



## Purchase Order Special Conditions

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POSP #7008

SPECIAL PROVISION TEXT:

The item listed on this purchase order is Government-owned property being returned for upgrade or repair. Seller shall control this property in accordance with Federal Acquisition Regulation (FAR), Subpart 45.5.

POSP #7015

SPECIAL PROVISION TEXT:

Seller warrants that computer programs will be free of defects, will conform to generally accepted standards of good programming practice, and will comply with all pertinent specifications including performance. All warranties shall run to MDHS, its successors, assigns, the Customers and to the Users of its products, and shall remain in effect through the period of Seller's warranty obligations under the Purchase Order General Provisions. In the event the Seller fails to correct deficiencies in any computer program or associated documentation, MDHS may, by Purchase Order or otherwise, make the necessary corrections and charge to Seller the cost occasioned to MDHS thereby. The rights and remedies of MDHS provided in this clause are in addition to and do not limit any rights afforded MDHS by law or this Purchase Order.

POSP #7022

SPECIAL PROVISION TEXT:

Seller is requested to process the goods as a No-Cost Warranty/Latent Defect repair, replacement or re-performance of nonconforming services (corrective action) as appropriate. If inspection reveals a nonconformance not covered by warranty or if Seller contests the MDHS decision regarding corrective action responsibility, Seller will, nevertheless, proceed immediately with the necessary corrective action. If Seller's itemized estimate of charges related to the appropriate corrective action exceeds 65 percent lesser of the original or current contract price, Seller will immediately notify the Buyer and await Buyer's instructions prior to performing any action. If Seller disagrees with the MDHS position, a description of the conditions related to the nonconformance which preclude No-Cost corrective action together with a detailed, itemized list of charges therefore shall be provided in writing to the Buyer. Notification by Seller shall be in writing and submitted to Buyer's attention within 30 days of receipt of nonconforming goods or Buyer's notice that services are nonconforming. If Seller fails to provide the Buyer with the required written notice within the 30 day time frame, Buyer shall consider that the required corrective action shall be performed at no cost to Buyer.

In addition to its other remedies, MDHS may recover by offset or otherwise, against this contract or any other contract on which money is due Seller by MDHS, any amounts paid for goods and services which are nonconforming to the contract requirements and/or which fail to meet Seller's warranties or any other contract requirement, until such goods and/or services have been corrected or replaced. Goods and services corrected or replaced by Seller shall be subject to all provisions of this contract in the manner and to the same extent as goods and services originally furnished.

POSP #7030

SPECIAL PROVISION TEXT:

Seller warrants all goods and services against defect in manufacture or any defect arising out of faulty materials or workmanship or any failure or malfunction due to quality of materials, workmanship, from acceptance of the goods or services until, (i) twelve (12) months from the date of successful completion of First Article Systems Test, or (ii) the firing of 2,500 rounds, or (3) the dry cycling of 2,500 cycles, whichever occurs first.

POSP SECTION 7500 - ADMINISTRATION

POSP #7512

SPECIAL PROVISION TEXT:

In connection with MDHS's responsibility for drawings, MDHS may furnish reproducibles (including microfilm) in lieu of blueprints or other engineering documentation.

POSP #7515

SPECIAL PROVISION TEXT:

The responsibility for the contractual administration of this Purchase Order at MDHS is vested in the Procurement Division of MDHS. Accordingly, the Purchase Order and any Change Orders and/or amendments thereto shall require the signature of the MDHS Purchasing Representative or higher Procurement Division authority. Any effort on Seller's part in performing a change to the scope of work prior to receipt of authorization from the MDHS Purchasing Representative or higher Procurement Division authority, will be at the Seller's risk.

POSP #7524

SPECIAL PROVISION TEXT:

Seller shall be responsible to ensure that all of its personnel and the personnel of its subcontractors, return MDHS identification badges to MDHS Security Department upon completion of this Purchase Order. The Seller will be held responsible for immediately notifying MDHS Security Department in the event of:

1. premature completion of a stated job by a subcontractor; or
2. the dismissal and/or termination of an employee possessing a MDHS identification badge prior to completion of job.

Failure to strictly adhere to the provisions of this condition may result in removal of Seller from MDHS's approved supplier information system.

POSP #7527

SPECIAL PROVISION TEXT:

Seller shall provide to MDHS, prior to the start of the work required under this Purchase Order, certificates of insurance indicating MDHS as an additional insured, which shall include satisfactory limits for comprehensive general liability coverage

including products liability and completed operations, a hold harmless clause, automobile liability, worker's compensation and employer's liability insurance. If Seller does not complete performance of the work/service specified herein before the expiration date of said certificates, Seller will provide MDHS with acceptable extensions or renewals thereof before proceeding with said work beyond the expiration dates.

## POSP #7528

### SPECIAL PROVISION TEXT:

Seller will indemnify and save MDHS, its officers, agents, subcontractors, and employees harmless from all loss, costs, fees and damages because of injury, including death, to any person, including employees and/or damage to property, including the property of MDHS or Seller, arising directly or indirectly by virtue of this Purchase Order and resulting from Seller's sole or joint negligence. The Seller shall submit evidence of insurance in amounts satisfactory to MDHS covering the above obligations prior to commencement of work under this Purchase Order.

## POSP #7530

### SPECIAL PROVISION TEXT:

This Purchase Order requires the handling of classified matters. Classified information provided to Seller by MDHS is to be controlled by Seller in accordance with the provisions outlined in the applicable security manual. In addition, MDHS requires the cosigner to notify the MDHS Buyer, in advance of a classified shipment, with the anticipated time and date of arrival.

## POSP #7533

### SPECIAL PROVISION TEXT:

#### 1. Definitions:

(A) *Antifriction bearings* means bearings.

(B) *Commercial product* means a product, such as an item, material, component, subsystem, or system sold or traded to the general public in the course of normal business operations at prices based on established catalog or market prices. It does not include items designed or developed under a Government contract or bearings and bearing components.

(C) *Domestic manufacture* means:

(1) For antifriction bearings, wholly manufactured in the United States or Canada. When a bearing assembly is involved, all components of the assembly must be wholly manufactured in the United States or Canada. Unless otherwise specified, raw materials, such as preformed bar, tube, or rod stock, and lubricants, need not be domestically mined or produced.

(2) For forging items, manufactured in the United States or Canada if the Canadian firm:

a. Normally produces similar items or is currently producing the item in support of DoD contracts (as prime or subcontractor); and

b. Agrees to become (upon receiving a contract/order) a planned producer under DoD's Industrial Preparedness Program (IPP), if it is not already a planned producer for the item.

(3) For high carbon ferrochrome (HCF), manufactured in the United States regardless of source of the chrome ore.

(4) For high-purity silicon, manufactured in the United States or Canada. When an item or subassembly containing high-purity silicon is involved, all such high-purity silicon incorporated in the item or subassembly must also have been manufactured in the United States or Canada.

(5) For miniature and instrument ball bearings, manufactured in the United States or Canada and, when a ball bearing assembly is involved, all components of the bearing must also have been manufactured in the United States or Canada; and

(6) For precision components for mechanical time devices, manufacture in the United States or Canada, and, when a mechanical timing assembly is involved, all precision components of the assembly must also have been manufactured in the United States or Canada.

(D) *Forging items* means:

Items	Categories
Shipboard forged anchor chain.	All.
Ship propulsion shafts.	Excludes service and landing craft shafts.
Periscope tubes.	All.
Ring forgings for bull gears.	All greater than 120 inches in diameter.
Large Caliber, thick-walled cannon (105mm through 8-inch forgings).	Preform, gun tube,muzzle brake, and breach ring forgings.
60 mm and 81mm mortar forgings.	Bipod, base plate, and body yoke forgings.
Small caliber weapons forgings.	Barrel extensions, bolts, receivers, sights/handles, etc.
Tank and automotive forgings.	Turret rings, road arms, final drive gears, shafts, flywheels, connecting rods, crankshafts, roadwheels, spindles,torsion bars.

(E) *High carbon ferrochrome* (HCF) means ferrochromium alloy that contains 3 percent or more carbon and 50 percent or more chromium.

(F) *High-purity silicon* means N or P type with a resistivity greater than 3000 ohm-centimeter.

(G) *Miniature and instrument ball bearings* means all rolling contact ball bearings with a basic outside diameter (exclusive of flange diameters) of 30 millimeters or less irrespective of material, tolerance, performance, or quality characteristics.

(H) *Precision components for mechanical time devices* are parts which closely relate so the precision control and selection of working production tolerances can be maintained to accomplish the desired function and reliability. In terms of accuracy, such precision components have total tolerances under 0.003 inches, eccentricities less than 0.0015 inches and surface finishes better than 65 rms. Examples of such precision components include: gears pinions, posts, and plates.

2. The Seller agrees that end items and their components delivered under this purchase order/subcontract shall contain antifriction bearings, forging items, high carbon ferrochrome, high-purity silicon, miniature and instrument ball bearings, and precision components for mechanical time devices that are of domestic manufacture only.

3. The restriction in paragraph 2. of this clause does not apply to the extent that the end items or components containing antifriction bearings are commercial products.
4. The restrictions in paragraph 2. of this clause may be waived upon request from the Seller. If the restriction waived for miniature and instrument ball bearings or precision components for mechanical time devices, the Seller agrees to acquire a like quantity and type of domestic manufacture for nongovernment use.
5. The restrictions in paragraph 2. do not include forgings incorporated in commercial vehicles, such as commercial cars and trucks, or noncombat support military vehicles.
6. The Seller agrees to retain records showing compliance with these restrictions until 3 years after final payment and to make records available upon request of the Buyer.
7. The Seller agrees to insert this clause, including this paragraph 7., in every subcontract and purchase order issued in performance of this purchase order/subcontract, unless items purchased contained none of the restricted items.

POSP #7540

SPECIAL PROVISION TEXT:

Seller acknowledges that, under the Immigration Reform and Control Act of 1986 (IRCA), is responsible for verifying the identity and work authorization status of its employees. Seller specifically agrees that it is an independent contractor under this Agreement for purposes of IRCA. Seller further agrees that, upon request by MDHS, it will make available for inspection by MDHS its documentation verifying the identity and work authorization status of its employees.

Selected positions and assignments contemplated for Seller's employees under this Agreement may require a security clearance and grant of access to classified data. The parties agree that selection and assignment of Seller's employees to such positions is contingent upon the successful completion of the clearance process.

POSP #7545

SPECIAL PROVISION TEXT:

Seller will submit written progress reports to MDHS beginning sixty (60) days after receipt of this Purchase Order and each sixty (60) days thereafter, until one (1) month prior to the first scheduled shipment. Thereafter, progress reports will be submitted the first day of each month throughout the life of the Purchase Order.

POSP #7551

SPECIAL PROVISION TEXT:

Supplier warrants that all items shipped against this Purchase Order are wholly of domestic (U.S.) origin and manufacture. Any items found not to be as such shall be returned at supplier expense for replacement of the items or refund of the purchase price.

POSP #7555

SPECIAL PROVISION TEXT:

## 1. New Material

Unless this purchase order/subcontract specifies otherwise, the Seller represents that the supplies and components, including any former U.S. Government property identified under the Used or Reconditioned Material, Residual Inventory, and Former Government Surplus Property clause of this contract, are new, including recycled (not used or reconditioned) and are not of such age or so deteriorated as to impair their usefulness or safety. If the Seller believes that furnishing used or reconditioned supplies or components will be in the MDHS interest, the Seller shall so notify the Buyer in writing. The Seller's notice shall include the reasons for the request along with a proposal for any consideration to MDHS if the Buyer authorized the use of used or reconditioned supplies or components.

## 2. Used or Reconditioned material, Residual Inventory, and Former U.S. Government Surplus Property

(A) The Seller shall not furnish any item or component which is used for reconditioned material, residual inventory resulting from terminated U.S. Government contracts, or former U.S. Government surplus property, unless such item or component was listed in the applicable attachment to the offer and approved by the Buyer or unless otherwise authorized in writing by the Buyer.

(B) All items or components furnished under this purchase order/subcontract shall comply with the terms and specifications contained in the purchase order/subcontract.

POSP #7563

### SPECIAL PROVISION TEXT:

In accordance with the Purchase Order General Provisions, an overshipment/undershipment allowance (per unit of measure) of plus \_\_\_\_\_ or minus \_\_\_\_\_% by Seller is authorized on raw material, ordered herein, when such overshipment/undershipment falls within "industry standards" for such raw material. The Purchase Order payment will be adjusted to reflect the actual amount received at the unit price stated herein.

POSP #7564

### SPECIAL PROVISION TEXT:

In accordance with the Purchase Order General Provisions, and overshipment allowance (per unit of measure) of plus \_\_\_\_\_ or minus \_\_\_\_\_% by Seller is authorized on the castings ordered herein. The Purchase Order payment will be adjusted to reflect the actual amount received at the unit price stated herein.

POSP #7565

### SPECIAL PROVISION TEXT:

In accordance with the Purchase Order General Provisions, an overshipment allowance (per unit of measure) of plus \_\_\_\_\_ or minus \_\_\_\_\_% by Seller is authorized on the forgings ordered herein. The Purchase Order payment will be adjusted to reflect the actual amount received at the unit price stated herein.

POSP #7580

### SPECIAL PROVISION TEXT:

In lieu of Article 27 of MDHS Government Firm Fixed Price General Terms and Conditions of Purchase, April 1994, MDHS represents that its business base consists, in part, of international orders, and that it must, from time to time, enter into international offset agreements to secure such orders. Seller agrees to cooperate with MDHS in the fulfillment of its offset obligations by engaging in such activities as may be specified by offset agreements between MDHS and its international customers. Such activities may include foreign subcontracting, co-production, co-development, technology transfers, countertrade, investments, joint ventures, etc. Seller's obligation shall be the equivalent of 20 percent of the value of orders received from MDHS, expressed in terms of offset credits earned in MDHS's customer countries.

POSP #7581

SPECIAL PROVISION TEXT:

MDHS reserves the right to credit the value of this order against any offset or industrial cooperation requirement, either present or future, that it may undertake in the Seller's country. Seller agrees to support MDHS by working with the appropriate agencies in the Seller's country to effect the proper crediting of this offset activity.

### POSP SECTION 8000 - FLOWDOWN

POSP #8003

SPECIAL PROVISION TEXT:

The Seller certifies that the Purchase Order price does not include any direct or indirect cost of sales commissions or fees for Seller's sales representatives involved in foreign military sales.

POSP #8006

SPECIAL PROVISION TEXT:

Seller warrants that the equipment to be supplied under this Purchase Order will at the time of delivery, be in full compliance with the Williams-Steiger Occupational Safety and Health Act of 1970.

POSP #8012

SPECIAL PROVISION TEXT:

Notwithstanding any other provision of this Purchase Order, any direct or indirect costs of sales commissions or fees for Seller's representative, involved in foreign military sales, shall be considered as an unallowable item of cost under this Purchase Order.

POSP #8022

SPECIAL PROVISION TEXT:

Seller agrees to comply with the provisions of the Small, Small Disadvantaged and Women-Owned Business Subcontracting Plan requirements of FAR 52.219-7 and FAR 52.219-9. Concurrent with submittal of Seller's properly completed SF 294 and Small, Small Disadvantaged and Women-Owned Small Business Subcontracting Plan in accordance with instructions

contained therein, Seller agrees to forward a copy to the MDHS Buyer referencing this Prime Contract number.

## POSP #8025

### SPECIAL PROVISION TEXT:

During the progress of work called for herein, the Seller shall make available for conference(s) with the Government and/or Buyer, any of its personnel or subcontractor personnel engaged in the performance of the work. The Seller shall ensure that all subcontracts provide the Government and/or Buyer with the right to have, through the Seller, access to all subcontractors and their facilities on a continuing basis for any reviews the Government and/or Buyer may desire to accomplish. The Seller or its subcontractor shall make adequate office space and other facilities available for these reviews for a reasonable number of Government and/or Buyer representatives at no change in contract price.

## POSP #8036

### SPECIAL PROVISION TEXT:

The parties hereby agree that this clause shall be applicable in its entirety to this contract. Further, the parties hereby agree that a clause no less favorable to the Buyer and/or Government than this clause shall be included in contract related to the AH-64 that is subsequently awarded to the Seller. In addition, the Seller agrees to accept, in any such subsequent contract, data clauses which shall be no less favorable to the Buyer and/or Government than the terms of the data clauses in this clause.

1. Intent. The Government intends to provide for maximum practical breakout or competitive procurement of the AH-64 System, including all parts, components, and subsystems (all called "parts" hereinafter in this provision) related to the AH-64. The intent extends to any requirement for such system or parts including but not limited to, foreign military sales and support of Rationalization, Standardization, and Interoperability (RSI). To accomplish this intent, the Government and the Buyer seek to either (1) acquire technical data packages with sufficient rights and technical assistance, if necessary, for competitive procurement or manufacture of such parts worldwide or; (2) provide for multiple qualification of sources of such parts in accordance with (e) below or; (3) acquire parts directly from their manufacturer. Nothing in this clause shall abrogate the Seller's obligation to pursue an aggressive Seller breakout and competitive procurement program in its purchasing and subcontracting activities.

2. Identification of Parts. Parts shall be identified in accordance with this Purchase Order.

3. Acquisition of Additional Technical Data and Computer Software and Rights Thereto and Technical Assistance.

(A) The Government, through the Buyer or directly to the Seller, has the right during the term of this Purchase Order or any future contract related to the AH-64 that is subsequently awarded to the Seller, to purchase from time to time "Technical Data Packages" (TDPs) which are to include Engineering Drawings and Associated Lists at Level 3, together with the required rights and/or technical assistance, for the purposes set forth above. Upon written notice of the Buyer's intent to purchase TDPs or technical assistance, the Seller shall within 60 calendar days after receipt of such notice, submit a proposal for the costs of preparation and reproduction of such TDPs, and the amount (separately stated) to be paid as compensation for the data/patent rights to be included in the TDPs and/or the cost of providing technical assistance. Within sixty (60) days after receipt of a proposal, the parties shall undertake to negotiate a firm price and/or royalty arrangement for such TDPs in accordance with a schedule mutually agreed upon.

(1) The scope of these Data Rights shall cover all uses of all or any part of the Seller's data. The Government will endeavor to accomplish its purpose with less than unlimited rights, but the Government through the Buyer reserves the right to acquire unlimited rights. The rights to be acquired may be procured on a royalty and/or lump sum basis.

(2) The scope of the Patent Rights shall be a license under any applicable U.S. or foreign patent or patent application that the



contractor owns or controls. The scope of the license shall be to the extent necessary to cover any use of such patent or patent application when using this data in the manufacture or sale of such parts by or for the U.S. Government and/or foreign Governments for other than commercial purposes.

(3) The scope of the Technical Assistance shall be Seller services necessary to transfer "know-how" required to manufacture the part described in the TDP. The scope may include plant access, services of Seller's qualified technical personnel at its facilities, and services of Seller's qualified technical personnel at a third party Seller's facilities. Such services may require personnel qualified in manufacturing, engineering, and requests for review of specifications and quality control. Further, such access and services shall be rendered to the Government, the Buyer, and third part Sellers selected by the Government who have a contract to manufacture the part. This right to technical assistance shall terminate three (3) years after Government and/or the Buyer acceptance of the TDP unless a longer period is negotiated as part of the purchase of the TDP.

(B) The Seller's right to compensation for data rights shall apply only to data which the Seller would be entitled to mark with the limited rights legend in accordance with the Contract clause of this contract titled "Rights in Technical Data Non-Commercial Items ", DFARS 252.227-7013, and "Rights in Noncommercial Computer Software and Noncommercial Software Documents", DFARS 252.227-7014. The Seller's entitlement to mark the data shall be determined as of the time the Seller receives notice of the Government's and/or Buyer's intent to purchase TDPs. The following factors may, among others, be considered in determining a fair and reasonable compensation for such great rights in data:

- (1) The benefit actually received by the Government from its use of the data.
- (2) The private expense incurred by the Seller in developing the data.
- (3) The extent to which the data conferred a competitive advantage (in terms of potential for future business, whether commercial or government) to the Seller at the time of its use by the Government and/or Buyer.
- (4) The extent to which the competitive advantage above was enhanced by virtue of the contract work.
- (5) The extent to which the data was developed by Government funds.
- (6) The nature of the Government's use and the extent to which the Seller's interest is protected during the use.
- (7) Any obligations of the Seller to pay others for the use of the data.
- (8) The terms of any previous sales or offers of sales of the data or products to which the data pertains.
- (9) The extent to which the Seller's competence in the field was brought about by prior Government contracts.
- (10) The degree of originality represented by the data (routine engineering versus high creativity).

(C) If it is deemed necessary by the Government through the Buyer to use data delivered under this contract with limited or restricted rights, with greater rights prior to completion of negotiations for such rights, the Government, through the Buyer, may do so upon giving written notice to the Seller ten (10) days in advance. This notice will specify the data which is to be so used, and will contain a brief explanation of the nature and conditions of the use. Thereafter, the parties shall promptly complete their negotiation for such greater rights. If an agreement is not reached within a reasonable time, the Buyer shall treat the question of compensation for greater rights in data as a disputed fact under the "Disputes" clause of this contract.

4. It is further agreed that all TDPs procured pursuant to this clause will be subject to the Warranty of Data (DFARS 252.246-7001) clause of this contract.

5. Qualification of Additional Vendors. The Government through the Buyer has the right to require the Seller to qualify at least one (1) additional competitive source for all parts, to permit the competitive purchase of the parts by the Government and/or the Buyer. This right may be exercised from time to time for the term of this contract. Upon written notice from the Buyer, the Seller shall, to the extent possible, promptly proceed with, and complete the qualification of parts as required at prices to be negotiated. Negotiated price shall include price of Seller support to qualification effort. In qualifying vendors, the Seller shall use the same basis or standard to the extent possible, in order that no competitive advantage or disadvantage is given to any vendor. When required by the Buyer to qualify an additional source, the additional vendor or source shall be other than the Seller, unless the Buyer specifically approves the Seller as the additional source. The Seller shall not cancel an existing order placed with a qualified vendor or vendors in the expectation of qualifying an alternate vendor without obtaining prior written approval from the Buyer. Any disagreement as to price, terms or enforcement of this clause shall be resolved using the procedures of the clause titled "Disputes".

#### 6. Subcontractors and Vendors.

(A) The Seller is responsible for securing compliance by its subcontractors and vendors with the requirements of this clause. The Seller shall use diligent efforts to contract only with suppliers who will accept this clause. In cases in which the Seller, after diligent efforts, is unable to persuade a subcontractor or vendor to accept this clause, the Seller shall report the entire circumstances, including alternate approaches to resolving the problem to the Buyer, who after thirty (30) calendar days shall direct the Seller as to action to be taken. The Seller shall follow the course of action directed by the Buyer. Any impact will be evaluated, an equitable adjustment to the contract price will be negotiated, if appropriate, in accordance with the procedure of the clause of this contract titled "Changes". The Seller shall maintain an updated list of all subcontractors/vendors granted a waiver of this provision by the Buyer and make a copy of such list available to the Buyer upon request. The Buyer reserves the right to request identification of substantiating correspondence in the event of waiver disagreements.

(B) Notification in accordance with the appropriate clause titled "Rights in Technical Data and Computer Software" of any item, component or process for which technical data shall be made available to the Buyer at every other Program Progress Review when requested by the Buyer. Such requests for inclusion of this information into the Program Progress Review shall be submitted to the Seller thirty (30) calendar days prior to the scheduled Program Progress Review.

POSP #8040

#### SPECIAL PROVISION TEXT:

Acceptance and implementation of this PO/Subcontract constitutes:

1. Seller's acknowledgment of notice that U.S. Government financing is funding this PO/Subcontract;
2. A declaration and agreement by the executive officers of Seller that no bribes, rebates, gifts, kickbacks, or gratuities will be directly or indirectly offered or given contrary to U.S. law, to officers, officials, or employees of the Government of Israel, by the Seller;
3. Agreement by the Seller to identify and to consent to the disclosure of the following accounts to (and at the request of) the U.S. Department of Defense, the U.S. Department of Justice, or U.S. Federal grand juries:

(A) Accounts wherever located in the name of the Seller and;

(B) Accounts located outside of the United States in the name of the principal executive officers of the Seller (or any nominees) who have been personally and substantially involved in a PO/Subcontract awarded under the current contract;

4. Agreement by Seller to identify the full amount of any down payment received as a down payment, and to apply these funds

solely to this PO/Subcontract, in its accounting records and provide a clear audit trail of the use of these funds;

5. Seller's agreement that, for a period of three (3) years following Seller's receipt of final payment of this PO/Subcontract by MDHS, MDHS shall have access to and the right to examine Seller's directly-pertinent records involving transactions related to this PO/Subcontract;

6. Seller's agreement that MDHS has a bilateral right, without liability, to suspend financing of this PO/Subcontract on the instruction of the U.S. Government for suspected misrepresentation or violation of any certification or agreement provided by Seller upon acceptance of this PO/Subcontract;

7. Certification that Seller has not employed or retained any agent to solicit or obtain the work required under this PO/Subcontract on a contingent basis, who has been or is to be paid from funds received by Seller from MDHS under the contract herein;

8. Certification that funds received by Seller from MDHS for this PO/Subcontract will not be used to purchase services from non-U.S. subcontractors, unless expressly authorized by MDHS;

9. Agreement that Seller invoices will be prepared in accordance with the below instructions, and will be submitted to MDHS for payment as follows:

(A) All Seller invoices must: 1) reflect the amount due and payment due date; 2) specify the nature of the payment; 3) itemize materials and/or services delivered; 4) designate the address to which payment should be sent.

(B) All Seller invoices must be submitted with certification that Seller acknowledges U.S. Government funds are being used to finance this purchase and that the invoice(s) submitted are free from any material false statements or misrepresentations.

10. Certification that neither Seller nor its employees are suspended or debarred from conducting business with any agency of the U.S. Government.

## POSP SECTION 8300 - PATENTS, ROYALTIES, DATA RIGHTS

POSP #8309

SPECIAL PROVISION TEXT:

This RFP/RFQ and/or Purchase Order/Subcontract covers work classified as experimental, developmental, or research.

POSP #8311

SPECIAL PROVISION TEXT:

Patent reports are to be sent directly to the following Administrative Contracting Officer/other designated representative:

Name

Title

Agency

Address

## POSP SECTION 9000 - AUDIT RIGHTS

POSP #9001

SPECIAL PROVISION TEXT:

Seller warrants that prices shown herein are based on the latest information available, including latest actual cost data, and that prices shown herein are no greater than prices being charged any other Customer for similar parts in like quantities and schedules with equivalent specifications.

POSP #9003

SPECIAL PROVISION TEXT:

Seller agrees no restrictions will be imposed on the release of any audit report under this Purchase Order to MDHS. Such audit report released to MDHS shall be used only for the purpose of negotiating a fair and reasonable Purchase Order price. Seller further agrees to include the substance of this clause, including this last sentence, in any subcontract where an audit is or may be required.

POSP #9006

SPECIAL PROVISION TEXT:

In the event MDHS elects to exercise an option, if contained herein, for the purchase of additional quantities, or requests a price quotation for follow-on contracts for the same product or services, Seller agrees to make available to MDHS or its authorized representative, its books, records, documents, and other supporting data for inspection and audit as required by MDHS in conjunction with any negotiations.

## POSP SECTION 9500 - MISCELLANEOUS

POSP #9515

SPECIAL PROVISION TEXT:

Employees of the Seller shall not be, in any sense, employees of MDHS, but shall be the Seller's employees. It is understood and agreed that neither the Seller nor any of its employees shall act in any sense as agents or representatives of MDHS. The Seller's employees shall be paid exclusively by the Seller for all services performed and the Seller shall be responsible for and shall actually comply with all requirements and obligations relating to such employees under local, state or federal law, or foreign law, as applicable, including but not limited to minimum wage, social security, unemployment insurance, state and federal income tax, and worker's compensation. MDHS has no responsibility for withholding any portion of salary or wages due employees of the Seller to comply with any taxes aforementioned.

POSP #9554

SPECIAL PROVISION TEXT:

Notwithstanding Reference Provision 0542, (if such Special Provision is contained herein), termination, in whole or in part, will be at no cost to MDHS and/or the U.S. Government, in the event termination occurs on or before thirty (30) calendar days after the Purchase Order is awarded.

## POSP #9560

### SPECIAL PROVISION TEXT:

Seller agrees that in the event MDHS establishes a supplier repair facility at MDHS or other location under MDHS control for parts or systems of Seller's design, and such facility requires MDHS to maintain an inventory of parts for such repairs, that at the conclusion of such a repair facility program, Seller will buy back such residual inventory at the acquisition cost under which MDHS has purchased the inventory of parts from Seller to support the timely repairs of Seller's parts system.

## POSP #9570

### SPECIAL PROVISION TEXT:

MDHS reserves the right to discuss permanent MDHS employment opportunities with any of Seller's employees after such person has been assigned to MDHS for 45 calendar days or longer. Seller agrees that in the event permanent MDHS employment is effected with any of Seller's employees, there shall be no employment fees or other charges beyond those charges applicable to the persons assignment at MDHS.

## POSP SECTION 9800 - MDC CORPORATE CONTRACTS AND AGREEMENTS

## POSP #9804

### SPECIAL PROVISION TEXT:

MDC CC/CLC \_\_\_\_\_ and its contractual requirements are incorporated by reference into this Purchase Order and take precedence of the other Terms and Conditions contained herein, when they are in conflict.

## POSP #9805

### SPECIAL PROVISION TEXT:

Seller agrees that any company, division or facility of McDonnell Douglas Corporation, not specifically included herein, may at the election of such company, division or facility, purchase items under or otherwise participate in this Purchase Agreement during the term hereof or any extension thereof, under the same terms and conditions and at the prices specified herein. Individual Purchase Orders will be issued with reference to this Purchase Agreement by number and will outline individual requirements, delivery destination, invoice address, tax information and other pertinent data.

### PARTICIPATION

1. SELLER agrees that during the term hereof (including any option period) any other MDC Component, division, affiliate or MDC majority-owned or controlled entity not specifically identified herein may participate in this Agreement by issuing a purchase order, work order or other authorized release document to SELLER. SELLER shall notify the MDC Purchasing Representative of any MDC Components not specifically referenced herein who frequently utilize this Agreement. The MDC Purchasing Representative will

immediately request a forecast and appropriate funding from the participating Component and shall amend this Agreement accordingly.

### JUST-IN-TIME (JIT)/NONJIT PROGRAM

A. Some MDC Components identified herein may not be ready to participate in a JIT program with SELLER. Said MDC Components shall be identified as non-JIT participants. SELLER agrees to assist non-JIT participants in the establishment of a JIT process when requested to do so. In the event that SELLER receives a request from a non-JIT participant to establish a JIT process for similar contract item(s), SELLER agrees to consider the total MDC forecasted usage in response to said pricing request.

B. If SELLER establishes an agreement with any MDC Component, division, affiliate or MDC majority-owned or controlled entity not specifically identified herein, SELLER shall immediately notify the cognizant MDC Purchasing Representative in writing and will extend any proposed price reduction to prices previously quoted herein. SELLER and MDC shall then negotiate and execute an amendment to adjust downward the pricing structure of this Agreement.

C. SELLER, upon award of another agreement by any other MDC Component, shall furnish quarterly a listing of all part numbers that are on multiple JIT Agreements. This listing shall display by part number each MDC Component's forecasted usage and the total combined MDC forecasted usage, along with the current JIT price for each of these part numbers and actual purchases to date.

2. SELLER agrees that any subcontractor or supplier of MDC or any MDC Component, division, affiliate or MDC-owned or controlled entity (hereinafter referred to as "MDC Supplier") may order Material under this Agreement at the same prices set forth herein, regardless of the quantity of Material, provided that MDC, SELLER and the MDC Supplier have entered into a separate agreement establishing the non-price terms and conditions of the relationship. Orders for such Material shall be placed with SELLER through duly authorized Purchase Orders issued by the particular MDC Supplier, which purchase orders shall reference this Agreement. SELLER may request written verification that the supplies or services ordered pursuant to the authority of this Agreement are in direct support of MDC-related requirements.

A. In the event any entity known by SELLER to be an MDC Supplier places an order for supplies or services covered by this Agreement, but fails to reference the Agreement or otherwise seek the prices established by this Agreement, SELLER shall notify such purchaser of the existence of this Agreement and the prices established hereunder and shall offer such prices to such purchaser.

B. Upon request by MDC or any MDC Component, division, affiliate or MDC-owned or controlled entity, SELLER shall provide a status report showing purchase orders pending, part numbers or description of service ordered under this Agreement, total forecast purchases under this Agreement, current purchase order prices and quantities ordered to date.

### [MDHS 1997 Terms & Conditions](#)