



## Purchase Order Special Provisions

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POSP #0107

SPECIAL PROVISION TEXT:

This Purchase Order confirms MDHS's acceptance of Seller's offer contained in Memorandum of Agreement (number) \_\_\_\_\_\*\_\_\_\_\_ dated \_\_\_\_\_\*. This Purchase Order is a binding contractual document between MDHS and Seller in the implementation of the aforementioned Memorandum of Agreement.

\* NOTE: Buyer to add agreement number and date

POSP #0147

SPECIAL PROVISION TEXT:

Notwithstanding the other provisions in International Traffic in Arms Regulations (ITAR) Part 124, the Office of Munitions Control may authorize by means of a license (DSP-5) the export of unclassified technical data to foreign persons for offshore procurement of defense articles, provided that:

1. The subcontract or purchase order for offshore procurement limits delivery of the defense articles to be produced only to the person in the United States or to an agency of the U.S. Government; and
2. The technical data of U.S. origin to be used in the foreign manufacture of the product does not and will not disclose the details of the design, development, production or manufacture of the product; and
3. The subcontract or purchase order between the Seller and the Buyer;
  - (A) Limits the use of the technical data to the manufacture of the articles required by the subcontract or purchase order only; and
  - (B) Prohibits the disclosure of the data to any other person except duly qualified subcontractors within the Seller's country; and
  - (C) Seller and its duly qualified subcontractors, and any other foreign persons shall not acquire rights in the technical data; and
  - (D) Provides that any subcontract or purchase order between foreign persons in the approved country for manufacture of equipment for delivery pursuant to the subcontract or purchase order contain all the limitations of this paragraph (c); and
  - (E) Requires the Seller, including subcontractors, to destroy or return to the Buyer upon completion of manufacture of the product or sooner if requested by the Buyer, all of the technical data exported pursuant to the subcontract or purchase order upon fulfillment of their terms; and
  - (F) Requires delivery of the product manufactured abroad only to the Buyer; and

4. Each such contract, purchase order or subcontract must clearly identify the article to be produced and must identify the U.S. Department of State export license number (DSP-5) or exemption under which the technical data is approved for export to the Seller. License number Expiration Date; and

5. Licenses issued pursuant to this section must be renewed upon their expiration if offshore procurement is to extend beyond the period of validity of the license. If the technical data involved in an offshore procurement arrangement is otherwise exempt from the licensing requirements pursuant to Sec. 126.4 or Sec. 126.5, the DSP-5 referred to in the first sentence of this section is not required. However, the exporter must comply with the other requirements of this section; and

6. Any subcontract or purchase order which the Seller may enter into must contain all of the clauses which are stipulated in this provision; and

7. The subcontract or purchase order related hereto is subject to the approval by the U.S. Department of State and no exports of technical data or hardware related to the manufacture of the product shall be made without obtaining prior U.S. Government approval.

POSP #0149

SPECIAL PROVISION TEXT:

DoD Duty-Free Entry is not applicable to goods purchased from foreign suppliers to fulfill the requirements of this Purchase Order. MDHS must be notified of the origin of all goods Seller acquires from foreign suppliers to fulfill this Purchase Order.

POSP #0151

SPECIAL PROVISION TEXT:

Transaction Value Statement.

Purchase Order Special Provisions (POSPs) 0151 through 0162 cover MDHS requirements for reporting to U.S. Customs. No action is required on Seller's part by reason of the inclusion of these POSPs in this Purchase Order.

Items on this Purchase Order which may be subject to U.S. Customs duty:

Item No.	Part Number	Qty	Unit of Measure	Unit Price
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POSP #0153

SPECIAL PROVISION TEXT:

Material for this Purchase Order is provided by Seller. Material costs are included in unit price.

Item No.                      Unit Price

## POSP #0154

### SPECIAL PROVISION TEXT:

Tooling for performance of this Purchase Order is designed to support projected production based upon current market estimates. Fabrication of tooling applicable to this Purchase Order is reported on tooling completion report(s).

Item No.	Tool Completion	Report No./Dated	Amount/Unit Price
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## POSP #0161

### SPECIAL PROVISION TEXT:

Transaction value for Customs purposes.

Item No.	Value
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## POSP #0162

### SPECIAL PROVISION TEXT:

Accounting principles used in construction of transaction value statement are as follows:

1. Material costs are reported using the moving average cost method of inventory valuation.
2. Tooling costs are based upon specification of tooling capability to support projected production derived from current market estimates. Charging rate is equal to total cost incurred as reported on tooling completion reports divided by the estimated number of parts which will be fabricated using this tooling.
3. Transportation costs are reported as the standard cost per piece of transporting material from MDHS stores and suppliers to the foreign destination. Standard costs are adjusted to actual costs as data becomes available.
4. Material on this Purchase Order may include interchangeable lots which will not be assigned control numbers or be segregated in MDHS stores. Quantity reported in POSP 0151 represents that lot portion attributed to dutiable contracts.

## POSP SECTION 0200 - BIDDER INSTRUCTIONS

## POSP #0222

### SPECIAL PROVISION TEXT:

Seller agrees to certify cost and pricing data by the use of MDHS Subcontractor's Certificate of Current Pricing, as of the date prices are agreed upon for procurements over \$500,000.

## POSP #0223

SPECIAL PROVISION TEXT:

Seller agrees to certify cost and pricing data by the use of MDHS Subcontractor's Certificate of Current Pricing, as of the date prices are agreed upon for procurements over \$100,000.

POSP #0290

SPECIAL PROVISION TEXT:

Seller certifies that it is an authorized distributor for the product to be delivered under this Purchase Order and that the product to be delivered is new and unused and was received directly from the original manufacturer. Seller further certifies that it has in its possession a valid copy of its distributorship authorization or franchise and documented evidence of the acceptability of the product. Returned or surplus material from any source is not acceptable for delivery under this Purchase Order.

POSP #0291-97

SPECIAL PROVISION TEXT:

Modifications to the General Provisions and FAR, DFARS, and NASA Provisions for Government Time and Material and Labor Hour contracts, (MDHS Terms and Conditions of Purchase, April 1997, Section IV) are hereby incorporated and made a part of this Purchase Order.

POSP #0293-97

SPECIAL PROVISION TEXT:

Modifications to the General Provisions and FAR, DFARS, and NASA Provisions for Foreign Contracts, (MDHS Terms and Conditions of Purchase, April 1997, Section VI) are hereby incorporated by reference and made a part of this Purchase Order.

POSP #0294-97

SPECIAL PROVISION TEXT:

Modifications to the General Provisions and FAR, DFARS, and NASA Provisions for Government Fixed Price Incentive Contracts, (MDHS Terms and Conditions of Purchase, April 1997, Section V) are hereby incorporated by reference and made a part of this Purchase Order.

POSP #0295-97

SPECIAL PROVISION TEXT:

General Provisions for Commercial Firm Fixed Price Contracts (MDHS Terms and Conditions of Purchase, April 1997, Section I) are hereby incorporated by reference and made a part of this Purchase Order.

POSP #0296-97

SPECIAL PROVISION TEXT:

General Provisions for Short Form - Commercial Nonproduction Goods Contracts (MDHS Terms and Conditions of Purchase, April 1997, Section VII) are hereby incorporated by reference and made a part for this Purchase Order.

POSP #0297-97

SPECIAL PROVISION TEXT:

General Provisions and FAR, DFARS and NASA Provisions for Government Fixed Price Contracts (MDHS Terms and Conditions of Purchase, April 1997, Section II) are hereby incorporated by reference and made a part of this Purchase Order.

POSP #0299-97

SPECIAL PROVISION TEXT:

Modifications to the General Provisions and FAR, DFARS, and NASA Provisions for Government Cost Type Contracts (MDHS Terms and Conditions of Purchase, April 1997, Section III) are hereby incorporated by this reference and made a part of this Purchase Order.

## POSP SECTION 0500 - PRICING

POSP #0508

SPECIAL PROVISION TEXT:

Seller is authorized to proceed with necessary repairs upon receipt of the material returned, provided Seller's estimated charge for repair is not in excess of sixty five percent (65%) of the unit's replacement price, estimated to be, whichever is less. If the estimated repair charge exceeds such percentage or dollar limit, Seller shall immediately stop work, notify the MDHS Purchasing Representative of the estimated repair charge, and shall not proceed without MDHS's further authorization.

Within five (5) days from receipt of an item returned for repair, Seller shall submit a firm quotation for all repair charges to MDHS. Repair charges exceeding \$250 shall be substantiated by Seller's cost breakdown.

POSP #0514

SPECIAL PROVISION TEXT:

The maximum cumulative termination liability of MDHS and/or the U.S. Government shall not exceed the amounts set forth in the following schedule which includes liability for delivered items plus possible termination claims.

Time PeriodDollars

NOTE: Buyer to fill in details

POSP #0522

SPECIAL PROVISION TEXT:

Prices stated herein cannot be increased, but Seller will allow any price decrease in effect at the time of any individual shipment. Deviations from the estimated quantity or quantities stated herein, or from periodic schedule or schedules subsequently stated, shall not be justification for any increase in price.

POSP #0524

SPECIAL PROVISION TEXT:

Limitation of MDHS obligation - incremental funding:

1. The items and/or work ordered will be funded on an incremental basis. MDHS shall not be obligated to provide funds at a more rapid rate than described in Paragraph 5, below. MDHS's liability for the items and/or work incrementally funded under this Purchase Order upon the termination hereof at any time, shall not exceed the cumulative total of the amounts then obligated, and the Seller shall not be entitled to any adjustment in delivery schedule, fixed prices, maximum price or any other provisions of this Purchase Order, attributable to the Seller's incurring of amounts at a rate exceeding the rate of obligation specified in Paragraph 5, below.

2. MDHS's limitation of liability set forth in this clause shall not be authority for the Seller to cease or slow the performance of work under this Purchase Order and may not be used as the basis for extending schedules or otherwise altering the performance requirements under this Purchase Order.

3. Nothing contained in this clause shall affect the right of MDHS to cancel or terminate this contract under the "Default" or "Termination for Convenience" clauses of this Purchase Order.

4. No incremental funding shall be deemed for any purpose under this Purchase Order as an acceptance of work performed by the Seller prior to such funding.

5. The maximum cumulative obligation of MDHS and/or the Government shall not exceed the amounts set forth in the following schedule, which includes liability for delivered items plus any possible termination claims:

Thru	Amount	Thru	Amount
	(Percent of Price)		(Percent of Price)

NOTE: Buyer to fill in details.

POSP #0528

SPECIAL PROVISION TEXT:

Within fifteen (15) days from the date of this Purchase Order or Purchase Order Change, Seller shall furnish MDHS a cumulative monthly termination liability schedule. The maximum termination liability of MDHS and/or the Government shall not exceed the amount set forth in the schedule to be furnished, which shall include liability for delivered items plus possible termination claims. The schedule shall be set forth in the following, or equivalent form:

Through Month of: Amount \$

The termination liability schedule furnished by Seller and incorporated by a Change Order shall become a part of this Purchase Order and MDHS termination liability shall be limited accordingly.

POSP #0540

SPECIAL PROVISION TEXT:

Rates incorporated herein are fixed for the period of performance stipulated and cannot be increased except for changes in the scope of work required.

POSP #0546

SPECIAL PROVISION TEXT:

Rates incorporated herein are maximum rates and are for billing purposes only, until such rates can be substantiated by MDHS audit or by the Government for MDHS. Such rates will be revised downward only to the extent that such audit and/or subsequent negotiations between MDHS and Seller result in mutual agreement. Seller's invoices may also be verified by MDHS audit. Any payment previously made or to be made will be subject to reduction by amounts included in the related invoice, which such audit reveals are not properly chargeable to this Purchase Order. For purposes of any such audit effort, Seller will make available to MDHS Seller's pertinent cost records and books of account.

POSP #0552

SPECIAL PROVISION TEXT:

Unit prices applicable to items in this Purchase Order for purposes of payment to Seller are as follows:

\_\_\_\_\_.

MDHS will pay Seller at the rate of exchange the date payment is initiated by MDHS, in U.S. dollars, equivalent to the following: \_\_\_\_\_.

POSP #0554

SPECIAL PROVISION TEXT:

Costs resulting from changes due to Seller's errors, decision to improve production techniques or tooling, rework resulting from failure to incorporate changes at the agreed effectively, rework to incorporate changes in excess of reasonableness consistent with the schedule requirements or MDHS Stress Department disapproval of a change previously approved by Seller's Stress Department will not affect the Purchase Order price, unless MDHS agrees to the contrary in writing.

POSP #0558

SPECIAL PROVISION TEXT:

All materials required to repair part(s) returned shall be furnished by the Seller. The cost of such materials will be included in the price of this Purchase Order.

POSP #0582

SPECIAL PROVISION TEXT:

All materials required for the fabrication of the goods ordered shall be furnished by Seller. The costs of all such material is included in the Purchase Order price as stated herein.

POSP #0584

SPECIAL PROVISION TEXT:

Seller shall submit to MDHS within thirty (30) days from receipt of the items returned for repair, a firm quotation for all repair charges applicable thereto and advise MDHS of the purchase price for new like equipment. The repair quotation shall have sufficient cost breakdown to evaluate the proposed repair. No repairs are to be made until Seller receives authorization to proceed in the form of a Change Order to this Purchase Order.

## POSP SECTION 1000 - SCHEDULES

POSP #1006

SPECIAL PROVISION TEXT:

The delivery dates shown herein are target dates and are for follow-up purposes in the absence of a firm delivery schedule. If such dates cannot be met, please furnish to the MDHS Purchasing Representative the earliest dates by which repair and delivery can be accomplished.

POSP #1021

SPECIAL PROVISION TEXT:

Notwithstanding any provisions of this Purchase Order to the contrary, Seller agrees that in the event MDHS finds it necessary to direct extensions in equipment deliveries under this Purchase Order. Any such extensions in equipment delivery schedules will be accomplished by Seller at no increase in Purchase Order price, provided that such extensions in delivery schedules do not exceed four (4) months for this Purchase Order. In the event such direction from MDHS exceeds four (4) months, Seller will be entitled to claim such equitable price adjustment, as may be appropriate under the Changes article of the Purchase Order General Provisions, but only for the period of deliveries that exceeds the aforesaid four month extensions in schedule. However, it is noted that the provisions of this clause do not limit MDHS's right to direct changes in delivery schedules as a result of design deficiencies disclosed in Seller's equipment and/or Seller's failure to meet milestone dates included in this Purchase Order, in as much as Seller continues to retain complete cost responsibility for such schedule changes, if they occur.

POSP #1045

SPECIAL PROVISION TEXT:

If a material shortage should develop, which will affect Seller's ability to meet the MDHS delivery schedules, Seller shall immediately notify the MDHS Purchasing Representative who will determine whether MDHS has such material available.

POSP #1048

SPECIAL PROVISION TEXT:

Since the precise amount of harm (or injury) to Buyer resulting from any delivery delays by Seller is not readily ascertainable at this time, the parties agree that the following formula for calculating liquidated damages will apply to this Purchase Order. The Seller will be debited for each day that Seller does not meet the delivery date indicated herein, unless such delinquency is accepted by Buyer in writing or if the delinquencies are beyond the reasonable control of Seller. Such reduction will be prorated for the month and will be computed on a daily basis by taking 5 percent (5%) of the unit price for undelivered item(s), dividing by 30 and multiplying by the number of days delinquent to the required delivery date. Buyer shall issue a Change Notice, if necessary, to the Purchase Order reflecting the reduction of the Purchase Order price for the total number of days delinquent to the Purchase Order delivery date.

## POSP SECTION 1500 - SPECIFICATIONS AND PERFORMANCE

### POSP #1500

SPECIAL PROVISION TEXT:

All hardware, software, or firmware in any products furnished under this contract shall either be Year 2000 compliant as delivered or, if noncompliant at the time, be upgraded to be Year 2000 compliant, at no additional cost to MDHS, by \_\_\_\_\_ (date.)

Year 2000 compliant means information technology that accurately processes date/time data (including, but not limited to, calculating, comparing, and sequencing) from, into, and between the twentieth and twenty-first centuries, and the years 1999 and 2000 and leap year calculations. Furthermore Year 2000 compliant information technology, shall accurately process date/time if the other information technology properly exchanges date/time with it.

### POSP #1505

SPECIAL PROVISION TEXT:

Seller shall review all applicable material processes, standards, and other specifications (including referenced drawings and planning documents). Hereafter referred to as "specifications," called out elsewhere in this purchase order and, to the extent compliance with a "Hughes Helicopter, Inc.," "HHI," "McDonnell Douglas Helicopter Systems" or "MDHS", "MDC" or "McDonnell Douglas Corporation" specification is required herein. The current revision level of such document shall be determined and used in accordance with the procurement instructions (MEPLAN) for the planning revision(s) referenced herein. In the event that Seller does not possess the current MEPLAN and specifications, Seller shall obtain the current MEPLAN and specifications by contacting the MDHS purchasing representative or Buyer responsible for this purchase order.

### POSP #1512

SPECIAL PROVISION TEXT:

In the event MDHS claims that supplies and services furnished or to be furnished under this Purchase Order do not conform to the description contained in this Purchase Order and Seller contests MDHS's claim, in the event of any other dispute between the parties regarding rights or obligations under this Purchase Order, Seller shall proceed in accordance with MDHS instructions pending resolution of the dispute. In the event of resolution of the dispute in favor of Seller, the price of this Purchase Order shall be equitably adjusted to compensate Seller for efforts expended in complying with MDHS instructions to the extent that MDHS instructions impose burdens upon the Seller in addition to those imposed by this Purchase Order prior to the issuance of MDHS instructions.

## POSP #1518

### SPECIAL PROVISION TEXT:

Modifications will be provided to Seller by issuance of a Purchase Order Change Notice (POCN). A copy must be signed by the Seller and returned to MDHS to acknowledge receipt of revised data. Any cost or schedule impact expected to result from Seller's incorporation shall be processed in accordance with the Changes clause herein.

## POSP #1520

### SPECIAL PROVISION TEXT:

This data item describes the test data required in support of Nonstandard Part Approval Requests DD Form 2052.

Approval of nonstandard parts, as they apply to a parts control program, is required in accordance with MIL-STD-965, Procedure 1. A nonstandard part is any item not appearing on the Program Parts Selection List (PPSL).

Nonstandard Part Approval Requests - Approvals for the use of nonstandard parts submitted in accordance with MIL-STD-965, shall be prepared on DD Form 2052. Nonstandard Part Approval Request. Preparation instructions are on the reverse side of the form.

Supplemental data such as existing control drawings, specifications, vendor data sheets, and other pertinent data shall be attached to each submittal. Data need not be furnished for nonstandard parts covered by documents listed in the Department of Defense Index of Specifications and Standards (DODISS).

Nonstandard parts, when approved, will be added to the PPSL.

MIL and MS Parts Requests - Where MIL specification or MS parts are to be used and they are not listed on the PPSL, these proposed additions to the PPSL shall be defined on DD Form 2053, Program Parts Selection List Worksheet. Preparation instructions are on the reverse side of this form.

Supplemental data is not required for the DD Form 2053 submittal.

NOTE: A copy of the PPSL may be obtained through the MDHS Buyer.

### TEST DATA FOR NONSTANDARD PARTS

Test data shall provide evidence that a proposed nonstandard part complies with the requirements of the applicable part procurement document.

The following existing test data may be used for justification:

1. Supplier-originated test data which document the results of test levels equal to or more stringent than those specified in the applicable part document.
2. Seller-oriented test data prepared under any previous contract.

### 3. Government/Industry Data Exchange Program (GIDEP) test reports.

When existing acceptable test data is not available, test data resulting from tests initiated in accordance with paragraph 4.6 of MIL-STD-965 shall be prepared in the format required by MIL-STD-831.

POSP #1527

#### SPECIAL PROVISION TEXT:

The items returned for repair will be repaired, overhauled, inspected, and tested in accordance with the specifications, repair manuals and/or technical orders applicable to the Purchase Order under which this equipment was manufactured.

POSP #1530

#### SPECIAL PROVISION TEXT:

Seller shall make no change in the design of the goods being purchased on this Purchase Order without notifying MDHS of its intent to make such changes, and such changes shall be accomplished only by issuance of a Purchase Order Change Notice (POCN).

POSP #1533

#### SPECIAL PROVISION TEXT:

MDHS blueprint bill of material sizes are approximate and make no allowances for tooling tabs or excess material for producing parts. Estimate(s) of material requirement(s) shall be Seller's sole responsibility.

POSP #1551

#### SPECIAL PROVISION TEXT:

Specification responsibility:

1. The Seller hereby acknowledges this Purchase Order has been executed by both parties on the basis that Seller has reviewed and accepted the procurement specification(s) as set forth in this Purchase Order. Such specification(s) set forth the performance requirements for the equipment and associated items being purchased herein.

2. Accordingly, notwithstanding any conflict or inconsistency which hereafter may be found between achievement of the aforesaid performance requirements and adherence to the Seller's proposed design for the equipment and associated items being purchased herein, the Seller hereby warrants that the equipment and associated items to be delivered or performed will meet or exceed the performance requirements of the said specification(s).

3. The Seller agrees that it hereby assumes all risks of impossibility of performance and commercial impracticability under this Purchase Order.

4. Notwithstanding the Changes clause or any other provision in this Purchase Order, the Seller hereby agrees that no changes to the aforesaid specification(s) which may be agreed upon to permit achievement of the performance requirements specified in this Purchase Order for the Seller's proposed equipment and associated items shall entitle the Seller to either any

price increase or any extension of the delivery times beyond those set forth herein.

5. Seller further agrees that the design features, if any, set forth in the above specification(s), were reviewed and considered by Seller and that Seller assumes all risks and full responsibility for such design features.

POSP #1557

SPECIAL PROVISION TEXT:

Seller will not begin manufacture of goods until MDHS has signed final approval of outline/installation drawings submitted to MDHS. If MDHS has not advised Seller of approval or disapproval of such drawings within sixty (60) days after receipt by MDHS, Seller may proceed with manufacture and subsequent changes will be subject to negotiation. Final copies of outline and assembly drawings are required for MDHS approval by MDHS Report No. \_\_\_\_\_.

POSP #1563

SPECIAL PROVISION TEXT:

Subject to the other provisions of this Purchase Order, Seller shall be responsible, as directed by MDHS, to accomplish all redesign, rework, retesting and other associated efforts to bring all equipment, modification kits, spares, computer programs, data and technical publications, delivered or to be delivered, up to the specified requirements of the Purchase Order at no increase in the Purchase Order price and/or option prices.

POSP #1581

SPECIAL PROVISION TEXT:

All provisions herein, or parts thereof, which relate solely to health, safety or fire prevention are mandatory only to MDHS performance. They are only advisory as to work performed by Sellers and Subcontractors and are not intended to supplant the Seller's or Subcontractor's independent judgment with respect to OSHA or other employee health, safety or fire prevention requirements.

POSP #1582

SPECIAL PROVISION TEXT:

Essential Program Performance Requirements

Seller agrees that all work in respect of goods and services shall be carried out in accordance with the terms of this purchase order. MDHS is reasonably entitled to 100% on time delivery and 100% quality of the products and services it procures from Seller. In the event that Seller does not meet, at any time after the end of March, 1997, at least a 90% on time delivery rating, and a 95% quality rating for the Longbow program, as measured by MDHS' Supplier Rating System (SRS) on a six month rolling average, then Seller shall deliver to an escrow agent acceptable to MDHS a complete, up to date data package consisting of Technical Data and know-how (Data Package) suitable for qualifying a second source to produce the products and perform the services which are the subject of this purchase order. Seller shall deliver such Data Package within 30 days of MDHS' request. This Data Package will include a royalty free, irrevocable, nonexclusive license for MDHS or MDHS' subcontractors to use Seller's Technical Data and know-how as necessary to re-procure and build the item or items provided for in the purchase order.

MDHS may inspect the Data Package, and permit a third party acceptable to Seller to inspect the Data Package, in order to verify the sufficiency of the Data Package to qualify a second source. Seller shall update the Data Package as necessary to keep it current. If, after 60 days from the date MDHS requests delivery of the Data Package to the escrow agent, Seller still does not meet at least a 90% on time SRS delivery and a 95% quality SRS rating, on a six month rolling average, Seller hereby agrees that MDHS may direct the escrow agent to release the Data Package to MDHS, and Seller agrees that MDHS may then use the Data Package to qualify a second source for the products and services. In conjunction with qualifying a second source, MDHS may, at no cost or fee payable to Seller, terminate no more than 50% of the goods and services provided for under this purchase order. In the event MDHS chooses to qualify a second source, Seller will provide, at no cost to MDHS and on an as needed basis, reasonable additional assistance in transferring the Technical Data and know-how to the second source.

At MDHS' request, Seller shall render to MDHS all reasonable assistance to enable MDHS or the second source to assume that portion of the subcontracts with Seller's suppliers as may be required for the second source to perform the terminated portion of the purchase order. If, at any time after MDHS has exercised its right to qualify a second source, Seller still does not meet at least a 90% on time SRS delivery and a 95% quality SRS rating, on a six month rolling average, then such failure shall be deemed to be an event of default under the Termination for Default clause of this purchase order. MDHS' rights and remedies provided for under this clause are in addition to any other rights and remedies available to MDHS under this purchase order. If at any time MDHS elects not to exercise any of its rights or remedies under this clause, such election shall not be deemed to prevent MDHS from exercising such rights or remedies at any other time.

POSP #1583

SPECIAL PROVISION TEXT:

Performance Fee Provision:

Seller has agreed to certain criteria established elsewhere in this contract/purchase order and Seller is entitled to be paid for its full performance. However, Seller is not entitled to full payment if performance does not meet the expectations of MDHS as contracted with Seller. As such, MDHS and Seller agree to a Performance Fee Provision which allows an incentive payment to Seller based on two performance categories -- delivery and quality. Each category shall be measured in accordance with MDHS' Supplier Rating System (SRS) submitted quarterly to the seller, and will be the evidence of Seller's performance by purchase order. While striving toward the goal of 100% performance, MDHS and Seller agree that a performance rating of 93% for Delivery and 97% for Quality shall entitle Seller to the full Performance Fee.

Establishment of Performance Fee:

The performance fee shall be established after final negotiation of the contract/purchase orders. Once firm fixed prices are definitized for the goods and services provided under the contract/purchase order including nonrecurring and data items, four (4) percent of the total price for each line item and/or each unit price will be deducted and set aside as the Performance Fee. This fee is split between each category: 2% Delivery Performance Fee and 2% Quality Performance Fee. [Note: each invoice will reflect the total 4% hold back]

If at the end of the SRS reporting period Seller's performance is 93% or higher for Delivery and 97% or higher for Quality, Seller has earned the full 4% performance fee for each item or unit delivered during the reporting period; and Seller will be paid the full amount held back. Likewise, if only one category is met, Seller will be paid only 2%, or half of the amount held back. However, if Seller does not meet either delivery or quality goal, the fee will be forfeited.

Payment of the Performance Fee:

A line item will be established in the purchase orders to administer the performance fee as set forth in this clause. The performance fee shall not be subject to Section II, Article 19 entitled "Disputes" of the April 1994 Terms and Conditions of Purchase nor shall the performance fee line item or any part thereof be included in any portion of a claim submitted in

accordance with Section II, Article 10 entitled "Termination for Convenience". Payment terms for the performance fee is Net 30 Days and the performance fee line item is not subject to progress payments.

POSP #1584

SPECIAL PROVISION TEXT:

Reliance:

Seller acknowledges that it is and that MDHS relies upon Seller as an expert, fully competent in all phases involved in designing, producing, testing, developing, tooling, manufacturing, modifying, altering, reconditioning, and stocking the goods, and in training or providing any services under this contract. Seller will not deny any responsibility or obligation to MDHS on the grounds that any such phase was approved or reviewed by MDHS or on the grounds that MDHS provided drawings to Seller.

This contract's specifications are performance specifications for the goods and services under this contract. If goods delivered or services performed do not meet or exceed the performance specifications, Seller will re-design the goods or re-perform the services and make changes to all affected technical data and computer software required by this contract, all at no increase in contract price. Re-designed goods, re-performed services, and corrected technical data and computer software are subject to this article. MDHS' review or approval of Seller's drawings or design, at any stage of development or production, does not relieve Seller of its obligations of this article.

POSP #1585

SPECIAL PROVISION TEXT:

Mitigation of Damages

The parties agree they are obligated to mitigate damages in the event the purchase order is terminated under Article 10 "Termination for Convenience" or Article 11 "Termination for Default" of the MDHS Terms and Conditions of Purchase, Section II. In that event, Seller shall immediately cease work as directed in the termination notice and take all reasonable steps to mitigate its losses, costs and any liabilities resulting or arising from such termination. Except as specifically provided in Articles 10 or 11, MDHS shall not be liable for Seller's expenses or liabilities expended or discharged prior to the effective date of the purchase order, or after the date of the notice of termination. Under no circumstances shall MDHS be liable to Seller for any costs Seller "invested" into the program.

In addition, in the event of Seller's default, Seller will be deemed to have transferred to MDHS a royalty free, irrevocable, nonexclusive license for MDHS or MDHS' subcontractors to use Seller's Technical Data and know-how as necessary to re-procure and build the item or items provided for in the purchase order. Any transfer of Technical Data or know-how required for MDHS' assumption of such subcontracts shall be at no additional charge. At MDHS' request, Seller shall render to MDHS all reasonable assistance to enable MDHS to assume subcontracts with Seller's suppliers entered into by Seller for purposes of performing its outstanding obligations under the terminated contract/purchase order.

[MDHS 1997 Terms & Conditions](#)