

LOCKHEED MARTIN CORPORATION
LOCKHEED MARTIN AERONAUTICS COMPANY

APPENDIX 5

TERMS AND CONDITIONS OF PURCHASE

ROYAL AUSTRALIAN AIR FORCE C-130J PROGRAM

1. Definitions

As used herein "Buyer" means Lockheed Martin Corporation by and on behalf of Lockheed Martin Aeronautics Company; "Seller" means the party identified on the face of this purchase order; "Items" means all required articles, materials, supplies and services (singular "Item," plural "Items"); "PO" means this purchase order; "Buyer's Authorized Representative" means the person or persons authorized by Buyer to alter, modify or change the provisions of this PO; and "Prime Contract" means the contract between Buyer and its customer under which this PO is issued.

1a. Additional Definitions

As used throughout this PO and documents related to performance hereunder, the following terms shall have the meanings set forth below except as otherwise noted:

- (a) The term "Government" means government of the Commonwealth of Australia except in the phrase "U.S. Government" where it means the government of the United States of America.
- (b) The term "Commonwealth" means Commonwealth of Australia and includes its officers, agents, and employees.
- (c) The term "Commonwealth Intellectual Property" means all Intellectual Property which results from, or which is otherwise created pursuant to or for the purposes of, the performance of this PO or a lower tier subcontract thereto.
- (d) The term "Seller Intellectual Property" means Intellectual Property which is or becomes proprietary to Seller and which is embodied in, or attaches to the Items, or is otherwise necessarily related to the functioning of the Items. This includes (without limitation) all Intellectual Property brought into existence after the effective date of this PO for the purposes of performing the contract but excludes Commonwealth Intellectual Property.
- (e) The term "Intellectual Property" includes all copyright and all rights in relation to inventions, plant varieties, registered and unregistered trademarks (including

service marks), registered and unregistered designs, and circuit layouts, and all other rights resulting from intellectual activity in the industrial, scientific, literary or artistic fields and Technical Data.

- (f) The term "Ozone Depleting Substance" means any substance prescribed in the Ozone Protection Act of 1989, or any complementary legislation of a State or Territory of Australia.
- (g) The term "Product Definition Data" means that data which fully describes the Items (both hardware and software) accepted by the Commonwealth. It includes, without limitation, data such as production and engineering drawings, schematic diagrams, wiring diagrams and lists, software source listings, and software variable indexes and cross-references, down to the Configuration Item level which describe the geometry, topology, relationships, tolerances, attributes and features to completely define a component part or assembly of parts or software modules.
- (h) The term "Project Authority" or "PA" means the person holding or performing the office of the Director of Transport and Training Projects - Air Force (DTTPROJ-AF) or the person for the time being holding, or performing the duties of that position or of any position which may replace it.
- (i) The term "RAAF" means the Royal Australian Air Force.
- (j) The term "Service Data" means data which describes how the Items (both hardware and software) are to be operated, maintained or modified. It includes, without limitation, data such as the operation or operating manuals, maintenance manuals and schedules, and manuals which describe how software updates are performed.
- (k) The term "Software" means computer programs consisting of a series of instructions or statements, in machine readable (object code) form or a systematized collection of data in object code form including any operating system or any such programs which may be hardwired into read-only memory integrated circuits or similar firmware devices, together with any associated materials and documentation, flow charts, logic diagrams and listings being items of software specified in the Items.
- (l) The term "Software Documentation" means the information that describes or specifies the design or details, explains the capabilities, or provides operating instructions for using the Software or to obtain desired results therefrom including without limitation software requirement specifications, Software Design Documentation, software support manuals, programming standards, software development files/folders, software programming manuals, test specifications, test descriptions, test reports, Source Listings.

- (m) The term "Source Code" means the Software in its human readable form
- (n) The terms "Source Listings" means document(s) generated by whatever means which list Source Code, and any other information which is necessary to render the Source Code useable, such as that which results from compiling or other processes.
- (o) The term "Design Data" means data which describe the internal design and operation of the Items (both hardware and software), describe how each item of hardware and software interfaces with other items of hardware and software, and documents the design process. This includes, without limitation, data at the system level down to the level of individual Configuration Items (with reference to inputs, outputs and processes), such as theory of operation manuals, design calculations and related information, design assumptions, math model reports, explanations of particular codes, standard headers or distinct procedures, design documents and reports for hardware and software and for the system as a whole, as well as the specifications to which the Items and their component systems and parts are designed and the tests required to establish performance, so as to provide: (a) a complete and accurate technical description of the design and operation of the system and its Configuration Items and aggregates of Configuration Items to permit investigation and isolation of failures and defects in service; (b) a clear understanding of the design and operation of internal interfacing and external interfacing systems; and (c) material and information to enable modifications and design enhancements to be implemented and fully tested.
- (p) The term "Configuration Item" means a collection of hardware or software elements treated as a unit for the purpose of configuration management.
- (q) The term "Software Design Documentation" means the description of the internal design and operation of the computer program and its interfaces with the hardware in which it operates, including explanations of particular codes, standard headers or distinct procedures (with reference to inputs, outputs and processing) so as to provide: (a) a clear understanding of the design and operation of internal interfacing and external interfacing software systems; (b) a complete and accurate technical description of the design and operation of the software system to permit investigation and isolation of software failures and defects in service; and (c) material and information to enable software modifications and design enhancements to be implemented and fully tested.
- (r) The term "Source Data" means all data which is used as a basis for the design or selection of the Items (both hardware and software). It includes, without limitation, Source Code, Primary Design Criteria and data relating to elements of the Items which were not designed or developed specifically for the Contract, and all data items which define requirements or impose limitations or constraints on the design of the Items.

- (s) The term "Technical Data" means recorded information regardless of form or method of recording, of a scientific or technical nature, relating to the Items including, without limitation, Design Data, Product Definition Data, Service Data, Software Documentation and Source Data, such as engineering design data, computer aided design data, computer aided engineering data, computer integrated manufacturing data, configuration management data, process planning and control data, test specifications and test descriptions, bill of materials data, inventory data, technical publication data, software requirement specification, Software Design Documentation, software support manuals, programming standards, software development files/folders, software programming manuals, test specification, test descriptions and Source Listings. It includes manuals, handbooks, notebooks, designs, standards, specifications, reports, writings, models, sketches, plans, circuit diagrams, schematic diagrams, drawings, programs, other similar items in a material form and expressly excluding financial or management data.
- (t) The term "Latent Defect" means a defect or deficiency in design, materials or workmanship in the Items or part of the Items which could not have been discovered by Buyer using the acceptance testing methods specified in this PO or by reasonable inspection prior to formal acceptance of the Items by Buyer

2. Delivery

- (a) Delivery according to schedule is a material condition of this PO.
- (b) In the event of termination or change, no claim will be allowed for any manufacture or procurement by Seller in advance of reasonable flow time unless Buyer's prior written consent has been obtained by Seller for such advance manufacture or procurement. Buyer shall have the right to return or store at Seller's expense any Item delivered in advance of the scheduled delivery date specified for such Item unless Buyer has given such prior written consent for such advance delivery.
- (c) If, at any time, it appears to Seller that any delivery schedule cannot be met, Seller shall notify Buyer as soon as possible as to the cause or causes thereof, action being taken to remove such cause or causes and when on-schedule status will be achieved. Seller, at its expense, shall take reasonable action necessary, with or without request of Buyer, to meet such schedules as set forth herein or to recover to the maximum extent possible any delay caused by Seller in meeting such schedule. Notification given and/or action taken by Seller under this clause shall in no way limit Buyer's rights under other provisions of this PO, at law, or in equity.

3. Variation in Quantity

Items shall not be supplied in excess of quantities specified herein, except for allowed shipping tolerances, if any. Seller shall be liable for handling charges and return shipment costs for any excess quantities; and, unless Seller agrees to pay and does pay such charges and costs within a reasonable time, the overshipped material will be retained by Buyer at no cost and shall become the property of Buyer.

4. Prices

Unless otherwise specified, prices are f.o.b. destination and shall include all applicable federal, state and local taxes, duties, tariffs, and similar fees imposed by any government. The price includes all charges for boxing, packing, crating, drayage, storage, dunnage, and bundling. Seller warrants that prices charged for Items are not higher than those charged to any other customer, including the Government, for items of like grade and quality in similar or lesser quantities.

5. Invoices, Payments, and Discounts

Unless otherwise provided, terms of payment shall be Net 30 days from the later of the following:

- (a) Buyer's receipt of Seller's correct invoice;
- (b) scheduled delivery date, or scheduled completion of performance of the Items;
or
- (c) actual delivery, or completion of performance of the Items.

Buyer shall have a right of setoff against payments due under this PO for any amounts at issue under this PO or other purchase orders between Buyer and Seller.

6. Warranty

(a) Seller warrants that:

- (1) Each of the Items shall, upon tender of delivery, conform to the applicable specifications the requirements of this PO;
- (2) Each of the Items shall, and in the event of redesign, repair, rework or replacement by Seller of any non-conforming accessory, equipment, or part pursuant to this Article, each such repaired, reworked or replaced item shall, upon tender of delivery, be free from defects in:
 - (i) Composition or substance of material; and
 - (ii) Workmanship or defects in material arising from workmanship or

processes of manufacture; and

- (iii) Design including changes to design and the effect of such changes on unaltered elements of earlier design, in view of the state of the art at the time of such design and of such changes, respectively;
- (b) All manuals, drawings, and data prepared by Seller and delivered to Buyer or the Commonwealth under this PO shall, in form and substance, be accurate and free from deficiencies in accordance with accepted aircraft manufacturing and engineering standards; and
- (c) Buyer's remedy for a breach of the warranties set forth in paragraph (a)(1) and (a)(2) and Seller's obligation and liability therefor shall be:
 - (1) In the event that the warranties are breached as a result of a design defect, one of the remedies provided for in paragraph (d) below; or
 - (2) In the event that the Warranties are breached as a result of a reason other than design defect; repair, rework or replacement of any non-conforming accessory, equipment or part or correction of any defective or non conforming manuals, drawings or technical data which have been provided to Buyer by Seller.
- (d) Where a warranty set forth in paragraph (a)(1) or (a)(2) has, as a result of a design defect, been breached by Seller, Seller shall in its discretion either:
 - (1) Repair or rework defectively designed items so that they perform as if they had not been defectively designed;
 - (2) Redesign and replace defectively designed items so that they are no longer defective: or
 - (3) Continue to repair or replace all items affected by the design defect for a period of sixty (60) months from the date of notice; provided, however, that if Seller offers another customer the remedy set forth in subparagraph (d)(2) during such period Seller shall offer that remedy to Buyer at that time.
- (e) Subject to paragraph (f), Seller's obligation and liability under paragraphs (b) and (c) are expressly conditioned upon:
 - (1) Buyer notifying Seller of such defect or non conformance within sixty (60) days after discovery thereof;
 - (2) In respect of defects or non-conformances of Items incorporated into an aircraft:

- (i) Any defect (other than a Latent Defect) being notified by Buyer to Seller within twelve (12) months after acceptance of the Aircraft containing the defect or non-conformance, or before such Aircraft has been operated for one thousand (1000) flight hours whichever occurs later:
 - (ii) Any Latent Defect in the Items being notified by Buyer to Seller within twenty-four (24) months after acceptance of the aircraft containing the Items; and
 - (3) In respect of defects or non-conformances relating to a part of the Items not incorporated into an aircraft;
 - (i) Any defect (other than a Latent Defect) being notified by Buyer to Seller within twelve (12) months after acceptance of such part of the Items by Buyer, or, in the case of Items furnished directly to the Commonwealth, within twelve (12) months after acceptance of such part by the Commonwealth; and
 - (ii) Any Latent Defect in the Items being notified by Buyer to Seller within twenty-four (24) months after acceptance of the aircraft containing the Items; and
 - (4) The notice referred to in subparagraph (e)(1) stating such particulars as may reasonably be necessary to notify Seller of the nature of the asserted defect or non-conformance:
 - (5) Buyer providing such facts as are reasonably necessary to support its assertion that the asserted defect or non-conformance is due to a matter embraced within the said warranty and providing reasonable support for the fact that it did not result from acts or omissions of Buyer: and
 - (6) The delivery by Buyer, at Buyer's expense to Seller or its agent at such other place as may be agreeable to Buyer and Seller, of such of the items asserted to be defective or non-conforming as are necessary to enable Seller to redesign, repair, rework or replace (as the case may be) the defective or non-conforming item. Buyer shall pay transportation costs to the point of repair or replacement, it being agreed that Seller shall bear the expense of return transportation of the item or any redesigned, repaired, reworked, replacement or corrected item to Buyer or to Buyer's customer in Australia as directed by Buyer.
- (f) If the defect or non-conformance relates to a redesigned, repaired, reworked, replaced or corrected item, then the period for giving notice shall extend for:

- (1) A period equal to the unexpired portion of the original period for giving notice of a defect under this warranty; or
 - (2) Shall expire six (6) months after the delivery of that item to Buyer; whichever is later.
- (g) Buyer shall, in addition to its other rights whether under this PO or otherwise, be entitled to elect to take the benefit of any warranty provided by any lower tier subcontractor and, in that event, Seller shall enforce its rights against the relevant lower tier subcontractor so as to provide that benefit to Buyer.
- (h) Seller will perform all obligations under this Article expeditiously, and in a manner to minimize to the extent reasonably possible the impact on RAAF operational capability that a failure to comply in a timely manner will cause Buyer and the Commonwealth. Without limiting the generality of the foregoing, Seller shall take any reasonable measures requested by Buyer to enable Buyer or the Commonwealth to continue to use the Items until the remedies are implemented. In the event Seller does not timely comply with its obligations under this Article, Buyer may notify Seller that the responsibilities are not being exercised in a timely period. Within thirty (30) days of such notice, Seller shall either remedy the circumstance or provide a mutually agreeable plan. In the absence of such a remedy or mutually agreeable plan, either Buyer or the Commonwealth may perform the work or cause another party to perform the work and Seller shall pay such costs.
- (i) Year 2000 compliant, as used in this clause, means that with respect to information technology, that the information technology accurately processes date/time data (including but not limited to, calculating, comparing, and sequencing) from, to, and between the twentieth and twenty-first centuries, and the years 1999 and 2000 and leap year calculations, to the extent that other information technology, used in combination with the information technology being acquired, properly exchanges date/time data with it.

Any and all products provided hereunder will be Year 2000 compliant at the time of delivery to Lockheed Martin Corporation (Lockheed Martin), including but not limited to accurately inputting, storing, manipulating, comparing, calculating, updating, displaying, outputting, and transferring such dates and data unless otherwise expressly provided herein by Lockheed Martin.

This provision takes precedence over all other provisions of this agreement with respect to Year 2000 compliance. In the event of a discovery of any non-compliance, either before, concurrent with, or subsequent to delivery of a good or service under this agreement, the discovering party shall notify the other party within five (5) business days of discovery. If the defective good or service is being presented for acceptance or has already been delivered, at Lockheed

Martin's option, the defective good or service shall be repaired or replaced within ten (10) business days of such notice at no cost to Lockheed Martin.

Nothing in this provision shall be construed to limit any other rights or remedies under this contract, at law or in equity that Lockheed Martin may have with respect to Year 2000 compliance.

- (j) Seller's warranties, as set forth in this Article, are exclusive, are in lieu of, and Buyer hereby waives all other warranties, express or implied, including, without limitation, any implied warranties of merchantability or implied warranties of fitness.
- (k) The warranties provided herein run to Buyer and its customer.

7. Compliance with Laws

- (a) Seller shall comply with the applicable provisions of all Federal, state, and local laws and ordinances and all lawful orders, rules and regulations promulgated thereunder including without limitation the Arms Export Control Act; and such compliance shall be a material requirement of this PO. Seller agrees to indemnify Buyer against any loss, cost, damage or liability by reason of Seller's violation of this clause.
- (b) Seller warrants that each chemical substance constituting or contained in Items sold or otherwise transferred to Buyer hereunder is on the list of chemical substances compiled and published by the Administrator of the Environmental Protection Administration pursuant to The Toxic Substances Control Act (15 U.S.C. Sec. 2601 et seq.) as amended.
- (c) Seller shall provide to Buyer with each delivery any Material Safety Data Sheet applicable to the Items and containing such information as required by the Occupational Safety and Health Act of 1970 and regulations promulgated thereunder.

8. Responsibility for Property

Unless otherwise specified, Seller shall be liable for any loss or destruction of or damage to property of Buyer or of any customer property Seller whether furnished to Seller by any such customer or Buyer; and, Seller shall be responsible for returning any such property in as good condition as when received except for reasonable wear and tear and for the utilization of it in accordance with the provisions of this PO. Upon request of Buyer, such property will be delivered to Buyer at Seller's expense. Seller shall promptly notify Buyer if such property is lost, destroyed or damaged. Title thereto shall not be affected by the incorporation or attachment to any property not owned by Buyer, nor shall any such property, or any part thereof, be or become a fixture or lose its identity as personalty by reason of affixation to any realty. All

property furnished by Buyer shall be used solely in the performance of this PO or other POs issued by Buyer.

9. Special Tooling and Test Equipment

Except as may be otherwise provided for in this PO, jigs, dies, fixtures, molds, patterns, special gages, and other items of special tooling (including software) and special test equipment, shall be furnished by and at the expense of Seller. Special tooling and test equipment shall be kept in good condition by Seller and replaced as necessary by Seller, without expense to Buyer. Title to special tooling and test equipment shall remain in Seller, except that Buyer may, at any time, reimburse Seller for the cost of part or of all special tooling and test equipment, and upon payment therefor shall become the sole owner thereof. Buyer shall at all times have unrestricted access to all such tooling, equipment, and information pertinent thereto for purposes of quality control, evaluation and verification.

10. Data Rights

(a) Rights and Reservations. The information contained in reports, drawings, documents or other records which are furnished to Seller by Buyer (hereinafter referred to as "property") relative to this PO, to the extent that such information is not in the public domain, shall not be disclosed to others, except to subcontractors as necessary for completion of this PO, in which event the subcontractors shall have the same obligation of nondisclosure and restriction on use. Such information shall not be used or reproduced for any purpose whatsoever except in the performance of work under this PO. Upon completion, termination or cancellation of this PO, Seller shall, if requested by Buyer, return all property to Buyer thirty (30) days after the effective date of such completion, termination or cancellation. Any such property of Buyer retained by Seller shall remain subject to the foregoing restrictions on use, reproduction and disclosure.

(b) Rights in Seller Data.

(1) In addition to any other provision of this PO providing Buyer and/or Buyer's customers rights in Data delivered under this PO, Seller grants to Buyer:

(i) A worldwide, perpetual, royalty-free, non-exclusive right and license to: (A) utilize and have utilized on Buyer's behalf the Data delivered under this PO for Buyer's own internal purposes in connection with the development, certification, validation and production of the Hercules (C-130J/382J) Aircraft, and (B) disclose the Data delivered under this PO, in confidence, to any third party for accomplishing such internal purposes, providing any such disclosure is made pursuant to a written understanding precluding unauthorized use and disclosure by provisions no less restrictive than those imposed on the Parties hereunder; and

- (ii) A worldwide, perpetual, royalty-free, non-exclusive right and license to grant to Buyer's customers the right to: (A) utilize and have utilized by Buyer's customer, the Data delivered under this PO for the operation, maintenance and repair of Hercules Aircraft, and (B) disclose the Data delivered under this PO, in confidence, to any third party for the operation, maintenance, and repair of the Hercules Aircraft, providing any such disclosure is made pursuant to a written understanding precluding unauthorized use and disclosure by provisions no less restrictive than those imposed on the parties hereunder.
- (2) Seller further agrees to negotiate in good faith with Buyer's customers and potential customers such further rights to Data of Seller, should Buyer's customers or potential customers so desire.
- (3) "Data" as used in this paragraph (b) means recorded information regardless of form or the method of recording. Data includes, but is not limited to, computer software and copyrightable works.
- (c) With respect to any design or development work required to be performed at Buyer's expense under this PO, Seller hereby sells, assigns, and transfers to Buyer all right, title and interest in and to all trade secrets, inventions, intellectual property rights, data, design rights, drawings, reports and documentation relating to items developed as a result of said work.

11. Patent Indemnity, Trademarks, Trade Secrets and Copyrights

To the extent that Items are produced to detailed designs not originated and furnished by Buyer, or by a process or method the use of which is not specifically directed by Buyer, Buyer shall have no responsibility to Seller for patent infringement and Seller warrants that the sale or use of such Items or the use of such processes or methods hereunder will not infringe any United States or foreign patents, trademarks, trade secrets, copyrights or other property rights. Seller shall defend, indemnify and hold Buyer and its customers harmless from any loss, including without limitation, cost, damage, expense (including attorney's fees) or liability which may be incurred on account of infringement or alleged infringement of patent rights, trademarks, trade secrets, copyrights or other property rights with respect to such Items and defend at its own expense any action or claim in which such infringement is alleged by third parties, provided Seller is notified of such actions or claims against Buyer and/or its customers. Indemnification shall not apply to infringements arising from use by Buyer of an Item supplied by Seller in combination with other items where infringement would not have occurred from the normal use of which such Item was designed.

12. Entry on Buyer's Property; Insurance

- (a) In the event that Seller or Seller's employees, subcontractors, or agents enter onto Buyer's premises for any reason in connection with this PO, Seller and such other parties shall observe all security requirements and all plant safety, plant protection, and traffic regulations.
- (b) Seller, and any subcontractors used by Seller in connection with this PO, shall carry Worker's Compensation and Employee's Liability Insurance to cover Seller's and such subcontractors' legal liability on account of accidents to their respective employees. Seller and its subcontractors shall carry adequate Comprehensive General Liability and adequate Comprehensive Automobile Liability Insurance covering the legal liability of Seller and such subcontractors on account of accidents arising out of the operations of Seller or such subcontractors and resulting in bodily injury, including death, being sustained by any person or persons, or in any damage to property. At Buyer's request, Seller shall furnish to Buyer certificates from Seller's insurers showing such coverage in effect and agreeing to give Buyer ten (10) days' prior written notice of cancellation of such coverage.

13. Amendments Required by the Prime Contract

Seller agrees that upon Buyer's request, it will from time to time enter into amendments of this PO to incorporate additional provisions herein or to change the provisions hereof, as Buyer may reasonably deem necessary in order to comply with the provisions of the prime contract(s) or with the provisions of amendments to the prime contract(s) under which this PO is issued. If any such amendment to this PO causes an increase or decrease in the cost of this PO, or the time required for performance of this PO, an equitable adjustment shall be made in the price or delivery schedule, or both, in accordance with the provisions of the "Changes" clause of this PO.

14. Remedies/Waiver

- (a) The rights and remedies provided under this PO shall be cumulative and in addition to any other rights and remedies provided by law or equity.
- (b) Failure by Buyer either to enforce at any time the provisions hereof or to protest at any time any breach or default hereof shall not be construed as evidence to interpret the requirements of this PO, nor as a waiver of the requirements of such provisions, nor of the right of Buyer thereafter to enforce each and every such provision. Buyer's approval of documents shall not relieve Seller from compliance with specifications related to this PO.

15. Assignment

Neither this PO nor any duty or right under it shall be delegated or assigned by Seller without the prior written consent of Buyer, except that claims for monies due or to

become due under this PO may be assigned to a bank, trust company or other financing institution, including any Federal lending agency, by Seller without such consent. Seller shall furnish Buyer with two signed copies of any such assignment. Payment to an assignee of any such claim shall be subject to set-off or recoupment for any present or future claim or claims which Buyer may have against Seller. Buyer shall have the right to make direct settlements or adjustments in price, or both, with Seller under the terms of this PO notwithstanding any assignment of claims for monies due or to become due hereunder and without notice to the assignee.

16. Environmental Issues

- (a) Prohibition of Hazardous Substances Without Consent. (1) The Commonwealth considers the substances so defined or listed in the National Occupational Health and Safety Commission Guidance Note for determining and classifying a Hazardous Substance (NOHSC:30011 (1991)), in all forms, to be hazardous substances. Subject to subparagraph (a)(2), such substances shall not be used in the Items without prior written consent of Buyer. Buyer shall have absolute discretion as to whether or not to grant that consent and as to what conditions to impose.
- (2) Seller is hereby authorized to include in the Items the Hazardous Substances listed on the face of this PO.
- (3) Where consent is given under subparagraph (a)(1) and in the case of a Hazardous Substance listed on the face of this PO, Seller shall ensure in respect of the Items that:
- (i) Full details of any hazardous substances (as identified in accordance with subparagraph (a)(1)) included in the Items are provided to Buyer;
 - (ii) All documentation, including that related to operation, maintenance, assembly, shipping and handling, is clearly endorsed to identify the presence and nature of the hazard;
 - (iii) All Items containing hazardous substances bear appropriate labels which clearly identify the nature of the substances, the associated hazards and appropriate safeguards; and
- (4) In addition to any other provision for indemnification under this PO, Seller hereby indemnifies and shall keep indemnified Buyer against any all liability, loss, damages, costs (including the costs of any reasonable settlement) compensation or expense whatsoever incurred by Buyer which arises out of any action, claim or proceeding in respect of incorporation or use in the Items of hazardous Substances for which consent has not been

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given under this Article or which have not otherwise been expressly approved by Buyer during performance of this PO.

- (5) Seller undertakes to advise Buyer, at any time during the production of Items, within a thirty (30) day period of becoming aware of a non-hazardous substance which could be substituted for a hazardous substance permitted under subparagraph (a)(1) without significant detriment to the performance of the Items.
- (6) All Items for delivery under this PO shall conform to all laws relating to any hazardous substance included therein which apply in the country of manufacture.
- (7) Items containing an unauthorized hazardous substance may be rejected by Buyer.

(b) Ozone Depleting Substances.

- (1) Seller shall not provide Items containing an Ozone Depleting Substance unless authorized by Buyer. Buyer shall have absolute discretion as to whether or not to grant that consent and as to what conditions to impose.
- (2) Buyer shall not authorize the provision of Ozone Depleting Substances unless the importation or manufacture of the substance is licensed, and Seller shall not in the importation or manufacture exceed the quota applying to Seller for the substance.
- (3) Items containing an unauthorized Ozone Depleting Substance may be rejected by Buyer.
- (4) Seller is hereby authorized to include in the Items the Ozone Depleting Substances listed on the face of this PO.

17. Consideration

Seller shall, for the consideration hereinafter mentioned and within the time specified, accomplish all required services, testing, manufacturing and other work; deliver to Buyer the Items provided for in this PO; and grant to Buyer the right to exercise the options, if any, provided for in this PO.

18. Technical Surveillance

Buyer and authorized representatives of Buyer's customers shall have direct access to all areas of Seller's and Seller's subcontractors' plants where work under this PO is being performed, to review progress and witness testing of the Items related to this PO. Seller shall include this clause in all of Seller's subcontracts under this PO.

19. Governing Law

If this PO specifies that the Items furnished hereunder are to be delivered directly to or performed at a Buyer facility, the laws, excluding choice of state law rules, of the state where the Items are delivered or are performed shall apply to the interpretation and construction of this PO. For Items neither delivered directly to nor performed at a Buyer facility, the laws of the state of Texas, excluding choice of state law rules, shall apply.

20. Acceptance of Order

This PO is the entire agreement between the Buyer and Seller in respect of the subject matter of this PO and is subject to the terms and conditions herein. This PO supersedes all communications, representations or agreements, oral or written, between Buyer and Seller with respect to the subject matter of this PO. Either: (a) acknowledgment of this PO, (b) furnishing of Items under this PO, (c) acceptance of payment under this PO, or (d) commencement of performance of this PO, shall constitute Seller's unqualified acceptance of this PO. Additional or differing terms or conditions proposed by Seller or included in Seller's acknowledgement hereof shall be void and have no effect unless accepted in writing by Buyer.

21. Packing, Shipment and Shipping Instructions

- (a) Unless otherwise specified by Buyer, Seller shall assure that all packing and packaging shall comply with good commercial practice and applicable carrier's tariffs. The use of commercial practices shall not relieve Seller of responsibility for packaging in a manner that will insure receipt of Items in an acceptable condition at the destination specified in this PO.
- (b) Seller shall assure the packaging, labeling and shipping of all HAZARDOUS SUBSTANCES including DANGEROUS MATERIALS, conforms to all applicable international, federal, state and local laws and regulations.
- (c) Seller shall mark on the outside of each exterior container: (i) the PO number(s) or numbers of the Items packed in that container; (ii) the sequence and quantity of each exterior container in each shipment (such as "1 of 3"); (iii) the bill of lading/express receipt number. If shipments against more than one purchase order are packed in one exterior container, mark each intermediate container with its applicable purchase order number.
- (d) Seller shall properly describe Seller's Less than Truckload shipments in accordance with the National Motor Freight Classification to insure the correct classification rate. Include this PO number on all carrier bills of lading and shipping labels. Combine on the same bill of lading, all shipments consigned to the same Buyer address and ship on the same day. No C.O.D. (Collect on Delivery) shipments will be received by Buyer. There shall be no deviation from these routing instructions unless such deviation is approved prior to shipping by Buyer's Authorized Procurement Representative or Buyer's Traffic Department.

- (e) Seller shall be responsible to Buyer for any increased costs to Buyer which result from Seller's failure to follow Buyer's routing instructions if such instructions are specified on the face of this order.

22. Public Release of Information

No public release (including, without limitation, photographs, films, announcements, denials or confirmations of same) on any part of the subject matter of this PO or any phase of any program hereunder shall be made without the prior written approval of Buyer.

23. Disputes

Except as otherwise provided in this PO, Buyer and Seller shall have the right to redress any dispute arising under or related to this PO, which is not disposed of by agreement, by pursuing any right or remedy which Buyer or Seller, as the case may be, may have at law, in equity or under this PO in any United States court of competent jurisdiction. Pending resolution of any dispute, Seller shall proceed diligently with the performance of work, including the delivery of Items in accordance with Buyer's direction. Upon resolution of any such dispute, this PO shall be equitably adjusted, if necessary, to reflect such resolution.

24. Severability of Provisions

Any provision of this PO that is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition, and shall be unenforceable in that jurisdiction without invalidating the remaining provisions hereof or affecting the validity or enforceability of such provisions in any other jurisdiction.

25. Contractual Commitments

The parties agree that there shall be no adjustment in the price, time for performance or any other provision of this PO unless Buyer's authorized representative shall have issued a written order directing a change hereto.

26. Changes

- (a) Buyer's Authorized Representative may at any time, by written notice, and without notice to sureties or assignees, make changes within the general scope of this PO in any one or more of the following: (i) drawings, designs or specifications; (ii) method of shipping or packing; (iii) place of inspection, acceptance or point of delivery; and (iv) delivery schedule.

- (b) Except as may otherwise be expressly provided in this PO, if any such change under paragraph (a)(i), (ii), or (iii) above causes an increase or decrease in the

time required for performance of any part of this PO, whether or not directed by such change, Buyer shall make an equitable adjustment in the delivery schedule and the PO shall be modified accordingly in writing.

- (c) Except as may otherwise be expressly provided in this PO, if any change under paragraph (a) above causes an increase or decrease in the cost or performance of any part of this PO, whether or not directed by such change, Buyer shall make an equitable adjustment in the PO price, and the PO shall be modified accordingly in writing.
- (d) Such equitable adjustment, if any, shall be calculated in a manner similar to that used to originally price the PO and shall be for the net increase or decrease in the cost for the changed portion only. In no event shall Seller reprice any portion of the Items unaffected by the change. Seller must assert its right to an adjustment under this clause within thirty (30) days from the date of the change to which such adjustment is attributable.
- (e) Seller agrees that its failure to submit such claim or claims within the applicable time period shall constitute a waiver thereof unless, for good cause, Seller requests in writing, prior to expiration of the applicable time period that a time extension for filing its claim or claims be granted by Buyer and Buyer grants such extension. Any such extensions, if approved, shall be effective only if authorized in writing by Buyer's authorized procurement representative. Prior to final settlement of any timely filed claim or claims, Seller may submit revisions to such claims or claims provided that such revisions do not introduce different areas of costs or claim elements.
- (f) Nothing contained in this clause shall relieve Seller from proceeding without delay in the performance of this PO as changed.

27. Notification of Changes

- (a) Only Buyer's Authorized Representative may direct or redirect Seller's effort hereunder. In the event, however, Seller considers any conduct including any action, inaction, written or oral communication by Buyer or Buyer's customer to constitute a change to this PO, other than a written change order issued by Buyer's Authorized Representative, Seller shall notify Buyer as soon as possible but in no event later than fifteen (15) days from the date Seller identifies the conduct considered to constitute a change to this PO. On the basis of the most accurate information available to Seller, the notice shall state: (1) the date, nature and circumstances of the conduct regarded as a change; (2) the name, function, and activity of each Buyer employee, customer employee and Seller employee involved in or knowledgeable about such conduct; (3) the identification of any documents and the substance of any oral communication involved in such conduct; (4) the particular elements of contract performance which Seller considers to be affected by the conduct, including an estimate of any cost or

schedule impact; (5) Seller's estimate of the time by which Buyer must respond to Seller's notice to minimize cost, delay or disruption of performance.

- (b) Seller shall take no action in reliance on the conduct considered to constitute a change unless and until Buyer's Authorized Representative issues a written change order covering the conduct in question.

28. Change and Follow-On Proposals

Circumstances may arise during the course of performance under this PO where Buyer may request Seller to submit to Buyer technical and cost proposals relating to (1) anticipated changes or modifications to this PO prior to the implementation of the change or modification under the Changes clause of this PO, or (2) potential follow-on POs for the Items furnished hereunder. In such cases, Seller agrees to furnish to Buyer a technical and/or cost proposal as requested within thirty (30) days of the request. Seller agrees to furnish current information to Buyer in sufficient detail for Buyer to determine price reasonableness and cost realism. Information furnished by Seller shall be submitted in the manner and in the detail specified in the pricing instructions included in Buyer's request for proposal.

29. Inspection

- (a) Buyer and Buyer's customer may inspect the Items supplied hereunder before, during or after the manufacture, fabrication or performance thereof at facilities which will or may be used in the performance of this PO. No such inspection or test shall in any way relieve Seller of its obligations to furnish all Items in strict accordance with the requirements of this PO. If inspection and test is made on the premises of Seller or any of its suppliers, Seller shall furnish, or cause to be furnished, without additional charge, all reasonable facilities and assistance for safety and convenience of the inspectors in the performance of their duties. All inspections and tests shall be performed in such a manner as not to delay the work unduly. All Items are subject to final inspection and acceptance at Buyer's facility (or at any other location specified in writing by Buyer) notwithstanding any payments or prior inspections. Such final inspection shall be made within a reasonable time after delivery.
- (b) Seller shall provide and maintain an inspection and process control system acceptable to Buyer and its customers covering the Items hereunder. Records of all inspection work by Seller shall be kept complete and available to Buyer and its customers during the performance of this PO and of such longer periods as may be specified in this PO.
- (c) Buyer shall have the right to reject and hold at Seller's expense subject to Seller's reasonable disposal instructions, Items which do not conform to applicable specifications, drawings, samples, descriptions or other requirements of this PO, which are defective in material, workmanship or design (unless such

design is Buyer's detailed design). Without limiting any other rights Buyer may have, Buyer at its option shall have the right to require Seller to (i) repair or replace or reperform at Seller's expense any Items which fail to meet the requirements of applicable design, specifications, drawings, samples, descriptions or other requirements of this PO, or (ii) to refund the price of any such Item. Previously rejected Items reworked to specification or replaced shall not be returned to Buyer by Seller unless Buyer has consented to such return. Seller shall notify Buyer of past rejections of all returned Items.

30. Offset/Countertrade Cooperation

Buyer is currently involved in a number of foreign offset/countertrade arrangements in various foreign countries in connection with the sale of Buyer's products to foreign countries. All offset or countertrade credit value resulting from this PO shall accrue solely to the benefit of Buyer for its use on the offset/countertrade program of Buyer's choice. Seller agrees to cooperate with Buyer in the fulfillment of such foreign offset/countertrade obligations which Buyer may have undertaken or may undertake in the future. In the event Seller solicits bids, procures or offers to procure any goods or services relating to the work to be performed under this PO, Buyer shall be entitled, to the exclusion of all others, to all offset credits or other similar benefits which may result from such activity. In addition, Seller agrees to provide to Buyer, at no additional cost, a report every six months during the performance of this PO summarizing by country Seller's lower tier proposal and procurement activity related to this PO.

31. Notification of Debarment/Suspension Status

Seller shall provide immediate notice to Buyer in the event of being suspended, debarred or declared ineligible by any Department or other Federal Agency, or upon receipt of a notice of proposed debarment from any agency, during the performance of this PO.

32. Incorporation of Certifications and Representations

All certifications and representations provided by Seller to Buyer in connection with this PO and the solicitation to which this PO relates are incorporated herein by reference. Seller acknowledges that Buyer has relied on such certifications and representations in making the award of this PO.

33. Lower Tier Subcontracts

(a) Notwithstanding any other provision of this PO, Seller shall not procure any of the completed or substantially completed Items described herein from any other party, by subcontract or otherwise, without the prior written consent of Buyer.

- (b) In the event Seller contemplates making an award to a lower tier subcontractor which is a foreign concern, or a domestic concern where any defense articles or technical data may be disclosed to foreign nationals, Seller shall ensure that all necessary U.S. export licenses are obtained prior to the transfer of any defense articles or technical data or other information to the prospective lower tier subcontractor.

34. Reliance

Seller represents and acknowledges that it is, and that Buyer absolutely relies upon Seller as an expert, fully competent in all areas of the requirements of this PO. Seller expressly agrees that it will not deny any responsibility or obligation to Buyer on the basis that such was originated, approved, reviewed, or accomplished by Buyer. In addition, Seller expressly agrees and acknowledges that it has received and reviewed all drawings, specifications and documents referred to in this PO either prior to or simultaneous with the execution of this PO, and Seller represents that it has the capability and resources to design and produce all such goods or services described herein. Seller agrees that it hereby assumes all risks of impossibility of performance, and commercial impracticability, under this PO.

35. Access by Commonwealth

(a) Access by Commonwealth to Seller's Premises.

- (1) Seller shall at all reasonable times, permit officers nominated by the Project Authority to enter upon its premises, and shall stipulate in all lower tier subcontracts that such authorized officers be granted similar entry to lower tier subcontractor's premises, for purposes associated with this PO. Seller may, at its discretion and at no cost to Buyer or the Commonwealth, arrange for any of its officers to accompany the Commonwealth representative on the visit to Seller's lower tier subcontractors. Any such visit must be for purposes associated with this PO and Seller shall not make any claim for delay under this PO caused by having any of its officers so accompany the Commonwealth. In relation to visits to both Seller's and lower tier Subcontractor's premises, the Commonwealth officers will be allowed to freely examine any material or talk to personnel to review Seller's (or lower tier subcontractor's) performance, progress, quality control, security and manufacturing and testing procedures; provided that any such examination is performed in such manner as not unduly to delay or to hinder manufacture, continuation or performance under this PO.
- (2) The Project Authority shall comply with, and shall require any authorized person to comply with, any Seller safety and security requirements or codes of behavior for the premises.

- (3) Access as permitted by this paragraph (a) shall not apply to financial information that is considered proprietary to Seller and/or lower tier subcontractor.

(b) Seller Access to Commonwealth Premises.

- (1) The Commonwealth shall provide all reasonable access to Commonwealth premises for persons approved under this Article as necessary for Seller's performance of this PO.
- (2) The Project Authority will notify Seller of any special security or access provisions that apply to particular Commonwealth premises or sites relevant to PO.
- (3) Seller shall seek written permission from the Project Authority a minimum of seven days before entry is required, for each person Seller wishes to have access to Commonwealth premises or sites.
- (4) Seller shall comply with, and shall require persons afforded access under this Article to comply with, any relevant Commonwealth safety and security requirements, regulations, standing orders, or codes of behavior for the Commonwealth premises or sites.
- (5) The Project Authority may by notice to Seller withdraw access rights to any Commonwealth premises at any time for any period, and the extent to which that withdrawal of access delays delivery of the Items will entitle Seller to an equitable adjustment to the delivery schedule unless an act or omission of Seller caused or contributed to the withdrawal of access.
- (6) Where there has been a material breach by Seller, a lower tier subcontractor or any of their servants or agents of the obligations set out in subparagraph (b)(4) above, the Project Authority may notify Buyer and Buyer shall notify Seller that in the opinion of the Commonwealth, the said breach is material and is incapable of being remedied by Seller, whereupon Buyer may terminate this PO for default pursuant to the default article of this PO.

(c) Location of Commonwealth Personnel.

- (1) Commonwealth personnel may be located at Seller's premises. The number of representatives, their terms of reference, the period of their location and a statement of the facilities to be provided are set out in an attachment to this PO or the affected purchase order(s).
- (2) Seller shall provide at its premises and within the contract price, suitable accommodation, communication and general office facilities and all

reasonable assistance required for the located Commonwealth personnel. The facilities provided shall be of an equal standard to Seller's personnel of similar status, and take into account requirements for health, safety and comfort.

- (3) Commonwealth incurred telephone, Fax and other similar usage charges shall be paid by Commonwealth. Such charges shall be invoiced at cost. Seller shall separately invoice buyer for such costs in the form specified by buyer.
- (4) For the work carried out by Seller within Australia, Seller shall (without in any way limiting the obligations which Seller would otherwise be under were it not for this provision): (i) for those personnel provide and maintain such a working environment; and (ii) ensure the safety at work of, and absence of risk at work to the health of, those personnel in such a way; as complies with the Commonwealth's obligations under section 16 of the Occupational Health and Safety (Commonwealth Employment) Act 1991.
- (5) For the purposes of this subparagraph, for work carried out and facilities provided within the United States of America, Seller shall comply with relevant Federal, State and Local Law dealing with Occupational Health and Safety and the environment.
- (6) The Commonwealth shall be responsible for arranging any clearances required by the relevant national authorities for access to Seller's premises where these are located outside Australia. Seller shall provide all reasonable assistance necessary to facilitate this process.
- (7) The Commonwealth shall comply with, and shall require persons afforded access under this Article to comply with, any relevant Seller safety and security arrangements and regulations and codes of behavior that apply to particular Seller premises or sites relevant to this PO.

36. Production of the Items

(a) Seller's Responsibility.

- (1) Seller acknowledges that neither Buyer nor the Commonwealth holds itself out as having competence to design the Items and so advice clarification, assistance, input and information originating from the Commonwealth should not be construed as a direction to Seller in relation to the design.
- (2) Neither Buyer's nor the Commonwealth's actions or failure to act in any of the following respects: (i) reviewing, testing, verifying, examining or commenting on any plan, schedule, specification, program, test result, report or other document delivered to Buyer and/or the Commonwealth by

Seller; (ii) attendances at technical reviews, audits, contract progress meetings; or (iii) review, acceptance of or payment for, any of the work or services for any part of the design or the design process, shall be construed as limiting Seller's responsibility under this PO in any way or as operating as a waiver of any right under this PO or of any cause of action arising out of the performance of this PO.

- (3) Without limiting the generality of any other provision of this PO, interpretation or assistance provided by resident, visiting or other Buyer or Commonwealth personnel to Seller shall not be taken as acceptance of materials or work which do not conform to the requirements of this PO and shall not waive any provisions of, or release Seller from its obligation under this PO.
- (b) Data. Seller shall (1) identify, collect, assess and reduce into appropriate useable form all data necessary to enable it to carry out its obligations under this PO; and (2) retain all technical data for a period of ten years after final acceptance.
 - (c) Audit, Examination and Investigation.
 - (1) The Commonwealth's representatives may visit Seller's and Seller's lower tier subcontractors premises to inspect, examine, or investigate any work of Seller performed under this PO provided that any such inspection, examination or investigation is performed in such a way as to not unduly delay or hinder performance under this PO. Seller may, at its discretion and at no additional cost to Buyer or the Commonwealth, arrange for any of its officers to accompany the Commonwealth on the visit to lower tier subcontractor's premises provided that Seller shall not make any claim for delay under this PO caused by having any of its officers so accompany the Commonwealth representative.
 - (2) Seller shall ensure that the Commonwealth has the right to exercise the rights detailed in paragraph (c)(1) above in relation to any lower tier subcontractor.
 - (3) Where Buyer or the Project Authority is of the opinion that Seller has failed to comply with any of its obligations under the Engineering Management section of the Statement of Requirement, in a way which endangers the due and proper completion of this PO, then Buyer may provide written notice to Seller giving the details of such failure.
 - (4) If within thirty (30) days of receiving a notice pursuant to subparagraph (c)(3) above, Seller has not remedied its failure to comply with any of its obligations under the Engineering Management section of the Statement of Requirement, then Buyer may withhold all payments which would

otherwise be due to Seller, until such time as Buyer is reasonably satisfied that Seller has remedied its failure.

- (5) If within sixty (60) days of receiving a notice pursuant to subparagraph (c)(3) above, Seller has not remedied its failure to comply with any of its obligations under the Engineering Management section of the Statement of Requirement, then Buyer may terminate this PO for default without the need for prior issue of notice pursuant to the default article of this PO requiring Seller to remedy the default.
- (6) Any delay in delivery of Items which results from either Buyer or the Commonwealth exercising its rights under paragraph (c)(1) or from Seller's failure to comply with Seller's obligations referred to in that paragraph (c)(1) shall not give rise to a claim for extension of time for delivery.

(d) Lower tier Subcontracts.

- (1) Except to the extent that this PO may provide otherwise, Seller is responsible to Buyer for the satisfactory completion all lower tier subcontracts.
- (2) Upon receipt of a written request from Buyer or the Project Authority Seller shall provide Buyer or the Project Authority with a complete copy of any lower tier subcontract between Seller and any lower tier subcontractor or any contract between lower tier subcontractors specified in the request. Seller shall not be obliged to supply any financial material relevant to the performance of the lower tier subcontract.
- (3) Seller shall be solely responsible for payment of its lower tier subcontractors.
- (4) If a lower tier subcontract is terminated, repudiated or rescinded, for any reason whatsoever, Seller shall promptly notify Buyer. Seller shall complete the work under this PO either itself or by an alternative lower tier subcontractor and promptly notify Buyer of the nature of the change.
- (5) Seller, by subcontracting any part of the work under this PO, shall not be relieved of its liabilities or obligations under this PO, and shall be responsible for all lower tier subcontracts.

37. Quality Requirements

(a) Quality System.

- (1) Seller shall ensure that all work carried out under this PO (including that by lower tier subcontractors) is performed under the quality system which complies with the requirements of this PO.
- (2) Notwithstanding subparagraph (a)(1) above, Seller shall establish and apply to all work (including design and development if applicable) performed by Seller under this PO a quality system which meets the requirements of ISO 9001.
- (3) Seller shall ensure that all lower tier subcontracts contain provisions which require work performed under this PO (including design and development if applicable) to be carried out under the quality system which complies with the requirements of this PO. Without limiting this requirement in any way, Seller shall make reasonable efforts to ensure that a representative of Buyer and/or the Project Authority may be located at or visit the premises of any lower tier subcontractor for the purpose of performing source Quality Audits or Quality Surveillance at those premises.
- (4) Seller shall perform self audits and allow oversight by the Federal Aviation Administration (FAA) and US Government quality auditing body of compliance with the quality system standards specified in subparagraph (a)(2) above.
- (5) All costs incurred by Seller in obtaining and maintaining the quality systems in accordance with this paragraph (a) shall be borne by Seller.
- (6) Seller shall allow Buyer and the Project Authority at all stages of the performance of this PO to conduct Quality Audits or Quality Surveillance of work performed under this PO, and shall produce, and make available to the Project Authority, Objective Evidence to substantiate conformity to the requirements of this PO.
- (7) If at any time Buyer determines by a Quality Audit, is informed or otherwise becomes aware that a quality system no longer conforms to the quality requirements of this PO, Buyer may, by notice in writing, notify Seller of the details of the nonconformity.
- (8) Upon receipt of a notice issued pursuant to subparagraph (a)(7) above, Seller shall, without delay, take all steps that may be necessary to make the nonconforming quality system conform to the quality requirements of this PO and shall advise Buyer immediately the quality system does not confirm. Such conformity may be verified by a Quality Audit conducted by Buyer or the Project Authority.
- (9) A notice issued pursuant to subparagraph (a)(7) above may, where Buyer considers appropriate, direct Seller to cease work on any specified aspect

of this PO affected by the nonconformity of a quality system to the quality requirements of this PO. Seller shall comply with any such direction and shall not recommence work on the specified aspect of this PO until directed to do so by notice in writing from Buyer. Delay caused by cessation of work under this Article shall not be ground for an equitable adjustment to this PO.

- (10) Without limiting the generality of any provision of this PO, references to "quality systems" in this paragraph (a) shall include both those of Seller and Seller's lower tier subcontractors.
- (b) Quality Plan. Seller shall maintain the Quality Plan submitted by Seller with its proposal as modified by and changes agreed to with Buyer to the production (including design and development) of the Items under this PO. Review of the quality plan does not relieve Seller of any obligations under this PO.
- (c) Quality Management.
 - (1) Seller shall maintain effective control of the quality of the Items at all stage of performance of work under this PO, shall provide test facilities and shall perform, or have performed, all examination and tests reasonably necessary to demonstrate that the quality of materials and workmanship used in the production of the Items conforms to the requirements of this PO. Where such examinations and tests are at the instigation of Buyer or the Project Authority, the Project Authority will, as far as practicable, give sufficient notice of such examinations to tests to permit them to be integrated with Seller's own conduct of inspection and testing. Buyer and the Project Authority shall be given reasonable notice of and be permitted to attend all such examinations and tests.
 - (2) Seller shall provide Buyer and the Project Authority with, or give access to, all documentation related to design, development, production or testing of the Items, as well as to test pieces and samples that may reasonably be required for verification of Items at all stages of this PO. Buyer and the Project Authority shall also have the right to make copies of such documents necessary to facilitate their Quality Audits or Quality Surveillance. Copies of such documents will not be released to a third party without the approval of Seller.
 - (3) Seller shall calibrate inspection, measuring and testing equipment and maintain associated documentation in accordance with MIL-STD-45662.
 - (4) Except for those materials, components, assemblies, documentation and records exempted by Buyer, Seller shall establish and maintain procedures for the identification and tracing of: (i) materials, components

and assemblies capable of introducing systemic defects; and (ii) documentation and records relating to the quality of the Items.

(5) Records pertaining to the verification of quality shall be retained for a minimum period of ten years after final acceptance.

(d) Control of Nonconforming Items. Seller shall have in place procedures for the management of Nonconforming Items in accordance with the requirements of ISO 9001. In accordance with the definitions in ISO 9001, "product" includes services. Seller shall not use in the performance of its obligations under this PO any product which does not conform with the requirements of this PO without first obtaining written consent to do so from Buyer.

38. Logistics Requirements

Seller, upon request by Buyer, shall provide in respect of the Items the manufacturer's references, part numbers, names, print drawings, specifications and related documents and, for Items procured by Seller from a lower tier subcontractor or other source, the name of the actual manufacturer (or code) and its reference or part numbers. The information shall be used to establish codification by the Commonwealth of the essential characteristics which any given item of Items its unique character and differentiate it from any other item.

39. In-Service Support

(a) Support Period.

(1) Seller undertakes to support the Items from the date of Acceptance of the Items: (i) until twenty five years after Final Acceptance by Buyer's customer of the last aircraft containing Seller's Items; or (ii) as long as there are at least five (5) C-130-J aircraft in operation in the world; whichever is the later, (for the purposes of this clause 14 called "the Support Period") by providing or maintaining facilities for the supply of: (iii) quantities of spare parts and support equipment as are necessary to meet orders by the Commonwealth to maintain the Items in effective operation; and (ii) such support as is otherwise provided in this Article.

(2) Seller shall undertake during the Support Period to meet orders placed by Buyer or the Commonwealth for items of spare parts and support equipment at prices no greater than those applying to Seller's most favored customer for like quantities and under like terms and conditions.

(3) Where during the Support Period Seller intends to disperse or close a facility for the supply of any spare parts or support equipment, Seller upon final decision to do so shall provide Buyer and the Commonwealth with forty-eight (48) months a notice in writing of the dispersal or closure, and

shall nominate in the notice the date by which Buyer or the Commonwealth may place orders for the final production run.

- (4) In the event that Seller during the Support Period decides to disperse or close its facilities for manufacture of items relevant to the Items and in respect of which it has a proprietary interest or is for any other reason unable to continue to supply such items, Seller shall grant to Buyer and the Commonwealth a royalty free, non-exclusive, irrevocable license to manufacture or have manufactured such items to maintain the Items in effective operation; and also to supply such data as Seller may possess and as may be necessary for the manufacture of such items. In addition, Seller acknowledges the right of Buyer and the Commonwealth under the Intellectual property provisions of this PO in relation to such items.
- (5) Seller shall use its best endeavors make reasonable efforts to include the rights of Buyer and the Commonwealth contained in this Article in all lower tier subcontracts.
- (6) Neither Buyer nor the Commonwealth shall be bound to order any, or any particular quantity of, spare parts and support equipment from Seller.

(b) Notification of Defects.

- (1) If, at any time during the Support Period, Seller becomes aware of any defect in the Items which adversely affects, or is likely to adversely affect, the operation of the Items or the safety of personnel, Seller shall give notice of the defect to Buyer.
- (2) Where the adverse effect or likely adverse effect is critical to the operation of the Items or the safety of personnel, Seller shall give notice immediately on becoming aware of the defect and provide a fully documented confirmation of the notice within twenty (20) working days after so becoming aware.
- (3) In any other case Seller shall give a fully documented notice to Buyer of the defect within thirty-five (35) working days after becoming aware of the defect.
- (4) In fully documented notices given under this Article, Seller shall include a statement of the cause and effect of the defect and the remedial action it proposes.

(d) Source Data and Software Design Data.

- (1) Seller shall appoint an escrow agent approved by Buyer and the Project Authority and negotiate with Buyer on behalf of the Commonwealth an

Escrow agreement in the form specified by Buyer within 12 months of the effective date of this PO requiring the escrow agent on request by Buyer or the Project Authority to release the current copy of the Source Data and Software Design Data held by the escrow agent if:

- (i) The Commonwealth terminates the prime contract or Buyer terminates this PO;
 - (ii) Seller ceases the production of items to which the Source Data and Software Design Data is relevant; or
 - (iii) Seller and Buyer/the Commonwealth agree to the release of the Source Data and Software Design Data.
- (2) Seller shall prior to acceptance of the first Items under this PO lodge the Source Data and Software Design Data with the escrow agent.
 - (3) Seller shall provide updates for the Software and to the Source Code for a period of five years from delivery of the Items.
 - (4) Failure by Seller to provide the Source Code and updates as required by this Article shall entitle Buyer to terminate this PO for default if Seller fails to remedy the default in accordance with the default provisions hereof.

40. Indemnities

- (a) In addition to any other provision of this PO providing for indemnification of Buyer or the Commonwealth, Seller shall be liable for and shall indemnify Buyer and the Commonwealth against:
 - (1) Any loss or damage to or loss of use of any property of Buyer or the Commonwealth or property for which Buyer or the Commonwealth is responsible (including the Items after acceptance and Government Property) while in the possession and control of Seller; and
 - (2) Any claims for damages or losses and any demands, actions, suits or proceedings which may be made or bought by any person (including employees and dependents and personal representatives of employees of Buyer, the Commonwealth, Seller or lower tier subcontractors) against Buyer or the Commonwealth in respect of (and whether resulting directly or indirectly from): (i) personal injury to or the death of any person; (ii) loss of damage to, or the loss of use of, any property; including all costs and expenses that may be incurred in connection with any such claim, demand, action, suit or proceeding whether arising from any defense, settlement, investigation procedure or otherwise including expenses of debris removal,

cleaning up and mitigation or expenses incurred in prevention and mitigation of any pollution hazard; occurring during and caused by or arising from any negligent act or omission of Seller or a lower tier subcontractor occurring during, or in connection with, the performance of this PO and not proximately caused by the contributory negligence of a servant of the Commonwealth or Buyer.

- (b) Seller shall be liable for and shall indemnify Buyer and the Commonwealth against liability of Buyer and the Commonwealth arising in the performance of this PO under any law of a United States or Australian State or Territory relating to workers compensation and owed to any person who is employed or contracted by Seller and who is deemed by such law to be employed by Seller.
- (c) In the absence of any negligence on the part of Buyer or the Commonwealth, neither Buyer nor the Commonwealth shall be liable or in any way responsible to Seller for any loss, damage, injury or death which may be suffered or sustained by any person in or around premises used for the purposes of this PO, however sustained.
- (d) To the extent that Seller has obtained indemnities from a lower tier subcontractor, Seller agrees to allow Buyer and the Commonwealth to share its rights of indemnification in any action caused by or arising from any fault or negligent act on the part of that lower tier subcontractor.
- (e) The rights conferred on Buyer/the Commonwealth by this Article are in addition to any other rights the Commonwealth may have whether under this PO or otherwise.

41. Insurance

- (a) Before commencing work under this PO, Seller shall take out insurance covering:
 - (1) Loss of or damage to the Items and Government Property which policies shall be endorsed with the name of the Commonwealth and Buyer as additional named insureds;
 - (2) Liability for death or injury to persons employed by Seller, including liability under statute and at common law. If Seller performs work in Australia, or places subcontracts for work in Australia, Seller ensure that it and such subcontractors are insured against liabilities in relation to Workers' Compensation;
 - (3) Liability arising out of the indemnities given by Seller under the Indemnities article of this PO except liability covered by insurance pursuant to subparagraph (a)(4) below; and

- (4) General, automobile and aviation liability which general and aviation policies shall be endorsed with the name of Buyer and the Commonwealth as additional named insureds.
- (b) The general and aviation liability insurance referred to in paragraph (a) shall include a cross-liability clause in which the insurer agrees to waive all rights of subrogation or action that it may have or acquire against all or any of the persons comprising the insured and for the purpose of which the insurer accepts the term "insured" as applying to each of the persons comprising the insured as if a separate policy of insurance had been issued to each of them, subject always to the overall sum insured not being increased for that reason.
- (c) Unless Buyer otherwise directs, the proceeds of any claim for loss of or damage to the Items or Government Property under any insurance policy shall be used to reinstate or replace those Items or Government Property.
- (d) It shall be an essential term of this PO that Seller shall not commit any act or omission or cause any act or omission to be done whereby any insurance required to be effected pursuant to this clause may become void, invalid, vitiated or ineffective.
- (e) On default by Seller in payment of any premium or other monies due in respect of any insurance effected pursuant to this PO, Buyer may pay the same and the amounts paid shall for all purposes be deemed to be a debt due by Seller to Buyer and shall be recoverable under this PO.
- (f) The existence or requirements of any policy of insurance obtained by Seller shall not limit the liability of Seller to Buyer or the Commonwealth nor any indemnity given by Seller to Buyer or the Commonwealth nor the performance of any obligation of Seller to Buyer or the Commonwealth nor the liability of Seller to any other person or in respect of any property or at common law or by any statute.
- (g) Each such policy of insurance shall require the insurer to inform immediately provide thirty (30) day notice to Seller and the Project Authority of service of any notice of cancellation or non-renewal or material change in relation to the policy.
- (h) As soon as is practicable, Buyer, the Commonwealth and Seller shall inform each other of the occurrences of any event that may give rise to a claim under any policy of insurance effected in accordance with this PO and shall ensure that the others are kept fully informed of subsequent proceedings concerning the subsequent claim.

Seller shall:

- (1) Within thirty (30) days after the effective date of this PO produce satisfactory evidence to Buyer, including certificates of currency, of the insurance effected and maintained pursuant to this Article;
- (2) Provide a copy of such certificates annually to Buyer and at any other time on demand; and
- (3) Maintain those policies of insurance during the performance of this PO.

42. Data Items

- (a) Submission of Data Items. Seller shall prepare the data items listed in the Subcontract Data Requirements List in accordance with the relevant Data Item Description and other requirements of this PO.
- (b) Delivery of Data Items. Seller shall deliver the relevant number of copies of the data items by the date, and to the "Delivery Point" specified in the Supplier Data Requirements List (SDRL) under a cover sheet substantially in the form specified by Buyer.
- (c) Data Item Identification. All data delivered to Buyer shall be identified by the SDRL Identification Number, the Contract Number, a document reference number and title.
- (d) Review or Approval.
 - (1) Buyer shall either review or approve each data item according to the indication to that effect in the SDRL.
 - (2) If Buyer is of the view that any data item submitted by Seller is not in accordance with the requirements of this PO, Buyer may notify Seller accordingly. In such event, the data item shall not be considered to have been submitted and any costs incurred by Seller in amending or supplementing the data item to comply with the requirements of this PO shall be borne by Seller.
 - (3) In respect of SDRL Items for which preliminary or draft versions are to be submitted, a reference to approval in the SDRL shall only apply to the final version.
- (e) Data Item Review. Wherever a data item is submitted for review Buyer may provide Seller with such comment, information or advice as it sees fit to provide. Any comment, information or advice provided: (i) is intended to be of assistance to Seller and should not be construed as a direction from Buyer to Seller; (ii) shall not be taken as approval or acceptance of materials or work which do not

conform to this PO; and (iii) shall not waive any provisions of, or release Seller from its obligations under this PO.

(f) Data Item Approval.

- (1) Where the SDRL provides that a data item is to be submitted by Seller to Buyer for approval, then Buyer shall provide Seller with notice in writing that the data item is either approved or rejected.
- (2) Approval of the data item shall not be unreasonably withheld and shall be subject to the following additional standard. Approval of any data item shall be as to form and general content and sufficiency to achieve the intended objectives, not to assess elements in detail or to substitute judgement of Buyer for the judgement of Seller.
- (3) Where, pursuant to subparagraph (f)(1) above, Buyer provides Seller with notice of rejection, then Buyer may provide details of any corrective action to be taken by Seller before the data item will be approved, in which case; (i) the cost of rectifying that data item shall be borne by Seller; and (ii) until the data item is rectified and approved by Buyer, Seller shall not have satisfied the precondition for payment of any Milestone in respect of the task comprising that data item and shall not implement that data item.
- (4) Where, pursuant to subparagraph (f)(1) above, Buyer provides Seller with notice of approval, then the data item shall have effect in accordance with that approval and, where relevant, Seller may claim payment in accordance with the Schedule of Payments set out in the purchase order(s) issued under this PO.
- (5) Where Buyer fails to furnish to Seller notice in writing of approval or rejection, pursuant to subparagraph (f)(1) above, within 30 days (or such longer period as is specified in the SDRL), then the data shall be considered as accepted.
- (6) Approval of a data item by Buyer shall not be construed as limiting Seller's responsibility to provide Items in accordance with the requirements of this PO, and shall not be construed as a waiver of any right under this PO or of any cause of action arising out of any act or omission of Seller or its servants, agents or employees.

43. Commonwealth Rights in Intellectual Property

1 Title to Intellectual Property

- 1.1 All Intellectual Property created initially for and developed at the expense of the Commonwealth, for the purposes of or in the performance of this PO, shall

immediately upon creation vest in and become the property of the Commonwealth and is by force of this Article assigned by Seller to the Commonwealth.

- 1.2 The Commonwealth shall have the exclusive right to apply for registration of any Commonwealth Intellectual Property in all countries of the world.
- 1.3 Seller shall cooperate with the Commonwealth to provide access and information so that the Commonwealth can effectively perfect, utilize and defend its rights in this Article.

2 Grant of Licence

- 2.1 Seller and any subcontractor may seek a licence from the Commonwealth to use inventions or processes or other Intellectual Property contained in the Commonwealth Intellectual Property subject to such terms as are mutually agreed.
- 2.2 Seller hereby grants to the Commonwealth an irrevocable, world-wide, royalty-free, and perpetual licence (including a right to sub-licence, but only for the purposes specified herein) to use, reproduce, copy and do all such other things with all Seller Intellectual Property as are necessary to enable the Commonwealth. or another Person (including Buyer) on behalf of the Commonwealth:

- (a) to use, repair, maintain and modify the Items (including reproduction and manufacture of items of Items for the purpose of such repair, maintenance and modification); and
- (b) in the event of termination of this PO, to complete the development and production of the Items.

Without limitation, the activities referred to in paragraphs 2.2(a) and 2.2(b) above, may be performed by a contractor for the Commonwealth and the licence provided for in this clause 2.2 will allow the Commonwealth to make such Seller Intellectual Property available in confidence to such a contractor for use in this regard.

For purposes of this clause, modify shall include the work to adapt, integrate, refurbish and develop the Items.

- 2.3 The licence to modify using Intellectual Property in Clause 2.2 shall only include minor modifications, except as authorised in this clause. For the purposes of this clause, a minor modification shall consist of those modifications where the actual contract value of the nonrecurring design portion, or the relevant portion where not separately priced, of any contract for modification shall not exceed \$5 million Australian in December 1995 prices.
- 2.4 Not Used.

2.5 The Commonwealth is authorised to perform any modification but excluding minor modifications as stipulated in Clause 2.3) subject to the payment of a percentage fee of 6.25% of the price of the non recurring design work referred to in clause 6.5. Upon payment of the fee, Seller shall provide to the Commonwealth Seller Intellectual Property then in existence which is necessary to perform the desired modification. Seller shall also provide the rights to the Commonwealth to use Seller Intellectual Property for that purpose. The purpose will be limited to the modification of the Items only for the Commonwealth. Subject to these requirements, the Commonwealth shall have the rights as provided in clause 2.2.

3 Limitation of Rights

3.1 Seller agrees to work with the Commonwealth and make all reasonable efforts:

- (a) to identify lower tier Subcontractors who are relevant to the rights granted in this Clause and who have not yet provided rights equivalent to the Seller Intellectual Property rights granted under this Clause, and
- (b) to obtain from the lower tier Subcontractors similar or comparable license rights as set forth in paragraph 2 above for the Commonwealth with regard to lower tier Subcontractor's Intellectual Property.

3.2 In respect of non-developmental items that are incorporated into the Items, Seller shall make available to the Commonwealth the same Intellectual Property rights which are provided to Seller and shall make all reasonable efforts to obtain from the supplier similar or comparable licence rights, as set forth in paragraph 2, for the Commonwealth with regard to Intellectual Property.

4 Disclosure Rights

4.1 Without limiting any rights of the Commonwealth provided for elsewhere in this PO and in particular in this clause 18, Seller hereby grants to the Commonwealth the rights to disclose, in confidence, Seller Intellectual Property which may be required to be released by the Commonwealth so as to allow software or equipment to connect to or communicate with any of the Items purchased under this PO.

5 Commercial in confidence

5.1 Where the Commonwealth makes available to another person any Seller Intellectual Property, or other such property as obtained under paragraph 3.1 or paragraph 3.2 the Commonwealth shall obtain from that person a deed of confidentiality or other agreement substantially which deed shall or other agreement shall:

- (a) impose an obligation on such person:

- (i) to use such Intellectual Property solely for the purposes provided for in this clause 1 and to observe appropriate confidentiality requirements; and
 - (ii) not to disclose any such information to any other person without the consent of Seller, lower tier subcontractor or supplier in whom the such Intellectual Property are vested:
- (b) obtain an acknowledgment from such person that:
- (i) such Intellectual Property belongs to, and at all times remains the property of Seller, lower tier Subcontractor or supplier as the case may be; and
 - (ii) that misuse of such Intellectual Property will cause harm to the owner of such Intellectual Property.

6 Provision of Intellectual Property

- 6.1 Seller Contractor shall provide the Intellectual Property required to be delivered by any provisions in the PO. It shall also deliver such additional Intellectual Property as may be required to enable the Commonwealth or other persons to exercise any of the rights granted under this clause.
- 6.1.1 If the Commonwealth requires additional Intellectual Property not required to be delivered which is needed to effectively exercise the rights granted in this clause, Seller shall upon written request by the Project Authority, and subject to the availability and or releasability of such requested Intellectual Property, furnish to the Project Authority copies of such Intellectual Property in accordance with the Project Authority's request and subject to the confidentiality provisions set forth in this Clause 18. Requests by the Project Authority for such Intellectual Property shall be in writing, shall refer to the prime contract C338250 and shall identify the additional Intellectual Property desired, as well as a desired delivery schedule therefor.
- 6.1.2 Within ten (10) working days after receipt by Seller of any request for additional Intellectual Property made in compliance with Clause 6.1.1, Seller shall notify the Project Authority of its preliminary determination as to the availability of the requested Intellectual Property and shall submit to the Project Authority factors influencing the schedule dates on or before which Seller can, in the course of its normal scheduling, deliver to the Project Authority, the additional Intellectual Property, or Seller shall, within such period notify the Project Authority that such data is not releasable or available. If such Intellectual Property is available, Seller and the Commonwealth shall enter into an agreement identifying the additional Intellectual Property, the price and payment schedule therefor, and the delivery schedule. The price for providing this Intellectual Property shall be justified by

Seller on a time and materials basis.

- 6.2 Seller shall provide all such Intellectual Property in printed form and where possible in electronic format, and where more than one printed or electronic copy is required, the Commonwealth shall pay all reasonable costs of reproduction.
- 6.3 Seller undertakes to support the Intellectual Property throughout the life of the Items and to meet orders by the Commonwealth for such support. The price of such support shall be justified by Seller on a time and materials basis.
- 6.4 Failure by Seller to provide the source code or other Intellectual Property as required by this PO shall be a breach.
- 6.5 For purposes of differentiating minor and other modifications for this clause, the Commonwealth shall provide reasonable documentation to Seller identifying the nonrecurring design work or relevant portion thereof. In the event that a modification is properly characterized as a major modification, then the calculation of the amount payable by the Commonwealth shall be based on the price of nonrecurring design work to be undertaken in the modification.
- 6.6 For all work, the calculations shall be made in Australian dollars, and the payments will be made in United States Dollars at the then applicable rate of exchange quoted by Westpac Bank.
- 6.7 The Commonwealth shall, on or before the thirty-first (31st) day of each and every March from and after the date hereof and during the period that the Commonwealth continues to own the Items, render to Seller a statement in writing setting forth the contractual payments made on each contract for work described in paragraph 2.4 and Clause 2.5 above during the twelve (12) immediately preceding calendar months, such statements to be accompanied by the amount shown by the said statement to be due to Seller. Such annual reports described herein are required even when no such contracts have been performed during the reporting period.
- 6.8 The Commonwealth, for the purpose of this clause, agrees to keep records and books of account sufficient to establish the value of any fee payable to Seller pursuant to this Clause 18. The Commonwealth further agrees to make such records and books of account available during reasonable business hours solely for the purpose of determining the accuracy of the yearly statements and payments provided herein.

7 Identification of Intellectual Property

- 7.1 Seller shall maintain detailed records of the work, including research and development work, carried out by Seller, lower tier subcontractor or any Third Party in order that all Commonwealth Intellectual Property may be readily identified and

distinguished.

7.2 Seller shall provide the Project Authority with written notice on a periodic basis not to exceed six (6) months of Intellectual Property which comes into existence during performance of this PO and which is to be used in the performance of this PO.

8 Intellectual Property Rights Issues

8.1 Seller warrants that use of Intellectual Property by the Commonwealth (or by a third party on its behalf), in accordance with this PO and in relation to the Items does not infringe the Intellectual Property rights or right to confidentiality of any person.

8.2 Seller shall indemnify, and shall at all times keep indemnified, Buyer and the Commonwealth against any and all liability, loss, damage, costs (including the cost of any settlement), compensation, or expense whatsoever incurred by them, arising out of any action, claim or proceeding brought by a third party in respect of

(a) an infringement or alleged infringement of that third party's Intellectual Property where the infringement arises out of any use, possession, reproduction, repair, maintenance, manufacture, modification or exploitation of the Items which is provided for in this Clause 18 or under this PO; or

(b) breach or alleged breach of a duty of confidentiality owed to that third party, where the breach is caused by an act or omission on the part of Seller or its officers, servants, agents or contractors (whether or not such act or omission constitutes a breach of this PO).

8.3 As soon as practicable, the Commonwealth, Buyer and Seller shall inform each other of the occurrence of any claim or demand made or action, suit or proceeding threatened or brought against the Commonwealth, Buyer or Seller arising from infringement or alleged infringement or breach referred to in paragraph 8.2 and shall ensure that the others are kept fully informed of subsequent proceedings concerning any subsequent claim.

8.3.1 The Commonwealth agrees that, subject to paragraph 8.3.2, Seller shall at Seller's expense have the right to conduct the defence of any claim against the Commonwealth, in respect of which Seller is required to indemnify the Commonwealth and or Buyer under paragraph 8.2.

8.3.2 The Commonwealth's and Buyer's obligation under paragraph 8.3.1 shall be subject to Seller throughout the conduct of the defence:

(a) keeping the Commonwealth and Buyer fully informed, consulting fully with the Commonwealth and according due consideration to the Commonwealth's position as defendant prior to making any material decision, regarding the

defense or settlement of the claim; and

- (b) acting with the uttermost good faith towards the Commonwealth and Buyer in relation to the conduct of that defense.

8.4 If a final judgment or award is made against the Commonwealth and/or Buyer as a result of any action, claim, or proceeding referred to in this paragraph 8, then pursuant to the indemnity in paragraph 8.2 and without necessarily being in full satisfaction of its obligations under that indemnity Seller shall:

- (a) not less than five (5) Working Days before the date on which the Commonwealth must pay the amount referred to in the judgment, award or settlement; or
- (b) if no date for payment is fixed by that judgment, award or settlement, then within seven (7) days of receipt of a notice in writing from the Commonwealth or Buyer that it intends to pay the amount referred to in that judgment, award or settlement; pay to Buyer or the Commonwealth as appropriate a sum equivalent to the sum that Buyer or the Commonwealth is required to pay.

8.5 Seller shall pay to Buyer or the Commonwealth all other sums required to be paid under the indemnity provided under this paragraph 8 within seven (7) days of receipt of a written notice from Buyer or the Commonwealth requiring payment of those sums.

8.6 In the event of the failure of Seller to comply with this clause, Buyer shall have the right, without prejudice to any other right of action or remedy which Buyer or the Commonwealth may have, to suspend any payment due under this PO until such claim, demand, suit, action or proceeding has been resolved.

8.7 In the event of any claim, demand, suit, action or proceeding being made, brought or threatened in respect of the rights referred to in this clause, Seller shall at its own expense and with the written consent of the Commonwealth and Buyer, use its best endeavours to

- (a) procure for the Commonwealth the right to retain possession of, and to continue to use, the whole, or the relevant part, of the Items; or
- (b) replace or modify the Items in a manner acceptable to the Commonwealth such that the quality, performance or usefulness of the Items is not degraded and so that the infringement or alleged infringement ceases.

8.8 The Commonwealth may, if Seller is unsuccessful in its efforts described in paragraph 8.7, and if it has the power to do so under the legislation referred to in paragraph 8.9, reach agreement with the owner of the Intellectual Property affected by Commonwealth possession and use of the Items in relation to continued

Commonwealth possession and use of the Items, and pursuant to paragraph 8.9, Seller shall pay to the Commonwealth an amount equal to the sum of:

- (a) the payments made by the Commonwealth to that owner under the relevant legislation; and
- (b) the reasonable costs incurred by the Commonwealth in reaching that agreement,

provided always that such payment by Seller shall not necessarily be in full satisfaction of its obligations under the indemnity in paragraph 8.2

8.9 For the purposes of this paragraph 8, "infringement" includes (without limiting the generality of the foregoing) unauthorized acts which would, but for the operation of section 163 of the Patents Act 1990 (Cth.), Section 40A of the Designs Act 1906 (Cth.), Section 183 of the Copyright Act 1968 (Cth.) and Section 25 of the Circuits Layout Act 1989 (Cth.) (or any sections that replace those sections from time to time), constitute an infringement.

44. Termination for Default

- (a) (1) Buyer may, subject to subparagraphs c and (d) below, by written notice of default to Seller, terminate this PO in whole or in part if Seller fails to (i) deliver or perform the Items within the time specified in this PO or any extension; (ii) make progress, so as to endanger performance of this PO (but see subparagraph (a)(2) below); (iii) perform any of the other provisions of this PO (but see subparagraph (a)(2) below); or (iv) in the event of the institution of any proceedings by or against Seller in bankruptcy or insolvency under any provisions of the applicable bankruptcy act or for the appointment of a receiver or trustee or any assignment for the benefit of creditors.(2) Buyer's right to terminate this PO under subdivisions (a)(1)(ii) and (a)(1)(iii) above may be exercised if Seller does not cure such failure within 10 days (or more if authorized in writing by Buyer) after receipt of the notice from Buyer specifying the failure.
- (b) If Buyer terminates this PO for default in whole or in part, Buyer shall have the right to acquire under the terms and in the manner it considers appropriate, Items similar to those terminated; and, the Seller will be liable to Buyer for any excess costs for those Items. However, Seller shall continue the work not terminated.
- (c) If this PO is terminated for default, Buyer shall have the right to require the Seller to transfer title and deliver to Buyer, as directed by Buyer, any (1) completed Items, and (2) partially completed Items, parts, tools, dies, jigs, fixtures, plans, drawings, information, and contract rights (collectively referred to as "manufacturing materials" in this clause) that Seller has specifically produced or

acquired for the terminated portion of this PO. Upon direction of Buyer, Seller shall also protect and preserve property in its possession in which Buyer has an interest.

- (d) Buyer shall pay the PO price for completed Items delivered and accepted. Seller and Buyer shall agree on the amount of payment for manufacturing materials delivered and accepted and for the protection and preservation of the property. Failure to agree will be a dispute under the "Disputes" clause of this PO. Buyer shall have the right to withhold from these amounts any sum Buyer determines to be necessary to protect Buyer against loss because of outstanding liens or claims of former lien holders.
- (e) After termination, if it is determined that Seller was not in default, or that the default was excusable, as set forth in the "Force Majeure" clause of this PO, the rights and obligations of Buyer and Seller shall be the same as if the termination had been issued for the convenience of Buyer.
- (f) The rights and remedies of Buyer in this "Termination for Default" clause are in addition to any other rights and remedies provided by law, in equity, or under this PO.

45. Termination for Buyer's Convenience

- (a) Buyer may terminate this PO, in whole or in part, at any time for its convenience by notice to Seller in writing. On receipt by Seller of such notice, Seller shall immediately comply with Buyer's instructions and, to the extent specified therein, stop work and the placement of subcontracts hereunder, terminate work under subcontracts outstanding hereunder, and take any action necessary to protect property in Seller's possession in which Buyer has or may acquire an interest. Within thirty (30) days of receipt by Seller of such notice, Seller shall advise Buyer of the actions taken by Seller to comply with Buyer's instructions and Seller shall also notify Buyer of Seller's intent to file a termination claim.

In the event Buyer terminates and Seller submits a termination claim, Buyer shall pay to Seller the following: (i) amounts due for completed Items delivered and accepted or performed in accordance herewith, and not theretofore paid for prior to the effective date of termination; (ii) actual work in process costs incurred by Seller if properly allocable and apportioned under generally accepted accounting principles and practices to the terminated portion of this PO, including liabilities to subcontractors which are so allocable, excluding any and all costs of supplies which either can be diverted to other purchase orders of Seller or retained by Seller for its own use or future purchase orders, and exclusive of any costs attributable to Seller's supplies paid or to be paid for under (i) above; (iii) reasonable settlement expenses; and (iv) a sum, as profit, determined by Buyer to be fair and reasonable, on the work performed prior to receipt of the termination notice; provided, however, if it appears that Seller

would have sustained a loss on the entire PO had it been completed, Buyer shall allow no profit under this subparagraph (iv) and shall reduce the total settlement to reflect the indicated rate of loss. In no event shall the total settlement (including settlement expenses) exceed the PO price.

- (b) Should there be an overpayment by Buyer to Seller as determined in accordance with subparagraph (a) above, as the result of a termination, Seller shall promptly reimburse Buyer for all sums overpaid. Seller's termination claim shall be submitted within 120 days after the effective date of the termination on forms provided by Buyer. Buyer shall not be required to make any determination on any late claim.
- (c) Seller agrees that its failure to submit a termination claim(s) within the 120 day period set forth in subparagraph (b) above shall constitute a waiver thereof unless Seller requests in writing prior to expiration of such time period that a time extension for filing its claim or claims be granted by Buyer. Any such extension, if approved, shall be effective only if authorized in writing by Buyer.
- (d) Buyer or Buyer's representative shall have the right to audit Seller's claim prior to payment.

46. Stop Work

Seller shall stop work for up to ninety (90) days in accordance with the terms of any written notice received from Buyer, or for such longer period of time as the parties may agree and shall take all reasonable steps to minimize the incurrence of costs allocable to the work covered by the PO during the period of work stoppage.

Within such period, Buyer shall either terminate or continue the work by written order to Seller. In the event of a continuation, equitable adjustment shall be made to the price, delivery schedule, or other provision affected by the work stoppage, if applicable, provided that the claim for equitable adjustment is made within thirty (30) days after such continuation. Claim costs, if any, shall be calculated in a manner similar to that used to originally price the Items and shall be for the increase or decrease in the cost caused only by the stop work.

47. Force Majeure

Neither Party shall be liable, nor be deemed in default or failed in its performance of its obligations under this PO where such failure is due to causes beyond the control and without the fault or negligence of the Party concerned including but not limited to Acts of God, Acts of the Government, fires, floods, riots, labor difficulties, embargo, and civil commotion (Force Majeure). Partial failure of performance due to any of the aforementioned causes shall not in itself terminate this PO or excuse any failure by either Party to resume all obligations as promptly as possible. In the event either Party is affected in the performance of its obligations by any of the aforementioned

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causes, it shall give the other Party prompt written notice of the fact, together with satisfactory evidence substantiating that said cause prevents performance, as well as a declaration specifying the steps being taken by the Party to remove the relevant cause(s) and shall continue the performance of its other obligations under this PO.

If Force Majeure remains in effect for a period longer than six (6) months, then Buyer may terminate all or part of this PO which is affected by the Force Majeure. Having done so, both Parties shall be relieved of any obligation for the canceled portion thereof.