



Section 8 : GENERAL TERMS AND CONDITIONS

862. Additional General Provisions (Fixed Price Contract). (2/26/01).

The following terms and conditions are in addition to the terms and conditions in GP1, The Boeing Company General Provisions (Fixed Price Contract). In some cases, they modify or supplement terms and conditions with the same or similar titles as in GP1.

1. INSPECTIONS

Seller will keep records evidencing inspections and their results and will make these records available to Buyer and the Government, where applicable, during contract performance and for four years after final payment.

2. INVOICE AND PAYMENT

For each shipment of goods or completed item of services, Seller will submit an original invoice marked "Original" and one copy marked "Copy" to Buyer's appropriate Accounts Payable Department.

3. BUYER'S USE OF DATA AND INFORMATION

(This article applies only if this contract is issued under a Government prime contract or subcontract.)

Seller agrees that any data such as drawings, instructions, or information furnished to Buyer in connection with this contract will be free from confidential, proprietary, or restrictive-use markings, other than statutory patent, copyright, U.S. Government security notices, or properly applied restrictive legends permitted by appropriate FAR, Department of Defense FAR Supplement (DFARS), or NASA FAR Supplement clauses incorporated herein. Buyer, its agents, or its assignees may duplicate or use such documents in connection with the manufacture, use, or disposition of the material furnished under this contract and may remove, obliterate, or ignore any such marking as may be on such documents unless such markings are specifically permitted by applicable FAR, DFARS, or NASA FAR Supplement clauses. Except as may be otherwise provided in this contract, all information and data disclosed or furnished to Buyer in connection herewith will be deemed to be disclosed or furnished as part of the consideration for this contract, and Seller agrees not to assert any claims (except claims for patent infringement) by reason of any use, duplication, or disclosure thereof.

4. PRECEDENCE

(A) If the various parts of this contract are inconsistent, the following order of precedence will apply: (i) special terms and conditions; (ii) the terms and conditions in this document, Clause 862; (iii) the terms and conditions in GP1; (iv) specifications; (v) all other attachments incorporated in this contract by reference.

(B) Buyer's specifications will prevail over any subsidiary documents referenced therein. Seller will not use any specification in lieu of those contained in this contract without the written consent of Buyer's Authorized Procurement Representative.

5. SHIPPING INSTRUCTIONS

Seller will ship the goods in accordance with the instructions set forth below and the specific routing terms incorporated in this contract.

(A) Buyer's contract number will be referenced on all shipping documents.

(B) Notwithstanding article 3(b)(v) in GP1, "Prepay and Add" is not authorized.

(C) Third Party/Direct Shipments must adhere to the instructions set forth herein and, if Buyer is responsible for the freight costs, must be shipped "Third Party Collect" to Buyer.

(D) Seller will contact Buyer's Traffic Management Department referenced elsewhere in this contract or Buyer's Authorized Procurement Representative prior to shipping the following types of shipments:

(i) Classified Shipments

(ii) Electronics

(iii) Shipments of hazardous materials, including explosives

(iv) Oversize shipments

(v) Refrigeration shipments

(vi) Shipments exceeding 1000 pounds in gross weight

(vii) Shipments requiring special handling or equipment (i.e., air ride equipment, fragile items, heavy haul trailers, etc.)

(viii) Same-day or courier deliveries

(ix) Counter-to-counter airfreight

(x) Truckload shipments

(E) Seller's failure to comply with the shipping instructions in this contract will result in Seller being liable for loss or damage in transit. In addition, excess freight charges and a \$100 administrative processing fee will be debited to Seller.

(F) Seller will contact Buyer's Traffic Management Department referenced elsewhere in this contract or Buyer's Authorized Procurement Representative with inquiries or requests for special instructions.

6. QUALIFIED PRODUCTS LIST (QPL) ITEM SOURCES

(A) If Seller is a seller of QPL items and this contract requires QPL items, Seller certifies:

(i) By acceptance of this order, that it is a qualified manufacturer listed, or approved for listing, on the

applicable Qualified Products List.

OR

(ii) In writing, that materials/parts being supplied pursuant to this Contract are, at the time of manufacture and shipment, produced by a qualified manufacturer listed, or approved for listing, on the applicable Qualified Products List. Certification shall accompany each shipment. This certification must also include the manufacturer's name for each item shipped to Buyer.

(B) If this contract requires assemblies or end items which contain any Government Standard Part specified on the Qualified Products List (as required by the controlling Government Specification), Seller agrees that such Government Standard Parts will be obtained only from such qualified sources or from authorized dealers/distributors. Seller will obtain and keep on file written evidence that such qualified items were, at the time of manufacture or shipment, produced by a qualified manufacturer listed, or approved for listing, on the applicable Qualified Products List. Seller will obtain and keep on file the names of such manufacturers.

7. SUBCONTRACTING

Seller agrees that no subcontract placed under this contract will provide for payment on a cost-plus-a-percentage-of-cost basis.

8. ADVANCE MANUFACTURE, ADVANCE SHIPMENTS, AND OVER SHIPMENTS

The goods covered by this contract will be delivered in accordance with the delivery schedule. Seller will not, without Buyer's prior written consent, manufacture in advance of the reasonable flow time required to accomplish delivery in accordance with such schedule, nor will Seller deliver any such supplies in advance of such schedule without Buyer's written consent. Buyer reserves the right to return, shipping charges collect, or to store at Seller's expense all such supplies received by Buyer substantially in advance of such schedule. No over shipments will be accepted except those resulting in good faith from conditions of loading, shipping, packing, or allowances in manufacturing processes, and in no case exceeding five percent of the quantity called for or the Forging Industry Association quantity tolerated.

9. REPRESENTATIONS AND CERTIFICATIONS

This article includes representations and certifications that Buyer is required to obtain from Seller in order to comply with various provisions of its Government contracts. They have been stated in such a way as to allow Seller's acceptance of this contract to serve as representations and certifications that will present no bar to Buyer's award of this contract. If, upon receipt of a solicitation that precedes a contract that will incorporate these terms and conditions, Seller believes it is not prepared to make these representations and certifications, it will so notify Buyer as part of its response to the solicitation.

By the acceptance of this order, Seller makes the following representations and certifications:

(A) Certification of Nonsegregated Facilities

(i) "Segregated facilities," as used in this provision, means any waiting rooms, work areas, rest rooms and wash rooms, restaurants and other eating areas, time clocks, locker rooms and other storage or dressing areas, parking lots, drinking fountains, recreation or entertainment areas, transportation, and housing facilities provided for employees, that are segregated by explicit directive or are in fact

segregated on the basis of race, color, religion, or national origin because of habit, local custom, or otherwise.

(ii) Seller certifies that it does not and will not maintain or provide for its employees any segregated facilities at any of its establishments, and that it does not and will not permit its employees to perform their services at any location under its control where segregated facilities are maintained. The Seller agrees that a breach of this certification is a violation of the Equal Opportunity clause in the contract.

(iii) Seller further agrees that (except where it has obtained identical certifications from proposed subcontractors for specific time periods) it will -

(a) Obtain identical certifications from proposed subcontractors before the award of contracts under which the subcontractor will be subject to the Equal Opportunity clause;

(b) Retain the certifications in the files; and

(c) Forward the following notice to the proposed subcontractors (except if the proposed subcontractors have submitted identical certifications for specific time periods).

Notice to Proposed Subcontractors of Requirement for Certifications of Nonsegregated Facilities.

A Certification of Nonsegregated Facilities must be submitted before the award of a subcontract under which the subcontractor will be subject to the Equal Opportunity clause. The certification may be submitted either for each subcontract or for all subcontracts during a period (i.e., quarterly, semiannually, or annually).

NOTE: The penalty for making false statements in bids is prescribed in 18 U.S.C. 1001.

(B) Previous Contracts and Compliance Reports

Seller represents that:

(i) It has participated in a previous contract or subcontract subject to the Equal Opportunity clause of this solicitation, the clause originally contained in Section 301 of Executive Order No. 10925, or the clause contained in Section 201 of Executive Order No. 11114.

(ii) It has filed all Compliance Reports.

(iii) Representations indicating submission of required compliance reports, signed by proposed subcontractors, will be obtained.

(C) Affirmative Action Compliance (applicable if Seller has 50 or more employees)

Seller represents that:

(i) If required to do so by the rules and regulations of the Secretary of Labor (41 CFR 60-1 and 60-2), it has developed and has on file a written Affirmative Action Compliance Program at each of its establishments, or

(ii) In the event such a program does not presently exist, and this contract is for \$50,000 or more, that it will develop and place in operation such a written Affirmative Action Compliance Program within 120 days from the award of this contract.

(D) Certification Regarding Debarment, Suspension, Proposed Debarment, and Other Responsibility Matters

Seller certifies that, to the best of its knowledge and belief, it is not presently debarred, suspended, proposed for debarment, or ineligible from entering into contracts with the Executive Branch of the Federal Government.

(E) Clean Air and Water Certification

(i) Seller certifies that at the time it submitted its proposal none of the facilities to be used in the performance of this contract were listed on the Environmental Protection Agency (EPA) List of Violating Facilities.

(ii) Seller further certifies that subsequent to submittal of its proposal and prior to award of this contract it has not received any communication from the Administrator, or a designee, of the EPA, indicating that any facility that Seller proposes to use for the performance of this contract is under consideration to be listed on the EPA List of Violating Facilities

(iii) Seller will include a certification substantially the same as this certification, including this paragraph (iii), in every nonexempt subcontract.

10. SINGLE PROCESS INITIATIVES

(A) Seller is encouraged to pursue and implement Single Process Initiatives (SPI) throughout the life of this contract. Seller may be relieved of requirements in this contract when those requirements are inconsistent with Government-approved SPI processes at Seller's facility. This relief will be granted under the following conditions:

(i) Boeing's customer (U.S. Air Force, U.S. Navy, U.S. Army, or NASA) must have been a party to the SPI approval at Seller's facility.

(ii) Seller must describe in writing the requirements of this contract that are inconsistent with the SPI process and must commit that there will be no adverse impact to performance, cost, quality, or schedule due to the substitution of Seller's approved SPI process.

(iii) There must be no specific technical reason that prevents the use of Seller's approved SPI process on work under this contract.

(iv) Cost savings realized from Seller's implementation of the SPI process will be shared with The Boeing Company in a manner similar to that used for determining the Government's share of cost savings.

(v) Seller's SPI must be submitted to Buyer for review as early as possible, preferably concurrent with Seller's submittal to its Government customer.

(vi) Seller's submittal to Buyer must include the following if available:

- (a) A copy of the concept paper/block change proposal that was submitted to Seller's Government customers.
- (b) A list of the Boeing SCG locations and programs affected by the SPI.
- (c) A description of the equipment items affected.
- (d) Specific change language (was/now) being requested.
- (e) Seller's proposed consideration to Boeing for agreeing to the change.
- (f) A copy of the signed block change from, or MOA with, the Government.
- (g) Seller's regular Boeing point of contact.
- (h) Seller's point of contact for SPI technical issues.
- (i) Names of other prime contractors affected by the SPI.
- (j) A list of Government agencies that have approved the SPI.

(B) Boeing will consider all Government-approved SPI processes meeting the above conditions as applicable to all existing and follow-on contracts with Seller.

11. OWNERSHIP OF INTELLECTUAL PROPERTY.

(A) Technical Work Product. All technical work product, including, but not limited to, ideas, information, data, documents, drawings, software, software documentation, designs, specifications and processes produced by or for Seller, either alone or with others, in the course of or as a result of any work performed by or for Seller which is covered by this contract using funds paid by Buyer under this contract will be the exclusive property of Buyer and be delivered to Buyer promptly upon request.

(B) Inventions and Patents. All inventions conceived, developed, or first reduced to practice by or for Seller, either alone or with others, in the course of or as a result of any work performed by or for Seller which is covered by this contract using funds paid by Buyer under this contract, and any patents based on any such inventions (both domestic and foreign), will be the exclusive property of Buyer. Seller will (i) promptly disclose all such inventions to Buyer in written detail and (ii) execute all papers, cooperate with Buyer and perform all acts necessary or appropriate in connection with the filing, prosecution, maintenance or assignment of related patents or patent applications on behalf of Buyer.

(C) Works of Authorship and Copyrights. All works of authorship (including, but not limited to, documents, drawings, software, software documentation, photographs, video tapes, sound recordings and images) created by or for Seller, either alone or with others, in the course of or as a result of any work performed by or for Seller which is covered by this contract using funds paid by Buyer under this contract, together with all copyrights subsisting therein, will be the sole property of Buyer. To the extent permitted under United States copyright law, all such works will be works made for hire, with the copyrights therein vesting in Buyer. The copyrights in all other such works, including all of the exclusive rights therein, will be promptly transferred

and formally assigned free of charge to Buyer.

(D) Pre-Existing Inventions and Works of Authorship. Seller grants to Buyer, and to Buyer's subcontractors, suppliers and customers in connection with Products or work being performed for Buyer, an irrevocable, nonexclusive, paid-up, worldwide license under any patents, copyrights, industrial designs and mask works (whether domestic or foreign) owned or controlled by Seller at any time and existing prior to or during the term of this contract, but only to the extent that such patents or copyrights would otherwise interfere with Buyer's or Buyer's subcontractors', suppliers' or customers' use or enjoyment of Products or the work product, inventions or works of authorship belonging to Buyer under this contract.

(E) Inapplicability of This Article. In the event of any inconsistency between this article and any government contract clause incorporated by reference into this contract, the incorporated clause shall govern.

12. RIGHTS IN SOFTWARE AND DOCUMENTATION.

Seller hereby grants to Buyer a perpetual, nonexclusive, paid-up, worldwide license to reproduce, distribute copies of, perform publicly, display publicly and make derivative works from software included in or provided with or for products (Software) and related information and materials (Software Documentation) as reasonably required by Buyer in connection with (i) the testing, certification, use, sale or support of a product or the manufacture, testing, certification, use, sale or support of any item including and/or utilizing a product or (ii) the design or acquisition of hardware or software intended to interface with Software. The license granted to Buyer under this article also includes the right to grant sublicenses to its customers as reasonably required in connection with customers' operation, maintenance, overhaul and modification of any item including and/or utilizing Software. All copies and derivative works made pursuant to the foregoing license or any sublicense to a customer will automatically become the property of Buyer or customer, and Buyer agrees to preserve Seller's copyright notice thereon to the extent that such a notice was included with the original Software and/or Software Documentation. Seller acknowledges that Buyer is the owner of all copies of Software and Software Documentation provided to or made by Buyer or customers pursuant to this contract, and Seller hereby authorizes Buyer and customers to dispose of, and to authorize the disposal of, the possession of any and all such copies by rental, lease or lending or by any other act or practice in the nature of rental, lease or lending.

NOTE: ARTICLES 13 THROUGH 16 APPLY ONLY IF THIS CONTRACT REQUIRES SELLER TO WORK ON FACILITIES OWNED OR CONTROLLED BY BUYER OR BUYER'S CUSTOMERS.

13. BADGING REQUIREMENTS FOR FOREIGN PERSONS

(A) An employee of Seller who is not a U.S. citizen and does not have a permanent-resident-alien "green" card on his or her person may not be admitted to Buyer's or Buyer's customer's facilities for purposes of performing work without special arrangements.

(B) If foreign persons are to be used for work at Buyer's or Buyer's customer's facilities, advance notice must be provided to Buyer's Authorized Procurement Representative at least three weeks prior to the scheduled need for access to Buyer's or Buyer's customer's facilities.

(C) The following specific information must be provided for each such foreign national:

(i) Complete name and address of employee

(ii) Company name and address

(iii) Contract number

(iv) Detailed description of employee's duties

(v) Nationality

(vi) Date and place of birth (country of origin)

(vii) Passport number and expiration date

(viii) Employment authorization and/or work permit number issued by the Immigration and Naturalization Service

(ix) Access requirements (i.e., facility locations, building number(s), controlled access areas, automated information systems, etc.)

(x) Duration of need for access to Buyer's or Buyer's customer's facilities.

(D) Buyer's Authorized Procurement Representative will make arrangements for appropriate badging for Seller's foreign national employees, or will notify Seller if unescorted access is denied or delayed.

(E) Seller agrees that it will not employ for the performance of work at Buyer's or Buyer's customer's facilities any individuals who are not legally authorized to work in the United States.

(F) Nothing in this clause shall be construed as requiring or encouraging violation of the labor laws of the United States, including without limitation, those pertaining to equal employment opportunity.

14. SECURITY

All employees, agents, and representatives of Seller or its subcontractors who are expected to enter premises owned or controlled by Buyer or the Government may, at Buyer's discretion, be required to provide Buyer's Security personnel birth certificates and/or other evidence of citizenship satisfactory to Buyer before being allowed within any restricted area. All such employees, agents, and representatives are bound by the provisions of the United States Criminal Code relating to espionage and sabotage and will conform to the standards and requirements established by the Government and Buyer's Security. The name, social security number, and birth certificate and/or other satisfactory evidence of citizenship of each such employee, agent, or representative will be submitted by Seller, if requested by Buyer, prior to the time for reporting to work. Selected positions and assignments of Seller's employees may require a security clearance.

15. SAFEGUARDS

If this contract requires work to be performed on property owned or controlled by Buyer or the Government, Seller will provide suitable and adequate protection of the work, property adjacent to the work, and persons in the immediate vicinity of the work.

16. INDEMNIFICATION, INSURANCE, AND PROTECTION OF PROPERTY

(A) Indemnification Negligence of Seller or Subcontractor. Seller shall indemnify and hold harmless The Boeing Company, its subsidiaries, and their directors, officers, employees, and agents from and against all

actions, causes of action, liabilities, claims, suits, judgments, liens, awards, and damages, of any kind and nature whatsoever for property damage, personal injury, or death (including without limitation injury to or death of employees of Seller or any subcontractor thereof) and expenses, costs of litigation and counsel fees related thereto or incident to establishing the right to indemnification, arising out of or in any way related to the Contract, the performance thereof by Seller or any subcontractor thereof or other third parties including without limitation the provision of services, personnel, facilities, equipment, support, supervision, or review. The foregoing indemnity shall apply only to the extent of the negligence of Seller, any subcontractor thereof, or their respective employees. In no event shall Seller's obligations hereunder be limited to the extent of any insurance available to or provided by the Seller or any subcontractor thereof. Seller expressly waives any immunity under industrial insurance, whether arising out of statute or source, to the extent of the indemnity set forth in this paragraph.

(B) Commercial General Liability. If Seller or any subcontractor thereof will be performing work on Buyer premises, Seller shall carry and maintain, and ensure that all subcontractors thereof carry and maintain, throughout the period when work is performed and until final acceptance by Buyer, Commercial General Liability insurance with available limits of not less than One Million Dollars (\$1,000,000) per occurrence for bodily injury and property damage combined. Such insurance shall contain coverage for all premises and operations, broad form property damage, contractual liability (including without limitation that specifically assumed under paragraph (A) herein) and goods and completed operations insurance with limits of not less than One Million Dollars (\$1,000,000) per occurrence for a minimum of twenty-four (24) months after final acceptance of the work by Buyer. Such insurance shall not be maintained on a per project basis unless the respective Seller or subcontractor thereof does not have blanket coverage.

(C) Automobile Liability. If licensed vehicles will be used in connection with the performance of the work, Seller shall carry and maintain, and ensure that any subcontractor thereof who uses a licensed vehicle in connection with the performance of the work carries and maintains, throughout the period when work is performed and until final acceptance by Buyer, Business Automobile Liability insurance covering all vehicles, whether owned, hired, rented, borrowed, or otherwise, with available limits of not less than One Million Dollars (\$1,000,000) per occurrence combined single limit for bodily injury and property damage.

(D) Workers' Compensation. Throughout the period when work is performed and until final acceptance by Buyer, Seller shall, and ensure that any subcontractor thereof shall, cover or maintain insurance in accordance with the applicable laws relating to Workers' Compensation with respect to all of their respective employees working on or about Buyer premises. If Buyer is required by any applicable law to pay any Workers' Compensation premiums with respect to an employee of Seller or any subcontractor, Seller shall reimburse Buyer for such payment.

(E) Certificates of Insurance. Prior to commencement of the work Seller shall provide for Buyer's review and approval Certificates of Insurance reflecting full compliance with the requirements set forth in Paragraphs (B) Commercial General Liability, (C) Automobile Liability and, (D) Workers' Compensation. Such certificates shall be kept current and in compliance throughout the period when work is being performed and until final acceptance by Buyer, and shall provide for thirty (30) days advance written notice to Buyer in the event of cancellation. Failure of Seller or any subcontractor thereof to furnish Certificates of Insurance, or to procure and maintain the insurance required herein or failure of Buyer to request such certificates, endorsements or other proof of coverage shall not constitute a waiver of the respective Seller's or subcontractor's obligations hereunder.

(F) Self-Assumption. Any self-insured retention, deductibles, and exclusions in coverage in the policies required under this article shall be assumed by, for the account of, and at the sole risk of Seller or the subcontractor which provides the insurance and to the extent applicable shall be paid by such Seller or

subcontractor. In no event shall the liability of Seller or any subcontractor thereof be limited to the extent of any of the minimum limits of insurance required herein.

(G) Protection of Property. Seller assumes, and shall ensure that all subcontractors thereof and their respective employees assume, the risk of loss or destruction of or damage to any property of such parties whether owned, hired, rented, borrowed, or otherwise. Seller waives, and shall ensure that any subcontractor thereof and their respective employees waive, all rights of recovery against Buyer, its subsidiaries, and their respective directors, officers, employees, and agents for any such loss or destruction of or damage to any property of Seller, any subcontractor, or their respective employees.

(H) At all times Seller shall, and ensure that any subcontractor thereof shall, use suitable precautions to prevent damage to Buyer property. If any such property is damaged by the fault or negligence of Seller or any subcontractor thereof, Seller shall, at no cost to Buyer, promptly and equitably reimburse Buyer for such damage, or repair or otherwise make good such property to Buyer's satisfaction. If Seller fails to do so, Buyer may do so and recover from Seller the cost thereof.