



STANDARD TERMS AND CONDITIONS OF SALE

GENERAL PROVISIONS. Our terms and conditions apply exclusively and govern the sale of all products and services ("Products") by New Source Technology, LLC ("NST") and apply notwithstanding any conflicting terms or conditions in any purchase agreement, purchase order, or other document or communication with BUYER. THESE TERMS AND CONDITIONS MAY ONLY BE WAIVED OR MODIFIED IN A WRITTEN AGREEMENT SIGNED BY AN AUTHORIZED REPRESENTATIVE OF NST. NEITHER NST'S ACKNOWLEDGMENT OF A PURCHASE ORDER NOR NST'S FAILURE TO OBJECT TO CONFLICTING, CONTRARY OR ADDITIONAL TERMS AND CONDITIONS IN A PURCHASE ORDER SHALL BE DEEMED AN ACCEPTANCE OF SUCH TERMS AND CONDITIONS OR A WAIVER OF THE PROVISIONS HEREOF.

1. **ORDERS.** Orders shall be initiated by Buyer through an acceptable means of communication to NST. All orders shall identify the Products, quantities, applicable prices and requested delivery dates. All orders are subject to express acceptance of NST.

2. **PRICES.** Prices quoted by NST are in U.S. dollars. Prices shall be as specified by NST and shall be applicable for the period stated by NST. All prices quoted are F.O.B. NST's facility and do not include taxes, freight, handling, duty, or other similar charges. Buyer shall be solely responsible for the payment of all taxes and related costs.

3. **METHODS OF PRE-PAYMENT.** All orders requiring pre-payment originating outside of the United States must be pre-paid by certified bank check, wire transfer, or confirmed irrevocable letter of credit, absent NST's prior written approval. Buyer shall be solely responsible for all applicable bank fees and/or charges associated with such pre-payment arrangements.

4. **TERMS OF PAYMENT.** Terms of payment for each Buyer shall be those specified by NST at the time of order. NST may, at its sole discretion, withhold shipment and delivery of all or any part of an order or cancel any order if at anytime: (1) Buyer's account with NST is in arrears; (2) NST reasonably believes Buyer is not creditworthy; (3) Buyer fails to comply with NST pre-payment requirements; or (4) any payment instrument of Buyer dishonored. Buyer shall pay interest on any account not paid when due from the due date to the date of payment at the rate of one and one-half (1-1/2%) percent per month plus a late charge of five (5%) percent. If Buyer fails to make payment when due, NST reserves the right to pursue all available remedies and shall be reimbursed by Buyer for all costs associated with collection of payment and reasonable attorney's fees.

5. **CANCELLATION OF ORDERS.** Orders cancelled by Buyer for custom, modified, or special configuration Products are subject to a cancellation charge, at NST's discretion, of up to one hundred (100%) percent of the purchase price. For standard Products, cancellations are subject to a twenty (20%) percent cancellation charge. Standard Products are defined as those Products that have multiple users and are immediately resalable. NST has the sole discretion in determining all Product classifications.

6. **SHIPMENT AND DELIVERY.** Selection of carriers and delivery methods shall be made by NST unless a contrary agreement has been reached with Buyer. The time of delivery dates requested by Buyer are binding. NST shall use reasonable efforts to initiate shipment and schedule delivery as close as possible to Buyer's requested delivery dates but all delivery dates agreed upon by NST are approximates only. NST shall not be liable for any failure or delay in the delivery or shipment of products.

7. **ACCEPTANCE OF PRODUCTS AND PRODUCT RETURNS.** Buyer is deemed to accept Products unless written notice of rejection is received by NST within ten (10) business days after delivery of the Products. Buyer waives any right to revoke acceptance thereafter. Buyer shall report any discrepancy in shipment quantity or damage within ten (10) business days after delivery. No return of Products shall be accepted by NST without a Return Material Authorization ("RMA") number and are to be returned at Buyer's expense. Returned Products without an RMA number will not be accepted by NST.

8. **PRODUCTS COMPOSED OF CUSTOMER-SUPPLIED MATERIALS.** Products manufactured all or in part from customer-supplied material are subject to additional terms and conditions, as set forth by NST.

9. **NST'S LIMITED WARRANTY.** NST warrants to Buyer that upon delivery the Products purchased shall conform to the applicable manufacturer's specifications for such products. In the event the Products do not meet manufacturer's specifications, Buyer's remedy under these warranties is limited, at NST's election to: (1) replacement of the Product; (2) repair of defects; or (3) refund of the purchase price. NST MAKES NO OTHER WARRANTY, EXPRESS OR IMPLIED (INCLUDING, BUT NOT LIMITED TO, MERCHANTABILITY, FITNESS FOR PARTICULAR PURPOSE, OR OTHERWISE), REGARDING THE PRODUCTS AND NONE SHALL BE IMPUTED OR PRESUMED. NST ASSUMES NO RESPONSIBILITY OR LIABILITY FOR MANUFACTURER'S PRODUCT SPECIFICATIONS OR THE PERFORMANCE OR ADEQUACY OF ANY DESIGN OR SPECIFICATIONS PROVIDED TO NST BY OR ON BEHALF OF CUSTOMER.

10. **LIMITATION ON LIABILITIES.** UNDER NO EVENT SHALL NST BE LIABLE TO BUYER FOR ANY DIRECT, INDIRECT, INCIDENTAL, CONSEQUENTIAL, SPECIAL, EXEMPLARY, OR PUNITIVE DAMAGES. SUCH LIMITATION OF LIABILITY SHALL APPLY TO ALL CIRCUMSTANCES, INCLUDING, WITHOUT LIMITATION, BUSINESS INTERRUPTION COSTS, REMOVAL, AND/OR REINSTALLATION COSTS, REPROCUREMENT COSTS, LOSS OF PROFIT OR REVENUE, PROMOTIONAL OR MANUFACTURING EXPENSES, AND OVERHEAD COSTS. SUCH LIMITATION ON LIABILITY SHALL ALSO APPLY TO INJURY TO REPUTATION AND LOSS OF CUSTOMERS. SUCH LIMITATION ON LIABILITY SHALL APPLY EVEN IF NST HAS BEEN ADVISED BY BUYER OF THE POSSIBILITY OF SUCH DAMAGES. SUCH LIMITATION SHALL APPLY TO THE FULLEST EXTENT PERMITTED BY LAW.

11. **TITLE AND RISK OF LOSS.** The legal title to the Products shall pass to Buyer at the point at which risk of loss passes under Incoterms 2000, regardless of any contrary interpretation, unless expressly agreed to by NST in writing.

12. **FORCE MAJEURE.** NST shall not be liable for failure to fulfill its obligations herein or for delays in delivery due to causes beyond its reasonable control, including, but not limited to, acts of God, natural disasters, acts or omissions of other parties, acts or omissions of civil or military authority, government priorities, changes in law, material shortages, fire, strikes, floods, epidemics, quarantine restrictions, riots, war, acts of terrorism, delays in transportation or inability to obtain labor or materials through its regular sources. NST's time for performance of any such obligation shall be extended for the time period of such delay or NST may, at its option, cancel any order or remaining part thereof without liability by giving notice of such cancellation to Buyer.

13. **EXPORT CONTROLS.** The sale, resale, or other disposition of Products and any related technology or documentation are subject to the export control laws, regulations, and orders of the United States and may be subject to the export and/or import control laws and regulations of other countries. Buyer agrees to comply with all such laws, regulations, and orders and acknowledges that it shall not directly or indirectly export any Products to any country to which such export or transmission is restricted or prohibited.

14. **SEVERABILITY.** If any provision of these Terms and Conditions is held invalid, such invalidity will not affect other provisions or applications of these Terms and Conditions.

15. **ENTIRE AGREEMENT.** This document constitutes the complete and exclusive agreement between NST and Buyer unless the parties have executed an applicable written agreement. Any additional or different terms are objected to and will not be binding unless expressly agreed to by NST in writing.

16. **CHOICE OF LAW.** THESE TERMS AND CONDITIONS SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF CALIFORNIA, USA, WITHOUT REGARD TO CHOICE OR CONFLICTS OF LAWS PRINCIPLES. THE UNITED NATIONS CONVENTION FOR THE INTERNATIONAL SALE OF GOODS SHALL NOT APPLY. BUYER CONSENTS TO THE JURISDICTION AND VENUE OF THE COURTS OF PROPER SUBJECT MATTER JURISDICTION LOCATED IN THE STATE OF CALIFORNIA, USA, COUNTY OF ALAMEDA, OR, IF IT HAS OR CAN ACQUIRE JURISDICTION, IN THE UNITED STATES DISTRICT COURT FOR THE SAME JURISDICTION, FOR ALL PURPOSES RELATED TO THESE TERMS AND CONDITIONS. BUYER CONSENTS TO THE JURISDICTION OF SUCH COURTS (AND OF THE APPROPRIATE APPELLATE COURTS) IN ANY SUCH ACTION OR PROCEEDING AND WAIVES ANY OBJECTION TO VENUE LAID THEREIN.