

**CUSTOMER CONTRACT REQUIREMENTS
(EELV – INITIAL LAUNCH SERVICES)
CUSTOMER CONTRACT F04701-98-D-0002**

CUSTOMER CONTRACT REQUIREMENTS

If Form GP1 is applicable to this procurement, this Attachment constitutes the Government clauses contemplated by Article 29. If Form GP2 is applicable to this procurement, this Attachment constitutes the Government clauses contemplated by Article 28. If Form GP3 is applicable to this procurement, this Attachment constitutes the Government clauses contemplated by Article 41. If Form GP4 is applicable to this procurement, this Attachment constitutes the Government clauses contemplated by Article 31. If this contract is for the procurement of commercial items, as defined in FAR Part 2.101, see Section 3 below.

1. The following contract clauses are incorporated by reference from the Federal Acquisition Regulation and apply to the extent indicated. In all of the following clauses, “Contractor” and “Offeror” mean Seller.

52.203-6 Restrictions on Subcontractor Sales to the Government (JUL 1995). This clause applies only if this contract exceeds \$100,000.

52.203-7 Anti-Kickback Procedures (excluding subparagraph (c)(1)) (JUL 1995). 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.

52.203-12 Limitation on Payments to Influence Certain Federal Transactions (JUN 2003). This clause applies only if this Contract exceeds \$100,000. Paragraph (c)(4) is modified to read as follows: "(c)(4) Seller will promptly submit any disclosure required (with written notice to Boeing) directly to the PCO for the prime contract. Boeing will identify the cognizant Government PCO at Seller's request. Each subcontractor certification will be retained in the subcontract file of the awarding contractor.

52.204-2 Security Requirements (AUG 1996). “Changes clause” means the changes clause of this contract. This clause applies only if access to classified material is required.

52.211-15 Defense Priority and Allocation Requirements (SEP 1990). This clause is applicable if a priority rating is noted in this contract. The rating for this program is DO-A2.

52.215-2 Audit and Records - Negotiation (JUN 1999). This clause applies only if this contract exceeds \$100,000 and (i) is cost-reimbursement, incentive, time-and-materials, labor-hour, or price-redeterminable type or any combination of these types: (ii) Seller was required to provide cost or pricing data, or (iii) Seller is required to furnish reports as discussed in paragraph (e) of the referenced clause.

52.219-8 Utilization of Small Business Concerns (OCT 2000).

52.222-26 Equal Opportunity (subparagraph (b)(1) through (11)) (APR 2002).

52.222-35 Equal Opportunity for Special Disabled, Veterans of the Vietnam Era, and Other Eligible Veterans (DEC 2001). This clause applies only if this contract exceeds \$25,000.

52.222-36 Affirmative Action for Workers With Disabilities (JUN 1998). This clause applies only if this contract exceeds \$ 10,000.

52.222-37 Employment Reports on Special Disabled Veterans, Veterans of the Vietnam Era, and Other Eligible Veterans (DEC 2001). This clause applies only if this contract exceeds \$25,000.

52.227-1 Authorization and Consent (JUL 1995).

52.227-2 Notice and Assistance Regarding Patent and Copyright Infringement (AUG 1996). A copy of each notice sent to the Government will be sent to Buyer. "Contracting Officer" shall mean "Buyer". This clause applies only if this contract exceeds \$100,000.

52.228-5 Insurance - Work on a Government Installation (JAN 1997). Seller shall provide and maintain insurance as set forth in this contract.

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 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.

252.225-7001 Buy American Act and Balance of Payment Program. (MAR 1998)

252.225-7012 Preference for Certain Domestic Commodities (SEP 1997)

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

252.227-7037 Validation of Restrictive Markings on Technical Data (NOV 19995). This clause applies only if the delivery of data is required by this contract.

3. The following prime contract special provisions apply to this purchase order:

A. COMPLIANCE WITH LAWS UNIQUE TO GOVERNMENT CONTRACTS

The Seller agrees to comply with 40 USC 327m et. Seq., Contract Work Hours & Safety Act and 41 USC 51-58, Anti-Kickback Act of 1986.

B. DELAYS

- (1) Except as set forth herein, Seller shall not be held responsible for delays in performance, if the delay or nonperformance is caused by an occurrence beyond the reasonable control of Seller and without its fault or negligence; similarly, Seller shall not be responsible for delays or nonperformance caused by an occurrence beyond the reasonable control and without the fault or negligence of its subcontractors. In addition, any explosions occurring at or around Vandenberg AFB or Cape Canaveral Air Station, not caused by Seller's actions or omissions, which interferes with or interrupts Seller's use of the launch site, shall be conclusively presumed to be an excusable delay under this clause. Seller shall notify Buyer in writing within five working days after commencement of any excusable delay, setting forth the full particulars in connection therewith, shall remedy such occurrence with all reasonable dispatch, and shall promptly give written notice to Buyer of the cessation of such occurrence.
- (2) In the event that Seller elects to use foreign technology, including but not limited to that of the former Soviet Union (FSU), it is expressly understood that Seller accepts all risks associated with such an international transaction. Specifically, neither the United State Government nor Buyer has any obligation to negotiate agreements with a foreign government. Any impacts, to include cost or schedule impacts, of such agreements on Seller will be borne entirely by Seller on this effort. Therefore, any delays or nonperformance caused by use of foreign technology shall not be excused and Buyer may, if appropriate, terminate this agreement for default. However, the parties may elect to modify this order to accommodate any delays caused by the use of foreign technology. DoD policies on FSU propulsion and other foreign technology will be adhered to by Seller.
- (3) In no event shall Seller be entitled to an equitable adjustment under this order or any other claims for any lost time or costs incurred by Seller due to any disruption of its activities at the launch sites/ranges, regardless of frequency or duration of any such interruptions, including disruptions of commercial activities, or for any delay in entry, temporary loss of access, barring of individual employees from the base under federal laws authorizing such actions, limitation or withdrawal of

- an employee's on-base driving privileges, or any other security action that may cause employees to be late to or unavailable at their work stations, or any delay in arrival of parts or supplies.
- (4) In the event the performance of all or any part of the work of this order is delayed or interrupted by an act of Buyer that is not expressly or implicitly authorized by this order, Buyer and Seller shall mutually agree to a modified schedule and/or equitable adjustment pursuant to the Changes clause, subject to the following: an adjustment (excluding profit) shall be made for any increase in the cost of performance of this order caused by the delay or interruption and the order shall be modified in writing accordingly; an adjustment shall be made in the delivery or performance dates and any other contractual term or condition affected by the delay or interruption; no adjustment shall be made under this order for any delay or interruption to the extent that it would have been delayed by any other cause, including the fault or negligence of Seller, an occurrence beyond the reasonable control of Buyer and without its fault or negligence, or for which adjustment is provided or excluded under any other term or condition of this order; a claim under this clause shall not be allowed for any costs incurred more than 20 calendar days before Seller shall have notified Buyer in writing of the act or failure to act involved, and unless the claim, in an amount stated, is asserted in writing as soon as practicable after termination of the delay or interruption, but not later than the date of the launch affected by the delay.
 - (5) If Buyer determines that Seller has an inexcusable delay under the terms of this order, Buyer shall promptly notify Seller of the noncompliance. The notification shall contain a statement of the discrepancy. Seller shall respond within seven calendar days following receipt of notice with a written reply addressing how it will become compliant with the terms of the order. In the event Seller cannot cure the noncompliance, Buyer may terminate the contract in accordance with the Cancellation for Default or Termination for Convenience clause, whichever is applicable.
 - (6) Nothing in subparagraphs (1), (2), (3) of this clause creates any liability on the part of Buyer for additional costs arising from delays caused by the events described in this clause.

C. ELIMINATION OF USE OF CLASS I OZONE DEPLETING SUBSTANCES (ODS)

- (1) It is Air Force policy to preserve mission readiness while minimizing dependency on Class I Ozone Depleting Substances (ODS), and their release into the environment, to help protect the Earth's stratospheric ozone layer.
- (2) Unless a specific waiver has been authorized, Air Force procurements:
 - (A) May not include any specification, standard, drawing, or other document that requires the use of a Class I ODS in the design, manufacture, test, operation, or maintenance of any system, subsystem, item, component, or process;
 - (B) May not include any specification, standard, drawing or other document that establishes a requirement that can only be met by use of a Class I ODS; and
 - (C) May not require the delivery of any item of supply that contains a Class I ODS or any service that includes the use of a Class I ODS.
- (3) For the purposes of the Air Force policy, the following are Class I ODS:
 - (A) Halons: 1011, 1202, 1211, 1301, and 2402
 - (B) Chlorofluorocarbons (CFC): CFC-11, CFC-12, CFC-13, CFC-111, CFC-112, CFC-113, CFC-114, CFC-115, CFC-211, CFC-212, CFC-213, CFC-214, CFC-215, CFC-216, CFC-217, and the blends R-500, R-501, R-502, and R-503.
 - (C) Other controlled substances: carbon tetrachloride, methyl chloroform, and methyl bromide.
- (4) The Air Force has reviewed the requirements specified in this contract to reflect this policy. Where considered essential, specific approval has been obtained to require use of the following substances: NONE.

(5) To assist the Air Force in implementing this policy, Seller is required to notify Buyer if any Class I ODS not specifically listed above is required in the performance of this contract.

D. EXPORT CONTROLLED DATA RESTRICTIONS

(1) For the purpose of this clause,

(A) Foreign person is any person who is not a citizen of the U.S. or lawfully admitted to the U.S. for permanent residence under the Immigration and Nationality Act, and includes foreign corporations, foreign organizations, and foreign governments;

(B) Foreign representative is anyone, regardless of nationality or citizenship, acting as an agent, representative, official, or employee of a foreign government, a foreign-owned or influenced firm, corporation, or person; and

(C) Foreign sources are those sources (vendors, subcontractors, and suppliers) owned and controlled by a foreign person.

(2) Seller shall place a clause in subcontracts containing appropriate export control restrictions, set forth in this clause.

(3) Nothing in this clause waives any requirement imposed by any other U.S. Government agency with respect to employment of foreign nationals or export-controlled data and information.

(4) Equipment and technical data generated or delivered in the performance of this contract are controlled by the International Traffic in Arms Regulation (ITAR), 22 CFR Sections 121 through 128. An export license is required before assigning any foreign source to perform work under this contract or before granting access to foreign persons to any equipment and technical data generated or delivered during performance (see 22 CFR Section 125). Seller shall notify Buyer and obtain the written approval of Buyer prior to assigning or granting access to any work, equipment, or technical data generated or delivered in the performance of this contract to foreign persons or their representatives. This notification shall include the name and country of origin of the foreign person or representative, the specific work, equipment, or data to which the person will have access, and whether the foreign person is cleared to have access to technical data (DoD 5220.22-M, National Industrial Security Program Operating Manual (NISPOM)).