

CT-78

NORTHROP GRUMMAN SYSTEMS CORPORATION

PURCHASE ORDER TERMS AND CONDITIONS

PERSONAL COMPUTER SOFTWARE LICENSE AGREEMENT

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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. COMPLIANCE WITH LAWS.

A. Federal, State and Local Laws. Vendor warrants that in the performance of this Agreement, it shall comply with all applicable Federal, state and local laws. On its invoice or in other form satisfactory to Customer, Vendor shall submit certification that the products covered by this Agreement were produced in compliance with all applicable requirements of Sections 6, 7, and 12 of the Fair Labor Standards Act (2 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. Customer is an "Equal Opportunity" employer and Vendor shall, therefore, comply with the provisions of the President's Executive License 11246 as supplemented and all related regulations of the Department of Labor.

12. 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.

13. 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.

14. 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.

15. 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.

16. 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.

17. 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 NGSC On-line Automated Supplier Information System (OASIS) https://oasis.northgrum.com/nu_cp_oasis.htm. 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.

18. 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.

19. 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.