

Composiflex, Inc.

Terms and Conditions of Sale

1. CONTRACT FORMATION

- 1.1. Offer. Composiflex, Inc. (the "Seller"), by providing a proposal, quote, or other communication regarding its provision of Work/Goods and/or services (individually or collectively, the "Proposal") constitutes an offer for the sale of Work/Goods (the "Work/Goods") or the provision of services (the "Services," and with the Work/Goods, collectively or individually, the "Work") and includes all of the terms and conditions contained herein (the "Terms and Conditions").
- 1.2. Acceptance. Any purchase order, payment, or other form of acceptance by the Buyer in response to a Proposal from Seller shall result in a contract for the purchase of the Work/Goods and/or Services at the price quoted in the Proposal and subject to these Terms and Conditions. Unless Buyer shall have set forth each specific objection to these Terms and Conditions in a separate writing signed and dated by Buyer and delivered to Seller contemporaneously with Buyer's purchase order or other acceptance document, Buyer shall be deemed to have accepted all of the sellers Terms and Conditions. Buyer's issuance of a purchase order or other document which purports to reject some or all of these Terms and Conditions by virtue of Buyer's standard form language, or otherwise, shall not be sufficient objection. Where Buyer specifically objects to any of these Terms and Conditions, no contract shall be formed unless and until Seller agrees to accept in writing Buyer's proposed modifications to these Terms and Conditions.
- 1.3. Different Terms. Seller does not accept any terms contained in any purchase order or other documents issued by Buyer which are different from, conflict with, modify, or in addition to these Terms and Conditions. Seller's execution of any document issued by Buyer shall constitute only an acknowledgement of receipt thereof, and shall not be construed as an acceptance of any of the terms therein. Unless expressly accepted in writing by Seller, additional or differing terms or conditions proposed by Buyer or provided by Buyer are rejected by Seller and have no effect.
- 1.4. Entire Agreement. The Proposal and these Terms and Conditions constitute the entire understanding and agreement (the "Contract") between Buyer and Seller. This Contract integrates, merges, and supersedes all prior offers, negotiations, representations, agreements, and understandings concerning the subject matter hereof. Any representation, promise, course of dealing, course of performance, custom or trade usage, oral or otherwise, – will not be binding upon either party. This Contract may not be amended or modified except in writing executed by both parties.

2. PURCHASE AND SALE

Subject to these Terms and Conditions, Buyer agrees to buy, and Seller agrees to sell, the Work/Goods, for the purchase price specified in the Proposal. Unless otherwise agreed in writing by the parties, Buyer assumes all responsibility for: (1) set-up, start-up, and installation; (2) safety equipment used with the Work/Goods or by Buyer's employees or any third-party handling or working with the Work/Goods; and (3) signage related to the proper use and/or installation of the Work/Goods. Seller reserves the right to substitute substantially comparable Work/Goods for the Work/Goods.

3. TAXES

Buyer shall be responsible for, and shall pay, any taxes (sales, excise, use, value added, etc.) and any import or export duties, fees, or other customs charges, which may be applicable to the sale and/or delivery of the Work and to the performance of warranty work on the Work/Goods, as may be required under Section 7. Buyer shall defend, indemnify, and hold Seller harmless from and against any claim,

loss, damage, liability, or expense incurred with regard to the payment of any such taxes, duties, fees, or expenses.

4. MATERIAL CHARGES

Buyer acknowledges that its purchase order shall require Seller to procure materials, components, products, Work/Goods, or other items ("Production Materials") from a supplier in order to manufacture the Work/Goods. In the event such vendor or such supplier has a minimum order quantity, volume, value, or other requirement which is in excess of the amount of Production Materials necessary for Seller to perform Work for Buyer, the cost of the vendor's or supplier's minimum order requirement shall be passed on to Buyer unless otherwise agreed to in writing by both parties. Such charge may appear on the Proposal, or separately be billed to Buyer. In any event, payment of the vendor or supplier minimum order charge shall be paid within 30 days of Seller's notice of such charge to Buyer. If payment is delayed beyond the date on which it is due, interest may accrue and be payable by Buyer on the unpaid balance at a rate of one and one-half percent (1 1/2%) per month.

5. PAYMENT; SECURITY INTEREST

5.1. Generally. Buyer shall pay the purchase price as set forth in the Proposal, and all applicable taxes, freight charges, and all other applicable charges in full, in U.S. Dollars, without any deduction for claims, set-offs or recoupment on account of this Contract or any other matter between the parties within the time periods set forth in Section 5.2 and Section 5.3, below. Payment shall not be contingent upon inspection, installation, field tests, or any other act or event. If payment is delayed beyond the date on which it is due, interest may accrue and be payable by Buyer on the unpaid balance at a rate of one and one-half percent (1 1/2%) per month. Buyer shall reimburse Seller for all costs incurred in collecting any late payments, including, without limitation, attorneys' fees. In addition to any other remedies available, Seller shall be entitled to suspend delivery of any Work/Goods or performance of any Services if Buyer fails to pay any amounts when due hereunder.

5.2. Payment—Domestic Shipments Only. Unless otherwise specified by Seller in the Proposal, the Buyer shall pay the purchase price within thirty (30) days from the date of delivery or the date of shipment, whichever is the earlier. If delivery or shipment is delayed by Buyer, payment shall be due with fifteen (15) business days from the date Seller notifies Buyer that the Work/Goods are ready for delivery or shipment, whichever is the earlier. This Section 5.2 shall apply to domestic shipments only.

5.3. Payment—International Shipments Only. Unless otherwise specified by Seller in the Proposal, the Buyer shall pay a non-refundable deposit of thirty percent (30%) of the purchase price upon the execution of this Contract with the balance due and payable at least five (5) business days before the date of delivery or the date of shipment, whichever is the earlier. The Proposal may specify that Buyer shall pay the purchase price and all applicable charges with an Irrevocable and Confirmed Letter of Credit or unconditional Bank Guarantee or upon such other payment terms, as Seller deems acceptable, in its sole discretion. If shipment is delayed by Buyer, payment of the balance of the purchase price shall be due within fifteen (15) business days from the date Seller notifies Buyer that the Work/Goods are ready for delivery or shipment, whichever is the earlier. This Section 5.3 shall apply to international shipments only.

5.4. Security Interest. Buyer hereby grants to Seller a security interest in the Work/Goods until all monies due Seller under this Contract are paid in full. Seller shall have the right to file financing statements and any other documents that may be necessary to evidence and perfect such a security interest in the Work/Goods in any jurisdiction.

5.5. Buyer's Delay or Cancellation. Buyer has no right to delay or cancel any order once placed unless agreed to in writing by both parties. In the event Buyer does not timely pay for any

amount due hereunder, attempts to delay or cancel any order or portion thereof, or otherwise breaches its obligations under the Contract, Seller shall be entitled to recover all monetary relief related to or arising from such acts or omissions of Buyer, including, but not limited to, out of pocket costs, material charges, loss of profit, delay damages, expectation interest, or any other damages in order to provide Buyer the full benefit of the Contract. The foregoing remedies are cumulative, and in addition to, not in lieu of, any other rights or remedies Buyer has under this Contract, any statute, at law, or in equity.

6. DELIVERY OF WORK/GOODS AND PERFORMANCE OF SERVICES

- 6.1. **Date.** Unless otherwise specified, Work/Goods will be delivered in a reasonable time after receipt of Buyer's purchase order. Any delivery date stated in the Contract is best date and Seller will do everything within its power to meet without unforeseen circumstances. Time shall be of the essence of the Contract. Seller shall not be liable for any delays, loss, or damage in transit.
- 6.2. **Terms.** Unless otherwise specified in Seller's Proposal, delivery of Work/Goods shall be Ex Works Seller's production facility 8100 Hawthorne Drive, Erie, PA 16509 (Incoterms 2020).
- 6.3. **Freight.** Notwithstanding Section 6.2 above, Seller may arrange for carriage of the Work/Goods. Buyer shall be solely responsible for the cost of carriage of the Work/Goods, regardless of any delivery terms specified in the Proposal.
- 6.4. **Risk of Loss; Title.** Risk of loss shall pass from Seller to Buyer in accordance with the delivery terms applicable to this Contract as specified in Section 6.2 above. Title to Work/Goods shall pass from Seller to Buyer upon passage of risk of loss from Seller to Buyer.
- 6.5. **Performance of Services.** Seller shall use reasonable efforts to meet any performance dates to render Services as specified in the Contract, although any such dates shall be estimates only. Buyer shall promptly cooperate with Seller in all matters relating to the Services as may reasonably be requested by Seller.
- 6.6. **Acts of Omission.** Seller reserves the right to re-bid, adjust selling price and agreed upon delivery dates when omitted information is received or flown down after purchase order acceptance.
- 6.7. **Delay.** Seller shall not be responsible to Buyer or any third party for any damages resulting from any failure or delay in manufacturing or shipping the Work/Goods or performing the Services due to any cause beyond Seller's reasonable control, including, but not limited to: (a) acts of God; (b) flood, fire, earthquake, epidemics, or explosion; (c) war, invasion, hostilities (whether war is declared or not), terrorist threats or acts, riot or other civil unrest; (d) government order, law, or action, including modifications or cancellations to government procurement contracts or funding; (e) embargoes or blockades in effect on or after the date of this Agreement; (f) national or regional emergency; (g) delays caused by Seller's suppliers or vendors; (h) work stoppages, labor disputes, lack of employees, or other employment related issues; (i) force majeure; and (j) other similar events beyond the reasonable control of the Seller.
- 6.8. **Buyer's Acts or Omissions.** If Seller's performance of its obligations under this Contract is prevented or delayed by any act or omission of Buyer or its agents, subcontractors, consultants, or employees, Seller shall not be deemed in breach of its obligations under this Contract or otherwise liable for any costs, charges, or losses sustained or incurred by Buyer, in each case, to the extent arising directly or indirectly from such prevention or delay.

7. LIMITED WARRANTIES

- 7.1. **Work/Goods.** For the benefit of Buyer only, Seller warrants that all new Work/Goods manufactured by Seller (a) shall be free from defects in material and workmanship, and (b) that

the Work/Goods will conform to relevant specifications in effect on the date of manufacture; for a period of 12 months from the date risk of loss of the Work/Goods passes from Seller to Buyer.

- 7.2. Exclusive Warranty-Work/Goods.** THE WARRANTIES SET FORTH IN SECTION 7.1 ARE THE SOLE AND EXCLUSIVE WARRANTIES GIVEN BY SELLER WITH RESPECT TO THE WORK/GOODS AND ARE IN LIEU OF ALL OTHER WARRANTIES, WHETHER EXPRESS, STATUTORY, OR IMPLIED BY LAW, COURSE OF DEALING, COURSE OF PERFORMANCE, TRADE USAGE, OR OTHERWISE. SELLER MAKES NO OTHER WARRANTIES WHATSOEVER WITH RESPECT TO THE WORK/GOODS, INCLUDING ANY WARRANTY OF MERCHANTABILITY OR WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE.
- 7.3. Services.** For the benefit of Buyer only, Seller warrants that it will perform the Services using personnel of required skill, experience, and qualifications and in a professional and workmanlike manner in accordance with generally recognized industry standards for similar services and shall devote adequate resources to meet its obligations under this Contract.
- 7.4. Exclusive Warranty-Services.** EXCEPT FOR THE SERVICES WARRANTIES SET FORTH IN SECTION 7.3, SELLER MAKES NO WARRANTIES WHATSOEVER WITH RESPECT TO THE SERVICES. ALL OTHER WARRANTIES, EXPRESS AND IMPLIED, ARE EXPRESSLY DISCLAIMED.
- 7.5. Exclusions.** The limited warranties set forth in this Section 7 shall not apply to, and no warranty is given with respect to, products manufactured by a third party that may constitute, contain, be contained in, incorporated into, attached to, or packaged together with, the Work/Goods. The Seller shall not be liable for a breach of the warranty set forth in Section 7.1 if: (i) Buyer makes any further use of such Work/Goods after giving such notice; (ii) the defect arises because Buyer failed to follow Seller's oral or written instructions as to the storage, installation, commissioning, use, or maintenance of the Work/Goods; or (iii) Buyer alters or repairs such Work/Goods without the prior written consent of Seller.
- 7.6. Alteration; Abuse.** The limited warranties set forth in this Section 7 shall be void with respect to Work/Goods which have been: (1) altered by Buyer or any third party; (2) repaired by other than Seller personnel or a Seller approved contractor; (3) subjected to misuse, abuse, neglect or accident; or (4) damaged by improper installation or application.
- 7.7. Warranty Procedure.** The Seller shall not be liable for a breach of the warranties set forth in Section 7.1 or Section 7.3 unless: (i) Buyer gives written notice of the defective or non-conforming Work/Goods or Services, as the case may be, reasonably described, to Seller within seven days of the time when Buyer discovers or ought to have discovered the defect; (ii) if applicable, Seller is given a reasonable opportunity after receiving the notice of breach of the warranty to examine such Work/Goods and Buyer (if requested to do so by Seller) returns such Work/Goods to Seller's place of business at Seller's cost for the examination to take place there; and (iii) Seller reasonably verifies Buyer's claim that the Work/Goods or Services are defective or non-conforming.
- 7.8. Limitation of Remedies for Breach of Warranty.** A breach of the warranty provisions set forth herein is subject to the following:
- 7.8.1.** With respect to any Work/Goods, Buyer's sole remedy, and Seller's sole obligation, is limited to the (i) repair, (ii) replacement, or (iii) credit or refund of the price of such Work/Goods at the pro rata contract rate. Seller may elect any of the foregoing remedies at its option and in Seller's sole discretion. If Seller so requests, Buyer shall, at Seller's expense, return such Work/Goods to Seller; and

7.8.2. With respect to any Services, Seller shall, at Seller's option and in Seller's sole discretion, (i) repair or reperform the applicable Services, or (ii) credit or refund the price of such Services at the pro rata contract rate.

THE REMEDIES SET FORTH IN THIS SECTION 7.8 ARE THE BUYER'S SOLE AND EXCLUSIVE REMEDY AND SELLER'S ENTIRE LIABILITY FOR ANY BREACH OF THE LIMITED WARRANTIES SET FORTH IN SECTION 7.1 AND 7.3, RESPECTIVELY.

8. LIMITATION OF LIABILITY

8.1. Exclusion of Certain Damages. In no event shall Seller be liable to Buyer or any third party for any loss of use, revenue, or profit; cost to cover; or for any consequential, indirect, incidental, special, exemplary, or punitive damages for any claim arising out of or related to the Contract or performance thereof, whether arising out of breach of warranty, contract, tort (including negligence), strict liability, indemnity, statutory liability, or otherwise, regardless of whether such damages were foreseeable and whether or not Seller or Buyer has been advised of the possibility of such damages, and notwithstanding the failure or any agreed or other remedy of its essential purpose.

8.2. Limitation on Amount. Notwithstanding any other provision of this Contract, the total liability, in the aggregate, of Seller and Seller's employees, officers, directors, representatives, affiliates and agents to Buyer or any third party claiming through or under Buyer for any claims, losses, damages, or costs arising out of or relating to this Contract, or the performance or breach thereof, shall not exceed the total consideration received by Seller from Buyer for Work/Goods and Services under this Contract. This Section 8.2 shall apply regardless of whether the claim is characterized as arising out of breach of warranty, contract, tort, strict liability, statutory liability, indemnity or otherwise.

8.3. Independent Covenants. The individual limitations of remedies and liability contained in the clauses of Sections 7.8, 8.1, 8.2, and elsewhere herein are each independent covenants. In the event any such limited remedy fails of its essential purpose or is otherwise unenforceable, the remaining limitations shall continue to apply, remaining in full force and effect.

9. TERMINATION

In addition to any remedies that may be provided under these Terms, Seller may terminate this Contract with immediate effect upon written notice to Buyer, if Buyer: (a) fails to pay any amount when due under this Contract; (b) has not otherwise performed or complied with any terms of the Contract, in whole or in part; or (c) becomes insolvent, files a petition for bankruptcy or commences or has commenced against it proceedings relating to bankruptcy, receivership, reorganization, or assignment for the benefit of creditors. In the event of termination, Buyer shall remain responsible to pay for all (including but not limited to work in progress, raw materials purchased, finished goods at Seller and Seller's subcontractors). Work through the point of termination.

10. CREDIT VERIFICATION

Seller reserves the right to perform a review of Buyer's creditworthiness following acceptance of Seller's Proposal by Buyer. Notwithstanding any other provision of this Contract, Seller shall not be obligated to perform the Contract if Buyer's creditworthiness is unsatisfactory to Seller, in Seller's sole discretion. In such case, Seller shall not be obliged to proceed with the performance of this Contract, and Seller may cancel this Contract at any time without any liability to Buyer, unless and until the Buyer shall have agreed to such terms of payment and such security therefor as is satisfactory to Seller, in Seller's sole discretion.

11. EXPORT AND IMPORT LICENSES—INTERNATIONAL SHIPMENTS ONLY

This Contract is contingent upon Seller obtaining all export licenses and/or government approvals which may be required under applicable U.S. laws and regulations including, but not limited to, the Export Administration Act, the Trading with the Enemy Act, the Export Administration Regulations and the Foreign Assets Control Regulations. Prior to the date of shipment of the Work/Goods, Buyer shall obtain, at its sole cost, all import licenses and/or other government approvals which may be required by the country of importation. Upon Seller's request, Buyer shall provide Seller with copies of such import licenses and/or government approvals to evidence Buyer's compliance with this Section 11. Buyer further represents and warrants that it is not, nor will Buyer, directly or indirectly, transfer the Work/Goods to a person or entity listed as: (1) a Specially Designated National or Blocked Person by the U.S. Treasury Department; (2) a Denied Person by the U.S. Commerce Department; (3) a Denied Entity by the U.S. Commerce Department; or (4) a Debarred Party by the U.S. State Department. Buyer shall defend, indemnify and hold Seller harmless from any claim, loss, damage, fines, penalties, liability or expense incurred with regard to Buyer's failure to comply with this Section 11.

12. NO WAIVER

No waiver by Seller of any of the provisions of this Contract is effective unless explicitly set forth in writing and signed by Seller. No failure to exercise, or delay in exercising, any right, remedy, power, or privilege arising from this Contract operates or may be construed, as a waiver thereof. No single or partial exercise of any right, remedy, power, or privilege hereunder precludes any other or further exercise thereof or the exercise of any other right, remedy, power, or privilege.

13. FORCE MAJEURE

No party shall be liable or responsible to the other party, or be deemed to have defaulted under or breached this Contract, for any failure or delay in fulfilling or performing any term of this Contract (except for any obligations of Buyer to make payments to Seller hereunder), when and to the extent such failure or delay is caused by or results from acts beyond the impacted party's ("Impacted Party") reasonable control, including, without limitation, the following force majeure events ("Force Majeure Event(s)": (a) acts of God; (b) flood, fire, earthquake, pandemic, epidemic, or explosion; (c) war, invasion, hostilities (whether war is declared or not), terrorist threats or acts, riot or other civil unrest; (d) government order, law, or actions; (e) embargoes or blockades in effect on or after the date of this Contract; (f) national or regional emergency; (g) strikes, labor stoppages or slowdowns, or other industrial disturbances; (h) telecommunication breakdowns, power outages or shortages, lack of warehouse or storage space, inadequate transportation services, or inability or delay in obtaining supplies of adequate or suitable materials; and (i) other events beyond the reasonable control of the Impacted Party. The Impacted Party shall give notice within 20 days of the Force Majeure Event to the other party, stating the period of time the occurrence is expected to continue. The Impacted Party shall use diligent efforts to end the failure or delay and ensure the effects of such Force Majeure Event are minimized. The Impacted Party shall resume the performance of its obligations as soon as reasonably practicable after the removal of the cause. In the event that the Impacted Party's failure or delay remains uncured for a period of 20 days following written notice given by it the other party may thereafter terminate this Contract upon 14 days' written notice.

14. DISPUTE RESOLUTION; VENUE; JURISDICTION

Any legal suit, action, or proceeding arising out of or relating to this Contract shall be instituted in the federal courts of the United States of America or the courts of the Commonwealth of Pennsylvania in each case located in the City of Erie and County of Erie, and each party irrevocably submits to the exclusive jurisdiction of such courts in any such suit, action, or proceeding. Each party hereby irrevocably waives, to the fullest extent permitted by applicable law, any right it may have to a trial by jury in respect to any litigation directly or indirectly arising out of under or in connection with this Contract.

15. GOVERNING LAW

This Contract and all matters arising out of or relating to this Contract shall be construed in accordance with the laws of the Commonwealth of Pennsylvania, without reference to any applicable principles of conflicts of law which would direct the application of the laws of another jurisdiction.

16. LIMITATION OF ACTIONS BY BUYER

Any actions against Seller with respect to any matter arising out of or relating to this Contract must be brought by Buyer, or anyone claiming through or under Buyer, within the earlier of: (a) one (1) year from the date that they knew or should have known about the facts underlying the claim; or (b) the expiration of any applicable statute of limitations.

17. ASSIGNMENT

This Contract may not be assigned by Buyer without the written consent of Seller.

18. SEVERABILITY

If any term or provision of this Contract is invalid, illegal, or unenforceable in any jurisdiction, such invalidity, illegality, or unenforceability shall not affect any other term or provision of this Contract or invalidate or render unenforceable such term or provision in any other jurisdiction.

19. BUYER DISCLOSURES

Unless otherwise agreed to in writing by Seller, any information or ideas transmitted by Buyer to Seller in connection with this Contract shall not be regarded as a trade secret of, or submitted in confidence by, the Buyer.

20. NO LICENSE OR SALE OF INTELLECTUAL PROPERTY

The sale of the Work/Goods does not grant to, convey to or confer upon Buyer a license or any other rights, express or implied, under any patent, copyright or other intellectual property right of Seller encompassed within, covering or relating to the Work/Goods.

21. NO THIRD PARTY BENEFICIARIES

This Contract is for the sole benefit of the parties hereto and their respective successors and permitted assigns and nothing herein, express or implied, is intended to or shall confer upon any other person or entity (including, but not limited to, any customers or affiliates of Buyer) any legal or equitable right, benefit, or remedy of any nature whatsoever.

22. INDEPENDENT CONTRACTORS

The relationship between the parties is that of independent contractors. Nothing contained in this Contract shall be construed as creating any agency, partnership, joint venture, or other form of joint enterprise, employment, or fiduciary relationship between the parties, and neither party shall have authority to contract for or bind the other party in any manner whatsoever.

23. RECOVERY OF EXPENSES

Seller shall be entitled to recover from Buyer all costs and expenses (including, but not limited to, reasonable attorney's fees) which are incurred by Seller in enforcing its rights under this Contract, including, but not limited to, the recovery of any amounts owed by Buyer to Seller under this Contract.

24. AMENDMENT

The Contract, including these Terms and Conditions, may only be amended or modified in writing stating specifically that it amends the Contract and that is signed by an authorized representative of each party.

25. GOVERNMENT CONTRACTS

In the event that the Work provided by Seller hereunder is for ultimate sale to the United States Government and purchased as “Commercial Items” (48 C.F.R. §52.202-1) under the Federal Acquisition Regulation (“FAR”), then Seller agrees to comply with FAR 52.212-5, “Contract Terms and Conditions Required to Implement Statutes or Executive Orders-Commercial Items” as applicable. All other Government flow downs shall be negotiated by the Parties and agreed to in writing.