



# Terms and Conditions

Comp-Utility provides offers titled "Work Authorizations" to provide products, services, commissioning and start up on equipment, and may specifically provide for delivery, installation, engineering and other work. Upon acceptance by the Customer, the subject work becomes a "Contract". The Work Authorization, these terms and conditions, and any documents incorporated by reference therein shall hereafter be referred to as the "Contract" and form the entire agreement between the parties in relation to the subject matter. In the case of a conflict between these terms and conditions and the Contract, the Contract shall prevail.

## DEFINITIONS ARTICLE 1

### 1.1 Certain Definitions.

- A. "Affiliate" means any entity controlling, controlled by or under common control with either party. "Control" shall mean the direct or indirect ownership of more than fifty per cent (50%) of the voting rights or income interest in a company or other business entity or such other relationship as, in fact, constitutes actual control.
- B. "Change" means any alteration to a Purchase Order or to this Contract, or any extra work, delay or other circumstance which results in an adjustment to any of the cost, delivery schedule, and/or any other affected provision of this Contract.
- C. "Commissioning" means on site Start-up and testing of the Products, in accordance with the Company's standards.
- D. "Documentation" means the Company user guides, operating manuals, education materials, product descriptions and specifications, technical manuals, supporting materials, and other information relating to the Products or Services made available by the Company, whether distributed in print, magnetic, electronic, or video format, in effect as of the date the applicable Service is provided to Customer, or at the Customer's request, to the End User.
- E. "End User" means the third party, final user of the Product or Service.
- F. "Product" means (individually or collectively, as appropriate) the hardware, Software, Documentation, supplies, spare parts, accessories, and other commodities, on which Services shall be provided by the Company pursuant to this Contract.
- G. "Purchase Order" means a written or electronic order from Customer for the purchase of Products and/or Services.
- H. "Services" means the Engineering, Installation, Start-up, Commissioning, repair, and/or maintenance activities to be performed by the Company pursuant to this Contract.
- I. "Software" means machine-readable instructions and data (and copies thereof) including middleware and firmware and related updates and upgrades, licensed materials, user documentation, user manuals, and operating procedures forming an integral part of the Products which are the subject of the Services but not including any diagnostics software or similar software used by the Company to perform the Services and which do not form an integral part of the Products.
- J. "Specifications" means the manufacturer's published specifications for the Products or Services.
- K. "Start-up" means installation of the Product at the End User's site and verification by the Company that the Product is in substantial conformance with the Specifications.
- L. "Substantial Completion" means the point in time at which the Products have been installed such that Commissioning and Start-up of the Products may thereafter commence, as further defined herein.
- M. "Trademarks" means all applicable trademarks, and service marks legally registered to and claimed or used by the Company and its Affiliates.
- N. "Work" means the Product(s) and Service(s) provided in the Contract.

## ARTICLE 2. PURCHASE ORDERS

2.1 Customer shall reference this Contract on all Purchase Orders related to this Contract. All Purchase Orders are subject to acceptance by the Company. These terms and conditions supersede and replace in their entirety any and all terms and conditions set forth on the face or reverse side of any Purchase Order or other document presented by Customer, except for the specific terms of the Purchase Order setting forth the price, quantity, and delivery location, unless different terms are mutually agreed to between the parties. All Purchase Orders placed with the Company for Work shall be subject to availability and Customer's favorable credit status with the Company.

## ARTICLE 3. PROVISION OF SERVICES AND CERTAIN CONDITIONS

3.1 Installation and Engineering. If installation, engineering or other services are provided for, the Company shall install the Product in good working order at the designated location in accordance with the standards agreed to between the parties. Company shall not be liable for any differing, subsurface, latent or concealed conditions encountered in the performance of any Work. The existence of such differing, subsurface, latent or concealed conditions shall constitute a Change.

3.2 Site Preparation. Any specific environmental conditions which are required for the provision of the Work shall be the responsibility of Customer unless otherwise specified herein. The Company shall be entitled to rely on the sufficiency and accuracy of any documentation or data, whether written or oral, provided by Customer to the Company regarding site conditions and site preparation requirements.

3.3 Health and Safety. If the Customer is subject to health and safety laws or regulations which are more stringent than the health and safety standards governing Company, or if Customer elects to operate under more stringent health and safety standards than those to which Company is subject, and Customer requires the Company to comply with those higher standards, the Company shall be entitled to charge the Customer any extra costs incurred in so complying. Furthermore, the Company may refuse, without any liability to Customer whatsoever, to perform in whole or in part the Work provided for in this Contract if the site presents unhealthy or unsafe conditions.



3.4 Relocation. If Customer relocates any of the Products which are subject to the terms of this Contract without the Company agreeing to perform work as provided under this Contract at the new site, the Company shall have the right, without any liability to Customer, to terminate the portion of the Contract that relates to the new site without any liability to Customer. Any such termination shall not relieve Customer of any fees to be paid, amounts for partially completed work or invoices due under this Contract.

3.5 Information. Information and/or notices given by the Company to the Customer in the course of this Contract shall be deemed to be correctly given if provided to employees or representatives of the Customer.

3.6 Site Access. The Company shall have reasonable access to the sites and the Products specified in this Contract. The Company will be entitled to charge the Customer at its normal rates for the time lost by the Company's employees as a result of delays from the Customer in granting access to the site.

3.7 Third Party Providers. If a party other than Company services the Products and if in the Company's reasonable opinion, corrective action is required to return the affected Products to their normal operating condition, the Company will offer to perform such work at the service rates and spare part prices in force at the time of the offer. The Company will not be obliged to perform work under this Contract until this remedial work has been done and accepted by Company.

3.8 Regulatory Requirements. When required by national regulations or safety rules, an employee or representative of the Customer shall be present in the room where the Work takes place. If no employee or representative of the Customer is present, the Company shall have the right to stop its work and to invoice the Customer at its normal labor rate.

3.9 Power Disruption. The Customer acknowledges and accepts that the Company may have to disrupt power supplies for a limited period in the course of carrying out the Work. The Company agrees only to cut off the power supply after having given reasonable notice (which may be verbal) to the Customer or any of its employees or representatives including any person holding himself out as an employee. No responsibility is assumed by Company for any unintentional disruptions.

#### **ARTICLE 4. PRICE AND PAYMENT**

4.1 Prices and Fees for Work. Prices and fees for the Work shall be as provided for in this Contract. Any quotes, including but not limited to quotes for price or availability are estimates only and may not include any applicable taxes, duties, freight, handling, return fees or other similar costs. Unless otherwise specified, Payments are required for the following, but are not limited to:

- Service Agreements
- Training
- Start-up

4.2 Prices for additional Work, Annual Contract Renewal and Multi-year Contracts. If the Initial Term of the Contract is for more than one year, yearly invoices will be issued by the Company at each anniversary date and shall be paid by the Customer in accordance with the payment terms below. Pricing may be adjusted each year at the anniversary date of the Contract depending on market conditions and/or in the specific terms of this Contract. Payment for any additional work not quoted by the Company which goes beyond the scope of this Contract which is approved by Customer may be subject to payment by the scheduled date of the Work unless otherwise stated on the invoice or Work Authorization.

4.3 Payment. Customer agrees to pay, without offset, all invoiced amounts within thirty (30) days of the Company's invoice date unless otherwise specifically provided for in this Contract. Payment by Customer shall not be contingent upon payment by a third party. If the Company places this account in the hands of an agency or a law firm for collection by legal action, Customer will pay an additional charge equal to the costs of collection including agency and attorneys' fees and court costs incurred to the extent permitted by laws governing these transactions. In case any invoice is not paid when due, Company shall be entitled to discontinue any work within (72) hours' prior notice. Discontinuation of the subject work does not relieve the Customer of its obligation to pay for the Work previously rendered and to pay the yearly fee in whole for the current year.

4.4 Taxes. Unless Customer provides evidence of exemption, Customer shall pay or reimburse the Company for all taxes which are imposed upon Customer's acquisition of Work. Customer shall not be obligated to pay or reimburse the Company for any taxes imposed on or measured by net or gross income, capital, net worth, franchise, privilege, any other taxes, or assessments, nor shall any of the foregoing be imposed on or payable by the Company.

#### **ARTICLE 5. SUBSTANTIAL COMPLETION**

5.1 Substantial Completion. If installation is provided for in this Contract, the Company shall provide written notice to Customer when the Company deems such installation to be Substantially Complete and ready for Commissioning and Start-up. Within five (5) days after receiving notice of Substantial Completion, Customer shall advise the Company in writing of any known defects or deficiencies in the Work. Upon receipt of such notice Company shall then take appropriate corrective action. The installation shall be deemed to have achieved Substantial Completion should Customer fail to reply to the Company's written notice within said five (5) day time period.

#### **ARTICLE 6. WARRANTIES**



6.1 Product and Service Warranties. Company warrants that the Services to be performed hereunder shall be performed in accordance with recognized professional standards customary in the industry in which the Services are being performed. Should the Services fail to comply with such standards, the Company agrees to re-perform such deficient Services at no cost to Customer provided that the Company has received written notification within thirty (30) days following the completion of the specific Services giving rise to the claim. Customer acknowledges that some or all Products and Services offered by Company may come with a manufacturer's warranty, and those terms and conditions pass through to the Customer and, at the Company's option, may supersede this Contract. FURTHERMORE, CUSTOMER AGREES TO HOLD THE COMPANY HARMLESS FROM ANY DAMAGES THAT ARISE FROM THE OPERATION OF THE PRODUCTS PROVIDED OR SERVICES PERFORMED IN STRICT ACCORDANCE WITH THE CUSTOMER'S SPECIFICATIONS, ORDER DOCUMENTS OR DIRECTIONS WHICH ARE CONTRARY TO THE TERMS OF THIS CONTRACT OR THE COMPANY'S STANDARD PRACTICES.

6.2 Exclusive Warranties. THE FOREGOING WARRANTIES AND REMEDIES ARE EXCLUSIVE AND IN LIEU OF ALL OTHER WARRANTIES, REPRESENTATIONS, OR CONDITIONS, EXPRESS OR IMPLIED, EITHER IN FACT OR BY OPERATION OF LAW, STATUTORY OR OTHERWISE, INCLUDING WARRANTIES OR CONDITIONS OF MERCHANTABILITY, TITLE, NON-INFRINGEMENT AND FITNESS FOR A PARTICULAR PURPOSE. THE COMPANY'S WARRANTIES CONTAINED HEREIN RUN ONLY TO CUSTOMER, AND ARE NOT EXTENDED TO ANY THIRD PARTIES.

6.3 Exclusions. The Company shall not warrant nor is the Company required to provide any Service on any Product defects (i) resulting from a) the Product being modified by any person other than the Company, (b) incorrect use of the Product (c) unsuitable environmental conditions, or (d) causes not attributable to the Product, or (ii) which were not apparent at the time of the Service visit. The Company will submit to the Customer an estimate of the additional repair work required to correct any such defects. Said estimate will be based on the Company labor and spare parts price list in force when the estimate is issued. The Company will not perform any additional Services without having obtained the Customer's written contract to the estimate. The opinion of the Company as to whether or not the work is additional Work and therefore not covered under this Contract shall be conclusive. Furthermore, the Company is not responsible for any software, firmware, information or memory data of Customer or End Users contained in, stored on, or integrated with any Products returned to the Company for repair, whether under warranty or not. The Company also makes no warranty or representation that its Software will work in combination with any hardware or applications software products provided by third parties, that the operation of the Software will be uninterrupted or error-free, or that all defects in the Software will be corrected.

## ARTICLE 7. LICENSE AND RESTRICTIONS

7.1 Trademarks. Neither Customer nor its Affiliates have any right to incorporate any Trademark into Customer's or Affiliate's company name or trade name. Neither Customer nor its Affiliates will alter, cover, obfuscate or remove any Trademarks placed by the Company on the Products or any material contained therein.

## ARTICLE 8. LIABILITIES

### 8.1 Limitation of Liability.

8.1.1 THE COMPANY'S MAXIMUM LIABILITY TO CUSTOMER FOR DIRECT DAMAGES WILL BE LIMITED TO THE AMOUNT PAID BY CUSTOMER PURSUANT TO THIS CONTRACT. THE FOREGOING LIMITATION WILL NOT REDUCE THE COMPANY'S LIABILITY FOR BODILY INJURY CAUSED BY THE COMPANY'S NEGLIGENCE. THE COMPANY ASSUMES NO RESPONSIBILITY FOR ANY WORK PERFORMED OR PRODUCT SOLD.

8.1.2 **NOTWITHSTANDING ANY PROVISION IN THIS CONTRACT TO THE CONTRARY, IN NO EVENT SHALL EITHER PARTY, ITS OFFICERS, DIRECTORS, AFFILIATES OR EMPLOYEES BE LIABLE FOR ANY FORM OF INDIRECT, SPECIAL, CONSEQUENTIAL OR PUNITIVE DAMAGES OF ANY KIND OR FOR LOSS OF REVENUE OR PROFITS, LOSS OF BUSINESS, LOSS OF INFORMATION OR DATA OR OTHER FINANCIAL LOSS WHETHER SUCH DAMAGES ARISE IN CONTRACT OR TORT, IRRESPECTIVE OF FAULT, NEGLIGENCE OR STRICT LIABILITY OR WHETHER SUCH PARTY HAS BEEN ADVISED IN ADVANCE OF THE POSSIBILITY OF SUCH DAMAGES.**

8.2 Applicability of Limitations of Liability. The limitation of liability in Section 8.1 shall apply to the full extent permitted by law, and shall apply whether liability is grounded in contract, tort, or otherwise, and shall extend to each party and their respective Affiliates, directors, officers, and employees.

8.3 Nothing in this Agreement shall limit or exclude the liability of either party for death or personal injury resulting from negligence, fraud, or fraudulent misrepresentation.

8.4 Survival of Article 8 The provisions of this Article 8 shall survive the expiration or termination of this Contract for any reason.

## ARTICLE 9. TERM AND TERMINATION.

9.1 Term. The Initial Term of this Contract is provided for elsewhere in this Contract. At the end of the Initial Term or upon Substantial Completion, or if not explicitly stated otherwise in this Contract, this Contract shall be automatically renewed for successive one-year periods thereafter (each, a "Renewal Term") unless either the Company or the Customer gives notice of cancellation in writing to the other ninety (90) days before the end of the Initial Term or Renewal Term then in effect.



9.2 Termination for Non-Payment. Company may terminate this Contract, or any portion thereof, if Customer fails to pay when due any amounts due pursuant to any Purchase Order. Invoices shall serve as notices.

9.3 Termination for Cause. Except as provided in the previous section, this Contract may be terminated immediately on written notice by either party (i) in the event the other party breaches any term of this Contract and fails to cure such breach within thirty (30) days following receipt of written notice thereof from the non-breaching party; (ii) if the other party becomes insolvent or upon the institution by the other party of insolvency, receivership or bankruptcy proceedings or any other proceedings for the settlement of its debts; or (iii) following the institution of such proceedings against the other party, which proceedings are not dismissed or otherwise resolved in that party's favor within sixty (60) days thereafter or upon the other party's making a general assignment for the benefit of creditors or the other party's dissolution or ceasing to conduct business in the normal course. Furthermore, the Company shall have the right without liability and without limiting any other right or remedy available, to suspend all Work to Customer. Suspension of Work by the Company does not relieve Customer of its obligation to pay the appropriate service fees. In the event of a dispute regarding fees owed to the Company, the Parties agree to use commercially reasonable efforts to resolve the dispute in a timely manner.

## ARTICLE 10. INTELLECTUAL PROPERTY INFRINGEMENT

10.1 Third-Party Claims. The Company will defend or settle any claim against Customer alleging that Work provided under this Contract infringes a third party's intellectual property right, if Customer:

- (a) promptly notifies the Company of the claim in writing;
- (b) cooperates with the Company in the defense of the claim; and
- (c) grants the Company sole control of the defense or settlement of the claim.

Company will pay infringement claim defense costs, Company-negotiated settlement amounts, and court awarded damages with respect to any such claim.

10.2. Remedies. If a claim under Section 10.1 above appears likely, then the Company may modify the Company Products or Services, procure any necessary license, or replace the affected item with one that is functionally equivalent. If the Company determines that none of these alternatives is reasonably available, then the Company will issue Customer a refund equal to the depreciated value of the affected item.

10.3. Exclusions. The Company has no obligation for any claim of infringement arising from:

- (a) Company's compliance with Customer or Customer sponsored third party designs, specifications, instructions, or technical information;
- (b) Modifications made by Customer or a third party;
- (c) Customer non-compliance with the Documentation, or
- (d) Customer use of Products with non-Company products, software, or services.

## ARTICLE 11. MISCELLANEOUS

11.1 Binding Nature, Assignment, and Subcontracting. This Contract shall be binding on the parties and their respective successors in interest and permitted assigns. Neither party shall have the power to assign, except to an Affiliate of such party, this Contract without the prior written consent of the other party, which consent shall not be unreasonably withheld.

11.2 Intellectual Property Rights. Customer shall not have or obtain title to any tangible or intangible property or materials which the Company may supply, and all such items may be used only for the performance of this Contract.

11.3 Counterparts. This Contract may be executed in several counterparts, all of which taken together shall constitute one single contract between the parties.

11.4 Headings. The Article and Section headings used in this Contract are for reference and convenience only and shall not affect the interpretation hereof.

11.5 Relationship of Parties. The Company is performing only as an independent contractor. Nothing set forth herein shall be construed to create the relationship of principal and agent between the Company and Customer.

11.6 Confidentiality. Each party acknowledges that in the course of performance of its obligations pursuant to this Contract, such party may obtain confidential and/or proprietary information of the other party. "Confidential Information" includes: any information relating to development plans, costs, finances, marketing plans, equipment configurations, data, access or security codes or procedures utilized or acquired, business opportunities, names of customers, research, and development; the terms, conditions and existence of this Contract; any information designated as confidential in writing or identified as confidential at the time of disclosure if such disclosure is verbal or visual; and any copies of the prior categories or excerpts included in other materials created by the recipient party. Each party agrees that, for a period of five (5) years following its receipt of Confidential Information from the other party, whether before or after the effective date of this Contract, such recipient party shall use the same means it uses to protect its own confidential and proprietary information, but in any event not less than reasonable means to prevent the disclosure and to protect the confidentiality of the Confidential Information. Further, the recipient party shall only use the Confidential Information for the purposes of this Contract, and shall not disclose the Confidential Information without the prior written consent of the other party. This provision shall not apply to Confidential Information which is (i) already known by the recipient party without an obligation of confidentiality, (ii) publicly known or becomes publicly known through no unauthorized act of the recipient party, (iii) rightfully received from a third party (other than an



Affiliate or customer of the party owning the Confidential Information) without an obligation of confidentiality, (iv) disclosed without similar restrictions by the party owning the Confidential Information to a third party (other than an Affiliate or customer of the party owning the Confidential Information), (v) approved by the party owning the Confidential Information, in writing, for disclosure, or (vi) required to be disclosed pursuant to a requirement of a governmental agency or law so long as the recipient party provides the other party with timely prior written notice of such requirement.

11.7 Electronic Communications. If the Company and Customer mutually agree, business communications between the parties, including, but not limited to, Purchase Orders, invoices, and payment, may be submitted electronically. In such case, the parties shall mutually agree in writing upon supplemental terms and conditions, including technical standards, for the electronic exchange of such items including refresh frequency.

11.8 Notices. All notices that are required under this Contract will be in writing and will be considered effective when delivered in hand, when mailed by registered or certified mail, return receipt requested, postage prepaid, acknowledgement by both parties to an electronic message, or when sent by a third party courier service where receipt is verified by the receiving party's acknowledgement to the address provided on the first page of this Contract or as those addresses are modified from time to time.

11.9 Force Majeure. Neither party will be liable for performance delays nor for non-performance due to causes beyond its reasonable control; however, this provision shall not apply to Customer's payment obligations.

11.10 Severability. If for any reason a court of competent jurisdiction finds any provision of this Contract, or portion thereof, to be unenforceable, that provision of the Contract shall be enforced to the maximum extent permissible so as to effect the intent of the parties, and the remainder of this Contract shall continue in full force and effect.

11.11 Waiver. Any waiver of this Contract or of any covenant, condition, or contract to be performed by a party under this Contract shall (i) only be valid if the waiver is in writing and signed by an authorized representative of the party against which such waiver is sought to be enforced, and (ii) apply only to the specific covenant, condition or contract to be performed, the specific instance or specific breach thereof and not to any other instance or breach thereof or subsequent instance or breach.

11.12 Remedies. The remedies set forth in this Contract shall be the exclusive remedies of the parties and shall constitute each party's exclusive liability and sole remedies for claims arising out of this Contract.

11.13 Survival of Terms. Termination or expiration of this Contract for any reason shall not release either party from any liabilities or obligations set forth in this Contract which (i) the parties have expressly agreed shall survive any such termination or expiration, or (ii) remain to be performed or by their nature would be intended to be applicable following any such termination or expiration.

11.14 Export Control. Customer acknowledges and agrees that the commodities, software, and/or technology herein are subject to the export control laws and regulations of the United States and/or other national governments. These regulations include, but are not limited to, the U.S. Export Administration Regulations (US EAR), the U.S. State Department's International Traffic in Arms Regulations (ITAR), sanction regimes of the U.S. Department of Treasury Office of Foreign Assets Controls (OFAC) and export laws and regulations of the European Union (EU) and/or any of its member states. Customer will comply with these laws and regulations. Customer shall not, without prior U.S. Government authorization, export, re-export, or transfer any commodities, software, or technology, either directly or indirectly, to any country subject to a U.S. trade embargo or sanction or to any resident or national of said countries, or to any person, organization, or entity on any of the restricted parties lists maintained by the U.S. Departments of State, Treasury, or Commerce. In addition, any commodities, software, or technology herein may not be exported, re-exported, or transferred to any end-user engaged in activities, or for any end-use, directly or indirectly related to the design, development, production, use, or stockpiling of weapons of mass destruction (e.g. nuclear, chemical, or biological weapons, and the missile technology to deliver them). The Company may suspend performance of this Contract if Customer is in violation of any applicable laws or regulations.

11.15 Data Protection. (a) In this Section "the Directive" means Directive 95/46/EC of the European Parliament and the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data, and where appropriate, terms used in this clause shall have meanings ascribed to them in the Directive. (b) The Customer acknowledges and agrees that all personal data provided by it or on its behalf will be processed by and on behalf of the Company in connection with the Work. Each party shall comply with the Directive as regards all such processing.

11.16 Governing Law and Dispute Resolution. THE RIGHTS AND OBLIGATIONS SHALL BE GOVERNED BY THE LAWS OF THE STATE OF TEXAS.