

**APPENDIX 1B**

**LOCKHEED MARTIN AERONAUTICS COMPANY**

**CONSTRUCTION CONTRACTS TERMS AND CONDITIONS**

**GEORGIA**

**1 - DEFINITIONS**

As used throughout this PO and documents related to performance hereunder, the following terms shall have the meanings set forth below except as otherwise noted:

- (a) The terms "LMAS" and "Lockheed Martin" mean "Lockheed Martin."
- (b) The terms "Contractor," "Subcontractor," "supplier," "vendor," and "\_" means the party identified on the face of the purchase order as Seller; as well as that party's agent or other person authorized to represent Contractor, such as the Contractor's superintendent or foreman, and Contractor's subcontractors at any tier
- (c) The term "schedule" means the typed provision of this PO.
- (d) The term "Work" means the supplies, clauses and services to be furnished hereunder and includes without limitation raw materials, components, intermediate assemblies, sub-assemblies, services, data, end products, and all work to be performed under this PO.
- (e) The term "PO" includes all change notices and change orders to this PO.
- (f) The term "Authorized Procurement Representative" means the person or persons authorized by Lockheed Martin to alter, modify or change the provisions of this PO. Unless otherwise provided, Lockheed Martin's Authorized Procurement Representative shall be designated by name in this PO.
- (g) The term "contract price" means the price for the work and services shown on this PO.
- (h) The term "Contractor Environment, Safety & Health Handbook" means the ES&H rules and regulations applicable to Contractors which perform work/services or deliver goods on LM Aero-owned or operated facilities. The Contractor ES&H Handbook is incorporated herein and is made a part hereof by this reference.
- (i) The term "lower tier subcontract" means any contract including POs issued by Contractor to a third party for the performance of any work related to this PO.
- (j) The term "Government" means the United States of America.
- (k) The term "Contracting Officer" means the Administrative Contracting Officer (ACO) who has cognizance over Lockheed Martin's prime contract and includes certain authorized representatives of the Contracting Officer acting within the limits of their authority as delegated by the Contracting Officer.

(l) "Head of the agency" (also called "agency head") or "Secretary" means the Secretary (or Attorney General, Administrator, Governor, Chairperson, or other chief official, as appropriate) of the agency, including any deputy or assistant chief official of the agency, and the term "authorized representative" means any person, persons, or board (other than the Contracting Officer) authorized to act for the head of the Agency or Secretary.

(m) The term "FAR" means the Federal Acquisition Regulation as in effect on the date of this PO unless a specific date is shown.

(n) The term "DFARS" means the Defense Federal Acquisition Regulation as in effect on the date of this PO unless specific date is shown.

## **2 – INDEPENDENT CONTRACTOR**

Contractor is an independent contractor in all its operations and activities hereunder and the employees furnished by Contractor to perform work pursuant to this PO are Contractor's employees exclusively without any relation whatsoever to Lockheed Martin. Said employees shall be paid by Contractor for all services performed under this PO and Contractor shall be responsible for all obligations and reports covering Social Security, Unemployment Insurance, Workers' Compensation, Income Tax, and any other reports and deductions required by local, state, and/or federal law or regulation. Contractor is not granted, expressly or impliedly, any right or authority to create any obligation or liability on behalf of or in the name of Lockheed Martin, or to bind Lockheed Martin in any manner whatsoever.

## **3 – DUTIES OF CONTRACTOR**

Contractor shall perform design and construction work and services for Lockheed Martin's project as identified on this PO. Such work and services shall be performed in compliance with the Statement of Work and Specifications referenced in this PO. Contractor shall perform such work and services with that degree of care, skill, supervision, thoroughness and competence exercised by the engineering, design, construction and consulting professions and in accordance with good trade and professional practices.

## **4 – DESIGN AND CONSTRUCTION WORK AND SERVICES**

(a) Contractor shall submit all drawings, designs and specifications for Lockheed Martin's approval. Drawings, designs and specifications shall set in detail the requirement for construction and shall be based upon and comply with all applicable codes, laws and regulations.

(b) Construction shall be in accordance with approved designs, drawings and specifications and the Statement of Work. Contractor shall provide Lockheed Martin with such copies as required by the order or referenced documents.

(c) Contractor shall provide design and construction supervision, inspection, equipment, labor, material tools and subcontracted items as required in order to perform the work and services required under this PO. In addition, Contractor shall comply with all laws regulations, rules, codes and ordinances which govern the performance of the work and services.

## **5 - REQUIREMENTS FOR REGISTRATION OF DESIGNERS**

The design of architectural, structural, mechanical, electrical, civil, or other engineering features of the work shall be accomplished or reviewed and approved by architects or engineers registered to practice in the particular professional field involved in a State or possession of the United States, or in the District of Columbia.

**6 - OVERSIGHT OF THE WORK BY LOCKHEED MARTIN**

The extent and character of the work to be done by Contractor shall be subject to the general supervision and approval of Lockheed Martin. The work to be performed by Contractor's agents, employees and subcontractors shall be subject to the supervision, inspection, direction, control and approval of Contractor.

**7 - RESPONSIBILITY FOR THE WORK**

(a) Contractor shall be responsible for the professional quality, technical accuracy, and the coordination of all designs, drawings, specifications and other work and services furnished by Contractor under this PO. Contractor shall, without additional compensation, correct or revise any errors or deficiencies in its designs, drawings, specifications, and other work and services.

(b) Neither Lockheed Martin's review, approval or acceptance of, nor payment for, the services required under this PO shall be construed to operate as a waiver of any rights under this PO or of any cause of action arising out of the performance of this PO, and Contractor shall be and remain liable to Lockheed Martin in accordance with applicable law for all damages to Lockheed Martin caused by Contractor's negligent performance of any of the services furnished under this PO.

(c) The rights and remedies of Lockheed Martin provided for under this PO are in addition to any other rights and remedies provided at law.

(d) Contractor is comprised of more than one legal entity, each entity shall be jointly and severally liable hereunder.

**8 SPECIFICATIONS AND DRAWINGS**

(a) Contractor shall keep on the work site a copy of the drawings and specifications and shall at all times give Lockheed Martin access thereto. Anything mentioned in the specifications and not shown on the drawings, or shown on the drawings but not mentioned in the specifications, shall be of like effect as if shown or mentioned in both. In the case of difference between drawings and specifications, the specifications shall govern. In the case of discrepancy in the figures, in the drawings, or in the specifications, the matter shall be promptly submitted to Lockheed Martin, who shall promptly make a determination in writing. Any adjustment by Contractor without such a determination shall be at its own risk and expense. Lockheed Martin shall furnish from time to time such detailed drawings and other information as considered necessary, unless otherwise provided.

(b) Whenever in the specifications or upon the drawings the words "directed," "required," "ordered," "designated," "prescribed," or words of like import are used, it shall be understood that the "direction," "requirement," "order," "designation," or "prescription," of Lockheed Martin is intended and similarly the words "approved," "acceptable," "satisfactory," or words of like import shall mean "approved by," or "acceptable to," or "satisfactory to" Lockheed Martin, unless otherwise noted.

(c) Where "as shown," "as indicated," "as detailed," or words of similar import are used, it shall be understood

that the reference is made to the drawings accompanying this PO unless stated otherwise. The word "provided" as used herein shall be understood to mean "provide complete in place," that is "furnished and installed."

(d) Shop drawings means drawings submitted to Lockheed Martin by Contractor, or any lower-tier subcontractor pursuant to a construction contract, showing in detail (1) the proposed fabrication and assembly of structural elements and (2) the installation (i.e. form, fit, and attachment details) of materials of equipment. It includes, drawings, diagrams, layouts, schematics, descriptive literature, illustrations, schedules, performance and test data, and similar materials furnished by Contractor to explain in detail specific portions of the work required by this PO. Lockheed Martin may duplicate, use, and disclose in any manner and for any purpose shop drawings delivered under this PO.

(e) If this PO requires shop drawings, Contractor shall coordinate all such drawings, and review them for accuracy, completeness, and compliance with the requirements of this PO, and shall indicate Contractor's approval thereon as evidence of such coordination and review. Shop drawings submitted to Lockheed Martin without evidence of Contractor's approval may be returned for resubmission. Lockheed Martin will indicate an approval or disapproval of the shop drawings and if not approved as submitted, shall indicate Lockheed Martin's reasons therefor. Any work done before such approval shall be at Contractor's own risk. Approval by Lockheed Martin shall not relieve Contractor from responsibility for any errors or omissions in such drawings, nor from responsibility for complying with the requirements of this PO, except with respect to variations described and approved in accordance with paragraph (f) below.

(f) If shop drawings show variations from the requirements of this PO, Contractor shall describe such variations in writing, separate from the drawings, at the time of submission. If Lockheed Martin approves any such variation, Lockheed Martin shall issue an appropriate modification to this PO, except that, if the variation is minor or does not involve a change in price or in time of performance, a modification need not be issued.

(g) Contractor shall submit to Lockheed Martin for approval four copies (unless otherwise indicated) of all shop drawings as called for under the various headings of these specifications. Three sets (unless otherwise indicated) of all shop drawings, will be retained by Lockheed Martin and one set will be returned to Contractor.

(h) This Clause shall be included in all lower tier subcontracts at any tier.

## **9 - LAYOUT OF WORK**

Contractor shall lay out its work from Lockheed Martin established base lines and benchmarks indicated on the drawings, and shall be responsible for all measurements in connection with the layout. Contractor shall furnish, at its own expense, all stakes, templates, platforms, equipment, tools, materials, and labor required to lay out any part of the work. Contractor shall be responsible for executing the work to the lines and grades that may be established or indicated by Lockheed Martin. Contractor shall also be responsible for maintaining and preserving all stakes and other marks established by Lockheed Martin until authorized to remove them. If such marks are destroyed by Contractor or through its negligence before their removal is authorized, Lockheed Martin may replace them and deduct the expense of the replacement from any amounts due or to become due to Contractor.

## **10- ORGANIZATION AND DIRECTION OF THE WORK**

(a) When this PO is executed or as otherwise agreed between the parties, Contractor shall submit to Lockheed

Martin a chart showing the general executive and administrative organization, the personnel to be employed in connection with the work under this PO, and their respective duties. Contractor shall keep the data furnished current by supplementing it as additional information becomes available.

(b) Work performance under this PO shall be under the full-time resident direction of:

(1) Contractor, if Contractor is an individual; (2) one or more principal partners, if Contractor is a partnership; or (3) one or more senior officers, if Contractor is a corporation, association, or similar legal entity. However, if Lockheed Martin approves, Contractor may be represented in the direction of the work by a specific person or persons holding positions other than those identified in this paragraph.

## 11 -SCHEDULES OF THE WORK

(a) Upon the request of Lockheed Martin, Contractor shall, within five days after the work commences under the PO or another period of time determined by Lockheed Martin, prepare and submit to Lockheed Martin for approval three copies of a practicable schedule showing the order in which Contractor proposes to perform the work, and the dates on which Contractor contemplates starting and completing the several salient features of the work (including acquiring materials, and equipment). The schedule shall be in the form of a progress chart of suitable scale to indicate appropriately the percentage of work scheduled for completion by any given date during the period. If Contractor fails to submit a schedule within the time prescribed, Lockheed Martin may withhold approval of payments for work in process until Contractor submits the required schedule.

(b) Contractor shall enter the actual progress on the chart as directed by Lockheed Martin, and upon doing so shall immediately deliver three copies of the annotated schedule to Lockheed Martin. If, in the opinion of Lockheed Martin, Contractor falls behind the approved schedule, Contractor shall take steps necessary to improve its progress, including those that may be required by Lockheed Martin, without additional cost to Lockheed Martin. In this circumstance, Lockheed Martin may require Contractor to increase the number of shifts, overtime operations, days of work, and/or the amount of construction, and to submit for approval any supplementary schedule or schedules in chart form as Lockheed Martin deems necessary to demonstrate how the approved rate of progress will be regained.

(c) Failure of Contractor to comply with the requirements of Lockheed Martin under this Clause shall be grounds for a determination by Lockheed Martin that Contractor is not prosecuting the work with sufficient diligence to ensure completion within the time specified in this PO. Upon making this determination, Lockheed Martin may terminate Contractor's right to proceed with the work, or any separable part of it, in accordance with the default terms of this PO.

## 12 SUPERINTENDENCE BY CONTRACTOR

At all times during performance of this PO and until the work is completed and accepted, Contractor shall directly superintend the work or assign and have on the worksite a competent superintendent who is satisfactory to Lockheed Martin and has the authority to act for Contractor.

## 13 - PERMITS AND RESPONSIBILITIES

Contractor shall, without additional expense to Lockheed Martin, be responsible for obtaining any necessary licenses

and permits, and for complying with any Federal, state, and municipal laws, codes, and regulations applicable to the performance of the work.

Contractor shall also be responsible for all damages to persons or property that occur as a result of Contractor's fault or negligence. Contractor shall also be responsible for all materials delivered and work performed until completion and acceptance of the entire work, except for any completed unit of work which may have been accepted under this PO.

**14 - SITE INVESTIGATION AND CONDITIONS AFFECTING THE WORK**

(a) Contractor acknowledges that it has taken steps reasonably necessary to ascertain the nature and location of the work, and that it has investigated and satisfied itself as to the general and local conditions which can affect the work or its cost, including but not limited to: (1) conditions bearing upon transportation, disposal, handling, and storage of materials; (2) the availability of labor, water, electric power, and roads; (3) general weather conditions; (4) the conformation and conditions of the ground; (5) applicable security requirements; and (6) the character of equipment and facilities needed preliminary to and during work performance.

Contractor also acknowledges that it has satisfied itself as to the character, quality, and quantity of surface and subsurface materials or obstacles to be encountered insofar as this information is reasonably ascertainable from an inspection of the site, including all exploratory work done by Lockheed Martin, as well as from the drawings and specifications made a part of this PO. Any failure of Contractor to take the actions described and acknowledged in this paragraph shall not relieve Contractor from responsibility for estimating properly the difficulty and cost of successfully performing the work, or for proceeding successfully to perform the work without additional expense to Lockheed Martin.

(b) Lockheed Martin assumes no responsibility for any conclusions or interpretations made by Contractor based on the information made available by Lockheed Martin. Nor does Lockheed Martin assume responsibility for any understanding reached or representation made concerning conditions which can affect the work by any of Lockheed Martin's officers, agents, subcontractors or employees prior to the execution of this PO, unless that representation is expressly stated in this PO. Any such representations or understandings made but not so expressly stated in this PO and for which liability is not expressly assumed by Lockheed Martin herein shall be deemed only for the information of Contractor and Lockheed Martin and shall not render Lockheed Martin responsible or liable therefor.

**15 - MATERIAL AND WORKMANSHIP**

(a) All equipment, material, and supplies incorporated into the Work covered by this PO shall be new and of the most suitable grade for the purpose intended, unless otherwise specifically provided in this PO. References in the specifications to equipment, material, Supplies, or patented processes by trade name, make, or catalog number, shall be regarded as establishing a standard of quality and shall not be construed as limiting competition. Contractor may, at its option, use any equipment, material, Supplies, or process that, in the judgment of Lockheed Martin, is equal to that named in the specifications, unless otherwise specifically provided in this PO.

(b) Contractor shall obtain Lockheed Martin's approval of the machinery and mechanical and other equipment to be incorporated into the work. When requesting approval, Contractor shall furnish to Lockheed Martin the name

of the manufacturer, the model number, and other information concerning the performance, capacity, nature and rating of the machinery and mechanical and other equipment. When required by this PO or by Lockheed Martin, Contractor shall also obtain Lockheed Martin's approval of the material or Supplies which Contractor contemplates incorporating into the work. When requesting approval, Contractor shall provide full information concerning the material or Supplies. When directed to do so, Contractor shall submit samples for approval at Contractor's expense, with all shipping charges prepaid. Machinery, equipment, material and Supplies that do not have the required approval shall be installed or used at the risk of subsequent rejection.

(c) All work under this PO shall be performed in a skillful and workmanlike manner. Lockheed Martin may require, in writing, that Contractor remove from the work any employee Lockheed Martin deems incompetent, careless, or otherwise objectionable.

**16 - AVAILABILITY AND USE OF UTILITY SERVICES**

(a) Lockheed Martin shall make all reasonably required amounts of utilities available to Contractor from existing outlets and supplies, as specified in this PO. Contractor shall carefully conserve all utilities furnished by Lockheed Martin.

(b) Contractor, at its expense and in a workmanlike manner satisfactory to Lockheed Martin, shall install and maintain all necessary temporary connections and distribution lines, and all meters required to measure the amount of each utility used for the purpose of determining usage. Before final acceptance of the work by Lockheed Martin, Contractor shall remove all the temporary connections, distribution lines, meters, and associated paraphernalia.

**17 - SAFETY PROVISIONS**

(a) Contractor shall comply with all Federal, State, Local and other safety laws and regulations and standards in the performance of work hereunder.

(b) Lockheed Martin shall furnish to Contractor a copy of Lockheed Martin's *Environmental, Safety and Health (ESH) Requirements for Contractors, Vendors and Suppliers* prior to Contractor's starting work on property owned by or under the control of Lockheed Martin. Contractor agrees to comply with all provisions set forth therein.

**18 - NOTIFICATION OF CHANGES**

As specified in the clause of this PO entitled Direction and Redirection of Effort, only Lockheed Martin's Authorized Procurement Representative may direct or redirect Contractor's effort hereunder. In the event, however, Contractor considers any conduct including any action, inaction, written or oral communication by Lockheed Martin or Lockheed Martin's customer to constitute a change to this PO, other than a written change order issued by Lockheed Martin's Authorized Procurement Representative, Contractor shall notify Lockheed Martin in writing as soon as possible but in no event later than fifteen days from the date Contractor identifies the conduct considered to constitute a change to this PO. On the basis of the most accurate information available to Contractor, 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 Lockheed Martin employee, customer employee and Contractor 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 Contractor considers to be affected by the conduct, including an estimate of any cost or schedule impact;

(5) Contractor's estimate of the time by which Lockheed Martin must respond to Contractor's notice to minimize cost, delay or disruption of performance.

(a) Contractor shall take no action in reliance on the conduct considered to constitute a change unless and until Lockheed Martin's Authorized Procurement Representative issues a written change order covering the conduct in question.

**19 – CHANGES**

(a) Lockheed Martin may at any time, by written order from Lockheed Martin's Authorized Procurement Representative, and without notice to sureties or assignees, if any, make changes in the Work within the general scope of this PO, including changes:

- (1) In the specifications (including drawings and designs),
- (2) In the method or manner of performance of the Work,
- (3) In the Lockheed Martin furnished facilities, equipment, materials, services, or site; or,
- (4) Directing acceleration in the performance of the Work or other schedule changes.

(b) Except as may otherwise be expressly provided in this PO, if any such change under subparagraphs (a)(1), (2), or (3) above causes an increase or decrease in the time required for performance of this PO, whether or not changed by the order, Lockheed Martin shall make an equitable adjustment in the delivery schedule, and the affected PO(s) shall be modified accordingly in writing.

(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 of performance of any part of this PO, whether or not changed by the order, Lockheed Martin shall make an equitable adjustment in the contract price, and the affected PO(s) shall be modified accordingly in writing.

(d) Contractor must submit any proposal for adjustment under this clause within twenty five (25) days from the date of receipt of the written change order from Lockheed Martin. The proposal for adjustment should include an estimate of costs for excess or obsolete material, work-in-process or other property using the forms and in the detail prescribed by generally acceptable accounting principles. If Contractor's proposal for adjustment includes the cost of property made obsolete or excess by the change, Lockheed Martin shall have the right to prescribe the manner of the disposition of the property.

(e) Contractor agrees that its failure to submit any proposal for adjustment within the applicable time period shall constitute a waiver thereof unless Contractor requests in writing, prior to the expiration of the applicable time period, that a time extension for filing its proposal for adjustment be granted by Lockheed Martin. Any such extensions shall not be unreasonably disapproved and shall be effective if authorized in writing by Lockheed Martin's Authorized Procurement Representative.

(f) Nothing contained in this Clause shall excuse Contractor from proceeding without delay with this PO as changed.



**20 - INSPECTION OF WORK**

- (a) "Work" includes, but is not limited to materials, workmanship, and manufacture and fabrication of components.
- (b) Contractor shall maintain an adequate inspection system acceptable to Lockheed Martin and shall perform such inspections as will ensure that the work performed under this PO conforms to contract requirements. Contractor shall maintain complete inspection records and make them available to Lockheed Martin. All work shall be conducted under the general direction of Lockheed Martin and is subject to Lockheed Martin inspection and test at all places and at all reasonable times before acceptance to ensure strict compliance with the terms of this PO.
- (c) Lockheed Martin inspections and tests are for the sole benefit of Lockheed Martin and do not:
  - (1) Relieve Contractor of responsibility for providing adequate quality control measures;
  - (2) Relieve Contractor of responsibility for damage to or loss of the material for acceptance;
  - (3) Constitute or imply acceptance; or
  - (4) Affect the continuing rights of Lockheed Martin after acceptance of the completed work under paragraph (i) below.
- (d) The presence or absence of a Lockheed Martin inspector does not relieve Contractor from any requirement of this PO, nor are the inspectors authorized to change any term or condition of the specification without the written authorization of Lockheed Martin's Authorized Procurement Representative.
- (e) Contractor shall promptly furnish, without additional charge, all facilities, labor, parts, supplies, and material reasonably needed for performing such safe and convenient inspections as may be required by Lockheed Martin. Lockheed Martin may charge to Contractor any additional cost of inspection or test when work is not ready at the time specified by Contractor for inspection or test, or when prior rejection makes reinspection or retest necessary. Lockheed Martin shall perform all inspections and tests in a manner that will not unnecessarily delay the work. Special, full size, and performance tests shall be performed as described in this PO.
- (f) Contractor shall, without additional charge, replace or correct work found by Lockheed Martin not to conform to the requirements of this PO, unless Lockheed Martin consents to accept the work with an appropriate adjustment in contract price. Contractor shall promptly segregate and remove rejected material from the premises.
- (g) If Contractor does not promptly replace or correct rejected work, Lockheed Martin may (1) by contract or otherwise, replace or correct the work and charge the cost to Contractor, or (2) terminate for default Contractor's right to proceed.
- (h) If, before acceptance of the entire work, Lockheed Martin decides to examine already completed work by removing it or tearing it out, Contractor, on request, shall promptly furnish all necessary facilities, labor, and material. If the work is found to be defective or nonconforming in any material respect due to the fault of Contractor or its lower tier subcontractors, Contractor shall defray the expenses of the examination and of satisfactory reconstruction. However, if the work is found to meet the requirements of this PO, Lockheed Martin shall make an equitable adjustment for the additional services involved in the examination and reconstruction, including, if completion of the work was thereby delayed, an extension of time.
- (i) Unless otherwise specified in this PO, Lockheed Martin shall accept, as promptly as practicable after

completion and inspection, all work required by this PO or that portion of the work Lockheed Martin determines can be accepted separately. Acceptance shall be final and conclusive except for latent defects, fraud, gross mistakes amounting to fraud, or Lockheed Martin's rights under any warranty or guarantee.

**21 - WARRANTY**

Contractor for itself, its successors and assigns, does hereby warranty to Lockheed Martin that all materials and equipment furnished under this PO shall be new unless otherwise specified by Lockheed Martin, and that

(a) The materials (herein defined as including but not limited to fixtures, tools, supplies, equipment, and parts thereof) provided for the work under said PO shall be of good quality and free from fault or defect due to design (except to the extent such design is prescribed in the specification furnished by Lockheed Martin, workmanship, or material content, shall be free from fault under conditions of proper and normal use and be in conformance with the PO documents.

Should any materials not be free of such fault or defect or otherwise fail to meet the requirements of the PO, Lockheed Martin may, within one (1) year after actually discovering such defect or nonconformance reject the materials and direct the Contractor to proceed at once to make alterations or furnish new materials. All costs of removing such defective or nonconforming materials, furnishing and install new materials or making alterations of materials, and all costs of tests made necessary by failure of the materials to meet this Warranty and other requirements of the PO, and all costs resulting from damage to other materials, work or the work site due to the defective or faulty materials, shall be borne by the Contractor.

(b) There shall be no omissions of materials and should there be by any such omission, Lockheed may direct the Contractor to proceed at once to furnish and install the materials omitted. All costs of furnishing and installing such materials, and all costs of test made necessary by such omission, shall be borne by the Contractor.

(c) The performance of said contract shall be free from improper workmanship. Should any workmanship fail to meet the requirements of the PO. Lockheed Martin may direct the Contractor to correct such work or otherwise perform to meet other requirements of this contract. All costs of correcting such work, or otherwise performing, and all costs of tests made necessary by the failure of the work to meet this Warranty or other requirements of said PO, and all costs resulting from damage to other work, materials, or the work site due to the improper workmanship, shall be borne by the Contractor.

(d) The provisions hereof are applicable to any new materials installed, any alteration to presently installed materials, and any work corrected or otherwise performed pursuant to this Warranty.

(e) Upon the Contractor's failure to proceed promptly to comply with the terms of this Warranty, Lockheed Martin may perform, or may have performed, such work as Lockheed Martin deems necessary to fulfill such Warranty and the Contractor shall reimburse Lockheed Martin promptly for all costs incurred by Lockheed Martin for such work.

**22 - TERMINATION - STOP-WORK**

(a) Termination for convenience. The clause at FAR 52.249-2 (Alternate I) is incorporated herein by reference except that as used in said clause "the contract" means "this PO," "Government" and "Contracting Officer" means

"Lockheed Martin." In paragraph

(d) the reference to "one year" is changed to "six months," and in paragraph (k) the reference to "90 days" is changed to "forty-five (45) days." Paragraph (i) is deleted.

(b) Termination for default. The clause at FAR 52.249-10 is incorporated herein by reference except that as used in said clause "the contract" means "this PO," "Contracting Officer" means "Lockheed Martin," "Government" means "Lockheed Martin." The fourth sentence in subparagraph (b)(2) of the foregoing clause is deleted.

(c) Stop-Work Order. The clause at FAR 52.242-15 is incorporated herein by reference except that as used in said clause "the contract" means "this PO," "Contracting Officer" and "Government" means "Lockheed Martin." The reference to "thirty (30) days" in paragraph (b)(2) is changed to "twenty (20) days," and the references to the "Termination for the Convenience of the Government" and "Default" clauses mean "paragraph (a)" and "paragraph (b) of this Clause" respectively.

(d) Protest After Award. The clause at FAR 52.233-3 is incorporated herein by reference except that the first sentence of said clause is changed to read as follows: "Upon receipt by Lockheed Martin of an order issued pursuant to FAR 33.1 from the Contracting Officer to stop performance of the work called for by the prime contract to which this PO relates, Lockheed Martin may, by written order to Contractor, direct Contractor to stop performance of the work called for by this PO." Further, with respect to the balance of said FAR clause, as used therein "Contracting Officer" and "Government" mean "Lockheed Martin," "the contract" means "this." The reference to "thirty (30) days" in paragraph (b)(2) is changed to "twenty (20) days," and the references to the "Termination for the Convenience of the Government" clause and "Default" clauses mean "paragraph (a)" and "paragraph (b) of this Clause," respectively.

(e) In the event Contractor makes an assignment for the benefit of creditors, undergoes receivership, institutes voluntary proceedings in bankruptcy, or is adjudged bankrupt, Lockheed Martin may terminate this PO, for default in accordance with paragraph (b) above.

(f) Contractor agrees that its failure to submit such claim or claims within the applicable time period shall constitute a waiver thereof unless Contractor requests in writing, prior to the expiration of the applicable time period, that a time extension for filing its claim be granted by Lockheed Martin. Any such extensions shall not be unreasonably disapproved and shall be effective if authorized in writing by Lockheed Martin.

**23 - COST AND PERFORMANCE**

(a) Lockheed Martin shall at all times have access to all work being performed hereunder by Contractor or by any of its subcontractors and suppliers, and shall have access to all books, records, correspondence, instructions, plans, specifications, drawings, memoranda, payroll records, vouchers, bills, receipts and all other information of whatsoever kind relating to performance of this PO (or otherwise evidencing Contractor's, subcontractor's and supplier's, costs and expenses, and their payment thereof.) Contractor shall preserve all such records, data and information and shall provide Lockheed Martin with reasonable access thereto for not less than thirty-six (36) months after final payment of the contract price. Contractor shall ensure that its subcontractors and suppliers agree to the above provisions in their POs with Lockheed Martin.

(b) Prior to acceptance of the work hereunder, Contractor agrees to provide Lockheed Martin with a construction and equipment cost breakdown for all items of labor, materials, equipment, supplies, services and all

other expenditures of whatever nature which may be chargeable to the work by Contractor for each of its subcontractors. The construction and equipment cost breakdown requirements shall be provided to Lockheed Martin in such a manner as to provide reasonable cost allocations and description for depreciation and insurance purposes.

**24 PAYMENTS**

(a) Except as may otherwise be provided in this PO, the Contractor shall be paid the PO price following completion and final acceptance by Lockheed Martin of all work called for by the PO, and after Contractor, shall have furnished to Lockheed Martin full and complete waivers or releases of all materialman's and mechanic's liens (of Contractor, its subcontractors and suppliers) in such form as required by Lockheed Martin. Payment will be made upon the submission by Contractor of a final invoice prepared on the same basis as indicated in paragraphs (c) and (d) of this Clause, provided that Lockheed Martin may withhold part or all of such payment on the basis indicated in paragraph (b) of this Clause.

(b) Contractor agrees that if (i) defective work has not been remedied, (ii) any claim is filed or reasonable evidence exists that a claim probably will be filed against Contractor, the premises or the work for unpaid material, labor or services, or (iii) Contractor has failed to make the required payments to the subcontractors for material, labor or services, then in any such event, Lockheed Martin may withhold part or all of the payment or payments hereinabove referred to until such conditions have been remedied or removed or provided for satisfactorily to Lockheed Martin.

(c) Invoices shall be in the format required by Lockheed Martin, be serially numbered, shall be prepared and submitted in triplicate, one of which must be marked "original." Lockheed Martin's PO number must appear on all copies of invoices.

(d) If this contract provides that monthly billings are to be made to Contractor, the following provisions shall be applicable in lieu of the foregoing paragraph (a):

(1) Payments may be made to Contractor based on a percentage or stage of completion of work and upon submission of properly prepared and certified invoices. Payments may be made as work progresses at the end of each calendar month, or as soon thereafter as practicable, based on actual costs certified and approved by Lockheed Martin. The actual costs of material delivered and work performed on the site since date of last invoice may be included.

(2) In making such progress payments, there shall be retained 10% of actual and estimated amounts until final completion and acceptance of all work covered by this contract.

(3) All material delivered on the site, or incorporated into the work, and any other work covered by progress payments made shall thereupon become the sole property of Lockheed Martin, but this provision shall not be construed as relieving Contractor from the sole risk and responsibility for such materials and work upon which payments have been made, or to relieve Contractor from the obligation to restore or replace any damaged work or materials, or as a waiver of the right of Lockheed Martin to require the fulfillment of all of the terms of this PO on schedule.

(4) After completion of all work hereunder by Contractor and acceptance by Lockheed Martin, and after

Contractor shall have furnished to Lockheed Martin full and complete waivers of all materials men's and mechanics' liens, Lockheed Martin shall pay to Contractor the full amount of the cost of the work, less all amounts theretofore paid.

(5) If (i) defective work has not been remedied, (ii) any claim is filed or reasonable evidence exists that a claim probably will be filed against the Contractor, the premises or the work for unpaid material, labor or services, or (iii) Contractor has failed to make the required payments to the subcontractors for material, labor or services, then in any such event, Lockheed Martin may withhold part or all of the payment or payments hereinabove referred to until such conditions have been remedied or removed or provided for satisfactorily to Lockheed Martin.

(6) Invoices serially numbered, shall be prepared and submitted in triplicate, one of which must be marked "original." Lockheed Martin's PO number must appear on all copies of invoices.

**25 - PERFORMANCE AND PAYMENT BOND**

Contractor shall, if requested by Lockheed Martin before or within thirty (30) days after execution of this PO, furnish a performance and payment bond each in the amount and form and issued by surety companies authorized to do business in the State of Georgia. The cost of such bonds shall be included in Contractor's price. If it develops that Contractor cannot furnish a satisfactory bond or bonds, Lockheed Martin shall have the right to terminate this PO without liability of any kind.

**26 - INSURANCE - WORK ON LOCKHEED MARTIN OR GOVERNMENT PREMISES**

(a) Unless otherwise specified by Lockheed Martin, Contractor shall, at its own expense, provide and maintain during the entire performance of this PO, at least the kinds and minimum amounts of insurance set forth below:

Limits

		<u>(Per Person/Occurrence)</u>
Non-hazardous	\$250,000	\$250,000/500,000
Hazardous	\$500,000	\$500,000/\$1,000,000
Extra Hazardous	\$1,000,000	\$1,000,000/2,000,000

(1) For the purposes of this Clause, the terms "Extra Hazardous," "Hazardous," and "Non-Hazardous" have the following meanings:

(2) Extra Hazardous Work means work such as (i) heavy construction work, (ii) work performed in manufacturing or flight areas of Lockheed Martin's premises where aircraft or aircraft assemblies are exposed, and (iii) work performed directly in or upon aircraft or aircraft assemblies.

(3) Hazardous Work means all other work performed in manufacturing or flight areas of Lockheed Martin's premises. Except as covered by subparagraph (b)(1)(ii) above, minor construction work, regardless of where such work is performed, shall be considered as Hazardous Work.

(4) Non-Hazardous Work means all work performed outside of manufacturing and flight areas, except for work, such as construction work, which is considered as Hazardous or Extra Hazardous Work.

(b) Upon Lockheed Martin's request, Contractor shall provide to Lockheed Martin satisfactory evidence in writing that the required insurance has been obtained. The policies evidencing required insurance shall contain an endorsement to the effect that any cancellation or material change adversely affecting Lockheed Martin's interests shall not be effective (1) for such period as the laws of the state in which this PO is to be performed prescribe or (2) until thirty (30) days after the insurer or Contractor gives written notice to Lockheed Martin, whichever period is longer.

(c) Contractor shall insert the substance of this Clause, including this paragraph (d) in lower tier subcontracts under this PO which require work on Lockheed Martin's premises and shall require lower tier subcontractors to provide and maintain the required insurance required in paragraph (a) above.

## **27- DIFFERING SITE CONDITIONS**

(a) Contractor shall promptly, and before the conditions are disturbed, give a written notice to Lockheed Martin of (1) subsurface or latent physical conditions at the site which differ materially from those indicated in this PO, or (2) unknown physical conditions at the site, of an unusual nature, which differ materially from those ordinarily encountered and generally recognized as inhering in work of the character provided for in this PO.

(b) Lockheed Martin shall investigate the site conditions promptly after receiving the notice. If the conditions do materially so differ and cause an increase or decrease in Contractor's cost of, or the time required for, performing any part of the work under this PO, whether or not changed as a result of the conditions, an equitable adjustment shall be made under this Clause and the affected PO(s) modified in writing accordingly.

(c) No request by Contractor for an equitable adjustment to this PO under this Clause shall be allowed, unless Contractor has given the written notice required; provided, that the time prescribed in (a) above for giving written notice may be extended by Lockheed Martin at Lockheed Martin's election.

(d) No request by Contractor for an equitable adjustment to this PO for differing site conditions shall be allowed if made after final payment under this PO.

## **28 - OPERATIONS AND STORAGE AREAS**

(a) Contractor shall confine all operations (including storage of materials) on Lockheed Martin premises to areas authorized or approved by Lockheed Martin. No unauthorized or unwarranted entry upon, passage through, or storage or disposal of materials shall be made upon Lockheed Martin or Government premises. At Lockheed Martin's option, areas adjacent to the work area may be made available for use by Contractor without cost whenever such use will not interfere with Lockheed Martin or Government use or purposes, and with respect to Government premises, subject to any required approval by the Government.

(b) Temporary buildings (e.g. storage sheds, shops, offices) and utilities may be erected by Contractor only with

the advance written approval of Lockheed Martin and shall be built with labor and materials furnished by Contractor without expense to Lockheed Martin. The temporary buildings and utilities shall remain the property of Contractor and shall be removed by Contractor and the premises restored to original condition at Contractor's expense upon completion of the work. With the written consent of Lockheed Martin, the buildings and utilities may be abandoned and need not be removed.

(c) Contractor shall, under regulations prescribed by Lockheed Martin, use only established roadways, or use temporary roadways constructed by Contractor when and authorized by Lockheed Martin. When materials are transported in prosecuting the work, vehicles shall not be loaded beyond the loading capacity recommended by the manufacturer of the vehicle or prescribed by any Federal, state or local law or regulation. When it is necessary to cross curbs or sidewalks, Contractor shall provide adequate protection against damage. In the event of damage, Contractor shall repair or pay for the repair of any damaged curb, sidewalks, or roads.

**29- PROTECTION OF EXISTING VEGETATION, STRUCTURES,**

(a) Contractor shall preserve and protect all structures, equipment, and vegetation (such as trees, shrubs, and grass) on or adjacent to the work site, which are not to be removed and which do not unreasonably interfere with the work required under this PO. Contractor shall only remove trees when specifically authorized to do so, and shall avoid damaging vegetation that will remain in place. If any limbs or branches of trees are broken during performance of the work required under this PO, or by the careless operation of equipment, or by workmen, Contractor shall trim those limbs or branches with a clean cut and paint the cut with a tree pruning compound as directed by Lockheed Martin.

(b) Contractor shall protect from damage all existing improvements and utilities (1) at or near the work site and (2) on adjacent property of a third party, the locations of which are made known to or should be known by Contractor. Contractor shall repair any damage to those facilities, including those that are the property of a third party, resulting from failure to comply with the requirements of this PO or failure to exercise reasonable care in performing the work. If Contractor fails or refuses to repair the damage promptly, Lockheed Martin may have the necessary work performed and charge the cost to Contractor.

**30 - ACCIDENT PREVENTION**

(a) Contractor shall provide and maintain work environments and procedures which will (safeguard, the public, Lockheed Martin and Government personnel, property, materials, supplies and equipment exposed to Contractor operations and activities; (2) avoid interruptions of Lockheed Martin and Government operations and delays in project completion dates; and (3) control costs in the performance of this PO.

(b) For these purposes on contracts for construction, dismantling, demolition, or removal of improvements, Contractor shall:

- (1) Provide appropriate safety barricades, signs, and signal lights;
- (2) Comply with the safety requirements of Lockheed Martin;
- (3) Comply with the standards issued by the Secretary of Labor at 29 CFR Part 1926 and 29 CFR Part 1910;
- (4) Ensure that any additional measures Lockheed Martin determines to be reasonably necessary for this purpose are taken.

(c) If this PO is for construction or dismantling, demolition or removal of improvements with any Department of Defense agency or component, Contractor shall comply with the pertinent provisions of the U.S. Army Corps of Engineers Safety and Health Requirements Manual, EM 385-1-1, in effect on the date of the solicitation to which this PO relates.

(d) Whenever Lockheed Martin or the Contracting Officer becomes aware of any noncompliance with these requirements or any condition which poses a serious or imminent danger to the health or safety of the Public or Lockheed Martin and Government personnel, Lockheed Martin shall notify Contractor orally, with written confirmation, and request immediate initiation of corrective action. This notice, when delivered to Contractor or Contractor's representative at the site of the work, shall be deemed sufficient notice of the noncompliance and corrective action required. After receiving the notice, Contractor shall immediately take corrective action. If Contractor fails or refuses to take corrective action promptly, Lockheed Martin may issue an order stopping all or part of the work until satisfactory corrective action has been taken. Contractor shall not be entitled to any equitable adjustment of the contract price or extension of the performance schedule on any stop work order issued under this Clause.

(e) Contractor shall insert this Clause, including this paragraph (e), with appropriate changes in the designation of the parties, in subcontracts.

### **31 CLEANING UP**

Contractor shall at all times keep the work area, including storage areas, free from accumulations of waste materials. Before completing the work, Contractor shall remove from the work site and premises of Lockheed Martin any rubbish, tools, scaffolding, equipment, and materials that are not the property of Lockheed Martin. Upon completing the work, Contractor shall leave the work area in a clean, neat, and orderly condition satisfactory to Lockheed Martin.

### **32 - OTHER CONTRACTS**

Lockheed Martin may undertake or award other contracts for additional facilities work. Contractor shall fully cooperate with the other contractors and with Lockheed Martin employees and shall carefully adapt scheduling and performing the work under this PO to accommodate the additional work, heeding any direction that may be provided by Lockheed Martin. Contractor shall not commit or permit any act that will interfere with the performance of work by any other contractor or by Lockheed Martin's employees.

### **33 - PATENT INDEMNITY, TRADEMARKS AND COPYRIGHTS**

(a) To the extent that the Supplies to be furnished hereunder are produced to detailed designs not originated and furnished by Lockheed Martin or by a process or method, the use of which is not specifically directed by Lockheed Martin, Lockheed Martin shall have no responsibility to Contractor for patent infringement and Contractor guarantees that the sale or use of such Supplies or the use of such process or method hereunder will not infringe any United States or foreign patents, trademarks or copyrights. Contractor shall defend, indemnify and hold Lockheed Martin and its customers harmless from any loss, cost, damage, expense (including attorney's fees) or liability which may be incurred on account of infringement or alleged infringement of patent rights, trademarks or copyrights with



respect to such Supplies, and defend, at its own expense, any action or claim in which such infringement is alleged by third parties, provided Contractor is notified of such actions or claims against Lockheed Martin.

(b) Contractor's liability under this Clause shall be reduced to the extent Lockheed Martin is afforded protection from any expense, cost, loss, damage or liability by FAR 52.227-1 "Authorization and Consent" which clause is incorporated herein by reference except as used therein "Government" means "Government," "Contractor" means "Contractor" and "contract" means "this PO."

**34 - NOTICE TO LOCKHEED MARTIN OF LABOR DISPUTES**

(a) If Contractor has knowledge that any actual or potential labor dispute is delaying or threatens to delay the timely performance of this PO, Contractor shall immediately give notice, including all relevant information, to Lockheed Martin.

(b) Contractor agrees to insert the substance of this Clause, including this paragraph

(b) in all lower tier subcontracts issued hereunder, except that each lower tier subcontract shall provide that in the event its timely performance is delayed or threatened by delay by any actual or potential labor dispute, the lower tier subcontractor shall immediately notify the next higher tier subcontractor or Contractor, as the case may be, of all relevant information concerning the dispute.

**35 - COMPLIANCE WITH LAWS**

Contractor agrees to comply with all applicable local, state and federal United States laws and executive orders and regulations issued pursuant thereto, and Contractor agrees to defend, indemnify and hold harmless Lockheed Martin from any claim, suit, cost, loss, damage, expense (including attorney's fees) or liability by reason of Contractor's violation hereof.

**36- INDEMNIFICATION**

Contractor shall defend, indemnify, and hold harmless Lockheed Martin, its officers, employees and agents from any claim, suit, loss, cost, damage, expense (including attorney's fees), or liability by reason of property damage or personal injury (including death) to any person, including Contractor's employees, of whatsoever nature or kind arising out of, as a result of, or in connection with such performance occasioned in whole or in part by the actions or omissions of Contractor, its officers, employees, agents or subcontractors at any tier. Contractor shall take all precautions necessary, special or otherwise and shall be responsible for compliance with all Federal, state and local safety laws in the performance of this PO. Without in any way limiting the foregoing undertakings, Contractor and its subcontractors at any tier shall maintain personal liability and property damage insurance in reasonable limits covering the obligations set forth herein and shall maintain proper Workers' Compensation Insurance covering all employees performing hereunder.

**37 - SPECIAL PLANT CONDITIONS**

(a) ALLOCATION OF WORK. The specifications are divided into sections in an effort to separate the work by

major trades insofar as possible. Any overlapping of trades or failure to include all work of a given trade under the appropriate heading will not relieve Contractor of his responsibility to provide a turnkey job, complete in every respect.

(b) INTERFERENCES. As the work progresses, Lockheed Martin will cooperate with Contractor in locating and identifying interferences in the work. When interferences are encountered in the work, Contractor shall notify Lockheed Martin for verification and identification. In all cases, Contractor shall proceed with extreme care in the vicinity of utilities and existing installations. If such are damaged by Contractor, Contractor shall repair or replace the damaged installation to the satisfaction of Lockheed Martin with no additional cost to Lockheed Martin.

(c) CONCURRENCE WITH PLANT OPERATIONS. Contractor will be required to conduct all phases of the work in such a manner as to preclude the possibility of any interferences with or delay to Lockheed Martin's personnel and/or production work and shall be prepared at all times to readily yield right of way to Lockheed Martin's transportation system. Removal of excavated material and debris, delivery of material, and other traffic to and from the work area will be scheduled so as not to interfere with Lockheed Martin's plant operations.

(d) CONTRACTOR'S VEHICLES. Contractor's trucks or vehicles identified with permanent type lettering will be allowed in the plant area. No privately owned vehicles will be admitted until proper certification and evidence of required insurance coverage have been filed with and approved by Lockheed Martin, and a vehicle pass has been secured from Lockheed Martin's Construction Contract Administrator.

(e) EQUIPMENT LIMITATIONS. Lockheed Martin reserves the right to limit the type of equipment used by Contractor. Use of equipment that may cause damage to nearby equipment and/or endanger personnel will be especially controlled.

(f) IN-PLANT TRAFFIC. Contractor shall schedule and arrange his work operations so that all of Lockheed Martin's traffic will have freedom of movement through the area at all times. Contractor will be advised by Lockheed Martin as to the sequence of construction necessary for existing traffic conditions.

(g) PERSONNEL AND DELIVERY OF MATERIALS. All personnel, including those delivering materials, shall be instructed by Contractor as to the applicable plant regulations and the location of the job site.

(h) SAFETY MEASURES. Contractor will be required to provide all safety equipment and shields and any other means necessary to preclude the possibility of injury and/or damage to Contractor's and Lockheed Martin's personnel, equipment, or product, as determined by the location of the job site.

(i) PROTECTION OF OTHER WORK PARTS, ETC. It is the prime responsibility of Contractor not to damage any parts, materials, equipment, etc. with any operations required to complete this work. Contractor will be held financially responsible for all of its damages.

(j) ENTRANCE TO THE PLANT. Entrance of personnel, vehicles and all other materials will be allowed only through gates designated by Lockheed Martin.

(k) OVERHEAD WORK. Contractor shall provide approved barricades to block off areas when overhead work is in progress. Contractor will be allowed to work over existing doors only on weekends or with the approval of Lockheed Martin. All floor areas, parts, materials, equipment, etc. shall be covered with drop cloths or otherwise protected from foreign material when work is being performed overhead. Contractor will be required to clean all debris, dust, and dirt that falls on floors, equipment, etc. as a result of his operations. This matter shall be cleaned up before the

end of each work period.

(l) USE OF LOCKHEED MARTIN'S EQUIPMENT. Contractor shall under no condition use any equipment, tools, or appliances belonging to Lockheed Martin unless specifically noted otherwise in the specifications.

(m) WASTE MATERIALS. Contractor shall be responsible for all waste materials and debris accumulating as the result of excavation, demolition, etc. and shall dispose of same as directed by Lockheed Martin. Contractor shall also be responsible for all hazardous waste generated in the performance of its work and shall comply with all of Lockheed Martin's procedures as directed by Lockheed Martin.

(n) PROTECTION OF EXISTING UTILITIES. Contractor shall protect all existing utilities against damage which may result in interruption of service during the progress of the work. All utility service lines which are damaged shall be repaired without delay by Contractor and at no additional expense to Lockheed Martin. All repairs necessary to reinstate fire protection systems to their design capabilities shall be made immediately by qualified personnel at Contractor's expense.

(o) CONSTRUCTION WATER. Construction water is available near the job site. Contractor shall furnish all valves, fittings, hoses, etc., as required. All temporary lines, fittings, etc., shall be furnished, installed, connected, and maintained by Contractor in a

workmanlike manner satisfactory to Lockheed Martin and shall be removed by Contractor in like manner at his expense prior to acceptance of the work.

(p) COMPLIANCE WITH HAZARD COMMUNICATION. Contractor shall comply with the Hazard Communication Program in accordance with the department of Labor's Occupational Safety and Health Administration Regulation, 29 CFR 1910.1200, "Hazard Communication."

(q) HAZARD COMMUNICATION PROGRAM. Lockheed Martin maintains a list of hazardous chemicals in use at Lockheed Martin's Facilities. A set of appropriate Material Safety Data Sheets (MSDS) for those chemicals is available at the Facilities Engineering Office and at other strategic locations in the plant. If Contractor's employees will work at Lockheed Martin's facilities, Contractor must review its PO for information about hazardous chemicals. Contractor shall furnish (1) a list of all chemicals, paints, cleaners, compounds, and other liquid products that will be used in the performance of Work and (2) a copy of the MSDS for those materials that are hazardous according to OSHA (29 CFR 1910.1200). Contractor will provide such a listing in advance of performing any work. Contractor must inform its employees of the hazards they may encounter in their work and must provide appropriate clothing, respirators, and equipment as required to perform their jobs safely. Contractor may use MSDSs from Lockheed Martin's Material Safety Reference Points to help in this matter. Contractor shall have copy of MSDS available at construction office at all times.

(r) SAFETY RULES AND REGULATIONS. Prior to commencement of any work, Contractor shall review with their employees, and subcontractors all applicable safety rules and regulations, including the Buyer's **Contractor Environment, Safety & Health Handbook**, which is incorporated herein and is made a part hereof by this reference. Contractor shall be required to certify in writing that these safety rules and regulations have been reviewed with all of its employees and subcontractors.

(s) SPRAY PAINTING AND USE OF CHEMICALS. All work involving spray painting or the use of any chemical must

be approved by Lockheed Martin prior to the commencement of that work. Material Safety Data Sheets on these products shall be submitted by Contractor for the review of hazardous materials and the method of application.

(t) **BANNED MATERIALS.** Contractor warrants and represents that items delivered under this PO do not contain Polychlorinated Biphenyls (PCBs), 2,4-Dichlorophenoxyacetic acid, 2,4,5-Trichlorophenoxyacetic acid, asbestos, benzene, dioxins, hydrazine, mercury or pentachlorophenol, and agrees to indemnify Lockheed Martin against any loss, cost, damage or liability, including removal costs, by reason of Contractor's violation of this warranty.

(u) **SMOKING POLICY.** Contractor will ensure that all personnel, subcontractors, vendors, etc. comply with Lockheed Martin's smoking policy.

(v) **PROJECT INVITATION SUSPENSION.**

(1) If, in the opinion of Lockheed Martin, Contractor is failing to properly

execute contractual obligations hereunder, Lockheed Martin may temporarily cease to invite Contractor to bid on additional work until Contractor has satisfactorily resolved deficiencies regarding contractual obligations. Failure to properly execute contractual obligations includes, but is not limited to, unsatisfactory progress as related to the construction schedule, and delays resulting from Contractor operations or negligence.

(2) In addition to Lockheed Martin's options under Paragraph (1), if, in the opinion of Lockheed Martin, Contractor is mishandling or improperly disposing of hazardous materials or waste products at Lockheed Martin's facility, Lockheed Martin may order Contractor to cease work hereunder until such violations are corrected to the satisfaction of Lockheed Martin. During this work stoppage, Lockheed Martin shall not be obligated to Contractor for payments, and no extensions of time shall be given for the completion of Contractor's work.

(w) **CLOSEOUT DOCUMENTS.** Contractor shall submit to Lockheed Martin, all required closeout documents within thirty (30) calendar days after completion of all work (excluding administrative tasks) associated with this project. Closeout documents include, without limitation, items such as: payroll reports, as-built and original tracing drawings, operation and maintenance data, security employee badges (if expired), final invoice and other required documents.

**38- DIRECTION AND REDIRECTION OF EFFORT**

While Lockheed Martin's engineering and technical personnel may from time-to-time render assistance to Contractor concerning the Supplies to be furnished by Contractor, Lockheed Martin's Authorized Procurement Representative shall be the only individual authorized to direct and/or redirect the effort or in any way amend any of the terms of this PO.

**39- FOREIGN NATIONALS**

(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 other

U.S. Government agency with respect to employment of foreign nationals or export controlled data and information.

#### **40- FOREIGN SOURCE**

In the event that Contractor anticipates soliciting foreign source(s) for any work under this PO, Contractor shall notify Lockheed Martin five (5) working days before either applying for an export license under ITAR (International Traffic In Arms Regulation), 22 CFR

§§121-128, or before solicitation of the foreign source, whichever shall occur first. This notification shall include detailed description of the Lockheed Martin or Government data/equipment to be exported and a copy of the application for an export license, if such application has been made. This notification shall not be construed as an application for an export license, nor shall it in any way be interpreted to impede Contractor's right to apply for an export license. However, if Lockheed Martin or the Contracting Officer disagrees with the application, Contractor will be so notified.

#### **41- COMSEC MONITORING**

All communications with DoD organizations are subject to COMSEC review. Contractor personnel will be aware that telecommunications networks are continually subject to intercept by unfriendly intelligence organizations. The DoD has authorized the military departments to conduct COMSEC monitoring and recording of telephone calls originating from or terminating at DoD organizations. Therefore, civilian contractor personnel are advised that any time they place a call to or receive a call from a USAF organization, they are subject to COMSEC procedures. Contractor will assume the responsibility for ensuring wide and frequent dissemination of the above information to all employees dealing with official DoD information.

#### **42 - ELIMINATION OF USE OF CLASS I OZONE DEPLETING SUBSTANCES IN AIR FORCE PROCUREMENTS**

(a) It is the Air Force policy to eliminate the use of Class I Ozone Depleting Substances (ODS) in all Air Force procurements.

(b) Unless a specific waiver has been authorized, Air Force procurements:

(1) May not include any specification, standard, drawing, or other document that requires use of a Class I ODS in the design, manufacture, test, operation, or maintenance of any system, subsystem, item, component or process;

(2) May not include any specification, standard, drawing, or other document that establishes a requirement that can only be met by use of a Class I ODS; and

(3) May not require the delivery of any item of supply that contains a Class I ODS or any service that includes the

use of a Class I ODS.

(c) For purposes of the Air Force policy, the following are Class I ODS: (1) Halons: 1011, 1202, 1211, 1301, and 2402

(2) Chlorofluorocarbons (CFC): CFC-11, CFC-12, CFC-13, CFC-111, CFC- 112, CFC-113, CFC-114, CFC-115, CFC-211, CFC-212, CFC-213, CFC-214, CFC- 215, CFC-216, and CFC-217, and the blends R-500, R-501, F-502 and R-503; and Other controlled substances: carbon tetrachloride, methyl chloroform, and methyl bromide.

(d) The Air Force has reviewed the requirements specified in the prime contract to reflect this policy. Where considered essential, specific authorization has been obtained to require use of the following substances.

<u>SUBSTANCE</u>	<u>APPLICATION/USE</u>	<u>QUANTITY(IES)</u>
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None

(e) Contractor is encouraged to notify Lockheed Martin if any Class I DDS not specifically listed is required in the performance of this PO.

**43 – USE OF LOCKHEED MARTIN’S DATA**

(a) "Lockheed Martin's data" as used herein means data, designs or other information owned by Lockheed Martin. The term does not include data, designs or other information owned by the Government. Contractor shall not reproduce, use or disclose any data, designs, drawings or other information belonging to or supplied by or on behalf of Lockheed Martin, except as necessary in the performance of this PO or other POs with Lockheed Martin or the U.S. Government pursuant to paragraph (c) below. Upon Lockheed Martin's request, such data, designs, drawings, and other information, and any copies thereof, shall be returned to Lockheed Martin. Where Lockheed Martin's data, designs, drawings or other information are furnished to Contractor's lower tier subcontractors for performance of this or other subcontracts with Lockheed Martin, Contractor shall insert a similar provision in Contractor's subcontracts with its lower tier subcontractors.

(b) Lockheed Martin shall be considered the "person for whom the work was prepared for the purpose of authorship in any copy-rightable work created by Contractor under this PO.

(c) Notwithstanding any other provision of this PO, to the extent the U.S. Government has rights in Lockheed Martin's data or has received the right under its prime contracts with Lockheed Martin to authorize such use by Contractor, Contractor may reproduce Supplies ordered, use Lockheed Martin's tooling, or use Lockheed Martin's data, designs, drawings and other information in the manufacture of clauses for direct sale to the U.S. Government; provided, however, that Contractor shall: (1) give Lockheed Martin prior written notice of each such proposed use, (2) make no use which adversely affects Contractor's performance of work under this PO, (3) prominently identify, to the extent possible, each clause as being manufactured by Contractor for direct sale to the U.S. Government, and (4) indemnify and save Lockheed Martin harmless from any and all expense, loss, cost, damage or liability which may arise out of Contractor's use of such data, designs, drawings and other information and clauses.

**44 - NOTIFICATION OF DEBARMENT/SUSPENSION STATUS**

Contractor shall provide immediate notice to Lockheed Martin in the event of being suspended, debarred or declared ineligible by any Government agency, or upon receipt of a notice of proposed suspension or debarment from any Government agency, during the performance of this PO.

**45 - GIFTS, GRATUITIES, AND KICKBACKS**

(a) Buyer may, by written notice to Contractor, terminate this PO for default if Buyer has reasonable cause to believe that gratuities or kickbacks were offered or given by Contractor, or any agent or representative of Contractor, 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 Contractor 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 Contractor's violation of the Act including, but not limited to, any amount that Buyer is directed by the Contracting Officer to withhold from Contractor; and
  - (4) that Buyer may terminate this PO for default in the event of Contractor'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.

**46 - RESPONSIBILITY FOR PROPERTY**

(a) Unless otherwise specified, Contractor shall be liable for any loss, damage or destruction to Lockheed Martin or Government property furnished to Contractor and shall be responsible for returning such property to Lockheed Martin or the Government in as good condition as when received except for reasonable wear and tear or for the utilization of the property in accordance with the provisions of this PO. Title to, and the right of immediate possession of, all Lockheed Martin or Government property shall remain in Lockheed Martin or the Government. Title thereto shall not be affected by the incorporation or attachment thereof to any property not owned by Lockheed Martin or the Government, 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. Lockheed Martin shall have the right to enter Contractor's premises at all reasonable times to inspect its property and Contractor's records with respect thereto.

(b) Contractor shall provide immediate notice to Lockheed Martin of any loss, damage or destruction of Lockheed Martin or the Government property in Contractor's possession. Lockheed Martin does not guarantee the accuracy of any furnished property or the quality or suitability of any material supplied to Contractor. All such property furnished by Lockheed Martin or the Government shall be used solely in the performance of this PO or

other POs with Lockheed Martin or the Government where the Government has received such rights from Lockheed Martin. Such property shall be subject at all times to disposition as Lockheed Martin may direct and shall not be commingled with property belonging to Contractor or others. Contractor agrees to maintain inventory Control of all such property and to furnish inventories thereof when so required by Lockheed Martin. Contractor shall insert the substance of this clause in all lower tier subcontracts for procurement of supplies for use in the performance of this PO.

**47-TAXES**

Unless otherwise agreed in writing between the parties, Contractor shall pay such taxes and other impositions levied under applicable law, the amount of which is included in the PO price.

**48 – CERTIFICATIONS AND REPRESENTATIONS**

Compliance with Laws

(a) Contractor 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. Contractor agrees to indemnify Buyer against any loss, cost, damage or liability by reason of Contractor's violation of this clause.

(b) Contractor 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) Contractor 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.

**49 - LOWER TIER SUBCONTRACTS**

**Notwithstanding any other provision of this PO, Contractor shall not procure any of the completed or substantially completed Supplies described herein from any other party, by subcontract or otherwise, without the prior written consent of Lockheed Martin.**

**No lower tier subcontracts placed in support of this PO shall provide for payment on a cost-plus-a-percentage-of-cost basis, and any fee payable under cost-reimbursement type lower tier subcontracts shall not exceed the fee limitations contained in FAR Subpart 15.903(d).**

**Contractor shall give Lockheed Martin immediate written notice of any action or suit filed and prompt notice of any claim made against Contractor by any lower tier subcontractor that, in the opinion of Contractor, may result in litigation related in any way to this PO, with respect to which Contractor may be entitled to reimbursement from**



**Lockheed Martin.**

**50 AMENDMENTS**

b) Contractor recognizes that this PO is entered into under and subject in part to a prime contract between Lockheed Martin and the Government. The parties agree to negotiate in good faith an amendment to this PO upon notice by Lockheed Martin that

additional clauses or conditions are required by reason of the terms of the applicable prime contract or amendment thereto which affects performance hereunder.