

Appendix 11

**LOCKHEED MARTIN CORPORATION
LOCKHEED MARTIN AERONAUTICS COMPANY**

**TERMS AND CONDITIONS OF PURCHASE
F-22 ENGINEERING AND MANUFACTURING DEVELOPMENT CONTRACT**

1. Definitions

As used herein "Buyer" means Lockheed Martin Corporation acting through 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 2.201 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

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) 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

- (e) 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

- (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

shipping labels. Combine on the same bill of lading, all shipments consigned to the same Buyer address and ship on t

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 law, in equity, or under this PO.

34. Indemnity/Commercial Items

This clause applies only to the portion, if any, of this PO that is for the purchase of a commercial item(s) as such 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 Part B and (DFARS Part B shall be applicable to the portion, if any, of the PO pertaining to the items regarding which such finding or determination was made.

35. 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)."

clause and in FAR 52.215-23; 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 15.8 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 52.215-23, then Seller agrees to indemnify and hold Buyer harmless to the full extent of any damage or expense resulting from such action."

- 52.215-23 **Price Reduction for Defective Cost or Pricing Data - Modifications (OCT 1995)** - Applies whenever FAR 52.215-25 applies to this PO. "The Contracting Officer" means "Buyer or the Contracting Officer." "United States" and "Government" mean "Buyer."
- 52.215-24 **Subcontractor Cost or Pricing Data (OCT 1995)** - Applies if this PO exceeds \$500,000 and is not otherwise exempt from the requirement to provide cost or pricing data.
- 52.215-25 **Subcontractor Cost or Pricing Data - Modifications (OCT 1995)** - Applies if this PO exceeds \$500,000 and modifications under this PO are not exempt from the requirement to provide cost or pricing data.
- 52.215-27 **Termination of Defined Benefit Pension Plans (MAR 1996)** - Applies

- 52.227-11 **Patent Rights – Retention by the Contractor (Short Form) (JUN 1997)** - Applies if this PO is for experimental, developmental, or research work and Seller is a small business concern. Reports required by this clause shall be filed with the agency indentified in the PO. If no agency is identified, contact Buyer’s authorized representative identified on the face of the contract.
- 52.227-11 **Patent Rights – Retention by the Contractor (Short Form) (JAN 1997)** - Applies if this PO is for experimental, developmental, or research work and Seller is a large business concern. Reports required by this clause shall be filed with the agency indentified in the PO. If no agency is identified, contact Buyer’s authorized representative identified on the face of the contract.
- 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."
- 52.247-63 **Preference for US - Flag Air Carriers (JAN 1997)** - Applies if this PO

Cost or Pricing Data--Modifications (JAN 1997) - "Contracting Officer" and "contracting office" means "Buyer."

52.219-8

- 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."
- 252.225-7016 **Restriction On Acquisition Of Ball And Roller Bearings (Jun 1997)**--"Contracting Officer" means "Buyer or Contracting Officer."
- 252.225-7026 **Reporting Of Contract Performance Outside The United States (NOV 1995)** - Applies if this PO exceeds \$100,000. Does not apply if the PO is for commercial items, construction, ores, natural gases, utilities, petroleum products and crudes, timber (logs), or subsistence. Paragraph (c) is deleted.
- 252.227-7013 **Rights In Technical Data--Non Commercial Items (NOV 1995).**
- 252.227-7014 **Rights In Noncommercial Computer Software And**

- 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 (JAN 1994).**
- 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 (JAN 1997).**
- 252.225-7010 **Duty-Free Entry -- Additional Provisions (JAN 1997).**
- 252.225-7012 **Preference For Certain Domestic Commodities (FEB 1997).**
- 252.225-7014 **Preference For Domestic Specialty Metals (FEB 1997) Alternate I (FEB 1997).**
- 252.225-7022 **Restriction on Acquisition of Polyacronitrile (PAN) Carbon Fiber (Jun 1997)** - Applies if the items furnished by Seller contain PAN carbon fiber.
- 252.225-7030 **Restriction on Acquisition of Carbon, Alloy, and Armor Steel Plate (OCT 1992).**
- 252.225-7036 **North American Free Trade Agreement Implementation Act (JAN 1994) - Alternate I (MAY 1995).**
- 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).**
- 252.227-7026 **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."

- 252.232-7006 **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."
- 252.249-7002 **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.

III. AIR FORCE FAR SUPPLEMENT CLAUSES

The clauses listed in this pare 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>
5352.223-9000	Elimination Of Use Of Class I Ozone Depleting Substances (ODS) (MAY 1996) - In paragraph (d) "Air Force" means "Buyer." The list in paragraph (d) is "None." In paragraph (e) "Contracting Officer" means "Buyer."
5352.223-9001	

IV. AIR FORCE MATERIAL COMMAND FAR SUPPLEMENT CLAUSES

The clauses listed in this part 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>
5352.210-9000	Elimination of Use of Class I Ozone Depleting Substances (ODS) in Air Force Procurements (OCT 1994).
5352.235-9003	Application for Equipment Frequency Authorization (AFMC) (JUL 1997) - In the second sentence "buyer at the issuing office" means "Buyer."

36. Review Of Proprietary Data

Seller hereby grants its permission to disclose and release any data submitted hereunder marked with a limited, restricted or proprietary rights legend to a support contractor retained by the Government to review the propriety of such marking; provided that such support contractor shall be prohibited from further releasing, disclosing or otherwise using such data in accordance with a Non-Disclosure Agreement.

37. 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

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

38. Foreign Nationals - Foreign Sources

(a) For purposes of this clause:

- (1) Foreign nationals are those persons not citizens of, not nationals of, or resident/immigrant aliens to, the United States;
- (2) Foreign representative is anyone, regardless of nationality or citizenship, acting as an agent, representative, official, or employee of a foreign government, a foreign-owned or influenced firm, corporation or person; and
- (3) Foreign sources are those sources (vendors, subcontractors, and suppliers) not owned and controlled by citizens or immigrant aliens of the United States.

(b) Nothing in this clause is intended to waive any requirement imposed by any goveot n2United States. 4Tj-4.5 -d con(1.15 TD-0.7.4xp.57 TD0 Tc0.0data63 0 .12orm.15 T

or data to which the person will have access, and whether the foreign national is cleared to have access to technical data (DOD 5220.22-M, National Industrial Security Program Operating Manual (NISPOM)). (AFMC FAR SUP 5352.293-9002, Dec 1995).