



2114 West 7th Street • Tempe, Arizona 85281 USA  
Telephone 1.480.333.2200 • Fax 1.480.333.2540

## Terms and Conditions of Sale, General

Revision 12.19.2011

### 1. GENERAL

All references to Comtech EF Data Corp. herein shall mean Comtech EF Data Corp. and all references to Buyer herein shall mean the customer named in a purchase order, quotation or proposal. All quotations from Comtech EF Data Corp. shall be considered solicitations of offers. All orders placed by Buyer shall be considered offers which shall be deemed accepted upon notice thereof from Comtech EF Data Corp.

Buyer will provide Comtech EF Data Corp. with a complete written authorization or purchase order (with frequencies and all other technical specifications required to manufacture the equipment to completion), containing necessary information, such as site name, type and quantity of product, requested delivery date and delivery instructions. Notwithstanding any terms or conditions which may be included in Buyer's purchase order form or other communication from Buyer, Comtech EF Data Corp's acceptance is conditional upon Buyer's assent to, or if this writing is construed as the offer, acceptance hereof is expressly limited to the terms and conditions set forth herein. It is agreed that sales are made only on the terms and conditions herein and any terms or conditions other than those set forth herein are hereby objected to by Comtech EF Data Corp and shall not become a part of the agreement of sale unless expressly agreed to in writing by Comtech EF Data Corp. Comtech EF Data Corp. objects to all supplemental or inconsistent terms and conditions in any purchase order or other communication from Buyer. Comtech EF Data Corp.'s failure to object to any specific term or condition contained in Buyer's purchase order or other communication shall not be deemed to be acceptance of such term or condition. In the absence of Buyer's written acceptance of these terms and conditions, acceptance of or payment for purchases hereunder shall constitute an acceptance of these terms and conditions. The terms and conditions set forth herein shall be deemed incorporated (as though set forth in full) into any agreement of sale entered into between Comtech EF Data Corp. and Buyer, unless otherwise modified in writing.

Comtech EF Data Corp. quotations are not firm unless expressly indicated, with a specific period of time during which the quotation will remain firm on the face thereof. Comtech EF Data Corp. reserves the right, without any increase in price, to modify the design and specifications of equipment designed by Comtech EF Data Corp., provided that the modification does not adversely affect the original performance specifications as specified by Comtech EF Data Corp. or as requested by the Buyer. All orders are subject to prior credit approval. Stenographic, typographic and clerical errors are subject to correction.

### 2. SHIPPING AND HANDLING

Unless otherwise specified by Buyer and agreed to by Comtech EF Data Corp. in writing, shipping and handling charges (e.g. Air, Parcel Post, and Common Carrier) will be included on the applicable invoice as a separately priced item to be paid by the Buyer. Freight charges are subject to frequent change and in consideration of Comtech EF Data Corp's agreement to hold to the charges stated, Buyer agrees to pay such amount without regard to the actual charges applicable at the time of shipment. It is understood that Comtech EF Data Corp. will not provide the Buyer with any copies of carrier freight bills. All packaging and packing shall be in accordance with ASTM D3951. Special export packaging, packing or crating, as required, will be quoted separately.

### 3. DELIVERY AND TITLE

Unless otherwise specified, all deliveries and risk of loss shall be determined in accordance with Ex Works as per Incoterms 2010. Shipping or delivery dates are best estimates only and subject to change based on Comtech EF Data Corp. commitments at the time Buyer's purchase order is received and accepted. Comtech EF Data Corp. reserves the right to make deliveries in installments, and contracts shall be severable as to such installments. A delay in delivery or default of any installment shall not relieve Buyer of its obligation to accept and pay for remaining deliveries. Claims for shipment shortage or damage shall be deemed waived unless presented to Comtech EF Data Corp. in writing within ten (10) days of delivery of each



2114 West 7th Street • Tempe, Arizona 85281 USA  
Telephone 1.480.333.2200 • Fax 1.480.333.2540

## Terms and Conditions of Sale, General

Revision 12.19.2011

shipment, and failure to make any claim within ten (10) days after receipt of each product covered hereunder shall constitute an irrevocable acceptance thereof. Title to the products shall pass to Buyer upon shipment; however, Buyer grants to Comtech EF Data Corp. a purchase money security interest and right of possession in the products until Buyer makes full payment. Comtech EF Data Corp's rights to enforce such purchase money security interest and its right of possession shall be non-exclusive remedies. Buyer agrees to cooperate as necessary to assist Comtech EF Data Corp. in perfecting such security interest, upon request.

#### 4. **COMMERCIAL WARRANTY**

Comtech EF Data Corp. manufactured products are warranted against defects in material and workmanship for a specific period from the date of shipment, and this period varies by product.

In the event of a defect during the warranty period, Buyer will return item to the Comtech EF Data Corp. depot repair facility for repair or replacement. Repair at Comtech EF Data Corp's option may include the replacement of parts or equipment and all replaced parts or equipment shall be the property of Comtech EF Data Corp. Parts or equipment replaced during the warranty period are warranted for the remainder of the original applicable warranty period or ninety (90) days, whichever is greater. This express warranty is extended by Comtech EF Data Corp. to the original Buyer for commercial, industrial or governmental use, but not to any transferee. Such action on the part of Comtech EF Data Corp. shall be the full extent of Comtech EF Data Corp's liability and Buyer's EXCLUSIVE REMEDY for breach of warranty or for any other defects in the products. Expenses of Buyer such as travel expenses are not covered by this warranty. This warranty extends only to products manufactured by Comtech EF Data Corp., and it is expressly conditioned upon the equipment having been installed in accordance with the installation practices accepted by the telecommunications industry, the standard installation and configuration practices recommended by Comtech EF Data Corp., and the equipment having been maintained in

accordance with Comtech EF Data Corp's recommended standard maintenance practices. Frequency products are excluded, but carry their own separate limited warranties as authorized by the Buyer and Comtech EF Data Corp. This warranty shall automatically terminate if the product is used in other than its normal and customary manner, has been subject to misuse, accident, neglect, or damage, is improperly disassembled or has improper alterations or repairs made to it, or if nonconforming parts are used in the product, unless done by a service facility authorized by Comtech EF Data Corp. to perform warranty service. Because each system is unique, Comtech EF Data Corp. disclaims liability for range, coverage, or operation of a system as a whole under this warranty except by a separate written agreement signed by an officer of Comtech EF Data Corp.

An authorization to return products under this warranty must be obtained from a Comtech EF Data Corp. representative prior to making shipment to Comtech EF Data Corp's service location, and all returns shall be shipped freight prepaid. Comtech EF Data Corp. will pre-pay return freight charges on repaired and replaced products found to be defective

**DISCLAIMER OF WARRANTIES: THE COMTECH EF DATA CORP. WARRANTY IS GIVEN IN LIEU OF ALL OTHER WARRANTIES, EITHER EXPRESS OR IMPLIED, WHICH ARE SPECIFICALLY EXCLUDED, INCLUDING THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.**

#### 5. **PATENT AND COPYRIGHT INDEMNIFICATION**

Comtech EF Data Corp. agrees to defend, at its expense, any suits against Buyer based upon a claim that any products furnished directly infringe a United States patent or copyright. Comtech EF Data Corp. agrees to pay costs and damages finally awarded in any such suit, provided that Comtech EF Data Corp., is notified promptly in writing of the suit and, at Comtech EF Data Corp's request and at its expense, is given control of said suit and all requested assistance for defense of same. If the use or



2114 West 7th Street • Tempe, Arizona 85281 USA  
Telephone 1.480.333.2200 • Fax 1.480.333.2540

## Terms and Conditions of Sale, General

Revision 12.19.2011

sale of any products furnished hereunder is enjoined as a result of such a suit, Comtech EF Data Corp., at its option and at no expense to Buyer, shall obtain for Buyer the right of use or sale for said product(s) or shall substitute an equivalent product reasonably acceptable to Buyer and extend this indemnity thereto, or shall accept the return of product(s) and reimburse Buyer the purchase price thereof, less a charge for reasonable wear and tear. This indemnity does not extend to any suit based upon any infringement or alleged infringement of any patent or copyright by the combination of any products furnished by Comtech EF Data Corp. and other elements, nor does it extend to any products of Buyer's design or formula. THE FOREGOING STATES THE ENTIRE LIABILITY OF COMTECH EF DATA CORP. FOR PATENT OR COPYRIGHT INFRINGEMENT.

### 6. PAYMENT

For domestic shipments, Comtech EF Data Corp.'s standard terms of sale are net thirty days of invoice date, subject to the approval of Comtech EF Data Corp. For export shipments, the standard payment terms are irrevocable Letter of Credit (in accordance with Comtech EF Data Corp. Letter of Credit Guidelines) or Cash in Advance (as described below), unless Comtech EF Data Corp. has, prior to its acceptance of Buyer's purchase order, approved in writing other credit arrangements. All payments, whether by Letter of Credit or Cash in Advance, shall be made in U.S. Dollars (US\$) by electronic funds transfer. All orders on terms of Cash in Advance require a 25% payment upon placement of the order and the balance shall be paid prior to shipment. Exceptions to the payment terms included herein shall be subject to the prior consideration and written approval of Comtech EF Data Corp. The Buyer shall make payments in full to Comtech EF Data Corp. at the address stated on the Comtech EF Data Corp. invoice or as otherwise specified in writing by Comtech EF Data Corp. Overdue payments are subject to a service charge of 1.5% per month or the maximum legal rate, whichever is lower. To the extent permitted by applicable law, Buyer agrees to pay any and all costs and disbursements, including reasonable attorney's fees, incurred by Comtech EF Data Corp. in

legal proceedings to collect overdue invoices or enforce indebtedness. Buyer agrees that any and all costs or disbursements may be added to the total invoice amount already due at time of placement with an attorney or collection agency.

### 7. TAXES

Except for the amount, if any, of tax stated in a Comtech EF Data Corp. proposal, the prices set forth in a Comtech EF Data Corp. proposal are exclusive of any amount for federal, state, local, excise, sales, use, property, retailers, occupation, in-country, import, VAT or similar taxes or duties. Such prices are also exclusive of all government permit fees, license fees, customs fees and similar fees levied upon delivery of the Comtech EF Data Corp. products and services. The Buyer shall be liable for all such taxes, duties and fees, regardless of whether or not the same are separately stated by Comtech EF Data Corp., and the Buyer shall pay the amount thereof to Comtech EF Data Corp. or, in lieu thereof, the Buyer shall provide Comtech EF Data Corp. with a properly executed tax exemption certificate acceptable to the taxing authorities prior to delivery of Comtech EF Data Corp. product. If Comtech EF Data Corp. is required to pay or bear the burden of any excluded tax then the Buyer shall reimburse to Comtech EF Data Corp. the full amount of any such tax payment no later than ten (10) days after receipt of an invoice.

### 8. TERMINATION, CHANGES AND DELAYS

Comtech EF Data Corp. shall not be liable for any delay or failure to perform due to any cause beyond its control, including, but not limited to, acts of God, civil disturbances, default of any supplier, delays in Federal Communications Commission ("FCC") any other government or regulatory body frequency authorization or license grant, government intervention, inability to obtain necessary labor, material or facilities, interruptions of transportation, strikes, or war. The delivery schedule shall be considered extended by a period of time reasonably necessary to perform after such event(s). Notwithstanding the preceding sentence, in the event Comtech EF Data Corp. is unable to wholly or partially perform due to any cause beyond its control, Comtech EF Data Corp. may



2114 West 7th Street • Tempe, Arizona 85281 USA  
Telephone 1.480.333.2200 • Fax 1.480.333.2540

## Terms and Conditions of Sale, General

Revision 12.19.2011

terminate any contract without liability to Buyer. Buyer may cancel any order due to the default of Comtech EF Data Corp. upon thirty (30) day's prior written notice and failure to cure by Comtech EF Data Corp. Otherwise orders may be terminated, changed or delayed by Buyer only with the specific approval of Comtech EF Data Corp. and shall be subject to termination, change or delay charges which shall include compensation for specific expenses and costs related to commitments already made in connection with the order and a reasonable allowance for the cost of overhead, general and administrative expenses and profit in accordance with Comtech EF Data Corp's standard accounting practices. A minimum of a 15% cancellation fee will be applicable to any order canceled after fifteen (15) days. Change orders may also necessitate a change in the delivery schedule. In the event Buyer causes a delay in contract completion or delivery, Comtech EF Data Corp. shall have the right to submit invoices at sales value for progress to date, and Buyer shall pay the invoiced amount and all necessary storage charges and other costs incurred due to such delay.

### 9. ANTI-CORRUPTION OBLIGATIONS

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

### 10. EXPORT CONTROLS

The products that Buyer obtains from Comtech EF Data Corp. are subject to the jurisdiction of

US export control laws and regulations, which include the Export Administration Regulation (EAR), International Traffic in Arms Regulations (ITAR) and Office of Foreign Assets Control (OFAC). The re-export or re-transfer of Comtech Equipment to other countries or parties may require a US export license or other approval. Buyer will not transfer the products in violation of any US export control law, including by making any exports or re-exports of Comtech Equipment to the US embargoed countries of North Korea, Iran, Cuba, Sudan, and Syria or to other restricted destinations or parties that may be added to the restricted export list by the U.S. Government. Export compliance guidelines and classification information for Comtech EF Data products are available at [www.comtechefdata.com](http://www.comtechefdata.com). Buyer acknowledges that the products will not be used in, or for any nuclear, chemical, biological weapons or applications. In the event of an alleged breach of export controls, the Buyer shall furnish to Comtech EF Data all information requested in order to verify compliance with U.S. export regulations.

### 11. GOVERNMENT OR IN-COUNTRY LICENSING

The Buyer is solely responsible for obtaining any licenses or other authorizations required by the FCC, Federal Aviation Administration or any other government regulatory bodies, and for complying with their rules and with the rules and regulations of any other U.S. or foreign regulatory agency, whether federal, state, local or otherwise. Neither Comtech EF Data Corp., nor any of its employees, will be an agent or representative of the Buyer in such matters or otherwise. Comtech EF Data Corp. may assist in the preparation of the license application by the Buyer; however, Comtech EF Data Corp's warranty shall not be modified to the detriment of Comtech EF Data Corp., and Comtech EF Data Corp. shall have no liability to Buyer or any third parties arising out of or relating to Comtech EF Data Corp. rendering technical advice, facilities or service in connection with such assistance.

### 12. CONTROLLING LAW

This document shall be governed by the internal laws of Arizona, as applied to contracts entered





2114 West 7th Street • Tempe, Arizona 85281 USA  
Telephone 1.480.333.2200 • Fax 1.480.333.2540

## Terms and Conditions of Sale, General

Revision 12.19.2011

into and performed within Arizona, by residents of Arizona, except for its conflict of law rules.

The parties hereby agree that this document shall not be governed by the United Nations Convention on Contracts for the International Sale of Goods. BUYER HEREBY IRREVOCABLY CONSENTS TO THE EXCLUSIVE PERSONAL JURISDICTION OF THE STATE AND/OR FEDERAL COURTS LOCATED IN THE STATE OF ARIZONA AND OF THE FEDERAL COURTS LOCATED IN THE NORTHERN DISTRICT OF ARIZONA, AND WAIVES ANY OTHER FORUM OR VENUE TO WHICH BUYER MIGHT BE ENTITLED BY DOMICILE OR OTHERWISE.

This document is prepared and executed in the English language only and any translation of this document into any other language shall have no effect on effectiveness of or the interpretation of this document.

### 13. LIMITATION OF REMEDY

COMTECH EF DATA CORP'S TOTAL LIABILITY IS LIMITED TO THE NET PRICE OF THE PRODUCTS SOLD HEREUNDER, EXCLUDING ANY CHARGES STATED SEPARATELY FROM THE PRODUCT PRICE ON THE INVOICE. BUYER'S SOLE REMEDY FOR LIABILITY OF ANY KIND, INCLUDING BREACH OF WARRANTY, NEGLIGENCE, AND PRODUCTS LIABILITY WITH RESPECT TO THE EQUIPMENT, SOFTWARE AND DOCUMENTATION FURNISHED HEREUNDER IS TO REQUEST COMTECH EF DATA CORP., AT COMTECH EF DATA CORP'S OPTION, TO REFUND THE PURCHASE PRICE, EXCEPT THAT IN THE CASE OF A BREACH OF PRODUCT WARRANTY, THE BUYER'S SOLE REMEDY IS TO RETURN THE PRODUCT TO COMTECH EF DATA CORP. FOR REPAIR IN ACCORDANCE WITH SECTION 4 OF THESE STANDARD TERMS AND CONDITIONS OF SALE.

### 14. LIMITATION OF LIABILITY

IN NO EVENT SHALL COMTECH EF DATA CORP. BE LIABLE FOR INCREASED COSTS, LOSS OF PROFITS, LOSS OF GOODWILL, OR ANY INCIDENTAL OR CONSEQUENTIAL DAMAGES FOR ANY REASON. THESE LIMITATIONS APPLY EVEN IF THE

EXCLUSIVE REMEDIES SET FORTH ABOVE FAIL OF THEIR ESSENTIAL PURPOSE.

### 15. LIMITATION ON BRINGING OF ACTIONS

NO ACTION SHALL BE BROUGHT FOR ANY BREACH OF THIS CONTRACT MORE THAN ONE YEAR AFTER THE ACCRUAL OF SUCH CAUSE OF ACTION, EXCEPT FOR MONEY DUE UPON AN OPEN ACCOUNT.

### 16. NO WAIVER

The failure of Comtech EF Data Corp. to insist, in any one or more instances, upon the performance of any of the terms, covenants or conditions herein or to exercise any right hereunder, shall not be construed as a waiver or relinquishment of the future performance of any such term, covenant or condition, or the future exercise of such right, but the obligation of the Buyer with respect to such future performance shall continue in full force and effect.

### 17. US GOVERNMENT ORDERS

The provision of Executive Order No. 11246 of September 24, 1965, as amended, regarding equal employment opportunity, and the rules and regulations issued pursuant thereto, are incorporated herein by reference. Any other US Government procurement regulations which are required to be included shall be specifically and separately agreed to in writing prior to incorporation into the final agreement of sale.

### 18. SPECIAL CONDITIONS OF QUOTATION AND SALE

Supplementary to the above terms and conditions of sale, circumstances which require quotation of special terms and conditions of sale are available from Comtech EF Data Corp. (Sales and/or Bid & Quote Departments) relating to the following: (A) Installation services (weather, employees, normal workday, FCC construction permits, realignment of existing equipment coordination, relocation of plant and equipment); (B) Frequency coordination (Buyer provided frequencies, Comtech EF Data Corp. proposed frequency plan) and path survey (Buyer path survey, Comtech EF Data Corp. proposed path survey); (C) Comtech EF Data Corp. provided antenna installations of Buyer (antenna pipe mount, waveguide bridge, indoor



2114 West 7th Street • Tempe, Arizona 85281 USA  
Telephone 1.480.333.2200 • Fax 1.480.333.2540

## Terms and Conditions of Sale, General

Revision 12.19.2011

waveguide runs, accessibility to building work areas, modification to Buyer's or Owner's premises, existing towers); (D) Comtech EF Data Corp. provided towers (grounding (REA), tower lighting, modification to Buyer's or Owner's premises); (E) Comtech EF Data Corp. provided roof mounted towers (roof reinforcing, transmission line entry, plot terrain, site accessibility, clearing and grading, tower load, future antenna loading); (F) Construction and/or civil work; (G) Dangerous or hazardous work conditions or environment; (H) PCS or PCN relocation services and related engineering services.

### **19. NO ASSIGNMENT**

Buyer shall not assign any interest in the contents of this quotation without the prior written consent of Comtech EF Data Corp.

### **20. COMPLETE AGREEMENT; INTERPRETATION**

Buyer acknowledges that Buyer has read and understands these Standard Terms and

Conditions of Sale as stated, and agrees to be bound by them and that these are the complete and exclusive statement of the agreement between the parties and supersede all proposals, oral or written, and all other communications between the parties relating to the subject matter. No modification hereof shall be binding upon either party unless such modification is in writing signed by duly authorized representatives of the parties. If any part of the terms and conditions included herein is deemed contrary to, prohibited by or invalid under applicable laws or regulations, such provision shall be deemed omitted to the extent so contrary, prohibited or invalid, but the remainder shall not be invalidated and shall be given effect as far as possible. All headings contained in these terms and conditions are for reference purposes only and shall not in any way affect the meaning or interpretation of these terms and conditions.