

**LOCKHEED MARTIN CORPORATION
LOCKHEED MARTIN AERONAUTICS COMPANY
TERMS AND CONDITIONS OF PURCHASE
C-5 RELIABILITY ENHANCEMENT AND RE-ENGINEING PROGRAM
SYSTEM DEVELOPMENT AND DEMONSTRATION
PRIME CONTRACT F33657-02-C-2000**

1. Definitions

As used herein "Buyer" means Lockheed Martin Corporation acting through its Lockheed Martin Aeronautics Company; "Seller" means the party identified on the face of this purchase order; Except in the term "commercial item" as defined at FAR 2.101 and its plural commercial items, "Items" or "items" means all required articles, materials, supplies, services and data (singular "Item," or "item," plural "Items," or "items"); "PO" means this purchase order; "Buyer's Authorized Representative" means the person or persons authorized by Buyer to alter, modify or change the provisions of this PO, "Government" means the "Government of the United States of America and those authorized or delegated responsibility to act on its behalf," except where specifically stated to be the government of another country; and "Prime Contract" means the Government contract under which this PO is issued. "Commercial Item," "commercial component" "component" and "nondevelopmental item" shall have the meaning as set forth at FAR 52.202-1.

2. Delivery

- (a) Delivery shall be made in strict accordance with the terms of this PO.
- (b) In the event of termination or change, no claim will be allowed for any manufacture or procurement by Seller in advance of reasonable flow time unless Buyer's prior written consent has been obtained by Seller for such advance manufacture or procurement. Buyer shall have the right to return or store at Seller's expense any Item delivered in advance of the scheduled delivery date specified for such Item unless Buyer has given such prior written consent for such advance delivery.
- (c) If, at any time, it appears to Seller that any delivery schedule cannot be met, Seller shall notify Buyer as soon as possible as to the cause or causes thereof; action being taken to remove such cause or causes and when on-schedule status will be achieved. Seller, at its expense, shall take reasonable action necessary, with or without request of Buyer to meet such schedules as set forth herein or to recover to the maximum extent possible any delay caused by Seller in meeting such schedule. Notification given and/or action taken by Seller under

this clause shall in no way limit Buyer's rights under other provisions of this PO,
at law, or in equity.

3. Variation in Quantity

Items shall not be supplied in excess of quantities specified herein, except for allowed shipping tolerances, if any. Seller shall be liable for handling charges and return shipment costs for any excess quantities; and, unless Seller agrees to pay and does pay such charges and costs within a reasonable time, the over-shipped material will be retained by Buyer at no cost and shall become the property of Buyer.

4. Prices

Unless otherwise specified, prices are F.O.B. destination and shall include all applicable federal, state and local taxes, duties, tariffs, and similar fees imposed by any government. The price includes all charges for boxing, packing, crating, drayage, storage, dunnage, and bundling. Seller warrants that prices charged for Items are not higher than those charged to any other customer, including the Government, for items of like grade and quality in similar or lesser quantities.

5. Invoices, Payments, and Discounts

Unless otherwise provided, terms of payment shall be Net 30 days from the latest of the following:

- (a) Buyer's receipt of Seller's correct invoice,
- (b) Scheduled delivery date, or scheduled completion of performance of the Items;
or
- (c) Actual delivery, or completion of performance of the Items.

Buyer shall have a right of setoff against payments due under this PO for any amounts at issue under this PO and/or under other purchase orders between Buyer and Seller.

6. Warranty

- (a) Seller warrants that from the time of acceptance by Buyer under the Inspection of Supplies clause of this PO until ten (10) years after acceptance by the Government of the end item containing the Items furnished to Buyer by Seller, or, in the case of Items furnished directly to the Government, for a period of ten (10) years after delivery of the Items to the Government, all Items furnished under this PO will be free from defects in material and workmanship and will conform to the applicable specifications and all other requirements of this PO. If Seller is responsible for the design of the Items, Seller warrants for such period that all Items delivered under this PO shall be free from defects in design, and if Seller is responsible for designing the Items to meet specified performance requirements of Buyer, Seller warrants for such period that all such Items shall be fit and sufficient for the purposes intended by Buyer. In addition, all data

furnished by Seller is warranted to be free from defects for a period of ten (10) years from delivery by Buyer to the Government.

Buyer's approval of designs furnished by Seller shall not relieve Seller of its obligations under this warranty. Seller's warranties, together with its service guarantees shall run to Buyer and its customers.

- (b) In the event of a breach of any warranty hereinabove set forth, Buyer may require Seller to repair or replace at Buyer's election defective or nonconforming Items or data. Seller shall be liable for the payment of all packing and transportation costs attributable to the repair or replacement of defective or nonconforming Items or data.
- (c) Year 2000 compliant, as used in this clause, means that with respect to information technology, that the information technology accurately processes date/time data (including but not limited to, calculating, comparing, and sequencing) from, to, and between the twentieth and twenty-first centuries, and the years 1999 and 2000 and leap year calculations, to the extent that other information technology, used in combination with the information technology being acquired, properly exchanges date/time data with it.

Any and all products provided hereunder will be Year 2000 compliant at the time of delivery to Lockheed Martin Corporation (Lockheed Martin), including but not limited to accurately inputting, storing, manipulating, comparing, calculating, updating, displaying, outputting, and transferring such dates and data unless otherwise expressly provided herein by Lockheed Martin.

This provision takes precedence over all other provisions of this agreement with respect to Year 2000 compliance. In the event of a discovery of any non-compliance, either before, concurrent with, or subsequent to delivery of a good or service under this agreement, the discovering party shall notify the other party within five (5) business days of discovery. If the defective good or service is being presented for acceptance or has already been delivered, at Lockheed Martin's option, the defective good or service shall be repaired or replaced within ten (10) business days of such notice at no cost to Lockheed Martin.

Nothing in this provision shall be construed to limit any other rights or remedies under this contract, at law or in equity that Lockheed Martin may have with respect to Year 2000 compliance.

- (d) The rights and remedies of Buyer provided in this clause shall not be exclusive and are in addition to any other rights and remedies provided at law, in equity, or under this PO.

7. Compliance with Laws and Self-Certification

A. Compliance with Laws

- (1) Seller shall comply with the applicable provisions of all Federal, state, and local laws and ordinances and all lawful orders, rules and regulations promulgated thereunder including without limitation the Arms Export Control Act. Seller agrees to indemnify Buyer against any loss, cost, damage or liability by reason of Seller's violation of this clause.
- (2) Seller warrants that each chemical substance constituting or contained in Items sold or otherwise transferred to Buyer hereunder is on the list of chemical substances compiled and published by the Administrator of the Environmental Protection Administration pursuant to The Toxic Substances Control Act (15 U.S.C. Sec. 2601 et seq.) as amended.
- (3) Seller shall provide to Buyer with each delivery any Material Safety Data Sheet applicable to the Items and containing such information as required by the Occupational Safety and Health Act of 1970 and regulations promulgated thereunder.

B. Self-Certification

- (1) This clause contains certifications and representations that are material representations of fact upon which LOCKHEED MARTIN will rely in making awards to CONTRACTOR. By submitting its written offer, or providing oral offers/quotations at the request of LOCKHEED MARTIN, or accepting any Contract, CONTRACTOR certifies to the representations and certifications as set forth below in this clause. These certifications shall apply whenever these terms and conditions are incorporated by reference in any Contract, agreement, other contractual document or any quotation, request for quotation (oral or written), request for proposal or solicitation (oral or written), issued by LOCKHEED MARTIN. CONTRACTOR shall immediately notify LOCKHEED MARTIN of any change of status with regard to these certifications and representations.
- (2) The following clauses of the Federal Acquisition Regulation (FAR) are incorporated herein by reference, with the same force and effect as if they were given in full text, and are applicable to any order, agreement, or subcontract. In each clause incorporated below, substitute "Lockheed Martin" for "Government" and "Contracting Agency" and "Lockheed Martin Procurement Representative" for "Contracting Officer" throughout.

(a) FAR 52.203-11 Certification and Disclosure Regarding Payments to Influence Certain Federal Transactions (Applicable to solicitations and contracts exceeding \$100,000)

[1] The definitions and prohibitions contained in the clause, at FAR 52.203-12, Limitation on Payments to Influence Certain Federal Transactions are hereby incorporated by reference in paragraph (b) of this certification.

[2] CONTRACTOR certifies that to the best of its knowledge and belief that on and after December 23, 1989--

[a] No Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress on his or her behalf in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment or modification of any Federal contract, grant, loan, or cooperative agreement;

[b] If any funds other than Federal appropriated funds (including profit or fee received under a covered Federal transaction) have been paid, or will be paid, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress on his or her behalf in connection with a solicitation or order, the offeror shall complete and submit, with its offer, OMB standard form LLL, Disclosure of Lobbying Activities, in accordance with its instructions, and

[c] CONTRACTOR will include the language of this certification in all subcontracts at any tier and require that all recipients of subcontract awards in excess of \$100,000 shall certify and disclose accordingly.

[3] Submission of this certification and disclosure is a prerequisite for making or entering into a contract as imposed by section 1352, title 31, United States Code. Any person who makes expenditure prohibited under this provision or who fails to file or amend the disclosure form to be filed or amended by this provision shall be subject to a civil penalty of not less than \$10,000, and not more than \$100,000, for each such failure.

(b) FAR 52.209-5 Certification Regarding Debarment, Suspension, Proposed Debarment, and Other Responsibility Matters.

[1] CONTRACTOR certifies that, to the best of its knowledge and belief, that CONTRACTOR and/or any of its Principals, (as defined in FAR 52.209-5,) are not presently debarred, suspended, proposed for debarment, or declared ineligible for the award of contracts by any Federal agency.

[2] CONTRACTOR shall provide immediate written notice to LOCKHEED MARTIN if, any time prior to award of any contract, it learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

(c) FAR 52.222-22 Previous Contracts and Compliance Reports.

CONTRACTOR represents that if CONTRACTOR has participated in a previous contract or subcontract subject to the Equal Opportunity clause (FAR 52.222-26) (i) CONTRACTOR has filed all required compliance reports and (ii) that representations indicating submission of required compliance reports, signed by proposed subcontractors, will be obtained before subcontract awards.

(d) FAR 52.222-25 Affirmative Action Compliance.

CONTRACTOR represents (1) that CONTRACTOR has developed and has on file at each establishment, affirmative action programs required by the rules and regulations of the Secretary of Labor (41 CFR 60-1 and 60-2), or (2) that in the event such a program does not presently exist, CONTRACTOR will develop and place in operation such a written Affirmative Action Compliance Program within 120 days from the award of this Contract.

(e) FAR 52.223-1 Clean Air and Water Certification (Applicable to solicitations and Contracts exceeding \$100,000).

[1] CONTRACTOR certifies that any facility to be used in the performance of a contract is not listed on the Environmental Protection Agency List of Violating Facilities.

[2] CONTRACTOR will include a certification substantially the same as this certification, including this paragraph (3), in every non-exempt subcontract.

(f) FAR 52.223-13 Certification Of Toxic Chemical Release Reporting (Applicable to competitive solicitations/contracts that exceed \$100,000)

- [1] Submission of this certification is a prerequisite for making or entering into this contract imposed by Executive Order 12969, August 8, 1995.
- [2] CONTRACTOR certifies that—
- [a] As the owner or operator of facilities that will be used in the performance of this Contract that are subject to the filing and reporting requirements described in section 313 of the Emergency Planning and Community Right-to-Know Act of 1986 (EPCRA) (42 U.S.C. 11023) and section 6607 of the Pollution Prevention Act of 1990 (PPA) (42 U.S.C. 13106), CONTRACTOR will file and continue to file for such facilities for the life of the contract the Toxic Chemical Release Inventory Form (Form R) as described in sections 313(a) and (g) of EPCRA and section 6607 of PPA; or
 - [b] None of its owned or operated facilities to be used in the performance of this Contract is subject to the Form R filing and reporting requirements because each such facility is exempt for at least one of the following reasons:
 - (i) The facility does not manufacture, process or otherwise use any toxic chemicals listed under section 313(c) of EPCRA, 42 U.S.C. 11023(c);
 - (ii) The facility does not have 10 or more full-time employees as specified in section 313.(b)(1)(A) of EPCRA 42 U.S.C. 11023(b)(1)(A);
 - (iii) The facility does not meet the reporting thresholds of toxic chemicals established under section 313(f) of EPCRA, 42 U.S.C. 11023(f) (including the alternate thresholds at 40 CFR 372.27, provided an appropriate certification form has been filed with EPA);
 - (iv) The facility does not fall within Standard Industrial Classification Code (SIC) designations 20 through 39 as set forth in FAR section 19.102 of the Federal Acquisition Regulation; or
 - (v) The facility is not located within any State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, American Samoa, the United States Virgin Islands, the Northern Mariana Islands, or any other territory or possession over which the United States has jurisdiction.

8. Responsibility for Property

Unless otherwise specified, Seller shall be liable for any loss or destruction of or damage to property of Buyer; and, Seller shall be responsible for returning any such property in as good condition as when received except for reasonable wear and tear and for the utilization of it in accordance with the provisions of this PO. Upon request of Buyer, such property will be delivered to Buyer at Seller's expense. Seller shall promptly notify Buyer if such property is lost, destroyed or damaged. Title thereto shall not be affected by the incorporation or attachment to any property not owned by Buyer, nor shall any such property, or any part thereof; be or become a fixture or lose its identity as personality by reason of affixation to any realty. All property of Buyer furnished hereunder to Seller shall be used solely in the performance of this PO unless otherwise specified in writing by Buyer.

9. Special Tooling and Test Equipment

Except as may be otherwise provided for in this PO, jigs, dies, fixtures, molds, patterns, special gages, and other items of special tooling (including software) and special test equipment, shall be furnished by and at the expense of Seller. Special tooling and test equipment shall be kept in good condition by Seller and replaced as necessary by Seller, without expense to Buyer. Title to special tooling and test equipment shall remain in Seller, except that Buyer may, at any time, reimburse Seller for the cost of part or of all special tooling and test equipment, and upon payment therefor shall become the sole owner thereof. Buyer shall at all times have unrestricted access to all such tooling, equipment, and information pertinent thereto for purposes of quality control, evaluation and verification. This paragraph shall not apply to special tooling or special test equipment (as those terms are defined in clauses incorporated by reference in clause 35) that is either provided by the Government or is acquired or fabricated for the Government pursuant to the clauses incorporated by reference in clause 35.

10. Use of Data Furnished by Buyer

The information contained in reports, drawings, documents or other records ("Information") which are furnished to Seller by Buyer relative to this PO, to the extent that such information is not in the public domain, shall not be disclosed to others, except to subcontractors as necessary for completion of this PO, in which event the subcontractors shall have the same obligation of nondisclosure and restriction on use. Such information shall not be used or reproduced for any purpose whatsoever except in the performance of work under this PO. Upon completion, termination or cancellation of this PO, Seller shall, if requested by Buyer, return all property to Buyer thirty (30) days after the effective date of such completion, termination or cancellation. All such Information furnished to Seller by Buyer and retained by Seller shall remain subject to the foregoing restrictions on use, reproduction and disclosure. Any such information furnished to Seller by Buyer and retained by Seller shall remain subject to the foregoing restrictions on use, reproduction and disclosure. In the event the parties have negotiated a proprietary

information agreement that is in effect as of the date of this PO, the terms of said agreement shall apply to any information exchanged by the parties in lieu of the terms of this clause.

11. Patent Indemnity, Trademarks, Trade Secrets and Copyrights. To the extent that the Items are produced to detailed designs not originated and furnished by Buyer or by a process or method, the use of which is not specifically directed by Buyer, Buyer shall have no responsibility to Seller for patent infringement and Seller guarantees that the sale or use of such Items or the use of such process or method hereunder will not infringe any United States or foreign patents, trademarks or copyrights. Seller shall defend, indemnify and hold Buyer and its customers harmless from any loss, cost, damage, expense (including attorney's fees) or liability which may be incurred on account of infringement or alleged infringement of patent rights, trademarks, trade secrets or copyrights with respect to such Items, and defend, at its own expense, any action or claim in which such infringement is alleged by third parties, provided Seller is notified of such actions or claims against Buyer. Seller's liability hereunder shall be reduced to the extent Buyer is afforded protection from any expense, cost, loss, damage or liability by FAR 52.227-1, Authorization and Consent; provided, however, as used therein "Government" means "Government", "Contractor" means "Seller", and "Contract" means "this PO".

12. Order of Precedence

In the event of any inconsistency between this PO and related documents, the order of priority shall be as follows:

- (a) The face of this PO;
- (b) The terms and conditions of this PO;
- (c) The Statement of Work;
- (d) The Specifications;
- (e) The Supplier Data Requirements List (SDRL);
- (f) Other documents contained in or referenced in purchase orders issued hereunder.

13. Entry on Buyer's Property; Insurance

- (a) In the event that Seller or Seller's employees, subcontractors, or agents enter onto Buyer's premises for any reason in connection with this PO, Seller and the other parties shall observe all security requirements and all plant safety, plant protection, and traffic regulations.
- (b) Seller, and any subcontractors used by Seller in connection with this PO, shall carry Worker's Compensation and Employee's Liability Insurance to cover Seller's and such subcontractors' legal liability on account of accidents to their respective employees. Seller and its subcontractors shall carry adequate Comprehensive General Liability and adequate Comprehensive Automobile Liability Insurance covering the legal liability of Seller and such subcontractors on account of accidents arising out of the operations of Seller or such

subcontractors and resulting in bodily injury, including death, being sustained by any person or persons, or in any damage to property. At Buyer's request, Seller shall furnish to Buyer certificates from Seller's and/or its subcontractors' insurers showing such coverage in effect and agreeing to give Buyer ten (10) days' prior written notice of cancellation of such coverage.

14. Amendments Required by the Prime Contract

Seller agrees that upon Buyer's request, it will from time to time enter into amendments of this PO to incorporate additional provisions herein or to change the provisions hereof, as Buyer may reasonably deem necessary in order to comply with the provisions of the prime contract(s) or with the provisions of amendments to the prime contract(s) under which this PO is issued. If any such amendment to this PO causes an increase or decrease in the cost of this PO, or the time required for performance of this PO, an equitable adjustment shall be made in the price or delivery schedule, or both, in accordance with the provisions of this PO's "Changes" clause.

15. Remedies/Waiver

- (a) The rights and remedies provided herein shall be cumulative and in addition to any other rights and remedies provided at law or in equity.
- (b) Failure by Buyer either to enforce at any time the provisions hereof or to protest at any time any breach or default hereof neither shall be construed as evidence to interpret the requirements of this PO, nor as a waiver of the requirements of such provisions, nor of the right of Buyer thereafter to enforce each and every such provision. Buyer's approval of documents shall not relieve Seller from compliance with specifications related to this PO.

16. Assignment

Seller shall not assign any of its rights under this PO without the prior written consent of Buyer, except that claims for monies due or to become due under this PO may be assigned to a bank, trust company or other financing institution, including any Federal lending agency, by Seller without such consent. Seller shall furnish Buyer with two signed copies of any such assignment. Payment to an assignee of any such claim shall be subject to set-off or recoupment for any present or future claim or claims which Buyer may have against Seller. Buyer may make direct settlements or adjustments in price, or both, with Seller under the terms of this PO notwithstanding any assignment of claims for monies due or to become due hereunder and without notice to the assignee.

17. Ozone Depleting Substances (“ODS”)

If Seller has not obtained specific authorization from Buyer or the Government to continue the use of Class I Ozone Depleting Substances (“ODS”), then Seller shall notify Buyer if any of such ODS are required in the performance of this PO or will be delivered as part of the Item(s) under this PO.

18. Rescission, Adjustment or Termination for Illegal or Improper Activity

- (a) In the event the Government takes action pursuant to FAR 52.203-8 entitled “Cancellation, Rescission, and Recovery of Funds for Illegal or Improper Activity” to cancel the solicitation or rescind the prime contract to which this PO relates, and such action results from Seller's violation of subsection (a), (b), (c) or (d) of the Office of Federal Procurement Policy Act (41. U.S.C. 423) (“the Act”) as amended by section 4304 of the National Defense Authorization Act for Fiscal Year 1996 (Pub. L. 104-106), Buyer may (1) rescind this PO; (2) recover from Seller all amounts paid by Buyer to Seller in connection with this PO; (3) recover from Seller any amounts, including any penalty prescribed by law, which Buyer is required to pay to the Government; and (4) recover from Seller any other costs, expenses, liabilities, incurred by Buyer in connection with Seller's violation of the Act.
- (b) Seller agrees to pay Buyer the amount Buyer's price or fee is reduced by the Government pursuant to FAR clause 52.203-10, entitled “Price or Fee Adjustment for Illegal or Improper Activity,” to the extent such reduction results from Seller's violation of the Act, as amended (41 U.S.C. 423), and as implemented in the FAR. In the event the Government terminates for default any of Buyer's prime contracts under which this PO is issued, as a result of Seller violation of the Act, Buyer shall have the right to terminate this PO for default in whole or in part.
- (c) Buyer's rights and remedies under this clause shall be in addition to any other rights and remedies provided by law, regulation, or under this PO.

19. Consideration

Seller shall, for the consideration hereinafter mentioned and within the time specified, accomplish all required services, testing, manufacturing and other work; deliver to Buyer the Items provided for in this PO; and grant to Buyer the right to exercise the options, if any, provided for in this PO.

20. Technical Surveillance

Buyer and authorized representatives of Buyer's customers shall have direct access to all areas of Seller's and Seller's subcontractors' plants where work is being performed in connection with any Item to be delivered under this PO, to review

progress and witness testing of such Items. Seller shall include this clause in all of Seller's subcontracts under this PO.

21. Governing Law

This PO shall be construed, interpreted and applied in accordance with the Federal law of Government contracts as enunciated and applied by Federal judicial bodies and boards of contract appeals. To the extent that the Federal law of Government contracts is not dispositive, the laws of the state of Georgia, excluding choice of state law rules, shall apply.

22. Acceptance of Order

This PO is the entire agreement between the Buyer and Seller in respect of the subject matter of this PO and is subject to the terms and conditions herein. This PO supersedes all communications, representations and agreements, oral, and written, between Buyer and Seller in respect of the subject matter of this PO. Either: (a) acknowledgment of this PO, (b) furnishing of Items under this PO, (c) acceptance of payment under this PO, or (d) commencement of performance of this PO, shall constitute Seller's unqualified acceptance of this PO. Additional or differing terms or conditions proposed by Seller or included in Seller's acknowledgment hereof shall be void and have no effect unless accepted in writing by Buyer.

23. Packing, Shipment and Shipping Instructions

- (a) Unless otherwise specified by Buyer, Seller shall assure that all packing and packaging shall comply with good commercial practice and applicable carrier's tariffs. The use of commercial practices shall not relieve Seller of responsibility for packaging in a manner that will insure receipt of Items in an acceptable condition at the destination specified in this PO.
- (b) Seller shall ensure the packaging, labeling and shipping of all HAZARDOUS SUBSTANCES including DANGEROUS MATERIALS, conforms with all applicable international, federal, state and local laws and regulations.
- (c) Seller shall mark on the outside of each exterior container: (i) the PO number(s) or numbers of the Items packed in that container; (ii) the sequence and quantity of each exterior container in each shipment (such as "1 of 3"); (iii) the bill of lading/express receipt number. If shipments against more than one purchase order are packed in one exterior container, mark each intermediate container with its applicable purchase order number.
- (d) Seller shall properly describe Seller's Less than Truckload shipments in accordance with the National Motor Freight Classification to insure the correct classification rate. Include this PO number on all carrier bills of lading and shipping labels. Combine on the same bill of lading, all shipments consigned to the same Buyer address and ship on the same day. No C.O.D. (Collect on

Delivery) shipments will be received by Buyer. There shall be no deviation from these routing instructions unless such deviation is approved prior to shipping by Buyer's Authorized Procurement Representative or Buyer's Traffic Department.

- (e) No material or supplies purchased, manufactured or otherwise acquired for use in the performance of or to be delivered under this PO shall be transported on vessels, aircraft or other carriers leased to or from, owned, operated, or controlled by any prohibited country identified in the International Traffic in Arms Regulations ("ITAR"), 22 CFR 126.

No vessels, aircraft, or other carrier, while carrying any such material or supplies, shall make an enroute stop in any prohibited country identified in the ITAR, 22 CFR 126. Seller shall insert the provisions of this paragraph (e) in all subcontracts hereunder.

24. Public Release of Information

No public release (including, without limitation, news releases, articles, manuscripts, brochures, advertisements, still and motion pictures, speeches, trade association meetings, symposia, photographs, films, announcements, discussions, denials or confirmations of same) regarding any part of the subject matter of this PO or any phase of any program hereunder shall be made without the prior written approval of Buyer. Seller agrees that for every instance, if any, where Buyer provides such prior written approval, Seller, in any resulting release, shall include information, if any, provided by Buyer stating which Government agency sponsors or sponsored the related project or effort.

25. Disputes

Except as otherwise provided in this PO, Buyer and Seller shall have the right to redress any dispute arising under or related to this PO, which is not disposed of by agreement, by pursuing any right or remedy which Buyer or Seller, as the case maybe, may have at law, or in equity, or under this PO in any United States court of competent jurisdiction. Pending resolution of any dispute, Seller shall proceed diligently with the performance of work, including the delivery of Items in accordance with Buyer's direction. Upon resolution of any such dispute, this PO shall be equitably adjusted, if necessary, to reflect such resolution.

26. Severability of Provisions

Any provision of this PO that is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition, and shall be unenforceable in that jurisdiction without invalidating the remaining provisions hereof or affecting the validity or enforceability of such provisions in any other jurisdiction.

27. Contractual Commitments

The parties agree that there shall be no adjustment in the price, time for performance or any other provision of this PO unless Buyer's authorized representative shall have issued a written order directing a change hereto.

28. Notification of Changes

- (a) Only Buyer's Authorized Representative may direct or redirect Seller's effort hereunder. In the event, however, Seller considers any conduct including any action, inaction, written or oral communication by Buyer or Buyer's customer to constitute a change to this PO, other than a written change order issued by Buyer's Authorized Representative, Seller shall notify Buyer as soon as possible but in no event later than fifteen (15) days from the date Seller identifies the conduct considered to constitute a change to this PO. On the basis of the most accurate information available to Seller, the notice shall state: (1) the date, nature and circumstances of the conduct regarded as a change; (2) the name, function, and activity of each Buyer employee, customer employee and Seller employee involved in or knowledgeable about such conduct; (3) the identification of any documents and the substance of any oral communication involved in such conduct; (4) the particular elements of contract performance which Seller considers to be affected by the conduct, including an estimate of any cost or schedule impact; (5) Seller's estimate of the time by which Buyer must respond to Seller's notice to minimize cost, delay or disruption of performance.
- (b) Seller shall take no action in reliance on the conduct considered to constitute a change unless and until Buyer's Authorized Representative issues a written change order covering the conduct in question.

29. Change and Follow-On Proposals

Circumstances may arise during the course of performance under this PO where Buyer may request Seller to submit to Buyer technical and cost proposals relating to (1) anticipated changes or modifications to this PO prior to the implementation of a change or modification under the Changes clause of this PO, or (2) potential follow-on POs for the Items furnished hereunder. In such cases, Seller agrees to furnish to Buyer a technical and/or cost proposal as requested within thirty (30) days of the request. Seller agrees to furnish current information to Buyer in sufficient detail for Buyer to determine price reasonableness and cost realism. Information furnished by Seller shall be submitted in the manner and in the detail specified in the pricing instructions included in Buyer's request for proposal.

30. Offset/Countertrade Cooperation

Buyer is currently involved in a number of foreign offset/countertrade arrangements in various foreign countries in connection with the sale of Buyer's products to foreign countries. All offset or countertrade credit value resulting from this PO shall accrue solely to the benefit of Buyer for its use on the offset/countertrade program of Buyer's choice. Seller agrees to cooperate with Buyer in the fulfillment of such foreign offset/countertrade obligations which Buyer may have undertaken or may undertake in the future. In the event Seller solicits bids, procures or offers to procure any goods or services relating to the work to be performed under this PO, Buyer shall be entitled, to the exclusion of all others, to all offset credits or other similar benefits that may result from such activity. In addition, Seller agrees to provide to Buyer, at no additional cost, a report every six months during the performance of this PO summarizing by country Seller's lower tier proposal and procurement activity related to this PO.

31. Notification of Debarment/Suspension Status

Seller shall provide immediate notice to Buyer in the event of being suspended, debarred, proposed for debarment or declared ineligible for the award of contracts, by any Federal Agency, during the performance of this PO.

32. Incorporation of Certifications and Representations

All certifications and representations provided by Seller to Buyer in connection with this PO and the solicitation to which this PO relates are incorporated herein by this reference. Seller acknowledges that Buyer has relied on such certifications and representations in making the award of this PO.

33. Lower-Tier Subcontracts

- (a) Notwithstanding any other provision of this PO, Seller shall not procure any of the completed or substantially completed Items described herein from any other party, by subcontract or otherwise, without the prior written consent of Buyer.
- (b) To the maximum practical extent, Seller shall select subcontractors on a competitive basis for work subcontracted in connection with this PO.
- (c) In the event Seller contemplates making an award to a lower-tier subcontractor which is a foreign concern, or a domestic concern where any defense articles or technical data may be disclosed to foreign nationals, Seller shall ensure that all necessary US export licenses are obtained prior to the transfer of any defense articles or technical data or other information to the prospective lower tier subcontractor.

34. Indemnity/Commercial Items

This clause applies only to the portion, if any, of this PO as is for the purchase of a commercial item(s) as such term - "Commercial item" - is defined at FAR 2.101. In the event Buyer is subject to any liability, damage, or expense, including without limitation Government withholding of payments, due to a finding or determination by the Contracting Officer that an item designated herein as a commercial item is not a commercial item, then Seller agrees to indemnify and hold Buyer harmless to the full extent of any such liability, damage, or expense resulting in whole or in part from such finding or determination.

Additionally, in the event of such finding or determination, the clauses of FAR II Part A and DFARS II Part A shall be applicable to the portion, if any, of the PO pertaining to the items regarding which such finding or determination was made.

35. English Language Requirement

All deliverable documents will be in the English language. An English language speaking person shall be provided during any in plant visits, inspections, reviews, audits, and other similar activities to facilitate communications and ensure mutual understanding.

36. Compliance with Regulations

The following Federal Acquisition Regulation ("FAR"), DoD FAR Supplement ("DFARS"), and Air Force Material Command FAR Supplement (AFMC FARS) clauses are incorporated herein by reference, subject to the modifications/applications indicated and the following definitions: "the contract" and "this contract" means "this PO" except in the phrase "prime contract;" "schedule" means "this PO;" "Contractor" means "Seller;" except in the phrase "prime contractor;" "subcontractor(s)" and "subcontract(s)" mean "lower tier subcontractor(s)" and "lower tier subcontract(s)" and "Supplies" means "Item(s)."

I. FAR Clauses

Part A The clauses listed in this Part A are not applicable to the portion, if any, of this PO which is for commercial item(s) as described in FAR 2.101. However, no item purchased under this PO shall be regarded as a commercial item(s) unless it is specifically so designated in this PO.

Citation Clause Name (Date)

52.203-5 **Covenant Against Contingent Fees (Apr 1984)**

In paragraph (a) "Government" means "Buyer." Elsewhere "Government" means "Buyer and/or Government."

52.203-6 **Restrictions on Subcontractor Sales to the Government (Jul 1995)**

Modifications: Does not apply if this PO is for less than \$100,000. "Government" means "Government or Buyer."

52.203-7 **Anti-Kickback Procedures (Jul 1995)**

Does not apply if this PO is for less than \$100,000. In (c)(2) the following is added: "Seller shall send a copy of such report to Buyer." The term "subcontractor" is unchanged throughout the clause. Add the following to the end of paragraph (c)(4): "In addition to any other remedies which the Buyer has at law, in equity, or under this PO, Buyer shall have the right to withhold from Seller the amount, if any, that the Contracting Officer directs Buyer to withhold from Seller."

52.203-12 **Limitation on Payments to Influence Certain Federal Transactions (Jun 1997)**

Applies if this PO exceeds \$100,000. Change the beginning of paragraph (c)(1) to read: "Seller shall file with Buyer a disclosure form..." change "such person" to "Seller" in paragraphs (c)(1) and (c)(2).

52.215-2 **Audit -- Negotiation (Jun 1999)**

Applicable if this PO exceeds \$100,000 and if (1) this is a cost-reimbursement, incentive, time and materials or price-redeterminable PO, (2) if Seller was required to furnish cost or pricing data, or (3) this PO requires Seller to furnish cost, funding or performance reports. Alternate II applies if Seller is an educational institution or non-profit institution.

52.215-10 **Price Reduction for Defective Cost or Pricing Data (Oct 1997)**

Applies whenever FAR 52.215-12 applies to this PO. "The Contracting Officer" means "Buyer or the Contracting Officer." "United States" and "Government" mean "Buyer." The following is added at the end of the clause: "If Buyer is subject to any liability or expense, including without limitation Government withholding of payments, as the result of: 1) Seller's or its lower-tier subcontractors' submission and/or certification of alleged or actual

defective cost or pricing data, as set forth in this clause and in FAR 52.215-11; or 2) their furnishing, as prospective subcontractors, alleged or actual defective cost or pricing data, which data was certified or required to be certified by Buyer to be accurate, complete and current as of the date of final price agreement given on Buyer's Certificate of Current Cost or Pricing Data, and which data Seller was given timely notice by Buyer to furnish and/or update prior to such date of Buyer's final price agreement; or 3) the Contracting Officer's rejection of Seller's or Seller's lower-tier subcontractor's claim for exception from submission of certified cost or pricing data on the basis set forth in FAR 15.403(b) or other pertinent law or regulation; or 4) their furnishing data of any description that is allegedly or actually inaccurate as set forth in this clause and in FAR 52.215-11, then Seller agrees to indemnify and hold Buyer harmless to the full extent of any damage or expense resulting from such action."

52.215-11 Price Reduction for Defective Cost or Pricing Data - Modifications (Oct 1997)

Applies whenever FAR 52.215-13 applies to this PO. "The Contracting Officer" means "Buyer or the Contracting Officer." "United States" and "Government" mean "Buyer."

52.215-12 Subcontractor Cost or Pricing Data (Oct 1997)

Applies if this PO exceeds \$550,000 and is not otherwise exempt from the requirement to provide cost or pricing data.

52.215-13 Subcontractor Cost or Pricing Data - Modifications (Oct 1997)

Applies if this PO exceeds \$550,000 and modifications under this PO are not exempt from the requirement to provide cost or pricing data.

52.215-14 Integrity of Unit Prices (Oct 1997) and Alternate I (Oct 1997)

Applies if this PO exceeds \$100,000. Paragraph (b) is deleted.

52.222-20 Walsh Healy Public Contracts Act (Dec 1996)

Applies if this PO exceeds \$10,000.

52.222-37 Employment Reports on Special Disabled Veterans and Veterans of the Vietnam Era 9Jan 1999)

Applies if this PO is for \$10,000 or more.

52.227-2 Notice and Assistance Regarding Patent and Copyright Infringement (Aug 1996)

Applies if this PO exceeds \$100,000.

52.230-2 Cost Accounting Standards (Apr 1998) (When referenced in the Contract, Full CAS Coverage applies. In subparagraph (a)(4)(ii) and (a)(5) substitute 'Buyer' for "Government". Delete paragraph (b) of the clause.

- 52.230-3 Disclosure and Consistency of Cost Accounting Practices (Apr 1998)**
(When referenced in the Contract, Modified CAS Coverage applies. In subparagraphs (a)(3)(ii) and (a)(4) substitute 'Buyer' for "Government". Delete paragraph (b) of the clause.)
- 52.230-6 Administration of Cost Accounting Standards (Nov 1999)** (Applicable if FAR 52.230-2 or FAR 52.230-3 applies.)
- 52.234-1 Industrial Resources Developed under Defense Production Act Title III (Dec 1994)**
"Contracting Officer" means "Buyer."
- 52.244-5 Competition in Subcontracting (Dec 1996)**
- 52.245-17 Special Tooling (April 1984)**
"Contracting Officer" means "Buyer." "Government" means "Buyer or the Government" except in paragraph (c) where it means "Buyer." The time period set forth in paragraph (i) is changed to 180 days.
- 52.245-18 Special Test Equipment (Feb 1993)**
"Contracting officer" means "Buyer." "Government" means "Buyer or the Government" except in the third sentence of paragraph (c) where it means "Buyer." In paragraphs (b) and (c), "30 days" is changed to "60 days."
- 52.247-63 Preference for US - Flag Air Carriers (Jan 1997)**
Applies if this PO involves international air transportation.

PART B The clauses listed in this Part B are applicable to both (1) commercial items, if any, meeting the definition thereof in FAR 2.101 and designated in this PO as commercial items, and (ii) items, if any, which are other than such commercial items.

Citation Clause Name (Date)

- 52.204-2 Security Requirements (Aug 1996)**
Applies only if this PO involves access to classified information.
The reference in paragraph (c) to the Changes clause shall be deemed to refer to the Changes clause of this PO.
- 52.211-5 Material Requirements (Aug 2000)**
"Contracting Officer" means "Buyer"
- 52.211-15 Defense Priority and Allocation Requirements (Sep 1990)**
- 52.215-21 Requirements for Cost or Pricing Data or Information Other Than Cost or Pricing Data--Modifications (Oct 1997)**
"Contracting Officer" and "contracting office" means "Buyer."

- 52.219-8 Utilization Small Business Concerns (Oct 2000)**
- 52.219-9 Small Business Subcontracting Plan (Oct 2000) and Alternate II (Oct 2000)**
Does not apply if this PO is for less than \$500,000 or if Seller is a small business concern. "Contracting Officer" means "Buyer" in paragraph (c).
- 52.222-21 Prohibition of Segregated Facilities (Feb 1999)**
- 52.222-26 Equal Opportunity (Feb 1999)**
- 52.222-35 Affirmative Action for Special Disabled and Vietnam Era Veterans (Apr 1998)**
Applies if this PO is for \$10,000 or more
- 52.222-36 Affirmative Action for Workers with Disabilities (Jun 1998)**
Applies if this PO exceeds \$10,000.
- 52.223-3 Hazardous Material Identification and Material Safety Data (Jan 1997)**
Applies if this PO requires delivery of hazardous materials. "Contracting Officer" means "Buyer;" "Government" means "Buyer and the Government."
- 52.223-11 Ozone-Depleting Substances (May 2001)**
Applies if the Items furnished hereunder contain or are manufactured with ozone-depleting substances.
- 52.225-13 Restrictions on Certain Foreign Purchases (Jul 2000)**
- 52.233-3 Protest After Award (Aug 1996)**
"Protest" means "protest under the prime contract," and "Contracting Officer" and "Government" mean "Buyer." "30 days" is changed to "20 days."
- 52.242-13 Bankruptcy (Jul 1995)**
"Contracting Officer" means "Buyer."
- 52.242-15 Stop-Work Order (Aug 1989)**
"Government" and "Contracting Officer" means "Buyer."
- 52.243-1 Changes - Fixed Price (Aug 1987)**
"Contracting Officer" and "Government" mean "Buyer." In paragraph (a) add as subparagraph (iv) "Delivery schedule." In paragraph (e) the words "disputes clause" are changed to "Disputes clause of this PO."
- 52.244-6 Subcontracts for Commercial Items and Commercial (May 2001)**

52.245-2 Government Property (Dec 1989)

"Contracting Officer" means "Buyer" except in paragraph (f) where it means "Buyer and Contracting Officer" "Government" means "Buyer" except in the phrases "Government property," (Government-furnished property," and in references to title to property. The following is added as paragraph (m) "Seller shall provide to Buyer immediate notice of any disapproval, withdrawal of approval, or nonacceptance by the Government of Seller's property control system."

52.246-2 Inspection - Fixed Price (Aug 1996)

"Government" means "Buyer and the Government" except in paragraphs (f), (j), and (l) where it means "Buyer." "Contracting Officer" means "Buyer."

52.249-2 Termination for Convenience (Fixed-Price) (Sep 1996)

"Government" and "Contracting Officer" mean "Buyer" except in paragraph (m) where "Government" means "Buyer and the Government" and "Contracting Officer" means "Buyer or the Contracting Officer." In paragraph (e) "1 year" is changed to "six months." In paragraph (c) "15 days" is change to "30 days," and "45 days" is changed to "60 days." In paragraph (k) "90 days" is changed to "45 days." Paragraph (j) is deleted.

52.249-8 Default (Apr 1984)

"Government" and "Contracting Officer" mean "Buyer," except in paragraph (c), where the term "Government" is unchanged.

52.253-1 Computer Generated Forms (Jan 1991)

II. DEFENSE FAR SUPPLEMENT CLAUSES

Part A The clauses listed in this Part A are not applicable to the portion, if any, of this PO which is for commercial item(s) as described in FAR 2.101. However, no item purchased under this PO shall be regarded as a commercial item(s) unless it is specifically so designated in this PO.

<u>Citation</u>	<u>Clause Name (Date)</u>
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252.203-7001	Prohibition on Persons Convicted of Fraud or Other Defense-Contract-Related Felonies (Mar 1999)
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Applies if this PO exceeds \$100,000. The terms "contract" "contractor" and "subcontract" are not modified in paragraph (a). Paragraph (g) is deleted.

252.205-7000	Provision of Information to Cooperative Agreement Holders (Dec 1991)
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252.209-7000	Acquisition from Subcontractors Subject to On-Site Inspection under the Intermediate-Range Nuclear Forces (INF) Treaty (Nov 1995)
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Applies if this PO exceeds \$100,000.

252.211-7000	Acquisition Streamlining (Dec 1991)
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Applies if this PO exceeds \$1,000,000. "Government" means "Buyer."

252.215-7000	Pricing Adjustments (Dec 1991)
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252.225-7016	Restriction on Acquisition of Ball and Roller Bearings (Dec 2000) and Alternate I (Dec 2000)
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"Contracting Officer" means "Buyer or Contracting Officer."

252.225-7026	Reporting of Contract Performance Outside The United States Jun 2000)
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Applies if this PO exceeds \$500,000. Paragraph (c) is deleted.

252.227-7013	Rights In Technical Data – Non-Commercial Items (Nov 1995) and Alternate I (Jun 1995)
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252.227-7037	Validation of Restrictive Markings on Technical Data (Nov 1995)
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252.231-7000	Supplemental Cost Principles (Dec 1991)
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252.243-7001	Pricing of Contract Modifications (Dec 1991)
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252.247-7024 Notification of Transportation of Supplies by Sea (Mar 2000)

Part B The clauses listed in this Part B are applicable to both (i) commercial items, if any, meeting the definition thereof in FAR 2.101 and designated in this PO as commercial items, and (ii) items, if any, which are other than such commercial items.

Citation **Clause Name (Date)**

252.204-7000 Disclosure of Information (Dec 1991)
In paragraph (b) "45 days" is changed to "60 days", and "Contracting Officer" means "Buyer."

252.208-7000 Intent to Furnish Precious Metals as Government Furnished Material (Dec 1991)

252.219-7003 Small, Small Disadvantaged and Women-Owned Small Business Subcontracting Plan (DoD Contracts) (Apr 1996)
Applies when FAR 52.219-9 applies to this PO. Paragraph (g) is deleted.

252.225-7009 Duty-Free Entry--Qualifying Country End Products and Components (Aug 2000) 252.225.7010 Duty-Free Entry – Additional Provisions (March 1998)

252.225-7012 Preference for Certain Domestic Commodities (Aug 2000)

252.225-7014 Preference for Domestic Specialty Metals (Apr 2003) Alternate I (Apr 2003)

252.227-7015 Technical Data - Commercial items (Nov 1995)
Applies if this PO is for a commercial item.

252.227-7016 Rights In Bid or Proposal Information (Jun 1995)

252.227-7030 Technical Data -- Withholding of Payment (Mar 2000)
"Government" means "Buyer or the Government" and "Contracting Officer" means "Buyer."

252.227-7036 Declaration of Technical Data Conformity (Jan 1997)
"Government" means "Buyer or the Government" and "Contracting Officer" means "Buyer."

252.243-7000 Engineering Change Proposals (Sept 1999)and Alternate I (Sept 1999)

252.243-7002 Requests for Equitable Adjustment (Mar 1998)

Applies if this PO exceeds \$100,000. In paragraph (d) "Government" means "Buyer."

252.247-7023 Transportation of Supplies By Sea (Mar 2000)

Applies if this PO exceeds \$100,000. " In paragraph (f) "Government" and "Contracting Officer" mean "Buyer and the words "of the Prompt Payment clause" are deleted.

III. AIR FORCE FAR SUPPLEMENT CLAUSES

The clauses listed in this are applicable to both (i) commercial items, if any, meeting the definition thereof in FAR 2.101 and designated in this PO as commercial items, and (ii) items, if any, which are other than such commercial items.

Citation Clause Name (Date)

5352.223-9000 Elimination of Use Of Class I Ozone Depleting Substances (ODS) (May 1996)

In paragraph (d) "Air Force" means "Buyer." The substance in paragraph (d) is "Halon 1301-Engine Nacelle and Auxiliary Power Unit Fire Suppression Bottles." In paragraph (e) "Contracting Officer" means "Buyer."