

Appendix 10

**LOCKHEED MARTIN CORPORATION
AERONAUTICS MATERIAL MANAGEMENT CENTER**

**TERMS AND CONDITIONS OF PURCHASE
F-22 PRODUCTION CONTRACT**

1. Definitions

As used herein "Buyer" means Lockheed Martin Corporation acting through its Aeronautics Material Management Center; "Seller" means the party identified on the face of this purchase order; Except in the term "commercial item" as defined at FAR and its plural "commercial items" "Items" means all required articles, materials, supplies and services (singular "Item," plural "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 52.201-2.

2. Delivery

- (a) Delivery according to schedule is a material condition 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 overshipped 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 later 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 or other purchase orders between Buyer and Seller.

6. Warranty

- (a) Seller warrants that all Items shall be free from defects in material and workmanship and shall conform to applicable specifications, drawings and all other requirements of this PO. Said warranties shall run from the date of delivery of the Items to Buyer or the next higher subcontractor until delivery of the Items to the customer. 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 defect 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. 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, if any, shall run to Buyer and its customers.

(b)

7. Compliance with Laws

- (a) 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; and such compliance shall be a material requirement of this PO. Seller agrees to indemnify Buyer against any loss, cost, damage or liability by reason of Seller's violation of this clause.
- (b) 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.
- (c) 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.
- (d) This paragraph 7(d) contains certifications and representations that are material representations of fact upon which Buyer will rely in making awards to Seller. By submitting its written offer, or providing oral offers/quotations at the request of Buyer, or accepting any PO, including oral orders from Buyer, Seller represents and certifies as set forth below in this clause. Seller shall immediately notify Buyer of any change of status with regard to these certifications and representations.
 - (1) Previous Contracts and Compliance Reports. Seller represents that if Seller has participated in a previous contract or subcontract subject either to the Equal Opportunity clause (FAR 52.222-26) of this solicitation/PO, the clause originally contained in Section 310 of Executive Order No. 10925, or the clause contained in Section 201 of Executive Order No. 11114, (i) that Seller 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.
 - (2) Affirmative Action Compliance. Seller represents (1) that Seller 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, Seller will develop and place in operation

such a written Affirmative Action Compliance Program within 120 days form the award of this PO.

- (3) FAR 52.203-11 Certification And Disclosure Regarding Payments To Influence Certain Federal Transactions (Applicable to solicitations/POs that exceed \$100,000)
 - (a) The definitions and prohibitions contained in the clause, at FAR 52.203-12, Limitation on Payments to Influence Certain Federal Transactions, included in this solicitation, are hereby incorporated by reference in paragraph (b) of this certification.
 - (b) Seller hereby certifies to the best of his or her knowledge and belief that on or after December 23, 1989,--
 - (1) 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;
 - (2) 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 this solicitation, Seller shall complete and submit, with its offer, OMB standard form LLL, Disclosure of Lobbying Activities, to Lockheed Martin; and
 - (3) He or she will include the language of this certification in all lower tier subcontract awards at any tier and require that all recipients of subcontract awards in excess of \$100,000 shall certify and disclose accordingly.
 - (c) Submission of this certification and disclosure is a prerequisite for making or entering into this contract imposed by section 1352,

title 31, United States Code. Any person who makes an 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.

- (4) FAR 52.209-5 Certification Regarding Debarment, Suspension, Proposed Debarment, And Other Responsibility Matters (Applicable to solicitations/ POs in excess of \$25,000)
 - (a) 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.
 - (b) 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.
- (5) FAR 52.223-1 Clean Air And Water Certification (Applicable to solicitations/POs in excess of \$100,000)

Seller certifies that--

- (a) Any facility to be used in the performance of this proposed contract is not listed on the Environmental Protection Agency (EPA) List of Violating Facilities;
- (b) Seller will immediately notify Lockheed Martin, before award, of the receipt of any communication from the Administrator, or a designee, of the EPA, indicating that any facility that Seller proposes to use for the performance of the contract is under consideration to be listed on the EPA List of Violating Facilities; and
- (c) Seller will include a certification substantially the same as this certification, including this paragraph (c), in every nonexempt lower tier subcontract.

8. Responsibility for Property

Unless otherwise specified, Seller shall be liable for any loss or destruction of or damage to property of Buyer or of any customer of Buyer, whether furnished to

Seller by any such customer or 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 personalty by reason of affixation to any realty. All property furnished by Buyer shall be used solely in the performance of this PO or other POs issued by Buyer 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 by the clauses incorporated by reference in clause 35) that is either provided by the Government or 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 (hereinafter referred to as "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 Information to Buyer thirty (30) days after the effective date of such completion, termination or cancellation. 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 which 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 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 warrants 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, trade secrets, copyrights or other property rights. Seller shall defend, indemnify and hold Buyer and its customers harmless from any loss, including without limitation, 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, copyrights or other property rights 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 and /or its customers. Indemnification shall not apply to infringements arising from use by Buyer of an Item supplied by Seller in combination with other items where infringement would not have occurred from the normal use of which such Item was designed, Seller's liability under this Article 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" which clause is incorporated herein by reference except as used therein "Government" means "Government," "Contractor" means "Seller," and "contract" means "this PO."

12. 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 such 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 insurers showing such coverage in effect and

agreeing to give Buyer ten (10) days' prior written notice of cancellation of such coverage.

13. 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 reasonable 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 the PO's "Changes" clause.

14. Remedies/Waiver

- (a) The rights and remedies provided herein shall be cumulative and in addition to any other rights and remedies provided by law or 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 shall not 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.

15. 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 shall have the right to make direct settlements or adjustments in price, or both, with Seller under the terms of this PO notwithstanding any assignment of claims

17. Recission, Adjustment or Termination for Illegal or Improper Activity

- (a) In the event the Government takes action pursuant to FAR 52.203-8 entitled "Cancellation, Recession, 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 of 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.

18. 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.

19. 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 under this PO is being performed, to review progress and witness testing of the Items to be delivered under this PO. Seller shall include this clause in all of Seller's subcontracts under this PO.

20. 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, if this PO specifies that the Items furnished hereunder are to be delivered directly to or performed at or on behalf of a specified Buyer facility, the laws, excluding choice of state law rules, of the state where Buyer's facility is located shall apply. For Items neither delivered directly to nor performed at or on behalf of a specified Buyer facility, the laws of the state of Texas, excluding choice of state law rules, shall apply.

21. 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 or agreements, oral or written, between Buyer and Seller with respect to the subject matter of this PO.

- (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.

23. Reserved

24. 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 may be, 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 and services in accordance with Buyer's direction. Upon resolution of any such dispute, this PO shall be equitably adjusted, if necessary, to reflect such resolution.

25. 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.

26. 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.

27. 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.

28. 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 the 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.

29. 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 which 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.

30. Notification of Debarment/Suspension Status

Seller shall provide immediate notice to Buyer in the event of being suspended, debarred or declared ineligible by any Department or other Federal Agency, or upon receipt of a notice of proposed debarment from any agency, during the performance of this PO.

31. 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 reference. Seller acknowledges that Buyer has relied on such certifications and representations in making the award of this PO.

32. 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) 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.

33. Gifts, Gratuities, and Kickbacks

- (a) Buyer may, by written notice to Seller, terminate this PO for default if Buyer has reasonable cause to believe that gratuities or kickbacks were offered or given by Seller, or any agent or representative of Seller, to any officer, employee or representative of Buyer with a view toward securing this PO or securing favorable treatment with respect to awarding, amending or the making of any determinations with respect to the performance of this PO.
- (b) Buyer complies with the Anti-Kickback Act of 1986, 41 U.S.C. 51-58, ("the Act") and related laws and regulations. By acceptance of this PO Seller agrees:

- (1) to comply with the Act;
 - (2) to report possible violations of the Act to and cooperate with Buyer and/or the Government in connection with the investigation of any actual or alleged violation of the Act;
 - (3) to indemnify Buyer against any loss, cost, damage or liability by reason of Seller's violation of the Act including, but not limited to, any amount that Buyer is directed by the Contracting Officer to withhold from Seller; and
 - (4) that Buyer may terminate this PO for default in the event of Seller's violation of the Act in connection with this PO.
- (c) 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

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.**

<u>Citation</u>	<u>Clause Name (Date)</u>
52.203-5	Covenant Against Contingent Fees (APR 1984) - In paragraph

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 \$500,000 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 \$500,000 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)** - Applies if this PO exceeds \$100,000. Paragraph (b) is deleted.
- 52.215-15 **Termination of Defined Benefit Pension Plans (OCT 1997)** - Applies if this PO meets the applicability requirements of FAR 15.408(g). "Government" means "Buyer and Government."
- 52.215-18 **Reversion or Adjustment of Plans for Postretirement Benefits Other Than Pensions (PRB) (OCT 1997)** - Applicable if this PO meets the applicability requirements of FAR 15.408(j). "Government" means "Buyer or the Government."
- 52.215-19 **Notification of Ownership Changes (OCT 1997)** - Applies if this PO meets the applicability requirements of FAR 15.408(k). "Contracting Officer" means "Buyer and Contracting Officer."
- 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 (APR 1998)** - Applies if this PO is for \$10,000 or more.
- 52.223-2 **Clean Air and Water (APR 1984)** - Does not apply if this PO is for less than \$100,000.

52.227-2	Notice and Assistance Regarding Patent and Copyright Infringement (AUG 1996) - Applies if this PO exceeds \$100,000.
52.227-10	Filing of Patent Applications - Classified Subject Matter (APR 1984) - Applies if this PO involves classified subject matter.
52.228-5	Insurance - Work on a Government Installation (JAN 1997) - Applies if this PO involves work on a Government installation.
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 (APR 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."
52.246-23	Limitation of Liability (FEB 1997) - Applies to subcontract line items with a unit value less than \$100,000. In paragraph (a) the phrase "supplies delivered under this contract" means "supplies delivered under the prime contract containing Seller's items."
52.246-24	Limitation of Liability - High Value Items (FEB 1997) - Applies to subcontract line items with a unit value of \$100,000 or greater. The reference to Government acceptance shall mean "acceptance by the Government of the prime contract end item containing Seller's items." "The Contracting Officer" means "Buyer."
52.247-63	Preference for US - Flag Air Carriers (JAN 1997) - Applies if this PO involves international air transportation.
52.248-1	Value Engineering (MAR 1989) (DEVIATION) (DoD Class Deviation 97-O0005 dated 27 JUN 97) Alternate I (APR 1984) - Applies if this PO exceeds \$100,000. "Contracting Officer" means "Buyer," "contracting office" means "US Government contracting office," "Government" means "Buyer" except in subparagraph (c)(5) and paragraph (m) where it means "Buyer and the Government." Also, "Government" does not mean "Buyer" in the phrase "Government costs."

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.**

<u>Citation</u>	<u>Clause Name (Date)</u>
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52.204-2	Security Requirements (AUG 1996) - Applies only if this PO involves access to classified information. The reference in
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paragraph (c) to the Changes clause shall be deemed to refer to the Changes clause of this PO.

52.211-5 **Material Requirements (OCT 1997)** - "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 of Small, Small Disadvantaged and Women-Owned Small Business Concerns (JUN 1997)**

52.219-9

- 52.244-6 **Subcontracts for Commercial Items and Commercial Components (OCT 1998)**
- 52.245-2 **Government Property (APR 1984) - Alternate I (APR 1984) -**
 “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. Alternate I applies only if Seller has and maintains a Government approved property control system. 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 is 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>
252.203-7001	Special Prohibition On Employment (JUN 1997) - 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)

- 252.209-7000 **Acquisition From Subcontractors Subject To On-Site Inspection Under The Intermediate-Range Nuclear Forces (INF) Treaty (NOV 1995)** - Applies if this PO exceeds \$100,000.
- 252.211-7000 **Acquisition Streamlining (DEC 1991)** - Applies if this PO exceeds \$1,000,000. "Government" means "Buyer."
- 252.215-7000 **Pricing Adjustments (DEC 1991)**
- 252.223-7002 **Safety Precautions For Ammunition And Explosives (MAY 1994)** - Applies if this PO involves ammunition or explosives. "Contracting Officer" means "Buyer" except in subparagraph (c)(4) where it means "Buyer/Contracting Officer." "Government" means "Buyer and Government." In subparagraph (g)(1)(ii) "subcontractor" means "Seller and lower tier subcontractor" in the first sentence, and "subcontractor" means "Seller" in the second sentence.
- 252.223-7003 **Change In Place Of Performance - Ammunition And Explosives (DEC 1991)** - Applies if this PO involves ammunition or explosives. "Contracting Officer" means "Buyer." "Government" means "Buyer and Government."
- 252.223-7007 **Safeguarding Sensitive Arms, Ammunition, And Explosives**

"Contracting Officer" mean "Buyer and the words "of the Prompt Payment clause" are deleted.

252.247-7024 **Notification of Transportation of Supplies by Sea (NOV 1995)**

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.

<u>Citation</u>	<u>Clause Name (Date)</u>
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.
252.223-7001	Hazard Warning Labels (DEC 1991)
252.225-7001	Buy American Act And Balance Of Payments Program (MAR 1998)
252.225-7002	Qualifying Country Sources As Subcontractors (DEC 1991)
252.225-7008	Supplies To Be Accorded Duty-Free Entry (MAR 1998) - The blanks in the clause are completed with the following: None."
252.225-7009	Duty-Free Entry--Qualifying Country End Products and Components (MAR 1998)
252.225-7010	Duty-Free Entry -- Additional Provisions (MAR 1998)
252.225-7012	Preference For Certain Domestic Commodities (FEB 1997)
252.225-7014	Preference For Domestic Specialty Metals (MAR 1998) Alternate I (MAR 1998)
252.225-7022	Restriction on Acquisition of Polyacronitrile (JAN) Carbon Fiber (JUN 1997) - Applies if the items furnished by Seller contain carbon fiber.
252.225-7030	Restriction on Acquisition of Carbon, Alloy, and Armor Steel Plate (OCT 1992)
252.225-7043	Antiterrorism/Force Protection Policy for Defense Contractors Outside the United States (JUN 1998)
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)
252.227-7025	Limitations On The Use Or Disclosure Of Government-Furnished Information Marked With Restrictive Legends (JUN 1995) - In subparagraph (c)(1) "Government" means "Buyer and the Government."
252.227-7026	Deferred Delivery Of Technical Data Or Computer Software (APR 1988) - Applicable if this PO includes a requirement for deferred delivery data. "Government" means "Buyer."

- 252.227-7027 **Deferred Ordering Of Technical Data Or Computer Software (APR 1988)** - "Government" means "Buyer and the Government" in the first sentence.
- 252.227-7030 **Technical Data -- Withholding Of Payment (OCT 1988)** - "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."
- 252.228-7005 **Accident Reporting And Investigation Involving Aircraft, Missiles, And Space Launch Vehicles (DEC 1991)** - "Administrative Contracting Officer" means "Buyer" and "Government" means "Buyer and Government."
- 252.229-7006 **Value Added Tax Exclusion (United Kingdom) (JUN 1997)** - Applies if Seller is a United Kingdom firm. "This contract" means "the prime contract."
- 252.232-7006 **Reduction Or Suspension Of Contract Payments Upon Finding Of Fraud (AUG 1992)** - To the extent that payments to Buyer are suspended or reduced under this clause due to Seller's fraud, Buyer shall suspend or reduce payments to Seller.
- 252.235-7003 **Frequency Authorization (DEC 1991) Alternate I (DEC 1991)** - Applies if this PO requires the development, production, construction, testing, or operation of a device for which a radio frequency authorization is required. "Contracting Officer" means "Buyer."
- 252.239-7000 **Protection Against Compromising Emanations (DEC 1991)** - "Contracting Officer" means "Buyer." "Government" means "Buyer and the Government" in paragraphs (c) and (d).
- 252.239-7016 **Telecommunications Security Equipment, Devices, Techniques And Services (DEC 1991)** - Applies if this PO requires securing telecommunications.
- 252.243-7002 **Requests For Equitable Adjustment (MAR 1998)** - Applies if this PO exceeds \$100,000. In paragraph (d) "Government" means "Buyer."
- 252.246-7000 **Material Inspection and Receiving Report (DEC 1991)** - Applicable if this PO requires delivery of items directly to the Government.
- 252.246-7001 **Warranty Of Data (DEC 1991)** - "Government" means "Buyer or the Government." "Contracting Officer" means "Buyer or Contracting Officer." The last sentence in paragraph (b) is changed to read as follows: The warranty period shall extend for three years after completion of delivery of the data to Buyer, or if the data is delivered to the Government, either by Buyer or Seller, the warranty period shall extend for three years after delivery to the Government."

252.249-7002

Notification Of Anticipated Contract Termination Or Reduction (DEC 1996) - Applies if this PO exceeds \$500,000. "Contracting Officer" means "Buyer." Subparagraphs (d)(1) and the first 5 words of subparagraph (d)(2) are deleted.

II. AIR FORCE FAR SUPPLEMENT CLAUSES

- 5352.235-9003 **Application for Equipment Frequency Authorization (AFMC) -**
In the second sentence "buyer at the issuing office" means "Buyer."
- 5352.245-9010 **Special Test Equipment (JUL 1997)**
- 5352.246-9000 **Material Inspection and Receiving Report (OMB No. 0704-0248)**
(AFMC) (JUL 1997) - Applies if this PO requires direct shipment to the Government. The blanks in paragraph (a) are completed as follows: (1) ASC/YFK, Building 50, 2130 Fifth Street, Wright-Patterson AFB, OH 454-33-7003; (2) None; (3)) ASC/YFMC, Building 50, 2130 Fifth Street, Wright-Patterson AFB, OH 454-33-7003 and Defense Contract Management Command, Lockheed Martin Corporation, Lockheed Martin Aeronautical Systems, 86 South Cobb Drive, Marietta, GA 30063-0260.
- 5352.246-9002 **Correction Of Supplies Accepted With Deficiencies (AFMC)**
(JUL 1997) - "Contracting Officer" means "Buyer." "Government" means "Buyer or Government" except in the first sentence in paragraph (b) where it means "Buyer."
- 5352.247-9011 **Packaging and Marking of Hazardous Material (SEP 1998)**

36. Seller Single Process Initiatives

- (a) Seller and the United States Government have agreed upon a variety of Single Process Initiative (SPI) block changes which have been incorporated into Seller's prime contracts. As of the date of this PO, the following block changes have been approved:

Block Change Number	Title
1	
2	
3	
4	
5	
6	

- (b) The above referenced block changes are incorporated by reference into this PO. In the event of a conflict between the processes and procedures established above and the process or procedure otherwise provided in this PO, the above referenced block changes shall control. The only exception

to the foregoing shall be with respect to provisions of this PO, if any, which are expressly identified as an exception to this provision.

- (c) Future SPI block changes will be incorporated into this and other POs between the Buyer and Seller as the parties agree from time to time.

37. Approvals Obtained Under EMD Applicable Under Production - Foreign Nationals/Sources

- (a) Notwithstanding anything in this PO to the contrary, the notifications and approvals previously provided during the F-22 EMD contract (F33657-91-C-0006) with respect to the Foreign Nationals or Foreign Sources clauses of the EMD PO between Buyer and Seller shall be applicable to this PO for AFMC FARS 5352.227-9000 Export-Controlled Data Restrictions.
- (b) Further, commercial items, off-the-shelf items (i.e., previously developed items) and items not on the critical (technology list are excluded from the

40. Release Of Information

Seller shall obtain approval from the Buyer 60 days prior to release of any information relating to this PO. Buyer shall in turn obtain approval from Aeronautical System Center Public Affairs Office (ASC/PA) in accordance with the prime contract. Seller shall also include this clause in any lower tier subcontract awarded as a result of this PO. "Information" includes, but is not limited to, news releases, articles, manuscripts, brochures, advertisements, still and motion pictures, speeches, trade association meetings, symposia, published professional papers, etc. Authors must submit materials proposed for release to ASC/PA in the following quantities:

- (a) news releases, articles, brochures, advertisements, and professional papers - 3 copies
- (b) videos - 3 copies/transcripts - 12 copies
- (c) briefings, speeches, symposia presentations - 12 copies
- (d) photographs - 1 original and 5 legible photocopies

Seller shall include a statement indicating the project or effort depicted was or is sponsored by:

Aeronautical System Center
Wright-Patterson AFB OH 45433-7129

41. Approval To Use Special Test Equipment, Special Tooling, And Government Furnished Property Available On EMD

On a non-interference basis in the performance of PO, Seller may use and may authorize its lower tier subcontractors to use Special Tooling, Special Test Equipment and/or Government Furnished Property accountable or approved for use under POs issued by Buyer in support of the F-22 EMD program (F33657-91-C-0006).

42. Deferred Delivery of Technical Data

- (a) Buyer may choose not to order the delivery of full supplier Technical Data Packages (TDPs) under PO's issued under the EMD prime contract. Buyer may choose to order the TDPs under this PO in accordance with DFARS 252.227-7026 "Deferred Delivery of Technical Data or Computer Software."
- (b) Seller and its lower tier subcontractors shall maintain the currency of their drawings and associated lists, provide access to Buyer and Government

personnel upon request, and deliver a complete Technical Data Package should the Buyer order delivery of TDP's under this PO.

- (c) Buyer and Seller agree that the Government's rights in any EMD data described above which is called for delivery under this contract will be subject to the data rights clauses of the PO(s) issued under the EMD prime contract (including DFARS 252.227-7013 Rights in Technical Data and Computer Software (OCT 1988)) notwithstanding any differing provision in this PO. Any production unique data newly created under this PO will be subject to the data rights clauses in this PO.

43. Production Data to Be Included in EMD Data Items

- (a) The Statement of Work (SOW) on this PO requires, in certain instances, that data previously developed under POs issued by Buyer to Seller under the EMD Contract (F33657-81-C-0006) be updated or maintained for production. In performance of these SOW requirements, Seller is authorized to incorporate updates for production into the applicable existing EMD data in lieu of creating new documentation. These updates shall be made available to the Government in accordance with existing EMD data access and delivery requirements (i.e., as required or periodic SDRL submittal, or alternate access data).
- (b) Costs incurred to incorporate updates for production into the existing EMD data shall be incurred under this contract and not charged to EMD POs.