

MILESTONE PAYMENTS (JULY 2014)

(a) Amount of payments. The amount of milestone payments shall be as specified in the subcontract.

(b) Request for milestone payment. The Seller may submit requests for milestone payments in a form and manner acceptable to the Company.

(c) Approval and payment of requests.

(1) The Seller is not entitled to a milestone payment prior to successful completion of the milestone. The Company shall determine whether the milestone for which payment is requested has been successfully completed in accordance with the subcontract.

(2) A milestone payment is a subcontract financing payment and not a partial payment. Approval by the Company of a request for milestone payment does not constitute acceptance for any purpose other than financing the milestone and does not excuse the Seller from performance of obligations under this subcontract.

(d) Reduction or suspension of milestone payments. The Company may reduce or suspend milestone payments if:

(1) The Seller fails to comply with any material requirement of this subcontract (which includes paragraphs (g) and (h) of this clause).

(2) Performance of this subcontract is endangered by the Seller's (i) failure to make progress or (ii) unsatisfactory financial condition.

(3) The Seller is delinquent in payment to any lower-tier subcontractor or supplier under this subcontract in the ordinary course of business.

(4) Work completed and paid under a previous milestone does not conform to any material requirement under this subcontract.

(e) Title. (1) Title to the property described in this paragraph (e) shall vest in the Government upon the first milestone payment under this subcontract, for property acquired or produced before that date. Otherwise, vestiture shall occur when the property is or should have been allocable or properly chargeable to this subcontract.

(2) "Property," as used in this clause, includes all of the following items acquired or produced by the Seller that are allocable or properly chargeable to this subcontract under generally accepted accounting principles and practices:

(i) Parts, materials, inventories, and work in process;

(ii) Special tooling and special test equipment to which the Government is to acquire title under any other clause of this subcontract;

(iii) Nondurable (*i.e.*, noncapital) tools, jigs, dies, fixtures, molds, patterns, taps, gauges, test equipment and other similar manufacturing aids, title to which would not be obtained as special tooling under paragraph (e)(2)(ii) above; and

(iv) Drawings and technical data, to the extent the Seller or lower-tier subcontractors are required to deliver them to the Company by other clauses of this subcontract.

(3) Although title to property is in the Government under this clause, other applicable clauses of this subcontract (*e.g.*, termination or special tooling clauses) shall determine the handling and disposition of the property.

(4) The Seller may sell any scrap resulting from production under this subcontract, without requesting the Company's approval, provided that any significant reduction in the value of the property to which the Government has title under this clause is reported in writing to the Subcontract Administrator.

(5) In order to acquire for its own use or dispose of property to which title is vested in the Government under this clause, the Seller must obtain the Company's advance approval of the action and the terms. If approved, the Seller shall refund any amount of milestone payments allocable to the property.

(6) When the Seller completes all of the obligations under this subcontract, title shall vest in the Seller for all property (or the proceeds thereof) not—

(i) Delivered to, and accepted by, the Company under this subcontract; or

(ii) Incorporated in supplies delivered to, and accepted by, the Company under this subcontract and to which title is vested in the Government under this clause.

(7) The terms of this subcontract concerning liability for Government-furnished property do not apply to property to which the Government acquired title solely under this clause.

(f) Risk of loss. Before delivery to and acceptance by the Company, the Seller shall bear the risk of loss for property, title to which vests in the Government under this clause. If any property is damaged, lost, stolen, or destroyed, the milestone to which the property is related shall be deemed to be not in compliance with the terms of the subcontract and not payable (if the property is part of or needed for performance), and the Seller shall refund the related milestone payments.

(g) Records and controls. The Seller shall maintain records and controls adequate for administration of this clause. The Seller shall have no entitlement to milestone payments during any time the Seller's records or controls are determined by the Company to be inadequate for administration of this clause.

(h) Reports and access. The Seller shall promptly furnish pertinent information requested by the Company for the administration of this clause and to determine that a milestone has been successfully completed. The Seller shall give the Company reasonable opportunity to examine and verify the Seller's records for administration of this clause.

(i) Special terms regarding default. If this subcontract is terminated under the Default clause, (1) the Seller shall, on demand, repay to the Company the amount of milestone payments, and (2) title shall vest in the Seller, on repayment of all milestone payments, for all property for which the Company elects not to require delivery under the Default clause. The Company shall be liable for no payment except as provided by the Default clause.

(j) Reservation of rights.

(1) No payment or vesting of title under this clause shall—

(i) Excuse the Seller from performance of obligations under this subcontract; or

(ii) Constitute a waiver of any of the rights or remedies of the parties under the subcontract.

(2) The Company's rights and remedies under this clause—

(i) Are in addition to any other rights and remedies provided by law or this subcontract; and

(ii) Shall not be affected by delayed, partial, or omitted exercise of any right, remedy, power, or privilege, nor shall such exercise or any single exercise preclude or impair any further exercise under this clause or the exercise of any other right, power, or privilege of the Company.

(End of clause)