

**FACILITIES CONSTRUCTION
PURCHASE ORDER TERMS AND CONDITIONS**

**APPENDIX "1"
REV. 1 –NOV. 7, 2016
ORIGINAL—SEP 3, 2004**

1. Definitions

The following definitions shall apply unless otherwise specifically stated.

"Buyer" shall mean Lockheed Martin Corporation acting through its Lockheed

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or delivers goods on LM Aero-owned or operated facilities. The current version of this [Handbook](#) is incorporated herein and is made a part hereof by this reference.

"Seller" shall mean the legal entity to which this Purchase Order is issued.

"PO" shall mean this Purchase Order.

"Government" shall mean 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 any other country.

"Prime Contract" shall mean the contract(s) under which this PO is issued.

2. General

Seller is an independent contractor in all its operations and activities hereunder, and the employees furnished by the Seller to perform work pursuant to this Purchase Order are Seller's employees exclusively without any relation whatsoever to Buyer. Said employees shall be paid by the Seller for all services performed under this Purchase Order and the Seller shall be responsible for all obligations and reports covering Social Security, Unemployment Insurance, Workers' Compensation, Income Tax, and any other reports and deductions required by Buyer, or to bind Buyer in any manner whatsoever.

Unless otherwise indicated, the work is to be furnished or performed at facilities owned by the United States Government, designated as Air Force Plant No. 4, which is property under Federal jurisdiction.

negligence of Seller, or for which an equitable adjustment is provided for or excluded under any other term or condition of this Purchase Order.

(c) A claim under this clause

partially completed plans, drawings, information, and other property that, if the contract had been completed, would be required to be furnished to Buyer.

- (7) Complete performance of the work not terminated.
 - (8) Take any action that may be necessary, or that the Buyer may direct, for the protection and preservation of the property related to this contract that is in the possession of the Seller and in which Buyer has or may acquire an interest.
 - (9) Use its best efforts to sell, as directed or authorized by the Buyer, any property of the types referred to in subparagraph (6) above; provided, however, that the Seller (i) is not required to extend credit to any purchaser and (ii) may acquire the property under the conditions prescribed by, and at prices approved by the Buyer. The proceeds of any transfer or disposition will be applied to reduce any payments to be made by Buyer under this Purchase Order, credited to the price or cost of the work, or paid in any other manner directed by the Buyer.
- (c) After termination, the Seller shall submit a final termination settlement proposal to Buyer in the form and with the certification prescribed by Buyer. The Seller shall submit the proposal promptly, but no later than 60 days from the effective date of termination, unless extended in writing by the Buyer upon written request of the Seller within this 60 day period. However, if the Buyer determines that the facts justify it, a termination settlement proposal may be received and acted on after 60 days or any extension. If the Seller fails to submit the proposal within the time allotted, the Seller shall be deemed to have accepted the Buyer's offer of settlement.

- (c) A sum, as profit on (a) above, determined by Buyer under Section 49.202 of the Federal Acquisition Regulation, in effect on the date of this Purchase Order, to be fair and reasonable; however, if it appears that the Seller would have sustained a loss on the entire Purchase Order had

- (2) If the total payments exceed the amount finally determined to be due, the Seller shall repay the excess to Buyer upon demand, together with interest thereon computed at the annual rate established under Section 6621 of the Internal Revenue Code of 1986 (26 U.S.C. 6621). Interest shall be computed for the period from the date the excess payment was received by the Seller to the date the excess is repaid. Interest shall not be charged on any excess payment due to a reduction in the Seller's termination settlement because of retention or other disposition of termination inventory until ten (10) days after the date of the retention or disposition, or a later date determined by the Buyer because of the circumstances.
- (j) As a condition precedent to any payments under this CLAUSE, Buyer may require Seller to furnish affidavits and releases, in accordance with the requirements of CLAUSE 14 "PAYMENTS" of this Purchase Order, that no liens or rights in rem of any kind lie upon or have attached against the work, materials, articles, or equipment.
- (1) Unless otherwise provided for in this Purchase Order or by statute, the Seller shall maintain all records and documents relating to the terminated portion of this Purchase Order for three (3) years after final settlement. This includes all books and other evidence bearing on the Seller's costs and expenses under this Purchase Order. The Seller shall make these records and documents available to Buyer at the Seller's office, at all reasonable times, without charge. If approved by the Buyer, photographs, microphotographs, or other authentic reproductions may be maintained instead of original records and documents.

9. Rights and Reservations

All reports, documents, records, data and software, including without limitation, drawings, specifications and documentation, and all material, including without limitation, tools, dies, patterns, samples, devices and improvements, and all other information prepared, created or developed in connection with this Purchase Order or furnished to Seller by Buyer, or paid for in whole or in part by Buyer (hereinafter referred to as "Property"), are and shall be owned solely by Buyer or the Government. Seller shall not use or disclose to others all or any

10. Patents, Copyrights, Mask Works, and Trade Secrets

- (a) Patents, Copyrights, Mask Works, and Trade Secrets: Seller agrees to defend, indemnify and hold harmless Buyer, its customers and agents, against any liability, including without limitation, costs, expenses and attorney's fees, for or by reason of any actual or alleged infringement of any patent, copyright, mask work or trade secret arising out of the manufacture, use, sale, delivery or disposal of goods or services furnished under this PO.

Buyer shall notify Seller as soon as practicable of any claim of infringement resulting therefrom received by Buyer. In the event of any such claim against Buyer, Seller shall furnish to Buyer, when so notified by Buyer, all evidence and information in the possession of Seller pertaining to such claim. Seller shall report to Buyer promptly and in reasonable written detail each notice or claim of patent, copyright, mask work or trade secret infringement relating to the performance of this PO of which Seller has knowledge.

The indemnity and hold harmless provisions of this clause shall not be applicable to actual or alleged patent infringements if this PO is issued under a Government prime contract which contains FAR Clause 52.227-1, "Authorization and Consent," with its Alternate 1. Where payment is made for or results in experimental, developmental, or research work performed under this PO, then unless this PO is issued under a Government prime contract, Seller shall disclose and does hereby assign to Buyer all inventions resulting therefrom and shall assist Buyer, to the extent reasonably requested, in securing and defending patent protection thereon, and does grant Buyer the right to use for any purpose all data specified to be delivered hereunder.

- (b) Patents and Data: The clauses related to Patents and Data in the FAR and DFARS which are incorporated in the prime contract(s) under which this PO is issued, are hereby incorporated herein by reference. Seller is cognizant of such provisions and agrees to comply with such provisions as "Contractor." Notwithstanding the foregoing, if this PO is not for experimental, developmental, or research work, the "Patent Rights-Retention By Contractor" clauses do not apply to Seller. Unless otherwise specified in this PO, all technical data and/or computer software and computer software documentation which are required to be furnished by Seller under this PO shall be furnished with "Unlim.348 0 Td [(f)-17

these safety rules and regulations have been reviewed with all of its employees and subcontractors.

Buyer will notify Seller or Seller's representative at the work site of any noncompliance with the foregoing rules and regulations and the corrective action to be taken. After receipt of such notice, Seller shall immediately take correction action. If Seller fails or refuses to comply promptly, Buyer may issue an order stopping all or part of the work until satisfactory corrective action has been taken. No part of the time lost due to any such stop work order shall be made the subject of a claim for an extension of time or for excess costs or damages by Seller.

Seller shall maintain an accurate record of, and shall report to Buyer in the manner and on the forms prescribed by Buyer, exposure data and all accidents resulting in death, traumatic injury, occupational disease, and damage to property, material, supplies and equipment incident to work performed under this Purchase Order. Seller shall defend, indemnify and hold Buyer harmless from all claims, actions, demands, losses and causes of action arising from injury, including death, to any person, or damage to any property, when such injury or damage results in whole or in part from acts or omissions of Seller, Seller's employees or agents, save and except damage caused by the sole negligence of Buyer.

12. Bonds

Seller shall furnish performance and payment bonds in a form acceptable to Buyer and with a surety satisfactory to Buyer.

(a) A payment

13. Insurance

- (a) 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 for accidents to their respective employees. Seller and its subcontractors shall carry adequate Comprehensive General Liability and Comprehensive Automobile Liability Insurance covering the legal liability of Seller and such subcontractors for accidents arising out of the operations of Seller or such subcontractors which result in bodily injury, including death, to any person or persons, or any damage to property. At Buyer's request, Seller shall furnish to Buyer certificates from Seller and/or its subcontractors' insurers showing such coverage in effect (in the amounts listed below) and agreeing to give Buyer ten (10) days prior written notice of cancellation of such coverage.

Type of Insurance	Limits of Minimum Liability
A. General Liability (to include premises and operations, elevators, Independent Contractors, and completed operations and products)	Single Limits for Bodily Injury and Property Damage: \$1.,

- (e) Seller will be entitled to progress payments in accordance with the provisions of this paragraph (e) if progress payments are specifically authorized. If so authorized, from time to time as construction progresses but at intervals of not less than thirty (30) days, Seller may submit invoices in duplicate certified by Seller's representative as to percentage of completion of performance of the entire Purchase Order. The amount of each invoice shall be that percentage of the total Purchase Order price equal to the percentage of completion of the Purchase Order, less any amounts previously billed by Seller. The net amount due

15. Assignment and Subcontracting

Seller shall not assign this Purchase Order or any portion thereof, nor shall Seller allow its

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.

19. Governing Law

This Purchase Order shall be construed in accordance with the laws of Texas, excluding its choice of law rules.

20. Buyer's Representative

Buyer will designate a representative, hereinafter referred to as the Construction Engineer, who will be available at the site of the work, and who will have the authority to act for Buyer as follows:

(a) Act as liaison between Buyer and Seller at the job site.

(b) Make field decisions within the general scope of this Purchase Order on behalf of Buyer.

(c) Relay orders to

(b) Employees. A badge will be issued daily

applicable, to the addresses on this Purchase Order, with postage fully prepaid. Notices shall be effective at the time of mailing.

24. Indemnity

Seller shall hold harmless and indemnify Buyer, and if the Buyer so requests defend Buyer, against any and all losses, claims, liabilities, damages, actions, costs and expenses, including without limitation attorneys' fees, arising out of or resulting from Seller's undertaking or performance under this Purchase Order, and including without limitation, losses, claims, liabilities, damages, actions, costs and expenses of any of the employees, representatives, agents or subcontractors of Seller or of subcontractors at any tier, engaged in such undertakings or performance.

25. 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.

26. Venue

This Purchase Order shall be deemed to have been executed by the parties and require performance in Fort Worth, Tarrant County, Texas and no suit or action under this Purchase Order or for any breach thereof shall be maintainable except in Fort Worth, Tarrant County, Texas.

27. Performance of Work

- (a) Seller shall start and complete the work in such order of procedure as may be prescribed by Buyer or Buyer's Representative (CE).
- (b) Seller shall supervise and direct the work, using his best skill and attention. Unless otherwise directed, Seller shall be solely responsible for all construction means, methods, techniques, sequences, and procedures and for coordinating all portions of the work required under this Purchase Order. At all times during performance of the contract and until the work is completed and accepted, Seller shall directly superintend the work or assign and have full control over the work.

- (e) Protection of Existing Structures, Utilities and Work. Seller shall protect all existing structures, utilities, and work of any kind against damage or interruption of service which may result from operations of Seller. Damage or interruption of service resulting from failure to do so shall be repaired or restored promptly by and at the expense of Seller.
- (f) Workmanship. Workmanship shall be of the highest grade throughout and in accordance with good commercial practices. All workers employed by Seller for the work under this Purchase Order shall be experienced and skilled in their respective trades.
- (g) Completion. Seller shall be responsible for and assume the risk of any loss of or destruction of, or damage to any and all materials or property acquired or delivered and work

(3) Negligence, willful

calculating,

charge to Seller any additional cost of inspection or test when work is not ready at the time specified by Seller for inspection or test, or when prior rejection makes reinspection or retest necessary. Buyer shall perform all inspections and tests in a manner that will not unnecessarily delay the work, provided that Buyer has been given reasonable prior written notice that the work is ready for such inspections or tests. Special, full size, and performance tests shall be performed as described in the

hazardous waste generated in the performance of its work and shall comply with all 1) applicable laws; 2) OSHA Regulations; and 3) Buyer's procedures as directed by Buyer's Construction Engineer.

- (n) Environmental Matters. Seller and Seller's subcontractors shall perform all work under this PO in accordance with environmental laws and permit requireme2.76Tj Tw 6.37 0

- (v) Means of Egress. It shall be the contractor's responsibility to post appropriate barriers and signs as required by Fire Protection Services. A sign indicating the appropriate alternate exit shall be posed at every obstructed or impaired exit.

The Seller shall contact the CE and/or the Fire Protection Services to inform them of the pending obstruction and to obtain direction, as to what measures are required in providing equivalent safety.

Fire Protection Services will provide the CE with the appropriate measures to be taken prior to obstructing any means of egress, along with the alternative exit to be used in lieu of those exits to be obstructed.

- (w) All federal, state, or local environmental agency reportable mishaps shall be reported within 24 hours to the Buyer Construction Engineer.
- (x) Banned Materials. Seller warrants and represents that items delivered under this Purchase Order do not contain Polychlorinated Biphenyls (PCBs), 2,4-Dichlorophenoxyacetic acid, 2,4,5-Trichlorophenoxyacetic acid, asbestos, benzene, dioxins, hydrazine, mercury or pentachlorophenol, and agrees to indemnify Buyer against any loss, cost, damage or liability, including removal costs, by reason of Seller's violation of this warranty.
- (y) Seller Identification Signs. Seller will provide signs with Seller's name and Purchase Order Number for areas outside of any building used for materials storage, workTj -0.01 516601

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34. Contractual Commitments

The parties agree that there shall be no adjustment in the price, time for performance or any other provision of this PO unhn30.016 To e € ,

offer, OMB standard

- (ii) Seller shall immediately notify the Buyer Procurement Representative, before any contract award, or the receipt of any communication from the Administrator, or a designee, of the Environmental Protection Agency, indicating that any facility that the Offeror proposes to use for the performance of any contract is under consideration to be listed on the EPA list of Violating Facilities.

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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.

If this Purchase Order is issued under a United States Government prime contract or Subcontract, then all the subparagraphs listed below in this Article 35, Government Contracts, are applicable to Seller's Purchase Order and shall be controlling over any conflicting terms and conditions set forth elsewhere in this Purchase Order.

(a) Article 16, Changes. Add the following clause as Article 16(c):

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the performance of this PO or will be delivered as part of end item(s) or service(s) under this PO.

- (g) Indemnity/Commercial Items: This clause applies only to the portion, if any, of this PO for the purchase of a commercial item(s) as defined in 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