THE AEROSPACE CORPORATION
PURCHASE ORDER TERMS AND CONDITIONS
TIME-AND-MATERIALS CONSTRUCTION CONTRACT

1. DEFINITIONS:  (a) Any reference herein to "Aerospace" or "Buyer" shall be construed to mean The Aerospace Corporation represented by the Buyer, who is the Procurement Representative.

(b) The term "Seller" shall mean the legal entity which contracts with the Buyer.

(c) The Aerospace representative having cognizance at the job site shall be a person designated by the Head of Facilities of The Aerospace Corporation.

(d) The term "Subcontractor" shall mean those entities having a direct contract with the Seller for the furnishing of labor or material worked to a special design according to the plans or specifications.

(e) Words and descriptions used in this contract which have a recognized technical or trade meaning shall be construed in light of such meaning.

2. ORDER OF PRECEDENCE: In the event of any inconsistency between any of the contract documents, the order of precedence shall be: (1) the typed provisions on the face of the Purchase Order; (2) these additional Terms and Conditions; (3) statement of work; (4) specifications and/or drawings attached or incorporated by reference.

3. AUTHORITY TO ADMINISTER CONTRACT: Authority to issue, change, administer, and/or enforce any of the provisions, terms, and/or conditions of this contract remains solely with the Buyer unless otherwise specifically stated herein.

4. STATEMENT OF WORK: (a) Seller will supply labor and direct supervision as requested by the Buyer in this Order and future work orders. Seller will furnish hourly rates for straight time and all possible premium time, as well as foreman rates, for each craft used herein under Rate Schedule.

(b) Seller will establish a method of work control under the direction of the Aerospace Representative. Seller will receive separately numbered work orders for each project and will account for all labor, materials, equipment, and fabricated items for each project. All Seller supplied labor assigned to a specific project will be considered part of the project cost. Direct charges shall not be made for any of Seller's general supervision, executive, clerical, and other personnel. Each workman's time will be properly accounted for and certified by his foreman for each period of work.

(c) Buyer will supply all materials under this contract to the fullest practical extent. Seller will furnish materials, equipment, or fabricated items for the work in accordance with instructions contained in each work assignment, when necessitated by job conditions. In this latter event, Seller will use its best effort to obtain such materials, equipment, or fabricated items delivered to the work site when needed and at the lowest possible cost. Basis of charges for such material, equipment, or fabricated items shall be as stipulated elsewhere herein.

5. CEILING PRICE LIMITATION: (a) It is estimated that the total amount of this Order will not exceed the ceiling price amount set forth on the face of the Purchase Order. The Seller shall promptly notify the Buyer in writing whenever it has reason to believe: (1) the ceiling price may be exceeded or substantially less than the estimated amount; or (2) the amounts of be expended under this Order during the next succeeding thirty (30)
days will exceed 75% of the ceiling price. As part of the notification, the Seller shall provide a revised estimate of the price to perform this Order.

(b) Buyer shall not be obligated to pay Seller, and Seller shall not be obligated to incur charges in excess of the ceiling price unless and until Buyer notifies Seller in writing that said amount has been increased and specifies the revised ceiling price.

6. PAYMENT AND RELEASE: (a) Subject to the price schedules set forth in the Purchase Order, upon submission by the Seller of invoices certified by an officer or other authorized official, Seller shall be paid as follows:

(i) Time Rate - The amounts shall be computed by multiplying the appropriate time rate, or rates, by the number of direct labor hours performed, or fractions thereof, subject to the provisions of (iii) below.

(ii) Materials - Unless otherwise provided herein, any materials properly chargeable to this contract shall be charged at actual net cost to the Seller and shall provide full credit for discounts, rebates, refunds, trade discounts, allowances, etc. Reasonable material handling charges may be included to the extent they are clearly excluded from the hourly rate.

(iii) Payment Withhold - Unless otherwise prescribed in the schedule, Buyer will reimburse Seller in accordance with the provisions of subparagraphs (i) and (ii) above, except that the Buyer will withhold five percent (5%) of the total amount invoiced for each task. The amount withheld will be released to Seller upon delivery of a release by Seller as provided in Paragraph (b) below.

(iv) Invoices - Invoices shall contain the following information: (a) Purchase Order Number, (b) number of hours worked within each labor classification, (c) material costs, (d) the cumulative total of the amounts previously billed against this Order, and (e) Facilities Work Request/Order number (FWR/0 number) or Maintenance Work Request/Order (MWR/0).

(v) Payment of Final Invoice - Thirty (30) days after completion and final acceptance of all tasks by Aerospace, and upon satisfaction of the other requirements of this contract, any balance due shall be paid by Aerospace upon submission of a final invoice in duplicate by the Seller.

(vi) Overpayment - Any overpayment to the Seller shall, unless otherwise adjusted, be repaid to Aerospace promptly after demand.

(b) Release - As a condition precedent to final payment under this contract, the Seller shall execute and furnish releases in terms acceptable to Aerospace of all claims and liens against Aerospace or its property arising directly or indirectly under or by virtue of this contract or any subcontract herein, including, in the event of any termination, claims and liens arising directly or indirectly under or by virtue of such termination, and shall execute and deliver a release discharging The Aerospace Corporation, its officers, Board of Trustees, Agents, employees and representatives from all liabilities, obligations, and claims arising out of or under this Order.

(c) Setoff - The obligation of Buyer to make any of the payments required under this contract shall be subject to a reduction or setoff in the amount to satisfy: (1) any unsettled claims against the Seller for labor or materials, (2) defects in material or workmanship, (3) any claims which Aerospace may have against the Seller under or in connection with this contract or any other contracts, and (4) any claims against which the Seller has agreed to indemnify or save Aerospace harmless.

7. RECORDS AND AUDIT: (a) Seller will maintain adequate records of labor expended and costs of material to permit substantiation of invoices, and shall make available at his office, at all reasonable times during the period covered by this contract, and for a period of three years after final payment under this contract, all of the records pertaining to performance under this contract.

(b) Buyer may at any time or times have the invoices, vouchers, or statements of cost audited by Seller's cognizant Government Audit Agency, or by Buyer. Each payment theretofore made shall be subject to reduction for amounts included in the related invoice or voucher which are found by the Buyer, on the basis of such audit, not to constitute an allowable charge hereunder. Any payment may be adjusted for overpayment or underpayment on previous invoices or vouchers.

8. STANDARDS OF WORK: Seller agrees that the performance of all work under this Order shall conform to high professional standards.

9. DRAWINGS AND SPECIFICATIONS:

(a) Copies Furnished - Aerospace will provide the Seller with as many sets of drawings and specifications as are reasonably necessary for the proper execution of the work. All drawings approved for use under this contract shall bear the Aerospace legend "Released for Construction" and shall be signed and dated. The work shall be performed in accordance with such drawings and specifications. Drawings and specifications, with the exception of one set which may be retained by the Seller for record purposes, remain the property of Aerospace and shall be returned upon completion of the work.

(b) Copy on the Work Site - The Seller shall at all times keep and maintain one complete copy of all drawings and specifications on the work site in good order, available to the Aerospace representative.
(c) **Record Drawings** - During the course of the work the Seller shall maintain accurate data relative to "as built" construction, and shall submit to Aerospace upon completion of the contract, and before final acceptance, one complete set of reproducible drawings (furnished by Aerospace) signed as being true in fact and identified as "AS-BUILT DRAWING". Upon which shall be legibly marked in red ink, all details of construction as actually performed which differ from details shown on the printed drawings. Such markings shall include changes in sizes of all items installed, changes in location of equipment and facilities thereto, and changes in types of material or equipment installed as substitutes approved by Aerospace.

(d) **Shop and Diagram Drawings** - The Seller shall, at his own expense, submit to Aerospace with such promptness as to cause no delay in the work, three (3) copies of all shop or setting drawings, diagrams, and schedules required for the work of the various trades. The Seller shall make any corrections required by Aerospace and receive Aerospace's written approval before commencing work. Approval of such drawings, diagrams and schedules shall not relieve the Seller from responsibility for errors in them or from proper fitting and construction of the work, or from furnishing materials and work required by the contract which may not be indicated on such drawings, diagrams and schedules. The Seller shall check all shop drawings prepared by subcontractors prior to submission for approval by Aerospace. Approval of same Aerospace does not authorize any substitution of material or other departure from the requirements of the contract document.

(e) **Codes and Standards** - Reference to codes, ordinances, regulations and standard specifications refer to editions in effect as of the date of the Invitation to Bid. Abbreviations may be used for agencies issuing standard specifications.

(f) **Manufacturer's Directions** - Where the specifications require that work be performed in accordance with the manufacturer's printed directions the seller or subcontractor performing the work shall obtain and distribute three (3) copies of such direction to Aerospace and maintain one file copy at the work site.

(g) **Data, Manuals and Parts Lists** - Where applicable, the Seller shall provide at least two complete sets of all manufacturers' data, operating manuals, training manuals and aids and parts lists in a loose-leaf, three-ring binder labeled with Purchase Order Number, Project Name and Facilities Work Request Number (FWR number) or Drawing Number and should include a Table of Contents where more than one piece of equipment is being furnished by the Seller.

10. **SURVEYS:** Aerospace shall furnish any surveys required for the work unless otherwise specified.

11. **SAMPLES:** When required by Aerospace, the Seller shall furnish for approval samples of all materials and fixtures. The work shall be in accordance with approved samples.

12. **DIFFERING SITE CONDITIONS:** The Seller shall promptly, and before such conditions are disturbed, notify Aerospace in writing of: (a) subsurface or latent physical conditions at the site which differ materially from those indicated in this contract, or (b) unknown physical conditions at the site, of an unusual nature, which differ materially from those ordinarily encountered and generally recognized as inherent in work of the character provided for in this contract.

Aerospace shall investigate the site conditions after receiving notice. If the conditions do materially differ and cause an increase or decrease in the Seller's cost of, or time required for, performing any part of the work under this contract, an equitable adjustment shall be made and the contract modified in writing. No request by the Seller for an equitable adjustment to the contract for differing site conditions shall be allowed if made after final payment under this contract.

13. **USE OF PREMISES:**

(a) **Space at Work Site** - Aerospace will provide reasonable space at the work site and the Seller shall confine the location of any tools or equipment, the storage of materials, and the operations of his workmen to the space assigned and within any limits imposed by laws, ordinances, permits or directions of Aerospace. If the Seller exceeds assigned area limits after being notified by Aerospace to return its materials or apparatus within such limits, Aerospace may have such materials or apparatus returned to the designated areas or removed from the premises at the Seller's expense.

(b) **Safety Measures** - The Seller shall be solely responsible for all safety precautions (see Article 26: Safety - Compliance and Indemnification). The Seller shall take all necessary precautions for the safety of employees on the work site and that of other persons on or about the premises and shall comply with and enforce all applicable safety laws and regulations, including those of Aerospace and including but not limited to providing, installing, and maintaining protective canopies, barricades and barriers, safety guards, warning signs/lights and temporary walks and drives, as required by the conditions and progress of the work. The Seller will remove such installations when the work is finished or when Aerospace directs their removal. The Seller shall not load or permit any part of the structure or floor to be loaded with a weight which will endanger its safety.

(c) **Protection of Property and Work in Progress** – The Seller shall protect all the work in progress, all Aerospace's property and all property of third parties from damage or loss arising in connection...
with this contract. The Seller shall be responsible for restoring any property sustaining such damage or loss to a condition satisfactory to Aerospace or the owner, as the case may be. Aerospace shall not be responsible for any loss of or damage to material on the work site, or work in progress, or for tools, equipment or other property owned or rented by the Seller or his subcontractors when employed in performance of the work, stored on Aerospace property, or in transit to or from the work site.

(d) **Conduct of Operations** - The Seller shall so conduct its operations and the operations of its subcontractors as not to interfere unreasonably with the performance of work by Aerospace, Aerospace’s employees or other contractors engaged by Aerospace, or with the normal business operations of Aerospace.

(e) **Welding and cutting** - Whenever any welding or cutting operations are to be performed, the Seller shall notify Aerospace and such operations shall not be commenced until Aerospace has taken or directed such fire protection measures as it deems desirable or until Aerospace has advised the Seller that no special measures will be required.

(f) **Temporary Facilities** - The Seller shall erect, at its own expense, and remove upon completion of the work, or sooner if directed by Aerospace, such temporary storage sheds, offices and other buildings or structures and sanitary facilities as are necessary for the work. The erection of such structures shall be subject to the approval of Aerospace.

(g) **Salvage and Surplus** - The Seller shall obtain written permission from Aerospace before permitting the removal of scrap or salvage materials from the job site. Aerospace will determine whether such materials will be removed by the Seller or retained by Aerospace.

(h) **Utilities** - Aerospace will furnish at no cost to the Seller all necessary water, power, and lights normally required for the Seller’s operations at the site unless otherwise agreed. The Seller shall obtain permission from Aerospace before shutoff of or connection to any utility services.

(i) **Landscaping** - The Seller will 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 will be taken in removing trees authorized for removal to avoid damage to vegetation to remain in place. Any limbs or branches or trees broken during such operations or by the careless operation of equipment, or by workmen, shall be trimmed with a clean cut and painted with an approved tree pruning compound as directed by Aerospace.

(j) **Improvements** - The Seller will protect from damage all existing improvements or utilities at or near the work site, and will repair or restore any damage to such facilities resulting from failure to comply with the requirements of this contract or the failure to exercise reasonable care in the performance of the work. If the Seller fails or refuses to repair any such damage promptly, Aerospace may have the necessary work performed and charge the cost thereof to the Seller.

14. **INSURANCE**: The Seller shall, during the term of this contract, and without additional cost to Aerospace, maintain: (1) Workers’ Compensation Insurance with a waiver of Subrogation in favor of Aerospace; (2) Commercial Liability Insurance, with the following minimum limits, unless otherwise provided by contract: $1,000,000 per occurrence and $1,000,000 in the aggregate; and (3) Liability Insurance on the Automotive Equipment, with the following minimum limits, unless otherwise provided in the contract: $500,000 per person, $1,000,000 per accident for bodily injury, and $500,000 per accident for property damage. The Seller shall ensure that Aerospace is named as an Additional Insured in Seller’s commercial Liability Policy. Before commencing work, the Seller shall deliver to Aerospace Certificates of Insurance issued by the insurance company(ies) or their duly authorized agents, certifying that the insurance required by this contract is in force and will not be changed or cancelled without twenty (20) days prior written notice to Aerospace. Such notice shall be directed to:

THE AEROSPACE CORPORATION
Attention: Procurement Department
Mail Stop: M1/357
Purchase Order No. ________________
Post Office Box 92957
Los Angeles, CA 90009-2957

Upon request by Aerospace, Seller shall submit for inspection any such policies of insurance.

15. **INDEMNIFICATION**: Seller hereby fully indemnifies and saves harmless Aerospace and its officers, Board of Trustees, employees and representatives against any and all loss, damage, liability, claim, demand, suit and expenses, (including attorney fees and reasonably related costs and expenses) resulting from injury or harm (including death) to all persons or property (including property of Aerospace) arising out of or in any way connected with the performance of work under this contract, regardless of responsibility for negligence, except where such injury or harm results solely and exclusively from the negligence or willful misconduct of Aerospace, its officers, Board of Trustees, employees or representatives. The Seller shall be responsible for all materials delivered and work performed until completion and final acceptance of the work, and shall repair all damage to such material and work for which it is responsible without cost to Aerospace. The rights and obligations of this article shall survive termination, expiration, or completion of this contract.
16. WARRANTIES: The Seller warrants that for a period of one (1) year from the date of acceptance by Aerospace, all work and materials covered by this contract will conform to the contract requirements and all specifications, drawings and designs, and shall be free from defects in design, material and workmanship and subject to all warranties, express or implied. The Seller shall, promptly after receipt of notice, correct at the Seller’s expense all defects developing during this period. If Aerospace does not require correction of defects, Seller shall repay any such portion of the contract price or such additional amount as is equitable under the circumstances. In addition, all subcontractor, manufacturer, or supplier warranties and guarantees, express or implied, for the benefit of the Seller (whether of work or equipment of the nature above specified or otherwise) shall be deemed obtained by the Seller as the agent of Aerospace without the necessity of transfer or assignment thereof. If directed by Aerospace, the Seller shall require such subcontractors, manufacturers or suppliers to execute such warranties and guarantees in writing to Aerospace. These rights are in addition to and shall not be limited by Seller’s standard warranties.

17. ADDITIONAL SELLER’S RESPONSIBILITIES:
(a) Performance and Payment Bond - If this contract is in excess of $100,000, the Seller shall furnish a duly executed bond to The Aerospace Corporation within 10 days after contract award. The bond shall be signed by an approved surety or sureties in the full amount of the contract. Such bond shall provide that the surety or sureties will agree to protect and indemnify The Aerospace Corporation against any direct or indirect loss that shall be suffered by reason of the failure of the Seller or any of the Seller’s employees, subcontractors, or agents to faithfully perform this Order or by reason of the failure of the Seller to pay all laborers, mechanics, subcontractors, agents, and all persons who shall supply such Seller, subcontractor or agents with provisions or supplies for carrying on such work.

At any time, The Aerospace Corporation may require any or all sureties or any surety company to appear and qualify themselves upon the bond. Whenever such surety or sureties are deemed by The Aerospace Corporation to have become insufficient, The Aerospace Corporation may demand in writing that the Seller furnish additional surety in an amount (not exceeding that originally required) as may be deemed necessary considering the work remaining to be done. Such additional surety shall be provided at no cost to The Aerospace Corporation. No further payment shall be made on the contract until such additional surety as required is furnished.

ALL COSTS FOR THE PERFORMANCE AND PAYMENT BOND SHALL BE THE RESPONSIBILITY OF THE SELLER.

(b) Payment of Obligations - The Seller shall promptly pay when due all claims for service, labor, and materials relating to the work and shall keep Aerospace property free from liens, claims, and encumbrances.

(c) Seller’s Status - The Seller’s relation to Aerospace shall be that of an independent seller. All persons hired or used by the Seller in performing the work, including but not limited to mechanics, laborers, and subcontractors shall be the Seller’s employees and only the Seller shall be liable to such employees in the course of their employment.

18. PERFORMANCE:
(a) Prosecution of Work - The Seller shall cause the work to be performed diligently to completion consistent with good construction practices. Should the Seller fail to make adequate progress, then, within three (3) days after receipt of written notice from Aerospace specifying such failure, the Seller shall provide evidence satisfactory to Aerospace that the delay is due to causes beyond the Seller’s control. Unless the Seller provides such evidence Aerospace shall have the right to supply necessary workmen and materials at the Seller’s expense.

(b) Seller’s Representative - The Seller shall at all times be represented at the work site by an authorized representative, or by a competent foreman or superintendent, who is satisfactory to Aerospace. This individual shall have the authority to act for the Seller in all matters concerning the work, and shall be designated in writing and such designation delivered to Aerospace immediately after execution of this contract.

(c) Notice of Labor Disputes - Whenever the Seller has knowledge that any actual or potential labor dispute is delaying or threatens to delay timely performance of this contract, the Seller shall immediately give notice thereof to Aerospace. The Seller agrees to insert the substance of this provision in any subcontract hereunder.

(d) Seller’s Employees - The Seller shall remove from the work site any employee of the Seller or his subcontractors Aerospace deems incompetent, careless, insubordinate or otherwise objectionable.

(e) Compliance with Applicable Laws and Regulations – The Seller guarantees that the work will be performed in strict compliance with all applicable laws, ordinances, codes, and regulations and indemnifies Aerospace against and agrees to indemnify and save harmless Aerospace, its officers, Board of Trustees, employees and representatives from any and all liability, claims, demands, loss, damage, and penalties (including costs and reasonable attorney’s fees) resulting from breaches of said guarantee. To the extent, however, that the
contract imposes requirements more strict than those imposed by said laws, ordinances, codes, and regulations, the contract requirements shall be met.

(f) Permits and Licenses - Unless otherwise provided in this Order, the Seller shall obtain necessary approval of all plans and shall obtain and pay for the general building permit and all other permits and licenses required.

19. CHANGES:

(a) Aerospace may at any time by written order (hereafter called Change Notice), without notice to sureties, make changes in the drawings, specifications, or performance schedule of this contract. The Seller shall give effect to the changes directed in the Change Notice immediately and without awaiting any adjustment under subparagraph (b).

(b) If a Change Notice causes any increase or decrease in the cost of doing the work under this contract or in the time required for its performance, the Seller shall submit to Aerospace a statement regarding the effect of such Change Notice on (1) the cost of performing the work or the time required for its performance, or both, and (2) a proposal, including a detailed cost breakdown, for an equitable adjustment in the contract price or time of performance or both. Unless such a statement and proposal are submitted within ten (10) days from the date of receipt of the Change Notice covered thereby or within such further time as Aerospace may allow, no increase in the contract price or extension of time for performance shall be made. Upon the basis of the Seller's proposal, and any other relevant information, an equitable adjustment in the contract price or in the time for performance, or both, shall be determined by mutual agreement between Aerospace and the Seller.

(c) The base labor, or other direct costs, and fringe benefits shall be adjusted throughout the period of performance to conform to changes imposed upon the Seller resulting from union agreement, federal, state or local laws, etc., to the extent of actual net cost to Seller exclusive of any overhead or profit whatsoever. Requests for such adjustments shall be supported by detailed cost breakdown by Seller and Buyer approval of such rate revisions will be evidenced by written Change Notice hereto.

(d) Change Notice Pricing Methodology: In connection with change orders under this Order, not covered by unit price or alternate bids, the Aerospace Corporation will use the following formula for approval unless it determines that such amounts would not be acceptable. All estimates must be itemized to show the separate costs of labor and materials and other costs as described below for each item of work.

(i) For work performed by the Supplier, the estimated cost of the work which includes the direct cost of labor, materials, supplies and transportation plus 15% of such estimated costs for overhead and profit to which shall be added payroll taxes, sales tax, applicable insurance and bond costs, if applicable;

(ii) For work performed by a first tier subcontractor of the Supplier, the basis for payment shall be as established in the preceding paragraph to which the Supplier may add 5% to such estimated costs plus any applicable bond or applicable insurance charges;

(iii) For work performed by a second tier subcontractor of the Supplier the basis for payment shall be as for a first tier subcontractor except that the first tier subcontractor may add 5% of the second tier subcontractor's total estimated costs as overhead and profit and the Supplier may add 5% to the preceding estimated costs. No increases for overhead and profit will be allowed above the 15% and 5% and 5% herein provided regardless of the number of tiers of subcontractors involved;

(iv) For reductions in scope or omissions not covered by unit prices or alternate bids, the Supplier agrees that the Owner shall be credited with the estimated cost of the labor, materials, supplies, transportation, payroll taxes, sales taxes, insurance, bond costs, overhead and profit that would have been incurred had there been no reductions in scope or omissions.

20. INSPECTION AND ACCEPTANCE – MATERIAL AND WORKMANSHIP:

(a) Aerospace shall have free access to the work at all times. All material and workmanship shall be subject to inspection and test by Aerospace during manufacture or construction and at all other times and places to the extent practicable. The Seller shall, without charge, promptly replace material and correct any workmanship found by Aerospace not to conform to the contract requirements. Any rejected material shall be removed promptly from the site of work by and at the expense of the Seller.

(b) During the progress of the work, Aerospace may require the Seller to uncover work. If work uncovered is found to be in conformity with the contract, Aerospace shall pay Seller's actual costs necessarily incurred in uncovering and recovering the work. If such work is not in conformity with the contract, the Seller shall bear all such costs incurred.

21. SELLER INSPECTION SYSTEM: The Seller shall (a) maintain an adequate inspection system and perform such inspections as will assure that the work performed under the contract conforms to contract requirements,
and (b) maintain and make available to Aerospace adequate records of such inspections.

22. ASSIGNMENT:
(a) The Seller shall not assign, transfer, or subcontract this contract or any substantial interest herein without the prior written consent of Aerospace, except that claims for moneys due or to become due the Seller hereunder may be assigned subject to the right of Aerospace to make deductions from assigned claims by way of setoff or recoupment in the same manner that such deductions could be made if such assignment did not exist. This right of setoff and recoupment shall exist whether the subject of the setoff or recoupment arose before or after the assignment or before or after any notice which may be given to Aerospace with respect thereto, and whether the subject of the setoff or recoupment arose from this contract or any other transaction between the Seller and Aerospace.

(b) Aerospace reserves the right to let other contracts in connection with this work under similar General Conditions. The Seller shall afford other contractors reasonable opportunity for the introduction and storage of their materials and the execution of their work, and shall properly connect and coordinate his work with theirs.

(c) If any part of the Seller's work depends for proper execution or results upon the work of any other seller, the Seller shall inspect and promptly report to Aerospace any defects in such work that make it unsuitable for such proper execution and results. The Seller's failure to so inspect and report shall constitute an acceptance of the other seller's work as fit and proper for the reception of his work, except as to defects which may develop in the other Seller's work after the execution of his work.

(d) To insure proper execution of his subsequent work the Seller shall measure work already in place and shall at once report to Aerospace any discrepancy between the executed work and the contract requirements.

23. TERMINATION OR STOP OF WORK:
(a) If the Seller fails to comply with any of the provisions hereof or so fails to prosecute the work as to endanger performance of this contract and such failure is not corrected by the Seller within ten days after receipt of written notice from Aerospace, or if the Seller becomes the subject of any proceeding under state or federal law for the relief of creditors, Aerospace shall have the right to hold the Seller in default and cancel this contract in whole or in part without liability in accordance with the Federal Acquisition Regulation (FAR) 52.249-10 in effect on the date hereof, which is incorporated herein by reference.

(b) Without affecting its rights under paragraph (a) hereof, Aerospace may terminate this contract for convenience in whole or in part at any time, and such termination shall be effected in accordance with the provisions contained in FAR 52.249-2 in effect on the date hereof, which is incorporated herein by reference, and in which the term "one (1) year" in Paragraph (d) is changed to six (6) months and the term "ninety (90) days" in Paragraph (k) is changed to forty-five (45) days.

(c) Termination for Aerospace's convenience - In the event of termination under (b) above, the Seller shall immediately upon receipt of a Notice of Termination, with respect to the terminated portion:

(i) Take action in accordance with Items i, ii, and iii of (d) below;
(ii) Terminate all orders and subcontractors;
(iii) Assign to Aerospace, in the manner and to the extent directed by Aerospace, all the Seller's rights, title, and interest in the terminated orders and subcontracts;
(iv) Proceed to settle subcontract termination claims, the final net settlement amounts hereof to be approved by Aerospace prior to payment of same;
(v) Transfer title (to the extent that title has not already been transferred) and in the manner, to the extent and at the time directed by Aerospace, deliver to Aerospace:

1) All parts, work in process, completed work, supplies and other material produced as a part of or acquired in respect to the performance of the work hereunder;

2) All plans, drawings, information, jigs, dies, fixtures, special tools and tooling, and other items for which the Seller has been or will be paid hereunder.

(d) Stop of Work - Aerospace may at any time, or from time to time, without cause, suspend performance by written notice to the Seller. Immediately upon receipt of a Notice to stop work the Seller shall:

(i) Stop all work;
(ii) Place no further orders or subcontracts;
(iii) Take action to protect and preserve all property and materials in which Aerospace has, or may acquire, an interest.

In the event of a notification to stop work under (d) above the Seller shall be paid for reasonable costs and expenses, approved by Aerospace, incurred directly in compliance with any such work.

24. STATUTORY AND REGULATORY PROVISIONS:
(a) Security Regulations - In the performance of the work, the Seller's shall comply with all security regulations and requirements of The Aerospace Corporation and the Department of Defense. Before an employee of a Seller or subcontractor can start work within any of the Aerospace facilities, it will be necessary that he be cleared by Aerospace's Security Section. To obtain required clearance, the Seller will submit to Aerospace...
names and any additional information that may be requested, regarding all employees twenty-four (24) hours before the work is to commence.

(b) Convict Labor.—No person undergoing sentence for imprisonment at hard labor shall be employed under this contract.

(c) Overtime
(i) Overtime rates shall be paid, when performed at Buyer direction, in accordance with the provisions of the State of California Order 4-89, Title 8, Administrative Code 11345 as partially stated below:

No employee eighteen (18) years of age or over nor any minor permitted to work as an adult shall be employed more than eight (8) hours in any workday or more than forty (40) hours in any workweek unless the employee receives one and one-half (1½) times such employee's regular rate of pay for all hours worked over forty (40) hours in the workweek. Employment beyond eight (8) hours in any workday or more than six (6) days in any workweek is permissible provided the employee is compensated for such overtime at not less than:

1) One and one-half (1½) times the employee's regular rate of pay for all hours worked in excess of eight (8) hours up to and including twelve (12) hours in any workday, and for the first eight (8) hours worked on the seventh (7th) day of work; and

2) Double the employee's regular rate of pay for all hours worked in excess of twelve (12) hours in any workday and for all hours worked in excess of eight (8) hours on the seventh (7th) day of work in any workweek.

(ii) Apprentices
1) Apprentices will be permitted to work as such only when they are registered, individually, under a bona fide apprenticeship program registered with a State Apprenticeship Agency which is recognized by the Bureau of Apprenticeship and Training, United States Department of Labor; or, if no such recognized agency exists in a State, under a program registered with the aforesaid Bureau of Apprenticeship and Training. The allowable ratio of apprentices to journeymen in any craft classification shall not be greater than the ratio permitted to the Seller as to his entire work force under the registered program. Any employee listed on a payroll at an apprentice wage rate, who is not registered as above, shall be paid the wage rate determined by the Secretary of Labor for the classification of work he actually performed.

2) The Seller shall furnish written evidence of the registration of his program and apprentices as well as the appropriate ratio and wage rates, prior to using any apprentices in the contract work.

(iii) Compliance with Copeland Regulations.—The regulations of the Secretary of Labor applicable to Sellers and subcontractors (29 CFR, Part 3) made pursuant to the Copeland Act, as amended (40 U.S.C. 276c), and to aid in the enforcement of the Anti-Kickback Act (18 U.S.C. 874) are made a part of this contract by reference. The Seller will comply with these regulations and any amendments or modifications thereof and will be responsible for the submission of affidavits required of subcontractors thereunder. The foregoing shall apply except as the Secretary of Labor may specifically provide for reasonable limitations, variations, tolerances, and exceptions.

(iv) Withholding of Funds to Insure Wage Payment.—There may be withheld from the Seller so much of the accrued payments or advances as may be considered necessary (1) to pay laborers and mechanics employed by the Seller or any subcontractor the full amount of wages required by this contract and (2) to satisfy any liability of the Seller for liquidated damages hereunder. In the event of failure to pay any laborer or mechanic all or part of the wages required by this contract, Aerospace or its Contracting Officer may take such action as may be necessary to cause the suspension, until such violations have ceased, of any further payment, advance, or guarantee of funds to or for the Seller. This clause shall not be subject to the five percent (5%) limitation on withholding as set forth in Article 6 herein.

25. FEDERAL, STATE, AND LOCAL TAXES:
(a) Except as may be otherwise provided in this contract, the contract price includes all applicable Federal, State, and local taxes and duties.

(b) Nevertheless, with respect to any Federal Excise Tax or duty on the transactions or property covered by this contract, if a statute, court decision, written ruling, or regulation takes effect after the contract date, and --

(i) results in the Seller being required to pay or bear the burden of any such Federal Excise Tax or duty or increase in the rate thereof which would not otherwise have been payable on such transactions or property, the contract price shall be increased by the amount of such tax or duty or rate increase, provided the Seller warrants in writing that no amount for
such newly imposed Federal Excise Tax or duty or rate increase was included in the contract price as a contingency reserve or otherwise; or

(ii) results in the Seller not being required to pay or bear the burden of, or in his obtaining a refund or drawback of, any such Federal Excise Tax or duty which would otherwise have been payable on such transactions or property or which was the basis of an increase in the contract price, the contract price shall be decreased by the amount of the relief, refund, or drawback, or the amount shall be paid as directed by Aerospace. The contract price shall be similarly decreased if the Seller, through his fault or negligence or his failure to follow instructions of Aerospace, is required to pay or bear the burden of, or does not obtain a refund or drawback of, any such Federal Excise Tax or duty.

(c) No adjustment of less than $100 shall be made in the contract price pursuant to paragraph (b) above.

(d) As used in paragraph (b) above, the term "contract date" means the date set for bid opening, or if this is a negotiated contract, the contract date. As to additional supplies or services procured by modification to this contract, the term "contract date" means the date of such modification.

(e) The Seller shall promptly notify Aerospace of matters which will result in either an increase or decrease in the contract price, and shall take action with respect thereto as directed by Aerospace.

26. SAFETY - COMPLIANCE AND INDEMNIFICATION:

(a) With respect to work performed under this contract, Seller shall have and exercise full responsibility for compliance by Seller, its agents, employees, and subcontractors with the requirements of the Federal Occupational Safety and Health Act of 1970 (29 USC 651 et seq.), the California Occupational Safety and Health Act of 1973 (California Labor Code Section 6300 et seq.), as said statutes may be amended, and all standards and regulations which are or may be promulgated by parties or agencies which administer such laws. Seller shall be directly responsible for any citation, assessment, fine, or penalty resulting from Seller's failure or any failure of Seller's agents, employees, or subcontractors so to comply.

(b) Seller shall indemnify and save harmless Buyer and its officers, Board of Trustees, employees and representatives from and against any liability, loss, damage cost claim, award, judgment, fine, expense (including litigation expenses, reasonable attorneys' fees, and claims or liability for harm to persons or property), and any other applicable cost which may be incurred by Buyer resulting from Seller's failure to fulfill the obligations set forth in this article.

(c) If Seller fails to comply with any citation issued by the United States Secretary of Labor, any order issued by the Occupational Safety and Health Review Commission, or any other issued by any other body responsible for the administration or enforcement of any statute, regulation, or ordinance relating to occupational health and safety within the period specified in its citation or order, the rights and remedies provided to Buyer under the provisions of this contract may be exercised by Buyer at its discretion.

(d) Seller agrees to insert this article, or a provision substantially in accordance with it, in each subcontract issued by Seller in the performance of its work under this contract.

27. DISCLOSURE OF INFORMATION:

Except as may be required to insure performance hereunder, Seller shall not, without Buyer's prior written consent:

(a) disclose or disseminate any information or data relative to this Order, including the disclosure that this Order was awarded;

(b) disclose or disseminate any information or data relative to this Order, including the disclosure that this Order was awarded;

(c) reproduce or use for anyone other than Buyer, designs, drawings, or other information belonging to or supplied by Buyer.

(d) Paragraphs (b) and (c) shall not prohibit direct sales to the U.S. Government.

28. BUYER'S PROPERTY:

(a) Title to and right of immediate possession of all property furnished by Buyer to Seller for Seller's use in the performance of this Order, including but not limited to tools and tooling, designs, patterns, drawings, and materials, shall be and remain in Buyer at all times. Title to all property purchased by Seller for the cost of which Seller is entitled to be reimbursed as a direct item of cost under this Order, shall vest in Buyer on delivery of such property to Seller. Title to other property, the cost of which is reimbursable to Seller hereunder, shall vest in Buyer on (1) issuance for use of such property in the performance of this Order, (2) commencement of processing or use of such property in the performance of this Order, or (3) reimbursement of the cost thereof by Buyer in whole or in part, whichever first occurs.

(b) Buyer's property shall not be used for any purpose except the performance of this Order without Buyer's written consent. All such property shall be
segregated and clearly marked for identification as Buyer’s property furnished by Buyer or which becomes Buyer’s property, and shall furnish a copy of such inventory to Buyer on request.

(c) Seller assumes the risk of and shall be responsible for all loss or damage to Buyer’s property, and shall deliver or redeliver such property to Buyer in as good condition as when received by Seller, except for reasonable wear and tear and except to the extent such property has been incorporated into items delivered to Buyer hereunder or consumed in the performance of this Order.

(d) At the completion or termination of this Order, all of Buyer’s property including any excess Buyer-furnished material, shall be disposed of as Buyer may direct. Unless otherwise specified in this Order, unusable scrap shall become Seller’s property as part consideration for the work performed. If any of Buyer’s property is damaged or made unfit for use, except by normal wear and tear or by its authorized use in accordance with provisions of this Order, Seller shall pay Buyer’s cost of replacing said property.

29. PATENT AND COPYRIGHT INDEMNITIES: To the extent the items ordered are not manufactured in accordance with designs or specifications originated by Buyer, Seller indemnifies and saves harmless Buyer and its successors, assigns, customers, and others rightfully claiming under Buyer from all claims, loss, damage, or liability, including related costs and expenses of every nature, which may be incurred on account of any claim, demand, suit, or judgement involving alleged infringement of any patent or copyright relating to such items, and agrees to defend at its own expense any action, suit, or claim in which such infringement is alleged, provided Seller is notified in writing of such action, suit, or claim and is given full control of the defense. If Seller fails to defend, Buyer may defend or cause to be defended such action, suit, or claim at Seller’s expense. If the use, manufacture or sale of any item is enjoined as a result of such suit, Seller, at no expense to Buyer, shall obtain for Buyer and its customers the right to use, manufacture and sell the item or shall substitute an equivalent item acceptable to Buyer and extend this indemnity thereto.

30. NOTICES: Any notice required or provided for under this agreement shall be deemed duly given when deposited in the United States mail, postage prepaid and addressed to the other party. Notice to both parties shall be mailed to the addresses specified on the first page of the Purchase Order.

31. AMENDMENTS REQUIRED BY PRIME CONTRACT: Seller agrees that upon the request of Buyer it will, from time to time, negotiate in good faith to amend this Order to incorporate additional provisions herein, or to change provisions hereof, as Buyer may reasonably deem necessary in order to comply with the provisions of the Prime Contract, or with the provisions of amendments to the Prime Contract. If any such amendment to this Order causes an increase or decrease in the cost of or the time required for performance of this Order, an equitable adjustment shall be made in the Order price or delivery schedule, or both, pursuant to the Changes clause of this order.

The term “Prime Contract” means the Government Prime Contract between Aerospace Corporation and the United States of America (hereinafter called the “Government”).

32. GOVERNMENT CONTRACTS AND GOVERNMENT CLAUSES:

(a) When a government contract number or the word “military” appears on the face of the Purchase Order Agreement Terms and Conditions or on the face of any Order, then the terms and condition for government contracts including the FAR and DFARS provisions attached hereto and incorporated herein by reference apply Purchase Order Agreement or any Order.

(b) If this Order is issued under a prime contract with the U.S. Government, the Federal Acquisition Regulations (FAR), the Defense Federal Acquisition Regulations Supplement (DFARS) and/or other clauses from Buyer’s contract with its customer are incorporated herein by reference either by citation or on a supplemental attachment. If any of the clauses are not applicable by their terms they shall be self-deleting.

(c) Where necessary to derive proper meaning in an Order or subcontract when the FAR, DFARS or other special provisions or clauses are flowed down to Seller, then “Contractor” means “Seller”, “Contracting Officer” means “Buyer”, “Contract” means this Order and “Government” means “Buyer or the Government”. However, the words “Government” and “Contracting Officer” do not change: (a) when a right, act, authorization or obligation can be granted or performed only by the Government or the prime contract Contracting Officer or duly authorized representative and (b) when title to property is to be transferred directly to the Government.

(d) As may be directed by a clause, the Seller shall either incorporate by reference or include the full text of a clause in any lower tier subcontract awarded or issued by the Seller to perform this Order.


34. REMEDIES, VALIDITY, WAIVER: Buyer’s remedies herein shall be cumulative and in addition to any other remedies provided by law or equity. The invalidity in whole or in part of any provision of this Order shall not affect the validity of the other provisions. A waiver of a breach of any provision of this Order shall not constitute a waiver of any subsequent breach of that provision or a breach of any other provision. Failure of
Buyer to enforce at any time, or from time to time, any provision of this order shall not be construed as a waiver thereof.

35. DISPUTES:
   (a) Irrespective of the place of performance, this Order will be construed and interpreted in accordance with the laws of the State of California; provided however, the FAR, DoD FAR Supplement (DFARS) and corresponding Federal Agency Supplement clauses contained herein shall be construed and interpreted in accordance with the federal common law of Government contracts as enunciated and applied by judicial bodies and boards of contract appeals. Pending final resolution of any dispute, the Seller shall proceed diligently with the performance of this Order and in accordance with Buyer’s instructions.

(b) Except as may be expressly set forth in this Order or expressly permitted under a FAR or DFARS clause applicable to this Order, the Subcontractor shall not acquire any direct claim or direct course of action against the U.S. Government.

36. EXPORT CONTROL: Seller shall comply with, and control the disclosure of and access to, defense articles and services, and related technical data received, disclosed, or generated under this Purchase Order in accordance with the U.S. export control laws and regulations including, but not limited to, the Export Administration Regulations (EAR), 15 C.F.R. Parts 730-774, and the International Traffic in Arms Regulations (ITAR), 22 C.F.R. Parts 120-130, including the requirements to obtain an export license, as applicable. Seller is advised and acknowledges that export controlled items or related technical data (or both) may not be exported, disclosed, or transferred to foreign businesses or governments, or to any “foreign person” as defined in 22 C.F.R §120.16, whether located in the United States or abroad. Without limiting the foregoing, the Seller agrees that it will not disclose or transfer any export-controlled items or related technical data (or both) to include transfer to foreign persons employed by or associated with the Seller, or under contract to the Seller, without the authority of any export license or applicable export license exemption. The Seller shall obtain the written consent of the Buyer prior to submitting any request for authority to export any such export controlled items or related technical data (or both). The Seller shall defend, indemnify and hold the Buyer harmless from all claims, demands, damages, costs, fines, penalties, reasonable attorney’s fees, and all other reasonable costs and expenses arising from failure to comply with this requirement. The Seller shall include the substance of this clause in all subcontracts that are expected to involve access to or the generation of export-controlled items or related technical data (or both).

37. COUNTERFEIT GOODS:
   (a) Seller shall not furnish Counterfeit Goods to Buyer, defined as goods or separately-identifiable items or components of Goods that: (i) are an unauthorized copy or substitute of an Original Equipment Manufacturer or Original Component Manufacturer or Original Software Developer (collectively, “OEM”) item; (ii) are not traceable to an OEM sufficient to ensure authenticity in OEM design and manufacture; (iii) do not contain proper external or internal materials or components required by the OEM or are not constructed in accordance with OEM design; (iv) have been re-worked, re-marked, repaired, refurbished, or otherwise modified from OEM design but not disclosed as such or are represented as OEM authentic or new; or (v) have not passed successfully all OEM required testing, verification, screening, and quality control processes. Notwithstanding the foregoing, Goods or items that contain modifications, repairs, re-work, or re-marking as a result of Seller’s or its subcontractor’s design authority, material review procedures, quality control processes or parts management plans, and that have not been misrepresented or mismarked without legal right to do so, shall not be deemed Counterfeit Goods. Counterfeit Goods shall be deemed nonconforming to this Contract.

(b) Seller shall implement an appropriate strategy to ensure that goods furnished to Buyer under this Contract are not Counterfeit Goods. Seller’s strategy shall include, but is not limited to, the direct procurement of items from OEMs or authorized suppliers, conducting approved testing or inspection to ensure the authenticity of items, and, when items are to be procured from non-authorized suppliers, obtaining from such non-authorized suppliers appropriate certificates of conformance that provide one or more of the following: (i) the OEM’s original certificate of conformance for the item; (ii) sufficient records providing unbroken supply chain traceability to the OEM; or (iii) test and inspection records demonstrating the item’s authenticity.

(c) If Seller becomes aware or suspects that it has furnished Counterfeit Goods to Buyer under this Contract, Seller promptly, but in no case later than thirty (30) days from discovery, shall notify Buyer and replace, at Seller’s expense, such Counterfeit Goods with OEM or Buyer-approved goods that conform to the requirements of this Contract. Seller shall be liable for all costs related to the replacement of Counterfeit Goods and any testing or validation necessitated by the installation of authentic goods after Counterfeit Goods have been replaced.

(d) Seller bears responsibility for procuring authentic goods or items from its subcontractors and shall ensure that all such subcontractors comply with the requirements of this Article.