

**APPENDIX 'X'**  
**AERONAUTICS SECTOR STANDARD COMMERCIAL**  
**TERMS & CONDITIONS**

1. Definitions

As used herein "Buyer" means Lockheed Martin Corporation, acting through its Aeronautics Material Management Center; "Seller" means the party identified on the face of this PO; "Items" means all required articles, materials, supplies and services (singular "Item," plural "Items"); and "PO" means this purchase order or subcontract; "Buyer's Authorized Representative" means the person or persons from the Aeronautics Sector Procurement Department, and any other person or persons authorized by Buyer to alter, modify or change the provisions of this PO.

2. Delivery

- (a) Delivery shall be made in strict accordance with the provisions of this PO.
- (b) In the event of termination or change, no claim will be allowed for any manufacture or procurement by Seller in advance of reasonable flow time unless Buyer's prior written consent has been obtained by Seller for such advance manufacture or procurement. Buyer shall have the right to return or store at Seller's expense any Item delivered in advance of the scheduled delivery date specified for such Item unless Buyer has given such prior written consent for such advance delivery.
- (c) If, at any time, it appears to Seller that any delivery schedule cannot be met, Seller shall notify Buyer as soon as possible as to the cause or causes thereof, action being taken to remove such cause or causes and when on-schedule status will be achieved. Seller, at its expense, shall take reasonable action necessary, with or without request of Buyer, to meet such schedules as set forth herein or to recover to the maximum extent possible any delay caused by Seller in meeting such schedule. Notification under this Article shall in no way limit Buyer's rights under other provisions of this PO, at law, or in equity.

3. Inspection

- (a) Buyer and Buyer's customer may inspect the Items supplied hereunder before, during or after the manufacture, fabrication or performance thereof at facilities which will or may be used in the performance of this PO and, at any time and place before, during, or after manufacture or completion, may inspect and test all material and workmanship entering into the performance of this PO. No such inspection or test shall in any way relieve Seller of its obligations to furnish all Items in strict accordance with the requirements of this PO. If

inspection and test is made on the premises of Seller or any of its suppliers, Seller shall furnish, or cause to be furnished, without additional charge, all reasonable facilities and assistance for safety and convenience of the inspectors in the performance of their duties. All inspections and tests shall be performed in such a manner as not to delay the work unduly. All Items are subject to final inspection and acceptance at Buyer's facility (or at any other location specified in writing by Buyer) notwithstanding any payments or prior inspections. Such final inspection shall be made within a reasonable time after delivery.

- (b) Seller shall provide and maintain an inspection and process control system acceptable to Buyer covering the Items hereunder. Records of all inspection work by Seller shall be kept complete and available to Buyer and its customers during the performance of this PO and for such longer periods as may be specified in this PO.
- (c) Buyer shall have the right to reject and hold at Seller's expense subject to Seller's reasonable disposal instructions, Supplies which do not conform to applicable specifications, drawings, samples or descriptions or which are defective in material, workmanship or design (unless such design is Buyer's detailed design). Without limiting any other rights Buyer may have, Buyer, at its option, shall have the right to require Seller to (i) repair or replace at Seller's expense any Items which fail to meet the requirements of applicable design, specifications, drawings, samples, descriptions or other requirements of this PO, or (ii) to refund the price of any such Item. Previously rejected Items reworked to specification or replaced shall not be returned to Buyer by Seller unless Buyer has consented to such return. Seller shall notify Buyer of past rejections of all returned Items.

#### 4. Variation in Quantity

Goods shall not be supplied in excess of quantities specified herein, except for allowed shipping tolerances, if any. Seller shall be liable for handling charges and return shipment costs for any excess quantities; and, unless Seller agrees to pay such costs, the overshipped material 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. The F.O.B. point is as specified on the face of this PO. The price includes all charges for boxing, packing, crating, drayage, storage, dunnage, and bundling.

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 the Seller's correct invoice;
- (b) Scheduled delivery date of the Items; or
- (c) Actual delivery, or completion of performance of the Items.

Buyer shall have a right of setoff against payments due under this PO for any amounts at issue under this PO or other purchase orders between Buyer and Seller.

7. Warranty

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calculating, updating, displaying, outputting, and transferring such dates and

## 9. Changes

- (a) Buyer's authorized representative may at any time, by written notice, and without notice to sureties or assignees, make changes within the general scope of this PO in any one or more of the following: (i) drawings, designs or specifications; (ii) method of shipping or packing; (iii) place of inspection, acceptance or point of delivery; (iv) delivery schedule.
- (b) Except as may otherwise be expressly provided in this PO, if any such change under subparagraphs (a)(i), (ii), or (iii) above causes an increase or decrease in the time required for performance of this PO, whether or not directed by such change, Buyer shall make an equitable adjustment in the delivery schedule, and the affected PO(s) shall be modified accordingly in writing.
- (c) Except as may otherwise be expressly provided in this PO, if any change

## 10. Responsibility for Property

Unless otherwise specified, Seller shall be liable for any loss or destruction of or damage to property of the Buyer or any customer of Buyer whether furnished to Seller by any such customer or 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. Special Tooling and Test Equipment

Except as may be otherwise provided for in this PO, jigs, dies, fixtures, molds, patterns, special gages, and other items of special tooling (including software) and special test equipment, shall be furnished by and at the expense of Seller. Special tooling and test equipment shall be kept in good condition by Seller and replaced as necessary by Seller, without expense to Buyer. Title to special tooling and test equipment shall remain in Seller, except that Buyer may, at any time, reimburse Seller for the cost of part or of all special tooling and test equipment, and upon payment therefor shall become the sole owner thereof, or at Buyer's option shall become the sole owner of all rights to manufacturing data pertinent thereto and to any technology, invention, mask work, patent or work of authorship derived therefrom, entitled to possession at the completion, or termination of this PO, or at such other date as the parties may agree. Buyer shall at all times have free access to all such tooling, equipment, and information pertinent thereto for purposes of quality control, evaluation and verification.

## 12. Data Rights

### Data and Information Disclosed to Buyer

Unless the data and information disclosed to Buyer is covered by and identified in accordance with a Proprietary Data Agreement between Buyer and Seller, any data and information which Seller has disclosed or may hereafter disclose to Buyer in connection with the purchase of the Items covered by this PO shall not be deemed to be proprietary data and information; and it shall be acquired by Buyer free from any restrictions regarding its use or disclosure.

#### Information Disclosed to Seller

Seller shall keep confidential all information, drawings, specifications or data either:

- (a) furnished by Buyer and captioned as proprietary or
- (b) prepared by Seller specifically in connection with the performance of this PO;

the appointment of a receiver or trustee or any assignment for the benefit of creditors.

- (2) Buyer's right to terminate this PO under subdivisions (a)(1)(ii) and (a)(1)(iii) above may be exercised if Seller does not cure such failure within 10 days (or more if authorized in writing by Buyer) after receipt of the notice from Buyer specifying the failure.
- (b) If Buyer terminates this PO for default in whole or in part, Buyer shall have the right to acquire under the terms and in the manner it considers appropriate, Items similar to those terminated; and, the Seller will be liable to Buyer for any excess costs for those Items. However, Seller shall continue the work not terminated.
- (c) If this PO is terminated for default, Buyer shall have the right to require the Seller to transfer title and deliver to Buyer, as directed by Buyer, any (1) completed Items, and (2) partially completed Items, parts, tools, dies, jigs, fixtures, plans, drawings, information, and contract rights (collectively referred to as "manufacturing materials" in this clause) that Seller has specifically produced or acquired for 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 Items delivered and accepted. Seller and Buyer shall agree on the amount of payment for manufacturing



specified therein, stop work and the placement of subcontracts hereunder, terminate work under subcontracts outstanding hereunder, and take any action necessary to protect property in Seller's possession in which Buyer has or may acquire an interest. Within thirty (30) days of receipt by Seller of such notice, Seller shall advise Buyer of the actions taken by Seller to comply with Buyer's instructions and Seller shall also notify Buyer of Seller's intent to file a termination claim. In the event Buyer terminates and Seller submits a termination claim, Buyer shall pay to Seller the following: (i) amounts due for completed Items delivered and accepted or performed in accordance herewith, and not theretofore 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 reasonable 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 days after the effective date of the termination on forms provided by Buyer. Buyer shall not be required to make any determination on any late claim.
- (c) Seller agrees that its failure to submit a termination claim(s) within the 120 day period set forth in subparagraph (b) above shall constitute a waiver thereof unless Seller requests in writing prior to expiration of such time period that a time extension for filing its claim or claims be granted by Buyer. Any such extension, if approved, shall be effective only if authorized in writing by Buyer.
- (d) Buyer or Buyer's representative shall have the right to audit Seller's claim prior to payment.

## 15. Stop Work

Seller shall stop work for up to ninety (90) days in accordance with the terms of any written notice received from Buyer, or for such longer period of time as the parties

may agree and shall take all reasonable steps to minimize the incurrence of costs allocable to the work covered by the PO during the period of work stoppage. Within such period, Buyer shall either terminate or continue the work by written order to Seller. In the event of a continuation, equitable adjustment shall be made to the price, delivery schedule, or other provision affected by the work stoppage, if applicable, provided that the claim for equitable adjustment is made within thirty (30) days after such continuation. Claim costs, if any, shall be calculated in a manner similar to that used to originally price the Items and shall be for the increase or decrease in the cost caused only by the stop work.

#### 16. Force Majeure

Neither Party 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 the Party concerned including but not limited to Acts of God, Acts of the 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 Party to resume all obligations as promptly as possible. In the event either Party is affected in the performance of its obligations by any of the aforementioned causes, it shall give the other Party prompt written notice of the fact, together with satisfactory evidence substantiating that said cause prevents performance, as well as a declaration specifying the steps being taken by the Party to remove the relevant cause(s) and shall continue the performance of its other obligations under this PO. If 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 Parties shall be relieved of any obligation for the canceled portion thereof.

#### 17. Patent Indemnity, Trademarks, Trade Secrets and Copyrights

To the extent that Items are produced to detailed designs not originated and furnished by Buyer, or by processes or methods the use of which is not specifically directed by Buyer, Buyer shall have no responsibility to Seller for patent infringement and Seller warrants that the sale or use of such Items and the use of such processes and methods hereunder will not infringe any United States or foreign patents, trademarks, trade secrets, copyrights or other property rights. Seller shall defend, indemnify and hold Buyer and its customers harmless from any loss, including without limitation, cost, damage, expense (including attorney's fees) or liability which may be incurred on account of infringement or alleged infringement of patent rights, trademarks, trade secrets, copyrights or other property rights with respect to such Items and defend at its own expense any action or claim in which such infringement is alleged by third parties, provided Seller is notified of such actions or claims against Buyer. Indemnification shall not apply to infringements arising from use by Buyer of an Item supplied by Seller in

combination with other items where infringement would not have occurred from the normal use for which such Item was designed.

#### 18. Entry on Buyer's Property; Insurance

- (a) In the event that Seller or Seller's employees or agents enter on to Buyer's premises for any reason in connection with this PO, Seller and such other parties shall observe all military security requirements and all plant safety, plant protection and traffic regulations.
- (b) Seller, and any contractors used by Seller in connection with this PO, shall carry Workers Compensation and Employee's Liability Insurance to cover Seller's and such contractors' legal liability on account of accidents to their respective employees. Seller and its contractors shall carry adequate Comprehensive General Liability and adequate Comprehensive Automobile Liability Insurance covering the legal liability of Seller and such contractors on account of accidents arising out of the operations of Seller or such contractors and resulting in bodily injury, including death, being sustained by any person or persons, or in any damage to property. At Buyer's request, Seller shall furnish to Buyer certificates from Seller's insurers showing such coverage in effect and agreeing to give Buyer ten (10) days' prior written notice of cancellation of such coverage.

#### 19. Waiver

Failure by Buyer either to enforce at any time the provisions hereof or to protest at any time any breach or default thereof shall not be construed as evidence to interpret the requirements of this PO, nor as a waiver of the requirements of such provisions, nor of the right of Buyer thereafter to enforce each and every such provision. Buyer's approval of documents shall not relieve Seller from compliance with specifications related to this PO. All rights and obligations hereunder shall survive final performance of this PO.

#### 20. 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 may be, may have at law or in equity 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 this PO. Upon resolution of any such dispute, this PO shall be equitably adjusted, if necessary, to reflect such resolution.

## 21. 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

between Buyer and Seller with respect to the subject matter of this PO. Either: (a) acknowledgment of this PO, (b) furnishing of Items under this PO, (c) acceptance of payment under this PO, or (d) commencement of performance, shall constitute Seller's unqualified acceptance of this PO. Additional or differing terms or conditions proposed by Seller or included in Seller's acknowledgment hereof shall be void and have no effect unless accepted in writing by Buyer.

## 26. Packing, Shipment, and Shipping Instructions

- (a) Unless otherwise specified, Seller shall assure that all packing and packaging shall comply with good commercial practice and applicable carrier's tariffs. The use of commercial practices shall not relieve Seller of responsibility for packaging in a manner that will insure receipt of Items in an acceptable condition at the destination specified in this PO.
- (b) Seller shall assure that the packaging, labeling and shipping of all HAZARDOUS SUBSTANCES including DANGEROUS MATERIALS, conforms to all applicable international, federal, state and local laws and regulations.
- (c) Seller shall mark on the outside of each exterior container: (i) the PO number or numbers of the Items packed in that container; (ii) the sequence and quantity of each exterior container in each shipment (such as "1 of 3"); (iii) the bill of lading/express receipt number. If shipments against more than one purchase order are packed in one exterior container, mark each intermediate container with its applicable purchase order number.
- (d) Seller shall properly describe Seller's Less than Truckload shipments in accordance with the National Motor Freight Classification to insure the correct classification rate. Include this PO number on all carrier bills of lading and shipping labels. Combine on the same bill of lading, all shipments consigned to the same Buyer address and ship on the same day. No C.O.D. (Collect on

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 or 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.

#### 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 provisions in any other jurisdiction.

#### 30. 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.

### 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.