

**TERMS AND CONDITIONS**  
**B (4-91)**

**1. BILLING INSTRUCTIONS.** (a) A packing list must accompany all shipments.

(b) Packing lists, delivery tickets, and any required invoices must show the subcontract number and must show car numbers when carload shipment is made.

(c) Render separate invoices, if required, for each and every shipment, and render invoice for returnable containers stating terms and conditions for return thereof.

(d) Mail one copy of all shipping papers to the Company's Accounts Payable Department at the address shown elsewhere in this subcontract.

**2. DEFINITIONS.** As used throughout this subcontract, the following terms shall have the meanings set forth below:

(a) The term "Government" means the United States of America and includes DOE.

(b) The term "DOE" means the Department of Energy or any duly authorized representative thereof.

(c) The term "Company" means Martin Marietta Energy Systems, Inc., acting under Contract No. DE-AC05-84OR21400 with DOE and includes any duly authorized representative thereof.

(d) The term "Seller" means the person or organization that has entered into this subcontract with the Company.

**3. TITLE AND ADMINISTRATION.** It is understood and agreed that title to all supplies furnished hereunder by the Seller shall pass directly from the Seller to the Government; that the Company is authorized to and will make payment hereunder from Government funds advanced and agreed to be advanced to it by DOE, and not from its own assets; and that administration of this subcontract may be transferred from the Company to DOE or its designee, and in case of such transfer and notice thereof to the Seller, the Company shall have no further responsibilities hereunder.

**4. OFFICIALS NOT TO BENEFIT.** No member of or delegate to Congress, or resident commissioner, shall be admitted to any share or part of this subcontract, or to any benefit arising from it. However, this clause does not apply to this subcontract to the extent that this subcontract is made with a corporation for the corporation's general benefit.

**5. COVENANT AGAINST CONTINGENT FEES.** (a) The Seller warrants that no person or agency has been employed or retained to solicit or obtain this subcontract upon an agreement or understanding for a contingent fee, except a bona fide employee or agency. For breach or violation of this warranty, the Company shall have the right to annul this subcontract without liability or, in its discretion, to deduct from the subcontract price or consideration, or otherwise recover, the full amount of the contingent fee.

(b) "Bona fide agency," as used in this clause, means an established commercial or selling agency, maintained by the Seller for the purpose of securing business, that neither exerts nor proposes to exert improper influence to solicit or obtain Government contracts or subcontracts nor holds itself out as being able to obtain any Government contracts or subcontracts through improper influence.

"Bona fide employee," as used in this clause, means a person, employed by the Seller and subject to the Seller's supervision and control as to time, place, and manner of performance, who neither exerts nor proposes to exert improper influence to solicit or obtain Government contracts or subcontracts nor holds out as being able to obtain any Government contracts or subcontracts through improper influence.

"Contingent fee," as used in this clause, means any

commission, percentage, brokerage, or other fee that is contingent upon the success that a person or concern has in securing a Government contract or subcontract.

"Improper influence," as used in this clause, means any influence that induces or tends to induce a Company employee or officer to give consideration or to act regarding a Company subcontract on any basis other than the merits of the matter.

**6. RESTRICTIONS ON SUBCONTRACTOR SALES TO THE COMPANY OR THE GOVERNMENT.**

(a) Except as provided in (b) below, the Seller shall not enter into any agreement with an actual or prospective subcontractor, nor otherwise act in any manner, which has or may have the effect of restricting sales by such subcontractors directly to the Company or the Government of any item or process (including computer software) made or furnished by the subcontractor under this subcontract or under any follow-on production subcontract.

(b) The prohibition in (a) above does not preclude the Seller from asserting rights that are otherwise authorized by law or regulation.

(c) The Seller agrees to incorporate the substance of this clause, including this paragraph (c), in all subcontracts under this subcontract.

**7. ANTI-KICKBACK PROCEDURES.** (a) Definitions.

"Kickback," as used in this clause, means any money, fee, commission, credit, gift, gratuity, thing of value, or compensation of any kind which is provided, directly or indirectly, to any prime Contractor, prime Contractor employee, subcontractor, or subcontractor employee for the purpose of improperly obtaining or rewarding favorable treatment in connection with a prime contract or in connection with a subcontract relating to a prime contract.

"Person," as used in this clause, means a corporation, partnership, business association of any kind, trust, joint-stock company, or individual.

"Prime contract," as used in this clause, means a contract or contractual action entered into by the United States for the purpose of obtaining supplies, materials, equipment, or services of any kind.

"Prime Contractor," as used in this clause, means a person who has entered into a prime contract with the United States.

"Prime Contractor employee," as used in this clause, means any officer, partner, employee, or agent of a prime Contractor.

"Subcontract," as used in this clause, means a contract or contractual action entered into by a prime Contractor or subcontractor for the purpose of obtaining supplies, materials, equipment, or services of any kind under a prime contract.

"Subcontractor," as used in this clause, (1) means any person, other than the prime Contractor, who offers to furnish or furnishes any supplies, materials, equipment, or services of any kind under a prime contract or a subcontract entered into in connection with such prime contract, and (2) includes any person who offers to furnish or furnishes general supplies to the prime Contractor or a higher tier subcontractor.

"Subcontractor employee," as used in this clause, means any officer, partner, employee, or agent of a subcontractor.

(b) The Anti-Kickback Act of 1986 (41 U.S.C. 51-58) (the Act), prohibits any person from:

(1) Providing or attempting to provide or offering to provide any kickback;

(2) Soliciting, accepting, or attempting to accept any kickback; or

(3) Including, directly or indirectly, the amount of any

kickback in the contract price charged by a prime Contractor to the United States or in the contract price charged by a subcontractor to a prime Contractor or higher tier subcontractor.

(c) (1) When the Seller has reasonable grounds to believe that a violation described in paragraph (b) of this clause may have occurred, the Seller shall promptly report in writing the possible violation. Such reports shall be made to the Company and the Inspector General of DOE or the Department of Justice.

(2) The Seller shall cooperate fully with any Federal agency investigating a possible violation described in paragraph (b) of this clause.

(3) The Contracting Officer may (i) offset the amount of the kickback against any monies owed by the United States under the prime contract and/or (ii) direct that the Prime Contractor withhold, from sums owed a subcontractor under the prime contract, the amount of any kickback. The Contracting Officer may order the monies withheld under subdivision (c)(3)(ii) of this clause be paid over to the Government unless the Government has already offset those monies under subdivision (c)(3)(i) of this clause. In either case, the Prime Contractor shall notify the Contracting Officer when the monies are withheld.

(4) The Seller agrees to incorporate the substance of this clause, including this subparagraph (c)(4) in all subcontracts under this subcontract.

**8. NEW MATERIAL.** Unless this subcontract specifies otherwise, the supplies and components to be delivered under this subcontract shall be new (not used or reconditioned) and shall not be of such an age or so deteriorated as to impair their usefulness or safety.

**9. DEFENSE PRIORITY AND ALLOCATION REQUIREMENTS.** This is a rated order certified for national defense use, and the Seller shall follow all the requirements of the Defense Priorities and Allocations System regulation (15 CFR 700).

**10. VARIATION IN QUANTITIES.** Unless otherwise specified, any variation in the quantity of any item called for by this subcontract, not exceeding 10%, will be accepted as compliance with this subcontract when caused by conditions of loading, shipping, or packing, or allowances in manufacturing processes, and payments shall be adjusted accordingly.

**11. CONVICT LABOR.** The Seller agrees not to employ any person undergoing sentence of imprisonment in performing this subcontract except as provided by 18 U.S.C. 4082(c)(2) and Executive Order 11755, December 29, 1973.

**12. BUY AMERICAN ACT.** (a) The Buy American Act (41 U.S.C. 10) provides that the Government give preference to domestic end products.

"Components," as used in this clause, means those articles, materials, and supplies incorporated directly into the end products.

"Domestic end product," as used in this clause, means (1) an unmanufactured end product mined or produced in the United States, or (2) an end product manufactured in the United States, if the cost of its components mined, produced, or manufactured in the United States exceeds 50 percent of the cost of all its components. Components of foreign origin of the same class or kind as the products referred to in subparagraphs (b)(2) or (3) of this clause shall be treated as domestic. Scrap generated, collected, and prepared for processing in the United States is considered domestic. On acquisitions above \$25,000 in value, components of Canadian origin are treated as domestic.

"End products," as used in this clause, means those articles, materials, and supplies to be acquired for public use under

this subcontract.

(b) The Seller shall deliver only domestic end products, except those:

(1) For use outside the United States;

(2) That the Government determines are not mined, produced, or manufactured in the United States in sufficient and reasonably available commercial quantities of a satisfactory quality;

(3) For which DOE determines that domestic preference would be inconsistent with the public interest; or

(4) For which DOE determines the cost to be unreasonable (see Section 25.105 of the Federal Acquisition Regulation).

(The foregoing requirements are administered in accordance with Executive Order 10582, dated December 17, 1954, as amended, and Subpart 25.1 of the Federal Acquisition Regulation.)

**13. RESTRICTIONS ON CONTRACTING WITH SANCTIONED**

**PERSONS.** (a) **Definitions.** (1) "Component part" means any article which is not usable for its intended functions without being imbedded or integrated into any other product and which, if used in production of a finished product, would be substantially transformed in that process.

(2) "Finished product" means any article which is usable for its intended function without being imbedded in, or integrated into, any other product. It does not include an article produced by a person, other than a sanctioned person, that contains parts or components of the sanctioned person if the parts or components have been substantially transformed during production of the finished product.

(3) "Sanctioned person" means a company or other foreign person upon whom prohibitions have been imposed.

(4) "Substantially transformed," when referring to a component part or finished product, means that the part or product has been subjected to a substantial manufacturing or processing operation by which the part or product is converted or combined into a new and different article of commerce having a new name, character, and use.

(b) **General.** Section 2443 of the Multilateral Export Control Enhancement Amendments Act (Pub. L. 100-418) and Executive Order 12661, effective December 28, 1988, impose, for a period of three years, with certain exceptions, a prohibition on contracting with, or procuring (including rental and lease/purchase) directly or indirectly the products or services of (1) Toshiba Machine Company, (2) Kongsberg Trading Company, (3) Toshiba Corporation, or (4) Kongsberg Vaapenfabrikk. The Act and Executive Order also prohibit, for the same three-year period, the importation into the United States of all products produced by Toshiba Machine Company and Kongsberg Trading Company. These prohibitions also apply to subsidiaries, successor entities or joint ventures of Toshiba Machine Company or Kongsberg Trading Company.

(c) **Restriction.** Unless listed by the Seller in its offer, or unless one of the exceptions in paragraph (d) of this clause applies, the Seller agrees that no products or services delivered to the Company under this subcontract will be products or services of a sanctioned person.

(d) **Exceptions.** The restrictions do not apply:

(1) To finished products of nonsanctioned persons containing components of a sanctioned person if these components have been substantially transformed during the manufacture of the finished product.

(2) To products or services of a sanctioned person, provided:

(i) The products are designed to the specifications of a nonsanctioned person marketed under the trademark, brand, or

name of the nonsanctioned person;

(ii) The business relationship between the nonsanctioned person and the sanctioned person clearly existed prior to June 30, 1987; and

(iii) The nonsanctioned person is not directly or indirectly owned by a sanctioned person.

(3) If a determination has been made in accordance with FAR 25.1003(a) or (b).

(e) Award. Award of any subcontract resulting from this solicitation will not affect the Seller's obligation to comply with importation regulations of the Secretary of the Treasury.

**14. AUTHORIZATION AND CONSENT.** The Government hereby gives its authorization and consent (without prejudice to any rights of indemnification) for all use and manufacture, in the performance of this subcontract or any part hereof or any amendment hereto or any subcontract hereunder (including any lower-tier subcontract), of any invention described in and covered by a patent of the United States (a) embodied in the structure or composition of any article the delivery of which is accepted by the Company under this subcontract or (b) utilized in the machinery, tools or methods the use of which necessarily results from compliance by the Seller or the using subcontractor with (1) specifications or written provisions now or hereafter forming a part of this subcontract, or (2) specific written instructions given by the Company directing the manner of performance. The entire liability to the Government for infringement of a patent of the United States shall be determined solely by the provisions of the indemnity clauses, if any, included in this subcontract or any subcontract hereunder (including all lower-tier subcontracts), and the Government assumes liability for all other infringement to the extent of the authorization and consent hereinabove granted.

**15. TAXES.** Except as may be otherwise provided in this subcontract, the price includes all applicable Federal taxes in effect on the date of this subcontract, but does not include any state or local sales, use, or other tax directly applicable to the completed supplies or services covered by this subcontract nor any other tax from which the Seller or this transaction is exempt. Upon request, the Company shall furnish a Tax Exemption Certificate or similar evidence of exemption with respect to any such tax not included in the price pursuant to this clause. For the purpose of this clause, "date of this subcontract" means the date of the Seller's quotation, or if no quotation, the date of this subcontract.

**16. PAYMENTS.** The Seller shall be paid (upon the submission of invoices or vouchers in a form satisfactory to the Company, if invoices are required by this subcontract) the prices stipulated in this subcontract for supplies delivered and accepted, or services rendered and accepted, less any deductions provided in this subcontract. Unless otherwise specified in this subcontract, payment will be made on partial deliveries accepted by the Company when the amount due on such deliveries so warrants.

**17. DISCOUNTS FOR PROMPT PAYMENT.** (a) Any offered discount will form a part of the award, and will be taken if payment is made within the discount period indicated in the offer. Awardees not offering a prompt payment discount in their offers may include prompt payment discounts on any required individual invoices.

(b) In connection with any discount offered for prompt payment, time shall be computed from the latest of: (1) the date of completion of performance of the services or delivery of the supplies to the carrier if acceptance is at point of origin, or date of delivery at destination or port of embarkation if delivery and acceptance are at either of these points; or (2) the date of acceptance under specific terms of the subcontract; or (3) the date

a proper invoice or voucher is received in the office specified by the Company. For the purpose of computing the discount earned, payment shall be considered to have been made on the date which appears on the payment check.

**18. ASSIGNMENT OF CLAIMS.** (a) The Seller, under the Assignment of Claims Act, as amended, 31 U.S.C. 3727, 41 U.S.C. 15 (hereafter referred to as "the Act"), may assign its rights to be paid amounts due or to become due as a result of the performance of this subcontract to a bank, trust company, or other financing institution, including any Federal lending agency. The assignee under such an assignment may thereafter further assign or reassign its right under the original assignment to any type of financing institution described in the preceding sentence. Unless otherwise stated in this subcontract, payments to an assignee of any amounts due or to become due under this subcontract shall not, to the extent specified in the Act, be subject to reduction or setoff.

(b) Any assignment or reassignment authorized under the Act and this clause shall cover all unpaid amounts payable under this subcontract, and shall not be made to more than one party, except that an assignment or reassignment may be made to one party as agent or trustee for two or more parties participating in the financing of this subcontract.

(c) The Seller shall not furnish or disclose to any assignee under this subcontract any classified document (including this subcontract) or information related to work under this subcontract until the Company authorizes such action in writing.

**19. PERMITS AND LICENSES.** Except as otherwise directed by the Company, the Seller shall procure all necessary permits or licenses and abide by all applicable laws, regulations, and ordinances of the United States and of the state, territory, and political subdivision in which the work under this subcontract is performed.

**20. INSPECTION OF SUPPLIES.** (a) The Company has the right to inspect and test all supplies called for by the subcontract, to the extent practicable, at all places and times, including the period of manufacture, and in any event before acceptance.

(b) The Company has the right either to reject or to require correction of supplies that are defective in material or workmanship or are otherwise not in conformity with subcontract requirements.

(c) The Seller shall remove supplies rejected or required to be corrected. However, the Company may require or permit correction in place, by and at the expense of the Seller. The Seller shall not tender for acceptance corrected or rejected supplies without disclosing the former rejection or requirement for correction, and, when required, shall disclose the corrective action taken.

(d) If the Seller fails to promptly remove, replace, or correct rejected supplies that are required to be removed or to be replaced or corrected, the Company may either (1) by contract or otherwise, remove, replace, or correct the supplies and charge the cost to the Seller or (2) terminate the subcontract for default.

(e) The Company shall accept or reject supplies as promptly as practicable after delivery, unless otherwise provided in the subcontract. Acceptance shall be conclusive, except for latent defects, fraud, gross mistakes amounting to fraud, or as otherwise provided in the subcontract.

(f) If acceptance is not conclusive, the Company shall have the right to require the Seller (1) at no increase in subcontract price, to correct or replace the defective or nonconforming supplies at the original point of delivery in accordance with a reasonable delivery schedule as may be agreed upon between the Seller and the Company; or (2) to repay such portion of the subcontract as is equitable under the circumstances if the Company elects not to

require correction or replacement. When supplies are returned to the Seller, the Seller shall bear the transportation cost from the original point of delivery to the Seller's plant and return to the original point when that point is not the Seller's plant. If the Seller fails to perform or act as required in (1) or (2) above, the Company shall have the right by contract or otherwise to replace or correct such supplies and charge to the Seller the cost occasioned the Company thereby.

**21. WARRANTY OF SUPPLIES.** (a) Notwithstanding inspection and acceptance by the Company of supplies furnished under this subcontract or any provision of this subcontract concerning the conclusiveness thereof, the Seller warrants that for one year after such supplies are placed in operation (but in no event to exceed 24 months from the date of delivery of such supplies), all supplies furnished under this subcontract will be free from defects in material or workmanship, and will conform with the specifications and all other requirements of this subcontract.

(b) The Company shall give written notice to the Seller of any breach of the warranties in paragraph (a) of this clause within 60 days after discovery of the defect.

(c) Within a reasonable time after such notice, the Company may either:

(1) By written notice require the prompt correction or replacement of any supplies or parts thereof that do not conform with the requirements of this subcontract within the meaning of paragraph (a) of this clause; or

(2) Retain such supplies and reduce the subcontract price by an amount equitable under the circumstances.

(d) When return, correction, or replacement is required, transportation charges and responsibility for such supplies while in transit shall be borne by the Seller.

(e) The Company may, by contract or otherwise, correct or replace the nonconforming supplies with similar supplies and charge to the Seller the cost occasioned to the Company thereby if the Seller (1) fails to make redelivery of the corrected or replaced supplies within the time established for their return, or (2) fails to accept return of the nonconforming supplies. In lieu of correction or replacement by the Company, the Company may require an equitable adjustment of the subcontract price.

(f) Any supplies or parts thereof corrected or furnished in replacement pursuant to this clause shall also be subject to all the provisions of this clause to the same extent as supplies initially delivered. The warranty with respect to such supplies or parts thereof shall be equal in duration to that set forth in (a) above and shall run from the date of delivery of such corrected or replaced supplies.

**22. TERMINATION FOR CONVENIENCE OF THE GOVERNMENT.**

The Company, by written notice, may terminate this subcontract, in whole or in part, when it is in the Government's interest. If this subcontract is terminated, the rights, duties, and obligations of the parties, including compensation to the Seller, shall be in accordance with Part 49 of the Federal Acquisition Regulation in effect on the date of this subcontract. For this purpose, the terms "Government" and "Contracting Officer" in Part 49 shall mean the Company, and the term "Contractor" shall mean the Seller.

**23. DEFAULT.** (a) The Company may, subject to paragraph (c) below, by written notice of default to the Seller, terminate this subcontract in whole or in part if the Seller fails to deliver the supplies or to perform the services within the time specified in this subcontract or any extension.

(b) If the Company terminates this subcontract in whole or in part, it may acquire, under the terms and in the manner the

Company considers appropriate, supplies or services similar to those terminated, and the Seller will be liable to the Company for any excess costs for those supplies or services. However, the Seller shall continue the work not terminated.

(c) The Seller shall not be liable for any excess costs if the failure to perform this subcontract arises from causes beyond the control and without the fault or negligence of the Seller.

(d) If, after termination, it is determined that the Seller was not in default, or that the default was excusable, the rights and obligations of the parties shall be the same as if the termination had been issued for the convenience of the Government.