

PURCHASE ORDER ATTACHMENT TC-006

COST REIMBURSEMENT PURCHASE ORDERS

ATTACHMENT: "A", Release Form

SPECIAL NOTE: Addendum to Form TC-001, Raytheon Terms and Conditions of Purchase, dated (9/99)

1. Delete Cause No. 13 entitled "Inspection"
2. Delete Clause No. 14 entitled "Changes"

PURCHASE ORDER TYPE (COST REIMBURSEMENT)

This purchase order is a cost reimbursement type award issued in connection with a U.S. Government Prime Contract between Buyer and the U.S. Government. The clauses set forth herein are applicable only to cost reimbursement type purchase orders. Therefore, to the extent that any of the cost reimbursement related clauses contained in this document may be inconsistent with or otherwise different from other terms and conditions of this purchase order, such clauses herein shall govern.

1. PURCHASE ORDERS

- (A) (Applicable only when specifically required by Buyer elsewhere in this order:) Seller shall not, without the prior consent of Buyer, place any purchase order which (1) is on a cost-reimbursement, time and materials, or labor-hour basis, or (2) is on a fixed-price basis and exceeds 5% of the total estimated cost of this order. Buyer may in its discretion ratify in writing any such purchase order. Such action shall constitute the consent of Buyer as required by this Provision. Buyer's consent shall in no way relieve Seller from its obligations under this order, but it shall have no effect other than to remove the prohibition against placing the purchase order which would exist under this Provision in the absence of such consent.
- (B) Seller agrees that no purchase order placed under this purchase order shall provide for payment on a cost-plus-a-percentage-of-cost basis.
- (C) Buyer may in its discretion, specially approve in writing any of the provisions of a purchase order. However, such approval shall not be construed to constitute an approval of more than the specific provisions referred to or a determination of the allowability of such cost under this purchase order, unless the approval specifically provides that it constitutes a determination of the allowability of such cost.
- (D) Seller shall give Buyer immediate notice in writing of any action or suit filed and prompt notice of any claim made against Seller by any purchase order or vendor which, in the opinion of the Seller, may result in litigation related in any way to this purchase order with respect to which Seller may be entitled to reimbursement from Buyer.

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2. ALLOWABLE COST AND PAYMENT (FAR 52.216-7)

- (A) Invoicing. The Buyer shall make payments to the Seller when requested as work progresses, but (except for small business concerns) not more often than once every 2 weeks, in amounts determined to be allowable by the Buyer in accordance with Subpart 31.2 of the Federal Acquisition Regulation (FAR) in effect on the date of this purchase order and the terms of this purchase order. The Seller may submit an invoice or voucher supported by a statement of the claimed allowable cost for performing this purchase order.
- (B) Reimbursing costs.
 - (1) For the purpose of reimbursing allowable costs (except as provided in subparagraph (2) below, with respect to pension, deferred profit sharing, and employee stock ownership plan contributions), the term "costs" includes only—
 - (i) Those recorded costs that, at the time of the request for reimbursement, the Seller has paid by cash, check, or other form of actual payment for items or services purchased directly for the purchase order;
 - (ii) When the Seller is not delinquent in paying costs of purchase order performance in the ordinary course of business, costs incurred, but not necessarily paid, for—
 - (a) Materials issued from the Seller's inventory and placed in the production process for use on the purchase order;
 - (b) Direct labor;
 - (c) Direct travel;
 - (d) Other direct in-house costs; and
 - (e) Properly allocable and allowable indirect costs, as shown in the records maintained by the Seller for purposes of obtaining reimbursement under Government contracts; and
 - (iii) The amount of progress and other payments that have been paid to the Seller's lower tier subcontractors under similar cost standards.
 - (2) Seller contributions to any pension, profit sharing, or employee stock ownership plan funds that are paid quarterly or more often may be included in indirect cost for payment purposes; provided, that the Seller pays the contribution to the fund within 30 days or more after the close of a period shall not be included until the Seller actually makes the payment. Accrued cost for such contributions that are paid less often than quarterly shall be excluded from indirect costs for payment purposes until the Seller actually makes the payment.

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Cost Reimbursement Subcontract



- (3) Notwithstanding the audit and adjustment of invoices or vouchers under paragraph (G) below, allowable indirect costs under this purchase order shall be obtained by applying indirect cost rates established in accordance with paragraph (D) below.
 - (4) Any statements in specifications or other documents incorporated in this purchase order by reference designating performance of services or furnishing of materials at the Seller's expense or at no cost to the Seller shall be disregarded for purposes of cost-reimbursement under this clause.
- (C) Small Business Concerns. A small business concern may be paid more often than every 2 weeks and may invoice and be paid for recorded costs for items or services purchased directly for the purchase order, even though the concern has not yet paid for those items or services.
- (D) Final indirect cost rates.
- (1) Final annual indirect cost rates and the appropriate bases shall be established in accordance with Subpart 42.7 of the Federal Acquisition Regulation (FAR) in effect for the period covered by the indirect cost proposal.
 - (2) The Seller shall, within 90 days after the expiration of each of its fiscal years, or by a later date approved by the Buyer, submit to the Buyer its final indirect costs rates for that period and supporting cost data specifying the purchase order and/or purchase order to which the rates apply. The proposed rates shall be based on the Seller's actual cost experience for that period. The Buyer and Seller shall establish the final indirect cost rates as promptly as practical after receipt of the Seller's proposal.
 - (3) The Seller shall execute a written understanding setting forth the final indirect cost rates. The understanding shall specify (i) the agreed-upon final annual indirect cost rates, (ii) the bases to which the rates apply, (iii) the periods for which the rates apply, (iv) any specific indirect cost items treated as direct costs in the settlement, and (v) the affected purchase order, identifying any with advance agreements or special terms and the applicable rates. The understanding shall not change any monetary ceiling, purchase order obligation, or specific cost allowance or disallowance provided for in this purchase order. The understanding is incorporated into this purchase order upon execution.
 - (4) Within 120 days after settlement of the final indirect cost rates covering the year in which the purchase order is physically complete (or longer if approved in writing by the Buyer), the Seller shall submit a completion invoice or voucher to reflect the settled amounts and rates.
 - (5) Failure by the parties to agree on a final annual indirect cost rate shall be a dispute within the meaning of the Disputes clause.
- (E) Billing rates. Until final annual indirect cost rates are established for any period, the Buyer shall reimburse the Seller at billing rates established by an authorized representative of the U.S. Government (the cognizant auditor), subject to adjustment when the final rates are established. These billing rates

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- (1) Shall be the anticipated final rates; and
 - (2) May be prospectively or retroactively revised by mutual agreement, at either party's request, to prevent substantial overpayment or underpayment.
- (F) Quick-closeout procedures are applicable when the conditions in FAR 42.708(a) are satisfied.
- (G) Audit. At any time or times before final payment, Buyer may have the Subcontractor's invoices or vouchers and statements of cost audited. Any payment may be (1) reduced by amount found by Buyer not to constitute allowable costs or (2) adjusted for prior overpayments or underpayments.
- (H) Final payment
- (1) Upon approval of a completion invoice or voucher, submitted by the Seller in accordance with paragraph (D)(4) of this clause, and upon the Buyer's compliance with all the terms of this purchase order, the Buyer shall promptly pay any balance of allowable costs and that part of the fee (if any) not previously paid.
 - (2) The Seller shall pay to the Buyer any refunds, rebates, credits, or other amounts (including interest, if any) accruing to or received by the Seller or any assignee under this purchase order, to the extent that those amounts are properly allocable to costs for which the Seller has been reimbursed by the Buyer. Reasonable expenses incurred by the Seller for securing refunds, rebates, credits, or other amounts shall be allowable costs if approved by the Buyer. Before final payment under this purchase order the Seller and each assignee whose assignment is in effect at the time of final payment shall execute and deliver—
 - (i) An assignment to the Buyer, in form and substance satisfactory to Buyer, of refunds, rebates, credits, or other amounts (including interest, if any) properly allocable to costs for which the Seller has been reimbursed by the Buyer under this purchase order; and
 - (ii) A release discharging the Buyer, its officers, agents, and employees from all liabilities, obligations, and claims arising out of or under this purchase order, except—
 - (a) Specified claims stated in exact amounts, or in estimated amounts when the exact amounts are not known;
 - (b) (including reasonable incidental expenses) based upon liabilities of the Seller to third parties arising out of the performance of this purchase order; provided, that the claims are not known to the Seller on the date of the execution of the release, and that the Seller gives notice of the claims in writing to Buyer within 6 years following the

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release date or notice of final payment date, whichever is earlier;
and

- (c) Claims for reimbursement of costs, including reasonable incidental expenses, incurred by the Seller under the patent clauses of this purchase order, excluding, however, any expenses arising from the Seller's indemnification of the Buyer against patent liability.

3. FIXED FEE (52.216-8). Applies if this is a COST-PLUS-FIXED-FEE (CPFF) purchase order or applies to individual CPFF SUBCONTRACT LINE ITEMS (SLINS) if this purchase order contains various SLINS purchase order types.

- (A) The Buyer shall pay the Seller for performing this purchase order the fixed fee specified in this Purchase Order.

Payment of the fixed fee shall be made as specified in this purchase order ; provided, that after payment of 85% of the fixed fee, Buyer may withhold further payment of fee until a reserve is set aside in an amount that Buyer considers necessary to protect the Buyer's interest. This reserve shall not exceed 15% of the total fixed fee or \$100,000, whichever is less. Buyer shall release 75% of all fee withholds under this purchase order after receipt of the certified final indirect cost rate proposal covering the year of physical completion of this purchase order, provided the purchase order has satisfied all other contractual terms and conditions, including the submission of the final patent and royalty reports, and is not delinquent in submitting final vouchers on prior years' settlements. The Buyer may release up to 90% of the fee withholds under this purchase order based on the Seller's past performance related to the submission and settlement of final indirect cost rate proposals.

4. INCENTIVE FEE (52.216-10) Applies if this is a COST-PLUS-INCENTIVE-FEE (CPIF) purchase order or applies to individual CPIF SUBCONTRACT LINE ITEMS (SLINS) if this purchase order contains various SLINS purchase order types. The incentive fee will be paid in accordance with the requirements set forth in this purchase order.

- (A) Buyer shall pay the Seller for performing this purchase order a fee provided in the purchase order.

- (B) The target cost and target fee specified in the Purchase Order are subject to adjustment if the Purchase Order is modified in accordance with Paragraph (D) below.

- (1) "Target Cost", as used in this purchase order, means the estimated cost of this purchase order as initially negotiated adjusted in accordance with Paragraph D below.

- (2) "Target Fee", as used in this purchase order, means the fee initially negotiated on the assumption that this purchase order would be performed for a cost equal to the estimated cost initially negotiated adjusted in accordance with Paragraph D below.

- (C) WITHHOLDING OF PAYMENT

Normally, Buyer shall pay the fee to the Seller as specified in the purchase order. However, when Buyer considers that performance or cost indicates that the Seller will not achieve target, Buyer shall pay on the basis of an appropriate lesser fee. When the Seller demonstrates that performance or cost clearly indicates that the Seller will earn

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a fee significantly above the target fee, Buyer may, at the sole discretion of Buyer, pay on the basis of an appropriate higher fee. After payment of 85% of the applicable fee, Buyer may withhold further payment of fee until a reserve is set aside in an amount that Buyer considers necessary to protect Buyer's interest. This reserve shall not exceed 15% of the applicable fee or \$100,000, whichever is less. When the work under this purchase order is increased or decreased by a modification to this purchase order or when any equitable adjustment in the target cost is authorized under any other clause, equitable adjustments in the target cost, target fee, minimum fee and maximum fee, as appropriate, shall be stated in a supplement agreement to this purchase order. Buyer shall release 75 % of all fee withholds under this contract after receipt of the certified final indirect cost rate proposal covering the year of physical completion of this purchase order, provided the Seller has satisfied all other contract terms and conditions, including the submission of the final patent and royalty reports, and is not delinquent in submitting final vouchers on prior years' settlements. The Buyer may release up to 90% of the fee withholds under this purchase order based on the Seller's past performance related to the submission and settlement of final indirect cost rate proposals.

(D) EQUITABLE ADJUSTMENTS

When the work under this purchase order (including any supplies or services which are ordered separately under, or otherwise added to, this purchase order) is increased or decreased, appropriate adjustments in the target cost and target fee shall be set forth in a change order to this purchase order.

(E) FEE PAYABLE

- (1) The fee payable under this purchase order shall be the target fee increased by cents for every dollar that the allowable cost is less than the target cost or decreased by cents for every dollar that the allowable cost exceeds the target cost. In no event shall the fee be greater than percent or less than percent of the target cost.
- (2) The fee shall be subject to adjustment, to the extent provided in Paragraph (C) above, and within the minimum and maximum fee limitations in subparagraph (1) above, when the allowable cost is increased or decreased as a consequence of (i) payments made under assignments or (ii) claims expected from the release as required by Paragraph (H) (2) of the Allowable Cost, Fee and Payment clause.
- (3) If this purchase order is terminated in its entirety, the portion of the target fee payable shall not be subject to an increase or decrease as provided in this paragraph. The termination shall be accomplished in accordance with other applicable clauses of this purchase order.
- (4) For the purpose of fee adjustment, "total allowable cost" shall not include allowable costs arising out of:
 - (i) Any of the causes covered by the Excusable Delays clause to the extent that they are beyond the control and without the fault or negligence of the Seller or any of Seller's lower tier subcontractors;

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- (ii) The taking effect, after negotiating the target cost, of a statute, court decision, written ruling or regulation that results in the Seller being required to pay or bear the burden of any tax or duty or rate increase in a tax or duty;
 - (iii) Any direct cost attributed to the Seller's involvement in litigation as required by Buyer pursuant to the Notice and Assistance Regarding Patent and Copyright Infringement clause;
 - (iv) The purpose and maintenance of additional insurance not in the target cost and required by the Buyer, or claims for reimbursement for liabilities to third persons pursuant to the Insurance—Libility to Third Persons clause;
 - (v) Any claim, loss or damage resulting from a risk for which the Seller has been relieved of liability by the Government Property clause; or
 - (vi) Any claim, loss or damage resulting from a risk defined in the Seller as unusually hazardous or as a nuclear risk and against which the Buyer has expressly agreed to indemnify the Subcontractor.
 - (vii) All other allowable costs are included in “total allowable cost” for fee adjustment in accordance with this Paragraph (E), unless otherwise specifically provided in this Buyer.
- (5) All other allowable costs are included in “total allowable cost” for fee adjustment in accordance with this Paragraph (E), unless otherwise specifically provided in this purchase order.
- (6) PURCHASE ORDER MODIFICATION
- The total allowable cost and the adjusted fee determined as provided in this clause shall be evidenced by a modification to this purchase order signed by the Seller and the Buyer.
- (6) INCONSISTENCIES
- In the event of any language inconsistencies between this clause and provisioning documents or Buyer's options under this purchase order, compensation for spare parts or other supplies and service ordered under such documents shall be determined in accordance with this clause.

5. PAYMENT FOR OVERTIME PREMIUMS (52.222-2)

- (A) Allowable cost shall not include any amount on account of overtime premiums except when paid for work:
- (1) Necessary to cope with emergencies such as those resulting from accidents, natural disasters, breakdowns of production equipment, or occasional production bottlenecks of a sporadic nature;

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- (2) By indirect-labor employees such as those performing duties in connection with administration, protection, transportation, maintenance, standby plant protection, operation of utilities, or accounting;
 - (3) To perform tests, industrial processes, laboratory procedures, loading or unloading of transportation conveyances, and operations in flight or afloat that are continuous in nature and cannot reasonably be interrupted or completed otherwise; or
 - (4) That will result in lower overall costs to the Buyer.
- (B) The cost of overtime premiums otherwise allowable under (a) above shall be allowed only to the extent the amount is reasonable and properly allocable to the work under this order.
- (C) Any request for overtime will be estimated for the remainder of the purchase order and shall contain the following—
- (1) Identify the work unit; e.g., department or section in which the requested overtime will be used together with present workload, staffing, and other data of the affected unit sufficient to permit Buyer to evaluate the necessity for the overtime;
 - (2) Demonstrate the effect that denial of the request will have on the purchase order delivery or performance schedule;
 - (3) Identify the extent to which approval of overtime would affect the performance or payments in connection with other Government contracts, together with identification of each affected contract; and
 - (4) Provide reasons why the required work cannot be performed by using multi-shift operations or by employing additional personnel.
- (D) Except as provided in this clause, Seller shall not incur overtime without the express prior written consent of the Buyer.

6. LIMITATION OF COST (52.232-20)

- (A) The parties estimate that performance of this purchase order, exclusive of any fee, will not cost the Buyer more than (1) the estimated cost specified in the purchase order or, (2) if this is a cost-sharing purchase order, the Buyer's share of the estimated cost specified in the purchase order. the Seller agrees to use its best efforts to perform the work specified in the purchase order and all obligations under this purchase order within the estimated cost, which, if this is a cost-sharing purchase order, includes both the Buyer's and the Seller's share of the cost.
- (B) The Seller shall notify Buyer in writing whenever it has reason to believe that:
- (1) The costs the purchase order expects to incur under this purchase order in the next 60 days, when added to all costs previously incurred, will exceed 75% of the estimated cost specified in the purchase order; or
 - (2) The total cost for the performance of this purchase order, exclusive of any fee, will be either greater or substantially less than had been previously estimated.

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- (C) As part of the notification, the Seller shall provide Buyer a revised estimate of the total cost of performing this purchase order.
- (D) Except as required by other provisions of this purchase order, specifically citing and stated to be an exception to this clause:
 - (1) The Buyer is not obligated to reimburse the Seller for costs incurred in excess of (i) the estimated cost specified in the purchase order or (ii) if this is a cost-sharing purchase order, the estimated cost to the Buyer specified in the purchase order; and
 - (2) The Seller is not obligated to continue performance under this purchase order (including actions under the Termination clause of this purchase order) or otherwise incur costs in excess of the estimated cost specified in the purchase order, until Buyer (i) notifies the Subcontractor in writing that the estimated cost has been increased and (ii) provides a revised estimated total cost of performing this purchase order. If this is a cost-sharing purchase order, the increase shall be allocated in accordance with the formula specified in the purchase order.
- (E) No notice, communication, or representation in any form other than that specified in subparagraph (D)(2) above, or from any person other than Buyer, shall affect this Seller's estimated cost to the Buyer. In the absence of the specified notice, the Buyer is not obligated to reimburse the Seller for any costs in excess of the estimated cost or, if this is a cost-sharing purchase order, for any costs in excess of the estimated cost to the Buyer specified in the purchase order, whether those excess costs were incurred during the course of the purchase order or as a result of termination.
- (F) If the estimated cost specified in the purchase order is increased, any costs the Buyer incurs before the increase that are in excess of the previously estimated cost shall be allowable to the same extent as if incurred afterward, unless the Buyer issues a termination or other notice directing that the increase is solely to cover termination or other specified expenses.
- (G) Change orders shall not be considered an authorization to exceed the estimated cost to the Buyer specified in the purchase order, unless they contain a statement increasing the estimated cost.
- (H) If this purchase order is terminated or the estimated cost is not increased, the Buyer and the Seller shall negotiate an equitable distribution of all property produced or purchased under the purchase order, based upon the share of costs incurred by each.

7. LIMITATION OF FUNDS (52.232-22)

- (A) It is estimated that the cost to Buyer for the performance of this purchase order will not exceed the cost the estimated cost set forth in this purchase order and the Seller agrees to use its best efforts to perform the work specified in this purchase order within the estimated cost, which, if this is a cost-sharing purchase order, includes both the Buyer's and the Seller's share of the cost.

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- (B) The amount presently available for payment and allotted to this purchase order, the products and services covered thereby, and the period of performance which is estimated the allotted amount will cover, are specified in the purchase order. It is contemplated that from time to time additional funds will be allotted to the purchase order up to the full estimated cost specified in the purchase order, inclusive of any fee. The Seller agrees to perform, or have performed, work on the purchase order up to the point at which the total amount paid and payable by the Buyer under the purchase order approximates but does not exceed the total amount actually allotted to the purchase order.
- (C) The Seller shall notify the Buyer in writing whenever it has reason to believe that the costs it expects to incur under this purchase order in the next succeeding 60 days, when added to all costs previously incurred, will exceed 75% of (1) the total amount then allotted to the purchase order by the Seller or, (2) if this is a cost-sharing purchase order, the amount then allotted to the purchase order by the Buyer plus the Seller's corresponding share. The notice shall state the estimated amount of additional funds required to continue performance for the period specified in the purchase order.
- (D) Sixty (60) days before the end of the period specified in the purchase order, the Seller shall notify the Buyer in writing of the estimated amount of additional funds, if any, required to continue timely performance under the purchase order or for any further period specified in the purchase order or otherwise agreed upon, and when the funds will be required.
- (E) If, after notification, additional funds are not allotted by the end of the period specified in the purchase order or another agreed-upon date, upon the Seller's written request Buyer will terminate this purchase order on that date in accordance with the provisions of the Termination clause of the purchase order. If the Seller estimates that the funds available will allow it to continue to discharge its obligations beyond that date, it may specify a later date in its request, and Buyer may terminate the purchase order on such later date.
- (F) Except as required by other provisions of the purchase order, specifically citing and stated to be an exception to this clause—
 - (1) The Buyer is not obligated to reimburse the Seller for costs incurred in excess of the total amount allotted by the Buyer to this purchase order; and
 - (2) The Seller is not obligated to continue performance under this purchase order (including actions under the Termination clause of this purchase order) or otherwise incur costs in excess of (i) the amount then allotted to the purchase order by the Buyer or, (ii) if this is a cost-sharing purchase order, the amount then allotted by the Buyer to the purchase order plus the Seller's corresponding share, until Buyer notifies the Seller in writing that the amount allotted by the Buyer has been increased and specifies an increased amount, which shall then constitute the total amount allotted by the Buyer to this purchase order.
- (G) The estimated cost shall be increased to the extent that (1) the amount allotted by the Buyer or, (2) if this is a cost-sharing purchase order, the amount then allotted by the Buyer to the purchase order plus the Seller's corresponding share, exceeds the estimated cost specified in the purchase order. If this is a cost-sharing purchase order,

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the increase shall be allocated in accordance with the formula specified in the purchase order.

- (H) No notice, communication, or representation in any form other than that specified in subparagraph (F)(2) above, or from any person other than the Buyer, shall affect the amount allotted to this purchase order. In the absence of the specified notice, the Buyer is not obligated to reimburse the Seller for any costs in excess of the total amount allotted by the Buyer to this purchase order.
- (I) When and to the extent that the amount allotted by the Buyer to the purchase order is increased, any costs the Seller incurs before the increase that are in excess of (1) the amount previously allotted by the Buyer or, (2) if this is a cost-sharing purchase order, the amount previously allotted by the Buyer to the purchase order plus the Seller's corresponding share, shall be allowable to the same extent as if incurred afterward, unless Buyer issues a termination or other notice and directs that the increase is solely to cover termination or other specified expenses.
- (J) Change orders shall not be considered an authorization to exceed the amount allotted by the Buyer specified in the purchase order, unless they contain a statement increasing the amount allotted.
- (K) Nothing in this clause shall affect the right of the Buyer to terminate this purchase order. If this purchase order is terminated, the Buyer and the Seller shall negotiate an equitable distribution of all property produced or purchased under the purchase order based upon the share of costs incurred by each.
- (L) If the Buyer does not allot sufficient funds to allow completion of the work, the Seller is entitled to a percentage of the fee specified in the purchase order equaling the percentage of completion of the work contemplated by the this purchase order.

8. CHANGES-COST REIMBURSEMENT (52.243-2)

- (A) By written order, Buyer may from time to time order work suspension or make changes in the services to be rendered or the materials to be furnished within the general scope of this purchase order in any one or more of the following:
 - (1) Drawings, designs, or specifications when the supplies to be furnished are to be specially manufactured for the Buyer in accordance with the drawings, designs, or specifications.
 - (2) Method of shipment or packing.
 - (3) Place of delivery.
- (B) If any such change causes an increase or decrease in the estimated cost of, or the time required for, performance of any part of the work under this purchase order, whether or not changed by the purchase order, or otherwise affects any other terms and conditions, Buyer shall make an equitable adjustment in the (1) estimated cost, delivery or completion purchase order, or both; (2) amount of any fixed fee; and (3) other affected terms and shall modify the purchase order accordingly.
- (C) The Seller must assert its right to an adjustment under this clause within 20 days from the date of receipt of the written order. However, if Buyer decides that the facts justify

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it, Buyer may receive and act upon a proposal submitted before final payment of the purchase order.

- (D) Failure to agree to any adjustment shall be a dispute under the Disputes clause. However, nothing in this clause shall excuse the Seller from proceeding with the purchase order as changed.
- (E) Notwithstanding the terms and conditions of paragraphs (A) and (B) above, the estimated cost of this purchase order and, if this purchase order is incremental funded, the funds allotted for the performance of this purchase order, shall not be increased or considered to be increased except by specific written modification of the purchase order indicating the new contract estimated cost and, if this purchase order is incremental funded, the new amount allotted to the purchase order. Until this modification is made, the Seller shall not be obligated to continue performance or incur costs beyond the point established in the Limitation of Cost or Limitation of Funds clause of this purchase order.

ALTERNATE I If the requirement is for services and no supplies are to be furnished, substitute the following paragraph (A) for paragraph (A) of the basic clause: (a) the Buyer may at any time, by written order, and without notice to the sureties, if any, make changes within the general scope of this purchase order in any one or more of the following:

- (1) Description of services to be performed.
- (2) Time of performance (i.e., hours of the day, days of the week, etc.).
- (3) Place of performance of the services.

ALTERNATE II If the requirement is for services and supplies are to be furnished, substitute the following paragraph (A) for paragraph (A) of the basic clause: (a) the Buyer may at any time, by written order, and without notice to the sureties, if any, make changes within the general scope of this purchase order in any one or more of the following:

- (1) Description of services to be performed.
- (2) Time of performance (i.e., hours of the day, days of the week, etc.).
- (3) Place of performance of the services.
- (4) Drawings, designs, or specifications when the supplies to be furnished are to be specially manufactured for the Contractor in accordance with the drawings, designs, or specifications.
- (5) Method of shipment or packing of supplies.
- (6) Place of delivery.

9. INSPECTION OF SUPPLIES-COST REIMBURSEMENT (52.246-3)

- (A) Definitions.

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"Seller's managerial personnel," as used in this clause, means any of the Seller's directors, officers, managers, superintendents, or equivalent representatives who have supervision or direction of--

- (1) All or substantially all of the Seller's business;
- (2) All or substantially all of the Seller's operation at a plant or separate location at which the purchase order is being performed; or
- (3) A separate and complete major industrial operation connected with performing this purchase order.

"Supplies," as used in this clause, includes, but is not limited to, raw materials, components, intermediate assemblies, end products, lots of supplies, and, when the purchase order does not include the Warranty of Data clause, data.

- (B) The Seller shall provide and maintain an inspection system acceptable to the Buyer/Government covering the supplies, fabricating methods, and special tooling under this purchase order. Complete records of all inspection work performed by the Seller shall be maintained and made available to the Buyer/Government during contract performance and for as long afterwards as the purchase order requires.
- (C) The Buyer has the right to inspect and test the purchase order supplies, to the extent practicable at all places and times, including the period of manufacture, and in any event before acceptance. The Buyer may also inspect the plant or plants of the Seller or any lower tier subcontractor engaged in the purchase order. The Buyer shall perform inspections and tests in a manner that will not duly delay the work.
- (D) If the Buyer performs inspections or tests on the premises of the Seller or a lower tier subcontractor, the Seller shall furnish and shall require its subcontractors to furnish all reasonable facilities and assistance for the safe and convenient performance of these duties.
- (E) Unless otherwise specified in the purchase order, the Buyer shall accept supplies as promptly as practicable after delivery, and supplies shall be deemed accepted 60 days after delivery, unless accepted earlier.
- (F) At any time during contract performance, but no later than 6 months (or such other time as may be specified in the purchase order) after acceptance of the supplies to be delivered under the purchase order, the Buyer may require the Seller to replace or correct any supplies that are nonconforming at time of delivery. Supplies are nonconforming when they are defective in material or workmanship or are otherwise not in conformity with purchase order requirements. Except as otherwise provided in paragraph (H) below, the cost of replacement or correction shall be included in allowable cost, determined as provided in the Allowable Cost and Payment clause, but no additional fee shall be paid. The Seller shall not tender for acceptance supplies required to be replaced or corrected without disclosing the former requirement for replacement or correction, and, when required, shall disclose the corrective action taken.
- (G) (1) If the Seller fails to proceed with reasonable promptness to perform required replacement or correction, the Buyer may:

The text of this document shall not be changed except by written agreement between Buyer and Seller.

- (i) By purchase order or otherwise, perform the replacement or correction and charge to the Seller any increased cost or make an equitable reduction in any fixed fee paid or payable under the purchase order;
 - (ii) Require delivery of undelivered supplies at an equitable reduction in any fixed fee paid or payable under the purchase order; or
 - (iii) Terminate the purchase order for default.
- (2) Failure to agree on the amount of increased cost to be charged to the Seller or to the reduction in the fixed fee shall be a dispute.
- (H) Notwithstanding paragraphs (F) and (G) above, the Buyer may at any time require the Seller to correct or replace, without cost to the Buyer, nonconforming supplies, if the non-conformances are due to (1) fraud, lack of good faith, or willful misconduct on the part of the Seller's managerial personnel; or (2) the conduct of one or more of the Seller's employees selected or retained by the Seller after any of the Seller's managerial personnel has reasonable grounds to believe that the employee is habitually careless or unqualified.
- (I) This clause applies in the same manner to corrected or replacement supplies as to supplies originally delivered.
- (J) The Seller shall have no obligation or liability under this purchase order to replace supplies that were nonconforming at the time of delivery, except as provided in this clause or as may be otherwise provided in the purchase order.
- (K) Except as otherwise specified in the purchase order, the Seller's obligation to correct or replace Buyer/Government-furnished property shall be governed by the clause pertaining to property.

10. INSPECTION OF SERVICES-COST-REIMBURSEMENT (52.246-5)

- (A) Definition. "Services," as used in this clause, includes services performed, workmanship, and material furnished or used in performing services.
- (B) The Seller shall provide and maintain an inspection system acceptable to the Buyer covering the services under this purchase order. Complete records of all inspection work performed by the Seller shall be maintained and made available to the Buyer during contract performance and for as long afterwards as the purchase order requires.
- (C) The Buyer has the right to inspect and test all services called for by the purchase order, to the extent practicable at all places and times during the term of the purchase order. The Buyer shall perform inspections and tests in a manner that will not unduly delay the work.
- (D) If any of the services performed do not conform with purchase order requirements, the Buyer may require the Seller to perform the services again in conformity with contract requirements, for no additional fee. When the defects in services cannot be corrected by reperformance, the Buyer may (1) require the Seller to take necessary action to ensure that future performance conforms to contract requirements and (2) reduce any fee payable under the Seller to reflect the reduced value of the services performed.

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- (E) If the Seller fails to promptly perform the services again or take the action necessary to ensure future performance in conformity with purchase order requirements, the Buyer may (1) by purchase order or otherwise, perform the services and reduce any fee payable by an amount that is equitable under the circumstances or (2) terminate the purchase order for default.

11. NOTICE OF INTENT TO DISALLOW COSTS (52.242-1)

- (A) Notwithstanding any other clause of this purchase order—
 - (1) Buyer may at any time issue to the purchase order a written notice of intent to disallow specified costs incurred or planned for incurrence under this purchase order that have been determined not to be allowable under the purchase order terms; and
 - (2) The Seller may, after receiving a notice under subparagraph (1) above, submit a written response to Buyer, with justification for allowance of the costs. If the Seller does respond within 60 days Buyer shall, within 60 days of receiving the response, either make a written withdrawal of the notice or issue a written decision.
- (B) Failure to issue a notice under this Notice of Intent to Disallow Costs clause shall not affect the Buyer's rights to take exception to incurred costs.

12. EXCUSABLE DELAYS (52.249-14)

- (A) Except for defaults of Seller at any tier, the Seller shall not be in default because of any failure to perform this purchase order under its terms if the failure arises from causes beyond the control and without the fault or negligence of the Seller. Examples of these causes are (1) acts of God or of the public enemy, (2) acts of the Government in either its sovereign or contractual capacity, (3) fires, (4) floods, (5) epidemics, (6) quarantine restrictions, (7) strikes, (8) freight embargoes, and (9) unusually severe weather. In each instance, the failure to perform must be beyond the control and without the fault or negligence of the Seller. "Default" includes failure to make progress in the work so as to endanger performance.
- (B) If the failure to perform is caused by the failure of a lower tier subcontractor at any tier to perform or make progress, and if the cause of the failure was beyond the control of both the Seller and subcontractor, and without the fault or negligence of either, the Seller shall not be deemed to be in fault, unless—
 - (1) The purchase order supplies or services were obtainable from other sources;

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Purchase Agreement TC-006 (Continued)
Cost Reimbursement Subcontract



- (2) Buyer ordered the Seller in writing to purchase these supplies or services from the other source; and
 - (3) The Seller failed to comply reasonably with this order.
- (C) Upon request of the Seller, Buyer shall ascertain the facts and extent of the failure. Buyer determines that any failure to perform results from one or more of the causes above, the delivery purchase order shall be revised, subject to the rights of the Buyer under the termination clause of this purchase order.

13. PENALTIES FOR UNALLOWABLE COSTS (52.242-3)

- (A) Definition. Proposal means:
- (1) A final indirect cost rate proposal submitted by the Seller after the expiration of its fiscal year which—
 - (i) relates to any payment made on the basis of billing rates, or
 - (ii) will be used in negotiating the final contract price.
 - (2) The final statement of costs incurred and estimated to be incurred under the Incentive Price Revision clause (if applicable) which is used to establish the final contract price.
- (B) Subcontractors which include unallowable costs in a proposal are subject to penalties. The penalties are prescribed in 10 U.S.C. 2324, or 41 U.S.C. 256, as applicable, which is implemented in Section 42.709 of the Federal Acquisition Regulation (FAR) .
- (C) The Seller shall not include in any proposal any cost which is unallowable, as defined in FAR Part 31.
- (D) If the Contracting Officer determines that a cost submitted by the Seller in its proposal is expressly unallowable under a cost principle in the FAR, or an executive agency supplement to the FAR, that defines the allowability of specific selected costs, the Seller shall be assessed a penalty equal to—
- (1) the amount of the disallowed cost allocated to this contract, plus
 - (2) simple interest to be computed—
 - (i) On the amount the Seller was paid (whether as a progress or billing payment) in excess of the amount which the Seller as entitled.
 - (ii) Using the applicable rate effective for each six month interval prescribed by the Secretary of the Treasury pursuant to Public Law 92-41 (85 Stat. 97).
- (E) If the Contracting Officer determines that a cost submitted by the Seller in its proposal includes a cost previously determined to be unallowable for the Seller, then the Seller will be assessed a penalty in an amount equal to two times the amount of the disallowable cost allocated to this contract.

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Purchase Agreement TC-006 (Continued)
Cost Reimbursement Subcontract



- (F) Determinations under (D) and (E) of this clause are final decisions within the meaning of the Contract Disputes Act of 1978 (41 U.S.C. 604, et seq.).
- (G) Pursuant to the criteria in FAR 42.709-5, the Contracting Officer may waive the penalties in (D) or (E) of this clause.
- (H) Payment by the Seller of any penalty assessed under this clause does not constitute repayment to the Government of any unallowable cost which has been paid by the Government to the Seller.

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ATTACHMENT A

RELEASE FORM

Pursuant to the terms of Purchase Order No. _____ and in consideration of the sum of \$ _____, which has been or is to be paid under the said purchase order to _____ (hereinafter called the Seller), upon payment of the said sum Buyer (hereinafter called the Buyer), the Seller does remise, release and discharge the Buyer, its officers, agents and employees, of and from all liabilities, obligations, claims and demands whatsoever under or arising from said purchase order, except:

1. Specified claims in stated amounts* or in estimated amount where the amounts are not susceptible of exact statement by the Subcontractor, as follows:
2. Claims, together with reasonable expenses incidental thereto, based upon liabilities of Seller to third parties arising out of the performance of the aforesaid order; provided, that such claims are not known to Seller on the date of the execution of this instrument, that such claims are reimbursable in accordance with the terms of aforesaid order, and that Seller gives notice of such claims in writing to Buyer promptly after the discovery, and in no event more than five years after the date of this instrument or the date of any notice to Seller that Buyer is prepared to make final payment, whichever is earlier; and
3. Claims for reimbursement of costs (other than expenses of the Seller by reason of its indemnification of the Buyer against patent liability), including reasonable expenses incidental thereto, incurred by the Seller under the provisions of the said purchase order relating to patents.

*"None" shall be stated in the space below when applicable.

The Seller agrees, in connection with patent matters and with claims which are not released as set forth above, that it will comply with all of the provisions of said purchase order, including, without limitation, those provisions relating to notification to the Buyer and relating to the defense or prosecution of litigation.

IN WITNESS WHEREOF, this release has been executed this _____ day of _____, 2000.

BY _____
TITLE _____
