

LOCKHEED MISSILES & SPACE COMPANY - DESIGN/BUILD TERMS AND CONDITIONS

LOCKHEED MARTIN CORPORATION  
Missiles and Space  
Sunnyvale, California

TERMS AND CONDITIONS

FOR

DESIGN/BUILD CONSTRUCTION

DB-1 (REV. 2)

March 1996

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**SECTION A - GENERAL TERMS AND CONDITIONS: Applicable to Design/build Contractor and all Subcontractors**

CONTRACT ACCEPTANCE

This contract becomes the exclusive Agreement between the parties for the supplies or services subject to the terms and conditions hereof, when accepted by acknowledgment or commencement of performance. Additional or different terms proposed by contractor shall not be applicable unless accepted in writing by the Lockheed Procurement Representative. No change in, modification of, or revision to this contract shall be valid unless in writing and signed by the authorized Lockheed Procurement Representative.

DEFINITIONS

As used in these Terms and Conditions, the Specifications, and the Contract Documents:

- A. The term "Contractor" or "Design/Build Contractor" when used in these Terms and Conditions refers to the company or firm so named in the agreement which incorporates these terms and conditions. When used in the body of the specifications, it refers to the contractor for that specific work whether it be the contractor, a subcontractor, or "other contractor".
- B. The term "Other Contractor" refers to contractors having a direct contractual relationship with Lockheed other than those described in this contract.
- C. The term "Subcontractor," as employed herein, includes only those having a direct contract with the Contractor and it includes one who furnishes material worked to a special design according to the plans or specifications of this work but does not include a supplier who merely furnishes material not so worked.
- D. The term "Work" shall mean the completed design and construction required by the Design/build Release issued by Lockheed pursuant to this contract and shall mean all labor, materials, plant, equipment, tools, transportation, facilities, supervision and services necessary for and/or reasonably incidental to the fabrication, delivery, and installation of all items shown on the drawings and/or described in the specifications and/or conditions of the Release issued by Lockheed pursuant to this contract.
- E. The term "Lockheed" shall mean Lockheed Martin Corporation acting by and through Missiles and Space with offices at 1111 Lockheed Way, Sunnyvale, CA 94088-3504 (LMMS).
- F. Except as used in Clause C-9, the term "Project Manager" as used herein, means the Lockheed Facilities Engineering and Construction Services Project Manager assigned to the Release issued by Lockheed pursuant to this contract and assigned the specific responsibility by Lockheed to manage and coordinate facility projects from inception to completion.
- G. The term "Procurement Representative," or "Authorized Procurement Representative" as used herein, means the person in the Lockheed General Procurement Organization assigned the responsibility for administration of this contract.
- H. The term "Completion," shall mean accomplishment and acceptance of all items of work as described in the Release issued by Lockheed pursuant to this contract. This includes, but is not limited to, testing, inspection, commissioning, and all "punch list" items, clean-up, touch-up, administrative paperwork actions and removal of the contractor's and subcontractor's personnel, tools and equipment from the job site.
- I. Removed.
- J. (1) Where "as shown," "as indicated," "as detailed," or words of similar import are used, it shall be understood that the reference is made to the specifications and/or the drawings accompanying Release issued by Lockheed pursuant to this contract unless stated otherwise.

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DEFINITIONS (Cont'd)

- K. "Specification," as used herein, refers to all of the Lockheed specifications, requirements documents, and documents specified in the schedule, supplemental specifications and addenda thereto, and to such descriptive data as may be incorporated in change orders.
- L. "Release" as used herein, means the "Design/build Release" issued by Lockheed to the Contractor authorizing the contractor to proceed with a specific design and build work requirement.
- M. "Subcontract" as used herein, also means "Purchase Order".

INTERPRETATION

This Agreement shall be construed and interpreted solely in accordance with the substantive laws of the State of California, excluding its conflict of laws rules.

INDEPENDENT CONTRACTOR

It is understood and agreed that the Contractor shall be deemed to be an independent Contractor in all its operations and activities hereunder; that the employees furnished by the Contractor to perform work hereunder shall be deemed to be the Contractor's employees exclusively without any relation whatever to Lockheed as employees, agents, or as independent contractors; that said employees shall be paid by the Contractor for all services in this connection; and that the Contractor shall be responsible for all obligations and reports covering Social Security Unemployment Insurance, Worker's Compensation, Income Tax, and other reports and deductions required by local, state and/or federal law or regulation.

LOCKHEED PROJECT MANAGER

The work will be conducted under the general direction of the Lockheed PROJECT MANAGER and is subject to inspection at all times to insure strict compliance with the terms of the contract. The presence or absence of a Project Manager shall not relieve the Contractor from any requirements of the contract.

CHANGES

- A. The Lockheed Procurement Representative or the Project Manager may, at any time, without notice to sureties, by written order designated to be a change order, make any change in the work within the general scope of the design/build release, including but not limited to changes:
- (1) In the requirements, specifications and drawings;
  - (2) In the method or manner or performance of the work;
  - (3) In the Lockheed-furnished facilities, equipment, materials, services or site;  
or
  - (4) Directing acceleration or deceleration in the performance of the work. If directed acceleration is due to the Contractor not maintaining schedule, such direction shall not necessarily be construed to be a change under the contract.
- B. Any other written or oral order from the Lockheed Procurement Representative termed to be "direction," "instruction," "interpretation," or "determination" which causes a change to the scope of work or schedule shall be treated as a change order under this clause, provided that the Contractor gives the Lockheed Procurement Representative written notice within ten (10) calendar days of receipt of such order stating the date, circumstances and source of the order and that Lockheed concurs in the Contractor's position that the order is a change to the contract.

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CHANGES (Cont'd)

- C. Any notice of a change directed under this clause will be by change order. A change order, must be signed by the Lockheed Procurement Representative or the Project Manager. Upon receipt of such change order, the Contractor shall, without delay, commence performance of the work described in the change order. All authorized change orders will be subsequently incorporated by a formal contract amendment. Except as herein provided, no order, statement, or conduct of the Lockheed Procurement Representative or any other Lockheed employee shall be treated as a change under this clause or entitle the Contractor to an equitable adjustment hereunder.
- D. If any change under this clause causes an increase or decrease in the Contractor's cost of, or the time required for the performance of any part of the work under this contract, an equitable adjustment shall be made and the contract modified in writing accordingly; provided, however, that no claim for any change under paragraph B of this clause shall be allowed for any costs incurred more than ten (10) days before the Contractor gives written notice as therein required.
- E. If the Contractor intends to assert a claim for an equitable adjustment under this clause, the Contractor shall, within the time limits set forth below, submit to the Procurement Representative a written statement setting forth the nature of the claim, accompanied by a detailed cost estimate. The cost data presented shall be sufficiently detailed to support the reasonableness of the cost estimate. All estimates for changed work are subject to negotiation.
- (1) Notice of claims resulting from a written change order issued by Lockheed shall be submitted within fifteen (15) calendar days after the furnishing of each notice.
  - (2) Notice of claims resulting from any other written or oral order for which the Contractor has given notice to Lockheed under (B) above shall be submitted within fifteen (15) calendar days after the furnishing of each notice.
  - (3) Determination of price reasonableness includes consideration of overhead and profit as well as direct costs.
  - (4) The price to be negotiated for any change involving a reduction in cost due to changes in the scope of work or any other cause shall include overhead and profit calculated at the same rates as for a price increase. For any change involving both increases and decreases in direct cost, the overhead and profit shall be based on the net difference in direct costs.
- F. No claim by the Contractor for an equitable adjustment hereunder shall be allowed if asserted after final payment under this contract.
- G. Contractor agrees that it will continue with performance of this contract pending resolution of any dispute over equitable adjustments thereto.
- H. Proposed Changes
- (1) Lockheed may from time to time request that the Contractor submit cost estimates for proposed changes. These proposed changes, at Lockheed's option, may or may not be incorporated into the contract at a later date. Such cost estimates are to be prepared at no charge to Lockheed.
  - (2) The Contractor shall submit a cost proposal for any proposed changes not later than ten (10) days after receipt of Lockheed's request, unless a different period of time is stated by Lockheed in the request.

ORAL CHANGES invalid

Except as provided for in A-6(D), no oral statement of any person whomsoever shall in any manner or degree modify or otherwise affect the terms of this contract, and, except as otherwise herein expressly provided, no charge may be made for any extra work or material unless the same has been ordered in writing by the Lockheed Procurement Representative or a Change order has been issued pursuant to the Changes clause.

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OTHER WORK

- A. Lockheed may undertake or award other contracts for additional work, and the Contractor and subcontractors shall fully cooperate with such other contractors and Lockheed to carefully integrate its own work and that of its subcontractors with such additional work as may be directed by Lockheed. The Contractor shall not commit or permit any act which will interfere with the performance of work by any other contractor.
- B. Lockheed work in the areas adjoining the construction site, or any other area, shall not be interrupted or interfered with during the progress of the construction unless otherwise agreed to in writing.

SUBCONTRACTS

- A. As used in this clause, the term "subcontract" includes purchase orders.
- B. At the time of award of the contract or prior to the commencement of construction services, the contractor will provide to Lockheed's Procurement Representative the names of all proposed subcontractors whose employees will require access to Lockheed premises, with the exception of material delivery men.
- C. Lockheed shall have the right to disapprove any and all prospective subcontractors.
- D. The Contractor shall require all subcontractors who perform work on LMMS premises to comply with the Construction Contractor's Safety at LMMS-- Contractor's Handbook. The Contractor shall further require Subcontractors who perform work on LMMS premises and/or provide or use chemicals identified by the State of California as causing cancer, birth defects, or other reproductive harm to comply with Proposition 65, the Safe Drinking Water and Toxic Act of 1986. The Contractor agrees to hold Lockheed harmless and defend against any loss, cost (including attorney's fees), damage, or liability arising out of Subcontractor's failure to comply with Proposition 65.
- E. The Design/build Contractor shall include SECTION A, GENERAL TERMS AND CONDITIONS, and SECTION B, CONSTRUCTION SERVICES, of these terms and conditions in each subcontract issued pursuant to a Design/build Release awarded the Design/build Contractor.
- F. Lockheed directed sources for specified subcontractors shall be identified in the requirements or the document entitled "Design Build Services".

ASSIGNMENT

Neither this contract, nor any duty or right under it shall be delegated or assigned by the Contractor without the prior written consent of Lockheed except that claims for moneys due, or to become due, under this contract may be assigned to a bank, trust company or other financing institution including any federal lending agency by the Contractor without such consent. Lockheed shall be furnished with two signed copies of any such assignment. Payment to an assignee of any such claim shall be subject to set-off or recoupment of any present or future claim or claims which Lockheed may have against the Contractor except to the extent that any such claims are expressly waived in writing by Lockheed. Lockheed reserves the right to make direct settlement and/or adjustment in price with the Contractor under the terms of this contract notwithstanding any assignment of claims for moneys due or to become due hereunder and without notice to the assignee.

PAYMENT

- A. Lockheed will pay the contract price for each design/build release by the method hereinafter provided.
- B. Lockheed will make payments monthly as the work proceeds or at other intervals as agreed upon in advance. Contractor billings shall be in the format indicated in Attachment No. 1. Sample Invoice Format. In no event shall cumulative monthly payments to the contractor exceed cumulative costs incurred.

PAYMENT (Cont'd)

- C. If requested by Lockheed, the Contractor shall furnish a breakdown of the total contract price for each design/build release showing the amount included therein for each principal category of the work in such detail as requested to provide a



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completed be taken into consideration. Material delivered to the Contractor at locations other than the site may also be taken into consideration; (1) if such consideration is specifically authorized by the design/build release; and (2) if the Contractor furnished satisfactory evidence that the Contractor has acquired title to such material and that it will be utilized on the

work covered by the design/build release.

- D. In the event the Contractor's performance is behind the agreed upon Schedule for any Design/Build Release, Lockheed may at its discretion withhold further payment on that Design/Build Release until compliance with the agreed upon schedule is achieved.
- E. Each invoice submitted by the Contractor hereunder shall bear the following certification signed by an officer or other authorized representative:

"I certify that the payment herein requested is just and correct, and that payment of the sum herein specified has not been received. I further certify that any supplies covered by this invoice were produced in compliance with all applicable requirements of the Fair Labor Standards Act (29 USC 206, 207, and 212), as amended, and of regulations and orders of the United States Department of Labor issued under such Act.

Indication of any assignment of claim and of any further assignment thereof together with the name(s) of such assignee(s) shall be made on all vouchers or invoices submitted.

All invoices shall be identified with the Design/Build Release number and submitted to the following address:

Accounts Payable - LMMS  
P.O. Box 3645  
Sunnyvale, CA 94086-3645

- F. Such invoices will be submitted monthly unless a greater frequency is authorized in writing and must be properly executed and in triplicate for a sum equal to the percentage of completed work, multiplied by the contract price less ten percent (10%) on construction management and construction work, less prior payment, if any. Such invoices shall be due and payable net thirty (30) days after receipt of invoice unless otherwise provided in this contract.
- G. In making payments there shall be retained ten percent (10%) of the value of the completed construction management and construction work until final completion and acceptance of the contract work. At Lockheed's sole discretion, the amount retained pursuant to this section may be reduced to no less than 2%, provided, that such reduction shall not occur until the original completion date has passed or the work is substantially completed. In addition, Lockheed shall have the right to withhold from payments to the Contractor the amounts of any liens served on and/or filed against Lockheed in connection with the Contract until such liens have been released and a copy of the Lien Release with recording information stamped thereon has been provided to Lockheed. When the Contractor has met all terms and conditions of the contract, the Contractor shall, as a condition precedent to final payment, execute the Certificate of Completion form which was furnished as an attachment to the Design/build Master Agreement and submit the certificate to the Lockheed Procurement Representative. The amount retained will be paid thirty (30) days after a valid Certificate of Completion is submitted, executed by the Lockheed Procurement Representative and all design/build release amendments, if any, have been signed. Lockheed shall retain the right to set-off amounts owing to Lockheed by the Contractor against any amount due to Contractor. Notwithstanding the foregoing, Lockheed hereby reserves the right to withhold moneys necessary to cover claims made against Lockheed which are determined to be the result of acts or failure to act on the part of the Contractor.
- H. When no monthly payments are requested, a retention of ten percent (10%) shall be withheld for a period of thirty (30) days after execution of the "Certificate of Completion". This retention will not apply to contracts under two thousand dollars (\$2,000.00) and full payment may be made in accordance with invoice terms set forth in the contract. At Lockheed's sole discretion, the amount retained pursuant to this section may be reduced to no less than 2%, provided, that such reduction shall not occur until the work is substantially completed.
- I. All material and work covered by payments made shall thereupon become the sole property of Lockheed. This provision shall not be construed as relieving the

right of Lockheed to require the fulfillment of any or all of the terms of the contract or to terminate the contract as provided for in other terms and conditions of this contract.

PATENT INDEMNITY

Except as otherwise provided, the Contractor shall defend, indemnify, and hold Lockheed and its customers harmless from any loss, cost, damage, expense (including attorney's fees), or liability which may be incurred on account of infringement or misappropriation (actual or alleged) of patent rights, trademarks, copyrights, or trade secrets arising out of, in connection with, or as a result of, the performance of this contract or out of the use or disposal by or for the account of Lockheed of supplies furnished or construction work performed hereunder and defend, at its own expense, any action or claim in which such infringement or misappropriation is alleged by third parties, provided Contractor is notified of such actions or claims against Lockheed.

**A-13**                    TERMINATION FOR CONVENIENCE

- A. Lockheed may terminate performance of work without cause under an individual design/build release, in whole or, from time to time, in part if the Procurement Representative determines that a termination is in Lockheed's interest. The Procurement Representative shall terminate by faxing or mailing to the Contractor a Notice of Termination specifying the extent of termination and the effective date.
- B. After receipt of a Notice of Termination, and except as directed by the Procurement Representative or the Lockheed Termination Coordinator, if one has been appointed, the Contractor shall immediately proceed with the following obligations, regardless of any delay in determining or adjusting any amounts due under this clause:
  - (1) Stop work as specified in the notice.
  - (2) Place no further subcontracts or orders (referred to as subcontracts in this clause) for materials, services, or facilities, except as necessary to complete the continued portion of the contract.
  - (3) Terminate all subcontracts to the extent they relate to the work terminated.
  - (4) Assign to Lockheed, as directed by the Procurement Representative, all right, title, and interest of the Contractor under the subcontracts terminated, in which case Lockheed shall have the right to settle or to pay any termination settlement proposal arising out of those termination's.

**A-13**      TERMINATION FOR CONVENIENCE (Cont'd)

- (5) With written approval or ratification to the extent required by the Procurement Representative, settle all outstanding liabilities and termination settlement proposals arising from the termination of subcontracts the approval or ratification will be final for purposes of this clause.
  - (6) As directed by the Procurement Representative, transfer title and deliver to Lockheed (i) the fabricated or unfabricated parts, work in process, completed work, supplies, and other material produced or acquired for the work terminated, and (ii) the completed or partially completed plans, drawings, information, and other property that, if the contract had been completed, would be required to be furnished to Lockheed.
  - (7) Complete performance of the work not terminated.
  - (8) Take any action that may be necessary, or that the Procurement Representative may direct, for the protection and preservation of the property related to this contract that is in the possession of the Contractor and in which Lockheed has or may acquire an interest.
  - (9) Use its best efforts to sell, as directed or authorized in writing by the Procurement Representative, any property of the types referred to in subparagraph (6) above; provided, however, that the Contractor (i) is not required to extend credit to any purchaser and (ii) may acquire the property under the conditions prescribed by, and at prices approved by the Procurement Representative. The proceeds of any transfer or disposition will be applied to reduce any payments to be made by Lockheed under this contract, credited to the price or cost of the work, or paid in any other manner directed by the Procurement Representative.
- C. After expiration of the plant clearance period as defined in Subpart 45.6 of the Federal Acquisition Regulation, the Contractor may submit to the Procurement Representative a list, certified as to quantity and quality, of termination inventory not previously disposed of, excluding items authorized for disposition by the Procurement Representative. The Contractor may request Lockheed to remove those items or enter into an Agreement for their storage. Within fifteen (15) days or receipt of the list Lockheed will accept title to those items and remove them or enter into a storage Agreement. The Procurement Representative may verify the list upon removal of the items, or if stored, within 45 days from submission of the list, and shall correct the list, as necessary, before final settlement.
- D. After termination, the Contractor shall submit a final termination settlement proposal to the Procurement Representative in the form and with the certification prescribed by the Procurement Representative. The Contractor shall submit the proposal promptly, but no later than 60 days from the effective date of termination, unless extended in writing by the Procurement Representative upon written request of the Contractor within this 60 day period. However, if the Procurement Representative determines that the facts justify it, a termination settlement proposal may be received and acted on after 60 days or any extension. If the Contractor fails to submit the proposal within the time allowed, the Procurement Representative may determine, on the basis of information available, the amount, if any, due the Contractor because of the termination and payment of the amount determined will be made to the Contractor.
- E. Subject to paragraph D above, the Contractor and the Procurement Representative may agree upon the whole or any part of the amount to be paid because of the termination. The amount may include a reasonable allowance for profit on work done. However, the agreed amount, whether under this paragraph E. or paragraph F. below, exclusive of costs shown in subparagraph F.(2) below, may not exceed the total design/build release price as reduced by (1) the amount of payments previously made and (2) the contract price of work not terminated. The contract shall be amended, and the Contractor paid the agreed amount. Paragraph F. below shall not limit, restrict, or affect the amount that may be agreed upon to be paid under this paragraph.
- F. If the Contractor and Procurement Representative fail to agree on the whole amount to be paid the Contractor because of the termination of work, the Procurement Representative shall pay the Contractor the amounts determined as follows, but without duplication of any amounts agreed upon under paragraph E above:

**A-13**      TERMINATION FOR CONVENIENCE (Cont'd)

- (1) For contract work completed before the effective date of termination and acceptable to LMMS, the total (without duplication of any items) of:
    - (a) The cost of this work;
    - (b) The cost of paying termination settlement proposals under terminated subcontracts that are properly chargeable to the terminated portion of the contract if not included in subdivision (a) above; and.
    - (c) A sum, as profit on (a) above, determined by the Procurement Representative under 49.202 of the Federal Acquisition Regulation, in effect on the date of this contract, to be fair and reasonable; however, if it appears that the Contractor would have sustained a loss on the entire contract had it been completed, the Procurement Representative shall allow no profit under this subdivision (c) and shall reduce the settlement to reflect the indicated rate of loss.
  - (2) The reasonable costs of settlement of the work terminated, including:
    - (a) Accounting, clerical, and other expenses reasonably necessary for the preparation of termination settlement proposals and supporting data;
    - (b) The termination and settlement of subcontracts (excluding the amounts of such settlements); and
    - (c) Storage, transportation, and other costs incurred, reasonably necessary for the preservation, protection, or disposition of the termination inventory.
- G. Except for normal spoilage, and except to the extent that Lockheed expressly assumed the risk of loss, the Procurement Representative shall exclude from the amounts payable to the Contractor under paragraph F. above, the fair value, as determined by the Procurement Representative, of property that is destroyed, lost, stolen, or damaged so as to become undeliverable to Lockheed or to a buyer.
- H. The cost principles and procedures of Part 31 of the Federal Acquisition Regulation, in effect on the date of this contract, shall govern all costs claimed, agreed to, or determined under this clause.
- I. In arriving at the amount due the Contractor under this clause, there shall be deducted:
  - (1) All unliquidated advance or other payments to the Contractor under the terminated portion of this contract;
  - (2) Any claim which Lockheed has against the Contractor under this contract; and
  - (3) The agreed price for, or the proceeds of sale of, materials, supplies, or other things acquired by the Contractor or sold under the provisions of this clause and not recovered by or credited to Lockheed.
- J. If the termination is partial, the Contractor may file a proposal with the Procurement Representative for an equitable adjustment of the price(s) of the continued portion of the contract. The Procurement Representative shall make any equitable adjustment agreed upon. Any proposal by the Contractor for an equitable adjustment under this clause shall be requested within 90 days from the effective date of termination unless extended in writing by the Procurement Representative.
- K. (1) Lockheed may, under the terms and conditions it prescribes, make partial payments and payments against costs incurred by the Contractor for the terminated portion of the contract, if the Procurement Representative ascertains the total of these payments will not exceed the amount to which the Contractor will be entitled.

**A-13**            TERMINATION FOR CONVENIENCE (Cont'd)

(2) If the total payments exceed the amount finally determined to be due, the Contractor shall repay the excess to Lockheed upon demand, together with interest computed at the rate established by the Secretary of the Treasury under 50 U.S.C. App. 1215(b)(2). Interest shall be computed for the period from the date the excess payment is received by the Contractor to the date the excess is repaid. Interest shall not be charged on any excess payment due to a reduction in the Contractor's termination settlement because of retention or other disposition of termination inventory until ten (10) days after the date of the retention or disposition, or a later date determined by the Procurement Representative because of the circumstances.\*\*\*\*\*

L. Unless otherwise provided for in this contract or by statute, the Contractor shall maintain all records and documents relating to the terminated portion of this contract for 3 years after final settlement. This includes all books and other evidence bearing on the Contractor's costs and expenses under this contract. The Contractor shall make these records and documents available to Lockheed, at the Contractor's office, at all reasonable times, without any charge.

TERMINATION FOR DEFAULT DAMAGES FOR DELAY TIME EXTENSIONS

A. If the Contractor refuses or fails to prosecute the work required under a release, or any separable part, with the diligence that will insure its completion within the time specified in this contract including any extension, or fails to complete the work within this time, Lockheed may, by written notice to the Contractor, terminate the right to proceed with the work (or the separable part of the work) that has been delayed. In this event, Lockheed may take over the work and complete it by contract or otherwise, and may take possession of and use any materials, appliances, and plant on the work site necessary for completing the work. The Contractor and its sureties shall be liable for any damage to Lockheed resulting from the Contractor's refusal or failure to complete the work within the specified time, whether or not the Contractor's right to proceed with the work is terminated. This liability includes any increased costs incurred by Lockheed in completing the work.

B. The Contractor's right to proceed will not be terminated nor the Contractor charged with damages under this clause, if:

(1) The delay in completing the work arises from unforeseeable causes beyond the control and without the fault or negligence of the Contractor. Examples of such causes include (i) acts of God or of the public enemy, (ii) fires, (iii) floods, (iv) epidemics, (v) quarantine restrictions, (vi) strikes, (vii) trade embargoes, (viii) unusually severe weather.

(2) The Contractor, within 10 days from the beginning of any delay (unless extended by the Procurement Representative), notifies the Procurement Representative in writing of the causes of delay. The Procurement Representative shall ascertain the facts and the extent of delay. If, in the judgment of the Procurement Representative, the findings of fact warrant such action, the time for completing the work shall be extended in writing. The findings of the Procurement Representative shall be final and conclusive on the parties.

C. If, after termination of the Contractor's right to proceed, it is determined that the Contractor was not in default, or that the delay was excusable, the rights and obligations of the parties will be the same as if the termination had been issued for the convenience of Lockheed.

D. The rights and remedies of Lockheed in this clause are in addition to any other rights and remedies provided by law or under this agreement.

## LOCKHEED MARTIN CORP. - Missiles & Space - DESIGN/BUILD TERMS AND CONDITIONS

### SUSPENSION OF WORK

- A. The Procurement Representative may order the Contractor, in writing, to suspend, delay, or interrupt all or any part of the work of a Design/Build Release under this contract for the period of time that the Procurement Representative determines appropriate for the convenience of Lockheed.
- B. If the performance of all or any part of the work is, for an unreasonable period of time, suspended, delayed, or interrupted (1) by an act of the Procurement Representative in the administration of this contract, or (2) by the Procurement Representative's failure to act within the time specified in this contract (or within a reasonable time if not specified), a price adjustment shall be made for any increase in the cost of performance of the design/build release (excluding profit) necessarily caused by the unreasonable suspension, delay, or interruption, and the design/build release shall be modified in writing accordingly. However, no price adjustment shall be made under this clause for any suspension, delay, or interruption to the extent that performance would have been so suspended, delayed, or interrupted by any other cause, including the fault or negligence of the Contractor or subcontractor at any tier, or for which an equitable adjustment is provided for or excluded under any other term or condition of this master design/build agreement.
- C. A claim under this clause shall not be allowed (1) for any costs incurred more than 20 days before the Contractor shall have notified the Procurement Representative in writing of the act or failure to act involved (but this requirement shall not apply as to a claim resulting from a suspension order), and (2) unless the claim, in an amount stated, is asserted in writing as soon as practicable after the termination of the suspension, delay, or interruption, but not later than the date of final payment under the contract.

### INDEMNIFICATION

In the event Contractor, its officers, employees, agents, suppliers, or subcontractors at any tier enter premises occupied by or under the control of Lockheed, the Government, or third parties in the performance of a design/build release issued pursuant to this Design/build Master Agreement, Contractor shall defend, indemnify, and hold harmless Lockheed, its officers, employees and agents from any claim, suit, loss, cost, damage, expense (including attorney's fees), or liability by reason of property damage or personal injury (including death) to any person, including Contractor's employees, of whatsoever nature or kind arising out of, as a result of, or in connection with such performance occasioned in whole or in part by the actions or omissions of Contractor, its officers, employees, agents, suppliers, or subcontractors at any tier. Contractor shall take all precautions necessary, special or otherwise and shall be responsible for compliance with all Federal, state, and local safety and environmental laws in performance of work hereunder. Without in any way limiting the foregoing undertakings, Contractor and its suppliers and subcontractors at any tier shall maintain commercial general liability insurance in prudent and reasonable limits covering the obligations set forth in this agreement and shall maintain, to the statutory limits required by law, proper Worker's Compensation Insurance or a state approved self insurance program, and employer's liability insurance covering all employees performing under this Master Design/Build Agreement. Insurance maintained pursuant to this clause shall be considered primary as respects the interest of Lockheed and is not contributory with any insurance which Lockheed may carry. The requirement to provide insurance under this clause shall not in any manner limit or qualify the liabilities and obligations assumed by Contractor under this Master Design/Build Agreement or any Design/Build Release issued hereto.

### RISK OF PHYSICAL DAMAGE OR LOSS

The Contractor shall be liable for any loss or destruction of, or damage to any material, equipment or fixtures to be installed in the work prior to the time title to the work vests in Lockheed and loss or destruction of or damage to the work after such title vests in Lockheed and prior to final acceptance, except to the extent such loss, damage or destruction exceeds twenty-five thousand dollars (\$25,000.00) for each occurrence or is a direct result of a natural disaster such as a flood or earthquake.

LOCKHEED MARTIN CORP. - Missiles & Space - DESIGN/BUILD TERMS AND CONDITIONS

INSURANCE

- A. Lockheed shall, during the progress of any Design/Build Release issued under this contract, maintain a combination of insurance and self-insurance covering Lockheed and Contractor and protecting the work against damage or loss arising from all risks of direct physical loss or damage subject to specified exclusions and a deductible clause, said insurance to cover the interest of Contractor in the work and all materials, supplies, equipment, machinery and apparatus entering into or used in the construction of the work excluding Contractor's personal property which is used in or is incidental to the construction of the work, but do not become a part thereof (such as temporary sheds, scaffolding and forms), and while situated on or within one hundred feet (100') of that portion of the construction site upon which the work is being erected. Contractor shall not include any premium to insure such loss or damages exceeding the twenty-five thousand dollar (\$25,000.00) loss threshold assumed by Contractor under clause A-17 as a charge to this contract.
- B. The Contractor shall, during the progress of the work, maintain workers' compensation insurance, Commercial General Liability and automobile liability insurance covering all owned or rented automotive and other equipment which is used in or on the work. Such insurance shall be placed with insurance carriers approved to do business in the state of contract performance and all the policies (except Worker's Compensation insurance shall name Lockheed as an additional insured.
- (1) The limits of liability provided in each such Commercial General Liability insurance policy shall be at least \$2,000,000.00 combined single limit or equivalent for body injury, personal injury and property damage as a result of any one occurrence.
  - (2) Automobile liability insurance policy shall be not less than \$1,000,000.00 combined single limit or equivalent for bodily injury and property damage as a result of any one occurrence.

Said Contractor's Commercial General Liability and Automobile Liability insurance shall include coverage of the contractual liability assumed by the Contractor under this agreement, including obligations assumed under clause A-16 - INDEMNIFICATION., herein, and shall be primary to Lockheed's non-contributory liability insurance coverage. Certificates of all such insurance (except Worker's Compensation) shall be filed with Lockheed before commencement of performance of the work and shall carry a provision that Lockheed, as a Certificate Holder, shall be notified of any cancellation or material change in coverage 30 days prior to such cancellation or change in the policies.

- C. Additional Insurance Requirements Applicable to the Design/Build Contractor and Professional Subcontractors - In addition to the requirements of Section A of these terms and conditions, the Contractor shall maintain Architects and Engineers Professional Liability insurance of not less than \$1,000,000 for errors and omissions.
- D. Upon recommendation of the Contractor and approval by Lockheed or as may be reasonable requested by Lockheed, the above insurance limits may be increased and additional coverage may be carried.

PUBLICITY

No photographs will be taken by the Contractor or any subcontractors and no news release, public announcement, denial or confirmation of same or any part of the subject matter of this contract shall be made without the prior written approval of Lockheed's Public Relations Office.

RECORDS

The Contractor agrees that Lockheed or any of its duly authorized representatives shall, until the expiration of three years after final payment under this contract, have access to and the right to examine and copy any directly pertinent books, document, papers and records of the Contractor and Subcontractors related to the work performed under or pursuant to said contract.

SHIPMENT TO SITE

The Contractor shall address all packages to its own company, in care of Lockheed Martin Corp. - Missiles & Space, at the proper address, and enter the Lockheed Missiles & Space Company contract number on packing sheets attached to the outside of all packages and

LOCKHEED MARTIN CORP. - Missiles & Space - DESIGN/BUILD TERMS AND CONDITIONS

UTILIZATION OF SMALL AND SMALL DISADVANTAGED BUSINESS CONCERNS AND OWNED SMALL BUSINESSES

WOMEN

The Contractor hereby agrees to use its best efforts to ensure that small and small disadvantaged businesses, and women-owned small businesses, as defined in statute or regulation by the Small Business Administration, have the maximum practicable opportunity, consistent with the efficient performance of this agreement, to participate in lower-tier subcontracts issued pursuant to this agreement.

EQUAL OPPORTUNITY

Unless exempt, 41 CFR Part 60 is incorporated herein by reference. Unless this contract is so exempted, the applicable Equal Employment Opportunity Compliance Certificate previously submitted by Contractor to Lockheed is by reference also incorporated herein.

AFFIRMATIVE ACTION FOR HANDICAPPED WORKERS

Unless exempt, 41 CFR Part 60 is incorporated herein by reference, unless the value of any Design/Build Release issued pursuant to this agreement is under \$2,500.

AFFIRMATIVE ACTION FOR DISABLED VETERANS/VETERANS OF THE VIETNAM ERA

Unless exempt, 41 CFR Part 60 is incorporated herein by reference, unless the value of any Design/Build Release issued pursuant to this agreement is under \$10,000.

REMEDIES

The rights and remedies provided herein shall be cumulative and in addition to any other rights and remedies provided by law or equity.

WAIVER

The failure of Lockheed in any one or more instances to insist on performance of any of the provisions of this agreement shall in no way be construed to be a waiver of such provisions in the future.

GRATUITIES

Lockheed may at any time, by written notice to Contractor, terminate for default the right of Contractor to proceed under this agreement if Lockheed has reasonable cause to believe that gratuities (in the form of entertainment, gifts, or otherwise) were offered or given by Contractor, or any agent or representative of Contractor, to any officer or employee of Lockheed with a view toward securing this agreement or securing favorable treatment with respect to the award or amendment of this agreement or the making of any determination with respect to the performance under this agreement. The rights and remedies of Lockheed provided in this clause shall not be exclusive and are in addition to any other rights and remedies provided by law or under this agreement.



## LOCKHEED MISSILES & SPACE COMPANY - DESIGN/BUILD TERMS AND CONDITIONS

### SECTION B - CONSTRUCTION SERVICES: APPLICABLE TO THE DESIGN/BUILD CONTRACTOR AND ALL SUBCONTRACTORS

#### SITE INVESTIGATION AND CONDITIONS AFFECTING THE WORK

The Contractor acknowledges that it has investigated and satisfied itself as to the conditions affecting the work, including but not restricted to those bearing upon transportation, disposal, handling and storage of materials, availability of labor, water, electric power, roads and uncertainties of weather, river stages, tides or similar physical conditions at the site, the conformation and conditions of the ground, and the character of equipment and facilities needed preliminary to and during prosecution of the work. The Contractor further acknowledges that it has satisfied itself as to the character, quality and quantity of surface and subsurface materials or obstacles to be encountered insofar as the information is ascertainable from an inspection of the site, including all exploratory work done by Lockheed as well as from information presented by the drawings and specifications made a part of this contract. Any failure by the Contractor to acquaint itself with the available information will not relieve it of responsibility for estimating properly the difficulty or cost of successfully performing the work. Lockheed assumes no responsibility for any conclusions or interpretations made by the Contractor on the basis of the information made available by Lockheed.

The Contractor shall be responsible for having taken steps reasonably necessary to ascertain the nature and locations of the work, and the general and local conditions which can affect the work or the cost thereof. Any failure by the Contractor to do so will not relieve the Contractor of responsibility for successfully performing the work without additional expense to Lockheed. Lockheed assumes no responsibility for any understandings or representations concerning conditions made by any of its officers or agents prior to the execution of this contract, unless such understandings or representations by Lockheed are expressly stated in the contract.

#### SPECIFICATIONS AND DRAWINGS

A. All specifications, publications drawings, and standard documents shall be designed in compliance with the current revision (including all addenda, amendments and errata) of the Lockheed Standard Construction Specifications and Lockheed Design Standards in effect as of Design/Build Release date.

B. Contractor/Subcontractor Drawings

(1) Shop Drawings

(a) When requested by Lockheed or when submitting substitutions, the Contractor shall provide at its sole expense shop drawings for all shop fabricated work and/or for other items requested by Lockheed. The shop drawings shall be submitted in accordance with the approved construction schedule. Drawings shall include all schedules, fabrication details, site plans and other data required for the work of the various trades. Lockheed will review them and advise the Contractor of action taken within a reasonable period of time.

(b) Review by Lockheed is for general conformance with the design concept and contract documents. Review will result in one of the four following general dispositions: Approved - No exceptions taken; Approved and Corrected - Verify corrections noted and distribute record copy; Revise and resubmit; Rejected - resubmit - see remarks.

Review by Lockheed is not considered complete until submittals are approved.

## LOCKHEED MISSILES & SPACE COMPANY - DESIGN/BUILD TERMS AND CONDITIONS

### SPECIFICATIONS AND DRAWINGS (Cont'd)

- (c) Review by Lockheed shall in no way relieve the Contractor of meeting Federal State and local building codes. Review by Lockheed shall in no way relieve the Contractor of ~~the~~ the responsibility for compliance with Contractor's drawings or specifications unless deviations have been expressly agreed to by a supplemental Amendment to the release, nor shall it relieve the Contractor of responsibility for errors or discrepancies of any sort in the shop drawings or schedules; nor shall it relieve Contractor of any responsibility under any of the terms, conditions, specifications or any other requirement of the contract. Any deviations by Contractor from specifications on the shop drawings are to be set forth in a separate cover letter to accompany the drawings along with a justification of why the deviation was considered necessary or beneficial to Lockheed by the Contractor. Lockheed approval of any shop drawings containing any deviation from the approved specifications shall not be construed to be approval of those deviations absent such a cover letter specifically calling them to Lockheed's attention.
- (d) When Shop Drawings are specifically requested by Lockheed, the Contractor shall not commence any forming, fabrication pursuant to paragraph (b) above or similar work until shop drawings are reviewed and approved by Lockheed.
- (e) When Shop Drawings are specifically requested by Lockheed they shall be submitted in the form of a transparency suitable for reproduction, plus a blue-line print made therefrom. An appropriate clear space shall be allowed on the drawing in the lower right hand corner for the placement of review and date stamps. After review, Lockheed will obtain prints from the transparency as required for Lockheed's use and will return the reviewed, noted, or corrected transparency to the Contractor. Transparencies returned for resubmission or rejected require the original drawings to be corrected and a new transparency with a blue-line print made therefrom submitted. Such procedures shall be followed until review is completed by Lockheed.
- (f) When requested the Contractor shall obtain and provide such number of prints from the final reviewed transparency as may be required or distribution. All printed matter such as catalog cuts, brochures, illustrations, material lists, and performance data shall be submitted in eight (8) copies. Drawings and printed matter shall be identified by project title, building number, register number and contract number.

#### (2) Record Drawings (As-builts)

- (a) The Contractor shall keep, and shall cause all subcontractors to keep, record drawings on the job site, to be available during working hours. On these drawings shall be entered all dimensions established in the field; all elevations and inverts, and all deviations, as approved by Lockheed, from the size, location or spacing shown on the drawings. At the conclusion of each phase of the work, this information is to be turned over to the Lockheed Project Manager.
- (b) From these drawings it must be possible to locate with accuracy any covered or concealed work and work of any nature which might be involved in future construction or maintenance.
- (c) The Contractor shall provide record drawings in the manner provided for in the document entitled "Design Build Services".

C. The Contractor shall keep on the work site a copy of all drawings and specifications and shall at all times give Lockheed access thereto.

## LOCKHEED MISSILES & SPACE COMPANY - DESIGN/BUILD TERMS AND CONDITIONS

### CHANGED CONDITIONS

The Contractor shall promptly, and before such conditions are disturbed, notify Lockheed in writing of:

- A. Sub-surface or latent physical conditions at the site differing materially from those indicated in the design/build release, or
- B. Unknown physical conditions at the site, of an unusual nature, differing materially from those ordinarily encountered and generally recognized as inherent in the nature and character of work provided for in the design/build release.

Lockheed will promptly investigate the conditions, and if it finds that such conditions do so materially differ and cause an increase or decrease in the Contractor's cost of, or the time required for, performance of the design/build release, and such site condition could not be ascertained by reasonable inspection or from LMMS documents, an equitable adjustment shall be made and the design/build release modified in writing accordingly. Any adjustment in price shall be negotiated following submittal of the contractor's cost estimates presented in the form required by the CHANGES clause. Any claim of the Contractor for adjustment hereunder shall not be allowed unless the Contractor has given notice as required above or unless Lockheed grants a further period of time in writing before the date of final payment under the design/build release.

### MATERIAL AND APPLIANCES

- A. Unless otherwise specified, all materials shall be new and both workmanship and material shall be of the most suitable grade for the purpose intended. The Contractor shall, if required, furnish satisfactory evidence as to the kind and quality of materials.
- B. In the event Contractor finds it necessary to substitute other materials for the materials specified in the Lockheed standards the Contractor shall propose such substitution in writing to Lockheed setting forth comparative data including cost. No substitutions shall be made by Contractor without the prior written approval of Lockheed's Project Manager.
- C. Unless otherwise approved, in writing, all materials delivered to and stored on the site shall be in their original containers with the manufacturer's label intact and legible.
- D. Transactions with manufacturers shall be through the Contractor. All letters initiated by the manufacturer, if transmitted to Lockheed, shall be accompanied by a cover letter in which the Contractor shall state all causes and effects of the subject matter and his position and/or disposition on same.
- E. Where several materials are specified by name for one use, any one of those so specified may be used.
- F. Whenever an item or class of material is specified exclusively by trade name, manufacturer's name, or by catalog reference, the Contractor shall use only such item unless written approval for substitution is secured from the Project Manager.
- G. Like material and equipment shall be one brand of manufacture throughout.
- H. Complete wiring and piping diagrams shall be included.
- I. Contractor shall supply certificates stating that materials conform to reference specification (ASTM, etc.) prior to installation as directed by Lockheed.

## LOCKHEED MISSILES & SPACE COMPANY - DESIGN/BUILD TERMS AND CONDITIONS

### DESIGN/BUILD SCHEDULE OF PROGRESS

- A. Time is of the essence in the performance of the Design/Build Releases issued pursuant to this contract. Performance by the Contractor according to the schedule for the Design/Build Release is a major condition of this agreement.
- B. The Contractor, for each proposed Design/Build Release to be issued, shall, with its proposal prepare and submit to Lockheed for approval a practicable schedule, showing the order in which the Contractor proposes to carry on the work, the date on which it will start the several activities (including procurement of materials, plant and equipment), the contemplated dates for completing the same.
- C. If, in the opinion of Lockheed, the Contractor falls behind the schedule, the Contractor shall take such steps as are necessary to improve its progress and Lockheed may require the Contractor to increase the number of shifts, or overtime operations, days of work, or the amount of construction facilities or all of them, and to submit for approval such supplementary schedule or schedules in chart form as may be deemed necessary to demonstrate the manner in which the agreed rate of progress will be regained, all without additional cost to Lockheed.
- D. Failure of the Contractor to comply with the requirements of Lockheed under this clause shall be grounds for determination by Lockheed that the Contractor is not prosecuting the work with such diligence as will insure completion of the work required under a Design/Build Release within the time specified. Upon such a determination, Lockheed, at its sole discretion, may terminate the Contractor's right to proceed with the work, or any separable part thereof, in accordance with the clause TERMINATION FOR DEFAULT - DAMAGES FOR DELAY - TIME EXTENSION.

### PRELIMINARY OPERATION

Should Lockheed's Project Manager request by written notice that any portion of the plant, apparatus, or equipment be operated previous to the final completion and acceptance of the work required under a Design/Build Release, the Contractor shall consent, and such operation shall be under the supervision and directions of the Contractor. Lockheed, if requested in accordance with Paragraph B of the Changes clause herein, will make an equitable adjustment, if required, pursuant to the Changes clause. Such preliminary operation and/or payment therefore shall not be construed as an acceptance of any of the work.

### USE AND POSSESSION PRIOR TO COMPLETION

Lockheed, by furnishing a written notice, shall have the right to take possession of or use any completed or partially completed part of the work. Such possession or use shall not be deemed an acceptance of any work not completed in accordance with the design/build release. While Lockheed is in such possession, the Contractor shall be relieved of the responsibility for loss or damage to the work other than that resulting from the Contractor's or lower-tier subcontractor's fault or negligence. If such prior possession or use by Lockheed delays the progress of the work or causes additional expense to the Contractor, an equitable adjustment in the design/build release price and/or time of completion will be made pursuant to the Changes clause and the design/build release shall be modified in writing accordingly.

## LOCKHEED MISSILES & SPACE COMPANY - DESIGN/BUILD TERMS AND CONDITIONS

### PERMITS AND RESPONSIBILITIES

The Contractor shall, within the target price for the Design/Build Release, be responsible for obtaining and maintaining all necessary licenses and permits, (including plan check fees,) and for complying with any applicable Federal, State, Regional, and/or local laws, codes or regulations, permits, including air pollution, water pollution, and hazardous waste controls, in connection with the prosecution of the work. Third-party independent structural testing services fees will be paid for by Lockheed unless specifically noted otherwise. All other fees, taxes and required bond premiums shall be paid by the Contractor. The Contractor shall pay for all utility, sanitary sewer and water connection charges, including development charges. The Contractor shall be similarly responsible for the following, including but not limited to: all damages to persons or property of third parties or to Lockheed that occur as a result of its act or failure to act; proper safety and health, and environmental precautions to protect the work, the workers, the public, the environment and the property of others; all materials delivered and work performed until completion and acceptance of the entire construction work required for a release, except for any completed unit of construction thereof which theretofore may have been accepted. The contractor shall provide written notice to Lockheed that the required building permit(s) have been obtained.

The contractor shall give all notices and comply with all applicable local, state and federal laws and executive orders and regulations issued pursuant thereto and agrees to defend, indemnify, and hold Lockheed harmless from any claim, suit, loss, cost, damage, expense (including attorneys' fees) or liability by reason of contractor's or contractor's lower tier subcontractor's violation hereof. Nothing in this agreement or in any Design/Build Release issued pursuant to this agreement shall be construed to mean that contractor should perform such work in violation of any law, statute, code or ordinance.

The contractor shall be subject to all California laws regulating the activities of a "California Contractor." The contractor shall be responsible for California sales and use tax on all consumed materials. LMMS will not issue sales/use tax exemption certificates for real property or fixed assets construction in California.

### BONDS

When requested to do so by Lockheed, the Contractor shall furnish to Lockheed a Performance and a Payment Bond within ten days after award of a design/build release. Each bond shall be in an amount equal to one hundred percent (100%) of the design/build construction price. When so requested, premiums for the bonds shall be added to the design/build release price. The bonds of any surety company holding a Certificate of Authority from the United States Secretary of Treasury as an acceptable surety of Federal bonds and licensed in the State of California will be accepted.

In the event the Contractor is unable to furnish satisfactory bonds, the design/build release and this Master Design/Build Agreement may be terminated for default, at Lockheed's sole discretion, in accordance with Clause A-14 TERMINATION FOR DEFAULT.

### LIENS

The Contractor shall pay promptly, when due, all wages of laborers and employees and all bills for materials used in construction of the work, together with all claims of any subcontractors, and all statutory withholdings and agrees to indemnify Lockheed and hold it, the construction site, and the work harmless from and against any and all liens including subcontractors' liens, claims for labor, services, and materials and agrees to forthwith discharge and pay any and all liens and claims. If a lien is filed against Lockheed property, Contractor shall (1) promptly pay such lien and obtain a Release of Lien; or (2) post a Release Bond to lift the lien from Lockheed's property and shall duly record such Release Bond in the County real estate records and promptly provide Lockheed with a copy of the recorded bond within five (5) working days of notification by Lockheed. Failure to do so shall be deemed to be a material breach of the contract. Lockheed, at its discretion, may withhold any moneys due the Contractor and use said money to satisfy any liens or past due amount.

## LOCKHEED MISSILES & SPACE COMPANY - DESIGN/BUILD TERMS AND CONDITIONS

### INSPECTION AND ACCEPTANCE

- A. Except as otherwise provided in this contract, inspection and/or test by Lockheed, of material and workmanship required by a Design/Build Release issued pursuant to this Contract shall be made at reasonable times and at the site of the work unless Lockheed determines that such inspection or test of material which is to be incorporated into the work shall be made at the place of production,, manufacture, or shipment of such material. Making off-site inspection(s) or test(s) shall not relieve the Contractor of responsibility for damage to or loss of the material prior to acceptance nor in any way affect the continuing rights of Lockheed after acceptance of the completed work required by a Design/Build Release under the terms of Paragraph F of this clause, except as herein above provided.
- B. The Contractor shall, at no cost to Lockheed, promptly replace any material or correct any workmanship found by Lockheed not to conform to the contract requirements unless in its interest Lockheed consents to accept such material or workmanship with an appropriate adjustment in the total final price of a Design/Build Release. The Contractor shall promptly segregate and remove rejected material from the premises.
- C. If the Contractor does not promptly replace rejected material or correct rejected workmanship, Lockheed (1) may, by contract or otherwise, replace such material or correct such workmanship and charge the cost thereof to the Contractor and/or (2) may terminate the Contractor's rights to proceed in accordance with the TERMINATION FOR DEFAULT - DAMAGE FOR DELAY - TIME EXTENSIONS, clauses hereof.
- D. The Contractor shall furnish promptly, within the target price of a release all facilities, labor, and material reasonably needed for performing such safe and convenient inspection and test as may be required by Lockheed. All inspection and test by Lockheed shall be performed in such manner as not to unnecessarily delay the work. Special, full size, and performance tests shall be performed as described in this contract. The Contractor shall be charged with an additional cost of inspection when material and workmanship are not ready at the time specified by the Contractor for its inspection.
- E. Should it be considered necessary or advisable by Lockheed at any time before acceptance of the entire work to make an examination of work already completed by removing or tearing out same, the Contractor shall upon request promptly furnish all necessary facilities, labor or material. If such work is found to be defective or nonconforming in any material respect due to the fault of the Contractor or his subcontractors at any tier, the Contractor shall pay all the expenses of such examination and of satisfactory reconstruction. If, however, such work is found to meet the requirements of the agreement, an equitable adjustment in accordance with the Changes clause hereof shall be made in the Design/Build Release.
- F. Unless otherwise provided in the release, acceptance by Lockheed shall be made as promptly as practicable after completion and inspection of all work required by the Design/Build Release. Acceptance shall be final and conclusive except as regards latent defects, fraud, or such gross mistakes as may amount to fraud. Final acceptance shall occur upon execution by Lockheed of the Certificate of Completion as required by these terms and conditions. Acceptance by Lockheed for the purpose of commencement of warranties shall occur on the date of Final Inspection as indicated on the Certificate of Completion, unless otherwise agreed to in writing.

## LOCKHEED MISSILES & SPACE COMPANY - DESIGN/BUILD TERMS AND CONDITIONS

### PROTECTION OF EXISTING STRUCTURES, UTILITIES AND IMPROVEMENTS

- A. The Contractor shall preserve and protect all existing vegetation such as trees, shrubs and grass on or adjacent to the site of work which is not to be removed and which does not unreasonably interfere with the construction work. Care shall be taken in removing trees authorized for removal to avoid damage to vegetation to remain in place. Any limbs or branches to trees broken during such operations or by the operation of equipment, or by workmen, shall be trimmed with a clean cut and painted with approved tree pruning compound as directed by Lockheed.
- B. The Contractor shall protect from damage all existing improvements or utilities at or near the site of the work, the location of which is made known to the Contractor, and shall repair or restore any damage to such facilities resulting from failure to comply with the requirements of this agreement or the failure to exercise reasonable care in the performance of the work. If the Contractor fails or refuses to repair any such damage promptly, Lockheed may have the necessary work performed and charge the cost thereof to the Contractor or obtain an equitable adjustment to the release.
- C. The Contractor agrees that all live pipe and conduit lines encountered in the performance of the work herein contemplated shall be protected, supported in cut off and capped and/or re-routed as required by certified or qualified persons for the appropriate trades, and Contractor agrees that Contractor shall promptly and properly notify the public utility companies, Lockheed and other parties involved in such matters and not interfere or begin work upon such live pipe or conduit lines without securing the express permission and approval of Lockheed and such other parties as required.

### WARRANTY - GUARANTEE

- A. Notwithstanding inspection and acceptance by Lockheed or any provisions concerning the conclusiveness thereof, the Contractor warrants that all equipment, products, and material furnished and services performed under this contract (whether by Contractor or by a Subcontractor or anyone employed by them or for whose acts Contractor or a Subcontractor may be responsible) shall (a) be free from defects in Contractor furnished design (if any), materials and workmanship for the period of one (1) year after acceptance as indicated in Clause B-11, (b) comply with all specifications of this contract, and (c) otherwise fully conform to the requirements of this contract. Lockheed shall give written notice of any such defects or nonconformance to the Contractor.
- B. If the Contractor is required to correct or re perform any part of the release, it shall be at no cost to Lockheed, and any item or service corrected or re performed by the Contractor pursuant to this clause shall be warranted to the same extent as an item or work initially performed provided, however, that the commencement period for warranty of re-worked items shall commence upon acceptance of the reworked item. If the Contractor fails or refuses to promptly correct or reperform, Lockheed may, by contract or otherwise, correct or replace with a similar item or service and charge to the Contractor the cost occasioned to Lockheed thereby or obtain an equitable adjustment in the Design/Build Release price. If Lockheed does not require correction or reperformance, Lockheed shall make an equitable adjustment to the Design/Build Release. The rights and remedies of Lockheed provided in this clause are in addition to and do not limit any rights afforded Lockheed under law or any other clause of this agreement or under any other warranty provided by Contractor or any of its suppliers or Subcontractors.
- C. Lockheed reserves the right to make temporary repairs as necessary to keep equipment in operating condition without voiding the Contractor's guarantee or relieving the Contractor of his responsibilities during the guarantee period.

## LOCKHEED MISSILES & SPACE COMPANY - DESIGN/BUILD TERMS AND CONDITIONS

### LABOR DISPUTES

- A. Whenever an actual or potential labor dispute involving the Contractor delays or threatens to delay the timely performance of a design/build release, the Contractor shall immediately give notice thereof in writing to the Procurement Representative.
- B. If, as a result of a labor dispute, a special reserved gate is designated by Lockheed for ingress and egress by the Contractor to its job site, the Contractor and its subcontractors and suppliers will comply with the requirements to use only the designated reserved gate. Special badging may be required as long as the Contractor is restricted to the reserved gate.
- C. In the event a picket line is established as a result of a labor dispute with another contractor or supplier, the Contractor is obligated and is expected to continue performance on any uncompleted Design/Build Releases to this contract.
- D. The Contractor shall insert the substance of this clause in all subcontracts issued in support of a design/build release.

### SECURITY

- A. The Contractor shall require its employees, agents, and subcontractors to comply with all security regulations established by the United States Government and/or Lockheed and further agrees that it and its subcontractors shall remove from the work or construction site any employee or representative when requested to do so by Lockheed. Failure to comply with the requirements of this paragraph shall be deemed to be a material breach of this agreement.
- B. Certain areas of the Lockheed plant are restricted areas. These areas are marked and are to be avoided. It is required that the Contractor and lower tier subcontractor personnel stay in the immediate area where they are working. Unauthorized tours are prohibited, and violators shall be removed from the work at Lockheed's request.

### SECURITY STANDARDS AND IDENTIFICATION OF EMPLOYEES

- A. The Contractor shall be responsible for requiring each of its employees and its subcontractor's employees on the work to display such identification as may be approved and/or directed by Lockheed.
- B. All Contractor and subcontractor personnel, including vendor's field representatives, requiring entry to Lockheed buildings or perimeter fenced areas for more than five (5) days must obtain a Lockheed non-employee identification badge. Personnel requiring entry for five (5) days or less, must obtain a non-employee identification badge when time permits preparation and processing of the required written application; when time is insufficient, a one-day temporary badge must be obtained.
- C. Additional Security Clearance or proper escort may be required to enter certain closed areas. This may be obtained through the Lockheed Procurement Representative.
- D. Applications for non-employee identification badges must be submitted on a Lockheed badge request form which may be obtained from the Lockheed Procurement Representative. Forms must be typewritten and require the following information about each contractor employee
  - (1) Full name (no initials or nicknames)
  - (2) Social Security Number
  - (3) Birthplace and Date of Birth
  - (4) Home Address
  - (5) Period of time entry into Lockheed controlled areas is required

### SECURITY STANDARDS AND IDENTIFICATION OF EMPLOYEES (Cont'd)

- (6) Citizenship



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A minimum seventy-two (72) hours is required to process a badge request form, except for personnel who will require access to Lockheed facilities for five (5) days or less; such requests will be processed in one (1) work day. It is therefore required that the Contractor and subcontractors contact the Procurement representative as soon as possible after award to arrange for badging.

- E. Contractor or subcontractor personnel requiring access to Lockheed facilities for one to five days must obtain a temporary badge by presenting to the Lockheed Identification Unit a written job referral or dispatch slip showing the individual's name, the name of the contractor and/or subcontractor, and the building number of the job site, and the Lockheed design/build release number.
- F. All prescribed identification shall immediately be delivered to Lockheed Plant Protection for cancellation upon the release of any employees or the completion of the design/build release.
- G. All contractor employees shall be United States citizens.

### SAFETY

- A. The Contractor shall abide by all Federal, State, Local and Lockheed safety, environmental protection, and hazardous waste handling and disposal rules and regulations in connection with the performance of work hereunder at the construction site and agrees to defend, indemnify, and hold Lockheed harmless from any claim, suit, loss, cost, damage, expense (including attorneys' fees) or liability by reason of contractor's or contractor's lower tier subcontractor's violation hereof.
- B. Protective wearing apparel and equipment shall be provided by the Contractor and worn or used by Contractor personnel according to the nature of the hazard and job.
- C. Lockheed owned equipment shall not be used by Contractor personnel except as specifically permitted under Paragraph D of this clause.
- D. When the use of Lockheed owned lifting equipment, defined as any crane, derrick, hoist, or aerial lift will be requested to perform work on a design/build release, the following requirements shall be met.
  - (1) All work procedures and locations of works shall be provided in writing to the Lockheed Occupational Safety & Health Office, 0/47-20, for review and concurrence approval.
  - (2) (a) Use of such lifting equipment requested to be provided by Lockheed shall be approved by the Occupational Safety & Health Office, 0/47-20.
    - (b) Lockheed owned equipment shall be operated by Lockheed personnel only.
    - (c) Contractor shall sign an agreement whereby it agrees to indemnify Lockheed against all claims, damages, losses and expenses arising out of a Contractor's use of any such equipment as well as obtain insurance to protect the work and the equipment against damage or loss thereto. This insurance would be in addition to that insurance already required under Clause A-18 hereof.
- E. Lifting equipment provided by the Contractor with a rated capacity of over three tons shall comply with the following:
  - (1) Such lifting equipment must comply with the State of California Safety Orders as set forth on California Administrative Code Title 8.

### SAFETY (Cont'd)

- (2) A current certificate to verify that such equipment is in compliance with Administrative Code Title 8 and that equipment is maintained and operated in accordance with the manufacturer's instructions will be furnished by the Contractor.
- (3) A certificate stating that the operator of subject equipment is properly qualified to operate the equipment to be used on the job will be furnished by the Contractor.
- (4) The certificates required above will be provided to the Project Manager prior

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attorney's fees), damage or liability resulting from the Contractor's failure to comply with the provisions of this paragraph and as provided in Clause A-16, INDEMNIFICATION.

- G. When performing work on Lockheed premises, and/or providing or using chemicals identified by the State as causing Cancer, birth defects, or other reproductive harm, the Contractor shall comply with the requirements of Proposition 65, The Safe Drinking Water and Toxic Act of 1986. The Contractor agrees to hold Lockheed harmless against any loss, cost (including attorney's fees), damage, or liability arising out of Contractor's failure to comply with Proposition 65.
- H. When installing and/or servicing equipment under this contract, the Contractor shall comply with 29 CFR 1910.147, The Control of Hazardous Energy (Lockout/Tagout), and shall be responsible for determining which equipment must be locked and tagged out and, using his own locks and LMMS provided tags, shall proceed to lock and tag out such equipment.

### WORKING HOURS

- A. The Contractor shall perform all work described in the design/build release during Lockheed normal working hours unless otherwise specified in the design/build release or authorized by the Lockheed Procurement Representative. Lockheed normal working hours are defined as follows:
  - 7:30 AM to 4:30 PM in open areas
  - 8:30 AM to 4:00 PM in closed areas (guards required)
- B. Prior written notice shall be given to the Lockheed Project Manager when any weekend work or LMMS holiday work is scheduled.

### OPERATIONS AND STORAGE AREAS

- A. All operations of the Contractor (including storage of materials) upon Lockheed's premises shall be confined to areas authorized or approved by Lockheed.
- B. Temporary buildings (storage sheds, shops, offices, etc.) or signs may be erected by the Contractor only with the approval of Lockheed and shall be built with labor and materials furnished by the Contractor without expense to Lockheed. Such temporary buildings and utilities shall remain the property of the Contractor and shall be removed by the Contractor at its expense upon the completion of the work.
- C. All materials, appliances and equipment are to be transported and stored in such a manner as to avoid deterioration or defacement from any cause.

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### CLEANING UP

- A. The Contractor shall at all times keep the construction area, including storage areas used by it, free from accumulations of waste material or rubbish and prior to completion of the work remove any rubbish from the premises and all tools, scaffolding, equipment, and materials not the property of Lockheed.
- B. Upon completion of the construction, the Contractor shall leave the work and premises in a clean, neat and workmanlike condition satisfactory to Lockheed. If the contractor fails upon completion of the construction to leave the Work and premises in a clean, neat and workmanlike conditions satisfactory to Lockheed, Lockheed may perform the clean up, the cost thereof shall be charged to the contractor.

### BERYLLIUM REQUIREMENTS

If the Contractor is required to work in areas designated by Lockheed as "Beryllium Controlled Areas," the Contractor warrants that it is aware of the fact that beryllium has hazardous properties which make it essential that it be used and handled only by persons skilled in its use. Inhalation of beryllium dust is considered extra hazardous and extreme caution must be exercised to protect workers and the general public from harmful concentrations.

The following references are listed for Contractor information, but Lockheed makes no representations with regard to the adequacy or accuracy of the information contained therein:

- (1) American National Standard: Acceptable concentrations of Beryllium and Beryllium Compounds, ANSI Z37-29-1970.
- (2) American Industrial Hygiene Association; Hygienic Guide, Beryllium and Compounds, November 1964.
- (3) Stockinger, E. E. et. al.; Beryllium Industrial Hygiene Aspects Academic Press, New York (1966).

The Contractor's acceptance of this agreement or any design/build release issued hereto constitutes a representation by it that the Contractor is familiar with the properties, including toxicity, of Beryllium.

The Contractor further warrants that it will apprise its workmen, prior to their entry into said controlled areas, of these facts and that it will insert this clause into any and all subcontracts related to this agreement.

### ARCHAEOLOGICAL ARTIFACTS

In the event Contractor unearths or otherwise discovers items which could possibly be construed as being archaeological artifacts, Contractor shall immediately stop all work in the area and promptly advise Lockheed of such discovery. Contractor further agrees that no work in the area will be resumed until written notification is received from Lockheed to do so.

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**SECTION C - DESIGN AND CONSTRUCTION MANAGEMENT SERVICES: Applicable only to the Design/Build Contractor**

**C-1**                    ADMINISTRATION OF THE AGREEMENT

- A. Lockheed will provide administration of the agreement as herein described. Lockheed shall issue all instructions to the contractor directly.
- B. Lockheed shall at all times have access to the Work in Progress wherever it is being prosecuted, including subcontractor's facilities. The Work will be conducted under the general direction of the Lockheed Project Manager and is subject to inspection at all times to ensure strict compliance with the terms of the agreement. The presence or absence of the Project Manager shall not relieve the contractor from any requirements of any design/build release issued pursuant to the agreement.
- C. Lockheed will be the interpreter of the requirements of the Design/Build Releases and determination as to the contractors performance under the releases shall be within the sole discretion of Lockheed.
- D. Lockheed may reject Work which does not conform to the requirements of the design/build release. Whenever Lockheed considers it necessary, or advisable for the implementation of the intent of the design/build release or this agreement, Lockheed shall have authority to require special inspection or testing of the Work whether or not such Work has been fabricated, installed or completed.
- E. Lockheed will review and approve or take other appropriate action upon contractor's submittals such as Shop Drawings, Product Data and Samples, but only for conformance with the design concept of the Work. If the submittals deviate from the project requirements as provided to the contractor, such deviation must be called to Lockheed's attention in writing and that document must accompany the submittal.
- F. Any and all changes to the work authorized by Lockheed shall be in accordance with the CHANGES clause.
- G. Lockheed, jointly with the design/build contractor, will conduct inspections to determine the dates of substantial completion and final completion, will receive and review written warranties and related documents required by the design/build release and assembled by the contractor, and will approve the final Certificate of Completion for each design/build release upon compliance with the requirements in clause B-11.

**C-2**                    COMPOSITION OF THE DESIGN/BUILD CONTRACTOR

If the Design/Build Contractor hereunder is comprised of more than one legal entity, each such entity shall be jointly and severally liable hereunder.

**C-3**                    RESPONSIBILITY OF THE DESIGN/BUILD CONTRACTOR

- A. The Design/Build Contractor shall be totally responsible for the professional quality, technical accuracy and the coordination of all designs, drawings, specifications, and other services furnished by the Design/Build Contractor under this agreement. The Design/Build Contractor shall, without additional compensation, correct or revise any errors or deficiencies in its designs, drawings, specifications, and other services which Lockheed determines to be necessary. Additional design services required due to enforcement agency code interpretations shall be at the Design/Build Contractor's expense, except where the enforcement agency requirement is in contradiction of or overrides an agreement reached between Lockheed, or the Design/Build Contractor acting for Lockheed, and the City of Sunnyvale.

## LOCKHEED MISSILES & SPACE COMPANY - DESIGN/BUILD TERMS AND CONDITIONS

### C-3 RESPONSIBILITY OF THE DESIGN/BUILD CONTRACTOR (Cont'd)

B. Neither Lockheed's review, approval or acceptance of, nor payment for, any of the services required under a design/build release issued pursuant to this contract shall be construed to operate as a waiver of any rights under this agreement of any cause of action arising out of the performance of this agreement, and the Design/Build Contractor shall be and remain liable to Lockheed for all damages to Lockheed resulting from the Design/Build Contractor's performance of any of the Services furnished under this agreement.

### C-4 REQUIREMENTS FOR REGISTRATION OF DESIGNERS

The design of architectural, structural, mechanical, electrical, civil or other engineering features of the work shall be accomplished or reviewed and approved by architects or engineers registered to practice in the particular professional field involved in the State in which such services are performed hereunder.

### C-5 NOTICE AND APPROVAL OF RESTRICTED DESIGNS

In the performance of this agreement, the Design/Build Contractor shall, to the extent practicable, make maximum use of structures, machines, products, materials, construction methods, and equipment which are readily available through competitive commercial channels, or thorough standards or proven production techniques, methods, and processes. Unless approved by Lockheed, the Design/Build Contractor shall not, in the performance of the work called for by any design/build release, produce a design or specification such as to require in this construction work the use of structures, products, materials, construction equipment, or processes which are known by the Design/Build Contractor to be available only from a sole source. As to any such design or specification the Design/Build Contractor shall report to Lockheed giving the reason or reasons why it is considered necessary to so restrict the design or specification.

### C-6 DRAWINGS AND OTHER DATA TO BECOME THE PROPERTY OF LOCKHEED

All designs, drawings, specifications, notes and other works developed in the performance of any design/build release issued under this agreement shall become the sole property of Lockheed and may not be used on any other design or construction without the express written permission of Lockheed. Lockheed shall be considered the "person for whom the work was prepared" for the purpose of authorship in any copyrightable work under Section 201 (b) of Title 17, United States Code. With respect thereto, the Design/Build Contractor agrees not to assert or authorize others to assert any rights nor establish any claim under the design patent or copyright laws. The Design/Build Contractor for a period of three years after completion of the project agrees to furnish all retained works on the request of Lockheed. Unless otherwise provided in this agreement, the Design/Build Contractor shall have the right to retain copies of all works beyond such period.

### C-7 RETENTION OF RIGHTS AND INTERESTS

Lockheed hereby retains all of its rights, title and interest in and to all information, data, designs and inventions furnished by Lockheed to the Design/Build Contractor for the purpose of assisting the Design/Build Contractor (i) in the performance of the agreement or (ii) in the submission of a bid by the Design/Build Contractor for such performance, whether furnished prior to, or after acceptance of, this agreement. None of such information, data, designs and inventions shall be reproduced or used by the Design/Build Contractor, except in the performance of this agreement, or disclosed by the Design/Build Contractor to others without the consent of Lockheed. Upon completion of performance of a design/build release issued hereunder, all such information, data, designs and inventions shall be promptly returned by the Design/Build Contractor to Lockheed.

### C-8 REPRODUCTION RIGHTS

Lockheed does not grant to the Design/Build Contractor (1) any reproduction rights to any materials, designs, drawings, data or other information produced in the performance of this agreement or (2) any rights to use, in the manufacture or design of articles or materials for anyone other than Lockheed any of the designs, drawings or other information belonging to or supplied by Lockheed.

### C-9 MANAGEMENT AND SUPERVISION OF THE WORK

A. The contractor shall supervise and direct the construction work, using its best skill and attention. The contractor shall be solely responsible for all

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- B. The Contractor shall designate a Project Manager who shall direct and coordinate all matters relating to the design and construction efforts and shall attend such meetings as may be required by the requirements documents. If requested by Lockheed, such designation shall be in writing.
- C. The Contractor's Project Manager shall not be changed except with the consent of Lockheed unless the Project Manager ceases to be in the Contractor's employ. The Project Manager shall represent the Contractor in the Contractor's absence, and all direction given to him shall be as binding as if given to the Contractor.
- D. The Contractors' Project Manager shall also supervise the performance of all changes issued by Lockheed.

**C-10**            ACCOUNTING RECORDS

- A. The contractor shall keep such accounts as may be necessary for proper financial management under this agreement. Lockheed shall be afforded, upon request to the contractor, access to the contractor's records, books, correspondence, instructions, Drawings, receipts, vouchers, memoranda and similar data related to this agreement. Lockheed has the right to audit, and copy, and the contractor shall preserve all such records for three (3) years after completion of construction services.
- B. For record retention purposes, construction services for a design/build release are complete on the date the Certificate of Completion is signed by the Lockheed Project Manager.

**C-11**            CONTRACT PRICE

- A. The term "Target Price" means the estimated cost of the Design/Build Release as initially negotiated, adjusted for negotiated changes in accordance with the terms of this agreement.
- B. The term "Total Final Price" means the final negotiated price upon completion of the Design/Build Release effort, adjusted for negotiated changes in accordance with the terms of this agreement and is the maximum amount payable by Lockheed to the design/build contractor for the performance of the work under the design/build release.
- C. Target Price, Total Final Price Revision: General. The supplies or services identified in a Design/Build Release under EFFORT TO BE PERFORMED are subject to price revision in accordance with the provisions of this clause. Any supplies or services which are to be ordered separately under, or otherwise added to, the Design/Build Release and which are to be subject to price revision in accordance with the provisions of this clause, shall be identified as such in a modification of the Design/Build Release.
- D. Definition of Cost. For the purposes of this clause, cost or costs means a sum computed and substantiated in accordance with standard accounting practices for those reasonable and allowable costs as defined in the Federal Acquisition Regulations incurred under this Agreement. Any legal costs incurred by Contractor pursuant to this Agreement shall not be deemed to be allowable or reimbursable.
- E. Submission of Final Price. Within forty-five (45) days after the end of the month in which contractor has delivered the last unit of supplies and completed the services called for by the items referred to in paragraph B above, contractor shall submit the final price in such form as Lockheed may require:
- F. Price Revision. Upon submission of the final price for a Design/Build Release as required by paragraph D above, contractor and Lockheed shall promptly establish the total final price in accordance with the following:

**C-11**            CONTRACT PRICE (Cont'd)

- (1) When the total final price is equal to the target price, there shall be no adjustment to total final price.
- (2) When the total final price is greater than the target price, the total final price shall be as negotiated by both parties.
- (3) When the total final price is less than the target price the target price shall be reduced equal to the total final price, as agreed to by both parties.

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contractor and Lockheed.

- G. Equitable Adjustments Under Other Clauses. If an equitable adjustment in the Design/Build Release price is made under the Changes clause of this contract before the total final price is established, the adjustment shall be made in the total target price for the Design/Build Release.