

APPENDIX 'M'
ADDITIONAL APPENDIX "X" TERMS AND CONDITIONS
ATTACHMENT KFP

Appendix M, Attachment KFP, Additional Appendix X Terms and Conditions, should be utilized in conjunction with the current version of Appendix X in all purchase orders, or portions thereof, issued under the commercial KFP Program. In the event of conflict between these modifications and the clauses of Appendix "X", the modifications shall control.

1. Add the following to Clause 3. INSPECTION:
 - (a) The inspections and tests required for the final acceptance of all items deliverable under this Purchase Order shall be performed at Buyer's or Seller's facilities in accordance with the applicable existing USAF F-16 acceptance test procedures and practices.
 - (b) Seller will notify Buyer's in-plant representative four (4) days prior to the start of a final acceptance test and will provide whatever technical or other assistance deemed reasonable and customary.
 - (c) If items are finally accepted by the U. S. Government Quality Assurance Representative at Seller's plant (by the execution of the final acceptance certificate or shipping document), then Buyer and authorized representatives of Buyer's customer and of the Government of the Republic of Korea shall be allowed access to Seller's facilities for the purpose of observing a final acceptance test.
 - (d) At the time of delivery of items hereunder, Seller shall furnish to Buyer the manufacturer's and Seller's inspection certificate and the functional test report as required and, if required as a result of agreement(s) between the United States Government and the Government of the Republic of Korea, the certificate of U.S. Government inspectors affirming that such items have been inspected and conform to the applicable specifications and/or drawings.
 - (e) If Seller is a U.S. vendor, then Seller must have an export license, approved by the U.S. Department of State, prior to any visits by South Korean nationals to Seller's facilities and prior to making any inspections or test records available to South Korean nationals.
2. Modify Clause 5. PRICES as follows:

Add the following phrase at the end of the last sentence: “, and that the prices quoted are accurate, current and complete.”

3. Delete Clause 7, WARRANTY and replace it with the following new Clause 7, Warranty:
- (a) Seller warrants that at the time of delivery, each item furnished by Seller will be free from defects in material and workmanship and will conform to the part number, description and specifications applicable to the item.
 - (b) The notification period for Buyer to report defective items to Seller shall be twenty (20) months from the date of delivery. This notification period may be extended by the mutual agreement of Buyer and Seller.
 - (c) In the event Buyer notifies Seller of an important defect which is determined to be the responsibility of Seller pursuant to this Clause, Seller shall at its sole expense immediately initiate an investigation and shall advise Buyer, within sixty (60) days after receipt of such notice, of the status of Seller's investigation of the cause of such defect and the corrective action to be taken.
 - (d) The obligation of Seller under this Clause is, at Seller's sole expense and Buyer's discretion, repair or replacement of the item (or as mutually agreed by the parties, refund of the purchase order price of the item), plus reimbursement of all transportation costs including insurance, if the defect is determined to be the responsibility of Seller pursuant to this Clause. As Buyer specifies, Seller shall repair or replace the item (or refund the price) within a reasonable time, considering the nature of the specific item and defect, in order to avoid delay in Buyer's aircraft delivery.
 - (e) Buyer or its customer may, with Seller's consent and for Seller's account, remedy defects in the defective items at Buyer's plant or at Buyer's customer's plant, if such is deemed economical and/or practical to both parties. When a defective item is repaired or replaced, Seller will re-warrant the repair or the replaced item for the full warranty period from the time of delivery by Seller of the repaired or replaced article, or for six months after delivery of the affected F-16 aircraft to Buyer's customer or to the Republic of Korea with the repaired/ replaced item installed, whichever event occurs first. If a defective item is repaired, Seller shall prepare and mail to Buyer the appropriate report and/or paperwork to the same extent as required by the U.S. Government for verification and documentation of said repairs, as applicable.
 - (f) Seller's warranties hereunder shall run to Buyer and to Buyer's customer.
 - (g) Seller warrants that all telecommunication, computer hardware, firmware, and software items provided hereunder will accurately process, prior to, during and after the year 2000; all: (i) date-related data, and (ii) dates before, on or after January 1, 2000, including without limitation accurately inputting, storing, manipulating, comparing, calculating, updating, recording, displaying, outputting, and transferring such dates and data.

This warranty provision takes precedence over all other provisions of this PO in respect of year 2000 compliance. Within five (5) days of discovery of any noncompliance, the discovering party shall notify the other party and, at Buyer's election, Seller, within ten (10) days of notice, either shall repair or replace the noncompliant item at no cost to Buyer, or refund Buyer's purchase price. Nothing in this warranty provision shall be construed to limit any other rights or remedies under this PO, at law, or in equity that Buyer may have in respect of year 2000 compliance.

4. Add the following to Clause 8. COMPLIANCE WITH LAWS:

If stationed in Korea, then Seller, Seller's employees, Seller's subcontractors, and employees of Seller's subcontractors shall respect and abide by the laws, regulations, and rules of the Government of the Republic of Korea related to the performance of this Purchase Order.

5. Add the following to Clause 9. CHANGES:

(a) All items to be delivered under this Purchase Order are subject to the configuration change impact of the items as defined by the USAF and approved by the Government of the Republic of Korea.

(b) All changes approved by the Government of the Republic of Korea shall be treated in accordance with MIL-STD-480 for the purpose of this Purchase Order.

(c) Seller will cooperate with Buyer in implementing the earliest change notification possible under the existing system employed by Seller and approved by the U.S. Government in accordance with the requirements of MIL-STD-480.

(d) Engineering Change Proposals initiated by Buyer will be processed through the existing system in the same controlled atmosphere as that outlined in the Configuration Management System.

6. Add the following to Clause 14. TERMINATION FOR BUYER'S CONVENIENCE:

In the event Buyer terminates this P.O., in whole or in part, at any time for its convenience, Seller shall immediately comply with the following additional instructions:

(a) Settle all outstanding liabilities and/or claims arising out of such termination of orders, including but not limited to any liability and/or claim from any subcontractors,

- (b) Transfer title and deliver to Buyer the fabricated or unfabricated parts, work in process, completed work, and other material produced or acquired in connection with the work terminated by the notice which, if the task had been completed, would have been furnished to Buyer,
- (c) At Buyer's request, use its best efforts to utilize in other production or to sell, as authorized by Buyer, any property of the types referred to in Paragraph b. above, provided that the proceeds of such disposition shall be applied in reduction of any payment to be made by Buyer to Seller under this Clause, and,
- (d) Complete performance of the part of the work not terminated by the notice.

7. Add the Following to Clause 17. PATENT INDEMNITY, TRADEMARKS, TRADE SECRETS AND COPYRIGHTS:

Further, if the exercise of any right to use any item supplied hereunder for the purpose contemplated herein is finally adjudged to be infringing, and Buyer's or Buyer's customer's exercise thereof is permanently enjoined, Seller shall, at Buyer's option, Seller's expense, and subject to U.S. Government approval, either:

- (a) Procure for Buyer and/or Buyer's customer the right to exercise the enjoined rights, or
- (b) Replace the infringing item or the technology incorporated therein which is adjudged infringing with a non-infringing item or technology, or
- (c) Modify the technology and information of the enjoined rights so as to render the modified technology and information non-infringing, or
- (d) Withdraw the infringing item from the scope of this Purchase Order and provide Buyer with reasonable reimbursement for such withdrawal.

8. Add the following to Clause 26. PACKING, SHIPMENT, AND SHIPPING INSTRUCTIONS:

- (a) Any items which are to be drop-shipped to Korea shall be appropriately packed, packaged and crated by Seller for export shipment in accordance with Seller's standard packing practices assuring seaworthiness to protect the items and to ensure assessment of the lowest applicable transportation charge.

Once items ordered hereunder are appropriately packed, packaged and crated by Seller for export shipment, Seller shall provide Buyer with the following information (where applicable) by facsimile:

- (1) estimated value of the shipment,
- (2) estimated number of crates or boxes,
- (3) estimated weight and volume,
- (4) purchase order number, and
- (5) date the shipment will be available for pickup.

(b) Seller shall notify Buyer of the readiness for shipment of deliverable items. Such notification of readiness shall be made at least ten (10) days prior to the anticipated shipment date, and shall include pertinent information such as the Purchase Order number and a brief description of the product to be shipped.

9. Add the following new Clause 34. SUBCONTRACTING:

Seller shall not knowingly select any subcontractor who is disbarred, suspended or declared ineligible to do business with the U.S. Government, for the performance of this Purchase Order.

10. Add the following new Clause 35. MAINTENANCE OF SECRECY:

Seller acknowledges the significance of national security matters of the Republic of Korea. Seller hereby agrees that it shall not disclose any information or data obtained from or related to the performance of this Purchase Order to any third party except as required in the performance of this Purchase Order and as required by Buyer and/or the U.S. Government, without prior written consent of Buyer.

11. Add the following new Clause 36. SALES COMMISSIONS AND FEES:

Seller certifies that the Purchase Order price (including any subcontracts awarded hereunder) does not include any direct or indirect costs of sales commissions or fees for Seller's sales representatives for the solicitation or promotion or otherwise to secure the conclusion of the sale of any of the supplies or services called for by this Purchase Order to Buyer.

12. Add the following new Clause 37. LIQUIDATED DAMAGES:

Should Seller fail to make delivery of an item in accordance with the delivery schedule in this Purchase Order, then Buyer shall be entitled to receive compensation from Seller in the form of liquidated damages and not as a penalty.

The amount of the liquidated damages shall be equivalent to 0.15% per day of the price of the delayed item(s), beginning the first day of the next month after the agreed delivery date. Any liquidated damages arising from the performance of this Purchase Order shall be deducted by Seller from the invoice following the late delivery of any such item(s).

In no event shall failure to assess liquidated damages be considered a waiver of Buyer's right in other articles or clauses set forth herein. Moreover, Buyer may, as an alternative to the assessment of liquidated damages, recover actual damages under other articles or clauses set forth herein, or by other remedies at law and/or equity.

13. Add the following new Clause 38. EXPORT LICENSE:

If Seller undertakes to export directly to Buyer's customers or to the Government of the Republic of Korea any information or hardware to be supplied under this Purchase Order, Seller shall obtain an export license and all required approvals for an export license for such information or hardware.

14. Add the following new Clause 39. UNITED STATES GOVERNMENT REGULATIONS:

The export to Buyer's customer or the Republic of Korea Government (ROKG) of information and hardware supplied to Buyer under this Purchase Order may be subject to control under the International Traffic in Arms Regulations (22 CFR Sections 120 - 130) and the U.S. Arms Export Control Act (22 U.S.C. 2778) and associated implementing regulations. Seller acknowledges its understanding of said laws and regulations and warrants its compliance therewith if Seller undertakes to export such information or hardware directly to Buyer's customer or the ROKG. Seller shall indemnify and hold Buyer harmless from all claims, demands, damages, costs, fines, penalties, attorney's fees, and all other expenses arising from the failure of Seller to comply with said laws and regulations.