



## 1. Application

These General Conditions of Sale of Comet America, LP (“Conditions”) shall apply to the sale, supply, and replacement of hardware and/or software (“Products”) by Comet America, LP (hereinafter “Comet America”) to Comet America’s customer (“Customer”) except to the extent the sale, supply, and replacement of Products is subject to a separate Agreement (as defined below). By submitting a purchase order, request for offer or any other document to purchase Products against a Comet America quotation or other Comet America document referencing these Conditions, Customer acknowledges: (a) its complete acceptance of these Conditions; and (b) that any terms accompanying Customer’s document(s) related to the sales transaction have no effect and shall not apply. These Conditions may be superseded or amended in writing by a separate agreement agreed upon and executed by both parties (“Agreement”); otherwise the sale, supply, and replacement of Products shall solely be governed by these Conditions and related documentation for the given sales transaction, which hereby together constitute the full contract (“Contract”) between Comet America and Customer.

## 2 Mutual Representations

Each party represents, warrants and covenants that: (a) it has the full right, power, and authority to render the performance and obligations as set forth herein; and (b) the representative whose signature is affixed to this Contract (when applicable) has full capacity and authority to bind that party to the terms hereof.

## 3 Prices, Payment, Delivery and Retention of Title

### 3.1 Prices

The quoted prices are in US dollars (USD). exclusive of all taxes, duties and charges of any kind, which shall be added to the purchase price in accordance with applicable law or paid directly by Customer to appropriate authorities, as the case may be.

### 3.2 Payment

Comet America LP does offer the following payment methods:

- Credit cards: we accept most major credit cards including: Visa, MasterCard, American Express.

- Pre-payment per bank transfer: Comet America LP does accept bank transfers and ACH payments for both domestic and international orders.

By choosing pre-payment as the payment method, upon receipt of your order we will send you a proforma invoice including our banking details to the e-mail address you have provided in your order. Please note that we will process your order only after your full payment has been received by Comet America LP.

- Net terms/open account basis: for specific customers, Comet America LP may apply a net payment term. Please consult our sales team if you wish to deal on an open account basis. The applicable payment term shall be notified in the acknowledgement of order. Comet America LP reserves the right to make a credit check for invoice customers that we supply on an open account basis. This may slow down order processing.

Upon Comet America's acceptance of Customer's credit application, payment terms shall be net 30 days. Any payment outstanding after the due date shall accrue interest at the rate of twelve percent (12%) per annum on the unpaid amount from the date such payment becomes due. Comet America is entitled to suspend all deliveries to Customer until any unpaid amount, including interest, has been paid in full.

### 3.3 Delivery

Any delivery and availability dates are estimates only. Comet America will endeavor to meet these estimates but will not be liable for any delays in meeting estimated delivery dates.

Customer will be deemed to have accepted the Products unless Comet America has received a substantiated written claim as to any alleged nonconformity or delayed delivery of the Products within fourteen (14) days from the date of receipt of the Products by the Customer.

### 3.4 Retention of Title

Comet America shall retain title to Products until Comet America's receipt of full payment, including possible interest on overdue payment.

Until full payment for Products has been received or unless prior written authorization has been given by Comet America, Customer (a) shall take all measures necessary to store and protect such Products, including labeling such Products as being owned by Comet America, shall inform Comet America of such measures, and shall grant Comet

America access to the premises where Products are stored for inspection and removal purposes at Customer's risk and expense, and (b) undertakes not to process, incorporate, give as security or resell Products.

#### 4 Confidentiality

Neither party shall disclose, transfer, transmit or otherwise make available to a third party documentation related to the given sales transaction or any confidential information submitted in connection with the sale, supply or replacement of Products without the written consent of the other party, unless and to the extent required for the purpose of fulfilling the obligations under this Contract. The obligations of this Section 4 shall survive the expiry and termination of this Contract for a period of three (3) years.

#### 5 Intellectual Property Rights

All trademarks, copyrights, trade names, patents, designs, drawings, technical data, trade secrets, and any other information designated as confidential information of a party shall remain the sole property of that party.

#### 6 Indemnification Liability

##### 6.1 Intellectual Indemnification by Comet America

and Limitation of

Property

Rights

Comet America shall hold harmless, defend and indemnify Customer, and each of its directors, officers, members, managers, employees, and agents (collectively, the "Customer Indemnified Parties") from and against any and all damages, losses, liabilities, costs and expenses suffered or incurred by any of Customer Indemnified Parties in any action, suit, litigation, arbitration or dispute brought by a third party arising or resulting from any claim that Products provided to Customer infringe any copyright, patent, or trademark, constitute a misappropriation of any trade secret, or violate any other intellectual property or proprietary right of any third party. The Customer Indemnified Parties shall without delay notify Comet America in writing about any such action, suit, litigation, arbitration or dispute, and they shall not settle or make any admissions in respect of the same. Comet America shall be given the option, at its expense, to control the action, suit, litigation, arbitration or dispute, and shall be given all necessary information, authorization and assistance to defend the same.

The foregoing indemnity shall not apply (a) to a claim, damage, loss, liability, cost or expense to the extent attributable to the negligent activities or intentional misconduct of any of Customer Indemnified Parties, (b) where any such infringement,

misappropriation, or violation would not have occurred but for Customer's modification of Products or Customer's combination of Products with any hardware, software or service not provided by Comet America or (c) to claims by entities belonging to the same group of companies with the Customer or otherwise associated with any of the Customer Indemnified Parties.

## 6.2 General Indemnity

Each party shall hold harmless, defend and indemnify the other party and its respective directors, officers, members, managers, employees, consultants, contractors, and agents from and against any and all third party claims, demands, suits, actions, or proceedings (and resulting costs, expenses and liabilities), which arise from personal injury, death, or tangible property loss or damage attributed to, or caused by, either party's negligent performance under this Contract or by Products supplied by Comet America (including latent defects in such Products). The foregoing indemnity shall not apply to the extent that such injury, death, tangible property loss or damage is caused in whole or in part by the willful misconduct or gross negligence of the party seeking to be indemnified.

## 6.3 Limitation of Liability

Notwithstanding any provision in this contract or otherwise to the contrary, the maximum aggregate liability of a party to the other party and to all indemnified parties for any and all damages, losses, liabilities, costs and expenses ("damages") arising from or related to this contract, whether in contract, tort or otherwise, excluding indemnity for which customer indemnified parties may be entitled to pursuant to section 6.1 above, shall not exceed the aggregate compensation paid or payable to Comet America under this contract.

## 6.4 No Indirect Damages

Neither party shall be liable to the other party for damages which are indirect, incidental, consequential, punitive, special or exemplary, including, without limitation, any loss of profits or revenue (exclusive of the full payment for products sold pursuant to the terms of this contract) incurred by either party whether in an action based on contract or tort, even if a party has been advised of the possibility of such damages, whether foreseeable or unforeseeable. damages resulting from any loss of data shall be deemed indirect damages, and shall be subject to this section 6.4.

## 7 Warranty

Comet America hereby represents and warrants all Products to be free from defects in workmanship and material during a period of thirty-six (36) months from the date of *shipment*.

If any Product proves to be nonconforming in workmanship or material within the period(s) herein provided, Comet America undertakes, to the exclusion of any other remedy, to repair or at its option replace the nonconforming Product or part thereof free of charge. Products so repaired or replaced shall have a six (6) months warranty period from the date of delivery and otherwise on the same conditions as for the original Product or part thereof, unless the original warranty period extends beyond the six (6) months warranty period, in which case the original warranty period applies. Comet America shall have the option to repair the Product at a Comet America facility of its choosing or on site. Nonconforming Products replaced in accordance with this Section shall be placed in Comet America's possession for disposal.

This warranty is subject to the following conditions:

- a) a substantiated written claim as to any alleged nonconformity shall have been received by Comet America within thirty (30) days after the nonconformity occurred or became known; and
- b) the allegedly nonconforming Product or part thereof shall be sent to the appropriate Comet America facility or to such other place as Comet America may indicate in writing within 30 days after authorization, properly packed and labeled by Customer, unless Comet America has agreed to inspect and repair or replace the Product on site; and
- c) the Product is within the warranty period.

Return freight and insurance shall be at Customer's expense following the return material authorization procedures set by Comet America for the return of the nonconforming Products, as set forth on Comet America's website.

This warranty does not apply when the nonconformity has been caused through:

- a) Normal wear and tear;
- b) Accident, theft or vandalism;
- c) Forces of nature;
- d) Misuse or other unsuitable or unauthorized use of the Product or negligence or error in storing, maintaining or handling the Product;
- e) Erroneous installation or assembly or failure to service the Product or otherwise follow Comet America's service instructions, including any repair, installation, assembly or service made by personnel not approved by Comet America or replacements with parts not manufactured or supplied by Comet America;
- f) Modifications or changes to the Product as well as any adding to it without Comet America's prior authorization; or
- g) Other factors depending on Customer or a third party.

Notwithstanding the aforesaid, Comet America's liability under this warranty shall not apply to any nonconformities arising out of materials, designs or instructions provided by Customer.

This warranty is expressly in lieu of and excludes all other conditions, warranties and liabilities, express or implied, whether under law, statute or otherwise, including without limitation any implied warranties of merchantability or of fitness for a particular purpose and all other obligations and liabilities of Comet America or its representatives with respect to any defect or deficiency applicable to or resulting directly or indirectly from products, which obligations and liabilities are hereby expressly canceled, waived and disclaimed. Comet America's liability under this warranty shall under no circumstances exceed the invoice price of any product for which a warranty claim is made, nor shall Comet America in any circumstances be liable for lost profits or other indirect, incidental, consequential, punitive, special or exemplary damages.

## 8 Export Control and Compliance

(a) Customer represents that neither Customer nor any of its directors, officers, members, managers or employees, or any person or entity known to Customer to be directly involved in this transaction as freight forwarder, consignee, end-user, consultant, agent or otherwise is designated on any of the U.S. government restricted parties lists, including without limitation the U.S. Commerce Department Bureau of Industry and Security Denied Persons List, Entity List or Unverified List, the U.S. Treasury Department Office of Foreign Asset Controls Specially Designated National and Blocked Persons List or the U.S. State Department Directorate of Defense Trade Controls Debarred Parties List or restricted parties lists of any country having jurisdiction over Customer or the transaction involving the Products that are the subject of this Contract or related technology.

Customer acknowledges that: (1) Export Regulations impose restrictions on the import, export, and transfer of certain categories data, articles and services to third countries and non-U.S. residents (including foreign persons working legally in the United States); and (2) licenses from the US Department of State and/or the US Department of Commerce may be required before such data, articles and/or related services can be exported; and (3) such licenses may impose further restrictions on the use and further disclosure of such data and articles. Customer agrees to comply with all U.S. Governmental regulations as they relate to the import, export, re-export and use of the subject technology hereof.

Customer shall have full responsibility for obtaining any export and import licenses and other authorizations required to export, import and use the Products. Comet America shall not be obliged to commence performance of this Contract until all necessary export and import licenses and authorizations have been obtained.

(b) Customer shall hold harmless, defend and indemnify Comet America and its respective directors, officers, members, managers, employees, consultants, contractors, and agents from and against any and all claims, demands, suits, actions, or proceedings (and resulting costs, expenses, penalties, fines and liabilities), arising out of claims, suit, allegations or charges of Customer's failure to comply with the provisions of this Section 8 and breach of the representation set forth in paragraph (a) above;

provided, however, that in the event Customer requests the export classification of the relevant Product(s) from Comet America and Comet America fails to provide the correct export classification, then the preceding indemnification provision shall not apply. Any failure of Customer to comply with the requirements or any breach of the representations contained in this Section 8 shall be a material breach of this Contract.

## 9 General

### 9.1 Force Majeure

Neither party shall be liable for delay in delivery or other failure to duly fulfil its obligations due to a Force Majeure event. Force Majeure events are events beyond the control of both parties and include, but are not limited to: a strike or other industrial or labor dispute, fire, flood, sandstorm, or any other natural catastrophe, act of God, riot, war, general mobilization, import, export, currency restriction or embargo, circumstance caused by reasons of law, regulations or acts (or failures to act) of any federal, state or local government authority, traffic, port or airport congestion, delay or accident during transportation, power failure, failure of telecommunications, acts of terror, widespread life-threatening disease, shortage of labor, materials, power, fuel or means of transportation or other similar events, whether affecting either party or any of its suppliers or subcontractors, or any other cause or circumstance beyond either party's reasonable control.

The party affected by a Force Majeure event shall notify the other party in writing as soon as commercially reasonable. Each party shall be entitled to terminate this Contract by notice in writing to the other party if performance of this Contract is suspended under this Section 9.1 for more than six (6) months.

### 9.2 Assignment

Neither party shall be permitted to assign or transfer, in whole or in part, this Contract, or any rights or obligations hereunder, except with the written authorization of the other party, and with regard to Comet America, except as assigned or transferred to a Comet America Group Company. Such authorization shall not be unreasonably withheld. Any attempted assignment in violation of this Section 9.2 shall be null and void.

### 9.3 Non-Waiver

Failure to enforce any right under this Contract will not be deemed a waiver of future enforcement of that or any other right.

### 9.4 Nature of Weather Forecasting and

Assessment

In the event that Customer is purchasing weather forecasting and/or assessment data, the parties acknowledge that weather forecasting and assessment is an inexact science and that the forecasts and assessments provided under this Contract may contain errors. The use or application of any content or data contained in or provided by Products shall be the sole responsibility of the users of Products, who shall assume all liabilities and obligations with respect to any use or application of such Products.

#### 9.5 Electrical Waste Disposal

Customer shall be responsible for collection and proper disposal of all waste electrical and electronic equipment (WEEE) and packaging material arising or deriving from Products.

#### 9.6 Product Loan

Comet America may, at its discretion, supply Products to Customer on loan for an agreed period of time for evaluation and other agreed purposes. All Product loans shall be subject to these Conditions. Such Products will remain at all times Comet America's property, and Customer shall indemnify Comet America against any loss or damage to the Products whilst in Customer care and custody in accordance with Section 6.2.

#### 9.7 Termination

In the event that either party files for bankruptcy, makes arrangements with creditors due to financial difficulties, goes into voluntary or compulsory liquidation other than for the purpose of reconstruction, or has a receiver appointed, the other party may, without prejudice to any other rights or remedies, terminate this Contract with immediate effect by written notice.

In the event that either party materially breaches this Contract and fails to cure the breach within thirty (30) days after being notified, the non-breaching party may terminate this Contract.

In any event of termination, Comet America shall be entitled to payment for Products already delivered and work in progress.

#### 9.8 Governing Law and Dispute Resolution

This Contract shall be governed by the laws of the State of Minnesota, without regard to its conflict of laws rules. It is expressly agreed that the application of United Nations Convention on Contracts for the International Sale of Goods (CISG) shall be excluded.

The parties shall first try to resolve any dispute relating to or arising from this Contract through good faith negotiations. If the parties are unable to resolve the dispute through negotiations, the dispute shall be submitted to, and settled by, binding arbitration by a single arbitrator chosen by the American Arbitration Association in accordance with the

Commercial Rules of the American Arbitration Association. The arbitrator shall apply the laws of the State of Minnesota. Any court having jurisdiction over the matter may enter judgment on the award of the arbitrator.