

**Terms and Conditions Guide**  
**Section H**

**Clause Number: H906**  
**Effective: 10/1/2007**  
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H906 (Variable)

**NOT-TO-EXCEED PURCHASE CONTRACT TERMS AND CONDITIONS**

1. Notwithstanding anything in this purchase contract (hereinafter “contract”) to the contrary, the terms and conditions in this clause take precedence over any conflicting terms and conditions elsewhere in this contract. The not-to-exceed (NTE) price set forth in this clause is the maximum price of the contemplated definitized contract, and the maximum termination liability amount set forth in this clause is Buyer’s maximum liability if this contract is terminated for any reason.

2. Except as otherwise expressly provided to the contrary in this contract, Seller agrees to proceed immediately to procure the necessary materials and to commence the manufacture of the goods or the performance of the services called for by this contract, and to pursue such work with all diligence to the end that the goods may be delivered or services performed in accordance with the schedules incorporated in this contract.

3. By Seller’s acceptance hereof, Seller agrees to negotiate promptly and in good faith with Buyer for the purpose of entering into a definitized contract for the goods and services set forth herein at a total NTE price of \$\_\_\_\_\_, incorporating the terms and conditions set forth in this contract, provisions required by Buyer’s contract with its customer, and such other terms and conditions as are mutually agreed to by the parties in writing. It is expected that the definitized contract will be a \_\_\_\_\_ contract. The total NTE price is subject to negotiation and downward adjustment only. Unless otherwise terminated as provided for in this contract, this contract shall expire on \_\_\_\_\_ unless Buyer’s Authorized Procurement Representative, by written notice to Seller, extends the above-specified expiration date. In no event shall Seller be obligated to continue performance hereunder beyond the above-specified expiration date, or any extension thereof.

4. Notwithstanding the above, in the event that a definitized contract is not executed by the date specified herein, or any extension of such date, because of the inability of the parties to agree upon the terms of a definitized contract, Buyer may, at its sole discretion, terminate this contract in accordance with the Termination for Convenience clause of this contract and shall pay Seller’s costs but with no allowance for profit or fee notwithstanding the allowance for profit or fee in the Termination for Convenience clause and subject always to the maximum termination liability amount and other limitations set forth herein. Should Buyer elect not to terminate this contract, Seller shall, subject to the maximum termination liability amount, continue performance hereunder in accordance with the Disputes clause of this contract.

5. The maximum termination liability amount, including a reasonable amount for termination costs and for profit or fee (if any), for which Buyer shall be liable under this contract is \$\_\_\_\_\_. This maximum termination liability amount shall be Buyer’s maximum total liability to Seller, including the price of any changes (bilateral

or unilateral) made under this contract and notwithstanding any other payment term or amount set forth in this contract. Any expenditure or obligation by Seller in excess of this maximum termination liability amount in furtherance of performance hereunder shall be at Seller's own risk. Seller will not be bound to continue performance hereunder if such performance would cause the amount to be expended or obligated to exceed such limitation. Seller shall notify Buyer in writing at least 30 days before reaching 85% of the maximum termination liability amount. Such written notice shall be addressed to the Buyer's Authorized Procurement Representative at the address shown below and shall include (a) a proposed new maximum termination liability amount and (b) appropriate supporting information. Buyer may, at its sole discretion and at any time, increase the maximum termination liability amount of this contract.

Pratt & Whitney Rocketdyne  
ATTN: \_\_\_\_\_, Mail Code \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_

6. The following is the schedule for definitization of this contract:

Submission of Proposal \_\_\_\_\_  
Fact Finding \_\_\_\_\_  
Negotiation Start Date \_\_\_\_\_  
Definitization Target Date \_\_\_\_\_

7. If agreement on a definitized contract is not reached by the target date or within any extension granted by Buyer, Buyer may determine a reasonable price or fee utilizing contract cost principles of Part 31 of the Federal Acquisition Regulation. In any event, Seller shall proceed with completion of the contract subject to the maximum termination liability amount limitation of this contract.