



# Terms & Conditions:

## MODIFICATIONS TO GENERAL TERMS AND CONDITIONS C-17 PRIME CONTRACT F33657-97-C-0008

MD-1870-22 (3 AUG 99) REV

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### GOVERNMENT CONTRACT REQUIREMENTS

If Form GP1 is applicable to this procurement, this Attachment constitutes the Government clauses contemplated by Article 29. If Form MD-1965 is applicable to this procurement, this Attachment constitutes the Government clauses contemplated by Article 36. If Form GP4 is applicable to this procurement, this Attachment constitutes the Government clauses contemplated by Article 31. If Form MDA-TA 26-858 is applicable to this procurement, the Government clauses set forth in Article 36 of said Form are hereby deleted and the provisions set forth in this document are inserted in lieu thereof.

1. The following contract clauses are incorporated by reference from the Federal Acquisition Regulation (FAR) and apply to the extent indicated. In all of the following clauses, "Contractor" and "Offeror" mean Seller. Unless otherwise provided, the clauses are those in effect as of the date of this contract.

52.203-6 Restrictions on Subcontractor Sales to the Government.

52.203-7 Anti-Kickback Procedures (excluding subparagraph (c)(1)). Buyer may withhold sums

owed Seller the amount of any kickback paid by Seller or its subcontractors at any tier if (a) the Contracting Officer so directs, or (b) the Contracting Officer has offset the amount of such kickback against money owed Buyer under the prime contract. This clause applies only if this contract exceeds \$100,000.

52.203-10 Price or Fee Adjustment for Illegal or Improper Activity. This clause applies only if this contract exceeds the FAR small purchase limitation. If the Government reduces Buyer's price or fee for violations of the Act by Seller or its subcontractors at any tier, Buyer may withhold from sums owed Seller the amount of the reduction.

52.203-12 Limitation on Payments to Influence Certain Federal Transactions. This clause applies only if this Contract exceeds \$100,000.

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

52.211-5 New Material. Any notice will be given to Buyer rather than the Contracting Officer.

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

52.215-2 Audit and Records — Negotiation. This clause applies only if this contract exceeds \$25,000.

52.215-27 Termination of Defined Benefit Pension Plans. This Clause applies to this contract if it meets the requirements of FAR 15.804-8(e).

52.215-39 Reversion or Adjustment of Plans for Postretirement Benefits Other Than Pensions (PRB). This Clause applies to this contract if it meets the requirements of FAR 15.804-8(f).

52.215-42 Requirements for Cost or Pricing Data or Information Other Than Cost or Pricing Data - Modifications. The terms "Contracting Officer" and "Government" mean Buyer.

52.219-8 Utilization of Small Business Concerns and Small Disadvantaged Business Concerns.

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

52.222-1 Notice to Government of Labor Disputes. "Contracting Officer" means Buyer.

52.222-20 Walsh-Healy Public Contracts Act. This clause applies only if this contract exceeds \$10,000.

52.222-26 Equal Opportunity (subparagraph (b)(1) through (11)).

52.222-35 Affirmative Action for Special Disabled and Vietnam Era Veterans. This clause applies only if this contract exceeds \$10,000.

52.222-36 Affirmative Action for Handicapped Workers. This clause applies only if this contract

exceeds \$2,500.

52.222-37 Employment Reports on Special Disabled Veterans and Veterans of the Viet Nam Era. This clause applies only if this contract exceeds \$10,000.

52.223-2 Clean Air and Water. This clause applies only if this contract exceeds \$100,000.

52.223-3 Hazardous Material Identification and Material Safety Data. This clause applies only if Seller delivers hazardous material under this contract.

52.223-7 Notice of Radioactive Materials. The period for giving the notice is 60 days.

52.225-3 Buy American Act — Supplies. This clause does not apply if this contract is placed under a Department of Defense contract.

52.225-10 Duty-free Entry. This clause applies only if this contract identifies supplies to be afforded duty-free entry or if foreign supplies in excess of \$10,000 may be imported into the customs territory of the United States.

52.225-11 Restrictions on Certain Foreign Purchases.

52.227-1 Authorization and Consent.

52.227-2 Notice and Assistance Regarding Patent and Copyright Infringement. A copy of each notice sent to the Government will be sent to Buyer. This clause applies only if this contract exceeds the FAR small purchase limitation.

52.227-12 Patent Rights - Retention by the Contractor (Long Form). This clause only applies if this Contract is for experimental, developmental, or research work and Seller is other than a small business firm or nonprofit organization.

52.227-16 Additional Data Requirements. This clause applies only if this contract involves experimental, developmental, research or demonstration work. This clause does not apply if this contract is placed under a Department of Defense contract.

52.228-5 Insurance – Work on a Government Installation. The term "Contracting Officer" shall mean Buyer's Purchasing Representative. The Seller shall obtain and maintain the minimum kinds and amounts of insurance during the performance of this contract as specified in FAR 28.307-2, Liability.

52.229-8 Taxes - Foreign Cost - Reimbursement Contracts. The name of the foreign government and the name of the foreign country to be inserted in paragraph (a) shall be the foreign government and foreign country wherein performance of this contract occurs.

52.234-1 Industrial Resources Developed Under Defense Production Act Title III.

52.242-15 Stop Work Order. The terms "Contracting Officer" and "Government" mean Buyer.

52.244-6 Subcontracts for Commercial Items and Commercial Components

52.245-2 Government Property.

52.245-5 Government Property (Cost-Reimbursement, Time-and-Material, or Labor-Hour Contracts). This clause only applies if this is a cost reimbursement or time-and-material contract.

52.245-17 Special Tooling (Apr 1984 Version). The term "90 days" in Paragraph (i) is changed to read "120 days". The requirement in this clause to furnish lists or other information to the Contracting Officer or Government shall be forwarded through Buyer's Purchasing Representative.

52.245-18 Special Test Equipment

52.247-64 Preference for Privately Owned U.S.-Flag Commercial Vessels. This clause applies only if this contract exceeds \$25,000.

2. DoD Contracts. If this Contract is placed under a Department of Defense Contract, the following contract clauses are incorporated by reference from the Department of Defense Federal Acquisition Regulation Supplement (DFARS) and apply to the extent indicated. In all of the following clauses, "Contractor" and "Offeror" mean Seller except as otherwise noted. Unless otherwise provided, the clauses are those in effect as of the date of this contract.

252.203-7001 Special Prohibition on Employment (excluding paragraph (g)). This clause applies only if this contract exceeds the FAR small purchase limitation.

252.204-7000 Disclosure of Information. Seller will submit requests for authorization to release

through Buyer.

252.209-7000 Acquisition From Subcontractors Subject to On-site Inspection Under the Intermediate-Range Nuclear Forces Treaty. This clause applies only if this contract exceeds the FAR small purchase limitation and is not for commercial or commercial-type products.

252.211-7000 Acquisition Streamlining. This clause applies only if this contract exceeds \$1 million.

252.225-7001 Buy American Act and Balance of Payment Program.

252.225-7009 Duty-free Entry — Qualifying Country End Products and Supplies.

252.225-7010 Duty-free Entry — Additional Provisions. This clause applies in addition to FAR 52.225-10. The following information is required to be furnished pursuant to this provision:

ACO Brad Norris

Activity Address DCMC, MDC-Airlift & Tanker Programs

P.O. Box 22608

Long Beach, California 90801-5608

Activity Address Number DLA8DL

Prime Contract Number F33657-97-C-0008

Contract Dollar Value \$160,556,272.00

Prime Contract Expiration Date December, 2005

252.225-7016 Restriction on Acquisition of Antifriction Bearings.

252.225-7025 Foreign Source Restrictions.

252.225-7026 Reporting of Contract Performance Outside the United States. This clause applies only if this contract exceeds \$100,000.

252.227-7013 Rights in Technical Data - Noncommercial Items (NOV 1995 Version). This clause applies only if the delivery of data is required or if computer software may be originated, developed or delivered under this contract.

252.227-7014 Rights in Noncommercial Computer Software and Noncommercial Computer Software Documentation (JUN 1995 Version).

252.227-7015 Technical Data - Commercial Items (NOV 1995 Version).

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

252.227-7019 Identification of Restricted Rights Computer Software (JUN 1995 Version). This clause applies only if computer software may be originated, developed, or delivered under this contract.

252.227-7025 Limitations on the Use or Disclosure of Government-Furnished Information Marked with Restrictive Legends (JUN 1995 Version).



252.227-7028 Technical Data or Computer Software previously delivered to the Government (JUN 1995 Version).

252.227-7030 Technical Data — Withholding of Payment (OCT 1988 Version). "Government" and "Contracting Officer" mean Buyer. This clause applies only if the delivery of data is required by this contract.

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

252.227-7037 Validation of Restrictive Markings on Technical Data (NOV 1995 Version). This clause applies only if the delivery of data is required by this contract.

252.228-7005 Accident Reporting and Investigation Involving Aircraft, Missiles, and Space Launch Vehicles.

252.234-7001 Earned Value Management System. This provision applies to those subcontractors as specified by the Contracting Officer in the prime contract.

252.245-7001 Reports of Government Property.

252.246-7001 Warranty of Data. The warranty period in paragraph (b) is three years from the Government's acceptance of the final items of data under this contract. "Government" and "Contracting Officer" mean Buyer.

252.247-7023 Transportation of Supplies by Sea. This clause applies only if this contract exceeds the FAR small purchase limitation.

252.247-7024 Notification of Transportation of Supplies by Sea. "Contracting Officer" and, in the first sentence of paragraph (a), "Contractor" mean Buyer.

252.249-7002 Notification of Proposed Program Termination or Reduction. This clause applies only if this contract is for \$500,000 or more.

3. If goods or services being procured under this contract are for commercial items and Clause 1086 is set forth in the purchase order, the foregoing Government clauses set forth in Sections 1. and 2. above are deleted and the following FAR and DFARS clauses are inserted in lieu thereof:

52.222-26 Equal Opportunity (subparagraph (b)(1) through (11)).

52.222-35 Affirmative Action for Special Disabled and Vietnam Era Veterans. This clause applies only if this contract exceeds \$10,000.

52.222-36 Affirmative Action for Handicapped Workers. This clause applies only if this contract exceeds \$2,500.

252.225-7014 and Alt. 1 Preference for Domestic Specialty Metals.

252.227-7015 Technical Data - Commercial Items (NOV 1995 Version).

4. The following special provisions are applicable to this contract:

A. SAFETY AND ACCIDENT PREVENTION

(a) In performing work under this Contract on a Government installation, Seller shall

(1) Conform to the specific safety requirements established by this Contract;

(2) Comply with the safety rules of the Government installation that concern related activities not directly addressed in this contract;

(3) Take all reasonable steps and precautions to prevent accidents and preserve the life and health of Seller, Buyer and Government personnel performing or in any way coming in contact with the performance of this contract; and

(4) Take such additional immediate precautions as Buyer or the Contracting Officer under Buyer's Government contract may reasonably require for safety and accident prevention purposes.

(b) Buyer may, by written notice to the Seller, direct Air Force Occupational Safety and Health Standards (AFOSH) and/or health/safety standards as may be required in the performance of this contract and any adjustments resulting from such direction will be in accordance with the article set forth in the General Terms and Conditions entitled "Changes"

(c) Any violation of these safety rules and requirements, unless promptly corrected as directed by Buyer or the Contracting Officer, shall be grounds for termination of this Contract in accordance with the default provisions hereof.

(d) If Form MD-1965 is applicable to this contract, Article 30 of said Form is deleted in its entirety and this Article A. is substituted in lieu thereof

## B. NOTIFICATION OF DEBARMENT/SUSPENSION STATUS

Seller shall provide immediate notice to Buyer in the event of being suspended, debarred or declared ineligible by any Department or other Federal Agency, or upon receipt of a notice of proposed debarment from any DoD Agency, during the performance of this Contract.

## C. DATA RIGHTS FOR COMMERCIAL STANDARDS

(a) Douglas Process Standards (DPS), Douglas Material Specifications (DMS), Douglas Process Material (DPM), and equivalent Seller and subcontractor documents that were developed at private expense which are called out on engineering drawings applicable to the C-17 may be used, duplicated or disclosed within the Government for C-17 purposes without restriction. These documents may be released or disclosed outside the Government and the Government may authorized persons to whom release or disclosure has been made to use, modify, reproduce, release, perform, display, or disclose that data if directly related to United States Government C-17 purposes. Prior to release or disclosure of the data outside the Government, the intended recipient shall be subject to a nondisclosure agreement. As used in this clause, "Government C-17 purpose" means any directly related C-17 activity in which the United States Government is a party, including cooperative agreements with international or multinational defense organizations, or sales or transfers by the United States Government to foreign governments or international organizations. Government C-17 purposes include competitive procurement for C-17 purposes, but do not include the rights to use, modify, reproduce, release, perform, display, or disclose technical data for commercial purposes, nor authorize others to do so.

(b) Any data delivered in accordance with paragraph (a) above shall be marked with the following legend:

## RESTRICTIONS

Contract Number: F33657-97-C-0008

Contractor Name: McDonnell Douglas Corporation

Contractor Address: 2401 E. Wardlow Road, Long Beach,

California 90807

Expiration Date: Not subject to expiration

These documents may be released or disclosed outside the Government and the Government may authorized persons to whom release or disclosure has been made to use, modify, reproduce, release, perform, display, or disclose that data if directly related to United States Government C-17 purposes. Prior to release or disclosure of the data outside the Government, the intended recipient shall be subject to a nondisclosure agreement. As used in this clause, "Government C-17 purpose" means any directly related C-17 activity in which the United States Government is a party, including cooperative agreements with international or multinational defense organizations, or sales or transfers by the United States Government to foreign governments or international organizations. Government C-17 purposes include competitive procurement for C-17 purposes, but do not include the rights to use, modify, reproduce, release, perform, display, or disclose technical data for commercial purposes, nor authorize others to do so. Any reproduction of this document or portions thereof marked with this legend must also reproduce the markings.

(c) This special Contract Requirement is intended to set forth additional rights granted the Government in accordance with paragraph (c) of DFARS 252-227-7015, Technical Data - Commercial Items. The terms of this article are not applicable to Pratt & Whitney's proprietary F117 commercial derivative engine documents to which the Government has not acquired rights.

#### D. SELLER LIABILITY FOR BREAKOUT OF SUPPORT EQUIPMENT, SPARES, REPAIR OF REPARABLES, RETROFIT AND MODIFICATIONS

(a) The Seller warrants the accuracy and completeness of its and its subcontractors' newly developed and/or developmentally modified design disclosure drawing(s) for Government use and/or Government breakout to third parties skilled in the applicable art, in the manufacture, retrofit, repair or modification of C-17 items. With respect to the above engineering data, the Seller makes no warranties express or implied including but not limited to the warranty of merchantability or fitness for a particular purpose. The Seller shall in no event be liable for incidental or consequential damages resulting from the misuse of (deviation from) the requirements specified on the design disclosure drawings.

(b) Seller shall not be held liable for claims or incidental and consequential damages arising out of the Government's misuse of or the Government breakout of control drawings to third parties wherein:

(1) The items or components are manufactured to new third party or Government design; and/or

(2) The third parties or the Government substitute material specifications and/or manufacturing processes other than Seller's material and/or process specifications specified on the Seller's or its subcontractors' engineering data; and/or

(3) The third parties or the Government manufacture, repair, retrofit, or modify items or components to engineering data developed by third parties or the Government to form, fit, and function requirements depicted on C-17 control drawings.

## E. MATERIAL INSPECTION AND RECEIVING REPORT

If any item of work set forth in this contract is to be shipped to the U.S. Government or to a foreign destination:

(a) As specified by DFARS, Appendix F, Table 2, a copy of DD Forms 250 shall be forwarded to the following address:

(1) Forward the Government purchasing office copy to ASC/YCKC, Bldg 558, Loop Road West, Wright – Patterson AFB, OH 45433-7142.

(2) For shipments involving foreign Military Assistance Program (MAP), Grant Aid (GA), or Foreign Military Sales (FMS) requirements, an additional copy shall be sent to: N/A.

(3) Additional distribution of DD Forms 250 is to be made to the following addresses: SA-ALC/LCK, 485 Quentin Roosevelt Blvd., Kelly AFB, TX 78241-6425.

(b) If delivery of MAP, GA, or FMS items to foreign destinations is required, the copies of DD Forms 250 required by DFARS, Appendix F, Table 2, Material Inspection and Receiving Report, Special Distribution, shall be forwarded to the "ship to" address designated in the contract.

## F. PROGRESS PAYMENTS

If Clause 2404 or 2405 is included in this contract, DFARS 252.232-7004, DoD Progress Payments Rate, November 1993 version, is incorporated herein by this reference. In such Clauses, the term "Contractor" shall mean Seller.

## G. SELLER IDENTIFICATION

(a) Seller personnel and their subcontractors must identify themselves as such during meetings, telephone conversations, in electronic messages, or correspondence related to this contract.

(b) Seller-occupied facilities (on AFMC or other Government installations) such as offices, separate rooms, or cubicles must be clearly identified with Seller supplier signs, name plates or other identification, showing that these are work areas for Seller or subcontractor personnel.

## H. PACKAGING AND MARKING OF HAZARDOUS MATERIAL

If hazardous materials will be shipped under this contract, such materials shall be prepared for shipment in accordance with the following applicable regulations for the individual shipment hazard, ultimate destination, and mode of transportation:

(a) Code of Federal Regulations (CFR) Title 29, Part 1910-1200;

(b) Code of Federal Regulations (CFR) Title 49

(c) Air Force Joint Manual (AFJAM) 24-204, Preparing Hazardous Materials for Military Air Shipment;

(d) International Civil Aviation Organization (ICAO) Technical Instructions for the Safe Transport of Dangerous Goods by Air; and

(e) International Maritime Dangerous Goods (IMDG) Code.

## I. FUTURE GOVERNMENT ORGANIC OR COMPETITIVELY PROCURED SUSTAINMENT



(a) The Government's sustainment strategy for the C-17 fleet may change depending on future circumstances. In the event the Government decides to use organic sustainment or competitively procured sustainment for any C-17 item for which Buyer or Seller is the assigned Inventory Control Point (ICP), the parties shall negotiate an equitable adjustment to this contract for the formal delivery of a support package (SP).

(b) The SP shall contain all data required to either return the item to Government organic support/repair or to facilitate competitive re-procurement of Seller-provided support/repair (Procuring Contracting Officer (PCO) will specify whether SP is to facilitate organic or re-procurement scenario). The SP shall also identify all associated Government-owned items which are being utilized for support/repair of the item. The SP will not include the Seller's proprietary Sustainment Data System.

(c) It is anticipated that any equitable adjustment made in accordance with this clause will include only those costs (with overhead, FCCOM, and fee as appropriate) associated with reproduction, data gathering, and delivery unless one or more of the following conditions apply:

1. The data is to be delivered in other than Seller's (or its subcontractor's) format and media.
2. The data has not been previously developed/generated for use in this contract.
3. The data has not been previously delivered under this or another Government contract.
4. The Government requires additional rights to the data beyond the rights it is already entitled to in association with the "Data Rights" clause of this contract.

If the Government requests Seller proprietary data be included in a SP, the Seller will make its best efforts to negotiate with its components and subcontractors for the release of same; however, the Seller is under no obligation to provide such proprietary data if its component(s) or subcontractor(s) refuses (subject to the "Data Rights" clauses of this contract).

## \*J. WARRANTY

Delete the Article set forth in the General Terms and Conditions/General Provisions entitled "Warranty", and insert in lieu thereof the following:

"All Seller warranties, if any, shall inure to and be passed on to the Government. The Seller shall perform all work hereunder in workmanlike manner. The Seller shall, when requested by the Government, determine if a returned part is under warranty. In the event that a failed part is under warranty, the Seller notify Buyer and the Government of such fact."

## K. OZONE DEPLETING SUBSTANCES

The Seller shall notify the Buyer Purchasing Representative if any Class 1 Ozone depleting Substances (ODS) are used or anticipated to be used in the design, manufacture, test, operation, or maintenance of any system, subsystem, item component or process set forth in this Contract.

## L. 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 Buyer or the Contracting Officer under Buyer'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 Buyer or the Contracting Officer, shall be grounds for termination of this Contract in accordance with the default provisions hereof. Buyer may, by written order, direct additional safety and accident standards as may be required under Buyer's Government contract and any adjustments resulting from such direction will be in accordance with the provisions of this Contract entitled "Changes."

## M. FOREIGN OBJECT DAMAGE/CONTROL

Seller shall establish and maintain systems and procedures necessary to provide a program of foreign object damage/control.