

Common Terms and Conditions Guide

NAS4-00041

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 (JUL 1995) [excluding subparagraph (c)(1)]. This clause applies only if this contract exceeds \$100,000. Buyer may withhold from 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.

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 or recover from Seller the amount of the reduction.

52.203-11 Certification and Disclosure Regarding Payments to Influence Certain Federal Transactions (APR 1991)

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."

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.

52.211-5 New Materials (AUG 2000)

52.211-15 Defense Priority and Allocation Requirements (SEP 1990)

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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 \$500,000. 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 \$500,000. 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 only if under this contract certified cost or pricing data is required or preaward or postaward cost determinations are subject to FAR part 31. Buyer may withhold or recover from Seller such sums as the Contracting Officer withholds or recovers from Buyer because of liabilities of Seller or its subcontractors under this clause. "Contracting Officer" shall mean Buyer.

52.215-18 Reversion or Adjustment of Plans for Postretirement Benefits (PRB) Other Than Pensions (OCT 1997). This clause applies only if under this contract certified cost or pricing data is required or preaward or postaward cost determinations are subject to FAR subpart 31.2. Buyer may withhold or recover from Seller such sums as the Contracting Officer withholds or recovers from Buyer because of liabilities of Seller or its subcontractors under this clause. "Contracting Officer" shall mean Buyer.

52.215-19 Notification of Ownership Changes (OCT 1997). This clause applies only if under this contract certified cost or pricing data is required or preaward or postaward cost determinations are subject to FAR subpart 31.2. Buyer may withhold or recover from Seller such sums as the Contracting Officer withholds or recovers from Buyer because of liabilities of Seller or its subcontractors under this clause. "Contracting Officer" shall mean Buyer.

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

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this contract exceeds \$500,000. "Contracting Officer" shall mean Buyer in subparagraph (a).

52.219-8 Utilization of Small, Small Disadvantaged and Women-Owned Small Business Concerns (OCT 1999)

52.219-9 Small, Small Disadvantaged and Women-Owned Small Business Subcontracting Plan (OCT 1999). This clause applies only if this contract exceeds \$500,000 and Seller is not a small business concern. In paragraph (c), "Contracting Officer" shall mean Buyer.

52.222-4 Contract Work Hours and Safety Standards Act -- Overtime Compensation (JUL 1995). This clause applies only if this contract exceeds \$100,000. Buyer may withhold or recover from Seller such sums as the Contracting Officer withholds or recovers from Buyer because of liabilities of Seller or its subcontractors under this clause.

52.222-21 Prohibition of Segregated Facilities (FEB 1999)

52.222-26 Equal Opportunity (FEB 1999) [subparagraphs (b)(1) through (11)]

52.222-35 Affirmative Action for Disabled Veterans and Veterans of the Vietnam Era (APR 1998). This clause applies only if this contract is for \$10,000 or more.

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 Disabled Veterans and Veterans of the Vietnam Era (JAN 1999). This clause applies only if this contract is for \$10,000 or more.

52.225-13 Restrictions on Certain Foreign Purchases (JUL 2000)

52.227-1 Authorization and Consent (JUL 1995), Alternate I (APR 1984)

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.

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

52.227-14 Rights in Data -- General (JUN 1987) -- As modified by NASA FAR Supplement 18-52.227-14. This clause applies only if data will be produced, furnished, or acquired under this contract.

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52.230-6 Administration of Cost Accounting Standards (NOV 1999). This clause applies only if clause 3050 or 3051 is incorporated in this contract. Add "Buyer and the" before "Contracting Officer" in paragraph (f).

52.237-2 Protection of Government Buildings, Equipment, and Vegetation (APR 1984). This clause applies only if this contract requires work on a Government installation.

52.244-5 Competition in Subcontracting (DEC 1996)

52.244-6 Subcontracts for Commercial Items and Commercial Components (OCT 1998)

52.245-2 Government Property (DEC 1989)

52.245-18 Special Test Equipment (FEB 1993)

52.248-1 Value Engineering (FEB 2000) [excluding subparagraph (f)]. This clause applies only if this contract is for \$100,000 or more. "Contracting Officer" shall mean Buyer. If a Value Engineering Change Proposal is accepted by the Government, Seller's share will be 50% of the instant, concurrent and future contract net acquisition savings and collateral savings that Buyer receives from the Government. Seller's negotiated share of net acquisition savings or collateral savings shall not reduce the Government's share of concurrent or future savings or collateral savings. Buyer's payments to Seller under this clause are conditioned upon Buyer's receipt of authorization for such payments from the Government.

2. NASA Contracts. If this contract is placed under a National Aeronautics and Space Administration contract, the following contract clauses are incorporated by reference from the National Aeronautics and Space Administration Federal Acquisition Regulation Supplement and apply to the extent indicated. In all of the following clauses, "Contractor" means Seller. Unless otherwise provided, the clauses are those in effect as of the date of this contract.

18-52.204-76 Security Requirements for Unclassified Automated Information Technology Resources (JUL 2000). This clause applies only if this contract requires unescorted or unsupervised physical access or electronic access to limited or controlled areas, systems, programs and data as set forth in this contract.

18-52.208-81 Restrictions on Printing and Duplicating (AUG 1993). This clause applies only if this contract involves a requirement for printing and/or duplicating/copying in excess of the limits specified in paragraph (c) of the referenced clause.

18-52.210-75 Packaging and Marking (SEP 1990), Alternate I (SEP 1990)

18-52.219-74 Use of Rural Area Small Businesses (SEP 1990). This clause applies only if this contract offers subcontracting possibilities.

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18-52.219-75 Small Business Subcontracting Reporting (MAY 1999). This clause applies only if this contract exceeds \$500,000 and Seller is not a Small Business concern

18-52.219-76 NASA 8 Percent Goal (JUL 1997). This clause applies only if Seller is not a small business.

18-52.223-70 Safety and Health (SEP 1993). This clause applies only if this contract exceeds \$1,000,000; requires construction, repairs, or alteration in excess of \$25,000; or involves the use of hazardous materials or operations.

18-52.227-14 Rights in Data - General (OCT 1995). This clause applies only if data will be produced, furnished, or acquired under this contract except contracts for basic or applied research with universities or colleges.

18-52.227-70 New Technology (NOV 1998). This clause applies only if this contract is for experimental, developmental or research work and Seller is not a small business or nonprofit organization.

18-52.227-72 Designation of New Technology Representative and Patent Representative (JUL 1997). Insert in paragraph (a): New Technology Representative and Patent Representative: NASA Dryden Flight Research Center, ATTN: Ms. Yvonne Kellogg, PO Box 273, MS D-4839A, Edwards, CA 93523-0273.

18-52.228-75 Minimum Insurance Coverage (OCT 1988). This clause applies only if this contract requires work on a Government installation.

18-52.235-70 Center for Aerospace Information (NOV 1992)

18-52.237-70 Emergency Evacuation Procedures (DEC 1988). This clause applies only if this contract requires work on a Government installation.

18-52.242.73 NASA Contractor Financial Management Reporting (JUL 2000). This clause applies only if this contract is a cost-type, price redetermination or FPI contract. "Contracting Officer" shall mean Buyer's Authorized Procurement Representative.

18-52.243-70 Engineering Change Proposal (FEB 98)

18-52.244-70 Geographic Participation in the Aerospace Program (APR 1985). This clause applies only if this contract is for \$100,000 or more.

18-52.245-70 Acquisition of Centrally Reportable Equipment (JUL 1997) [excluding paragraph (b)(3)]. "Contracting Officer" shall mean Buyer. If the equipment is to be acquired as Special Test Equipment (STE), Seller shall submit the applicable request 75 days in advance of the date Seller intends to acquire the equipment. No later than 30 September of each year, Seller will provide Buyer a list of all property acquired under this clause. The list will

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include at a minimum: (1) part number; (2) serial number; (3) modification number, if any; (4) nomenclature; (5) acquisition cost; (6) acquisition date; and (7) the date of the prior year's list.

18-52.245-73 Financial Reporting of Government-Owned/Contractor-Held Property (SEP 2000). Seller will submit annual reports to Buyer no later than October 15.

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 1999). 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.

252.225-7014, Preference for Domestic Specialty Metals (MAR 1998).

252.247-7023 Transportation of Supplies by Sea (MAR 2000). This clause applies only if this contract exceeds \$100,000 and are a type of supplies described in paragraph (b)(2) of this clause. In paragraph (c), "45 days" is changed to "60 days". In paragraph (g) "Government" means Buyer.

252.247-7024 Notification of Transportation of Supplies by Sea (MAR 2000). "Contracting Officer" and, in the first sentence of paragraph (a), "Contractor" mean Buyer. This clause applies only if the supplies being transported are noncommercial items or commercial items that (i) Seller is reselling or

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distributing to the Government without adding value (generally, Seller does not add value to items that it contracts for f.o.b. destination shipment); (ii) are shipped in direct support of U.S. military contingency operations, exercises, or forces deployed in humanitarian or peacekeeping operations; or (iii) are commissary or exchange cargoes transported outside the Defense Transportation System in accordance with 10 U.S.C. 2643.

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 1996.

(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. Packaging and Marking

- (1) Seller shall preserve, pack, and mark for shipment all items deliverable under this contract in accordance with good commercial practices and adequate to ensure both acceptance by common carrier and safe transportation at the most economical rates.
- (2) Seller's markings on shipping containers shall be clearly legible from a distance of 36 inches. Seller may mark by stencil, rubber stamp, or lacquer over a coated gummed label.
- (3) Seller shall develop packaging, handling, and transportation records, if required, from engineering and packaging data. The Contracting Officer technical representative is the approving official of the records and special packaging data under paragraph 302 of NHB 6000.1.
- (4) Seller's packaging specifications or procedures may be utilized if they are (i) not in conflict with cited NASA specifications and (ii) approved in writing by the Contracting Officer. In any contract between NASA's specifications and procedures and Seller's specifications and procedures, the NASA documents cited in this clause shall take precedence.
- (5) Seller shall place identical requirements on all subcontracts.

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6. Security Registration and Identification Badges

Seller's employees engaged in work at Dryden Flight Research Center are required to be registered and badged by the Center's Security Office and to follow all security regulations and requirements.

7. Management and Protection of Data

(1) In the performance of this contract it is anticipated that Seller may have access to, be furnished, use, or generate the following types of data (recorded information):

- (A) data submitted to the Government with limited rights or restricted rights notices;
- (B) data of third parties which the Government has agreed to handle under protective arrangements; and
- (C) data generated by or on behalf of the Government that the Government intends to control the use of dissemination thereof.

(2) In order to provide management appropriate for protecting interests of the Government and other owners of such data, Seller agrees with respect to data in category (A) above, and with respect to any data in categories (B) and (C) when so identified by Buyer, to:

- (A) use and disclose such data only to the extent necessary to perform the work required under this contract, with particular emphasis on restricting disclosure of this data to those persons who have a definite need for the data in order to perform under this contract;
- (B) not reproduce the data unless reproduction of the data is specifically permitted elsewhere in this contract or by Buyer Authorized Procurement Representative;
- (C) refrain from disclosing the data to third parties without the written consent of Buyer's Authorized Procurement Representative; and
- (D) return or deliver the data, including all copies thereof, to Buyer upon request.

8. Notice of Claims and Demands. (This clause is incorporated in Buyer's contract with NASA and is incorporated here in accordance with the requirement stated in paragraph (3) below.)

(1) The Contractor shall forward to the Government Contracting Officer and to the NASA-Dryden Chief Counsel, within thirty (30) days from receipt thereof, a copy of any complaint filed in court or any other written notice, made or served upon, or submitted to, the Contractor or its subcontractors, agents, or employees, containing a claim or demand for money or damages, arising out

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of the performance of this contract, against the Contractor, its subcontractors, agents, or employees, or any named Insured. The Contractor, its subcontractors and agents, shall not, without first notifying the Government Contracting Officer and NASA-Dryden Chief Counsel, engage in discussions or negotiations relative to considering ascertaining, settling, or adjusting any claim or demand against the Contractor, subcontractor, or any named Insured arising from the performance of work or services under the Contract. Should the Contractor or its subcontractors fail to notify the Government within 30 days of notice of a claim or demand, or engage in discussions or negotiations as described, without first notifying the Government Contracting Officer and NASA-Dryden Chief Counsel, such discussions or negotiations may constitute a material breach of contract.

- (2) The Contractor's or subcontractor's failure to notify the Government, as required above, will constitute an irrebuttable presumption and the Contractor's or subcontractor's binding admission both (i) that the claim does not arise from the negligence or willful misconduct of the Government and (ii) that either the Contractor, its subcontractor, the claimant, any of their agents or employees (other than the Government), is responsible for the alleged injury or damage.
- (3) The Contractor will put notice of this clause (Notice of Claims and Demands) in all its subcontracts entered into in performance of the work. Failure to do so, such that a subcontractor or other agent of the Contractor may be excused from the irrebuttable presumption and binding admission described above, will result in the Contractor's absolute obligation to indemnify the Government for all costs, attorney's fees, and damages to the Government arising therefrom.