

PSS/T- 9
NORTHROP GRUMMAN SYSTEMS CORPORATION
PURCHASE ORDER TERMS AND CONDITIONS
RENTAL OF PERSONAL PROPERTY
(COMMERCIAL)

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1. DEFINITIONS AND EXPLANATION.

"Buyer" or "Lessee" means the entity name listed on the Purchase Order/Subcontract. "Seller" or "Lessor" means the party with whom Lessee is contracting and any reference to "vendor," "subcontractor," "contractor" or "supplier" shall also mean Lessor. The word "Purchase Order" ("Order") or "Lease" or "Rental Agreement" means the name or title of the instrument of contracting even though this transaction involves a rental and not a purchase, including all documents, exhibits and attachments referenced thereon, and once accepted by Lessor as herein provided shall constitute the entire agreement between Lessee and Lessor for the rental of those goods, products, equipment, tools, machines, articles, items, parts, components or assemblies ("Property") described herein, this Order as written by executing and returning to Lessee the Acceptance or Acknowledgement copy of the Order, or by delivering the Property to Lessee.

2. ACCEPTANCE OF ORDER.

This Order is Lessee's offer to Lessor. Lessor's Acceptance is expressly limited to the terms of the Order and Lessee hereby objects to any additional or different terms in Lessor's acceptance. Lessor accepts this Order as written by executing and returning to Lessee the Acceptance or Acknowledgement copy of the Order, or by delivering the Property to Lessee.

3. COMPLETE AGREEMENT.

This Order is the complete and exclusive statement of the terms of the agreement between Lessor and Lessee.

4. MODIFICATION.

No modification of this Order (including any additional or different terms in Seller's acceptance) shall be

binding on Lessee unless agreed to in writing and signed by Lessee's Purchasing Representative.

5. DELIVERY AND WARRANTY.

At the commencement of the term hereof or on such other dates as may be specified herein, Lessor shall deliver the Property to Lessee at the place or places set forth herein and hereby warrants that such Property is in good condition, satisfactory for continuous and efficient use for the purpose(s) for which it was designed and for any additional purposes, uses, requirements, descriptions, and specifications set forth in this Order.

6. REJECTION.

If the condition of the Property, when received by Lessee, is not in conformity with the requirements or specifications of this Order, Lessee may reject all or any part of the Property and on notifying Lessor of such rejection, and at Lessee's election and Lessor's risk and expense, such items shall be held by Lessee or returned to Lessor, and Lessor shall immediately accomplish necessary repairs, corrections or replacement of the Property at Lessor's expense.

7. MAINTENANCE, REPAIR, AND REPLACEMENT.

Lessor shall maintain, repair, and replace the Property to the extent necessary to keep such property available to Lessee during the term of this Order in good condition satisfactory for continuous and efficient use for the purpose for which it was designed and for all the additional uses and requirements set forth in this Order.

8. PROTECTION OF PROPERTY.

Lessee shall use reasonable efforts to protect the Property from loss or damage.

9. RENTAL.

Upon the submission of proper invoices by Lessor, Lessee shall promptly pay Lessor rent at the times and in the amounts set forth herein for the possession and use of the Property. Unless due to the fault or negligence of Lessee, no rental shall accrue or be due with respect to the Property for the periods during which the Property is unavailable to or unusable by Lessee because the Property fails to comply with and function in accordance with the requirements of this Order.

10. USE.

Lessee may use the Property in any reasonable manner consistent with the purpose for which it was designed and for all additional uses and requirements set forth in this Order.

11. RETURN.

Upon termination or cancellation of this Order Lessee shall return the Property to Lessor at the location specified herein in as good a condition as when the property was received; provided, however, Lessee shall not be liable for (1) normal wear, tear and depreciation, (2) any loss or damage to the Property except loss or damage caused by Lessee's fault or negligence, and (3) any loss or damage covered by insurance maintained by Lessor or other persons having an interest in the Property.

12. TITLE.

Title to Property is and shall remain in Lessor and Lessee shall not sell, assign to third parties, or mortgage the Property or otherwise permit such Property to be subject to any encumbrance or legal process.

13. TERM AND TERMINATION/CANCELLATION.

- A. The Term of this rental, unless sooner terminated or cancelled as herein provided, shall be for that period of time as set forth on the Order.
- B. Termination-Convenience. The performance under this Order may be terminated in whole or in part, by Lessee for Lessee's convenience at any time and for any reason on Lessee giving written termination notice to Lessor and Lessee shall return the Property affected by the termination to Lessor and pay Lessor the unpaid balance of any rent due with respect to such Property prorated as of the date of the Termination.
- C. Cancellation-Default. Except in the case of delay or failure resulting from circumstances beyond the control and without the fault or negligence of the defaulting party, either party shall be entitled, by written cancellation notice to the other, to cancel the whole or any part of this Order for default, without granting an extension of time, and to have all other rights against the defaulting party by reason of the default as provided by law. If Lessee cancels because of an alleged default of Lessor and it is later found that Lessor was not in default, the rights and obligations of the parties shall be the same as if Notice of Cancellation had been issued by Lessee pursuant to Clause 13.B, Termination-Convenience.

14. LESSOR'S DATA.

Any knowledge, information, drawings, designs, data or computer programs (herein called "Data") which Lessor discloses to Lessee in connection with this Order, which

Data Lessor has not marked with a proprietary legend, shall not be considered as proprietary to Lessor or in any way restrict Lessee's use of such Data.

15. 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.

16. DELEGATION AND ASSIGNMENT.

No delegation of any duties under this order shall be binding upon Lessee until its written consent thereto has been obtained. Lessor is requested to inform Lessee prior to any assignments of rights to moneys due or to become due under this Order.

17. COMPLIANCE WITH LAWS.

- A. Federal, State and Local Laws. Lessor warrants that in the performance of this Order, it will comply with all applicable Federal, state and local laws including but not by way of limitation all applicable requirements of Sections 6, 7 and 12 of the Fair Labor Standards Act (29 U.S.C. 201-219) as amended, and of regulations and orders of the U.S. Department of Labor issued under Section 14 thereof.
- B. Equal Opportunity. Buyer is an "Equal Opportunity" employer and Lessor shall, therefore, comply with the provisions of the President's Executive Order 11246 as supplemented and all related regulations of the Department of Labor.

18. NONWAIVER.

Any failure at any time of Lessee to enforce any provision of this Order shall not constitute a waiver of such provision or prejudice the right of Lessee to enforce such provision at any subsequent time.

19. PARTIAL INVALIDITY.

If any provision of this Order is or becomes void or unenforceable by force or operation of law, the other provisions shall remain valid and enforceable.

20. CLEARANCE OF MATERIALS INTENDED FOR PUBLIC RELEASE.

No news release, including photographs and films, advertisement, public announcement, denial or confirmation of same, or any part of the subject matter

of this Order or any phase of any program hereunder shall be made without prior written approval of Lessee.

21. TAXES AND FEES.

Lessor shall be obligated to pay all license fees and business, transfer, or other taxes which are now or transaction by any unit of government except applicable state sales or use taxes and property taxes applicable to Lessee's use and possession of the Property

22. 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.

23. 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.

24. 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.

25. 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.

26. 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. ForeignPersonnel/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 and 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.