

## **1. General**

These terms and conditions apply to the purchase orders (“Orders”) issued between Comtech PST Corp. (CPST) and the supplier (“Seller”) whose name appears on the face of this order. By acceptance of this order and/or performance hereunder, Seller agrees to comply fully with the terms and conditions set forth herein. Acceptance of this Order is expressly limited to the terms and conditions set forth herein; any other terms used in Seller acknowledging this Order, in the acceptance of this Order or otherwise used by Seller shall not be of any force or effect. Acceptance by Buyer of the goods, services or work delivered under this Order shall not constitute acceptance of the Seller’s terms and conditions. Seller may not ship under reservation. The terms and conditions hereof are the final, complete, and exclusive statement of the agreement between the parties and no change in, modification of, or revision to this Order shall be valid unless agreed to in writing and signed by Buyer.

## **2. Contract Direction/Changes**

- a) Only the CPST Procurement Representative has authority to make changes in, to amend, or to modify this Contract on behalf of CPST. SELLER shall not implement any changes or modifications to this contract (including contract specifications and quality control provisions) without first having received written authorization to do so from CPST’s Procurement Representative.
- b) CPST program, operations, engineering, technical, or other personnel may from time to time render assistance, give technical advice, discuss, or exchange information with SELLER’s personnel concerning the Work hereunder. Such actions shall not be deemed to be a change under this clause of this Contract and shall not be the basis for equitable adjustment. If SELLER believes the foregoing creates an actual or constructive change, SELLER shall notify the CPST Procurement Representative and shall not accept such direction or perform said action unless authorized by CPST Procurement Representative.
- c) Except as otherwise provided herein, all notices to be furnished by the SELLER shall be sent to the CPST Procurement Representative.
- d) CPST shall not be liable for any of seller’s increased costs of performance that result from seller’s implementation of changes or modifications that CPST’s procurement representative did not first approve in writing.

## **3. Information**

- a) Information provided by CPST to SELLER remains the property of CPST. SELLER shall comply with all proprietary information markings and restrictive legends applied by CPST to anything provided hereunder to SELLER. SELLER shall not use any CPST provided information for any purpose except to perform this Contract and shall not disclose such information to third parties without the prior written consent of CPST.
- b) If the parties have entered into a Proprietary Information Agreement or NDA pertaining to the Work of this Contract, the terms and conditions of such Agreement(s) shall govern the protection and exchange of proprietary information between the Parties.

c) As CPST and other Defense Prime Contractors have enhanced their cyber security defenses, attackers have expanded their targets to include the supply base, searching for weaknesses that they can exploit. SELLER will employ appropriate tools and practices to protect CPST's provided data and advise CPST within 48 hours if a cyber-attack has been detected which may have compromised CPST's data. Where DFARS 252.204-7012 Safeguarding Covered Defense Information and Cyber Incident Reporting applies, SELLER shall additionally rapidly report cyber incidents directly to DoD at <http://dibnet.dod.mil> and CPST; this includes providing the incident report number, automatically assigned by DoD, to CPST as soon as practicable.

#### **4. Severability**

Each paragraph and provision of this Contract is severable, and if one or more paragraphs or provisions are declared invalid, the remaining provisions of this Contract will remain in full force and effect.

#### **5. Quantities and Prices**

CPST's count shall be accepted as conclusive on all shipments not accompanied by a packing slip. CPST reserves the right to reject and return any material in excess of the quantities specified herein.

#### **6. Warranties**

Seller expressly warrants that all articles, materials, parts, and work covered by this order will conform to the specifications, drawings, samples or other descriptions furnished or adopted by CPST, shall be merchantable, of good workmanship and material and free from defects. These warranties are in addition to any other warranties specified herein or implied by law, and shall survive acceptance and payment. In case of ambiguity in specifications, drawings, or other requirements of this order, Seller, before proceeding, must consult CPST, whose written interpretation shall be final.

#### **7. Inspection and Acceptance**

CPST and its Customer may inspect all Work at reasonable times and places, including, when practicable, during manufacture and before shipment. CPST shall perform such inspections in a manner that will not unduly delay the Work. SELLER shall provide all information, facilities, and assistance necessary for safe and convenient inspection without additional charge.

All articles, parts, materials and workmanship entering into the performance of this order are subject to 100% inspection, testing and final acceptance by CPST after delivery to CPST notwithstanding if prior payment has occurred. No preliminary inspection by or on behalf of CPST shall relieve Seller of its own obligation to make full and adequate test and inspection. Seller agrees to furnish all reasonable facilities and assistance for tests and inspections to be made on its premises by or on behalf of CPST. Any article, part, material, or workmanship not accepted may be held by CPST, after notice of rejection to Seller, at Seller's risk and expense, or at the option of CPST, and in addition to CPST's other rights, Seller shall replace the same or reimburse CPST for its expenses of rework, inspection, transportation, and repackaging. Seller shall pay the cost of all CPST's articles, parts or material which may be damaged by any improper workmanship on the part of Seller.

#### **8. Parts Obsolescence**

"Obsolete Electronic Part" means an electronic part that is no longer in production by the original manufacturer or an aftermarket manufacturer that has been provided express written authorization from the current design activity or original manufacturer.

SUPPLIER shall take appropriate actions to mitigate Electronic Parts obsolescence in order to maximize the availability and use of authentic, originally designed, and qualified Electronic Parts throughout the product's lifecycle.

CPST may desire to place additional orders for items purchased hereunder. SELLER shall provide CPST with a "Last Time Buy Notice" at least twelve (12) months prior to any action to discontinue any item purchased under this Contract.

SUPPLIER shall notify CPST if parts they have supplied contain materials at risk of future obsolescence or supply risk due to current or proposed regulations and/or standards, either domestic or foreign.

## **9. Quality Control System**

a) SELLER agrees to provide and maintain a quality control system to an industry recognized Quality Standard and to provide access to SELLER's facilities at all reasonable times by CPST, authorized Customer representatives, and Regulatory Authorities. SELLER agrees to include, and to require its subcontractors to include, the substance of this provision, including this sentence, in each of its subcontracts under this Contract. Further, SELLER shall be in compliance with any other specific quality requirements identified in this Contract.

b) Records of all quality control inspection work by SELLER shall be kept complete and available to CPST and its Customers.

## **10. Delivery**

Seller must make deliveries in accordance with the delivery schedule specified herein. TIME IS OF THE ESSENCE OF THIS ORDER. If for any reason Seller cannot or will not make delivery by the time specified, Seller shall immediately notify CPST to that effect and the reasons thereof. CPST reserves the right to reject or return at Seller's risk and expense all articles or materials shipped which are in excess of or in advance of the time specified for delivery or to defer payment for advance deliveries until the specified delivery dates.

## **11. Patents**

By acceptance of this order, Seller agrees to indemnify CPST against all claims, judgments, decrees cost and expenses and attorney's fees incidental to any infringement or to any claimed infringement of any patent arising out of its use or sale by CPST or its customers of articles or materials covered by this order, of the use thereof by CPST in the manufacture and sale of products, unless the article or material is solely of CPST design. Seller agrees that it will, upon request of CPST, and at Seller's own expense, defend or assist in the defense of any action which may be brought against CPST or its customer for such infringement or claimed in infringement. CPST agrees to notify Seller promptly upon receipt of notice or information of such a suit.

## **12. Changes**

CPST shall have the right, by giving written notice to Seller to make changes in the drawings, specifications, design, quantities and delivery schedule of the articles ordered. Upon receipt of any such notice, Seller shall proceed promptly to make such changes in accordance with the terms of such notice. Seller shall deliver to CPST as promptly as possible but in no event more than thirty (30) days from notice a statement showing the effect of any such change on the delivery date and prices, and an equitable adjustment shall be negotiated between the parties claim representative.

### **13. Termination**

a) Termination for Convenience

CPST may terminate this contract for its convenience in whole or, from time to time, in part if CPST's Procurement Representative determines that a termination is in CPST's best interest. CPST's Procurement Representative shall effect such termination by delivering to SELLER a notice of termination specifying the extent of termination and the effective date. Any such termination shall be in accordance with the procedure set forth in the clause entitled *Termination for the Convenience of the Government* set forth in FAR 52.249-2, (Apr 2012) which clause is incorporated herein by this reference. References in such clauses to Buyer and Seller shall mean CPST and Seller respectively. In the event that CPST terminates this Contract pursuant to Government direction, SELLER's recovery of termination costs shall be limited to the extent that CPST is able to recover such costs from the Government.

b) Termination for Default

CPST may, by written notice, terminate the whole or any part of this contract in any of the following circumstances:

- a. If SELLER fails to deliver the goods or to perform the services required by this contract within the time specified herein, or any extension thereof granted by CPST in writing;
- b. If SELLER fails to perform any material provision of this contract or so fails to make progress as to endanger performance of this contract, and if in either of these two circumstances, SELLER does not cure such failure within a period of ten (10) days after receipt of written notice from CPST specifying such failure;
- c. If SELLER fails to deliver goods or to perform services required or fails to perform any material provision of other contracts issued by CPST and such default causes CPST to terminate those other contracts;
- d. SELLER files or declares bankruptcy; or
- e. In the event of suspension of SELLER'S business, insolvency, liquidation proceedings by or against SELLER, appointment of a trustee or receiver for SELLER's property or business, or any assignment, reorganization or arrangement by SELLER for the benefit of creditors.

### **14. Indemnification**

SELLER shall indemnify, hold harmless and, at CPSTs' election, defend CPST, its directors, officers, employees, and agents from and against all losses, costs, claims, penalties, causes of action, damages, liabilities, fees, and expenses, including, but not limited to, reasonable attorneys' fees, all expenses of litigation and/or settlement, and court costs, arising from or related to any act or omission of seller, its directors, officers, employees, agents, suppliers, or subcontractors at any tier, related to or as part of the execution of work to be performed or otherwise in the performance of any of its obligations under this contract.

### **15. Intellectual Property**

- a) SELLER warrants that the Work performed and delivered under this Contract will not infringe or otherwise violate the intellectual property rights of any third party in the United States or any foreign country and is free and clear of all liens, licenses, claims, and encumbrances.
- b) To satisfy its contractual obligations to its Customer, SELLER grants and agrees that CPST shall have a nonexclusive, worldwide, sub-licensable, irrevocable, paid-up, royalty-free license and right, to

enable CPST, to make, have made, sell, offer for sale, use, execute, reproduce, display, perform, publish, distribute, copy, prepare derivatives or compilations, and authorize others to do any, some or all of the foregoing, with respect to any and all, inventions, discoveries, improvements, technology, designs, works of authorship, mask works, patents, copyrights, technical information, data, databases, Software, conceived, developed, generated or delivered in performance of this Contract. SELLER shall provide all assistance reasonably required and execute all documents necessary to perfect the rights granted to CPST herein. To enable SELLER to comply with the foregoing, SELLER shall ensure that each of its personnel, workers, representatives, agents and subcontractors providing services under this Contract, assign sufficient rights they have in all inventions, works for hire, project results, and the like, to SELLER.

c) SELLER agrees that any technical data or computer software furnished to CPST as a required deliverable under this Contract shall be free from confidential, proprietary or restrictive markings (“Nonconforming Markings”) that are either (i) not expressly permitted by applicable FAR, DFARS or NASA Far supplement clauses incorporated herein or (ii) are violative in rights in ownership of any technical data or computer software owned by CPST. On behalf of itself or its customer, CPST will notify SELLER, in writing, of any Nonconforming Markings and SELLER will remove such Nonconforming Markings and resubmit within sixty (60) days after such notification. If SELLER fails to remove or correct such Nonconforming Markings within sixty (60) days after such notification, CPST may ignore, or at SELLER’S expense remove or modify, as appropriate, any such Nonconforming Markings as may be on such deliverables and SELLER shall not have any recourse nor shall CPST incur any liability for any such removal or modification.

## **16. Proprietary Rights**

If articles hereunder are to be manufactured or supplied pursuant to CPST’s drawings or to specifications furnished by CPST hereunder and are not based upon Seller’s design, Seller hereby grants to CPST and assigns a nonexclusive, fully paid-up, and irrevocable license to make, procure, use, and sell any improvement in such article made or incorporated by Seller in its performance hereunder.

## **17. CPST’s Property**

Whenever Seller has in its possession any of CPST’s property, Seller shall be deemed an insurer thereof and shall be responsible for its safe return. Equipment, patterns, dies, tooling, materials, specifications, and drawings supplied or paid for by CPST in connection with this order shall remain its property, shall not be used except for work performed for CPST, and upon request by CPST, shall be returned to it F.O.B., its shipping point specified on the face thereof, together with completed articles and those in process if so specified by CPST.

## **18. Nondisclosure of Trade Secrets**

Seller agrees that the nature of said materials, specifications, and drawings, and the purposes for which the same are furnished by CPST to Seller shall be kept in strict confidence and shall be revealed only to Seller’s employees to the extent necessary.

## **19. Damage and Risk of Loss**

Seller assumes all responsibility for risk of loss or other damages to all articles and materials ordered hereunder or in its custody pursuant hereto, until delivered to CPST, F.O.B., its shipping point specified on

the face hereof. In no event shall CPST be liable for anticipated profits or for damages on account of negligence or for incidental or consequential damages.

## **20. Insurance**

In the event that SELLER, its employees, agents, or subcontractors enter the site(s) of CPST or its Customer for any reason in connection with this Contract, then SELLER and its subcontractors shall procure and maintain worker's compensation (with a waiver of subrogation in favor of CPST), automobile liability, comprehensive general liability (bodily injury and property damage) insurance in amounts reasonably acceptable to CPST, and such other insurance as CPST may reasonably require. With respect to any injury, including, but not limited to, death, to employees of SELLER or SELLER's agents, subcontractors or suppliers, SELLER's obligation to indemnify and defend in accordance with this paragraph shall apply regardless of cause. SELLER shall provide to the CPST Procurement Representative thirty (30) days advance written notice prior to the effective date of any cancellation or change in the term or coverage of any of SELLER's required insurance, provided however such notice shall not relieve SELLER of its obligations to procure and maintain the required insurance. If requested, SELLER shall send a "Certificate of Insurance" showing SELLER's compliance with these requirements. SELLER shall name CPST as an additional insured for the duration of this Contract. Property and Contractor's Equipment Insurance maintained pursuant to this paragraph shall be considered primary as respects the interest of CPST and is not contributory with any insurance that CPST may carry. "Subcontractor" as used in this subparagraph shall include SELLER's subcontractors at any tier.

## **21. Assignment**

No right or obligation under this order (including the right to receive money due and to become due hereunder) shall be assigned by Seller without the prior written consent of CPST, and any purported assignment without such consent shall be void.

## **22. Equal Employment Opportunity**

The Equal Employment Opportunity Clause in Section 202 and Executive Order 12466, as amended relative to equal employment opportunity and the implementing rules and regulations of the Office of Federal Contracts Compliance are incorporated herein by specific reference.

## **23. Payment**

Invoices shall be submitted with the following information. Purchase Order number, item number description of articles, sizes, quantities, unit price and extended totals. Any adjustments in Seller's invoices due to shortages, late delivery, rejections, or either failure to comply with the requirements of this order may be made by CPST before payment. Payment shall not constitute final acceptance.

## **24. Disputes**

Except as otherwise specifically provided in this contract, all disputes concerning questions of fact under this order which are not promptly disposed of by mutual agreement may be decided by recourse to any available or equitable remedy. Pending decision of any dispute hereunder, Seller shall diligently proceed with performance of this contract as directed by CPST.

## **25. Miscellaneous**

No delay or failure on the part of CPST in exercising any right hereunder shall constitute a waiver of any rights hereunder. Either party may cancel this order without obligation in the event that the other becomes bankrupt or insolvent or makes an assignment for the benefit of creditor.

This order shall supersede all prior understandings, transactions, and communications, whether oral or written, pertaining to the subject matter thereof.

This order and the performance by the parties hereunder shall be construed and governed by the law of the State of New York.

## **26. Anti-Corruption Obligations**

The U.S. Foreign Corrupt Practices Act and similar anti-corruption and anti-bribery laws in other countries generally prohibit making, promising, or offering payments or gifts to government officials to obtain or retain business or to secure any improper business advantage. Buyer will not offer or make any payments or provide anything of value to a government official to influence an official action that awards business, retains business or secures an improper business advantage in connection with the products. In the event of an alleged breach of the anti-corruption obligations, the Buyer shall cooperate in good faith with Comtech PST to determine whether an alleged breach occurred. In such case, the buyer shall furnish to Comtech PST all information requested to establish compliance with the Buyer's anti-corruption obligations.

## **27. Export Control Regulations**

Seller shall comply with all U.S. Government export control regulations, 22 CFR Parts 120-130, International Traffic in Arms Regulations (ITAR), and 15 CFR Parts 730-774, Export Administration Regulations (EAR), as applicable, before (a) disclosing to foreign nationals CPST's technical data, including drawings and specifications, or (b) providing foreign nationals with access to CPST's supplied equipment, or technology, or (c) assigning any foreign national to perform work under this Purchase Order/Subcontract. Seller also shall notify CPST in writing prior to subcontracting or sourcing all or any part of the work under this Order to any non-US entity or national. Failure to comply by Seller may be a violation of U.S. Government export control regulations and may be deemed a material failure to perform under this Purchase Order and shall subject Seller to termination in accordance with the Article titled Default.

The Seller is hereby notified that pursuant to 22 CFR 122.1(a) (International Traffic in Arms Regulations – ITAR), any person who engages in the United States in the business of manufacturing defense articles is required to register with the U.S. Department of State, Directorate of Defense Trade Controls.

## **28. Foreign Nationals**

Seller is hereby notified that technical specifications, drawings, or information (technical data) provided by CPST may be subject to U.S. Government export control regulations (ITAR) (22 CFR 120-130) or (EAR) (15 CFR 730-774). Applicable export control regulations may restrict access to CPST's technical data and equipment to U.S. citizens and permanent residents only. It is Seller's responsibility to obtain from CPST the appropriate export classification of technical data or other items provided by CPST pursuant to this order if Seller will engage in any exports of such technical data or items. Supplier is prohibited from providing any transmission or access (e.g., visual or electronic), of any technical data, including drawings and specifications that are designated by the company as subject to the ITAR under this Purchase Order/Subcontract, to any Foreign Person\*. The prohibition regarding Foreign Person access includes the Supplier's foreign employees, subcontractors, or visitors.

*\*Foreign Person means any person who is not a U.S. citizen or Green Card Holder as defined by 8 U.S.C. 1101(a)(20).*

### **29. Eligibility to Accept U.S. Contract**

Supplier certifies by acceptance of the purchase order, that they are not included on any export debarment list. Seller agrees to provide immediate written notice to the Buyer if, during the term of the purchase order, the Supplier or any of its Principals are debarred, suspended, proposed for debarment, declared ineligible or excluded from participation in any U.S. contract or export transaction. Supplier agrees that debarment, suspension, proposed debarment or suspension, ineligibility, or exclusion of Supplier, or any of its Principals or subcontractors, may constitute cause for immediate termination of the purchase order/contract unless corrective action is taken to the satisfaction of the Purchaser.

### **30. Export-Controlled Data**

Supplier is hereby notified that any technical specifications, drawings, or information (technical data) provided by the Buyer that are marked or labeled as containing U.S.-origin technical data controlled under the International Traffic in Arms Regulations (“ITAR”) or the Export Administration Regulations (“EAR”) are subject to the U.S. Government export control laws and regulations. Supplier is obligated to comply with the ITAR and/or EAR shall indemnify Purchaser for all liabilities, penalties, losses, damages, costs or expenses that may be imposed on or incurred by the Buyer in connection with any violations of such laws and regulations by Supplier.

### **31. Employment Eligibility Verification**

Seller is hereby notified that Employment Eligibility Verification as provided for in FAR 52.222-54 is required for orders that exceed three thousand dollars (\$3,000.00), include work performed in the U.S., and are for commercial or non-commercial products and services (excepting COTS items and related services).

### **32. Conflict Minerals Verification**

Seller is hereby notified that in accordance with Section 1502 of the Dodd-Frank Wall Street and Consumer Protection Act certification shall be provided to the Buyer that product(s) / component(s) supplied are “DRC Conflict Free<sup>1</sup>”. Seller shall not knowingly provide any goods containing Conflict Minerals from the Conflict Region.

Seller shall adopt (or already have in place) policies and processes to (i) conduct a reasonable inquiry into the country of origin of any Conflict Minerals incorporated into any goods provided under the Order, (ii) conduct due diligence of its supply chain, as necessary, to determine if any Conflict Minerals from the Conflict Region are incorporated into any goods provided under the Order, and (iii) promptly notify Buyer if any Conflict Minerals from the Conflict Region are incorporated into any goods provided under the Order. The Seller shall fully cooperate (at no cost to Buyer) with any inquiries conducted by Buyer or its customers to ensure compliance with this Article including, but not limited to, completing any applicable disclosure forms or surveys.

<sup>1</sup> *Conflict Minerals are those minerals, including cassiterite, columbite-tantalite (coltan), gold, wolframite and their derivatives (limited to tantalum, tin, and tungsten), that originated in the Democratic Republic of the Congo (DRC) or an adjoining country and financed and/or benefited armed groups.*



### 33. Counterfeit Electronic Parts

Counterfeit Parts: Prevention and Notification (Note: If DFARS 252.246-7007 is applicable to this procurement, it shall take precedence for any differing terms and conditions for Electronic Parts within this specific provision with the exception of subsections: a) i., b), d), and f))

a) Definitions for purposes of this Contract:

- i. "Counterfeit Part" is one that is (1) an unauthorized copy or substitute that has been identified, marked, and/or altered by a source other than the item's legally authorized source and has been misrepresented to be an authorized item of the legally authorized source and/or (2) previously used parts provided as "new." A part is a "Suspect Counterfeit Electronic Part" if visual inspection, testing, or other information provides reason to believe that the part may be a counterfeit part.
- ii. "Counterfeit Electronic Part" means an unlawful or unauthorized reproduction, substitution, or alteration that has been knowingly mismarked, misidentified, or otherwise misrepresented to be an authentic, unmodified electronic part from the original manufacturer, or a source with the express written authority of the original manufacturer or current design activity, including an authorized aftermarket manufacturer. Unlawful or unauthorized substitution includes used electronic parts represented as new, or the false identification of grade, serial number, lot number, date code, or performance characteristics.
- iii. As used herein, "authentic" shall mean (A) from the legitimate source claimed or implied by the marking and design of the product offered; and (B) manufactured by, or at the behest and to the standards of, the manufacturer that has lawfully applied its name and trademark for that model/version of the material.
- iv. "Independent Distributors" are persons and businesses that are not part of an OCM's authorized distribution chain. These also may be referred to as non-franchised distributors, unauthorized distributors or brokers.
- v. "Electronic Part" means an integrated circuit, a discrete electronic component (including, but not limited to, a transistor, capacitor, resistor, or diode), or a circuit assembly (section 818(f)(2) of Pub. L. 112-81). The term "Electronic Part" includes any embedded software or firmware.
- vi. "Original Component Manufacturer" (OCM) is an organization that designs and/or engineers a part and is pursuing or has obtained the intellectual property rights to that part.
- vii. "Original Equipment Manufacturer" (OEM) is an organization that designs, manufactures and/or engineers an end product comprised of various parts and is pursuing or has obtained the intellectual property rights to that end product.
- viii. "Suspect Counterfeit Electronic Part" means an Electronic Part for which credible evidence (including but not limited to, visual inspection or testing) provides reasonable doubt that the Electronic Part is authentic.

b) SELLER represents and warrants that only new and authentic materials are used in products required to be delivered to CPST and that the Work delivered contains no Counterfeit Parts. No other material, part, or component other than a new and authentic part shall be used unless approved in advance in writing by the CPST Procurement Representative. To further mitigate the possibility of

the inadvertent use of Counterfeit Parts, SELLER shall only purchase authentic parts/components directly from the OEMs/OCMs or through the OEMs/OCMs authorized distribution chain. SELLER must make available to CPST, at CPST's request, OEM/OCM documentation that authenticates traceability of the components to that applicable OEM/OCM. Purchase of parts/components from Independent Distributors is not authorized unless first approved in writing by CPST Procurement Representative. SELLER must present complete and compelling support for its request and include in its request all actions needed to ensure that the parts/components thus procured are legitimate parts. CPST may additionally need to get its customer's approval of SELLER's request. Awaiting the processing of such requests shall not constitute a basis for excusable delay on part of the SELLER. CPST's approval of SELLER request(s) does not relieve SELLER's responsibility to comply with all Contract requirements, including the representations and warranties in this provision.

c) SELLER shall maintain a documented system (policy, procedure, or other documented approach) that provides for prior notification to the CPST Procurement Representative and his/her written approval before parts/components are procured from sources other than OEMs/OCMs or through the OEM's/OCM's authorized distribution chain. SELLER shall provide copies of such documentation for its system for CPST's inspection upon CPST's request. SELLER's system shall be consistent with applicable industry standards, AS5553 as minimum, for the detection and avoidance of Counterfeit Electronic Parts and Suspect Counterfeit Electronic Parts, including policies and procedures for training personnel, designing and maintaining systems to mitigate risks associated with parts obsolescence, making sourcing decisions, prioritizing mission critical and sensitive components, ensuring traceability of parts, developing lists of trusted and non-trusted suppliers, flowing down requirements to subcontractors, inspecting and testing parts, reporting and quarantining Suspect Counterfeit Electronic Parts and Counterfeit Electronic Parts, and taking corrective action.

d) If the SELLER is providing electronic components/devices only, the following certification applies:

*Certification of Origin of Product:*

*Acceptance of this Contract constitutes confirmation by the SELLER that it is the Original Equipment Manufacturer (OEM)/Original Component Manufacturer (OCM), or a franchised or authorized distributor of the OEM/OCM for the product herein procured. SELLER further warrants that OEM/OCM acquisition documentation that authenticates traceability of the components to that applicable OEM/OCM is available upon request. If the SELLER is not the OEM/OCM or a franchised or authorized distributor, the SELLER confirms by acceptance of this Contract that it has been authorized in writing by CPST to act on CPST behalf to procure from the OCM or a franchised or authorized distributor of the OEM/OCM. The SELLER further warrants that OEM/OCM acquisition traceability documentation is accurate and available to CPST upon CPST's request and is retained as a quality record in accordance with the "Maintenance of Records" provision contained herein.*

e) SELLER shall quarantine Suspect Counterfeit Electronic Parts and Counterfeit Electronic Parts, and make them available for investigation by appropriate government authorities. Suspect Counterfeit Electronic Parts and Counterfeit Electronic Parts shall not be returned to the supply chain unless and until such time that the parts are determined to be authentic.

### **34. Priority Rating**

a) If so identified, this Contract is a "rated order" certified for national defense use, emergency preparedness, and energy program use, and the SELLER shall follow all the requirements of the Defense Priorities and Allocation System (DPAS) Regulation (15 C.F.R. Part 700).

b) Levels of priority: There are two levels of priority established by this regulation, identified by the rating symbols “DO” and “DX”. All DX rated orders take preference over DO rated orders and unrated orders. Customer notification requirements. (1) A person must accept or reject a rated order and transmit the acceptance or rejection in writing (hard copy), or in electronic format, within fifteen (15) working days after receipt of a DO rated order and within ten (10) working days after receipt of a DX rated order. If the order is rejected, the person must also provide the reasons for the rejection, pursuant to paragraphs (b) and (c) of C.F.R 15 Part 700 Subpart D, Section 700.13, in writing (hard copy) or electronic format.

### **35. Gratuities/Kickbacks/Ethical Conduct**

a) No gratuities (in the form of entertainment, gifts or otherwise) or kickbacks shall be offered or given by SELLER, or anyone acting on SELLER’s behalf, to any employee of CPST with a view toward securing favorable treatment as a supplier.

b) By accepting this Contract, SELLER certifies and represents that it has not made or solicited and will not make or solicit kickbacks in violation of FAR 52.203-7 or the Anti-Kickback Act of 1986 (41 U.S.C. Sec. 51-58), incorporated herein by this specific reference if this Contract exceeds \$150,000, except that paragraph (c)(1) of FAR 52.203-7 shall not apply.

### **36. Safeguarding Covered Defense Information and Cyber Incident Reporting**

Seller is hereby notified that compliance with Subpart 204.73 is required; and clause 252.204-7012 “Safeguarding Covered Defense Information and Cyber Incident Reporting” is incorporated in its entirety by reference. Full compliance with this clause is required by the Supplier, and in turn their suppliers, as regards the obligation to protect and secure unclassified defense information to include cyber incident reporting as defined in the clause.

## **Laws and Regulations:**

### **37. Applicable Laws**

a) Unless specifically identified otherwise on the PO, all matters arising from or related to it shall be governed by and construed in accordance with the law of the State from which this Contract was issued, excluding its choice of law rules, except that any provision in this Contract that is (i) incorporated in full text or by reference from the Federal Acquisition Regulations (FAR); and/or (ii) incorporated in full text or by reference from any agency regulation that implements or supplements the FAR; and/or (iii) that is substantially based on any such agency regulation or FAR provision, shall be construed and interpreted according to the U.S. federal common law of government contracts as enunciated and applied by U.S. federal judicial bodies, boards of contract appeals, and quasi-judicial agencies of the U.S. federal Government.

b) (1) SELLER shall comply with all applicable laws, orders, rules, regulations, and ordinances. SELLER shall procure all licenses and permits, and pay all fees and other required charges necessary to conduct its business, all at SELLER’s expense.

(2) SELLER shall be responsible for compliance with all requirements and obligations relating to its employees under all applicable local, state, and federal statutes, ordinances, rules, and obligations including, but not limited to, employer’s obligations under laws relating to: income tax withholding and reporting; civil rights; equal employment opportunity; discrimination on the basis of age, sex, race, color,

religion, disability, national origin, or veteran status; overtime; minimum wage; social security contribution and withholding; unemployment insurance; employer's liability insurance; worker's compensation; veteran's rights; and all other employment, labor, or benefits related laws.

(3), SELLER certifies compliance that materials incorporated into the product comply with the laws regarding slavery and human trafficking of the country or countries in which they are doing business.

(4) CPST is a federal government contractor subject to the nondiscrimination and affirmative action compliance requirements of Executive Order 11246, as amended, Executive Order 13672, the Rehabilitation Act of 1973, as amended, and the Vietnam Era Veterans' Readjustment Assistance Act of 1974, as amended. CPST is committed to compliance with these nondiscrimination and affirmative action requirements. As part of our efforts to comply with these laws and their implementing regulations, we have developed and implemented equal employment opportunity and affirmative action policies and programs, which are designed to ensure that all qualified applicants and employees are treated without regard to such factors as race, color, religion, sex, national origin, disability, veteran status, sexual orientation, gender identity, or any other reason prohibited by law.

In accordance with the implementing regulations of these laws CPST's General Provisions serves as notification to SELLER about our nondiscrimination and affirmative action policies, and also "requests appropriate action" of SELLER to ensure full compliance throughout the subcontracting chain under related federal contract(s).

i. To the extent applicable, the equal employment opportunity and affirmative action requirements set forth in 41 C.F.R. Part 60-1.4(a) (women and minorities) (if > \$10,000), 41 C.F.R. Part 60-250.5(a) (if > \$25,000) and Part 60-300.5(a) (covered veterans), and the employee notice requirements set forth in 29 C.F.R. Part 471, Appendix A to Subpart A, are hereby incorporated by reference into this Contract.

ii. This contractor and subcontractor shall abide by the requirements of 41 CFR 60 741.5(a) (if > \$15,000). This regulation prohibits discrimination against qualified individuals on the basis of disability, and requires affirmative action by covered prime contractors and subcontractors to employ and advance in employment qualified individuals with disabilities (If this procurement is =>\$10,000.) Additionally, this contractor and subcontractor shall abide by the requirements of 41 CFR 60-300.5(a). This regulation prohibits discrimination against qualified protected veterans, and requires affirmative action by covered prime contractors and subcontractors to employ and advance in employment qualified protected veterans (if this procurement is =>\$150,000).

## **FAR FLOWDOWN CLAUSES**

In accordance with FAR 52.252-1 and 52.252-2, the following clauses and provisions are incorporated by reference and apply to this Contract as defined by the respective FAR clause or provision:

### **1. The following clauses apply to this Contract as defined by the respective FAR clause (for Commercial and Non-Commercial Items):**

- 52.203-15 WHISTLEBLOWER PROTECTIONS UNDER THE AMERICAN RECOVERY AND REINVESTMENT ACT OF 2009 (JUN 2010)
- 52.204-21 BASIC SAFEGUARDING OF COVERED CONTRACTOR INFORMATION SYSTEMS (JUN 2016)
- 52.204-23 PROHIBITION ON CONTRACTING FOR HARDWARE, SOFTWARE, AND SERVICES DEVELOPED BY KASPERSKY LAB AND OTHER COVERED ENTITIES (JUL 2018)

- 52.211-15 DEFENSE PRIORITY AND ALLOCATION REQUIREMENTS (APR 2008)
- 52.222-21 PROHIBITION OF SEGREGATED FACILITIES (APR 2015)
- 52.222-26 EQUAL OPPORTUNITY (SEP 2016) (Only subparagraphs (c) (1)-(11) applies.)
- 52.222-50 COMBATING TRAFFICKING IN PERSONS (JAN 2019) (A requirement for a compliance plan and certification appropriate to the size and complexity of the contract is required if any portion of the contract (i) is for supplies, other than COTS items, acquired outside the United States, or services to be performed outside the United States, and (ii) has an estimated value that exceeds \$500,000.)
- 52.222-54 EMPLOYMENT ELIGIBILITY VERIFICATION (OCT 2015)
- 52.222-55 ESTABLISHING MINIMUM WAGES UNDER EXECUTIVE ORDER 13658 (DEC 2015)
  
- 52.222-62 PAID SICK LEAVE UNDER EXECUTIVE ORDER 13706 (JAN 2017)
- 52.223-6 DRUG-FREE WORKPLACE (MAY 2001)
- 52.223-7 NOTICE OF RADIOACTIVE MATERIALS (JAN 1997) (In the blank insert “30.”)
- 52.223-11 OZONE-DEPLETING SUBSTANCES AND HIGH GLOBAL WARMING HYDROFLUOROCARBONS (JUN 2016)
- 52.223-18 ENCOURAGING CONTRACTOR POLICIES TO BAN TEXT MESSAGING WHILE DRIVING (AUG 2011)
- 52.225-1 BUY AMERICAN ACT—SUPPLIES (MAY 2014)

**2. The following additional clauses apply to this Contract as defined by the respective FAR clause if the value of this Contract equals or exceeds \$10,000 (for Commercial and Non-Commercial Items):**

- 52.222-40 NOTIFICATION OF EMPLOYEE RIGHTS UNDER THE NATIONAL LABOR RELATIONS ACT (DEC 2010)

**3. The following additional clauses apply to this Contract as defined by the respective FAR clause if the value of this Contract equals or exceeds \$15,000 (for Commercial and Non-Commercial Items):**

- 52.222-36 EQUAL OPPORTUNITY FOR WORKERS WITH DISABILITIES (JUL 2014)

**4. The following additional clauses apply to this Contract as defined by the respective FAR clause if the value of this Contract equals or exceeds \$30,000 (for Commercial and Non-Commercial Items):**

- 52.204-10 REPORTING EXECUTIVE COMPENSATION AND FIRST-TIER SUBCONTRACT AWARDS (OCT 2018) Note: CPST requires that all SELLERS register and annually update the System for Award Management (SAM)

**5. The following additional clauses apply to this Contract as defined by the respective FAR clause if the value of this Contract equals or exceeds \$150,000 (for Commercial and Non-Commercial Items):**

- 52.203-3 GRATUITIES (APR 1984)

- 52.203-12 LIMITATION ON PAYMENTS TO INFLUENCE CERTAIN FEDERAL TRANSACTIONS (OCT 2010)
- 52.203-17 CONTRACTOR EMPLOYEE WHISTLEBLOWER RIGHTS AND REQUIREMENTS TO INFORM EMPLOYEES OF WHISTLEBLOWER RIGHTS (APR 2014).
- 52.222-17 NONDISPLACEMENT OF QUALIFIED WORKERS (MAY 2014). Seller shall honor the requirements of paragraphs (b) through (c) of this clause with respect to the service employees of a predecessor subcontractors working under this contract, as well as of a predecessor Contractor and its Subcontractors. Seller will provide CPST with the information about the service employees of the Subcontractor needed to comply with paragraphs (d) and (e) of this clause; and the record keeping requirements of (f).
- 52.222-35 EQUAL OPPORTUNITY FOR VETERANS (OCT 2015)
- 52.222-37 EMPLOYMENT REPORTS ON VETERANS (FEB 2016)
- 52.229-3 FEDERAL, STATE AND LOCAL TAXES (FEB 2013)
- 52.229-4 FEDERAL, STATE AND LOCAL TAXES (STATE AND LOCAL ADJUSTMENTS) (FEB 013)
- 52.229-6 TAXES – FOREIGN FIXED PRICE CONTRACTS (FEB 2013)
- 52.229-7 TAXES – FIXED PRICE CONTRACTS WITH FOREIGN GOVERNMENTS (FEB 2013)
- 52.244-5 COMPETITION IN SUBCONTRACTING (DEC 1996)

### **Compliance with Laws, Regulations, and Executive Orders**

The following clauses appearing in the Federal Acquisition Regulations (FAR) or Dept. of Defense-Federal Acquisition Regulations (DFAR) are incorporated by reference herein. It is recognized that certain of these clauses apply only to certain types of contracts, the applicability thereof being conditioned on such factors as price and the nature of the work to be performed (reference preceding citations). The extent and scope of applicability to this contract shall be in accordance with the terms, requirements, guidelines and limitations stated in each clause.

Administration of Cost Accounting Standards 52.230-6

Affirmative Action for Special Disabled and Vietnam Era Veterans 52.222-35

Affirmative Action for Workers with Disabilities 52.222-36

Anti-Kickback Procedures 52.203-7

Audit – Negotiation 52.215-2

Authorization and Consent 52.227-1

Buy American Act 52.225-1

Buy American Act and Balance of Payments Program 252.225-7001

Combating Trafficking in Persons 52.222-50

Contract Work Hours and Safety Standards Act Overtime Compensation – General 52.222-4

Contractor Code of Business Ethics and Conduct 52.203-13

Contractor Counterfeit Electronic Part Detection and Avoidance System 252.246-7007

Contractor Employee Whistleblower Rights and Requirement to Inform Employees of Whistleblower Rights 52.203-17

Contractor Inspection Requirements 52.246-1

Cost Accounting Standards (except (b) thereof) 52.230-2  
Defense Priorities and Allocations Requirements 52.211-15  
Disclosure and Consistency of CAS 52.230-3  
Duty Free Entry 52.225-8  
Duty-Free Entry 252.225-7013  
Employment Eligibility Verification 52.222-54  
Employment Reports on Veterans 52.222-37  
Equal Opportunity 52.222-26  
Equal Opportunity for Veterans 52.222-35  
Export Controlled Items 252.225-7048  
Filing of Patent Applications – Classified Subject Matter 52.227-10  
Frequency Authorization 252.235-7003  
Government Property (Fixed Price Contracts) 52.245-2  
Hazardous Material Identification and Material Safety Data 52.223-3  
Limitation of Liability 52.246-23  
Limitation of Liability High-Value Items 52.246-24  
Limitation on Payments to Influence Certain Federal Transactions 52.203-12  
Material Requirement 52.211-5  
Notice and Assistance Regarding Patent and Copyright Infringement 52.227-2  
Notice to the Government of Labor Disputes 52.222-1  
Notification of Employee Rights Under the National Labor Relations Act 52.222-40  
Patent Indemnity 52.227-3  
Price Reduction for Defective Cost or Pricing Data – Modifications 52.215-11  
Price Reduction for Defective Cost or Pricing Data 52.215-10  
Pricing Adjustment 252.215-7000  
Prohibition of Hexavalent Chromium 252.223-7008  
Prohibition of Segregated Facilities 52.222-21  
Protecting the Government's Interest When Subcontracting With Contractors Debarred, Suspended, or Proposed for Debarment 52.209-6  
Qualifying Country Sources as Subcontractors 252.225-7002  
Refund of Royalties 52.227-9  
Report of Intended Performance Outside the United States or Canada – Submission with Award 252.225-7004  
Requirement to Inform Employees of Whistleblower Rights 252.203-7002  
Restriction on Acquisition of Certain Articles Containing Specialty Metals 252.225-7009  
Restriction on acquisition of Specialty Metals 252.225-7008  
Rights in Technical Data – Non-Commercial Items 252.227-7013  
Royalty Information 52.227-6  
Safeguarding Covered Defense Information and Cyber Incident Reporting 252.204-7012



**Terms and Conditions of Purchase**  
*A Subsidiary of Comtech Telecommunications Corporation*

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Security Requirements 52-204-2

Small Business and Small Disadvantaged Business Subcontracting Plan 52.219-9

Sources of Electronic Parts 252.246-7008

Technical Data – Withholding of Payment 52.227-7030

Utilization of Small Business Concerns and Small Disadvantaged Business Concerns 52.219-8

Value Engineering 52.248-1

Walsh-Healy Public Contracts Act Disputes 52.222-20

Workmen's Compensation and War Hazard Insurance Overseas 52.228-4

Workmen's Compensation Insurance (Defense Base Act) 52.228-3

*Seller hereby acknowledges to have notice of the foregoing provisions and agrees that noncompliance with any of the above provisions incorporated by reference may be considered a material breach of this contract and, as such, shall go to the essence of the contract.*