

**APPENDIX 6**  
**TERMS AND CONDITIONS OF PURCHASE**  
**UNITED KINGDOM C-130J PROGRAM**

1. Definitions

As used herein "Buyer" means Lockheed Martin Corporation acting through its Aeronautics Material Management Center; "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; "Prime Contract" means the contract between Buyer and its customer under which this PO is issued; "Government" and "Her Majesty's Government" mean "government of the United Kingdom" except in the phrase "U.S. Government" where it means the "government of the United States of America;" "Authority" means Buyer's customer, the United Kingdom Secretary of State for Defence; "MoD" means "United Kingdom Ministry of Defence;" "MOD(PE)" means "United Kingdom Ministry of Defence Procurement Executive or his representative;" and "UK" means the "United Kingdom of Great Britain."

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 for a period of one year from the date of delivery under this PO that all Items shall be free from defects in material and workmanship and shall conform to applicable specifications, drawings and all other requirements of this PO. If Seller is responsible for the design of the Items, Seller warrants for such period that all Items delivered under this PO shall be free from defect in design, and if Seller is responsible for designing the Items to meet specified performance requirements of Buyer, Seller warrants for such period that all such Items shall be fit and sufficient for the purposes intended by Buyer. Buyer's approval of designs furnished by Seller shall not relieve

Seller of its obligations under this warranty. Seller's warranties, together with its service guarantees, if any, shall run to Buyer and its customers.

- (b) In the event of a breach of any warranty hereinabove set forth, Buyer may require Seller to repair or replace at Buyer's election defective or non-conforming Items. Seller shall be liable for the payment of all packing and transportation costs attributable to the repair or replacement of defective or non-conforming Items.
- (c) If the Items delivered under this PO are, or are to be, incorporated in an end item(s) to be delivered to Buyer's customer(s), Seller's obligation under this clause shall be extended to one year after delivery of such end items to such customer(s).
- (d) 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.

- (e) The rights and remedies of Buyer provided in this clause shall not be exclusive and are in addition to any other rights and remedies provided at law, in equity, or under this PO.

## 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. Supply of Information about Substances Referred to in the Montreal Protocol

(a) As a signatory to the Montreal Protocol on Substances that deplete the Ozone Layer, Her Majesty's Government is committed to the reduction of the production and consumption of those Substances controlled under the Protocol. Seller shall supply a list specifying:

- (1) All substances listed at paragraph (b) below contained in the Items (including the packaging thereof, whether or not specified in this PO)
- (2) The quantity of each of the substances at paragraph (b) below contained in the Items;
- (3) Where in the Items (including packaging) the substances listed at paragraph (b) below are contained; or
- (4) Or confirm that none of the substances listed at paragraph (b) below are contained in or have been used in the supply of the Items.

(b) PROTOCOL SUBSTANCES

<u>SUBSTANCE</u>	<u>CHEMICAL NAME</u>
CFC 11	Carbon Tetrachloride
CFC 12	I,I,I Trichloroethane (Methyl Chloroform)
CFC 13	Trichlorofluoromethane
CFC 111	Dichlorodifluoromethane
CFC 112	
CFC 113	Trichlorotrifluorethane
CFC 114	Dichlorotetrafluoroethane
CFC 115	Chloropentafluorethane
CFC 211	
CFC 212	
CFC 213	
CFC 214	
CFC 215	
CFC 216	
CFC 217	



CFC 500 (See Footnote 1)  
CFC 502 (See Footnote 2)

HALONS

1211	Bromochlorodifluoromethane
1301	Bromotrifluoromethane
2402	Dibromotetrafluorethane

Footnote 1: CFC 500 is a blend of CFC 12 and HFC152a.  
Footnote 2: CFC 502 is a blend of CFC 115 and HCFC22.

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.

- (c) Seller shall to the extent possible include in all lower tier subcontract orders placed all relevant Articles of this PO agreed with Buyer and shall ensure that all lower tier subcontract orders are amended as to include amendments to this PO.
- (d) Where Seller enters a lower tier subcontract with a UK subcontractor for the purpose of performing this PO, Seller shall cause a term to be included in such lower tier subcontract which requires payment to be made to the subcontractor within a specified period not exceeding thirty (30) days from receipt of a valid invoice as defined by the subcontract requirements.
- (e) Notification to Lower Tier Subcontractors (Subcontracts for non-proprietary articles only). Seller shall notify to lower tier subcontractors the number of the prime contract identified herein and this information must be passed down to each lower tier subcontractor concerned in the execution of this PO no matter how remote the stage of lower tier subcontracting may be.
- (f) Lower Tier Subcontracting to Sheltered Workshops. When placing lower tier subcontracts Seller is asked to give consideration, as far as possible, to the placing of work on a competitive basis with workshops approved by the United Kingdom Department of Employment under the Disabled Persons (Employment) Act, 1944 and 1958. Details of the capabilities of these workshops are available from the Sheltered Employment Branch, Employment Service, Steel City House, Moorfoot, Sheffield, S1 4PQ (Tel: 0742-739190). Seller is asked also to give similar consideration to United Kingdom workshops.

#### 34. Corrupt Gifts and Payment of Commissions

- (a) Seller shall not:
  - (1) Offer or give or agree to give to any person in Her Majesty's Service or employed by or representing Buyer any gift or consideration of any kind as an inducement or reward for doing or forbearing to do or for having done or forborne to do any act in relation to the obtaining or execution of this PO or for showing or forbearing to show favor or disfavor to any person in relation to this PO; or
  - (2) Enter into this PO in connection with which commission has been paid or agreed to be paid by Seller on Seller's behalf, or to Seller's knowledge,

unless before Buyer is made particulars of any such commission and of the terms and conditions of any agreement for the payment thereof have been disclosed in writing to the representative of Buyer.

- (b) Any breach of this Article by Seller or by anyone employed by Seller or acting on Seller's behalf (whether with or without the knowledge of Seller) or the commission of any offence by Seller or by anyone employed by Seller or acting on Seller's behalf under the Prevention of Corruption Acts, 1889 to 1916, in relation to this or any other contract for Her Majesty's Service, shall entitle Buyer to terminate this PO for default and recover from Seller the amount of any loss resulting from such termination and/or to recover from Seller the amount or value of any such gift, consideration or commission, or other loss, incurred by Buyer under the prime contract with the Authority.

### 35. 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.

### 36. Liens

Neither Seller, nor any lower tier subcontractor, nor any other person, shall have a lien on property of the Authority, whether paid for by or charged against Seller or not, for any sum due to Seller, lower tier subcontractor or other person, and Seller shall take all such steps as may be reasonably necessary to ensure that the title of the Authority, and the exclusion of any such lien, are brought to the notice of all lower tier subcontractors and other persons dealing with any property of the Authority.

### 37. Use of Authority Documents, Information, etc.

- (a) Except with the consent in writing of Buyer, Seller shall not disclose this PO or any provision thereof to any person other than a person employed by Seller in the carrying out of this PO or any lower tier subcontractor, supplier or other person concerned with the same. Such disclosure shall be made in confidence and shall extend so far only as may be necessary for the purposes of this PO.



- (b) Except with the consent in writing of Buyer, Seller shall not make use of this PO or any information issued or furnished by or on behalf of Buyer or the Authority otherwise than for the purpose of this PO, and, save as provided for in paragraph (c) below, Seller shall not make any article or part thereof similar to Items furnished hereunder for any other purpose.
- (c) Subject to any rights of Third Parties, nothing in this Article shall, however, constrain the use for any purpose by Seller of any specifications, plans, drawings and other documents, the rights of which vest in Seller otherwise than as result of work carried out under this PO.
- (d) Any samples or patterns or any specifications, plans, drawings, or any other documents issued by or on behalf of the Authority for the purposes of this PO remain the property of the Authority as the case may be and must be returned on completion of this PO.

(Note: Where both this Article and the article entitled "Security Measures" apply to this PO, in the event of any inconsistency or conflict between them, the provisions of the Security Measures article shall prevail).

#### 38. Materials Requirement

Seller shall furnish to Buyer such information as Buyer may from time to time reasonably require as to the source of materials and components which Seller will be required to purchase in connection with the execution of this PO. This Article shall not, however, relieve Seller and Seller's lower tier subcontractors from responsibility for obtaining such materials and components.

#### 39. Price Fixing (Fixed Price Subcontracts)

Note: This clause shall be effective with respect to this PO only in the following instances: (1) it becomes necessary to negotiate a firm or fixed price within a maximum price, (2) it becomes necessary to agree to firm or fixed prices for changes in accordance with the Changes article hereof, or (3) it becomes necessary to agree to firm or fixed prices for additional work over and above that included within the initial contract price. If Seller is a United States concern, the relevant officials of the U.S. Government shall be the authorized representatives of the Authority.

- (a) For the purpose of estimating the costs of production of the Items to be furnished under the prime contract, Seller shall, at all times before prices for those articles have been finally fixed, afford such facilities as Buyer or the Authority (that is to say, the United Kingdom Secretary of State for Defence) may reasonably require for their representatives to visit Seller's premises and

examine any or all of the processes involved in, and the plans for, the manufacture of the Items to be furnished under this PO.

- (b) In this Article, the expression "the prime contract" means the contract between the Buyer and the Authority in connection with which, or for the purposes of which, this PO has been made.

#### 40. Tests

- (a) Representative samples of materials, finished test pieces, processed materials, parts and complete Items shall be subject to such tests as may be required by the drawings and specifications or by any addenda to these and, upon terms to be agreed, to any additional tests required by Buyer. All such samples must be selected, marked and controlled in accordance with the requirements of this PO or, where not specified in this PO, as may be reasonably required by Buyer.
- (b) Except where Buyer requires tests to be carried out at a particular Test House or Laboratory, the tests are to be carried out either at Seller's works on equipment acceptable to Buyer or at a Test House or Laboratory acceptable to Buyer.
- (c) Buyer may require documentary evidence to be provided that the tests have been carried out and the items found to conform to requirements.
- (d) Subject to reasonable prior notice, Buyer may elect for its representatives to witness the tests at an agreed time and place. The basis of recovery of any extra costs incurred by Seller through the implementation of this Article shall be subject to agreement between Buyer and Seller including any necessary extension to the program.

#### 41. Selection of Electronic and Associated Electrical Components for Defense Equipment

- (a) Equipment Sourced in the UK. Notwithstanding any reference in the tender or contract documents to other specifications all electronic and associated electrical components for use in Items initially designed and developed under this PO shall be selected in accordance with the procedures set out in MoD Defence Standard 59-36 Issue 4.
- (b) Equipment sourced outside the UK. For equipment sourced outside the UK the Contractor shall observe the requirements of 4093 MMS (Edn 4) - "Mutual Acceptance by the NATO Member Countries of Qualification of Electronic and Electrical Components for Military Use" reference MAS/03-MMS/4093 dated 22 Jan 93.

#### 42. Control of Dangerous Articles and Substances

- (a) Seller must provide information about any dangerous article or substance to be supplied under this PO. Immediately after this PO has been executed, Seller must provide Buyer with all the details specified below by completing the form at UK DEFCON 68.
- (b) Use of Asbestos. No asbestos of any type shall be incorporated into the Items except that in exceptional circumstances and where it is considered essential to the satisfactory performance of the Items or where the use of an alternative substance would be equally or more hazardous than using CHRYSOLITE (WHITE) Asbestos, then Chrysolite (White) asbestos may be incorporated in the Items subject to Seller obtaining the prior written consent of Buyer.

#### 43. Waiver of Import Duty

Articles to which this PO applies are Defence Equipments in respect of which the United Kingdom will waive the application of import duty provided that the UK Customs entry documents are completed by the MOD(PE) Transport Branch detailed as instructed by Buyer. So that these items may be readily identified by Seller's agent, invoices for supplies from overseas should be endorsed to certify that the goods are in aid of project (to be specified) and quote the Contract Number. Any lower tier subcontractors shall be similarly instructed. No import duty shall be included in the contract price.

#### 44. Supply of Documentation for NATO Codification Purposes

- (a) For Items furnished by Seller to Buyer and items procured by Seller from a lower tier subcontractor or vendor, Seller will furnish to Buyer the name of the actual manufacturer(s) and his/their drawings or part numbers and applicable technical data, plus draft item identifications if required. All necessary data and related draft item identifications required will be submitted at the earliest practicable date but in all instances within the time limits specified by this PO.
- (b) For as long as at least five aircraft remain in service, Seller will provide to Buyer updating information regarding all modifications or design changes made to the equipment or spare parts. When draft item identifications are to be furnished, these will be provided in accordance with the guide for the preparation of item identifications furnished by the designated agency of the producing country.

#### 45. Access to Premises

- (a) Access to Premises. Buyer shall be kept fully informed of progress of work throughout the life of this PO so that it may be in a position to make an

independent assessment of such progress. Accordingly Seller shall cooperate and shall provide reasonable facilities to Buyer and the Authority to enable him to keep in touch with all aspects of this PO.

- (b) Buyer and the Authority shall have reasonable access to the premises where the work of this PO is being undertaken and to all technical information relevant to this PO for the purpose of monitoring the nature and progress of the program, and Seller accordingly shall permit such access to Seller's own works and ensure that similar rights are secured in the terms and conditions of all lower tier subcontract orders placed by Seller or by Seller's subsidiary companies on Seller's behalf.

#### 46. Data Validity

- (a) Seller shall ensure that Seller has the right to divulge to Buyer and the Authority all documentation, information, manuals, drawings, software and data (hereinafter collectively referred to as "technical data"), including that originating from lower tier subcontractors or suppliers, that is required to be delivered under the terms of this PO. Seller agrees that such technical data shall be in the format which is valid and accurate as required by this PO. In the event that Seller becomes aware that any such technical data is inaccurate or invalid, Seller shall promptly so inform Buyer.
- (b) Seller further agrees that if the technical data does not so conform to the standard provided by paragraph (a) above, Seller's sole obligation and liability shall be to rectify any damage to any articles supplied under this PO, with the exception replacement of the non-conforming technical data with technical data which does conform with said usage; provided that Seller shall have no obligation or liability with respect to any non-conforming technical data as to which Buyer fails to give Seller written notice of non-conformance, with details, within three (3) years after such non-conforming technical data were furnished.

#### 47. Additional Quality Assurance Requirements

- (a) Quality Assurance Representative. A Ministry of Defence, Quality Assurance Representative (MoDQAR) for the purposes of this PO will be appointed by the MoD(PE) Project Director. Government Quality Assurance services will be requested in accordance with STANAG 4107 and DEF STAN 05-3 Issue 4 "Mutual Acceptance of Government Quality Assurance" and the provision of such services will be delegated to the US Government QAR - Defense Contracts Management Command or other appropriate authority.
- (b) Quality Assurance Activity. For the purposes of satisfying himself that the quality standards specified in this PO are being observed, the MoDQAR may

carry out quality assurance audits at Seller's works, and, following reasonable notice to Seller, at those of Seller's lower tier subcontractors. To provide the right of access to lower tier subcontractors' works all lower tier subcontracts placed by Seller shall be annotated as follows:

"This order is in aid of an United Kingdom Ministry of Defence Contract and may be subject to quality assurance activity at your works by the MoD Quality Assurance Representative, who will advise you accordingly. You shall provide at no additional direct cost to this company or to the United Kingdom Ministry of Defence such reasonable accommodation, facilities and assistance as the MoDQAR may require. Such accommodation shall be adequately furnished, lighted, heated and ventilated and shall include suitable cloakroom and telephone facilities."

- (c) Contractor's Responsibilities for Quality. Seller shall be responsible for maintaining effective control of the quality of supplies and services, for the provision of test facilities and the performance of quality control essential to demonstrate full conformance of the articles to the contract requirements and for the provision of objective evidence that controls and inspection are effective.
- (d) Retention of Quality Control/Inspection Records. Unless otherwise directed in this PO, Seller shall retain the Quality Control/Inspection Records or such of those records as may be agreed by the MoDQAR for a period of 5 years from completion of all work under this PO and shall make them accessible to the Authority on request. Exceptionally, when requested by Seller, earlier disposal may be authorized in writing by the MoDQAR . At the end of the retention period Seller shall seek advice from Buyer or the QAR regarding the disposal/continued retention of the Quality Control/Inspection Records, and Seller shall not dispose of such records without the written authority of Buyer or the MoDQAR.
- (e) Seller shall ensure that copies of lower tier subcontract orders placed by Seller shall be passed to the MoDQAR or his authorized representative in accordance with DEFSTAN 05-61 (Part 3/Issue 1). A "Right of Access" clause is to be included in lower tier subcontract orders to enable the MoDQAR to delegate re-assurance as necessary.
- (f) Previously Used Material.
  - (1) Should Seller wish to satisfy the requirements of this PO by supplying or utilizing articles which have been previously used in any other application Seller shall first make available to Buyer and the MoD(PE) Project Officer documentary evidence showing the full history of

manufacture, storage conditions, inspections, tests, use and modification of such materiel and seek written approval for the supply or use of such.

- (2) Where agreement is given, all articles supplied or used shall meet the full requirements of this PO in terms of performance, life, wear, repairability and all other characteristics of new build articles.
- (3) Should Seller supply previously used materiel in breach of this Article and evidence of such becomes available to Buyer or the Authority, the acceptance or non rejection of the materiel supplied or used shall not constitute a waiver of that breach except where agreed under the procedures specified in MIL-STD-480.

#### 48. Refund of Royalties

- (a) The contract price includes certain amounts for royalties payable by Seller or lower tier subcontractors or both, which amounts have been reported to Buyer.
- (b) The term "royalties" as used in this Article refers to any costs or charges in the nature of royalties, license fees, patent or license amortization costs, or the like, for the use of or for rights in patents and patent applications in connection with performing this PO or any lower tier subcontract hereunder.
- (c) Seller shall furnish to Buyer, before final payment under this PO, a statement of royalties paid or required to be paid in connection with performing this PO and lower tier subcontracts hereunder together with the reasons.
- (d) Seller will be compensated for royalties reported under paragraph (c) above, only to the extent that such royalties were included in the contract price and are determined by Buyer to be properly chargeable to Buyer and allocable to this PO. To the extent that any royalties that are included in the contract price are not in fact paid by Seller or are determined by Buyer not to be properly chargeable to Buyer and allocable to this PO, the contract price shall be reduced. Repayment or credit to Buyer shall be made as Buyer directs.
- (e) If, at any time within three years after final payment under this PO, Seller for any reason is relieved in whole or in part from the payment of the royalties included in the final contract price as adjusted pursuant to paragraph (d) above, Seller shall promptly notify Buyer of that fact and shall reimburse the Buyer in a corresponding amount.
- (f) The substance of this Article, including this paragraph (f), shall be included in any lower tier subcontract in which the amount of royalties reported during negotiation of the lower tier subcontract exceeds \$250.

#### 49. Availability of Spares and Access to Technical Data for Support of the Aircraft

(a) For the purpose of this Article, the following terms shall have the meanings indicated below:

- (1) The term "Article" shall mean any item or equipment forming part or the whole of any item, which is to be supplied under this PO and shall include other items to substantially the same design; and
- (2) The term "repair" shall mean the restoration of a component to a serviceable condition.
- (3) The term "overhaul" shall mean examination and repair of a component to return it to a serviceable condition with a full service life and to the same part number as when received without the embodiment of approved modifications.
- (4) The term "conversion" shall mean the embodiment of approved modifications in to components thereby changing their part number.
- (5) The term "Maintenance, Repair and Overhaul" shall, in relation to Articles, include the following activities:
  - (i) Work required to keep the Items in a serviceable condition;
  - (ii) Procedures and arrangements (including safety procedures) for removing the Items from and reinstalling them in a serviceable system, and for handling, storing, transporting, packaging and labelling the Items;
  - (iii) Inspection and testing of Items or parts thereof to check calibration and performance and to detect and identify faults;
  - (iv) Dismantling Items for repair or for modification;
  - (v) Reassembling Items after repair, or incorporation of replacement or new parts;
  - (vi) Testing and calibrating of Items or parts thereof prior to, during or after reassembly and after reinstallation in a serviceable system;
  - (vii) Reworking or reconditioning of existing Articles or parts thereof.

- (6) "Category I Technical Data" means technical data that relates to items developed exclusively for Buyer on behalf of the Authority by Seller under this PO.
  - (7) "Category II Technical Data" means Seller proprietary technical data.
- (b) In consideration of the award of this PO, Seller guarantees the availability of spare parts and components of Seller's own manufacture for the aircraft system covered by this PO at fair and reasonable prices for as long as at least five (5) aircraft of the same type as supplied under Buyer's prime contract with the United Kingdom are in service. Fair and reasonable prices will be agreed except where the spare parts and components are already included in the scope of Seller's fixed price spares catalogue which shall be provided by Seller if one is developed by Seller. For the purposes of agreeing fair and reasonable prices, Seller shall, if required, permit price investigation of Seller's offered prices. Insofar as lower tier subcontractor items are incorporated in the equipment, Seller shall endeavor to obtain similar guarantees, but where this is not possible, Seller will make every reasonable effort to seek a suitable alternative acceptable to Buyer if the original spare part or component is no longer available.
- (c) For official use, Seller shall provide to Buyer, and Buyer may provide to the Authority, such technical data as is agreed to be delivered under the terms of this PO. This technical information, and the data rights associated therewith, shall be designated as either Category I or Category II Technical Data, as defined in subparagraphs (a)(6) and (a)(7) above:
- (1) Use of Category I Technical Data: Buyer and the Authority and any other Department of Her Majesty's Government and their agents in the United Kingdom shall have the right to use, duplicate, or disclose such technical data by or for Buyer or the Authority without limitations on a royalty free basis.
  - (2) Use of Category II Technical Data:
    - (i) Subject to payment of a 7.5% fee as described below in subparagraph (c)(2)(ii) below, Buyer and the Authority and any other Department of Her Majesty's Government and such Designated Contractor in the United Kingdom as is mutually agreed to by the parties, shall have the right to use, duplicate, or disclose such Category II Technical Data controlled or owned by Seller or Seller's affiliate which is free and clear of any claims, and which is required by Her Majesty's Government for:



- (A) Manufacture of spare parts,
- (B) Maintenance,
- (C) Repair,
- (D) Overhaul,
- (E) Modification, and
- (F) As a Configuration Baseline for updates of the Items.

Seller further agrees to work with its lower tier subcontractors to attempt to obtain similar or comparable licence rights in lower tier subcontractor Category II Technical Data.

- (ii) As stated in subparagraph (c)(2)(i) above, Buyer on behalf of the Authority agrees to pay Seller a fee of 7.5% of the "contract price" of any contract which Buyer or the Authority or any other Department of Her Majesty's Government awards to any third party for the work described in subparagraph (c)(2)(i) above whereby Category II Technical Data is used, duplicated or disclosed (hereinafter referred to as the "Licensed Contract"). The 7.5% fee shall not, however, be payable by Buyer or the Authority to Seller if the third party has a license or other agreement with Seller authorizing the use of Category II Technical Data on contracts with Buyer or the Authority or any other Department of Her Majesty's Government for the work described in subparagraph (c)(2)(i) above and if the contract with its third party reflects that licence or agreement.

(c)(2)(ii)(A) The term "contract price" as used herein shall mean the contract price or part thereof of the Licensed Contract net of VAT to the UK Government Contract for the Licensed Work awarded by Buyer or Her Majesty's Government of the United Kingdom for the work described in subparagraph (c)(2)(i) above.

(c)(2)(ii)(B) All monetary payments by Buyer or the Authority to Seller pursuant to this Article shall be calculated in British Pounds Sterling but paid in United States Dollars. The currency exchange rate shall be calculated at the market exchange rate specified in the International Herald Tribune on the day of remittance.

(c)(2)(ii)(C) Buyer or the Authority shall, on or before the thirty-first (31st) of each and every April from and after the date hereof and during the continuance of this PO, render to Seller a statement in writing setting forth the contractual payments made on each UK Licensed Contract during the twelve (12) immediately preceding calendar months, such statement to be accompanied by a payment in the amount shown by the said statement to be due to Seller. Such annual reports described herein are required even when no Licensed Contracts have been performed during the reporting period.

(c)(2)(ii)(D) Buyer and the Authority agrees, for the purpose of this Article, to keep such full, accurate and complete records and books of account respecting work done on or in connection with any UK Licensed Contract as are necessary to establish the value of any fee payable to Seller pursuant to this Article. Buyer and the Authority further agrees to make such records and books of account available to Seller upon request and Seller shall have the right to examine such books and records during reasonable business hours solely for the purpose of determining the accuracy of the yearly statements and payments provided for herein.

(c)(2)(ii)(E) Buyer and the Authority shall maintain all Category II Technical Data delivered under this PO in strict confidence and shall use such Category II Technical Data only for the purposes authorized by subparagraph (c)(2)(i). Any Licensed Contracts shall include provisions requiring the Designated Contractors to safeguard all Category II Technical Data against unauthorized use and disclosure.

#### 50. Break

(a) Buyer shall in addition to Buyer's power under any other of these Articles, have power to determine this PO or any purchase order issued hereunder at any time by giving to Seller written notice, to expire at the end of three months after the date of issue, and upon the expiration of the notice this PO or any affected purchase order issued hereunder shall be determined without prejudice to the rights of the parties accrued to the date of determination but subject to the operation of the following provisions of this Article.

- (b) In the event of such notice being given Buyer shall at any time before the expiration of the notice be entitled to exercise and shall as soon as may be reasonably practicable within that period exercise such of the following powers as Buyer considers expedient:
- (1) To direct Seller, where production has not been commenced, to refrain from commencing production;
  - (2) To direct Seller to complete in accordance with this PO all or any of the Articles, or any part or component thereof in course of manufacture at the expiration of the notice and to deliver the same at such time or times as may be mutually agreed on, or, in default of agreement, at the time or times provided by this PO. All Articles delivered by Seller in accordance with such directions and accepted shall be paid for at a fair and reasonable price;
  - (3) To direct that Seller shall as soon as may be reasonably practicable after the receipt of such notice:
    - (i) Take such steps as will ensure that the production rate of the Articles and parts and components thereof is reduced as rapidly as possible;
    - (ii) As far as possible consistent with subparagraph (b)(3) above of this paragraph concentrate work on the completion on parts and components already in a partly manufactured state;
    - (iii) Determine on the best possible terms such lower tier subcontracts and orders for materials and parts and components bought out in a partly manufactured or wholly manufactured state as have not been completed, observing in this connection any direction given under paragraphs (b)(1) and (b)(2) of this Article as far as may be possible.
- (c) In the event of such notice being given:
- (1) Buyer shall take over from Seller at a fair and reasonable price all unused and undamaged materials, bought-out parts and components and articles in course of manufacture in the possession of Seller at the expiration of the notice and properly provided by or supplied to Seller for the performance of this PO except such materials, bought-out parts and components and articles in course of manufacture as Seller shall, with the concurrence of the Authority, elect to retain;

- (2) Seller shall prepare and deliver to Buyer within an agreed period, or in default of agreement within such period as Buyer may specify, a list of all such unused and undamaged materials, bought-out parts and components and articles in course of manufacture liable to be taken over by or previously belonging to Buyer and shall deliver such materials and things in accordance with the directions of Buyer who shall pay to Seller fair and reasonable handling and delivery charges incurred in complying with such directions;
  - (3) Buyer shall indemnify Seller against any commitments, liabilities or expenditure which are reasonably and properly chargeable by Seller in connection with this PO to the extent to which the said commitments, liabilities or expenditure would otherwise represent an unavoidable loss by Seller by reason of the determination of this PO: provided that (i) in the event of Seller not having observed any direction given to Seller under paragraph (b) of this Article Buyer shall not under this Article pay any sums in excess of those which Buyer would have paid had Seller observed that direction, and (2) Buyer is reimbursed for such commitments, liabilities or expenditures under the applicable prime contract.
- (d) The amount due Seller from Buyer as a result of the determination of all or part of the work hereunder shall be determined as follows:
- (1) After determination of all or part of the work hereunder, Seller shall submit a termination settlement proposal to Buyer. Seller shall submit the proposal promptly, but no later than one year from the effective date of determination, unless extended in writing by Buyer upon written request of Seller within this one-year period. However, if Buyer determines that the facts justify it, a termination settlement proposal may be received and acted on after one year or any extension. If Seller fails to submit the proposal within the time allowed, Buyer may determine on the basis of information available, the amount, if any, due Seller because of the termination and shall pay the amount determined.
  - (2) Subject to subparagraph (d)(1) above, Buyer and Seller may agree upon the whole or any part of the amount to be paid because of the determination. The amount may include a reasonable allowance for profit on work done. This PO or any affected purchase order shall be amended, and Seller paid the agreed amount. Subparagraph (d)(3) below shall not limit, restrict, or affect the amount that may be agreed upon to be paid under this paragraph.
  - (3) If Buyer and Seller fail to agree on the whole amount to be paid because of the termination of work, Buyer shall pay Seller the following amounts,

but without duplication of any amounts agreed on under subparagraph (d)(2) above or any other amounts paid to Seller under this Article:

- (i) The contract price for completed supplies or services, less expected receipts from any onward sales of the determined articles.
- (ii) The total of (A) the costs incurred in the performance of the work terminated but not complete, including initial costs and preparatory expense allocable thereto, but excluding any costs attributable to supplies or services paid or to be paid under subparagraph (d)(3)(i) above; (B) the cost of settling and paying determination settlement proposals under determined subcontracts or determined orders placed thereunder that are properly chargeable to the determined portion of the contract if not included in subdivision (A) above; and (C) a sum, as profit on subdivision (A) above determined to be fair and reasonable, less expected receipts from any onward sale of determined articles.
- (iii) The reasonable costs of settlement of the work determined, which shall include:
  - (A) Accounting, legal, clerical, and other expenses reasonably necessary for the preparation of termination settlement proposals and supporting data;
  - (B) The termination and settlement of lower tier subcontracts or determined orders placed thereunder;
  - (C) Storage, transportation, and other costs incurred, reasonably necessary for the preservation, protection, or disposition of the termination inventory; and
  - (D) Any loss, cost or expense that Seller incurs as a result of terminating or liquidating any foreign exchange contract.
- (e) If in any particular case hardship to Seller should arise from the operation of this Article it shall be open to Seller to refer the circumstances to Buyer who on being satisfied that such hardship exists shall make allowance, if any, as in Buyer's opinion is reasonable and the decision of Buyer on any matter or thing arising out of this Article shall be final and conclusive.
- (f) Buyer shall not in any case be liable to pay under the provisions of this Article any sum which, when taken together with any sums paid or due or becoming

due to Seller under this PO, shall exceed the total price of the Items payable under this PO.

#### 51. Availability of Information

Note: This clause shall be effective with respect to this PO only in the following instances: (1) it becomes necessary to negotiate a firm or fixed price within a maximum price, (2) it becomes necessary to agree to firm or fixed prices for changes in accordance with the Changes article hereof, or (3) it becomes necessary to agree to firm or fixed prices for additional work over and above that included within the initial contract price.

- (a) Seller shall, at all times during the course of this PO and for a period of two years after final payment of all sums due under this PO or a period of three years after the final delivery under this PO, whichever period expires sooner, maintain:
  - (1) In accordance with Seller's normal procedures, a record of:
    - (i) The manufacturing facilities and production plans employed by Seller for the supply of the articles under this PO; and
    - (ii) The costs incurred by Seller in the execution of this PO (including, for example, details of times taken and of wage rates paid); and
  - (2) A record of such further particulars of the costs of production of the said articles as the Buyer or Authority (that is to say, the United Kingdom Secretary of State for Defence) may from time to time reasonably require (including particulars of the costs of production of such substantial parts of any of the said articles as the Buyer or Authority may specify in any such requirement) as being necessary for the purpose of determining such costs with reasonable accuracy; provided that a requirement under this paragraph shall not apply so as to impose any obligation on Seller to maintain a record of any such further particulars as aforesaid in respect of any costs of production incurred before the date on which that requirement is made.
- (b) At any time after prices in respect of the articles to be supplied under this PO have been finally fixed and after delivery thereunder is substantially complete but within the period during which paragraph (a) above applies Seller shall, when requested by Buyer or the Authority:
  - (1) Furnish a summary of any of the costs mentioned in the said paragraph (a) in such form and detail as Buyer or the Authority may reasonably require; and

- (2) Afford such facilities as Buyer or the Authority may reasonably require for their representatives to visit Seller's premises and examine the records maintained under that paragraph.
- (c) If at any time during the course of this PO Buyer or the Authority notifies Seller that the said records are required for the purpose of assisting Buyer or the Authority in fixing prices under any other contract (whether made or under negotiation) where Seller is to supply articles of a similar or substantially similar kind either as a contractor to Buyer or the Authority or as a subcontractor to a contractor to Buyer or the Authority, Seller shall:
  - (1) Furnish the like summary and afford the like facilities as are mentioned in paragraphs (a) and (b) above; and
  - (2) Afford such other facilities as Buyer or the Authority may reasonably require for their representatives to visit Seller's premises and examine any or all of the processes involved in the manufacture of the articles to be supplied under this PO.

## 52. Value Added Tax

[This Article shall apply only to work performed by Seller under this PO in the United Kingdom.]

- (a) Buyer shall pay to Seller, in addition to the contract price, a sum equal to the UK Value Added Tax chargeable on the value of the supply of goods and services provided in accordance with this PO.
- (b) Any invoice or other request for payment of monies due to Seller under this PO shall, if Seller is a taxable person, be in the same form and contain the same information as if the same were a tax invoice for the purposes of Regulations made under the Finance Act of 1972.
- (c) Seller shall, if so requested by Buyer, furnish such information as may reasonably be required by Buyer as to the amount of Value Added Tax chargeable on the value of goods and services supplied in accordance with this PO and payable by Buyer to Seller in addition to the contract price.
- (d) For the purposes of the Price Fixing article of this PO, if such an article is included in this PO, a provisional price fixed by Buyer shall have added to it a sum equal to the Value Added Tax chargeable on a supply of a value equal to that provisional price. When prices are finally fixed, any sums payable to or by Seller shall include any adjustment in respect of Value Added Tax due on the final value of the supply.

- (e) If the contract price is increased or decreased, or if a sum shall become due for payment by or to Buyer pursuant to any variation in price article of this PO, any monies thereby payable shall have added to them a sum equal to any appropriate adjustment in respect of Value Added tax due on the final value of the supply.
- (f) The reference to values of contracts described by reference to a sum of money in the below listed articles of this PO, where these Articles are included in this PO, shall be regarded as values before the addition of Value Added Tax chargeable on such values: Price Fixing, Availability of Information, References to the Review Board of Questions Arising Under the Contract, and Break.

### 53. Racial Discrimination

[This Article shall apply only to work performed by Seller under this PO in the United Kingdom.]

- (a) Seller shall not unlawfully discriminate within the meaning and scope of the provisions of the Race Relations Act 1986 or any statutory modification or re-enactment thereof relating to discrimination in employment.
- (b) Seller shall take all reasonable steps to secure the observance of the provisions of paragraph (a) hereof by all servants, employees or agents of Seller and all lower tier subcontractors employed in the execution of this PO.

(NOTE: Contractors will be aware that the Race Relations Act 1986 does not apply in Northern Ireland but attention is drawn to paragraph (b) above which will be relevant in cases of subcontractors in other parts of the United Kingdom.)

### 54. Patents, etc.

[This Article shall apply only to work performed by Seller under this PO in the United Kingdom.]

- (a) Under the provisions of Sections 55 and 56 of the Patents Act 1977, and Section 12 of the Registered Designs Act, 1949, and subject to specific approval of the Authority, Seller is hereby authorized for the purpose of tendering for or performing this PO (but not otherwise) to use in accordance with the said provisions any invention or design to which the said provisions relate (hereinafter referred to as invention or design except as qualified by the parentheses in paragraph (g) of this Article) and to use any model, document or information relating to any such invention or design which may be required for that purpose.



- (b) By Section 57 of the Patents Act, 1977, and Section 12 of the Registered Designs Act, 1949, Seller is released by the Authority from liability under any license, assignment, assignation or agreement to make any payments, whether by way of royalties, license fees or similar expenses in respect of Seller's use of any invention or design in accordance with paragraph (a) of this Article, or the use of any model, document or information relating thereto for the purpose of tendering for or performing this PO.
- (c) No royalty, license fee or similar expense in respect of the use by Seller of any invention or design mentioned in paragraph (a) above for the purpose of tendering for or performing this PO, or in respect of the use by Seller of any model, document or information mentioned in paragraph (a) above will be allowed as a proper item of cost incurred by Seller unless it shall have been specifically agreed to by Buyer and no such royalty, license fee or similar expense not so agreed shall be included in Buyer's tender, quotation, offer, acceptance or contract price. If any claim in respect of use or alleged use of any invention or design as is mentioned in paragraph (a) above is made against Seller it shall be referred to Buyer.
- (d) Seller shall within 3 months, or such additional time as may be agreed, of the date of this PO supply Buyer with a statement setting out the details of any license or other agreement under which Seller would or might, but for the authorization of paragraph (a) above of this Article and the release from liability to make payment of paragraph (b) of this Article, have been liable to make any payment in respect of the use of any invention or design, or the use of any model, document or information. Thereafter Seller shall as soon as may be reasonably practicable upon entering into any license or other agreement as aforesaid after the date of this PO and that license or other agreement is not included in the aforesaid statement supply Buyer with the details of such license or other agreement. If any claim for any such payment as is mentioned in paragraph (b) above is made against Seller it shall be referred to Buyer.
- (e) Seller shall inform Buyer as soon as possible after the date of this PO of any invention or design to which the foregoing provisions of this Article relate, the use of which, by Seller, is known by Seller to be likely to be required for the purpose of this PO, and which Seller would not have been entitled to use if this authority had not been given.
- (f) If and insofar as Seller has already given to Buyer any of the information required under paragraphs (d) and (e) above in connection with a previous contract it shall be sufficient for Seller to identify such contract and the letter giving such information.

- (g) Seller shall not be entitled to claim or include as an element in Seller's price any payment by way of royalty, license fee or similar expense for the use in the performance of this PO of any invention (whether patented or not), design (whether registered or not), drawing, model, plan, document or information whether owned by Seller or not, unless the payment has been specifically agreed to by Buyer.
- (h) In the event of Seller placing any lower tier subcontract for the purpose of this PO, Seller shall request or shall require the lower tier subcontractor to request the Authority to confer on the lower tier subcontractor like authority in respect of the lower tier subcontract as is conferred on Seller by paragraph (a) above in respect of this PO and the Authority will, upon being so requested, confer upon the lower tier subcontractor such like authority, and the provisions of paragraphs (b), (c) and (g) of this Article shall apply to anything done by the lower tier subcontractor for the purpose of tendering for or performing the lower tier subcontract in like manner as those provisions apply to anything done by Seller for the purpose of tendering for or performing this PO.
- (i) Seller shall make reasonable efforts to incorporate in any lower tier subcontract for the purpose of this PO provisions whereby there shall subsist between Seller and the lower tier subcontractor rights and obligations in respect of the lower tier subcontract corresponding to those subsisting between Buyer and Seller in respect of this PO by virtue of paragraphs (d), (e) and (g) of this Article and Seller shall take all reasonable steps to secure that the lower tier subcontractor observes the obligations so imposed upon Seller and shall upon obtaining any information from the lower tier subcontractor in accordance with any provision so incorporated in the lower tier subcontract pass that information to the Authority without delay.

55. Contracts for Defence Material Subject to Defence Contracts Act 1958 - Agreements in Relation to Technical Information

[This Article shall apply only to work performed by Seller under this PO in the United Kingdom.]

- (a) Seller shall inform Buyer in writing: (1) when tendering; (2) when quoting a price for this PO; or (3) when offering to perform this PO (where work under this PO is to begin before the contract price is fixed), whether Seller is:
  - (i) Subject to any restriction imposed on Seller by an agreement to which Seller is a party or imposed on Seller by reason of existence of copyright in any work or
  - (ii) Subject to an obligation to make payments to any other person in respect of the use of technical information (not being technical information to

which the article entitled Patents, etc. applies) which Seller requires to use for the purposes of this PO, or in respect of the supply for the purposes of this PO of articles produced by means of the use of any such information.

- (b) If, at any times mentioned in paragraph (a) above, it is not apparent to Seller that Seller is subject to a restriction or obligation of the nature referred to in the said paragraph, but it subsequently becomes apparent that Seller is so subject or if, after the commencement of this PO, Seller requires to make use of technical information for the purposes of this PO or for the supply, for those purposes, of Articles produced by means of the use of such information and Seller is subject to a restriction or obligation in respect of such use or supply, Seller shall, with reasonable dispatch, so inform Buyer in writing.
- (c) Seller shall at the request of Buyer give Buyer particulars of every such restriction and obligation, and shall give Buyer such information as may be required for the purposes of Section 2 of the Defence Contracts Act, 1958.
- (d) Seller shall not include in any tender price or quotation for the purposes of this PO anything in respect of any such payment or the liability to make any such payment without the written consent of Buyer and if Seller shall include anything in any tender price or quotation in breach of this Article, and such tender price or quotation shall be accepted by Buyer, the contract price shall be reduced accordingly.
- (e) Insofar as and to the extent that Seller is not, by virtue of an authorization given to Seller under Section 2 of the Defence Contracts Act, 1958, discharged, in relation to the performance of this PO, from any obligation to make payments to any other person in pursuance of an agreement to which the provisions of paragraphs (a), and (b) of this Article apply and of which Buyer has been duly informed by Seller thereunder, there shall be added to the contract price the amount of any such payments necessarily and properly made by Seller in pursuance of such agreement (as having effect subject to any waiver or modification made in consequence of the serving of a notice under Section 3(1) of the said Act) in respect of the use for the purposes of this PO of any technical information in Seller's possession or in respect of the supply under this PO of Items produced by means of the use of any such information.
- (f) Seller shall not place any lower tier subcontract unless it imposes on the subcontractor obligations similar to those placed on Seller by paragraphs (a), (b), (c) and (d) above and contains a provision similar to paragraph (e) above. Seller shall take all reasonable steps to secure that the lower tier subcontractor complies with those obligations.

(g) Nothing in this Article shall be deemed to require Seller to disclose any technical Information in contravention of any agreement.

(h) In this Article:

(1) "Technical information" means information to which Section 2 of the Defence Contracts Act, 1958, applies;

(2) "PO" and "articles" have the meaning assigned to them by Section 6 of that Act.

#### 56. The Fair Employment (Northern Ireland) Act 1989 ("The Act")

[This Article shall apply only to work performed by Seller under this PO in the United Kingdom.]

Seller undertakes not to subcontract the execution of work or supply of materiel or services under this PO to an unqualified person within the meaning of the Act.

#### 57. 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 the parties 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.

#### 58. 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.

#### 59. 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 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.