

NEC Corporation of America

30-Day No Risk Program

Terms and Conditions

TERMS AND CONDITIONS

By accepting these terms and conditions of 30-day No Risk Program (“Agreement”), you and your Company (“You” and/or “Your”) understand and agree that You are formalizing Your participation in the NEC 30-Day No Risk Program and that You agree to abide by all the applicable rules, terms, and conditions of the program.

BY PARTICIPATING IN THIS PROGRAM, YOU:

- i) Warrant that you are a Qualified Eligible Customer, all information provided by You is accurate and that You are an officer, employee or agent duly authorized to act for Your company;
 - ii) Consent to these terms, and acknowledge (a) that You have reviewed, understood, agree and comply with these Terms and Conditions, including the terms of the Promotion Overview, and (b) that You are aware of and agree that these Terms and Conditions may be provided and executed electronically; and
 - iii) Evidence Your acceptance of this Agreement and/or issuance of a Purchase Order (“PO”) for the Products.
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1. TRIAL PERIOD.

NECAM will provide Products to You for a period of thirty (30) days commencing ten (10) days from the date the Product is shipped from NECAM’s facility to You (“Trial Period”), unless terminated earlier in accordance with the provisions of this Agreement.

2. PURCHASE ORDER, INVOICING AND CREDIT.

- a. In order to receive the Product(s), You will issue to NECAM a PO equal to the amount of the sale price of the Product in addition to any shipping charges and installation fees that apply.
- b. Upon review and acceptance of the PO, NECAM will provide the Product(s) and invoice which covers the cost of Product(s) and shipping charges and installation fees.
- c. If You provide a notification to return the Product(s) within the Trial Period, NECAM will issue You a credit equal to the amount of the sale price of the Product(s) only. For clarity, NECAM will not issue credit for shipping charges and/or installation fees.

3. TITLE.

- a. The Product(s) shall be and remain the personal property of NECAM. Except for the right to use the Product(s) as set forth in Section 6(c) below, all right, title and interest in and to the Product(s) shall be retained by NECAM. You shall not make any representation to the contrary. You shall keep the Product(s) at all times free and clear from all claims, levies, liens, process, security interest and encumbrances. You shall not alter or modify the Product(s) without NECAM’s prior written consent. Upon expiration or termination of the Trial Period that does not result in the sale of the Product(s), You shall return the Product(s) to NECAM in the same condition in which the Product(s) was received, ordinary wear and tear excepted.

- b. You shall not reverse engineer, decompile or disassemble the Product(s).
- c. Notwithstanding the above, should You choose to purchase the Product(s) from NECAM, terms and conditions for such purchase/license shall be made pursuant to the terms and conditions accompanying the invoice issued by NECAM to You.

4. RISK OF LOSS.

Upon delivery of the Product(s) to You, all risk of loss, damage, theft or destruction, partial or complete, to any item of the Product(s) solely caused by the acts or omissions of You shall be borne by You. You shall promptly notify NECAM of any theft, loss or damage to the Product(s).

5. DISCLAIMER OF WARRANTY.

UNLESS AND UNTIL THE PRODUCT(S) IS PURCHASED/LICENSED BY YOU, THE PRODUCT(S) IS PROVIDED BY NECAM "AS IS" AND NECAM HEREBY DISCLAIMS ALL WARRANTIES, WHETHER IMPLIED, EXPRESS OR STATUTORY, INCLUDING, WITHOUT LIMITATION, WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR USE.

6. INSTALLATION AND REMOVAL.

- a. Initial delivery and installation of the Product(s) shall be performed by NECAM at Your premises. NECAM must be accompanied by a designated employee of You whenever visiting the Your premises.
- b. At the conclusion of the Trial Period, upon the return of the Product(s) to NECAM or upon the termination of this Agreement, You will make the Product(s) available for removal and return to be performed by NECAM within seven (7) days of Your notice to NECAM. You shall make the Product(s) available for removal in the same condition as originally installed. If You fails to return the Product(s) in its original condition, You shall reimburse NECAM for the reasonable costs required to repair or replace the Product(s) or any lost or damaged portion thereof.
- c. During the term of the Trial Period, You may use the Products only for testing and evaluation purposes within Your facilities and may not sublicense the right to use the Product(s) or transfer the Products to a third party.

7. INDEMNIFICATION.

Each party will indemnify, defend and hold the other party harmless from and against any and all claims, actions, damages, liabilities, costs and expenses, including reasonable attorneys' fees and expenses, arising out of or resulting from any bodily injury (including death) or damages to tangible property suffered by a third party to the extent proximately and proportionately caused by any willful misconduct or negligent act or omission of the indemnifying party in connection with this Agreement.

8. LIMITATION OF LIABILITY.

Any liability of either party from or relating to this Agreement, whether based on contract, equity, tort (including negligence), intended conduct, strict liability, or otherwise will be limited to the damaged party's actual, direct damages, and, except as set forth in Sections 3 and 9, the amount of damages recoverable against either party for all events, acts or omissions shall not exceed, in the aggregate, the fees, if any, then already paid by You to NECAM hereunder for the Product(s) or services that give rise to such liability. In no event shall either party be liable for any special, incidental, indirect or consequential damages in connection with this Agreement, whether based on action or claim in contract, equity, indemnity, tort (including negligence), intended conduct, strict liability or otherwise, even if such damages are foreseeable. The provisions of this Section 8 shall survive the expiration or termination of this Agreement for any reason.

9. CONFIDENTIAL INFORMATION.

a. Either party ("Disclosing Party") may, during the course of discussions, reveal to the other party ("Recipient") certain confidential, proprietary and/or trade secret information. Such information may include, without limitation, certain specifications, designs, plans, drawings, hardware, software, data and other business and technical information which may relate in whole or in part to Disclosing Party's operations, requirements and other business interests ("Confidential Information"). All Confidential Information, in whatever form provided, shall remain the property of Disclosing Party.

b. Recipient shall: (i) only disclose such Confidential Information to those of Recipient's employees with a need to know and not disclose to third parties except with the prior written approval of Disclosing Party; (ii) advise employees who receive the Confidential Information of the existence and terms of this Agreement and of the obligations of confidentiality herein; (iii) use and require Recipient's employees to use at least the same degree of care to protect the Confidential Information as is used with Recipient's proprietary information, with the degree of care, in no event, to be less than holding the Confidential Information in confidence; and (iv) use the Confidential Information only as it relates to the evaluation contemplated by this Agreement.

10. CANCELLATION/TERMINATION.

Notwithstanding anything to the contrary contained herein, NECAM may terminate this Agreement immediately upon written notice if You fail to comply with any of the material terms and conditions hereof or You are adjudicated bankrupt, file a petition in bankruptcy, make an assignment for benefit for creditors or enter dissolution or liquidation proceedings.

Upon termination of this agreement during the Trial Period, You shall immediately terminate use of the Products, and within five (5) business days, return the Products at your expense to NECAM.

11. GOVERNING LAW.

This Agreement shall be governed by and construed in accordance with the laws of the State of California, without giving effect to the choice of law provisions of its conflicts of law rules.

12. GENERAL

a. Any and all controversies, claims or disputes arising out of or related to this Agreement that the parties are unable to resolve on their own shall be submitted to final and binding arbitration to be conducted pursuant to the JAMS Arbitration Rules and Procedures except as modified herein. In such arbitration proceeding, (i) the parties waive the right to seek and the arbitrator waives the right to award punitive damages, and (ii) the prevailing party shall be entitled to an award of all costs, fees and expenses, including attorneys' fees.

b. Expiration or termination of this Agreement for any reason shall not release either party from any liability or obligation set forth in this Agreement which (i) the parties have expressly agreed will survive any such expiration or termination, or (ii) remain to be performed or by their nature would be intended to be applicable following such expiration or termination.

c. Any written notice either party may give the other concerning the subject matter of this Agreement shall be in writing and given or made by means of telegram, certified or registered mail, express mail or other overnight delivery service, or hand delivery, proper postage or other charges paid and addressed or directed to the respective parties at the parties address shown below:

To NECAM:
NEC Corporation of America
Attn: Legal
2880 Scott Boulevard
Santa Clara, CA 95050

To YOU:

d. The relationship between the parties under this Agreement shall be that of independent contractors. Nothing herein shall be construed to create any relationship of joint venture, partnership or agency between the parties.

e. Neither party may assign this Agreement to a third party without the prior written consent of the other, which consent shall not be unreasonably withheld, provided, however, that either party may assign this Agreement to its parent corporation or an affiliated company. Notwithstanding the foregoing, in no event shall any assignment or transfer of this Agreement to a third party relieve a party of its obligations hereunder.

f. The terms and conditions of this Agreement form the complete and exclusive agreement between You and NECAM and replaces any prior oral or written communications regarding the subject matter hereof. Any changes to this Agreement must be made by mutual agreement in writing. A facsimile signature is legal and binding.

g. If any provision of these Terms and Conditions is held by a court of law to be illegal, invalid, or unenforceable, the legality, validity, and enforceability of the remaining provisions of this Agreement will not be affected or impaired thereby and the illegal, invalid, or unenforceable provision will be deemed modified such that it is legal, valid, and enforceable and accomplishes the intention of the parties to the fullest extent possible.

h. Any waiver by NECAM of any breach of, or any default under, any of these terms and conditions by You will not be deemed a waiver of any subsequent breach or default and will in no way affect the other terms and conditions. Failure or delay by NECAM in enforcing or partially enforcing any provision of these terms and conditions will not be construed as a waiver of any of its rights under these terms and conditions.

YOU ACKNOWLEDGE THAT YOU HAVE READ THIS AGREEMENT, UNDERSTAND IT, AND AGREE TO BE BOUND BY ITS TERMS AND CONDITIONS.

Signature: _____

Printed Name: _____

Title: _____

Company: _____

Date: _____