



Comark LLC | 440 Fortune Boulevard | Milford, MA 01757 | T: 508.359.8161 | F: 508.359.2267

## TERMS AND CONDITIONS

THIS SALES QUOTATION, PROPOSAL, ORDER OR ACKNOWLEDGMENT IS SUBJECT TO THE FOLLOWING TERMS AND CONDITIONS. THE RECIPIENT OF THIS OFFER IS HEREIN CALLED BUYER AND COMARK LLC. HEREIN CALLED SELLER. THE TERM PRODUCT SHALL INCLUDE, WITHOUT LIMITATION, GOODS, SERVICES, WORK AND DATA EXPRESSLY OR IMPLIED DELIVERED HEREUNDER AND ANY PART THEREOF. THESE TERMS AND CONDITIONS SHALL BE THE ONLY TERMS AND CONDITIONS IN EFFECT AND CONTROLLING THE TRANSACTION REGARDLESS OF ANY OTHER PROVISION IN ANY PURCHASE ORDER OR TERMS AND CONDITIONS OF THE BUYER. THE BUYER'S ACCEPTANCE OF THE DELIVERY OF THE GOODS OR THE DEPLOYMENT OF THE SERVICES SHALL BE THE BUYER'S ACCEPTANCE OF THESE TERMS AND CONDITIONS, AS FURTHER SET FORTH BELOW.

**1. ACCEPTANCE.** This Acknowledgment constitutes Seller's offer to Buyer upon the terms and conditions stated herein and in Seller's Proposal, if any, and shall become a binding contract on the terms set forth herein when it is accepted by Buyer, either by formal acknowledgment or by acceptance of the Product called for hereunder. By acceptance hereof or the issuance of a purchase order relating hereto or the acceptance of the Product referred to herein. Buyer thereby understands and agrees that in the interest of economy, and notwithstanding anything else to the contrary in Buyer's purchase order, Seller will not and need not analyze any of the terms, conditions, and other provisions contained in any such acceptance or purchase order other than to determine the product or service ordered, quantities, and shipping data. Buyer also agrees that Seller may disregard all terms, conditions, and provisions of any such acceptance or purchase order that do not comply herewith and may fulfill such part of the terms, conditions, and provisions thereof as shall comply herewith. Any variation of the terms and conditions herein must be specifically accepted in writing by Seller. Failure of Buyer to give notice to Seller of any discrepancies, subject to the warranties herein provided, within ten (10) days after receipt of delivered Products hereunder, shall constitute acceptance hereunder and acknowledgment of the accuracy of the related invoice.

**2. FORCE MAJEURE.** This order is accepted subject to delays due to conditions or forces beyond Seller's control including, but not limited to, strikes, work stoppages, breakdowns, fires, accidents, contingencies or transportation, storage or delivery, acts of terrorism, war, interruption of supplies beyond the control of Seller, and acts of God.

**3. CREDIT.** Buyer agrees to comply with the credit terms and accept deliveries as indicated: upon violation or default by Buyer, or upon bankruptcy or insolvency, of Buyer, or by reason of the insecurity of Seller as to the ultimate collectability of the purchase price as determined by Seller in its sole and unfettered discretion, Seller may, without notice to Buyer, delay or postpone the delivery of the Products; and Seller, at its option, is authorized to change the terms of payment to payment in full in advance of shipment of the entire undelivered balance of said Products. In the event of default by Buyer in the payment of the purchase price or otherwise, Seller, after demand, may sell any undelivered Products on hand for the account of Buyer and apply such credit against the contract purchase price, and Buyer agrees to pay the balance then due to Seller on demand. Such balance shall bear interest at the highest legal rate from the date of demand. Buyer agrees to pay all expenses, including but not limited to, storage and shipment costs, court costs, attorney's fees and other expenses of litigation or preparation therefore, resulting in any default by Buyer in any of the terms hereof. Should Buyer default hereunder prior to the manufacture of all Products ordered hereunder, Buyer agrees to pay as liquidated damages the contract price for such un-produced or partially produced Products, less Seller's then unexpected actual costs for materials, direct labor, and variable overhead with respect to the Products as in effect at the time of default.

**4. CHANGES.** Orders arising hereunder may be amended by written change order signed by the parties, or specifically agreed to in writing by Seller, setting forth the particular changes to be made and the effect of such changes on the price and time of delivery. A charge will be made for changes in drawings and/or specifications after Buyer and Seller have previously agreed upon same. The total charge for such change will include order reprocessing costs, additional material and labor costs. Seller will advise the total charge for such changes after receipt of written authorization or direction for such changes. In the event the changes are required as a result of an error on the part of the Seller, no charge will be made.

**5. FAIR LABOR STANDARDS ACT.** Seller hereby certifies that the Products covered by this order were produced in compliance with the Fair Labor Standards Act of 1938, as amended, and of regulations and orders issued thereunder.

**6. Minimum Orders and Expedited orders.**

6a - Seller will not accept an order where the sum of the product sales, less any applicable discounts, does not exceed \$1500.

6b - Purchase Orders that specify a next day shipment (which is defined as - a time frame from the physical receipt of an order by COMARK and the date which the product must ship), will be subject to a \$100.00 order expedite charge. Unless within standard delivery lead-time.

**7. TAXES.** All applicable taxes of every kind or nature now or hereafter assessed which are or may become effective before this order is completed may be added to the invoice price.

**8. BUYER'S REPRESENTATIONS AND INDEMNITY.** Buyer represents and warrants that all trademarks, copyright materials, and patents submitted in connection with this order and that the use thereof in accordance with this order will not violate any federal, state, or municipal law or regulation, and Buyer agrees to indemnify and hold harmless Seller, its agents, successors and assigns against any suits, loss, claim, demand, liabilities, costs and expenses (including attorney's fees) arising out of any breach or alleged breach hereof.

**9. TERMS.** All sales are made F.O.B. Seller's plant, unless otherwise specified on the face of this acknowledgment. Delivery of all or any part of the Products to a carrier for shipment to Buyer or to a consignee designated by Buyer shall constitute delivery to Buyer and shall pass and vest title to, and risk of loss of such goods to Buyer. In the event of loss or damage to Products after delivery to a carrier, Seller will, upon request of Buyer, assist in filing claims against the carrier. Standard payment terms are net 30 days and subject to satisfactory credit review and approval. Any other terms unless accepted and acknowledged are inapplicable.

**10. CANCELLATION.**

10a - Orders for Products received by Seller are accepted subject to the understanding that orders may be cancelled by Seller because of Seller's inability to obtain all or part of the materials necessary to complete the order at prices in effect on the date hereof or by reason of other causes beyond its reasonable control.

10b - Orders canceled by the buyer prior to shipment may be assessed a cancellation charge based upon the cost incurred by Seller relating to the Order, through the date of cancellation. Such costs shall include when applicable; engineering associated with non list price orders; costs of inventory and supplies that were purchased for the order and that are non cancelable; cancellation charges related to any cancelled purchases; and any other costs directly associated with the cancellation.

**11. DELIVERY.** Buyer agrees to accept delivery of all goods included in this order within the time specified on the face hereof. No extension of the delivery period shall relieve Buyer from the obligation to accept the goods included in this order. Partial shipment of goods may be made by Seller when ready and invoiced.

**12. CLAIMS OR RETURNS.** All claims must be made in writing and delivered to Seller within ten (10) days after receipt of the goods and must be accompanied by Seller's packing list and freight bill. Failure of Buyer to make such claims within ten (10) days will constitute a waiver by Buyer of such claims. In the event of the receipt of notice of such claims, Seller agrees to forward definitive shipping instructions to Buyer or to send a representative of Seller to Buyer's facilities to review

shipment and make any necessary adjustments. No return of the goods pursuant to this paragraph shall be made for any purpose without the prior written consent of Seller. Any goods returned by Buyer without Seller's consent shall be held for the account of Buyer.

**13. CHARGES.** Material approved for return and credit is subject to a 25% restocking charge.

**14. SOLVENCY.** Buyer, by these presents and the acceptance of the Products, represents and warrants that Buyer is solvent and able to pay for the Products in accordance with the terms of sale.

**15. WARRANTIES.** The Products are warranted by Seller as follows: (a) Seller has the right to sell the Products, (b) Buyer and its customers shall have the right to enjoy the Products free of claims of third persons against Seller, (c) the Products shall be free from manufacturing defects upon delivery in material and workmanship as described in Seller's products specification sheets and quality assurance criteria sheets, and (d) In the event the Product encompasses services, Seller shall perform the Services with such care as a reasonably prudent provider of similar services would use under similar circumstances. This warranty does not apply to any Product which has been tampered with, improperly stored, exposed to extreme heat or moisture, or otherwise subject to misuse or abuse; or damage that is attributable to by an act of war (declared or otherwise), terrorism, natural disaster or act of God.

THE FOREGOING WARRANTIES ARE IN LIEU OF ALL OTHER WARRANTIES EXPRESS OR IMPLIED INCLUDING WITHOUT LIMITATION, WARRANTIES OF MERCHANTABILITY AND FITNESS FOR ANY PARTICULAR PURPOSE, WHICH ARE HEREBY DISCLAIMED.

Except as otherwise agreed to in writing in each specific instance the obligation of Seller is limited: (i) in the case of any material breach of the warranties set forth in subparagraphs (a) and (b) above, to the reimbursement of the price paid by Buyer or its customer for such Products; and (ii) in the case of any breach of the warranty set forth in subparagraph (c) above, to any of the following (at Seller's option); refund of the purchase price, or repair, or replacement of any such defective Product without charge other than for transportation.

**SELLER SHALL NOT IN ANY EVENT BE LIABLE FOR INCIDENTAL, CONSEQUENTIAL, OR SPECIAL DAMAGES RESULTING FROM ANY USE OR FAILURE OF THE PRODUCTS, INCLUDING, WITHOUT LIMITATION, LIABILITY FOR LOSS OF TIME TO, PROFITS OF BUYER OR THE USER OR FOR ANY LABOR OR ANY OTHER EXPENSE, DAMAGE OR LOSS OCCASIONED BY ANY SUCH DEFECT.**

**16. TERMS AND CONDITIONS FOR A RETURN OR SERVICE OF PRODUCTS:**

All repairs and service must have a Return Material Authorization (RMA) issued prior to shipping to Supplier. To obtain an RMA Number go to [www.comarkcorp.com](http://www.comarkcorp.com) or call Supplier directly at 1-800-280-8522 or 508-359-8161. Units returned for repairs or services without an RMA will not be worked upon until an RMA is properly established.

Once you receive an RMA number, package and ship your unit and any applicable accessories to: COMARK, 440 Fortune Boulevard, Milford, MA 01757, U.S.A. If a shipping sticker has been provided or is required, affix it with the noted information on the outside of external package. When returning products for service, the following information must be provided: 1] RMA #; 2] Buyer's contact name and phone number; 3] Buyer email address (if available); 4] A detailed description of the problem or work to be completed; 5] Arrange for the product to be delivered to and from COMARK at the noted address. All costs and risk of loss of product is the responsibility of the customer and as such we suggest you carefully consider who you use in arranging the transport of the product. COMARK does not accept returns on a collect and bill to customer unless pre-approved by Suppliers credit department. Package all items in a suitable shipping container to ensure safe delivery to COMARK

**17. ARBITRATION.** Any controversy arising under, or in any way related to this order or the subject matter hereof shall be settled by arbitration by three disinterested arbitrators in the city of Boston, State of Massachusetts and under the laws of said State, in accordance with the rules of the American Arbitration Association then obtaining. All costs of such arbitration, and any proceedings directly or indirectly related thereto, including reasonable attorney's fees, shall be paid by the party against whom the arbitrators shall render their award or as otherwise directed by the arbitrators. Notwithstanding the above if any cause of action arises that requires the seeking of an injunction the Seller may seek such injunction whether temporary or permanent through the court of competent jurisdiction in Suffolk County, Massachusetts.

**18. LAW.** The Contract shall be governed and construed under the laws of the State of Massachusetts, without regard for the conflict of law provisions. In addition, any legal action arising hereunder which would give rise to the right to arbitrate on the part of the Buyer must be brought within one year of the date that the cause of action arose.

**19. INDEMNIFICATION.** Buyer shall indemnify and hold harmless Seller and its parent, other affiliates, employees, officers, directors, agents and other authorized representatives (the "Seller Indemnities") from any and all threatened or actual claims, suits, proceedings, investigations and all losses, damages, liabilities and costs of any kind arising from personal injury (including resulting death) or damage to property, including, but not limited to, legal fees (collectively, "Losses") which are attributable to any negligent act or omission or intentional wrongdoing of Buyer or its employees hereunder that is in any way connected to or arises out of this purchase or Seller's performance of the Services, except to the extent, and only to such extent, such Losses are attributable to the negligent act or omission or intentional wrongdoing of Seller

**20. CONFIDENTIALITY; PUBLICITY; OWNERSHIP OF WORK PRODUCT.** "Confidential Information" shall be deemed to include all information, materials and/or data which either party designates, either orally or in writing, to be of a confidential or proprietary nature or which either party or its employees have reason to believe should be treated as such, including, but not limited to: (i) technical drawings, (ii) designs and concepts; (iii) software programs, routines, formula and concepts; (iv) production plans, designs, layouts and schedules; (v) marketing analyses, plans, customer data and surveys; (vi) all matters relating to a party's finances and personnel; and (vii) all Deliverables as defined in purchase orders. "Confidential Information" does not include Information that: (a) is or becomes generally available to the public other than as a result of a disclosure by the recipient or recipient's representatives; or (b) becomes available to recipient on a non-confidential basis from a third party source provided that such source is not prohibited from transmitting the Information to recipient or recipient's representatives by a contractual, legal or fiduciary obligation; or (c) were known to recipient on a non-confidential basis prior to their disclosure to recipient or (d) is developed independently by the personnel of recipient which have not had access to all or any part of the Information.

**20.1** Each of Buyer and Seller covenants that it and its respective employees shall:

(a) Protect and maintain the confidentiality of the Confidential Information in a manner no less stringent than it uses to protect similar confidential information which it owns; (b) Not disclose, or allow to be disclosed, the Confidential Information to any person other than to employees who have a need-to-know in order to perform the duties of a party under this Agreement; (c) Not use the Confidential Information for any purpose other than in connection with the Services and Products; (d) Take all necessary precautions to restrict access to the Confidential Information. (e) In the event that recipient party becomes legally requested (by oral questions, interrogatories, requests for information or documents, subpoena, civil investigative demand or similar process) or otherwise required to disclose any of the Information, recipient party will provide the disclosing party with prompt written notice so that the disclosing party may seek a protective order or other appropriate remedy and/or waive compliance with the provisions of this Agreement. In the event that a protective order or other remedy is not obtained, recipient will furnish only that portion of the Information that is legally required and recipient party will exercise reasonable efforts to obtain reliable assurance that confidential treatment will be accorded the Information.

**20.2** Each party acknowledges and agrees that monetary damages will not be adequate in the event of the other party's breach of this Article 19, and that the other party shall be entitled to seek injunctive or other affirmative relief or to terminate any future sales orders, or both, without such constituting an election of remedies.

**21. NON-SOLICITATION.** From the date of the delivery of the Product or the deployment of the Services, and for a period of two (2) years from the date of the last Product delivered or performed, Buyer shall not directly or indirectly solicit for employment any person who: (a) is now or employed by Seller or (b) is now employed by Seller during the time Products were being provided.

As part of the acceptance of our Terms and Conditions, you are also accepting the Microsoft End-User-License-Agreement for any and all Microsoft products included in your order. [You may view and download it from Microsoft.](#)