

T-RMSDPA (02/02)

RAYTHEON MISSILE SYSTEMS (RMS) DIVISIONAL PURCHASE AGREEMENT (DPA)

This RMSDPA, hereinafter referred to as the Agreement, is effected through a controlled RMS Purchase Order (PO) document.

If said document contains/reflects an actual dollar value funding amount, this is a FUNDED Agreement for which Buyer's Purchase Order Attachment GA-002 and its monetary "Not-to-Exceed (NTE)" limitation amount applies and dollar value shown on the PO vellum is this GA-002 NTE limitation amount. This amount is an "in the aggregate" total Agreement sales limit, which Seller shall not exceed.

If there is no dollar value reflected on the document, this DPA is not funded and Buyer's Purchase Order Attachment GA-003 applies. Where GA-003 applies, each order/release contains its own funds and is a contract in and of itself [see the paragraph entitled "Ordering" below].

**1. General**

This RMSDPA, hereinafter referred to as the "Agreement", is either a BOA, IQOA, OCOA or RCOA, depending upon which paragraph 2 "Commitment/Termination" obligation clause applies, as specified by the Buyer elsewhere in the PO vellum. **NOTWITHSTANDING, IN THE ABSENCE OF SPECIFIC IDENTIFICATION TO THE CONTRARY, THIS AGREEMENT IS DEEMED TO BE A BOA.**

This Agreement facilitates and governs the future sale of those supplies and/or services which are hereinafter referred to as the "products" or "covered items" and which are identified elsewhere in a separate Attachment A or Schedule. It does so by setting forth pre-agreements between the parties as to prices and other terms and conditions that will govern said future sales. Terms and conditions applicable to this Agreement itself, as well as to the Orders/Releases issued under it, are found both herein and in the associated GA series document noted above. Details related to the "covered items" (e.g. their prices, quality requirements, delivery schedule, etc.) are as set forth in the above referenced Attachment A or the Schedule. Terms and conditions modifications, if any, are also documented in a separate Attachment and/or the Schedule.

**2. Commitment/Termination Obligations**

UNLESS THE BUYER SPECIFICALLY SPECIFIES OTHERWISE, THIS AGREEMENT IS A BOA SUBJECT TO THE BOA COMMITMENT/TERMINATION CLAUSE SHOWN BELOW. WHERE THE AGREEMENT IS SPECIFICALLY IDENTIFIED AS AN IQOA, OCOA, OR RCOA, INSTEAD OF A BOA, THE ALTERNATIVE COMMITMENT/TERMINATION CLAUSE SHOWN BELOW FOR THAT TYPE AGREEMENT APPLIES INSTEAD OF THE BOA CLAUSE. NOTE THAT IN SPITE OF THIS AUTOMATIC DEFAULT, RMS STILL INTENDS TO CLEARLY IDENTIFY THE ACTUAL TYPE OF AGREEMENT, IN RMS TP STATEMENT "TP-507", FOUND ON THE CONTROLLING PO VELLUM. IF SUCH IDENTIFICATION IS MISSING IMMEDIATELY CONTACT THE BUYER TO CLARIFY.

**[ ] BOA (No Guarantees)**

This is a Basic or Blanket Ordering Agreement (BOA) which extends through the "Effective Period" identified in paragraph 3. During this period and subject to the terms and conditions hereof, Seller agrees to sell to Buyer products of the description, quantities and at the price(s) set forth in Schedule Attachment A. whenever Buyer issues a proper "order" (see the paragraph below entitled "Ordering") therefore. Buyer is not obligated to "order" any "covered items" from Seller and may, at any time, acquire them elsewhere. Accordingly, Seller may terminate this Agreement at any time prior to its acceptance of Buyer's first order. Thereafter, however, in consideration for Buyer issuing said first order, Seller may only terminate this Agreement with thirty (30) days advance written notice. Note: Seller's authority to terminate does not extend to individual orders which may only be terminated in accordance with their own terms and conditions (see the paragraph below entitled "Terms and Conditions Baseline").

**[ ] OCOA (Guarantee included in first order)**

This is an Option Contract Ordering Agreement (OCOA) which extends through the "Effective Period" identified in paragraph 3. During this period and subject to the terms and conditions of this Agreement, Seller agrees to sell to Buyer products of the description, quantities and at the price set forth in Schedule Attachment A. whenever Buyer issues a proper "order" (see the paragraph below entitled "Ordering") therefore. If this is a T&M OCOA, Seller's obligation is to perform additional T&M tasks, as Buyer may "order", at the same T&M rates as set forth in the Schedule.

Buyer's option rights hereunder are as additional consideration for Buyer issuing, and Seller accepting Buyer's first order No. [**\* number of the first "order" issued hereunder**].

\* For the first order number see RMS TP Statement TP-507 on the face of the PO vellum.

**[ ] IQOA (Minimum Buy Guarantee)**

This is an Indefinite Quantity Ordering Agreement (IQOA) which extends through through the "Effective Period" identified in paragraph 3. During this period and subject to the terms and conditions hereof, Seller agrees to sell to Buyer products of the description, quantities and at the price set forth in Schedule Attachment A. whenever Buyer issues a proper "order" (see the paragraph below entitled "Ordering") therefore. In consideration for the foregoing, RMS [**\* specific RMS program identification or name(s)**] agrees to buy a minimum of [**\*\* specific quantity or \$ value amount**] of said supplies/services. Buyer's obligation to buy the specific quantity or minimum amount set forth above continues provided Seller continues to meet Buyer's quality, technical and delivery requirements and provided Seller continues to be an acceptable supplier as far as Buyer's customer is concerned (e.g. is not listed in the U.S. Government's Excluded Parties List System); otherwise, Buyer may acquire its requirements for any individual release/order elsewhere and may, at its election, terminate this contract, in whole or in part for convenience or for default, as the case may be.

[Note: If GA-003 is used in conjunction this Agreement, its second header paragraph and all but the first sentence of paragraph 2.2. is replaced with the above.]

\* For the specific program(s), if any, and

\*\* For the minimum quantity or dollar amount,

See RMS TP Statement TP-507 on the face of the PO vellum

**[ ] RCOA (Buyer Guarantee - if requirements generate)**

This is a Basic or Blanket Ordering Agreement (BOA) which extends through the "Effective Period" identified in paragraph 3. During this period and subject to the terms and conditions of this Agreement, Seller agrees to sell to Buyer products of the description, quantities and at the price set forth in Schedule Attachment A. whenever Buyer issues a proper "order" (see the paragraph below entitled "Ordering") therefore.

Although Buyer is not obligated to "order" any specific amount of "product" or "covered items", in consideration for the foregoing, RMS agrees to buy from Seller, all of its [**\* name of specific program(s)**] requirements for said supplies/services, which it can not provide for itself and which it must procure from outside sources. Buyer's obligation continues provided Seller continues to meet Buyer's quality, technical and delivery requirements and provided Seller continues to be an acceptable supplier as far as Buyer's customer is concerned (e.g. is not listed in the U.S. Government's Excluded Parties List System); otherwise, Buyer may acquire its requirements for any individual release/order elsewhere and may, at its election, terminate this contract, in whole or in part for convenience or for default, as the case may be.

[Note: If GA-003 is used in conjunction this Agreement, its second header paragraph and all but the first sentence of paragraph 2.2. is replaced with the above.]

\* For the specific program(s), if any, see RMS TP Statement TP-507 on the face of the PO vellum.

### **3. Effective Period.**

The effective period of this agreement extends through the date specified in RMS TP Statement "TP-507" as found on the face of the PO vellum.

### **4. Ordering**

Buyer shall acquire "covered items" through the issuance of individual "orders/releases" or other authorized ordering mechanism/document, citing this Agreement (see the paragraph below entitled "Agreement Incorporation). Each such release or order is a separate contract specifying the item(s) and quantities ordered, their delivery schedule, price, packaging/quality requirements, the total amount committed and Defense Priorities and Allocation System (DPAS) rating(s), if applicable. Orders/Releases may be in the form of a Purchase Order/Subcontract or other authorized ordering document (e.g. task order, etc.).

### **5. Defense Priorities and Allocations System**

Individual orders/releases hereunder may be Certified for National Defense Use and, if so, are subject to 15 CFR 700 the "Defense Priorities & Allocations System (DPAS)". As a result, provisions similar to DPAS apply to this Agreement itself and Buyer requires Seller's written acknowledgment and acceptance or rejection within fifteen (15) working days. With respect to individual orders, Buyer will verbally advise Seller of the specific DPAS rating, if one exists. Where a rating applies and where such order exceeds \$50K, Seller shall acknowledge its receipt and acceptance or rejection in writing within ten (10) working days for a DX rating or fifteen (15) working days for a DO rating.

### **6. Changes**

This Agreement may only be modified by mutual agreement of the parties, however, mutual agreement is not required for changes to individual orders issued under the Changes clause of the individual orders.

### **7. Terms and Conditions Baseline.**

Except where their text or standard usage clearly dictates otherwise, terms and conditions in the body of this Agreement, and in the body of the GA series document associated herewith, do not apply to individual orders. Terms and conditions applicable to individual orders are as follows:

#### **1. Baseline Terms and Conditions.**

- a. Purchase Order Attachments:
  - Specific individual order related terms in GA-002 or GA-003, as applicable
  - TC-001 (issue in effect at time of issuance of this Agreement)
  - T-RMS (issue in effect at time of issuance of this Agreement)
  - Terms and Conditions Modifications Attachment, if any
  - Attachment A Schedule (prices, quality requirements, delivery schedule, etc.)
  
- b. Public Law Compliance:

If pricing hereunder was established without the use of (certified) Cost or Pricing Data, the Truth in Negotiations Act (TINA) exemption at FAR 15.804-4 (f) does not apply. Accordingly, should TINA later be imposed upon Buyer for any particular order, Seller agrees to furnish said data, to treat existing pricing as "not to exceed" pricing and to execute a Certificate of Current Cost or Pricing Data with an "as of date" as close as possible to the date Buyer requests such certificate. In similar fashion, Seller also recognizes that Cost Accounting Standards (CAS) may also apply as a result of the above, and agrees to execute an appropriate CAS Disclosure Certification and to comply with any CAS requirements applicable to said order.

c. Tucson Purchasing (TP) Statements:

TP-490 (4/99) SPI AND REQUIRED MATERIALS AND PROCESS SPECIFICATIONS

TP-020 (02/01) MISSING CERTIFICATION WARNING

TP-053 (10/00) SPECIAL, EMERGENCY, PERISHABLE AND/OR GBL SHIPMENTS

TP-453 (10/00) PURCHASE ORDER ATTACHMENTS & TP STATEMENTS

TP-455 (10/00) OVERAGE OR SHORT CLOSURE NOT ALLOWED

TP-459 (10/00) UNPAID INVOICE NOTICE

**TP-487 (10/00) TINA FOR OPTIONS WITHOUT TINA.**

2. Other than Baseline Terms and Conditions:

Clauses or requirements necessary for Buyer's compliance with its Customer contract/requirements.

If "Other than Baseline Terms and Conditions" are cited in an individual order, such citation shall constitute a "change" under the Changes clause of the individual order, with an equitable adjustment effected, as necessary.

**8. Audit & Pricing Errors**

If pricing under this agreement is based upon specific markups over Seller's actual cost incurred or if Seller enters prices on invoices based upon deliveries not officially controlled by a pre-priced line item in a specific order/release, Buyer may audit said prices and supporting documentation at any time. If Buyer discovers pricing errors after auditing 25% or more of the total dollars invoiced for any specific audit period, the error rate will be documented and provided to Seller. Within 30 days, or such longer time as Buyer may permit, Seller may review Buyer's findings, including invoices examined, and point out any mistakes or discrepancies. Buyer shall then make a final decision as to the error rate and extrapolate and apply it to all billings for the period. Seller shall then promptly submit debit or credit memos as directed by Buyer. If Buyer audits less than 25% of the total dollars invoiced for a period, an error rate shall be determined and applied as per the above, however, adjustments shall be made only to the invoices actually audited.

**9. Agreement Incorporation**

Each order or Implementing Agreement (IA) (see the paragraph below entitled "Implementing Agreements") shall be governed by and incorporate the terms and conditions of the master agreement. For orders/releases the master Agreement is this Agreement. For an Implementing Agreement the master Agreement will be the CWA or other Agreement created by the non RMS buying activity. A statement similar to the following will be used to incorporate the applicable master Agreement:

TP-069 (10/00) AGREEMENT INCORPORATION  
(10/00) THIS PURCHASE ORDER/RELEASE OR IMPLEMENTING AGREEMENT IS  
ISSUED/PLACED UNDER & SUBJECT TO THE TERMS & CONDITIONS OF RAYTHEON  
AGREEMENT NO. \_\_\_\_\_, DATED \_\_\_\_\_

IMMEDIATELY NOTIFY BUYER IF BLANKS IN THIS CLAUSE ARE NOT FILLED IN.

**10. Ordering Limitations**

Seller shall comply with the following limitations, if any, on Buyer's orders/releases hereunder.

**Value** – Except where this is a RCOA, without an express written authorization separate from the order or release, Seller shall reject any order hereunder which exceeds \$500K.

**Personnel** – Except for those identified in the matrix below, only Buyer's Purchasing Department representative may issue orders/releases under this agreement:

DEPT NAME.

- None unless filled in  
[see TP-507 on the PO vellum]

ITEM/REL. NOS.

- None unless filled in  
[see TP-507 on the PO vellum]

**11. Implementing Agreement**

Since RMS computer systems preclude record keeping under documents not issued by RMS, when RMS sets forth to use or place orders against an Agreement established by another Raytheon entity [e.g. a Corporate Wide Agreement (CWA)], it (RMS) uses/issues this local attachment, not as an Agreement itself, but as an Implementing Agreement (IA). In this context an IA is simply an accounting transfer document which, in turn, implements the other Agreement. Accordingly, if this document is an IA, actual releases/orders will cite this IA as opposed to the CWA (see the paragraph above entitled "Agreement Incorporation") and the original non-RMS Agreement will be identified in the blank \* below.

\* This IA implements Agreement number \_\_\_\_ [see TP-507 on the face of the PO Vellum] \_\_\_\_

End of Document