

KTX-2 FULL SCALE DEVELOPMENT PROGRAM

The attached KTX-2 Procurement Special Instruction should be used in conjunction with Appendix X. The clauses of Appendix "X" Standard Commercial Purchase Order Terms and Conditions are modified as follows below. In the event of a conflict between these modifications and the clauses of Appendix "X," the modifications shall control.

1. Strict adherence to the delivery schedule and all specifications is essential. Any deviation requires Buyer's written approval.
2. Make the following changes to Clause 7, "**WARRANTY:**"

In the first sentence of this paragraph, delete "for a period of one year from the date of delivery under this PO" and substitute the following: "from the time of delivery through 30 September 2005."

3. Add the following to Clause 8, "**COMPLIANCE WITH LAWS:**"

If stationed in Korea, Seller and Seller's employees, subcontractors, and employees of Seller's subcontractors shall respect and abide by the laws, regulations, and rules of the Government of the Republic of Korea related to the performance of this Purchase Order.

The export to buyer's customer or the Republic of Korea Government (ROKG) of information and hardware supplied to Buyer under this Purchase Order may be subject to control under the International Traffic in Arms Regulations (22 C.F.R. Sections 120-130) and the U.S. Arms Export Control Act (22 U.S.C. 2778) and associated implementing regulations. Seller acknowledges its understanding of these laws and regulations and warrants its compliance therewith. Seller shall indemnify and hold Buyer harmless from all claims, demands, damages, costs, fines, penalties, attorney's fees, and all other expenses arising from the failure of Seller to comply with said laws and regulations.

4. Add the following to Clause 14, "**TERMINATION FOR BUYER'S CONVENIENCE:**"

In the event Buyer terminates this Purchase Order in whole or part for its convenience, Seller shall immediately comply with the following additional instructions:

- (a) Settle all outstanding liabilities and/or claims arising out of such termination of orders, including but not limited to any liability and/or claim from any subcontractors;

- (b) Transfer title and deliver to Buyer the fabricated or unfabricated parts, work in process, completed work, and other material produced or acquired in connection with the work terminated by the notice which, if the task had been completed, would have been furnished to Buyer;
- (c) At Buyer's request, use its best efforts to utilize in other production or to sell as authorized by Buyer, any property of the types referred to in Paragraph b, provided that the proceeds of such disposition shall be applied in reduction of any payment to be made by Buyer to Seller under this Clause; and
- (d) Complete performance of the part of the work not terminated by the notice.

5. **FORCE MAJEURE:** Delete the last two sentences of Clause 16 and substitute the following:

Upon the occurrence of a Force Majeure condition, the Seller shall give written notice to the Buyer within fourteen (14) days of the condition and provide a reasonable explanation of the event.

Seller shall use its best efforts to remove or settle any cause of excusable delay and continue to perform its obligations within a reasonable time after such cause is removed or settled.

If the Force Majeure remains in effect for a period longer than one hundred and twenty (120) calendar days, Buyer may terminate all or part of this Purchase Order which is affected by the Force Majeure. Having done so, both Seller and Buyer shall be relieved of any obligation for the canceled portion thereof.

6. Substitute the following Clause 24, "**GOVERNING LAW**" if this Purchase Order is with a foreign supplier:

This Purchase Order is governed by, and construed and interpreted in accordance with the laws of the state of New York, U.S.A., excluding its choice of law rules. It is expressly agreed to exclude from this Purchase Order the United Nations Convention on Contracts for the International Sale of Goods (1980) and any successor thereto.

7. Add the following to Clause 26, "**PACKING, SHIPMENT, AND SHIPPING INSTRUCTIONS**:"

- (a) Any items which are to be drop shipped to Korea shall be appropriately packed, packaged, and crated by Seller for export shipment in accordance with Seller's standard packing practices assuring seaworthiness to protect the items and to ensure assessment of the lowest applicable transportation charge.

(b) Seller shall notify Buyer of the readiness for shipment of deliverable items. Such notification shall be made by facsimile at least (14) fourteen days prior to the anticipated shipment date, and shall include the pertinent information listed below:

- (1) Purchase Order number and a brief description of the product to be shipped;
- (2) estimated value of the shipment;
- (3) estimated number of crates or boxes;
- (4) estimated weight and volume;
- (5) purchase order number;
- (6) date shipment will be available for pickup; and,

packing sheet which specifies that goods have been inspected and conform to the applicable specification and drawings.

8. Add the following new Clause 34, **“SALES COMMISSIONS AND FEES”**

Seller certifies that the Purchase Order price (including any subcontracts awarded hereunder) does not include any direct or indirect costs of sales commissions or brokerage or contingent fees for Seller’s sales representatives for the solicitation or promotion or otherwise to secure the conclusion of the sale of any of the supplies or services called for by this Purchase Order to Buyer. Should Seller breach this provision, Buyer shall have the right to deduct such costs from any amounts due Seller.

9. Add the following new Clause 35, **“TRANSFER OF INFORMATION”**

Seller and Seller’s subcontractors agree not to sell or transfer, either directly or through an agent, any of the rights, know how, technical data, technical assistance, or any item which is the subject of this purchase order to the Democratic People’s Republic of Korea (North Korea). Any sale or transfer is a material breach of this Purchase Order. Sale or transfer includes a lease or any other assignment of any item which is the subject of this subcontract.

Seller shall not disclose any KTX-2 Program Data or any other information or data obtained from or related to the performance of the Purchase Order to any third party except as required in the performance of this Purchase Order and as required by Buyer and/or the United States Government, without prior written consent of Buyer. Said data or information shall be prominently and conspicuously identified

as being proprietary with an appropriate legend, stamp, or other marking. The receiving party shall protect the information or data obtained from or related to the performance of this Purchase Order and restrict disclosure only to those persons having a need to know for the performance of this Purchase Order. All employees, agents, contractors, and consultants who receive access to said information, shall execute an agreement of confidentiality. Parties shall store such information or data in a locked file cabinet or desk drawer when not in use.

The Seller may only disclose such information or data to its subcontractors if its subcontractors: 1) execute an agreement with the same obligations concerning the protection of the confidentiality of data as provided in this Purchase Order; and 2) the agreement provides that the subcontractors shall use the information or data only in connection with its work in support of this Purchase Order. The obligation to protect this information or data shall survive the termination or completion of this Purchase Order.