



General Provisions for Commercial Firm Fixed Price Contracts

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1. FORMATION OF THE CONTRACT

This Purchase Order is MDHS's offer to Seller, and acceptance by Seller is expressly limited to the terms of this offer. MDHS objects to any additional terms stated in Seller's acceptance. Acceptance may be by prompt written acknowledgment or by beginning performance. Seller's acceptance of this purchase order creates a binding contract between Seller and MDHS (this Contract) which shall be governed by the Terms and Conditions of this purchase order.

2. MODIFICATIONS

None of the terms and conditions of this Contract may be contradicted, modified, supplemented, explained, waived or rescinded except as provided in this Contract or in a written agreement signed by both parties. Only a MDHS purchasing representative may sign on behalf of MDHS.

3. INSPECTIONS

(A) Seller will provide and maintain an inspection system acceptable to MDHS covering goods and services under this Contract and will tender only goods that have been inspected and found to conform to this Contract's requirements. Seller will keep records evidencing inspections and their results, and will make these records available to MDHS during Contract performance and for three years after final payment.

(B) MDHS may inspect and test all goods and services under this Contract. Such inspections and tests, to the extent practicable, may occur at all times and places, including the period and place of manufacture or performance, and in any event, before acceptance. MDHS will perform any inspections and tests in a manner that will not unduly delay the work.

(C) If MDHS performs an inspection or test on the premises of Seller or its subcontractor, Seller will furnish, and require its subcontractor to furnish, without additional charge, all reasonable facilities and assistance for the safe and convenient performance of these duties. Except as may be otherwise provided in this Contract, MDHS will bear the expense of inspections or tests made at other than Seller's or Seller's subcontractor's premises; provided, that in case of rejection, MDHS will not be liable for any reduction in the value of samples inspected or tested.

4. QUALITY CONTROL

Seller will provide and maintain a quality control system acceptable to MDHS for the goods and services purchased under this Contract, and Seller will permit MDHS to review procedures, practices, processes and related documents to determine such acceptability.

5. DELIVERY, NOTICE OF DELAY, PACKAGING AND SHIPMENT

(A) Seller will strictly adhere to the delivery and completion schedules specified in this Contract. These delivery dates are the MDHS "on-dock" dates. If, at any time, Seller believes it may be unable to comply with the delivery or completion schedules, Seller will immediately notify MDHS in writing of the probable length of any anticipated delay and the reasons for it, and will provide MDHS with a written recovery schedule. Seller will continue to notify MDHS of any material change in the situation. If Seller fails to deliver goods within the delivery schedule, MDHS may require Seller to ship goods, at Seller's expense, by air freight or expedited routing.

(B) MDHS may, at its option, either retain (and store at Seller's expense) any goods received in advance of the Contract delivery schedule(s) or return them to Seller at Seller's risk and expense; and if retained, time for payment and discount shall be calculated on the basis of scheduled delivery dates.

(C) Commercial packaging is normally acceptable for shipment to MDHS. Seller is responsible for selecting packaging methods and materials, except Styrofoam and similar packaging materials, which provide adequate protection at minimum cost. Packaging methods and material selected should consider, as a minimum, fragility, part composition, surface finish, size, weight and transportation mode. Packaging specified or referenced in this Contract must be adhered to unless written deviation is authorized by MDHS. Nonconforming packaging is subject to rejection or repackaging at Seller's expense. Questions concerning these packaging instructions are to be directed to the Buyer. Any change in price, terms or conditions must be approved by the undersigned MDHS Buyer prior to implementation.

Each Contract item must be packaged and identified separately. If the part number consists of more than one component, then each component shall be packaged in a single container. Markings on primary packaging must include the part number, nomenclature and quantity. If applicable, include serial number, lot number and cure date. DO NOT combine items from different Contracts in the same shipping container.

All containers are subject to material inspection and should provide a recloseable feature.

Loose fill packaging material, e.g., plastic peanuts, is prohibited unless contained in polyethylene bag or similar method.

Two or more shipping containers and/or a total weight exceeding 150 pounds must be combined into a unitary load. The limit size of unitary loads is 50" overall height, 42" X 48" pallet (double deck construction) and a maximum 4" overhang on any side. Unitary loads must be properly stacked and bound (i.e., efficient stacking pattern) and bound by stretch wrap. Containers over 150 pounds and/or 60" and up foot print, must integrate a 4 way entry skid permitting the use of standard material handling equipment.

Seller must provide legible packing slips, located in a conspicuous and easily accessible place on the inside of the shipping container, unitary or pallet loads. All associated paperwork (i.e., certifications, test reports, MRD's, etc.) must be located with the packing slips.

In addition, one copy of the packing slip must be in a conspicuous and easily accessible place on the outside of the shipping containers or unitary loads. Each shipping container shall be identified with the address, Contract number, item number(s) and part number.

(D) Except as specifically authorized by this Contract, MDHS shall not be responsible for payment of goods delivered by Seller which are in excess of the total quantity ordered. Upon receipt of any excess quantity, the MDHS Buyer will notify Seller of the over shipment and allow 48 hours for Seller's determination of whether Seller will:

(1) Pick up the excess material at MDHS;

(2) Authorize packing and return shipment at Seller's expense (if Seller elects to have material returned), MDHS's minimum charges for repackaging and shipping will be \$250.00; or

(3) Permit MDHS to retain such goods at no cost to MDHS.

6. ACCEPTANCE AND REJECTION

(A) MDHS will accept or give notice of rejection of goods delivered and services performed within ninety (90) calendar days of receipt of goods or completion of services.

(B) Goods. If Seller tenders nonconforming goods, MDHS may, at its option, require Seller to replace or correct the goods, at no increase in Contract price. Seller will not tender for acceptance corrected or rejected goods without disclosing the former rejection or requirement for correction, and, when required, will disclose the corrective action taken. Unless Seller corrects or replaces nonconforming goods within the delivery schedule, MDHS may require their delivery and make an equitable price reduction.

(C) Services. If services do not conform with Contract requirements, MDHS may require Seller to perform the services again in conformity with Contract requirements, at no increase in Contract price. When the defects in services cannot be corrected by re-performance, MDHS may (i) require Seller to take necessary action to ensure that future performance conforms to Contract requirements; and (ii) reduce the Contract price to reflect the reduced value of the services performed.

7. DAMAGES

MDHS may deduct from the price due under this or any other Contract all or any part of any damages resulting from any breach of this Contract, including damages incurred as a result of late delivery, rework, return, removal, replacement, correction, reinstallation, or rejection of nonconforming goods or services. MDHS will not deduct damages pursuant to this paragraph before (i) notifying Seller of MDHS's intent to do so and (ii) providing Seller with documentation reasonably supporting the amount of the deduction.

8. WARRANTY

(A) Goods. Seller warrants that all goods furnished under this Contract will be free from defects, will conform with all requirements of this Contract, and, to the extent not manufactured pursuant to designs furnished by MDHS, will be free from defects in design. Any goods corrected or replaced will be covered by this warranty. Seller agrees to immediately notify MDHS upon becoming aware of a potential problem with product previously delivered to MDHS. Such notification shall include a recommended course of action.

(B) Services. Seller warrants that all services performed under this Contract will be free from defects and will conform to the requirements of the Contract. Any services corrected or reperfomed will be covered by this warranty.

(C) If Seller breaches this warranty, MDHS may, at no increase in Contract price -- (i) Require Seller to promptly repair or replace, at Seller's election, defective or nonconforming goods; (ii) Require Seller to promptly furnish materials or parts and installation instructions required to successfully accomplish the correction of defective or nonconforming goods, and equitably reduce the Contract price to account for the cost of removal and installation; (iii) Require Seller to promptly redesign defective or nonconforming goods not manufactured pursuant to designs furnished by MDHS and require Seller to promptly repair or replace goods manufactured in accordance with such defective design; (iv) Require Seller to promptly correct or reperform, at Seller's election, defective or nonconforming services; or (v) Equitably reduce the Contract price.

(D) Notwithstanding any disagreement regarding the existence of a breach of this warranty, Seller will comply with MDHS's direction to (i) repair or replace, at the Seller's election, the goods or (ii) furnish materials or parts and installation instructions required to successfully repair the goods. If it is later determined that Seller did not breach this warranty, the Contract price will be equitably adjusted.

9. CHANGES

(A) MDHS may, at any time, exclusively by a written Change Order signed by its authorized Purchasing Representative and without notice to sureties, make changes within the general scope of this Contract, which affect the:

- (1) drawings, designs or specifications;
- (2) method of shipment or packing;
- (3) place of inspection, delivery or acceptance;
- (4) quantities, and delivery schedules;
- (5) description of services to be performed; time of or place of performance of services; and
- (6) MDHS-furnished facilities, equipment or material.

(B) If any such change causes an increase or decrease in the cost of or the time required for performance of this Contract, an equitable adjustment shall be made in the Contract price or delivery schedule or both, and this Contract shall be modified in writing accordingly. Any claim by Seller for adjustment under this provision must be asserted in writing to MDHS's Purchasing Representative not later than thirty (30) calendar days after the date of receipt by Seller of the written change authorization or within such extension as MDHS may grant in writing. However, MDHS may, in its sole discretion, consider any claim received from Seller regardless of when asserted. Such claim shall be in the form of a complete change proposal fully supported by factual information.

(C) Pending any such adjustment, Seller will diligently proceed with the Contract as modified. If the cost of property made excess or obsolete as a result of a change is included in Seller's claim for adjustment, MDHS shall have the right to direct the manner of disposition of such property. MDHS shall have the right to examine any of Seller's pertinent books and records for the purpose of verifying Seller's claims.

(D) Notwithstanding any dispute under this Article, Seller will proceed with performance of the Contract as changed.

10. INVOICE AND PAYMENT

(A) Unless Seller receives payment under the "Autopay" system, for each shipment of goods or complete item of services, Seller shall submit an original invoice marked "Original" and one copy marked "Copy" to MDHS's Accounts Payable Department at the address specified on the face of this Contract. Seller's invoices will be returned for correction or offset by MDHS's debit memoranda for any adjustments due to shortages, late deliveries, rejections or other failure to comply with the requirements of this order, before payment is made by MDHS. Taxes, if any, must be separately itemized. The Contract number and appropriate line item number must appear on all shipping documents, invoices, quality certifications and packing sheets.

(B) Determination of payment due date, whether under net or discount terms, will be based on the latest of (i) the date goods are received or services performed; (ii) the date provided in this Contract for receipt of goods or completion of services; or (iii) the date an accurate invoice is received.

(C) Payment will be deemed to have been made when deposited in the mail.

11. PRICE WARRANTY

Seller warrants that the price of goods delivered or services performed under this Contract do not exceed the price charged by Seller to any other customer purchasing the same goods or services in like or lesser quantities and under the same or similar circumstances.

12. TERMINATION FOR CONVENIENCE

(A) MDHS may terminate performance of work under this Contract in whole or, from time to time, in part, by delivering to Seller a written Notice of Termination specifying the extent of termination and the effective date.

(B) MDHS will pay Seller (i) the Contract price for goods and services completed and accepted but not previously paid for; (ii) reasonable costs incurred in

performance of work terminated but not completed; (iii) reasonable profit on work performed before termination; and (iv) reasonable costs incurred as a result of the termination, adjusted for any savings allowed by the termination. However, if it appears that Seller would have suffered a loss on the entire Contract had it been completed, MDHS will pay no profit and will reduce the settlement to reflect the indicated rate of loss. In no event will MDHS pay Seller more than the Contract price.

(C) Seller will submit to MDHS a fully supported written termination settlement proposal within ninety (90) calendar days after receipt of a Notice of Termination, and MDHS and Seller will promptly negotiate a termination settlement. Failure to agree upon a settlement will be a dispute. MDHS may examine any of Seller's books and records relevant to the amount Seller should be compensated for the termination. If Seller fails to timely submit a termination settlement proposal, MDHS will determine the amount due under paragraph (B), if any, and Seller will be bound by MDHS's determination.

(D) If the termination is partial and Seller submits to MDHS a written proposal for equitable adjustment within ninety (90) calendar days after receipt of the Notice of Termination, the parties will equitably adjust the price of the continued portion of the Contract if failure to adjust the price would be unfair to the Seller.

13. CANCELLATION FOR DEFAULT

(A) MDHS may, by written notice of default to Seller, cancel this Contract in whole or in part -- (i) If Seller fails to deliver goods or to perform services within the time specified by this Contract or any written extension; (ii) If Seller fails to perform any other provision of this Contract or fails to make progress, so as to endanger performance of this Contract, and, in either of these two circumstances, does not cure the failure within ten (10) calendar days after receipt of notice from MDHS specifying the failure; or (iii) in the event of Seller's suspension of business, insolvency, institution of bankruptcy, liquidation proceedings by or against Seller, appointment of a trustee or receiver for Seller's property or business, or any assignment, reorganization or arrangement by Seller for the benefit of its creditors.

(B) Seller will continue work not canceled.

(C) If MDHS cancels this Contract in whole or in part, in addition to remedies provided by law, MDHS may require Seller to transfer title and deliver to MDHS, as directed by MDHS, any (i) completed goods, and (ii) any partially completed goods and materials, parts, tools, dies, jigs, fixtures, plans, drawings, information, and Contract rights (collectively, "manufacturing materials") that Seller has specifically produced or acquired for the canceled portion of this Contract. Upon direction from MDHS, Seller will also protect and preserve property in its possession in which MDHS has an interest.

(D) MDHS will pay the Contract price for goods or services accepted. Payment for manufacturing materials accepted by MDHS and for the protection and preservation of property will be at a price determined in accordance with Article 12 (Termination for Convenience), except that Seller will not be entitled to profit. MDHS may withhold from any amount due under this Contract any sum MDHS determines to be necessary to protect MDHS against loss because of outstanding liens or claims of former lien holders.

(E) If, after cancellation, it is determined that Seller was not in default, the rights and remedies of the parties will be as if the Contract had been terminated in accordance with Article 12 (Termination for Convenience).

14. MDHS PROPERTY

Seller will clearly mark, maintain an inventory of, and keep segregated or identifiable all MDHS property and all property to which MDHS acquires an interest by virtue of this Contract. Seller assumes all risk of loss, destruction or damage to such property while in Seller's possession, custody or control, and will not use such property other than in performance of this Contract without MDHS's written consent. Seller will notify MDHS if MDHS's property is lost, damaged or destroyed. As directed by MDHS, upon completion, termination, or cancellation of this Contract, Seller will deliver such property, to the extent not incorporated in delivered end products, to MDHS in good condition subject to ordinary wear and tear and normal manufacturing losses. Nothing in this Article limits Seller's use in direct dealings with the Government, of property in which the Government has a vested interest.

15. SELLER'S NONDISCLOSURE

Seller shall not, without the written consent of MDHS, either during or after the performance of the work required, use, other than for such performance, or disclose to any person other than a duly authorized representative of MDHS any information, data, material or exhibit created, developed, produced or otherwise obtained in the course of the work required, or any information contained in reports, drawings, documents or other records furnished to Seller by

MDHS. Seller further agrees that it will not divulge any matter, the disclosure of which would be detrimental to the interests of MDHS as determined by MDHS. Nothing contained herein shall prevent Seller from making proper use of its experience gained in the performance of the work required. The restrictions of this provision shall not apply to information in the prior possession of Seller or to information acquired by Seller from a source other than MDHS that has the right to disclose such information to Seller, and which Seller, in turn, has the right to disclose, nor shall it limit any rights the Government may have in such information.

16. PATENT, TRADEMARK, COPYRIGHT, AND MASK WORK INDEMNITY

Seller will indemnify and hold harmless MDHS against any expense, loss or liability for any actual or alleged infringement of any patent, trademark, copyright, or mask work arising from or related to the use, sale manufacture, disposal, display or reproduction of goods purchased or services performed under this Contract. Upon timely receipt of notice of any claim or suit alleging such infringement, Seller is excused from its duties under this Article if such actual or alleged infringement would not have arisen but for Seller's compliance with MDHS's detailed design.

17. INTELLECTUAL PROPERTY RIGHTS

Seller will promptly disclose to MDHS in writing any invention, works of authorship, improvement, development, discovery or mask work conceived or reduced to practice by Seller, either solely or in collaboration with others, using funds paid by MDHS under this Contract. Seller will assign all such inventions, works of authorship, improvements, developments, discoveries or mask works to MDHS. Seller will execute all documents and do whatever is reasonably necessary to ensure that MDHS will obtain full title to such inventions, works of authorship, improvements, developments, discoveries or mask works and to enable MDHS to secure copyright protection or file and prosecute applications for patents at MDHS's expense.

18. DELEGATION AND SUBCONTRACTING

Without MDHS's written consent, Seller will not delegate any duty of performance, or subcontract for the design, development or procurement of any substantial portion of goods or services under this Contract. This clause does not limit Seller's purchases of standard commercial supplies or raw materials.

19. SUSPENSION OF WORK

(A) MDHS's Purchasing Representative may, by written order, suspend all or part of the work to be performed under this Contract. Within ninety (90) calendar days of the suspension of work order, or within any additional time as the parties may agree, MDHS will (i) cancel the suspension of work order; (ii) terminate this Contract in accordance with Article 12 (Termination for Convenience); or (iii) cancel this Contract in accordance with Article 13 (Cancellation for Default).

(B) Seller will resume work whenever, a suspension expires or is canceled. An equitable adjustment will be made in the delivery schedule, the Contract price, or both, if (i) the suspension results in a change in Seller's cost of performance or ability to meet the Contract delivery schedule; and (ii) Seller submits a claim for adjustment within thirty (30) calendar days after the suspension expires or is canceled.

20. DISPUTES

Any dispute that arises under or is related to this Contract will be decided by a court of competent jurisdiction. Pending final resolution of any dispute arising under or related to this Contract, Seller will proceed with performance of this Contract in accordance with MDHS's instructions.

21. APPLICABLE LAW

This Contract will be governed by and construed in accordance with the law of the state of Arizona, with no consideration given to that state's conflict of laws rules, regardless of the places of execution or performance of this Contract.

22. RIGHTS AND REMEDIES

The rights and remedies of the parties set forth in this Contract are cumulative and in addition to any other rights or remedies that they may have at law or in equity.

23. COMPLIANCE WITH STATUTES AND REGULATIONS

Seller will comply with all applicable statutes and government rules, regulations, and orders.

24. ORDER OF PRECEDENCE

(A) In the event of any inconsistency between or among the provisions, articles, attachments, or specifications which constitute this Contract, the following order of precedence shall apply:

- (1) the Purchase Order,
- (2) all Special Provisions, including any attachments referenced or incorporated by those Special Provisions;
- (3) the General Provisions (the MDHS Terms and Conditions of Purchase);
- (4) the specifications;
- (5) all other attachments incorporated in this contract by reference.

(B) MDHS's specifications shall prevail over any subsidiary documents referenced therein. Seller shall not use any specification in lieu of those contained in this contract without written consent of MDHS's Purchasing Representative.

25. DEFINITIONS

The following definitions apply to this Purchase Order unless otherwise specifically stated:

- (A) "MDHS" or "Buyer" - the legal entity issuing this Purchase Order: McDonnell Douglas Helicopter Systems, a Delaware Corporation and wholly owned subsidiary of McDonnell Douglas Corporation ("MDC"), its successors, assigns or purchasers of a substantial portion of its business or assets.
- (B) "Purchasing Representative" - Buyer's authorized representative identified elsewhere in this Contract and assigned responsibility for this procurement activity. The term "Purchasing Representative" also includes any MDHS Subcontract Administrator ("SCA") or cognizant Buyer.
- (C) "Seller" - the legal entity which contracts with the Buyer, including any occasional reference to "Offeror", "Supplier", "Vendor" or "Subcontractor" (first-tier only).
- (D) "Contract" - this Purchase Order, this contractual instrument, including any changes or modifications to it.
- (E) "Goods" - all items, including raw materials, components, services, intermediate assemblies, end products and data, required to be delivered or performed under this Purchase Order.
- (F) "Government" - the Government of the United States.
- (G) "Prime Contract" - the Government contract, higher-tier subcontract issued to MDHS under a Government contract or commercial contract under which this Purchase Order is issued.

(H) "Contracting Officer" - the designed contracting representative for any applicable Government prime contract, including that Contracting Officer's authorized representative.

(I) "FAR" - the Federal Acquisition Regulation.

(J) "DFARS" - the Department of Defense FAR Supplement.

(K) "Technical Data" or "Data" - Specifications, plans, drawings, standards, processes, procedures, manuals, technical publications, layouts, tooling aids, software, purchase descriptions, and other data to describe Services, Goods and Purchase Order requirements.

(L) "Computer Software" or "Software" - Computer programs and computer databases.

[MDHS 1997 Terms & Conditions](#)