

**Global Terms  
and Conditions**

**GLOBAL TERMS AND CONDITIONS  
FOR SALE OF PRODUCTS, PROVISION OF SERVICES AND  
COMPLETE SOLUTIONS (GTC)**

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**ComAp** provides smart electronic control products and solutions to our **Customers** globally. These **GTC** will assist our global business partners to connect to **ComAp**, and to protect our **Customers'** requirements in a simple global manner. **ComAp** also ensures in these **GTC** that the legal and business local needs of our global business partners are considered.

## GENERAL

These **GTC** constitute a legally binding agreement between **ComAp** and the **Customer** for sale of Products, provision of Services and for Complete Solutions.



Figure 1: **ComAp Group**

The rights and obligations of the **Contracting Parties** are governed by these **GTC** even if the **Customer's** order states otherwise. Any terms other than these **GTC** or **Agreement** shall be disregarded in compliance with these **GTC**. **ComAp** presumes that the **Customer** is familiar with these **GTC**, understands them and has expressed his consent with them. **ComAp** is entitled to modify these **GTC** at any time. A modification of these **GTC** will be announced by **ComAp** at least 30 working days before its effectiveness. Such an announcement will be undertaken via the **ComAp** website and/or by another suitable way. If the **Customer** does not agree with the proposed modification of these **GTC**, the version valid at the time of **Agreement** was executed, will remain effective. If the **Customer** agrees with the modification of these **GTC** or, in the 30-day time-period from the announcement will not express his will, it means that the **Customer** agrees with the proposed modification and such modification becomes binding for the **Customer**.

The **Customer** is not entitled to propose any amendment, or variation from the existing or proposed wording of these **GTC**. **ComAp** precludes any changes, amendments, or variations from these **GTC** proposed by the **Customer** unless approved in writing by **ComAp**.

Corrections of grammatical or factual inaccuracies in typing, calculations or identifications of authorities, work positions, product names, **ComAp's** documentation, correction or completion of other parts of these **GTC**, which do not impair the position of the **Customer** are not considered a modification of these **GTC**.

In case of conflict among the documents in accordance to the **Agreement**, the documents shall prevail in this order: 1. **Specific Agreement**, 2. **Order Confirmation**, 3. **GTC**, 4. **INCOTERMS (2010)**, and 5. other documentation related to the particular business case. In case of conflict among the provisions in this **GTC**, the provisions shall prevail in this order: 1. **Australia SC** and **USA SC**, as applicable, to the extent of the inconsistency with these **GTC**, and 2. **License Agreement**. For the avoidance of any doubt, unless agreed otherwise in the **Specific Agreement**, the **INCOTERMS (2010)** rules as determined in the **Agreement** shall not cause prevalence over the preceding documents listed in the previous sentence.

The valid and effective version of these GTC is available at [www.comap-control.com](http://www.comap-control.com).

## 1. DEFINITIONS

**Additional Services** – refer to the installation, cabling, commissioning, consultations, training and other services not included in the scope of the **Contract for Work**, provided by **ComAp** on the basis of a separate order under Article 4 of these **GTC**;

**Agreement** – means a bilateral legal relationship concluded between **ComAp** and the **Customer** which is expressed in **Order Confirmation** and/or **Specific Agreement** and set of all related documentation of each **ComAp's** business cases connected to the sale and purchase of **Products** and/or the provision of **Services** including these **GTC**; a written form of **Agreement** (paper or electronic) is required;

**Australia SC** – means Australia special conditions for **Products** or **Services** supplied within the territory of Australia;

**ComAp** – means **ComAp a.s.**, U Uranie 1612/14a, 170 00 Prague or, if so specified in these **GTC** or in the **Agreement** its subsidiaries and sales affiliates belonging to the **ComAp Group**;

**Complete Solutions** – refers to an activity aimed to completing the **Work**;

**Contracting Parties** – means **ComAp** and the **Customer**;

**Contract for Work** – the **Specific Agreement** entered into between **ComAp** and the **Customer**, on provision of **Work** within a **Complete Solution**, which includes these **GTC** as its integral part, with a list of documents that are part of the contract documentation for the business case, on the part of **ComAp**. Unless expressly agreed, the delivery is not “turnkey”;

**Customer** – means any person or company to whom **ComAp** sells **Products** or provides **Services**;

**Distributor** - means a person or a company cooperating with **ComAp** and selling **ComAp's Products** and/or **Services** in accordance with a distribution agreement;

**Documentation** – means all licenses and consents, which the **Customer** shall obtain on its own responsibility and at its own expense, if necessary, before the performance of **ComAp** is initiated, or at any time during the performance and **ComAp** shall be entitled at any time to require the **Customer** to submit **Documentation**. **ComAp** or **ComAp's** contractual carrier may also require the submission of all documents defined in the **Agreement** and require their submission as a condition of precedent for the commencement of delivery, further, in relation to the **Complete Solutions**, the **Documentation** refers to the work design documentation and **Guides**. The **Documentation** contains important instructions concerning the setting, configuration, testing, servicing and publication of new and updated functionalities and parameters of the individual **Products**;

**Guides** – means an integral part of **Products** which is available to each authorized **Customer** on the web [www.comap-control.com](http://www.comap-control.com) (at the respective **Product page**). The **Guides** contain important instructions for **Product's** operational status, configuration, testing and servicing. Some new features for **Products** may be available at the same web address as released and published by **ComAp** from time to time;

**Handover Protocol** – refers to a written document signed by a representative of **ComAp** and a representative of the **Customer** after completion and commissioning of the **Work** or its part and its handover to the **Customer** or after performance of **Additional Services** in accordance with Article 4 of these **GTC**;

**Incoterms 2010** – means the international rules for the interpretation of trade terms prepared by the International Chamber of Commerce;

**Installation Site** – refers to premises identified by the **Customer** for the performance of the **Work** or **Additional Services**, as described in the **Contract for Work**;

**Intellectual Property Rights** – means **Trademarks**, geographical indications, industrial design, patents, layout-design (topographies) of integrated circuits, which means particularly registered designs, applications for any of these rights, copyright, design right, know-how, confidential information, trade and business names, database rights, underlying algorithms, **Guides** and any other intellectual property rights and similar rights in any country;

**License Agreement** – means the written terms and conditions of use of **ComAp** control system software and documentation created, issued and published by **ComAp** related to the protection of the **Intellectual Property Rights** and other intangible property rights of **ComAp a.s.** called “**COMAP LICENSE AGREEMENT**”. **License Agreement** is an integral part of these **GTC** and cannot be derogated without **ComAp a.s.** written consent. The **License Agreement** may have different variants taking into account the type of **Products** or provided **Services**;

**Order Confirmation** – means **ComAp's** written acknowledgement and acceptance of the **Customer's** order to purchase **Products** and/or **Services**;

**Price** – means the sums to be paid by the **Customer** to **ComAp** for the purchase of **Products** and/or provision of **Services**, **Additional Services** and/or performing the **Work** as set out in the **Agreement**;

**Products/Goods** – means **Products** that **ComAp** agrees to supply to the **Customer** i) under the **Agreement**, and/or ii) subject to the **License Agreement**; in relation to the **Complete Solutions** the **Products** become part of the **Work**;

**Services** – has the meaning provided in the document **ComAp Service Definition** and for the **Complete Solutions** refers to **ComAp** services aimed at assembly of the **Work**, and possibly also **Additional Services** if required under Article 4 of these **GTC** and, if applicable, also other services which **ComAp** undertakes to provide to the **Customer** in the **Contract for Work**;

**Shipment Date** – refers to the estimated date on which the **Products** and sub-deliveries will be shipped to the place of performance or installation of the **Work**;

**Specific Agreement** – means every written agreement between the **Contracting Parties** that includes provision/s different to these **GTC**; other than **Order Confirmation** and in the relations to the **Complete Solutions** the **Contract for Work** is considered as **Specific Agreement**;

**Specification** - means **ComAp's** specific documentation relating to **Products**, **Services**, and **Complete Solutions**;

**Technical Documents** – means a set of documents necessary for the operation, maintenance and repair of **Products** in a written or electronic form, including but not limited to **Guides**, and **Specification**;

**Technical Specification** – refers to **Work** specification (if necessary and if any) described in the **Contract for Work**;

**Trademark(s)** – means any sign, or any combination of signs in particular words including personal or trade names in any form, letters, numerals, figurative elements and combinations of colors as well as any combination of such signs including graphical depiction (logo) used by **ComAp** for its **Products** and the business name **ComAp**;

**USA SC** – means USA special conditions for **Products** or **Services** supplied within the territory of USA;

**Work** – refers to **Products** and **Services** to the extent agreed in the **Contract for Work**.

## 2. CONCLUSION OF AGREEMENT

### Order requirements

Before sending an order to **ComAp**, **ComAp** and the **Customer** will agree on the essential terms of the order, i.e. the **Customer** name, Invoice address (contact person, contact phone number), delivery address (contact person, contact phone number), **Price**, payment method, VAT number, identification of **Products** and/or **Services**, quantity, estimated **Shipment Date** and the applicable **INCOTERMS 2010** rule, order number and specific requirements (e.g. Certificate of origin, Chamber of Commerce), if applicable. Any other requirements may be agreed by **Contracting Parties** in accordance with these **GTC**. If the provisions that vary from these **GTC** are subject to negotiation, these derogations (*note: written form required*) may be reflected in the **Order Confirmation** or in the **Specific Agreement**. These **GTC** are a mandatory part of all **Agreements**.

### Quote

After the essential terms of the order are preliminarily agreed by the **Contracting Parties**, **ComAp** will send the quote to the **Customer**. The quote is valid for 30 days from its issuance, if the quote does not state another time-period.

### Order

The **Customer** sends a written order to **ComAp** within 30 days from the date the quote is issued or otherwise the stated time-period. The order may be accepted by **ComAp** in writing if the **Customer** confirms the quote by sending the written order to **ComAp**.

The **Customer** may only send an order to **ComAp** without a previous quote provided by **ComAp** if this process has been previously agreed to by **ComAp**. By sending such an order to **ComAp**, the **Customer** agrees that sale of **Products** and/or provision of **Services** will be governed by these **GTC**. The **Customer's** order shall include all essential terms of the order. For the avoidance of doubt, if the **Customer** sends an order to **ComAp**, it shall only be deemed to have been accepted by **ComAp** if **ComAp** sends an **Order Confirmation** in accordance with this **Agreement**. **ComAp** is under no obligation to accept any orders sent by the **Customer**.

### Order Confirmation

The order is accepted if **ComAp** sends **Order Confirmation** to the **Customer**, otherwise it is considered that the **Customer's** order was rejected. **ComAp** will initiate performance of the **Agreement** after it has sent **Order Confirmation** to the **Customer**. The text of **Order Confirmation** shall deviate from these **GTC**, only to the extent permitted by these **GTC**.

### Price List

If the **Products** or **Services** are ordered on the basis of a price list (or previous buy price), then the **Customer** acknowledges that these **GTCs** are followed.

### **Customer's purchase order or contract for work order**

The **Customer** may, as a matter of administrative convenience only, use its purchase order document or **Contract for Work** document when ordering **Products** or **Works** from **ComAp**. However, notwithstanding the foregoing sentence, except as to the quantity and type of **Products** or **Works** ordered and the location to which the **Customer** requests shipment, any terms, including without limitation any pre-printed terms, contained in the **Customer's** purchase order or **Contract for Work** order shall have no effect, and **ComAp** hereby expressly rejects any such **Customer** purchase order terms or **Contract for Work** order terms.

## **3. DISPATCH AND DELIVERY**

3.1. **ComAp** shall use its reasonable efforts to deliver **Products**. The delivery shall be made in accordance with the **Agreement**. Time shall not be of the essence for the purposes of delivery under this **Agreement**. **ComAp** has the right to suspend deliveries in case of registration of any **Customer's** overdue invoice(s).

3.2. The **Customer** will collect **Products** in the place agreed in the **Agreement**. The place to collect **Products** by the **Customer**, shipping method, and selected contractual carrier will be agreed in the **Agreement**.

3.3. **ComAp** or **ComAp's** contractual carrier may condition the initiation of the transport by the delivery of **Documentation** that the **Customer** is obliged to submit. Failure to provide **Documentation** entitles **ComAp** to postpone the delivery of **Products** until **Documentation** is submitted. **ComAp** may obtain **Documentation** instead of the **Customer** at the **Customer's** expense, or may terminate the **Agreement**. Upon termination of the **Agreement**, **ComAp** is entitled to reimbursement of all costs related to non-delivery of **Products**, i.e. payment of **Products' Price** including all costs incurred for shipment and return of **Products**, whether the shipment has been initiated or not. Any damages resulting therefrom will be borne in full by the **Customer**. Should **Products** be delivered outside the EU, the **Customer** shall deliver an export confirmation for non-EU countries to **ComAp**.

3.4. The **Customer** may request a change of the place and/or time of delivery of **Products** after the shipment was initiated. **ComAp** shall have absolute discretion as to whether to accept such a change. Where **ComAp** accepts a change to the place and/or time of delivery of the **Products**, the **Customer** shall pay all additional costs incurred by **ComAp** related to said change.

3.5. **Products** can also be delivered at the expense of the **Customer** via their contractual carrier. In this case, for the purposes of these **GTC**, dispatch reference date shall be the collection of **Products** by the **Customer's** contractual carrier or by the **Customer** directly. The **Customer's** obligation to provide all necessary **Documentation** is retained. This also applies to deliveries based on the price list.

3.6. **Products** may be delivered in partial shipments, unless the **Agreement** explicitly states otherwise. Should the delivery of any **Products** be cancelled, this will not affect the delivery of the remaining shipments of **Products**, unless agreed otherwise.

3.7. The **Customer** shall immediately notify **ComAp** if **Products** i) are not delivered to the place of delivery and/or on time, ii) are delivered in a different quantity, or iii) do not correspond to the type of **Products** stated in the **Agreement**. In such cases **ComAp** will replace the **Products**, unless the **Agreement** defines that the replacement of **Products** is precluded or is not possible for another reason.

3.8. If the packaging of **Products** appears to be visibly damaged at the time of delivery, the **Customer** shall inspect **Products** in the presence of a **ComAp** contractual carrier or other person authorized by **ComAp**. Should **Products** be visibly damaged i) the **Customer** shall describe the damage in writing in the corresponding handover document of the contractual carrier, ii) immediately inform **ComAp** about the damage in writing, iii) provide **ComAp** with sufficiently documented evidence (including photographic evidence) and iv) immediately inform **ComAp** whether or not the **Customer** had taken over the damaged **Products**. If the information and evidence mentioned above is not sent to **ComAp** immediately, a warranty claim may be rejected and **ComAp** shall not be liable for any damage related thereto. The same procedure is applicable for the transfer of **Products** by the **Customer's** contractual carrier.

3.9. The **Customer** exporting **Products** by himself or by his contractual carrier is obliged to declare **Products**. When **Products** are exported outside the EU, the **Customer** shall provide evidence that all respective customs proceedings have been undertaken. From the time when **Products** leave **ComAp**, the **Customer** shall submit to **ComAp** the required Written Custom Declaration in electronic format .xml (WCD) within 10 days. If the issuance of WCD requires a longer time-period, **ComAp** may grant reasonable extension in writing, however the overall time-period shall not exceed 60 days from the date when **Products** are exported from **ComAp**. If the **Customer** fails to submit the WCD within the above mentioned time-period, the **Customer** shall pay a fee in the amount of 25% of the **Price**. The **Customer** is obliged to pay all cost incurred in connection with the relevant tax and customs proceeding exceeding the fee defined in the previous sentence.

## 4. SERVICES

4.1. **ComAp** provides **Services** in relation to **Products** (Different **Services** are provided for hardware and for software) and for the **Complete Solutions**, which consist mainly of product support, additional product-related services, project and complete solutions, and **Customer** training. Under these **GTC**, the term **Services** also includes warranty and post-warranty repairs.

4.2. Should the **Customer** require **Services**, such **Services** shall be indicated in the **Agreement**, and the **Customer** will provide **ComAp** with all necessary information related to provision of **Services**, i.e. identification of **Products**, document/s proving legal acquisition of **Products** and the place where **Products** are located and/or **Services** should be provided.

4.3. The type of **Services** offered are i) **Services** provided together with **Products** and included in the **Price of Products** - product support as defined in **Specification**, and ii) other **Services** provided on the request of the **Customer**. The **Price** will be determined individually and based on the **Price** provided by **ComAp**. The minimum rate is € 1,200.00 per man-day, unless the **Agreement** provides otherwise.

4.4. The scope of other **Services**, their **Price**, place of performance and the dates of their provision must be included in the **Agreement**.

4.5. The **Customer** acknowledges that an autonomous system (so-called artificial intelligence) may be used to provide technical support. More details are available [Terms of use](#) of autonomous system.

4.6. The **Customer** may order **Additional Services** from **ComAp** in relation to **Complete Solutions**.

4.7. If the **Customer** orders **Additional Services** from **ComAp**, it is obliged to provide **ComAp** with details of such a requirement, as requested by **ComAp** to an extent appropriate to the nature of things, including details of which **Additional Services** are required and where they shall be provided.

4.8. **ComAp** may, at its full discretion, approve or refuse the provision of an **Additional Service**. **ComAp** is not obliged to provide **Additional Service**, if their technical parameters, scope, dates and **Price** are not agreed between **ComAp** and the **Customer** in writing.

4.9. **ComAp** shall take reasonable efforts to comply with the agreed dates of performance of **Services** and **Additional Services**. **ComAp** shall notify the **Customer** of the effect of performance of the **Additional Services** on the milestones in the Timetable of the **Contract for Work**. **ComAp** is not obliged to commence performing the **Additional Services** until they are approved by the **Customer**.

## 5. PRICE AND PAYMENT CONDITIONS

### Price

5.1. **Price** for **Products** and/or **Services** is defined in the **Agreement**. If applicable, other costs may be added to the **Price**, including: i) value added tax, ii) costs related to the delivery of **Products** (including customs fees), if the delivery is provided by **ComAp's** contractual carrier, iii) costs related to the provision of **Services**, and/or iv) other costs related to requirements imposed by relevant authorities.

5.2. Any costs incurred by the **Customer** not required by, caused by, or under the control of **ComAp**, shall be borne by the **Customer**.

5.3. If there are any additional requirements after the final **Price** was agreed, these requirements, including their impact on the **Price**, must be agreed between the **Contracting Parties**.

5.4. Any increase in tax rates impacting the **Price of Products** and/or **Services**, if applicable, shall not require additional consent of **Contracting Parties** to be reflected in the **Price of Products** and/or **Services**. If any withholding tax or similar tax is to be applied to the licenses, then **ComAp** will receive from the **Customer** the full invoiced amount, which will not be reduced by any such tax.

5.5. The **Customer** must take into account, that in case of cancellation of confirmed **Agreement (Order Confirmation)** by **ComAp**, the **Customer** will be obliged to pay the actual costs of **ComAp** associated with the cancelled **Agreement** (i.e. including but not limited to administrative costs, customs and tax costs, costs associated with manufacture of ordered **Products**, preparation of the **Services**, shipment, storage, packaging, etc.). More detailed conditions can be adjusted in the **ComAp** cancellation policy.

### Payment Conditions

5.6. **Price** for **Products** and/or **Services** shall be invoiced by **ComAp** and delivery/provision of the **Products/Services** shall not be made until the **Price** is paid in full by the **Customer** via bank transfer to **ComAp**, unless otherwise agreed between the **Contracting Parties** under the **Agreement**. All details regarding **Price** will be defined in the **Agreement**. Any other costs

connected to the selected type of payment (including all fees) shall be borne by the **Customer**.

5.7. Unless the **Agreement** provides otherwise, the **Customer** shall pay to **ComAp** the total amount of each invoice (including electronic invoice issued in standard electronic form) within 14 days from the issuance of the invoice or on such due date as may be stated in the invoice. Further details of invoicing may be specified in the **Agreement**. If a payment gateway is available, the terms of use will be stated before the payment is made.

5.8. **ComAp** accepts the following currencies: USD, EUR, CHF, GBP, AUD, SGD, CZK, and other convertible currencies approved by **ComAp**. The currency will be specified in the **Agreement**.

5.9. **ComAp** reserves the right to use the following currency clause in the **Agreement**:

5.10. For the purposes of this exchange rate clause, the base currency to the chosen currency in the **Agreement** is EURO. The date of the valid exchange rate is the date when the **Agreement** was concluded based on the central exchange rate valid in the state of the **Customer's** registered seat. If, after the conclusion of the **Agreement**, either currency changes, the **Customer** shall pay the **Price** ensuring that the currency in the **Agreement** is deemed to have retained the same exchange rate value to EURO as of the date of the conclusion of the **Agreement**.

5.11. The **Customer** acknowledges that if the payment is made in a currency other than the currency indicated on the invoice, the exchange rate is determined by **ComAp**. If an arrears arise during the exchange rate transfer, **ComAp** has the right to demand payment from the **Customer**. If there is an overpayment during the exchange rate transfer, **ComAp** will return it to the **Customer's** account, in the amount after deducting the costs associated with its return.

5.12. €40.00 is the minimum amount invoiced by **ComAp**, even if the **Price of Products** and/or **Services** is lower.

5.13. The **Customer** may not retain any payment of **ComAp** invoices, for whatever reason.

5.14. The **Customer** shall not set off any due or undue receivables against **ComAp's** or assign receivables against **ComAp** to any third party without the prior written consent of **ComAp**.

5.15. Payment is considered executed if it is credited to **ComAp's** account, as specified by **ComAp** from time to time.

5.16. **ComAp** may require advance payments.

5.17. If the payment of the **Customer** becomes overdue or if there is any doubt that the payment would not be paid on time as determined by **ComAp** at its absolute discretion, **ComAp** has the right to suspend the delivery of **Products** or provision of **Services** until such payment has been executed and/or the doubt has ceased to exist, as determined by **ComAp** in its absolute discretion.

5.18. **ComAp** is entitled to provide the **Customer** with a credit limit. The amount and conditions shall be determined solely by **ComAp**. If the conditions for a credit limit are fulfilled, the **Customer** is entitled to acquire **Products** and **Services** up to the amount of the credit limit provided. If the credit limit is exceeded, **ComAp** is entitled to suspend the delivery of **Products** and/or provision of **Services** and to require immediate payment of the amount exceeding the credit limit.

### Liquidated damages

5.19. If the **Customer** is in delay with the payment of **Price** for **Products** and/or **Services**, the **Customer** shall pay an amount of 15% p.a. from the overdue amount. Paying this charge does not exempt the **Customer** to pay the **Price** for **Products** and/or **Services**.

5.20. **ComAp** may require from the **Customer** to pay liquidated damages in the amount of 50% from the **Price** but not less than € 10.000,00 for each individual breach of these **GTC** and/or the **Agreement**, including but not limited to:

- 5.20.1. breach of **Intellectual Property Rights**;
- 5.20.2. breach of the prohibition to resale **Products** by the **Customer** (other than the **Distributor**);
- 5.20.3. damage to the reputation of **ComAp**;
- 5.20.4. breach of export/import rules in international trade;
- 5.20.5. breach of export/import rules by delivery to locations and/or to the person that are subjects to international sanctions;
- 5.20.6. breaches of environmental rules (e.g. failure to destruct **Products** in an environmentally responsible manner);
- 5.20.7. failure to ensure the authorization to export outside the EU;

The **Customer** hereby agrees that such liquidated damages sum amounts to a genuine pre-estimate of the loss incurred by **ComAp**.

5.21. **ComAp** may require from the **Customer** to pay the liquidated damages in the amount of 10% from the **Price** but not less than € 1.000,00 for each individual breach of these **GTC** and/or the **Agreement**, including but not limited to:

- 5.21.1. failure to provide the required documents for the purposes of Delivery or Dispatch of the **Products**;



- 5.21.2. failure to inform **ComAp** about the damage of **Products** upon their delivery;
- 5.21.3. breach of any obligation by the **Customer** related to **Products** before the ownership title is transferred to the **Customer**.

5.22. The **Customer** acknowledges and agrees that damages alone would not be an adequate remedy for any actual or threatened breach of its obligations defined by these **GTC**. Any such breach may cause irreparable harm to **ComAp**, and therefore, upon any such breach or any threat thereof, **ComAp** shall be entitled to an appropriate equitable relief, including injunctions and specific performance, in addition to whatever remedies it might otherwise have.

5.23. Derogations from this article per regions:

#### **AUSTRALIA SC**

##### **GST:**

- a) GST has the meaning it does in section 195-1 of the GST Act;
- b) GST Act means *A New Tax System (Goods and Services Tax) Act 1999* (Cth) and any related or similar legislation;
- c) Supply has the same meaning it does in section 9-10 of the GST Act and excludes any "GST-free supplies" and "input taxed supplies" as those terms are defined in section 195-1 of the GST Act; and

Gross Up for **GST**:

- d) Unless otherwise stated, the consideration payable by the **Customer** to **ComAp** for, or in connection with, a Supply under the **Agreement** does not include any **GST**.
- e) The **Customer** must pay to **ComAp** an additional amount on account of **GST** equal to the amount payable by **ComAp** for the relevant Supply or Supplies multiplied by the prevailing **GST** rate.
- f) The **Customer** is required to pay the additional amount to **ComAp** within seven (7) days of any request from the **ComAp**.
- g) If a payment is to be made by the **Customer** to **ComAp** under this clause, then **ComAp** will provide the **Customer** with a tax invoice which complies with the requirements of the GST Act.

#### **USA SC**

5.24. **Products** and **Services** may be paid by check drawn on a U.S. bank in U.S. funds.

## **6. RISK AND TITLE**

6.1. The risk on **Products** shall pass to the **Customer** at the moment **Products** are made available to the **Customer** in accordance with the **Agreement** or at the moment of delivery to the **Customer**. **Products** may be delivered to the **Customer** either directly by **ComAp** or by any of **ComAp's** entities, the **Distributor** authorized by **ComAp**, by **ComAp's** or the **Customer's** contractual carrier, if agreed by the **Contracting Parties** under this **Agreement**.

6.2. The ownership of **Products** transfers to the **Customer** at the moment, when the total **Price** of **Products** including all additional payments arising from the **Agreement** are credited to **ComAp's** account, unless otherwise agreed in the **Agreement** (retention of title).

6.3. If **Products** have been made available to the **Customer** and/or **Products** are delivered, but ownership of the **Products** has not yet transferred from **ComAp** to the **Customer**, the **Customer** is obliged to:

- 6.3.1. hold **Products** on a fiduciary basis as bailee or trustee or as may be otherwise agreed on behalf of **ComAp**;
- 6.3.2. store **Products** (at no cost to **ComAp**) separately from its other merchandise and possessions or the merchandise or possessions of third parties, in such a way that they remain readily identifiable as **ComAp's** property;
- 6.3.3. not destroy, deface or obscure any identifying mark or packaging on or relating to **Products**; and
- 6.3.4. ensure the fulfillment of any requirement foreseen by local law for the enforceability of the above retention of title clause towards the **Customer** and towards third parties
- 6.3.5. maintain **Products** in a satisfactory condition in accordance with any storage conditions advised by **ComAp** and keep them insured at the **Customer's** expense on **ComAp's** behalf for their full **Price** against all risks to the reasonable satisfaction of **ComAp**. On request the **Customer** shall produce the insurance policy to **ComAp**.

6.4. If **Products** or **Services** are not paid on time according to the **Agreement** or according to the issued invoice, **ComAp** is entitled to suspend to provide **Products** and / or all **Services** to the **Customer** who is in delay. **ComAp** reserves the right to request the **Customer** to return the **Products**. In these cases, **ComAp** is not liable for any damages that may occur to the **Customer** or any third party in this respect.

6.5. **ComAp's** rights under this article 6 shall be retained even after the **Agreement** has been terminated.

6.6. If the **Customer** desires to dispose of **Products**, or to provide **Products** for use to any third party, a prior written consent of **ComAp** is required. The **Customer** is obliged to inform the third party about the rights and obligations (including retention of title) arising from these **GTC, Agreement, License Agreement** and **Documentation** and to provide **GTC, Agreement, License Agreement** and **Documentation** to the third party together with **Products**.

If the **Customer** collects **Products** but notifies **ComAp** in writing that the **Products** are defective or damaged, **ComAp** shall determine the veracity of such claims. If **ComAp** determines that the **Products** supplied were defective or damaged, **ComAp** shall, as chosen by **ComAp**, either replace or repair the **Products** in question.

6.7. Derogations from this article per regions:

## AUSTRALIA SC

### PPSA AND SECURITY

6.8. Property in and legal and beneficial ownership of **Products** shall remain with **ComAp** until the **Customer** has made payment in full in cleared funds of the **Price** of those **Products** and any other money owing by the **Customer** to **ComAp**.

6.9. The **Customer** acknowledges and agrees that by assenting to the **Agreement**, which constitutes a security agreement for the purposes of the Personal Property Securities Act 2009 (Cth):

- a) the **Customer** grants a security interest to **ComAp** in all **Products** now or in the future supplied by **ComAp** to the **Customer** (or to its account) during the continuance of the relationship between **ComAp** and the **Customer**, and the proceeds of those **Products**;
- b) any purchase it makes on credit terms or on a retention of title basis pursuant to the **Agreement**, will constitute a purchase money security interest (PMSI) for the purposes of the PPSA, and the PMSI will continue to apply to any **Goods** coming into existence, and the proceeds of the sale of **Goods** coming into existence, on or after the date of the **Agreement**;
- c) until title in **Products** passes to the **Customer**, it will keep all **Products** supplied by **ComAp** free, and will ensure all such **Products** are kept free, of any charge, lien or security interest and not otherwise deal with **Products** in a way that will or may prejudice any rights of **ComAp** under the **Agreement** or the PPSA; and
- d) in addition to any other rights under the **Agreement** or otherwise arising, **ComAp** may exercise any and all remedies afforded to it as a secured party under the PPSA, including, without limitation, entry into any building or premises owned, occupied or used by the **Customer**, to search for, seize, dispose of or retain those **Products** in respect to which the **Customer** has granted a security interest to **ComAp**.

6.10. The **Customer** will, whether before or after **Products** are supplied under this **Agreement**, do such acts and provide such information (which information the **Customer** warrants to be complete, accurate and up to date in all respects) as in the opinion of **ComAp** (acting at its absolute discretion) may be required or desirable to enable **ComAp** to perfect under the PPSA the security interest created by this **Agreement**.

6.11. To the extent permitted by law the **Customer** waives any right to receive a copy of a verification statement under section 157 (or otherwise) of the PPSA and agrees as to any contract between **ComAp** and the **Customer** for the supply of **Products** governed by this **Agreement**, to the extent permitted by law, to contract out of each and every provision permitted by section 115(1) of the PPSA, except section 115(1)(g), to the intent that **ComAp** will preserve its right to seize collateral, and the **Customer** agrees to waive its rights referred to in section 115(1).

6.12. The **Customer** undertakes to:

- a) not register or permit to be registered a Financing Change Statement (as defined under the PPSA) in any of the **Goods** in which **ComAp** has a security interest pursuant to this **Agreement**; and
- b) provide **ComAp** not less than 7 days' prior written notice of any proposed change in the **Customer's** name, address, contact numbers, business practice or such other change in the **Customer's** details which are registered on the Personal Property Securities Register, to enable **ComAp** to register a Financing Change Statement (as defined by the PPSA), if **ComAp** deems it necessary (in its sole discretion).

6.13. The **Customer** agrees to pay the costs, charges and expenses of and incidental to the need for, or desirability of registration of, a financing statement or financing change statement or any action taken by **ComAp** to comply with the PPSA or to protect its position under the PPSA. The **Customer** agrees to pay any costs incurred by **ComAp**, including, but not limited to, legal costs on a solicitor-own client basis, arising from any disputes or negotiations with third parties claiming an interest in any **Goods** supplied by **ComAp**.

## 7. PROPRIETARY RIGHTS AND ACTION AGAINST THIRD PARTIES

7.1. **Intellectual Property Rights** of whatever nature, and wherever in the world which relate to the **Product(s)** are and shall remain property of ComAp a.s. as defined and pursuant to the terms and conditions of the relevant **License Agreement**. The **Customer** may use the rights if i) the **Price** of the License is paid in accordance with the **Agreement** and the **License Agreement**, or ii) the **Price** of the License is considered as a part of **Products**, or iii) the License is provided by **ComAp** free of charge, or iv) the License is provided by **ComAp** for the duration of the Service.

7.2. Any reputation in **Trademarks** affixed to or applied to **Products** shall be for the sole benefit of **ComAp** or any other trademark owner.

7.3. **Products** may be equipped with the **ComAp** control system software. The **Customer** shall not remove any copyright notices, confidential or proprietary details, or identification from the **Product(s)**.

7.4. The **Customer** shall notify **ComAp** immediately if it becomes aware of any illegal or unauthorized use of the whole or any part of **Products** or the **Intellectual Property Rights** in them, including any infringement of **Trademarks** or suspicion of the occurrence of counterfeit products, and will assist **ComAp** in taking all steps necessary to defend its rights to them at **ComAp's** expense. **ComAp** shall have the exclusive right to take steps to defend its rights and the **Customer** shall use best efforts to assist **ComAp** as requested by **ComAp**.

7.5. The **Customer** acknowledges that the software and/or **Documentation** and/or any other Intellectual Property are not bespoke materials and have not been prepared to meet the **Customer's** individual requirements. The **Customer** acknowledges that they are acquainted with the **Guides** and **Specifications** of **Products**.

7.6. The **Customer** acknowledges that only the software installed on the **Product** and its **Documentation** is intended and applicable for use for the control and monitoring of **ComAp** control systems together with the **ComAp's Products** and for no other purpose.

7.7. The **Customer** acknowledges that the software and **Documentation** shall be used only by a person who is suitably qualified and who has been properly trained and is competent in their use.

7.8. If the **Customer** requires labeling of the **Product** with a logo, name, trademark or any other information, the **Customer** gives his/her consent to **ComAp** for such labeling. At the same time, the **Customer** declares that he/she is entitled to do so without any restrictions.

## 8. TERMINATION

8.1. The **Agreement** may be terminated after its fulfillment, unilaterally by **ComAp** by giving 30 days' written notice to the **Customer**, after the expiration of the period the **Agreement** was concluded for, or by the notices of termination outlined in this article 8.

8.2. **ComAp** may terminate the **Agreement** with immediate effect by giving a written notice to the **Customer** in the following circumstances:

- 8.2.1. any breach of the **Agreement** that the **Customer** does not remedy within 30 days from the day the **Customer** was notified in writing by **ComAp**;
- 8.2.2. if:

- a) an insolvency proceeding (bankruptcy) has been initiated with respect to the **Customer**;
- b) the **Customer** is in liquidation;
- c) any person undertakes or sells the property, assets or liabilities of the **Customer**;
- d) the **Customer** or any of its employees, contractors or agents have been sentenced for committing a crime related to its business activities; or
- e) the **Customer** is represented by any person, directly or indirectly, that is in the role of the administrator, trustee, holder of prior rights to claimed receivable or for any similar reason (e.g. in accordance with Article 14 of Schedule B1 to the UK Insolvency Act 1986 and so called "floating charge").

8.3. If the **Agreement** is terminated earlier for any reason caused by:

- a) the **Customer**, all outstanding amounts arising out of the **Agreement** become immediately due and payable, including **Price** of all undelivered and/or not provided **Products, Services**, penalties and accessories. The right of **ComAp** to require compensation from the **Customer** for damage is not affected;
- b) **ComAp**, in the event the **Customer** has already paid for **Products** and/or **Services**, that were not delivered and/or provided due to the early termination of the **Agreement**, **ComAp** shall return to the **Customer's** account an amount in the same currency equivalent to the paid **Price**, after setting-off all sums owed by the **Customer** to **ComAp** including any outstanding claims **ComAp** has against the **Customer**.

8.4. The rights and obligations arising from the **Agreement** shall be settled as of the effective date of the early termination of the **Agreement**.

## 9. WARRANTIES

9.1. **ComAp** provides warranties for its **Products**. The warranty period and the scope of the warranty may differ according to the place of delivery. The warranty is provided at the location of purchase of **Products** and/or **Services** (local warranty). The warranty provided from other locations is charged according to the **ComAp's** price-list and/or **Agreement** (global warranty).

9.2. If third party products are supplied together with **Products**, **ComAp** reserves the right to provide a warranty for them of the same scope as for its **Products** or ii) of the same duration and scope provided by manufacturers for these products or iii) of duration and/or scope under the discretion of **ComAp**. Third party products are products that **ComAp** expressly designates as such products in the **Agreement** or offer, and a different length of warranty, if applicable, is stated therein.

9.3. The basic warranty period provided is 24 months for **Products** and starts upon the risk in **Products** passing to the **Customer**. A different warranty period may be specified in the **Agreement**. The warranty period for **Services** is provided in the **Specific Agreement**, otherwise it does not exceed 3 months. This does not apply if the **Service** provided is support, such support is provided without any warranty or liability and “as is”, unless otherwise is stated by applicable jurisdiction. The full warranty applies only to the originally sold **Product**. If this **Product** is replaced for another **Product** under the warranty, the remaining warranty period of the originally sold **Product** will apply to it. The terms of the software warranty are set forth in the **License Agreement**.

9.4. The **Customer** may claim warranty for **Products** defects provided that:

- a) the claim concerns **Products**;
- b) the warranty was claimed within the warranty period;
- c) the **Customer** provides evidence that **Products** have been obtained legally;
- d) the **Customer** delivers **Products** at their own expense to the location specified by **ComAp** or the **Distributor** before the expiration of the warranty period;
- e) the **Customer** provides a sufficient description of the defect, so that it can be identified; and

9.5. Reasons for rejecting defect warranty include without limitation:

- a) warranty was claimed after the expiration of the warranty period;
- b) the **Customer** does not have a valid license to the software installed in **Products**;
- c) the defect arises as a result of an installation incorrectly performed by the **Customer**, incorrect commissioning, incorrect use in contradiction with verbal or written instructions on the proper use of **Products**;
- d) **ComAp** may reject the warranty if the **Customer** refuses to upgrade software upon **ComAp**'s request;
- e) any unauthorized mechanical or software intervention in **Products**;
- f) willful or negligent damage to **Products**, ordinary wear and tear, improper storage, or use in unsuitable conditions;
- g) further use of **Products** after the defect was detected;
- h) the defect is caused by failure of any equipment necessary for the correct functioning of **Products** including any failure caused by improper operation of such equipment, or incorrectly used electric power, frequency or voltage;
- i) the defect is caused by force majeure.

9.6. The defect claim shall be assessed by **ComAp** as soon as reasonably possible from receipt of **Products**.

9.7. Cost connected to shipment of the claimed **Product** to **ComAp** or including but not limited to other costs of assessing the claim shall be paid by the **Customer**. If the defect claim is accepted, it will be resolved by **ComAp**. If it is not possible to resolve the defect or if the repairs were more expensive than the **Price** of **Product**, **ComAp** will provide the **Customer** with new or substitute **Products** with the same or better specifications than the original **Products**. Providing new or substitute **Products** does not give rise to any breach of these **GTC** or any liability of **ComAp** to the **Customer**, even if new or substitute **Products** are rejected by the **Customer**. **ComAp** does not reimburse any other direct or indirect costs associated with the replacement or repair of the **Product** as part of any warranty claim or if preventive replacement or repair the **Product** was agreed, including but not limited to costs associated with travel, travel allowance or any costs incurred by third parties or by the **Customer** in connection with the elimination or prevention of the claimed defect and its consequences, whether at the location where the **Product** is placed or performed remotely.

9.8. Should the defect claimed not be covered by the warranty, **ComAp** shall repair **Products** only at the **Customer's** express request and only if the repair is possible. **ComAp** and the **Customer** shall enter into an **Agreement** on such a repair. **Products**, whether repaired or un-repaired, shall be disposed of in an environmentally sound manner, unless the **Customer** explicitly requires the return of the **Product**. In such case, the **Product** will be returned to the **Customer** at the **Customer's** expenses. In case of any costs associated with the post-warranty repair or with the repair where the warranty is rejected, the invoice will be issued to the **Customer**. The invoice must be paid in accordance with the payment terms determined by **ComAp**.

9.9. **ComAp** reserves the right not to accept the defect claim, particularly if it has been caused by the **Customer's** failure to provide cooperation to **ComAp**, by incorrect or untrue information provided by the **Customer** or by force majeure.

9.10. Local warranty for **Products** specific to the jurisdiction they were delivered to is included in the **Price**, while global warranty may require an extra charge.

9.11. **ComAp** reserves the right to sell **Products** which are not new or which have been repaired that meet all technological and safety requirements for the given type of **Products**. For such **Products** **ComAp** may specify a different duration of the warranty period.

9.12. If the claimed defect is recognized by **ComAp**, the duration of the warranty period will be interrupted throughout the whole period during which the defect is assessed and subsequently removed by **ComAp**. The warranty period is extended by the length of its interruption.

9.13. A longer warranty period or other **Services** that are outside the warranty scope may be provided by **ComAp** at an extra charge.

9.14. Derogations from this article according to the region:

## **AUSTRALIA SC**

### **WARRANTY AND LIMITATION OF LIABILITY**

9.15. These articles apply only to the extent that any supply of **Goods** or **Services** is made to a 'Consumer' as defined in the Australian Consumer Law.

9.16. Our **Goods** come with guarantees that cannot be excluded under the Australian Consumer Law. You are (a Consumer) entitled to a replacement or refund for a major failure and compensation for any other reasonably foreseeable loss or damage. You are (a Consumer) entitled to have the **Goods** repaired or replaced if the **Goods** fail to be of acceptable quality and the failure does not amount to a major failure.

9.17. Other than as outlined specifically in these **GTC**, to the extent permitted by law, where **ComAp** becomes liable to the **Customer** in any manner for any breach of any condition or warranty expressed or implied in relation to the supply of **Goods** or **Services** to the **Customer**, **ComAp's** liability will be limited, at **ComAp's** sole discretion to either:

- a) In relation to the supply of **Goods**:
  - (1) the replacement of the **Goods** or the supply of equivalent **Goods**;
  - (2) the repair of the **Goods**;
  - (3) the payment of the cost of replacing the **Goods** or of acquiring equivalent **Goods**; or
  - (4) the payment of the cost of having the **Goods** repaired; and
- b) In relation to the supply of **Services**:
  - (1) the supplying of the **Services** again; or
  - (2) the payment of the cost of having the **Services** supplied again.

9.18. If any action is brought by the **Customer** against **ComAp**, pursuant to Part 5.4 Division 1 of the Australian Consumer Law, **ComAp's** liability will be as prescribed in Part 5.4 Division 1 of the Australian Consumer Law.

9.19. To the extent permitted by law, the **Customer** releases and indemnifies **ComAp** and its officers, employees, consultants and agents from and against all actions, claims, proceedings and demands (including those brought by third parties) which may be brought against it or them, whether on their own or jointly with the **Customer** and whether at common law, under tort (including negligence), in equity, pursuant to statute or otherwise, in respect of any loss, death, injury, illness, cost or damage arising out of or in relation to any breach by the **Customer** of any warranty provided by it under the first paragraph of these article.

9.20. To the extent permitted by law, **ComAp** will have no liability to the **Customer** however arising, including, without limitation, under any cause of action or theory of liability, in respect of special, indirect or consequential damages, loss of profit (whether direct or indirect) or loss of business opportunity, arising out of or in connection with the **Agreement**.

## **10. LIABILITY**

10.1. **ComAp** disclaims any liability for damage caused by **Products** and/or **Services**, unless these **GTC** or the **Agreement** state otherwise and only where such disclamation is permitted under applicable laws. Liability for damage can be claimed only upon proof and if it directly relates to **Products** and/or **Services**, unless otherwise specified in the **Agreement**.

10.2. To the full extent permitted under applicable laws, damages shall be limited to the amount of 20% of **Price** of the respective **Product** or **Service** for each individual damage, in total to be limited to the amount of 100% of **Price** of the respective **Product** or **Service**, for all damages. Different limits may be specified in the **Agreement**.

10.3. Where permitted under applicable laws, **ComAp** has no liability to the **Customer** for economic losses, loss of profits, loss of contracts, loss of opportunity, loss of business, loss or depletion of goodwill, increased overheads or administration expenses, management time, loss of savings, loss of data, attorney or legal fees, or any type of special, indirect or consequential loss of any nature whatsoever (including without limitation loss or damage suffered by the **Customer** as a result of an action brought by any third party) even if such loss was reasonably foreseeable or **ComAp** had been advised of the possibility of the **Customer** incurring it or for any other similar reason.

10.4. **ComAp's** liability to the **Customer** for damage caused by **Products** and/or **Services** is excluded for the reasons on which any claimed warranty may be refused, including (among others) where the damage occurred as a result of unauthorized or improper act or omissions of the **Customer** or any third party different from **ComAp** or due to a breach of the **Agreement** by the **Customer**.

10.5. Liability for damage related to the products of third parties that are part of **ComAp's Products** are governed by the relevant terms and conditions of these third parties and are limited to the amount of liability that such third parties provide on

their products. Liability for damage and warranties of **ComAp** are excluded.

10.6. Any other provisions on damages other than those mentioned in these **GTC** or in the **Agreement**, shall be disregarded.

10.7. The **Customer** is obliged to inform **ComAp** about any defect and/or damage on the **Products** and/or caused by **ComAp's Products** and/or **Services** immediately and stop the use of **Products** and/or **Services** after the defect was detected and/or damage was incurred.

10.8. Liability of **ComAp** for damage caused by delay of delivery of **Products** resulting from administrative requirements of authorities (including customs) is excluded.

10.9. **ComAp** shall not be liable for damage caused by the **Customer's** use of unsupported software.

## 11. CUSTOMER ACKNOWLEDGEMENT

The **Customer** acknowledges, agrees, represents and warrants that:

- a) use of **Products** and/or **Services** is outside the control of **ComAp**, and the **Customer** is satisfied that **Products** and/or **Services** have (unless **Products** and/or **Services** are returned as permitted under an **Agreement**) the condition, characteristics, quality and attributes that will make them suitable or fit for any ordinary or special purpose required for those **Products** and/or **Services**, even if that purpose was made known to **ComAp**;
- b) the **Customer** has or will in a timely manner conduct all mandatory or prudent tests and apply all mandatory or prudent quality control checks and procedures to ensure **Products** and/or **Services** and any **Products** that is produced from them will be without defect and suitable or fit for any purpose required for them; and
- c) it has not relied upon any statement, representation, warranty, guarantee, condition, advice, recommendation, information, assistance or service provided or given by **ComAp** or anyone on its behalf, or apparently on its behalf, in respect of **Products** and/or **Services**, other than those that are expressly contained in the **Agreement**.

## 12. FORCE MAJEURE

12.1. **Contracting Parties** are obliged to take maximum precautions to prevent the negative impacts of force majeure on provided supplies and try to prevent them in the greatest possible extent.

12.2. A breach of an obligation does not occur provided that the breach was caused by an obstacle that is i) independent of the will of the **Contracting Parties** ii) the obstacle was not predictable at the time of concluding the **Agreement** and iii) it could not be averted or overcome by the will of the **Contracting Parties**. The liability is excluded for the duration of the obstacle. If the force majeure continues for more than 30 business days, the Contracting Party which was not directly impacted by the force majeure may terminate the **Agreement** by notice with immediate effect. In such a case the liability of the **Contracting Parties** is fully excluded.

12.3. Force majeure is considered, including but not limited to:

- 12.3.1. war, civil unrest and revolution, pirate attacks, political upheavals, natural disasters (floods, earthquakes, volcanic eruptions, tsunamis, hurricanes, fires, storms, etc.), boycotts, embargoes and other restrictions from the authorities, terrorist attacks, epidemics, pandemics.

12.4. Denial of export or import permits necessary for the provision of performance is not considered as force majeure.

12.5. Contracting Party not fulfilling its contractual obligation due to force majeure is obliged to notify the other Contracting Party about this fact in writing and state what the implications on performance in relation to the other Contracting Party will be. If the other Contracting Party is not notified about the force majeure, the circumstances causing the force majeure will be disregarded, and the **Contracting Parties** are obliged to perform as if there is no force majeure.

12.6. Where possible under applicable laws, the above apply in relation to carriers of **Products** and to any other third party involved in providing performance (manufacturer, the **Distributor**).

## 13. MISCELLANEOUS

13.1. No waiver by **ComAp** of any of the **Customer's** obligations under the **Agreement** shall be deemed effective unless made by **ComAp** in writing, nor shall any waiver by **ComAp** in respect of any breach be deemed to constitute a waiver of or a consent to any subsequent breach by the **Customer** of its obligations.

13.2. The following provisions of **GTC** shall survive the termination (including expiry) of any **Agreement**:

- 13.2.1. the rights and obligations occurring before an early termination of the **Agreement**, which by their nature will continue after the termination of the **Agreement**;
- 13.2.2. **Intellectual Property Rights** and the rights and obligations arising therein;

- 13.2.3. prohibition of withholding payment of any invoice issued by **ComAp**;
- 13.2.4. prohibition of offsetting of any Customer's claims against **ComAp**;
- 13.2.5. **ComAp** prior written consent to the assignment of any claims against **ComAp**;
- 13.2.6. provisions on warranties;
- 13.2.7. provisions on liability; and
- 13.2.8. all other provisions stated in these **GTC** or in the **Agreement**.

13.3. Any notice or other communication pursuant to, or in connection with **Agreement** shall be in writing (paper or electronic) and delivered personally, or sent by recorded delivery post (air mail if overseas), to the Contracting Party due to receive such notice at its registered office or to such other address as may have been notified in writing to the other Contracting Party or by sending it by e-mail (subject to the original notice or communication being sent by post on the same day in the manner specified above). Notice is considered as delivered on the same day if sent by email and 5 business days after posting if sent only by regular mail.

13.4. **GTC** are drawn up in the English language. If these **GTC** are translated into another language, the English language text shall, in any event, prevail.

13.5. **Severability Clause**. Should any provision of these **GTC** in whole or in part be or become invalid, impracticable or unenforceable, the validity of the other provisions shall not be affected thereby. In such a case, the invalid, impracticable or unenforceable provision shall be deemed to be replaced by a provision which, to the extent admissible according to the applicable laws, comes closest to the purpose of the invalid, impracticable or unenforceable provision.

13.6. The provisions of the **Agreement** apply only to **Contracting Parties**.

13.7. In these **GTC**, unless otherwise specified:

- 13.7.1. references to **ComAp** and the Customer include their permitted successors and assignees;
- 13.7.2. headings to clauses are for convenience only and do not affect the interpretation of these **GTC**;
- 13.7.3. words indicating the singular include the plural;
- 13.7.4. references to persons shall include companies and other unincorporated associations or bodies and (in each case) vice versa.

13.8. Unless not agreed otherwise in this **GTC**, no provisions of consumer law under any jurisdiction will apply to these **GTC**. The **Customer** agrees that it is not deemed a consumer under any such consumer laws.

13.9. **ComAp** may at its own discretion generate new access data in relation to legally acquired software, whether used alone or together with **ComAp's Products**, provided that:

- 13.9.1. The **Customer** has requested **ComAp** provide the access data and has demonstrated that the person that has the right to the access data has ceased to exist without legal succession, or demonstrably refuses to communicate with the **Customer** without any specific reason; or
- 13.9.2. It is required by public interest. In these cases, such new access data shall only be generated and provided if such generating and provision of the new access data is not considered as infringement of intellectual property rights and/or any other rights of third parties or the **Customer**.

13.10. The **Customer** acknowledges that he/she is obliged to provide access passwords to the new authorized owner of the **Product**.

13.11. The **Customer** confirms that it is currently and shall continue to be in compliance with applicable EU and/or US sanctions and/or any other applicable export control policies, and that the **Customer** is not subject to any sanctions.

13.12. The **Customer** declares that he is not directly or indirectly involved in the financing, commission or support of terrorist activities or in the development or production of nuclear, chemical, biological weapons or in missile technology programs and hardware, software, technology, or services may not be exported, re-exported, transferred or downloaded to any such entity.

13.13. The **Customer** and its employees, subcontractors and/or agents shall behave ethically in compliance with all anti-bribery and anti-corruption laws, statutes and regulations including the UK Bribery Act (2010), and is therefore prohibited to offer, accept or demand any payment or asset of significant value that can be considered as bribe, commission or fee, especially when dealing with state administration. The **Customer** shall not engage in any activity, practice or conduct which would constitute an offence under sections 1, 2 or 6 of the Bribery Act 2010 if such activity, practice or conduct had been carried out in the UK and shall promptly report to **ComAp** any request or demand for any undue financial or other advantage of any kind received by the **Customer** in connection with the performance of the **Agreement**.

13.14. The **Customer** shall comply with all applicable data protection laws.

13.15. The **Customer** shall comply with local health and safety regulations while using and handling **ComAp's Products**.

13.16. The **Customer** shall keep confidentiality regarding information provided by **ComAp** which is not generally known to the public and is or should be reasonably understood to be confidential. If a separate non-disclosure agreement has been

concluded between **ComAp** and the **Customer** before the execution of the **Agreement**, the **Customer** is obliged to follow the rules agreed therein.

13.17. The **Customer** is obliged to follow the applicable legislation, technical standards, manuals and all other documentation relating to the use of the **Product** in a real environment.

13.18. The **Customer** takes into account that **ComAp** needs to gain accessing to data from the **Products** due to of their settings, commissioning and operating.

13.19. Regardless of how the data was acquired, if it was originated by the **Customer** the data is owned by the **Customer**. **ComAp** processes the data based on the law or for the fulfilment of its contractual obligations. The **Customer** grants to **ComAp** the perpetual right to use such data for further processing for any purpose including but not limited to the purpose of providing additional **Services**, settings, commissioning **Products**, monitoring (if applicable), operation, improvements, enhancements etc. Further details may be described in the other documents (**License Agreement**, order, quote, **Guideline**, **Technical Specification** etc.). The **Customer** is not entitled to any compensation for collection and/or usage of data by **ComAp**. The **Customer** may not request **ComAp** to delete, provide or return such data (or part of it) obtained pursuant to this provision, unless required otherwise by specific legislation.

13.20. **ComAp's Products** shall comply with current version of i) EU Directive of the restriction of the use of certain hazardous substances in electrical and electronic equipment, as amended (RoHS) and laws related to the sourcing and use of conflict minerals and ii) EU Regulation concerning the Registration, Evaluation, Authorisation and Restriction of Chemicals (REACH) the **Customer** may contact **ComAp** in relation to the RoHS's and REACH's **Product** compliance questions through her/his Sales Channel.

## 14. COMAP COMPLETE SOLUTIONS

14.1. This **GTC** are an integral part of the **Contract for Work** govern the commercial relationships between **ComAp** and the **Customer** for the **ComAp Complete Solutions**.

14.2. All other business and technical conditions necessary for the provision of performance to the **Customer** within the **Complete Solutions** are listed in the **Contract for Work**.

14.3. This Article further sets forth the provisions that apply to **Complete Solutions** and supplements the provisions of the **GTC**. The provisions pursuant to this Article 15 take precedence over in case of conflict.

### Change management

14.4. If a party suggests changing the content of the performance, it shall submit the details of the change in writing to the other party.

14.5. Within a reasonable period of time, **ComAp** shall prepare a written proposal for the **Customer**:

- 14.5.1. of the time probably necessary for implementing the change;
- 14.5.2. of **Price** adjustment due to the change;
- 14.5.3. of impacts of the change on the **Technical Specification**, and
- 14.5.4. of other impacts of the change on the conditions of the **Contract for Work**.

14.6. If the **Customer** wishes **ComAp** to carry out a change, **ComAp** is not obliged to do so until the **Contracting Parties** agree in writing on the necessary adjustment of the **Price**, the **Technical Specification**, the **Shipment Date** and, if applicable, a change of the applicable conditions of the **Contract for Work**. Such an agreement shall have the form of an amendment to the **Contract for Work**.

14.7. **ComAp** may change the scope or performance of the **Services** without the **Customer's** consent only if necessary because the **Customer** has not provided accurate or complete information or assistance or due to additional information or requirements not communicated to **ComAp** prior to the execution of this **Contract for Work** and such a new solution is beneficial to the **Customer**.

14.8. For the purposes of this clause for **Complete Solutions**, any reference to written form shall also include e-mail communication, with the exception of an amendment to the **Contract for Work**.

### Risk and Title

14.9. The risk and liability for the **Products** and sub-deliveries shall pass to the **Customer** at the time of their delivery to the site of performance or upon takeover in accordance with the **Contract for Work**.

14.10. The title to the **Work** or its part shall pass to the **Customer** to the extent paid under the invoice of **ComAp**.

14.11. Until the title to the **Products**, sub-deliveries, **Work** or its completed part passes to the **Customer**, the **Customer**:



- 14.11.1. shall keep the **Products** and sub-deliveries in custody as a custodian for **ComAp**;
- 14.11.2. shall maintain the **Products** and sub-deliveries in a proper condition in accordance with the storage conditions for similar types of goods and recommendations of **ComAp**, arrange an all-risk insurance and maintain such insurance to the benefit of **ComAp** at their full price. Upon request, the **Customer** shall submit to **ComAp** the properly executed insurance policy.

14.12. The **Customer's** right to keep the **Products** in custody under the Article Risk and Title shall cease to exist immediately as soon as:

- 14.12.1. the **Customer** and its property become subject to execution, the **Customer** breaches or fails its obligations hereunder or another agreement between the **Customer** and **ComAp**, is unable to pay its debts, ceases to do business or a petition in insolvency or another similar or analogous petition is filed against it in any jurisdiction; or
- 14.12.2. the **Customer** tries to encumber the **Products** and sub-deliveries in any way or pledges the **Products** or sub-deliveries to the benefit of another party.

14.13. **ComAp** is entitled to require and receive payment for the **Products** and sub-deliveries regardless of whether it possesses the title to any **Products** or sub-deliveries.

14.14. The rights of **ComAp** contained in this Article shall survive the possible termination of the **Contract for Work** for any reason.

### **Warranties**

14.15. The **Work** has defects if its performance does not correspond with the outcome agreed in the **Contract for Work** and, therefore, it cannot be used for the agreed purpose. **ComAp** shall also be responsible for hidden defects which prevent the use of the **Work** and which will be identified within 24 months of the date of handover to the **Customer**.

14.16. As soon as the **Customer** identifies a defect subject to warranty, it is obliged to:

- 14.16.1. report this fact to **ComAp** in writing immediately, no later than within 5 days of identification of the defect;
- 14.16.2. allow **ComAp** to verify the **Work** at the **Installation Site** and;
- 14.16.3. if **ComAp** is of the opinion that its presence at the **Installation Site** is not necessary, the **Customer** is obliged to provide the necessary assistance and to take the necessary efforts for a more detailed identification or diagnostics or to proceed in accordance with **ComAp's** instructions to repair the defect.

14.17. **ComAp** shall not be responsible for defects subject to warranty if the **Customer** fails to meet its obligations specified in previous clause of this Article.

14.18. **ComAp** shall not be responsible for defects if:

- 14.18.1. the **Customer** continues using the damaged part of the **Work** in spite of **ComAp's** prohibition; or
- 14.18.2. the defect results from the **Customer's** failure to meet the conditions stipulated in the **Contract for Work**, in the **Documentation**, **ComAp's** written or oral instructions concerning storage, installation, commissioning, handling, use or maintenance of the **Work** or its parts;

14.19. When demonstrating that the **Work** has defects, **ComAp** shall decide without any delay:

- 14.19.1. to remove the defect within a reasonable period of time if the defects do not prevent to use the **Work** for the agreed purpose;
- 14.19.2. to provide new deliverables to the extent of the defective part of the **Work** without undue delay, no later than within 30 days of the date of delivery of the defect notice to **ComAp**, unless the Contractual Parties agree on a longer period of time in each specific case.

14.20. The means and procedures for removing a defect specified in previous clause of this Article are the only remedies available to **ComAp**. The warranty period for the respective part of the **Work** shall not run during the time of settlement of the right arising from liability for defects. If it turns out that, in light of clauses 15.18 and 15.19 of this Article, the **Customer** did not have the right arising from liability for defects, **ComAp** shall provide support and **Services** to the **Customer** under the conditions stipulated in Article 4 of these **GTC**.

### **Liability and Compensation of Damage**

14.21. This Article stipulates full liability of **ComAp** toward the **Customer** in connection with:

- 14.21.1. the **Work**, **Products**, sub-deliveries, **Services** and **Additional Services**;
- 14.21.2. breach of **ComAp's** contractual obligations arising from the **Contract for Work**;
- 14.21.3. a statement, notice (except for a deliberate and proven misrepresentation) or illegal conduct or omission, including negligence or breach of obligations, arising from the law or from this **Contract for Work** or associated with it.

14.22. Within the framework of **ComAp's** liability hereunder, **ComAp** shall be liable for damage caused by breach of its obligations, always to the extent and up to the amount of the value of the deliverable which falls under the scope of the **Contract for Work**.

14.23. **ComAp** shall not be liable to the **Customer** for any loss, damage or other costs or expenses (due to failure to perform the Contract, breach of the law or a statutory obligation, offence under the private law, including negligence and others) due to:

- 14.23.1. use of the **Work** by the **Customer** after its handover default, including normal wear and tear;
- 14.23.2. deliberate damage to the **Work**;
- 14.23.3. negligence or breach of the **Contract for Work** by the **Customer**, its representatives or employees;
- 14.23.4. provision of incorrect, inaccurate or incomplete information to **ComAp** by the **Customer**;
- 14.23.5. failure to meet **ComAp's** instructions concerning the installation of the **Products** and the use of the **Work** or failure to comply with the procedures under the **Documentation**;
- 14.23.6. deviating conditions inconsistent with the technical or other conditions envisaged in the **Contract for Work**;
- 14.23.7. lightning strike or due to power supply of the **Work** or its part with electric current at an incorrect voltage and quality;
- 14.23.8. delay or default on the part of **ComAp**;
- 14.23.9. modifications, changes or repairs of the **Work** performed by a party other than **ComAp** or a person authorized by **ComAp**;
- 14.23.10. the fact that the **Customer** operates the **Work** or its part prior to the signing of the **Handover Protocol** and prior to takeover.

14.24. Notwithstanding the other provisions hereof, **ComAp** shall not seek to limit or exclude its liability to the **Customer**;

14.25. The **Customer** acknowledges that exemptions and limitations of liability are fully reflected in the **Price** of the **Work, Products** and **Services** and that **ComAp** could offer the **Work, Products** and **Services** at higher prices under conditions where the liability of **ComAp** to the **Customer** would be limited to a lower extent.

## 15. LAW AND JURISDICTION

The United Nations Convention on Contracts for the International Sale of **Goods** shall not apply to the **Agreement**. In the case of any dispute, the **Contracting Parties** shall endeavor to reach an amicable agreement first.

### EUROPE

15.1. These **GTC** and any dispute or claim (including non-contractual disputes or claims) shall be governed by and construed and interpreted in accordance with the law of England and Wales in all respects (including formation) without regard to principles of law that might make the law of some other jurisdiction applicable (conflict of laws).

15.2. In the event of any dispute or differences arising between the **Contracting Parties** hereto out of or in connection with these **GTC** or their validity or of any documents arising from it, or made a part hereof or any amendments thereto, the **Contracting Parties** shall endeavor to reach an amicable agreement, but if such agreement is not reached within 30 days of first notification of the reason of the dispute then, all disputes, controversy or claim arising out of or relating to these **GTC**, or the breach, termination or invalidity thereof, shall be settled and resolved, to the exclusion of the ordinary courts, by arbitration in accordance with the UNCITRAL Arbitration Rules. The number of arbitrators shall be three.

15.3. The **Contracting Parties** shall accept the award of the above-mentioned arbitrators as final and binding. The **Contracting Parties** hereby waive their right to any form of recourse against an award to any court or other competent authority, insofar as such waiver can validly be made under the applicable law.

15.4. All costs and expenses incurred in connection with any arbitral proceedings hereunder shall be borne by the losing party, except as otherwise provided in the arbitral award. The place of arbitration shall be in Prague, Czech Republic. The language to be used in the arbitral proceedings shall be English.

### USA

15.5. These **GTC** shall be governed by and construed and interpreted by Illinois law in all respects (including formation) without regard to principles of law that might make the law of some other jurisdiction applicable (conflict of laws).

15.6. In the event of any dispute or differences arising between the **Contracting Parties** hereto out of or in connection with these **GTC** or their validity or any documents arising from it, or made a part hereof or any amendments thereto, the **Contracting Parties** shall endeavour to reach an amicable agreement, but if such agreement is not reached within 30 days of first notification of the dispute then, all disputes, controversy or claim arising out of or relating to these **GTC**, or the breach, termination or invalidity thereof, shall be settled and resolved, to the exclusion of the ordinary courts, by arbitration in accordance with the UNCITRAL Arbitration Rules. The number of arbitrators shall be three.

15.7. The **Contracting Parties** shall accept the award of the above mentioned arbitrators as final and binding. The

**Contracting Parties** hereby waive their right to any form of recourse against an award to any court or other competent authority, insofar as such waiver can validly be made under the applicable law. All costs and expenses incurred in connection with any arbitral proceedings hereunder shall be borne by the losing party, except as otherwise provided in the arbitral award, or agreed upon in writing. The place of arbitration shall be Chicago, USA. The language to be used in the arbitral proceedings shall be English.

#### **AUSTRALIA**

15.8. These **GTC** shall be governed by the laws of the State of South Australia (excluding its conflict of laws provisions) and the **Customer** must submit to the non-exclusive jurisdiction of the courts of or exercising jurisdiction of that state and the **Customer** waives, without limitation, any claim or objection based on absence of jurisdiction or inconvenient forum.

#### **ARAB LEAGUE**

15.9. The **Agreement** shall be governed by and construed in accordance with the law of England and Wales.

15.10. Each of the **Contracting Parties** hereby irrevocably and unconditionally submits, for itself and its property, to the non-exclusive jurisdiction of the courts of the Dubai International Financial Center in any suit, action or proceeding arising out of or relating to the **Agreement** or for recognition and enforcement of any judgment in respect thereof, and each of the parties hereby irrevocably and unconditionally agrees, to the fullest extent permitted under applicable law, that all claims in respect of any such suit, action or proceeding may be heard and determined in the courts of the Dubai International Financial Center. Each of the **Contracting Parties** agrees that a final judgment in any such action or proceeding shall be conclusive and may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by law.

15.11. Nothing in the **Agreement** shall limit or affect the right of **ComAp** to bring any suit, action or proceeding arising out of or relating to the **Agreement** against the **Customer** or its property in any other court having jurisdiction over the **Customer** or its property.

15.12. In the event of any dispute between the **Contracting Parties** arising out of or in connection with the **Agreement** or its validity or any documents arising from or made a part of the **Agreement** or any amendments thereto, the **Contracting Parties** shall endeavour to reach an amicable agreement for a period of 30 days from one party's first notification to the other party of the matter in dispute.

15.13. If the parties do not reach agreement as to a matter in dispute within 30 days of such first notification of the dispute, then either party may refer the matter to arbitration. The rules and administration of the arbitration shall be as follows:

- a) any arbitration hereunder shall be carried out under the procedures, rules and regulations of the DIFC-LCIA Arbitration Centre (the "**Arbitration Rules**") by a panel of three arbitrators to be appointed in accordance with the Arbitration Rules;
- b) the seat of the arbitration shall be the Dubai International Financial Centre (DIFC) and all arbitration hearings shall be held in Dubai, United Arab Emirates unless otherwise agreed by the **Contracting Parties**;
- c) the parties agree that the procedural law governing the conduct and procedure of the arbitration shall be the laws of the DIFC; and
- d) such arbitration shall be conducted in the English language and the award of any arbitrators, together with the reasons for the determination, shall be written in the English language.

15.14. The **Contracting Parties** agree that all interim or final decisions and/or awards of the arbitrators

- (1) shall be binding on the **Contracting Parties**,
- (2) shall be given effect and implemented forthwith by them,
- (3) shall not be subject to judicial appeal or review (all rights to which the **Contracting Parties** hereby waive) to the fullest extent permissible under applicable law, and
- (4) may be enforced in any court having jurisdiction.

15.15. All costs and expenses incurred in connection with any arbitral proceedings hereunder shall be borne by the losing party, except as otherwise provided in the arbitral award or agreed upon in writing.

#### **ASIA PACIFIC REGION**

15.16. These **GTC** shall be governed by and construed and interpreted by English law in all respects (including formation) without regard to principles of law that might make the law of some other jurisdiction applicable (conflict of laws).

15.17. In the event of any dispute or differences arising between the **Contracting Parties** hereto out of or in connection with these **GTC** or their validity or of any documents arising from it, or made a part hereof or any amendments thereto, the **Contracting Parties** shall endeavour to reach an amicable agreement, but if such agreement is not reached within 30 days of first notification of the dispute, then, all disputes arising in the connection with these **GTC** including any question regarding its existence, validity or termination, shall be referred to and finally resolved by arbitration administered by the Singapore International Arbitration Centre in accordance with the Arbitration Rules of the Singapore International Arbitration Centre for the time being in force, which rules are deemed to be incorporated by reference in this clause. The tribunal shall consist of three arbitrator(s). The language of the arbitration shall be English. The seat of the arbitration shall be Singapore.

**LATIN AMERICA**

15.18. These **GTC** shall be governed by and construed and interpreted by Brazilian law in all respects (including formation) without regard to principles of law that might make the law of some other jurisdiction applicable (conflict of laws).

15.19. In the event of any dispute or differences arising between the **Contracting Parties** hereto out of or in connection with these **GTC** or their validity or any documents arising from it or made a part hereof or any amendments thereto, the **Contracting Parties** shall endeavour to reach an amicable agreement, but if such agreement is not reached within 30 days of first notification of the dispute then, all disputes, controversy or claim arising out of or relating to these **GTC**, or the breach, termination or invalidity thereof, shall be settled and resolved, to the exclusion of the ordinary courts, by arbitration in accordance with the UNCITRAL Arbitration Rules. The number of arbitrators shall be three.

15.20. The **Contracting Parties** shall accept the award of the above mentioned arbitrators as final and binding. The **Contracting Parties** hereby waive their right to any form of recourse against an award to any court or other competent authority, insofar as such waiver can validly be made under the applicable law. All costs and expenses incurred in connection with any arbitral proceedings hereunder shall be borne by the losing party, except as otherwise provided in the arbitral award, or agreed upon in writing. The place of arbitration shall be Rio de Janeiro, Brazil. The language to be used in the arbitral proceedings shall be English.

Date and version **GTC**: 13.08.2020, version 3, Peter Sandin, **ComAp** CEO