



## Terms and Conditions for Sale of Products, Services and Finished Goods

Updated January 2022

### **1. APPLICABLE CONTRACT PROVISIONS.**

- a. “Buyer” means the entity issuing the Order, and any affiliates, subsidiaries, successors or assigns thereof. “Seller” means Creative Digital Systems Integration, Inc. “Deliverables” means any and all products, services, or finished goods to be supplied by Seller under the Order. “Order” means the purchase order issued by Buyer for the supply of Deliverables, which is a written or electronic CDSI purchase order document, and may also include particular shipping instructions and other specifications required by Buyer for the Deliverables. “FAR” means Federal Acquisition Regulation. “DFAR” means Defense Federal Acquisition Regulation. “Buyer Work” means intellectual property that: (i) is created by Seller specifically to meet the requirements of the applicable Order; or (ii) is a modification to or derivative work of Buyer’s intellectual property, or (iii) is created by Seller using Buyer’s confidential information.
- b. These terms and conditions, together with the Order, constitute an offer by Buyer to purchase the Deliverables from Seller pursuant to the terms and conditions described herein. This offer is not an acceptance or a confirmation of any previous offer or proposal from Seller, and this offer shall be deemed to be a rejection and counteroffer with respect to any previous offer or proposal from Seller. No understandings or agreements which modify or add to the Order and these terms and conditions, shall bind Seller or Buyer. Acceptance of any shipment of the Deliverables shall not be construed as an acceptance of any previous offer or proposal or an acceptance of any different or additional terms proposed by Seller or Buyer.
- c. This offer shall become an “Agreement” upon acceptance by Seller. Seller shall be deemed to have accepted this offer by any of the following means: (i) commencement of performance called for in the Order, (ii) delivery of the Deliverables to Buyer, (iii) written acceptance or confirmation of this Agreement, or (iv) any other act or communication constituting legal acceptance, whether or not any such acceptance or confirmation purports to state terms additional to or different from those stated herein.
- d. FAR & DFAR clauses shall apply to sub-contracts and purchase orders issued under a Buyer, United States government sponsored contract.

### **2. SALE OF DELIVERABLES.**

- a. Seller agrees to sell, transfer and deliver the Deliverables to Buyer for the purchase price set forth in the Order, subject to all of the covenants, terms and conditions hereof.
- b. Buyer agrees to purchase the Deliverables and to pay Seller the purchase price set forth in the Order, subject to all of the covenants, terms and conditions hereof. Typographical and other clerical errors in the Order are subject to correction. Buyer reserves the right at any time to modify the Order upon written notice to Seller. Upon such notice, Buyer and Seller shall negotiate an equitable adjustment in price and/or time of performance.



c. Seller agrees to obtain from Buyer a purchase order number for any and all purchase orders of Deliverables listed as line items. Seller further agrees it will clearly reference the purchase order number on the applicable invoice(s). Seller acknowledges that any invoice submitted to Buyer that does not clearly reference Buyer's corresponding purchase order number may be considered invalid by Buyer and may result in a rejected invoice and a delayed payment.

### **3. PURCHASE PRICE AND TERMS OF PAYMENT.**

a. Deliverables shipped against this Agreement shall be invoiced at the price set forth in the Order. All finished goods require a minimum of 50% of the total purchase price to be paid to Seller by Buyer in advance/upon the acceptance of the Order by Seller, with payment of the balance of the purchase price due as further defined and agreed in the Order.

b. The purchase price for the Deliverables shall include all US taxes, US customs duties, US customs fees or other US governmental charges due with respect to the Deliverables. Buyer shall pay for any taxes that it is statutorily required to pay and any foreign related costs and fees if applicable.

c. Buyer shall be responsible for all shipping and insurance costs, including without limitation, packing, crating, cartage and freight costs.

d. Terms and Conditions & FAR/DFAR flow downs (applicable to Government Cost Reimbursable Contracts, CPFF CPIF, T&M only) - if Order is directly tied to a U.S Government Cost Reimbursable contract, Seller is responsible to adhere to applicable contract terms for correctly and accurately collecting, recording and disclosing costs for reimbursement shall apply to all invoices submitted for payment. Additionally, the Defense Contracts Audit Agency (DCAA) has the right to review all cost records (including labor time cards) when requested to the prime. Failure to adhere to Terms and Conditions flow downs and may result in a rejected invoice and a delayed payment.

### **4. SHIPMENT, DELIVERY AND ACCEPTANCE.**

a. Seller shall deliver the Deliverables F.O.B. shipping point Simi Valley California for shipment to Buyer in the Order. Seller shall follow any shipping instructions provided by Buyer and shall properly and carefully package the Deliverables for shipment. Title to and risk of loss of the Deliverables shall pass to Buyer once the Deliverable leaves the care and custody of Seller and thus any loss or damage incurred during transport will be borne by Buyer.

b. All items shipped shall be properly identified with Buyer's purchase order number and any purchase order item number or other identification number shown. Buyer accepts full responsibility for the completeness and accuracy of all transport and customs documentation ("Shipping Documents") provided to Seller.

c. Notwithstanding anything herein to the contrary, Buyer shall have a reasonable opportunity to inspect the Deliverables at Seller's premises prior to shipment. Buyer shall not be deemed to have accepted any such Deliverables until the expiration of such reasonable time for inspection. The parties acknowledge and understand that Buyer may inspect any commercial lot of the Deliverables consisting of numerous units of the same product by inspecting only a reasonable sampling of such units and that Buyer may revoke acceptance of any other units of such commercial lot which Buyer at a later time discovers to be defective. Upon rejection or revocation of acceptance of any Deliverables, Seller shall promptly replace or correct, at Seller's option, any unsatisfactory units at Seller's expense.



## **5. WARRANTY PROVISIONS.**

- a. Seller hereby warrants to Buyer that, in addition to any and all express and implied warranties provided under the Uniform Commercial Code and applicable law, the Deliverables: (i) shall be provided in a competent, professional manner and in accordance with the standards and practices of Seller's industry; (ii) shall be free from defects in materials and workmanship, and shall be merchantable and fit for their particular purpose; (iii) shall conform to and perform in accordance with all specifications, drawings, samples and other requirements referred to in writing in the Order and provided by Buyer; (iv) when shipped shall be free from all liens, security interests and encumbrances of any type whatsoever; and (v) shall be manufactured, produced, labeled, furnished and delivered to Buyer in full and complete compliance with all applicable US laws and regulations.
- b. Seller shall give Buyer reasonable advance written notice of any production change related to the Deliverables, including but not limited to any change in the manufacturing process, formulation, raw materials or production location. For any change that could affect performance of the Deliverables, Seller shall complete any reasonable qualification processes of Buyer and address Buyer's concerns about the change.
- c. "Epidemic Failure" means a defect or malfunction that is a warranty failure or prevents access or operation of the Deliverables from a single root cause as confirmed by Seller in at least ten percent (10%) of the Deliverables. In the event of an Epidemic Failure, all Deliverables of the same type will be presumed defective. In addition, Seller will provide a corrective action plan, that is reasonably acceptable to Buyer as soon as possible and no later than ten (10) business days after notification from Buyer and verification by Seller of the Epidemic Failure, and Seller will implement the corrective action plan accepted by Buyer (including any de-installation and re-installation of the Deliverables if requested by Buyer) as soon as possible (but no later than thirty (30) business days after approval by Buyer), all at no additional charge to Buyer. Buyer may cancel or postpone all Orders, pending implementation of the corrective action plan. To the extent Seller recalls any Deliverables, Seller will be responsible for all reasonable costs to replace the Deliverables as a result of such recall.

## **6. INDEMNIFICATION.**

- a. Buyer agrees to indemnify, defend (with counsel reasonably acceptable to Seller) and hold Seller harmless from and against any and all liabilities, damages, costs, losses and expenses, including reasonable attorneys' fees, incurred or suffered by Buyer as a result of or in connection with Buyer's breach of any of its representations, warranties or obligations hereunder.
- b. If Seller discovers that any Deliverables are likely to infringe any rights of any third party, it shall promptly inform Buyer, and Seller shall, at Seller's sole cost and expense, (i) obtain for Buyer the right to continue using such Deliverables or (ii) replace or modify such Deliverables so that such Deliverables becomes non-infringing; provided, however, that such replacement or modified Deliverables must provide at least the same level of functionality as the original Deliverables. Further, Seller agrees to indemnify, defend (with counsel reasonably acceptable to Buyer) and hold Buyer harmless from and in respect of any liabilities, damages, costs, losses and expenses which Buyer may suffer or incur (including reasonable attorneys' fees) arising out of, relating to or concerning any claim, action or allegation that any of the Deliverables (or Buyer's use of same) infringes any patent or other intellectual property rights claimed by any third party; provided that Buyer shall notify Seller in writing of any such claim, act or allegation promptly after learning of the same and shall assist and cooperate in the defense or settlement thereof.



## **7. OWNERSHIP.**

a. Seller may use any information, data or Deliverables provided by Buyer (the “Buyer Information”) in connection with providing the Deliverables for the sole purpose of preparing the Deliverables as permitted by and for the term of the applicable Order, and Buyer retains all other right, title and interest in and to the Buyer Information.

## **8. GENERAL PROVISIONS.**

a. Seller shall furnish, at Seller’s expense, all labor, Deliverables, equipment, transportation, facilities and other items that are necessary to meet the Order requirements. Time is of the essence in Seller’s performance. Seller must notify Buyer whenever Seller has knowledge of an actual or potential delay to the timely performance of the Order.

b. This Agreement shall constitute the complete understanding and contract between Seller and Buyer with respect to the subject matter hereof and supersedes any prior written or oral understandings with regard thereto. No purported amendment, modification or waiver of any provision of the Agreement shall be binding on Buyer or Seller unless set forth in a written document signed by an authorized representative of both Buyer and Seller.

c. Seller is responsible for the performance or non-performance of any subcontractor and will indemnify, defend and hold harmless Buyer from and against all claims, actions, losses, damages, costs and expenses (including reasonable attorneys’ fees) arising from any subcontractor’s acts or omissions.

d. If any provision hereof is held to be unenforceable by the final order of any court of competent jurisdiction, such provision shall be severed here from and shall not affect the interpretation or enforceability of remaining provisions hereof.

e. This Agreement shall be governed by and interpreted in accordance with the laws of the State of California, without reference to any conflicts of law principles. Each of the parties irrevocably agrees that any legal action or proceeding arising out of or relating to this Agreement or any Order shall be brought and determined in any California State court sitting in the County of Ventura (or, if such court lacks subject matter jurisdiction, in any United States District Court for the Central District of California), and each of the parties hereby irrevocably submits to the exclusive jurisdiction of the aforesaid courts for itself and with respect to its property, generally and unconditionally, with regard to any such action or proceeding arising out of or relating to this Agreement or any Order (and agrees not to commence any action, suit or proceeding relating thereto except in such courts).

f. Seller may announce or publish Buyer’s name as a Customer of Seller in any format for any promotion, publicity, marketing or advertising purpose. All information, drawings, material, or documents disclosed or delivered to Seller by Buyer or arising from work or services done for Buyer, shall be and remain the sole property of Seller.

g. Any confidential proprietary information of Buyer shall not be disclosed or made available to others by Seller without prior written permission by an officer of Buyer, and shall be held by Seller solely for Buyer’s benefit and use in fulfilling the Order. Such obligation shall not apply to any information, material, goods, equipment or apparatus which Seller establishes (a) is already known to Seller at the time of its receipt from Buyer as shown by Seller’s records, (b) is or subsequently



becomes available and accessible to the public through no fault of Seller, or (c) is disclosed to Seller by a third party not bound by a confidentiality obligation on a nonconfidential basis.

h. Buyer and Seller acknowledge that they are each independent parties and at all times shall be independent contractors, and neither shall be deemed an agent or representative of the other or have any authority to bind the other in any manner whatsoever.

i. During the term of this Agreement and one year following completion of final delivery of the Deliverables, Buyer agrees that it will not, without Seller's prior written consent, directly, or indirectly through third parties, employ, solicit, engage or retain the services of any of Seller's employees or personnel with whom Buyer came into contact as part of this Agreement or any Order.