

STANDARD TERMS AND CONDITIONS OF SALE

EXCEPT AS SPECIFICALLY NOTED ON THE FACE OF THE PURCHASE ORDER ISSUED TO COM DEV LTD., THE FOLLOWING TERMS AND CONDITIONS SHALL APPLY TO AND FORM AN INTEGRAL PART OF THE PURCHASE ORDER TO WHICH THEY ARE ATTACHED.

1. INTERPRETATION

- 1.1 The "Buyer" refers to the party issuing the Purchase Order to which these terms and conditions are attached and COMDEV Ltd. is herein referred to as the "Seller".
- 1.2 When used herein the word "contract" means the Purchase Order and these terms and conditions.
- 1.3 Any reference in this contract to money is a reference to Canadian dollars unless otherwise the currency as indicated within the Seller's proposal.
- 1.4 The parties agree to exclude the application of the UN Convention on Contracts for the International Sale of Goods, 1980.
- 1.5 Where the meaning of any particular paragraph requires, words in the singular include the plural and words in the plural include the singular.
- 1.6 When a word is defined in this contract, other parts of speech and grammatical forms of the same word have corresponding meanings.
- 1.7 When used in this contract in capitalised form the following words have the meanings specified below:
 - "Change Notice" means the notice described in paragraph 5.1 hereof.
 - "Change Proposal" has the meaning ascribed to it in paragraph 5.2 hereof.
 - "Confidential Information" has the meaning ascribed to it in paragraph 19.1 hereof.
 - "Disclosing Party" has the meaning ascribed to it in paragraph 19.2 hereof.
 - "Dispute" has the meaning ascribed to it in paragraph 20.1 hereof.
 - "Excusable Delay" has the meaning ascribed to it in paragraph 15.1 hereof.
 - "Receiving Party" has the meaning ascribed to it in paragraph 19.2 hereof.
 - "Work" means the provision of the services or the furnishing and supply of the goods and materials described in the Purchase Order, as the case may be.
- 1.8 This contract is composed of all of the following documents, each of which is hereinafter sometimes referred to as a "Contract Document" and all of which constitute the "Contract Documents":
 - The Purchase Order; and
 - Terms and Conditions of Sale; and
 - Any Annex to these Terms and Conditions, including, without limitation, drawings and specifications relating to the Work.
- 1.9 All Annexes to these Terms and Conditions are subject to the terms of these Terms and Conditions and in the event of a conflict between the wording of any two or more Contract Documents, the wording of that Contract Document that is listed earlier in the foregoing paragraph shall govern.
- 1.10 Where any standard, procedure, specification or other technical document is incorporated by reference into a Contract Document, such reference matter shall be contractually binding only to the extent that the Contract Document concerned makes it clear that the part of such reference matter referred to is to be a specific requirement.

2. ACCEPTANCE OF CONDITIONS

- 2.1 The Buyer acknowledges and agrees that it shall be bound by the contract and the Contract Documents and any other terms and conditions incorporated by reference or appended to this contract and the Seller accepts his order only upon those terms and conditions.

3. CONSIDERATION/SUBCONTRACTING

- 3.1 In consideration of the reciprocal covenants herein contained the Buyer and the Seller agree that the Seller shall perform the Work described herein and the Buyer shall make the payments on the terms and subject to the conditions set out in the contract.
- 3.2 The Seller may subcontract such portions of the Work as it, in its sole discretion, deems necessary in the performance of this contract.

4. MERGER

- 4.1 The contract supersedes all prior representations, arrangements, communications, negotiations, understandings or agreements of whatsoever kind, whether written or verbal, between the parties in respect of the subject matter of the contract or any part thereof and shall constitute the sole and only agreement between the parties in respect of such subject matter.

Each of the parties represents to the other that it has not entered into this contract as a result of or in reliance upon any representation or warranty made to it by the other party other than as may be contained herein.

5. SPECIFICATIONS/MODIFICATIONS

- 5.1 The Buyer may by delivery of a written notice (the "Change Notice"), make changes at any time and from time to time to any Contract Document, drawings and specifications relating to the Work or by requesting additional work or the omission of work and if such changes cause an increase or decrease in the cost of performance of this contract or in the time required for its performance, an equitable adjustment shall be agreed in writing by the Buyer and the Seller within ten [10] days of the delivery of the Change Notice (or such longer time as the Buyer and Seller may mutually agree) and the contract shall be amended in writing accordingly. Failing agreement on an equitable adjustment, the Seller shall be under no obligation to implement the change requested in the Change Notice.
- 5.2 The Seller may propose changes at any time and from time to time to any Contract Document, drawings and specifications relating to the Work provided that if it does so it shall prepare, at its cost, a written proposal to the Buyer containing the following minimum information (a "Change Proposal"):
 - (a) effect on price;
 - (b) effect on delivery dates;
 - (c) impact on the Work, if any;
 - (d) effect on any other Contract Document.

Each such Change Proposal shall be submitted to the Buyer with a stated proposal validity period, within which the Buyer shall either accept or reject the Change Proposal. On receipt of written notice of acceptance the Seller shall be entitled to proceed with the change as if this contract were amended in accordance with the Change Proposal.

6. PRICE/INVOICES

- 6.1 In consideration of the performance by the Seller of its obligations hereunder the Buyer shall pay to the Seller, at the times, in the manner and subject to the terms set forth in this contract, the price set out on the Purchase Order to which these terms and conditions are attached.
- 6.2 Invoices will show the Buyer's Purchase Order number thereon, and must be rendered on the same date shipment is made. All invoices shall be accompanied by copies of packing slips.

- 6.3 Buyer agrees to pay the Seller's invoices Net 30 days from delivery of invoice and to pay interest on overdue accounts at then current bank rates for Canadian commercial loans, plus 2% (two percent).

- 6.4 The contract price is exclusive of any allowance for taxes of any kind (including sales and goods and services taxes) or customs duties of any kind related to the Work. If applicable, such taxes and duties shall be for the account of the Buyer.

7. DELIVERY

- 7.1 The Seller may complete or deliver all or any part of the Work in advance of the delivery schedule set out in the contract.
- 7.2 Seller shall notify Buyer immediately of any actual or potential labour dispute or any other cause which delays or threatens to delay the timely performance of this contract.

8. LIENS

- 8.1 Seller covenants that all Work to which an invoice relates are free from all claims, liens, attachments, charges or encumbrances of any kind and that it shall not become or continue to be a party to any contract or voluntarily enter into any relationship with any person, firm or corporation in any jurisdiction whereby such party may obtain any right, lien or encumbrance upon the Work or any part thereof after title vests in the Buyer.

9. INSPECTION AND ACCEPTANCE

- 9.1 The Work shall be subject to the Buyer's inspection at any reasonable time on a non-interference basis upon reasonable notice being given to the Seller. Acceptance of the Work shall be upon delivery.
- 9.2 Acceptance by the Buyer of any deliverable data requiring Buyer approval shall be deemed to have taken place within fifteen [15] days of delivery of same to Buyer provided Seller has not been notified in writing that the data has been rejected together with the reasons for the rejection.

10. PACKING, SHIPPING TITLE & RISK

- 10.1 The Seller shall package the Work to a commercial standard sufficient to protect same from normally expected damage or deterioration in transit to destination. The Buyer shall select the transportation and common carrier.
- 10.2 Title to the Work (excluding data) shall pass from the Seller to the Buyer upon delivery at the F.O.B./FCA. (as defined by INCOTERMS 2000) point, which shall be the Seller's plant, Cambridge, Ontario.
- 10.3 Risk of loss or damage shall remain with the Seller until delivery is made to the F.O.B./F.C.A. point.

11. CUSTOMS AND IMPORT/EXPORT

- 11.1 Upon notification by Seller, the Buyer shall be responsible to provide to the Seller all end-use statements and information as may be required by the Seller to comply with the requirements of Canada's Export and Import Permits Act, Defence Production Act, the International Traffic in Arms regulations, and any related Canadian export laws as applicable. The Buyer shall be solely responsible for the accuracy and completeness of information provided to the Seller and shall be responsible for all costs or delays resulting from failure to provide accurate and complete information, or failure to obtain an import license if applicable.

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12. WARRANTY

- 12.1 Seller warrants for twelve [12] months from the date of delivery that Work of its manufacture will materially conform to the published specifications and be free from defective material and faulty workmanship attributable to Seller.
- 12.2 The above warranty does not apply to consumables, or to products, which have a normal useful life shorter than ninety [90] days. With respect to such consumables or products, Seller's regular existing warranty, if any, or that of its suppliers, applicable thereto shall apply.
- 12.4 Subject to written notice being provided to Seller within the applicable warranty period, Seller shall determine whether or not the Work contains defective material or faulty workmanship, in which case Seller shall, at its sole discretion, either repair or replace any Work or products thereof returned by Buyer with shipping charges paid for by Buyer.
- 12.5 All non applicable warranty claims by Buyer shall be subject to Seller's standard shipping and material costs and labour rates in force at the time of claim.

13. RIGHTS IN DATA AND INVENTIONS

- 13.3 The Seller shall have or retain the entire right, title and interest to all data first produced or specifically used by the Seller in the performance of this contract, except for the Buyer-furnished data received by the Seller. The Seller grants to the Buyer the right to use the data delivered by the Seller hereunder solely for the purposes of this contract and the Buyer's own use of the Work furnished by the Seller; provided that such data will not, without the prior written consent of the Seller, be disclosed or supplied in whole or in part to any third party or used in whole or in part for design, manufacture, re-procurement or any other purpose whatsoever. Further, the Seller shall have no obligation to deliver any data, which is not otherwise specifically stated to be a deliverable under the contract.
- 13.4 The Seller shall have and retain the entire right, title and interest to all inventions (including discoveries, new and useful art, processes, methodologies, techniques of manufacture, design or composition of matter, or any new and useful improvement thereof) conceived or developed or first actually reduced to practice in the performance of this contract.

14. PATENT INDEMNITY

- 14.1 The Seller shall indemnify the Buyer against all claims, actions or proceedings against the Buyer alleging the infringement of any Canadian patent existing as of the effective date of this contract in respect of any supplies or designs or parts thereof (the "items") furnished by the Seller under the contract; provided the Seller is given prompt written notice of such claim by the Buyer and given authority and such assistance and information as is available to the Buyer for resisting or for the defence of such claim. In the event of such action or proceeding, the Seller at its expense and option may: (a) secure for the Buyer the right to use the item; or (b) replace the item; or (c) modify the item; or (d) take back the item and refund the contract price therefore less a reasonable sum for use, damage and obsolescence.
- 14.2 The foregoing indemnity shall not apply to any infringement resulting from an item furnished by the Buyer or from a modification or addition by other than the Seller to the items after delivery. The Seller shall not be bound by any settlement of any charge or infringement made by the Buyer without the Seller's written consent.

15. EXCUSABLE DELAY

- 15.1 A delay in the performance of an obligation of the Seller under this contract which is caused by an event beyond the reasonable control of the Seller shall constitute an Excusable Delay:

15.2 For greater clarity, it is agreed that any delay caused by any one or more of the following events shall be an Excusable Delay:

- (a) delay by the Buyer in performing any of its obligations under this contract;
- (b) strikes, lock-outs or other labour disturbances;
- (c) fire, flood, war, hostilities, insurrection, civil unrest, blockage, terrorism or other instances of vis major;
- (d) perils of the sea, earthquake or other acts of God;
- (e) delay or refusal by any government, government department, authority or administrative agency to issue any permits, licences or other approvals necessary for the performance of any of the obligations of the Seller under this contract, or any revocation of the same, or any prohibition by such government, government department, authority or administrative agency of any such obligation; or
- (f) a delay caused by a failure by a third person engaged by the Seller as a supplier of any part of the Work if such delay is caused by or results from,
 - (i.) the third person ceasing to carry on business;
 - (ii.) an event that would otherwise meet the criteria set out in paragraph 15.1 if that paragraph applied to such third person;
 - (iii.) an event that would be included in subparagraphs 15.2(b) to (e) inclusive if such subparagraphs applied to such third person.

15.3 To the extent that any obligation of the Seller is not performed by a required date specified in this contract or is delayed or further delayed as a result of an Excusable Delay, the date for the performance of that obligation shall be postponed by the duration of the Excusable Delay and any reference in this contract to a date or dates for the performance of such obligation shall be a reference to such date or dates as amended by operation of this paragraph.

16. TERMINATION AND DEFAULT BY SELLER

- 16.1 The Buyer may terminate all or any portion of the Work at its convenience upon thirty [30] days written notice to the Seller. Upon termination, the Buyer shall pay the Seller for all work completed on the basis of the contract price, together with the Seller's actual costs plus fair and reasonable profit on all work completed and in progress and all work attributable to the termination, including but not limited to subcontractor cancellation charges, any un-amortized non-recurring costs, administrative costs of settlement and any extraordinary expenses or losses occasioned to the Seller.
- 16.2 If the Seller is in default of performing any of its material obligations under this contract and fails to remedy or take reasonable steps to remedy the default within thirty [30] days after receipt of a written notice from the Buyer, the Buyer may terminate all or any portion of this contract; provided however, if the default is due to causes beyond the control of the Seller, the payment provisions of paragraph 16.1 above shall apply.

17. EFFECTS OF TERMINATION

- 17.1 Termination of the contract releases both parties from their obligations under it, subject to any payments, which may be due. Termination does not affect any provision of this contract for the settlement of disputes or any other provision of the contract governing the rights and obligations of the parties consequent upon the termination of the contract (and, for greater certainty, the provisions of paragraph 19 hereof respecting Confidentiality shall survive termination of this contract).

18. LIMITATION OF LIABILITY

- 18.1 NOTWITHSTANDING ANY OTHER PROVISION OF THE CONTRACT, THE SELLER'S TOTAL

LIABILITY RESULTING FROM OR IN CONNECTION WITH THIS CONTRACT SHALL NOT EXCEED THE AGGREGATE SUM PAID TO THE SELLER IN PERFORMING THE WORK UP TO THE CONTRACT PRICE. IN NO EVENT WHATSOEVER SHALL THE SELLER BE LIABLE FOR INDIRECT OR CONSEQUENTIAL DAMAGES OR FOR LOSS OF THE BUYER'S USE OR LOSS OF THE BUYER'S PROFIT.

19. CONFIDENTIALITY

19.1 This contract and all information or things issued, used or disclosed in the performance of the Work ("Confidential Information") are confidential.

19.2 All Confidential Information communicated or disclosed by one party to this contract (the "Disclosing Party") to the other (the "Receiving Party") in the performance of this contract is communicated or disclosed on the following conditions on each of which the Disclosing Party relies and the Receiving Party agrees to undertake and fulfil and to ensure that its agents, employees, consultants, officers and directors shall observe and fulfil:

- (a) the Confidential Information disclosed by the Disclosing Party shall be used by the Receiving Party solely for the purpose of performing this contract and under no circumstances shall it be disclosed to any third party; and shall be marked as such;
- (b) the Confidential Information shall be disclosed by the Receiving Party only to those of its employees, agents, consultants or other representatives who need to use it for the aforesaid purpose and then only after they have signed an agreement in terms identical with this Contract in favour of the Disclosing Party;
- (c) the Receiving Party shall at all times take all measures necessary for the protection of the Confidential Information and any part of it from loss, espionage, theft, appropriation or destruction.

19.3 The Receiving Party shall specifically perform the undertakings set out in the foregoing paragraph from the date of the Purchase Order for a period of five [5] years except in connection with any item of Confidential Information that the Receiving Party can prove to have been:

- (a) in the possession of the Receiving Party before disclosure by the Disclosing Party;
- (b) in the public domain at the time of disclosure by the Disclosing Party or subsequently to have entered the public domain other than by breach of this Contract; or
- (c) disclosed to the Receiving Party on a non-confidential basis by a third party without breach of any obligation of confidentiality by that third party.

19.4 The Disclosing Party shall retain all the right, title and interest that he had in the Confidential Information disclosed to the Receiving Party notwithstanding such disclosure and the fact of such disclosure shall not impart or grant to the Receiving Party any rights in or licence to use the Confidential Information thus disclosed.

20. DISPUTES

20.1 Any dispute, controversy or claim arising out of or relating to or in connection with this contract or the validity, performance, discharge or termination thereof (a "Dispute") shall be subject to resolution pursuant to this paragraph.

20.2 The parties shall use all reasonable endeavours to resolve any Dispute themselves.

20.3 Prior to the initiation of formal Dispute resolution procedure described in paragraph 20.4 hereof, the Buyer and Seller shall first attempt (each at their own expense) to resolve the Dispute informally, as follows:

- (a) Upon the request of either the Buyer or the Seller, each shall independently appoint a

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- designated representative who is not directly representative for the purpose of endeavouring to resolve the Dispute.
- (b) The designated representatives shall meet as often as the parties reasonably deem necessary in order to gather and furnish to the other all information with respect to the matter in issue which the parties believe to be appropriate and germane in connection with its resolution. The representatives shall discuss the problem and negotiate in good faith in an effort to resolve the Dispute without the necessity of the formal proceeding provided in paragraph 20.5.
- (c) During the course of negotiations, all reasonable requests made by one party to the other for non-privileged information, reasonably related to this contract, shall be honoured in order that each of the parties may be fully advised of the other's position.
- (d) The specific format for the discussion shall be left to the discretion of the designated representatives, but may include the preparation of agreed-upon statements of fact or written statements of position.
- (e) Should the parties fail to reach agreement pursuant to subparagraphs 20.3(a) to (d) above, or at any other time as the parties may mutually agree, authorised officers of the parties shall meet and endeavour to resolve the Dispute.
- (f) Formal proceedings for the resolution of a Dispute may not be commenced until the earlier of:
- (i.) the designated representatives concluding in good faith that amicable resolution through continued negotiation of the matters does not appear likely; or
 - (ii.) thirty [30] days after the initial request to negotiate the Dispute.
- 20.4 This provision shall not be construed to prevent a party from instituting, and a party is authorized to institute, formal proceedings under paragraph 20.5 earlier to avoid the expiration of any applicable limitations period or to preserve a superior position with respect to other creditors.
- 20.5 Any unsettled Dispute shall be resolved by arbitration in accordance with the *International Commercial Arbitration Act* and the Code referred to therein and involved in the Dispute and whose task it will be the UNCITRAL Arbitration Rules to the extent that they are not inconsistent with the Code, and in respect of any such arbitration the following conditions shall apply:
- (a) the location shall be Toronto;
 - (b) the language of the arbitration proceeding shall be English;
 - (c) the number of arbitrators shall be three [3];
 - (d) the appointing authority for purposes of the Code shall be a judge of the Ontario Court (General Division);
 - (e) the scope of the arbitration proceeding shall be limited to the resolution of the Dispute submitted to arbitrators;
 - (f) the arbitration panel shall decide the Dispute in accordance with the laws of the Province of Ontario and the laws of Canada applicable therein;
 - (g) subject only to the provisions of the *International Commercial Arbitration Act*, the parties agree that the determination and award of the arbitration panel shall be final and binding on both parties.
- 20.6 Where money is claimed to be due and payable and a party disputes its obligation to pay any portion thereof, the party so disputing its obligation may hold back only the disputed portion pending resolution of the Dispute.
- 20.7 Unless the continued performance of any part of the Work by the Seller, given the subject matter of the Dispute, could lead to costs thrown away for the Seller, the Seller shall continue to perform the Work diligently, notwithstanding the existence of such Dispute.
21. **SEVERABILITY**
- 21.1 Each paragraph of this contract shall be construed separately, and the invalidity or unenforceability of one paragraph shall not affect the validity or unenforceability of any other section.
- be to meet with the other's designated
22. **INDEMNITY**
- 22.1 The Buyer shall and does hereby indemnify the Seller from and against any and all loss arising out of and from claims for injury (including death) to persons or damage to property, which may be sustained in the performance of or in connection with this contract.
- 22.2 The Buyer shall be liable for and shall indemnify and hold the Seller harmless from and against any and all claims, liabilities or obligations of any nature or kind, save and except as provided in paragraphs 12 (Warranty) and 14 (Patent Indemnity) hereof, including those of third parties, arising from or in connection with the Work or data delivered pursuant to the terms hereof including, without limitation, the use, performance or construction of the Work (including any part thereof) or data.
23. **AMENDMENT**
- 23.1 Any amendment to this contract shall be of no force or effect unless made in writing and signed by authorised representatives of each party.
24. **ASSIGNMENT**
- 24.1 This contract or any interest herein or claim hereunder may not be assigned by either party (except, in either case to a wholly-owned subsidiary of such party) without the written consent of the other and no such consent shall relieve the assigning party of its obligation hereunder. Notwithstanding the foregoing, the Seller may assign payments due or to become due from the Buyer hereunder (and no more) provided always that the Buyer shall be given written notice of such assignment and all invoices shall refer to such assignment and further provided that the Buyer shall continue to have the right to exercise all of its rights hereunder without notice to or the consent of such assignee.
- 24.2 This contract shall ensure to the benefit of and be binding upon the successors and permitted assignees of the parties.