

**GENERAL DYNAMICS**  
**ORDNANCE AND TACTICAL SYSTEMS**  
**TERMS AND CONDITIONS - TIME AND MATERIAL AND LABOR HOUR**  
**January 29, 2001**

**1. DEFINITIONS.**

As used in this Agreement, the following terms shall have the meanings set forth below:

a. The term "Buyer" means General Dynamics, Ordnance and Tactical Systems.

b. The term "This Order" means this Agreement and the Purchase Order incorporating this Agreement.

**2. PREVIOUS UNDERSTANDINGS SUPERSEDED:**

The terms and conditions contained herein, together with those of the Purchase Order and other documents which may be specifically incorporated herein, constitute the entire agreement between Buyer and Seller, and supersede all previous communications, representations, or agreements, either oral or written, between the parties hereto with respect to this Order.

**3. SCOPE:**

a. Seller shall, as an independent contractor, and not as an agent of Buyer, at the time and in the manner stated, furnish all plant, facilities, equipment, labor, materials, and perform all work necessary to complete the work set forth in this Order.

b. It is agreed that Seller is satisfied as to the nature of the work, the character, quality, and quantity of materials which may be required, the character of the equipment and facilities needed, and all matters which can in any way affect performance hereunder.

**4. PAYMENTS:**

The Seller shall be paid for Goods and Services as follows upon the submission of invoices approved by Buyer.

a. Labor Hour Rate:

1. The amounts computed by multiplying the appropriate labor hour rate, or rates, set forth in the Order, by the number of direct labor hours performed, which rates shall include wages, overhead, general and administrative expense and profit. Fractional parts of an hour shall be payable on a prorated basis. Invoices may be submitted once each month (or at more frequent intervals if approved by the Buyer), to the Buyer. The Seller will substantiate invoices by evidence of actual payment and by individual daily job timecards, or such other substantiation approved by the Buyer. The Buyer shall, except as otherwise provided in this Order, and subject to the provisions of (e) below, make payment thereon as approved by the Buyer.

2. Unless otherwise specified, the labor hour rate or rates set forth in the Order shall not be varied by virtue of the

Seller having performed work on an overtime basis. If no overtime rates are provided in the Order and overtime work is approved in advance by Buyer, overtime rates will be negotiated. Buyer's approval of overtime rates shall be final. If the Order provides rates for overtime, the premium portion of those rates will be reimbursable only to the extent the overtime is approved by the Buyer.

b. Materials (including Subcontracts):

1. The Seller shall support all material costs claimed by submitting invoices or storeroom requisitions, or by other substantiation acceptable to the Buyer. Materials are those materials which enter directly into the end product or services, or which are used or consumed directly in connection with the furnishing of such product or service. Indirect costs allocated to direct materials shall be determined by the Buyer in accordance with Seller's usual accounting procedures. Reasonable and allocable material handling costs may be included in the charge for material at cost to the extent they are clearly excluded from the labor-hour rate.

1.a. Optional Method of Pricing: If Seller furnishes material which is regularly sold to the general public in the normal course of business by the Seller, Seller may be governed by the following conditions when:

i. The total estimated Order does not exceed \$25,000.00 or the estimated price of material so charged does not exceed twenty percent (20%) of the estimated Order price.

ii. The material to be so charged is identified in the Order.

iii. No element of profit on material so charged is included in the profit in the fixed hourly labor rates.

iv. The price to be paid for such material shall be based on estimated catalog or list price in effect when material is furnished, less all applicable discounts to the Buyer. In no event shall such price be in excess of the Seller's most favored customer price for the same item in like quantity, or the current market price, whichever is lower.

2. The cost of subcontracts which are authorized pursuant to the "Subcontracts" clause hereof shall be reimbursable costs hereunder provided such costs are consistent with subparagraph (3) below. Reimbursable cost in connection with subcontracts shall be limited to the amounts actually required to be paid by the Seller to the subcontractor and shall not include any costs arising from the letting, administration or supervision of performance of the subcontract.

3. The Seller shall procure materials at the most advantageous prices with due

regard to securing prompt delivery of satisfactory materials and take all cash and trade discounts, rebates, allowances, credits, salvage, commissions, and other benefits. When unable to take advantage of such benefits, Seller shall promptly notify the Buyer to that effect and give the reason therefore. Credit shall be given to the Buyer for cash and trade discounts, rebates, allowances, credits, salvage, the value of resulting scrap when the amount of such scrap is appreciable, commissions, and other amounts which have been accrued to the benefit of Seller. Such benefits lost through no fault or neglect on the part of the Seller shall not be deducted from gross costs.

c. It is intended that the total cost to the Buyer for the performance of this Contract will not exceed the ceiling price set forth on the face of the Order, and the Seller agrees to use its best efforts to perform the work specified in the Order and all obligations under this Order within such ceiling price. If at any time the Seller has reason to believe that the labor hour rate payments and material costs which will accrue in the performance of this Order in the next succeeding thirty (30) days, when added to all other payments and costs previously accrued, will exceed eight-five percent (85%) of the ceiling price set forth in the Order, the Seller shall notify the Buyer to that effect, giving a revised estimate of the total price to the Buyer for the performance of this Order together with supporting reasons and documentation. If at any time during the performance of this Order the Seller has reason to believe that the total price to the Buyer for the performance of this Order will be substantially greater or less than the then-stated ceiling price, the Seller shall so notify the Buyer, giving the revised estimate of the total price for the performance of this Order, together with supporting reasons and documentation. If at any time during the performance of this Order the Buyer has reason to believe that the work required in the performance of this Order will be substantially greater or less than the stated ceiling price, the Buyer will so advise the Seller, giving the then-revised estimate of the total amount of effort to be required under the Order. Seller acknowledges that Buyer is relying upon the required notifications from Seller in order to determine whether to permit Seller to proceed with performance.

d. The Buyer shall not be obligated to pay the Seller any amount in excess of the ceiling price set forth in the Order, and the Seller shall not be obligated to continue performance if to do so would exceed the ceiling price set forth in the Order, unless and until the Buyer shall have notified the Seller in writing that such ceiling price has been increased and shall have specified in such notice a revised ceiling which shall thereupon constitute the ceiling price for performance under this Order. When and to the extent that the ceiling price set forth in the Order has been increased, any hours expended and material costs incurred by the Seller in excess of the ceiling price prior to the increase shall be allowable to the same extent as if such hours expended and material costs

had been incurred after such increase in the ceiling price.

e. At any time or times prior to final payment under this Order the Buyer may audit the invoices and substantiating material to the extent Buyer shall deem necessary. Each payment therefore made shall be subject to reduction to the extent of amounts which are found by the Buyer not to have been properly payable and shall also be subject to reduction for over-payments, or to increase for underpayments, on preceding invoices. Upon receipt and approval of the invoice designated by the Seller as the "completion invoice", and substantiating material, and upon compliance by the Seller with all provisions of this Order, the Buyer shall as promptly as may be practicable pay any balance due and owing the Seller. The completion invoice and substantiating material shall be submitted by the Seller as promptly as may be practicable following completion of the work under this Order, but in no event later than one (1) year from the date of such completion.

f. The Seller agrees that any refunds, rebates, or credits, (including any interest thereon) accruing to or received by the Seller or any assignee, which arise under the materials portion of this Order and for which the Seller has received reimbursement, shall be paid by the Seller to the Buyer. The Seller and each assignee, under any assignment entered into under this Order and in effect at the time of final payment under this Order shall execute and deliver, at the time of and as a condition precedent to final payment under this Order, an assignment to the Buyer of such refunds, rebates, or credits (including interest thereon) in form and substance satisfactory to the Buyer.

##### 5. CHANGES:

The Buyer may at any time, by a written order and without notice to the sureties, if any, make changes, within the general scope of this Order in any one or more of the following: (i) drawings, designs, or specifications, (ii) method of shipment or packing, (iii) place of delivery; and (iv) the amount of Buyer or Government-furnished property. If any such change requires an increase or decrease in any hourly rate or in the ceiling price provided for in this Order or in the time required for the performance of any part of the work under this Order, whether changed or not changed by any such Order, or otherwise affects any other provision of this Order, an equitable adjustment shall be made in the (i) ceiling price, (ii) hourly rates, (iii) delivery schedule, and (iv) in such other provisions of this Order as may be so affected and the Order shall be modified in writing accordingly. Any claim by the Seller for adjustment under this clause must be asserted within thirty (30) days from the date of receipt by the Seller of the notification of change, provided, however, that the Buyer, if it decides that the facts justify such action, may receive and act upon any such claim asserted at any time prior to final payment under this Order. Failure to agree to any adjustment shall be a dispute concerning a question of fact within the meaning of the "Disputes" clause of this Order. However, nothing in this clause shall

excuse the Seller from proceeding with the Order as changed.

**6. EXCUSABLE DELAYS:**

Except with respect to defaults of subcontractors, the Seller shall not be in default by reason of any failure in performance of this Order in accordance with its terms (including any failure by the Seller to make progress in the prosecution of the work hereunder which endangers such performance) if such failure arises out of causes beyond the control and without the fault or negligence of the Seller. Such causes may include, but are not restricted to: acts of God or of the public enemy, acts of the Government in either its sovereign or contractual capacity; fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes; and unusually severe weather, but in every case the failure to perform must be beyond the control and without the fault or negligence of the Seller. If the failure to perform is caused by the failure of a subcontractor to perform or make progress, and if such failure arises out of causes beyond the control of both the Seller and subcontractor, and without the fault or negligence of either of them, the Seller shall not be deemed to be in default, unless (i) the supplies or services to be furnished by the subcontractor were obtainable from other sources, (ii) the Buyer shall have ordered the Seller in writing to procure such supplies or services from such other sources, and (iii) the Seller shall have failed to comply reasonably with such order. Upon request of the Seller, the Buyer shall ascertain the facts and extent of such failure and, if the Buyer shall determine that any failure to perform was occasioned by any one or more of the said causes, the delivery schedule shall be revised accordingly, subject to the rights of the Buyer under the clauses hereof entitled "Termination".

**7. TERMINATION:**

a. Convenience. Buyer may at any time, terminate this Purchase Order in whole or in part for its convenience by written or telegraphic notice, or oral notice confirmed in writing.

(1) Upon termination for convenience of Buyer, settlement shall be made in accordance with the following principles.

(a) If the materials covered by the Purchase Order are shelf items, then Buyer shall be liable to Seller only for the difference between Purchase Order price and the fair market price or the amount received on disposal of the items, whichever price or amount is higher. In no event shall Buyer be liable for an amount in excess of 15% of the Purchase Order price.

(b) If the materials covered by the Purchase Order are special items or services, then Buyer shall be liable only for costs of direct materials, direct labor and variable overhead incurred prior to the date of termination that relate directly to the materials covered in the Purchase Order, less any salvage value.

b. Default. If Seller fails to make delivery of the Materials, in accordance with the delivery dates specified in this Purchase Order, or fails to make progress as to endanger performance of this Purchase Order in accordance with its terms and does not cure such failure within ten (10) days after notice from the Buyer, Buyer may (in addition to any other right or remedy provided by this Purchase Order or by law) terminate all or any part of this Purchase Order by written notice to Seller without liability and purchase substitute goods elsewhere, and Seller shall be liable to Buyer for any excess cost occasioned Buyer thereby. Seller shall continue performance of this Purchase Order to the extent not terminated pursuant to this Clause 7(b). Except with respect to defaults of subcontractors at any tier, Seller shall not be liable to Buyer if the failure to perform this Purchase Order arises out of causes beyond the control and without the fault or negligence of the Seller. If the failure to perform is caused by the default of a subcontractor at any tier, and if such default arises out of causes beyond the control of both the Seller and subcontractor, and without the fault or negligence of either of them, Seller shall not be liable to buyer unless the Materials to be furnished by the subcontractor were obtained from other sources in sufficient time to permit the Seller to meet the requirements of this Purchase Order.

If, after notice of the termination of this Purchase Order "with cause," it is determined that the failure to perform is due to causes totally beyond the control and totally without the fault or negligence of the Seller, such notice of default shall be deemed to have been issued pursuant to Clause 7(a) hereof, and the rights and obligations of the parties hereto shall be governed by Clause 7(a).

**8. ASSIGNMENTS:**

No assignment of this Purchase Order to Seller or of the monies due hereunder shall be made without the prior written consent of Buyer.

**9. SUBCONTRACTS:**

No subcontract shall be made by the Seller for the furnishing of any of the work herein contracted for without the written approval of the Buyer. For the purpose of this clause, purchase of raw material or commercial stock items shall not be considered work.

**10. NOTICE TO THE BUYER OF LABOR DISPUTES:**

Whenever the Seller has knowledge that any actual or potential labor dispute is delaying or threatens to delay the timely performance of this Order, the Seller shall immediately give notice thereof, including all relevant information with respect thereto, to the Buyer.

**11. INSPECTION:**

Buyer shall have the right to inspect Materials and Services purchased hereunder at Seller's plant or following receipt, at Buyer's election, and to reject those which do not conform to Buyer's instructions,

specifications, drawings and data, or Seller's warranty (whether express or implied) or, if not so specified, which do not conform to standard or generally accepted specifications for such Materials. If the cause of any delay in inspection of Seller's Materials results from the activities of Seller's customer, and if such cause or delay is made known to Seller, Buyer may extend its reasonable opportunity to inspect Seller's Materials by the length of such delay. Items not accepted will be returned to Seller at Seller's expense. Payment for any Materials hereunder shall not be deemed an acceptance thereof.

**12. INSURANCE:**

Seller shall procure and thereafter maintain workman's compensation, employer's liability (bodily injury), and comprehensive automobile liability (bodily injury and property damage) insurance with respect to performance under this Order, and such other insurance Buyer may from time to time require with respect to performance under this Order, provided that Seller in fulfillment of its obligation to procure workmen's compensation insurance may, with the approval of Buyer and pursuant to statutory authority, maintain a self-insurance program. All insurance required pursuant to the provisions of this paragraph shall be in such form, in such amounts, and for such periods of time, as Buyer may from time to time require or approve, with insurers approved by Buyer.

**13. INDEMNIFICATION:**

In the event Seller, its employees, agents, subcontractors or lower-tier subcontractors enter premises occupied by or under the control of Buyer, in the performance of this Order, Seller agrees that it will indemnify and hold harmless Buyer, its officers, and employees from any loss, cost, damage, expenses or liability by reason of property damage or personal injury of whatsoever nature or kind arising out of, as a result of, or in connection with such performance occasioned in whole or in part by actions or omissions of Seller, its employees, agents, subcontractors or lower-tier subcontractors.

**14. BANKRUPTCY AND INSOLVENCY:**

Buyer, by written notice, may terminate this Order in whole or in part, for default in the event of the appointment of a trustee, receiver, or liquidator for all or a portion of Seller's property, or the institution of bankruptcy, reorganization or arrangement of liquidation proceedings by or against Seller, or any assignment or composition for the benefit of Creditors. In addition, Buyer, by written notice may terminate this Order, in whole or part, for default whenever in Buyer's opinion Seller appears to be insolvent or in such an unsound financial position as to endanger performance of this Order. As used herein "insolvency" means the inability of Seller to pay its debts as they become due.

**15. NON-DISCLOSURE OF INFORMATION:**

Seller shall not use or disclose to any third party any information or details in connection with this Order except as may be required to ensure performance hereunder and except as otherwise provided in this Order without first obtaining the written consent of Buyer.

**16. APPLICABLE LAWS AND REGULATIONS:**

Seller shall comply with all applicable Federal, State, or local laws, rulings, regulations, and orders pertaining thereto in effect on the date of this Order. The laws of the State of Florida shall apply, excluding its choice of law provisions.

**17. DISPUTES:**

a. Either party may litigate any dispute arising or matter relating to this Purchase Order before any court of competent jurisdiction. Pending resolution of any such dispute by settlement or by final judgment, the parties shall proceed diligently with performance. Seller's performance shall be in accordance with Buyer's written instructions.

b. Seller shall fully cooperate at its own expense with Buyer in any proceeding involving Buyer's customer on the Goods and Services under this Purchase Order.

c. Whenever a provision of this Order gives Seller a form of remedy, whether an "equitable adjustment" or otherwise, that shall be the exclusive form of remedy available to Seller, and Seller shall not have any other or broader right, including, but not limited to, one for "breach of contract".