

# PSS/T - 32

## NORTHROP GRUMMAN SYSTEMS CORPORATION

### GENERAL TERMS AND CONDITIONS CONSTRUCTION AND SIMILAR WORK

Title and Clause Number		Title and Clause Number	
Acceptance of Purchase Order	2.	Northrop Grumman Systems Corporation Furnished Property	46.
Audit Rights	75.	Northrop Grumman Systems Corporation Named Insured	53.
Choice of Law	69.	Northrop Grumman Systems Corporation Operations	15.
As-Built Data	50.	Northrop Grumman Systems Corporation Right To Do Work	31.
Assignment	64.	Notice of Labor Disputes	17.
Bonds	9.	Offset Commitment	71.
Cancellation for Default – Damages for Delay	66.	Patent, Trademark, and Copyright Indemnity	59.
Changes	13.	Payment for Labor, Material, and Waiver of Liens	43.
Choice of Law	69.	Payment or Termination of Subcontractors	45.
Codes and Standards	34.	Personnel Superintendence	25.
Complete Agreement	3.	Possession or Use Prior to Completion	32.
Compliance with Laws	57.	Price Breakdown and Invoices	40.
Compliance with Site Regulations	58.	Product Vulnerabilities	97.
Composition of Contractor	63.	Progress Payments	41.
Contract Performance	11.	Protection of Monuments and Marks	36.
Contractor's Employees	27.	Protection of Property	35.
Contractor's Fire Insurance	52.	Protection of Work and Material	37.
Contractor's Liability Insurance	51.	Record Retention Requirements	74.
Contractor's Work Area	30.	Response to Audit	80.
Cooperation of Contractor	14.	Responsibility for Claims	55.
Definitions and Explanation	1.	Restoration of Existing Improvements	48.
Differing Site Conditions	8.	Risk of Loss	38.
Discrepancies	6.	Safety	29.
Disputes	72.	Salvage and Clean Up	47.
Divestitures	81.	Schedule Progress and Overtime	16.
Existing Underground Utilities	23.	Shop Drawings	19.
Export and Import	76.	Specifications and Drawings	18.
Final Payment	42.	Subcontracting	10.
Fire Protection	56.	Successors or Parties	70.
Inconsistency of Provisions	67.	Superintendence by Northrop Grumman Systems Corporation	26.
Independent Contractor	61.	Suspension of Work	12.
Intent of Contract Documents	5.	Taxes	60.
Inspection and Acceptance	39.	Termination for Convenience	65.
Layout of the Work	20.	Title to Work	62.
Location of Work, Site Investigation and Representations	7.	Utilities	21.
Maintenance Information and Tools	44.	Utility Shut-Off	22.
Material and Workmanship	33.	Waiver of Right to Jury Trial	73.
Mergers and Acquisitions	82.	Warranty	49.
Modification	4.	Workmen's Compensation	54.
Non-waiver	68.	Workmen's Passes	28.
Northrop Grumman Systems Corporation and Contractor Representative	24.		

**1. DEFINITIONS AND EXPLANATION.**

- A. The words "Northrop Grumman Systems Corporation" or "Buyer" or "Owner" mean Northrop Grumman Systems Corporation subsidiary, Sector, or business unit identified on the face of the Order.

- B. The words "Contractor" or "Seller" mean the party with whom Northrop Grumman Systems Corporation is contracting and whose name and address appears on the face of the Order (if a Purchase Order is being used as the instrument of contracting) or the Agreement.
- C. The word "Subcontractor" means any person, supplier, distributor, retailer, vendor or firm which furnished supplies or services to or for the

Contractor or another subcontractor and, therefore, means subcontractor at any tier.

- D. The word "Order" means an instrument entitled "Purchase Order" which has been accepted by Contractor as provided in Clause 2 including all drawings, specifications, documents and all special and general conditions or provisions referenced therein or made subject thereto.
- E. The words "Agreement" or "Construction Agreement" mean the instrument of contracting used in lieu of a Purchase Order, which has been duly executed by both Northrop Grumman Systems Corporation and Contractor, and includes all drawings, specifications, documents and all special and general conditions or provisions referenced therein or made subject thereto.
- F. "Contract" means the total legal obligation of the parties which results from the agreement of Northrop Grumman Systems Corporation and Contractor as evidenced by an instrument called an Order (as herein defined) or a duly executed instrument entitled Agreement if a Purchase Order is not being used as the instrument of contracting.
- G. "Work" means all plant, labor, materials, supplies, appliances, equipment, transportation or other things required to be furnished or performed by the Contractor/Subcontractor in order to properly perform and fulfill the obligations and requirements of the Order/Agreement.
- H. "Project" means the subject of the Order/Agreement for which Contractor is performing the Work.
- I. Miscellaneous Word Explanation:
  - (1) Whenever the words "as shown," "as indicated" or "as detailed" or words of similar import are used it means that reference is being made to the drawings and/or specifications unless otherwise specifically provided.
  - (2) Whenever the words "as directed," "as required," "as permitted," "approved," "accepted," "acceptance" or words of similar import are used it means that specific direction, permission, approval or acceptance by Northrop Grumman Systems Corporation is required prior to Contractor's proceeding further unless otherwise specifically provided.
  - (3) The words "to provide" or "provide" means "to furnish and install" or "to provide complete and in place" unless otherwise specifically provided.
- J. Unless the context otherwise requires, words importing the singular number include the plural and in the plural include the singular and words of the masculine gender include the feminine and the neuter.
- K. Titles and paragraph headings used herein and in the Order/Agreement are for convenient reference only and shall not affect the interpretation of any provision of the Order/Agreement.
- L. Refer to Clause 24 herein for a definition and explanation of "Northrop Grumman Systems Corporation and Contractor Representative."

## **2. ACCEPTANCE OF PURCHASE ORDER.**

If a Northrop Grumman Systems Corporation Purchase Order is being used as the instrument of contracting, acceptance of it by Contractor is expressly limited to its terms and any additional terms in Contractor's acceptance are hereby objected to. Contractor accepts the Purchase Order as written by acknowledging receipt or beginning performance. On such acceptance a binding contract between Contractor and Northrop Grumman Systems Corporation is formed which contract is herein referred to as "Order."

## **3. COMPLETE AGREEMENT.**

An Order or an Agreement shall constitute the complete and exclusive agreement between Contractor and Northrop Grumman Systems Corporation and shall supersede any prior correspondence or other communications, quotations or proposals or bids unless such or portions thereof are specifically incorporated by reference into such Order/Agreement.

## **4. MODIFICATION.**

Except for the provisions of the "Changes" clause herein, no modification of an Order/Agreement (including any additional or different terms in Seller's acceptance of a Purchase Order) shall be binding on Contractor or Northrop Grumman Systems Corporation unless agreed to in a writing signed by the duly authorized representatives of the parties as hereinafter described and designated.

## **5. INTENT OF CONTRACT DOCUMENTS.**

The provisions and exhibits of the Order/Agreement shall be construed as a whole. They are complementary and what is required by anyone shall be as binding as if required by all. The intent of the Order/Agreement is to include all labor, materials, equipment, tools, plant and other items necessary for the proper execution and completion of the Work. The titling and division of the drawings and specifications by trades or other classifications is for convenience only and the fact that any part of the Work should or could properly have been shown or specified under some other title or division shall not relieve Contractor of performing or furnishing the same nor entitle Contractor to extra compensation.

## **6. DISCREPANCIES.**

If Contractor believes there are or may be any errors, omissions or inconsistencies in the provisions and exhibits of the Order/Agreement or if Contractor has any doubt as to the meaning thereof, Contractor shall immediately submit the matter to Northrop Grumman Systems Corporation for written clarification. Any Work performed before receipt of such clarification shall be at Contractor's risk and expense. If any clarification is needed, Northrop Grumman Systems Corporation shall clarify the same by issuing a written field order pursuant to the "Changes" clause. However, notwithstanding the provisions of said clause, there shall be no increase in the Order/Agreement price or extension of the time for completion on account of any misdescription or omissions of details of the Work which are clearly necessary to carry out the intent of the documents or which are customarily performed or furnished by Contractors. Such misdescribed or omitted details shall be performed or furnished by Contractor without extra compensation as if correctly and fully set forth in the documents.

**7. LOCATION OF WORK, SITE INVESTIGATION AND REPRESENTATIONS.**

- A. The Work under this Order/Agreement shall be performed at such place or places as shall be designated in this Order/Agreement and at such other place or places as may be necessary. Contractor acknowledges that it has satisfied itself as to the nature and location of the work and to the general and local conditions, particularly those bearing upon, (A) transportation, (B) disposal, (C) handling and storage of materials, (D), availability of labor, (E) security requirements, (F) water, (G) electric power and other utilities, (H) roads, (I) the conformation and condition of the ground, (J) equipment and facilities needed preliminary to and during the prosecution of the Work, and (K) all other matters which can, in any way, affect the Work or the cost thereof under this Order/Agreement. Any failure by Contractor to acquaint itself with all the available information concerning these conditions shall not relieve Contractor from responsibility for estimating properly the difficulty or cost of successfully performing the Work.
- B. Northrop Grumman Systems Corporation assumes no responsibility for any understanding or representation made by any of its employees, agents or representatives during or prior to the execution of this Order/Agreement, unless such understanding or representation by Northrop Grumman Systems Corporation is expressly stated in this Order/Agreement. Any such representation or understanding made but not so expressly stated in the Order/Agreement and for which liability is not expressly assumed by Northrop Grumman Systems Corporation herein shall be deemed only for the information of Contractor and Northrop Grumman Systems Corporation and shall not render Northrop Grumman Systems Corporation responsible or liable.

**8. DIFFERING SITE CONDITIONS.**

- A. Contractor shall promptly and before such conditions are disturbed, notify Northrop Grumman Systems Corporation in writing of:
- (1) Subsurface or latent physical conditions at the site differing materially from those indicated in this Order/Agreement, or
  - (2) Unknown physical conditions at the site, of an unusual nature, differing materially from those ordinarily encountered and generally recognized as inhering in Work of the character provided for in this Order/Agreement.
- B. Northrop Grumman Systems Corporation shall promptly investigate the conditions, and if such conditions do materially so differ and cause an increase or decrease in Contractor's cost of, or the time required for, performance of any part of the Work under this Order/Agreement, whether or not changed as a result of such conditions, an equitable adjustment shall be made and the Order/Agreement modified in writing accordingly.
- C. No claim of Contractor under this clause shall be allowed unless Contractor has given the notice required in 8.A.; provided, however, the time

prescribed therefore may be extended by Northrop Grumman Systems Corporation in writing.

- D. No claim by Contractor for an equitable adjustment hereunder shall be allowed if asserted after final payment under this Order/Agreement.

**9. BONDS.**

(If a bond or bonds is specifically required by the terms of the Order/Agreement, the provisions of this clause shall apply.) Prior to commencing Work hereunder, or within such further time as Northrop Grumman Systems Corporation may allow in writing, Contractor shall deliver to Northrop Grumman Systems Corporation performance bond and a payment bond executed by a corporate surety acceptable to Northrop Grumman Systems Corporation, in amounts not less than the Order/Agreement price, on the bond forms furnished by Northrop Grumman Systems Corporation in accordance with the instructions on said forms. Failure to deliver acceptable bonds within the time allowed shall constitute a material breach of this Order/Agreement and entitle Northrop Grumman Systems Corporation to (A) cancel Contractor's right to proceed with the Work, and (B) recover from Contractor any damages resulting from such breach. If any surety on such bonds becomes unacceptable to Northrop Grumman Systems Corporation if the Order/Agreement price is substantially increased after such bonds are delivered, Contractor shall promptly deliver such acceptable additional bond security as Northrop Grumman Systems Corporation may require.

**10. SUBCONTRACTING.**

- A. Seller shall not subcontract without the prior written authorization of Buyer for the performance of any service to be provided hereunder, and Seller shall require a like agreement from any immediate and lower-tier suppliers. This is not a restriction on authorized distributors, dealers, jobbers or industrial suppliers.
- B. No subcontract placed under this Order shall provide for payment on a cost- plus-percentage-of cost basis, and any fee payable under cost-reimbursement subcontract shall not exceed the fee limitations in subsection 15.404-4(c) of the Federal Acquisition Regulation (FAR)
- C. Any subcontract awarded to a foreign person, as defined in the International Traffic in Arms Regulations or the Export Administration Regulations, must comply with the Export and Import Compliance clause herein.

**11. CONTRACT PERFORMANCE.**

Contractor shall perform all Work required by and in strict accordance with the drawings, specifications and other provisions and requirements of the Order/Agreement and all within the period of time specified and at the price or prices set forth in the Order/Agreement.

**12. SUSPENSION OF WORK.**

- A. Northrop Grumman Systems Corporation may, by a written field order signed by the Northrop Grumman Systems Purchasing Representative which expressly refers to this clause, order Contractor to suspend, delay or interrupt all or any part of the Work for such period of time as may be

appropriate for the convenience of Northrop Grumman Systems Corporation.

- B. If the performance of all or any part of the Work is, for an unreasonable period of time, suspended, delayed or interrupted by an act of the Northrop Grumman Systems Purchasing Representative in the administration of this Order/Agreement, or by the failure to act within the time specified in this Order/Agreement (or if no time is specified, within a reasonable time), an adjustment shall be made for any increase in the cost of performance of this Order/Agreement (excluding profit) necessarily caused by such unreasonable suspension, delay or interruption and the Order/Agreement modified in writing accordingly. However, no adjustment shall be made under this clause for any suspension, delay or interruption to the extent (1) that performance would have been so suspended, delayed or interrupted by any other cause, including the fault or negligence of Contractor or its subcontractors, or (2) for which an equitable adjustment is provided for or excluded under any other provision of this Order/Agreement.
- C. Except as may be otherwise provided herein, no claim under this clause shall be allowed (1) for any costs incurred more than twenty (20) days before Contractor shall have notified Northrop Grumman Systems in writing of the act of failure to act involved, and (2) unless the claim, in an amount stated, is asserted in writing as soon as practicable after the termination of such suspension, delay or interruption, but not later than the date of final payment under this Order/Agreement.

### 13. CHANGES.

- A. Northrop Grumman Systems may, at any time, without notice to the sureties, by a written field order signed by the Northrop Grumman Systems Purchasing Representative which expressly refers to this clause, make any change in the Work within the general scope of the Order/Agreement, including but not limited to changes:
  - (1) In the specifications (including drawings and designs);
  - (2) In the method or manner of performance of the Work;
  - (3) In the Northrop Grumman Systems -furnished property, facilities, equipment, services, or site; or
  - (4) Directing acceleration in the performance of the Work.Upon receipt of any field order issued pursuant to this paragraph 13.A, Contractor shall immediately proceed in accordance with such order.
- B. Any other written order or an oral order (which terms as used in this paragraph 13.B. shall include direction, instruction, interpretation or determination) from the Northrop Grumman Systems Purchasing Representative, which causes any such change, shall be treated as a change order under this clause, provided that Contractor gives Northrop Grumman Systems written notice stating the date, circumstances and source of the order and that Contractor regards the order as a change order.

- C. Except as provided in 13.A. and 13.B., no order, statement or conduct of the Northrop Grumman Systems Corporation Purchasing Representative, or of any inspector, engineer, architect or other employee or representative of Northrop Grumman Systems Corporation shall be treated as a change under this clause or entitle Contractor to an equitable adjustment hereunder.
- D. If any change under this clause causes an increase or decrease in Contractor's cost of, or the time required for the performance of any part of the Work under this Contract, whether or not changed by any order, an equitable adjustment shall be made and the Order/Agreement modified in writing accordingly; provided, however, that except for claims based on defective specifications, no claim for any change under 13.B. shall be allowed for any costs incurred more than twenty (20) days before Contractor gives written notice as therein required; and provided further, that in the case of defective specifications for which Grumman Systems Corporation is responsible, the equitable adjustment shall include any increased cost reasonably incurred by Contractor in attempting to comply with such defective specifications.
- E. Ordinarily a field order will not be issued under 13.A. until the parties have agreed upon the final and entire equitable adjustment, if any, to be made on account of the order and the agreed adjustment will be set forth in the Order/Agreement. However, whenever Northrop Grumman Systems Corporation deems it necessary, an order may be issued pursuant to 13.A. before agreement has been reached; notwithstanding any dispute or delay in reaching agreement, Contractor shall immediately proceed in accordance with any such order; no such order shall be construed as an admission by either party that the order changes the requirements of the Contract nor prejudice the rights of either party with respect to the adjustment, if any, either party may be entitled to on account of the order.
- F. If Contractor intends to assert a claim for an equitable adjustment under this clause, it must, within thirty (30) days after receipt of any written field order issued under 13.A. which does not set forth the agreed adjustment, or within thirty (30) days after the furnishing of any written notice under 13.B. submit to Northrop Grumman Systems Corporation a written statement setting forth the general nature and monetary extent of such claim, unless this period is extended by Northrop Grumman Systems Corporation in writing. The statement of claim hereunder may be included in the notice under 13.B. Promptly after submission of each statement or claim hereunder (and preferably with each statement of claim) Contractor shall submit to Northrop Grumman Systems Corporation a modification proposal in accordance with the "Price Breakdown and Invoices" clause.
- G. No claim by Contractor for an equitable adjustment hereunder shall be allowed if asserted after final payment under this Order/Agreement.

### 14. COOPERATION OF CONTRACTOR.

Northrop Grumman Systems Corporation may undertake or award other contracts for additional work to be performed in connection with or in or about the Work under this Order/Agreement. Contractor shall cooperate with Northrop Grumman Systems and its other contractors and coordinate Contractor's Work with theirs so that all Work may be promptly and properly performed without undue interference or delay. Contractor shall afford Northrop Grumman Systems Corporation and its other contractor's reasonable opportunity for the introduction and storage of their materials and the execution of their Work, including storage space, access, use of hoisting equipment and Contractor's construction utilities.

**15. NORTHROP GRUMMAN SYSTEMS CORPORATION OPERATIONS.**

Contractor shall schedule all Work under this contract to avoid interruption of normal Northrop Grumman Systems Corporation operations.

**16. SCHEDULE PROGRESS AND OVERTIME.**

- A. Prior to commencing Work, or within such further time as Northrop Grumman Systems Corporation may allow, Contractor shall prepare and submit to Northrop Grumman Systems Corporation for approval a practicable and feasible critical path construction schedule for the Work. Such schedule shall be in the form of a complete critical path scheduling network. Contractor shall update the scheduling network as required and promptly submit each revision thereof to Northrop Grumman Systems Corporation for its approval.
- B. At the end of each week or as requested by Northrop Grumman Systems Corporation, Contractor shall submit to Northrop Grumman Systems three copies of a progress report showing the actual progress of the Work in comparison with the network items on the approved construction schedule.
- C. Contractor shall prosecute the Work in accordance with the approved construction schedule. Failure to do so shall be evidence that Contractor is failing to prosecute the Work with such diligence as will ensure its completion within the time specified in this Order/Agreement and may result in cancellation in accordance with the provisions of the Cancellation for Default clause herein.
- D. If requested by Northrop Grumman Systems Corporation, Contractor shall furnish evidence satisfactory to Northrop Grumman Systems Corporation that all necessary mechanical equipment, electrical equipment and other materials have been ordered and scheduled for delivery so as to ensure their arrival at the site in time for construction schedule requirements.
- E. Contractor shall furnish sufficient forces, construction plant and equipment, and shall work such hours, including night shift, overtime operations and Sunday and holiday work, as may be necessary to ensure the prosecution of the Work in accordance with the approved construction schedule. If Contractor falls behind such schedule, Contractor shall take such steps as may be necessary to improve its progress and Northrop

Grumman Systems Corporation may require Contractor to increase the number of shifts, overtime operations, days of work, including Saturdays, Sundays and holidays, and the amount of construction plant and equipment, all without additional cost to Northrop Grumman Systems Corporation. This is in addition to Northrop Grumman Systems Corporation other remedies.

- F. *Time is of the essence in the performance of this Order/Agreement.* If at any time it appears to Contractor that it will not meet any of the critical path schedules or the scheduled completion date of the Work for any reasons including Labor Disputes as hereinafter provided, Contractor shall promptly notify Northrop Grumman Systems Corporation in writing of the reasons for the delay and the estimated time or duration of such delay. The herein notification requirements shall not in any way be considered as relieving Contractor of any liability for breach of contract by reason of any delay in performance.

**17. NOTICE OF LABOR DISPUTES.**

Whenever Contractor has knowledge that any actual or potential labor dispute may delay this Order/Agreement, Contractor shall immediately notify and submit all relevant information to Northrop Grumman Systems Corporation. Contractor shall insert the substance of this entire clause in any subcontract hereunder as to which a labor dispute may delay this Order/Agreement. However, any subcontractor need give notice and information only to its next higher tier subcontractor.

**18. SPECIFICATIONS AND DRAWINGS.**

- A. Contractor shall keep at the site of the Work a copy of the drawings and specifications required by this Order/Agreement and shall at all times provide Northrop Grumman Systems Corporation access thereto. Anything mentioned in the specifications, shall be of like effect as if shown or mentioned in both. In any case of discrepancy in the figures, drawings or specifications, the matter shall be immediately submitted, in writing, to the designated Northrop Grumman Systems Corporation Purchasing Representative or his appointed designee without whose decision said discrepancy shall not be resolved by Contractor, save only at its own risk and expense. Northrop Grumman Systems Corporation Purchasing Representative shall resolve such discrepancy in writing or by initiating and dating the approval on a clarifying revision on the figure, drawing or specification. Northrop Grumman Systems Corporation may furnish from time to time such other detail drawings, specifications and information as it may consider necessary. All drawings, plans, specifications, data and other information furnished by Northrop Grumman Systems Corporation to Contractor, or developed by Contractor in the performance of this Order/Agreement shall remain or become the property of Northrop Grumman Systems Corporation, and Contractor shall deliver the original and all copies of all such documents to Northrop Grumman Systems Corporation upon

completion and acceptance or termination of the Work.

- B. Whenever in the specifications or drawings, any material or process is indicated or specified by patent or proprietary material name or by name of manufacturers; such listings shall be deemed to be "NO SUBSTITUTIONS." Any material or process which shall be substantially equal in every respect to that so indicated or specified may not be substituted without the express written approval of the Northrop Grumman Systems Corporation Purchasing Representative. In the event Contractor or its subcontractors at any tier uses materials, supplies, goods or processes not so permitted by the Specifications or authorized by Grumman Systems Corporation Purchasing Representative, Contractor, at the request of Northrop Grumman Systems Corporation, shall be obligated to remove and replace such materials at no cost to Northrop Grumman Systems Corporation. This is in addition to Northrop Grumman Systems Corporation other remedies.
- C. All lists, rules, regulations and standards referred to in this Order/Agreement are recognized as requirements of this Order/Agreement. When ASTM Specifications are referred to, it is understood to mean that these specifications shall comply with the latest American Society of Testing Materials specifications of that serial designation.

#### **19. SHOP DRAWINGS.**

- A. Contractor shall submit shop drawings to Northrop Grumman Systems Corporation for approval (1) where shop drawings are called for by the Order/Agreement, (2) where Contractor desires to perform the Work in a manner significantly different from the details shown in the Order/Agreement, (3) where substitutions require rearrangement of portions of the Work, or (4) where Shop drawings are requested by Northrop Grumman Systems Corporation.
- B. All shop drawings shall be accurately dimensioned and show all details necessary to define the Work completely.
- C. Submittal shall be made with ample lead time to avoid delay. Two (2) copies of each drawing shall be submitted initially, and one (1) of these shall be returned with reasonable promptness showing the changes desired by Northrop Grumman Systems Corporation. Contractor shall return six (6) corrected copies. When approved by Northrop Grumman Systems Corporation, two (2) signed copies shall be returned to Contractor. Contractor shall furnish any additional copies needed by it or its subcontractors or suppliers.
- D. Approval of shop drawings by Northrop Grumman Systems Corporation is limited to general configuration and shall not relieve Contractor of any responsibility for defects in design or other errors or omissions in such drawings nor from compliance with all the Order/Agreement requirements.

#### **20. LAYOUT OF THE WORK.**

- A. Unless otherwise specified elsewhere in this Order Agreement, Contractor shall set, cut and lay out the Work as necessary and shall furnish all stakes, templates, platforms, equipment and labor that may be required in performing such part of the Work. All stakes or other marks shall be preserved by Contractor until removal is authorized by Northrop Grumman Systems Corporation Purchasing Representative. Northrop Grumman Systems Corporation shall furnish, on request from Contractor, all location and limit marks reasonably necessary per the Specifications for the conduct of the Work.
- B. Basic elevations and controlling location reference points as may be designated in the drawings or Specifications shall be established by the Contractor. Contractor shall provide such survey work as required for the execution of the Work. Contractor shall be responsible for the accuracy of such intermediate lines and grades which shall be subject to check from time to time by Northrop Grumman Systems Corporation. Failure to check shall not relieve Contractor of responsibility for the accuracy of all lines and grades. Dimensions shown on the drawings or Specifications are to be verified in the field by the Contractor.

#### **21. UTILITIES.**

Unless otherwise provided in this Order/Agreement, Contractor shall furnish all the water and electric current and other utilities as may be required for the performance of this Order/Agreement. At no additional expense to Northrop Grumman, Contractor shall install and maintain any necessary temporary electrical and water supply connections, facilities and piping, but only at such locations and in such workmanlike manner as may be authorized in writing by Northrop Grumman Systems Corporation. Before final acceptance all temporary connections, facilities and piping installed by Contractor shall be removed in a workmanlike manner, to the satisfaction of Northrop Grumman.

#### **22. UTILITY SHUT-OFF.**

If Contractor requires the temporary shut-off of any utility (which term as used in this clause and the following clause shall include all supply, disposal, distribution and communication systems, and all similar facilities) Contractor shall notify Northrop Grumman Corporation twenty-four hours in advance of the time Contractor requires the shut-off. Contractor shall then perform the Work requiring the shut-off on such days and at such hours as Northrop Grumman Systems Corporation may direct. Regardless of the days or hours fixed by Northrop Grumman Systems Corporation, no extra compensation will be paid for such work.

#### **23. EXISTING UNDERGROUND UTILITIES.**

Underground utilities which are known by Northrop Grumman Systems Corporation to exist are shown in their approximate locations only because exact locations are unknown to Northrop Grumman Systems Corporation. Contractor shall excavate with utmost care so as not to cause damage or interruption of service. If any utility shown on the drawings is damaged as a result of any failure of Contractor or any of its subcontractors of any tier or any of their respective agents,

representatives or employees to exercise utmost care, the Contractor shall be solely liable and shall indemnify and hold Northrop Grumman Systems Corporation harmless from any claims, suits, damages or losses including any costs associated with repairing such utility. If an existing utility requires relocation and such relocation is not specified in the Order/Agreement, Northrop Grumman Systems Corporation shall issue a written field order pursuant to the "Changes" clause to provide for the relocation.

**24. NORTHROP GRUMMAN SYSTEMS CORPORATION AND CONTRACTOR REPRESENTATIVE.**

For all purposes in the administration of this Order/Agreement, Northrop Grumman and Contractor shall be represented only by that person respectively designated by each party elsewhere in this Order/Agreement or otherwise designated in writing by each party as the "Northrop Grumman Systems Corporation Purchasing Representative" and "Contractor Representative" assigned to administer this Order/Agreement for such party, and by such person(s) as such Representatives may authorize in writing to act for him. The term "Representative" and "Engineer" and "Field Engineer" and "Inspector" as used in this Order/Agreement shall mean such designated person or any person(s) so authorized in writing by such representative to act for Northrop Grumman with such limitations in authority as may be set forth.

**25. PERSONNEL SUPERINTENDENCE.**

Contractor shall keep continuously on the Work at the site a competent superintendent or foreman acceptable to Northrop Grumman Systems Corporation fully authorized to receive instructions and act on behalf of Contractor in performance of the Order/Agreement as so authorized pursuant to Clause 24 above.

**26. SUPERINTENDENCE BY NORTHROP GRUMMAN SYSTEMS CORPORATION.**

- A. The duties of the Northrop Grumman Purchasing Representative or his designee as authorized in Clause 24 above shall be as follows:
- (1) Make decisions at the site or in the field on behalf of Northrop Grumman including the resolution of discrepancies in accordance with the clause herein entitled "Specifications and Drawings."
  - (2) Inspect details of the Work as it progresses,
  - (3) Suspend or cause to be suspended Contractor's operations for unsafe practices or any other act or omission detrimental to sound construction practices and Work resumption, or cause to be resumed operations when such unsafe practices are corrected, and
  - (4) Assist in making other determinations and findings for Northrop Grumman provided for in this Order/Agreement.
- B. A field decision shall be binding on Contractor and Northrop Grumman when such decision is in writing (Northrop Grumman Form 60-506) and signed by Northrop Grumman's Purchasing Representative and the Contractor Representative provided that such decision relates only to changes in (1) the Work, and (2) schedules.

- C. The mutually agreed to field decision shall permit the Contractor to immediately proceed with the Work as changed. The final agreed to pricing change(s) shall be processed in accordance with the clause herein entitled "Changes."

**27. CONTRACTOR'S EMPLOYEES.**

Northrop Grumman may, by a written order signed by the Northrop Grumman Purchasing Representative, require Contractor to remove from the Work any employee, agent or representative of Contractor or any of its subcontractors, Northrop Grumman deems incompetent, careless or otherwise objectionable.

**28. WORKMEN'S PASSES.**

Contractor must obtain a pass (or suitable badge) for each person who is to work in any restricted area and any person to whom the cognizant Security Officer will not issue a pass or whose pass is cancelled will not be permitted to work in any such area. Contractor may obtain such passes by submitting the required information to Northrop Grumman Purchasing Representative reasonably in advance of the time passes are needed.

**29. SAFETY.**

- A. At all times Contractor shall use suitable safety precautions including as a minimum those safety precautions specified elsewhere in this Order/Agreement or as may be required by Northrop Grumman's Safety Rules and Standards in order to prevent injury to workmen and all other persons who may be on or about the site. Such safety precautions shall include but not be limited to the use of proper materials, tools, mechanical and automotive equipment and the erection and maintenance of barricades, signs, flags, lights and other safeguards. The barricades used shall be equipped with an electric flasher type light approved by Northrop Grumman.
- B. If, because of the site area, safety permits are required by Northrop Grumman's Safety Rules and Standards, Contractor shall obtain proper permits or clearance in writing from Northrop Grumman's Safety Office and any previous approvals granted under any other contracts with Northrop Grumman shall not be valid for the purpose hereof.
- C. Contractor shall also comply with all applicable rules, regulations and orders of the Occupational Safety and Health Act of 1970 (P.L. 91-596, 29 USC 651-678) as amended and all applicable safety laws, rules, regulations and orders of the United States and the State wherein the Work is being performed. Contractor hereby indemnifies and holds Northrop Grumman harmless from and against any noncompliance by Contractor with any of the above laws, rules, regulations and orders as may be applicable.

**30. CONTRACTOR'S WORK AREA.**

- A. Contractor shall confine all its operations, including storage, vehicle parking and the movement of materials, equipment and workmen to the areas specified herein, or approved by Northrop Grumman; provided, however, that at Northrop Grumman's option, premises adjacent to the construction site may be made available for use by

Contractor without cost whenever such use will not interfere with other use or purposes of Northrop Grumman Systems Corporation and Northrop Grumman Systems Corporation gives its written consent.

- B. Materials and equipment shall be neatly and safely stored with the least possible interference to existing traffic lanes.
- C. Temporary buildings may be erected if approved by Northrop Grumman Systems Corporation in writing.

**31. NORTHROP GRUMMAN SYSTEMS CORPORATION RIGHT TO DO WORK.**

If Contractor refuses or fails to prosecute any part of the Work with such diligence as will ensure its completion within the time specified in this Order/Agreement, as the same may be modified in writing from time to time, or otherwise fails to perform any of its obligations under this Order/Agreement, Northrop Grumman Systems Corporation may, at any time after three (3) days' written notice to Contractor, or in an emergency endangering life or property, after such notice, if any, as may be reasonable under the circumstances, without prejudice to any other rights or remedies Northrop Grumman Systems Corporation may have, make good such deficiencies by such means as Northrop Grumman Systems Corporation may deem expedient and charge the cost thereof to Contractor.

**32. POSSESSION OR USE PRIOR TO COMPLETION.**

Northrop Grumman Systems Corporation may pursuant to a written field order signed by the Northrop Grumman Systems Corporation Representative which expressly refers to this clause, take possession of or use of any completed or partially completed part of the Work at any time prior to final completion. Unless otherwise agreed in writing, such possession or use shall not be deemed an acceptance of any part of the Work nor relieve Contractor of the risk of loss. If such possession or use delays the progress of the Work or causes additional expense to Contractor, an equitable adjustment shall be made in the Order/Agreement price and time for completion and the Order/Agreement shall be modified in writing accordingly; provided, however, if Contractor fails to complete the Work within the time specified in this Order/Agreement, as the same may be modified in writing from time to time, Northrop Grumman Systems Corporation may take possession of or use all or any part of the Work without payment of additional compensation to Contractor or extension of time for completion of such possession or use.

**33. MATERIAL AND WORKMANSHIP.**

- A. Unless otherwise specifically provided in this Order/Agreement, all material (which term as used in this Order/Agreement shall include all materials, equipment and other items incorporated or to be incorporated in the Work covered by this Order/Agreement) shall be new and of the most suitable grade for the purpose intended.
- B. Unless otherwise specifically provided in this Order/Agreement, reference to any material or patented process by trade name, make or catalog number, whether or not coupled with the words "or equal," shall be regarded as establishing a standard

of quality and shall not be construed as limiting competition, and Contractor may, at his option, substitute any material or process which, in the judgment of Northrop Grumman Systems Corporation, is equal to that so referred to. All substitutions, including "or equal" items, must have the prior written approval of Northrop Grumman Systems Corporation.

- C. When required by this Order/Agreement or when requested by Northrop Grumman Systems Corporation, Contractor shall promptly furnish to Northrop Grumman Systems Corporation for its approval full information concerning, and samples of, the material to be incorporated in the Work. Material installed or used without required approval shall be at the risk of subsequent rejection.
- D. Approval by Northrop Grumman Systems Corporation of material shall not relieve Contractor of any warranty with respect thereto or any obligation or liability in connection with this Order/Agreement.
- E. All Work under this Order/Agreement shall be performed in a skillful and workmanlike manner.

**34. CODES AND STANDARDS.**

Material and workmanship specified by reference to codes or standards shall, unless otherwise specified, comply with the latest revision of such codes or standards in effect on the effective date of the Order/Agreement.

**35. PROTECTION OF PROPERTY.**

At all times Contractor shall use suitable precautions to prevent damage to Northrop Grumman Systems Corporation property or the property of third parties. If any such property is damaged by any negligent act or omission of Contractor or any of its subcontractors of any tier or any of their respective agents or employees in connection with the performance of this Order/Agreement, Contractor shall, at no cost to Northrop Grumman Systems Corporation, promptly and equitably reimburse the owner of such property for such damage or repair or otherwise make good the same to the owner's satisfaction. If Contractor fails to do so, Northrop Grumman Systems Corporation may do so and charge to or otherwise recover from Contractor the cost thereof. This clause shall not be construed to relieve Contractor of, or limit, Contractor's liability under any other provision of this Order/Agreement for loss or destruction of or damage to any property.

**36. PROTECTION OF MONUMENTS AND MARKS.**

Contractor shall carefully protect all land monuments and property marks from disturbance and damage and shall not move the same without the prior written consent of Northrop Grumman Systems Corporation.

**37. PROTECTION OF WORK AND MATERIAL.**

At all times Contractor shall adequately protect from damage or deterioration all Work performed and all materials, equipment and other items incorporated or to be incorporated therein. All reasonable requests of Northrop Grumman Systems Corporation to enclose or otherwise protect such property shall be complied with promptly at no cost to Northrop Grumman Systems Corporation.

**38. RISK OF LOSS.**



Contractor shall bear the risk of any loss or destruction of or damage to the Work performed under this Order/Agreement or any materials, equipment or other items incorporated or to be incorporated therein until the completion of the Work and its final acceptance by Northrop Grumman Systems Corporation.

### **39. INSPECTION AND ACCEPTANCE.**

- A. Contractor shall (1) maintain an adequate inspection system and perform such inspections as will assure that the Work will be free from defects and otherwise conform to the Order/ Agreement requirements and (2) maintain and make available to Northrop Grumman Systems Corporation adequate records of such inspections.
- B. Contractor shall (1) be responsible for notifying the appropriate city, county or other inspection agency whenever the Work has advanced to the point at which an inspection is required under this Order/Agreement or any applicable law or ordinance, (2) have the Work ready for inspection upon the arrival of such inspectors, and (3) notify Northrop Grumman Systems Corporation in advance, when possible, of their arrival.
- C. All material and workmanship shall be subject to inspection and test by Northrop Grumman Systems Corporation at all reasonable times and places, including the period of manufacture or performance and the premises of subcontractors and suppliers.
- D. No inspector (other than the Northrop Grumman Systems Corporation Purchasing Representative) is authorized to change any of the Order/Agreement requirements.
- E. Neither the presence nor absence of an inspector, nor any inspection or test performed, nor any failure to discover defective or nonconforming Work shall relieve Contractor of any Order/Agreement requirement.
- F. If the Specifications call for the Work to be covered or buried (as in the case of certain conduit or pipes) Contractor shall, at no cost to Northrop Grumman Systems Corporation, uncover or remove such portion of the Work as may be necessary if Contractor covered or buried the Work prior to Northrop Grumman Systems Corporation having fully inspected and approved the Work.
- G. Contractor shall, at no cost to Northrop Grumman System Corporation, promptly and satisfactorily replace any material and correct any workmanship found to be defective or otherwise not in conformity with the Order/Agreement requirements, unless Northrop Grumman consents in writing to accept such material or workmanship with an appropriate adjustment in the Order/Agreement price, in which event the Order/Agreement shall be modified in writing accordingly. Contractor shall promptly segregate and remove rejected material from the site.
- H. If Contractor does not promptly and satisfactorily replace rejected material or correct rejected workmanship, Northrop Grumman may (1) by contract or otherwise, replace such material or

correct such workmanship and charge the cost thereof to Contractor, or (2) terminate or cancel Contractor's right to proceed in accordance with the "Cancellation for Default-Damages for Delay" clause.

- I. Contractor shall furnish all facilities reasonably needed for such inspection and test as may be performed by Northrop Grumman Systems Corporation. All inspection and test by Northrop Grumman Systems Corporation shall be performed in such manner as not unnecessarily to delay the Work. Contractor shall be charged with any additional cost of inspection if the Work is not ready for inspection at the time stated or advised by Contractor.
- J. Should it be considered necessary by Northrop Grumman Systems Corporation at any time before acceptance of the entire Work to make an examination of Work already completed, by removing or tearing out same, Contractor shall, on request, promptly furnish all necessary facilities, labor and material. If such Work is found to be defective or nonconforming in any material respect due to the fault of Contractor or his subcontractors Contractor shall defray all the expenses of such examination and of satisfactory reconstruction. If, however, such Work is found to meet the requirements of the Order/Agreement, an equitable adjustment shall be made in the Order/Agreement price to compensate Contractor for the additional Work involved in such examination and reconstruction and, if completion of the Work has been delayed thereby, Contractor shall, in addition, be granted a suitable extension of time and the Order/Agreement shall be modified in writing accordingly.
- K. Unless otherwise provided in this Order/Agreement, final acceptance by Northrop Grumman Systems Corporation shall be made as promptly as practicable after completion and inspection of all Work required by this Order/Agreement. Final acceptance shall be conclusive except as regards latent defects, fraud or such gross mistakes as may amount to fraud, and except as regards Northrop Grumman Systems Corporation rights under the "Warranty" clause or under any other warranty or guarantee made or given in connection with this Order/Agreement.

### **40. PRICE BREAKDOWN AND INVOICES.**

- A. Within ten days after commencing Work, Contractor shall submit to Northrop Grumman Systems Corporation for approval a breakdown of the total Order/Agreement price. Such breakdown shall consist of an allocation of costs for all items of labor, materials, equipment, supplies, services and all other expenditures of whatever nature which may be chargeable to the Work by Contractor and each of its subcontractors.
- B. The construction and equipment cost breakdown requirements shall be provided to Northrop Grumman Systems Corporation in such a manner as to provide reasonable cost allocations and

description for depreciation and insurance purposes.

- C. Contractor shall submit to Northrop Grumman Systems Corporation three (3) copies of an invoice for each payment provided for in this Order/Agreement. Each invoice shall be in the form prescribed by Northrop Grumman Systems Corporation and shall be accompanied by such evidence in support thereof as may reasonably be required by Northrop Grumman Systems Corporation.
- D. The invoice shall be serially numbered and one marked "original." Northrop Grumman Systems Corporation Order/Agreement number must appear on all copies of the invoices.
- E. Contractor, in connection with any proposal it makes for a Contract modification pursuant to the "Changes" clause or any other clause of this Order/Agreement shall furnish a price breakdown, itemized as required by Northrop Grumman Systems Corporation. Unless otherwise directed, the breakdown shall be in sufficient detail to permit an analysis of all material, labor, equipment, subcontract and overhead costs, as well as profit and shall cover all Work involved in the modification, whether such Work was deleted, added or changed. Any amount claimed for subcontracts shall be supported by a similar price breakdown. In addition, if the proposal includes a time extension, a justification therefore shall be furnished.
- F. Contractor shall furnish for that portion of the Work covered under each invoice submittal:
  - (1) A list of every subcontractor, material man, laborer and other person furnishing services, labor or materials in connection with the Work, and
  - (2) A receipt in full together with an affidavit that the receipt covers all the services, labor, equipment, and materials for which a lien might be filed, or
  - (3) Except as covered by the release or receipt in full, Contractor may furnish a bond satisfactory to Northrop Grumman Systems Corporation against any claim or lien or otherwise.

#### **41. PROGRESS PAYMENTS.**

- A. No progress payments will be made under Order/Agreement unless this Order/Agreement contains another clause specifically providing that progress payments will be made. If so provided for, Northrop Grumman Systems Corporation shall make progress payments monthly as the Work proceeds (or at more frequent intervals if deemed advisable by Northrop Grumman Systems Corporation). The approved price breakdown shall be used as the basis for determining progress payments. Subject to the retention provided for in Clauses 41.B, and 42., and subject to the approval by Northrop Grumman Systems Corporation of the estimated values involved, each progress payment shall be equal to the estimated value of Work in place at the site plus the value of materials purchased and suitably stored at the site for timely

and permanent incorporation in the Work, less the total of all previous payments and retention, provided that such estimated values shall not include any Work added by field order until the price adjustment for such Work has been incorporated in the Order/Agreement by a change order or other Order/Agreement modification signed by both parties.

- B. In making progress payments, ten percent of each such payment shall be retained by Northrop Grumman Systems Corporation until completion and final acceptance of all of the Work under the Order/Agreement. However, if Northrop Grumman Systems Corporation at any time after 50 percent of the Work has been completed finds that satisfactory progress is being made, it may make any of the remaining progress payments in full. Also, whenever the Work is substantially complete, Northrop Grumman Systems Corporation, if it considers the amount retained to be in excess of the amount adequate for the protection of Northrop Grumman Systems Corporation, may release to Contractor all or a portion of such excess amount. Further, on completion and acceptance of any separate part of the Work for which a price is stated separately in the Order/Agreement, payment may be made therefore without retention.
- C. All material and Work covered by progress payments made shall thereupon become the sole property of Northrop Grumman Systems Corporation, but this provision shall not be construed as relieving Contractor from the risk of loss of or the sole responsibility for all material and Work upon which payments have been made, or from Contractor's obligation to restore any damaged material or Work, or as waiving the right of Northrop Grumman Systems Corporation to require the fulfillment of all of the terms of this Order/Agreement. This paragraph shall not apply to scrap or materials furnished by Contractor that are not intended for permanent incorporation in the Work, and the same shall remain the property of Contractor.

#### **42. FINAL PAYMENT.**

Upon (a) the final acceptance by Northrop Grumman Systems Corporation of all of the Work called for by this Order/Agreement, (b) the submission by Contractor, if requested, of an affidavit, together with receipts, releases or other satisfactory evidence in support thereof, stating that all payments and claims for which Contractor is responsible hereunder have been made or settled, except as specifically listed therein, and (c) the submission by Contractor as required by Clauses 40. and 43. of a release and waiver by Contractor of all liens and rights of lien and all claims against the Work site or property and Northrop Grumman Systems Corporation under or arising out of this Order/Agreement or its performance other than such claims, if any, as may be specifically excepted by Contractor from the operation of the release in stated amounts set forth therein or in estimated amounts where the amounts are not susceptible of exact statement. Northrop Grumman Systems Corporation shall pay Contractor the amount

due Contractor under this Order/Agreement, provided, however, that Northrop Grumman Systems Corporation may retain from any payment, until the claim involved is settled, such amount as may reasonably be necessary to protect Northrop Grumman Systems Corporation from loss on account of any lien, claim, suit or action for which Contractor is responsible under this Order/Agreement or any claim Northrop Grumman Systems Corporation may have against Contractor in connection with this Order/Agreement.

**43. PAYMENT FOR LABOR, MATERIAL, AND WAIVER OF LIENS.**

- A. Contractor shall be responsible for the prompt payment of all persons who perform labor upon or furnish services, materials, equipment, supplies or other items (including but not limited to water, gas, power, light, heat, oil, gasoline, telephone service and rental of equipment) used or to be used in the performance of the Work called for by this Order/Agreement.
- B. Contractor shall (1) indemnify and save harmless Northrop Grumman Systems Corporation from all claims, demands, causes of action or suits of whatever nature arising out of the services, labor and materials furnished by Contractor or its subcontractors and from all laborer's, material men's and mechanic's liens upon the real property upon which the Work is located arising out of the services, labor and materials furnished by Contractor or any of its subcontractors under this Order/Agreement, and (2) keep said property free and clear of all liens and claims and encumbrances arising from the performance of this Order/Agreement by Contractor or its subcontractors.
- C. Contractor for its subcontractors, material men, laborers and for all other persons performing any labor or furnishing any services, labor or materials for any of the Work, hereby waives, to the full extent permitted by law, all right to file or maintain any mechanical or other liens or claims for and on account of the services, labor or materials to be furnished hereunder.
- D. It is the intention of the parties hereto, and Contractor agrees, that if Contractor or any of its subcontractors of any tier fail to pay all such persons, Northrop Grumman Systems Corporation may, at any time after five (5) days' written notice to Contractor, pay such persons directly and deduct such payments from any amounts due Contractor hereunder.

**44. MAINTENANCE INFORMATION AND TOOLS.**

For each piece of equipment installed in the Work, Contractor shall, as a condition precedent to final payment, provide Northrop Grumman Systems Corporation with the following: three (3) each of working drawings, operating instructions, performance curves and data, and maintenance and parts manuals, and one (1) each of nonstandard tools required in the normal maintenance, adjustment, use and operation of the equipment. For small commercial standard equipment the information and tools to be provided shall be limited to that normally available from the

manufacturer. The provisions of this clause do not apply to Northrop Grumman Systems Corporation furnished equipment.

**45. PAYMENT OR TERMINATION OF SUBCONTRACTORS.**

- A. If Contractor fails to pay any of its subcontractors and such failure jeopardizes the completion of the Work within the time specified in this Order/Agreement, then Northrop Grumman Systems Corporation, upon notice to Contractor, may make payment directly to any such subcontractor in accordance with the actual subcontract price for work performed under this Order/Agreement. To the extent of any such direct payments to a subcontractor, payments made to Contractor or to be made, or both shall be adjusted and any refund due Northrop Grumman Systems Corporation as a result of such adjustment shall be promptly paid.
- B. In addition, Northrop Grumman Systems Corporation may terminate the Work under the Order/Agreement being performed by any subcontractor in accordance with the clause herein entitled "Termination for Convenience" and (1) contract directly with such subcontractor, or (2) upon request by Northrop Grumman Systems Corporation the Contractor shall assign the subcontract involved to Northrop Grumman Systems Corporation. The terms and conditions of Contractor's subcontracts shall make Northrop Grumman Systems Corporation a third party beneficiary to the Termination for Convenience Clause by giving Contractor or Northrop Grumman Systems Corporation the right to terminate the subcontract.

**46. NORTHROP GRUMMAN SYSTEMS CORPORATION FURNISHED PROPERTY.**

- A. Northrop Grumman Systems Corporation shall deliver or cause to be delivered to Contractor, for installation under or other use in the performance of this Order/Agreement, the property, if any, described in this Order/Agreement as property to be furnished by Northrop Grumman Systems Corporation. The Furnished Property shall be installed or used in accordance with any provisions of this Order/Agreement that specifically refer to its installation or use and, to the extent such property is not specifically referred to it, shall be used wherever practicable, provided that it complies with the specifications and this Order/Agreement. In no event shall the Furnished Property be used where it does not comply with the specifications and the Order/Agreement and the fact that it is furnished shall not be construed as establishing that it does comply. The Order/Agreement price and time for completion specified in this Order/Agreement are based upon the expectation that the Furnished Property will be delivered to Contractor in a condition suitable for the intended use (except for property to be furnished "as is") at the time stated in the Order/Agreement, or if not so stated, in sufficient time to enable Contractor to meet such time for completion. If the Furnished Property is not delivered within such time or is

received by Contractor in a condition not suitable for the intended use, Contractor shall promptly notify Northrop Grumman Systems Corporation in writing and Northrop Grumman Systems Corporation shall promptly issue a written field order pursuant to the "Changes" clause to provide for the return, repair or other disposition of any unsuitable property (except for property to be furnished "as is") and for the furnishing or procurement of substitutes for any undelivered property, or for such other remedial action as may be appropriate. The parties shall then proceed in accordance with the "Changes" clause, an equitable adjustment shall be made as provided therein and the Order/Agreement shall be modified in writing accordingly. The foregoing provisions for adjustment are exclusive and Northrop Grumman Systems Corporation shall not be liable to suit for breach of contract by reason of any delay in delivery of Furnished Property or delivery of such property in a condition not suitable for the intended use.

- B. Northrop Grumman Systems Corporation may, by a written field order issued pursuant to the "Changes" clause, increase, and decrease or change the property to be furnished by Northrop Grumman Systems Corporation.
- C. Title to all Furnished Property is and shall remain in Northrop Grumman Systems Corporation.
- D. Contractor shall maintain suitable and accurate records, acceptable to Northrop Grumman Systems Corporation and open to its inspection, showing the receipt, use and disposition of all Furnished Property.
- E. The Furnished Property shall, unless otherwise provided herein, be used only in the performance of this Order/Agreement.
- F. At all times Contractor shall adequately protect from damage or deterioration all Furnished Property. All reasonable requests of Northrop Grumman Systems Corporation to enclose or otherwise protect such property shall be complied with promptly at no cost to Northrop Grumman Systems Corporation.
- G. Northrop Grumman Systems Corporation shall at all reasonable times have access to the premises wherein any Furnished Property is located.
- H. Contractor, upon delivery to it of any Furnished Property, assumes the risk of and shall be responsible for any loss or destruction of or damage to such property. Contractor shall promptly report to Northrop Grumman Systems Corporation all instances of loss, destruction or damage of Furnished Property. When the Furnished Property is no longer needed by Contractor for the performance of this Order/Agreement and in event upon the completion (or termination or cancellation) of the Work, and as a condition precedent to its final acceptance, Contractor shall return all the Furnished Property to Northrop Grumman Systems Corporation in as good condition as when received, except for reasonable wear and tear and except to the extent such

property has been incorporated in the Work, or reasonably consumed or used in the intended manner in the performance of Work under and in accordance with this Order/Agreement.

#### **47. SALVAGE AND CLEAN UP.**

- A. Unless otherwise provided in this Order/Agreement, all material excavated, demolished or removed from existing improvements by Contractor and not required for incorporation in the Work (such as waste, rubble and salvable materials) shall be stored, destroyed, removed from the site or otherwise disposed of by Contractor, as directed by Northrop Grumman Systems Corporation.
- B. Contractor shall keep its work and storage areas cleared of debris at all times.
- C. Upon completion of the Work and before final acceptance, Contractor shall, unless otherwise specified herein or authorized by Northrop Grumman Systems Corporation, remove from the site all construction equipment, debris, surplus materials and temporary construction, clean both sides of all glass installed and leave the premises in a broom-clean neat and workmanlike condition.

#### **48. RESTORATION OF EXISTING IMPROVEMENTS.**

Unless otherwise specified, all existing structures and other improvements altered or removed by Contractor in the execution of the Work shall be appropriately repaired, replaced or otherwise restored by Contractor at no cost to Northrop Grumman Systems Corporation. Quality of the restoration shall be as good as existing and meet the approval of Northrop Grumman Systems Corporation.

#### **49. WARRANTY.**

Contractor warrants that all Work performed and all material (as defined in 33.A.) furnished under this Order/Agreement will be free from defects in workmanship, material and design (excluding any defect in any design furnished by Northrop Grumman Systems Corporation) and will conform to the requirements of the Order/Agreement.

- A. Northrop Grumman Systems Corporation shall give Contractor written notice of any such defect or nonconformance within one year (or such longer warranty period as may be specified elsewhere in this Order/Agreement) after final acceptance by Northrop Grumman Systems Corporation of all Work required by this Order/Agreement. In such notice, or within sixty (60) days thereafter, Northrop Grumman Systems Corporation shall, at its sole discretion, direct Contractor to correct, to partially correct, or not to correct the defect or nonconformance.
  - (1) Contractor shall comply with any such direction. If the direction is to correct or to partially correct, Contractor shall, at no cost to Northrop Grumman Systems Corporation, promptly and satisfactorily correct or partially correct, as directed, the defect or nonconformance and remedy any damage to other parts of the Work or any other property resulting from such defect or nonconformance. This warranty shall then continue as to any

corrected or partially corrected Work for one year (or such longer warranty period as may be specified elsewhere in this Order/Agreement) after acceptance by Northrop Grumman Systems Corporation of the correction or partial correction. In addition, if the direction is to partially correct or not to correct, Contractor shall promptly repay to Northrop Grumman Systems Corporation such portion of the Order/Agreement as is equitable under the circumstances.

- (2) If Contractor fails to comply with any timely direction to correct or to partially correct any such defect or nonconformance, Northrop Grumman Systems Corporation may do so and recover from Contractor the cost thereof.

- B. The rights and remedies of Northrop Grumman Systems Corporation provided in this clause are in addition to and do not limit any rights and remedies afforded to Northrop Grumman Systems Corporation by any other clause of this Order/Agreement or by law.

#### **50. AS-BUILT DATA.**

Promptly after completion of all Work, and as a condition precedent to final payment, Contractor shall deliver to Northrop Grumman Systems Corporation all data necessary to revise the drawings and specifications to conform to the "as-built" condition. Contractor shall also deliver survey data establishing the location and elevation, to any accuracy of 0.1 foot horizontally and vertically, of all underground utilities installed under this Order/Agreement or encountered by Contractor in performing the Work.

#### **51. CONTRACTOR'S LIABILITY INSURANCE.**

- A. Prior to commencing Work hereunder, or within such further time as Northrop Grumman Systems Corporation may allow in writing, Contractor shall secure, and obtain Northrop Grumman Systems Corporation's approval of, such comprehensive general and automobile liability insurance as will protect Contractor against all claims for bodily injury (including death) or property damage that may arise from operations under this Order/Agreement, whether such operations be by Contractor or any subcontractor of any tier or any of their respective agents or employees, in not less than the limits of liability stated elsewhere in this Order/Agreement.
- B. Two copies of Certificates of such insurance, containing a ten (10) day prior notice of cancellation to Northrop Grumman Systems Corporation, shall be filed with the Northrop Grumman Systems Corporation Purchasing Representative within five (5) days of the notice of Order/Agreement award or at least five (5) days prior to the commencement of any Work.
- C. The Certificates shall show that such insurance covers Contractor's contractual liability under the clause herein entitled "Responsibility for Claims."
- D. The Contractor shall provide, in addition to any other required insurance, insurance and evidence thereof adequate to cover Northrop Grumman Systems Corporation employee(s), the Contractor's

employee(s), or third parties against any (1) injury, including death at any time resulting therefrom, while on the premises of Northrop Grumman Systems Corporation and/or Work site, traveling to or from said premises; (2) dam-ages to, or destruction of, property belonging to Northrop Grumman Systems Corporation, Northrop Grumman Systems Corporation's employee(s), Contractor's employee(s), or third parties arising out of a negligent act(s) of commission or omission of the Contractor or Contractor's employee(s) or subcontractor's in the performance of this Order/Agreement.

- E. Contractor shall maintain such insurance in full force and effect at all times until the Work called for by this Order/Agreement has been completed and finally accepted by Northrop Grumman Systems Corporation and all the operations at the site, including removal of construction equipment and clean-up operations have been concluded.

#### **52. CONTRACTOR'S FIRE INSURANCE.**

- A. Contractor shall secure immediately after the execution of this Order/Agreement and obtain Northrop Grumman Systems Corporation's approval of, fire insurance with extended coverage and vandalism and malicious mischief endorsements (or such other insurance as Northrop Grumman Systems Corporation may require and approve) in such form and with such insurers as Northrop Grumman Systems Corporation may approve, insuring the Work called for by this Order/Agreement to the full insurable value thereof. The policies providing such insurance shall name as insured's the Northrop Grumman Systems Corporation and Contractor. All subcontractors of every tier, without naming them, shall be designated therein as insured's in their capacity as subcontractors. Such insurance shall be for the benefit of said parties as their respective interests may appear.
- B. The policies providing such insurance shall contain endorsements that cancellation thereof may be effected only upon ten (10) days' written notice to Northrop Grumman Systems Corporation. Copies of such policies shall be filed with Northrop Grumman Systems Corporation, Contractor shall maintain such insurance in full force and effect at all times until the Work called for by this Order/Agreement has been completed and finally accepted by Northrop Grumman Systems Corporation.
- C. In the event of loss, the proceeds from such insurance shall be paid to Northrop Grumman Systems Corporation as trustee for, and for distribution to, the interested parties as their respective interests may appear. Northrop Grumman Systems Corporation shall have the exclusive right to adjust and settle any loss with the insurers and any such settlement shall be final and binding upon all interested parties. provided that if within ten (10) days of the occurrence of the loss any interested party gives Northrop Grumman Systems Corporation written notice of its desire to

participate with Northrop Grumman Systems Corporation in the settlement negotiations. Northrop Grumman Systems Corporation shall not make final settlement with the insurers to the extent of such party's interest without the approval of such party.

**53. NORTHROP GRUMMAN SYSTEMS CORPORATION NAMED INSURED.**

If Contractor has or secures, either voluntarily or pursuant to the requirements of this Order/Agreement, any fire or other physical damage insurance of any type covering all or any part of the Work performed under this Order/Agreement or any materials, equipment or other items incorporated or to be incorporated therein while the same are located on property owned, leased or occupied by Northrop Grumman Systems Corporation, the policies providing such insurance shall name The Northrop Grumman Systems Corporation as an additional insured. Such insurance shall be for the benefit of the named insured as their respective interests may appear. Copies of the policies or certificates of insurance as may be required by Northrop Grumman Systems Corporation shall be filed with Northrop Grumman Systems Corporation for its information.

**54. WORKMEN'S COMPENSATION.**

Contractor and all of its subcontractors of every tier shall, in accordance with the applicable laws relating to workmen's compensation or employer's liability insurance, cover or maintain insurance with respect to all of their employees working on or about the construction site, regardless of whether such coverage or insurance is mandatory or merely elective under the law. Contractor shall defend, protect, indemnify and hold Northrop Grumman Systems Corporation harmless from and against all claims, suits, and actions arising from any failure of Contractor or any such subcontractor so to do.

**55. RESPONSIBILITY FOR CLAIMS.**

Contractor shall defend, protect, indemnify and hold Northrop Grumman Systems Corporation harmless from and against all claims, suits and actions arising from any negligent act or omission of Contractor or any of its subcontractors of any tier or any of their respective agents or employees in connection with the performance of this Order/Agreement.

**56. FIRE PROTECTION.**

- A. Contractor shall provide adequate fire extinguishing equipment including, as a minimum, portable extinguishers suitable for the types of hazards involved and any other extinguishers specified herein or required by Northrop Grumman Systems Corporation.
- B. Welding, cutting and other open flame operations shall be performed only after obtaining a permit, if required by Northrop Grumman Systems Corporation (daily permits may be required), and only under conditions approved by Northrop Grumman Systems Corporation.
- C. Smoking shall be confined to areas free from fire hazards and any smoking regulations in effect in any area where Work is being performed shall be strictly observed.

**57. COMPLIANCE WITH LAWS.**

Contractor warrants that it shall comply with all applicable federal, state, or local laws, rules, and regulations in the performance of this Agreement. Contractor shall not discriminate against any employee or applicant for employment because of race, color, religion, sex or national origin and warrants compliance with Section 508 of the Rehabilitation Act. Where applicable, the Contractor agrees to provide products and services which are Section 508 compliant and agrees to provide a Voluntary Product Accessibility Template® (VPAT®) to Customer Representatives, if requested.

**58. COMPLIANCE WITH SITE REGULATIONS.**

If any Work is performed hereunder at a Government facility, Contractor and all its subcontractors of every tier shall comply with all regulations applicable at such facility.

**59. PATENT, TRADEMARK, AND COPYRIGHT INDEMNITY.**

Seller shall defend, indemnify, and hold Buyer, Buyer's officers, agents, employees, and customers harmless against all claims and liabilities, including costs, for infringement of any United States patent, trademark, or copyright by any Products delivered under this Order or, at Seller's option and expense, Seller shall obtain such licenses as are necessary to remove such infringement, provided that Seller is reasonably notified of such claims and liabilities. Seller's obligation shall not apply to Products manufactured by Seller pursuant to detailed designs developed by Buyer and furnished to Seller under an Order which does not require research, development, or design work by Seller. Seller's obligation shall also not apply to any infringement arising from the use or sale of Products in combination with items not delivered by Seller if such infringement would not have occurred from the use or sale of such Products solely for the purpose for which they were designed or sold to Buyer. Seller's obligation shall extend to the U.S. Government only if and to the extent Buyer has agreed to indemnify the U.S. Government.

**60. TAXES.**

Except as may otherwise be provided, the prices indicated in this Order/Agreement include all applicable Federal, state and local taxes and duties. Contractor shall pay, when and as the same become due and payable, all taxes, assessments and similar charges which at any time prior to final settlement of this Order/Agreement are properly and legally taxed, assessed or imposed upon Contractor, arising out of or in connection with the performance of any Work, furnishing or any materials, or performing any services required hereunder. Contractor shall bear the risk of any such taxes and Northrop Grumman Systems Corporation shall not be liable. It is understood that Contractor is a "General Contractor," as defined under applicable California law and regulations, and will report and pay any and all applicable California sales or use taxes.

**61. INDEPENDENT CONTRACTOR.**

Contractor shall perform the Work provided for as an independent contractor and at its sole risk and responsibility. Employees and subcontractors engaged in Contractor's services hereunder shall not be in any sense

employees or subcontractors of Northrop Grumman Systems Corporation, but shall be employees and subcontractors of Contractor during the period of this Order/Agreement and shall be subject to the rules and regulations and management of Contractor. Contractor shall not act in any sense as agent or representative of Northrop Grumman Systems Corporation. Contractor shall establish and enforce rules and regulations for its employees and subcontractors while on the Work site, including all security and safety regulations as herein provided.

**62. TITLE TO WORK.**

Title to all of the Work completed and all material, equipment and fixtures installed in the Work, shall vest in Northrop Grumman Systems Corporation upon installation thereof at the construction site, and Contractor shall deliver to Northrop Grumman Systems Corporation all necessary indicia of ownership relating thereto.

**63. COMPOSITION OF CONTRACTOR.**

If Contractor is comprised of more than one legal entity, each such entity shall be jointly and severally liable under this Order/Agreement.

**64. ASSIGNMENT.**

No assignment of any rights or delegation of any duties under this Order/Agreement shall be binding upon Northrop Grumman Systems Corporation until its written consent thereto has been obtained, except Contractor may assign rights to moneys due or to become due providing it advises Northrop Grumman Systems Corporation in writing of such assignments.

**65. TERMINATION FOR CONVENIENCE.**

A. The performance of Work under this Order/Agreement may be terminated by Northrop Grumman Systems Corporation in accordance with this clause in whole, or from time to time in part for any reason and whenever Northrop Grumman Systems Corporation so desires. Any such termination shall be effected by delivery to Contractor of a Notice of Termination specifying the extent to which performance of Work under the Order/Agreement is terminated and the date upon which such termination becomes effective.

B. After receipt of a Notice of Termination and except as otherwise directed by Northrop Grumman Systems Corporation, Contractor shall:

- (1) Stop work under the Order/Agreement on the date and to the extent specified in the Notice of Termination;
- (2) Place no further orders or subcontracts for materials services or facilities except as may be necessary for completion of such portion of the Work under the Order/Agreement as is not terminated;
- (3) Terminate all orders and subcontracts to the extent that they relate to the performance of work terminated by the Notice of Termination;
- (4) Assign to Northrop Grumman Systems Corporation in the manner, at the times and to the extent directed by Northrop Grumman Systems Corporation, all of the right, title and interest of Contractor under the orders and subcontracts so terminated, in which case Northrop Grumman Systems Corporation shall

have the right, in its discretion, to settle or pay any or all claims arising out of the termination of such orders and subcontracts;

- (5) Settle all outstanding liabilities and all claims arising out of such termination of orders and subcontracts with the approval or ratification of Northrop Grumman Systems Corporation to the extent it may require, which approval or ratification shall be final for all the purposes of this clause;
  - (6) Transfer title and deliver to Northrop Grumman Systems Corporation, in the manner, at the times and to the extent, if any, directed by Northrop Grumman Systems Corporation, (a) the fabricated or unfabricated parts, work in process, completed work, supplies and other material produced as a part of, or acquired in connection with the performance of, the Work terminated by the Notice of Termination, and (b) the completed or partially completed plans, drawings, information and other property which, if the Order/Agreement had been completed, would have been required to be furnished to Northrop Grumman Systems Corporation;
  - (7) Use Contractor's best efforts to sell, in the manner at the times, to the extent and at the price or prices directed or authorized by Northrop Grumman, any property of the types referred to in (6) above; provided, however, that Contractor (a) shall not be required to extend credit to any purchaser, and (b) may acquire any such property under the conditions prescribed and at a price or prices approved by Northrop Grumman, and provided further that the proceeds of any such transfer or disposition shall be applied in reduction of any payments to be made by Northrop Grumman to Contractor under this Order/Agreement or shall otherwise be credited to the price or cost of the Work covered by this Order/Agreement or paid in such other manner as Northrop Grumman Systems Corporation may direct;
  - (8) Complete performance of such part of the Work as shall not have been terminated by the Notice of Termination, and
  - (9) Take such action as may be necessary, or as Northrop Grumman Systems Corporation may direct, for the protection and preservation of the property related to this Order/Contract which is in the possession of Contractor and in which Northrop Grumman Systems Corporation has or may acquire an interest.
- C. After receipt of a Notice of Termination, Contractor shall submit to Northrop Grumman Systems Corporation its termination claim, in the form and with the certification prescribed by Northrop Grumman Systems Corporation. Such claim shall be submitted promptly but in no event later than six months after the effective date of termination. If Contractor fails to submit its termination claim within the time allowed, Northrop Grumman Systems Corporation may determine on the basis of information available to it the amount, if any, due Contractor by reason of the termination, and such determination shall be final.

After Northrop Grumman Systems Corporation has made a determination under this paragraph, Northrop Grumman Systems Corporation shall pay Contractor the amount so determined, which payment shall be deemed to satisfy all claims of Contractor against Northrop Grumman Systems Corporation by reason of the termination.

D. Subject to the provisions of 65.C., Contractor and Northrop Grumman Systems Corporation may agree upon the whole or any part of the amount or amounts to be paid to Contractor by reason of the total or partial termination of Work pursuant to this clause, which amount or amounts may include a reasonable allowance for profit on Work done; provided that such agreed amount or amounts, exclusive of settlement costs, shall not exceed the total Order/Agreement price as reduced by the amount of payments otherwise made and as further reduced by the Order/Agreement price of Work not terminated. The Order/Agreement shall be amended accordingly, and Contractor shall be paid the agreed amount. Nothing in 65.E., prescribing the amount to be paid to Contractor in the event of failure of Contractor and Northrop Grumman Systems Corporation to agree upon the whole amount to be paid to Contractor by reason of the termination of Work pursuant to this clause, shall be deemed to limit, restrict or otherwise determine or affect the amount or amounts which may be agreed upon to be paid to Contractor pursuant to this paragraph 65.D.

E. In the event of the failure of Contractor and Northrop Grumman Systems Corporation to agree as provided in 65.D. upon the whole amount to be paid to Contractor by reason of the termination of Work pursuant to this clause, Northrop Grumman Systems Corporation shall pay Contractor the following amounts (but without duplication of any amounts agreed upon in accordance with 65.D.), which payment shall be deemed to satisfy all claims of Contractor against Northrop Grumman Systems Corporation by reason of the termination:

(1) With respect to all Work performed prior to the effective date of the Notice of Termination, the total (without duplication of any items) of:

- (a) The cost of such Work;
- (b) The cost of settling and paying claims arising out of the termination of Work under subcontracts or orders as provided in 65.B.(6), exclusive of the amounts paid or payable on account of supplies or materials delivered or services furnished by the subcontractor prior to the effective date of the Notice of Termination of Work under this Order/Agreement, which amounts shall be included in the cost on account of which payment is made under (a) above; and
- (c) A sum, as profit on (a) above, to be fair and reasonable, provided, however, that if it appears that Contractor would have sustained a loss on the entire Order/Agreement had it been completed, no profit shall be included or allowed under

this subdivision (c) and an appropriate adjustment shall be made reducing the amount of the settlement to reflect the indicated rate of loss; and

(2) The reasonable cost of the preservation and protection of property incurred pursuant to 65.B.(9), and other reasonable cost incidental to termination of Work under this Order/Agreement, including expense incidental to the determination of the amount due to Contractor as the result of the termination of Work under this Order/Agreement.

The total sum to be paid to Contractor under (1) above shall not exceed the total Order/Agreement price as reduced by the amount of payments otherwise made and as further reduced by the Order/Agreement price of Work not terminated. Except for the normal spoilage and except to the extent that Northrop Grumman Systems Corporation shall have otherwise expressly assumed the risk of loss, there shall be excluded from the amounts payable to Contractor under (1) above, the fair value of property which is destroyed, lost, stolen or damaged so as to become undeliverable to Northrop Grumman Systems Corporation, or to a buyer pursuant to 65.B. (7).

F. Contractor and Northrop Grumman Systems Corporation agree that any determination of costs under 65.C. or 65.E. shall be governed by the principles and procedures set forth or referred to in Section XV, Part 4, of the Defense Acquisition Regulation (DAR) as in effect on the date of this Order/Agreement even though this is not a subcontract under a Government contract.

G. In arriving at the amount due Contractor under this clause there shall be deducted (1) all unliquidated advance or other payments on account theretofore made to Contractor, applicable to the terminated portion of this Order/Agreement, (2) any claim which Northrop Grumman Systems Corporation may have against Contractor in connection with this Order/Agreement, and (3) the agreed price for, or the proceeds of sale of, any materials, supplies or other things kept by Contractor or sold, pursuant to the provisions of this clause, and not otherwise recovered by or credited to Northrop Grumman Systems Corporation.

H. If the termination hereunder be partial, prior to the settlement of the terminated portion of this Order/Agreement, Contractor may file with Northrop Grumman Systems Corporation request in writing for an equitable adjustment of the price or prices specified in the Order/Agreement relating to the continued portion of the Order/Agreement (the portion not terminated by the Notice of Termination), and such equitable adjustment as may be agreed upon shall be made in such price or prices.

I. Northrop Grumman Systems Corporation may from time to time, under such terms and conditions as it may prescribe, make partial payments and payments on account against costs incurred by Contractor in connection with the terminated portion of this Order/Agreement whenever in the



opinion of Northrop Grumman Systems Corporation the aggregate of such payments shall be within the amount to which Contractor will be entitled hereunder. If the total of such payments is in excess of the amount finally agreed or determined to be due under this clause, such excess shall be payable by Contractor to Northrop Grumman Systems Corporation upon demand, together with interest computed at the rate of ten (10) percent per annum, for the period from the date such excess payment is received by Contractor to the date on which such excess is repaid to Northrop Grumman Systems Corporation, provided, however, that no interest shall be charged with respect to any such excess payment attributable to a reduction in Contractor's claim by reason of retention or other disposition of termination inventory until ten (10) days after the date of such retention or disposition, or such later date as determined by Northrop Grumman Systems Corporation by reason of the circumstances.

J. Unless otherwise provided for in this Order/Agreement by applicable statute, Contractor, from the effective date of termination and for a period of three (3) years after final settlement under this Order/Agreement, shall preserve and make available to Northrop Grumman Systems Corporation at all reasonable times at the office of Contractor, and without charge, all Contractor's books, records, documents and other evidence bearing on the costs and expenses of Contractor under this Order/Agreement and relating to the Work terminated hereunder.

K. Contractor shall include in each of its subcontracts a clause similar to this clause 65.

#### **66. CANCELLATION FOR DEFAULT – DAMAGES FOR DELAY.**

A. If Contractor refuses or fails to prosecute the Work, or any separable part thereof, with such diligence as will ensure its completion within the time specified in this Order/Agreement as the same may be modified in writing from time to time, or fails to complete said Work within such time, Northrop Grumman Systems Corporation may, by written notice to Contractor, cancel Contractor's right to proceed with the Work or such part of the Work as to which there has been delay. In such event Northrop Grumman Systems Corporation may take over the Work and prosecute the same to completion, by contract or otherwise, and may take possession of and utilize in completing the Work such materials, tools and plans as may be on the site of the Work and necessary. Whether or not Contractor's right to proceed with the Work is terminated, Contractor and its sureties shall be liable for any damage to Northrop Grumman Systems Corporation resulting from Contractor's refusal or failure to complete the work within the specified time.

B. If liquidated damages are provided for in this Order/Agreement and if Northrop Grumman Systems Corporation so cancels Contractor's right to proceed, the resulting damage shall consist of

such liquidated damages until such reasonable time as may be required for final completion of the Work together with any increased costs occasioned by Northrop Grumman Systems Corporation in completing the Work.

C. If liquidated damages are provided for in this Order/Agreement and if Northrop Grumman Systems Corporation does not so cancel Contractor's right to proceed, the resulting damage shall consist of such liquidated damages until the Work is completed or accepted.

D. Contractor shall not be liable to Northrop Grumman Systems Corporation for resulting damage if and to the extent: (1) the delay in the completion of the Work arises from unforeseeable causes beyond the control and without the fault or negligence of Contractor, including but not restricted to, acts of God, acts of the public enemy, acts of the Government in either its sovereign or contractual capacity, acts of Northrop Grumman Systems Corporation, acts of another contractor in the performance of a contract with Northrop Grumman Systems Corporation, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, unusually severe weather or delays of subcontractors or suppliers arising from unforeseeable causes beyond the control and without the fault or negligence of both Contractor and such subcontractors or suppliers, and (2) Contractor, within ten (10) days after the beginning of any such delay, or within such further period before final payment under this Order/Agreement as Northrop Grumman Systems Corporation may allow in writing, notifies Northrop Grumman Systems Corporation in writing of the cause of the delay.

E. If, after notice of cancellation issued pursuant to this clause, it is determined for any reason that Contractor was not in default under the provisions of this clause, or that the delay was excusable under the provisions of this clause, the rights and obligations of the parties shall be the same as if the notice of cancellation had been issued pursuant to the Termination for Convenience clause.

F. The rights and remedies of Northrop Grumman Systems Corporation provided in this clause are in addition to any other rights and remedies provided by law or under this Order/Agreement. The terms subcontractors or suppliers means subcontractors or suppliers at any tier.

G. By written notice to Contractor, Northrop Grumman Systems Corporation may cancel the whole or any part of this Order/Agreement in the event of suspension of Contractor's business, insolvency of Contractor, institution of bankruptcy, reorganization, arrangement or liquidation proceedings by or against Contractor, appointment of a trustee or receiver for Contractor's property or business, or any assignment by Contractor for the benefit of creditors. Such cancellation shall be deemed "for default" in accordance with the provisions of this clause and rights and obligations

of the parties shall be determined as herein provided.

**67. INCONSISTENCY OF PROVISIONS.**

In the event of any conflict or inconsistency between the provisions of the Order/Agreement, the provisions of any drawings and specifications, and the provisions of these General Conditions, the provisions of these General Conditions shall control unless specifically amended by a particular provision of the Order/Agreement.

**68. NON-WAIVER.**

Any failure at any time of Northrop Grumman Systems Corporation to enforce any provision of this Order/Agreement shall not constitute a waiver of such provision or prejudice the right of Northrop Grumman Systems Corporation to enforce such provision at any subsequent time.

**69. CHOICE OF LAW.**

This Order and any dispute arising hereunder shall be governed by the substantive and procedural laws of the State of California, except, however, that California's Choice of Law provisions shall not apply.

**70. SUCCESSORS OR PARTIES.**

This Order/ Agreement is binding on the parties and their respective legal representatives, trustees, successors and assigns.

**71. OFFSET COMMITMENT.**

This clause shall only apply to Orders in excess of \$50,000.00.

- A. Definition: "Offset" means the obligations that Buyer undertakes, in order to market or sell its Products, to assist a customer country in reducing any trade imbalance caused by its purchase of Buyer's Products or to meet other customer country national objectives.
- B. Notwithstanding that this Order is or is not made in direct support of a foreign sale, Seller agrees that it is obligated to support Buyer's Offset commitments as a condition of this Order.
- C. The offset credits arising out of or resulting from, directly or indirectly, this Order are for the exclusive use of Buyer and may be used by Buyer and any of its affiliates and subsidiaries to fulfill all past, present and future Offset obligations. In addition, Seller agrees to identify and retain for Buyer's use any rights to offset credits generated by its suppliers and subcontractors arising out of or resulting from this Order.
- D. Seller shall provide a copy of each Order or Subcontract placed with a foreign source under this Order in support of Buyer's rights to offset credit.
- E. Seller shall execute all necessary documents to evidence Buyer's right to use or assign any offset credits.
- F. Buyer reserves the right to assign offset credits generated through Seller's efforts under this Order to third parties.
- G. Seller shall include the substance of this clause, in favor of Buyer, in its subcontracts issued at all tiers pursuant to this Order.

**72. DISPUTES.**

Either party may litigate any dispute arising under or relating to this order. Such litigation shall be brought

and jurisdiction and venue shall be proper only in a state or federal district court in Los Angeles County. Pending resolution of any such dispute by settlement or by final judgment, the parties shall proceed diligently with performance.

**73. WAIVER OF RIGHT TO JURY TRIAL.**

Buyer and Seller hereby waive their respective right to trial by jury of any cause of action, claim, counterclaim or cross-complaint in any action, proceeding or hearing brought by either Seller against Buyer or Buyer against Seller on any matter whatsoever arising under, relating to, or in any way connected with this Order, the relationship of Seller and Buyer or any claim of injury or damage, or the enforcement of any remedy under any law, statute or regulation now or hereafter in effect.

**74. RECORD RETENTION REQUIREMENTS.**

Supplier shall retain all documents, notes, records and all other documentation with regard to the Services, including records of hours worked by each Supplier employee, for a period of four (4) years after completion of such Services provided by Supplier.

**75. AUDIT RIGHTS.**

During the Term of this Order and for a period of four (4) years thereafter, Buyer shall have the right to audit such records of Supplier to ensure compliance with the terms and conditions of this Order. Such books and records shall be made available at Buyer's facility in the United States for verification, copying, audit and inspection by Buyer or its representatives, including authorized third-party auditors. Any such audit shall be conducted during normal business hours upon reasonable prior written notice to Supplier provided, however, that Supplier shall provide reasonable assistance necessary to enable Buyer to conduct such audit and shall not be entitled to charge Buyer for any such assistance. In the event such audit reveals that Supplier has billed Buyer in excess of the correct amount to be billed, Supplier shall promptly pay to Buyer the amounts over paid.

**76. EXPORT AND IMPORT**

- A. Export Compliance. Seller is advised that its performance of this Order may involve the use of or access to articles, technical data or software this is subject to export controls under 22 United States Code 2751-2796(Arms Export Control Act) and 22 Code of Federal Regulations 120-130(International Traffic in Arms Regulations) or 50 United States Code 2401-2420(Export Administration Act) and 15 Code of Federal Regulations 768-799 (Export Administration Regulations) and their successor and supplemental laws and regulations(collectively hereinafter referred to as the "Export Laws and Regulations"). Seller represents and warrants that it is either 1) a U.S. Person as that term is defined in the Export Laws and Regulations, or 2) that it has disclosed to Buyer's Representative in writing the country in which it is incorporated or otherwise organized to do business, or if a natural person, all citizenships and US immigration status. Seller shall comply with any and all Export Laws and Regulations, and any license(s) issued there under.
- B. Registration. If Seller is a U.S. entity and is engaged in the business of either exporting or manufacturing (whether exporting or not) defense articles or furnishing defense services. Seller represents that it is registered with the Office of

Defense Trade Controls, as required by the ITAR and it maintains an effective export and import compliance program in accordance with the ITAR.

- C. Foreign Personnel/Person. Seller shall not give any Foreign Person access to Technical Data, software or Defense Articles, or provide an unauthorized Defense Service as those terms are defined in the applicable Export Laws and Regulations without the prior written consent of Contractor/Buyer. Any request for such consent must state the intended recipient's citizenship(s) and status under 8 U.S.C 1324(the "Immigration and Naturalization Act"), and such other information as Buyer may reasonably request. No consent granted by Buyer in response to Seller's request under this paragraph C. shall relieve Seller of its obligations to comply with the provisions of paragraph A. of this Clause or the Export Laws and Regulations, nor shall any such consent constitute a waiver of the requirements of paragraph A. hereinabove, nor constitute consent for Seller to violate any provision of the Export Laws and Regulations.
- D. Indemnification. Seller shall indemnify and save harmless Buyer from and against all damages, liabilities, penalties, fines, costs, and expenses, including attorneys' fees, arising out of claims, suit, allegations or charges of Seller's failure to comply with the provisions of this clause and breach of the warranty set forth in paragraph A. Any failure of Seller to comply with the requirements or any breach of the warranty contained in this Clause shall be a material breach of this Order.
- E. Subcontracts. The substance of this Clause shall be incorporated into any lower-tier subcontract or purchase order entered into by the Seller for performance of any part of work under this order.

**77. – 79. RESERVED.**

**80. RESPONSE TO AUDIT.**

Buyer shall not be prohibited from providing copies of the purchase order to federal and state taxing agencies as requested by either buyer's or government auditors to comply with auditing procedures.

**81. DIVESTITURES - COMMODITY PRODUCTS & SERVICES**

- A. Upon Buyer's divestiture of any affiliate, division, business unit, line of business or sector ("divested entity"), Buyer may assign in whole or in part the services that are the subject of this order to that divested entity. Upon execution of an assignment, Buyer shall have no further rights or obligations with respect to the assigned services (with the exception of any unpaid service fees which remain due on the effective date of such assignment) and the divested entity shall become the "customer" of record for those assigned services. Any such assignment or other transfer of services made to a third party will be subject to the prior written consent of Seller which consent will not be unreasonably withheld or delayed.
- B. Divested entities will have the right, for a period of twelve (12) months post-divestiture, to continue to purchase the products and/or services covered under this order, or Buyer may purchase such products under this order on behalf of the divested entities. If a divested entity wishes to order from Seller directly, Seller reserves the right to require such divested entity to provide financial

information sufficient to determine creditworthiness before accepting any orders.

- C. Buyer may access and use the services under the agreement to provide transitional services to the divested entity, including transitional access and use of the services by the divested entity, during the transition period at no additional charge (i.e., no charge other than fees otherwise due to supplier under the agreement as if the divested entity were a part of Buyer) provided that Buyer is and remains current on the payment of all fees due to supplier under the agreement.

**82. MERGERS AND ACQUISITIONS – COMMODITY PRODUCTS/SERVICES.**

If Buyer merges with or acquires an entity or entities that have a need for Seller's products and services, Buyer and the acquired entity will be permitted to make purchases using this purchase order and price discounts in support of the acquired entity. If under any existing purchase order with an acquired entity or entities Seller currently provides or agrees to provide services, Buyer and Seller will negotiate a combined agreement sufficient to cover the combined companies so as to avoid any disruption in service.

**83. – 96. RESERVED.**

**97. PRODUCT VULNERABILITIES.**

Within 24 hours of confirming vulnerability in their product line, seller shall notify buyer and provide a corrective action plan to address the issue. This plan should include, but not be limited to: identification of the specific vulnerability; steps to isolate and prevent further occurrences; replacement of the defective product(s); enhanced quality control procedures.

