NASA CROSS-WAIVER OF LIABILITY FOR SPACE STATION ACTIVITIES:

With acceptance of this Order Supplier hereby agrees to the CROSS-WAIVER OF LIABILITY FOR SPACE STATION ACTIVITIES (NFS 1852.228-76) the full text which can be found at NFA 1952.228-76.

(1) The SELLER agrees to a cross-waiver of liability pursuant to which SELLER waives all claims against any of the entities or persons listed in paragraphs (c)(1)(i) through (c)(1)(iv) of this clause based on Damage arising out of Protected Space Operations. This cross-waiver shall apply only if the person, entity, or property causing the Damage is involved in Protected Space Operations and the person, entity, or property damaged is damaged by virtue of its involvement in Protected Space Operations. The cross-waiver shall apply to any claims for Damage, whatever the legal basis for such claims, against:

(i) A Party as defined in (b)(7) of this clause;
(ii) A Partner State including the United States of America;
(iii) A Related Entity of any entity identified in paragraph (c)(1)(i) or (c)(1)(ii) of this clause; or
(iv) The employees of any of the entities identified in paragraphs (c)(1)(i) through (c)(1)(iii) of this clause.

(2) In addition, the SELLER shall, by contract or otherwise, extend the cross-waiver of liability set forth in paragraph (c)(1) of this clause to its SELLERs at any tier by requiring them, by contract or otherwise, to:

(i) Waive all claims against the entities or persons identified in paragraphs (c)(1)(i) through (c)(1)(iv) of this clause; and
(ii) Require that their SELLERs waive all claims against the entities or persons identified in paragraphs (c)(1)(i) through (c)(1)(iv) of this clause.

(3) For avoidance of doubt, this cross-waiver of liability includes a cross-waiver of claims arising from the Convention on International Liability for Damage Caused by Space Objects, which entered into force on September 1, 1972, where the person, entity, or property causing the Damage is involved in Protected Space Operations and the person, entity, or property damaged is damaged by virtue of its involvement in Protected Space Operations.

(4) Notwithstanding the other provisions of this clause, this cross-waiver of liability shall not be applicable to:

(i) Claims between the SELLER and its own Related Entities or between its Related Entities;
(ii) Claims made by a natural person (with the exception of providers of non-NASA cargo), his/her estate, survivors or subrogees (except when a subrogee is a Party to an Agreement or is otherwise bound by the terms of this cross-waiver) for bodily injury to, or other impairment of health of, or death of, such person;
(iii) Claims for Damage caused by willful misconduct;
(iv) Intellectual property claims;
(v) Claims for Damage resulting from a failure of NASA to extend the Prime Contract cross-waiver of liability to its Related Entities;
(vi) Claims by a party to the Prime Contract arising out of or relating to the other Party’s failure to perform its obligations under that contract.

(vii) Claims against providers of non-NASA cargo as outlined in clause II.A.5 of this contract.

(5) Nothing in this clause shall be construed to create the basis for a claim or suit where none would otherwise exist.

(6) This clause provides for a reciprocal waiver of claims between BUYER and the SELLER and their Related Entities as described in paragraph (c) above. This reciprocal waiver of claims shall not apply to rights and obligations arising from the application of any of the other clauses in the Subcontract or to rights and obligations arising from activities that are not within the scope of this Subcontract.

(7) Pursuant to paragraph (c) (2), the SELLER shall extend this waiver of claims to its Related Entities by requiring them, by contract or otherwise, to waive all claims against the Government, BUYER, and their Related Entities. For avoidance of doubt, the SELLER shall require providers of non-NASA cargo (any cargo on an ISS Resupply Mission that is not NASA cargo), to waive claims against the Government, BUYER and their Related Entities; however, the Government does not waive such claims against providers of non-NASA cargo.