

Common Terms and Conditions Guide
Section 5 – Government Contract Requirements

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NAS5-32933
MEDIUM-LIGHT (MED-LITE) EXPENDABLE
LAUNCH VEHICLE SERVICES (ELVS)

- (a) The following contract clauses are incorporated by reference from the Federal Acquisition Regulation and apply to the extent indicated. Unless provided for elsewhere in this contract, only subparagraphs (14), (15), (16), and (29) of this paragraph (a) shall apply to any portion of this contract that is for commercial items or commercial components, as those terms are defined at FAR 52.202-1. In all of the following clauses, "Contractor" and "Offeror" shall mean Seller.
- (1) 52.203-6 Restrictions on Subcontractor Sales to the Government (OCT 1995). This clause applies only if this contract exceeds \$100,000.
 - (2) 52.203-7 Anti-Kickback Procedures (JUL 1995) [excluding subparagraph (c)(1)]. This clause applies only if this contract exceeds \$100,000. MDC may withhold from 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 MDC under the prime contract.
 - (3) 52.203-10 Price or Fee Adjustment for Illegal or Improper Activity (JAN 1997). This clause applies only if this contract exceeds \$100,000. If the Government reduces MDC's price or fee for violations of the Act by Seller or its subcontractors at any tier, MDC may withhold or recover from Seller the amount of the reduction.
 - (4) 52.203-11 Certification and Disclosure Regarding Payments to Influence Certain Federal Transactions (APR 1991). This clause applies only if this contract exceeds \$100,000.
 - (5) 52.203-12 Limitation on Payments to Influence Certain Federal Transactions (JAN 1990). 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 MDC) directly to the PCO for the prime contract. MDC will identify the cognizant Government PCO at Seller's request. Each subcontractor certification will be retained in the subcontract file of the awarding contractor."
 - (6) 52.211-15 Defense Priority and Allocation Requirements (SEP 1990)
 - (7) 52.215-2 Audit and Records -- Negotiation (AUG 1996). 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.

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- (8) 52.215-10 Price Reduction For Defective Cost or Pricing Data (OCT 1997). This clause applies only if this contract exceeds \$500,000. In subparagraph (3) of paragraph (a), insert "of this contract" after "price or cost." In Paragraph (c), "Contracting Officer" shall mean "Contracting Officer or Buyer." In Paragraphs (c)(1), (c)(1)(ii), and (c)(2)(i), "Contracting Officer" shall mean "Contracting Officer or Buyer." In Subparagraph (c)(2)(i)(A), delete "to the Contracting Officer." In Subparagraph (c)(2)(ii)(B), "Government" shall mean "Government or Buyer." In Paragraph (d), "United States" shall mean "United States or Buyer."
- (9) 52.215-12 Subcontractor Cost or Pricing Data (OCT 1997). This clause applies only if this contract exceeds \$500,000. The certificate required by paragraph (b) of the referenced clause shall be modified as follows: delete "to the Contracting Officer or the Contracting Officer's representative" and substitute in lieu thereof "The Boeing Company or any of its wholly owned subsidiaries."(10) 52.215-27 Termination of Defined Benefit Pension Plans (MAR 1996). This clause applies only if under this contract certified cost or pricing data is required or preaward or postaward cost determinations are subject to FAR part 31. MDC may withhold or recover from Seller such sums as the Contracting Officer withholds or recovers from MDC because of liabilities of Seller or its subcontractors under this clause. "Contracting Officer" shall mean MDC.
- (11) 52.219-8 Utilization of Small, Small Disadvantaged and Women-Owned Small Business Concerns (OCT 1995)
- (12) 52.219-9 Small, Small Disadvantaged and Women-Owned Small Business Subcontracting Plan (AUG 1996). This clause applies only if this contract exceeds \$500,000 and Seller is not a small business concern. In paragraph (c), "Contracting Officer" shall mean MDC.
- (13) 52.222-4 Contract Work Hours and Safety Standards Act -- Overtime Compensation (JUL 1995). This clause applies only if this contract exceeds \$100,000. MDC may withhold or recover from Seller such sums as the Contracting Officer withholds or recovers from MDC because of liabilities of Seller or its subcontractors under this clause.
- (14) 52.222-26 Equal Opportunity (APR 1984) [subparagraphs (b)(1) through (11)]
- (15) 52.222-35 Affirmative Action for Special Disabled and Vietnam Era Veterans (APR 1984). This clause applies only if this contract is for \$10,000 or more.
- (16) 52.222-36 Affirmative Action for Handicapped Workers (APR 1984). This clause applies only if this contract exceeds \$2,500.

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- (17) 52.222-37 Employment Reports on Special Disabled Veterans and Veterans of the Vietnam Era (JAN 1988). This clause applies only if this contract is for \$10,000 or more.
- (18) 52.223-2 Clean Air and Water (APR 1984). This clause applies only if this contract exceeds \$100,000.
- (19) 52.225-3 Buy American Act - Supplies (JAN 1994)
- (20) 52.225-10 Duty-Free Entry (APR 1984). This clause applies only if supplies are to be afforded duty-free entry or foreign supplies in excess of \$10,000 may be imported into the customs territory of the United States.
- (21) 52.225-11 Restrictions on Certain Foreign Purchases (OCT 1996)
- (22) 52.227-1 Authorization and Consent (JUL 1995)
- (23) 52.227-2 Notice and Assistance Regarding Patent and Copyright Infringement (AUG 1996). This clause applies only if this contract exceeds \$100,000. A copy of each notice sent to the Government will be sent to MDC.
- (24) 52.227-14 Rights in Data -- General (JUN 1987), as modified by NASA FAR Supplement 18-52.227-14. This clause applies only if data will be produced, furnished, or required under this contract.
- (25) 52.227-16 Additional Data Requirements (JUN 1987). This clause applies only if this contract involves experimental, developmental, research, or demonstration work.
- (26) 52.228-5 Insurance - Work on a Government Installation (SEP 1989). This clause applies only if this contract requires work on a Government installation.
- (27) 52.230-6 Administration of Cost Accounting Standards (APR 1996). This clause applies only if clause 3050 or 3051 is incorporated in this contract. Add "Buyer and the" before "Contracting Officer" in paragraph (f).
- (28) 52.244-5 Competition in Subcontracting (DEC 1996)
- (29) 52.244-6 Subcontracts for Commercial Items and Commercial Components (OCT 1998)
- (30) 52.245-2 Government Property (DEC 1989)
- (31) 52.247-63 Preference for U.S. - Flag Air Carriers (JAN 1997)

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- (32) 52.248-1 Value Engineering (MAR 1989) [excluding subparagraph (f)]. This clause applies only if this contract is for \$100,000 or more. "Contracting Officer" means MDC.. If a Value Engineering Change Proposal is accepted by the Government, Seller's share will be 50% of the instant, concurrent and future contract net acquisition savings and collateral savings that MDC receives from the Government. Seller's negotiated share of net acquisition savings or collateral savings shall not reduce the Government's share of concurrent or future savings or collateral savings. MDC's payments to Seller under this clause are conditioned upon MDC's receipt of authorization for such payments from the Government.
- (b) The following contract clauses are incorporated by reference from the National Aeronautics and Space Administration Federal Acquisition Regulation Supplement and apply to the extent indicated. In all of the following clauses, "Contractor" and "Offeror" shall mean Seller.
- (1) 18-52.208-81 Restrictions on Printing and Duplicating (AUG 1993)
 - (2) 18-52.223-70 Safety and Health (MAR 1997). This clause applies only if this contract exceeds \$1,000,000; requires construction, repair, or alteration in excess of \$100,000; or, regardless of dollar amount, involves the use of hazardous materials or operations.
 - (3) 18-52.223-71 Frequency Authorization (DEC 1988)
 - (4) 18-52.228-75 Minimum Insurance Coverage (OCT 1988). This clause applies only if this contract requires work on a Government installation.
 - (5) 18-52.232-84 Milestone Billing Arrangements (DEC 1992). This clause applies only if this contract exceeds \$10,000,000.
 - (6) 18-52.244-70 Geographic Participation in the Aerospace Program (APR 1985). This clause applies only if this contract is for \$100,000 or more.
- (c) Cost Accounting Standards
- (1) The version of FAR 52.230-2, Cost Accounting Standards, incorporated by clause 3050 is the version dated April 1996.
 - (2) The version of FAR 52.230-3, Disclosure and Consistency of Cost Accounting Practices, incorporated by clause 3051 is the version dated April 1996.
- (d) Cross-waiver of Liability
- (1) Definitions: For purposes of this clause, the following definitions are applicable:

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- (A) A "Party" is a person or entity that signs this contract.
- (B) The term "related entity" means:
 - (i) a Contractor or subcontractor of a Party at any tier;
 - (ii) a user or customer of a Party at any tier; or
 - (iii) a Contractor or subcontractor of a user or customer of a Party at any tier. "Contractors" and "subcontractors" include suppliers of any kind.
- (C) The term "damage" means:
 - (i) bodily injury to, or other impairment of health of, or death of, any person;
 - (ii) damage to, loss of, or loss of use of any property;
 - (iii) loss of revenue or profits; or
 - (iv) other direct, indirect, or consequential damage.
- (D) The term "launch vehicle" means an object (or any part thereof) intended for launch, launched from Earth, or returning to Earth which carries payloads or persons or both.
- (E) The term "payload" means all property to be flown or used on or in a launch vehicle.
- (F) The term "Protected Space Operations" means all launch-vehicle and payload activities on Earth, in outer space, or in transit between Earth and outer space performed under this contract. It includes, but is not limited to:
 - (i) research, design, development, test, manufacture, assembly, integration, operation, or use of: launch vehicles, transfer vehicles, payloads, and related support equipment, facilities, and services;
 - (ii) all activities related to ground support, test, training, simulation, or guidance and control equipment, and related facilities and services.

"Protected Space Operations" excludes activities on Earth that are conducted on return from space to develop further a payload's product or process for use other than for launch-vehicle-related activities in implementation of this Contract.

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- (2) The objective of this clause is to establish a cross-waiver of liability by the parties and related entities in the interest of encouraging participation in the exploration, exploitation, and use of outer space. This cross-waiver of liability shall be broadly construed to achieve this objective.
- (3) Each Party agrees to a cross-waiver of liability pursuant to which each Party waives all claims against any of the entities or persons listed in such paragraphs (3)(A) through (3)(C) of this paragraph based on damage arising out of Protected Space Operations. This cross-waiver shall apply only if the person, entity, or property causing the damage is involved in Protected Space Operations and the person, entity, or property damaged is damaged by virtue of its involvement in Protected Space Operations. The cross-waiver shall apply to any claims for damage, whatever the legal basis for such claims, including but not limited to delict and tort (including negligence of every degree and kind) and contract, against:
 - (A) another Party;
 - (B) a related entity of another Party;
 - (C) the employees of any of the entities identified in subparagraphs (3)(A) and (3)(B) of this clause.
- (4) In addition, each Party shall extend the cross-waiver of liability as set forth in paragraph (3) of this clause to its own related entities by requiring them, by contract or otherwise, to agree to waive all claims against the entities or persons identified in paragraphs (3)(A) through (3)(C) of this clause.
- (5) For avoidance of doubt, this cross-waiver of liability includes a cross-waiver of liability arising from the Convention on International Liability for Damage by Space Objects (Mar 29, 1972, 24 United States Treaties and Other International Agreements (U.S.T.) 2389, Treaties and other International Acts Series (T.I.A.S.) (No. 7762) where the person, entity, or property causing the damage is involved in Protected Space Operations and the person, entity, or property damaged is damaged by virtue of its involvement in Protected Space Operations.
- (6) Notwithstanding the other provisions of this clause, this cross-waiver of liability shall not be applicable to:
 - (A) claims between a Party and its own related entity or between its own related entities;
 - (B) claims made by a natural person, his or her estate, survivors, or subrogees for injury or death of such natural person;

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- (C) claims for damage caused by willful misconduct;
 - (D) intellectual property claims;
 - (E) contract claims between the Parties based on the express contractual provisions of this contract, except for this Cross-Waiver of Liability clause.
- (7) Nothing in this clause shall be construed to create the basis for a claim or suit where none would otherwise exist.
- (e) Safety and Health

This clause applies only if NFS 18-52.223-70, Safety and Health, applies to this contract.

- (1) The GSFC Safety and Health Branch, Code 205.2, is designated as the Contracting Officer's representative for the purpose of NASA FAR Supplement (NFS) Clause 18-52.223-70, SAFETY AND HEALTH, of this contract.
 - (2) In addition to compliance with all Federal, State, and local laws applicable to safety and health [paragraph (a) of the SAFETY AND HEALTH clause], Seller shall also demonstrate compliance with the intent of NHB 1700.1 (V1-B) Basic Safety Manual. Seller shall also comply with the Safety and Health Plan incorporated in the "Performance Assurance Implementation Plan," which is incorporated in this contract as an attachment.
 - (3) "Accidents, incidents, and exposures" in paragraph (c) of the SAFETY AND HEALTH clause are further defined in Chapter 2 of NHB 1700.1 (V1-A). Notification shall be verbal and immediately provided to the Contracting Officer's representative (through MDC's authorized purchasing representative) for Type A, B, and C mishaps; for mission failure; and for test failures which have a monetary impact of \$25,000 or more. A written report shall be provided within 5 days of the occurrence.
 - (4) Immediate notification is not required for incidents and potential mishaps. However, a written report shall be provided within 7 days of such occurrences.
 - (5) Seller shall promptly notify the Contracting Officer (through MDC's authorized purchasing representative) in writing, with a copy to the GSFC Safety and Health Branch, Code 205.2, of the nonconformance of any Government-furnished property with the requirements of the clause.
- (f) Seller's Conduct While on Government Premises

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- (1) Access. A portion or all of the effort required to be accomplished under this contract may be performed at the Goddard Space Flight Center (GSFC) or other NASA installations or sites. During performance of this effort, the right of ingress and egress to the Government site for Contractor personnel shall be made available as required.

- (2) Compliance with Center procedures. While on Government premises, Seller shall comply with requirements governing the conduct of personnel and the operation of the facility. Such requirements are generally set forth in NASA-wide or local installation management instructions, handbooks, or announcements. For example, GSFC issues GSFC Management Instructions (GMI's), GSFC Handbooks (GHB's), and GSFC Announcements. A NASA-wide instruction would be a NASA Management Instruction (NMI).