

**PURCHASE ORDER ATTACHMENT T-ESSM (95)  
(April 1996)**

**This attachment is designed for use with awards under Prime Contract: N00024-95-C-5400**

The following provisions are added to and made a part of the Purchase Order General Provisions effective for this Purchase Order:

1. The following FAR and FAR Supplement clauses (modified as indicated) replace the FAR and DFARS clauses listed in the Purchase Order General Provisions:
  - a. All orders include the following:
    - 52.203-6 Restrictions on Subcontractor Sales to the Government (Jul 85)
    - 52.203-7 Anti-Kickback Procedures (Oct 88)
    - 52.203-12 Limitation on Payments to Influence Certain Federal Transactions (Jan 90)
    - 52.204-2 Security Requirements (Apr 84)
    - 52.208-1 Required Sources for Jewel Bearings and Related Items (Apr 84) *Communication under this clause from Seller to Contracting Officer shall be through Buyer's Purchasing Representative.*
    - 52.210-5 New Material (Apr 84), *in which "Contracting Officer" means Buyer's Purchasing Representative and "Government" means Buyer in the last two sentences of the clause.*
    - 52.210-7 Used or Reconditioned Material, Residual Inventory, and Former Government Surplus Property (Apr 84)
    - 52.212-8 Defense Priority and Allocation Requirements. (Sep 90)
    - 52.215-26 Integrity of Unit Prices, ALTERNATE I (Apr 91), excluding paragraph (c).
    - 52.219-13 Utilization of Women-Owned Small Businesses (Aug 86)
    - 52.222-1 Notice to the Government of Labor Disputes (Apr 84), *in which "Contracting Officer" means Buyer's Purchasing Representative.*
    - 52.222-4 Contract Work Hours and Safety Standards Act -- Overtime Compensation (Mar 86) *Buyer may withhold or recover from Seller such sums as the Contracting Officer withholds or recovers from Buyer because of liabilities of Seller or its subcontractors under this clause.*
    - 52.223-3 Hazardous Material Identification and Material Safety Data (Nov 91) *"Government" shall mean Government or Buyer, and after "United States Government Contract No. \_\_\_\_\_ in paragraph (e)(4) add "and Buyer's Order No. \_\_\_\_\_." Numbers are noted on the face of this Order.[Applies to any material defined as hazardous under the latest version of National Aerospace Standard (NAS) 41 (including revisions adopted during the term of the contract]*
    - 52.225-11 Restrictions on Certain Foreign Purchases (May 92)
    - 52.225-17 Buy American Act-Supplies Under European Community Agreement (Jan 94)
    - 52.227-1 Authorization and Consent & ALT I (Apr 84)
    - 52.227-10 Filing of Patent Applications -- Classified Subject Matter (Apr 84)
    - xx Patent Rights (Modified for contracts for the Cooperative Development of the Evolved Seasparrow Missile under the Multinational MOU)(*applicable only if this order requires the performance of research, experimental, or development work. -- see text under para 2. below*)
    - 52.229-3 Federal, State, and Local Taxes (Jan 91) *"Government" means Buyer and "Contracting Officer" means Buyer's Purchasing Representative.*
    - 52.245-2 Government Property (Fixed-Price Contracts) (Dec 89), *"Contracting Officer" means Buyer's Purchasing Representative, & "Government" means Government or Buyer. The fourth sentence of para (h) is changed to read: "Neither the Government nor the Buyer shall be liable...."*
    - 52.246-2 Inspection of Supplies (Fixed Price) (Jul 85), *in which "Contracting Officer" means Buyer's Purchasing Representative or his/her authorized designee, and "Government" means Buyer except that the first time it appears in the first sentence of paragraph (b) and in the fourth sentence of*

*paragraph (b) it means Buyer and the Government (provided, however, that an inspection system accepted by the Government will be deemed acceptable to the Buyer), and the first time it appears in paragraph (k) it means Government or Buyer. The provisions in the clause for access, rights to inspect, safety protection, and relief from liability apply equally to Buyer and the Government. The rights and remedies of the Buyer shall be in addition to and not in limitation of those set forth in Provision I, Warranties.*

- 52.246-16 Responsibility for Supplies (Apr 84), *in which "Contractor" means Seller and "Government" means Buyer, except in paragraph (d) where "Government" means Government or Buyer.*
- 52.246-23 Limitation of Liability (Apr 84)
- 52.246-25 Limitation of Liability - Services (Apr 84)
- 52.247-63 Preference for U.S. Flag Air Carriers (Apr 84)
- 52.247-64 Preference for Privately Owned U.S. Flag Commercial Vessels, ALTERNATE I (Apr 84)
- 52.249-2 Termination for Convenience of the Government (Fixed Price) (Apr 84), *in which "Contracting Officer" means Buyer's Purchasing Representative, and "Government" means Buyer except in paragraph (m). In paragraph (c) the term "45 days" is changed to "90 days." The term "1-year" in paragraph (d) is changed to "6 months." The term "90 days" in paragraph (k) is changed to "45 days." If the Government is unable or unwilling in a timely manner to conduct any audit of Seller's books and records, an audit may be conducted by a mutually acceptable independent certified public accounting firm.*
- 52.249-8 Default (Fixed-Price Supply and Service) (Apr 84)
- 252.225-7001 Buy American Act and Balance of Payments Program (Jan 94)
- 252.225-7002 Qualifying Country Sources as Subcontractors (Dec 91)
- 252.225-7009 Duty-Free Entry -- Qualifying Country End Products and Supplies (Dec 91)
- 252.225-7010 Duty Free Entry - Additional Provisions (Dec 91)
- 252.225-7012 Preference for Certain Domestic Commodities (May 94)
- 252.225-7014 Preference for Domestic Specialty Metals (Dec 91)
- 252.225-7015 Preference for Domestic Hand or Measuring Tools (Dec 91)
- 252.225-7016 Restriction on Acquisition of Antifriction Bearings (Apr 93)
- 252.225-7017 Preference for US and Canadian Valves and Machine Tools (Apr 92)
- 252.225-7022 Restriction on Acquisition of Polyacrylonitrile (PAN) Based Carbon Fiber (Dec 91)
- 252.225-7025 Foreign Source Restrictions (antifriction bearings, forgings, hi-carbon ferrochrome, hi-purity silicon, mini & instrument ball bearings, precision components for mechanical time devices) (Apr 93)
- 252.225-7028 Exclusionary Policies and Practices of Foreign Governments (Dec 91)
- 252.225-7034 Restriction on Acquisition of Coal Petroleum Pitch Carbon Fiber (May 94)
- 252.225-7037 Duty Free Entry - NAFTA Country End Products and Supplies (Jan 94)
- 252.227-7013 Rights in Technical Data and Computer Software (Oct 88)
- 252.227-7018 Restrictive Markings on Technical Data (Oct 88)
- 252.226-7026 Certification of Technical Data Conformity (May 87)
- 252.227-7027 Deferred Ordering of Technical Data or Computer Software (Apr 88)
- 252.227-7037 Validation of Restrictive Markings on Technical Data (Apr 88)
- 252.228-7005 Accident Reporting and Investigation Involving Aircraft, Missiles, and Space Launch Vehicles (Dec 91)
- 252.247-7023 Transportation of Supplies by Sea (Dec 91)
- 252.247-7024 Notification of Transportation of Supplies by Sea (Dec 91)

b. All orders over \$2,500 include:

- 52.222-36 Affirmative Action for Handicapped Workers (Apr 84)

c. All orders over \$10,000 include:

- 52.219-8 Utilization of Small Business Concerns and Small Disadvantaged Business Concerns (Feb 90)
- 52.220-3 Utilization of Labor Surplus Area Concerns (Apr 84)
- 52.222-20 Walsh-Healey Public Contracts Act (Apr 84)

- 52.222-26 (b) Equal Opportunity (Apr 84)
- 52.222-35 Affirmative Action for Special Disabled and Vietnam Era Veterans (Apr 84)
- 52.222-37 Employment Reports on Special Disabled Veterans and Veterans of the Vietnam Era (Jan 88)
- 52.225-10 Duty-Free Entry (Apr 84) *"Contracting Officer" means Buyer's Purchasing Representative. In the last sentence of paragraph (h) "the contract" means prime contract.*
- 52.227-2 Notice and Assistance Regarding Patent and Copyright Infringement (Apr 84)
- 52.244-5 Competition in Subcontracting (Apr 84)

d. All orders over \$25,000 include:

- 52.215-1 Examination of Records by Comptroller General (Feb 93) *excluding paragraph (c).*
- 52.215-2 Audit-Negotiation (Feb 93) *If the Government is unable or unwilling in a timely manner to conduct any audit of Seller's books or records, an audit may be conducted by a mutually acceptable independent certified public accounting firm.*
- 252.203-7001 Special Prohibition on Employment (Apr 93)
- 252.209-7000 Acquisition From Subcontractors Subject to On-site Inspection under the Intermediate-Range Nuclear Forces (INF) Treaty (Dec 91)

e. All orders over \$100,000 include:

- 52.223-2 Clean Air and Water (Apr 84)
- 52.232-16 Progress Payments (Jul 91) (Applicable only if approved by Buyer elsewhere in this PO. Alt I applies if Seller is a small business; Alt II applies if the PO is a letter contract.)
- 252.225-7026 Reporting of Contract Performance Outside the United States (May 95)
- 252.232-7004 DoD Progress Payment Rates (Nov 93) (Applicable if Buyer makes FAR 52.232-16 applicable)
- 252.249-7002 Notification of Proposed Program Termination or Reduction (May 94)

f. All orders over \$500,000 include:

- 52.215-22 Price Reduction for Defective Cost or Pricing Data (Jan 91). (Applicable only if this order is subject to PL 87-653.) *Buyer's prime contract contains this clause. The obligations which FAR 52.215-24 in the prime contract requires of subcontractors are required of Seller. In addition to any other remedies provided by law or under this Order, if Buyer is subjected to any liability as the result of Seller's or its lower-tier subcontractors' failure to comply with the requirements of 52.215-24, then Seller agrees to indemnify and hold Buyer harmless to the full extent of any loss, damage or expense resulting from such failure.*
- 52.215-24 Subcontractor Cost or Pricing Data (Dec 91). (Applicable only if this order is subject to PL 87-653.) *The certificate required by paragraph (b) is Buyer's Form 9784A.*
- 52.215-27 Termination of Defined Benefit Pension Plans (Sep 89) (Applicable if certified cost or pricing data is required and any cost determinations will be required under FAR Part 31.2)
- 52.215-39 Reversion or Adjustment of Plans for Postretirement Benefits Other Than Pensions (PRB) (Jul 91) (Applicable if 52.215-27 above is applicable)
- 52.219-9 Small Business and Small Disadvantaged Business Subcontracting Plan (Jan 91) (Applicable only if Seller is other than a small business.) *"Contracting Officer" means Buyer's Purchasing Representative in the first sentence of subparagraph (c).*
- 52.220-4 Labor Surplus Area Subcontracting Program (Apr 84)
- 52.230-2 Cost Accounting Standards (Aug 92). (Applicable only if this order is subject to Public Law 100-679 and Seller has not claimed eligibility for modified CAS coverage.) *\*\*\*NOTE: the following applies to FAR 52.230-2 (or 52.230-3 whenever applicable): Paragraph (b) of the Clause is hereby deleted. Seller shall communicate and otherwise deal directly with the Contracting Officer to the extent practicable and permissible as to all matters relating to Cost Accounting Standards. Seller shall provide Buyer with copies of all communications between Seller and the Contracting Officer respecting this clause and clause 52.230-4, provided Seller shall not be required to disclose to Buyer such communications containing information which is privileged and confidential to the Seller. In addition to any other remedies provided by law or under this Order, Seller agrees to indemnify and hold Buyer harmless to the full extent of any loss, damage or expense if Buyer is subjected to any liability as the result of a failure of the Seller or its lower-tier subcontractors to comply with this clause or clause 52.230-4.*

- 52.230-3 Disclosure and Consistency of Cost Accounting Practices (Aug 92) (Applicable only if this order is subject to Public Law 100-679 and Seller has properly claimed modified CAS coverage. If this clause 52.230-3 is applicable, see the "\*\*\*NOTE" under the 52.230-2 clause above.)
- 52.230-4 Consistency in Cost Accounting Practices (Aug 92) (Applies to United Kingdom contractors where performance is substantially in the United Kingdom provided the contractor has filed with the United Kingdom Ministry of Defense, for retention by the Ministry, a completed Disclosure Statement Form No CASB-DS-1)
- 52.230-5 Administration of Cost Accounting Standards (Aug 92). (Applicable only if this order is subject to Public Law 100-679 and either FAR 52.230-2 or 52.230-3 applies.)
- 252.249-7001 Notification of Substantial Impact on Employment (Dec 91)

- g. All orders over \$1,000,000 include:
  - 252.210-7003 Acquisition Streamlining (Dec 91)

2. All orders include the following:

a. INSPECTION

In addition to and not in lieu of quality attachments which are made a part of this order, Buyer and Buyer's customer personnel may inspect work performed hereunder by Seller at all reasonable times. The Seller shall provide access to his facilities and render such assistance therein as Buyer's rights hereunder. The Seller shall include this provision in all orders/subcontracts executed hereunder.

b. RELEASE OF INFORMATION

Release of any information pertinent to this subcontract requires prior approval of the Buyer.

c. INSURANCE REQUIREMENTS

If Seller is to perform work at Buyer's facility or on U.S. Government property, Seller shall furnish insurance certificates in accordance with paragraph I of Buyer's Purchase Order Attachment GL-14 prior to the commencement of any work at Buyer's facility or on U.S. Government property.

d. PATENT RIGHTS -- RETENTION BY THE CONTRACTOR (LONG FORM) (JUN 1989) [MODIFIED FOR CONTRACTS FOR THE COOPERATIVE DEVELOPMENT OF THE EVOLVED SEASPARROW MISSILE UNDER THE MULTINATIONAL MOU](Applicable for experimental, developmental or research work)

(a) Definitions.

"Invention" means any invention or discovery which is or may be patentable or otherwise protectable under Title 35 of the United States Code or any novel variety of plant that is or may be protectable under the Plant Variety Protection Act (7 U.S.C. 2321, et seq.).

"Made" when used in relation to any invention means the conception or first actual reduction to practice of such invention.

"Nonprofit organization" means a domestic university or other institution of higher education or an organization of the type described in section 501(c)(3) of the Internal Revenue Code of 1954 (26 U.S.C. 501(c)) and exempt from taxation under section 501(a) of the Internal Revenue Code (26 U.S.C. 501(a)) or any domestic nonprofit scientific or educational organization qualified under a state nonprofit organization statute.

"Practical application" means to manufacture in the case of a composition or product, to practice in the case of a process or method, or to operate in the case of a machine or system; and, in each case, under such conditions as to establish that the invention is being utilized and that its benefits are, to the extent permitted by law or Government regulations, available to the public on reasonable terms.

"Small business firm" means a domestic small business concern as defined at Section 2 of Public Law 85-536 (15 U.S.C. 532) and implementing regulations of the Administrator of the Small Business Administration. For the purpose of this clause, the size standards for small business concerns involved in Government procurement and subcontracting at 13 CFR 121.3-8 and 13 CFR 121.3-12, respectively, will be used.

"Subject invention" means any invention of the Contractor conceived or first actually reduced to practice in the performance of work under this contract; provided, that in the case of a variety of plant, the date of determination (as defined in section 41(d) of the Plant Variety Protection Act, 7 U.S.C. 3401(d) must also occur during the period of contract performance.

(b) Allocation of principal rights. The Contractor may elect to retain the entire right, title, and interest throughout the world to each subject invention subject to the provisions of this clause and 35 U.S.C. 203. With respect to any subject invention in which the Contractor elects to retain title, the Federal Government shall have a nonexclusive, nontransferable, irrevocable, paid-up license to practice or have practiced for or on behalf of the United States the subject invention throughout the world.

The license shall include the right of the Government to sublicense foreign governments and international organizations pursuant to the following treaties or international agreements: The 1 September 1994 Addendum to the Memorandum of Understanding for the Cooperative Support of the NATO Seasparrow Surface Missile System concerning the Cooperative Engineering and Manufacturing Development of the Evolved Seasparrow Missile, the earlier basic memorandum of understanding to which this addendum applies, or pursuant to any future treaties or agreements with foreign governments or international organizations.

(c) Invention disclosure, election of title, and filing of patent applications by Contractor.

(1) The Contractor shall disclose each subject invention to the Contracting Officer within 2 months after the inventor discloses it in writing to Contractor personnel responsible for patent matters or within 6 months after the Contractor becomes aware that a subject invention has been made, whichever is earlier. The disclosure to the Contracting Officer shall be in the form of a written report and shall identify the contract under which the invention was made and the inventor(s). It shall be sufficiently complete in technical detail to convey a clear understanding, to the extent known at the time of the disclosure, of the nature, purpose, operation, and physical, chemical, biological, or electrical characteristics of the invention. The disclosure shall also identify any publication, on sale, or public use of the invention and whether a manuscript describing the invention has been submitted for publication and, if so, whether it has been accepted for publication at the time of disclosure. In addition, after disclosure to the Contracting Officer, the Contractor shall promptly notify the Contracting Officer of the acceptance of any manuscript describing the invention for publication or of any on sale or public use planned by the Contractor.

(2) The Contractor shall elect in writing whether or not to retain title to any such invention by notifying the Federal agency at the time of disclosure or within 8 months of disclosure, as to those countries (including the United States) in which the Contractor will retain title; provided, that in any case where publication, on sale, or public use has initiated the 1-year statutory period wherein valid patent protection can still be obtained in the United States, the period of election of title may be shortened by the agency to a date that is no more than 60 days prior to the end of the statutory period.

(3) The Contractor shall file its initial patent application on an elected invention within 1 year after election or, if earlier, prior to the end of any statutory period wherein valid patent protection can be obtained in the United States after a publication, on sale, or public use. The Contractor shall promptly provide the Contracting Office with a copy of such application, and shall provide information as to the filing date and serial number when the information becomes available. The Contractor shall file patent applications in additional countries (including the European Patent Office and under the Patent Cooperation Treaty) within either 10 months of the corresponding initial patent application or 6 months from the date permission is granted by the Commissioner of Patents and Trademarks to file foreign patent applications where such filing has been prohibited by a Secrecy Order, and shall notify the Contracting Officer such that he receives such notice within one week of such filing that filing has taken place, and the names of the countries in which such filing has taken place. Otherwise, the countries involved in the aforementioned MOU shall have an irrevocable right to file in any additional countries.

(4) Requests for extension of the time for disclosure to the Contracting Officer, election, and filing may, at the discretion of the funding Federal agency, be granted, and will normally be granted unless the Contracting Officer has reason to believe that a particular extension would prejudice the Government's interest.

(d) Conditions when the Government may obtain title. The Contractor shall convey to the Federal agency, upon written request, title to any subject invention --

(1) If the Contractor elects not to retain title to a subject invention;

(2) If the Contractor fails to disclose or elect the subject invention within the times specified in paragraph (c) above (the agency may only request title within 60 days after learning of the Contractor's failure to report or elect within the specified times);

(3) In those countries in which the Contractor fails to file patent applications or notify the Contracting Officer of such filing within the times specified in paragraph (c) above; or

(4) In any country in which the Contractor decides not to continue the prosecution of any application for, to pay the maintenance fees on, or defend in reexamination or opposition proceeding on, a patent on a subject invention.

(e) Minimum rights to Contractor.

(1) The Contractor shall retain a nonexclusive, royalty-free license throughout the world in each subject invention to which the Government obtains title except if the Contractor fails to disclose the subject invention within the times specified in paragraph (c) above. The Contractor's license extends to its domestic subsidiaries and affiliates, if any, within the corporate structure of which the Contractor is a part and includes the right to grant sublicenses of the same scope to the extent the Contractor was legally obligated to do so at the time the contract was awarded. The license is transferable only with the approval of the funding Federal agency except when transferred to the successor of that part of the Contractor's business to which the invention pertains.

(2) The Contractor's domestic license may be revoked or modified by the funding Federal agency to the extent necessary to achieve expeditious practical application of the subject invention pursuant to an application for an exclusive license submitted in accordance with applicable provisions in the Federal Property Management Regulations and agency licensing regulations (if any). This license shall not be revoked in that field of use or the geographical areas in which the Contractor has achieved practical application and continues to make the benefits of the invention reasonably accessible to the public. The license in any foreign country may be revoked or modified at the discretion of the funding Federal agency to the extent the Contractor, its licensees, or its domestic subsidiaries or affiliates have failed to achieve practical application in that foreign country.

(3) Before revocation or modification of the license, the funding Federal agency shall furnish the Contractor a written notice of its intention to revoke or modify the license, and the Contractor shall be allowed 30 days (or such other time as may be authorized by the funding Federal agency for good cause shown by the Contractor) after the notice to show cause why the license should not be revoked or modified. The Contractor has the right to appeal, in accordance with applicable agency licensing regulations and 37 CFR 404 concerning the licensing of Government-owned inventions, any decision concerning the revocation or modification of its license.

(f) Contractor action to protect the Government's interest.

(1) The Contractor agrees to prosecute or to have executed and promptly deliver to the Federal agency all instruments necessary to (i) establish or confirm the rights the Government has throughout the world in those subject inventions to which the Contractor elects to retain title, and (ii) convey title to the Federal agency when requested under paragraph (d) above and subparagraph (n)(2) below, and to enable the Government to obtain patent protection throughout the world in that subject invention.

(2) The Contractor agrees to require, by written agreement, its employees, other than clerical and nontechnical employees, to disclose promptly in writing to personnel identified as responsible for the administration of patent matters and in a format suggested by the Contractor each subject invention made under contract in order that the Contractor can comply with the disclosure provisions of paragraph (c) above, and to execute all papers necessary to file patent applications on subject inventions and to establish the Government's rights in the subject inventions. This disclosure format should require, as a minimum, the information required by subparagraph (c)(1) above. The Contractor shall instruct such employees through employee agreements or other suitable educational programs on the importance of reporting inventions in sufficient time to permit the filing of patent applications prior to U.S. or foreign statutory bars.

(3) The Contractor shall notify the Federal agency of any decision not to continue the prosecution of a patent application, pay maintenance fees, or defend in a reexamination or opposition proceeding on a patent, in any country, not less than 30 days before the expiration of the response period required by the relevant patent office.

(4) The Contractor agrees to include, within the specification of any United States patent application and any patent issuing thereon covering a subject invention, the following statement: "This invention was made with Government support under (identify the contract) awarded by (identify the Federal agency). The Government has certain rights in this invention."

(5) The Contractor shall establish and maintain active and effective procedures to assure that subject inventions are promptly identified and disclosed to Contractor personnel responsible for patent matters within 6 months of conception and/or first actual reduction to practice, whichever occurs first in performance of work under this contract. These procedures shall include the maintenance of laboratory notebooks or equivalent records and other records as are reasonably necessary to document the conception and/or the first actual reduction to practice of subject inventions, and records that show that the procedures for identifying and disclosing the inventions are followed. Upon request, the Contractor shall furnish the Contracting Officer a description of such procedures for evaluation and for determination as to their effectiveness.

(6) The Contractor agrees, when licensing a subject invention, to arrange to avoid royalty charges on acquisitions involving Government funds, including funds derived through Military Assistance Program of the Government or otherwise derived through the Government, to refund any amounts received as royalty charges on the subject invention in acquisitions for, or on behalf of, the Government, and to provide for such refund in any instrument transferring rights in the invention to any party. The Contractor shall likewise avoid royalty charges to any foreign Government licensed because of the aforementioned MOU.

(7) The Contractor shall furnish the Contracting Officer the following:

(i) Interim reports every 12 months (or such longer period as may be specified by the Contracting Officer) from the date of the contract, listing subject inventions during that period and certifying that all subject inventions have been disclosed or that there are no such inventions.

(ii) A final report, within 3 months after completion of the contracted work, listing all subject inventions or certifying that there were no such inventions, and listing all subcontracts at any tier containing a patent rights clause or certifying that there were no such subcontracts.

(8) The Contractor shall promptly notify the Contracting Officer in writing upon the award of any subcontract at any tier containing a patent rights clause by identifying the subcontractor, the applicable patent rights clause, the work to be performed under the subcontract, and the dates of award and estimated completion. Upon request of the Contracting Officer, the Contractor shall furnish a copy of such subcontract, and no more frequently than annually, a listing of the subcontracts that have been awarded.

(9) In the event of a refusal by a prospective subcontractor to accept the clauses in subparagraph (g)(2) below, the Contractor (i) shall promptly submit a written notice to the Contracting Officer setting forth the subcontractor's reasons for such refusal and other pertinent information that may expedite disposition of the matter and (ii) shall not proceed with such subcontracting without the written authorization of the Contracting Officer.

(10) The Contractor shall provide the filing date, serial number and title, a copy of the patent application (including an English-language version if filed in a language other than English), and patent number and issue date for any subject invention for which the Contractor has retained title.

(11) Upon request, the Contractor shall furnish the Government an irrevocable power to inspect and make copies of the patent application file.

(12) If a Contractor makes an invention outside the United States, the Contractor may make a first patent application outside the United States and comply with home country laws in this respect. The Contractor must, in all other respects, comply with the provisions of this clause.

(g) Subcontracts.

(1) Reserved.

(2) The Contractor shall include this clause in all subcontracts, regardless of tier, for experimental, developmental, or research work.

(3) In the case of subcontracts at any tier, when the prime award with the Federal agency was a contract (but not a grant or cooperative agreement), the agency, subcontractor, and the Contractor agree that the mutual obligations of the parties created by this clause constitute a contract between the subcontractor and the Federal agency with respect to those matters covered by this clause.

(h) Reporting utilization of subject inventions. The Contractor agrees to submit on request periodic reports no more frequently than annually on the utilization of a subject invention or on efforts at obtaining such utilization that are being made by the Contractor or its licensees or assignees. Such reports shall include information regarding the status of development, date of first commercial sale or use, gross royalties received by the Contractor, and such other data and information as the agency may reasonably specify. The Contractor also agrees to provide additional reports as may be requested by the agency in connection with any march-in proceedings undertaken by the agency in accordance with paragraph (j) of this clause. To the extent data or information supplied under this paragraph is considered by the Contractor, its licensee or assignee to be privileged and confidential and is so marked, the agency agrees that, to the extent permitted by law, it shall not disclose such information to persons outside the Government.

(i) Preference for United States industry.

(1) Notwithstanding any other provision of this clause, the Contractor agrees that neither it nor any assignee will grant to any person the exclusive right to use or sell any subject invention in the United States unless such person agrees that any products embodying the subject invention will be manufactured substantially in the United States. However, in individual cases, the requirement for such an agreement may be waived by the Federal agency upon a showing by the Contractor or its assignee that reasonable but unsuccessful efforts have been made to grant licenses on similar terms to potential licensees that would be likely to manufacture substantially in the United States or that under the circumstances domestic manufacture is not commercially feasible.

(j) March-in rights. The Contractor agrees that with respect to any subject invention in which it has acquired title, the Federal agency has the right in accordance with the procedures in FAR 27.304-1(g) to require the Contractor, an assignee, or exclusive licensee of a subject invention to grant a nonexclusive, partially exclusive, or exclusive licensee in any field of use to a responsible applicant or applicants, upon terms that are reasonable under the circumstances, and if the Contractor, assignee, or exclusive licensee refuses such a request, the Federal agency has the right to grant such a license itself if the Federal agency determines that --

(1) Such action is necessary because the Contractor or assignee has not taken, or is not expected to take within a reasonable time, effective steps to achieve practical application of the subject invention in such field of use;

(2) Such action is necessary to alleviate health or safety needs which are not reasonably satisfied by the Contractor, assignee, or their licensees;

(3) Such action is necessary to meet requirements for public use specified by Federal regulations and such requirements are not reasonably satisfied by the Contractor, assignee, or licensees; or

(4) Such action is necessary because the agreement required by paragraph (i) of this clause has not been obtained or waived or because a licensee of the exclusive right to use or sell any subject invention in the United States is in breach of such agreement.

(k) Special provisions for contracts with nonprofit organizations. Reserved.

(l) Communications. Reserved.

(m) Other inventions. Nothing contained in this clause shall be deemed to grant to the Government any rights with respect to any invention other than a subject invention.

(n) Examination of records relating to inventions.

(1) The Contracting Officer or any authorized representative shall, until 3 years after final payment under this contract, have the right to examine any books (including laboratory notebooks), records, and documents of the Contractor relating to the conception or first reduction to practice of inventions in the same field of technology as the work under this contract to determine whether --

(i) Any such inventions are subject inventions;

(ii) The Contractor has established and maintains the procedures required by subparagraphs (f)(2) and (f)(3) of this clause; and

(iii) The Contractor and its inventors have complied with the procedures.

(2) If the Contracting Officer determines that an inventor has not disclosed a subject invention to the Contractor in accordance with the procedures required by subparagraph (f)(5) of this clause, the Contracting Officer may, within 60 days after the determination, request title in accordance with subparagraph (d)(2) and (d)(3) of this clause. However, if the Contractor establishes that the failure to disclose did not result from the Contractor's fault or negligence, the Contracting Officer shall not request title.

(3) If the Contracting Officer learns of an unreported Contractor invention which the Contracting Officer believes may be a subject invention, the Contractor may be required to disclose the invention to the agency for a determination of ownership rights.

(4) Any examination of records under this paragraph shall be subject to appropriate conditions to protect the confidentiality of the information involved.

(o) Withholding of payment (this paragraph does not apply to subcontracts).

(1) Any time before final payment under this contract, the Contracting Officer may, in the Government's interest, withhold payment until a reserve not exceeding \$50,000 or 5 percent of the amount of the contract, whichever is less, shall have been set aside if, in the Contracting Officer's opinion, the Contractor fails to --

(i) Establish, maintain, and follow effective procedures for identifying and disclosing subject inventions pursuant to subparagraph (f)(5) above;

(ii) Disclose any subject invention pursuant to subparagraph (c)(1) above;

(iii) Deliver acceptable interim reports pursuant to subdivision (f)(7)(i) above; or

(iv) Provide the information regarding subcontracts pursuant to subparagraph (f)(6) above.

(2) Such reserve or balance shall be withheld until the Contracting Officer has determined that the Contractor has rectified whatever deficiencies exist and has delivered all reports, disclosures, and other information required by this clause.

(3) Final payment under this contract shall not be made before the Contractor delivers to the Contracting Officer all disclosures of subject inventions required by subparagraphs (c)(1) above, an acceptable final report pursuant to subdivision (f)(7)(ii) above, and all past due confirmatory instruments.

(4) The Contracting Officer may decrease or increase the sums withheld up to the maximum authorized above. No amount shall be withheld under this paragraph while the amount specified by this paragraph is being withheld under other provisions of the contract. The withholding of any amount or the subsequent payment thereof shall not be construed as a waiver of any Government right.

e. **EXCLUSION OF MERCURY (ELECTRONICS) (NAVSEA) (SEP 1990)**

(a) Supplies furnished shall contain no free mercury (metallic form) or mercury compounds (e.g. mercuric oxide and mercuric chloride) without written approval of the Naval Sea Systems Command (NAVSEA).

Note: The Contractor shall perform a review to the extent necessary to obtain reasonable assurance that mercury is not being used in the supplies (e.g. review of drawing parts lists and material lists)

(b) Mercury bearing instruments and equipment (i.e. those instruments and equipment containing free mercury) shall not be used in the manufacture, fabrication, assembly, testing, etc., of any supplies.

Note: (1) The most probable causes of mercury contamination are direct connected manometers, mercury vacuum pumps, mercury seals, mercury-in-glass thermometers, or handling free mercury in the immediate vicinity of supplies.

(2) The Contractor shall perform a review of his facilities to provide reasonable assurance that supplies are not in danger of mercury contamination (e.g. check of instruments and test equipment).

(3) In case of doubt or question of manufacturing procedures, equipment, or instruments regarding mercury, contact NAVSEA for assistance.

(4) In the event of any accident involving mercury contamination or suspicion of such contamination of supplies, NAVSEA shall be notified immediately.

(c) The Contractor shall develop the same assurance and confidence of compliance with the mercury exclusion clause as it does with other specification requirements (e.g. toxic materials, flammable materials, fragile materials, and radioactive materials).

Note: Certification of compliance or other attesting documentation shall be available if required to be provided to the Government.

(d) The Contractor shall require all subcontractors to comply with the mercury exclusion requirements.

f. **ACCESS TO PROPRIETARY DATA OR COMPUTER SOFTWARE (NAVSEA) (JUN 1994)**

(a) Performance under this contract may require that the Contractor have access to technical data, computer software, or other sensitive data of another party who asserts that such data or software is proprietary. If access to such data or software is required or to be provided, the Contractor shall enter into a written agreement with such party prior to gaining access to such data or software. The agreement shall address, at a minimum, (1) access to, and use of, the proprietary data or software exclusively for the purposes of performance of the work required by this contract, and (2) safeguards to protect such data or software from unauthorized use or disclosure for so long as the data or software remains proprietary. In addition, the agreement shall not impose any limitation upon the Government or its employees with respect to such data or software. A copy of the executed agreement shall be provided to the Contracting Officer. The Government may unilaterally modify the contract to list those third parties with which the Contractor has agreement(s).

(b) The Contractor agrees to: (1) indoctrinate its personnel who will have access to the data or software as to the restrictions under which access is granted; (2) not disclose the data or software to another party or other Contractor personnel except as authorized by the Contracting Officer; (3) not engage in any other action, venture, or employment wherein this information will be used, other than under this contract, in any manner inconsistent with the spirit and intent of this requirement; (4) not disclose the data or software to any other party, including, but not limited to, joint venturer, affiliate, successor, or assign of the Contractor; and (5) reproduce the restrictive stamp, marking, or legend on each use of the data or software whether in whole or in part.

(c) The restrictions on use and disclosure of the data and software described above also apply to such information received from the Government through any means to which the Contractor has access in the performance of this contract that contains proprietary or other restrictive markings.

(d) The Contractor agrees that it will promptly notify the Contracting Officer of any attempt by an individual, company, or Government representative not directly involved in the effort to be performed under this contract to gain access to such proprietary information. Such notification shall include the name and organization of the individual, company, or Government representative seeking access to such information.

(e) The Contractor shall include this requirement in subcontracts of any tier which involve access to information covered by paragraph (a), substituting "subcontractor" for "Contractor" where appropriate.

(f) Compliance with this requirement is a material requirement of this contract.

g. **WORK SHARE INITIATIVE FOR THE ESSM COOPERATIVE PROGRAM (SEASPARROW)**

Should shall notify Buyer if subcontractor subcontract any of its work to a supplier in any of the following countries: Australia, Canada, Denmark, Germany, Greece, Netherlands, Norway, Portugal, Spain, or Turkey

h. **HAZARDOUS MATERIALS (SEASPARROW)**

Based on the characteristics of the item, the mode of transportation and the destination, hazardous materials shall be 71-43, the United Nations (U.N.) Transport of Dangerous Goods Regulations, the International Civil Air Organization Goods Code (IMDG Code). Packaging and handling requirements for hazardous materials shall be documented in logistics Support Analysis Record (LSAR), H data record, CFR Title 29 (OSHA) shall be followed to assure safety in the generation, storage, transportation and disposal of hazardous wastes. Material Safety Data sheets shall be prepared and Transportation Systems (DTS) shall be governed by DOD 4500.32R MILSTAMP.

i. **SPECIAL PROVISION FOR EVOLVED SEASPARROW MISSILE (ESSM) ROCKET MOTOR**  
(Applies to Norwegian Industry Rocket Motor Subcontracts Only) (See Prime Contract)

j. **GUIDELINES FOR THE DISCLOSURE OF CLASSIFIED ESSM-RELATED INFORMATION**

In the performance of this contract, it is anticipated that U.S. and allied industries will require the disclosure and transfer of unclassified and classified information related to the ESSM Program. Actual disclosure or transfer of such information is subject to the approval of export licenses by the U.S. Government. Guidelines for the release of information associated with the ESSM Program can be found in Navy IPO letter of 2 November 1994.

3. All orders over \$100,000 include Buyer's Purchase Order Attachment VE-01.
4. All orders over \$500,000 include the following:
  - a. Buyer's Purchase Order Attachment CS-15.
  - b. Government Industry Data exchange Program (GIDEP)  
The Subcontractor shall participate in the appropriate interchange of the Government-Industry Data Exchange Program (GIDEP) in accordance with MIL-STD-1556B, "Government-Industry Data Exchange Program (GIDEP)" dated 24 February 1986. Data entered is retained by the program and provided to qualified participants. Compliance with this requirement shall not relieve the Subcontractor from complying with any other requirement of the contract.
5. All orders involving ammunition or explosives include the following:
  - a. 252.223-7002 Safety Precautions for Ammunition and Explosives (May 94)
  - b. Supplier to furnish a copy of its Certificate of Competent Authority (CCA) along with its shipment of explosives or an item containing explosives.