

**FACILITIES CONSTRUCTION  
PURCHASE ORDER TERMS AND CONDITIONS**

**APPENDIX "1"  
REV. 1 –NOV. 7, 2016  
ORIGINAL—SEP 3, 2004**

1. Definitions

The following definitions shall apply unless otherwise specifically stated.

- "Buyer" shall mean Lockheed Martin Corporation acting through its Lockheed Martin Aeronautics Company – Ft. Worth, Texas.
- "Construction Engineer" (CE) shall mean the Buyer's Representative
- "Contractor ES&H [Handbook](#)" shall mean the Buyer's Contractor Environment, Safety & Health Handbook, which is applicable to Seller if Seller performs work/services or delivers goods on LM Aero-owned or operated facilities. The current version of this [Handbook](#) is incorporated herein and is made a part hereof by this reference.
- "Seller" shall mean the legal entity to which this Purchase Order is issued.
- "PO" shall mean this Purchase Order.
- "Government" shall mean the Government of the United States of America and those authorized or delegated responsibility to act on its behalf, except where specifically stated to be the government of any other country.
- "Prime Contract" shall mean the contract(s) under which this PO is issued.

2. General

Seller is an independent contractor in all its operations and activities hereunder, and the employees furnished by the Seller to perform work pursuant to this Purchase Order are Seller's employees exclusively without any relation whatsoever to Buyer. Said employees shall be paid by the Seller for all services performed under this Purchase Order and the Seller 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. Seller is not granted, expressly or impliedly, any right or authority to create any obligation or liability on behalf of or in the name of Buyer, or to bind Buyer in any manner whatsoever.

Unless otherwise indicated, the work is to be furnished or performed at facilities owned by the United States Government, designated as Air Force Plant No. 4, which is property under Federal jurisdiction.

3. Acceptance

Acceptance of this Purchase Order, either by acknowledgment or performance of services, constitutes acceptance of the conditions set forth below and on this Purchase Order. No change, modification, or revision to this contract shall be valid unless in writing and signed by the authorized Buyer Procurement Representative.

4. Performance

Performance must be in strict compliance with the schedule and other terms and conditions of this Purchase Order.

5. Compliance with Laws and Regulations

- (a) Seller shall comply with the applicable provisions of all Federal, state, and local laws and ordinances and all lawful orders, rules and regulations promulgated thereunder including without limitation the Occupational, Safety and Health Act (OSHA) and the Arms Export Control Act. Seller agrees to indemnify Buyer against any loss, cost, damage or liability by reason of Seller's violation of this clause.
- (b) In the event Seller anticipates contracting with foreign sources for work performed under this PO, the Seller shall: 1) notify the Buyers Construction Engineer; and 2) comply with the International Tariff in Arms Regulation (ITAR) 22 CFR Sections 121-128.
- (c) Seller shall comply with the Toxic Substances Control Act and any rules and regulations promulgated 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.
- (d) Seller shall provide to Buyer with each delivery any Material Safety Data Sheet applicable to the Items and containing such information as required by the Occupational Safety and Health Act of 1970 and regulations promulgated thereunder.

6. Suspension of Work

- (a) Buyer or Buyer's Representative (CE) may order Seller, in writing, to suspend, delay, or interrupt all or any part of the work of this Purchase Order for the period of time that Buyer determines appropriate for the convenience of Buyer.
- (b) If the performance of all or any part of the work is, suspended, delayed, or interrupted for an unreasonable period of time, (1) by an act of Buyer in the administration of this Purchase Order, or (2) by Buyer's failure to act within the time specified in this Purchase Order (or within a reasonable time if not specified), an adjustment shall be made for any increase in the cost of performance of this Purchase Order (excluding profit) necessarily caused by the unreasonable suspension, delay, or interruption, and the Purchase Order shall be modified in writing accordingly. However, no adjustment shall be made under this clause for any suspension, delay, or interruption to the extent that performance would have been so suspended, delayed, or interrupted by any other cause, including the fault or

negligence of Seller, or for which an equitable adjustment is provided for or excluded under any other term or condition of this Purchase Order.

- (c) A claim under this clause shall not be allowed (1) for any costs incurred more than 20 days before Seller shall have notified Buyer in writing of the act or failure to act involved (but this requirement shall not apply to a claim resulting from a suspension order), and (2) unless the claim, in an amount stated, is asserted in writing as soon as practicable after the termination of the suspension, delay, or interruption, but not later than the date of final payment under the Purchase Order.

## 7. Termination for Default

- (a) Buyer may, by written notice of default to Seller, terminate the whole or any part of this Purchase Order if Seller fails to: (i) perform this Purchase Order within the time specified herein or any extension thereof; or (ii) perform any other provision of this Purchase Order; or, (iii) make progress so as to endanger performance of this Purchase Order in accordance with its terms, and does not cure such failure within a period of ten (10) days (or longer period as Buyer may authorize in writing) after receipt of notice from Buyer specifying such failure.
- (b) In the event Buyer terminates this Purchase Order in whole or in part as provided in subparagraph (a) above, Buyer may procure, upon such terms and in such manner as Buyer may deem appropriate, services similar to those so terminated, and Seller shall be liable to Buyer for any excess costs. However, Seller shall continue the performance of this Purchase Order to the extent not terminated.
- (c) Seller shall not be liable for any excess costs if the failure to perform this Purchase Order arises out of unforeseeable causes beyond the control and without the fault or negligence of Seller. Such causes may include, but are not limited to, acts of God or the public enemy, acts of the Government in either its sovereign or contractual capacity, fires, floods, epidemics, quarantines restrictions, strikes, freight embargoes, and unusually severe weather; but in every case the failure to perform must be beyond the control and without the fault or negligence of Seller. If failure to perform is caused by the default of a subcontractor, and if such default arises out of unforeseeable causes beyond the control of both Seller and the subcontractor, and without the fault or negligence of either of them, Seller shall not be liable for any excess costs for failure to perform, unless the services to be furnished by the subcontractor were obtainable from other sources in sufficient time to permit Seller to meet the required delivery schedule. The term "subcontractor(s)" shall mean subcontractor(s) at any tier.
- (d) If this Purchase Order is terminated as provided in subparagraph (a) above, Buyer, in addition to any other rights provided in this Purchase Order, may require Seller to deliver to Buyer or the Government, in the manner and to the extent directed by Buyer, (i) any completed services, and (ii) such partially completed services and materials, plans, drawings, information and contract rights (hereinafter called "services and/or materials") as Seller has specifically produced or specifically acquired for the performance of such part of this Purchase Order as has been terminated; and Seller shall, upon direction of Buyer, protect and preserve property in the possession of Seller in which Buyer or the Government has an interest. Payment for completed services delivered to and accepted by Buyer shall be at the

Purchase Order price. Payment for services and/or materials delivered to and accepted by Buyer and for the protection and preservation of property shall be in an amount agreed upon by Buyer and Seller. Failure to agree to such amount shall be a dispute concerning a question of fact within the meaning of the paragraph of this Purchase Order entitled "Disputes." Buyer may withhold from amounts otherwise due Seller for such completed services and/or materials such sum as Buyer determines to be necessary to protect Buyer or the Government against loss because of outstanding liens or claims of former lien holders.

- (e) If, after notice of termination of this Purchase Order under the provisions of this paragraph, it is determined for any reason that Seller was not in default under the provisions above, or that the default was excusable under the provisions of this paragraph, the rights and obligations of the parties shall be the same as if the notice of termination had been issued pursuant to a termination for convenience of Buyer.
- (f) The rights and remedies of Buyer provided in this paragraph shall not be exclusive and are in addition to any other rights and remedies provided by law or under this Purchase Order.

#### 8. Termination for Convenience

- (a) Buyer, in accordance with this clause, may terminate performance of work under this Purchase Order in whole or in part if the Buyer determines that a termination is in Buyer's interest. The Buyer shall terminate by delivering to the Seller a Notice of Termination specifying the extent of termination and the effective date.
- (b) After receipt of a Notice of Termination, and except as directed by the Buyer, the Seller shall immediately proceed with the following obligations, regardless of any delay in determining or adjusting any amounts due under this Clause:
  - (1) Stop work as specified in the notice.
  - (2) Place no further subcontracts or orders (referred to as subcontracts in this clause) for materials, services, or facilities, except as necessary to complete the continued portion of the contract.
  - (3) Terminate all subcontracts to the extent they relate to the work terminated.
  - (4) Assign to Buyer, as directed by Buyer, all right, title, and interest of the Seller under the subcontracts terminated, in which case Buyer shall have the right to settle or to pay any termination settlement proposal arising out of those terminations.
  - (5) With approval or ratification to the extent required by Buyer, settle all outstanding liabilities and termination settlement proposals arising from the termination of subcontracts, the approval or ratification being final for purposes of this CLAUSE.
  - (6) As directed by the Buyer, transfer title and deliver to Buyer (i) the fabricated or unfabricated parts, work in process, completed work, supplies, and other material produced or acquired for the work terminated, and (ii) the completed or

partially completed plans, drawings, information, and other property that, if the contract had been completed, would be required to be furnished to Buyer.

- (7) Complete performance of the work not terminated.
  - (8) Take any action that may be necessary, or that the Buyer may direct, for the protection and preservation of the property related to this contract that is in the possession of the Seller and in which Buyer has or may acquire an interest.
  - (9) Use its best efforts to sell, as directed or authorized by the Buyer, any property of the types referred to in subparagraph (6) above; provided, however, that the Seller (i) is not required to extend credit to any purchaser and (ii) may acquire the property under the conditions prescribed by, and at prices approved by the Buyer. The proceeds of any transfer or disposition will be applied to reduce any payments to be made by Buyer under this Purchase Order, credited to the price or cost of the work, or paid in any other manner directed by the Buyer.
- (c) After termination, the Seller shall submit a final termination settlement proposal to Buyer in the form and with the certification prescribed by Buyer. The Seller shall submit the proposal promptly, but no later than 60 days from the effective date of termination, unless extended in writing by the Buyer upon written request of the Seller within this 60 day period. However, if the Buyer determines that the facts justify it, a termination settlement proposal may be received and acted on after 60 days or any extension. If the Seller fails to submit the proposal within the time allowed, the Buyer may determine, on the basis of information available, the amount, if any, due the Seller because of the termination and shall pay the amount determined.
- (d) Subject to paragraph (c) above, the Seller and the Buyer may agree upon the whole or any part of the amount to be paid because of the termination. The amount may include a reasonable allowance for profit on work done. However, the agreed amount, whether under this paragraph (d) or paragraph (e) below, exclusive of costs shown in subparagraph (e)(2) below, may not exceed the total Purchase Order price as reduced by (1) the amount of payments previously made and (2) the Purchase Order price of work not terminated. The Purchase Order shall be amended, and the Seller paid the agreed amount. Paragraph (e) below shall not limit, restrict, or affect the amount that may be agreed upon to be paid under this paragraph.
- (e) If the Seller and Buyer fail to agree on the whole amount to be paid the Seller because of the termination of work, the Buyer shall pay the Seller the amounts determined as follows, but without duplication of any amounts agreed upon under paragraph (d) above:
- (1) For Purchase Order work completed before the effective date of termination and acceptable to Buyer, the total (without duplication of any items) of:
    - (a) The cost of this work;
    - (b) The cost of settling and paying termination settlement proposals under terminated subcontracts that are properly chargeable to the terminated portion of the contract if not included in subdivision (a) above; and

- (c) A sum, as profit on (a) above, determined by Buyer under Section 49.202 of the Federal Acquisition Regulation, in effect on the date of this Purchase Order, to be fair and reasonable; however, if it appears that the Seller would have sustained a loss on the entire Purchase Order had it been completed, the Buyer shall allow no profit under this subdivision (c) and shall reduce the settlement to reflect the indicated rate of loss.
- (2) The reasonable cost of settlement of the work terminated, including:
  - (a) Accounting, legal, clerical, and other expenses reasonably necessary for the preparation of termination settlement proposals and supporting data;
  - (b) The termination and settlement of subcontracts (excluding the amounts of such settlements); and
  - (c) Storage, transportation, and other costs incurred, reasonably necessary for the preservation, protection, or disposition of the termination inventory.
- (f) Except for normal spoilage, and except to the extent that Buyer expressly assumed the risk of loss, the Buyer shall exclude from the amounts payable to the Seller under paragraph (e) above, the fair value, as determined by the Buyer, of property that is destroyed, lost, stolen, or damaged so as to become undeliverable to Buyer or to a buyer of said property.
- (g) The cost principles and procedures of Part 31 of the Federal Acquisition Regulation, in effect on the date of this contract, shall govern all costs claimed, agreed to, or determined under this CLAUSE.
- (h) In arriving at the amount due the Seller under this CLAUSE, there shall be deducted:
  - (1) Any payments to the Seller under the terminated portion of this contract;
  - (2) Any claim which Buyer has against the Seller under this Purchase Order; and
  - (3) The agreed price for, or the proceeds of sale of, materials, supplies, or other things acquired by the Seller or sold under the provisions of this CLAUSE and not recovered by or credited to Buyer.
- (i) If the termination is partial, the Seller may file a proposal with the Buyer for an equitable adjustment of the price(s) of the continued portion of the Purchase Order. The Buyer shall make any equitable adjustment agreed upon. Any proposal by the Seller for an equitable adjustment under this clause shall be requested within 60 days from the effective date of termination unless extended in writing by the Buyer.
  - (1) Buyer may, under the terms and conditions it prescribes, make partial payments and payments against costs incurred by the Seller for the terminated portion of the Purchase Order, if the Buyer believes the total of these payments will not exceed the amount to which the Seller will be entitled.

- (2) If the total payments exceed the amount finally determined to be due, the Seller shall repay the excess to Buyer upon demand, together with interest thereon computed at the annual rate established under Section 6621 of the Internal Revenue Code of 1986 (26 U.S.C. 6621). Interest shall be computed for the period from the date the excess payment was received by the Seller to the date the excess is repaid. Interest shall not be charged on any excess payment due to a reduction in the Seller's termination settlement because of retention or other disposition of termination inventory until ten (10) days after the date of the retention or disposition, or a later date determined by the Buyer because of the circumstances.
- (j) As a condition precedent to any payments under this CLAUSE, Buyer may require Seller to furnish affidavits and releases, in accordance with the requirements of CLAUSE 14 "PAYMENTS" of this Purchase Order, that no liens or rights in rem of any kind lie upon or have attached against the work, materials, articles, or equipment.
  - (1) Unless otherwise provided for in this Purchase Order or by statute, the Seller shall maintain all records and documents relating to the terminated portion of this Purchase Order for three (3) years after final settlement. This includes all books and other evidence bearing on the Seller's costs and expenses under this Purchase Order. The Seller shall make these records and documents available to Buyer at the Seller's office, at all reasonable times, without charge. If approved by the Buyer, photographs, microphotographs, or other authentic reproductions may be maintained instead of original records and documents.

## 9. Rights and Reservations

All reports, documents, records, data and software, including without limitation, drawings, specifications and documentation, and all material, including without limitation, tools, dies, patterns, samples, devices and improvements, and all other information prepared, created or developed in connection with this Purchase Order or furnished to Seller by Buyer, or paid for in whole or in part by Buyer (hereinafter referred to as "Property"), are and shall be owned solely by Buyer or the Government. Seller shall not use or disclose to others all or any part of such Property without specific prior written permission of Buyer. Seller shall disclose to Buyer and hereby transfers, assigns and sets over to Buyer the entirety of any and all patents, copyrights, mask works and/or trade secrets in such Property, which may be possessed or become possessed by Seller as author and/or otherwise. Prior to any printing required under the terms of this Purchase Order, Seller shall request in writing from Buyer the legends and notices, if any, to be affixed on such Property at the time of printing.

Any data, software, material and/or information developed by Seller solely at its expense, and/or solely at the expense of any of its subcontractors other than Buyer, and delivered and/or required to be delivered hereunder (hereinafter referred to as "Other Data"), shall be furnished without restriction as to Buyer's right to use and/or disclose such Other Data, and free of all legends and notices unless such Other Data is specifically identified in a Proprietary Data Agreement incorporated into this Purchase Order.

10. Patents, Copyrights, Mask Works, and Trade Secrets

- (a) Patents, Copyrights, Mask Works, and Trade Secrets: Seller agrees to defend, indemnify and hold harmless Buyer, its customers and agents, against any liability, including without limitation, costs, expenses and attorney's fees, for or by reason of any actual or alleged infringement of any patent, copyright, mask work or trade secret arising out of the manufacture, use, sale, delivery or disposal of goods or services furnished under this PO.

Buyer shall notify Seller as soon as practicable of any claim of infringement resulting therefrom received by Buyer. In the event of any such claim against Buyer, Seller shall furnish to Buyer, when so notified by Buyer, all evidence and information in the possession of Seller pertaining to such claim. Seller shall report to Buyer promptly and in reasonable written detail each notice or claim of patent, copyright, mask work or trade secret infringement relating to the performance of this PO of which Seller has knowledge.

The indemnity and hold harmless provisions of this clause shall not be applicable to actual or alleged patent infringements if this PO is issued under a Government prime contract which contains FAR Clause 52.227-1, "Authorization and Consent," with its Alternate 1. Where payment is made for or results in experimental, developmental, or research work performed under this PO, then unless this PO is issued under a Government prime contract, Seller shall disclose and does hereby assign to Buyer all inventions resulting therefrom and shall assist Buyer, to the extent reasonably requested, in securing and defending patent protection thereon, and does grant Buyer the right to use for any purpose all data specified to be delivered hereunder.

- (b) Patents and Data: The clauses related to Patents and Data in the FAR and DFARS which are incorporated in the prime contract(s) under which this PO is issued, are hereby incorporated herein by reference. Seller is cognizant of such provisions and agrees to comply with such provisions as "Contractor." Notwithstanding the foregoing, if this PO is not for experimental, developmental, or research work, the "Patent Rights-Retention By Contractor" clauses do not apply to Seller. Unless otherwise specified in this PO, all technical data and/or computer software and computer software documentation which are required to be furnished by Seller under this PO shall be furnished with "Unlimited Rights."

11. Work on Buyer's Premises

When Seller, Seller's employees, agents, representatives or subcontractors enter onto Buyer's premises for any reason in connection with this Purchase Order, Seller and such other parties shall abide by all rules and regulations at the work site including but not limited to those with respect to safety, security, fire prevention, traffic, and waste management, and abide by all military security regulations including the Buyer's "**Contractor Environment, Safety & Health Handbook**" (PM-8013), the current version of which is incorporated herein and made a part hereof by this reference.

Prior to commencement of any work, Seller shall review with their employees, and subcontractors all applicable safety rules and regulations, including the Contractor Environment, Safety & Health Handbook. Seller shall be required to certify in writing that



these safety rules and regulations have been reviewed with all of its employees and subcontractors.

Buyer will notify Seller or Seller's representative at the work site of any noncompliance with the foregoing rules and regulations and the corrective action to be taken. After receipt of such notice, Seller shall immediately take correction action. If Seller fails or refuses to comply promptly, Buyer may issue an order stopping all or part of the work until satisfactory corrective action has been taken. No part of the time lost due to any such stop work order shall be made the subject of a claim for an extension of time or for excess costs or damages by Seller.

Seller shall maintain an accurate record of, and shall report to Buyer in the manner and on the forms prescribed by Buyer, exposure data and all accidents resulting in death, traumatic injury, occupational disease, and damage to property, material, supplies and equipment incident to work performed under this Purchase Order. Seller shall defend, indemnify and hold Buyer harmless from all claims, actions, demands, losses and causes of action arising from injury, including death, to any person, or damage to any property, when such injury or damage results in whole or in part from acts or omissions of Seller, Seller's employees or agents, save and except damage caused by the sole negligence of Buyer.

## 12. Bonds

Seller shall furnish performance and payment bonds in a form acceptable to Buyer and with a surety satisfactory to Buyer.

- (a) A payment bond, for the protection of persons furnishing material or labor in connection with the performance of the work under this Purchase Order, shall have a penal sum as follows:
  - (1) 50 percent of the PO price if the PO is not more than \$1 million,
  - (2) 40 percent of the PO price if the PO is more than \$1 million but not more than \$5 million; or
  - (3) \$2.5 million if the PO price is more than \$5 million.
- (b) Seller shall furnish a performance bond equal to 100% of the Purchase Order price. The performance bond amount shall include taxes imposed by the United States which are collected, deducted, or withheld from wages paid by Seller in carrying out the Purchase Order.
- (c) All bonds required hereunder shall become binding upon the award of the Purchase Order.
- (d) Irrespective of whether the foregoing requirements are met, if any surety for any bond furnished is or becomes unacceptable to Buyer, or if any such surety fails to furnish reports as to its financial condition when requested by Buyer, Seller shall promptly furnish such additional security as may be required to protect the interests of Buyer or the United States and the person or business entity(s) supplying labor or materials in prosecution of the work contemplated by this Purchase Order.

13. Insurance

- (a) Seller, and any subcontractors used by Seller in connection with this PO, shall carry Worker's Compensation and Employee's Liability Insurance to cover Seller's and such subcontractors' legal liability for accidents to their respective employees. Seller and its subcontractors shall carry adequate Comprehensive General Liability and Comprehensive Automobile Liability Insurance covering the legal liability of Seller and such subcontractors for accidents arising out of the operations of Seller or such subcontractors which result in bodily injury, including death, to any person or persons, or any damage to property. At Buyer's request, Seller shall furnish to Buyer certificates from Seller and/or its subcontractors' insurers showing such coverage in effect (in the amounts listed below) and agreeing to give Buyer ten (10) days prior written notice of cancellation of such coverage.

<b>Type of Insurance</b>	<b>Limits of Minimum Liability</b>
A. General Liability (to include premises and operations, elevators, Independent Contractors, and completed operations and products)	Single Limits for Bodily Injury and Property Damage: \$1,000,000 (Each Occurrence)
B. Automobile Public Liability (to include Employer's non-ownership liability and hired autos)	Combined Single Limit: \$1,000,000 (Each Accident)
C. Workers Compensation and Employers' Liability	Each Accident: \$500,000 Disease – Each Employee: \$500,000 Disease – Policy Limit: \$500,000

14. Payment

- (a) The bid amount (fixed price purchase orders) shall be submitted in whole dollar increments only. All invoices submitted monthly in whole dollar increments for payment shall reference Buyer's purchase order number and line item number.
- (b) If the construction schedule is 30 days or less, payment for the work will be made in two payments only and no progress payments will be made.
- (c) Except as provided in paragraph (d) below and as otherwise provided in this Purchase Order, Seller, upon completion of all work called for by the Purchase Order and upon submission of all documentation, including a properly certified invoice in duplicate, shall be paid the Purchase Order price following final acceptance by Buyer.
- (d) Notwithstanding any other provisions of this Purchase Order, Buyer shall retain during the progress of the work under this Purchase Order and for thirty (30) days after the completion and final acceptance thereof, ten percent (10%) of the total price as set forth in the Purchase Order.

- (e) Seller will be entitled to progress payments in accordance with the provisions of this paragraph (e) if progress payments are specifically authorized. If so authorized, from time to time as construction progresses but at intervals of not less than thirty (30) days, Seller may submit invoices in duplicate certified by Seller's representative as to percentage of completion of performance of the entire Purchase Order. The amount of each invoice shall be that percentage of the total Purchase Order price equal to the percentage of completion of the Purchase Order, less any amounts previously billed by Seller. The net amount of each invoice so submitted and certified shall, upon approval of Buyer, be paid by Buyer to Seller, except that Buyer shall withhold a percentage not to exceed ten percent (10%) of each such invoice until expiration of thirty (30) days after completion and final acceptance by Buyer of the entire work called for by this Purchase Order, or until such earlier time as Buyer may approve it for payment.
- (f) The Government and Buyer, as their interests may be, shall retain title to all Government-furnished and Buyer-furnished property. Title to all facilities and components shall pass to and vest in the Government and Buyer, as their interests may be, upon delivery by Seller of such items which are required to be furnished or for which Seller may be entitled to payment for having furnished. Title to other property furnished or required to be furnished by Seller shall pass to and vest in the Government upon (i) issuance of the property for use in performing this Purchase Order, (ii) commencement of processing or use of the property in performing, this Purchase Order, or reimbursement of the cost of the property by Buyer, whichever occurs first. Title to any property shall not be affected by its incorporation into or attachment to any property not owned by the Government, nor shall any item of property become a fixture or lose its identity as personal property by being attached to real property. Notwithstanding that title to property is in the United States or Buyer through the operation of this Article, the handling and disposition of such property shall be determined by the applicable provisions of this Purchase Order.
- (g) Except to the extent that Buyer shall have otherwise expressly assumed risk of loss of property and without regard to title, in the event of the loss, theft, or destruction of or damage to property before Buyer's final acceptance of the work hereunder, Seller shall bear the risk of loss.
- (h) Seller recognizes that all work is to be performed at Air Force Plant No. 4, a Federal enclave, and that no claims by Seller or any subcontractor in connection with the work shall be the basis for enforcement of mechanics' or materialman's' liens or any similar rights or claims under Chapter 53 of the Texas Property Code or otherwise. Seller shall indemnify and hold Buyer harmless from and against any claims, demands, liability, cost or expense, including without limitation attorneys' fees, arising in connection with the nonpayment or alleged nonpayment for work performed by a subcontract at any tier. As a condition precedent to any payments under this Purchase Order, Buyer may require Seller to furnish affidavits that no liens or rights in rem of any kind lie upon or have attached against the work, materials, articles, or equipment, either for or on account of any work done or any materials, articles, or equipment or other item furnished or used in connection therewith, or any claims or demands of any kind. Seller promises to keep said property free and clear of all such liens and rights in rem. Buyer's payment is subject to the express condition that no liens or rights in rem shall so lie or attach. In the event any liens or rights in rem attach to, or are claimed by any person or entity in any property in

connection with this Purchase Order, Seller shall indemnify and hold Buyer harmless against all costs and expenses, including without limitation attorneys' fees, incurred by Buyer in discharging such liens or rights in rem or defending against such claims.

- (i) As conditions precedent to final payment Seller shall:
  - (1) execute and furnish to Buyer a release, in terms acceptable to the Buyer, of all claims and liens against Buyer arising under or by virtue of this Purchase Order, including, in the event of any termination, claims or liens arising under or by virtue of such termination;
  - (2) execute and furnish Buyer an affidavit executed in duplicate by a duly authorized officer of Seller that all charges for labor and materials used in the work have been paid, and an indemnification to Buyer against claims by others that such charges have not been paid;
  - (3) return all badges for plant admission and all car passes to Buyer's representative (Construction Engineer). Badges and passes may be returned by mail or in person. In the event that all badges and passes have not been returned, Seller's request for payment will be held without action.
  
- (j) The obligation of Buyer to make any of the payments required under this Purchase Order shall be subject to:
  - (1) any unsettled claims against Seller for labor and/or materials,
  - (2) reasonable deductions on account of defects in material and/or workmanship,
  - (3) any other claims which Buyer may have against Seller, including without limitation any withholding of, or reduction in, the payments or price payable to Buyer pursuant to any Government prime contract under which this Purchase Order may be issued arising out of any action, or failure or deficiency in performance, by Seller. Buyer may withhold from or setoff against the Purchase Order price under this Purchase Order or any other Purchase Order between Buyer and Seller any claims or amounts due to Buyer from Seller under this or any other Purchase Order and Buyer shall be entitled to payment from Seller of any claims or amounts due not so setoff.
  
- (k) Seller shall pay all Social Security Taxes, Unemployment Compensation Taxes, and all other obligations lawfully imposed on any employer of labor, at its own expense, and shall indemnify Buyer against any liability therefor. Unless otherwise provided, Seller agrees that any compensation paid by Buyer for Seller's performance of work under this Purchase Order includes all taxes levied by the Federal Government and by any state or political subdivision thereof, other than sales tax where Buyer's Direct Payment Exemption Certificate is issued, and the cost of all bonds required to be furnished hereunder.
  
- (l) Texas Direct Payment Exemption Certificate: The Buyer will furnish the Seller with a Texas Direct Payment Exemption Certificate to be used on this contract for the procurement of materials (excluding rental equipment), where applicable. The Seller shall furnish its subcontractors, suppliers and/or vendors with a Texas Resale Certificate, where applicable.

15. Assignment and Subcontracting

Seller shall not assign this Purchase Order or any portion thereof, nor shall Seller allow its subcontractors at any tier to place any subcontract hereunder that is not in accordance with the subcontract plan in the bid documents, without prior written consent of Buyer. All subcontracts shall contain the provisions required by this Purchase Order and shall permit assignment of those subcontracts to Buyer upon any termination of this Purchase Order. Any prohibited assignment of this Purchase Order by Seller shall be null and void and shall be deemed a material breach of this Purchase Order, and Seller shall remain liable to Buyer for performance of its covenants, duties, liabilities and obligations hereunder.

16. Changes

(a) Buyer may at any time, within the general scope of this Purchase Order, make changes in drawings and specifications, issue additional instructions, require additional work, or vary the period of performance of work and Seller shall immediately comply therewith. All changes shall be issued by Buyer in writing. No change shall release or exonerate any sureties upon any bond required or given, regardless of whether or not such sureties receive notice of such changes. Seller shall not undertake any change to this Purchase Order, nor shall Buyer be liable for increased costs resulting therefrom, unless requested by Buyer in writing.

(b) If any such change causes a material increase or decrease in the cost of, or the time required for, performance of any part of the work under this Purchase Order, Buyer shall make an equitable adjustment to the time of performance and the consideration to be paid to Seller, and the Purchase Order shall be modified in writing accordingly. Any claim by Seller for adjustment under this Article must be asserted in writing within twenty (20) days from the date of receipt by Seller of the notification of change. Any claim not so made by Seller shall be deemed to have been waived, provided, however, that if Buyer, in its sole discretion, decides that the facts justify it, Buyer may receive and act upon a proposal submitted before final payment of the Purchase Order. Any failure to agree upon an adjustment shall be resolved under the Article of this Purchase Order entitled "Disputes," but nothing provided in this Article shall excuse Seller from proceeding with the prosecution of the work as changed. Except as otherwise provided in this Purchase Order, no charge for extra work or material shall be allowed.

17. Waiver

The failure of Buyer in one or more instances to insist on performance of any portion or all of this Purchase Order shall not be construed to be a waiver in the future of Seller's performance in compliance with this Purchase Order.

18. Disputes

Except as otherwise provided in this PO, Buyer and Seller shall have the right to redress any dispute arising under or related to this PO, which is not disposed of by agreement, by pursuing any right or remedy which Buyer or Seller, as the case maybe, may have at law, or in equity, or under this PO in any United States court of competent jurisdiction. Pending resolution of any dispute, Seller shall proceed diligently with the performance of work,

including the delivery of Items in accordance with Buyer's direction. Upon resolution of any such dispute, this PO shall be equitably adjusted, if necessary, to reflect such resolution.

19. Governing Law

This Purchase Order shall be construed in accordance with the laws of Texas, excluding its choice of law rules.

20. Buyer's Representative

Buyer will designate a representative, hereinafter referred to as the Construction Engineer, who will be available at the site of the work, and who will have the authority to act for Buyer as follows:

- (a) Act as liaison between Buyer and Seller at the job site.
- (b) Make field decisions, within the general scope of this Purchase Order, on behalf of Buyer.
- (c) Relay Buyer's instructions or decisions to Seller.
- (d) Inspect and approve specified details and inspect for adherence to design and completeness of all details shown on Buyer's drawings.
- (e) Suspend Seller's operations for any act or omission detrimental to sound practices.
- (f) Direct changes within the general scope of this contract provided:
  - (1) The adjustment (increase or decrease), in contract price does not exceed \$3,000 in any one case and is implemented due to an emergency that could either cause loss or damage to Buyer and/or prevent significant delays; and,
  - (2) Such changes do not affect the time of performance of this contract; and,
  - (3) Such changes are in accordance with Article 16, the Changes clause.

21. Identification of Employees

Seller shall be responsible for requiring each employee to display, as directed by Buyer, such identification badges as may be furnished by Buyer. Seller's employees will be subject to all current security regulations and to investigation and clearance by Buyer's Industrial Security Department.

- (a) Seller's Representative. Before commencing work, Seller shall furnish the name(s) of its authorized representative(s) who will be the foreman or superintendent on the job site. Upon request from Buyer, subject to the approval of Buyer's Industrial Security Department, a service representative badge and identification card will be issued. These must be returned to the Buyer's Construction Engineer at the completion of the work.

- (b) Employees. A badge will be issued daily to Seller's employees prior to the beginning of each work shift. Each employee must be identified by Seller or its authorized representative before a badge is issued. Whenever it is necessary for Seller to secure additional employees after the start of a shift, Seller shall notify Buyer's Industrial Security Department, which will issue the necessary badges to those employees upon their arrival and identification by Seller or authorized representative. Each Seller's employee must check out with and turn in his badge to a representative of Buyer's Industrial Security Department at the end of each shift. Badges are for identification only and do not confer entrance privileges.

## 22. Responsibility of Contractors

- (a) If directed by Buyer, Seller shall afford other contractors reasonable opportunity for the introduction and storage of their materials and equipment and the execution of their work. Seller shall properly connect and coordinate Seller's work and other subcontractor work.
- (b) If any part of Seller's work depends upon the work of any other separate contractor, for proper execution or results Seller shall inspect and promptly report to Buyer any discrepancies or defects in such other work that render it unsuitable for such proper execution and results. Failure of Seller to so inspect and report shall constitute an acceptance of the other contractor's work as fit and proper to receive Seller's work, except for defects which may develop in the other separate contractor's work after the execution of Seller's work.
- (c) Should Seller cause damage to the work or property of any separate contractor on the project, Seller shall, upon due notice, settle with such other contractor. If such separate contractor sues Buyer for any damage alleged to have been caused by Seller, Buyer shall notify Seller who shall defend such proceedings and pay all costs in connection therewith. If any judgment against Buyer arises therefrom, Seller shall satisfy judgment or indemnify Buyer, as Buyer determines.
- (d) Seller shall do all cutting, fitting, or patching of its work that may be required to receive or be received by the work of other contractors as reasonably implied by this Purchase Order. Seller shall not endanger any work of other contractors by cutting, excavating, or otherwise altering any work, and shall not cut or alter the work of any other contractor except with the written consent of Buyer.
- (e) Any cost caused by defective or ill-timed work shall be borne by the party responsible therefor.

## 23. Notices and Modifications

- (a) No notice, order, direction, determination, requirement, consent, approval or ratification under this Purchase Order shall be of any effect unless in writing.
- (b) by an authorized representative of Buyer.
- (c) All notices required or permitted hereunder shall be in writing, delivered personally or sent by United States certified or registered mail addressed to Seller or Buyer, as

applicable, to the addresses on this Purchase Order, with postage fully prepaid. Notices shall be effective at the time of mailing.

24. Indemnity

Seller shall hold harmless and indemnify Buyer, and if the Buyer so requests defend Buyer, against any and all losses, claims, liabilities, damages, actions, costs and expenses, including without limitation attorneys' fees, arising out of or resulting from Seller's undertaking or performance under this Purchase Order, and including without limitation, losses, claims, liabilities, damages, actions, costs and expenses of any of the employees, representatives, agents or subcontractors of Seller or of subcontractors at any tier, engaged in such undertakings or performance.

25. Notification of Debarment/Suspension Status

Seller shall provide immediate notice to Buyer in the event of being suspended, debarred, proposed for debarment or declared ineligible for the award of contracts, by any Federal Agency, during the performance of this PO.

26. Venue

This Purchase Order shall be deemed to have been executed by the parties and require performance in Fort Worth, Tarrant County, Texas and no suit or action under this Purchase Order or for any breach thereof shall be maintainable except in Fort Worth, Tarrant County, Texas.

27. Performance of Work

- (a) Seller shall start and complete the work in such order of procedure as may be prescribed by Buyer or Buyer's Representative (CE).
- (b) Seller shall supervise and direct the work, using his best skill and attention. Unless otherwise directed, Seller shall be solely responsible for all construction means, methods, techniques, sequences, and procedures and for coordinating all portions of the work required under this Purchase Order. At all times during performance of the contract and until the work is completed and accepted, Seller shall directly superintend the work or assign and have on the work site a competent superintendent who is satisfactory to Buyer and has authority to act for Seller.
- (c) Seller shall be responsible for the acts and omissions of all his employees and all subcontractors, their agents and employees, and all other persons performing any of the work under a Purchase Order with Seller.
- (d) Scope. All work which is manifestly necessary to carry out the intent of the drawings and specifications or which is customarily performed for such work shall be performed by Seller. Any requirement shown on the drawings but omitted from the specifications, or any requirement shown in the specifications but omitted from the drawings shall be considered as being required under the Purchase Order as if set forth in both.



- (e) Protection of Existing Structures, Utilities and Work. Seller shall protect all existing structures, utilities, and work of any kind against damage or interruption of service which may result from operations of Seller. Damage or interruption of service resulting from failure to do so shall be repaired or restored promptly by and at the expense of Seller.
- (f) Workmanship. Workmanship shall be of the highest grade throughout and in accordance with good commercial practices. All workers employed by Seller for the work under this Purchase Order shall be experienced and skilled in their respective trades.
- (g) Completion. Seller shall be responsible for and assume the risk of any loss of or destruction of, or damage to any and all materials or property acquired or delivered and work performed until completion and final acceptance, including materials or property furnished by Buyer or the Government. Upon completion of this Purchase Order, the work shall be delivered complete and undamaged.
- (h) Temporary Buildings. Seller shall erect and remove, without additional expense to Buyer, such temporary storage sheds and offices necessary for the work. Such structures shall be subject to Buyer approval.
- (i) Protective Measures. Seller shall protect the materials and work from deterioration and damage during construction and during cold weather, furnish all heat necessary for the proper conduct of the work. Seller shall, in addition, take all measures to adequately protect adjacent property.

28. Warranty of Construction

- (a) In addition to any other warranties in this Purchase Order, Seller warrants, that work performed under this Purchase Order conforms to the Purchase Order requirements and is free of any defect in equipment, material, or design furnished, or workmanship performed by Seller or any of Seller's subcontractors or suppliers at any tier.
- (b) Unless otherwise specified, this warranty shall continue for a period of one (1) year from the date of final acceptance of the work. If the Buyer takes possession of any part of the work before final acceptance, this warranty with respect to such part of the work shall continue for a period of one (1) year from the date Buyer takes possession.
- (c) Seller shall remedy at the Seller's expense any failure to conform, or any defect. In addition, Seller shall remedy at the Seller's expense any damage, loss or destruction to the facilities at Air Force Plant 4, and for expenses incidental to such loss, destruction or damage to Buyer or Government owned or controlled real or personal property, when that damage is the result of:
  - (1) Seller's failure to conform to Purchase Order requirements; or
  - (2) Any defect of equipment, material, workmanship, or design furnished by Seller;  
or

- (3) Negligence, willful misconduct, or lack of good faith by Seller, Seller's employees, or Seller's subcontractors' employees.
- (d) Seller shall restore any work damaged in fulfilling the terms and conditions of this clause. Seller's warranty with respect to work repaired or replaced will run for a period of one (1) year from the date of repair or replacement.
- (e) Buyer shall notify Seller, in writing, within a reasonable time after the discovery of any failure, defect, or damage.
- (f) If Seller fails to remedy any failure, defect, or damage within a reasonable time after receipt of notice, Buyer shall have the right to replace, repair, or otherwise remedy the failure, defect, or damage at Seller's expense.
- (g) With respect to all warranties, express or implied, from subcontractors, manufacturers, or suppliers for work performed and materials furnished under this Purchase Order, Seller shall:
  - (1) Obtain all warranties that would be given in normal commercial practices;
  - (2) Require all warranties to be executed, in writing, for the benefit of Buyer; and,
  - (3) Enforce all warranties for the benefit of Buyer.
- (h) In the event Seller's warranty under this article has expired, Buyer may on its own behalf or in the name of Seller bring suit at its expense to enforce a subcontractor's, manufacturer's, or supplier's warranty. Seller shall cooperate with Buyer in connection with any such suit.
- (i) Unless a defect is caused by the negligence of Seller or subcontractor or supplier at any tier, Seller shall not be liable for the repair of any defects of material or design furnished by Buyer, nor for the repair of any damage that results from any defect in Buyer-furnished material or design.
- (j) This warranty shall not limit Buyer's rights under the Inspection of Construction clause of this Purchase Order with respect to latent defects, gross mistakes, or fraud.
- (k) Defects in design or manufacture of equipment specified by Buyer on a "brand name and model" basis, shall not be included in this warranty. In this event, Seller shall require any subcontractors, manufacturers, or suppliers thereof to execute their warranties, in writing, directly to Buyer.
- (l) Year 2000 compliant, as used in this clause, means that with respect to information technology, that the information technology accurately processes date/time data (including but not limited to, calculating, comparing, and sequencing) from, to, and between the twentieth and twenty-first centuries, and the years 1999 and 2000 and leap year calculations, to the extent that other information technology, used in combination with the information technology being acquired, properly exchanges date/time data with it. Any and all products provided hereunder will be Year 2000 compliant at the time of delivery to Lockheed Martin Corporation (Lockheed Martin), including but not limited to accurately inputting, storing, manipulating, comparing,

calculating, updating, displaying, outputting, and transferring such dates and data unless otherwise expressly provided herein by Lockheed Martin. This provision takes precedence over all other provisions of this agreement with respect to Year 2000 compliance. In the event of a discovery of any noncompliance, either before, concurrent with, or subsequent to delivery of a good or service under this agreement, the discovering party shall notify the other party within five (5) business days of discovery. If the defective good or service is being presented for acceptance or has already been delivered, at Lockheed Martin's option, the defective good or service shall be repaired or replaced within ten (10) business days of such notice at no cost to Lockheed Martin. Nothing in this provision shall be construed to limit any other rights or remedies under this contract, at law or in equity that Lockheed Martin may have with respect to Year 2000 compliance.

- (m) 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.

## 29. Inspection of Construction

- (a) Definition. "Work" includes, but is not limited to, materials, workmanship, and manufacture and fabrication of components.
- (b) Seller shall maintain an adequate inspection system and perform such inspections necessary to ensure that the work performed under the Purchase Order conforms to Purchase Order requirements. Seller shall maintain complete inspection records and make them available to Buyer and if this PO is issued pursuant to a Government prime contract such records shall be made available to the Government. All work shall be conducted under the general direction of Buyer and is subject to Buyer and Government inspection and test at all places and at all reasonable times before acceptance to ensure strict compliance with the terms of the Purchase Order.
- (c) Buyer or Government inspections and tests are for the sole benefit of Buyer and Government and do not:
  - (1) Relieve Seller of responsibility for providing adequate quality control measures;
  - (2) Relieve Seller of responsibility for damage to or loss of material before acceptance;
  - (3) Constitute or imply acceptance; or
  - (4) Affect the continuing rights of Buyer after acceptance of completed work under Paragraph (i) below.
- (d) The presence or absence of Buyer's inspector does not relieve Seller from any Purchase Order requirement, nor is the inspector authorized to change any term or condition of the specification without Buyer's written authorization.
- (e) Seller shall promptly furnish, without additional charge, all facilities, labor, and material reasonably needed for performing safe and convenient inspections and tests as may be required by Buyer or Buyer's Representative (CE). Buyer may

charge to Seller any additional cost of inspection or test when work is not ready at the time specified by Seller for inspection or test, or when prior rejection makes reinspection or retest necessary. Buyer shall perform all inspections and tests in a manner that will not unnecessarily delay the work, provided that Buyer has been given reasonable prior written notice that the work is ready for such inspections or tests. Special, full size, and performance tests shall be performed as described in the Purchase Order.

- (f) Seller shall, without charge, replace or correct work which Buyers determines not to conform to the Purchase Order requirements, unless in the public interest Buyer consents to accept the work with an appropriate adjustment in price. Seller shall promptly segregate and remove rejected material from the premises.
- (g) If Seller does not promptly replace or correct rejected work, Buyer may (1) replace or correct the work and charge the cost to Seller or (2) terminate for default Seller's right to proceed.
- (h) If, before acceptance of the entire work, Buyer decides to examine already completed work by removing it or tearing it out, Seller, 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 Seller or its subcontractors or if such removal or tearing out was made necessary due to Seller covering work which was required or directed by Buyer to be kept accessible for inspection, Seller shall incur the expenses of the examination and of satisfactory reconstruction. However, if the work is found to meet Purchase Order requirements and was not prematurely covered or made inaccessible, Buyer 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 the Purchase Order, Buyer shall accept, as promptly as practicable after completion and inspection, all work required by the Purchase Order or that portion of the work which Buyer determines in its sole discretion can be accepted immediately. Acceptance shall be final and conclusive except for latent defects, fraud, gross mistakes amounting to fraud, or Buyer's rights under any warranty or guarantee or other provisions of this Purchase Order.

### 30. 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 Seller of his responsibility to provide a turnkey job, complete in every respect.
- (b) Interferences. As the work progresses, Buyer will cooperate with Seller in locating and identifying interferences in the work. When interferences are encountered in the work, Seller shall notify Buyer for verification and identification. In all cases, Seller shall proceed with extreme care in the vicinity of utilities and existing installations. Seller shall repair or replace any Seller damaged installations or utilities to the satisfaction of Buyer with no additional cost to Buyer.

- (c) Concurrence with Plant Operations. Seller 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 Buyer's personnel and/or production work and shall be prepared at all times to readily yield right of way to Buyer'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 Buyer's plant operations.
- (d) Seller's Vehicles. Seller'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 is filed with and approved by Buyer, and a vehicle pass is secured from Buyer's Construction Engineer.
- (e) Equipment Limitations. Buyer reserves the right to limit the type of equipment used by Seller. Use of equipment that may cause damage to nearby equipment and/or endanger personnel will be especially controlled.
- (f) In-Plant Traffic. Seller shall schedule and arrange work operations so that all of Buyer's traffic will have freedom of movement through the area at all times. Seller will be advised by Buyer 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 Seller as to the applicable plant regulations and the location of the job site.
- (h) Safety Measures. Seller 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 Seller's and Buyer's personnel, equipment, property or product, as determined by the location of the job site.
- (i) Protection of Other Work Parts, etc. It is the responsibility of Seller not to damage any parts, materials, equipment, etc. of any operations required to complete this work. Seller 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 Buyer.
- (k) Medical Affiliation. Prior to commencement of work, Seller shall furnish Buyer with the name of its affiliated physician and hospital to be used in case of accident.
- (l) Overhead Work. Seller will be allowed to work over existing doors only on weekends or with the approval of Buyer's Construction Engineer. 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. Before the end of each work period, Seller will be required to clean all debris, dust, and dirt that falls on floors, equipment, etc. as a result of its operations.
- (m) Waste Materials. Seller 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 Buyer's Construction Engineer. Seller shall also be responsible for all

hazardous waste generated in the performance of its work and shall comply with all 1) applicable laws; 2) OSHA Regulations; and 3) Buyer's procedures as directed by Buyer's Construction Engineer.

- (n) Environmental Matters. Seller and Seller's subcontractors shall perform all work under this PO in accordance with environmental laws and permit requirements. Seller shall be responsible for any penalties or fines resulting therefrom and for any and all damage and environmental remediation as a result of any acts or omissions of Seller or Seller's subcontractor or any other party acting on behalf of Seller.
- (o) Protection of Existing Utilities. Seller 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 Seller and at no additional expense to Buyer. All repairs necessary to reinstate fire protection systems to their design capabilities shall be made immediately by qualified personnel at Seller's expense.
- (p) Construction Water. Construction water is available near the job site. Seller shall furnish all valves, fittings, hoses, etc., as required. All temporary lines, fittings, etc., shall be furnished, installed, connected, and maintained by Seller in a workmanlike manner satisfactory to Buyer, and shall be removed by Seller in like manner at his expense prior to acceptance of the work.
- (q) Drinking Water and Toilet Facilities. These facilities are available near the job site.
- (r) Lunch Room Facilities. Seller may use the vending machines during the day. Seller will be restricted from using the lunch room facilities except from 11:45 a.m. to 12:45 p.m.
- (s) Compressed Air, Electric Power and Lighting. Located near the work site are 100 psi compressed air and 120/208V 3 phase and 440V 3 phase power which will be made available to Seller at the various lighting and power panels. All temporary lines shall be furnished, installed, connected, and maintained by Seller in a workmanlike manner satisfactory to Buyer, and shall be removed by Seller in like manner at Seller's expense prior to acceptance of the work.
- (t) Service Tie-Ins to New Lines. Seller shall first install all of the new lines except for tie-ins. The lines shall then be tested as specified. Tie-ins to new lines must be done at Buyer's convenience so as to cause the least amount of interruption of existing operations. Seller shall set up and prepare his work and ready all needed materials so that the tie-ins can be accomplished in a minimum period of time. Any utility connection to be made that will interrupt service shall be cleared with Buyer's Construction Engineer at least twenty-four (24) hours in advance. Buyer will not be obligated for any additional cost over the Purchase Order price in regard to this phase of the work.
- (u) Fire Precautions. Seller will be required to observe all of Buyer's current safety and fire regulations and to comply with the requirements of the National Fire Protection Association (NFPA) and National Fire Codes, in order to provide reasonable fire protection for Air Force Plant 4 real property and personal property. Seller is required to notify Buyer of any fire incidents occurring at Air Force Plant 4 immediately.

- (v) Means of Egress. It shall be the contractor's responsibility to post appropriate barriers and signs as required by Fire Protection Services. A sign indicating the appropriate alternate exit shall be posed at every obstructed or impaired exit.

The Seller shall contact the CE and/or the Fire Protection Services to inform them of the pending obstruction and to obtain direction, as to what measures are required in providing equivalent safety.

Fire Protection Services will provide the CE with the appropriate measures to be taken prior to obstructing any means of egress, along with the alternative exit to be used in lieu of those exits to be obstructed.

- (w) All federal, state, or local environmental agency reportable mishaps shall be reported within 24 hours to the Buyer Construction Engineer.

- (x) Banned Materials. Seller warrants and represents that items delivered under this Purchase Order 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 Buyer against any loss, cost, damage or liability, including removal costs, by reason of Seller's violation of this warranty.

- (y) Seller Identification Signs. Seller will provide signs with Seller's name and Purchase Order Number for areas outside of any building used for materials storage, work in progress, or equipment storage. Signs are to be approximately 16" x 24" metal, white background with black letters. Each site is to be identified.

- (z) Weekend Work. Seller shall schedule all weekend work, (both Seller's forces and Seller's subcontractor forces), with Buyer's Construction Engineer by 9:00 a.m. of the prior Thursday. Seller shall give Buyer a list of subcontractors and the scope of work with the weekend schedule.

(aa) Project Invitation Suspension

- (1) If, in the opinion of Buyer or Buyer's Representative (CE), Seller is failing to properly execute contractual obligations under this Purchase Order, Buyer may temporarily cease to invite Seller to bid on additional work until Seller has satisfactorily resolved deficiencies regarding contractual obligations. Failure to properly execute contractual obligations includes, but is not limited to, unsatisfactory progress related to the construction schedule and delays resulting from Seller operations or negligence.

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

- (bb) Closeout Documents. Seller shall submit to Buyer's Construction Engineer, 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.
- (cc) Contractor Employee Communication. All non-English speaking contractor personnel, while on Lockheed Martin occupied sites, shall be accompanied by a bilingual, fluent English speaking and reading contractor employee at all times. Direct communication between Contractor personnel and Lockheed Martin personnel is necessary to ensure a clear understanding of work to be performed and any potential hazards on the occupied site.

### 31. Prohibited Carriers

No material or supplies purchased, manufactured or otherwise acquired for use in the performance of or to be delivered under this PO shall be transported on vessels, aircraft or other carriers leased to or from, owned, operated, or controlled by any prohibited country identified in the International Traffic in Arms Regulations ("ITAR"), 22 CFR 126. No vessel, aircraft, or other carrier shall, while carrying any such material, make an enroute stop in any prohibited country identified in the ITAR, 22 CFR 126. The Seller shall insert the provisions of this paragraph in all subcontracts hereunder.

### 32. Release of Information

No public release (including, without limitation, news releases, articles, manuscripts, brochures, advertisements, still and motion pictures, speeches, trade association meetings, symposia, photographs, films, announcements, discussions, denials or confirmations of same) regarding any part of the subject matter of this PO or any phase of any program hereunder shall be made without the prior written approval of Buyer. Seller agrees that for every instance, if any, where Buyer provides such prior written approval, Seller, in any resulting release, shall include information, if any, provided by Buyer stating which Government agency sponsors or sponsored the related project or effort.

Seller further agrees to include this paragraph in any subcontract awarded as a result of this PO.

### 33. PO Severability - Invalid Provisions

If any of the provisions of this PO shall contravene or be determined to be invalid under the laws of the United States or of any country in which the work is being performed, such contravention or invalidity shall not invalidate the whole PO, but the PO shall be construed as if not containing the particular provision or provisions held to be invalid, and the rights and obligations of the parties shall be construed and enforced accordingly. Buyer and Seller shall then endeavor to agree on a mutually acceptable alternative provision.



34. Contractual Commitments

The parties agree that there shall be no adjustment in the price, time for performance or any other provision of this PO unless an authorized representative of Buyer's procurement department shall have issued a written order directing a change hereto.

35. Government Contracts

If this Purchase Order is issued under a United States Government prime contract, the following certifications and representations are applicable.

(a) This clause contains certifications and representations that are material representations of fact upon which Buyer will rely in making awards to Seller. By submitting its written offer, or providing oral offers/quotations at the request of Buyer, or accepting any Contract, Seller certifies to the representations and certifications as set forth below in this clause. These certifications shall apply whenever these terms and conditions are incorporated by reference in any Contract, agreement, other contractual document or any quotation, request for quotation (oral or written), request for proposal or solicitation (oral or written), issued by Buyer. Seller shall immediately notify Buyer of any change of status with regard to these certifications and representations.

(1) FAR 52.203-11 Certification and Disclosure Regarding Payments to Influence Certain Federal Transactions (Applicable to solicitations and contracts exceeding \$100,000)

(i) The definitions and prohibitions contained in the clause, at FAR 52.203-12, Limitation on Payments to Influence Certain Federal Transactions are hereby incorporated by reference in paragraph (b) of this certification.

(ii) Seller certifies that to the best of its knowledge and belief that on and after December 23, 1989:

(a) No Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress on his or her behalf in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment or modification of any Federal contract, grant, loan, or cooperative agreement;

(b) If any funds other than Federal appropriated funds (including profit or fee received under a covered Federal transaction) have been paid, or will be paid, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress on his or her behalf in connection with a solicitation or order, the offeror shall complete and submit, with its

offer, OMB standard form LLL, Disclosure of Lobbying Activities, in accordance with its instructions, and

- (c) He or she will include the language of this certification in all subcontracts at any tier and require that all recipients of subcontract awards in excess of \$100,000 shall certify and disclose accordingly.
  - (iii) Submission of this certification and disclosure is a prerequisite for making or entering into a contract as imposed by section 1352, title 31, United States Code. Any person who makes an expenditure prohibited under this provision or who fails to file or amend the disclosure form to be filed or amended by this provision, shall be subject to a civil penalty of not less than \$10,000, and not more than \$100,000, for each such failure.
- (2) FAR 52.209-5 Certification Regarding Debarment, Suspension, Proposed Debarment, and Other Responsibility Matters.
- (i) Seller certifies that, to the best of its knowledge and belief, that Seller and/or any of its Principals, (as defined in FAR 52.209-5,) are not presently debarred, suspended, proposed for debarment, or declared ineligible for the award of contracts by any Federal agency.
  - (ii) Seller shall provide immediate written notice to Buyer if, any time prior to award of any contract, it learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.
- (3) FAR 52.222-22 Previous Contracts and Compliance Reports. Seller represents that if Seller has participated in a previous contract or subcontract subject either to Equal Opportunity clause (FAR 52.222-26) of this Solicitation/PO, the clause originally contained in Section 310 of Executive Order No. 10925, or the clause contained in Section 201 of Executive Order No. 11114, (i) Seller has filed all required compliance reports and (ii) that representations indicating submission of required compliance reports, signed by proposed subcontractors, will be obtained before subcontract awards.
- (4) FAR 52.222-25 Affirmative Action Compliance. Seller represents (1) that Seller has developed and has on file at each establishment, affirmative action programs required by the rules and regulations of the Secretary of Labor (41 CFR 60-1 and 60-2), or (2) that in the event such a program does not presently exist, Seller will develop and place in operation such a written Affirmative Action Compliance Program within 120 days from the award of this Purchase Order.
- (5) FAR 52.223-1 Clean Air and Water Certification (Applicable to solicitations and Contracts exceeding \$100,000).
- (i) Seller certifies that any facility to be used in the performance of a contract is not listed on the Environmental Protection Agency List of Violating Facilities.

- (ii) Seller shall immediately notify the Buyer Procurement Representative, before any contract award, or the receipt of any communication from the Administrator, or a designee, of the Environmental Protection Agency, indicating that any facility that the Offeror proposes to use for the performance of any contract is under consideration to be listed on the EPA list of Violating Facilities.
- (6) FAR 52.223-13 Certification of Toxic Chemical Release Reporting (Applicable to competitive solicitations/POs which exceed \$100,000)
- (i) Submission of this certification is a prerequisite for making or entering into this contract imposed by Executive Order 12969, August 8, 1995.
  - (ii) Seller certifies that—
    - (a) As the owner or operator of facilities that will be used in the performance of this PO that are subject to the filing and reporting requirements described in section 313 of the Emergency Planning and Community Right-to-Know Act of 1986 (EPCRA) (42 U.S.C. 11023) and section 6607 of the Pollution Prevention Act of 1990 (PPA) (42 U.S.C. 13106), Seller will file and continue to file for such facilities for the life of the contract the Toxic Chemical Release Inventory Form (Form R) as described in sections 313(a) and (g) of EPCRA and section 6607 of PPA; or
    - (b) None of its owned or operated facilities to be used in the performance of this PO is subject to the Form R filing and reporting requirements because each such facility is exempt for at least one of the following reasons:
      - (1) The facility does not manufacture, process or otherwise use any toxic chemicals listed under section 313(c) of EPCRA, 42 U.S.C. 11023(c);
      - (2) The facility does not have 10 or more full-time employees as specified in section 313.(b)(1)(A) of EPCRA 42 U.S.C. 11023(b)(1)(A);
      - (3) The facility does not meet the reporting thresholds of toxic chemicals established under section 313(f) of EPCRA, 42 U.S.C. 11023(f) (including the alternate thresholds at 40 CFR 372.27, provided an appropriate certification form has been filed with EPA);
      - (4) The facility does not fall within Standard Industrial Classification Code (SIC) designations 20 through 39 as set forth in FAR section 19.102 of the Federal Acquisition Regulation; or
      - (5) The facility is not located within any State of the United States, the District of Columbia, the Commonwealth of Puerto Rico,

Guam, American Samoa, the United States Virgin Islands, the Northern Mariana Islands, or any other territory or possession over which the United States has jurisdiction.

If this Purchase Order is issued under a United States Government prime contract or Subcontract, then all the subparagraphs listed below in this Article 35, Government Contracts, are applicable to Seller's Purchase Order and shall be controlling over any conflicting terms and conditions set forth elsewhere in this Purchase Order.

- (a) Article 16, Changes. Add the following clause as Article 16(c):

In addition to subparagraphs 16(a) and 16(b), Seller agrees that upon Buyer's request, it will from time to time enter into written amendments of this PO to incorporate additional provisions herein or to change the provisions hereof, as Buyer may reasonably deem necessary in order to comply with the provisions of the prime contract(s) or amendments to the prime contract(s). If any such amendment to this PO causes an increase or decrease in the cost of this PO, or the time required for performance of this PO, an equitable adjustment shall be made in the price or delivery schedule, or both, in accordance with the provisions of the PO's "Changes" clause.

- (b) Article 30, Special Plant Conditions. Add the following clauses:

- (1) Posting of Notices.

- (a) Wage Rate Information. Buyer will furnish to Seller an appropriate number of copies of the wage determination decision listing the prevailing minimum wage provisions that are applicable to this Purchase Order and an appropriate number of copies of the notice entitled "Wage Rate Information." For the duration of the job, Seller will be responsible for keeping this information posted at the site of the work in a prominent place where it can be easily seen by the workers.
- (b) Equal Employment Opportunity. Buyer will furnish Seller an appropriate number of copies of the notice entitled "Equal Employment Opportunity." For the duration of the job, Seller will be responsible for keeping this information posted at the site of the work in a prominent place where it can be easily seen by the workers.

- (2) Payroll Documents.

- (a) Seller shall submit weekly to Buyer two certified copies of all payrolls, including the submission of certified copies of the payrolls of all subcontractors. The payrolls shall be on a form approved by Buyer and shall contain all information that Buyer may deem necessary.
- (b) Seller will be required to furnish certification in duplicate that each apprentice is registered in an approved apprenticeship program.

- (3) Wage Rates. General Wage Determination issued under the Davis-Bacon and Related Acts are applicable for this Purchase Order.

- (4) DPAS Rating. This is a rated order certified for national defense use, and Seller will be required to follow all the provisions of the Defense Priorities and Allocation System Regulation (15 CFR Part 700).
- (c) Delete Article 19, Governing Law in its entirety and substitute the following: Governing Law: This PO shall be construed, interpreted and applied in accordance with the Federal law of Government contracts as enunciated and applied by Federal judicial bodies and boards of contract appeals. To the extent that the Federal law of Government contracts is not dispositive, the laws of Texas shall apply, excluding its choice-of-law rules.
- (d) Add the following to "BONDS," Article 12 (e): Other than enforcement of any rights against Seller or any persons with whom a person may be in privity, the sole remedy of subcontractors under this Purchase Order for nonpayment of any moneys due or alleged to be due for the work under this Purchase Order or any subcontract hereunder shall be the Miller Act or other applicable payment bond. Seller shall include in all subcontracts the substance of this paragraph (e), including this sentence, modified to identify the parties.
- (e) Add: Rescission, Adjustment or Termination for Illegal or Improper Activity
  - (1) In the event the Government takes action pursuant to FAR 52.203-8, "Cancellation, Rescission, and Recovery of Funds for Illegal or Improper Activity," to cancel the solicitation or rescind the prime contract to which this PO relates, and such action results from Seller's violation of subsection (a), (b), (c) or (d) of the Office of Federal Procurement Policy Act (41. U.S.C. 423) ("the Act") as amended by section 4304 of the National Defense Authorization Act for Fiscal Year 1996 (Pub. L. 104-106), Buyer may (1) rescind this PO; (2) recover from Seller all amounts paid by Buyer to Seller in connection with this PO; (3) recover from Seller any amounts, including any penalty prescribed by law, which Buyer is required to pay to the Government; and (4) recover from Seller any other costs, expenses, liabilities, incurred by Buyer in connection with Seller's violation of the Act.
  - (2) Seller agrees to pay Buyer the amount Buyer's price or fee is reduced by the Government pursuant to FAR clause 52.203-10, entitled "Price or Fee Adjustment for Illegal or Improper Activity," to the extent such reduction results from Seller's violation of the Act, as amended (41 U.S.C. 423), and as implemented in the FAR. In the event the Government terminates for default any of Buyer's prime contracts under which this PO is issued, as a result of Seller violation of the Act, Buyer shall have the right to terminate this PO for default in whole or in part.
  - (3) Buyer's rights and remedies under this clause shall be in addition to any other rights and remedies provided by law, regulation, or under this PO.
- (f) Elimination of Class I Ozone-Depleting Substances: If Seller has not obtained specific authorization from Buyer or the Government to continue the use of Class I ODS, then Seller shall notify Buyer if any of these substances have been required in

the performance of this PO or will be delivered as part of end item(s) or service(s) under this PO.

- (g) Indemnity/Commercial Items: This clause applies only to the portion, if any, of this PO for the purchase of a commercial item(s) as defined in 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 II(A) and DFARS II(A) shall be applicable to the portion, if any, of the PO pertaining to the items regarding which such finding or determination was made.
  
- (h) Recycle and Recovered Material: Buyer strongly promotes the use of recycled and recovered materials and products. Seller shall use recycled and recovered materials in the products identified on the Environmental Protection Agency's Comprehensive Procurement Guidelines (available on the internet at (<http://epa.gov/cpg/>)), provided that the materials must meet the requirements of the Specifications, must not delay the progress of the work, and must not increase cost. Prior to final payment, Seller shall complete and deliver to Buyer Form entitled "Estimate & Certification of Recycled or Recovered Materials" estimating the percentage content of recycled/recovered material actually used in the work.