

Additional Terms And Conditions  
EA-6B Improved Capabilities (ICAP) III Modification Kits  
(Prime Contract No. N00019-08-D-0002)

All of the additional terms and conditions set forth below are incorporated in and made part of this Order. Any conflict between any of the conditions contained in this form and those appearing on Northrop Grumman Order Terms and Conditions shall be resolved in favor of the conditions in this form.

I. Changes to Terms And Conditions

- A. The November 1995 version of the DoD FAR Supplement 252.227-7013 clause applies to this Order.
- B. The following changes are made to the clause entitled, "FAR and DFARS Provisions/Clauses":
1. Delete the following FAR clauses:
    - 52.245-2 GOVERNMENT PROPERTY (FIXED PRICE CONTRACTS
    - 52.245-5 GOVERNMENT PROPERTY (COST-REIMBURSEMENT, TIME-AND-MATERIAL, OR LABOR-HOUR CONTRACTS) (applies to T-5 and T-16 only)
    - 52.245-17 SPECIAL TOOLING
    - 52.245-18 SPECIAL TEST EQUIPMENT
  2. Add the following FAR clauses:
    - 52.204-9 PERSONAL IDENTITY VERIFICATION OF CONTRACTOR PERSONNEL
    - 52.223-11 OZONE DEPLETING SUBSTANCES
    - 52.243-7 NOTIFICATION OF CHANGES (under paragraph b, the notification period is 60 days, under paragraph d, the response time is 120 days)
    - 52.245-1 GOVERNMENT PROPERTY

3. Add the following DoD FAR Supplement clauses:
  - 252.204-7005 ORAL ATTESTATION OF SECURITY RESPONSIBILITIES
  - 252.211-7003 ITEM IDENTIFICATION AND VALUATION (items requiring Unique Item Identification shall be identified on the resultant Order)
  
4. Add the following Naval Air Systems Command (NAVAIR) clauses (all technical data, invention or subcontract reports required by the following clauses shall be forwarded to the Northrop Grumman buyer in lieu of the Contracting Officer of the controlling prime contract):
  - 5252.204-9504 DISCLOSURE OF CONTRACT INFORMATION (in subparagraph (b), change 10 days to 15 days)
  - 5252.227-9505 TECHNICAL DATA AND COMPUTER SOFTWARE IDENTIFICATION IN ENGINEERING CHANGE PROPOSALS (ECPs)
  - 5252.227-9512 TRADEMARK MANUFACTURE/USE LICENSE AGREEMENT
  - 5252.247-9505 TECHNICAL DATA AND INFORMATION (in subparagraph (f), change 30 days to 25 days)
  - 5252.247-9507 PACKAGING AND MARKING OF REPORTS (NAVAIR)
  - 5252.247-9514 TECHNICAL DATA PACKING INSTRUCTIONS

## II. ADDITIONAL CONDITIONS

1. PREFERENCE FOR DOMESTIC SPECIALTY METALS 252.225-7014 Alternate I (DEVIATION 2008-O0002)
  - (a) Definitions. As used in this clause—
    - (1) "Assembly" means an item forming a portion of a system or subsystem that can be provisioned and replaced as an entity and which incorporates multiple, replaceable parts.
    - (2) "Commercial derivative military article" means an item procured by the Department of Defense that is or will be produced using the same production facilities, a common supply chain, and the same or similar production processes that are used for the production of articles predominantly used by the general public or by nongovernmental entities for purposes other than governmental purposes.
    - (3) "Commercially available off-the-shelf item" –
      - (i) Means any item of supply that is –
        - (A) A commercial item;
        - (B) Sold in substantial quantities in the commercial marketplace;
      - and

- (C) Offered to the Government, under a contract or subcontract at any tier, without modification, in the same form in which it is sold in the commercial marketplace; and
- (ii) Does not include bulk cargo, as defined in section 3 of the Shipping Act of 1984 (46 U.S.C. App.1702), such as agricultural products and petroleum products.
- (4) "Component" means any item supplied to the Government as part of an end time or of another component.
- (5) "Electronic component" means an item that operates by controlling the flow of electrons or other electrically charged particles in circuits, using interconnections of electrical devices such as resistors, inductors, capacitors, diodes, switches, transistors, or integrated circuits.
- (6) "End item" means the final production product when assembled or completed, ready for issue, delivery, or deployment.
- (7) "Produce" means the application of forces or processes to a specialty metal to create desired physical properties through quenching or tempering of steel plate, or gas atomization or sputtering of titanium.
- (8) "Qualifying country" means any country listed in subsection 225.872-1(a) or (b) of the Defense Federal Acquisition Regulation Supplement (DFARS).
- (9) "Required form" means in the form of mill product, such as bar, billet, wire, slab, plate or sheet, and in the grade appropriate for the production of –
  - (i) A finished end item delivered to the Department of Defense; or
  - (ii) A finished component assembled into an end item delivered to the Department of Defense.
- (10) "Specialty metals" means -
  - (i) Steel--
    - (A) With a maximum alloy content exceeding one or more of the following limits: manganese, 1.65 percent; silicon, 0.60 percent; or copper, 0.60 percent; or
    - (B) Containing more than 0.25 percent of any of the following elements: aluminum, chromium, cobalt, molybdenum, nickel, niobium (columbium), titanium, tungsten, or vanadium.
  - (ii) Metal alloys consisting of –
    - (A) Nickel or iron-nickel alloys that contain a total of alloying metals other than nickel in excess of 10 percent; or
    - (B) Cobalt alloys that contain a total of alloying metals other than cobalt and iron in excess of 10 percent;
  - (iii) Titanium and titanium alloys; or
  - (iv) Zirconium and zirconium alloys.

- (11) "Subsystem" means a functional grouping of items that combine to perform a major function within an end item, such as electrical power, attitude control, and propulsion.
- (b) Except as provided in paragraph (c) of this clause, any specialty metals incorporated in items delivered under this contract shall be melted or produced in the United States, its outlying areas, or a qualifying country, except for –
- (1) Electronic components;
  - (2)(i) Commercially available off-the-shelf (COTS) items; other than –
    - (A) COTS fasteners, unless such fasteners are incorporated into COTS end items, subsystems, assemblies, or components.
    - (B) Forgings or castings of specialty metals, unless such forgings or castings are incorporated into COTS end items, subsystems, or assemblies.
    - (C) Commercially available high performance magnets, unless such high performance magnets are incorporated into COTS end items or subsystems;
  - (ii) A COTS item is considered to be "offered without modification" as long as it is not modified prior to contractual acceptance by the next higher tier in the supply chain.
    - (A) Specialty metals contained in a COTS item that was accepted without modification by the next higher tier are excepted and remain excepted even if a piece of the COTS item subsequently is removed (e.g., the end is removed for the COTS screw or an extra hole is drilled in the COTS bracket).
    - (B) For specialty metals that were not contained in a COTS item upon acceptance, but are added to the COTS item after acceptance, the added specialty metals are subject to the restrictions (e.g., a special reinforced handle made of specialty metal that is added to a COTS item).
    - (C) If two or more COTS items are combined in such a way that the resultant item is not a COTS item, only the specialty metals involved in joining the COTS items together are subject to the restrictions (e.g., a COTS aircraft is outfitted with a COTS engine, but not the COTS engine normally provided with that aircraft).
    - (D) For COTS items that are normally sold in the commercial marketplace with various options, items that include such options are also COTS items. However, if a COTS item is offered to the Government with an option that is not normally offered in the commercial marketplace, that option is subject to the specialty metals restrictions. (e.g., An aircraft is normally sold to the public with an option for several different

radios. DoD requests a military-unique radio. The aircraft is still a COTS item, but the military-unique radio is not a COTS item, and must comply with the specialty metals restrictions, unless another exception applies.)

- (3) Fasteners that are commercial items that are purchased under a contract or subcontract with a manufacturer of such fasteners, if the manufacturer has certified that it will purchase, during the relevant calendar year, an amount of domestically melted specialty metal, in the required form, for use in the production of fasteners for sale to the Department of Defense and other customers, that is not less than 50% of the total amount of the specialty metal that it will purchase to carry out the production of such fasteners for all customers.
  - (4) Items manufactured in qualifying country;
  - (5) Items for which the Government has determined in accordance with 225.700X-3 of Class Deviation 2008-O0002 that specialty metal melted or produced in the United States cannot be acquired as and when needed in –
    - (i) A satisfactory quality;
    - (ii) A sufficient quantity; and
    - (iii) The required form.
  - (6) Specialty metals, other than specialty metals in high performance magnets, that do not meet any of the exceptions in paragraphs (b)(1) through (5) of this clause, if the total weight of such noncompliant metals does not exceed 2 percent of the total weight of specialty metals in the item, as estimated in good faith by the Contractor.
- (c) (1) Streamlined compliance for commercial derivative military articles. As an alternative to the compliance required in paragraph (b) of this clause, the Contractor may purchase an amount of domestically melted specialty metals in the required form, for use during the period of contract performance in the production of the commercial derivative military article and the related commercial article, in the amount determined in accordance with paragraph (c)(2) of this clause.
- (i) This is an acquisition of commercial derivative military articles; and
  - (ii) The Contractor has certified in its offer in accordance with paragraph (c) (2) of this clause.
- (2) Certification for streamlined compliance for commercial derivative military articles (to be submitted with offer when applicable). The offeror  certifies  does not certify that prior to award it will have entered into a contractual agreement or agreements to purchase and amount of domestically melted or produced specialty metal in the required form for use during the period of contract performance in the production of the commercial derivative military article and the related

commercial article, that is not less than the Contractor's good faith estimate of the greater of –

- (i) An amount equivalent to 120% of the amount of specialty metal that is required to carry out the production of the commercial derivative military article (including the work performed under each subcontract);  
or
  - (ii) An amount equivalent to 50% of the amount of specialty metal that is purchased by the contractor and its subcontractors for use during such period in the production of the commercial derivative military article and the related commercial article.
- (3) For the purposes of the certification in paragraph (c)(2) of this clause, the amount of specialty metal that is required to carry out the production of the commercial derivative military article includes specialty metal contained in any item, including commercially available off-the-shelf items, incorporated into such commercial derivative military article.
- (d) Unless the Contractor has certified in accordance with paragraph (c), the Contractor shall insert the substance of this clause, excluding paragraph (c) but including this paragraph (d), in all subcontracts for articles containing specialty metals.

2. COMPLIANCE WITH PREFERENCE FOR DOMESTIC SPECIALTY METALS CLAUSE

Seller must comply with the provisions of DFARS 252.225-7014 Preference for Domestic Specialty Metals and Alternate I and is required to notify all subcontractors at all levels to comply with the provisions of this clause through inclusion of DFARS 252.225-7014 & Alternate I in its Subcontracts and Purchase Orders. Seller and its subcontractors must deliver compliant hardware pursuant to the requirements of this Order.

3. PROVISIONAL ACCEPTANCE

- a. If at the delivery date stated herein the supplies are not complete or otherwise are not in conformity with the requirements of this Order, Buyer may, nevertheless, direct their delivery and may provisionally accept them upon such inspection of the supplies as Buyer shall deem appropriate. Provisionally accepted supplies shall be completed or otherwise brought into conformity with Order requirements by Seller at Seller's expense and as directed by Buyer. Alternatively, Buyer may elect to either perform such work at Seller's expense or to retain the non-conforming supplies, in which event the price shall be equitably reduced.
- b. If supplies are otherwise ready for delivery hereunder prior to completion of the qualification tests required by this order or by any prior order with Seller for supplies of the type to be delivered hereunder, Buyer may nevertheless

direct the Seller to deliver such supplies and may provisionally accept such supplies upon (1) satisfactory completion by Seller of the acceptance tests for the supplies concerned, and (2) such other inspection of the supplies as Buyer may deem appropriate. In the event that supplies have been provisionally accepted hereunder, Seller shall, as a condition precedent to final acceptance, be obligated to complete such qualification tests successfully and to incorporate in all such supplies at no increase in Order price, (1) all corrections of a type required to pass qualification tests, and (2) replacement for non-approved, non-standard parts.

- c. Pending final acceptance of supplies which have been provisionally accepted, Buyer may, in his/her discretion, withhold such portion of the Order price as may be appropriate.
- d. Nothing in this clause shall affect the Seller's obligation under other clauses of this Order.

4. NOTICE REGARDING THE DISSEMINATION OF EXPORT-CONTROLLED TECHNICAL DATA (NAVAIR 5252.227-9507)

- (a) Export of information contained herein, which includes release to foreign nationals within the United States, without first obtaining approval or license from the Department of State for items controlled by the International Traffic in Arms Regulations (ITARs), or the Department of Commerce for items controlled by the Export Administration Regulations (EAR), may constitute a violation of law.
- (b) For violation of export laws, the contractor, its employees, officials or agents are subject to:
  - (1) Imprisonment and/or imposition of criminal fines; and
  - (2) Suspension or debarment from future Government contracting actions.
- (c) The Government or Northrop Grumman Systems Corporation shall not be liable for any unauthorized use or release of export-controlled information, technical data or specifications in this Order.