

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. ORDER OF PRECEDENCE.

In the event of any inconsistency between any parts of this Order, the inconsistency shall be resolved by giving precedence in the following order:

- A. Change Order Document
- B. Purchase Order Document
- C. Purchase Order Terms and Conditions
- D. Statement of Work
- E. Other Referenced Documents

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. 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.

14. 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.

15. 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.

16. RESERVED.

17. 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.

18. RESERVED.

19. 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.

20. 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.

21. ASSIGNMENT.

Seller shall not assign any of its rights under this Order without Buyer's prior, written consent, except as specifically stated in this clause. Seller may assign to a bank, trust company, or other financing institution including any Federal lending agency, claims for money due or to become due to Seller from Buyer under this Order, provided:

1. The assignment is limited to one party, covers all amounts payable under the Order and not already paid, is not subject to further assignment, and is made specifically subject to reduction and set off or recoupment for any present or future claim or claims or indebtedness which Buyer may have against Seller;

- 2. Seller furnishes to Buyer written notice of assignment and a true copy of the instrument of assignment.
- B. Buyer may make direct settlements or adjustments in price, or both, with Seller under the terms of this Order notwithstanding any assignment of claims for money due or to become due under this Order and without notice to the assignee.
- C. Seller shall not furnish or disclose to any assignee under this Order or any other person not entitled to receive the same, any classified document or any of Buyer's Proprietary information (including this Order) until and unless authorized to do so by Buyer's authorized representative.

22. 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 supplier. 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.

23. RESERVED

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, counter claim 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. – 27. RESERVED.

28. COMPLIANCE WITH LAWS

Seller warrants that it shall comply with all applicable federal, state, or local laws, rules, and regulations in the performance of this Agreement. Seller 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 Supplier 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.

29. CHOICE OF LAW.

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

30. – 31. RESERVED.

32. 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 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.

33. – 37. RESERVED.

38. 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.

39. 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.

40. COMPLETE AGREEMENT.

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

41. – 42. RESERVED.

43. 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.

44. – 50. RESERVED.

51. CONFLICT OF INTEREST.

Seller warrants that no conflict of interest exists between the Services and Products to be provided under this Order and Seller's other activities. Seller shall immediately advise Buyer of any such conflict of interest or potential conflict of interest which arises during performance of this Order.

52. – 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.