

APPENDIX '3'

ATTACHMENT 96

**ADDITIONAL TERMS AND CONDITIONS TO ' X'
FOR PRODUCTION/LEASE AND PRODUCTION/PURCHASE PROGRAMS**

1. Modify Article 7, "Warranty," as follows:

In paragraph (b), delete "one year," and substitute, "six months."

In paragraph (b), at the end of the sentence, add, "unless the basic one-year warranty period set forth above already extends to six months after Items are, or are to be, incorporated in an end item delivered to any of Buyer's customers."

2. Article 12, "Data Rights." At the end of the first section of this Article, styled "Data Information Disclosed to Buyer," add the following: "Seller hereby grants Buyer and its customers an irrevocable license to use any information, data, patents or copyrights disclosed to Buyer in connection with the purchase of the Items covered by this Purchase Order for the purpose of training, maintaining and operating the Item in any end item it might be incorporated."
3. Article 16, "Force Majeure." In the penultimate sentence of the Article, substitute "twelve (12) weeks" for "six (6) months."
4. Substitute the following clause for Article 28, "Public Release of Information."

28. Confidentiality

- (a) Except with the consent in writing of the Buyer, Seller shall not disclose the existence of this Purchase Order or any provisions thereof to any person, other than the Buyer (on a need-to-know basis); or a person employed or engaged by the Seller in carrying out the Purchase Order; or any subtier subcontractor, supplier, or other persons concerned with the same; or as otherwise may be required by law, regulation, or order by a court of competent jurisdiction. Prior to complying with a law, regulation, or order by a court of competent jurisdiction, Seller shall give notice to the Buyer of such, and, if the Buyer elects to contest the disclosure, Contractor shall reasonably cooperate with the Buyer in contesting the disclosure.
- (b) This Purchase Order shall be held in confidence between the parties, and Seller may only communicate information to its employees and agents on a need-to-know basis.

- (c) Seller shall obtain in writing the prior approval and consent of the Buyer before the release of any news item, article, publication, advertisement, prepared speech, or any other information or material pertaining to any part of the obligations to be performed under the Purchase Order.
 - (d) The Seller, its employees, its subtier subcontractor and suppliers, and agents shall comply with the security instructions issued by the Buyer, on behalf of its customer, from time to time.
5. "Export Laws, Regulation and Administrative Acts" should be added as a new clause 34.

This Purchase Order is subject to all United States laws and regulations relating to exports and to all administrative acts of the United States Government pursuant to such laws and regulations which include, but are not limited to, the International Traffic in Arms Regulations ("ITAR") and the Foreign Corrupt Practices Act.

6. "Liquidated Damages," shall be added as a new Clause 35.

Should Seller, other than as a result of the circumstances described in Article 16 entitled "Force Majeure", fail to make delivery of an Item in accordance with the delivery schedule in this Purchase Order, then Buyer shall be entitled to receive compensation from Seller in the form of liquidated damages, and not as a penalty.

The amount of the liquidated damages shall be equivalent to 0.025% per day of the price of the delayed Item(s), beginning from the date of delivery specified for such Items herein. Notwithstanding the foregoing, the Seller shall be entitled to a grace period of sixty (60) days for delivery of the Item, after the delivery date specified herein, during which period of time no liquidated damages shall be assessed, but, if the Items are delivered after the grace period, liquidated damages shall be assessed on a retroactive basis as though there were no grace period. In no event shall failure to assess liquidated damages be considered a waiver of buyer's right in other articles set forth herein, or of other remedies at law and equity, to enforce the contractual delivery schedule set forth herein. Moreover, Buyer may, as an alternative to the assessment of liquidated damages, recover actual damages under other articles set forth herein, or by other remedies at law and equity.

7. Article 36, "Condition of Items," shall be added as a new clause.

All Items supplied by Seller hereunder shall be new.

Buyer should substitute Alternate I of Article 36 in Attachment 96 to Appendix X when procuring Items that were formerly supplied as Government Furnished Equipment ("GFE") to Lockheed Martin on the F-16 Program.

Article 36, "Condition of Items," Alternate I.

All Items supplied hereunder must be new unless it is not possible to supply all such Items as new due to certain parts, components or equipment being out of production. If Seller learns of any Items that can only be procured in "like new" serviceable condition, Seller shall promptly notify Buyer of the identity of such Items with a written explanation as to why such Items can only be procured in "like new" serviceable condition.

**CERTIFICATE REGARDING GIFTS, INDUCEMENTS
AND REWARDS**

Please check appropriate box:

Offeror/Seller hereby certifies that neither it nor its employees or agents have offered or agreed to give any person any gift or consideration of any kind, as an inducement or reward for forbearing to do or for having done or forborne to do any act in relation to the obtaining or execution of this Purchase Order with Buyer.

Offeror/Seller hereby certifies that it and its employees or agents have offered or agreed to give one or more persons gifts or consideration of some kind, as an inducement or reward for forbearing to do or for having done or forborne to do any act in relation to the obtaining or execution of the Purchase Order with Buyer.

This Certification constitutes a material representation by Seller for which AMMC will rely in the event it makes a Purchase Order award to Offeror/Seller with respect to the goods or services that are the subject of the referenced RFP. Buyer shall have the right to terminate for default any purchase order so awarded in the event Offeror/Seller submits any false, inaccurate or incomplete information in connection with this Certification, fails to provide any necessary or required information.

Signature of Offeror/Seller

Date

Title