

- (b) Buyer and Buyer's customer each shall have the right to inspect and test all Services called for by this PO, to the extent practicable at all times and places during the term of this PO. All inspections and tests shall be performed in a manner that will not unduly delay the work.
- (c) If Buyer and/or Buyer's customer perform inspections or tests on the premises of Seller or Seller's subcontractor(s), Seller shall furnish, and shall require subcontractors to furnish, without additional charge, all reasonable facilities and assistance for the safe and convenient performance of these duties.
- (d) If any of the Services do not conform with PO requirements, Buyer may require Seller to perform the Services again in conformity with PO requirements, at no increase in the PO amount. When the defects in Services cannot be corrected by reperformance, Buyer may (1) require Seller to take necessary action to ensure that future performance conforms to PO requirements and (2) reduce the price specified in this PO to reflect the reduced value of the Services performed.
- (e) If Seller fails to promptly perform the Services again or to take the necessary action to ensure future performance is in conformity with PO requirements, Buyer may (1) by contract or otherwise, perform the Services and charge to Seller any cost incurred by Buyer that is directly related to the performance of such Service or (2) terminate this PO for default.

4. Variation in Quantity

Services shall not be supplied in excess of quantities specified herein. Seller shall be liable for all charges and costs for any excess quantities; and, unless Seller agrees to pay such costs, the excess Services will be retained by Buyer at no cost.

5. Prices

Unless otherwise specified, prices include all applicable federal, state and local taxes, duties, tariffs, and similar fees imposed by any government. Seller warrants that prices charged for the Services are not higher than those charged to any other customer, including, without limitation, the U.S. Government, for Services of like grade and quality in similar or lesser quantities.

6. Invoices, Payments, and Discounts

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

comparing, and sequencing) from, to, and between the twentieth and twenty-first centuries, and the years 1999 and 2000 and leap year calculations, to the extent that other information technology, used in combination with the information technology being acquired, properly exchanges date/time data with it.

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

This provision takes precedence over all other provisions of this agreement with respect to Year 2000 compliance. In the event of a discovery of any non-compliance, either before, concurrent with, or subsequent to delivery of a good or service under this agreement, the discovering party shall notify the other party within five (5) business days of discovery. If the defective good or service is being presented for acceptance or has already been delivered, at Lockheed Martin's option, the defective

326 Tw1en22 Tw-18.mn C Tc0.21375 Tw(good os

Lockheed Mar it.

- (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.

9. Changes

- (a) Buyer's authorized representative may at any time, by written notice, and without notice to sureties or assignees, make changes within the general scope of this PO in any one or more of the following: (i) description of Services to be performed; (ii) time of Services to be performed (hours of the day, days of the week, et cetera); (iii) place of performance (iv) delivery schedule.
- (b) Except as may otherwise be expressly provided in this PO, if any such change under subparagraphs (a)(i), (ii), or (iii) above causes an increase or decrease in the time required for performance of this PO, whether or not directed by such change, Buyer shall make an equitable adjustment in the delivery schedule, and the affected PO(s)

- (f) Failure to agree to any adjustment shall be a dispute under the “Disputes” clause of this PO. However, nothing contained in this “Changes” clause shall relieve Seller from proceeding without delay in the performance of this PO as changed.

10. Responsibility for Property

Unless otherwise specified, Seller shall be liable for any loss or destruction of or damage to property of Buyer or any customer of Buyer whether furnished to Seller by any such customer or by 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 provision of this order. Upon request of Buyer such property will be delivered to Buyer at Seller's expense. Seller will 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 or such customer, 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.

11. Data Rights

Data and Information Disclosed to Buyer

Unless the data and information disclosed to Buyer is covered by and identified in accordance with a Proprietary Data Agreement between Buyer and Seller, any data and information which Seller has disclosed or may hereafter disclose to Buyer in connection with the purchase of the Services covered by this PO shall not be deemed to be proprietary data and information; and it shall be acquired by Buyer free from any restrictions regarding its use or disclosure.

Information Disclosed to Seller

Seller shall keep confidential all information, drawings, specifications or data either:

- (a) furnished by Buyer and captioned as proprietary or
- (b) prepared by Seller specifically in connection with the performance of this PO; and, Seller shall not divulge or use such information, drawings, specifications or data to provide goods or Services to any other customer. Except as required for the efficient performance of this PO, Seller shall not make copies or permit copies to be made without the prior written consent of Buyer. Seller shall thereafter make no further use, either directly or indirectly, of any such information, drawings, specifications, data, or of any derivation therefrom without obtaining Buyer's written consent. This clause shall not apply to information after its entry into the public domain other than as a result of a breach of this clause.

Items Developed by Seller for Buyer

Any invention, discovery, proprietary information, maskwork, software, system, data or report resulting from the work performed under this PO shall be the sole property of Buyer. All patents, copyright, trade secrets, trademarks, maskworks or other intellectual property resulting from work under this PO shall be the sole property of Buyer. Buyer shall have the full right to use such property in any manner without any claim on the part of Seller and without any duty to account to Seller for such use. Seller agrees to assign to Buyer any patent or patent application resulting from work performed under this PO, and to provide reasonable support for Buyer's prosecution of such patent application. Buyer and Seller agree that any original work of authorship created under this PO is a work made for hire for purposes of copyright ownership. To whatever extent Seller has any interest in any original work of authorship created under this PO, Seller agrees to assign and hereby assigns its entire interest in such work to Buyer, including all rights to derivative works.

12. Termination for Default

- (a)(1) Buyer may, subject to subparagraphs (c) and (d) below, by written notice of default to Seller, terminate this PO in whole or in part if (i) Seller fails to deliver or perform the Services within the time specified in this PO or any extension; (ii) Seller fails to make progress, so as to endanger performance of this PO (but see subparagraph (a)(2) below); (iii) Seller fails to perform any of the other provisions of this PO (but see subparagraph (a)(2) below); or (iv) in the event of the institution of any proceedings by or against Seller in bankruptcy or insolvency under any provisions of the Bankruptcy Act or for the appointment of a receiver or trustee or any assignment for the benefit of creditors.
- (a)(2) Buyer's right to terminate this PO under subdivisions (a)(1)(ii) and (a)(1)(iii) above may be exercised if Seller does not cure such failure within 10 days (or more if authorized in writing by Buyer) after receipt of the notice from Buyer specifying the failure.
- (b) If Buyer terminates this PO for default in whole or in part, Buyer shall have the

- "materials" in this clause) that Seller has specifically produced or acquired for the performance of the terminated portion of this PO. Upon direction of Buyer, Seller shall also protect and preserve property in its possession in which Buyer has an interest.
- (d) Buyer shall pay the PO price for completed Services delivered and accepted. Seller and Buyer shall agree on the amount of payment for manufacturing materials delivered and accepted and for the protection and preservation of the property. Failure to agree will be a dispute under the "Disputes" clause of this PO. Buyer shall have the right to withhold from these amounts any sum Buyer determines to be necessary to protect Buyer against loss because of outstanding liens or claims of former lienholders.
 - (e) After termination, if it is determined that Seller was not in default, or that the default was excusable, as set forth in the "Force Majeure" clause of this PO, the rights and obligations of Buyer and Seller shall be the same as if the termination had been issued for the convenience of Buyer.
 - (f) The rights and remedies of Buyer in this "Termination for Default" clause are in addition to any other rights and remedies provided at law, in equity, or under this PO.

13. Termination for Buyer's Convenience

- (a) Buyer may terminate this PO, in whole or in part, at any time for its convenience by notice to Seller in writing. On receipt by Seller of such notice, Seller shall immediately comply with Buyer's instructions and, to the extent specified therein, stop work and the placement of subcontracts hereunder, terminate work under subcontracts outstanding hereunder, and take any action necessary to protect property in Seller's possession in which Buyer has or may acquire an interest. Within thirty (30) days of receipt by Seller of such notice, Seller shall advise Buyer of the actions taken by Seller to comply with Buyer's instructions and Seller shall also notify Buyer of Seller's intent to file a termination claim.

In the event Buyer terminates and Seller submits a termination claim, Buyer shall pay to Seller the following: (i) amounts due for completed Items delivered and accepted or performed in accordance herewith, and not

therefore paid for prior to the effective date of termination; (ii) actual work in process costs incurred by Seller if properly allocable and apportioned under generally accepted accounting principles and practices to the terminated portion of this PO, including liabilities to subcontractors which are so allocable, excluding any and all costs of supplies which either can be diverted to other purchase orders of Seller or retained by Seller for its own use or future purchase orders, and exclusive of any costs attributable to Seller's supplies paid or to be paid for under (i) above; (iii) reasonable settlement expenses; and (iv) a sum, as profit, determined by Buyer to be fair and reasonable, on the work performed prior to receipt of the termination notice; provided, however, if it appears that Seller would have sustained a loss on the entire PO had it been completed, Buyer shall allow no profit under this subparagraph (iv) and shall reduce the total settlement to reflect the indicated rate of loss. In no event shall the total settlement (including settlement expenses) exceed the PO price.

- (b) Should there be an overpayment by Buyer to Seller as determined in accordance with subparagraph (a) above, as the result of a termination, Seller shall promptly reimburse Buyer for all sums overpaid. Seller's termination claim shall be submitted within 120 days after the effective date of the termination on forms provided by Buyer. Buyer shall not be required to make any determination on any late claim.
- (c) Seller agrees that its failure to submit a termination claim(s) within the 120 day period set forth in subparagraph (b) above shall constitute a waiver thereof unless Seller requests in writing prior to expiration of such time period that a time extension for filing its claim or claims be granted by Buyer. Any such extension, if approved, shall be effective only if authorized in writing by Buyer.
- (d) Buyer or Buyer's representative shall have the right to audit Seller's claim(s) within 120 days after the effective date of termination. If Seller fails to provide access to its records within 120 days after the effective date of termination, Seller shall be deemed to have waived its right to a settlement. Seller shall be liable for the cost of such audit, including reasonable attorney's fees and costs. Seller shall be liable for the cost of such audit, including reasonable attorney's fees and costs. Seller shall be liable for the cost of such audit, including reasonable attorney's fees and costs.

manner similar to that used to originally price the Services and shall be for the increase or decrease in the cost caused only by the stop work.

15. Force Majeure

Neither Buyer nor Seller shall be liable, nor be deemed in default or failed in its performance of its obligations under this PO where such fail^{2.2}his PO

17. Entry on Buyer's Property; Insurance

- (a) In the event that Seller or Seller's employees, contractors or agents enter on to Buyer's premises for any reason in connection with this PO, Seller and such employees, contractors or agents shall observe all military security requirements and all plant safety, plant protection and traffic regulations.
- (b) Seller, and any contractors used by Seller in connection with this PO, shall carry Workers Compensation and Employee's Liability Insurance to cover Seller's and such contractors' or agents' legal liability on account of accidents to their respective employees. Seller and its contractors shall carry adequate Comprehensive General Liability and adequate Comprehensive Automobile Liability Insurance covering the legal liability of Seller and such contractors and agents on account of accidents arising out of the operations of Seller or such contractors or agents 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. Seller agrees to obtain the insurance coverage listed above whether or not insurance coverage is required elsewhere in this PO.

18. Waiver

Failure by Buyer either to enforce at any time the provisions hereof or to protest at any time any breach or default thereof shall not be construed as evidence to interpret the requirements of this PO, nor as a waiver of the provisions containing such requirements, nor as a waiver 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. All rights and obligations hereunder shall survive final performance of this PO.

19. 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 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 Services in accordance with this PO. Upon resolution of any such dispute, this PO shall be equitably adjusted, if necessary, to reflect such resolution.

20. Technical Surveillance

Buyer and authorized representatives of Buyer's customers shall have direct access to all areas of Sellers and Seller's subcontractors' plants where work under this PO is being performed, to review the work in process and to witness testing of Services, or materials furnished or utilized in the performance of such Services, related to this PO. Seller shall include this clause in all of Seller's subcontracts under this PO.

21. 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.

22. 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 order may be assigned to a bank, trust company or other financing institution, including any Federal lending agency, by Seller without such consent. Buyer shall be furnished 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.

23. Governing Law

Unless otherwise expressly set forth herein, this PO shall be construed, interpreted and applied in accordance with the laws of Texas, excluding its choice of state law rules.

24. Acceptance of Order

This PO is the entire agreement between 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 Services under this PO, (c) acceptance of payment under this PO, or (d) commencement of performance, 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.

25. Packing, Shipment, and Shipping Instructions

- (a) Unless otherwise specified, 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 re

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.

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

