

**IDS Terms and Conditions Guide**  
**Section F**

**Clause Number: F409**  
**Effective: 06/07/2010**  
**Page: 1 of 5**

ADVANCE PAYMENTS (Variable)

(a) *Use of funds.* Advance payments will be made under this contract upon submission of properly certified invoices or vouchers by Seller, and approval by Buyer. The amount of the invoice or voucher submitted plus all advance payments previously approved shall not exceed

(Appropriate dollar amount) \_\_\_\_\_

Seller shall use the funds only for the following purpose(s):

[Define the purpose] \_\_\_\_\_

Further, Seller may use such funds only to pay for properly allocable, allowable, and reasonable costs for direct materials, direct labor, and indirect costs, in fulfillment of such purpose(s). Determinations of whether costs are properly allocable, allowable, and reasonable shall be in accordance with generally accepted accounting principles, subject to any applicable subparts of Part 31 of the Federal Acquisition Regulation.

(b) *Repayment to Buyer.* Seller shall repay all or any part of the funds advanced by Buyer whenever requested in writing to do so by Buyer. Seller shall repay to Buyer any part of unliquidated advance payments considered by Buyer to exceed Seller's current requirements or the amount contemplated in paragraph (a) above. If Seller fails to repay the amount requested by Buyer, all or any part of the unliquidated advance payments may be recovered from Seller by equitable price reduction or credit against any amounts that may be owed to Seller under this contract or otherwise and applied to reduction of the unliquidated advance payments under this contract.

(c) *Lien on property under contract.*

(1) All advance payments under this contract shall be secured, when made, by a lien in favor of Buyer, paramount to all other liens, on the supplies or other things covered by this contract and on material and other property acquired for or allocated to the performance of this contract, except to the extent that Buyer by virtue of any other terms of this contract, or otherwise, shall have valid title to the supplies, materials, or other property as against other creditors of Seller. At any time Buyer may take possession of and, with or without advertisement, sell at public or private sale all or any part of the property on which Buyer has a lien under this contract and, after deducting any expenses incident to the sale, apply the net proceeds of the sale to reduce the unliquidated balance of advance payments or other Buyer claims against Seller.

**IDS Terms and Conditions Guide**  
**Section F**

**Clause Number: F409**  
**Effective: 06/07/2010**  
**Page: 2 of 5**

- (2) Seller shall identify, by marking or segregation, all property that is subject to a lien in favor of Buyer by virtue of any terms of this contract in such a way as to indicate that it is subject to a lien and that it has been acquired for or allocated to performing this contract. If, for any reason, the supplies, materials, or other property are not identified by marking or segregation, Buyer shall be considered to have a lien to the extent of Buyer's interest under this contract on any mass of property with which the supplies, materials, or other property are commingled. Seller shall maintain adequate accounting control over the property on its books and records.
- (3) If, at any time during the progress of the work on the contract, it becomes necessary to deliver to a third person any items or materials on which Buyer has a lien, Seller shall notify the third person of the lien and shall obtain from the third person a receipt in duplicate acknowledging the existence of the lien. Seller shall provide a copy of each receipt to Buyer.
- (4) If, under the termination clause, Buyer authorizes Seller to sell or retain termination inventory, the approval shall constitute a release of Buyer's lien to the extent that --
- (i) The termination inventory is sold or retained; and
  - (ii) The sale proceeds or retention credits are applied to reduce any outstanding advance payments.
- (d) *Insurance.*
- (1) Seller shall maintain with responsible insurance carriers--
- (i) Insurance on plant and equipment against fire and other hazards, to the extent that similar properties are usually insured by others operating plants and properties of similar character in the same general locality;
  - (ii) Adequate insurance against liability on account of damage to persons or property; and
  - (iii) Adequate insurance under all applicable workers' compensation laws.
- (2) Until work under this contract has been completed and all advance payments made under the contract have been liquidated, Seller shall—
- (i) Maintain this insurance;

**IDS Terms and Conditions Guide**  
**Section F**

**Clause Number: F409**  
**Effective: 06/07/2010**  
**Page: 3 of 5**

- (ii) Maintain adequate insurance on any materials, parts, assemblies, subassemblies, supplies, equipment, and other property acquired for or allocable to this contract and subject to Buyer lien under paragraph (c) of this clause; and
- (iii) Furnish any evidence with respect to its insurance that the administering office may require.

*(e) Default.*

(1) If any of the following events occurs, Buyer may, by written notice to Seller, withhold further payments on this contract:

- (i) Termination for Convenience or Cancellation for Default;
- (ii) A finding that Seller has failed to --
  - (A) Observe any of the conditions of the advance payment terms;
  - (B) Comply with any material term of this contract;
  - (C) Make progress or maintain a financial condition adequate for performance of this contract;
  - (D) Limit inventory allocated to this contract to reasonable requirements; or
  - (E) Avoid delinquency in payment of taxes or of the costs of performing this contract in the ordinary course of business.
- (iii) The appointment of a trustee, receiver, or liquidator for all or a substantial part of Seller's property, or the institution of proceedings by or against Seller for bankruptcy, reorganization, arrangement, or liquidation.
- (iv) The service of any writ of attachment, levy of execution, or commencement of garnishment proceedings which adversely affect advance payments from Buyer.
- (vi) The commission of an act of bankruptcy.

(2) If any of the events described in subparagraphs (e) (1) of this clause continue for 10 days after the written notice to Seller, Buyer may take any of the following additional actions:

**IDS Terms and Conditions Guide**  
**Section F**

**Clause Number: F409**  
**Effective: 06/07/2010**  
**Page: 4 of 5**

(i) Charge interest, in the manner on outstanding advance payments during the period of any event described in subparagraph (e) (1) of this clause. If interest is required under the contract, Buyer shall determine a daily interest rate based on the higher of (1) the published prime rate of the [*define the appropriate interest rate that Boeing pays for funds that it borrows*] or (2) the rate established by the Secretary of the Treasury under Pub. L. 92-41 (50 U.S.C. App. 1215(b) (2)). Buyer shall revise the daily interest rate during the contract period in keeping with any changes in the cited interest rates;

(ii) Demand immediate repayment by Seller of the unliquidated balance of advance payments; and

(iii) Take possession of and, with or without advertisement, sell at public or private sale all or any part of the property on which Buyer has a lien under this contract and, after deducting any expenses incident to the sale, apply the net proceeds of the sale to reduce the unliquidated balance of advance payments or other Buyer claims against Seller.

(3) Seller may take any of the actions described in subparagraphs (e) (1) and (2) of this clause it considers appropriate at its discretion and without limiting any other rights of Seller.

*(f) Prohibition against assignment.* Notwithstanding any other terms of this contract, Seller shall not assign this contract, any interest therein, or any claim under the contract to any party.

*(g) Information and access to records.* Seller shall furnish to Buyer

(1) monthly or at other intervals as required, signed or certified balance sheets and profit and loss statements together with a report on the advanced payment account in the form prescribed by Buyer; and

(2) if requested, other information concerning the operation of Seller's business. Seller shall provide the authorized Buyer representatives proper facilities for inspection of Seller's books, records, and accounts.

*(h) Other security.* If Buyer considers the security for advance payments inadequate, Seller shall furnish additional security satisfactory to Buyer, to the extent that the security is available.

*(i) Representations and warranties.* Seller represents the following:

**IDS Terms and Conditions Guide**  
**Section F**

**Clause Number: F409**  
**Effective: 06/07/2010**  
**Page: 5 of 5**

- (1) The balance sheet, the profit and loss statement, and any other supporting financial statements furnished to Buyer fairly reflect the financial condition of Seller at the date shown or the period covered, and there has been no subsequent materially adverse change in the financial condition of Seller.
- (2) No litigation or proceedings are presently pending or threatened against Seller except as shown in the financial statements.
- (3) Seller has disclosed all contingent liabilities in the financial statements furnished to Buyer.
- (4) None of the terms in this clause conflict with the authority under which Seller is doing business or with the provision of any existing indenture or agreement of Seller.
- (5) Seller has the power to enter into this contract and accept advance payments, and has taken all necessary action to authorize the acceptance under the terms of this contract.
- (6) The assets of Seller are not subject to any lien or encumbrance of any character except for current taxes not delinquent, and except as shown in the financial statements furnished by Seller There is no current assignment of claims under any contract affected by these advance payment provisions.
- (7) All information furnished by Seller to Buyer in connection with each request for advance payments is true and correct.
- (8) These representations shall be continuing and shall be considered to have been repeated by the submission of each invoice for advance payments.