

NEC ELECTRONICS AMERICA, INC.
STANDARD TERMS AND CONDITIONS
<http://www.am.necel.com/terms>

1. Acceptance. These Standard Terms and Conditions ("Terms") apply to any quotation or sales transaction which is not governed by a separate written agreement signed by the customer ("Buyer") and **NEC Electronics America, Inc.** ("Seller"). A separate written agreement supersedes the Terms. The Terms supersede all other terms submitted or proposed by Buyer, including any submitted by the Buyer on any quotation or purchase order. No other terms will be valid unless specifically agreed to in writing and signed by Seller. Failure of Seller to object to the provisions in any document sent by Buyer will not be deemed a waiver of the Terms or acceptance of any terms the Buyer may have requested. Buyer is deemed to have expressly accepted the Terms if Buyer requests or accepts delivery of any product. In the event that Seller consents to modify any of the following terms, the modification will be in writing signed by the parties which refers to the change to these Terms or will be expressly stated on the face of the Terms and endorsed by Seller.

2. Prices. Billings for products and services will be at the prices in Seller's acknowledgment unless otherwise specified by Seller in writing. In the event that the billed price is different from the quoted price, Buyer may send a written notice to Seller within five (5) days of the date of Seller's acknowledgment canceling the order without liability. The prices for standard products will be revised semi-annually. If after the semi-annual revision the parties cannot agree on a price either may in writing cancel purchase orders for standard products subject to the terms of §9 for which the parties were unable to agree upon a price. Seller will have the right to increase prices by an amount equal to any additional duty, tariff, tax, or other charge imposed as a result of any action by the federal, state or local government

Any balance remaining undelivered on any order after eighteen (18) months from the date the order is received may at Seller's option be cancelled. Unless otherwise agreed in writing or required by law, all prices will be quoted and billed exclusive of federal, state and local excise, sales and similar taxes. Those taxes will appear as additional terms on invoices. If Buyer claims exemption from those taxes, Buyer must provide a Certificate of Exemption at the time the purchase order is submitted.

3. Terms of Payment. Subject to credit approval by Seller, payment terms are Net thirty (30) days from date of invoice. Seller reserves the right to require payment in advance, C.O.D., and to modify credit terms. Each shipment will be a separate and independent transaction and will be invoiced separately. Buyer will pay for each shipment separately and as invoiced. Seller reserves the right to add a monthly interest charge equal to ten percent annual simple interest. Seller may accept partial payment in an amount less than the full amount of any invoice. The acceptance does not constitute a waiver of Seller's right to collect the balance or an accord and satisfaction despite Seller's endorsement of a check or other instrument.

If, in the judgment of Seller, the financial condition of Buyer at any time does not justify continuance of production or shipment on the terms of payment originally specified, Seller may stop production and charge Buyer an appropriate cancellation fee and require full or partial payment in advance. If bankruptcy, insolvency or any proceeding is brought by or against Buyer under the bankruptcy or insolvency laws, Seller may cancel any outstanding order without waiving its claim for damages or other remedies.

If shipments are delayed by Buyer without Seller's prior written consent, payments will be due on the date when Seller was prepared to make shipment. Products held for Buyer will be at Buyer's risk and expense.

4. Title and Delivery. Seller will ship by the method it deems most advantageous. Transportation will be collect. If transportation is prepaid, transportation will subsequently be billed to Buyer. Title passes to

Buyer and Seller's liability as to delivery ceases upon delivery of products to carrier at Seller's facility. Risk of loss or damage in transit rests with Buyer. Buyer must file all claims for loss or damage with the carrier. Claims against Seller for shortages occurring before delivery to carrier are waived unless made within ten (10) days after receipt at Buyer's designated facility. Seller has no obligation to ship via carrier that does not comply with applicable U.S. law.

All shipping dates and quantities are approximate. Seller will use reasonable commercial efforts to fill all orders according to the agreed schedule and quantity.

5. Contingencies/ Force Majeure. Seller is not be responsible for any failure to perform resulting from unforeseen circumstances or causes beyond Seller's reasonable control. Examples include but are not limited to:

- Strikes
- Floods
- Accidents
- Inability to obtain materials or supplies
- Any interruption for any reason in the manufacture of products by Seller's suppliers
- Excessive demand for products over the available supply
- Any act of God
- Fires
- Labor disputes
- Customs duties or surcharges
- The action of any government

In the event of any delay caused by such contingency, the date of delivery will, at the request of the Seller, be deferred for a period equal to the period of the delay.

When only part of Seller's capacity to perform is excused under this condition, Seller will attempt to allocate deliveries among its various customers in a commercially fair and reasonable manner. When such allocation has been made, reasonable notice of the estimated quota available to Buyer will be given.

6. Patents/Intellectual Property.

a. Seller will indemnify, defend and hold Buyer harmless against all expenses, damages, costs or losses resulting from a suit or proceeding brought by a third party which claims that the product, any part of the product, the process technology or methodology used to manufacture the product infringes any copyright, patent, trademark, mask work, trade secret, unfair competition, or other intellectual property right. Seller will have no duty to indemnify Buyer for any claims arising out of the circumstances described in subparagraph b, below.

b. Buyer will indemnify, defend and hold Seller harmless against all expenses, damages, costs or losses, including reasonable attorney's fees, resulting from a suit or proceeding brought by a third party which claims that the product, any part of the product, the process technology or methodology used to manufacture the product, infringes any copyright, patent, trademark, mask work, trade secret, unfair competition, or other intellectual property right, to the extent the third party claim arises out of (i) Seller's compliance with designs or specifications provided by Buyer (including, but not limited to, gate level or register transfer level netlists, physical or logical circuit schematics, algorithms, timing files, timing data, physical placement data, and design for test data); (ii) any modification of the product by Buyer without Seller's approval; or (iii) Buyer's use of the product in combination with any equipment, circuit, assembly, software, method or process.

c. In order to obtain a defense and indemnification, the party seeking a defense and indemnity will: (i) give prompt written notice of the claim to the other party; (ii) give the other party sole control of the defense and settlement of the claim; and (iii) provide to the other party all reasonably available information and assistance, at the other party's cost and expense. Neither party will enter into any settlement or compromise that materially affects the other party without the other party's prior written approval.

d. Should the manufacture, use and/or sale by Seller to Buyer of a product be enjoined or become the subject of a claim of infringement for which indemnity is provided under subparagraph (a), above, Seller

may elect to (i) procure the rights to continue to use and distribute the product, (ii) replace or modify the product to make it non-infringing without materially changing the form, fit, and function of the product, or (iii) discontinue production of product.

e. In no event will Seller's total liability under this provision exceed the total revenues paid by Buyer to Seller for the particular product at issue.

f. THE FOREGOING STATES THE EXCLUSIVE REMEDIES FOR THE PARTIES WITH RESPECT TO ANY ALLEGED COPYRIGHT, PATENT, TRADEMARK, MASK WORK, TRADE SECRET OR OTHER INTELLECTUAL PROPERTY RIGHT INFRINGEMENT BY SUCH PRODUCTS OR PARTS THEREOF.

7. Warranty and Sole Remedy

a. All Products Except Development Tools. For twelve (12) months* after the date of shipment, Seller warrants that the product to be delivered will (1) be free from defects in materials and workmanship under normal use and service and (2) will comply with the agreed specifications for the product. No other warranty period is expressed or implied.

***Display products are warranted for eighteen (18) months from date of manufacture.**

Deviations from specifications that do not materially affect performance of the product will not be deemed to constitute defects of material, workmanship or failure to comply with the specifications. Seller disclaims any warranty for defects arising out of designs or specifications provided by the Buyer including but not limited to Buyer's function and logic design, netlists and test methodologies.

Seller's warranty obligations are limited to replacing, repairing or giving credit, at its option, for any products that are returned to the Seller as provided and are shown to be defective.

BUYER ACKNOWLEDGES AND AGREES THAT THE PROVISIONS OF THIS WARRANTY CONSTITUTE THE SOLE AND EXCLUSIVE REMEDY AVAILABLE TO IT WITH REGARD TO SAID PRODUCTS.

EXCEPT FOR THE EXPRESS WARRANTIES PROVIDED IN THIS SECTION, ALL WARRANTIES WHETHER EXPRESS OR IMPLIED, INCLUDING ALL WARRANTIES THAT MIGHT ARISE FROM COURSE OF DEALING OR CUSTOM OF TRADE INCLUDING ALL IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, ARE EXPRESSLY EXCLUDED AND DISCLAIMED BY SELLER.

No agent, employee or representative of Seller has any authority to bind Seller to any declaration, representation or warranty relating to the products other than as specifically provided in writing.

The warranty is subject to the following conditions:

1) Buyer will notify Seller promptly in writing of any claims if product becomes defective during the warranty period.

2) Buyer will follow Seller's Return Material Authorization (RMA) procedures if Seller advises Buyer to return product for repair or replacement.

3) Buyer will reimburse Seller for all reasonable expenses incurred in traveling to and the shipping, handling, and inspection of product if product alleged by Buyer to be defective is (i) not under warranty, (ii) determined not to be defective, or (iii) defective due to any cause or condition not covered under the warranty.

4) Seller will accept products for warranty claim verification only when returned by Buyer in a condition that allows for suitable testing by Seller.

5) Products must be segregated by product type when more than one type of product is returned.

6) Buyer will pay all transportation charges for returned product. Seller will reimburse Buyer for shipping charges based on the percentage of the total returns that are found by Seller to be defective.

7) In no event will Seller be liable for any defective products if examination discloses that the defective condition was caused by misuse, abuse, improper installation or application, improper maintenance

or repair, assembly by other than Seller, alteration, accident or negligence in use, storage, transportation or handling

8) Any returned products electrically or mechanically destroyed by Buyer or third parties will not be covered by this warranty, and will not be returned to Buyer, but will be scrapped by Seller.

b. Microcomputer Development Tool (DT) Warranty: NO WARRANTY OBLIGATION WILL ARISE UNTIL BUYER REGISTERS THE TOOL BY COMPLETING AND MAILING THE REGISTRATION CARD TO SELLER WITHIN 30 DAYS OF THE PURCHASE DATE.

For twelve (12) months after the date of shipment, Seller warrants that the DT to be delivered will 1) be free from defects in materials and workmanship under normal use and service and 2) will comply with the agreed specifications for the DT. No other warranty period is expressed or implied.

Deviations from specifications that do not materially affect performance of the DT will not be deemed to constitute defects of material, workmanship or failure to comply with the specifications. Seller disclaims any warranty for defects arising out of designs or specifications provided by the Buyer including but not limited to Buyer's function and logic design, netlists and test methodologies.

1) Within 30 days after the discovery of defects, Buyer will contact the Seller's Field Applications Office (FAO) nearest Buyer's address. The FAO's Engineer will be the sole judge as to whether the DT is defective in either material or workmanship. If the DT is found to be defective, the FAO Engineer will contact Seller's Customer Service Department with instructions.

2) DT will be returned to Seller, freight prepaid by Buyer, in the original or similar package with the same or more protection. Buyer will provide sufficient information about any alleged defects to allow Seller to determine the existence and cause of said defects.

3) Upon receipt of alleged defective DT, Seller will at its option (a) repair or replace the DT without charge or (b) refund the purchase price of the DT. Returned DT where the DT has been replaced or Buyer has been given credit become the property of Seller.

4) If DT is not defective, defective for any reason other than those explicitly covered by this warranty, or not repairable, Seller will return DT to Buyer. Where the returned product is not covered by warranty, Buyer will pay to Seller any and all cost of inspection and transportation.

5) If the DT is defective and repairable but not covered by this warranty, Seller may offer to repair said DT at Buyer's expense.

6) This warranty does not apply:

- a. if the DT was not purchased from Seller or its authorized Distributor;
- b. if Buyer fails to register the DT or file warranty claim within the period and in the manner specified above;
- c. to normal wear and tear of the DT;
- d. if the DT was not used as specified in the applicable manuals and other operating instructions or if defect was caused by misuse, abuse, improper installation, operation, maintenance, repair, alteration or modification, or accident or negligence in use, storage, transportation or handling;
- e. to any defects caused by equipment or other devices connected to DT; or
- f. to consumable parts and components.

BUYER ACKNOWLEDGES AND AGREES THAT THE PROVISIONS OF THIS WARRANTY CONSTITUTE THE SOLE AND EXCLUSIVE REMEDY AVAILABLE TO IT WITH REGARD TO DT.

EXCEPT FOR THE EXPRESS WARRANTIES PROVIDED IN THIS SECTION, ALL WARRANTIES WHETHER EXPRESS OR IMPLIED, INCLUDING ALL WARRANTIES THAT MIGHT ARISE FROM COURSE OF DEALING OR CUSTOM OF TRADE INCLUDING ALL IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, ARE EXPRESSLY EXCLUDED AND DISCLAIMED BY SELLER.

8. Product Discontinuance. Seller reserves the right to discontinue production of any product at any time without notice. In the event that product is discontinued, Seller will not discontinue production until Seller has produced the quantity of product for which Seller has acknowledged a purchase order from Buyer and scheduled product for shipment within six (6) months of the date of acknowledgement.

9. Cancellation by Buyer. Orders for standard products may be cancelled on thirty- (30) day prior written notice to Seller. Orders for custom ASIC, semi-custom ASIC products or other semi-custom products which have special markings, received special testing, or are specially programmed for Buyer may not be cancelled except under the provisions of a prior written agreement between Buyer and Seller. If a prior written agreement is not in place the charges shall be 100%.

10. Property Rights. The design, development or manufacture by Seller of a product for Buyer will not be deemed to produce a work made for hire and will not give Buyer any copyright, trademark, patent, trade secret or other intellectual property rights in the product or any interest in all or any portion of the mask works relating to the product. All such rights will remain the property of Seller and no license of any type express or implied is granted to Buyer under the Terms. No license, express or implied with regard to any trademark of Seller or its affiliated companies is granted to Buyer under the Terms.

Even if Seller provides product exclusively to Buyer, Seller will retain possession of all masks. All masks unique to the Buyer's design will be held by Seller for the exclusive use of Buyer. Seller will not use the mask for any party without authorization from Buyer.

If Buyer places no production orders for six (6) months from the date of engineering sample approval or six (6) months from the last production delivery, Seller is free to dispose of such mask with no further obligation to Buyer.

11. Special, Incidental, Consequential, Punitive or Indirect Damages. INDEPENDENT OF ANY OTHER LIMITATION AND REGARDLESS OF WHETHER THE PURPOSE OF THE LIMITATION IS SERVED, IT IS AGREED THAT IN NO EVENT WILL SELLER BE LIABLE FOR SPECIAL, INCIDENTAL, CONSEQUENTIAL, PUNITIVE OR INDIRECT DAMAGES.

12. Limitations of Actions. No action against Seller for breach will be commenced more than one (1) year after the accrual of the cause of action.

13. Assignment. Buyer will not assign the Terms or any interest or rights in the Terms without the prior written consent of Seller.

14. Tools, Etc. Unless agreed in writing, Seller will retain title to and possession of any models, drawings, composites, patterns, dies, molds, masks, working plates, schematics, bread boards, jigs, fixtures and tools made for or obtained for the furnishing of products hereunder. Tools, dies, and other equipment furnished to Seller will be at Buyer's risk and expense.

15. Export. Diversion of purchased products, software, or technology contrary to U.S. law is prohibited. Buyer will use its best efforts to cooperate with Seller to identify and classify controlled items and technology transferred by Buyer to Seller. For "items" and "technologies" controlled under the Export Administration Regulations ("EAR") (15 C.F.R. 730-774) of the U.S. Department of Commerce, Bureau of Industry & Security, Buyer will notify Seller of the applicable Export Control Classification Numbers ("ECCN") for each item and/or technology prior to transfer or release to Seller. For items and technologies controlled under the International Traffic in Arms Regulations (22 C.F.R. 120-130), Buyer will inform Seller of such items and technologies prior to transfer or release to Seller.

16. Government Contracts. If Buyer's original Purchase Order indicates by contract number that it is placed under a government contract, Buyer will notify Seller of the Federal Acquisition Regulations (FAR) requirement applicable to the purchase order. "Contracting Officer" will mean "Buyer," "Contractor" will mean "Seller," and the term "Contract" will mean the "Terms."

17. Fair Labor Standard Act. Seller will fully comply with all requirements of the Fair Labor Standards Act of 1938 as amended for the production of the product or the performance of covered services.

18. Variation in Quantity. If Buyer's purchase order is for custom ASIC, semi-custom ASIC products or other semi-custom products which have special markings, received special testing, or are specially programmed for Buyer, it is agreed that Seller may ship a quantity which is five percent (5%) more or less than the ordered quantity and that such quantity shipped will be accepted and paid for in full satisfaction of each party's obligation for the quantity ordered or received.

19. Local Currency. All purchase orders will be in U.S. Dollars. All payment of invoices will be in U.S. Dollars.

20. Confidential Information. Seller has no obligation to hold any information received from Buyer in confidence unless the information is covered by a written, signed, separate, negotiated Non-Disclosure Agreement.

21. Governing Law: Severability. The laws of the State of California will govern the Terms. Any provisions which are unenforceable in any jurisdiction will not affect the remaining provisions or the enforceability of the provisions in any other jurisdiction. Buyer consents to the exercise of jurisdiction by any state or federal court within the State of California.

22. Dispute Resolution. If a disagreement whether in tort, contract or otherwise arises between Buyer and Seller, the parties will meet to attempt to resolve the disagreement. If the parties cannot resolve the disagreement, they will submit the matter to mediation. The parties will mutually agree on a suitable mediator. At least ten (10) business days before the mediation each side will provide the mediator with a statement of its position and copies of all supporting documents. Each party will send to the mediation a person who has authority to bind the party. If the disagreement cannot be resolved at mediation, a binding arbitration will be held. Prior to the arbitration the parties will agree to the rules of the arbitration. To the extent that Buyer and Seller cannot agree to the rules of the arbitration, the Rules of the California Code of Civil Procedure will apply. The arbitration will be held in Santa Clara County. Neither party will sue the other except for enforcement of the arbitrator's decision. Any arbitration proceeding must be commenced within one (1) year after the accrual of the disagreement or controversy.

23. Modifications. Any addition, deletion or modification of the Terms will not be binding on Seller unless it is in writing and signed by an officer of Seller. Any change made by Seller will be deemed accepted by Buyer unless within ten (10) days from notice of the change Buyer notifies Seller of Buyer's exception to the change. A waiver by the Seller of any default or of any of the terms of the Terms will not be deemed to be a continuing waiver of any other default or of any other terms. The waiver only applies to the instance to which the waiver is directed.

24. Publicity. Neither party will publicize nor disclose the existence of terms and conditions of the Terms or any transactions without the express, prior written consent of the other party.

25. Prohibited Uses. Parties agree that product is designed and intended for commercial use only. Seller's product is not authorized for use as critical components in military or medical applications, nuclear facilities or systems, or any other application where product failure could lead to loss of life or catastrophic property damage.

Seller products described herein are not authorized for use as **critical components in life support systems** without the written consent of an officer of Seller.

- **Life support systems** are either systems intended for surgical implant in the body or systems which sustain life.
- A **critical component** is any component of a life support system whose failure to perform may cause a malfunction or failure of the life support system, or may affect its safety or effectiveness.

The inclusion of products in life support devices or systems without the express written approval of an officer of Seller implies that the manufacturer assumes all risk of such use and in so doing indemnifies Seller against all damages and attorney's fees.