



**GENERAL PROVISIONS AND FAR FLOWDOWN PROVISIONS FOR INTERNATIONAL
SUBCONTRACTS/PURCHASE ORDERS FOR COMMERCIAL ITEMS UNDER A U.S. GOVERNMENT PRIME
CONTRACT**

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SECTION I: GENERAL PROVISIONS

1. ACCEPTANCE OF CONTRACT/TERMS AND CONDITIONS

- (a) This Contract integrates, merges, and supersedes any prior offers, negotiations, and agreements concerning the subject matter hereof and constitutes the entire agreement between the Parties.
- (b) SELLER's acknowledgment, acceptance of payment, or commencement of performance, shall constitute SELLER's unqualified acceptance of this Contract.
- (c) **Additional or differing terms or conditions proposed by SELLER or included in SELLER's acknowledgment hereof are hereby objected to by LOCKHEED MARTIN and have no effect unless expressly accepted in writing by LOCKHEED MARTIN.**

2. APPLICABLE LAWS

- (a) This Contract shall be governed by the laws of the State from which this Contract was issued, excluding its choice of laws rules, except that any provision in this Contract that is (i) incorporated in full text or by reference from the Federal Acquisition Regulation (FAR); or (ii) incorporated in full text or by reference from any agency regulation that implements or supplements the FAR or; (iii) that is substantially based on any such agency regulation or FAR provision, shall be construed and interpreted according to the federal common law of government contracts as enunciated and applied by federal judicial bodies, boards of contracts appeals, and quasi-judicial agencies of the federal Government.
- (b) (1) SELLER agrees to comply with all applicable laws, orders, representations rules, regulations, and ordinances of the United States and the country where SELLER will be performing the Contract. The provisions of the "United Nations Convention on Contracts for International Sale of Goods" shall not apply to this Contract.
- (2) If: (i) LOCKHEED MARTIN's contract price or fee is reduced; (ii) LOCKHEED MARTIN's costs are determined to be unallowable; (iii) any fines, penalties or interest are assessed on LOCKHEED MARTIN; or (iv) LOCKHEED MARTIN incurs any other costs or damages; as a result of any violation of applicable laws, orders, rules, regulations, or ordinances by SELLER, its officers, employees, agents, suppliers, or subcontractors at any tier, LOCKHEED MARTIN may proceed as provided for in (3) below.
- (3) Upon the occurrence of any of the circumstances identified in (2) above, LOCKHEED MARTIN may make a reduction of corresponding amounts (in whole or in part) in the price, or in the costs and fee, of this Contract or any other contract with SELLER, or may demand payment (in whole or in part) of the corresponding amounts. SELLER shall promptly pay amounts so demanded.
- (4) In the event it is determined that the Work is not a Commercial Item as defined at FAR 2.101, then SELLER agrees that CORPDOC 3 and the corresponding agency flowdowns shall be applicable to this Contract, in lieu of these terms and conditions, effective as of the date of this Contract

(c) If the Work is to be shipped to, or performed in the United States:

- (1) SELLER represents that each chemical substance constituting or contained in Work sold or otherwise transferred to LOCKHEED MARTIN hereunder is on the list of chemical substances compiled 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.
- (2) SELLER shall provide to LOCKHEED MARTIN with each delivery any Material Safety Data Sheet applicable to the Work in conformance with and containing such information as required by the Occupational Safety and Health Act of 1970 and regulations promulgated thereunder, or its State approved counterpart.

3. ASSIGNMENT

Any assignment of SELLER's contract rights or delegation of duties shall be void, unless prior written consent is given by LOCKHEED MARTIN.

4. CHANGES

- (a) The LOCKHEED MARTIN Procurement Representative may at any time, by written notice, and without notice to sureties or assignees, make changes within the general scope of this Contract 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; and (iv) delivery schedule.
- (b) If any such change causes an increase or decrease in the cost of, or the time required for, performance of any part of this Contract, LOCKHEED MARTIN shall make an equitable adjustment in the Contract price and/or delivery schedule, and modify the Contract accordingly. Changes to the delivery schedule will be subject to a price adjustment only.
- (c) Any claim for an equitable adjustment by SELLER must be submitted in writing to LOCKHEED MARTIN within thirty (30) days from the date of notice of the change, unless the Parties agree in writing to a longer period.
- (d) Failure to agree to any adjustment shall be resolved in accordance with the "Disputes" clause of this Contract. However, nothing contained in this "Changes" clause shall excuse SELLER from proceeding without delay in the performance of this Contract as changed.

5. COMMERCIAL COMPUTER SOFTWARE

- (a) As used in this clause, "restricted computer software" means computer program, computer data base, or documentation thereof, that has been developed at private expense and either is a trade secret, is commercial or financial and confidential or privileged, or is published and copyrighted, and so marked when delivered or otherwise furnished.
- (b) Notwithstanding any provisions to the contrary contained in any SELLER's standard commercial license or lease agreement, SELLER agrees that the restricted computer software delivered under this Contract shall provide the following rights to LOCKHEED MARTIN and the U.S. Government.
 - (1) The restricted computer software may be:
 - (i) Used or copied for use in or with the computer or computers for which it was acquired, including use at any Government installation to which such computer or computers may be transferred;
 - (ii) Used or copied for use in or with a backup computer if any computer for which it was acquired is inoperative;
 - (iii) Reproduced for safekeeping (archives) or backup purposes;
 - (iv) Modified, adapted, or combined with other computer software, provided that the modified, combined, or adapted portions of the derivative software incorporating any of the delivered, restricted computer software shall be subject to same restrictions set forth in this Contract;
 - (v) Disclosed to and reproduced for use by support service contractors or their subcontractors, subject to the same restrictions set forth in this Contract; and
 - (vi) Used or copied for use in or transferred to a replacement computer.
- (c) Release from liability. The SELLER agrees that the Government and LOCKHEED MARTIN, and other persons to whom the Government or LOCKHEED MARTIN may have released or disclosed commercial computer software delivered or otherwise furnished under this Contract, shall have no liability for any release or disclosure of such commercial computer software that are not marked to indicate that such software are licensed data subject to use, modification, reproduction, release, performance, display, or disclosure restrictions.

6. COMMUNICATION WITH LOCKHEED MARTIN CUSTOMER

LOCKHEED MARTIN shall be solely responsible for all liaison and coordination with the LOCKHEED MARTIN customer, including the U. S. Government, as it affects the applicable Prime Contract, this Contract, and any related contract.

7. CONTRACT DIRECTION

- (a) Only the LOCKHEED MARTIN Procurement Representative, has authority to amend this Contract. Such amendments must be in writing.
- (b) LOCKHEED MARTIN engineering and technical personnel may from time to time render assistance or give technical advice or discuss or effect an exchange of information with SELLER's personnel concerning the Work hereunder. Such actions shall not be deemed to be a change under the "Changes" clause of this Contract and shall not be the basis for equitable adjustment.
- (c) Except as otherwise provided herein, all notices to be furnished by the SELLER shall be sent to the LOCKHEED MARTIN Procurement Representative.

8. **DEFAULT**

- (a) LOCKHEED MARTIN, by written notice, may terminate this Contract for default, in whole or in part, if SELLER fails to comply with any of the terms of this Contract, fails to make progress so as to endanger performance of this Contract, or fails to provide adequate assurance of future performance. Seller shall have ten (10) days (or such longer period as LOCKHEED MARTIN may authorize in writing) to cure any such failure after receipt of notice from LOCKHEED MARTIN. Default involving delivery schedule delays shall not be subject to the cure provision.
- (b) LOCKHEED MARTIN shall not be liable for any Work not accepted; however, LOCKHEED MARTIN may require SELLER to deliver to LOCKHEED MARTIN any supplies and materials, manufacturing materials, and manufacturing drawings that SELLER has specifically produced or acquired for the terminated portion of this Contract. LOCKHEED MARTIN and SELLER shall agree on the amount of payment for these other deliverables.
- (c) SELLER shall continue all Work not terminated.

If after termination under paragraph (a), it is later determined that SELLER was not in default, such termination shall be deemed a Termination for Convenience.

9. **DEFINITIONS**

The following terms shall have the meanings set forth below:

- (a) "Contract" means the instrument of contracting, such as "PO", "Purchase Order", or other such type designation, including all referenced documents, exhibits and attachments. If these terms and conditions are incorporated into a "master" agreement that provides for releases, (in the form of a Purchase Order or other such document) the term "Contract" shall also mean the Release document for the Work to be performed.
- (b) "FAR" means the Federal Acquisition Regulation, issued as Chapter 1 of Title 48, Code of Federal Regulations.
- (c) "LOCKHEED MARTIN" means LOCKHEED MARTIN CORPORATION, acting through its companies or business sites as identified on the face of this Contract. If a subsidiary or affiliate of LOCKHEED MARTIN CORPORATION is identified on the face of the Contract then "LOCKHEED MARTIN" means that subsidiary or affiliate.
- (d) "LOCKHEED MARTIN Procurement Representative" means the person authorized by LOCKHEED MARTIN's cognizant procurement organization to administer and/or execute this Contract.
- (e) "PO" or "Purchase Order" as used in any document constituting a part of this Contract shall mean this "Contract."
- (f) "SELLER" means the Party identified on the face of the Contract with whom LOCKHEED MARTIN is contracting.
- (g) "Work" means all required articles, materials, supplies, goods, and services constituting the subject matter of this Contract.

10. **DISPUTES**

All disputes under this Contract which are not disposed of by mutual agreement may be decided by recourse to an action at law or in equity exclusively in a United States court of competent jurisdiction located in the state from which this Contract was issued. Until final resolution of any dispute hereunder, SELLER shall diligently proceed with the performance of this Contract as directed by LOCKHEED MARTIN

11. **ELECTRONIC CONTRACTING**

LOCKHEED MARTIN may issue and transmit Purchase Orders and attachment(s), (if any) electronically and execute such Purchase Orders by electronic signature in lieu of a hard copy Purchase Order. Such electronic transmission may be the only document that the SELLER will receive for placement of any Purchase Order. Both parties agree that the validity of the Purchase Order, and any acknowledgement by SELLER, shall not be contested on the basis that the documents contain an electronic signature.

12. **EXCUSABLE DELAYS**

- (a) Subject to (b) and when mutually agreed by the parties, SELLER shall be excused from, and shall not be liable for, failure of performance due to one or more of the following qualifying events (such list being exclusive):
 - (i) War; warlike operation; insurrection; riot; fire, explosion, accident, governmental act; material control regulations or orders; act of God; act of the public enemy; epidemic; and quarantine restriction; and if
 - (ii) Such event was beyond Seller's control and not occasioned by its negligence or default. The Contract will be extended for that period of time attributable to such event.
- (b) In order to be excused from performance under (a) Seller shall submit, within ten (10) calendar days of the start of the qualifying event, a written notice stating a complete and detailed description of such event, the date of commencement, an estimate of the probable period of delay, and explanation indicating how such event was beyond the control of the SELLER and not due to its negligence or fault and what efforts SELLER will make to minimize the length of delay. SELLER shall submit within ten (10) calendar days of the end of the event a written notice stating the impact to the schedule and evidence justifying the length of the delay. If the delay extends for thirty (30) days or more this Contract may be terminated by LOCKHEED MARTIN without additional cost.
- (c) Failure of the United States Government to issue any required export license, or withdrawal/termination of a required export license by the United States Government, shall relieve LOCKHEED MARTIN of its obligations under this Contract, and shall relieve SELLER of its' corresponding obligations.

13. **EXPORT CONTROL**

- (a) SELLER agrees to comply with all applicable U.S. export control laws and regulations, specifically the requirements of the International Traffic in Arms Regulation (ITAR), 22 CFR 120 et seq.; and the Export Administration Act, 50 U.S.C. Appx. 2401 et seq.; including the requirement for obtaining any export license, if applicable. Without limiting the foregoing, SELLER agrees that it will not transfer any export controlled item, data, or services, to include transfer to foreign persons employed by or associated with, or under contract to SELLER or SELLER's lower-tier suppliers, without the authority of any export license or applicable license exemption.
- (b) SELLER agrees to notify LOCKHEED MARTIN if any deliverable under this Contract is restricted by export control laws or regulations.
- (c) SELLER shall immediately notify the LOCKHEED MARTIN Procurement Representative if SELLER is listed in any Denied Parties List or if SELLER's export privileges are otherwise denied, suspended or revoked in whole or in part by any U.S. Government entity or agency.
- (d) SELLER agrees to maintain an effective export/import compliance program in accordance with the ITAR regulations and Office of Defense Trade Controls (ODTC) guidelines.
- (e) Where SELLER is a signatory under a LOCKHEED MARTIN license or agreement, SELLER shall provide prompt notification to the LOCKHEED MARTIN Procurement Representative in the event of changed circumstances under the Contract including, but not limited to, ineligibility, changes in the activities to be performed, a violation or potential violation of the ITAR, the initiation or existence of a U.S. government investigation that could affect the status of the SELLER under the ITAR, or any other compliance activity related to the Program and this Contract.
- (f) SELLER shall be responsible for all losses, costs, claims, causes of action, damages, liabilities, and expense, including attorneys' fees, all expense of litigation and/or settlement, and court costs, arising from any act or omission of SELLER, its officers, employees, agents, suppliers, or subcontractors at any tier, in the performance of any of its obligations under this clause.
- (g) If the technical data required to perform this Contract is subject to the United States International Traffic in Arms Regulations (ITAR), SELLER shall comply with the following:
 - (i) The technical data shall be used only to manufacture the Work required by the Contract; and
 - (ii) The data shall not be disclosed to any other person except lower-tier subcontractors within the same country; and
 - (iii) Any rights in the data may not be acquired by any foreign person; and
 - (iv) SELLER, including lower-tier subcontractors, shall return, or at LOCKHEED MARTIN's direction, destroy all of the technical data exported to SELLER pursuant to the Contract upon fulfillment of its terms; and
 - (v) Unless otherwise directed by LOCKHEED MARTIN, SELLER shall deliver the Work only to LOCKHEED MARTIN or to an agency of the U.S. Government.
 - (vi) SELLER shall include the terms of this paragraph (g) in all lower-tier subcontracts issued when technical data is provided to the lower-tier subcontractor.

14. **EXTRAS**

Work shall not be supplied in excess of quantities specified in the Contract. SELLER shall be liable for handling charges and return shipment costs for any excess quantities.

15. **FURNISHED PROPERTY**

- (a) LOCKHEED MARTIN may provide to SELLER property owned by either LOCKHEED MARTIN or its customer (Furnished Property). Furnished Property shall be used only for the performance of this Contract.
- (b) Title to Furnished Property shall remain in LOCKHEED MARTIN or its customer. SELLER shall clearly mark (if not so marked) all Furnished Property to show its ownership.
- (c) Except for reasonable wear and tear, SELLER shall be responsible for, and shall promptly notify LOCKHEED MARTIN of, any loss or damage. Without additional charge, SELLER shall manage, maintain, and preserve Furnished Property in accordance with good commercial practice.
- (d) At LOCKHEED MARTIN's request, and/or upon completion of this Contract the SELLER shall submit, in an acceptable form, inventory lists of Furnished Property and shall deliver or make such other disposal as may be directed by LOCKHEED MARTIN.
- (e) The Government Property Clause contained in Section II shall apply in lieu of paragraphs (a) through (d) above with respect to Government furnished property, or property to which the Government may take title under this Contract

16. **GRATUITIES/KICKBACKS**

- (a) No gratuities (in the form of entertainment, gifts or otherwise) or kickbacks shall be offered or given by SELLER, to any employee of LOCKHEED MARTIN with a view toward securing favorable treatment as a supplier.
- (b) **By accepting this Contract, SELLER certifies and represents that it has not made or solicited and will not make or solicit kickbacks in violation of FAR 52.203-7 or the Anti-Kickback Act of 1986 (41 USC 51-58), both of which are incorporated herein by this specific reference, except that paragraph (c)(1) of FAR 52.203-7 shall not apply.**

17. **IMPORTER OF RECORD**

Applies only if the Contract involves importation of Work into the United States.

- (a) If elsewhere in the Contract LOCKHEED MARTIN is indicated as importer of record, SELLER warrants that all sales hereunder are or will be made at not less than fair value under the United States Anti-Dumping Laws (19 U.S.C. 1673 et seq.).
- (b) If elsewhere in the Contract LOCKHEED MARTIN is not indicated as importer of record, then SELLER agrees that:
 - (i) LOCKHEED MARTIN will not be a party to the importation of Works, the transaction(s) represented by this Contract will be consummated after importation, and SELLER will neither cause nor permit LOCKHEED MARTIN's name to be shown as "Importer Of Record" on any customs declaration; and
 - (ii) Upon request and where applicable, SELLER will provide to LOCKHEED MARTIN Customs Form 7501 entitled "Customs Entry", properly executed.

18. **INDEPENDENT CONTRACTOR RELATIONSHIP**

- (a) SELLER is an independent contractor in all its operations and activities hereunder. The employees used by SELLER to perform Work under this Contract shall be SELLER's employees exclusively without any relation whatsoever to LOCKHEED MARTIN.
- (b) SELLER shall be responsible for any costs or expenses including attorneys' fees, all expenses of litigation and/or settlement, and court costs, arising from any act or omission of SELLER, its officers, employees, agents, suppliers, or subcontractors at any tier, in the performance of any of its obligations under this Contract.

19. **INFORMATION OF LOCKHEED MARTIN**

Information provided by LOCKHEED MARTIN to SELLER remains the property of LOCKHEED MARTIN. SELLER agrees to comply with the terms of any Proprietary Information Agreement with LOCKHEED MARTIN and to comply with all Proprietary Information markings and Restrictive Legends applied by LOCKHEED MARTIN to anything provided hereunder to SELLER. **SELLER agrees not to use any LOCKHEED MARTIN provided information for any purpose except to perform this Contract and agrees not to disclose such information to third parties without the prior written consent of LOCKHEED MARTIN.**

20. **INFORMATION OF SELLER**

SELLER shall not provide any Proprietary Information to LOCKHEED MARTIN without prior execution by LOCKHEED MARTIN of a Proprietary Information Agreement.

21. **INSPECTION AND ACCEPTANCE**

- (a) LOCKHEED MARTIN and its customer may inspect all Work at reasonable times and places, including, when practicable, during manufacture and before shipment. SELLER shall provide all information, facilities, and assistance necessary for safe and convenient inspection without additional charge.
- (b) No such inspection shall relieve SELLER of its obligations to furnish all Work in accordance with the requirements of this Contract. LOCKHEED MARTIN's final inspection and acceptance shall be at destination.
- (c) If SELLER delivers non-conforming Work, LOCKHEED MARTIN may: (i) accept all or part of such Work at an equitable price reduction; (ii) reject such Work; or (iii) make, or have a third party make all repairs, modifications, or replacements necessary to enable such Work to comply in all respects with Contract requirements and charge the cost incurred to SELLER.
- (d) SELLER shall not re-tender rejected Work without disclosing the corrective action taken.

22. **INSURANCE/ENTRY ON LOCKHEED MARTIN PROPERTY**

In the event that SELLER, its' employees, agents, or subcontractors enter the site(s) of LOCKHEED MARTIN or its customers and for any reason in connection with this Contract, then SELLER and its subcontractors shall procure and maintain worker's compensation, comprehensive general liability, bodily injury and property damage insurance in reasonable amounts, and such other insurance as LOCKHEED MARTIN may require. In addition, SELLER and its subcontractors shall comply with all site requirements. SELLER shall indemnify and hold harmless LOCKHEED MARTIN, its officers, employees, and agents from any losses, costs, claims, causes of action, damages, liabilities, and expenses, including attorneys' fees, all expenses of litigation and/or settlement, and court costs, by reason of property damage or loss or personal injury to any person caused in whole or in part by the actions or omissions of SELLER, its officers, employees, agents, suppliers, or subcontractors, SELLER shall provide LOCKHEED MARTIN thirty (30) days advance written notice prior to the effective date of any cancellation or change in the term or coverage of any of SELLER's required insurance. If requested, SELLER shall send a "Certificate of Insurance" showing SELLER's compliance with these requirements. SELLER shall name LOCKHEED MARTIN as an additional insured for the duration of this Contract. Insurance maintained pursuant to this clause shall be considered primary as respects the interest of LOCKHEED MARTIN and is not contributory with any insurance which LOCKHEED MARTIN may carry. "Subcontractor" as used in this clause shall include SELLER's subcontractors at any tier.

23. **INTELLECTUAL PROPERTY**

- (a) SELLER warrants that the Work performed or delivered under this Contract will not infringe or otherwise violate the intellectual property rights of any third party in the United States or any foreign country. SELLER agrees to defend, indemnify and hold harmless LOCKHEED MARTIN and its customers from and against any claims, damages, losses, costs and expenses, including reasonable attorneys' fees, arising out of any action by a third party that is based upon a claim that the Work performed or delivered under this Contract infringes or otherwise violates the intellectual property rights of any person or entity.
- (b) With regard to any modifications that SELLER makes to any Work in the performance of this Contract, LOCKHEED MARTIN and the Government shall have a nonexclusive, irrevocable, world wide license and right under any intellectual property right obtained to cover such modifications to make, have made, use, sell, copy, distribute, make derivative works or compilations, display publicly, or perform publicly such modifications.

24. **LANGUAGE AND STANDARDS**

All reports, correspondence, drawings, notices, marking, and other communications shall be in the English language. The English version of the Contract shall prevail. Unless otherwise provided in writing all documentation and work shall employ the units of United States Standard weights and measures

25. **NEW MATERIALS**

The Work to be delivered hereunder shall consist of new materials, as defined in FAR 52.211-5; not used, or reconditioned, remanufactured, or of such age as to impair its usefulness or safety.

26. **OFFSET CREDIT/COOPERATION**

All offset or countertrade credit value resulting from this Contract shall accrue solely to the benefit of LOCKHEED MARTIN. SELLER agrees to cooperate with LOCKHEED MARTIN in the fulfillment of any foreign offset/countertrade obligations.

27. **PACKING AND SHIPMENT**

- (a) Unless otherwise specified, all Work is to be packed in accordance with good commercial practice.
- (b) A complete packing list shall be enclosed with all shipments. SELLER shall mark containers or packages with necessary lifting, loading, and shipping information, including the LOCKHEED MARTIN Contract number, item number, dates of shipment, and the names and addresses of consignor and consignee. Bills of lading shall include this Contract number.
- (c) Unless otherwise specified, delivery shall be DDP LOCKHEED MARTIN'S facility named on the face of the Contract in accordance with INCOTERMS 1990.

28. **PAYMENTS, TAXES, AND DUTIES**

- (a) Unless otherwise provided, terms of payment shall be net thirty (30) days from the latest of the following: (i) LOCKHEED MARTIN's receipt of the SELLER's proper invoice; (ii) Scheduled delivery date of the Work; or (iii) Actual delivery of the Work. LOCKHEED MARTIN shall have a right of setoff against payments due or at issue under this Contract or any other Contract between the Parties.
- (b) Payment shall be deemed to have been made as of the date of mailing LOCKHEED MARTIN's payment or electronic funds transfer.
- (c) Unless otherwise specified, prices include all applicable federal, state and local taxes, duties, tariffs, and similar fees imposed by any government, all of which shall be listed separately on the invoice.
- (d) The prices stated in the Contract are firm, fixed prices in United States dollars.

29. **PRECEDENCE**

Any inconsistencies in this Contract shall be resolved in accordance with the following descending order of precedence: (1) Face of the Purchase Order, Release document or Schedule, (which shall include continuation sheets), as applicable, including any Special Provisions; (2) Any master-type agreement (such as corporate or blanket agreements); (3) these General Provisions; and (4) Statement of Work.

30. **PRIORITY RATING**

If so identified, this Contract is a "rated order" certified for national defense use, and the SELLER shall follow all the requirements of the Defense Priorities and Allocation System Regulation (15 C.F.R. Part 700).

31. **QUALITY CONTROL SYSTEM**

- (a) SELLER shall provide and maintain a quality control system to an industry recognized Quality Standard and in compliance with any other specific quality requirements identified in this Contract.
- (b) Records of all quality control inspection work by SELLER shall be kept complete and available to LOCKHEED MARTIN and its customers.

32. **RELEASE OF INFORMATION**

Except as required by law, no public release of any information, or confirmation or denial of same, with respect to this Contract or the subject matter hereof, will be made by SELLER without the prior written approval of LOCKHEED MARTIN.

33. **SEVERABILITY**

Each paragraph and provision of this Contract is severable, and if one or more paragraphs or provisions are declared invalid, the remaining provisions of this Contract will remain in full force and effect.

34. **STOP WORK ORDER**

- (a) SELLER shall stop Work for up to ninety (90) days in accordance with the terms of any written notice received from LOCKHEED MARTIN, 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 during the period of Work stoppage.

- (b) Within such period, LOCKHEED MARTIN shall either terminate or continue the Work by written order to SELLER. In the event of a continuation, an equitable adjustment in accordance with the principles of the "Changes" clause, 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.

35. **SURVIVABILITY**

If this Contract expires, is completed, or is terminated, SELLER shall not be relieved of those obligations contained in the following provisions:

- (a) Applicable Laws
Electronic Contracting
Export Control
Independent Contractor Relationship
Information of Lockheed Martin
Insurance/Entry on Lockheed Martin Property
Intellectual Property
Release of Information
Warranty
- (b) Those U. S. Government flowdown provisions that by their nature should survive.

36. **TERMINATION FOR CONVENIENCE**

- (a) For specially performed Work: LOCKHEED MARTIN may terminate part or all of this Contract for its convenience by giving written notice to SELLER. LOCKHEED MARTIN's only obligation shall be to pay SELLER a percentage of the price reflecting the percentage of the Work performed prior to the notice of termination, plus reasonable charges that SELLER can demonstrate to the satisfaction of LOCKHEED MARTIN, using generally accepted accounting principles, have resulted from the termination. SELLER shall not be paid for any Work performed or costs incurred which reasonably could have been avoided.
- (b) In no event shall LOCKHEED MARTIN be liable for lost or anticipated profits, or unabsorbed indirect costs or overhead, or for any sum in excess of the total Contract price. SELLER's termination claim shall be submitted within ninety (90) days from the effective date of the termination.
- (c) For other than specially performed Work: LOCKHEED MARTIN may terminate part or all of this Contract for its convenience by giving written notice to SELLER and LOCKHEED MARTIN's only obligation to SELLER shall be payment of a mutually agreed-upon restocking or service charge.
- (d) In either case, SELLER shall continue all Work not terminated.

37. **TIMELY PERFORMANCE**

- (a) SELLER's timely performance is a critical element of this Contract.
- (b) Unless advance shipment has been authorized in writing by LOCKHEED MARTIN, LOCKHEED MARTIN may store at SELLER's expense, or return, shipping charges collect, all Work received in advance of the scheduled delivery date.
- (c) If SELLER becomes aware of difficulty in performing the Work, SELLER shall timely notify LOCKHEED MARTIN, in writing, giving pertinent details. This notification shall not change any delivery schedule.
- (d) In the event of a termination for convenience or change, no claim will be allowed for any manufacture or procurement in advance of SELLER's normal flow time unless there has been prior written consent by LOCKHEED MARTIN.

38. **WAIVER, APPROVAL, AND REMEDIES**

- (a) Failure by LOCKHEED MARTIN to enforce any of the provision(s) of this Contract shall not be construed as a waiver of the requirement(s) of such provision(s), or as a waiver of the right of LOCKHEED MARTIN thereafter to enforce each and every such provision(s).
- (b) LOCKHEED MARTIN's approval of documents shall not relieve SELLER from complying with any requirements of this Contract.
- (c) The rights and remedies of LOCKHEED MARTIN in this Contract are cumulative and in addition to any other rights and remedies provided by law or in equity.

39. **WARRANTY**

SELLER warrants that all Work furnished pursuant to this Contract shall strictly conform to applicable specifications, drawings, samples, and descriptions, and other requirements of this Contract and be free from defects in design, material and workmanship. The warranty shall begin upon final acceptance and extend for a period of one year or the manufacturer's warranty, whichever is longer. If any non-conformity with Work appears within that time, SELLER at LOCKHEED MARTIN's option, shall promptly repair, replace, or reperform the Work. Transportation of replacement Work and return of non-conforming Work and repeat performance of Work shall be at SELLER's expense. If repair or replacement or reperformance of Work is not timely, LOCKHEED MARTIN may elect to return the nonconforming Work or repair or replace Work or procure the Work at SELLER's expense. All warranties shall run to LOCKHEED MARTIN and its customer(s).

SECTION II: FAR FLOWDOWN PROVISIONS

A. INCORPORATION OF FAR CLAUSES

The Federal Acquisition Regulation (FAR) clauses referenced below are incorporated herein by reference, with the same force and effect as if they were given in full text, and are applicable, including any notes following the clause citation, to this Contract. If the date or substance of any of the clauses listed below is different than the date or substance of the clause actually incorporated in the Prime Contract referenced by number herein, the date or substance of the clause incorporated by said Prime Contract shall apply instead.

B. GOVERNMENT SUBCONTRACT

This Contract is entered into by the Parties in support of a U.S. Government contract.

As used in the FAR clauses referenced below and otherwise in this Contract:

1. "Commercial Item" means a commercial item as defined in FAR 2.101.
2. "Contract" means this contract.
3. "CONTRACTOR" means the SELLER, as defined in this CORPDOC 2 INT, acting as the immediate (first tier) subcontractor to LOCKHEED MARTIN.
4. "Prime Contract" means the contract between LOCKHEED MARTIN and the U.S. Government or between LOCKHEED MARTIN and its higher-tier contractor who has a contract with the U.S. Government.
5. "Subcontract" means any contract placed by the CONTRACTOR or lower-tier subcontractors under this Contract.

C. NOTES

1. Substitute "LOCKHEED MARTIN" for "Government" or "United States" as applicable throughout this clause.
2. Substitute "LOCKHEED MARTIN Procurement Representative" for "Contracting Officer", "Administrative Contracting Officer", and "ACO" throughout this clause.
3. Insert "and LOCKHEED MARTIN" after "Government" or "Contracting Officer", as appropriate, throughout this clause.
4. Insert "or LOCKHEED MARTIN" after "Government" throughout this clause.
5. Communication/notification required under this clause from/to the CONTRACTOR to/from the Contracting Officer shall be through LOCKHEED MARTIN.

D. AMENDMENTS REQUIRED BY PRIME CONTRACT

CONTRACTOR agrees that upon the request of LOCKHEED MARTIN it will negotiate in good faith with LOCKHEED MARTIN relative to amendments to this Contract to incorporate additional provisions herein or to change provisions hereof, as LOCKHEED MARTIN may reasonably deem necessary in order to comply with the provisions of the applicable Prime Contract or with the provisions of amendments to such Prime Contract. If any such amendment to this Contract causes an increase or decrease in the cost of, or the time required for, performance of any part of the work under this Contract, an equitable adjustment shall be made pursuant to the "Changes" clause of this Contract.

E. PRESERVATION OF THE GOVERNMENT'S RIGHTS

If LOCKHEED MARTIN furnishes designs, drawings, special tooling, equipment, engineering data or other technical or proprietary information (Furnished Items) to which the U. S. Government owns or has the right to authorize the use of, nothing herein shall be construed to mean that LOCKHEED MARTIN, acting on its own behalf, may modify or limit any rights the Government may have to authorize the CONTRACTOR's use of such Furnished Items in support of other U. S. Government prime contracts.

F. FAR FLOWDOWN CLAUSES

REFERENCE TITLE

1. The following FAR clauses apply to this Contract :

- (a) 52.215-20 REQUIREMENTS FOR COST OR PRICING DATA OR INFORMATION OTHER THAN COST OR PRICING DATA (OCT 1997) (See Note 2.)
- (b) 52.215-21 REQUIREMENTS FOR COST OR PRICING DATA OR INFORMATION OTHER THAN COST OR PRICING DATA - MODIFICATIONS (OCT 1997) (See Note 2.)
- (c) 52.225-11 RESTRICTION ON CERTAIN FOREIGN PURCHASES (FEB 2000)
- (d) 52.244-6 SUBCONTRACTS FOR COMMERCIAL ITEMS AND COMMERCIAL COMPONENTS (DEC 2001)

2. The following clauses apply as indicated:

- (a) 52.204-2 SECURITY REQUIREMENTS (AUG 1996) (Applicable if the Work involves access to classified information; delete paragraph (c) of the clause.)
- (b) 52.223-11 OZONE-DEPLETING SUBSTANCES (MAR 2001) (Applicable if the Work was manufactured with or contains ozone-depleting substances.)
- (c) 52.225-5 TRADE AGREEMENT (APR 2001) (Applicable if the Work contains other than domestic components.)
- (d) 52.245-2 GOVERNMENT PROPERTY (FIXED PRICE CONTRACTS) (DEC 1989) (Applicable if Government property is furnished in the performance of the Contract. Note 1 applies except in the phrases "Government property," "Government-furnished property," and in references to title to property. Note 2 applies. The following is added as paragraph (m) "Seller shall provide to LOCKHEED MARTIN immediate notice of any disapproval, withdrawal of approval, or nonacceptance by the Government of property control system.")

3. The following FAR clauses apply to this Contract if Work under the contract will be performed in the United States or Contractor is recruiting employees in the United States to work on the Contract.

(i) The following FAR clauses apply to this Contract:

- (a) 52.219-8 UTILIZATION OF SMALL BUSINESS CONCERNS (OCT 2000)
- (b) 52.222-21 PROHIBITION OF SEGREGATED FACILITIES (FEB 1999)
- (c) 52.222-26 EQUAL OPPORTUNITY (FEB 1999) (Only subparagraphs (b)(1)-(11) applies.)
- (d) 52.223-11 OZONE-DEPLETING SUBSTANCES (MAR 2001) (Applicable if the Work was manufactured with or contains ozone-depleting substances.)

(ii) The following FAR Clauses apply to this Contract if the value of this Contract equals or exceeds \$10,000:

- (a) 52.222-36 AFFIRMATIVE ACTION FOR WORKERS WITH DISABILITIES (JUNE 1998)

(iii) The following FAR Clauses apply to this Contract if the value of this Contract equals or exceeds \$25,000:

- (a) 52.222-35 EQUAL OPPORTUNITY FOR SPECIAL DISABLED VETERANS, VETERANS OF THE VIETNAM ERA, AND OTHER ELIGIBLE VETERANS (DEC 2001)
- (b) 52.222-37 EMPLOYMENT REPORTS ON SPECIAL DISABLED VETERANS, VETERANS OF THE VIETNAM ERA, and OTHER ELIGIBLE VETERANS (DEC 2001).

(iv) The following FAR Clauses apply to this Contract if the value of this Contract equals or exceeds \$500,000:

- (a) 52.219-9 SMALL BUSINESS SUBCONTRACTING PLAN (OCT 2001) (Applicable if the CONTRACTOR is not a small business. See Note 1 and Note 2, applicable to subparagraph (c) only. The CONTRACTOR's subcontracting plan is incorporated herein by reference.)

G. CERTIFICATIONS AND REPRESENTATIONS

- (1) This clause contains certifications and representations that are material representations of fact upon which LOCKHEED MARTIN will rely in making awards to CONTRACTOR. By submitting its written offer, or providing oral offers/quotations at the request of LOCKHEED MARTIN, or accepting any Contract, CONTRACTOR 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 LOCKHEED MARTIN. CONTRACTOR shall immediately notify LOCKHEED MARTIN of any change of status with regard to these certifications and representations.
- (2) The following clauses of the Federal Acquisition Regulation (FAR) are incorporated herein by reference, with the same force and effect as if they were given in full text, and are applicable to any order, agreement, or subcontract. In each clause incorporated below, substitute "LOCKHEED MARTIN" for "Government" and "Contracting Agency" and "LOCKHEED MARTIN Procurement Representative" for "Contracting Officer" throughout.
 - (a) **FAR 52.209-5 Certification Regarding Debarment, Suspension, Proposed Debarment, and Other Responsibility Matters.**
 - (i) CONTRACTOR certifies that, to the best of its knowledge and belief, that CONTRACTOR 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) CONTRACTOR shall provide immediate written notice to LOCKHEED MARTIN 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) The following FAR clauses apply to this Contract if Work under the contract will be performed in the United States or Contractor is recruiting employees in the United States to work on the Contract.
 - (a) **FAR 52.222-22 Previous Contracts and Compliance Reports.** CONTRACTOR represents that if CONTRACTOR has participated in a previous contract or subcontract subject to Equal Opportunity clause (FAR 52.222-26), (i) CONTRACTOR 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.
 - (b) **FAR 52.222-25 Affirmative Action Compliance.** CONTRACTOR represents (1) that CONTRACTOR 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, CONTRACTOR will develop and place in operation such a written Affirmative Action Compliance Program within 120 days from the award of this Contract.