



*A SUBSIDIARY OF COMTECH TELECOMMUNICATIONS CORP.*

## **STANDARD PURCHASE ORDER TERMS AND CONDITIONS**

### **1. DATA AND FACILITIES**

Seller acknowledges that it has in its possession all applicable specifications and drawings and all other documents to which reference is made herein, and that such data be adequate to enable the Seller to perform the work called for herein fairly at the price and in accordance with the schedule set forth. All such data shall be deemed to be a part of the purchase order. Seller represents that it now has or can readily procure without assistance from Buyer all facilities, machinery and equipment necessary for the performance of this purchase order.

### **2. PRICES**

Seller warrants that any unit prices charged herein do not exceed the unit prices charged by the Seller to any other customer in substantially similar transactions. Seller will give Buyer the benefit of any price reductions at the time of shipment.

### **3. CASH DISCOUNT**

The date used as the basis for cash discount calculation is the date the acceptable items are received by Buyer or the date an acceptable invoice is received, whichever is later.

### **4. TAXES**

Seller shall separately state on all invoices any taxes imposed by federal, state or local governments applicable to items purchased; provided, however, that no tax shall be included whenever an exemption is available. In the event it shall ever be determined that any tax included in the prices herein was not required to be paid, Seller agrees to make prompt refund thereof to Buyer.

### **5. INSURANCE**

Throughout the term of this Agreement, the Seller shall maintain the following minimum amounts of insurance with an insurance carrier having an A.M. Best rating of A- X or better: (i) workers' compensation, with employer's liability of \$500,000 per accident, \$500,000 per employee, and \$500,000 aggregate, (ii) commercial general liability with \$1,000,000 per occurrence, and \$1,000,000 general aggregate and (iii) automobile liability for all owned, hired, and non-owned automobiles with \$1,000,000 combined single limit. Prior to starting any work under this Agreement but in no case later than ten (10) days after the Effective Date, the Seller shall provide Comtech with a certificate that confirms that the Seller has the above coverages and that states that Comtech shall be notified thirty (30) days prior to any cancellation or non-renewal of any such coverages.

### **6. CHANGES**

Buyer shall have the right by written notice, signed by a member of the Buyer's Purchasing Department, to change the extent of the work covered by the Purchase Order, the drawings, specifications or other description herein, the time, method or place of delivery or the method of shipment or packaging or to suspend work. Upon receipt of any such notice Seller shall proceed promptly to make changes in accordance with the terms of the notice. If any such change causes an increase or decrease in the cost of performance or in the time required for performance, an equitable adjustment shall be negotiated promptly and the Purchase Order modified in writing accordingly. Seller shall deliver to Buyer, as promptly as possible, and in any event within thirty (30) days after receipt of the change notice a statement showing the effect of any such change in the delivery dates and prices, such statement to be supplemented within thirty (30) days from the date thereof by detailed specification of the amount of the price adjustment and supporting cost figures. The issuance of information, advice, approvals, or instructions by Buyer's technical personnel or other representatives shall be deemed expressions of personal opinions only and shall not affect Buyer's and Seller's rights and obligations hereunder unless the same is in writing which is signed by a member of Buyer's Purchasing Department and which expressly states that it constitutes an amendment to the purchase order.

### **7. DELIVERY**

Seller agrees to deliver the items, in quantities, within the time in accordance with specifications (and approved sample, if furnished) and at the prices specified on the face hereof, any failure of which shall entitle Buyer, in addition to any other rights or remedies, to cancel this order and be relieved of all liability for any undelivered

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items or portion thereof. Time shall be of the essence hereunder, but Seller shall perform work and make deliveries hereunder no earlier than and only to the minimum extent consistent with delivery schedules and other requirements.

### 8. EXCUSABLE DELAYS

Neither party shall be liable for damages for delay in delivery if such delay is caused by revolutions or other disorders, wars, acts of enemies, strikes, fires, floods or without limiting the foregoing, by any other cause not within the control of the party whose performance is interfered with, and which by the exercise of reasonable diligence, such party is unable to prevent, whether of the class of causes herein before enumerated or not. If the delay is caused by the delay of a subcontractor of Seller, and if such delay arises out of causes beyond the control of both Seller and the subcontractor, and without the fault of negligence of either of them, Seller shall not be liable to Buyer in damages unless the materials or services to be furnished by the subcontractor were obtainable from other sources in sufficient time to permit the Seller to meet the required delivery schedule. Seller will notify Buyer in writing within ten (10) days after the beginning of any such cause.

### 9. PACKING AND SHIPPING

Deliveries shall be made as specified without separate charge for boxing, crating, carting or storage unless otherwise specified, and items shall be suitably packed to secure lowest transportation costs, and in accordance with the requirements of common carriers, and in such manner as to assure against damage from weather or transportation. Items shall be described on bills of lading in accordance with current uniform Freight Classification. Buyer's order numbers must be plainly marked on all invoices, packages, bills of lading and shipping orders. Buyer's count or weight shall be final and conclusive on shipments not accompanied by packing lists. No charge will be allowed for packing, boxing or cartage unless fully and separately itemized on the face hereof. Damage to any material not packed to insure proper protection will be charged to Seller.

### 10. WARRANTY

Seller warrants that at the time of delivery thereof all items delivered hereunder will be in conformity with the specifications and other requirements hereof (and approved sample, if furnished), and free from defects, including latent defects, which warranty shall survive inspection, delivery, and payment, for a period of not less than twelve (12) months from final acceptance by Buyer. If a sample item has been or is to be submitted by Seller to Buyer, Seller shall obtain Buyer's written approval thereof before proceeding hereunder, and no modification thereof shall be binding upon Buyer unless in writing and signed by Buyer. Items not in conformity herewith may, at Buyer's option, be returned to Seller for immediate repair, replacement, credit, or refund as Buyer may direct, or Buyer may retain such defective items at a proper reduction in Purchase Order price. Buyer shall be reimbursed for all its expenses of handling, inspection, and return of defective items. The foregoing warranty is in addition to any other warranty expressed by the Seller or implied by operation of law or otherwise.

### 11. INSPECTIONS

The items may be inspected by Buyer at all times and places and at any stage of production, and if at the premises of Seller, Seller without additional charge shall provide all reasonable facilities and assistance required for safe and convenient test and inspection. Buyer may base acceptance or rejection of any or all items on inspection by sampling. If, upon inspection, any of the items shall be found to be defective in design, material or workmanship, or otherwise not in conformity with the requirements of this order, Buyer may, in addition to its other rights, (a) require prompt correction or replacement thereof at Seller's expense, including transportation charges, or (b) rework, or have reworked any such items at Seller's expense for the purpose of conforming the items to contractual requirements, or (c) reject any such items and require the immediate removal (Buyer to be repaid or credited the full invoice price transportation charges), or (d) cancel the Purchase Order in whole or in part under Clause 21 herein. From the time of notice of rejection of defective items upon inspection, or, for a breach of warranty, risk of loss thereof shall be upon Seller until receipt of conforming items by the Buyer.

### 12. REPRODUCTION AND DATA RESTRICTIONS

Seller agrees not to make any use of any of the drawings, reports, specifications or other data furnished to it by Buyer except for the performance of this Purchase Order, and Seller further agrees not to disclose the same to others except to facilitate the performance of this Purchase Order under similar restrictions against use and disclosure provided. Rights to all ideas and features of novelty or invention described in the data furnished, to the extent originating with Buyer, and all design, manufacturing, reproduction, use and sales rights regarding

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the same shall be deemed exclusively the property of and reserved to Buyer, and all design, manufacturing, reproduction, use and sales rights regarding the same shall be deemed exclusively the property of and reserved to Buyer. Upon completion, cancellation, or termination of this Purchase Order, Seller shall immediately return to Buyer all such data, drawings, specifications and other information received by Seller, including all copies made by Seller upon request.

### 13. TOOLS AND MATERIALS

Title to and the right of immediate possession of tooling, equipment or materials furnished or paid for by Buyer directly or for use hereunder shall be and remain in Buyer. Buyer does not guarantee or warrant the accuracy of any tooling furnished by it. Seller shall (a) be responsible for all loss or damage to such tooling, equipment or materials while in its possession and insure its risk in this respect with adequate fire and extended coverage insurance, (b) clearly mark the same as belonging to Buyer, keep it segregated in Seller's plant and treat it confidentially, (c) keep the same in good operating condition, and (d) use the same exclusively for the performance of work for Buyer and not for production of larger quantities than specified on in advance of normal production schedules, except with Buyer's written consent. All taxes, assessments, and similar charges levied with respect to or upon any such items owned by Buyer while in Seller's possession or control, and for which no exemption is available, shall be borne by Seller. Seller shall maintain adequate property control records for such items. When such items are no longer required hereunder, Seller shall promptly furnish Buyer with a list thereof and return such items to Buyer on demand and in as good a condition as received, less ordinary wear and tear.

### 14. PATENT, TRADEMARK AND COPYRIGHT INDEMNITY

Seller agrees to indemnify and save harmless Buyer and its customer against all losses, liabilities, damages, and expenses which they may sustain due to infringements of any patent, trademark or copyright resulting from the purchase, use or sale of the items to be delivered hereunder, or arising out of, or in connection with, the defense of any such claim of infringement. If the use or sale of any item is enjoined as a result of any suit, Seller, at no expense to Buyer, shall obtain for Buyer and its customers the right to use and sell said item, or shall substitute an equivalent item acceptable to the Buyer and shall extend the indemnity set forth in this Section to the subject item.

### 15. INDEMNIFICATION

To the extent that Seller's agents, employees or subcontractors enter upon premises occupied by or under the control of Buyer, or any of its customers or suppliers, in the course of the performance of this purchase order, Seller shall take all necessary precautions to prevent the occurrence of any injury (including death) to any person, or any damage to any property, arising out of any acts or omissions of such agents, employees, or subcontractors. Seller shall maintain such comprehensive Liability, Property Damage and Bodily Injury, Workman's Compensation and Employee's Liability insurance as will protect Buyer from any said risks and from any claims under applicable laws and statutes. Seller shall indemnify and hold harmless Buyer, its officers, employees, agents and invitees from and against all claims, judgments, liabilities, losses, injuries, and damages of every nature (including costs and expenses incident thereto) caused by the acts or omissions to act by the Seller, its officers, employees, agents, invitees or vendors, directly or indirectly arising out of the performance of this purchase order or any act or failure to act by subcontractors or suppliers of the Seller.

### 16. GRATUITIES

Seller warrants that neither it nor any of its employees, agents, or representatives has offered or given any gratuities to any of Buyer's employees, agents or representatives. If it is found that Seller or any of its employees, agents or representatives has offered or given any gratuities to Buyer's employees, agents or representatives with, in Buyer's opinion, a view toward securing purchase orders or contracts from Buyer, or securing favorable treatment with respect thereto, Buyer may, by written notice to Seller, cancel this Purchase Order under Clause 21 hereof, or deduct from the price the value of any such gratuities.

### 17. ASSIGNMENT

Seller will not assign or sublet the work to be done hereunder without the written consent of Buyer, but this provision shall not restrict Seller in the procurement of component parts or materials. If Seller is not a manufacturer, Seller agrees to require compliance with all the provisions of this order by its manufacturer the same as through such manufacturer was the Seller hereunder, and if this order is terminated under Clause 20 or 21, Buyer's liability to Seller shall in no event exceed the amount for which Seller would be liable to its manufacturer if such liability was determined on the basis of Clause 20 or 21.

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### 18. ADVERTISING

Seller shall not, without first obtaining the written consent of buyer, in any manner advertise or publish in any form the fact that Seller has contracted to furnish Buyer the items ordered hereunder.

### 19. APPLICABLE LAW

Seller shall in the performance of the contract comply with all applicable laws, statutes, regulations, ordinances, and other requirements, if any, of the Government or of any state or local governmental authority which may now or hereafter govern performance hereunder. This Purchase Order shall be construed in accordance with the laws of Florida. Any and all disputes shall be adjudicated in Orlando, Florida. Pending settlement of any dispute, Seller shall continue to deliver in accordance with Buyer's decision with respect to Purchase Order requirements.

### 20. DISPUTES

Any and all disputes and claims that arise as a result of this purchase order shall be settled by the parties first through negotiation, then through mediation and if necessary finally by binding arbitration in accordance with the rules of the American Arbitration Association. The ruling of the arbitrator(s) will be final and binding on both parties. Seller hereby agrees that any and all such disputes resolution will take place in Orlando, Florida. Seller hereby submits to and jurisdiction and venue shall reside in Orlando, Florida.

### 21. TERMINATION FOR CONVENIENCE

- A. Buyer may terminate, for convenience, without reason or cause, work under this order, in whole or in part, at any time by written, facsimile, email or telegraphic notice to Seller. Upon any such termination Seller shall, to the extent and at the times specified by Buyer, stop all work on this order, place no further orders hereunder, terminate work under orders outstanding hereunder, assign to Buyer all Seller's interest under terminated subcontracts and orders, settle all claims thereunder after obtaining buyer's approval, protect all property in which Buyer has or may acquire an interest, and transfer title and make delivery to Buyer of all articles, materials, work in process or other things held or acquired by Seller in connection with the terminated portion of this order. Seller shall proceed promptly to comply with Buyer's directions respecting each of the foregoing without awaiting settlement of payment of its termination claim.
- B. Within thirty (30) days from such notice of termination Seller shall submit to Buyer its written claim for termination charges in the form and with the certifications prescribed by Buyer, it being understood and agreed that no profit shall be allowed if it appears Seller would have sustained a loss on the order. Failure to submit such claim within such time shall constitute a waiver of all claims and shall release Buyer of all liability arising out of such termination.
- C. The parties may agree upon the amount to be paid. Seller for such items delivered prior to termination Buyer agrees to pay the following amounts.
  - (1) The purchase order price for all items completed in accordance with this order and not previously paid for.
  - (2) The actual costs incurred by Seller that are properly allocable or apportionable under recognized commercial accounting practices to the terminated portion of this order and a sum constituting a fair and reasonable profit on such costs. If it appears Seller would have sustained a loss on the order no profit shall be allowed and an adjustment shall be made reducing the amount of the settlement to reflect the indicated rate of loss.
  - (3) The reasonable costs of the Seller in making settlement hereunder and in protecting property in which Buyer has acquired an interest.
- D. Payments to Seller shall not under any circumstances exceed the aggregate price specified in this order less payments otherwise made or to be made. There shall be excluded from any amounts payable to Seller under this Section 21 all amounts payable in respect to property lost, damaged, stolen or destroyed prior to delivery to Buyer.
- E. The foregoing paragraphs A to D, inclusive, shall be applicable only to a termination for Buyer's convenience and shall not affect or impair any right of Buyer to terminate this order for Seller's default in the performance hereof.

### 22. TERMINATION FOR DEFAULT

Buyer may, by written 30-day notice to Seller with an opportunity to cure, cancel for default this contract in whole or in part, and without obligation, whereby:

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- (1) Seller fails to deliver the items or to perform the services strictly within the time specified herein, or if no time is specified within a reasonable time;
- (2) The items delivered do not conform to contractual requirements or if Seller fails to perform any of the other provisions of the purchase order in accordance with its terms;
- (3) The Seller becomes insolvent or commits an act of bankruptcy. If this purchase order is canceled for default, Buyer, in addition to all other rights afforded by law for Seller's breach of contract, including without limitation recovery of consequential damages, shall have the right to charge Seller the amount by which costs of fabricating or procuring canceled items from another source exceed the prices specified herein, and Buyer may offset any such charge against any amounts which may become payable to Seller under the Purchase Order or otherwise. Upon such cancellation Seller will deliver to Buyer any of the items, parts or materials, for which Buyer shall make written request at or after cancellation and Buyer shall pay Seller the fair value (but not in excess of the Purchase Order price) of any such property so requested and delivered; or
- (4) Buyer reasonably believes that the items or services will not be delivered on time or in accordance with these terms and conditions.

### 23. DEFECTIVE MATERIAL

Buyer, notwithstanding any prior acceptance, at its option, may reject, or require prompt correction (in place or elsewhere), of any supplies or goods which are defective in material or workmanship or otherwise fail to meet the requirements of this purchase order. All supplies or goods furnished under this purchase order shall be subject to inspection at destination notwithstanding any previous source inspection and Seller shall be given notice of any defects, other than latent defects, within a reasonable time after receipt of the supplies or goods and all records (such as affidavits, test reports, drawings, etc) required to be furnished therewith.

Buyer may, in addition to any rights it may have by law, prepare for shipment and ship the supplies to Seller, require Seller to remove them, direct their correction in place or, with authorization by Seller, correct them, and the expense of any such action, including any transportation, if any, shall be borne by Seller.

If Seller fails promptly to remove such supplies or goods and to proceed promptly to replace or correct them, Buyer may replace or correct such supplies or goods at the expense of Seller, including any excess cost. Seller shall not again tender rejected or corrected supplies or goods unless Seller discloses the former tender and rejection or requirement of correction.

### 24. GENERAL

This purchase order and the attachments and documents incorporated herein constitute the complete and exclusive statement of the terms of the agreement between Buyer and Seller and it supersedes all prior representations, understandings, communications or other terms & conditions offered by the Seller. The invalidity in whole or in part of any provision of this order shall not affect the validity of its other provisions. Buyer's failure to insist, in any one or more instances, upon the performance of any term or terms of this purchase order shall not be construed as a waiver or relinquishment or Buyer's right to such performance of the future performance of such a term or terms, and Seller's obligation in respect thereto shall continue to full force and effect. Seller shall comply with provisions of the Fair Labor Standards Act in the manufacture of items hereunder and Seller shall accompany all invoices with appropriate certificate of compliance.