

APPENDIX 'W'

TERMS AND CONDITIONS FOR ENVIRONMENTAL SERVICES

Unless otherwise specified in this Purchase Order, this Appendix "W" supersedes and replaces the standard Purchase Order Terms and Conditions appearing on the reverse side of the Purchase Order face page.

1. DEFINITIONS

- (a) Analytical Laboratory Testing - All activities necessary to perform chemical analysis of specimen samples of material relating to hazardous waste.
- (b) Architect/Engineer - Persons or firms providing architectural, engineering and/or design services for work relating to or involving

- (h) Hazardous Waste - Any waste or combination of wastes which pose substantial present or potential hazard to human health or living organisms because such wastes are non-degradable or persistent in nature, or because they can be biologically magnified, or because they can be lethal, or because they may otherwise cause or tend to cause detrimental cumulative effects (CFR Title 40 Protection of Environment-EPA). Additionally, hazardous waste is that so defined by any federal, state, local or other governmental agency.
- (i) Landfill - A disposal facility or part of a facility where hazardous waste is placed in or on land which is not a land treatment facility, a surface, impoundment, or an injection well, [40 CFR Part 260.10]
- (j) Seller - Persons or firms and other subcontractors providing services for work relating to or involving environmental conditions.
- (k) Storage - Holding of hazardous waste for a temporary period, at the end of which the hazardous waste is treated, disposed of, or stored elsewhere. [40 CFR Part 260]
- (l) Transportation - The collection, consolidation, packaging, loading, movement, unloading and temporary storage of hazardous waste by air, rail, highway or water. [40 CFR Part 260]
- (m) Treatment - Any method, technique or process, including neutralization, designed to change the physical, chemical or biological character or composition of any hazardous waste so as to neutralize such waste, or so as to recover energy or material resources from the waste, or so as to render such waste non-hazardous or less hazardous; safer to transport, store or dispose of; or amenable for recovery, amenable for storage or reduced in volume. [40 CFR Part 260]
- (n) Treatment, Storage and/or Disposal Facility (TSDF) - A facility which performs the operations of treatment, storage of materials on a long-term basis and/or disposal of hazardous waste as defined herein.

2. ACCEPTANCE

The acceptance of this Purchase Order, by acknowledgment or performance of services shall constitute acceptance of the conditions set forth below and on the face of this Purchase Order. No purported acceptance of this Purchase Order on terms and conditions which modify, supersede or otherwise alter the terms and conditions hereof shall be binding upon Buyer. Any performance of services by Seller shall be

deemed to be only upon the terms and conditions contained herein, except to the extent that an authorized purchasing representative of Buyer may otherwise expressly consent in writing, notwithstanding Buyer's acceptance or payment for any services performed by Seller.

3. DELIVERY

Delivery must be in strict compliance with the schedule contained in this Purchase Order.

4. INSPECTION OF SERVICES

- (a) Buyer shall have the right, at its own expense, to inspect, test and observe all aspects of the performance of services under this Purchase Order and all facilities of Seller relating thereto and the right to inspect and obtain copies of all documents and records of Seller relating to the performance of this Purchase Order and of all licenses, permits or approvals relating to the performance of this Purchase Order issued by any governmental entity or agency to Seller. Buyer shall also have the foregoing rights with respect to any other facilities, operations or documents of Seller insofar as Buyer reasonably deems the same necessary or appropriate in order to audit Seller's compliance with applicable law and observance of good and safe practices and procedures. Seller shall cooperate with and, upon Buyer's request, assist Buyer in the exercise of Buyer's rights under this clause.

- (b) If any services performed hereunder are not in conformity with the requirements of this Purchase Order, the Buyer shall have the right to require the Seller to perform the services again in conformity with the requirements of the Purchase Order, at no additional increase in the total Purchase Order amount. Any services corrected or re-performed by the Seller pursuant to this clause shall be subject to all provisions of this clause to the same extent as work initially performed. When the services to be performed are of such a nature that the effect cannot be corrected by re-performance of the services, the Buyer shall have the right to (i) require the Seller to immediately take all necessary steps to ensure future performance of the services in conformity with the requirements of the Purchase Order; and (ii) reduce the Purchase Order price to reflect the reduced value of the services performed. In the event the Seller fails or refuses to promptly perform the services again or to take necessary steps to ensure future performance of the services in conformity with the requirements of the Purchase Order, the Buyer shall have the right to either (i) by Purchase Order or otherwise have

the services performed in conformity with the Purchase Order requirements an charge to the Seller any cost occasioned to the Buyer that is directly related to the performance of such services; or (ii) terminate this Purchase Order for default as provided in the clause of this Purchase Order entitled "Termination -for Default"; or (iii) obtain an equitable adjustment in the Purchase Order price. If the Buyer does not require correction or re-performance, the Buyer may also make an equitable adjustment in the Purchase Order price.

5. MAINTENANCE OF RECORDS

Seller shall keep adequate records pertaining to its performance of services under this Purchase Order and shall maintain for at least ten (10) years after completion of all services performed under this Purchase Order all of its records pertaining to such performance. Within six (6) months f, but at least sixty (60) days before the end of, the period during which Seller shall keep such records, Seller shall give Buyer written notice that such period is ending and afford Buyer an opportunity to receive such records. If Buyer gives Seller notice of its election to exercise such right, Seller shall facilitate the transfer of such records in accordance with Buyer's directions. Any receipt or maintenance of such records by Buyer shall be solely for Buyer's benefit and Buyer shall not be liable or responsible for any loss or destruction of such records.

6. PRICES

Unless otherwise specified, prices shall include all federal, state and local taxes. Seller warrants that prices charged for the services are not higher than those charged to any other customer, including the Government, for services of like grade and quality in similar or lesser quantities.

7. PAYMENT

Seller shall be paid upon submission of properly prepared invoices in accordance with Buyer's invoicing instructions for services performed and accepted by Buyer. Any adjustments in Seller's invoice due to any failure to comply with the provisions of this Purchase Order may be made by Buyer before payment. No charges will be honored unless specified on the face of this Purchase Order.

8. SELLER REPRESENTATIONS

Seller acknowledges that it understands the hazards which are presented to persons, property and the environment in performance of the services hereunder, that is will perform such services in full compliance with all

applicable governmental laws, regulations and orders, and that Seller and any designated facilities are now licensed and permitted to perform the services for the waste materials described in this Purchase Order in accordance with applicable laws and regulations. In the event Seller or a facility loses its permitted status, hereafter Seller will promptly notify Buyer of such loss. Copies of all certificates showing evidence of certification under this clause will be provided upon request by Buyer.

9. WARRANTY OF SERVICES

- (a) Notwithstanding inspection and acceptance by the Buyer or any provision concerning the conclusiveness thereof, the Seller warrants that all services and any supplies that may be used or delivered in connection with the services performed under this Purchase Order will be free from defects in workmanship and conform to the requirements of this Purchase Order.
- (b) 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.

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.

- (c) The rights and remedies of Buyer provided in this clause shall not be exclusive and are in addition to any other rights and remedies provided at law, in equity, or under this PO.

10. COMPLIANCE WITH LAWS AND REGULATIONS

Seller shall comply with all applicable laws pertaining to the performance of this Purchase Order. Without limiting the generality of the foregoing, Seller shall also comply with all applicable law relating to hazardous materials, hazardous waste, occupational health and safety, public health and safety, and environmental protection, including without limitation any federal, state and local statutes, regulations, ordinances, rules, interpretations and orders, insofar as the same may pertain to any activities of the Seller in connection with this Purchase Order. The Seller's attention is called particularly to the regulations and orders of the Environmental Protection Agency, Occupational Safety and Health Administration, Department of Transportation, Texas Water Commission, Texas Air Control Board and similar agencies or instrumentalities of any jurisdiction in which a facility of the Seller is located or otherwise having jurisdiction over any activities of Buyer and Seller in connection with this Purchase Order.

11. CHANGES

The Buyer may at any time, by written order, and without notice to the sureties, make changes, within the general scope of this Purchase Order, in the definition of services to be performed, and the time (e.g., hours of the day, days of the week, etc.) and place of performance thereof. If any such change causes an increase or decrease in the cost of, or the time required for the performance of any part of the work under this Purchase Order, whether changed or not changed by such order, an equitable adjustment shall be made in the Purchase Order price or delivery schedule or both, and the Purchase Order shall be modified in writing accordingly. Any claim by the Seller for adjustment under this clause must be asserted within thirty (30) days from the date of receipt by the Seller of the notification of change, provided, however, that the Buyer, if he decides that the facts justify such action, may receive and act upon any such claim asserted at any time prior to final payment under this Purchase Order. Where the cost of property made obsolete or excess as a result of a change is included in the Seller's claim for adjustment, the Buyer shall have the right to prescribe the manner of disposition of such property.

Failure to agree to any adjustment shall be a dispute concerning a question of fact within the meaning of the clause of this Purchase Order entitled "Disputes". However, nothing in this clause shall excuse the Seller from proceeding with the Purchase Order as changed.

12. BUYER FURNISHED MATERIALS OR SUPPLIES

Buyer may from time to time furnish Seller with materials or supplies which are required by Seller for the performance of this Purchase Order. In such event, an equitable reduction in the price shall be accomplished prior to delivery of such materials or supplies to Seller, or as soon thereafter as possible, but in no event later than thirty (30) days after such delivery.

13. STOP WORK ORDER

Buyer may at any time, by written notice to Seller, require Seller to stop all or any part of the work called for by this Purchase Order for a period of up to ninety (90) days after the notice is delivered to Seller ("Stop Work Order"). Upon receipt of the Stop Work Order, Seller shall forthwith comply with its terms and take reasonable steps to minimize the incurrence of costs allocable to the work covered by the Purchase Order during the period of work stoppage. Within the period covered by this Stop Work Order or within any extension of that period to which the parties shall have agreed, Buyer shall either cancel the Stop Work Order, or terminate the work covered by this Purchase Order as provided in the "Termination for Default" or the "Termination for Convenience" clauses of this Purchase Order, whichever may be appropriate. Seller shall resume work upon cancellation or expiration of any Stop Work Order. An equitable adjustment shall be made in the delivery schedule or prices hereunder, or both, and this Purchase Order shall be modified in writing accordingly, if the Stop Work Order results in an increase in the time required for the performance of this Purchase Order or in Seller's costs properly allocable thereto.

14. TERMINATION

(a) Buyer may, subject to the provisions of subparagraph (c) below, by written notice of default to Seller, terminate the whole or any part of this Purchase Order in any one of the following circumstances: (i) if Seller fails to perform this Purchase Order within the time specified herein or any extension thereof; or (ii) if Seller fails to perform any of the other provisions of this Purchase Order, or so fails to make progress 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 for the same; provided, that Seller shall continue the performance of this Purchase Order to the extent not terminated hereunder.
- (c) Except with respect to defaults of subcontractors, Seller shall not be liable for any excess costs if the failure to perform this Purchase Order arises out of 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, quarantine 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 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)

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 go protect Buyer or the Government against loss because of outstanding liens or claims of former lien holders.

- (e) The rights and remedies of Buyer provided in this clause shall not be exclusive and are in addition for any other rights and remedies provided by law or under this Purchase Order.

15. TERMINATION FOR INSOLVENCY

In the event of the institution of any proceedings by or against Seller in bankruptcy or insolvency or under any other provisions of the Bankruptcy Act including proceedings under Chapters 7, 11, 12 or 13 thereof, or the appointment of a receiver or trustee or an assignment for the benefit of creditors of Seller, Buyer may terminate this Purchase Order. Any termination under this clause shall be deemed to be a termination in accordance with the clause of this Purchase Order entitled "Termination."

16. WITHHOLDING OF PAYMENT

If Buyer considers that performance may not have been accomplished in accordance with the requirements of both this Purchase Order and applicable government laws and regulations, in addition to any other rights or remedies of the Buyer under this Purchase Order or under law, Buyer may withhold fifteen percent (15%) of payment pending determination of whether performance has been so accomplished through invocation of the clause of this Purchase Order entitled "Inspection of Services."

17. INDEMNIFICATION

Seller shall indemnify Buyer against and hold Buyer harmless from, assume and, if General Dynamics requests, defend Buyer against any liabilities, claims, losses, penalties, orders, damages, injury (including death), costs or expenses, including without limitation attorneys' fees: (i) resulting, directly or indirectly, in whole or in part, from any failure by Seller or Seller's agents, employees or contractors at any tier to comply fully with the requirements of this Purchase Order, including without limitation these Terms and Conditions for Environmental Services and the clause hereof entitled "Compliance with Laws and Regulations," or (ii) arising, directly or indirectly, in whole or in part, out of any negligent or willful act or omission by Seller or Seller's agents, employees or contractors at any tier. As used above in this clause, "Buyer" shall include Buyer and Buyer's officers,

directors, employees and agents. This indemnification liability shall be binding upon successors in interest of the Seller.

18. WORK ON BUYER'S PREMISES

All employees, agents and representatives of Seller shall be subject to the rules and regulations at any time promulgated by Buyer, for the safe, orderly and efficient conduct of operations on Buyer's property. Seller shall enforce observance of such rules and regulations and shall maintain discipline and good order among its employees, agents and representatives. Employees, agents and representative of Seller employed at the site of the work or visiting the site for any purpose shall be subject to such security regulations as may be in force in that area. Seller's employees, agents and representatives, during such time as they are for Buyer's premises, shall abide by the same rules and regulations with respect to fire protection and safety that govern Buyer's employees.

19. FINANCIAL RESPONSIBILITY

- (a) The Seller shall maintain the following insurance:
 - (i) Workers' Compensation Insurance in accordance with the laws of each and every state in which services hereunder are performed;
 - (ii) Employer's Liability Insurance with limits not less than \$500,000 per occurrence;
 - (iii) Public Liability and Property Damage Insurance with limits not less than \$1 million combined single limit, including without limitation the following coverages: comprehensive form, contractual liability, broad form property damage, independent contractors, and personal and bodily injury; and
 - (iv) Automobile Public Liability and Property Damage Insurance with limits not less than \$ 1 million combined single limit, or the amount required by state or federal regulations, whichever is greater.
- (b) The Seller shall furnish to the Buyer prior to the commencement of services under this Purchase Order one or more certificates issued to Buyer by a responsible insurer, satisfactory to Buyer, demonstrating the maintenance of all policies of insurance set forth in subsection (a) of this clause or required pursuant to any other clause hereof. Buyer shall be named as, and certificates shall show

Buyer as having been so named as, an additional insured on all such policies (except with respect to Workers' Compensation Insurance) including an MCS-90 (automobile liability) endorsement. Such certificates shall provide that such policies of insurance shall not be canceled, and coverage thereunder shall not be decreased, except upon forty-five (45) days prior written notice to Buyer. The language in the policies and/or endorsements naming Buyer as an additional insured shall include this sentence: "The inclusion herein of any person or entity as an additional insured shall not affect any right such person or entity would have as a claimant hereunder if not so included." The insurance certificate should also note if coverage is written on a claims-made or occurrence basis. For all claims-made policies, certificates evidencing such insurance shall be provided to Buyer during the term of this Purchase Order and shall be available to Buyer under the "Maintenance of Records" clause of this Purchase Order. If the expiration date of any policy of insurance is prior to the date of completion or anticipated completion of services, the Seller shall furnish new certificates in accordance with this subsection (b) at least thirty (30) days prior to any such expiration dates. Absent Buyer's sole discretion, insurers not rated A10 or better in the current edition of Best's Insurance Guide shall not be considered satisfactory to Buyer.

20. ASSIGNMENT AND SUBCONTRACTING

Seller shall not assign any contract resulting from this Purchase Order or any portion of such contract, nor shall Seller subcontract for completed or substantially completed services purchased hereunder without the prior express written consent of Buyer.

21. NOTICES

All notices required or permitted to be given hereunder shall be deemed to be properly given if delivered in writing. The effective time of notice shall be at the time of receipt.

22. WAIVER

No waiver by Buyer or any breach of this Purchase Order or the granting of an extension for performance hereunder shall be deemed to be a waiver of any other or subsequent breach.

23. DISPUTES

Pending resolution of any dispute hereunder, Seller shall proceed diligently with the performance of work, including performance of services in accordance with Buyer's direction. Upon resolution of the dispute, this Purchase Order shall be equitably adjusted, if necessary, to reflect such resolution.

24. ORDER OF PRECEDENCE

This Purchase Order and all documents incorporated by reference constitute the entire agreement of the parties as to the subject matter hereof. In the event of any inconsistency among the foregoing, the inconsistency shall be resolved by giving precedence in the following order: (i) this Purchase Order, including these terms and conditions; (ii) any appendices incorporated herein; (iii) any specifications or drawings; and (iv) any other documents incorporated herein by reference.

25. APPLICABLE LAW

The validity, performance and construction of the contract arising from the acceptance of this Purchase Order shall be governed by and construed in accordance with the laws of the State of Texas, excluding its choice of law rules. Jurisdiction and venue for any suit between the parties hereto arising out or connected with this Purchase Order or the goods or services furnished hereunder, shall lie only in Tarrant County, Texas.

26. SURVIVAL

These terms and conditions shall survive the completion of the work of Seller to be performed under this Purchase Order and any cancellation or termination, or purported cancellation or termination, of this Purchase Order or of the services of Seller to be performed pursuant to this Purchase Order, and shall inure to the benefit of, and be binding upon, the successors and assigns of Seller and Buyer.

PART A ADDITIONAL PROVISIONS FOR TRANSPORTATION SERVICES

27A. FINANCIAL RESPONSIBILITY, ADDITIONAL

In addition to other insurance requirements specified in the terms and conditions herein, Seller shall maintain the following insurance:

- (a) Automobile Public Liability and Property Damage in the minimum amount as listed below, but not limited to the following coverages: comprehensive form, contractual liability, broad form property damage, independent contractors, personal injury and environmental restoration (as defined in 49 CFR 387.5): Schedule of Limits
 - (i) For-hire (in interstate or foreign commerce): Property (nonhazardous) in the amount of \$750,000.
 - (ii)

Order and shall be available to Buyer under the "Maintenance of Records" clause of this Purchase Order.

- (c) Environmental Restoration - restitution for the loss, damage or destruction of natural resources arising out of the accidental discharge, dispersal, release or escape into or upon the land, atmosphere, watercourse or body of water of any commodity transported. This shall include the cost of removal and the cost of necessary measures taken to minimize or mitigate damage to human health and the natural environment [49 CFR Part 172].
- (d) Seller may comply with the financial responsibility requirements of this clause by providing financial reserves sufficient to satisfy liability amounts set forth in this clause. Surety bonds or self-constituted financial reserves. Seller shall provide a Motor Carrier Surety Bond for Public Liability under Section 30 of the Motor Carrier Act of 1980 (Form MCS-82) issued by a surety in the form prescribed by order or authorization of the ICC authorization to self-insure under 49 CFR Part 1043 as evidence of compliance with the aforementioned financial responsibility requirements.

28A. TRANSPORTATION RESPONSIBILITIES

Seller shall perform all transportation responsibilities including transporting, transferring from one place to another, loading, unloading, pumping or packaging of waste in strict accordance with Title 49 of the Code of Federal Regulations (CFR) "Transportation," Parts 100-199, and any other such applicable governmental regulation or statute.

29A. MANIFEST RECORDKEEPING

Seller shall comply with all manifest system and record keeping requirements set out in federal environmental regulation 40 CFR Part 263.

30A. ACCOUNTABILITY

The seller shall account for and report to the Buyer the amounts of hazardous material or waste received hereunder and the amounts utilized in the treatment, storage and disposal process for each lot delivered. Any difference between the amount delivered and the amount treated, stored and/or disposed of shall be accounted for, and disposition instruction shall be obtained from the Buyer. Under no circumstances may any of the delivered materials be disposed of in any manner other than that specifically authorized by the Buyer.

31A. SELLER REPRESENTATIONS

Seller represents that it knows of no pending or threatened proceeding or action which could result in the termination or modification of any permit under which Seller may perform work hereunder. Seller shall furnish Buyer

PART C ADDITIONAL PROVISIONS FOR CONSTRUCTION SERVICES

In addition to the foregoing terms and conditions in paragraphs 1 through 26, above, the following terms and conditions shall apply to this Purchase Order if issued for, or which includes, construction services, building demolition, excavation, or structural work which is performed incident to, but not directly involving, the removal, transportation, treatment, disposal or storage of hazardous waste or material, hereunder:

27C. FINANCIAL RESPONSIBILITY, ADDITIONAL

- (a) Seller is required to satisfy the requirements of paragraph (i) of subsection (a) of 27D, Financial Responsibility, below, and shall provide such certificate(s) demonstrating the maintenance of the policies or insurance set forth in said clause.
- (b) All insurance must be written with a company that has a Best's rating of at least A10. Prior approval is required from Buyer before using an insurance company with a lesser rating.
- (c) Seller may comply with the financial responsibility requirements of this clause by passing the financial test set forth in 40 CFR 264.1 or by utilizing a Corporate Guarantee as specified in 40 CFR 264. In either circumstance, Seller must provide Buyer with written proof of passing the financial test.

PART D ADDITIONAL PROVISIONS FOR TREATMENT, STORAGE AND DISPOSAL FACILITIES

In addition to the foregoing terms and conditions in paragraphs 1 through 26 above, the following terms and conditions shall apply to this Purchase Order if issued in whole or in part for, or if performance, in whole or in part requires utilization of, treatment, storage and disposal facilities services hereunder:

27D. FINANCIAL RESPONSIBILITY

- (a) The Seller shall also demonstrate financial responsibility with respect to environment impairment in amounts not less than \$1 million per occurrence with an annual aggregate of not less than \$2 million for sudden pollution and in amounts with limits not less than

Limits") shall be available exclusive of legal defense costs. The Seller shall also satisfy the following requirements for financial responsibility with respect to environmental impairment set forth hereafter in paragraphs (i) and (ii) of this section, or whichever of said paragraphs (i) and (ii) as may be specified in this Purchase Order:

- (i) Seller shall maintain insurance coverage with limits not less than the Environmental Coverage Limits under a policy no more restrictive than that described in the Hazardous Waste Facility

Order. If the expiration date of any policy of insurance is prior to the date of completion or anticipated completion of services, the Seller shall furnish new certificates in accordance with this subsection (c)

29D. ACCOUNTABILITY

The Seller shall account for and report to the Buyer the amounts of hazardous material or waste received hereunder and the amounts utilized in the treatment, storage disposal process for each lot delivered. Any difference between the amount delivered and the amount treated, stored and/or disposed of shall be accounted for and disposition instructions obtained from the Buyer. Under no circumstances may any of the delivered material be disposed of in any manner other than that specifically authorized by the Buyer.

30D. AUDIT AND SURVEILLANCE

Seller agrees that Buyer shall have the right go observe all aspects of performance of work hereunder. Buyer agrees to comply with reasonable precautions and procedures relative to observing Seller's safety regulations and avoiding interference with the orderly process of Seller's normal business operations. Buyer or the government has the right to audit Seller's records and facilities, and observe any performance under the Purchase Order.