

**PURCHASE ORDER FOR GOODS AND/OR SERVICES**  
**STANDARD TERMS AND CONDITIONS**  
 (Applicable to Buyer and its subsidiaries)

1. **CERTAIN DEFINITIONS:** The Purchase Order ("Order") is identified by the number set forth above. "Seller" is the entity set forth on the front of this Order. "Buyer" means the entity indicated on the front of this Order or its Subsidiaries, as applicable. "Product(s)" means the items ordered by this Order that are provided by Seller to Buyer and also encompasses associated software programs, articles, materials, drawings, data, information and property. "Services" means, individually or collectively, any of the services set forth in this Order. "Seller" means the person, firm or corporation to which this Order is addressed. Seller and Buyer are hereafter referred to as the "Parties." "Subsidiary" means a commonly controlled subsidiary of a party.
2. **ACKNOWLEDGEMENT:** Except where this Order is issued as an ordering mechanism under the terms and conditions of a master document, this Order becomes a binding contract subject to these terms and conditions when accepted by Seller by executed acknowledgment of the Order or by Seller's performance (notwithstanding the terms of any order acceptance, invoice or other document at variance with the terms of this Order).
3. **PRICE AND TAXES:** Any price specified in this Order is fixed and not subject to increase, unless otherwise expressly stated. Seller's prices are exclusive of any federal, state or local sales, use or excise taxes levied upon, or measured by the sale, the sales price, or use of Products supplied under this Order ("Taxes"). Buyer shall be liable for and shall reimburse Seller for Taxes applicable to Products or Services provided pursuant to this Order. Taxes payable by Buyer shall be separately stated in Seller's invoices and shall not be included in Seller's prices. Buyer shall not be liable for any Taxes for which a valid exemption certificate acceptable to the applicable state or local taxing authorities is furnished by Buyer to Seller. Buyer's Order may provide Seller additional tax instruction as allowed by law including, but not limited to, Buyer's accrual and payment of taxes and/or special jurisdictional exemptions.
4. **BILLING AND PAYMENT TERMS:** Seller shall invoice Buyer for each Product shipment made or Service rendered (unless another address is specified in writing by Buyer), at the address listed on the Order. Invoices shall include, but not be limited to: (i) Order number; (ii) Order line number; (iii) Product or Service identification number; (iv) ship to address; (v) quantity of Product shipped and billed; (vi) description of Services rendered (vii) net invoice amount; (viii) net unit cost; (ix) itemized Taxes, and (x) any special instructions requested by Buyer. For Products, payment of all undisputed charges shall be due thirty (30) days from the date of receipt of the Products, or receipt of Seller's invoice, whichever occurs later. For Services, payment of all undisputed charges shall be due thirty (30) days from completion and acceptance of such Services by Buyer, unless otherwise stated on the front of the Order.
5. **CHANGES:** Buyer may, by written change order, make any changes that are consistent with the general scope of this Order. If any such change affects the amount due or the time of performance under this Order, Seller shall notify Buyer in writing of such change within ten (10) days of receipt of the change order. Otherwise, Seller will be deemed to have accepted the change order. If Seller timely notifies Buyer of a change in the amount due or the time of performance, neither party shall be bound by the change unless and until the change in amount due and time of performance has been agreed to in writing by the Parties. If the Parties do not agree in writing to the change in amount due or time of performance, the original terms of the Order shall apply.
6. **DELIVERY OF PRODUCTS:** Deliveries of Products will be made in the quantities and at the times specified in this Order. If Seller fails to timely deliver the Products, Buyer may, without limitation of its other rights under this Order, direct expedited routing of the Products, and any resulted excess costs incurred must be paid by Seller and are subject to offset by Buyer. Buyer is not liable for Seller's commitments or production arrangements that exceed the amount of or in advance of the time necessary to meet this Order's delivery schedule. Products that are delivered in advance of schedule may, at Buyer's option, either (i) be returned at Seller's expense for scheduled delivery or (ii) have payment withheld by Buyer until the date that Products are actually scheduled for delivery. Shipment of Products shall be made FCA Destination, prepaid and added to the invoice or as otherwise specified on the Order. If Seller is instructed by Buyer to ship Products prepaid with shipping costs and added to the invoice, subject to the following requirements, Seller shall select the carrier based on the best rate as negotiated by Seller, and Buyer shall only pay Seller's net transportation costs that include, but are not limited to, all applicable discounts, allowances and refunds. If Products are shipped in any manner other than FCA Destination, Seller shall bear risk of loss until acceptance by Buyer in accordance with the terms of this Order. For all Products imported into the United States, Supplier shall, in a timely manner, provide all data element information required in accordance with the United States Customs Service's Importer Security Filing (ISF), 19 CFR 149.3 (the "ISF Data Elements"). Supplier shall indemnify and hold NEC harmless from and against any liability, claims, demands or expenses (including attorney's fees or other professional fees) arising from or relating to Supplier's failure to provide the ISF Data Elements. The required ISF Data Elements shall be made available by Supplier to NEC at least three (3) business days prior to the lading of the ocean container at the foreign port. Seller shall place the Products, or cause the Products to be placed, with carriers of good national reputation fully insured for the replacement cost of the Products. Delivery or payment in accordance with the Order does not constitute acceptance by Buyer under this Order. Risk of loss of Products rests with Seller before delivery and acceptance by Buyer and with Buyer after delivery and acceptance by Buyer.
7. **INSPECTION/ACCEPTANCE:** All Products and Services ordered pursuant to this Order shall be subject to inspection by Buyer after delivery or performance to determine conformity with Buyer's Order and Seller's advertised or published specifications. Buyer shall have a period of thirty (30) days following arrival of Products at the delivery destination specified by Buyer within which to inspect the Products for conformity with the Order and Seller's advertised and published specifications and to provide Seller with written notice of any discrepancy or rejection. Buyer shall have a period of thirty (30) days following completion of Services within which to inspect the Services for conformity with Buyer's Order and Seller's advertised and published specifications and to provide Seller with written notice of any discrepancy or rejection. If the Products delivered or Services performed do not so conform, Buyer shall have the right to reject such Products or Services. Products that have been delivered and rejected, in whole or in part, shall be returned to Seller at Seller's risk and expense. Buyer shall notify Seller and arrange for the return of Products as required. Inspection or failure to inspect on any occasion shall not affect Buyer's rights under the "WARRANTY" provisions below or any other rights or remedies available to Buyer, whether at law or in equity.
8. **RELATIONSHIP OF PARTIES:** Neither party undertakes by this Order or otherwise to perform or discharge any liability or obligation of the other party, whether regulatory or contractual, or to assume any responsibility whatsoever for the conduct of the business or operations of the other party. Nothing contained in this Order is intended to give rise to a partnership or joint venture between the Parties or to impose upon the Parties any of the duties or responsibilities of partners or joint venturers. In providing any Products and Services under this Order, Seller is acting solely as an independent contractor and not as an agent of Buyer. Persons furnished by the Seller shall be solely the employees or agents of Seller, shall be under the sole and exclusive direction and control of the Seller, and shall not be considered employees of the Buyer for any purpose. Seller shall be responsible for compliance with all laws, rules and regulations involving its employees or agents, including but not limited to employment of labor, hours of labor, health and safety, working conditions and payment of wages. Seller shall also be responsible for payment of taxes, including federal, state, and municipal taxes, chargeable or assessed with respect to its employees or agents, such as social security, unemployment, worker's compensation, disability insurance and federal and state income tax withholding.
9. **WARRANTIES:** Seller warrants that Seller complies with all applicable permits and licenses and all requirements of applicable laws, orders, regulations and standards ("Provisions") including, without limitation, Provisions applicable to Seller relating to equal employment opportunity, non-discrimination (based upon race, color, creed, religion, sex, age, disabilities, sexual preference, or national origin), wages and hours, occupational health and safety and immigration. Seller warrants each Product for a period of one-hundred and eighty (180) days from the date the Product is accepted ("Product warranty period"), and warrants Services for a period of ninety (90) days from the date of acceptance of Services ("Services warranty period") unless otherwise stated on the front of the Order. During the Product warranty period and the Service warranty period, Seller warrants as follows:
  - (a) upon delivery of each Product to Buyer, acceptance and payment by Buyer of the purchase price, all right, title and interest in Product will pass to Buyer free of all liens, imperfections in title, claims, charges, damages, restrictions, or other encumbrances;
  - (b) all Products furnished shall be new (unless otherwise stated on the front of the Order), merchantable, free from defects in material and workmanship, fit for the ordinary purpose for which the Products are used, and shall conform to Seller's advertised and published specifications in effect at the time the warranty began;
  - (c) the Products and Services will comply in all material aspects with all applicable Provisions which directly impose obligations upon any manufacturer, seller or installer of such Products and Services, including, but not limited to, environmental, health, and safety laws, treaties, regulations, directives, and standards recognized in the industry, including those prepared by the International Standards Organization;
  - (d) to the best of Seller's knowledge, the Products and Service do not and will not, and Buyer's use of the Products and/or Service, as represented by Buyer to Seller as of the time of the Order for such Product and/or Service, does not and will not infringe upon any patent, trademark, copyright, trade secret or other proprietary right of any third party; and, as of the date of Seller's acceptance of the Order (the "Order Date"), other than as disclosed in writing by Seller prior to the Order Date, (i) there is no actual suit pending against Seller by any such third party based upon an alleged violation of such right, and (ii) to the best of Seller's knowledge, there is no threatened litigation against Seller in which a reasonable probability exists that there is a violation of such right;
  - (e) that for all Products imported into the United States, Supplier shall accept, implement, and comply with all applications, recommendations or requirements of the United States Customs and Border Protection's Customs-Trade Partnership Against Terrorism (C-TPAT). Supplier shall indemnify and hold NEC harmless from and against any liability, claims, demands or expenses (including attorney's fees or other professional fees) arising from or relating to Supplier's failure to accept, implement or comply with C-TPAT; and
  - (f) Seller will perform the Services required by this Order in accordance with industry practices and standards generally applicable to such Services; provided, however, that where this Order specifies a particular standard or criteria for performance, this warranty is not intended to and does not diminish that standard or criteria for performance.

Should the Products and/or Services not conform to the foregoing warranties, Seller shall, at its sole cost, repair or replace the defective or nonconforming Products, and promptly re-perform the defective or nonconforming Services. Seller shall reimburse Buyer for all direct expenses incurred by Buyer because the Product and/or Services are defective or nonconforming. Notwithstanding the foregoing, the Product warranties do not extend to Product to the extent that such Product has been subjected to misuse, neglect or abuse not caused by Seller or been used in violation of the approved written instructions furnished to Buyer prior to or contemporaneous with delivery of the Product, and such action is the cause of the damage or malfunction.
10. **INFRINGEMENT:** Seller agrees to indemnify, defend and hold harmless Buyer and its Subsidiaries, shareholders, directors, officers, employees, contractors, agents and other representatives from all demands, claims, actions, causes of action, proceedings, assessments, losses, damages, liabilities, settlements, judgments, fines, penalties, interest, cost and expenses (including fees and disbursements of counsel) arising from or relating to any actual or alleged infringement or misappropriation of any patent, trademark, copyright, trade secret or any actual or alleged violation of any other intellectual property rights arising from or in connection with the Products provided or the Services performed under this Order regardless of whether such Products or Services form the entire basis or only a portion of the basis for such claims of infringement, misappropriation or violation. Notwithstanding anything to the contrary contained in this Order (including, but not limited to the indemnification provisions herein), the provisions of this Section shall govern the rights of Buyer and its Subsidiaries, shareholders, directors, officers, employees, contractors, agents and other representatives to indemnification for claims of infringement, misappropriation or violation of intellectual property rights.

11. INDEMNIFICATION AND INSURANCE:

- (a) Seller shall indemnify, defend, and hold harmless Buyer and its Subsidiaries, officers, agents, and employees, from all claims, suits, actions, demands, damages, liabilities, expenses (including fees and disbursements of counsel), judgments, settlements and penalties of every kind arising from defective Products or any acts or omissions of Seller, its employees, subcontractors and agents in performing under this Order, including those based on personal injury, death, or property damage, and those based on strict liability in tort or products liability of any other kind. THE FOREGOING INDEMNITY, TO THE EXTENT PERMITTED BY LAW, SHALL APPLY IN THE CASE OF ALL CLAIMS THAT ARISE FROM THE NEGLIGENCE, MISCONDUCT OR OTHER FAULT OF BUYER, provided, however, that if a claim is the result of the joint negligence, joint misconduct, or joint fault of the Parties, the amount of the claim for which Buyer is entitled to indemnification shall be limited to that portion of such claim that is attributable to the negligence, misconduct or other fault of Seller. The obligations of this provision are in addition to Seller's obligation to provide insurance and shall not be limited by any limitation on the amount or type of damages, compensation or benefits payable by Seller under applicable worker's compensation acts, longshoremen and harborworker's acts, disability benefits acts or any other employee benefit act.
- (b) Buyer shall promptly notify Seller in writing of any suits, claims or demands covered by this indemnity. Promptly after receipt of such notice, Seller shall assume the defense of such claim with counsel reasonably satisfactory to Buyer. If Seller fails, within a reasonable time after receipt of such notice, to assume the defense with counsel reasonably satisfactory to Buyer, or if, in the reasonable judgment of Buyer, a direct or indirect conflict of interest exists between the Parties with respect to the claim, or if in the sole judgment of Buyer the assumption and conduct of the defense by Seller would materially and adversely affect Buyer in any manner or prejudice its ability to conduct a successful defense, then Buyer shall have the right to undertake the defense, compromise and settlement of such claim for the account and at the expense of Seller. Notwithstanding the above, if Buyer in its sole discretion so elects, Buyer may also participate in the defense of such actions by employing counsel at its expense, without waiving Seller's obligations to indemnify or defend. Seller shall not settle or compromise any claim or consent to the entry of any judgment without the prior written consent of Buyer and without an unconditional release of all liability by each claimant or plaintiff to Buyer.
- (c) Seller agrees to maintain during the term of this Order all insurance or bonds required by law or this Order, including, but not limited to (i) Worker's Compensation and related insurance as prescribed by the law of the state in which Seller's services are performed or Products are delivered; (ii) employer's liability insurance with limits of at least one million dollars (\$1,000,000) for each occurrence, and (iii) comprehensive general liability insurance including products liability, and, if the use of motor vehicles is required, comprehensive motor vehicle liability insurance, each with limits of at least two million dollars (\$2,000,000) for combined single limit for bodily injury, including death, and/or property damage. Seller shall cause Buyer to be included as an additional insured under said policies and Buyer's coverage under such policies shall be primary. Seller waives its rights of subrogation against Buyer. Upon request by Buyer, Seller shall furnish certificates or evidence of the foregoing insurance indicating the amount and nature of such coverage, the expiration date of each policy, and stating that no material change or cancellation of any such policy shall be effective unless thirty (30) days' prior written notice is given to Buyer.

12. **TERMINATION:** Either party may terminate this Order, in whole or in part, due to a material breach or default of any of the terms, conditions or covenants of this Order by the other party, provided that such termination may be made only following the expiration of a ten (10) day period during which the other party has failed to cure such breach after having been given written notice of such breach.

Either party may terminate this Order, effective immediately, without liability for said termination, upon written notice to the other party, if any of the following events occur: (i) the other party files a voluntary petition in bankruptcy; (ii) the other party is adjudged bankrupt; (iii) a court assumes jurisdiction of the assets of the other party under a federal reorganization act; (iv) a trustee or receiver is appointed by a court for all or a substantial portion of the assets of the other party; (v) the other party becomes insolvent or suspends its business; or (vi) the other party makes an assignment of its assets for the benefit of its creditors, except as required in the ordinary course of business.

In addition to the foregoing, Buyer may terminate this Order in whole or in part, without cause, effective immediately, upon written notice to Seller. Termination shall not affect any other purchase order placed or any fully paid up license granted to Buyer or Buyer's rights as to the portions of the Order not terminated. Upon termination of this Order without cause, Buyer shall not be liable to Seller, either for compensation or for damages of any kind or character whatsoever, whether on account of the loss by Seller of present or prospective profits on sales or anticipated sales, or expenditures, investments or commitments made in connection with the establishment, development or maintenance of Seller's business, or on account of any other cause whatsoever. Subject to the terms of this Order, the termination shall not prejudice the rights or liabilities of the Parties with respect to any Products or Services then delivered to Buyer in conformance with the terms of this Order or any indebtedness then owing by either party to the other party.

13. **CONFIDENTIALITY:** During the course of this Order, one party may become aware of, gain access to, or receive certain information from the source party which is of a proprietary, confidential, or technical nature. If such information is considered sensitive by the source party, the source party shall designate it, in writing, as "Confidential" (hereafter "Confidential Information"). Neither party shall disclose Confidential Information to any third party following the date of initial disclosure unless such disclosure is lawfully required by any governmental agency, is otherwise required to be disclosed by applicable law, or is necessary in any legal proceeding establishing rights and obligations under this Order. Each party agrees to cooperate with the other's reasonable confidentiality requirements and to immediately notify the other party of any unauthorized disclosure of Confidential Information. Each party agrees not to provide copies of this Order, or otherwise disclose the terms of this Order, to any third party without the prior written consent of the other party; provided, however, that Buyer may, without obtaining Seller's consent, provide copies or make disclosures to prospective purchasers of the business of Buyer or of any Subsidiary; or for the purpose of obtaining third party financing; and any regulatory or judicial body requesting such information. The Parties further agree to submit to one another, for written approval, all advertising, sales promotion, press releases and other publicity matters relating to the Product furnished or the Services performed pursuant to this Order, when its respective name or mark is mentioned or language from which the connection of said name or mark may be inferred or implied. The Parties further agree not to publish or use such advertising, sales promotions, press releases, or publicity matters without such prior written approval. Any approval required under this Section shall not be unreasonably withheld or delayed by either party.
14. **DISPUTE RESOLUTION:** The Parties desire to resolve certain disputes, controversies and claims arising out of this Order without litigation. Accordingly, except in the case of (i) a dispute, controversy or claim relating to a breach or alleged breach on the part of either party of the provisions of the Confidentiality provisions herein; (ii) a suit, action or proceeding to compel Seller to comply with its obligations to indemnify Buyer pursuant to this Order or (iii) a suit, action or proceeding to compel either party to comply with the dispute resolution procedures set forth in this Section, the Parties agree to use the following alternative procedure as their sole initial remedy with respect to any dispute, controversy or claim arising out of or relating to this Order or its breach. The term "Dispute" means any dispute, controversy or claim to be resolved in accordance with the dispute resolution procedure specified in this Section. At the written request of a party, each party shall appoint a knowledgeable, responsible representative to meet and negotiate in good faith to resolve any Dispute arising under this Order. The Parties intend that these negotiations be conducted by nonlawyer, business representatives. The discussions shall be left to the discretion of the representatives. Upon agreement, the representatives may utilize other alternative dispute resolution procedures such as mediation to assist in the negotiations. Discussions and correspondence among the representatives for purposes of these negotiations shall be treated as Confidential Information developed for purposes of settlement, shall be exempt from discovery and production, and shall not be admissible in the arbitration described below or in any lawsuit without the concurrence of all Parties. Documents identified in or provided with such communications, which are not prepared for purposes of the negotiations, are not so exempted and may, if otherwise admissible, be admitted in evidence in the arbitration or lawsuit. If the negotiations do not resolve the Dispute within sixty (60) days of the initial written request, or if such negotiations do not commence within seven (7) days of such request, then either party shall be free to pursue all rights and remedies available at law and/or in equity. If the parties mutually agree to resolve a Dispute arising out of or relating to this Agreement through arbitration, then such Dispute shall be submitted to arbitration by a single arbitrator pursuant to the Commercial Arbitration Rules of the Judicial Arbitration and Mediation Services ("JAMS"). Discovery shall be controlled by the arbitrator and shall be permitted to the extent set out in this Section. The arbitration hearing shall be commenced within thirty (30) days of the demand for arbitration and the arbitration shall be held in Dallas, Texas. The arbitrator shall control the scheduling so as to process the matter expeditiously. The Parties may submit written briefs. The arbitrator shall rule on the Dispute by issuing a written opinion within thirty (30) days after the close of hearings. The times specified in this Section may be extended upon mutual agreement of the Parties or by the arbitrator upon a showing of good cause. Judgment upon the award rendered by the arbitrator may be entered in any court having jurisdiction. The arbitrator may award attorneys' fees and other costs, including interest at the rate of 18% per annum to the prevailing party in such arbitration. Otherwise, each party shall bear its own cost of these procedures. A party seeking discovery shall reimburse the responding party the cost of production of documents (to include search time and reproduction time costs). Except as the arbitrator may otherwise award, the Parties shall equally share the fees of the arbitration and the arbitrator.
15. **ASSIGNMENT:** The rights and obligations of the Parties shall neither be assigned nor delegated without the prior written consent of the other party. However, any party may assign or delegate its respective rights and obligations, in whole or in part, (i) to any Subsidiary, (ii) pursuant to any financing, merger or reorganization, or (iii) pursuant to any sale or transfer of substantially all of the assets of the assigning party.
16. **ENTIRE AGREEMENT:** This Order, together with its Exhibits attached hereto (if applicable) constitutes the entire agreement between the Parties and cancels all contemporaneous or prior agreements, unless otherwise referenced on the front of this Order, in which case the referenced agreement will control, whether written or oral, with respect to the subject matter of this Order. No other terms and conditions or changes and modifications shall bind Buyer unless agreed to in writing by a duly authorized officer of Buyer. THE ORDER SHALL PREVAIL OVER, AND SHALL GOVERN THE TERMS OF THE PURCHASE OF PRODUCTS AND SERVICES NOTWITHSTANDING, THE TERMS OF ANY ORDER ACKNOWLEDGEMENT, INVOICE OR OTHER DOCUMENT OF THE PARTIES VARYING OR CONFLICTING WITH THE TERMS OF THIS ORDER, EXCEPT TO THE EXTENT THAT THE SAME IS EXECUTED BY DULY AUTHORIZED OFFICERS OF THE PARTIES AND EXPRESSLY STATES THAT SUCH DOCUMENT MODIFIES OR AMENDS THIS ORDER.
17. **FORCE MAJEURE:** Neither party shall be responsible for any delay or failure in performance of any part of this Order to the extent that such delay or failure is caused by fire, flood, explosion, war, embargo, government requirement, civil or military authority, acts of God, or any other circumstances beyond its reasonable control and not involving any fault or negligence of the party affected ("Condition"). If any such Condition occurs, the party delayed or unable to perform shall promptly give written notice to the other party and, if such Condition remains at the end of thirty (30) days, the party affected by the other party's delay or inability to perform may elect to (i) terminate such Order or part thereof, or (ii) suspend the Order for the duration of the Condition, and if Buyer is the suspending party, buy elsewhere comparable material to be sold under the Order, and apply to any commitment the purchase price of such purchase, and resume performance of the Order once the Condition ceases, with an option in the affected party to extend the period of this Order up to the length of time the Condition endured.
18. **GOVERNING LAW:** The construction, interpretation and performance of this Order shall be governed by and construed in accordance with the laws of the State of New York regard to its conflict of law rules. The application of the U.N. Convention on Contracts for the International Sale of Products is specifically excluded from this Order.
19. **NON-WAIVER:** No course of dealing or failure of either party to strictly enforce any term, right, or condition of this Order will be construed as a waiver of such term, right, or condition. Any waiver by Buyer will only be in writing and will waive no succeeding breach of a term, right or condition or the term, right or condition.
20. **NOTICES:** Except as otherwise provided herein, any notice or demand given under the terms of this Order or pursuant to statute shall be in writing and shall be given or made by facsimile transmission, certified or registered mail, express mail or other overnight delivery service or hand delivery, proper postage or other charges paid and addressed to the Parties at the address of Seller set forth on the first page of the Order and to Buyer at Buyer's address for invoicing.
21. **MISCELLANEOUS:** If any of the provisions of this Order shall be held invalid or unenforceable, then such invalidity or unenforceability shall not invalidate or render unenforceable the entire Order. The headings of the sections are inserted for convenience only and are not intended to affect the meaning or interpretation of this Order. The respective obligations of the Parties under this Order that by their nature would continue beyond the termination, cancellation or expiration of this Order shall survive any such termination, cancellation or expiration, including, but not limited to, obligations to indemnify, insure and maintain confidentiality, and continued availability of Product support. Subject to the terms of this Agreement, the prevailing party in any litigation with respect to this Order or a breach thereof shall be entitled to recover, in addition to any other remedy, reimbursement for reasonable attorneys' fees, court costs, costs of investigation and other related expenses incurred in connection therewith. Each party agrees to pay interest on any amounts past due pursuant to the terms of this Order at the rate of twelve percent (12%) per annum.