from full performance of the Purchase Order, nor will it provide the basis for an excusable delay or any claims against Buyer or Government.

**J. OZONE DEPLETING SUBSTANCES**

(1) Definition: "Ozone-depleting substance", as used in this clause, means any substance designated as Class I by the Environmental Protection Agency (EPA) (40 CFR Part 82), including but not limited to chlorofluorocarbons, halons, carbon tetrachloride, and methyl chloroform; or any substance designated as Class II by EPA (40 CFR Part 82), including but not limited to hydrochlorofluorocarbons.



(2) The Seller shall label products which contain or are manufactured with ozone-depleting substances in the manner and to the extent by 42 U.S.C. 7671j (b), (c), and (d) and 40 CFR Part 82, Subpart E, as follows:

“WARNING: Contains (or manufactured with, if applicable) \_\_\_\_\_, a substance(s) which harm(s) public health and environment by destroying ozone in the upper atmosphere.”

**K. PROHIBITION ON STORAGE AND DISPOSAL OF TOXIC AND HAZARDOUS MATERIAL**

(1) Definitions: As used in this clause:

(A) “Storage” means a non-transitory, semi-permanent or permanent holding, placement, or leaving of material. It does not include temporary accumulation of a limited quantity of a material used in or a waste generated or resulting from authorized activities, such as servicing, maintenance, or repair of items, equipment, or facilities.

(B) “Toxic or hazardous materials” means those materials identified in the “EPA Title III List of Lists.”

(2) The Seller is prohibited from transporting, storing, disposing or using toxic or hazardous materials in performing this Purchase Order except for those materials listed in (3) below or when authorized in writing by Buyer.

(3) Toxic and hazardous materials authorized for use in the performance of this contract are as listed below:

<u>Material</u>	<u>Material Usage</u>	<u>Hazard</u>
MMH, NTO	Fuel	Toxic, Flammable
Hydrazine	Fuel	Toxic, Flammable
Potassium Hydroxide	Electrolyte Battery Cells	Corrosion
Zirconium (potassium perchlorate)	Initiators	Flammable
Hydrogen Gas	Battery Cells	Flammable
Ammonia	Heat Pipes	Toxic
GaAs	Solar Cells	Toxic
Hercules hi-temp explosive	Ordnance Devices	Flammable

**L. APPROVAL TO ACQUIRE SPECIAL TEST EQUIPMENT**

(1) General Requirement: Buyer approval is required prior to the purchase or fabrication of special test equipment (STE) when the cost for such is directly charged to this contract.

(2) Approval Process: The Seller shall request, in writing to Buyer’s Authorized Procurement Representative, approval to acquire or fabricate STE.

**M. SPECIAL TERMINATION COSTS**

This clause is applicable only if this Purchase Order is Incrementally Funded.

(1) Definition: "Special termination costs" as used in this clause, means only costs in the following categories as defined in Part 31 of the Federal Acquisition Regulation (FAR):

- (A) Severance pay, as provided by FAR 31.205-6(g);
- (B) Reasonable costs continuing after termination, as provided in FAR 31.205-42(b);
- (C) Settlement of expenses, as provided in FAR 31.205-42(g);
- (D) Costs of return of field service personnel from sites, as provided in FAR 31.205-35 and FAR 31.205.46(c); and
- (E) Costs in paragraphs (a) (1), (2), (3), and (4) of this clause to which lower-tier subcontractors may be entitled in the event of termination.

(2) Notwithstanding any "Limitation of Funds" clause of this Purchase Order, the Seller shall not include in its estimate of costs incurred or to be incurred, any amount for special termination costs to which the Seller may be entitled in the event this Purchase Order is terminated for the convenience of Buyer.

(3 ) The Seller agrees to perform this Purchase Order in such a manner that the Seller's claim for special termination costs will not exceed \$\_\_\_\_\_\*, Buyer shall have no obligation to pay the Seller any amount for the special termination costs in excess of this amount.

(4) In the event of termination for the convenience of Buyer, this clause shall not be construed as affecting the allowability of special termination costs in any manner other than lifting the maximum amount of the costs payable by Buyer.

(5) This clause shall remain in full force and effect until this contract is fully funded. \*The amount specifically identified in the Maximum Termination Liability Funding Schedule or CFSR, as applicable, at the time of notification.

**N. CONTRACTOR COMPLIANCE WITH ENVIRONMENTAL, OCCUPATIONAL SAFETY AND HEALTH AND SYSTEM SAFETY REQUIREMENTS**

(1) In performing work under this Purchase Order, the Seller shall comply with:

- (A) All applicable Federal, State and Local environmental, occupational safety and health, and system safety laws, regulations, policies and procedures in effect as of the date the contract is executed;
- (B) Any regulations, policies and procedures in effect at any Government facility where work will be performed;
- (C) Any contract specific requirements; and
- (D) Any Buyer direction.

(2) Conflicting Requirements: The Seller shall provide written notification to the Buyer of any conflicts in requirements. The notification will describe the conflicting requirements and their source; provide an estimate of any impact to the contract's cost, schedule and any other terms and conditions; and provide a recommended solution. The notification will also identify any external organizations that the Buyer or the Seller may have to coordinate with in order to implement the solution. The Buyer will review the notification and provide written direction. Until the Buyer issues that direction, the Seller will continue performance of the contract, to the extend practicable, giving precedence in the following order to requirements that originate from:

- (A) Federal, state and local laws, regulations, policies and procedures;
- (B) Government facility regulations, policies and procedures; and
- (C) Purchase Order specific direction.

(3) Material Condition of Contract: Environmental, occupational safety and health, and system safety requirements are a material condition of this contract. Failure of the Seller to maintain and administer an environmental and safety program that is compliant with the requirements of this contract shall constitute grounds for termination for default.

(4) The Seller shall include this clause in all subcontracts.

**O. CALENDAR DATE AND ORDINAL DATE INTERCHANGE REQUIREMENTS**

American National Standard ANSI X3.30-1985, Representation for Calendar Date and Ordinal Date Information Interchange is implemented for this Purchase Order and must be followed.

**P. TIMELY NOTICE OF LITIGATION**

- (1) The Seller hereby agrees to immediately give notice to the Buyer of any anticipated or current litigation involving or in any way relating to this Purchase Order or pertinent subcontracts. Said notice shall include all relevant information with respect hereto.
- (2) The Government shall have access to and the right to examine any pertinent books, documents, papers, and records of Seller or its subcontractor(s) involving transactions related to any such litigation.
- (3) The Seller agrees to insert this requirement in any subcontract under this contract.

**Q. FOREIGN NATIONALS – FOREIGN SOURCES**

- (1) For the purposes of this clause,
  - (A) Foreign Nationals are those persons not citizens of, not nationals of, or resident immigrant to, the United States;
  - (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) not owned and controlled by citizens or immigrant aliens of the United States.
- (2) Nothing in this clause is intended to waive any requirement imposed by any other U.S. Government agency with respect to employment of foreign nationals or export-controlled data and information.
- (3) Seller acknowledges that equipment and technical data generated or delivered in the performance of this contract is controlled by the International Traffic in Arms Regulation (ITAR), 22 CFR Sections 121 through 128, and require an export license before assigning any foreign national to perform work under this contract or before granting access to foreign nationals to any equipment and technical data generated or delivered under this contract (see 22 CFR Section 125). Seller agrees to notify 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 nationals or their representatives. This notification will include the name and country of origin of the foreign national or representative, the specific work, equipment, or data to which the person will have access, and whether the foreign national is cleared to have access to technical data DoD 5220.22-M, National Industrial Security Program Operating Manual (NISPOM).