

LOCKHEED MARTIN CORPORATION

PRIME SUPPLEMENTAL FLOWDOWN DOCUMENT (PSFD)

**ADDITIONAL TERMS AND CONDITIONS FOR SUBCONTRACTS/PURCHASE ORDERS
UNDER**

PRIME CONTRACT TC-99-024
SUPPLEMENT 0024a

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20 May 2003

The Terms and Conditions listed below are incorporated by reference and made a part of this Contract. Unless otherwise limited in this Contract, each document applies in its entirety.

In the event of a conflict between the version or date of a clause set forth in this document and the version or date of a clause set forth in the identified CorpDocs, the version or date of the clauses set forth in this document shall take precedence.

To the extent that any clause included in this PSFD is inapplicable to the performance of this Contract, the parties shall consider such clauses to be self-deleting and shall not impose any obligations upon the SELLER.

A. In addition to Appendix 'A' 26th Series Standard Purchase Order Terms and Conditions applicable to this Purchase Order, the following terms and conditions set forth in this Attachment shall apply. In the event of any conflict between this Attachment and other documents, the order of priority shall be as follows:

- (1) The face of the Purchase Order;
- (2) The terms and conditions of this Attachment; (3) Appendix 'A';
- (4) Other documents incorporated by reference.

B. Clause 34 is deleted and the following substituted in lieu thereof:

34. INDEMNITY/COMMERCIAL ITEMS

This clause applies only to the portion, if any, of this PO as is for the purchase of a commercial item(s) as such term - "Commercial 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 A shall be applicable to the portion, if any, of the PO pertaining to the items regarding which such finding or determination was made.

C. Clause 36 is deleted and the following is substituted in lieu thereof:

36. Compliance with Regulations

The following Federal Acquisition Regulation ("FAR") 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)."

PART

A FAR

TITLE

The clauses listed in this FAR, Part A, are not applicable to the portion, if any, of this PO which is for a 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

- 52.203-6 Restrictions on Subcontractor Sales to the Government (JUL 1995) - If this PO exceeds \$100,000.
- 52.203-12 Limitation on Payments to Influence Certain Federal Transactions (JUN 1997) - If this PO exceeds \$100,000. Change the beginning of paragraphs c(1) and c(2) to read: "Seller shall file with Buyer a disclosure form...," and "such person" means Seller.
- 52.204-4 Printing/Copying Double Sided on Recycled Paper (JUN 1996).
- 52.215-2 Audit & Records – Negotiation (AUG 1996).
- 52.215-10 Price Reduction for Defective Cost or Pricing Data (OCT 1997)) - In paragraph (a)(2), "subcontractor" means Seller or Seller's subcontractors, and "Contractor" means Buyer. If Buyer is subject to any liability or expense, including without limitation Government withholding of payments, as the result of: 1) Seller's or its lower-tier subcontractors' submission and/or certification of alleged or actual defective cost or pricing data, as set forth in this clause and in 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 specified by Buyer in its 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 specified in such certificate; or 3) the Government 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 that the price offered by the Seller or lower-tier subcontractor is based on an established catalog or market price of a commercial item sold in substantial quantities to the general public, is a price set by law or regulation, is a commercial item; or, on any other basis set forth in FAR 15.804-1 (or FAR 15.403-1, as applicable) 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, as applicable), 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 he 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) with its Alternate 1 (OCT 1997).
52.215-15	Termination of Defined Benefit Pension (OCT 1997) - If this PO requires certified cost or pricing data and any preaward or postaward cost determinations will be subject to FAR part 31. "Government" means Government and Buyer.
52.215-18	52.215-18, Reversion or Adjustment of Plans for Postretirement Benefits (PRB) Other Than Pensions (OCT 1997) - If this PO requires certified cost or pricing data or if any preaward or postaward cost determinations will be subject to FAR part 31.
52.215-19	Notification of Ownership Changes (OCT 1997) - If this PO requires cost or pricing data, or if any preaward or postaward cost determination will be subject to FAR subpart 31.2.
52.222-1	Notice to the Government of Labor Disputes (FEB 1997) - "Contracting Officer" means Buyer.
52.222-20	Walsh Healy Public Contracts Act (DEC 1996) - If this PO exceeds \$10,000.
52.222-37	Employment Reports on Special Disabled Veterans and Veterans of the Vietnam Era (JAN 1999) - If this PO is for \$10,000 or more.
52.223-2	Clean Air and Water (APR 1984).
52.228-5	Insurance - Work on a Government Installation (JAN 1997) - If work is to be performed on a Government installation.
52.244-5	Competition in Subcontracting (DEC 1996).

PART B

FAR

TITLE

Unless otherwise specifically set forth, the clauses listed in this FAR, 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.

52.203-7	Anti-kickback Procedures (JUL 1995) - If this PO exceeds \$100,000. Delete paragraph (c)(1). In paragraph (c)(2), sentence two, insert "Buyer and to" after the sixth word "to." In paragraph (c)(3), insert "Buyer and" after the sixth word "with." Add the following to the end of paragraph (c)(4): "In addition to any other remedies which the Buyer has at law, in equity, or under this PO, Buyer shall have the right to withhold from Seller the amount, if
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- any, that the Contracting Officer directs Buyer to withhold from Seller.”
- 52.204-2 Security Requirements (AUG 1996) - If access to classified material is required.
 - 52.211-5 New Material (OCT 1997) - “Contracting Officer” and “Government” mean Buyer in the last two sentences.
 - 52.219-8 Utilization of Small, Small Disadvantaged and Women-Owned Small Business Concerns (JAN 1999).
 - 52.219-9 Small, Small Disadvantaged and Women-Owned Small Business Subcontracting Plan (JAN 1999) - If this PO contains the clause at FAR 52.219-8. “Contracting Officer” means Buyer in the first sentence of paragraph (c).
 - 52.222-26 Equal Opportunity (FEB 1999).
 - 52.222-35 Affirmative Action for Special Disabled and Vietnam Era Veterans (APR 1998) - If this PO exceeds \$10,000.
 - 52.222-36 Affirmative Action for Handicapped Workers (JAN 1998) - If this PO exceeds \$2,500.
 - 52.225-10 Duty-Free Entry (APR 1984) - Except where noted herein, “Contracting Officer” and “contract administration office” mean Buyer, and “foreign” means non-U.S. In Paragraph (b)(1), change “20 days” to “30 days,” and “contract” means the prime contract(s). In Paragraph (b)(2), delete the fifth word “determines” and substitute the words “has been notified” in lieu thereof. In Paragraph (d), “Contracting Officer” means Contracting Officer, and “this contract” means the prime contract(s). In Paragraph (e), “this contract” means the prime contract(s), and “Contracting Officer” means Contracting Officer. In Paragraph (h), “contract administration office” means contract administration office, and “Contracting Officer” means Contracting Officer.
 - 52.225-11 Restrictions on Certain Foreign Purchases (AUG 1998).
 - 52.229-4 Federal, State and Local Taxes (Noncompetitive Contract) (JAN 1991) - “Government” and “Contracting Officer” mean Buyer except in (a), the excepted tax definition, “Government” means Government.
 - 52.229-5 Taxes - Contracts Performed in U.S. Possessions or Puerto Rico (APR 1984).
 - 52.244-6 Subcontracts for Commercial Items and Commercial Components (APR 1998).
 - 52.245-2 Government Property (Fixed-Price Contracts) (DEC 1989) - “Government” means Buyer except 1) in the terms “Government-furnished property” and “Government property,” 2) the second time it appears in Paragraph (b)(1)(ii), 3) in Paragraph (c)(1), 4) in Paragraph (f), and 5) in Paragraph (j) and subparagraph (j)(1), “Government” means Government or Buyer. The fourth sentence of paragraph (h) is changed to read: “Neither the Government nor the Buyer shall be liable...”

D. The following clauses are added:

37. RIGHTS IN DATA – GENERAL

(a) Seller is required to deliver only the data items (1) listed in the Supplier Data Requirements List (SDRL) included in or made a part of this PO, (2) identified in any other clause under this PO, and (3) identified in and deliverable under any contract clause of FAR Subpart 52.2 incorporated into and made a part of this PO.

(b) The clauses at FAR 52.227-14 "Rights in Data - General" and Alternate IV are incorporated herein by reference except as used in said clause "Contractor" means "Seller," "contract" means "this Agreement," "Government" means "Buyer and/or the Government," "Contracting Officer" means "Buyer and/or the Contracting Officer" and "subcontract" means "lower tier subcontract." The provisions of the foregoing clause which provides that a failure to agree shall be a dispute within the meaning of the Government contract clause entitled "Disputes" shall have no force or effect.

38. ADDITIONAL DATA REQUIREMENTS

The clause at FAR 52.227-16 "Additional Data Requirements" is incorporated herein by reference except as used in said clause the term "Contracting Officer" means "Buyer," "Contractor" means "Seller," and "contract" means "this Agreement."

39. TECHNICAL DATA CERTIFICATION, REVISION AND WITHHOLDING OF PAYMENT—MAJOR SYSTEMS

(a) SCOPE OF CLAUSE. This clause shall apply to all technical data (as defined in the Rights in Data—General Clause included in this PO) subject to this clause. It shall apply to all such data delivered, or required to be delivered, at any time during contract performance or within 3 years after acceptance of all items (other than technical data) delivered under this PO unless a different period is set forth herein. The Buyer may release the Seller from all or part of the requirements of this clause for specifically identified technical data items at any time during the period covered by this clause.

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(b) TECHNICAL DATA CERTIFICATION

(1) All technical data that are subject to this clause shall be accompanied by the following declaration upon delivery:

TECHNICAL DATA DECLARATION (JAN 1997)

The Contractor, _____, hereby declares that to the best of its knowledge and belief the technical data delivered herewith under Government Contract No. _____, (and subcontract _____, if appropriate) are complete, accurate, and comply with the requirements of the contract concerning such technical data.

(End of Declaration)

(2) The Buyer and Government shall rely on the declarations set out in paragraph (b)(1) of this clause in accepting delivery of the technical data, and in consideration thereof may, at any time during the period covered by this clause, request correction of any deficiencies which are not in compliance with order requirements. Such corrections shall be made at the expense of the Seller. Unauthorized markings on data shall not be considered a deficiency for the purpose of this clause, but will be treated in accordance with paragraph (e) of the Rights in Data—General clause included in this contract.

(c) TECHNICAL DATA REVISION. The Seller also agrees, at the request of the Buyer, to revise technical

data that are subject to this clause to reflect engineering design changes made during the performance of this contract and affecting the form, fit, and function of any item (other than technical data) delivered under this order. The Seller may submit a request for an equitable adjustment to the terms and conditions of this order for any revisions to technical data made pursuant to this paragraph.

(d) WITHHOLDING OF PAYMENT

(1) At any time before final payment under this contract the Buyer may, in the Buyer or Government’s interest, withhold payment until a reserve not exceeding \$100,000 or 5 percent of the amount of this order, whichever is less, if in the Buyer’s opinion respecting any technical data that are subject to this clause, the Seller fails to—

(i) Make timely delivery of such technical data as required by this order;

(ii) Provide the declaration required by subparagraph (b)(1) of this clause; (iii) Make the corrections required by subparagraph (b)(2) of this clause; or (iv) Make revisions requested under paragraph (c) of this clause.

(2) Such reserve or balance shall be withheld until the Buyer has determined that the Seller has delivered the data and/or has made the required corrections or revisions. Withholding shall not be made if the failure to make timely delivery, and/or the deficiencies relating to delivered data, arose out of causes beyond the control of the Seller and without the fault or negligence of the Seller.

(3) The Buyer may decrease or increase the sums withheld up to the sums authorized in subparagraph (d)(1) of this clause. The withholding of any amount under this paragraph, or the subsequent payment thereof, shall not be construed as a waiver of any Buyer or Government rights.

40. RIGHTS TO PROPOSAL DATA (TECHNICAL)

Except for data contained in the SOW, it is agreed that as a condition of award of this order, and notwithstanding the conditions of any notice appearing thereon, the Buyer and Government shall have unlimited rights (as defined in the “Rights in Data—General” clause contained in this contract) in and to the technical data contained in the proposal upon which this order is based.

41. ORGANIZATIONAL CONFLICTS OF INTEREST

(1) The Seller warrants that, to the best of its knowledge and belief, there are no relevant facts or circumstances which could give rise to an organizational conflict of interest, as defined in Federal Acquisition Regulation (FAR) Subpart 9.5, or that the Seller has disclosed all such relevant information in writing to the Buyer.

(2) The Seller agrees that if an actual or potential organizational conflict of interest is discovered after award, the Seller will make a full disclosure in writing to the Buyer no later than three working days after discovery. This disclosure shall include a description of actions which the Seller has taken or proposes to take, after consultation with the Buyer, to avoid, mitigate, or neutralize the actual or potential conflict.

(3) Remedies. The Buyer may terminate this order for convenience, in whole or in part, if it deems such termination necessary to avoid an organizational conflict of interest. If the Seller was aware, or should have been aware, of a potential organizational conflict of interest prior to award or discovered an actual or potential conflict after award and did not disclose or misrepresented relevant information to the Buyer, the Buyer may terminate the order for default, or pursue such other remedies as may be permitted by law or this order.

(4) The Seller further agrees to insert provisions which shall conform substantially to the language of this clause, including this paragraph (4), in any subcontract or consultant agreement hereunder.

42. PREFERENCE FOR USE OF PAPER AND PAPER PRODUCTS CONTAINING RECOVERED MATERIAL CONTENT

The Department of the Treasury and its bureaus strongly support the use of paper and paper products with the maximum extent of recovered material content. Although the Seller is not required to utilize paper and paper products containing the percentage of recovered material content as specified in the Department of the Treasury Affirmative Procurement Program for Items with Recovered Material Content, the Seller is encouraged to utilize paper and paper products with recovered material content to the maximum extent possible.

43. DEPARTMENT OF THE TREASURY SUPPORT FOR ACQUISITION OF PRODUCTS AND SERVICES WITH RECOVERED MATERIAL CONTENT

The Department of the Treasury strongly supports the use of products with the maximum extent of recovered material content. Sellers are encouraged to utilize recovered material content wherever such use will allow compliance with the specifications.

44. DISCLOSURE OF INFORMATION

Any information made available to the Seller by the Buyer shall be used only for the purpose of carrying out the provisions of this order and shall not be divulged or made known in any manner to any persons except as may be necessary in the performance of the contract.

In performance of this order, the Seller assumes responsibility for protection of the confidentiality of Buyer and Government records and shall ensure that all work performed by its lower tier subcontractors shall be under the supervision of the Seller or the Seller's responsible employees. Each officer or employee of the Seller or any of its subcontractors to whom any Buyer and Government record may be made available or disclosed shall be notified in writing by the Seller that information disclosed to such officer or employee can be used only for a purpose and to the extent authorized herein. Further disclosure of any such information, by any means, for a purpose or to an extent unauthorized herein, may subject the offender to criminal sanctions imposed by 18 U.S.C. 641. That section provides, in pertinent part, that whoever knowingly converts to their use or the use of another, or without authority, sells, conveys, or disposes of any record of the United States or whoever receives the same with intent to convert it to their use or gain, knowing it to have been converted, shall be guilty of a crime punishable by a fine of up to \$10,000, or imprisoned up to ten years, or both.

45. YEAR 2000 WARRANTY—NON-COMMERCIAL SUPPLY ITEMS

The Seller warrants that each non-commercial item of hardware, software, and firmware delivered or developed under this PO shall be able to accurately process date/time data (including, but not limited to, calculating, comparing, and sequencing) from, into, 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, when used in combination with the information technology being acquired, properly exchanges date/time data with it, when used in accordance with the product documentation provided by the Seller. If the PO requires that the specific products must perform as a system in accordance with the foregoing warranty, then that warranty shall apply to those products as a system. The duration of this warranty and the remedies available to the Buyer for breach of this warranty shall be as defined in, and subject to, the terms and limitations of Seller's standard commercial warranty or warranties contained in this PO, provided that notwithstanding any provisions to the contrary in such

commercial warranty or warranties, the remedies available to the Buyer under this warranty shall include repair or replacement of any product whose non-compliance is discovered and made known to the Seller in writing within one (1) year after acceptance. Nothing in this warranty shall be construed to limit any rights or remedies the Buyer may otherwise have under this contract with respect to defects other than Year 2000 performance.

46. YEAR 2000 WARRANTY—COMMERCIAL SUPPLY ITEMS

The Seller warrants that each hardware, software, and firmware product delivered under this PO shall be able to accurately process date/time data (including, but not limited to, calculating, comparing, and sequencing) from, into, 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. If the contract requires that specific listed products must perform as a system in accordance with the foregoing warranty, then that warranty shall apply to those products as a system. The duration of this warranty and the remedies available to the Buyer for breach of this warranty shall be as defined in, and subject to, the terms and limitations of the Seller's standard commercial warranty or warranties contained in this PO, provided that notwithstanding any provision to the contrary in such commercial warranty or warranties, the remedies available to the Buyer under this warranty shall include repair or replacement of any product whose non-compliance is discovered and made known to the Seller in writing within one (1) year after acceptance. Nothing in this warranty shall be construed to limit any rights or remedies the Buyer may otherwise have under this PO with respect to defects other than Year 2000 performance.

47. RECOVERY OF NONRECURRING COSTS ON COMMERCIAL SALES

The Seller shall notify the Buyer of any domestic or foreign commercial sales for any part or replication of the USCS AEW system specified in this order, to make suitable arrangements for the payments of the applicable nonrecurring recoupment charge. The recovery of nonrecurring costs applies to any of the engineering, tooling, fabrication, and planning costs which are covered in this contract. This includes the licensing or technical assistance of any of the technology developed under this contract.

The Seller will reimburse or give credit to the Government for a fair share on a pro-rata basis of the U. S. Government expenditures for nonrecurring costs applicable to the items, or, in the case of technology, the Government's proportionate share of the fair market price of the technology for the commercial customer. In the event that the current charge is unavailable, the Seller will submit information required to support the development of the appropriate charge. In all cases, the substantiated cost/price data shall be certified pursuant to FAR 15.8. The specific formula for determining the Government's share of recovery costs will be by mutual agreement between the Buyer and Seller after a customer has been identified and prior to the sale of items and/or technology.

48. ADDITIONAL PROGRAM REQUIREMENTS

The following additional requirements shall be performed by the contractor at no additional cost to the Government and without causing any delay in delivery requirements.

1. Copies of all proprietary and non-proprietary drawings developed/modified during the course of this program shall be provided to the Government as required. The Government shall have rights to these drawings in accordance with contract Clause 52.227-14.
2. If during the course of this PO Seller identifies defects in the GFE that require repair or restoration, Seller shall notify the Buyer in writing within 2 days of identification. This notification shall contain detailed

information relating to the specific nature of the defect and the recommended action necessary to correct the defect.