

United Technologies Corporation

Part III

Used by:

Pratt & Whitney Rocketdyne, Inc. (PWR) A United Technologies Company

**GP 3 DATED 8-15-2006
REVISION 2: 11-10-2006**

**STANDARD TERMS AND CONDITIONS OF PURCHASE
for
SERVICE AGREEMENT TERMS & CONDITIONS**

DEFINITIONS

As used throughout this Order, the following definitions apply unless otherwise specifically stated in a particular General Condition set forth below or unless specifically defined within the terms of a particular General Condition:

- A. “Buyer” means United Technologies Corporation, or a subsidiary, division affiliate, successor, or assign of United Technologies Corporation, or other entity issuing this Order, or issuing any order under any agreement to which these terms and conditions are attached or referenced therein, or to any entity to which this Order is assigned pursuant to this Order.
- B. “Purchase Order”, “Order”, or “Agreement” means this agreement, including change notices, supplements, amendments, or modifications thereto, except where the context indicates that a particular Purchase Order document or other particular document is being referred to.
- C. “Supplier” or “Contractor” means the legal entity providing Good and Services or otherwise performing work pursuant to this Order.
- D. “Goods” means goods, supplies, or items that include, but are not limited to, those part numbers, model numbers, and/or descriptions set forth on the face of this Order. These terms also include computer software or hardware (including any software, firmware or other hardwired logic embedded within the hardware) delivered or to be delivered under this Order.
- E. “Services” means any effort supplied by Supplier incidental to the sale of Goods by Supplier under this Order including, without limitation, installation, repair and maintenance Services. The term “Services” shall also include, without limitation, any effort specifically required by this Order, including all associated efforts such as design, engineering, repair, maintenance, technical, construction, consulting, professional, or other services.

INVOICING INSTRUCTIONS

- a. Invoices shall be submitted no more frequently than monthly and shall contain the following information: (1) Purchase Order number, (2) invoice number, (3) date services were performed, (4) brief description of services performed, and (5) invoice amount. The invoice shall itemize material, labor, any special charges or costs, shipping, other direct charges, travel, and taxes.
- b. Invoices shall be submitted to Buyer, to the attention of Buyer's point of contact for invoice submittals.
- c. Invoices shall not be submitted in advance of services being performed. Payment inquiries shall be submitted to the Buyer whose name appears on the face of this order.

SPECIFICATIONS

- a. Contractor shall comply with all specifications stated in this order, including applicable U.S. Government specifications.

INSPECTION

- a. Contractor shall provide and maintain, without additional charge to Buyer, an inspection system ensuring that Contractor complies with all specifications and requirements applicable to this order.
- b. Buyer (and its customer(s), as applicable) may perform such reviews and evaluations as they deem reasonably necessary, at all times and places, to ascertain compliance with this provision. However, Buyer's right of review, whether or not exercised, does not relieve Contractor of any of its obligations for inspection, testing, performance, or associated documentation. Contractor shall furnish, at no additional cost, such facilities and assistance as are reasonably required for the safe and efficient performance of inspection by Buyer and its customer(s).

INTERPRETATION AND CONSTRUCTION

- a. This Agreement shall be interpreted as a unified contractual document with all provisions having equal effect. In the event of any conflict or inconsistency between or among these provisions and terms or conditions appearing in the body of the purchase order, the purchase order shall control. Captions and headings in this Agreement are for convenience only and shall not affect the interpretation or construction hereof.
- b. The construction of this Agreement shall be governed by the laws of the State of Connecticut, excluding its conflict of law rules.

- c. This Agreement constitutes the entire agreement between the parties and shall supersede all previous communications, representations, and agreements, either oral or written, between the parties with respect to the subject matter hereof and no agreement or understanding varying or extending this Agreement shall be binding upon either party unless made in a writing referencing this Agreement and signed by a duly authorized representative of each party.
- d. Ambiguities, inconsistencies, or conflicts arising out of or related to this Agreement will not be strictly construed against Buyer; rather, they shall be resolved by applying the most reasonable interpretation under the circumstances, giving full consideration to the intentions of the parties at the time of contracting.
- e. If in any instance any provision of this order shall be determined to be invalid or unenforceable under any law or regulation, such provision shall not apply in such instance, but the remaining provisions hereof shall be given effect in accordance with their terms.
- f. Buyer's failure to insist on performance of any of the terms or conditions herein, or to exercise any right or privilege, or Buyer's waiver of any breach hereunder, shall not thereafter waive any such terms, conditions, or privileges or any other terms, conditions, or privileges, whether of the same or similar type.
- g. The rights and remedies of Buyer under this order shall be cumulative and additional to any other or further rights or remedies provided at law or in equity. Contractor's obligations under this Agreement to indemnify and hold harmless Buyer shall include, without limitation, all court costs and attorney's fees incurred by Buyer, including those incurred in enforcing Contractor's obligations hereunder.

INDEPENDENT CONTRACTOR RELATIONSHIP

- a. The relationship of the Contractor to Buyer is that of an independent contractor and nothing herein shall be construed as creating any other relationship. Unless otherwise provided in this order, the Contractor may adopt such arrangements as the Contractor may desire with regard to the details of the services performed hereunder, the hours during which said services are to be provided, and the place or places where said services are to be furnished, provided that such details, hours and services shall be consistent with the proper accomplishment of said services and provided further that said services shall be performed in a manner calculated to attain the most satisfactory and cost-effective results for Buyer.
- b. Contractor accepts, in connection with the work called for hereby, exclusive liability for the payment of any employee wages, benefits, other labor costs, fees, and taxes or contributions, however measured. Contractor is solely liable for taxes, duties, and any other costs or fees levied on Contractor's property (real or personal). Contractor as-

sumes all liability for overtime premiums, shift differentials, Social Security, unemployment insurance, old age payments, workers' compensation premiums, annuities or retirement benefits which are measured by wages, salaries or other remunerations paid by Contractor to any and all persons employed by it in connection with the performance of the services. Contractor shall comply with all Federal and State administrative regulations respecting the assumption of liability for any of the aforesaid wages, benefits, taxes or contributions. Contractor represents that the prices and rates incorporated herein include all such wages, costs, benefits, taxes or contributions and agrees to indemnify and hold Buyer and Buyer's directors, officers and employees harmless from and against any and all liability for the delay or failure of Contractor and its subcontractors to pay any such wages, costs, benefits, taxes or contributions.

TITLE TO MATERIALS AND EQUIPMENT

- a. All materials and equipment furnished by Buyer and all materials and equipment the cost of which shall be reimbursed to the Contractor by Buyer are to be and remain the sole property of Buyer and are to be returned to Buyer within ninety (90) days after the expiration or earlier termination of this Agreement. Contractor has and assumes risk of loss of or damage to Buyer's materials and equipment while in Contractor's possession, and agrees to return all unused materials and equipment to Buyer, upon Buyer's request, in the same condition as when originally provided, reasonable wear and tear excepted.

INVENTIONS AND PROPRIETARY RIGHTS

- a. Contractor agrees to disclose promptly to Buyer all data, information, inventions, discoveries, and improvements conceived or first actually reduced to practice in the performance of, or arising out of, the services furnished to Buyer by the Contractor or by other persons used by the Contractor in the performance of services hereunder. All such inventions, discoveries or improvements and patents therefor shall become the exclusive property of Buyer. Contractor hereby undertakes and agrees to execute such assignments and other papers which, in the opinion of Buyer, are necessary at any time to permit the filing and prosecution of any applications for patents covering the inventions, discoveries or improvements or are otherwise required for compliance with the terms of this provision. In the event that others are used by the Contractor in connection with the work called for by this Agreement, the Contractor agrees to procure from them similar agreements and to cooperate with Buyer in procuring execution by them of such assignments and other papers as may be required.
- b. The Contractor agrees that, in consideration of payments made by Buyer to Contractor under this Agreement, any work prepared by or for Contractor for Buyer, in which copyright protection subsists, shall be deemed a "work made for hire" under Section 101 of Title 17 of the United States Code and ownership thereof shall vest in Buyer. Any such work shall be deemed assigned to Buyer by Contractor. The Contractor

shall execute formal written assignments of all such works to Buyer at any time upon request.

- c. Contractor shall be liable for and shall indemnify and save Buyer harmless from any infringement claim, suit, or action alleging that the services provided hereunder infringe any patent, trademark, copyright, semiconductor chip product mask work right, or other common law or statutory proprietary right. If any suit or claim is filed directly against Buyer as a direct or indirect result of Contractor's provision of services hereunder, Contractor shall cooperate with Buyer in its defense of any alleged infringement claim. At Buyer's election, Contractor shall assume the defense of any such action or claim.
- d. Buyer is hereby licensed by Contractor to copy any software provided or used under this order onto a computer memory device and to make back-up copies of such software. Buyer's sole obligation with respect to software furnished hereunder is to use such software in accordance with applicable U.S. copyright laws and regulations, regardless of any other license agreement, including, but not limited to, any license agreement packaged with such software.
- e. The services performed hereunder and the results thereof shall be considered as confidential and proprietary to Buyer, and Contractor (including others used by Contractor in the performance of services hereunder) shall not, without the prior written consent of Buyer, (i) use, publish or otherwise divulge any information developed, divulged, or otherwise learned in any manner arising out of this Agreement. "Information" includes, but is not limited to, technical or business information developed by, for, or at the expense of Buyer, or assigned or entrusted to Contractor or anyone else. Contractor shall not discuss the nature of Contractor's activities in connection with Buyer with anyone except authorized representatives of Buyer.

DISCLOSURES AND CONFLICT OF INTERESTS

Contractor represents, warrants, covenants and agrees that:

- a. During the term of this Agreement and any renewal(s) hereof, the Contractor and any others used by the Contractor in the performance of services hereunder shall not consult with any other person, association, firm, corporation or other entity regarding the services provided hereunder without the prior written approval of Buyer;
- b. The Contractor and any others used by the Contractor in the performance of services hereunder shall not, directly or indirectly, wrongfully solicit, obtain or use on behalf of the Buyer, or wrongfully disclose to Buyer, any information of any other person, association, firm, corporation, government or other entity, including information which is a trade secret, confidential, proprietary, government security classified, or government procurement sensitive (including documents identified prior to the award of a government contract as source selection information and any other information which offers or may offer Buyer an illegal or unfair competitive advantage); and,

unless otherwise specifically identified in writing at the time of disclosure, all information disclosed to Buyer by the Contractor and any others used by the Contractor in the performance of services hereunder may be used or disclosed by Buyer without restriction;

- c. None of the provisions of this Agreement, nor the services performed hereunder by the Contractor and any others used by the Contractor, contravenes or is in conflict with any law, judgment, decree, order or regulation of any governmental authority, or with any contract or agreement with, or any obligations owed to, any other person, association, firm, corporation, government or other entity to which the Contractor or any such others used by the Contractor are subject, including without limiting the generality of the foregoing, employment agreements, consulting agreements, disclosure agreements or agreements for the assignment of inventions;
- d. No entertainment, gift, gratuity, money, or anything of value shall be paid, offered, given or promised by the Contractor or by any others used by the Contractor in the performance of services hereunder to, or be obtained or solicited by the Contractor or by any such others from, directly or indirectly, any person, association, firm, corporation, government or other entity that is prohibited by Buyer's "Code of Ethics," by applicable law or regulation, by the policies of that association, firm, corporation, government or other entity, or by Buyer's "Policy Statement on Business Ethics and Conduct in Contracting with the U.S. Government";
- e. Prior to the effective date hereof and throughout the term of this Agreement, the Contractor shall promptly notify Buyer in writing of any action, change or development which would make any representation, warranty, covenant or agreement in or furnished under or as a part of this Agreement untrue, inaccurate or incomplete in any respect;
- f. If the Contractor (or any others used by the Contractor in the performance of services hereunder) is expected to or may engage in services considered to be within the definitions of a "Government Marketing Consultant", "Lobbyist", or "current or former employee of, or consultant to, the U.S. Government," as such terms are defined in pertinent laws and regulations, the Contractor agrees to notify Buyer immediately in writing. In addition to the representation, warranties, covenants, and agreements provided in paragraphs (a) through (f) above, the Contractor additionally warrants, represents, agrees and covenants, that:
 - 1) The Contractor (and all others used by the Contractor in performing services hereunder) will comply with all applicable laws and regulations, including, but not limited to:
 - (A) the "Byrd Amendment", 31 U.S.C. 1352, as implemented by Federal Acquisition Regulation ("FAR") 3.8; and

- (B) the Office of Federal Procurement Policy Act, 41 U.S.C. 423, as implemented by FAR 3.104; and
 - (C) section 8141 of the 1989 Department of Defense Appropriation Act and section 6 of the OFPP Act, 41 U.S.C. 404, as implemented by FAR 9.5 and OFPP Policy Letter 89-1.
- 2) The Contractor is familiar with and shall continue to be familiar with all such conflicts of interest laws and regulations and shall provide such written certifications under such laws and regulations as Buyer may reasonably request. Written certifications may be required as provided for under the OFPP Amendments and other regulations governing the conduct of Government Marketing Consultants and/or Lobbyists. Buyer shall make available to the Contractor, upon written request, copies or synopses of such laws and regulations. Failure to promptly and accurately complete certifications shall be grounds for Buyer's immediate termination of this Agreement, without liability to Buyer;
- (3) The Contractor agrees to promptly notify Buyer if the Contractor at any time has information or reason to believe that the performance of services hereunder would violate any such laws or regulation or would create such a conflict of interest, or the appearance of such a conflict;
- (4) The Contractor and any other persons used by the Contractor in the performance of services hereunder shall not contact, directly or indirectly, (i) any officer, employee, principal or agent of the Government (including any elected member of the legislative branch of the Government or their staff) or, (ii) any customer, competitor, prime contractor, subcontractor, vendor or supplier of Buyer, unless the Contractor is specifically authorized to make such a contact under the terms of this Agreement or the Contractor receives the prior written approval of Buyer. In any and all such instances the Contractor and any such others used by the Contractor shall comply with all applicable laws and regulations; and
- (5) Neither the Contractor nor, where applicable, any others used by the Contractor in the performance of services hereunder, has been convicted of a felony or has been debarred or suspended from doing business with the government or declared ineligible by the government to perform services for or on behalf of Buyer, or is presently the subject of any such action.
- g. In performing this Agreement, Contractor agrees not to use the Services of (1) current or former employees of the U.S. Government, or (2) current or former employees of Buyer, or (3) persons not U. S. citizens or permanent resident aliens, without first obtaining the written review and approval of Buyer. Buyer reserves the right to review, and Contractor agrees to provide, such information as Buyer may reasonably

require in determining whether to approve Contractor's use of any such person(s) under this Agreement. Requests for such authorization must be submitted by Contractor through Buyer's Legal Department.

ETHICAL BUSINESS PRACTICES

- a. This Agreement is subject to and governed by Buyer's "Code of Ethics" and the "Policy Statement on Business Ethics and Conduct in Contracting with the Buyer States Government," as such may be amended from time to time. The Contractor covenants and agrees that the Contractor and any others used by the Contractor in the performance of services hereunder will comply with all applicable laws and regulations and with the "Policy Statement" and "Code of Ethics".

ASSIGNMENT

- a. Neither this Agreement nor any interest hereunder (including funds payable hereunder) shall be assignable by either party unless such assignment is mutually agreed to in writing by the parties hereto; provided, however, that Buyer may assign this Agreement to any entity with which Buyer may merge or consolidate or to which Buyer may assign substantially all of its assets or that portion of its business to which this Agreement pertains without recourse to Buyer and without obtaining the agreement of the Contractor.

MODIFICATION

- a. No modification of this Agreement shall be valid unless in writing and signed by the parties hereto.

TERMINATIONS AND SUSPENSION OF WORK

- a. The performance of work under this Contract may be terminated or suspended by Buyer in whole or from time to time in part whenever Buyer shall determine that such termination or suspension is in the best interest of Buyer. Any such termination or suspension shall be effected by delivery to the Contractor by Buyer of a written notice specifying the extent to which performance of work under this Contract is terminated and/or suspended and the date upon which such action shall become effective. In the event of such action, Buyer shall pay Contractor for services satisfactorily rendered up to the effective date of termination or suspension and Contractor may submit a proposal for equitable increase in the prices hereof to account for any costs of demobilization and direct termination expenses, to the extent such costs are solely attributable to the termination/suspension and are actually incurred and paid by Contractor.
- b. This Agreement or any renewal(s) hereof shall automatically expire as of the end of the term if the parties do not renew the Agreement.

- c. Notwithstanding any other provisions of this Agreement, if Contractor or others used by the Contractor in the performance of services hereunder violate any of the provisions of this Agreement, including but not limited to any applicable laws or regulations or the "Policy Statement" or Buyer's "Code of Ethics", Buyer may, in its sole discretion and in addition to any other remedies available at law or in equity, terminate this Agreement by written notice to the Contractor effective immediately upon the sending of said notice. Contractor shall not be paid for any services or associated costs that are unsatisfactory or that violate any terms and conditions of this Agreement.
- d. Buyer may terminate this order under paragraph c. above at any time when Contractor consents to or voluntarily or involuntarily petitions for appointment of a receiver, trustee, liquidator, assignee, custodian, sequestrator, or similar official, or files or has filed a petition in bankruptcy, reorganization, or order of relief, or in any other manner demonstrates its current inability to pay its debts or satisfy its obligations as they become due.
- e. The expiration or termination of this Agreement or of any renewal thereof shall discharge any further obligations of either party hereto with respect to this Agreement or any renewal(s) hereof; provided, however, that the Contractor's obligations under provisions related to conflicts of interest, proprietary information, intellectual property, and title to materials and services provided by Buyer shall not be discharged by such expiration or termination but shall remain in full force and effect.

AUDIT RIGHTS

- a. At any time prior to final payment for work under this Agreement and within three (3) years thereafter, Buyer shall have the right to audit all direct and indirect charges, to the extent Buyer may deem necessary, for the purpose of verifying all direct or indirect charges claimed under this Agreement. Contractor agrees to maintain and make available all records and books of account detailing any costs and expenses charged against this Agreement or any invoice hereunder.

WARRANTIES

- a. Contractor warrants that all work will be performed in accordance with current, sound and generally accepted industry practices by appropriately licensed personnel who are trained and experienced in the appropriate fields. These services are to be performed by Contractor for Buyer in consideration of the payments specified herein. Contractor will exert its best efforts to achieve satisfactory results.
- b. Contractor agrees that should any of the work not prove satisfactory at any time, in Buyer's sole judgment, Contractor shall re-perform all work originally undertaken by

Contractor and/or necessary to correct such defective work, at no additional cost to Buyer or its customer(s). In the event reperformance does not remedy Contractor's unsatisfactory performance, Buyer reserves the right to procure substitute services from another source or sources and to charge Contractor (directly or via set-off) with the costs thereof. Buyer also reserves the right to charge Contractor for its direct and indirect costs occasioned by Contractor's breach of this warranty, including excess procurement costs, delay damages, costs incurred in payments made to Buyer's customers, and other costs, fees, expenses, and interest directly or indirectly attributable to Contractor's breach.

- c. All work submitted by Contractor shall comply with federal, state, or local guidelines and directions, as appropriate, regarding the format of documents, protocols, testing procedures, and/or contents of designs, plans, specifications, etc.
- d. Contractor shall assign to Buyer all warranties for materials and equipment furnished by Contractor during the performance of services. Contractor shall notify Buyer prior to furnishing any materials or equipment that are not fully warranted for at least the six month period immediately following performance of services.
- e. Contractor further agrees to execute any certificate reasonably required by Buyer and within the scope of services hereunder if such certificate is required pursuant to federal, state, or local laws or regulations.
- f. Contractor agrees to comply with all applicable federal, state, and local laws pertinent to performance of services under this Agreement, and further agrees to include the substance of this paragraph in all subcontracts entered into by Contractor.
- g. Any payment(s) otherwise due Contractor for any services in dispute may be withheld by Buyer (in whole or part) upon evidence of default by Contractor in the performance of any such services. In no event shall payment be made for any services performed by the Contractor if such services are not stated in or is not otherwise within the scope of this Agreement.
- h. Contractor warrants that the prices/charges/rates set forth or incorporated via reference in this Agreement are not less favorable than those currently extended to any other customer for the same or similar services, in similar quantities, during the term hereof. No additional charges or rates of any type shall be added without Buyer's prior written consent.

EXCUSABLE DELAYS

- a. Should the progress or completion of the services be delayed due to causes such as (but not limited to) strikes, accidents, or other unforeseeable causes beyond the Contractor's reasonable control and without its fault or negligence, the time for completion of said work shall be extended for an equivalent period of such delay as may be approved in writing by Buyer (such approval not to be unreasonably withheld).

Delays caused by acts of subcontractors or parties engaged by Contractor shall not be excusable unless such subcontractor's or party's delay was excusable within the meaning of this clause and Contractor was unable to secure alternate sources of supply or services within a commercially reasonable time. Prompt notice in writing shall be given to Buyer whenever it appears said work shall be delayed or is likely to be delayed for any cause, and Contractor shall use its best efforts to minimize any delay and continue its performance.

- b. Buyer shall be excused for any delays due to causes beyond its reasonable control.
- c. Contractor hereby specifically waives the defenses of impossibility or impracticability of performance and in the event of Contractor's failure to make adequate progress under this Agreement consents to Buyer's termination of this Agreement for default.

CHANGES

- a. At any time during the performance of services hereunder, Buyer shall have the right to make changes in, deletions from, or additions to the services or the time in which such services are to be performed, hereinafter collectively referred to as "Changes". In the event that Changes require different and/or additional services by Contractor, Contractor shall present to Buyer, prior to commencement of work under such Change, and Buyer shall consider, a claim for an equitable increase in compensation because of such Change. Such claim shall be supported by such data and information as Buyer reasonably may require. Any such claim by Contractor for an equitable increase in compensation shall be mutually agreed to prior to the commencement of work under the proposed Change, except as directed under paragraph b. below.
- b. The parties anticipate that Changes may be required under circumstances not permitting sufficient time in which to meet the requirements of paragraph a. above. In such event, Contractor agrees to use its best efforts to prosecute the Change as well as to fully definitize any equitable increase in compensation within a reasonable time after the Change is ordered by Buyer.
- c. Any Changes ordered hereunder shall be issued only by Buyer's duly authorized representative or other designee appointed in writing, in advance of Contractor's commencing performance of a Change.

INSURANCE AND INDEMNIFICATION

- a. Contractor agrees to secure and carry as a minimum the following insurance covering all work to be performed under this Agreement:
 - (1) Workers' Compensation and Employer's Liability Insurance in an amount sufficient by virtue of the laws of the State in which the work or any portion of the work is performed;

- (2) General Liability Insurance in which the limit of liability for injuries, including accidental death, shall be \$1,000,000 for any one occurrence;
 - (3) General Liability Insurance in which the limit of liability for property damage shall be \$1,000,000 for any one occurrence;
 - (4) Automobile Liability Insurance in which the limit of liability for injuries, including accidental death, shall be \$1,000,000 for any one occurrence;
 - (5) Automobile Liability Insurance in which the limit of liability for property damage shall be \$1,000,000 for any one occurrence; and
 - (6) Professional Liability Insurance subject to a limit of \$1,000,000.
 - (7) Contractual Liability Insurance sufficient in scope of coverage and amount (in Buyer's reasonable discretion) to cover the liabilities herein assumed by Contractor.
- b. All such insurance shall be issued by companies authorized to do business under the laws of the State in which all or part of the services are to be performed, shall be in form satisfactory to Buyer, and shall contain a provision prohibiting cancellation except upon at least ten (10) days' prior notice to Buyer. All such insurance policies will be primary in the event of a loss arising out of the Contractor's performance of work. Certified copies of said policies or certificates evidencing such insurance and naming Buyer as an additional insured shall be filed with Buyer within 30 days after the date of this Agreement and within a reasonable time after any renewals or changes to such policies are issued.
- c. In the event Contractor makes a claim against Buyer, at law or otherwise, alleging damage to Contractor as a result of any error, omission or other act arising out of or relating to this Agreement, and Contractor fails to prove such claim or to prevail in any action at law or in equity, then Contractor shall pay all costs, including reasonable attorney's fees, incurred by Buyer in defending itself against such claim.
- d. To the extent permitted by law, Contractor and its insurer(s) agree that subrogation rights against Buyer are hereby waived. Contractor hereby undertakes to reflect such waiver in any policy(ies) required under this Agreement.
- e. Contractor agrees to insert the substance of paragraphs a. through d. above in all subcontracts entered into by Contractor to support services performed under this Agreement.
- f. Contractor agrees to protect, defend, indemnify, and hold harmless Buyer from and against all claims, demands, and causes of action of every type and character, without limitation, arising out of or related to performance of services under this Agreement.

- g. The indemnification provided in f. above shall apply to any action arising out of or related to the negligent or willful acts or omissions of Contractor or its subcontractors, officers, directors, heirs, assigns, or employees. This indemnity shall not apply to claims - other than those described in h. below - proximately resulting from the sole negligence or willful misconduct of Buyer, its directors, officers, agents or employees.
- h. The obligation undertaken in f. above shall expressly include, without limitation, indemnification against injuries, sickness, disease (including occupational disease whenever occurring), or death of Contractor's employees in any way connected with or resulting from the sole, joint, or comparative negligence of Buyer, or of its directors, officers, agents, or employees, whether acting jointly or severally.
- i. Contractor shall hold harmless and indemnify Buyer from and against all claims and liabilities (including attorneys' fees) however arising and whether based on contract, tort, strict liability, negligence, statute, or any other theory at law or in equity, arising from, based on, or connected with the performance of this order by Supplier's subcontractors, agents, or any other third parties used by Contractor in performing or supporting this order. Contractor's indemnity hereunder shall survive termination or expiration of this order.

PERMITS AND LICENSES

- a. Except for permits and/or licenses required by statute or regulation to be obtained by Buyer, Contractor agrees to obtain and maintain - at its own expense - all permits, licenses and other forms of documentation required by Contractor in order to comply with all existing laws, ordinances, and regulations of the United States and of any state, county, township, or municipal subdivision thereof, or other governmental agency, which may be applicable to Contractor's performance of work hereunder. Buyer reserves the right to review and approve all applications, permits, and licenses prior to the commencement of any work hereunder.

PERFORMANCE AND PAYMENT BONDS

- a. If specifically requested by Buyer, Contractor shall furnish (at Contractor's expense) performance and payment bonds in form and amount satisfactory to Buyer. Contractor represents that the rates and/or costs herein provided do not include any amount for any cost of performance or payment bonds.

EQUAL OPPORTUNITY

- a. Contractor will not discriminate against any employee or applicant for employment because of age, race, color, handicap, religion, sex, or national origin. Contractor will take affirmative action to ensure that applicants are employed, and that employees are

treated during employment without regard to their age, race, color, religion, sex, handicap, or national origin. Such action shall include but not be limited to the following: Employment, upgrading, demotion, or transfer, recruitment or recruitment advertising, layoff or termination, rates of pay or other forms of compensation, selection for training, including apprenticeship. Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause.

- b. Contractor will comply with all provisions of the rules, regulations, and relevant orders of the Secretary of Labor.
- c. Contractor will include the substance of this provision in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, as amended by Executive Order 11375 of October 13, 1967, so that such provisions will be binding upon each subcontractor or vendor.

KICKBACKS

- a. Contractor represents and warrants to Buyer that neither Contractor (including any of its officers, partners, employees or agents) nor any Subcontractor or Subcontractor employee has:
 - (1) provided, attempted to provide, or offered to provide any kickback or gratuity;
 - (2) solicited, accepted or attempted to accept any kickback or gratuity; or
 - (3) included, directly or indirectly, the amount of any kickback or gratuity in the price applicable to this Contract or in the subcontract price charged by any subcontractor to a higher tier subcontractor.
- b. In addition to any other remedies that Buyer may have, Contractor shall indemnify and hold harmless Buyer from and against any loss or damage, including, without limitation, Buyer's costs, attorney's fees, or any fines or penalties assessed against Buyer, resulting from a violation of (i) the Anti-Kickback Act of 1986 or (ii) other pertinent federal, state, or local laws regarding kickbacks or commercial bribery, by Contractor (including any of its officers, partners, employees, or agents) or by any Subcontractor or Subcontractor employee.

CONTINUATION OF WORK DURING THE PENDENCY OF A DISPUTE

- a. No failure of Contractor and Buyer to settle any dispute or to reach any agreement provided for by the terms of this Contract shall excuse Contractor from diligently proceeding with the performance of this Contract, except as otherwise expressly provided in this Agreement.

LIENS

- a. Contractor (i) shall indemnify and hold harmless Buyer from all laborers', materialmen's, and mechanics' liens upon the property where services are performed, arising out of the services, labor and materials furnished by Contractor or any of its subcontractors under this Contract, and (ii) shall keep said property free and clear of all liens, claims, and encumbrances arising from the performance of this Contract by Contractor or its subcontractors.
- b. Contractor, for itself, its subcontractors, materialmen, laborers and for all other persons performing any labor or furnishing any services, labor or materials for any of the work, hereby waives, to the full extent permitted by law, all right to have filed or maintained any mechanics' or other liens or claims for or on account of the services, labor, or materials to be furnished hereunder.
- c. Contractor shall include a provision satisfying the requirements of this provision as a part of any and all subcontracts entered into for the work or any portion thereof. Any such provision shall specifically identify Buyer as a third party beneficiary of such provision.

ATTORNEYS' FEES

- a. In the event Buyer should bring an action against Contractor for enforcement of the terms and conditions of this order, Contractor agrees that Buyer shall be entitled to award of its reasonable attorneys' fees and court costs associated with such proceedings.

DISCLOSURES OF TECHNICAL DATA

- a. Contractor warrants and represents that it will limit disclosure of any technical data contained in, made available, or generated in the performance of this order in accordance with export restrictions imposed by the U.S. Export Administration Regulations, 15 C.F.R. Parts 768 et seq. and the International Traffic in Arms Regulation, 22 C.F.R. Part 120 et seq. Compliance with export laws and regulations does not relieve Contractor of its obligations under any other provision of this order related to protection of information.

U.S. GOVERNMENT PROVISIONS AND CLAUSES FOR SERVICE AGREEMENTS UNDER U.S. GOVERNMENT CONTRACTS

For Services Agreements issued under prime contracts with the U.S. Government or subcontracts at any tier under US Government contracts, the provisions of PWR 's "H-200 series clause(s) "Customer Contract Requirements (CCR's)" in effect on the date

of the specific Government Prime Contract shall apply and are hereby incorporated by reference in the Service Agreement and made available on the Internet at the following URL address:

<http://www.rocketdynetech.com/supplierinfo/>