

T-3

Purchase Order Terms and Conditions Commercial - Non-End Item Usage - Short Form - (Fixed Price Supply) (2/00)

1. DEFINITIONS

“Buyer” means Northrop Grumman Corporation including its subsidiaries, sectors, and business areas as identified on the face of the Order.

“Order” means the instrument of contracting including this Purchase Order and all referenced documents.

“Parties” means Buyer and Seller collectively.

“Products” means those goods, supplies, reports, computer software, data, materials, articles, items, parts, components or assemblies, and any related services described in the Order.

“Seller” means the Party with whom Buyer is contracting.

2. ACCEPTANCE

This Order is Buyer’s offer to Seller. Seller’s acceptance is expressly limited to the written terms of this Order. No additional or different term shall be binding. Buyer hereby objects to any additional or different terms contained in Seller’s acceptance. Any of the following acts by Seller shall constitute acceptance:

- A. Signing and returning a copy of this Order;
- B. Commencing performance of any effort required to complete this Order;
- C. Informing Buyer of commencement of any effort required to complete this Order;
- or
- D. Shipping of any Products in performance of this Order.

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. Typed Purchase Order.
- B. Purchase Order Terms and Conditions.
- C. Statement of Work.
- D. Specification/Drawing.
- E. Supplier Data Requirements List (SDRL)/Data Item Description (DID).
- F. Other Referenced Documents.

4. DELIVERY, TITLE AND RISK OF LOSS

- A. The FOB point shall be as designated in the Order. Risk of any loss and/or damage to Products occurring before receipt at the delivery point specified shall be Seller’s responsibility. Title shall pass to Buyer upon acceptance (except as otherwise

specified within this Order); however, passing of title shall not relieve Seller of any other obligations under this Order.

- B. All deliveries shall be strictly in accordance with the applicable quantities and schedules set forth in this Order. Unauthorized overshipments and early shipments shall be returned at Seller's expense. Seller shall be liable for all storage/handling charges incurred as a result of overshipments and early shipments.
- C. Whenever it appears Seller will not meet the delivery schedule, Seller shall immediately notify Buyer of the reason and estimated length of the delay. Seller shall make every effort to avoid or minimize the delay to the maximum extent possible including the expenditure of premium time and most expeditious transportation. Any additional cost caused by these requirements shall be borne by Seller.
- D. If Seller is unable to meet the required delivery schedules for any reason, other than a change directed by Buyer, Buyer shall have the option to (1) cancel this Order, or (2) fill such Order or any portion thereof, from sources other than Seller and to reduce Seller's Order quantities accordingly at no increase in unit price, without any penalty to Buyer. **THIS CONDITION SHALL NOT LIMIT BUYER'S RIGHTS UNDER THE DEFAULT CLAUSE CONTAINED HEREIN.**
- E. All Parties expressly agree that time is of the essence in the performance of this Order.

5. INVOICE AND FREIGHT BILL

Seller shall send a separate invoice for each shipment and shall include the following information taken from Buyer's Purchase Order: Purchase Order number, item number, part serial number (if serialized), part number, unit of measure, and unit price. Seller's invoice shall also include: Seller's phone number and address, invoice number, date prepared, item quantity, extended item price, and total invoice value. If Seller's "remit to" address is different than the address indicated on the Purchase Order, clearly identify the "remit to" address on the invoice. No invoice shall be issued prior to shipment of Products. For each shipment made at Buyer's expense (e.g., FOB Origin), Seller shall include a copy of the freight bill (which shall include the weight of items shipped) with each invoice.

6. PAYMENT

Payment due dates, including discount periods, will be calculated from the date of acceptance of Products or correct invoice, whichever is later. Unless freight and other charges are itemized, any discount will be taken on the full amount invoiced. Buyer has the right, without loss of discount privileges, to pay invoices covering Products shipped in advance of schedule on the normal maturity after the date specified for delivery. Payment shall not constitute acceptance of Products.

7. SETOFFS

Any amounts owing to Buyer by Seller may be set off against amounts otherwise due to Seller under this or any other Buyer Order.

8. PACKING AND SHIPPING

Except as otherwise specified in the Order, or referenced documents, normal commercial packaging and packing shall be utilized to assure receipt of acceptable merchandise. No packing or carting charges are authorized without written approval. Seller shall mark all packages and correspondence with the purchase order and the part number.

Damage resulting from improper Product packaging will be charged to Seller.

9. NON-CONFORMING GOODS

If Seller fails to deliver or delivers defective or non-conforming Products, Buyer may:

- A. Accept all or part of the defective or non-conforming Products at an equitable price reduction;
- B. Reject all or any part of a delivery of defective or non-conforming Products, and demand delivery of conforming Products. All rejected Products shall be shipped to Seller at Seller's cost;
- C. Make, or have a third party make, all repairs, modifications, or replacements (the "Corrections") necessary to enable such Product to comply in all respects with Order requirements and charge the cost incurred to Seller; or
- D. Rescind this Order.

Buyer and Seller agree that the Products ordered pursuant to this Order are unique goods.

10. WARRANTIES

The Seller agrees that the Products furnished under this Order shall be covered by the most favorable commercial warranties the Seller gives to any customer for such Products and that the rights or remedies provided herein are in addition to and do not limit any rights afforded to Buyer by any other clause of this Order.

11. 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 the state from which this Order was issued. Pending resolution of any such dispute by settlement or by final judgment, the Parties shall proceed diligently with performance of the Order.

12. RESPONSIBILITY FOR CLAIMS/INDEMNITY

If Seller enters premises of Buyer or its customer, Seller shall indemnify and hold harmless Buyer, its officers, agents and employees from any loss or liability by reason of property damage, personal injury or death arising out of Seller's presence thereon, except when arising solely out of Buyer's fault or negligence. In such events, Seller and its subcontractors shall, at their sole cost and expense, maintain the following insurance coverage in the minimum limits indicated:

Commercial General Liability - \$2,000,000 combined single limit. Coverages shall include but not necessarily be limited to, premises and operations, products and completed operations and contracts.

Automobile Liability - \$2,000,000 combined single limit, covering all owned, hired and non-owned vehicles.

Workers' Compensation and Employers' Liability - the workers' compensation insurance coverage shall be as required by the laws of the jurisdiction where the work is performed. The Employers' Liability insurance limit shall be \$1,000,000.

All insurance required as a part of this Order shall be in at least the minimum amounts specified above, shall be placed with insurance companies which are authorized to do business under the laws of the state in which the work is performed and shall be in a form reasonably acceptable to Buyer. All insurance shall contain a provision prohibiting cancellation of material revision except upon at least thirty (30) days prior written notice to Buyer.

Evidence that the required insurance is in place shall be provided by the Seller in the form of insurance certificates. Each insurance certificate, except for workers' compensation, shall provide that Buyer is named as an additional insured with waiver of subrogation for each required insurance coverage.

The insurance certificates, as evidence that the required insurance is in place, shall be provided to Buyer before any activity that is the subject of this Order is begun. Renewal insurance certificates, if applicable, shall be provided to Buyer at least 15 days prior to the expiration date of the insurance under each required coverage.

Seller will, upon request, provide certificates of insurance prior to entering Buyer's or customer's premises.

13. TAXES

Seller's prices include all applicable federal, state and local taxes.

14. ASSIGNMENT

No delegation of any duties under this Order shall be binding upon Buyer until its written consent thereto has been obtained. Seller is required to provide Buyer a true copy of any assignment of rights to moneys due or to become due under this Order.

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 Products 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.

16. LABOR DISPUTES

Whenever Seller has knowledge that any actual or potential labor dispute is delaying or threatens to delay timely performance of this Order, Seller shall immediately give notice to Buyer including all relevant information. Seller agrees to insert the substance of this clause, including this sentence, in any lower-tier subcontract where a labor dispute might delay timely performance of this Order.

17. COMPLIANCE WITH LAWS

- A. Seller warrants that it shall comply with all applicable federal, state and local laws, rulings, and regulations in effect on the date of this Order.
- B. Seller shall not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin.

18. CHOICE OF LAW

This Order and any dispute arising hereunder shall be governed by the substantive and procedural laws of the state in which the Order is issued, except, as identified in the Order, however that the Conflict of Law provisions of that state shall not apply.

19. 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. Seller agrees to support Buyer's offset commitments. Seller shall provide and execute all necessary documents to evidence Buyer's right to use or assign any offset credits. Buyer reserves the right to assign offset credits generated through Seller's efforts under this Order to third parties.

20. PRICE WARRANTY

Seller warrants that the Product's price does not exceed the price charged by Seller to any other customer purchasing the same or similar Products in like or smaller quantities under similar conditions. Seller agrees to reimburse Buyer promptly upon the discovery of a violation of that principle in the amount of the difference between the lower price charged and that charged Buyer.

21. PARTIAL INVALIDITY

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

22. COMPLETE AGREEMENT

This Order is intended by the Parties as a final expression of their agreement and is the complete and exclusive statement of all terms and conditions of agreement.

23. NONWAIVER

Buyer's failure at any time to enforce any provision of any Order shall not constitute a waiver of such provision or prejudice Buyer's right to enforce such provision at any subsequent time.

24. MODIFICATION

No modification of this Order (including any additional or different terms in Seller's acceptance) shall be binding on Buyer unless agreed to in writing and signed by Buyer's duly authorized Purchasing Representative.

25. INSPECTION, ACCEPTANCE AND REJECTION

- A. All Products are subject to final inspection and acceptance at destination, notwithstanding the FOB point or any payment or prior inspection at source. Final inspection and acceptance will be made at a reasonable time after receipt of Products.
- B. Buyer's failure to inspect any of the Products shall neither relieve Seller from responsibility for non-conforming Products nor impose liability on Buyer therefor.

26. WAIVER OF RIGHT TO A JURY TRIAL.

TO THE MAXIMUM EXTENT PERMITTED BY LAW, SELLER HEREBY WAIVES ITS 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.