

## PC-CTC3144 - Purchase Order Counterfeit Electronic Parts Control Flow-down Terms & Conditions

When noted on face of purchase order, Seller (i.e. Supplier) and Pro-Comm, Inc. agree as follows:

[ ] A. By accepting this Pro-Comm, Inc. Purchase Order the Seller accepts and agrees to the following requirements of the Purchase Order.

**Certification:** As a minimum the Seller is to provide a certification with their shipping documents, for each shipment against the Purchase Order stating, "*Seller hereby certifies that the products furnished on this shipment are manufactured by the referenced manufacturer/OCM in accordance with and conforms to the applicable manufacturers/OCM specifications and that Certifications are on file with the seller or are available from the manufacture.*" If a certification cannot be provided, Pro-Comm may cancel the order without any claim to Pro-Comm.

And;

[ ] B. This Pro-Comm, Inc. purchase order is subject to the flow down requirement of clause at 252.244-7001, Contractor Purchasing System Administration, with 252.244-7007 Counterfeit Electronic Parts Control.

By accepting this Pro-Comm, Inc. Purchase Order identified as requiring compliance with DFARS Counterfeit Electronic Parts Control, the Seller accepts and agrees to the following requirements of the Purchase Order.

1. Sellers, including small entities, will need to be able to trace the source of the electronic parts they are supplying to the original source if they are not the OCM's (original component manufacturer) or current design activity; including an authorized aftermarket manufacturer.
  2. The Seller shall provide product in strict conformance in all ways to applicable OCM's (original component manufacturer's) specifications as identified on Pro-Comm, Inc.'s Purchase Order. All product must be authentic, new, unused and in the original manufacturer packaging. Pro-Comm, Inc. will NOT ACCEPT any product that is counterfeit, sub-standard, remarked, and pulled, or contains surface scratches, cracks, or contains bent, deformed, re-tinned, re-dipped, tarnished, oxidized, burnt or missing leads. Pro-Comm, Inc. will accept product that is refurbished or contains re-tinned, or re-dipped leads if Pro-Comm, Inc. issues its acceptance in writing of product that is refurbished or contains re-tinned, or re-dipped leads and its customer provides written permission that the product that it is purchasing from Pro-Comm ,Inc. may be refurbished or may contain re-tinned or re-dipped leads. All product supplied must meet the original manufacturer's specifications for fit, form, and function.
  3. The Seller shall establish and maintain policies and procedures to ensure purchase orders and subcontracts for the supplying of electronic parts or assemblies containing electric parts, contain the mandatory and applicable flow down clauses, to all levels of the supply chain, as required by the FAR and DFARS, including terms and conditions required by the prime contract and any clauses required to carry out the requirements of the prime contract, including the requirements of 252.246-7007, Contractor Counterfeit Electronic Part Detection and Avoidance System.
4. Definitions

- a) *Counterfeit electronic part* means an unlawful or unauthorized reproduction, substitution, or alteration that has been knowingly mismarked, misidentified, or otherwise misrepresented to be an

authentic, unmodified electronic part from the original manufacturer, or a source with the express written authority of the original manufacturer or current design activity, including an authorized aftermarket manufacturer. Unlawful or unauthorized substitution includes used electronic parts represented as new, or the false identification of grade, serial number, lot number, date code, or performance characteristics.

- b) *Electronic part* means an integrated circuit, a discrete electronic component (including, but not limited to, a transistor, capacitor, resistor, or diode), or a circuit assembly (section 818(f)(2) of Pub. L. 112–81). The term “electronic part” includes any embedded software or firmware.
  - c) *Obsolete electronic part* means an electronic part that is no longer in production by the original manufacturer or an aftermarket manufacturer that has been provided express written authorization from the current design activity or original manufacturer.
  - d) *Suspect counterfeit electronic part* means an electronic part for which credible evidence (including, but not limited to, visual inspection or testing) provides reasonable doubt that the electronic part is authentic.
5. Quality: *Seller* hereby warrants that the parts/material and workmanship of parts /materials delivered hereunder is of the quality specified, is free from all defects, and complies with the drawings, samples or other specifications if any, in all respects. Pro-Comm, Inc. shall have the right to inspect and test all material at source or destination before acceptance. If product is found defective, Pro-Comm, Inc. has the right to return product for full refund or rework product at the expense of the Seller. If product definition changes, the Seller is required to notify Pro-Comm, Inc. in a timely manner. If product is non-conforming to the specific Purchase Order requirements, Seller must notify Pro-Comm, Inc. in a timely manner.
6. Inspection: Pro-Comm, Inc. will inspect the supplied product, upon receipt, to the requirements noted on the Purchase Order. The certificate includes the following information:
- a) Seller's name and address.
  - b) Date certification issued.
  - c) Pro-Comm, Inc.'s Purchase Order number.
  - d) Governing specifications and/or drawing number and revision.
  - e) A statement for Quality certifying that all material used in accordance with the applicable specification. All processes prescribed in the drawing or Purchase Order meet the applicable specification. All required inspections and/or tests, have been successfully performed.
  - f) Signature and title of an authorized company representative.
7. Counterfeit Inspection Criteria: The following criteria are used to determine suspect or confirmed counterfeit products:
- a) Pro-Comm, Inc.'s visual inspection, decap, and/or x-ray;
  - b) Any third party testing facility;
  - c) Pro-Comm, Inc.'s end user's inspection's findings and/or testing reports.
8. Confirmed Counterfeit: If product supplied is deemed suspect or confirmed counterfeit, the product has NO VALUE, deeming this purchase order null and void. As a result, Pro-Comm, Inc. has the right to confiscate, seize, quarantine, destroy or forward any or all suspect and confirmed counterfeit product to the IP holder or original component manufacturer, and/or appropriate Federal or State authorities. Pro-Comm, Inc. also has the right to file a complaint with ERAI and submit Failure Experience Data to GIDEP.

- a) Since the product has no value and the purchase order is deemed null and void, Pro-Comm, Inc. will not disburse/release funds and shall be entitled to a full refund if funds have already been disbursed/released.
  - b) Should product be deemed suspect or confirmed counterfeit by Pro-Comm, Inc., Seller has the right to agree or disagree with Pro-Comm, Inc.'s findings. If seller disagrees, Pro-Comm, Inc. will provide to the Seller a sample lot of said components for the Seller to test and conclude their own results. If the product is verified to be authentic (not counterfeit) by a mutually agreed test facility, the Seller must forward evidence of said test report. If the Seller verifies Pro-Comm, Inc.'s findings to be correct, Pro-Comm, Inc. will confiscate the product, and the testing facility that is in possession of the testing sample, shall return the testing sample to Pro-Comm, Inc. and not to the Seller.
9. No limitation of Warranty: The industry standard of a 1 year warranty applies to this purchase order. However, if product is deemed "suspect or confirmed counterfeit," "substandard" or "defective" no limitation of warranty and damages will apply. Pro-Comm, Inc. shall be entitled to a full refund (no credit) regardless of the warranty period. There is no warranty period for product that is deemed suspect or confirmed counterfeit or substandard.