



## **COMPULINK GENERAL TERMS AND CONDITIONS**

### ***Table of Contents***

1. Definitions
2. Construction
3. Acceptance of This Order
4. Acceptance of Goods and Services
5. Independent Contractor
6. Invoices and Payment
7. Shipping, Packing and Marking
8. Changes
9. Supplier Monitoring
10. Notices
11. Time of the Essence
12. Duty to Proceed
13. Order of Precedence
14. Insurance
15. Taxes
16. Awareness
17. Assignment / Subcontracting
18. Set-Off
19. Proprietary Information
20. Release of Information
21. Intellectual Property
22. Buyer's Property
23. Incorporation of supplemental Terms & Conditions
24. Disputes under this Order
25. Disputes under a Government Prime Contract
26. Termination for Convenience
27. Termination for Default
28. Quality / Inspection
29. Use of Open Source Software (OSS)
30. Requirement – Kaspersky Lab
31. Warranty
32. Design, Process, Location Changes / Material Disposition
33. Access to Records
34. Counterfeit or Suspect Counterfeit
35. Compliance with Laws
36. Export Control
37. Foreign Persons
38. Conflict Minerals
39. Toxic, Hazardous or Carcinogenic Substances and Substances of Very High Concern (SVHC)
40. Ozone Depleting Substances
41. Standards on Slavery and Human Trafficking in the Supply
42. Compliance with the U.S. Foreign Corrupt Practices Act
43. Gratuities / Kickbacks
44. Certificates
45. Certifications
46. Waiver, Remedies, and Severability
47. Force Majeure
48. Indemnification
49. Survival
50. End of Life
51. Entire Agreement



**1. Definitions**

The following definitions apply to this Order and to any supplemental terms and conditions attached to this Order unless otherwise specifically stated:

- A. Buyer: The legal entity issuing this Order.
- B. Buyer's Purchasing Representative: Buyer's designated purchasing representative responsible for issuing this Order and any amendments or changes thereto.
- C. Seller: The legal entity that contracts with Buyer under this Order.
- D. Order: The contractual instrument of which these terms and conditions are a part.
- E. Government: The United States of America, acting in its contractual capacity.
- F. FAR: The Federal Acquisition Regulation (Title 48 Code of Federal Regulations Chapter 1), if applicable.
- G. DFARS: The Department of Defense Federal Acquisition Regulation Supplement, if applicable.
- H. Days: Calendar days (unless specified otherwise).

**2. Construction**

The construction of this Order shall be governed by the law specified in the article entitled "Disputes Under This Order." The title designations of the numbered articles and provisions to this Order are for convenience only and shall not affect the interpretation or construction of this Order. Notwithstanding any other provisions of these terms and conditions, upon prior written notice to Buyer and to the extent that such use will not interfere with Seller's performance of this Order or any other purchase order/subcontract between Seller and Buyer, Seller, with the U.S. Government's written authorization, may use any furnished property, data, information or other items, which the U.S. Government owns and/or for which it has the right to authorize use on other U.S. Government contracts or subcontracts.

**3. Acceptance of This Order**

Seller's written acknowledgement of the Order, its commencement of any performance under the Order, or acceptance of any payment under the Order, shall constitute Seller's unqualified and irrevocable acceptance of this Order subject solely to these terms and conditions. Buyer will not be bound to any prices or delivery terms to which it has not specifically agreed in writing. Any terms or conditions proposed by Seller inconsistent with or in addition to the terms and conditions contained in this Order shall be void and of no effect unless specifically agreed to in writing by Buyer, regardless of whether or not such terms and conditions materially alter this Order and irrespective of any payment by Buyer hereunder.

**4. Acceptance of Goods and Services**

- A. All goods and/or services provided by Seller under this Order shall be in accordance with the requirements of this Order, including all applicable exhibits and attachments, and shall be subject to rejection if such goods and/or services are nonconforming. No inspection or evaluation performed by Buyer (and/or Buyer's customer, if applicable) shall in any way relieve Seller of its obligation to furnish all required goods and/or services in strict accordance with the requirements of this Order. If any of the goods and/or services provided hereunder does not conform to the requirements of this Order, Buyer may require Seller to replace the goods or perform the work and/or services again in conformity with the applicable requirements at no cost to Buyer. Work shall be performed by fully experienced and qualified persons. Statistical techniques / sampling plans may be utilized, unless otherwise specified but does not relieve Seller of supplying acceptable product / services to Buyer.
- B. At Buyer's sole option, any rejected items may be returned for credit or replacement at Seller's risk and expense and all handling and transportation expenses, both ways, shall be assumed by Seller. No items returned as defective shall be replaced without written authorization from Buyer.
- C. Seller is responsible for the production of acceptable goods and services and release to Buyer under controlled and defined processes.
- D. Final acceptance is contingent on Buyer's satisfaction that provided goods and services conform to the requirements of the order. Acceptance shall be conclusive, except for latent defects, fraud, or gross mistakes amounting to fraud.

**5. Independent Contractor**

Seller is an independent contractor and the employees, agents, or representatives of Seller are not employees, agents, or representatives of Buyer for any purpose including, but not limited to, federal, state, and local tax obligations unemployment and worker's compensation obligations, social security, and any and all other benefits.

**6. Invoices and Payment**

- A. Seller's invoices or vouchers shall contain all certifications required by Buyer and shall include the invoice date, the purchase order number, as well as a complete breakout of the prices by line item for the goods and/or services encompassed by the invoice or voucher.



### **7. Shipping, Packing and Marking**

A. Except as otherwise provided on the face of this Order, transportation charges on goods sold f.o.b. shipping point must be prepaid and invoiced to Seller. Transportation charges on goods sold f.o.b. destination must be prepaid in all cases. No insurance or premium transportation costs will be allowed unless authorized in writing by Buyer's Purchasing Representative. Risk of loss from any casualty to goods ordered hereunder, regardless of cause, shall be Seller's responsibility until the goods have been delivered in compliance with terms of transportation required by this Order. If Seller does not comply with the stated delivery schedule, Buyer may, in addition to any other rights which it may have at law or in equity, require delivery by the most expeditious way, and any charges resulting from the premium transportation shall be fully prepaid and absorbed by Seller. Title to all goods passes at Buyer's dock unless otherwise specified in this Order.

B. Seller shall pack, mark and ship all goods and supplies in accordance with the requirements of this Order and so as to be in compliance with all applicable transportation regulations and good commercial practice for protection against damage from weather and shipment, including any applicable federal, state and local laws and regulations for the packaging, labeling, transportation and shipping of hazardous materials. Seller shall secure the most advantageous transportation services and rates consistent therewith. No separate or additional charge shall be payable by Buyer for containers, crating, boxing, handling, storage or any other services unless specifically stated in this Order or otherwise agreed to by Buyer in writing. Seller shall mark each container with the number of this Order and shall enclose a packing slip with this Order number in an envelope attached to each container. Damage resulting from improper packing or shipping will be charged to Seller.

C. Acceleration of delivery is not authorized unless specified in writing by the Buyer's Purchasing Representative.

D. Buyer reserves the right to refuse or return at Seller's risk and expense any shipments made in excess of the quantities stipulated in the Order or received in advance of the required delivery schedule, or to keep the goods received in advance of the required delivery schedule and defer payment as if the delivery was made per the required delivery schedule.

### **8. Changes**

A. Buyer shall have the right at any time to (i) suspend all or any portion of Seller's work, and/or (ii) make changes within the general scope of this Order that affect any one or more of the following:

- (1) drawings, designs, specifications, or quantities of goods and/or services to be provided hereunder;
- (2) the statement of work or description of services;
- (3) method of shipment or packing;
- (4) the time or place of performance, inspection, delivery, or acceptance of goods and/or services; and
- (5) the amount of Buyer-furnished or customer-furnished property or facilities.

B. If any such suspension or change causes a change in the cost of, and/or the time required for, performance of this Order, an equitable adjustment shall be made in the price or delivery schedule or both, and this Order shall be modified in writing accordingly. Any claim by Seller for such an adjustment must be made in writing within twenty days from the date of receipt of a written order from Buyer's Purchasing Representative directing such a suspension or change.

C. Nothing in this clause, including any disagreement with Buyer as to any equitable adjustment, shall excuse Seller from proceeding with this Order as changed. Any disagreement between the parties arising out of this clause shall be resolved in accordance with the clause entitled "Disputes Under This Order."

### **9. Supplier Monitoring**

Suppliers are scored quarterly in regards to On Time Delivery (based on initial promise date by Supplier) and Acceptance Rate (base on acceptance of product at Receiving Inspection and throughout the manufacturing process). Suppliers not maintaining satisfactory performance in these areas will be contacted and worked with until On Time Delivery and/or Acceptance Rates improve to an acceptable level.

### **10. Notices**

All notices required or permitted to be sent by either party shall be deemed sufficiently given when delivered by hand delivery or sent by facsimile (which is confirmed), recognized overnight courier service or certified mail, return receipt requested, to the parties at the addresses shown on the first page of this Order for each party and to the attention of the individual who executes this Order on behalf of the party to whom the notice is sent. All notices shall be deemed given (i) on the date of delivery if delivered by hand or sent by facsimile (which is confirmed), (ii) on the next business day if sent by recognized overnight courier service and (iii) on the third business day following the date sent by certified mail, return receipt requested. Either party may designate, in writing, a different manner of address for notices under this Order.

### **11. Time of the Essence**

Time is and shall remain a material element of this Order, and no acts of Buyer, including without limitation modifications of this Order or acceptance of late deliveries or performance, shall constitute a waiver of this provision. Seller shall notify Buyer in writing immediately of any actual or potential delay in the deliveries or performance of this Order and such notice shall include a revised schedule using the Seller's best efforts; provided, however, that Buyer's receipt of such notice shall not constitute a waiver to Buyer's rights and remedies for such late deliveries or performance. Buyer reserves the right to cancel this Order without liability to Buyer and without waiver of any other remedies of Buyer if delivery or performance is not effected as specified in the Order or on written shipping authorizations that may be furnished by the Buyer.

### **12. Duty to Proceed**



Except as expressly authorized in writing by Buyer, no failure of Buyer and Seller to reach agreement with respect to any dispute relating to or arising under this Order shall excuse Seller from proceeding diligently with the performance of the work required by this Order.

**13. Order of Precedence**

A. In the event of any inconsistency or conflict between or among the provisions of this Order, such inconsistency or conflict shall be resolved by the following descending order of precedence: (i) Typed provisions set forth in this Order; (ii) Documents incorporated by reference on the face page(s) of this Order; (iii) These standard terms and conditions, and any supplemental terms and conditions as referenced herein and/or set forth; (iv) The Statement of Work; and (v) Specifications attached to this Order or incorporated by reference. Buyer's specifications shall prevail over any specifications of Seller.

B. In the event of conflict between specifications, drawings, samples, designated type, part number, or catalog description, the specifications shall govern over drawings, drawings over samples (whether or not approved by Buyer), and samples over designated type, part number, or catalog description. In cases of ambiguity in the specifications, drawings, or other requirements of this Order, Seller shall, before proceeding, consult Buyer, whose written interpretation shall be final and binding on the parties.

**14. Insurance**

Seller shall maintain and cause its subcontractors to maintain insurance coverage to adequately protect Seller, its Subcontractors and Buyer from risk and claims.

**15. Taxes**

Unless otherwise notified by Buyer in writing, the price of this Order includes any Federal, State, and Local taxes, duties, tariffs, transportation taxes, or other similar taxes or fees which are required to be imposed upon the Items or Services ordered hereunder by Buyer, unless Seller obtains any applicable exemptions. Seller represents that its price does not include any taxes, impositions, charges or exactions for which it is eligible to obtain and/or has obtained a valid exemption certificate or other evidence of exemption. Any taxes / tariffs included in this Order shall be itemized separately in Seller's invoice.

**16. Awareness**

Seller must ensure each employee / supplier is aware of their personal contribution to product safety and conformity as well as the importance of ethical behavior.

**17. Assignment and Subcontracting**

Seller shall not sell, assign, or in any manner transfer this Order or its rights, duties, and obligations under this Order without first obtaining the written consent of Buyer. Any attempted assignment without such consent shall be void. The foregoing shall not apply to assignment to any successor entity in the event Seller shall change its name. Notwithstanding the foregoing, in the event of an approved sale, assignment or transfer as provided hereunder, Seller shall remain liable, jointly and severally, to Buyer for all obligations arising under or resulting from this Order. Seller shall not subcontract work without Buyer's approval.

**18. Set-Off**

Buyer shall be entitled at all times to set-off any amount owing at any time from Seller to Buyer, or to any of Buyer's affiliated companies, against any amount payable at any time by Buyer, or by any of its affiliated companies, to Seller.

**19. Proprietary Information**

A. Unless otherwise expressly agreed by Buyer in writing to the contrary, all specifications, information, data, drawings, software and other items supplied to Buyer by Seller under this Order, whether or not marked with any restrictive or proprietary designations, shall be disclosed to Buyer on a non-proprietary basis and may be used and/or disclosed by Buyer without restriction in any way in the conduct of its business. Seller's sole rights with respect to use of such information by Buyer, its successors, subsidiaries, licensees, affiliates, or parents shall be determined only by any valid pre-existing patent rights of Seller as related to the manufacture, use, or sale of goods and/or services covered by this Order. Seller agrees to promptly notify Buyer in writing of any such pre-existing patents or any other similar form of protection which Seller may hold or know of which relates to the goods and/or services to be provided under this Order.

B. If any pre-existing patents, inventions, copyrights, technology, designs, works of authorship, mask works, technical information, computer software, or other information or data of Seller (hereinafter "Seller's Intellectual Property") are used, included, or contained in the goods and/or services provided hereunder, the Seller grants Buyer an irrevocable, transferable, nonexclusive, world-wide, royalty-free license to use Seller's Intellectual Property with such goods and/or services.

C. Unless otherwise expressly agreed in writing to the contrary, all specifications, information, data, drawings, software and other items which are (i) supplied to Seller by Buyer or (ii) obtained or developed by Seller and paid for by Buyer under this Order, shall be the exclusive property of Buyer, shall be maintained by Seller as proprietary to Buyer, shall be used only for purposes of providing goods and/or services to Buyer pursuant to this Order, and shall not be disclosed to any third party without Buyer's express written consent. Seller will ensure necessary requirements are flowed down to ensure all purchase order requirements are met. All such items supplied by Buyer shall be promptly returned to Buyer on request or upon completion or earlier termination of this Order.

**20. Release of Information**

Seller shall not publish any information developed under this Order nor distribute it nor make any news release about the existence or subject matter of this Order without Buyer's prior written consent.



### **21. Intellectual Property**

A. Seller warrants that the sale, use or incorporation into manufactured products of any machines, parts, components, services, devices, material, software, and rights furnished or licensed hereunder (collectively "goods") which are not of Buyer's design, composition or manufacture shall be free and clear of infringement or misappropriation of any valid patent, copyright, trademark or other third party intellectual property rights. Seller shall indemnify, defend and save Buyer and its customers harmless from any and all expenses, liability and loss of any kind (including all costs and expenses including attorneys' fees) arising out of claims, suits or actions alleging such infringement or misappropriation, including proceedings under 28 U.S.C. § 1498, which claims, suits or actions Seller agrees to defend with counsel acceptable to Buyer. The Buyer agrees to give the Seller written notice of any such suit or action promptly after notice is received by the Buyer and the Seller agrees to conduct, at its own expense, the entire defense thereof; provided, however, that the Buyer may, at its own election and expense, at any time supersede the Seller in any such defense in which event the Seller shall thereby be released from its obligation under this Article with respect to the particular suit or action involved.

B. Seller further agrees to indemnify, hold harmless and defend, at Seller's own expense, Buyer against all liens, security interests, and/or encumbrances whatsoever asserted against such goods, including claims to said merchandise, asserted by others. To the extent that the goods delivered hereunder are manufactured pursuant to the designs originated by Buyer, the Seller hereby assigns to Buyer, without reservation, all patent rights, copyrights and trademark rights relating to the goods and all related documents, models, computer drawings and other electronic expression, photographs, related documents, models, computer drawings and other electronic expression, photographs, drawings, specifications or other materials ("Protected Materials"). Buyer, in turn, grants to Seller a non-exclusive, non-transferable license to reproduce the Protected Materials for purposes related solely and directly to the Seller's performance of its obligations to Buyer hereunder. No other Protected Materials may be reproduced for any other purpose without the express written permission of Buyer. This non-exclusive license shall terminate immediately upon termination of the Order.

C. Seller may replace or modify infringing goods with comparable goods acceptable to Buyer of substantially the same form, fit and function so as to remove the source of infringement, and shall extend this provision to such comparable goods. If the use or sale of any of the above items is enjoined as a result of such claim, suit or action, Seller, at no expense to Buyer, shall obtain for Buyer and Buyer's customers the right to use and sell the items.

D. Any invention or intellectual property first made, developed or conceived by Seller in the performance of this Order or which is derived from or based on the use of information supplied by Buyer, in whole or in part, alone or with others, shall be the sole property of Buyer, and Seller hereby conveys, transfers and assigns to Buyer all rights, title and interest in and to any such invention or intellectual property. Any original works of authorship created by Seller hereunder are considered "works made for hire" under U.S. Copyright Law (17 U.S.C. §101). This Order shall operate as an irrevocable assignment from Seller to Buyer of all rights to such inventions or intellectual property including all rights, title and interest throughout the world.

### **22. Buyer's Property**

A. All information as well as all drawings, tools, jigs, dies, fixtures, materials, and other items supplied or paid for by Buyer or Buyer's Customer shall be and remain the sole property of Buyer or Buyer's Customer and Buyer shall have the right to enter Seller's premises and remove any such property and Seller's records with respect thereto at any time without being liable for trespass or for damages of any sort.

B. All such items shall be used only in the performance of work under this Order unless Buyer consents otherwise in writing.

C. Material made in accordance with Buyer's specifications and drawings shall not be furnished or quoted by Seller to any other person or concern without Buyer's prior written consent.

D. Seller shall have the obligation to maintain any and all property furnished by Buyer to Seller and shall be responsible for all loss or damage to the property except for normal wear and tear.

### **23. Incorporation of Supplemental Terms & Conditions**

Additional terms and/or conditions may be invoked on the purchase order. If this Order is placed under a Government Prime Contract, FARS / DFARS may be, referenced on the purchase order itself. They are incorporated by reference into this Order with the same force and effect as though set out in herein. Seller shall insert these provisions in lower tier contract. Should any FARS / DFARS not apply to a specific order they are self-deleting. The supplier is responsible for understanding the definition of a Commercial Item per the Federal Acquisition Regulations (FAR) Subpart 2.101.

### **24. Disputes Under This Order**

The parties shall attempt amicably to resolve all disputes arising from or related to this Order. If the parties are unable to resolve amicably such a dispute within a reasonable time, the dispute shall be adjudicated in a court of competent jurisdiction in the State where Buyer is located, applying the laws of the State of Florida, as well as, when applicable, the law of federal contracts as enunciated in decisions of administrative boards of contract appeals and the federal courts. Pending resolution or settlement of any dispute arising under this Order, Seller shall proceed diligently as directed by Buyer with the performance of this Order.

### **25. Disputes Under a Government Prime Contract**

A. If the Contracting Officer of Buyer's Government Prime Contract by a final decision interprets any provision or requirement of Buyer's Prime Contract, and the same or substantially similar provision or requirement is contained in this Order, such



interpretation shall be binding between Buyer and Seller, provided that Buyer affords Seller the opportunity to appeal such decision in Buyer's name, and provided further that Seller provides to Buyer any and all information requested by Buyer to justify Buyer's verifying, supporting, or providing any and all certificates required by the Contract Disputes Act of 1978, 41 U.S.C. § 601 et seq. Any such appeal brought by Seller shall be at the sole expense of Seller, who shall be solely responsible for the prosecution of such appeal. If Seller so appeals, Seller shall, upon Buyer's written request, provide to Buyer advance copies of papers to be filed in such appeal and such other information, consultation, and opportunity to participate in the appeal as Buyer may request. As used in this provision, the term "appeal" shall include any and all proceedings taken by Seller under this provision before any board of contract appeals or federal courts.

B. If Seller asserts against Buyer a claim for either damages or an equitable adjustment in a situation where the facts constituting such claim would also support a claim by Buyer against Buyer's customer, prior to initiating any action or suit on such claim against Buyer in any court, if Buyer so authorizes, Seller shall pursue, to exhaustion of its administrative and judicial remedies, such claim in Buyer's name and at Seller's cost against Buyer's customer.

C. Any reference to the "Disputes" clause in any applicable FAR or DFARS clause incorporated into this Order shall mean this Article 20 "Disputes Under a Government Prime Contract."

#### **26. Termination for Convenience**

A. Buyer, by written notice, may terminate this Order at any time, in whole or in part, without cause and/or for Buyer's convenience, prior to final delivery of goods and/or completion of services, and such termination shall not constitute a default. In such event, Buyer shall have all rights and obligations accruing both at law and in equity, including Buyer's rights to title and possession of any goods paid for. Seller shall be reimbursed for actual, reasonable, substantiated and allowable costs, plus a reasonable profit for work performed to date of termination. Buyer may take immediate possession of all work so performed upon notice of termination. Reference FAR 31.

#### **27. Termination for Default**

A. Buyer may, by written notice of default to Seller, terminate this Order in whole or in part if Seller fails (i) to deliver the goods and/or perform the services within the time specified in this Order or any extension thereof, (ii) to perform any of the other provisions or meet any of the requirements of this Order, or (iii) to make progress so as to endanger performance of this Order in accordance with its terms and, in either of the second or third circumstances, does not cure such failure within ten days after receipt of written notice from Buyer specifying such failure.

B. If Buyer terminates this Order in whole or in part it may acquire, upon such terms as it deems appropriate, goods and/or services similar to those terminated. Seller shall be liable to Buyer for any excess cost for such similar goods and/or services, provided, however, that Seller shall continue performance of this Order to the extent not terminated under the provisions of this Article and, provided, further, that Buyer shall pay the price set forth in this Order for completed goods or services delivered and accepted.

C. The rights and remedies of Buyer in this Article are in addition to any other rights and remedies provided by law or in equity, or under this Order.

#### **28. Quality / Inspection**

A. Buyer (and Buyer's customer, if applicable) through any authorized representatives, has the right at all reasonable times and places to inspect and test the goods and/or services being supplied under this Order, including by Seller's suppliers.

B. Buyer assumes no contractual obligation to perform any inspection or test unless otherwise specifically set forth in this Order.

C. Buyer's failure to inspect or test any goods and/or services shall not relieve Seller from responsibility for any defective or nonconforming goods and/or services.

D. If any inspection or evaluation is made by Buyer or its customer on the premises of Seller or any of Seller's suppliers, Seller or its suppliers shall provide at no additional charge all reasonable facilities and assistance for the safety and convenience of the personnel conducting the inspection or test.

E. Should source inspection (verification of the production process, special processes) be required by Buyer it will be specified on the purchase order. Suppliers performing special processes (those that cannot be verified by subsequent monitoring or measurement) must be certified or use a supplier approved by Compulink.

F. Seller, when requested by Compulink, will provide test specimens for the purpose of inspection, verification, investigation or auditing.

G. Seller shall maintain a Quality Management and Inspection System acceptable to Buyer. A Quality Management System registered to ISO9001 is acceptable. A QMS registered to AS9100 is preferred

#### **29. Use of Open Source Software (OSS)**

a. This clause only applies to Work that includes the delivery of software (including software residing on hardware).

b. Seller shall disclose to Compulink in writing any (OSS) that will be used or delivered in connection with this Contract and shall obtain Compulink's prior written consent before using or delivering such OSS in connection with this Contract. Compulink may withhold such consent in its sole discretion. Seller warrants all OSS used or delivered in connection with this Contract complies with any applicable OSS License.

c. As used herein, "OSS License" means the General Public License ("GPL"), Lesser/Library GPL, (LGPL), the Affero GPL (APL), the Apache license, the Berkeley Software Distribution ("BSD") license, the MIT license, the Artistic License (e.g., PERL), the Mozilla Public License (MPL), or variations thereof, including without limitation licenses referred to as "Free Software License", "Open Source License", "Public License", or "GPL Compatible License."

d. As used herein, "OSS" means software that incorporates or embeds software in, or uses software in connection with, as part of, bundled with, or alongside any (1) open source, publicly available, or "free" software, library or documentation, or (2) software



that is licensed under an OSS License, or (3) software provided under a license that (a) subjects the delivered software to any OSS License, or (b) requires the delivered software to be licensed for the purpose of making derivative works or be redistributable at no charge, or (c) obligates BUYER to sell, loan, distribute, disclose or otherwise make available or accessible to any third party (i) the delivered software, or any portion thereof, in object code and/or source code formats, or (ii) any products incorporating the delivered software, or any portion thereof, in object code and/or source code formats.

e. Seller agrees to defend, indemnify, and hold harmless CompuLink, its customers and suppliers from and against any claims, damages, losses, costs, and expenses, including reasonable attorneys' fees, to the extent caused by CompuLink's use in connection with the Purchase Order or the delivery of Prohibited Software.

### **30. Requirement**

The following provision is applicable and all deliverables must be compliant, including anything provided by lower tier suppliers. FAR 52.204-23, Prohibition on Contracting for Hardware, Software, and Services Developed or Provided by Kaspersky Lab and Other Covered Entities (Jul 2018)

(a) Definitions. As used in this clause--

Covered article means any hardware, software, or service that--

- (1) Is developed or provided by a covered entity;
- (2) Includes any hardware, software, or service developed or provided in whole or in part by a covered entity; or
- (3) Contains components using any hardware or software developed in whole or in part by a covered entity.

Covered entity means--

- (1) Kaspersky Lab;
- (2) Any successor entity to Kaspersky Lab;
- (3) Any entity that controls, is controlled by, or is under common control with Kaspersky Lab; or
- (4) Any entity of which Kaspersky Lab has a majority ownership.

(b) Prohibition. Section 1634 of Division A of the National Defense Authorization Act for Fiscal Year 2018 (Pub. L. 115-91) prohibits Government use of any covered article. The Contractor is prohibited from--

- (1) Providing any covered article that the Government will use on or after October 1, 2018; and
- (2) Using any covered article on or after October 1, 2018, in the development of data or deliverables first produced in the performance of the contract.

(c) Reporting requirement. (1) In the event the Contractor identifies a covered article provided to the Government during contract performance, or the Contractor is notified of such by a subcontractor at any tier or any other source, the Contractor shall report, in writing, to the Contracting Officer or, in the case of the Department of Defense, to the website at <https://dibnet.dod.mil/>. For indefinite delivery contracts, the Contractor shall report to the Contracting Officer for the indefinite delivery contract and the Contracting Officer(s) for any affected order or, in the case of the Department of Defense, identify both the indefinite delivery contract and any affected orders in the report provided at <https://dibnet.dod.mil/>.

(2) The Contractor shall report the following information pursuant to paragraph (c)(1) of this clause:

(i) Within 1 business day from the date of such identification or notification: The contract number; the order number(s), if applicable; supplier name; brand; model number (Original Equipment Manufacturer (OEM) number, manufacturer part number, or wholesaler number); item description; and any readily available information about mitigation actions undertaken or recommended.

(ii) Within 10 business days of submitting the report pursuant to paragraph (c)(1) of this clause: Any further available information about mitigation actions undertaken or recommended. In addition, the Contractor shall describe the efforts it undertook to prevent use or submission of a covered article, any reasons that led to the use or submission of the covered article, and any additional efforts that will be incorporated to prevent future use or submission of covered articles (d) Subcontracts. The Contractor shall insert the substance of this clause, including this paragraph (d), in all subcontracts, including subcontracts for the acquisition of commercial items.

### **31. Warranty**

A. Seller warrants to Buyer, its successors and assigns, that all goods provided hereunder shall be (i) merchantable, (ii) free from defects in material and workmanship, (iii) with regard to goods designed by Seller, free from defects in design, (iv) suitable for the purposes intended whether expressed or reasonably implied, and (v) in compliance with all applicable specifications, drawings, and performance requirements; and that all services provided hereunder shall be (vi) free from defects in workmanship, (vii) suitable for the purposes intended whether expressed or reasonably implied, (iii) performed in a professional and workmanlike manner, and (viii) in compliance with all applicable specifications, drawings, and performance requirements.

B. If any nonconformity under this warranty appears within one (1) year after final acceptance of the goods and/or services, Seller shall promptly and diligently repair, replace or correct (by re-performance or otherwise) such nonconformity at no cost to Buyer (including any transportation costs associated therewith). If repair, replacement or correction is not made in a timely manner to Buyer's satisfaction, then the Buyer may, at its election and in addition to any other remedies available to Buyer at law or in equity, correct or have corrected such nonconformity at Seller's expense.

### **32. Design, Process, Location Changes / Material Disposition**

During performance of this Order, Seller shall not make any changes in the design, processing or location of manufacture of goods or services to be furnished by Seller under this Order without advance written notification to and written approval of Buyer. This requirement applies whether or not there is a cost impact associated with the change and regardless of the type of change involved, including product improvements.

### **33. Access to Records**



Buyer shall have access to all records of Seller's performance hereunder. Records are to be kept for an indefinite period of time.

#### **34. Counterfeit or Suspect Counterfeit**

Only new and authentic materials are to be used in products delivered to Buyer. No counterfeit or suspect counterfeit parts are to be contained within the delivered product. Parts shall be purchased directly from the OCMs/OEMs, or through the OCM/OEMs Franchised Distributor. Documentation must be available that authenticates traceability to the applicable OCM/OEM. Independent Distributors (Brokers) shall not be used without written consent from Buyer. The Supplier shall have a Counterfeit Parts Avoidance Program in place that is compliant to AS5553. It is recommended the Seller participate in GIDEP.

#### **35. Compliance with Laws**

Seller shall comply with the applicable provisions of all federal, state, and local laws and ordinances and all lawful orders, rules, and regulations there under, and such compliance shall be a material requirement of this Order.

- a) Compliance to all local, state and national laws pertaining to child labor and indentured / prison / compulsory labor is mandatory
- b) Compliance to federal and state laws prohibiting
- c) Compliance to:
  - 41 C.F.R. § 60-741.5(a) (prohibition of discrimination against qualified individuals based on disability) required
  - 41 C.F.R. § 60-300.5(a) (prohibition of discrimination against qualified protected veterans)
  - 41 C.F.R. § 60-250.5 (affirmative actions and prohibition of discrimination against special disabled veterans, veterans of the Vietnam era, recently separated veterans and other protected veterans)
  - 41 C.F.R. Parts 60-1, 60-20, and 60-50 as set forth under EO 11246 and as amended under EO 13672 (prohibition of discrimination against discrimination on the basis of race, color, religion, sex, sexual orientation, gender identity, national origin, disability or veteran status is required
  - FAR 52.222-50 Combating Trafficking in Persons
- d) Compliance with the laws and regulations in force related to protection of the environment and the health and safety requirements applicable to the Contract. If applicable specific requirements will be provided in the purchase order.

#### **36. Export Control**

Seller agrees to comply fully with all applicable laws and regulations of Seller's country and of the United States pertaining to the export of any hardware, software, defense service, information or technical data provided by, through or with the cooperation of the Buyer in the performance of this Order, whether in the United States or abroad. This Order may involve information or items that are subject to the International Traffic in Arms Regulations (ITAR) or Export Administration Regulations (EAR) and that may not be released to Foreign Persons inside or outside the United States without the proper export authority. The ITAR defines a "Foreign Person" as any person who is not a U.S. citizen, a lawful permanent resident as defined by 8 USC 1101(a) (20), or a protected individual as defined by 8 USC 1324b(a)(3). Foreign Person is also defined as a corporation, a business, an association, a partnership, or any other entity that is not incorporated or organized to do business in the United States and as international organizations, foreign governments, and any agency or subdivision of foreign governments (e.g., diplomatic missions). Seller further agrees that it will not export or re-export, directly or indirectly, any hardware, software, defense service, information or technical data provided by, through or with the cooperation of the Buyer to any Foreign Person, including persons employed by or associated with, or under contract with the Seller or Seller's lower-tier suppliers without the prior written consent of the Buyer *and* without first obtaining any required export license or other approval. In addition, should Seller participate in the performance of this Order at Buyer's facilities, Seller shall inform Buyer in advance in writing of the country of citizenship (or countries, in the case of dual citizenship) of each Foreign Person employee, agent, or representative of Seller or of Seller's suppliers prior to such person being allowed access to Buyer's facilities. Sellers and Seller's suppliers' Foreign Person employees, agents, or representatives shall not participate in the performance of this Order at Buyer's facilities without Buyer's written consent. Seller shall comply with the registration requirements of the International Traffic in Arms Regulations at 22 CFR §122.1, as applicable. Seller shall indemnify and hold Buyer harmless for all claims, demands, damages, costs, fines, penalties, attorneys' fees and other expenses arising or resulting from Seller's failure to comply with this clause.

#### **37. Foreign Persons**

The Seller acknowledges that certain hardware (e.g., finished goods, parts, components, accessories, attachments, samples, prototypes, test equipment, firmware, software, or systems), technical data (e.g., technical specifications, drawings, photos, instructions, or other technical information in any form), and/or services provided by Buyer for purposes of this Order may be controlled by the ITAR or the EAR, and may require U.S. Government export authorization before assigning any Foreign Person (as defined in 22 CFR 120.16, which includes foreign governments, business entities, groups and international organizations) to perform work under this Order or before granting access to Foreign Persons to any technical data obtained, used, generated, or delivered in performance of this Order. Any request for export authorization must include the information required by applicable export laws and regulations (reference ITAR or EAR).





**38. Conflict Minerals** - Conflict minerals (CM) contained in products delivered to Compulink by Suppliers must not originate from a covered country (CC) unless the Supplier, based on due diligence, can positively state that the conflict minerals do not benefit any armed group in a covered country. Reporting Supplier must notify Compulink of any CM contained in delivered product manufactured during CY 2013 if the CM originated in a CC. Any CM that was fully smelted or refined prior to January 31, 2013 or was outside the CC prior to that date is not subject to the SEC Final Rule and does not need to be reported. At the end of CY 2-13, Supplier must provide a report of any CM from CC in delivered to CompuLink at year's end, if not from a recycler or scrap source, including purchase order number, description of the deliverable(s), CM contained and its source. As applicable, such report is required annually at the end of each calendar year. If CM is obtained from CC or is not from a metal recycler or metal scrap source, Supplier must obtain an alternate source for CM in products to be delivered to Compulink such that by CY 2015, all products delivered to Compulink must not contain any CM from CC, unless it has been documented by due diligence that the CM did not benefit any armed group. Suppliers are expected to adopt policies and management systems with respect to conflict minerals and to require their suppliers to adopt similar policies and systems.

**39. Toxic, Hazardous or Carcinogenic Substances and Substances of Very High Concern (SVHC)**

Seller represents and warrants that the following are not prohibited or restricted by any laws or regulations of any country or other jurisdiction in the world: The Items, and substances contained therein including parts, subparts, components, and chemical constituents; substances used in the manufacture of the Items, including its parts, subparts, components and chemical constituents. If Seller provides Items under this Order which contain a toxic or hazardous substance identified under Occupational Safety and Health Standards, 29 C.F.R. § 1919.20 or 29 C.F.R. § 1910.1000 et seq. (Subpart Z),

- contain a carcinogenic substance, or the use of which is regulated or restricted under 76/769/EC or other European Community Directive
- contain SVHCs or materials requiring registration, notification or communication under REACH
- contain substances or materials that are regulated under EC RoHS, WEEE and Battery directives or any other jurisdiction's RoHS, WEEE and Battery regulations
- contain substances or materials that are regulated as a hazardous waste by RCRA

Seller shall provide Buyer, at no cost to the buyer, all relevant information including without limitation, SDS in the language and the legally required format of the location to which the items will be shipped and mandated labelling information, (meeting the requirements of the Hazard Communication Standard at 29 C.F.R. § 1910.1200 ("HCS") and the latest revision of Federal Standard No 313, REACH and EC CLP Regulation 1272/2008), that shall include information on the presence of all chemical substances in the Item, including concentrations of carcinogenic chemicals equal to or greater than 0.1% on a weight by weight basis within an Item and any other information required by any applicable law. Seller is required to monitor the SVHCs and RoHS and other jurisdictions' lists of substances on a regular basis and shall provide this information to Buyer before the initial shipment of the item and again with the initial shipment of the item. When a change in formulations occurs, Seller shall provide Buyer with a copy of the revised SDS and any new restrictions on handling, use, or disposal and receive approval from Buyer before shipment. Seller shall label each container of such Items in a clearly legible and conspicuous form in compliance with the HCS and all applicable shipping requirements, and shall provide Buyer with a copy of any existing or new restrictions on handling or use. Safety Data Sheets for all other materials shall be retained by Seller and made available to Buyer upon request.

**40. Ozone Depleting Substances**

Seller agrees that the Items delivered hereunder shall be accurately labeled for ODSs in accordance with the requirements of Section 611 of the 1990 Clean Air Act Amendments and the regulations promulgated thereunder, including but not limited to requirements contained in 40 C.F.R. §§ 82.114 and 82.116. At Buyer's request, Seller shall certify in a form satisfactory to Buyer whether the Items were manufactured with a controlled substance, as defined in 40 C.F.R. § 82.104.

**41. Standards on Slavery and Human Trafficking in the Supply Chain**

Seller – Pursuant to the California Transparency in Supply Chains Act and consistent with our commitment to excellence and corporate social responsibility, Buyer supports the eradication of human trafficking and slavery in supply chains around the world, including in our own. Buyer sets forth the following Standards that its Sellers shall meet in order to do business with Buyer: - Seller that provides goods or services to Buyer shall operate in full compliance with the laws of their respective countries and with all other applicable laws, rules and regulations. - Seller shall employ only workers who meet the applicable minimum legal age requirement for employment in the country or countries in which they are doing business. Seller shall not employ any prison, indentured or forced labor. Seller shall comply with all applicable laws, regulations and industry standards on working hours and working conditions. Seller shall certify that materials incorporated into goods provided to Buyer comply with the laws regarding slavery and human trafficking of the country or countries in which Seller is doing business.

**42. Compliance with the U.S. Foreign Corrupt Practices Act**

Seller warrants and represents that it is familiar with and will strictly comply with the requirements of the U.S. Foreign Corrupt Practices Act of 1977, as amended. Seller will not offer, pay or promise to pay, give, or authorize payment of any money or anything of value to any government or public official (including political parties, officials or candidates for political office) for the purpose of influencing any act or decision of such official in his official capacity, including failure to perform his official function. Seller agrees that no expenditures for other than lawful purposes will be made with respect to the performance of this Order.

**43. Gratuities/Kickbacks**



No gratuities (in the form of entertainment, gifts, travel, or anything of value) or kickbacks shall be offered or given by Seller or by any agent, representative, affiliate or subcontractor of Seller to any officer or employee of Buyer's customer or Buyer. This restriction specifically prohibits the direct or indirect inclusion of any kickback amounts in any invoices or billings submitted under this Order or any other agreement with Buyer. Buyer may, by written notice to Seller, immediately terminate the right of Seller to proceed under this Order if it is found that gratuities (in the form of entertainment, gifts, travel or anything of value) or kickbacks were offered or given by Seller, or by any agent or representative of Seller, to any officer or employee of Buyer's customer or Buyer.

#### **44. Certificates**

Seller shall furnish to Buyer any certificate required to be furnished by any provision of this Order, including any clauses incorporated by reference herein, and any certificate required by any future law, ordinance, or regulation with respect to Seller's compliance with the terms and provisions of such laws, ordinances, or regulations. As used in this Article, the word "certificate" shall include any plan or course of action or recordkeeping function.

#### **45. Certifications**

By accepting this Order, Seller certifies to the best of its knowledge and belief that: Seller and/or any of its principles are not presently debarred, suspended, proposed for debarment, or declared ineligible for the award of contracts by any federal agency:

- there is no litigation or proceeding pending, and that none are anticipated (e.g. claims of fraud, waste or abuse, debarment proceedings, or criminal allegations, against it or any of its officers or employees that may restrict, invalidate or void the Items or Services contemplated by this Order or render the continuation of such Order inadvisable)
- Seller has reviewed the Order and that no person that it provides to perform any services included therein has any legal restrictions as a result of government service that would be pertinent to the Order that would prevent such person from reasonably performing the work contemplated (e.g., post-employment restrictions related to representing a company to the government, accepting compensation for these services or improperly using or disclosing non-public information in these duties);

#### **46. Waiver, Remedies, and Severability**

A. The failure or delay of Buyer to insist on performance of any provision of this Order, or to exercise any right or remedy available under this Order, shall not be construed as a waiver of that provision, right, or remedy in any later instance. Further, if any provision of this Order is or becomes void or unenforceable by operation of law, the remaining provisions shall be valid and enforceable.

B. Unless otherwise expressly stated in this Order, the rights and remedies of both parties hereunder shall be in addition to their rights and remedies at law or in equity; provided, however, that in no event shall Buyer be liable to Seller for any anticipatory profits or for any special (including multiple or punitive), indirect, incidental, or consequential damages howsoever arising.

#### **47. Force Majeure**

Neither Buyer nor Seller shall be liable for failure to perform under this Order if such failure is due to events which are beyond the reasonable control and without the fault or negligence of Buyer or Seller, as the case may be, and which intervene after the execution of this Order and impede its performance, provided such failure to perform shall only be excused for the duration of one such intervening event and shall be subject to the Buyer's right to terminate this Order pursuant to clause 27. Examples of such Force Majeure events include, but are not limited to: a strike or labor dispute, war or act of war (whether or not an actual declaration thereof is made), insurrection, riot or civil commotion, act of public enemy, fire, flood, or other act of God, or any act of governmental authority (including export restrictions). The party wishing to claim relief by reason of any of the said circumstances shall notify the other party in writing without delay on the intervention and cessation thereof.

#### **48. Indemnification**

In addition to any other indemnification provision of this Order, Seller shall indemnify, defend and hold harmless Buyer, its officers, directors, and employees, from any and all claims, liabilities, losses, damages, costs, and expenses, including attorneys' fees --

(1) for actual or alleged (a) injury to any person, (b) damage to any property, or (c) violation of any law, ordinance, or regulation, arising from or related to Seller's (or Seller's subcontractors') performance of work in connection with this Order (including, if applicable, Seller's violation of the Truth in Negotiations Act or any implementing or comparable regulation, including FAR Part 15); or

(2) any civil or criminal penalty or fine incurred by Buyer which is caused to any degree or any extent by Seller, its employees, agents, representatives, suppliers, or subcontractors.

#### **49. Survival**

Seller's obligations under the warranty, proprietary information, Buyer's property, and intellectual property provisions of this Order shall survive completion or any earlier termination of this Order.

#### **50. End of Life**

Supplier is responsible to notify in writing to CompuLink regarding any and all end of life (EOL) situations for all related material procured from Supplier. The EOL will precede the last order date by up to 90 days or within lead-time whichever is greater.

#### **51. Entire Agreement**

This Order, including any attachments and documents incorporated by reference, constitutes the entire agreement between Buyer and Seller, and supersedes all prior representations, agreements, understandings, and communications between Buyer and Seller related to the subject matter of this Order, whether oral or written. No amendment or modification of this Order shall be binding upon either party unless it is set forth in a written instrument signed by authorized representatives of both Buyer and Seller.

