

CUSTOMER CONTRACT REQUIREMENTS
PAC-3 Government Property
CUSTOMER CONTRACT 4300226620

CUSTOMER CONTRACT REQUIREMENTS

The following customer contract requirements apply to this purchase contract.

GOVERNMENT PROPERTY
(FIXED PRICE PURCHASE ORDER, FIXED PRICE OR COST TYPE PRIME)

The Buyer's Purchase Order Terms and Conditions, as the case may be, are hereby amended by the addition of the following provisions:

I. GENERAL

- A. *Evidence of Satisfactory Tools/Test Equipment.*** Invoices for items of tooling and or test equipment will not be rendered until such items have been proved. Evidence of satisfactory items will be indicated by Buyer's acceptance of a satisfactory part produced and/or tested by such tools and/or test equipment except as specifically agreed elsewhere in this order. A certified listing of ST/STE is also required prior to payment.
- B. *Use of Government Property.*** The Government property shall be used only for performing this purchase order, unless otherwise provided in this purchase order or approved by the Buyer.
- C. *Identification of Tools/Test Equipment.*** Unless otherwise directed by Buyer, Seller will make use of Buyer's numbering system and identification numbers for all items of special tooling and special test equipment acquired hereunder. Each item shall be marked with Buyer's identification number, and as advised by Buyer, one of the following: "USA," "USN," "USAF," or "NASA." When it is impractical to mark such tools acquired hereunder, Seller shall request marking instructions from Buyer.
- D. *Inventory.*** All special tooling and/or special test equipment to which this Attachment is applicable in the possession of Seller shall be subject to physical inventory by the Seller as follows:
- (1) Special tooling shall be physically inventoried at least once every three years commencing with the date of this purchase order.
 - (2) Special test equipment shall be physically inventoried at least once every three years commencing with the date of this purchase order.
 - (3) Immediately upon termination or completion of related production orders, the Seller shall perform a physical inventory of special tooling and/or special test equipment adequate for disposal purposes.
 - (4) Personnel who perform the physical inventories shall not be the same individuals who maintain the property records or have custody of the property unless the size of the Seller's operation is so small as to make it impracticable for others to do so.
 - (5) Seller shall report the results of the inventory to the Buyer, in a format acceptable to the Buyer. Unrecorded property (overages) and losses (shortages) shall be clearly identified and described in the report. Inventory reports shall be furnished the Buyer as follows:
 - (a) Special Tooling: Within 15 days after completion of the three year inventory cycle.
 - (b) Special Test Equipment: Within 15 days after completion of the three year inventory cycle.
 - (c) Upon Termination or Completion: As directed by the Buyer.

(6) Physical Inventory, as used herein, consists of sighting, describing, recording and reporting the property concerned and reconciling the property recorded and reported with the property records. The Seller's property control system shall contain an adequate locator system or technique to permit the location of any item of property within a reasonable period of time after request thereof.

E. **Excess Property.** The Seller shall report to the Buyer all Government or Buyer property in excess of the amounts needed to complete full performance under the Buyer purchase orders pursuant to which it was provided, or other existing contracts or purchase orders which authorized the use of such property, as promptly as possible after disclosure of the condition.

II. SPECIAL TOOLING

A. **Definition.** "Special tooling" means jigs, dies, fixtures, molds, patterns, taps, gauges, other equipment and manufacturing aids, all components of these items, and replacements of these items, that are of such a specialized nature that, without substantial modification or alteration, their use is limited to the development of production of particular suppliers or parts thereof, or the performance of particular services. It does not include material, special test equipment, facilities (except foundations and similar improvements necessary for installing special tooling), general or special machine tools, or similar capital items. Special tooling, for the purpose of this clause, does not include any item acquired by the Seller before the effective date of this purchase order, or replacement of such items, whether or not altered or adapted for use in performing this purchase order, or items specially excluded by the schedule of this purchase order.

B. **Use of Special Tooling.** The Seller agrees to use the special tooling only in performing this purchase order or as otherwise approved by Buyer.

C. **Lists of Special Tooling.** Seller shall prepare and submit to Buyer promptly after execution of this order, if not previously submitted, a Form 3-80226 R2 listing all items of special tooling and the respective cost of each, which Seller plans to manufacture or acquire for the performance of work hereunder. It shall specify the nomenclature, related product part number (or service performed), tool number, and unit or group cost of the special tooling. This tooling list shall be maintained on a current basis and periodically, as required by Buyer, Seller shall submit to Buyer a revised list indicating all changes therein. (See Paragraph (D) below for tooling that has become obsolete).

D. **Changes in Design.** Changes in the design or specifications of the end items being produced under this purchase order may affect the interchangeability of end item parts. In such an event, unless otherwise agreed to by the Buyer, the Seller shall notify the Buyer of any part not interchangeable with a new or superseding part. Pending disposition instructions, such usable tooling shall be retained and maintained by the Seller.

E. **Seller's Offer to Retain Special Tooling.** The Seller may indicate a desire to retain certain items of special tooling at the time it furnishes a list or notification pursuant to Paragraphs P(C), (D), or (H) of this clause. (Any list furnished in accordance with Paragraphs (D) or (H) hereof, shall be furnished on Form SF-1432.) The Seller shall furnish a written offer designating those items that it wishes to retain by specifically listing the items or by listing the particular products, parts, or services for which the items were used or designed. The offer shall be made on one of the following basis:

(1) An amount shall be offered for retention of the items free of any Buyer or Government Interest. This amount should ordinarily not be less than the current fair value of the items, considering, among other things, the value of the items to the Seller for use in future work.

(2) Retention may be requested for a limited period of time and under terms as may be agreed to by the Buyer, the Government and the Seller. This temporary retention is subject to final disposition pursuant to Paragraph (1) of this clause.

F. **Property Control Records.** The Seller shall maintain adequate property control records of all special tooling in accordance with its normal industrial practice and in compliance with Paragraph IV.(E) hereof. The records shall be made available for Buyer or Government inspection at all reasonable times. The Seller shall identify all special tooling subject to this clause with an approximate stamp, tag, or other make in accordance with Paragraph I.C. hereof.

- G. Maintenance.** The Seller shall take all reasonable steps necessary to maintain the identity and existing condition of usable items of special tooling from the date such items are no longer needed by the Seller until final disposition under Paragraph (I) of this clause. These maintenance requirements do not apply to those items designated by the Buyer for disposal as scrap or identified as of no further use. The Seller is not required to keep unneeded item of special tooling in place.
- H. Final List of Special Tooling.** When all or a substantial part of the work under this contract is completed or terminated, the Seller shall, when requested by Buyer, furnish the Buyer a final list of special tooling on Form SF-1432 with the same information as required for the initial list under Paragraph (C) of this clause. The final list shall include all items not previously reported under Paragraph (C). The Buyer may delay any such request until the completion of this contract together with the completion of other purchase orders and subcontracts authorizing the use of the special tooling under Paragraph (B) of this clause. Special tooling that has become obsolete as a result of changes in design or specification need not be reported except as provided for in Paragraph (D) above.
- I. Disposition Instructions.** The Buyer shall provide the Seller with disposition instructions for special tooling identified in a list or notice properly submitted under Paragraphs (D) or (H) of this clause. The Buyer may direct disposition by any of the methods listed in Subparagraphs (1) through (4) of this Paragraph, or a combination of such methods.
- (1) The Buyer shall give the Seller a list specifying the products, parts, or services for which the Government may require special tooling and request the Seller to transfer title (to the extent not previously transferred under any other clause of this purchase order) and deliver to the Government all usable items of special tooling that were designed for or used in the production or performance of such products, parts, or services and that were on hand when such production or performance ceased.
 - (2) The Buyer may accept or reject any offer made by the Seller under Paragraph (E) of this clause to retain items of special tooling or may request further negotiation of the offer. The Seller agrees to enter into the negotiations in good faith. The net proceeds from the Buyer's acceptance of the Seller's retention offer shall either be deducted from amounts due the Seller under this purchase order or shall be otherwise paid to the Buyer of the Government as directed by the Buyer.
 - (3) The Buyer may direct the Seller to sell, or dispose of as scrap, for the account of the Buyer or Government, any special tooling reported by the Seller under this clause. The net proceeds of all sales shall either be deducted from amounts due the Seller under this purchase order or shall be otherwise paid to the Buyer or the Government as directed by the Buyer. To the extent that the Seller incurs any costs occasioned by compliance with such directions, for which it is not otherwise compensated, the purchase order price shall be equitably adjusted in accordance with the Changes clause of this purchase order.
 - (4) The Buyer may furnish the Seller with a statement disclaiming further Buyer or Government interest or rights in any of the special tooling listed.
- J. Storage or Shipment.** The Seller shall promptly transfer to the Government title to the special tooling specified by the Buyer and arrange for either the shipment or the storage of such tooling in accordance with the final disposition instructions in Subparagraph(I)(1) of this clause. Tooling to be shipped shall be properly packaged, packed and marked in accordance with the directions of the Buyer. Tooling to be stored shall be stored pursuant to a storage agreement between the Buyer and the Seller or the Government and the Seller, as directed by the Buyer. Tooling shipped or stored shall be accompanied by operation sheets or other appropriate data necessary to show the manufacturing operations or processes for which the items were used or designed. To the extent that the Seller incurs costs for authorized storage or shipment under this paragraph and not otherwise compensated for, the purchase order price shall be equitably adjusted in accordance with the Changes clause of this purchase order.
- K. Subcontract Provisions.** In order to perform this purchase order, the Seller may place subcontracts (including purchase orders) involving the use of special tooling. If the full cost of the tooling is charged to those subcontracts, the Seller agrees to include in the subcontracts appropriate provisions to obtain

Buyer and Government rights comparable to the rights of the Buyer and the Government under this clause (unless the Seller, the Buyer and the Government agree that such rights are not of substantial interest to the Government.) The Seller agrees to exercise such rights for the benefit of the Government as directed by the Buyer.

III. SPECIAL TEST EQUIPMENT

- A. *Definition.*** "Special Test Equipment," as used in this clause, means either single or multipurpose integrated test units engineered, designed, fabricated, or modified to accomplish special purpose testing in performing a purchase order. These testing units comprise electrical electronics, hydraulic, pneumatic, mechanical, or other items or assemblies of equipment that are mechanically, electrical, or electronically interconnected so as to become a new functional entity, causing the individual item or items to become interdependent and essential in performing special purpose testing in the development or production of peculiar suppliers or services. It does not include material, special tooling, facilities (except foundations and similar improvements necessary for installing special test equipment), and plant equipment items used for general plant testing purposes.
- B. *Notice of Intent to Acquire Special Test Equipment.*** The Seller may either acquire or fabricate special test equipment at Buyer's expense when the equipment is not otherwise itemized in this purchase order and the prior approval of the Buyer has been obtained. The Seller shall provide the Buyer with a written notice, at least forty-five days in advance, of the Seller's intention to acquire or fabricate the special test equipment. As a minimum, the notice shall also include an estimated aggregate cost of all items and components of the equipment the individual cost of which is less than \$5,000 and the following information on each item or component of equipment costing \$5,000 or more:
1. The end use application and function of each proposed special test unit, identifying special characteristics and the reasons for the classification of the test unit as special test equipment.
 2. A complete description identifying the items to be acquired and the items to be fabricated by the Contractor.
 3. The estimated cost of the item of special test equipment or component.
 4. A statement that intra-plant screening of Seller, Buyer and Government-owned special test equipment and components has been accomplished and that none are available for use in performing this contract.
- C. *Buyer or Government Furnished Special Test Equipment.*** The Buyer or the Government may furnish any special test equipment or components rather than approve their acquisition or fabrication by the Seller. Such Buyer/Government-furnished items shall be subject to the Government Property clause herein, except that the Buyer or the Government shall not be obligated to deliver such items any sooner than the Seller could have acquired or fabricated them after expiration of the forty-five day notice period in Paragraph (B) of this clause. However, unless the Buyer or the Government notifies the Seller of its decision to furnish the items within the forty-five day notice period, the Seller may proceed to acquire or fabricate the equipment or components subject to any other applicable provisions of this purchase order.
- D. *Subcontract Provisions.*** The Seller shall, in any subcontract order that provides that special test equipment or components may be acquired or fabricated for the Government, insert provisions that conform substantially to the language of this clause, including this Paragraph (D). The Seller shall furnish the names of such subcontractors to the Buyer.
- E. *Changes.*** If an engineering change requires either the acquisition or fabrication of new special test equipment or substantial modification of existing special test equipment, the Seller shall comply with Paragraph (B) above. In so complying, the Seller shall identify the change order which requires the proposed acquisition, fabrication, or modification.
- F. *General.*** Special test equipment and components thereof approved by Buyer as of the date of this order are listed in this order. If this order provides that the Seller will acquire other special test equipment and components thereof, the exact nature of which is currently being determined and which are unknown as of the date of this order, Seller shall not acquire any such items unless such

acquisitions shall have been authorized pursuant to Paragraphs (B) or (C) above. Buyer shall amend this purchase order to reflect the acquisition of any such authorized items provided, however, that such amendment shall not be grounds for any adjustment of purchase order price or delivery schedules unless this purchase order includes an adjustment clause expressly for that purpose.

- G. *Equitable Adjustment.*** If the Buyer furnishes or causes to be furnished, any special test equipment or components thereof under Paragraph (C) above, any affected provisions of this order shall be equitably adjusted in accordance with the procedures of the Changes clause hereof.

IV. GOVERNMENT PROPERTY

A. *Government-Furnished Property.*

- (1) The Buyer shall deliver or cause to be delivered to the Seller, for use in connection with and under the terms of this purchase order, the Government-furnished property described in this purchase order, if any, together with any related data and information that the Seller may request and is reasonably required for the intended use of the property (hereinafter referred to as "Government-furnished property").
- (2) The delivery or performance dates for this purchase order are based upon the expectation that Government-furnished property suitable for use (except for property furnished "as-is") will be delivered to the Seller at the times stated in the purchase order or, if not so stated, in sufficient time to enable the Seller to meet the purchase order delivery or performance dates.
- (3) If Government-furnished property is received by the Seller in a condition not suitable for the intended use, the Seller shall, upon receipt of it, notify the Buyer, detailing the facts, and, as directed by the Buyer and at Buyer's expense, either repair, modify, return, or otherwise dispose of the property. After completing the directed action and upon written request of the Seller, the Buyer shall make an equitable adjustment as provide in Paragraph (H) of this clause.
- (4) If Government-furnished property is not delivered to the Seller by the required time, the Buyer shall, upon Seller's timely written request, make a determination of the delay, if any, caused the Seller and shall make an equitable adjustment in accordance with Paragraph (H) of this clause.

B. *Changes in Government-Furnished Property.*

- (1) The Buyer may, by written notice, (I) decrease the Government-furnished property provided or to be provided under this purchase order, or (II) substitute other Government-furnished property for the property to be provided by the Buyer, or to be acquired by the Seller for the Government, under this purchase order. The Seller shall promptly take such action as the Buyer may direct regarding the removal, shipment, or disposal of the property covered by such notice.
- (2) Upon the Seller's written request, the Buyer shall make an equitable adjustment to the purchase order in accordance with Paragraph (H) of this clause, if the Buyer has agreed in the purchase order to make the property available for performing this purchase order and there is any (I) decrease or substitution in this property pursuant to Subparagraph (B)(1) above; or, (II) withdrawal of authority to use this property, if provided under any other purchase order or lease.

(C) *Title in Government Property.*

- (1) The Government shall retain title to all Government-furnished property.
- (2) All Government-furnished property and all property acquired by the Seller, title to which vests in the Government under this paragraph (collectively referred to as "Government property"), are subject to the provisions of this clause. Title to Government property shall not be affected by its incorporation into or attachment to any property not owned by the Government, nor shall Government property become a fixture or lose its identity as personal property by being attached to any real property.

- (3) Title to each item of facilities, special test equipment, and special tooling (other than that subject to a special tooling clause) acquired by the Seller for the Government under this purchase order shall pass to and vest in the Government when its use in performing this purchase order commences or when the Government has paid for it, whichever is earlier, whether or not title previously vested in the Government.
- D. Use of Government Property.** The Government property shall be used only for performing this purchase order, unless otherwise provided in this purchase order or approved by the Buyer.
- E. Property Administration.**
- (1) The Seller shall be responsible and accountable for all Government property provided under this purchase order and shall comply with Federal Acquisition Regulation (FAR) Subpart 45.5, as in effect on the date of this purchase order.
- (2) The Seller shall establish and maintain a program for the use, maintenance, repair, protection, and preservation of Government property in accordance with sound industrial practice and the applicable provisions of Subpart 45.5 of the FAR.
- F. Access.** The Buyer, the Government and all their designees shall have access at all reasonable times to the premises in which any Government property is located for the purpose of inspecting the Government property.
- G. Risk of Loss.** Unless otherwise provided in this purchase order, the Seller assumes the risk of, and shall be responsible for, any loss or destruction of, or damage to, Government property upon its delivery to the Seller or upon passage of title to the Government under Paragraph (C) of this clause. However, the seller is not responsible for reasonable wear and tear to Government property or for Government property properly consumed in performing this purchase order. The Seller shall repair, renovate, and take other action with respect to damaged Government property as the Buyer directs, at Seller's expense.
- H. Equitable Adjustment.** When this clause specifies an equitable adjustment, it shall be made to any affected purchase order provision in accordance with the procedures of the Changes clause. When appropriate, the Buyer may initiate an equitable adjustment in favor of the Buyer. The right to an equitable adjustment shall be the Seller's exclusive remedy. The Buyer or the Government shall not be liable to suit for breach of contract for:
- (1) Any delay in delivery of Government-furnished property;
- (2) Delivery of Government-furnished property in a condition not suitable for its intended use;
- (3) A decrease in or substitution of Government-furnished property; or,
- (4) Failure to repair or replace Government property for which the Buyer or the Government is responsible.
- I. Final Accounting and Disposition of Government Property.** Upon completing this purchase order or at such earlier dates as may be fixed by the Buyer, the Seller shall submit, in a form acceptable to the Buyer, inventory schedules covering all items of Government property (including any resulting scrap) not consumed in performing this purchase order or delivered to the Government. The Seller shall prepare for shipment, deliver F.O.B. origin, or dispose of the Government property as may be directed or authorized by the Buyer. The net proceeds of any such disposal shall be credited to the purchase order price or shall be paid to the Buyer or the Government as the Buyer directs.
- (J) Abandonment and Restoration of Seller's Premises.** Unless otherwise provided herein, the Buyer of the Government:

- (1) May abandon any Government property in place, at which time all obligations of the Buyer or the Government regarding such abandoned property shall cease; and,
- (2) Has no obligation to restore or rehabilitate the Seller's premises under any circumstances (e.g., abandonment, disposition upon completion of need, or upon purchase order completion). However, if the Government-furnished property (listed in the purchase order) is withdrawn or is unsuitable for the intended use, or if other Government property is substituted, then the equitable adjustment under Paragraph (H) of this clause may properly include restoration or rehabilitation costs.

K. *Communication.* All communications under this clause shall be in writing.

L. *Overseas Purchase Order.* If this purchase order is to be performed outside of the United States of America, its territories, or possessions, the words "Government" and "Government-furnished" (wherever they appear in this clause) shall be construed as "United States Government" and "United States Government-furnished," respectively.