

PURCHASE ORDER ATTACHMENT T-BRILLIANT (91)  
(October 1991)

The following provisions are added to and made a part of the Purchase Order General Provisions effective for this Purchase Order:

A. All orders include the following:

1. FAR/DFARS

<u>Reference:</u>	<u>Title:</u>
52.203-12	Limitation on Payments to Influence Certain Federal Transactions
52.209-6	Contracting with Contractors Debarred, Suspended, Proposed for Debarment
52.225-13	Restrictions on Contracting with Sanctioned Persons
52.227-1	Authorization and Consent (Alt I)
52.245-18	Special Test Equipment
52.246-23	Limitation of Liability
52.246-25	Limitation of Liability - Services
52.247-63	Preference for U.S. Flag Air Carriers
252.203-7001	Special Prohibition on Employment
252.223-7000	Notice of Radioactive Materials
252.225-7001	Buy American Act and Balance of Payments Program
252.225-7014	Duty Free Entry - Additional Provisions
252.235-7004	Frequency Authorization

2. INSPECTION

In addition to and not in lieu of quality attachments which are made a part of this order, Buyer reserves the right to assign representatives on an itinerant or resident basis at Seller's facilities, or those of lower-tier subcontractors, for the purpose of maintaining surveillance activities, including the right to witness any or all tests performed as part of the requirements of this subcontract. Seller shall provide Buyer's representatives with reasonable facilities and equipment, and unescorted free access to all areas essential to the proper conduct of the aforementioned activity, throughout all phases of engineering, manufacturing, testing, packaging, and shipping. In addition, Seller agrees to make available to Buyer's representatives pertinent planning, status, and forecast information, and such other technical and management reporting information as may be necessary for the representatives to carry out their responsibilities. Seller also agrees, upon request of Buyer, to allow Buyer's customer and/or government representatives, to visit Seller's facilities to review progress and witness testing pertaining to the requirements of this subcontract. Seller further agrees to insert, and to require its subcontractors to insert, the substance of this article, including this paragraph, in each lower-tier subcontract hereunder.

3. RELEASE OF INFORMATION

Release of any procurement information pertinent to this subcontract requires prior approval of the Buyer.

4. INSURANCE REQUIREMENTS

If Seller is to perform work at Buyer's facility or on U.S. Government property, Buyer's Purchase Order Attachment GL-14 is incorporated herein by reference. Seller shall furnish insurance certificates in accordance with paragraph I of POA GL-14 prior to the commencement of any work at Buyer's facility or on U.S. Government property. The following minimum coverage amounts shall be required in lieu of those amounts specified in GL-14:

<u>Insurance Coverage</u>	<u>Limits of Liability</u>
a. Worker's Compensation	\$100,000
b. Employer's Liability	\$100,000
c. Comprehensive General Liability	\$500,000 per occurrence
d. Comprehensive Automobile Liability	
1) Bodily injury	\$200,000 per person \$500,000 per accident
2) Property damage	\$ 20,000 per accident

5. SDI INTERFACE SUPPORT

a. It is anticipated that during the performance of this contract, the contractor will be required to interface with other SDI contractors and Government agencies. This interaction will occur at two distinct levels.

b. The first is the interaction which will be required with the SDI System Engineering and Technical Assistance (SETA) support contractors. SDI support contractors are defined as those contractors who provide technical and management support to the Brilliant Pebbles Task Force. Appropriate organizational conflict of interest/proprietary information agreements will be negotiated with the SETA support contractors as required. Anticipated interface will include support of Technical Interchange Meetings, as well as access to cost/schedule performance data and technical matters. The contractor will not be required to provide proprietary information to non-Government entities or personnel in the absence of non-disclosure agreements between the contractor and such entities.

c. The second level is the interaction which may be required by the Government with associate contractors. Associate contractors are defined as those contractors engaged in developments and experiments related to Brilliant Pebbles. This does not include nor involve competing Pre-FSD contractors. An associate contractor agreement, which is mutually agreeable between the parties, will be required between the selected Pre-FSD contractor(s) and the SDIO System Engineering and Integration contractor (General Electric). The Government reserves the right to direct the contractor to enter into other associate contractor agreements as deemed appropriate at any time during the performance of this contract. The agreement will be accomplished to facilitate the timely exchange of information necessary to the performance of this contract. The contractor shall at that time execute written agreements with companies, individuals, and organizations identified by the Government as associate contractors within 60 days of notice by the Government. The agreements shall provide for timely, free, and direct exchange of information and data necessary to the performance of this contract, and shall be structured to ensure effective communication between counterparts at all levels from senior corporate management to working engineers. The agreements shall include the provision that any proprietary information furnished by an associate contractor pursuant to the work under this contract shall be protected from unauthorized release of disclosure beyond the scope of the agreement. Further, the agreements shall hold the Government free of liability for the unauthorized disclosure by the contractor or associate contractor of proprietary information.

d. In both instances cited above, it is anticipated that the contractor may be required to support interface/integration meetings with other contractors and other Government agencies. Appropriate organizational conflict of interest clauses shall be negotiated as needed to protect the rights of the contractor and the Government.

e. The contractor further agrees to include in each subcontract a clause requiring compliance by the subcontractor and the succeeding levels of subcontracts with the provisions above, subject to coordination

with the contractor. This agreement does not relieve the contractor of its responsibility to manage its subcontracts effectively, nor is it intended to establish privity of contract between such subcontractors and the Buyer, its customers or the U.S. Government.

f. Personnel from other contractors and other Government agencies are not authorized to direct the contractor in any manner. Whenever it becomes necessary to modify the contract and redirect the effort, a change order signed by the Buyer or a supplemental agreement signed by both the Buyer and the contractor will be issued.

g. This clause shall not prejudice the Contractor or its subcontractors from negotiating separate organizational conflict of interest agreements with SDI contractors; however, these agreements shall not restrict any of the Buyer's or Government's rights established pursuant to this clause.

6. ORGANIZATIONAL CONFLICT OF INTEREST

a. Purpose: The primary purpose of this clause is to aid in ensuring that:

(1) the contractor does not obtain an unfair competitive advantage by virtue of its access to non-public information regarding the Government's program plans and actual or anticipated resources; and

(2) by virtue of its access to proprietary information belonging to others, the contractor does not obtain any unfair competitive advantage; and

(3) access to and the use of Government information, originating with the U.S. Government, particularly information relating to Brilliant Pebbles efforts by Lawrence Livermore National Laboratory (LLNL) and other SDI executing agents (including, but not limited to the Air Force, Army, Navy, DNA, DARPA and DOE) related efforts, is handled in such a way that no unfair competitive advantage accrues to the Seller.

b. Scope: The restrictions described herein shall apply to performance or participation by the contractor and any of its affiliates or their successors in interest (hereinafter collectively referred to as a "contractor") in the activities covered by this clause as prime contractor, as a subcontractor, co-sponsor, venturer, consultant, or in any similar capacity. The term "proprietary information" for purpose of this clause is any information considered so valuable by its owners that it is held secret by them and their licensees. Information furnished voluntarily by the owner without limitations on its use, or is available without restrictions from other sources, is not considered proprietary.

(1) Access to and Use of Government Information: If the contractor, in the performance of this contract, obtains access to information originating with the U.S. Government such as plans, policies, reports, studies, financial plans, or data which has not been released or otherwise made available to the public, the contractor agrees that without prior written approval of the Buyer, it shall not: (a) use such information for any private purpose unless the information has been released or otherwise made available to the public, (b) compete for work, other than succeeding Brilliant Pebbles development phases, based on such information for a period of two years after the completion of this contract, or until such information is released or otherwise made available to the public, whichever comes first, (c) submit an unsolicited proposal to the Government which is based on such information until after such information is released or otherwise made available to the public, and (d) release such information unless such information has previously been released or otherwise made available to the public by the Government with respect to Brilliant Pebbles information arising from ongoing LLNL and SDI efforts.

(2) Access to and Protection of Proprietary Information: The contractor agrees that, to the extent it receives or is given access to proprietary data, trade secrets, or other confidential or privileged technical, business, or financial information (hereinafter referred to as "proprietary data") of another contractor under this contract, it shall treat such information in accordance with any restrictions imposed on such information. The contractor further agrees to enter into a written agreement for the protection of the proprietary data of others and to exercise diligent effort to protect such proprietary data from unauthorized

use or disclosure. The contractor will inculcate in its employees the philosophy of FAR 9.505-4, so that they will not use or disclose proprietary information acquired in the performance of this contract except as provided herein.

c. Subcontracts: The contractor shall include this clause, including this paragraph, in consulting agreements and subcontracts of any tier. The terms "contract", "contractor" and "Contracting Officer" will be appropriately modified to preserve the Government's rights.

d. Representations and Disclosures:

(1) The contractor represents that it has disclosed to the Buyer, prior to award, all facts relevant to the existence or potential existence of any other organizational conflict of interest as that term is used in FAR Subpart 9.5.

(2) The contractor agrees that if after award it discovers an organizational conflict of interest with respect to this contract, a prompt and full disclosure shall be made in writing to the Buyer which shall include a description of the action the contractor has taken or proposes to take to avoid or mitigate such conflicts.

e. Remedies and Waiver: For knowing breach of any of the above restrictions or for knowing nondisclosure or misrepresentation of any relevant facts required to be disclosed concerning this contract, the Buyer may terminate this contract for default, disqualify the contractor for subsequent related contractual efforts, and pursue such other remedies as may be permitted by law or this contract. If, however, in compliance with this clause, the contractor discovers and promptly reports an organizational conflict of interest (or the potential thereof) subsequent to contract award, the Buyer may terminate this contract for convenience if such termination is deemed to be in the best interest of the Buyer or its customers.

f. Indemnity: The contractor shall hold the Buyer and its customers harmless and indemnify the Buyer or its customers as to any cost or loss directly resulting from the unauthorized use of disclosure of third party information data or software by the contractor, its employees, subcontractors or agents."

B. All orders over \$100,000 include Buyer's Purchase Order Attachments CS-15, SP-04 and SS-17, together with the following FAR/DFARS provisions when applicable:

<u>FAR/DFARS Reference</u>	<u>Applicability</u>	<u>Title</u>
52.215-22	All orders subject to PL 87-653	Price Reduction for Defective Cost or Pricing Data. Buyer's prime contract contains this clause. The obligations which FAR 52.215-24 in the prime contract requires of subcontractors are required of Seller. In addition to any other remedies provided by law or under this Order, if Buyer is subjected to any liability as the result of Seller's or its lower-tier subcontractors' failure to comply with the requirements of 52.215-24, then Seller agrees to indemnify and hold Buyer harmless to the full extent of any loss, damage or expense resulting from such failure.
52.215-24	All orders subject to PL 87-653	Subcontractor Cost or Pricing Data. The certificate required by paragraph (b) is Buyer's Form 9784A.
52.230-3	All orders subject to PL 91-379	Cost Accounting Standards. Paragraph (b) of the Clause is hereby deleted. Seller shall communicate and otherwise deal directly with the Contracting Officer to the extent practicable and permissible as to all matters relating to Cost

Accounting Standards. Seller shall provide Buyer with copies of all communications between Seller and the Contracting Officer respecting this clause and clause 52.230-4, provided Seller shall not be required to disclose to Buyer such communications containing information which is privileged and confidential to the Seller. In addition to any other remedies provided by law or under this Order, Seller agrees to indemnify and hold Buyer harmless to the full extent of any loss, damage or expense if Buyer is subjected to any liability as the result of a failure of the Seller or its lower-tier subcontractors to comply with this clause or clause 52.230-4.

52.230-4 All orders Administration of Cost Accounting Standards.  
subject to PL  
91-379

52.230-5 All orders Disclosure and consistency of Cost Accounting Practices. Paragraph (b) of the  
subject to PL Clause is deleted. Seller shall communicate and otherwise deal directly with the  
91-379 where Contracting Officer to the extent practicable and permissible as to all matters  
exemption 1(d) relating to Cost Accounting Standards. Seller shall provide Buyer with copies of  
or 1(f) marked all communications between Seller and the Contracting Officer respecting this  
on Buyer's clause, and clause 52.230-4, provided Seller shall not be required to disclose to  
Form 9784D. Buyer such communications containing information which is privileged and  
confidential to the Seller. In addition to any other remedies provided by law or  
under this Order, Seller agrees to indemnify and hold Buyer harmless to the full  
extent of any loss, damage or expense if Buyer is subjected to any liability as the  
result of a failure of the Seller or its lower-tier subcontractors to comply with the  
requirements of this clause or clause 52.230-4.

252.204-7005 All orders Overseas Distribution of Defense Subcontracts.

C. All orders over \$1,000,000 include:

52.271-7001 Recovery of Nonrecurring Costs on Commercial Sales.