

THE BOEING COMPANY

GENERAL PROVISIONS

Fixed Price Commercial Goods Under Government Prime Contract DF 4400-912 (Rev. 2/97)

1. **ACCEPTANCE.** This Contract is Buyer's offer to Seller, and acceptance is strictly limited to its terms. Buyer shall not be bound by and specifically objects to any term or condition whatsoever which is different from or in addition to the provisions of this Contract, whether or not such term or condition will materially alter this Contract. Seller commencement of performance or acceptance of this Contract in any manner shall conclusively evidence agreement to this Contract as written.
2. **DEFINITIONS.** Whenever used in this Contract, (a) "Customer" means any customer of Buyer, any subsequent owner, operator or user of the Goods and any other individual, partnership, corporation or person or entity which has or acquires any interest in the Goods from, through or under Buyer; (b) "FAR" means the Federal Acquisition Regulation; (c) "Goods" means all of the goods, services, data, software and other items furnished or to be furnished to Buyer under this Contract; and (d) "Contract" means this purchase contract including the provisions on its face, these General Provisions, and all of the specifications, technical descriptions, statements of work, drawings, designs, documents, and other requirements and provisions attached to, incorporated into or otherwise made a part of this purchase contract by Buyer. [Unless otherwise specified in this contract, FAR/DFARS and NFS references cited herein are those in effect on the date of this contract.]
3. **SHIPMENT/DELIVERY.** Shipments or deliveries, as specified in this Contract, shall be strictly in accordance with: the specified quantities, without shortage or excess; the specified schedules, neither ahead nor behind schedule; and the other requirements of this Contract. Seller shall promptly notify Buyer in writing of any anticipated or actual delay, the reasons therefor, and the actions being taken by Seller to overcome or minimize the delay. If requested by Buyer, Seller shall, at Seller's expense, ship via air or other fast transportation to avoid or minimize the delay to the maximum extent possible. Schedule delays may be cause for an equitable reduction in contract price. .
4. **PACKING AND SHIPPING.** Seller shall prepare and pack the Goods to prevent damage and deterioration, and comply with carrier tariffs. Charges for preparation, packing, crating and cartage, if goods are sold f.o.b. destination, are included in the price unless separately specified in this Contract. Goods sold f.o.b. place of shipment shall be forwarded collect. Seller shall make no declaration concerning value of Goods shipped, except on Goods where tariff rating is dependent upon released or declared value, in which event Seller shall release or declare such value at maximum value within the lowest rating
5. **INVOICE AND PAYMENT.** Seller shall issue a separate invoice for each delivery and shall not issue any invoice prior to the scheduled or actual delivery date, whichever is later. Payment will be made after receipt of Goods and correct invoice. Unless freight or other charges are itemized, any discount may be taken on full amount of invoice. Payment due date, including discount periods, will be computed from date of receipt of Goods or correct invoice, whichever is later, to date Buyer's check is mailed or otherwise tendered. Seller shall promptly repay to Buyer any amounts paid in excess of amounts due Seller.
6. **INVOICE PAYMENT REQUIREMENTS.**
 - A. *Payments.* Payments are made from "Original" invoices only. Fax copies, statements or invoice copies will not be accepted. "Duplicate Original" invoices must not be sent without prior authorization from either the Buyer or Accounts Payable. "Duplicate Original" invoices must be signed and dated with the full signature of Seller's appropriate manager. Initials will not be accepted. Third Party Billing is not allowed.

- B. *Terms.* Payment terms BEGIN UPON RECEIPT of an acceptable invoice by Buyer's Accounts Payable organization. Payments are not scheduled based upon the date of your invoice. Agreed upon terms must be correctly indicated on your invoice and should agree with the purchase contract. Example: 2% 10 Net 30.
- C. *Mailing Information.*

Invoices are to be mailed to: Boeing Defense & Space Group Accounts Payable
Mail Stop 80-FW
P.O. Box 34113
Seattle, WA 98124-1113

Express Overnight mail should be sent to: Boeing Defense & Space Group Accounts Payable
18-01 Building, 2nd Floor, Mail Stop 80-FW
20403 68th Avenue South
Kent, WA 98032

- D. *Prepaid Freight Charges.* When prepaid freight charges are authorized by Buyer, include a copy of the "prepaid freight bill" with the invoice for charges over \$100.00. Freight charges will be deducted from the payment if this documentation is not included
- E. *Invoice Information.* All invoices must contain the following information:

1. Buyer's Purchase Contract Number (Example: AA1111 or AAA111)
(**Note:** Only one Purchase Contract Number per Invoice.)
2. Payment Terms (Example: 2% 10 Net 30)
3. Invoice Number
4. Invoice Date
5. Boeing Purchase Contract Order Line Item Number (Example: 05)
6. Quantity Invoiced
(**Note:** quantity invoiced must equal quantity shipped and cannot exceed quantity ordered)
7. Part Number as it appears in the purchase contract
8. Unit Price
9. Total Price
10. Total Tax
11. Freight Charges

The Purchase Contract is the sole basis for your payment. Incorrect invoices will be returned unpaid. Accounts Payable cannot authorize or negotiate any changes to the Purchase Contract. Contact the Buyer directly to resolve invoice discrepancies.

- F. *Payment Inquiries.* Boeing Defense & Space Group checks are generated once a week. Checks are prepared and mailed each Friday. Inquiries on past due invoices (aged over 45 days) or payment problems may be faxed directly to Accounts Payable, fax number (206) 773-7999. A copy of the invoice in question should be annotated with the specific problem. For example:

1. Not Paid
2. Under/Over Paid (show the amount under or over paid)
3. Sales Tax or Freight Not Paid

7. **INSPECTION.** (a) Buyer acceptance of Goods shall be subject to Buyer's final receiving inspection within 60 days after receipt at destination, notwithstanding any payment or prior test or inspection. No inspection, test, delay or failure to inspect or test, or delay or failure to discover any defect or other non-compliance, shall relieve Seller of any of its obligations under this Contract or impair any rights or remedies of Buyer or Customers. Acceptance shall be conclusive, except for latent defects, fraud or gross mistakes amounting to fraud. (b) The Seller is responsible for performing or having performed all inspections and tests necessary to substantiate that the supplies or services furnished under this contract conform to contract requirements, including any applicable technical requirements for specified manufacturers' parts. Authorized representatives of the Buyer or its government customer shall, upon request, be afforded the opportunity to inspect and/or witness testing of supplies/services, or be permitted on-site review of evidence of contractor performance of such inspections/tests.
8. **REJECTION.** In the regular course of its business, Buyer may reject, refuse acceptance or revoke acceptance ("rejection" herein) of any or all of the Goods or any tender thereof which are not strictly in conformance with all of the requirements of this Contract; and by notice, rejection tag or other communication, notify Seller of such rejection. At Seller's risk and expense, all such Goods will be returned to Seller for immediate Seller repair, replacement and other correction and redelivery to Buyer; provided, however, that with respect to any or all such Goods and at Buyer's election and at Seller's risk and expense, Buyer may: (a) hold or retain such Goods, without permitting any repair, replacement or other correction by Seller; (b) hold or retain such Goods for repair by Seller or, at Buyer's election, for repair by Buyer with such assistance from Seller as Buyer may require; or (c) return such Goods with instructions to Seller as to whether the Goods shall be repaired or replaced and as to the manner of redelivery. All repair, replacement and other correction and redelivery shall be completed within such time as Buyer may require. All costs and expenses and loss of value incurred as a result of or in connection with non conformance and repair, replacement or other correction may be recovered from Seller by equitable price reduction, set-off or credit against any amounts which may be owed to Seller under this Contract or otherwise.
9. **WARRANTIES.** Seller warrants and guarantees that all goods delivered under this contract will conform to all specifications, descriptions, drawings and other requirements of this contract, will be free from defects in materials and workmanship, will be fit and suitable for the intended purposes, and, to the extent not manufactured pursuant to detailed designs furnished by Buyer, will be free from defects in design. These warranties and guarantees shall extend for a period after completion of Buyer's final acceptance as set forth elsewhere in this contract; provided, that they shall begin anew as to those goods corrected by Seller pursuant to this clause. Approval or acceptance of Seller's designs, and inspection or acceptance of the goods shall not prejudice Buyer's rights under this clause. Such rights shall be enforceable also by Buyer's customers, and shall be assignable to them. Such rights are not exclusive and Buyer reserves any and all other rights provided in this contract or by law.
10. **CHANGES.** Buyer's Materiel Representative may from time to time in writing direct changes within the general scope of this Contract in any one or more of the following: (a) technical requirements and descriptions, specifications, statement of work, drawings or designs; (b) shipment or packing methods, (c) place of delivery, inspection or acceptance; (d) reasonable adjustments in quantities or delivery schedules or both; and (e) amount of Buyer-furnished property. Seller shall comply immediately with such direction, and avoid unnecessary costs related thereto. If any such change causes an increase or decrease in the cost of or the time required for performance of this Contract, an equitable adjustment in the prices and schedules of this Contract shall be made to reflect such increase or decrease and this Contract shall be modified in writing accordingly. Unless otherwise agreed in writing, any Seller claim for adjustment must be asserted to the Buyer in writing within 25 days with a firm proposal delivered to the Buyer within 60 days after Seller receipt of such direction. Failure of Buyer and Seller to agree upon any adjustment shall not excuse Seller from performing in accordance with such direction. If Seller considers that Buyer's conduct has constituted a change hereunder, Seller shall notify Buyer immediately in writing as to the nature of such conduct and its effect upon Seller's performance. Pending direction from Buyer's Materiel Representative, Seller shall take no action to implement any such change.

11. **TERMINATION - CONVENIENCE.** Buyer may terminate this Contract in whole or from time to time in part, effective as of the date specified by Buyer, in accordance with the provisions of FAR 52.249-2, "Termination for Convenience of the Government", which provisions are incorporated herein by reference; and in which "Government" and "Contracting Officer" shall mean Buyer, "Contractor" shall mean Seller and the phrase "1 year" is deleted each place it occurs and "180 days" is substituted. If this contract supports a prime contract with the U.S. Government, settlements and payments under this clause are subject to approval by the Contracting Officer and Settlement Review Board.
12. **CANCELLATION - DEFAULT.** Buyer may cancel this Contract in whole or from time to time in part, effective on the date specified by Buyer, in accordance with the provisions of FAR 52.249-8, which provisions are incorporated herein by reference, in the event of Seller default, or in the event of Seller's suspension of business, insolvency, reorganization or arrangement or liquidation proceedings, assignment for the benefit of creditors, or actual or constructive rejection by a bankruptcy trustee, or appointment of a receiver for Seller's property. In FAR 52.249-8, "Government" and "Contracting Officer", except in paragraph (c), shall mean Buyer, "Contractor" shall mean Seller, and all references to a "Disputes" clause are deleted. If Buyer and Seller fail to agree on the amount to be paid for manufacturing materials referred to in paragraph (f) of FAR 52.249-8, the amount shall be the reasonable value thereof but not to exceed that portion of the price of this Contract which is reasonably allocable to such materials.
13. **ASSIGNMENT.** Seller shall not, by contract, operation of law, or otherwise, assign any of its rights or interest in this Contract, including but not limited to any right to monies due or to become due, or delegate any of its duties or obligations under this Contract, or subcontract all or substantially all of its performance of this Contract to one or more third parties, without Buyer's prior written consent. No assignment, delegation or subcontracting by Seller, with or without Buyer's consent, shall relieve Seller of any of its obligations under this Contract.
14. **PUBLICITY.** Seller shall not, and shall require that its subcontractors and suppliers of any tier shall not, cause or permit to be released any publicity, advertisement, news release, public announcement, or denial or confirmation of same, in whatever form, regarding any aspect of this Contract or the Goods or program to which they pertain without Buyer's prior written approval. The above restrictions shall not apply to information provided in response to Government requests.
15. **RESPONSIBILITY FOR BUYER-OWNED PROPERTY.** Unless otherwise specified, upon delivery to Seller or manufacture or acquisition by Seller of any materials, parts, tooling, data or other property, title to which is in Buyer, Seller assumes the risk of and shall be responsible for any loss thereof or damage thereto. In accordance with the provisions of this Contract, but in any event upon completion thereof, Seller shall return such property to Buyer in the condition in which it was received except for reasonable wear and tear and except for such property as has been reasonably consumed in the performance of this Contract.
16. **PATENT INDEMNITY.** Seller shall defend Buyer, Buyer's customers, and any subsequent seller or user of the goods against all claims and proceedings alleging infringement of any United States or foreign patent by any goods delivered under this contract, and Seller shall hold them harmless from any resulting liabilities and losses, providing Seller is reasonably notified of such claims and proceedings. Seller's obligation shall not apply to goods manufactured pursuant to detailed designs developed and furnished by Buyer nor to any infringement arising from the use or sale of goods in combination with items not delivered by Seller if such infringement would not have occurred from the use or sale of such goods solely for the purpose for which they were designed or sold to Buyer.

17. **CONFIDENTIAL OR PROPRIETARY INFORMATION AND PROPERTY.** Seller shall keep confidential and otherwise protect from disclosure all information and property obtained from Buyer in connection with this Contract and identified as confidential or proprietary. Unless otherwise expressly authorized herein or by Buyer, Seller shall use such information and property, and the features thereof, only in the performance and for the purpose of this Contract; provided, however, that if the U.S. Government has the right to authorize the use of such information or property, Seller may, to the extent of such right, use such information or property as authorized by the U.S. Government; provided, further, that Seller give Buyer notice of such authorization prior to use and shall indemnify and hold harmless Buyer from all claims, demands, damages or causes of action caused by or in any way arising out of products manufactured by Seller using such information and property and sold by Seller to parties other than Buyer. Upon Buyer's request, and in any event upon the completion, termination or cancellation of this Contract, Seller shall return all such information and property to Buyer or make such other disposition thereof as is directed by Buyer. Seller shall not sell or dispose of as scrap or otherwise any completed or partially completed or defective proprietary property before receiving written authorization from Buyer and before rendering such property unsuitable for use. In all subcontracts and purchase orders issued by Seller for performance of work related to this Contract, Seller shall provide to Buyer the same rights and protection as contained in this clause.
18. **COMPLIANCE WITH LAWS.** Seller shall be responsible for complying with all laws, including, but not limited to, any statute, rule, regulation, judgment, decree, order or permit applicable to its performance under this Contract. Seller further agrees (1) to notify Buyer of any obligation under this Contract which is prohibited under any applicable environmental law, at the earliest opportunity but in all events sufficiently in advance of Seller's performance of such obligation so as to enable the identification of alternative methods of performance, and (2) to notify Buyer at the earliest possible opportunity of any aspect of its performance which becomes subject to additional environmental regulation or which Seller reasonably believes will become subject to additional environmental regulation during performance of this Contract.
19. **MATERIAL SAFETY DATA SHEETS.** Seller will comply with the Hazard Communication Standard, 29 CFR 1910.1200. Seller shall ensure that the name of the Product as identified on the MSDS is identical to the name which appears on the label of the Product shipped to Buyer. Seller shall provide a copy of the Material Safety Data Sheet with each shipment of the product.
20. **NOTIFICATION OF TOXIC CHEMICALS.** Seller will comply with Section 313 of the Emergency Planning and Community Right to Know Act of 1986 (EPCRA) and 40 CFR Part 372, if applicable. As part of such compliance, Seller shall furnish to the Buyer's Materiel Representative the following information with the initial shipment of each Product to Buyer:
 - a. A statement that the Product contains chemicals which are subject to Section 313 of Title III of the Superfund Amendments and Reauthorization Act of 1986 and 40 CFR 372.45;
 - b. The name and the associated Chemical Abstract Service Registry number of each chemical which has been incorporated in the Product and which is listed in the specific Toxic Chemical Listings contained in 40 CFR 372.65; and
 - c. The percent by weight of each toxic chemical component of the product shipped.

If the Seller is required to submit a Material Safety Data Sheet (MSDS), this notification must be attached to or otherwise incorporated into such MSDS.

21. SHIPPING HAZARDOUS MATERIALS.

(a) Shipment of hazardous materials shall be by common carrier authorized to handle the material, and in accordance with 49 CFR Parts 100-199 and the IATA "Dangerous Goods Regulations" or "The International Maritime Dangerous Goods Code" (if applicable). This includes but is not limited to:

(1) Shipping papers must include the emergency contact number.

(2) Shipping papers and packages for hazardous materials or wastes identified as "N.O.S." (not otherwise specified) must show the technical name(s) listed in parenthesis, the association to the basic description, and in the case of mixtures, list the major hazardous components by percentage contributing to the hazard.

(b) Seller shall indicate on the shipping papers whether the material presents Poisonous by Inhalation (PIH) hazard.

(c) At Buyer's request Seller will provide test reports indicating Performance Oriented Packaging (POPs) compliance to facilitate Buyer's reshipment of Seller's Product.

(d) Seller shall mark on all interior packages and shipping containers the closed cup flash point of flammable and combustible materials and/or percentage concentration of corrosive liquids.

22. **ASBESTOS FREE DUNNAGE.** Each package and/or container shipped to Buyer is to be free of any asbestos-containing vermiculite and/or any asbestos-containing material as dunnage. Seller hereby warrants to Buyer that the vermiculite and any other dunnage is asbestos-free.

23. **LEAD.** It is the policy of Buyer to prohibit the use of paints containing lead in any form. Seller hereby affirms that the Product provided in compliance with this Contract contains no lead. Further Buyer prohibits the use of lead hammers and lead "slappers." Seller hereby affirms that individuals under its control are informed of this policy.

24. **PRODUCTS MANUFACTURED WITH OZONE DEPLETING SUBSTANCES.** The item(s) to be delivered under this contract may be manufactured using Class I ozone depleting substances and the following warning statement shall apply to such item(s):

WARNING: Manufactured with CFC-11, 12, 13, 111, 112, 113, 114, 115, 211, 212, 213, 214, 215, 216, 217, Halons 1211, 1301, 2402, Carbon Tetrachloride or Methyl Chloroform substances which harm public health and environment by destroying ozone in the upper atmosphere.

25. **PRODUCTS CONTAINING OZONE DEPLETING SUBSTANCES.** The item(s) to be delivered under this contract may contain a Class I ozone depleting substance and the following warning statement shall apply to such item(s):

WARNING: Contains CFC-11, 12, 13, 111, 112, 113, 114, 115, 211, 212, 213, 214, 215, 216, 217, Halons 1211, 1301, 2402, Carbon Tetrachloride or Methyl Chloroform substances which harm public health and environment by destroying ozone in the upper atmosphere.

26. **LABELING REQUIREMENTS.** It is agreed that the above warning statements satisfy the requirements of the Clean Air Act Amendments of 1990 (Section 611), Title 40 CFR Part 82. Accordingly, no method of marking or tagging items shall be used unless the item is a chemical or chemical compound.
27. **SELLER NOTICE OF DISCREPANCIES.** Seller will notify Buyer in writing when discrepancies in the Seller's process or product are discovered or suspected which may affect parts or assemblies Seller has delivered or will deliver under this contract.
28. **NON-WAIVER AND PARTIAL INVALIDITY.** Any and all failures, delays or forbearances of either party in insisting upon or enforcing at any time or times any of the provisions of this Contract, or to exercise any rights or remedies under this Contract, shall not be construed as a waiver or relinquishment of any such provisions, rights or remedies in those or any other instances; rather, the same shall be and remain in full force and effect. Further, if any provision of this Contract is or becomes void or unenforceable by law, the remainder shall be valid and enforceable.
29. **GOVERNMENT REQUIREMENTS.** Within Seller's invoice or other form satisfactory to Buyer, Seller shall certify that goods covered by this Contract were produced in compliance with Sections 6, 7 and 12, Fair Labor Standards Act, as amended, and the regulations and orders of the U.S. Department of Labor issued thereunder. The Equal Opportunity clause set forth in FAR 52.222-26 is incorporated herein by reference, except "Contractor" means Seller.
30. **GOVERNING LAW.** This Contract and the performance thereof shall be governed by the laws of the State of Washington, U.S.A.
31. **ENTIRE AGREEMENT.** This Contract sets forth the entire agreement, and supersedes any and all other agreements, understandings and communications, between Buyer and Seller and related to the subject matter of this Contract with the exception of Proprietary Information Agreements, which shall continue in force in accordance with the provisions of such agreements. No amendment or modification of this Contract shall be binding upon either party unless set forth in a written instrument signed by Buyer's Materiel Representative and an authorized representative of the Seller. The rights and remedies afforded to Buyer or Customers pursuant to any provision of this Contract are in addition to any other rights and remedies afforded by any other provisions of this Contract, by law, or otherwise.
32. **GOVERNMENT CLAUSES.**

a. **PRICING OF ADJUSTMENTS.** When costs are a factor in any determination of a contract price adjustment pursuant to the "Changes" clause or any other provision of this contract, or when the allowability of costs under this contract are to be determined, determination of such costs shall be in accordance with FAR Part 31.

b. **ADDITIONAL CLAUSES.** The clauses contained in the following Government regulations are incorporated herein by reference. Where necessary or appropriate to derive proper meaning in a subcontract situation from these clauses or other clauses incorporated into this contract by reference, "Contractor" shall mean Seller.

FAR Reference	Title
52.215-43	Audit-Commercial Items (Applicable if contract exceeds \$500,000)
52.219-8	Utilization of Small Business and Small Disadvantaged Business Concerns

- 52.222-1 Notice of Labor Disputes
- 52.222-35 Affirmative Action for Special Disabled and Viet Nam Era Veterans (Applies only if the contract exceeds \$10,000.)
- 52.222-36 Affirmative Action for Handicapped Workers (Applies only if the contract exceeds \$2,500.)
- 52.242-15 Stop Work Order ("Contracting Officer" and "Government" mean Buyer.)
- 52.244-6 Subcontracts for Commercial Items and Commercial Components