

Terms and Conditions

In the terms and conditions below the "Terms", NEC Corporation of America shall be referred to as 'NEC' and the purchaser shall be referred to as the Purchaser. The sale of the products listed on the face hereof is subject to all the terms and conditions of the Terms or of the formal written agreement between NEC and the Purchaser. Any proposal for additional or different terms or any attempt by the Purchaser to vary, in any degree, the Terms, in the Purchaser's acceptance, will be deemed material and are hereby objected to and rejected. However, such additional or different terms shall not operate as a rejection of the Terms, unless such additional and different terms contain variances in terms description, quantity, price, or delivery schedule for the goods. Unless otherwise expressly agreed to by NEC in writing, the Terms will be deemed accepted by the Purchaser as set forth herein

1. Payment.

Payment for the Purchaser of the Product hereunder shall be due net thirty (30) days from delivery date when not superseded by an existing agreement. Delivery of Products shall be deemed to take place upon the occurrence of either (i) delivery by NEC of the Products to the common carrier, or (ii) taking possession of the Products by Purchaser, whichever occurs first.

2. Limitation of Liability.

In the event that a Product malfunction leads to damages or injuries to the Product, to Purchaser's business, to the end-user's business, to other equipment, to a factory or place of business, or to employees or other persons, NEC's liability shall be limited to repair or replacement of parts of the Product if the warranty period has not expired. If such warranty period has expired, NEC shall not be liable for such damages or injuries, provided, however, that if a court of competent jurisdiction shall find as a matter of law that the foregoing part of this section is unconscionable, it is agreed that NEC's liability shall be limited solely to a U.S. dollar amount equal to Purchaser's purchase price for the malfunctioning product, less freight and insurance if included in the invoice price and less any depreciation deductions or investment tax credits taken by Purchaser or another purchaser or end-user with regard to such Product or Purchaser's or another purchaser or end-user's income taxes. THE REMEDIES PROVIDED FOR HEREIN SHALL BE EXCLUSIVE AND SHALL BE PURCHASER'S SOLE REMEDIES.

3. Transportation.

Freight charges shall be prepaid by NEC and shall be invoiced to Purchaser in addition to the purchase price for product.

4. Risk of Loss; Title.

When products are sold to Purchaser, risk of loss and title to such products shall pass to purchaser upon delivery (as defined in Section 1 hereof) of the products.

5. Defective Deliveries; Revocation of Acceptance.

Purchaser shall give NEC notice of any objections to incomplete deliveries or defective Products within thirty (30) days after delivery (as defined in Section 1 hereof) thereof. NEC will promptly undertake to remedy same in such manner as may be appropriate. No Products shall be returned to NEC without NEC's prior consent. Revocation of acceptance by Purchaser of the Products must also be within thirty (30) days after delivery of the Products to Purchaser.

6. Infringement.

No representation is made that the Products or their use or sale, do not infringe any patents, trademarks or trade names or other rights of third parties. Purchaser agrees to release NEC from and in respect of any and all claims by Purchaser to any such infringement.

7. Security Agreement.

Purchaser hereby grants to NEC, its successors and assigns, a security interest in all of the products ordered by Purchaser, in the proceeds of all such Products (including but not limited to, the related accounts), and in contract rights related to any of such Products, to secure payment of the purchase price of any such Products. Default in payment of such price shall permit NEC, at its sole discretion, to declare all of Purchaser's obligations owing to NEC to be immediately due and payable and in such event NEC shall have all the rights and remedies of a secured party under the applicable Uniform Commercial Code. In connection with the security interest granted herein, NEC is expressly authorized by Purchaser, at its sole discretion and as Purchaser's attorney-in-fact; to file one or more financing statements under the applicable Uniform Commercial Code naming Purchaser as debtor and NEC as security party (without Purchaser's signature in state where such filings are permitted) and indicating therein, as types of items of collateral, the collateral described above and Purchaser agrees to sign, as debtor, and immediately return to NEC any such financing statement that NEC may in its sole discretion choose to submit to Purchaser for agreement.

8. Taxes.

Unless a contrary notation in writing appears on the face hereof, the prices quoted in the invoice do not include any sales , use, excise, ad-valorem, receipts, or like taxes or any duties, imports or custom taxes, or import surcharges which may now or hereafter be imposed by national, federal, state, prefectural, provincial or local governments by reason of NEC's selling, exporting, importing or storing the Products described on the face hereof. Any and all of the foregoing taxes and duties shall be borne by the Purchaser.

9. Applicable Law

The contract for the sale of the Products shall be governed by and construed in accordance with the laws of the State of New York.

10. Force Majeure.

NEC shall not be responsible for any losses resulting if the fulfillment by NEC of any of the Terms or any order is delayed or prevented by revolution or other disorders, wars, acts of enemies, strikes, fires, floods, transportation delays or shortages, labor disputes, riots, insurrections, accidents, storms, inability to obtain materials or supplies, excessive demand for the Products over the available supply, customs duties or surcharges, any interruption for any reason in the manufacture of Products by NEC's suppliers, any act of God, the action of any government, or other cause not within NEC's control, whether of the class of the causes hereinbefore enumerated or not. Where only part of NEC's capacity to perform is excused under this condition NEC shall attempt to allocate deliveries among its various customers in a commercially fair and reasonable manner.

11. Limitations of Actions.

NO action for breach of the contract for the sale of the Products shall be commenced more than one (1) year after the event giving rise to such action.

12. Headings.

The headings hereunder are for convenience of reference only and shall in no way define or limit the provisions hereof.

13. Amendment.

Any change or modification to these terms and conditions must be made in writing signed by authorized representative of each party.

14. Waiver

The waiver by NEC of any breach by Purchaser of any term or condition or covenant herein shall not be deemed to be a waiver of any breach or any other term, condition, or covenant.