

PSS/T-78
NORTHROP GRUMMAN SYSTEMS CORPORATION
PURCHASE ORDER TERMS AND CONDITIONS
PERSONAL COMPUTER SOFTWARE LICENSE AGREEMENT

Title and Clause Number		Title and Clause Number	
Acceptance	9.	Mergers and Acquisition	82.
Choice of Law	11.	No Warranty of Performance	4.
Clearance of Materials Intended for Public Release	14.	Non-waiver	12.
Compliance with Laws	28.	Partial Invalidity	13.
Confidentiality of Licensor's Information	2.	Patent, Trademark and Copyright Indemnity	10.
Data Breach Notification	88.	Product Vulnerabilities	97.
Data Control	89.	Reporting – IT Software	86.
Definition and Acceptance of Order	1.	Response to Audit	80.
Diskettes Replacement Policy	6.	Restriction on Use and Transfer	3.
Disputes	17.	Software Chain of Custody	85.
Divestitures	81.	Subcontracting	20.
Export and Import	20.	Taxes	15.
Invoice and Payment	16.	Term	8.
Limitation of Liability	7.	Waiver of right to Jury Trial	18.
Limited Warranty for Diskettes	5.		

1. DEFINITIONS AND ACCEPTANCE OF ORDER.

- A. "Customer," "Buyer," "Licensee" or "Lessee" means the entity name listed on the Purchase Order/Subcontract. "Licensor," "Seller" or "Lessor" means the party with whom the Customer is contracting. The term "Purchase Order" means the name or title of the instrument of contracting, including all documents, exhibits and attachments referenced thereon.
- B. This Order constitutes Customer's offer. Acceptance is expressly limited to the terms of the Order and Customer hereby objects to any additional or different terms in the acceptance. This Order is accepted as written by executing the Acknowledgement or Acceptance copy of the Order, or by beginning performance.
- C. No modification of this Order (including any additional terms or different terms contained in the acceptance) shall be binding on Customer unless agreed to in writing and signed by Customer's duly authorized Purchase Representative.

2. CONFIDENTIALITY OF LICENSOR'S INFORMATION.

Notwithstanding any other provisions of this Agreement to the contrary, Customer hereby agrees that it shall use reasonable efforts to avoid disclosure of Vendor's proprietary/ confidential information to any third party other than Customer's consultants, agents and representatives having access to Customer proprietary data. Further, Vendor agrees that all such proprietary/confidential information shall be marked with a stamp or legend indicating its

confidential/proprietary nature. For the purposes of the Agreement, the term "reasonable efforts" shall mean that Customer shall treat such proprietary/ confidential information in accordance with Customer's procedures regarding vendor/ customer proprietary information. Further, Customer shall have the right to copy the software products for backup and archival purposes. Customer shall not be liable for use or disclosure of any such proprietary information if the same is:

- A. In the public domain at the time it was disclosed;
- B. Known to the party receiving it at the time of disclosure;
- C. Used or disclosed inadvertently provided the appropriate degree of care is exercised;
- D. Used or disclosed with the prior written approval of the other party;
- E. Independently developed by the receiving party;
- F. Becomes known to the receiving party without similar restrictions from a source other than the disclosing party having the right to disclose.

3. RESTRICTIONS ON USE AND TRANSFER.

Buyer agrees not to copy or otherwise reproduce any part of the software or the manual or its documentation, except that Customer may load the software into a computer as an essential step in executing the software on the computer. Customer agrees not to distribute copies of the software or the manual to others. CUSTOMER AGREES NOT TO COPY, MODIFY, TRANSFER, SUBLICENSE, RENT, LEASE, CONVEY, TRANSLATE, CONVERT TO ANY PROGRAMMING LANGUAGE OR FORMAT OR DECOMPILE OR

DISASSEMBLE THE SOFTWARE OR ANY COPY, MODIFICATION OR MERGED PORTION, IN WHOLE OR IN PART, EXCEPT AS AUTHORIZED BY THIS AGREEMENT.

4. NO WARRANTY OF PERFORMANCE.

Except as specified in the Purchase Order, Vendor does not warrant the performance or results that may be obtained by using the software and the manual. All products are licensed "as is" without warranty as to their performance, merchantability or fitness for any particular purpose. The entire risk as to the results and performance of the program is assumed by Customer.

5. LIMITED WARRANTY FOR DISKETTES.

Vendor warrants the magnetic diskette on which the software is recorded to be free from defects in materials and faulty workmanship under normal use and service for a period of 180 days from the date software is delivered. If, during this 180-day period, a defect in the diskette should occur, the diskette may be returned to Vendor who will replace the diskette without charge to Customer. Customer's sole and exclusive remedy in the event of a defect is expressly limited to replacement of the diskette as provided above. Any implied warranties of merchantability and fitness for a particular purpose are limited in duration to the period of 180 days from the date of delivery. If the failure of a diskette has resulted from accident, abuse or misapplication of the diskette, then Vendor shall have no responsibility to replace the diskette under the terms of this limited warranty.

6. DISKETTE REPLACEMENT POLICY.

If after 180 days and during the first year after the date of delivery, a defect in the diskette should occur, the diskette may be returned to the Vendor and Vendor will replace the diskette.

7. LIMITATION OF LIABILITY.

Neither Vendor nor anyone else who has been involved in the creation, production, or delivery of this software or manual shall be liable for any incidental, special, exemplary or consequential damages, such as, but not limited to, loss of anticipated profits or benefits, resulting from the use of the program or arising out of any breach of any warranty.

8. TERM.

The License is effective until terminated. Customer may terminate it at any time by destroying the software and the manual together with all copies, modifications and merged portions in any form. It will also terminate if Customer fails to comply with any term or condition of the Agreement. Customer agrees upon such termination to destroy the software and the manual together with all copies, modifications and merged portions in any form. CUSTOMER AGREES THAT THE LICENSE AGREEMENT, THE PURCHASE ORDER AND ANY ATTACHMENTS ARE THE COMPLETE AND EXCLUSIVE STATEMENT OF THE AGREEMENT BETWEEN THE PARTIES AND SUPERSEDES ANY PROPOSAL, OR PRIOR AGREEMENT, ORAL OR WRITTEN, AND ANY OTHER COMMUNICATIONS BETWEEN THE PARTIES RELATING TO THE SUBJECT MATTER OF THIS AGREEMENT.

9. ACCEPTANCE.

Receipt of the software by Customer's shipping personnel shall not constitute acceptance of the software. Customer shall have 30 days after receipt of the software to accept or reject it. Customer's liability in the event of a rejection made within this 30-day period shall not exceed 10 percent of the value of the software exclusive of tax and delivery charges.

10. 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. The limitation of liability stated in paragraph 7 shall not apply to claims brought pursuant to paragraph 10.

11. 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.

12. NONWAIVER.

A Party's failure at any time to enforce any provision of any Order shall not constitute a waiver of the provision or prejudice a Party's right to enforce that provision at any subsequent time.

13. PARTIAL INVALIDITY.

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

14. 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 Agreement or any phase of any program hereunder shall be made without prior written approval of both parties.

15. TAXES.

All prices herein, unless otherwise provided, include all applicable Federal, state and local taxes as may be assessed against Vendor except those sales or use taxes required by law to be paid by Customer.

16. INVOICE AND PAYMENT.

Unless otherwise specified, Seller shall send a separate invoice for each shipment according to the Buyer Invoice Instructions which is incorporated herein and available on the NGC On-line Automated Supplier Information System (OASIS) <https://oasis.northgrum.com/corp/pss/docs/InvoiceInstructions.pdf>. No invoice shall be issued prior to shipment of products. No payment will be made prior to receipt of products and correct invoice and Customer reserves the right to delay payment until the products have been accepted. Payment due dates, including discount periods, will be computed from date of receipt of products and correct invoice (whichever is later). Unless freight and other charges are itemized, any discount taken will be taken on the full amount of invoice. Customer has the right, without loss of discount privileges, to pay invoices covering products shipped in advance of the schedule on the normal maturity after the date specified for delivery. Payment shall not constitute acceptance of the products.

17. 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.

18. 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.

19. 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.

20. 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 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.

21-27. 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.

29-79. 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 - IT 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 software and/or maintenance 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 licenses and/or services (with the exception of any unpaid license and/or maintenance 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 licenses and/or services. Any such assignment or other transfer of licenses to the software and/or maintenance services made to a third party will be subject to the prior written consent of Seller/licensor 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 software products and/or maintenance services covered under this order, or Buyer may purchase such licenses 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. For software. In the event of a divestiture, Buyer shall be permitted to use the software products to provide managed services for the divested entity during a period of transition, provided that Buyer's use in such case is only for the divested entity. Once the transition period ceases, Buyer shall assign the licenses to the divested entity as provided in the "divestiture" provision in this purchase order.
- D. Buyer shall have the unrestricted right to transfer the software license(s) to its parent and/or any subsidiary or affiliate of Buyer upon written notification to Seller/licensor of such transfer without payment of additional costs or fees provided that the number of licenses transferred does not exceed the Buyers total licensed count. In each such instance, Buyer shall inform

Seller/licensor of the transfer, and shall provide details on the name and address of assignee, including which products (and how many licenses of each) are being transferred.

82. MERGERS AND ACQUISITIONS - IT PRODUCTS/SERVICES.

- A. If Buyer merges with or acquires entities that have existing licensed software, the merged, or acquired entity's licenses will terminate upon completion of the acquisition or merger and the merger/acquired entity's licenses will be combined with Buyer's existing licenses of the same license type under the terms of this purchase order, provided that Buyer and the merged/acquired entity are both current on maintenance and there are no outstanding receivables against either account. There shall be no transfer fee for combining the licenses, provided; however, that Buyer will true up the merged or acquired licenses to match Buyer's software configuration and license type(s). Maintenance will continue on the combined number of users. Buyer may, at its option, permit an acquired entity to continue to operate its existing software as a standalone operation, but subject to the terms of this purchase order at no additional cost other than continued maintenance fees.
- C. 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 maintenance services, Buyer and Seller will negotiate a combined maintenance agreement sufficient to cover the combined companies so as to avoid any disruption in service.

83. – 84. RESERVED**85. SOFTWARE CHAIN OF CUSTODY.**

Seller represents and warrants that it has policies and procedures in place to ensure that software code used to develop product(s) has been within Seller's configuration management and control during the entire development process. Should Buyer determine that Seller has supplied product(s) that have failed or do not properly function (i.e. harmful/malicious code embedded into software) due to lapses in the chain of custody, Buyer shall promptly notify Seller and Seller shall at its own expense immediately replace the defective product(s) with product(s) that conform to the software documentation specifications.

86. REPORTING - IT SOFTWARE.

For software. Upon request, Seller will submit within 48 hours a copy of the testing procedures and test results used for the product(s) being procured.

87. RESERVED**88. DATA BREACH NOTIFICATION.**

Seller will promptly notify Buyer of any actual or potential exposure or misappropriation of Buyer data ("breach") that comes to Seller's attention. Seller will cooperate with Buyer and in investigating any such breach, at Seller's expense. Seller will likewise cooperate with Buyer and, as applicable, with law enforcement agencies in any effort to notify injured or

potentially injured parties, and such cooperation will be at Seller's expense, except to the extent that the breach was caused by Buyer. The remedies and obligations set forth in this subsection are in addition to any others Buyer may have.

89. DATA CONTROL.

Seller will have policies and procedures in place to protect any data that Buyer provides, including destruction methods employed and how audit and system log information is protected. Buyer may upon request, review Seller's applicable policies and procedures.

90. – 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.