

**1. CONTRACT FORMATION AND MODIFICATION**

- a. This Order is Boeing's offer to Seller for performance under Government, Government Management risk contract funding, or a combination thereof. This Order, including any documents incorporated herein by express reference, is intended to be a complete integration and there are no prior or contemporaneous different or additional agreements pertaining to the subject matter of the Order.
- b. Acceptance by Seller is expressly limited to the terms of this offer. Seller's acceptance of Boeing's offer must be by commencement of performance or by seasonable written acknowledgement of this Order, but where Seller's acceptance is by commencement of performance, Boeing reserves the right to treat its offer as having lapsed before acceptance unless Boeing is notified of Seller's acceptance within a reasonable time. Any different or additional terms of Seller's acknowledgment are hereby objected to and rejected by Boeing regardless of the form of such acknowledgment. Upon Seller's acceptance, the Order shall become the complete and exclusive statement of the terms of the resulting contract.
- c. The Contract (which term is intended to include Purchase Order [PO]) shall not be modified by or interpreted by reference to any course of dealing or usage of trade and shall not be modified by any course of performance. No modification of the Contract shall be effective unless in writing signed by the party to be charged with the modification. No modification shall bind Boeing unless signed by an authorized Boeing Purchasing Representative.
- d. If, in connection with this Contract, Seller is represented (directly or indirectly) by any former Boeing Procurement or Procurement decision-making employee, whose termination from Boeing is less than one (1) year prior to the date of this Contract; then this Contract is voidable in the sole discretion of Boeing.
- e. All documentation, notices, and oral communications concerning this Purchase Order/Contract shall use the English language. In the event that English communications are translated into another language for Seller's convenience, the meaning conveyed by the English version of the communication shall govern this Purchase Order/Contract and the Parties' performance thereunder.

**2. INSPECTION, ACCEPTANCE, AND REJECTION**

- a. All goods (which term throughout this Contract includes, without limitation, processes, technical information, computer software, raw materials, components, intermediate assemblies, end products and, where applicable, services to be performed hereunder) shall be subject to inspection and test at all times and places, including the period of manufacture, by Boeing, and also the Government if this is an order that is placed under a Government contract. Inspectors shall have access to all areas on the premises of the Seller or of Seller's subcontractors in which work on this Contract is being performed. If this Contract calls for the delivery of goods for installation on aircraft, the right of inspection and test shall extend to representatives of the Federal Aviation Administration, and, if nondomestic, equivalent Foreign Government Agencies.
- b. Seller and Seller's subcontractors shall provide all reasonable facilities for the safety and convenience of inspectors at no additional cost. Seller shall furnish to inspectors all information and data as may be reasonably required to perform their inspection. All goods to be delivered hereunder shall be subject to final inspection, test and acceptance by Boeing at destination, notwithstanding any payment or inspection at source. Boeing shall accept or give notice of rejection of goods delivered hereunder within a reasonable time after receipt of such goods. Acceptance by Boeing shall not waive any rights that Boeing might otherwise have at law or by express reservation in this Contract with respect to any nonconformity.
- c. Any tender of goods which is nonconforming as to the quality or quantity or the delivery schedule shall constitute a breach of this Contract and Boeing shall have the absolute right to reject such goods, in whole or in part, and notify Seller thereof. In the event of such a tender, Boeing shall be entitled to all remedies as provided by law, and in addition thereto shall have the right to do any or all of the following: (1) to hold such nonconforming goods for a reasonable period at Seller's risk and expense pending a determination to accept or reject any or all thereof; (2) to return such nonconforming goods to Seller at Boeing's election and at Seller's risk and expense for replacement or correction; (3) to accept such nonconforming goods subject to an equitable price reduction; (4) to replace or correct such nonconforming goods and charge to Seller the cost occasioned to Boeing thereby; (5) to recover by offset or otherwise any and all expenses, costs, price reductions, and damages paid, incurred, or suffered by Boeing as a result of such holding, return, replacement, correction, reductions, or rejections of nonconforming goods; or (6) to terminate this Contract as provided in Article 9 hereof.

**3. QUALITY CONTROL AND CONTRACTUAL COMPLIANCE**

- a. Seller shall provide and maintain a quality control system acceptable to Boeing for the items purchased under this Contract, and Seller shall permit Boeing to review procedures, practices, processes and related documents to determine such acceptability. It is Boeing's policy to survey all sellers periodically to ascertain compliance with

Boeing and U.S. Government requirements which have been made part of this Contract. Seller agrees to provide access to its premises for, and to cooperate with, Boeing in the conduct of those surveys.

- b. It shall be Seller's continuing obligation subsequent to delivery of goods for installation on aircraft to advise Boeing's Purchasing Representative in the event that Seller discovers any quality deficiency in the delivered goods with respect to approved specifications. Seller must provide written notice within twenty- four (24) hours of discovery using Form DAC 26-23B, Vendor Information Request (VIR) or any similar format providing the same information.
- c. Foreign procurement of metallic raw materials required to conform to federal, military, or industrial specifications shall be procured per the requirements and from those suppliers listed in Douglas Material Specification (DMS) 2201.

#### **4. WARRANTY**

- a. Inspection and acceptance of any goods by Boeing shall not be deemed to alter or affect the obligations of Seller or the rights of Boeing under the warranties herein or as may be provided by law.
- b. Seller warrants that all goods furnished hereunder will conform to the requirements of this Contract (including all descriptions, specifications and drawings made a part of this Contract), will be merchantable, fit for their intended purposes, free from all defects in materials and workmanship and to the extent not manufactured pursuant to detailed designs furnished by Boeing, free from defects in design. Boeing's approval of designs or specifications furnished by Seller shall not relieve Seller of its obligations under this warranty.
- c. In addition to its other remedies, Boeing may, at Seller's expense, require prompt correction or replacement of any goods failing to meet Seller's warranties herein. Goods corrected or replaced by Seller shall be subject to all of the provisions of this Contract in the manner and to the extent as goods originally furnished hereunder.
- d. All warranties, including special warranties specified elsewhere herein, shall inure to Boeing, its successors, assigns, customers and users of its products.

#### **5. DELIVERY**

- a. Seller shall strictly adhere to the delivery and completion schedules specified in this Contract. If, at any time, Seller believes it may be unable to comply with the delivery or completion schedules, Seller shall immediately notify Boeing's Purchasing Representative in writing of the probable length of any anticipated delay and the reasons for it, and shall continue to notify Boeing's Purchasing Representative of any material change in the situation. In the event of such notification or of an actual failure by Seller to comply with the delivery or completion schedules, Boeing may, in addition to all other remedies, require Seller, at Seller's expense, to ship goods via air freight or expedited routing to avoid or minimize delay.
- b. In the event of early delivery, Boeing may store goods at Seller's expense, unless delivery in advance of the contractual commitment date is expressly authorized within this Contract.
- c. The quantities specified for delivery on this Purchase Order/contract are the only quantities required by Boeing. Therefore, if Seller delivers quantities in excess of those specified in this Purchase Order/contract, Boeing shall not be required to make any payment for the excess goods and, at Boeing's election, may keep or return the excess goods at Seller's risk and expense.
- d. Seller shall provide bar coded shipping labels, as specified in this Purchase Order/Contract, on all unit loads and transport packages shipped to Boeing hereunder.

#### **6. CHANGES**

Boeing may, at any time, exclusively in a writing signed by its authorized Purchasing Representative, and without notice to sureties, make changes with the general scope of this Contract which affect the (a) drawings, designs, or specifications of goods being specially manufactured for Boeing; (b) method of shipment or packing; (c) place of delivery; or (d) delivery schedules. If any such change causes an increase or decrease in the cost of, or the time required for, performance of this Contract, an equitable adjustment shall be made in the contract price or delivery schedule or both, and the Contract shall be modified in writing accordingly. Any claim by Seller for adjustment under this Article must be asserted in writing to Boeing's Purchasing Representative not later than thirty (30) days after the date of receipt by Seller of the written change authorization, or within such extension as Boeing may grant in writing. Boeing may, in its sole discretion, consider any such claim regardless of when asserted. Such claim shall be in the form of a complete change proposal fully supported by factual information. Pending any such adjustment, Seller will diligently proceed with the Contract as modified. Where the cost of property made excess or obsolete as a result of a change is included in Seller's claim for adjustment, Boeing shall have the right to direct the manner of disposition of

such property. Boeing shall have the right to examine any of Seller's pertinent books and records for the purpose of verifying Seller's claim.

## **7. INVOICE AND PAYMENT**

- a. For each shipment of goods Seller shall submit an original invoice marked "original" and one copy marked "copy" to the appropriate Boeing Accounts Payable Department. The prices set forth in this order includes all taxes, fees, levies and similar charges except for sales and use taxes. All sales and use taxes must be separately itemized. Purchase Order/Contract Number and Item Number must appear on all shipping documents, invoices, quality certifications, and packing sheets.
- b. Determination of payment due date, whether under net or discount terms, will be based on the latest of (1) the date goods are received or services are completed; (2) the date goods are scheduled to be shipped/received or services are scheduled for completion under the Contract; or (3) the date an accurate invoice is received. Unless early delivery of goods or services is expressly authorized by the Boeing Purchasing Representative, payment for goods or services received in advance of the contractual commitment date shall not be made prior to the contractual commitment date.
- c. Payment will be deemed to have been made when deposited in the mail.

## **8. TERMINATION FOR CONVENIENCE**

Boeing may terminate this Contract for its convenience in whole or, from time to time, in part in accordance with the provisions set forth in Defense Acquisition Regulation (DAR) 8-706, which provisions are hereby incorporated by reference.

## **9. TERMINATION FOR DEFAULT**

- a. Boeing may terminate the whole or any part of this Contract in any of the following circumstances:
  1. If Seller fails to deliver the goods or to perform the services required by this Contract within the time specified herein, or any extension thereof granted by Boeing in writing; or
  2. If seller fails to perform any of the other provisions of this Contract or so fails to make progress as to endanger performance of this Contract in accordance with its terms, and in either of these two (2) circumstances does not cure such failure within a period of ten (10) days after receipt of notice from Boeing specifying such failure; or
  3. In the event of suspension of Seller's business, insolvency, institution of bankruptcy, liquidation proceedings by or against Seller, appointment of a trustee or receiver for Seller's property or business, or any assignment, reorganization or arrangement by Seller for the benefit of creditors.
- b. Boeing may require Seller to transfer title and deliver to Boeing in the manner and to the extent directed by Boeing (1) any completed goods, and (2) such partially completed goods and materials, parts, tools, dies, jigs, fixtures, plans, drawings, information, and contract rights, (hereinafter called "manufacturing materials") as Seller has produced or acquired for the performance of this Contract, including the assignment to Boeing of Seller's subcontracts; and Seller shall protect and preserve property in possession of Seller in which Boeing has an interest. Payment for completed goods delivered to and accepted by Boeing shall be at the contract price. Payment for manufactured materials delivered to and accepted by Boeing and for the protection and preservation of property shall be at a price determined in the same manner as provided in Article 8 hereof, except that Seller shall not be entitled to profit. Boeing may withhold from Seller monies otherwise due Seller for completed goods and/or manufacturing materials in such amounts as Boeing determines necessary to protect Boeing against loss due to outstanding liens or claims against said goods.

## **10. BOEING PROPRIETARY**

Seller shall keep all property furnished by Boeing and all property to which Boeing acquires title by virtue of this Contract segregated and clearly marked and will maintain a complete inventory thereof. Seller assumes all risk of loss, destruction or damage to such property while in Seller's custody or control. Seller will immediately notify Boeing's Purchasing Representative in writing of any such loss, destruction or damage. Except for property incorporated in delivered end products, Seller will, upon termination or completion of this Contract, deliver such property, as directed by Boeing, in good condition subject to ordinary wear and tear and normal manufacturing losses.

## **11. NONDISCLOSURE; TECHNICAL DATA FOR CERTIFICATION, SIMULATION, TRAINING, OR INTERFACE**

- a. The information contained in reports, drawings, documents, or other records which are furnished to Seller by Boeing shall not be disclosed by Seller to others and shall not be used for purposes other than the performance of this Contract without Boeing's written consent.

- b. The information furnished to Boeing by Seller in reports, drawings, documents, or other records shall not be disclosed by Boeing to others except as provided herein and shall not otherwise be used for purposes other than the performance of this Contract without Seller's written consent.
- c. Each party will recognize the other party's restrictive markings and impose such restrictions upon third parties, provided that such markings purporting to cover information already within a recipient's knowledge or which is obtainable from another source without restrictions or which for any reason is not protectable by law shall not be binding upon the recipient.
- d. Upon request, Seller shall provide Boeing at no additional charge, such existing technical data pertaining to Seller's Product as Boeing deems necessary for certification, training, simulation, or interface purposes. In support of those purposes only, Boeing may furnish such Seller data to third parties, in which case Boeing will impose Seller's restrictive markings (if any) in accordance with Subparagraph c, above. In the alternative and upon Boeing's request, Seller shall provide such data directly to Boeing-designated third parties also at no extra charge.
- e. Nothing in this provision shall limit either party's right to enter into data exchange agreements with each other or third-party recipients of the data to ensure further protection of a party's proprietary interests in such technical data. Nothing in this provision shall limit Seller's right to compensation in the event that necessary data must be created to support the certification, training, simulation, or interface technical objective.
- f. Nothing herein shall interfere with the rights of the U.S. Government as set forth in DAR 7-104.9(a), where this provision is included in the prime contract under which this order is issued.
- g. Seller shall include this provision, exclusive of Paragraph b, in all of its lower-tier subcontracts issued in support of this Contract, and this provision shall have precedence over any other provisions herein relating to the transfer of Seller's technical data.

## **12. EXPORT LICENSING INFORMATION/OFFSHORE PROCUREMENT**

- a. Upon the request of Boeing's Purchasing Representative and without additional cost, Seller shall provide such information as may be necessary to support Boeing's application for export license(s) covering any items ordered hereunder.
- b. This Contract may contain defense related technical data. Boeing has obtained, or will obtain, the approval of the U.S. Government to furnish to Seller the data, and any other items hereunder requiring such approval, which are necessary for Seller to perform this Contract. U.S. Government approval is based upon the following International Traffic in Arms Regulations (ITAR) requirements (Reference 22 CFR, Sub-chapter M) with which Seller agrees to comply.
  - 1. Seller shall use the technical data furnished by Boeing only in the manufacture of defense articles in accordance with this Contract.
  - 2. Seller shall not disclose or provide technical data furnished by Boeing to any person except authorized U.S. citizen, intending citizen, permanent resident alien (immigrant alien) employees and qualified subcontractors which require the data in performance of the subcontracts.
  - 3. Seller shall not disclose or provide technical data furnished by Boeing to any foreign person either in the U.S. or abroad unless obtaining prior authorization directly from the U.S. Department of State Office of Defense Trade Controls (ODTC). ITAR defines a "foreign person" as any person who is not a U.S. citizen, immigrant alien (green card holder), or an intending citizen, and foreign corporation (corporation not incorporated in the U.S.), international organization, foreign government, and any agency or subdivision of foreign governments (i.e., diplomatic mission)
  - 4. Seller shall not acquire any rights in the data furnished by Boeing except to use it in the performance of this Contract. Seller also shall not convey to its qualified subcontractors any greater rights in the data than Seller has. Seller's qualified subcontractors shall only have the right to use the data as required in performance of their subcontracts.
  - 5. Seller shall deliver the defense articles manufactured in accordance with this Contract only to Boeing or to the U.S. Government.
  - 6. Upon completion or termination of this Contract, Seller shall destroy or return to Boeing all technical data furnished to Seller by Boeing pursuant to this Contract. At Boeing's election, Boeing may direct Seller to return or destroy the data and may require Seller to certify in writing that Seller has complied.

- c. Seller shall impose these requirements, (1) through (6), suitably revised to identify the parties properly, on all its subcontractors to which Seller intends to furnish technical data provided by Boeing for use by the subcontractors in performance of the subcontracts.

### **13. SUBCONTRACTING**

Seller will not subcontract without Boeing's prior written consent for the design, development or procurement of the whole or any substantial portion of any goods ordered hereunder. This limitation shall not apply to Seller's purchases of standard commercial supplies or raw material.

### **14. SUSPENSION OF WORK**

Boeing's Purchasing Representative may, by written order, suspend all or part of the work to be performed under this Contract for any period not to exceed ninety (90) days. Within such period, or any extension thereof to which the parties may agree, Boeing shall either: (a) cancel such suspension, or (b) terminate the work covered by suspension in accordance with Article 8 or Article 9 hereof. Seller shall resume work whenever a suspension is cancelled or expires. An equitable adjustment shall be made in the delivery schedule or contract price, or both, if: (a) the suspension results in a change in Seller's cost of performance or ability to meet the contract delivery schedule, and (b) Seller asserts a claim for adjustment within thirty (30) days after the end of the period of suspension.

### **15. NOTICES**

- a. Whenever Seller has knowledge that any actual or potential labor dispute is delaying or threatens to delay the timely performance of this Contract, Seller shall immediately give notice thereof, and all relevant information with respect thereto, and shall continue to notify Boeing of any material changes in the information required hereunder. Seller agrees to insert the substance of this Article in any subcontract hereunder wherein a labor dispute may delay the timely performance of this Contract.
- b. Any notice submitted by Seller, unless otherwise specified within this Contract, shall be in writing and directed to the Boeing Purchasing Representative indicated on the face of the Purchase Order/Contract.

### **16. DISPUTES**

- a. Pending the final resolution of any dispute involving this Contract, Seller agrees to proceed with performance of this Contract, including the delivery of goods, in accordance with Boeing's instructions.
- b. Seller shall submit to Boeing's authorized Purchasing Representative a written demand for Boeing's final decision regarding the disposition of any dispute between the parties relating to this Contract, unless Boeing, on its own initiative, has already rendered such a final decision. Any Boeing final decision shall be expressly identified as such, shall be in writing, and shall be signed by Boeing's authorized Purchasing Representative, except that Boeing's failure to render a final decision within ninety (90) days after receipt of Seller's demand shall be deemed a final decision adverse to Seller's contentions.
- c. Boeing's final decision shall be conclusive and binding regarding the dispute unless Seller commences an action to contest such decision within ninety (90) days following the date of the final decision or one (1) year following the accrual of the cause of action, whichever is later.
- d. Seller shall cooperate fully with Boeing in seeking a resolution of any dispute involving this Contract under the disputes procedure applicable to the Government prime or higher-tier contract and if Boeing elects to follow such procedures Seller shall not be entitled to demand a final decision under Paragraph b. above until such resolution. Seller shall be bound by the final outcome of the disputes procedure if: (1) Boeing has afforded Seller an opportunity to participate in Boeing's conduct of the dispute, or (2) Boeing, having decided to discontinue its own processing of the dispute, has afforded Seller an opportunity to assume the processing of the dispute in Boeing's name.
- e. Boeing and Seller shall bear their own costs of processing the dispute.
- f. Except with respect to security matters, which shall be governed by applicable security regulations, both parties agree that the Government will not be an indispensable party to the resolution of any dispute arising under any Contract issued under a Government contract.

### **17. WAIVER AND SEVERABILITY**

Any action or inaction by Boeing or the failure of Boeing, on any occasion, to enforce any right or provision of this Contract shall not be construed to be a waiver by Boeing of its rights hereunder, and shall not prevent Boeing from enforcing such provision or right on any future occasion. A determination that any portion of this Contract is unenforceable or invalid shall not affect the enforceability or validity of any of the remaining portions of this Contract.

**18. RIGHTS AND REMEDIES**

The rights and remedies of Boeing herein are cumulative, and are in addition to any other rights or remedies that Boeing may have at law or in equity.

**19. PRECEDENCE**

In the event of any inconsistency between the articles, attachments, specifications or provisions which constitute this Contract, the following order of precedence shall apply: (a) special terms and conditions; (b) general terms and conditions contained in this Form DAC 26-685; (c) specifications; and (d) all other attachments incorporated herein by reference. Boeing's specifications shall prevail over any subsidiary documents referenced therein. Seller shall not use any specification in lieu of those contained in this Contract without written consent of Boeing's authorized Purchasing Representative.

**20. COMPLIANCE WITH AND APPLICABILITY OF LAWS**

- a. Federal, State and Local Laws. Seller warrants that in the performance of this Contract, it shall comply with all applicable Federal, State and Local Laws, in addition to any specifically noted within this Contract.
  1. Federal Labor Standards Act. On its invoice or in other form satisfactory to Boeing, Seller shall submit certification that the products covered by this Contract were produced in compliance with all applicable requirements of Sections 6, 7 and 12 of the Fair Labor Standards Act (29 U.S.C. 201-209), as amended, and of regulations and orders of the U.S. Department of Labor issued under Section 14 thereof.
- b. Applicable Law. The rights and duties of the parties arising from or relating to the Contract shall be governed by and be construed and interpreted in accordance with the law, custom and usage applicable to U.S. Government contracts and subcontracts, as enunciated by federal judicial bodies, boards of contract appeals, and quasi-judicial agencies of the federal government. To the extent that the foregoing is not dispositive, said contract rights, and duties shall be governed by and be construed and interpreted in accordance with the law of the state in which the Boeing Purchasing Department placing this Contract is located, regardless of the location of execution or performance of this Contract.
- c. If any provision herein is or becomes void or unenforceable by force or operation of law, all other provisions shall remain valid and enforceable.

**21. INDEMNIFY AND HOLD HARMLESS**

- a. Patent Trademark and Copyright Indemnity. Seller agrees to indemnify and hold harmless Boeing, its customers and users of its products, against any expense, loss or liability for any actual or alleged infringement of any patent, trademark or copyright, arising from or related to the use, sale, manufacture or disposal of the goods furnished to Boeing under this Contract. Upon receipt of timely notice of any claim or suit alleging such infringement, Seller agrees to defend Boeing, its customers and users of its products, or any of them, at Seller's expense.
- b. Seller shall also indemnify, defend and hold harmless Boeing from and against all losses, costs, fees and damages arising, directly or indirectly, from any actual or alleged failure by Seller to comply with any of the statutes, rules, regulations and orders herein.
- c. The obligations which DAR Clauses 7-104.42(a) and/or 7-104.42(b) of the prime contract required of Boeing are also required of Seller. In addition to any other remedies provided by law or under this PO/Contract, if Boeing is subjected to any liability resulting from Seller's (or its lower-tier subcontractor's) failure to comply with the aforementioned DAR Clauses, Seller agrees to indemnify and hold Boeing harmless to the full extent of any loss, damage or expense resulting from such failure.

**22. PRICE WARRANTY**

Seller warrants that the price of the goods to be furnished to Boeing under this Contract do not exceed the price charged by Seller to any other customer purchasing the same goods in like or smaller quantities and under similar conditions of purchase.

**23. UTILIZATION OF SMALL BUSINESS, WOMEN-OWNED BUSINESS AND SMALL DISADVANTAGED BUSINESS CONCERNS**

In support of Government policy and consistent with its obligations under contracts issued under Government contracts, Seller agrees to accomplish the maximum amount of subcontracting to small business, women-owned business and small disadvantaged business concerns and to use its best efforts to place subcontracts in areas of persistent or substantial labor surplus, where this can be done consistent with the efficient performance of this Contract and at prices no higher than are available elsewhere.

**24. MATERIALS FURNISHED AND PROPERTY RIGHTS**

- a. If Boeing furnishes any material for fabrication hereunder, Seller agrees: (1) not to substitute any other material in such fabrication without Boeing's written consent; (2) that title to such materials shall not be affected by incorporation in or attachment to any other property; and (3) that all such material or replacement material furnished at Boeing's expense shall be returned in the form of products (except that which became normal industrial waste) or unused material. Seller shall inspect any such material furnished by Boeing and shall have the right to reject nonconforming material upon inspection, but in the event of losses or attrition thereafter, Seller shall be responsible for replacing such material at its own expense. Inaccuracies, out of tolerance conditions or inadequacies in materials which are accepted by Seller shall not excuse performance in strict accordance with the applicable specifications; provided, however, that if such materials were furnished by Boeing with such deficiencies, Seller shall be entitled to an equitable adjustment, if any, pursuant to the changes provision of this Contract.
- b. Seller agrees that it will use all designs, tools, patterns, drawings, specifications, other information and equipment, title to which is in Boeing, only in the performance of this Contract and not otherwise, unless Boeing's prior written consent has been obtained. The foregoing shall not be construed as limiting the right of Seller to use such items in the manufacture of end products for direct sale to the Government to the extent that the Government has the right under a contract with Boeing, or otherwise, to authorize such use by Seller; provided that such use will not interfere with Seller's performance of this or other contracts from Boeing relating to Government Contracts in effect at the time Seller enters into direct sale to the Government, that Seller furnishes prior written notice to Boeing of such intended use, and, to the extent practicable, Seller prominently identifies each such end product as being manufactured by Seller for direct sale to the Government. Seller's performance in strict accordance with the specifications shall not be excused by reason of any inaccuracy in tools or fixtures furnished by Boeing; provided, however, that if such tools or fixtures were furnished by Boeing with such inaccuracies, Seller shall be entitled to an equitable adjustment, if any, pursuant to the changes provision of this Contract.

**25. CITIZENSHIP REQUIREMENTS**

- a. Employees of Seller who perform services under this Contract on the premises of Boeing shall be citizens of the United States of America (U.S.A.), its possessions or territories, in instances when the performance of such services requires Secret or Top Secret security classifications. If any employee of Seller who performs services on Boeing premises under this Contract is not a citizen of the U.S., its possessions or territories, and the performance of such services requires a Company Confidential security classification, Seller shall contact the cognizant Boeing Purchasing Representative prior to allowing said employee to perform such services. Following necessary coordination within Boeing, the Boeing Purchasing Representative shall provide specific instructions to Seller. When the performance of work on Boeing premises does not require a security clearance above, Seller shall bear exclusive responsibility for providing employees who are qualified under the Immigration Reform and Control Act (IRCA) and who have completed an I-9 Form.
- b. Upon the request of Boeing, Seller shall submit proof of citizenship or employment eligibility status to Boeing for each employee covered by Subparagraph a. who shall perform services under this Contract on the premises of Boeing. Examples of documents that may be considered satisfactory are state birth certificates, U.S. passports, U.S. naturalization papers, and green cards issued by the U.S. Department of Immigration and Naturalization. Consistent with IRCA, the order of presentment of such documents shall be the sole prerogative of Seller's employees. If these documents are not available, a compilation of other evidence may suffice. Upon acceptance of proof of citizenship or employment eligibility, Boeing may issue identification badges or cards to employees of Seller.
- c. Should Seller fail to comply with this Clause, Boeing may, at its option, terminate this Contract for default in accordance with Article 9 hereof. An example of such failure would be the submittal of falsified proof of citizenship or employment eligibility.

**26. SPECIAL TOOLING**

Unless otherwise specified in this Contract, the price includes the cost of gauges, jigs, fixtures, dies, molds, tools, patterns, and similar items of special tooling that may be manufactured or acquired by Seller for use in the manufacture, fabrication, or assembly of the goods called for herein, and unless otherwise specified herein, title to such special tooling will remain in Seller.

**27. NEW ITEMS OF MANUFACTURE**

In the event (a) there are any new features of design incorporated in any goods made under this Contract as a result of Seller's compliance with the drawings or specifications of Boeing, (b) development cost for such features is being charged by Seller to Boeing, and (c) the goods to be made hereunder are not merely a slight modification of goods

with respect to which Seller already possesses patent rights, then Seller grants to Boeing the right to make or have made such goods, together with a royalty-free, nonexclusive, irrevocable license under any U.S. patent covering such new features of design. If in connection with this Contract the Government funds directly or indirectly the monies paid to Seller for development costs, Boeing shall have no right to make or have made the goods for which the Government funded the development.

**28. ASSIGNMENT**

Except as hereinafter provided, neither this Contract nor any duty, right or interest therein may be delegated, assigned, or otherwise transferred in any manner by Seller without the prior written consent of Boeing, and any effort to the contrary shall be void. Either party may, upon notice to the other, assign this Contract to any person, firm or corporation with which such party may merge or consolidate or to which such party may assign substantially all of its assets, and either party may assign claims for monies due or to become due hereunder to any bank, trust company or other financial institution, including any Government lending agency. The assigning party shall furnish the other party with two (2) signed copies of any such assignment.

**29. PACKING**

All items are to be packed in suitable containers for protection in shipment and storage, and in accordance with applicable specifications. Each container of a multiple container shipment shall be identified (a) to show the number of the container and the total number of containers in the shipment, and (b) the number of the container in which the packing sheet has been enclosed. All shipments by Seller or its subcontractors must include packing sheets containing Boeing's Contract number, quantity, part number/size, description of the items shipped, and appropriate evidence of inspection. Materials for different contracts shall be listed on separate packing sheets.

**30. SHIPPING INSTRUCTIONS**

Shipments must be made as specified on the face of the Contract, except as subsequently modified in writing by Boeing or otherwise directed in writing by Boeing's Traffic Department. Originals of all bills of lading and express receipts shall be mailed to the Traffic Department of Boeing's consignee division.

**31. CLEARANCE OF MATERIALS INTENDED FOR PUBLIC RELEASE**

Seller shall issue no news release (including photographs and files), public announcement, advertisement, denial, or confirmation concerning all or any part of the subject matter of this Contract or any phase of any program hereunder without the prior written approval of Boeing.

**32. OFFSET/CO-PRODUCTION**

- a. Seller shall use its best efforts to cooperate with Boeing in fulfillment of any offset program obligation that Boeing may have accepted as a condition of the sale of an Boeing product to a foreign nation.
- b. Boeing expressly reserves the right to all "offset" credits resulting from co-production or other similar obligations entered into between Seller and foreign sources of any goods or services in support of the procurement hereunder. Seller may not, therefore, procure or offer to procure any goods or services ordered hereunder from any foreign source without the prior written approval of Boeing. The express reservation applies to not only the goods and services ordered hereunder but also to the procurement of additional quantities thereof by means of options or similar commitments obtained by Seller to fulfill anticipated requirements Boeing may have. Seller may not, therefore, enter into such procurements from foreign sources to support Boeing future requirements without Boeing's prior written approval.
- c. While Boeing's approval under the foregoing paragraph may not be unreasonably withheld, Seller may be required to complete and file all necessary documentation in order to effect the passing through of offset credits to Boeing as a condition precedent to such approval.
- d. Any data to be provided to a foreign source shall be coordinated with Boeing in advance to ensure that any necessary export licenses are obtained prior to transfer of such data.

**33. GOVERNMENT CONTRACT CLAUSES**

- a. The following Clauses which are incorporated by reference from the Defense Acquisition Regulations (DAR) apply to this Contract to the extent indicated. In all of the following Clauses "Contractor" shall mean Seller. The effective date of the following provisions shall be the date of such Clauses on the issuance date of this Contract, unless otherwise stated in the body of this Contract.
  1. 7-103.16 Contract Work Hours and Safety Standards Act - Overtime Compensation. This Clause only applies if this Contract exceeds \$2,500. The term "subcontractor" therein shall mean Seller.
  2. 7-103.17 Walsh-Healey Public Contracts Act. This Clause only applies if this Contract exceeds \$10,000.



3. 7-103.18(a) Equal Opportunity. This Clause only applies if this Contract exceeds \$10,000.
4. 7-103.22 Authorization and Consent. This Clause does not apply if both complete performance and delivery are to be outside the U.S., its possessions, or Puerto Rico; or if this contract is for experimental, developmental or research work.
5. 7-103.23 Notice and Assistance Regarding Patent and Copyright Infringement (Jan 1965). (A copy of each notice sent to the Government shall be sent to Boeing.) This Clause only applies if this Contract exceeds \$25,000.
6. 7-103.25 Commercial Bills of Lading Covering FOB Origin Shipments. This Clause applies where direct shipment to the Government is specified.
7. 7-103.26 Pricing of Adjustments.
8. 7-103.27 Affirmative Action for Disabled Veterans and Veterans of the Vietnam Era. This Clause only applies if this Contract exceeds \$10,000.
9. 7-103.28 Affirmative Action for Handicapped Workers. This Clause only applies if this Contract exceeds \$2,500.
10. 7-103.29 Clean Air and Water. This Clause only applies if this Contract exceeds \$100,000.
11. 7-104.3 Buy American Act and Balance of Payments Program.
12. 7-104.6 Filing of Patent Applications (Dec 1969).
13. 7-104.8(b) Refund of Royalties. This Clause only applies if the amount of royalties reported during negotiation of this Contract exceeds \$250 and such amount has been included in the price. (A copy of each statement or notice sent to the Contracting Officer will be sent to Boeing.)
14. 7-104.9(a) Rights in Technical Data and Computer Software (May 1981).
15. 7-104.9(h) Technical Data - Withholding of Payment (Jul 1976). This Clause only applies if the delivery of data is required by this Contract. The terms "Contracting Officer" and "Government" therein shall mean Boeing.
16. 7-104.9(p) Restrictive Markings on Technical Data (Mar 1975). This Clause only applies if the delivery of data is required.
17. 7-104.12 Military Security Requirements (excluding the last sentence of Paragraph [c]). This Clause only applies if access to classified material is required.
18. 7-104.14(a) Utilization of Small Business and Small Disadvantaged Business Concerns.
19. 7-104.14(b) Subcontracting Plan for Small Business and Small Disadvantaged Business Concerns (Negotiated). This Clause only applies if this Contract exceeds \$500,000 and Seller is not a Small Business Concern.
20. 7-104.15 Examination of Records by Comptroller General. This Clause only applies if this Contract exceeds \$10,000.
21. 7-104.18 Priorities, Allocations, and Allotments. This Clause does not apply to Government Management Risk Quantities.
22. 7-104.20(a) Utilization of Labor Surplus Area Concerns.
23. 7-104.20(b) Labor Surplus Area Subcontracting Program. This Clause only applies if this Contract exceeds \$500,000.
24. 7-104.24(a) Government Property.
25. 7-104.25 Special Tooling (excluding Paragraph [j]).
26. 7-104.26 Special Test Equipment. The term "Contracting Officer" therein shall mean Boeing.
27. 7-104.29(a) Price Reduction for Defective Cost or Pricing Data. This Clause applies if DAR 7-104.42(a) is applicable to the Contract.
28. 7-104.29(b) Price Reduction for Defective Cost or Pricing Data - Price Adjustments. This Clause applies if DAR 7-104.42(b) is applicable to the Contract.
29. 7-104.32 Duty-Free Entry – Qualifying Country End Products and Supplies. This Clause only applies if this Contract exceeds \$2,500. (Seller shall identify the Government Contract under which this Contract is placed by its contract number on any shipping documents submitted to Customs covering goods for which duty-free entry is to be claimed pursuant to this Clause.) The term "Contract Administration Office" therein shall mean Boeing.

30. 7-104.37 Required Source for Jewel Bearings and Related Items.
31. 7-104.38 Required Sources for Miniature and Instrument Ball Bearings.
32. 7-104.41(a) Audit by Department of Defense. This Clause only applies if this Contract exceeds \$10,000.
33. 7-104.42(a) Subcontractor Cost or Pricing Data. This Clause only applies if the cost or pricing data for this Contract is subject to certification pursuant to DAR 3-807.3. The dollar figure in this Clause shall be deemed to be one hundred thousand dollars (\$100,000).
34. 7-104.42(b) Subcontractor Cost or Pricing Data - Price Adjustments. This Clause applies when DAR 7-104.42(a) is not applicable to this Contract. The dollar figure in this Clause shall be deemed to be one hundred thousand dollars (\$100,000).
35. 7-104.45(a) Limitation of Liability. (The term "acceptance" as used therein means acceptance of the supplies by the Government.)
36. 7-104.46 Required Sources for Precision Components for Mechanical Time Devices.
37. 7-104.48 New Material. The term "Contracting Officer" therein shall mean Boeing.
38. 7-104.49 Government Surplus. The term "Contracting Officer" therein shall mean Boeing.
39. 7-104.61 Frequency Authorization. This Clause only applies to contracts which call for developing, producing, testing, or operating a device for which a radio frequency authorization is required.
40. 7-104.63 Protection of Government Buildings, Equipment and Vegetation. This Clause only applies to contracts which involve performance of services on a Government installation.
41. 7-104.64 Recovery of Nonrecurring Costs on Commercial Sales. This Clause only applies to contracts for goods or related technology which can be sold commercially and which meet, or are expected to meet, the thresholds set forth in the Clause.
42. 7-104.65 Insurance (excluding Paragraph [c]). This Clause only applies to contracts which involve other than incidental performance of services on a Government installation within the United States, its possessions and Puerto Rico. (Not- withstanding the reference to "the Schedule", the minimum types and amounts of insurance required are as stipulated in DAR 10-501.)
43. 7-104.78 Overseas Distribution of Defense Subcontracts (excluding Paragraph [c]). This Clause applies only if this Contract exceeds \$100,000 and is not for ores, natural gas, utilities, petroleum products and crudes, timber (logs), and subsistence.
44. 7-104.79 Safety Precautions for Ammunition and Explosives. This Clause only applies if this Contract involves the development, testing, storage, manufacture, modification, renovation, demilitarization, packaging, transportation, handling, disposal, inspection, repair or any other use of ammunition and explosives as defined in the Clause.
45. 7-104.81 Accident Reporting and Investigation Involving Aircraft, Missiles, and Space Launch Vehicles. The term "Contracting Officer" therein shall mean Boeing.
46. 7-104.93(a) Preference for Domestic Specialty Metals (Major Programs).
47. 7-104.95 Preference for United States Flag Air Carriers.
48. 7-104.98 Hazardous Material Identification and Material Safety Data. This Clause only applies if this Contract involves hazardous material, as defined in Federal Standard No. 313A, "Material Safety Data Sheet, Preparation and Submission of," in effect on the date of this Contract.
49. 7-302.23(b) Patent Rights - Retention by the Contractor (Long Form) (Aug 1977). This Clause only applies if this Contract has as a purpose the conduct of experimental, development or research work. (If Seller is a Small Business Firm or a Nonprofit Organization, 7-302.23(h) shall apply in lieu of 7-302.23[b].)

#### **34. SAFETY AND ACCIDENT PREVENTION**

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

**35. FOREIGN MILITARY SALES**

The Seller certifies that the price of this Contract does not include any direct or indirect costs of sales commissions or fees for Seller's sales representatives involved in Foreign Military Sales.

**36. AFFIRMATIVE ACTION COMPLIANCE PROGRAMS**

- a. If (1) Seller has not previously developed and filed an affirmative action plan, (2) has at least 50 employees, and (3) has received/is receiving a single award worth at least \$50,000 under which a Federal Government equal opportunity Clause was/is applicable, Seller shall develop a written Affirmative Action Program in accordance with the rules, regulations and orders of the Secretary of Labor. The Program shall assure equal opportunity in employment to minorities, women, and other protected classes of people and shall be developed or, if necessary, updated within 120 days of receipt of this Order.
- b. Seller shall include the terms and conditions of this Article, including this Paragraph, in every subcontract or purchase order that is not exempted by the rules, regulations, or orders of the Secretary of Labor.

**37. EQUAL EMPLOYMENT OPPORTUNITY REPORTING REQUIREMENTS**

- a. Seller shall complete and file Standard Form 100, "Employer Information Report EEO-1," or any successor form, in accordance with the instructions contained therein.
- b. This Article only applies if DAR 7-103.18(a) in Article 33, Paragraph a. is applicable to this Contract.

**38. ANTI-KICKBACK ACT PROCEDURES**

- a. The Contract Clause entitled "Anti-Kickback Act Procedures" set forth in FAR 52.203-7 is made a part of this Contract by this reference, with the following modifications: the term "the Contractor" shall mean Seller, and the term "the Contracting Officer" shall mean the contracting officer cognizant of the prime contract under which this Contract was awarded.
- b. By its acceptance of this Contract, Seller warrants and represents to Boeing that neither Seller nor any immediate or lower-tier subcontractor of Seller nor any person acting on behalf of any of them has engaged in conduct prohibited by Section 3 of the Anti-Kickback Act of 1986 (Public Law 99-634) relating to this Contract or any subcontract or lower-tier subcontract under this Contract. Seller shall indemnify, defend and save harmless Boeing, its officers, agents and employees, from all losses, costs, fees and damages resulting, directly or indirectly, in whole or in part, from any conduct prohibited as aforesaid in which Seller, any immediate or lower-tier subcontractor of Seller, or any person acting on behalf of any of them has engaged or hereafter engages relating to this Contract or any lower-tier subcontract under this Contract. Boeing shall have the right to withhold from any sums due Seller under this Contract: (1) if so directed pursuant to Section 6 of the aforesaid Act or pursuant to the Anti-Kickback Act Procedures Clause of the prime contract or higher-tier subcontract under which this Contract has been issued by the contracting officer or agency cognizant of the prime contract under which the Contract was awarded, or (2) to recoup losses, costs, fees and damages against the incurrence of which Seller has agreed in this Clause to indemnify Boeing. For purpose of this Clause, the definitions of the terms "subcontractor", "subcontract" and "person" shall be deemed to be those set forth in Section 2 of said Act.
- c. Any report made pursuant to this Clause shall also be made to the Boeing Ethics hotline: (phone) 1-888-970-7171; (fax) 1-888-970-5330; (caller ID enabled; Australia Voice Line) 1-800-427-179.