

ADDITIONAL INSTRUCTIONS AND TERMS AND CONDITIONS OF PURCHASE PROGRESS PAYMENTS FOR OTHER THAN SMALL BUSINESS CONCERNS

(Applicable to purchase orders issued in support of all Government prime contracts)

(FAR clause 52.232-16 modified to identify the Contracting Parties as required by FAR 32.504(e). Progress payment invoices shall be submitted on Standard Form 1443.)

Progress payments shall be made to the Seller when requested as work progresses, but not more frequently than monthly in amounts approved by Lockheed Martin, under the following conditions:

- (a) Computation of amounts.
- (1) Unless the Seller requests a smaller amount, each progress payment shall be computed as (i) ___% of the Seller's cumulative total costs under this order, as shown by records maintained by the Seller for the purpose of obtaining payment under Lockheed Martin orders, plus (ii) progress payments to lower-tier subcontractors (see paragraph (j) below), all less the sum of all previous progress payments made by Lockheed Martin under this order. Cost of money that would be allowable under 31.205-10 of the Federal Acquisition Regulation (FAR) shall be deemed an incurred cost for progress payment purposes.
- (2) The following conditions apply to the timing of including costs in progress payment requests:
- (i) The costs of supplies and services purchased by the Seller directly for this order may be included only after payment by cash, check, or other form of actual payment.
- (ii) Costs for the following may be included when incurred, even if before payment, when the Seller is not delinquent in payment of the costs of contract performance in the ordinary course of business:
- (A) Materials issued from the Seller's stores inventory and placed in the production process for use on this order.
- (B) Direct labor, direct travel, and other direct in-house costs.
- (C) Properly allocable and allowable indirect costs.
- (iii) Accrued costs of Seller contributions under employee pension, or other postretirement benefit, profit sharing, and stock ownership plans shall be excluded until actually paid unless-
- (A) The Seller's practice is to contribute to the plans quarterly or more frequently; and
- (B) The contribution does not remain unpaid 30 days after the end of the applicable quarter or shorter payment period (any contributions remaining unpaid shall be excluded from the Seller's total cost for progress payments until paid).
- (iv) If the order is subject to the special transition method authorized in Cost Accounting Standard (CAS) 410, Allocation of Business Unit General and Administrative Expense to Final Cost Objective, General and Administrative expenses (G&A) shall not be included in progress payment requests until the suspense account prescribed in CAS 410 is less than-
- (A) Five million dollars; or
- (B) The value of the work-in-process inventories under contracts entered into after the suspense account was established (only a pro rata share of the G&A allocable to the excess of the inventory over the suspense account value is includable in progress payment requests under this order).
- (3) The Seller shall not include the following in total costs for progress payment purposes in subparagraph (a)(1)(i) above:
- (i) Costs that are not reasonable, allocable to this order, and consistent with sound and generally accepted accounting principles and practices.
- (ii) Costs incurred by lower-tier subcontractors or suppliers.
- (iii) Costs ordinarily capitalized and subject to depreciation or amortization except for the properly depreciated or amortized portion of such costs.
- (iv) Payments made or amounts payable to lower-tier subcontractors or suppliers, except for-
- (A) Completed work, including partial deliveries, to which the Seller has acquired title; and
- (B) Work under cost-reimbursement or time-and-material lower-tier subcontracts to which the Seller has acquired title.
- (4) The amount of unliquidated progress payments may exceed neither (i) the progress payments made against incomplete work (including allowable unliquidated progress payments to lower-tier subcontractors) nor (ii) the value, for progress payment purposes, of the incomplete work. Incomplete work shall be considered to be the supplies and services required by this order, for which delivery and invoicing by the Seller and acceptance by Lockheed Martin are incomplete.
- (5) The total amount of progress payments shall not exceed ___% of the total price of this order.
- (6) If a progress payment or the unliquidated progress payments exceed the amounts permitted by subparagraphs (a)(4) or (a)(5) above, the Seller shall repay the amount of such excess to Lockheed Martin on demand.
- (b) Liquidation. Except as provided in the Termination clause herein, all progress payments shall be liquidated by deducting from any payment under this order, other than advance or progress payments, the unliquidated progress payments, or ___% of the amount invoiced, whichever is less. The Seller shall repay to Lockheed Martin any amounts required by a retroactive price reduction after computing liquidations and payments on past invoices at the reduced prices and adjusting the unliquidated progress payments accordingly. Lockheed Martin reserves the right to unilaterally change from the ordinary liquidation rate to an alternate rate when deemed appropriate for proper financing of this order.
- (c) Reduction or suspension. Lockheed Martin may reduce or suspend progress payments, increase the rate of liquidation, or take a combination of these actions, after finding on substantial evidence any of the following conditions:
- (1) The Seller failed to comply with any material requirement of this order (which includes paragraphs (f) and (g) below).
- (2) Performance of this order is endangered by the Seller's (i) failure to make progress or (ii) unsatisfactory financial condition.
- (3) Inventory allocated to this order substantially exceeds reasonable requirements.
- (4) The Seller is delinquent in payment of the costs of performing this order in the ordinary course of business.
- (5) The unliquidated progress payments exceed the fair value of the work accomplished on the undelivered portion of this order.
- (6) The Seller is realizing less profit than that reflected in the establishment of any alternate liquidation rate in paragraph (b) above, and that rate is less than the progress payment rate stated in subparagraph (a)(1) above.
- (d) Title.
- (1) Title to the property described in this paragraph (d) shall vest in the Government. Vestiture shall be immediately upon the date of this order, for property acquired or produced before that date. Otherwise, vestiture shall occur when the property is or should have been allocable or properly chargeable to this order.
- (2) "Property," as used in this clause, includes all of the below-described items acquired or produced by the Seller that are or should be allocable or properly chargeable to this order under sound and generally accepted accounting principles and practices.
- (i) Parts, materials, inventories, and work in process;
- (ii) Special tooling and special test equipment to which the Government is to acquire title under any other clause of this order;
- (iii) Nondurable (i.e., noncapital) tools, jigs, dies, fixtures, molds, patterns, taps, gauges, test equipment, and other similar manufacturing aids, title to which would not be obtained as special tooling under subparagraph (ii) above; and
- (iv) Drawings and technical data, to the extent the Seller or lower-tier subcontractors are required to deliver them to Lockheed Martin or the Government by other clauses of this order.

*See purchase order for fill-in percentage (%) in paragraphs (a)(1), (a)(5), and (b).

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- (3) Although title to property is in the Government under this clause, other applicable clauses of this order, e.g., the termination or special tooling clauses, shall determine the handling and disposition of the property.
- (4) The Seller may sell any scrap resulting from production under this order without requesting Lockheed Martin's approval, but the proceeds shall be credited against the costs of performance.
- (5) To acquire for its own use or dispose of property to which title is vested in the Government under this clause, the Seller must obtain Lockheed Martin's advance approval of the action and the terms. The Seller shall (i) exclude the allocable costs of the property from the costs of contract performance, and (ii) repay to Lockheed Martin any amount of unliquidated progress payments allocable to the property. Repayment may be by cash or credit memorandum.
- (6) When the Seller completes all of the obligations under this order, including liquidation of all progress payments, title shall vest in the Seller for all property (or the proceeds thereof) not-
- (i) Delivered to, and accepted by, Lockheed Martin under this order; or
- (ii) Incorporated in supplies delivered to, and accepted by, Lockheed Martin under this order and to which title is vested in the Government under this clause.
- (7) The terms of this order concerning liability for Government-furnished property shall not apply to property to which the Government acquired title solely under this clause.
- (e) Risk of loss. Before delivery to and acceptance by Lockheed Martin, the Seller shall bear the risk of loss for property, the title to which vests in the Government under this clause, except to the extent the Government or Lockheed Martin expressly assumes the risk. The Seller shall repay Lockheed Martin an amount equal to the unliquidated progress payments that are based on costs allocable to property that is damaged, lost, stolen, or destroyed.
- (f) Control of costs and property. The Seller shall maintain an accounting system and controls adequate for the proper administration of this clause.
- (g) Reports and access to records. The Seller shall promptly furnish reports, certificates, financial statements, and other pertinent information reasonably requested by the Contracting Officer or Lockheed Martin for the administration of this clause. Also, the Seller shall give the Government or Lockheed Martin reasonable opportunity to examine and verify the Seller's books, records, and accounts.
- (h) Special terms regarding default. If this order is terminated under the Default clause, (i) the Seller shall, on demand, repay to Lockheed Martin the amount of unliquidated progress payments and (ii) title shall vest in the Seller, on full liquidation of progress payments, for all property for which Lockheed Martin elects not to require delivery under the Default clause. Lockheed Martin shall be liable for no payment except as provided by the Default clause.
- (i) Reservations of rights.
- (1) No payment or vesting of title under this clause shall (i) excuse the Seller from performance of obligations under this order or (ii) constitute a waiver of any of the rights or remedies of the parties under the order.
- (2) Lockheed Martin's rights and remedies under this clause (i) shall not be exclusive but rather shall be in addition to any other rights and remedies provided by law or this order and (ii) shall not be affected by delayed, partial, or omitted exercise of any right, remedy, power, or privilege, nor shall such exercise or any single exercise preclude or impair any further exercise of any other right, power, or privilege of the Government or Lockheed Martin.
- (j) Progress payments to lower-tier subcontractors. The amounts mentioned in (a)(1)(ii) above shall be all progress payments to lower-tier subcontractors or divisions, if the following conditions are met:
- (1) The amounts included are limited to (i) the unliquidated remainder of progress payments made plus (ii) for small business concerns any unpaid lower-tier subcontractor requests for progress payments that the Seller has approved for current payment in the ordinary course of business.
- (2) The lower-tier subcontract or interdivisional order is expected to involve a minimum of approximately 6 months between the beginning of work and the first delivery, or, if the lower-tier subcontractor is a small business concern, 4 months.
- (3) The terms of the lower-tier subcontract or interdivisional order concerning progress payments-
- (i) Are substantially similar to the terms of the clause at 52.232-16, Progress Payments, of the Federal Acquisition Regulation for any lower-tier subcontractor that is a large business concern, or that clause with its Alternate I for any lower-tier subcontractor that is a small business concern;
- (ii) Are at least as favorable to Lockheed Martin as the terms of this clause;
- (iii) Are not more favorable to the lower-tier subcontractor or division than the terms of this clause are to the Seller;
- (iv) Are in conformance with the requirements of paragraph 32.504(e) of the Federal Acquisition Regulation; and
- (v) Subordinate all lower-tier subcontractor rights concerning property to which the Government has title under the order to the Government's or Lockheed Martin's right to require delivery of the property to the Government or Lockheed Martin if (A) the Seller defaults or (B) the lower-tier subcontractor becomes bankrupt or insolvent.
- (4) The progress payment rate in the lower-tier subcontract is the customary rate used by the Contracting Agency, depending on whether the lower-tier subcontractor is or is not a small business concern.
- (5) The parties agree concerning any proceeds received by Lockheed Martin for property to which title has vested in the Government under the order terms, that the proceeds shall be applied to reducing any unliquidated progress payments by Lockheed Martin to the Seller under this order.
- (6) If no unliquidated progress payments to the Seller remain, but there are unliquidated progress payments that the Seller has made to any lower-tier subcontractor, the Seller shall be subrogated to all the rights the Government and Lockheed Martin obtained through the terms required by this clause to be in any lower-tier subcontract, as if all such rights had been assigned and transferred to the Seller.
- (7) The Seller shall pay the lower-tier subcontractor's progress payment request under subdivision (j)(1)(ii) above, within a reasonable time after receiving Lockheed Martin progress payment covering those amounts.
- (8) To facilitate small business participation in lower-tier subcontracting under this order, the Seller agrees to provide progress payments to small business concerns, in conformity with the standards for customary progress payments stated in Subpart 32.5 of the Federal Acquisition Regulation. The Seller further agrees that the need for such progress payments shall not be considered as a handicap or adverse factor in the award of lower-tier subcontracts.
- (k) Limitations on Undefined Purchase Order Actions. Notwithstanding any other progress payment provision in this Purchase Order, progress payments may not exceed eighty percent (80%) of costs incurred on work accomplished under undefinitized Purchase Order actions. A "Purchase Order action" is any action resulting in a contractual action as defined in FAR Subpart 2.1, including Purchase Order modifications for additional supplies or services, but not including Purchase Order modifications that are within the scope and under the terms of the Purchase Order, such as Purchase Order modifications issued pursuant to the Changes clause, or funding and other administrative changes. This limitation shall apply to the costs incurred, as computed in accordance with paragraph (a) of this clause, and shall remain in effect until the Purchase Order action is definitized. Costs incurred which are subject to this limitation shall be segregated on Supplier progress payment requests and invoices from those costs eligible for higher progress payment rates. For purposes of progress payment liquidation, as described in paragraph (b), progress payments for undefinitized Purchase Order actions shall be liquidated at eighty percent (80%) of the amount invoiced for work performed under the undefinitized Purchase Order action as long as the Purchase Order action remains undefinitized.

The amount of unliquidated progress payments for undefinitized Purchase Order actions shall not exceed eighty percent (80%) of the maximum liability of Lockheed Martin under the undefinitized Purchase Order action or such lower limit specified elsewhere in the Purchase Order. Separate limits may be specified for separate actions.

(If this Purchase Order is a letter Purchase Order, paragraphs (l) and (m) below apply.)

*See purchase order for fill-in percentage (%) in paragraphs (a)(1), (a)(5), and (b).

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- (l) Progress payments made under this letter Purchase Order shall, unless previously liquidated under paragraph (b), be liquidated under the following procedures:
 - (1) If this letter Purchase Order is superseded by a definitive Purchase Order, unliquidated progress payments made under this letter Purchase Order shall be liquidated by deducting the amount from the first progress payment(s) made under the definitive Purchase Order.
 - (2) If this letter Purchase Order is not superseded by a definitive Purchase Order calling for the furnishing of all or part of the articles or services covered under the letter Purchase Order, unliquidated progress payments made under the letter Purchase Order shall be liquidated by deduction from the amount payable under the Termination clause.
 - (3) If this letter Purchase Order is partly terminated and partly superseded by a Purchase Order, Lockheed Martin shall allocate the unliquidated progress payments to the terminated and unterminated portions as Lockheed Martin deems equitable, and shall liquidate each portion under the relevant procedure in subparagraphs (l)(1) and (l)(2) above.
 - (4) If the method of liquidating progress payments provided above does not result in full liquidation, the Supplier shall immediately pay the unliquidated balance to Lockheed Martin on demand.
- (m) The amount of unliquidated progress payments shall not exceed eighty percent (80%), applied to the maximum liability of Lockheed Martin under this letter Purchase Order.

*See purchase order for fill-in percentage (%) in paragraphs (a)(1), (a)(5), and (b).