

**APPENDIX 'H'**

**LOCKHEED MARTIN AERONAUTICS COMPANY  
STANDARD COMMERCIAL  
TERMS & CONDITIONS FOR SERVICES**

1. Definitions

As used c2tt-in "Buyer" meas

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

#### 4. Variation in Quantity

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

#### 5. Prices

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

6. Invoices, Payments, and Discounts

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

- (a) Buyer's receipt of Seller's correct invoice;

- (e) 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 non-compliance, either before, concurrent with, or subsequent to delivery of a good or service under this agreement, the discovering party shall notify the other party within five (5) business days of discovery. If the defective good or service is being presented for acceptance or has already been delivered, at Lockheed Martin's option, the defective 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.

- (f) 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.

## 8. Compliance with Laws

- (a) Seller shall comply with the applicable provisions of all Federal, state, and local laws and ordinances and all lawful orders, rules and regulations thereunder, including without limitation the Arms Export Control Act, the International Traffic in Arms Regulation, and the Foreign Corrupt Practices Act; and such compliance shall be a material requirement of this PO. **Seller agrees to indemnify Buyer against any loss, cost, damage or liability by reason of Seller's violation of this clause.**



writing by Buyer's Authorized Representative. Prior to final settlement of any timely filed claim or claims, Seller may submit revisions to such claim or claims provided that such revisions do not introduce different areas of costs or claim elements.

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

#### 10. Responsibility for Property

Unless otherwise specified, Seller shall be liable for any loss or destruction of or damage to property of Buyer or any customer of Buyer whether furnished to Seller by any such customer or by Buyer; and, Seller shall be responsible for returning any such property in as good condition as when received except for reasonable wear and tear and for the utilization of it in accordance with the provision of this order. Upon request of Buyer such property will be delivered to Buyer at Seller's expense. Seller will promptly notify Buyer if such property is lost, destroyed or damaged. Title thereto shall not be affected by the incorporation or attachment to any property not owned by Buyer or such customer, nor shall any such property, or any part thereof, be or become a fixture or lose its identity as personalty by reason of affixation to any realty.

#### 11. Data Rights

##### Data and Information Disclosed to Buyer

Unless the data and information disclosed to Buyer is covered by and identified in aofe0.0524p6.0004 Tcnt to 0 0 12 314ion Disclosed toy0 TcAgs

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

#### Items Developed by Seller for Buyer

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

#### Barred Software

Seller, unless it has obtained Buyer's prior written consent, which Buyer may withhold in Buyer's sole discretion, shall not provide Buyer with software that incorporates or embeds software in, or uses software in connection with, as part of, bundled with, or alongside any:

- (1) open source, publicly available, or "free" software, library or documentation;
- (2) software licensed under the General Public License ("GPL") or Lesser/Library GPL, the Artistic License (e.g., PERL), the Mozilla Public License, the Netscape Public License, the Sun Community Source License, the Sun Industry Standards License, or variations thereof, including without limitation licenses referred to as "GPL-Compatible, Free Software License" (hereinafter referred to as the "Barred Licenses"); or,

(3) software provided under a license that:

(A) subjects the provided software to any of the Barred Licenses;

(B) requires the provided software to be licensed for the purpose of making derivative works or be redistributable at no charge; or,

(C) obligates Buyer to sell, loan, distribute, disclose or otherwise make available or accessible to any third party(ies);

(i) the provided software or any portion thereof, in object code and/or source code formats; or,

(ii) any products incorporating the provided software, or any portion thereof, in object code or source code formats.

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- (c) If this PO is terminated for default, Buyer shall have the right to require Seller to transfer title and deliver to Buyer, as directed by Buyer, any (1) completed Services, and (2) partially completed Services, materials, plans, drawings, information, and contract rights (collectively referred to as "Services" and/or "materials" in this clause) that Seller has specifically produced or acquired for the performance of the terminated portion of this PO. Upon direction of Buyer, Seller shall also protect and preserve property in its possession in which Buyer has an interest.
  
- (d) Buyer shall pay the PO price for completed Services delivered and accepted. Seller and Buyer shall agree on the amount of payment for manufacturing materials delivered and accepted and for the protection and preservation of the property. Failure to agree will be a dispute under the "Disputes" clause of this PO. Buyer shall have the right to withhold from these amounts any sum Buyer determines to be necessary to protect Buyer against loss because of

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

- (b) Should there be an overpayment by Buyer to Seller as determined in accordance with subparagraph (a) above, as the result of a termination, Seller shall promptly reimburse Buyer for all sums overpaid. Seller's termination claim shall be submitted within 120 da

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

15. Force Majeure

Neither Buyer nor Seller shall be liable, nor be deemed in default or failed in its performance of its obligations under this PO where such failure is due to causes beyond the control and without the fault or negligence of Buyer or Seller, as the case may be, including, but not limited to, Acts of God, Acts of the U.S. Government, fires, floods, riots, labor difficulties, embargo, and civil commotion (“Force Majeure”).

Partial failure of performance due to any of the aforementioned causes shall not in itself terminate this PO or excuse any failure by either Buyer or Seller to resume all obligations as promptly as possible.

In the event either Buyer or Seller is affected in the performance of its obligations by any of the aforementioned causes, it shall give the other prompt written notice of the fact, together with satisfactory evidence substantiating that such cause prevents performance, as well as a declaration specifying the steps being taken by Buyer or Seller to remove the relevant cause(s) and shall continue the performance of its other obligations under this PO.

If a Force Majeure remains in effect for a period longer than six (6) months, then Buyer may terminate all or part of this PO which is affected by the Force Majeure. Having done so, both Buyer and Seller shall be relieved of any obligation for the canceled portion of this PO.

16. Patent Indemnity, Trademarks, Trade Secrets and Copyrights

Seller warrants that the manufacture, use, sale, delivery or disposal of goods or Services furnished under this PO will not infringe any United States or foreign patents, trademarks, trade secrets, copyrights or other property rights. **Seller agrees to defend, indemnify and hold Buyer, its customers and agents harmless from any loss, including without limitation, cost damage, expense (including attorneys’ fees) or liability which may be incurred on account of infringement or alleged infringement, whether willful or not, of any patent right, trademark, trade secret, copyright or other property right with respect to such manufacture, use, sale, delivery or disposal of goods or Services and defend at its own expense any action or claim in which such infringement is alleged by a third party or parties, provided Seller is notified of such action or claim against Buyer.**



## 20. Technical Surveillance

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

## 21. Amendments Required by the Prime Contract

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

## 22. Assignment

Neither this PO nor any duty or right under it shall be delegated or assigned by Seller without the prior written consent of Buyer, except that claims for monies due or to become due under this order may be assigned to a bank, trust company or other financing institution, including any Federal lending agency, by Seller without such consent. Buyer shall be furnished with two signed copies of any such

between Buyer and Seller with respect to the subject matter of this PO. Either: (a) acknowledgment of this PO, (b) furnishing of Services under this PO, (c)

accrue solely to the benefit of Buyer for its use on the offset/countertrade program of Buyer's choice. Seller agrees to cooperate with Buyer in the fulfillment of such foreign offset/countertrade obligations which Buyer may have undertaken or may undertake in the future. In the event Seller solicits bids, procures or offers to procure any goods or services relating to the work to be performed under this PO, Buyer shall be entitled, to the exclusion of all others, to all offset credits or other similar benefits which may result from such activity. In addition, Seller agrees to provide to Buyer, at no additional cost, a report every six months during the performance of this PO summarizing by country Seller's lower tier proposal and procurement activity related to this PO.

## 27. Notification of Changes

- (a) Only Buyer's Authorized Representative may direct or redirect Seller's effort hereunder. In the event, however, Seller considers any conduct including any action, inaction, written or oral communication by Buyer or Buyer's customer to constitute a change to this PO, other than a written change order issued by Buyer's Authorized Representative, Seller shall notify Buyer as soon as possible but in no event later than fifteen (15) days from the date Seller identifies the conduct considered to constitute a change to this PO. On the basis of the most accurate information available to Seller, the notice shall state: (1) the date, nature and circumstances of the conduct regarded as a change; (2) the name, function, and activity of each Buyer employee, customer employee and Seller employee involved in or knowledgeable about such conduct; (3) the identification of any documents and the substance of any oral communication involved in such conduct; (4) the particular elements of contract performance which Seller considers to be affected by the conduct, including an estimate of any cost or schedule impact; (5) Seller's estimate of the time by which Buyer must respond to Seller's notice to minimize cost, delay or disruption of performance.
- (b) Seller shall take no action in reliance on the conduct considered to constitute a change unless and until Buyer's Authorized Representative issues a written change order covering the conduct in question.

## 28. Public Release of Information

No public release (including, without limitation, photographs, films, announcements, denials or confirmations of same) on 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.

29. Severability of Provisions

Any provision of this PO that is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition; and, shall be unenforceable in that jurisdiction without invalidating the remaining provisions hereof, or affecting the validity or enforceability of such provision in any other jurisdiction.

30. Contractual Commitments

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

31. Superseding Statement

This PO contains the entire agreement between Buyer and Seller and is not subject to variation, irrespective of the wording of Seller's acceptance. This PO supersedes any and all prior agreements of the Buyer and Seller, whether oral or written, concerning the subject matter hereof.

32. English Language Requirement

All deliverable documents will be in the English language. An English language speaking person shall be provided during any in plant visits, inspections, reviews, audits, and other similar activities to facilitate communications and ensure mutual understanding. In the event of any inconsistency between any terms of this Purchase Order and any translation thereof into another language, the English language version and its meaning shall control.

33. Exclusion of 1980 U.N. Convention

The 1980 United Nations Convention on Contracts for the International Sale of Goods shall not apply to this Purchase Order.