

Compucraft Standard Purchase Order Terms and Conditions

1. **AGREEMENT.** These Standard Purchase Order Terms and Conditions shall apply to any Purchase Order (a "P.O.") issued to seller by CompuCraft Industries hereinafter referred to as "Buyer." Unless otherwise provided in a written agreement expressly by Seller and Buyer, each P.O. accepted by Seller, together with all documents expressly referenced in such P.O., the Representation and Certifications form executed by Seller (if any) and these Terms and Conditions, shall constitute the entire agreement (the "Agreement") between Buyer and Seller with respect to the purchase, sale and delivery of the product(s) described in such P.O. (the "Products") and the performance of any work described in the P.O. and shall supersede all prior agreements, understandings and representations between Seller and Buyer with respect thereto. Any additional or different terms stated by Seller in any proposal, quotation, confirmation, acknowledgment, invoice or otherwise shall be of no force and effect, and no course of dealing, usage of trade, or course of performance shall be relevant to explain or supplement any term expressed in the Agreement.
2. **DELIVERY.** Unless otherwise expressly specified in the P.O., all deliveries of Products shall be made FOB origin. Seller shall deliver the Products and/or complete the work specified in the P.O. on or before the applicable "Due Date" indicated in the P.O.; provided, however, that Buyer, in its sole discretion, may refuse to accept Products delivered outside of our Delivery Terms of 5 days Early | 0 days Late. Time is of the essence in the performance of Seller's obligations under the Agreement.
3. **TITLE AND RISK OF LOSS.** Seller warrants that it has good and clear title, free from any security interest, lien, or other encumbrance, to all Products to be delivered to Buyer. Title and risk of loss or damage to the Products shall pass to Buyer upon delivery to the FOB point, subject to Buyer's right to reject non-conforming Products or deliveries shall remain with Seller unless and until Buyer finally accepts such Products or deliveries.
4. **INSPECTION; ACCEPTANCE.** Final inspection of Products delivered shall be made at Buyer's premises unless otherwise specified in writing signed by both parties. Buyer shall either accept or reject Products or work within the later of (a) sixty (60) days after the Due Date specified in the P.O. or (b) sixty (60) days after receiving such Products or work. Any non-conformity in any Products or work shall entitle Buyer to reject such Products or work or to revoke its acceptance thereof. At Buyer's option, Buyer may return non-conforming Products or work to Seller, freight collect, or Buyer may modify or adapt non-conforming Products to work or render it acceptable. If Buyer elects to return such non-conforming Products or work, Seller shall issue a return authorization number (RMA) for all non-conforming Products within 24 hours after Buyer's request, and such non-conforming Products or work shall be the property of the Seller. If Buyer elects to modify or adapt non-conforming Products or work, Buyer may offset all costs incurred in performing any such modifications and adaptations against any and all amounts otherwise due to Seller or, at Buyer's option, may bill Seller directly for such costs.
5. **CUSTOMER VERIFICATION OF SUBCONTRACTED PRODUCT, RIGHT OF ENTRY:**
Parts subcontracted to a suppliers facility may be reviewed at the suppliers facility by the subcontractors customer as well as regulatory representatives. Verification by the subcontractors customer or regulatory authority does not absolve the supplier of the responsibility to provide acceptable product, nor shall it preclude subsequent rejection by the customer or regulatory agency.
6. **PRICE AND PAYMENT TERMS.** The prices of Products delivered and work performed shall be as specified in the Buyers purchase price therefor. The P.O. will specify whether items listed therein are taxable, and Seller shall invoice Buyer accordingly. Buyer shall pay for Products and work accepted within the later of (a) sixty (60) days after Buyer's acceptance of such Products or work or (b) sixty (60) days after receipt of Seller's invoice therefor. Buyer shall have no obligation to pay for any Products or work that is rejected or as to which acceptance is revoked in accordance with Paragraph 4 above.
7. **WARRANTIES.** Seller warrants that all Products delivered and work performed under the Agreement shall be free from defects in workmanship and material and fit for the purposes for which such Products or work is intended. Further, all Products delivered and work performed shall contain all new materials, shall strictly conform to the requirements, specifications, certifications and conditions as stated in the P.O. and all other specifications furnished by Buyer therefor, and shall conform to Seller's specifications to the extent such specifications are consistent with those provided by Buyer; in the event Seller's specifications, certifications and conditions supersede those as stated in the P.O., it is the responsibility of the Seller to provide documentation authenticating that said specifications, certifications and conditions are current requirements for those specifications, certifications and conditions as stated in the P.O. Failure to provide said authentication documents might hinder the payment of Seller's invoice as stated in Paragraph 5.
8. **INFRINGEMENT.** In addition to the warranties set forth in Paragraph 6, Seller warrants that all Products delivered and worked performed shall be delivered free of any claim that such Products or work infringes any patent, copyright, trade secret, or other intellectual property right of any third party, except insofar as such claims are based solely on Seller's literal compliance with Buyer's written specifications for such Products or work. Seller shall indemnify, defend and hold Buyer and its customers harmless against any losses, damages liabilities, costs and expenses (including reasonable attorneys' fees) arising out of or resulting from any claim alleging facts that, if true, would constitute a breach of the warranty stated in this Paragraph 7. Buyer will notify Seller of any such claim and permit Seller, at Seller's sole expense, to defend or settle such claim. In the event that any Product or work is determined to infringe any intellectual property of any third party, Seller shall, at Buyer's option, either: (i) obtain from such third party, at Seller's sole expense, the right for Buyer and Buyer's customers to continue using the infringing Products and/or work, (ii) modify the Products and/or work at Seller's sole expense so as to render them non-infringing, while maintaining substantially identical fit, form and function, or (iii) refund to Buyer the aggregate purchase prices paid for all infringing Products and work (which may include the costs associated with replacement Products and/or work having to be expended to make up for any and all schedule variances caused by said infringing Products and/or work).
9. **BUYER PROPERTY.** All property used by Seller in connection with its performance under the Agreement which is owned, furnished or consigned by Buyer, or is charged to or paid for by Buyer, including but not limited to materials, tools, dies, jigs, molds, patterns, fixtures, equipment, drawings, specifications and other documentation (the "Property") shall be and remain the property of Buyer. Unless already so marked by Buyer, Seller shall identify and conspicuously mark all Property, as belonging to Buyer and, upon request, shall furnish Buyer a

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list of all Property being held by Seller. All Property shall be used only for Seller's performance under the Agreement and held at Seller's risk and insured at Seller's sole expense in an amount equal to its replacement cost, with loss payable to Buyer. Buyer may inspect and/or remove any Property at any time at no charge to Buyer, and Buyer shall have reasonable access to Seller's premises for such purpose. Seller shall return such Property to Buyer upon Buyer's demand at Seller's sole expense.

10. **PATENT AND DATA RIGHTS.** Seller agrees to promptly disclose to Buyer and upon request to assign to Buyer, each invention conceived or first actually reduced to practice during the performance of the Agreement. Further, Seller hereby grants to Buyer a royalty-free, non-exclusive, unrestricted, irrevocable, world-wide license to use, duplicate, or disclose for any purpose whatsoever and to authorize others to do so, all data and information (including but not limited to writings, recordings, pictorial reproductions, drawings, computer programs and/or files, other graphic representations and works of any similar nature) required to be furnished and/or actually furnished to Buyer under the Agreement.
11. **CONFIDENTIALITY; PUBLICITY.** Except as necessary for its performance under the Agreement, Seller shall not disclose to any person (including but not limited to any company affiliated with Seller and any consultant or independent contractor of Seller), reproduce, or use any information furnished by Buyer under the Agreement (whether or not marked as confidential or proprietary), and, at Buyer's request, Seller shall return all such information to Buyer. Further, Seller shall not issue any news release, advertisement, publicity, or promotional material regarding the Agreement or Seller's relationship with Buyer without Buyer's prior written consent. The provisions of this Paragraph 10 shall survive the termination or cancellation of any or all P.O.'s under the Agreement.
12. **CHANGES.** Buyer may at any time instruct Seller to make changes within the general scope of the Agreement in any of the following: (i) Buyer's drawings, designs, or specifications furnished to Seller; (ii) Seller's method of shipment or packing; (iii) the quantities of Products ordered; (iv) the place of delivery, and/or (v) the delivery schedule. If any such change causes an increase or decrease in the cost of, or time required for, performance under the Agreement, Seller shall have ten (10) days to request adjustments in the price and/or delivery schedule for Products directly affected by the Buyer's changes. To the extent that Buyer agrees to such adjustments, Buyer shall revise the P.O. accordingly. Any requests by Seller for adjustments under this Paragraph 12 shall be deemed waived if not asserted within such 10-day period, and failure to agree to an adjustment shall not excuse Seller from performance in accordance with the revised P.O. In the event that Seller makes changes in its design, manufacturing process, or specifications that affect Products to be delivered or work to be performed under the Agreement, even if such changes do not materially alter the form, fit or function of such Products or work, Seller shall inform Buyer of such changes not less than thirty (30) days before the Due Date in the P.O. specified for such Products or work.
13. **REPRESENTATIONS.** By acceptance of Buyer's P.O., Seller is certifying that Seller is in full compliance with the Fair Labor Standards Act of 1938, as amended, and regulations issued thereunder. Upon request, Seller shall furnish Buyer with satisfactory evidence of its compliance with the representations in this Paragraph 12.
14. **TERMINATION; CANCELLATION.** Unless otherwise provided in a written agreement executed by Seller and Buyer, Buyer may terminate any P.O. or any portion thereof upon giving notice to Seller of such termination not less than two (2) business days prior to the earliest applicable Due Date set forth in the original P.O., and Buyer will revise or revoke the P.O. accordingly. Within ten (10) business days after receiving notice of such termination, Seller shall advise Buyer in writing of any cancellation charges it desires to impose as a direct result of such termination. To the extent such charges are deemed reasonable in the Buyer's sole discretion, Buyer will pay such cancellation charges within forty-five (45) days after the date of the Seller's written request therefor. Any request by Seller for cancellation charges shall be deemed waived if not asserted within ten (10) business days after Buyer's termination notice. Notwithstanding the foregoing, Buyer may cancel any P.O. or portion thereof without charge at any time upon notice to Seller if: (a) Seller fails to timely perform any of its obligations under the Agreement and such failure is not cured within ten (10) days after written notice of such failure is delivered to Seller, and/or (b) there is or comes to be any material misstatement or omission in the Representation and Certification submitted to Buyer by Seller (if any) or in any of Seller's representations in Paragraph 12.
15. **ASSIGNMENT.** Seller shall not assign any of its rights or delegate any of its obligations under the Agreement without the prior written consent of the Buyer, and any assignment in violation of this provision shall be null and void. Notwithstanding the foregoing, Seller may assign claims for monies due or to become due under the Agreement without the Buyer's consent provided that Seller promptly furnishes Buyer with two (2) signed copies of all documentation evidencing such assignment and further provided that payment to any assignee shall be subject to setoff or retrieval of any present or future claim(s) that Buyer may have against Seller. Regardless of any such assignment, Buyer shall continue to deal directly with Seller with respect to all matters other than payment of monies due under the Agreement.
16. **APPLICABLE LAW.** The Agreement shall be governed by the laws of the State of California. All disputes arising in connection therewith shall be heard only by a court of competent jurisdiction in San Diego County, California, and the prevailing party in any legal proceeding shall be entitled to recover its reasonable attorneys' fees incurred in connection therewith. The U.N. Convention on Contracts for the International Sale of Goods shall not apply to the purchase of Products or services by Buyer.
17. **EQUAL OPPORTUNITY.** The Agreement is subject to Executive Order 11246 and Labor Department Order No. 4, including revision of December 4, 1971, OFCCP order number 14, January 14, 1972, section 503 of the Rehabilitation Act of 1973, section 402 of the Vietnam Era Veterans Readjustment and Assistance Act of 1974, the Americans with Disabilities Act of 1990, and all rules and regulations promulgated pursuant thereto, as any of such laws or regulations may be amended at any time, all of which are incorporated herein by the reference.
18. **MISCELLANEOUS PROVISIONS.** No addition or modification of the Agreement shall be effective unless made in writing and signed by the representatives of Seller and Buyer. Any delay of failure to enforce at any time any provision of the Agreement is determined to be invalid, illegal, or otherwise unenforceable, the remaining provisions shall remain in full force and effect. The rights and remedies expressly provided to Buyer herein are not exclusive, but cumulative and in addition to any other rights and remedies available at law or in equity.
19. **CORRESPONDENCE.** Seller shall place Buyer's applicable P.O. number on all notices, correspondence, invoices, packing slips and packages pertaining thereto. All written correspondence other than invoices shall be sent to the attention of the person identified as the "Buyer" on the P.O., addressed to: **CompuCraft Industries, Inc., P.O. Box 712529, Santee, CA 92072.** All invoices shall be sent to the attention of the Accounts Payable Department at the same address.

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