

**Prime Contracts F33657-03-C-2014; F33657-00-C-0018; F33657-95-C-2055
and
C-130J Program General Procurement**

**LOCKHEED MARTIN CORPORATION
LOCKHEED MARTIN AERONAUTICS COMPANY**

**APPENDIX 4
TERMS AND CONDITIONS OF PURCHASE
C-130J PROGRAM**

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; "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 contract between Buyer and its customer under which this PO is issued.

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 for a period of one year from the date of delivery under this PO 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. 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

- (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 from the award of this PO.
- (3) FAR 52.209-5 Certification Regarding Debarment, Suspension, Proposed Debarment, And Other Responsibility Matters (Applicable to solicitations/ POs in excess of \$25,000)
 - (i) 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.
 - (iii) 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.

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 property Seller 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 personally 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.

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.

10. Data Rights

- (a) Rights and Reservations. The information contained in reports, drawings, documents or other records which are furnished to Seller by Buyer (hereinafter referred to as "property") relative to this PO, to the extent that such information is not in the public domain, shall not be disclosed to others, except to subcontractors as necessary for completion of this PO, in which event the subcontractors shall have the same obligation of nondisclosure and restriction on use. Such information shall not be used or reproduced for any purpose whatsoever except in the performance of work under this PO. Upon completion, termination or cancellation of this PO, Seller shall, if requested by Buyer, return all property to Buyer thirty (30) days after the effective date of such completion, termination or cancellation. Any such property of Buyer retained by Seller shall remain subject to the foregoing restrictions on use, reproduction and disclosure.
- (b) Rights in Seller Data.
 - (1) In addition to any other provision of this PO providing Buyer and/or Buyer's customers rights in Data delivered under this PO, Seller grants to Buyer:
 - (i) A worldwide, perpetual, royalty-free, nonexclusive right and license to: (A) utilize and have utilized on Buyer's behalf the Data delivered under this PO for Buyer's own internal purposes in connection with the development, certification, validation and production of the Hercules (C-130J/382J) Aircraft, and (B) disclose the Data delivered under this PO, in confidence, to any third party for accomplishing such internal purposes, providing any such disclosure is made pursuant to a written understanding

- (ii) A worldwide, perpetual, royalty-free, nonexclusive right and license to grant to Buyer's customers the right to: (A) utilize and have utilized by Buyer's customer, the Data delivered under this PO for the operation, maintenance and repair of Hercules Aircraft, and (B) disclose the Data delivered under this PO, in confidence, to any third party for the operation, maintenance, and repair of the Hercules Aircraft, providing any such disclosure is made pursuant to a written understanding precluding unauthorized use and disclosure by provisions no less restrictive than those imposed on the parties hereunder.
 - (2) Seller further agrees to negotiate in good faith with Buyer's customers and potential customers such further rights to Data of Seller, should Buyer's customers or potential customers so desire.
 - (3) "Data" as used in this paragraph (b) means recorded information regardless of form or the method of recording. Data includes, but is not limited to, computer software and copyrightable works.
- (c) With respect to any design or development work required to be performed at Buyer's expense under this PO, Seller her

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 reasonably deem necessary in order to comply with the provisions of the prime contract(s) or with the provisions of amendments to the prime contract(s) under which this PO is issued. If any such amendment to this PO causes an increase or decrease in the cost of this PO, or the time required for performance of this PO, an equitable adjustment shall be made in the price or delivery schedule, or both, in accordance with the provisions of the "Changes" clause of this PO.

14. Remedies/Waiver

- (a) The rights and remedies provided under this PO 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

Neither this PO nor any duty or right under it shall be delegated or assigned by Seller 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 for monies due or to become due hereunder and without notice to the assignee.

16. Ozone Depleting Substances ("ODS")

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

17. Reserved

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 related to this PO. Seller shall include this clause in all of Seller's subcontracts under this PO.

20. Governing Law

This PO shall be governed by and construed in accordance with the laws of the State of Georgia, USA., excluding its choice of law rules.

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. Either: (a) acknowledgment of this PO, (b) furnishing of Items under this PO, (c) acceptance of payment under this PO, or (d) commencement of performance of this PO, shall constitute Seller's unqualified acceptance of this PO. Additional or differing terms or conditions proposed by Seller or included in Seller's acknowledgment hereof shall be void and have no effect unless accepted in writing by Buyer.

22. Packing, Shipment and Shipping Instructions

- (a) Unless otherwise specified by Buyer, Seller shall assure that all packing and packaging shall comply with good commercial practice and applicable carrier's tariffs. The use of commercial practices shall not relieve Seller of responsibility for packaging in a manner that will insure receipt of Items in an acceptable condition at the destination specified in this PO.
- (b) Seller shall assure the packaging, labeling and shipping of all HAZARDOUS SUBSTANCES including DANGEROUS MATERIALS, conforms to all applicable international, federal, state and local laws and regulations.
- (c) Seller shall mark on the outside of each exterior container: (i) the PO number(s) or numbers of the Items packed in that container; (ii) the sequence and quantity of each exterior container in each shipment (such as "1 of 3"); (iii) the bill of lading/express receipt number. If shipments against more than one purchase order are packed in one exterior container, mark

- (c) Except as may otherwise be expressly provided in this PO, if any change under paragraph (a) above causes an increase or decrease in the cost or performance of any part of this PO, whether or not directed by such change, Buyer shall make an equitable adjustment in the PO price, and the PO shall be modified accordingly in writing.
- (d) Such equitable adjustment, if any, shall be calculated in a manner similar to that used to originally price the PO and shall be for the net increase or decrease in the cost for the changed portion only. In no event shall Seller reprice any portion of the Items unaffected by the change. Seller must assert its right to an adjustment under this clause within thirty (30) days from the date of the change to which such adjustment is attributable.
- (e) Seller agrees that its failure to submit such claim or claims within the applicable time period shall constitute a waiver thereof unless, for good cause, Seller requests in writing, prior to expiration of the applicable time period that a time extension for filing its claim or claims be granted by Buyer and Buyer grants such extension. Any such extensions, if approved, shall be effective only if authorized in writing by Buyer's authorized procurement representative. Prior to final settlement of any timely filed claim or claims, Seller may submit revisions to such claims or claims provided that such revisions do not introduce different areas of costs or claim elements.
- (f) Nothing contained in this clause shall relieve Seller from proceeding without delay in the performance of this PO as changed.

28. Notification of Changes

- (a) Only Buyer's Authorized Representative may direct or redirect Seller's effort hereunder. In the event, however, Seller considers any conduct including any action, inaction, written or oral communication by Buyer or Buyer's customer to constitute a change to this PO, other than a written change order issued by Buyer's Authorized Representative, Seller shall notify Buyer as soon as possible but in no event later than fifteen (15) days from the date Seller identifies the conduct considered to constitute a change to this PO. On the basis of the most accurate information available to Seller, the notice shall state: (1) the date, nature and circumstances of the conduct regarded as a change; (2) the name, function, and activity of each Buyer employee, customer employee and Seller employee involved in or knowledgeable about such conduct; (3) the identification of any documents and the substance of any oral communication involved in such

require Seller to (i) repair or replace or reperform at Seller's expense any Items which fail to meet the requirements of applicable design, specifications, drawings, samples, descriptions or other requirements of this PO, or (ii) to refund the price of any such Item. Previously rejected Items

- (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 U.S. export licenses are obtained prior to the transfer of any defense articles or technical data or other information to the prospective lower-tier subcontractor.

35. 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:

received and reviewed all drawings, specifications and documents referred to in this PO either prior to or simultaneous with the execution of this PO, and Seller represents that it has the capability and resources to design and produce all such goods or services described herein. Seller agrees that it hereby assumes all risks of impossibility of performance, and commercial impracticability, under this PO.

39. Compliance with Regulations

The following Federal Acquisition Regulation ("FAR") and DoD FAR Supplement ("DFARS") clauses are incorporated herein by reference, subject to the modifications/ applications indicated and the following definitions: "Contract" and "schedule" means "this PO," "Contractor" means "Seller," except in the phrase "prime contractor," "Subcontractor(s)" means lower-tier subcontractor(s) and "Supplies" means "Item(s)."

Part I. FAR Clauses

<u>Citation</u>	<u>Clause Name</u>
52.203-6	Restrictions on Subcontractor Sales to the Government (Jul 1995) Alternate I (Oct 1995) - Applies if this PO exceeds \$100,000.
52.204-2	Security Requirements (AUG 1996) - Applies if access to classified Information is required. The reference to the Changes clause in paragraph (c) shall mean the Changes clause of this PO.
52.211-15	Defense Priority and Allocation Requirements (SEP 1990).
52.219-8	Utilization of Small Business Concerns 1999) (Oct 2000).
52.219-9	Small, Small Disadvantaged and Women-Owned Small Business Subcontracting Plan (Jan 2002) - Applies if this PO exceeds \$500,000, unless Seller is a small business concern. Contracting Officer" means "Buyer" in the first sentence of paragraph (c).
52.222-21	Prohibition of Segregated Facilities (FEB 1999)
52.222-26	Equal Opportunity (FEB 1999).
52.222-35	Affirmative Action for Special Disabled Veterans, Veterans of the Vietnam Era and other Eligible Veterans (DEC 2001) - Applies if this PO exceeds \$25,000.
52.222-36	Affirmative Action for Workers with Disabilities (JUN 1998) - Applies if this PO exceeds \$10,000.
52.222-37	Employment Reports on Disabled Veterans, Veterans of the Vietnam Era and Other Eligible Veterans (DEC 2001) - Applies if this PO is for \$25,000 or more except does not apply if this PO is for a commercial item.
52.225-8	Duty-Free Entry (FEB 2000) - Applies if supplies will be imported into the Customs Territory of the United States. Contracting Officer" means "Buyer" except in paragraphs (d) and (h). In subparagraph (b)(1) "20 days" is changed to "30 days." In subparagraph (b)(2), replace the fifth word "determines" with "has been notified." Communication/notification

Part II. DFARS Clauses

<u>Citation</u>	<u>Clause Name</u>	<u>Date</u>
252.225-7001	Buy American Act and Balance of Payments Program	(Mar 1998)
252.225-7002	Qualifying Country Sources as Subcontractors	(DEC 1991).
252.225-7009	Duty-Free Entry -- Qualifying Country End Products and Supplies	(AUG 2000) - Applies if this PO is for supplies.
252.225-7010	Duty-Free Entry - Additional Provisions	(AUG 2000)
252.225-7012	Preference for Certain Domestic Commodities	(APR 2002) – Does not apply if this PO is for a commercial item.
252.225-7014	Preference for Domestic Specialty Metals	(MAR 1998) (Alternate I (MAR 1998) - Applies if the Supplies furnished under this PO contain specialty metals.
252.225-7016	Restriction on Acquisition of Ball and Roller Bearings	(DEC 2000) Does not apply if this PO is for a commercial item. If the PO is for other than a commercial item, applies if the supplies contain ball or roller bearings. "Contracting Officer" means "Lockheed Martin or Contracting Officer."
252.225-7027	Limitation on Sales Commissions and Fees	(MAR 1998) - The reference to the clause in paragraph (a) means FAR 52.203-5. The blank in paragraph (b)(1) is completed with "any Government." Subparagraph (b)(2) is deleted.
252.225-7028	Exclusionary Policies and Practices of Foreign Governments	(DEC 1991).
252.225-7032	Waiver of United Kingdom Levies	(OCT 1992) - Applies if this PO exceeds \$1,000,000 and Seller is a United Kingdom firm.
252.227-7015	Technical Data - Commercial Items	(NOV 1995) - Applies to all Items furnished under this PO.
252.243-7002	Requests for Equitable Adjustment	(MAR 1998) - Applies if this PO exceeds \$100,000. "Government" means "Buyer or the Government"
252.247-7023	Transportation of Supplies by Sea	(MAR 2002) -In paragraph (g) "Government" and "Contracting Officer" mean "Lockheed Martin" and the words "of the Prompt Payment clause" are deleted. If this contract is less than \$100,000 only paragraphs (a) through (e) of the clause applies.
252.247-7024	Notification of Transportation of Supplies by Sea	(MAR 2000) - Applies (1) if this PO is for noncommercial items , or (2) if this PO is for commercial items that meet the definition of paragraph (b)(2) of the clause. "Contracting Officer" means "Buyer."

40. Barred Software

Seller, unless it has obtained Buyer's prior written consent, which Buyer may withhold in Buyer's sole discretion, shall not provide Buyer with software that incorporates or embeds software in, or uses software in connection with, as part of,

bundled with, or alongside any (1) open source, publicly available, or “free” software, library or documentation, (2) software licensed under the General Public License (“GPL”) or Lesser/Library GPL, the Artistic License (e.g., PERL), the Mozilla Public License, the Netscape Public License, the Sun Community Source License, the Sun Industry Standards License, or variations thereof, including without limitation licenses referred to as “GPL-Compatible, Free Software License” (hereinafter referred to as the “Barred Licenses”) or (3) software provided under a license that (a) subjects the provided software to any of the Barred Licenses, or (b) requires the provided software to be licensed for the purpose of making derivative works or be redistributable at no charge, or (c) obligates Buyer to sell, loan, distribute, disclose or otherwise make available or accessible to any third party(ies) (i) the provided software or any portion thereof, in object code and/or source code formats, or (ii) any products incorporating the provided software, or any portion thereof, in object code or source code formats.

Seller, at its own expense, shall defend Buyer, Buyer’s employees, and/or Buyer’s customers against any and all claims, suits and other actions relating to the use of provided software, however arising, including without limitation those arising from claims of violation of Barred License provisions or claims of infringement of any patent, trademark, copyright or trade secret right relating to the use of any Barred License in Items furnished by Seller.