



Boeing Commercial Airplanes (BCA) Terms and Conditions

DAC 26-915 (06-92)

GENERAL TERMS AND CONDITIONS - COMMERCIAL (80/11)

1. CONTRACT FORMATION AND MODIFICATION

- a. This Order is MDC's offer to Seller for performance under Government, Government Management Risk or Commercial 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 MDC'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, MDC reserves the right to treat its offer as having lapsed before acceptance unless MDC is notified of Seller's acceptance within a reasonable time. Any different or additional terms of Seller's acknowledgement are hereby objected to and rejected by MDC regardless of the form of such acknowledgement. Upon Seller's acceptance, the Order shall be the complete and exclusive statement of the terms of the resulting Contract.
- c. The Contract (which term is intended to include Purchase Order [P.O.]) 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 MDC unless signed by an authorized MDC Purchasing Representative.
- d. If, in connection with this Contract, Seller is represented (directly or indirectly) by any former MDC Procurement or Procurement decision-making employee, whose termination from MDC is less than three (3) years prior to the date of this Contract; then this Contract is voidable in the sole discretion of MDC.
- 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 by MDC at all times and places, including the period of manufacture. 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 MDC at destination, notwithstanding any payment or inspection at source. MDC shall accept or give notice of rejection of goods delivered hereunder within a reasonable time after receipt of such goods. Acceptance by MDC shall not waive any rights that MDC 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 MDC 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, MDC 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 MDC'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 MDC thereby; (5) to recover by offset or otherwise any and all expenses, costs, price reductions, and damages paid, incurred, or suffered by MDC 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 MDC for the goods and services purchased under this Contract, and Seller shall permit MDC to review procedures, practices, processes and related documents to determine such acceptability. It is MDC's policy to survey all sellers periodically to ascertain compliance with MDC 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, MDC 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 MDC'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 MDC shall not be deemed to alter or affect the obligations of Seller or the rights of MDC under the Warranties herein or as may be provided by law.

b. Seller warrants that all goods and services furnished hereunder will conform to the requirements of this Contract (including all descriptions, specifications and drawings made a part of this Contract), and such goods 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 MDC, free from defects in design. MDC'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, MDC may, at Seller's expense, require prompt correction or replacement of any goods and services failing to meet Seller's warranties herein. Goods and services 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 and services originally furnished hereunder.

d. All warranties, including special warranties specified elsewhere herein, shall inure to MDC, 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 MDC's Purchasing Representative in writing of the probable length of any anticipated delay and the reasons for it, and shall continue to notify MDC'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, MDC 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, MDC 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 MDC. Therefore, if Seller delivers quantities in excess of those specified in this Purchase Order/Contract, MDC shall not be required to make any payment for the excess goods and, at MDC'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 MDC hereunder.

6. CHANGES

a. MDC may, at any time, exclusively in a writing signed by its authorized Purchasing Representative, and without notice to sureties, make changes within the general scope of this Contract which affect the (a) drawings, designs, or specifications; (b) method of shipment or packing; (c) place of inspection delivery or acceptance; 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 MDC'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 MDC may grant in writing. MDC may, in its sole discretion, consider any such claim regardless of when asserted. 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, MDC shall have the right to direct the manner of disposition of such property. MDC shall have the right to examine any of Seller's pertinent books and records for the purpose of verifying Seller's claim.

b. Seller's claim for equitable adjustment shall be in the form of a complete change proposal fully supported by factual information and shall separately identify all increases and all decreases in costs. The claim shall be submitted by a senior company official in a signed writing that contains the following certification statement:

"I certify that the claim is made in good faith, that the supporting data are accurate and complete to the best of my knowledge and belief; and that the amount requested accurately reflects the contract adjustment for which (Seller) believes MDC is liable."

7. INVOICE AND PAYMENT

a. For each shipment of goods or completed item of services, Seller shall submit an original invoice marked "original" and one copy marked "copy" to the appropriate MDC 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 MDC 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

a. MDC may terminate performance of work under this contract in whole or, from time to time, in part by delivering to Seller a written notice of termination specifying the extent of termination and the effective date.

b. MDC will pay Seller (i) the contract price for goods and services completed and accepted but not previously paid for; (ii) reasonable costs incurred in performance of work terminated but not completed; (iii) reasonable profit on work performed before but not complete at the time of termination; and (iv) reasonable settlement costs incurred as a result of the termination, adjusted for any savings reasonably identified with the termination. Settlement costs for the work terminated shall consist of expenses for accounting, legal, clerical, and other services reasonably necessary for the preparation of termination settlement proposals and supporting data; termination and settlement of subcontracts (excluding the amounts of such settlements); and necessary preservation and protection of property which is in Seller's possession and in which MDC has, as a result of this Contract, or may acquire an interest. However, if it appears that Seller would have suffered a loss on the entire contract had it been completed, MDC will pay no profit and will reduce the settlement to reflect the indicated rate of loss. In no event will MDC pay Seller more than the contract price.

c. Seller will submit to MDC a fully supported written termination settlement proposal within forty-five (45) days after receipt of a notice of termination, and MDC will promptly negotiate an equitable termination settlement. Failure to agree to a settlement will be a dispute. MDC may examine any of Seller's books and records relevant to Seller's termination compensation under this provision. If Seller fails to submit a timely termination settlement proposal, Seller will be bound by MDC's good faith determination under Paragraph b, above, of the amount due if any, for a total termination or the prospective price adjustment affecting the continued portion of the Contract if the termination is partial.

9. TERMINATION FOR DEFAULT

a. MDC 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 MDC 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 give adequate assurances regarding such failure within a period of ten (10) days after receipt of notice from MDC 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. MDC may require Seller to transfer title and deliver to MDC in the manner and to the extent directed by MDC (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 MDC of Seller's subcontracts; and Seller shall protect and preserve property in possession of Seller in which MDC has an interest. Payment for completed goods delivered to and accepted by MDC shall be at the contract price. Payment for manufactured materials delivered to and accepted by MDC 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. MDC may withhold from Seller monies otherwise due Seller for completed goods and/or manufacturing materials in such amounts as MDC determines necessary to protect MDC against loss due to outstanding liens or claims against said goods.

10. MDC PROPERTY

Seller shall keep all property furnished by MDC and all property to which MDC 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 MDC'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 MDC, 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 MDC shall not be disclosed by Seller to others and shall not be used for purposes other than the performance of this Contract without MDC's written consent.

b. The information furnished to MDC by Seller in reports, drawings, documents, or other records shall not be disclosed by MDC 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 MDC at no additional charge, such existing technical data pertaining to Seller's Product as MDC deems necessary for certification, training, simulation, or interface purposes. In support of those purposes only, MDC may furnish such Seller data to third parties, in which case MDC will impose Seller's restrictive markings (if any) in accordance with Subparagraph c, above. In the alternative and upon MDC's request, Seller shall provide such data directly to MDC-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. 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. PARTS MANUFACTURER APPROVAL/EXPORT LICENSING INFORMATION/CONTROL OF TECHNICAL DATA

a. The following subparagraphs shall not apply to parts produced under an FAA Technical Standard Order (TSO) or to standard parts (such as bolts and nuts) conforming to established industry or United States specifications:

(1) Seller expressly acknowledges the legal prohibition, in the absence of a valid Parts Manufacturer Approval (PMA) or foreign equivalent authority, against the sale and delivery in or outside the United States of any modification or replacement part for installation on an Aircraft to any person other than the production or type certificate holder for the Aircraft. MDC represents to Seller that it holds a production and/or type certificate for the Aircraft on which the goods ordered herein will be installed.

(2) MDC shall have the right, upon written notice given within five (5) years after this award, to require Seller at no cost to MDC to assume program support responsibility for direct sales of spares for the goods covered by this Purchase Order/Contract (i.e., sales directly to aircraft operators/owners of goods or parts for goods for installation on the aircraft). Within sixty (60) days after receipt of such written notice and prior to delivery of any such spares to an Aircraft owner/operator, Seller shall apply for and actively pursue obtaining PMA and all other required approvals, licenses, or certifications in accordance with the applicable law and regulations and shall provide copies of the same to MDC. When Seller is required to obtain a PMA or other approval, license, or certification in accordance with this provision, MDC shall cooperate with reasonable requests for assistance.

(3) For five (5) years after the date of this award, MDC shall have the right to request and obtain from Seller copies of any governmental approvals, licenses, and certificates which are prerequisites to Seller's lawful sale to MDC or others of the goods ordered under this Purchase Order/Contract. Within thirty (30) days after receiving such a request, Seller shall provide the requested information.

b. Upon the request of MDC's Purchasing Representative and without additional cost, Seller shall provide such information as may be necessary to support MDC's application for export license(s) covering any items ordered hereunder.

c. This Contract may contain technical data the dissemination of which is regulated by the U.S. Government pursuant to the Export Administration Regulation (15 CFR 779) and the International Traffic in Arms Regulation (ITAR) (22 CFR 124). MDC 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 on the following requirements with which Seller agrees to comply:

(1) Seller shall use the technical data furnished by MDC only in accordance with this Contract and only for the manufacture of the articles or other work required pursuant to this Contract.

(2) Seller shall not disclose the technical data furnished by MDC to any person except authorized employees and qualified subcontractors within Seller's country which require the data in performance of the subcontracts.

(3) Seller shall not acquire any rights in the data furnished by MDC 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 the performance of their subcontracts.

(4) Seller shall deliver the manufactured articles or other work produced in reliance on the technical data in accordance with this Contract only to MDC.

(5) Upon completion or termination of this Contract, Seller shall destroy or return to MDC all technical data furnished to Seller by MDC pursuant to this Contract. At MDC's election, MDC may direct Seller to return or destroy the data and may require Seller to certify in writing that Seller has complied.

(6) 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 MDC for use by the subcontractors in performance of the subcontracts. Seller shall not subcontract with any person or business entity in a country other than the United States of America or Seller's own country without written assurance from MDC's Purchasing Representative that the necessary U.S. Government approvals have been obtained if the contemplated subcontract would entail regulated technical data.

13. SUBCONTRACTING

Seller will not subcontract without MDC'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

MDC'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, MDC 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 notify MDC 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 MDC 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 MDC's instructions.

b. Seller shall submit to MDC's authorized Purchasing Representative a written demand for MDC's final decision regarding the disposition of any dispute between the parties relating to this Contract, unless MDC, on its own initiative, has already rendered such a final decision. Seller's written demand shall be fully supported by factual information, and if such demand involves a cost adjustment to the contract it shall include a signed writing submitted by a senior company official containing the following certification statement:

"I certify that the written demand is made in good faith, that the supporting data are accurate and complete to the best of my knowledge and belief; and that the amount requested accurately reflects the contract adjustment for which (Seller) believes MDC is liable."

c. Any MDC final decision shall be expressly identified as such, shall be in writing, and shall be signed by MDC's authorized Purchasing Representative, except that MDC'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. MDC'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. MDC and Seller shall bear their own costs of processing the dispute.

17. WAIVER AND SEVERABILITY

Any action or inaction by MDC or the failure of MDC, on any occasion, to enforce any right or provision of this Contract shall not be construed to be a waiver by MDC of its rights hereunder, and shall not prevent MDC 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 MDC herein are cumulative, and are in addition to any other rights or remedies that MDC 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 26-800; (c) specifications; and (d) all other attachments incorporated herein by reference. MDC'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 MDC'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 MDC, 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 of the state in which the MDC 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 MDC, 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 MDC under this Contract. Upon receipt of timely notice of any claim or suit alleging such infringement, Seller agrees to defend MDC, its customers and users of its products, or any of them, at Seller's expense.

b. Seller shall also indemnify, defend and hold harmless MDC 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.

22. PRICE WARRANTY

Seller warrants that the price of the goods and services to be furnished to MDC under this Contract do not exceed the price charged by Seller to any other customer purchasing the same goods and services 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 MDC furnishes any material for fabrication hereunder, Seller agrees: (1) not to substitute any other material in such fabrication without MDC'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 MDC's expense will be returned in the form of products (except that which become normal industrial waste) or unused material. Seller shall inspect any such material furnished by MDC and shall have the right to reject nonconforming material upon inspection. 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.

b. Seller agrees that it will use all designs, tools, patterns, drawings, specifications, other information and equipment, title to which is in MDC, only in the performance of this Contract and not otherwise, unless MDC'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 MDC, 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 MDC relating to Government contracts in effect at the time Seller enters into direct sale to the Government, that Seller furnishes prior written notice to MDC 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 MDC.

25. COMPLIANCE WITH IRCA

a. Seller agrees that it is an independent contractor under this Contract for purposes of the Immigration Reform and Control Act of 1986 (IRCA). Furthermore, Seller acknowledges that IRCA require Seller to verify the identity and work authorization status of its employees performing work in the United States.

b. Upon the request of MDC, Seller shall submit proof of identity or work authorization status to MDC for each employee covered by Subparagraph a. who shall perform services under this Contract on the premises of MDC. 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 identity or work authorization status, MDC may issue identification badges or cards to employees of Seller.

c. Should Seller fail to comply with this Clause, MDC 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 MDC; (b) development cost for such features is being charged by Seller to MDC; 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 MDC the right to make or have made all such goods, together with a royalty-free, nonexclusive, irrevocable license under any U.S. patent covering such new features of design.

28. ASSIGNMENT

a. 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 MDC, 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.

b. MDC may without Seller consent assign all or part of its rights and obligations under this Agreement, without recourse against MDC, to an affiliate or MDC majority-owned entity into which is placed all, or substantially all, of MDC's commercial aircraft business. Upon such assignment, Seller will look exclusively to such assignee for performance under this Agreement.

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 MDC'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 MDC or otherwise directed in writing by MDC's Traffic Department. Originals of all bills of lading and express receipts shall be mailed to the Traffic Department of MDC'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 MDC.

32. OFFSET/CO-PRODUCTION

a. Seller shall use its best efforts to cooperate with MDC in the fulfillment of any offset program obligation that MDC may have accepted as a condition of the sale of an MDC product to a foreign nation.

b. MDC 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 MDC. 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 MDC may have. Seller may not, therefore, enter into such procurements from foreign sources to support MDC future requirements without MDC's prior written approval.

c. While MDC'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 MDC as a condition precedent to such approval.

d. Any data to be provided to a foreign source shall be coordinated with MDC in advance to ensure that any necessary export licenses are obtained prior to transfer of such data.

(END)

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