

1. DEFINITIONS

In these Standard Terms and Conditions of Sale ("Terms") the following definitions apply: "Acknowledgment" means the Seller's standard sales order acknowledgment document.

"Customer" means the person, firm, body or company to whom a quotation is made and/or to whom an Acknowledgment is sent by Seller.

"Contract" means the binding contract between the Customer and the Seller for the sale and purchase of the Products.

"Delivery" means the making available to Buyer the Products specified in an Acknowledgement.

"Product" means a product that the Seller offers to sell, and/or sells (or agrees to sell) pursuant to a Contract.

"Seller" means either Necsel, Inc. or any of its subsidiaries and/or affiliates as indicated on a quotation and/or an acknowledgement.

References to Clauses mean clauses of these Terms, Clause headings are for convenience only.

2. FORMATION OF CONTRACT

2.1 Any written quotation of the Seller is (except as otherwise stated therein):

- a) an offer to sell Products in accordance with these Terms; and
- b) valid for thirty (30) days from the date thereof (subject to any written extension or earlier withdrawal by Seller).

2.2 Any published price list of Seller does not represent an offer open for acceptance.

2.3 Seller shall sell the Products to the Customer in accordance with any Customer order:

- a) That constitutes an unqualified acceptance of Seller's written quotation; or
- b) That Seller, at its sole discretion accepts (either in whole or in part).

2.4 Any Customer order conforming to Clause 2.3 will be accepted by means of the Acknowledgement. Such acceptance shall form a Contract governed solely by these Terms.

2.5 These Terms shall override all other terms and/or conditions or warranties (if any) imprinted on or referred to in an order, form or other document issued by the Customer (none of which shall apply), and no alteration of the Terms will bind the Seller unless expressly accepted in writing by the Seller.

2.6 Contracts shall be non-cancellable in whole or in part. Any indulgence or waiver that Seller may make shall be at Seller's discretion, on a case-by-case basis and subject to Clause 15.8.

3. DELIVERY & PASSING OF RISK

3.1 Unless otherwise agreed in the Acknowledgement, Delivery of Products shall be ex-works (EXW) (the Seller's applicable shipment facility as stated in the Acknowledgement) (Incoterms 2010).

3.2 The Seller will use its reasonable endeavors to meet any time or date for Delivery stated in the Acknowledgement.

3.3 Delivery may be made in one or more separate consignments.

3.4 The Customer shall be deemed to have accepted the Products within fourteen (14) calendar days of Delivery.

3.5 Risk of loss and damage to Products shall pass to the Buyer upon Delivery. Title shall pass to Buyer as provided in Section 6.3 of these Terms.

3.6 If due Delivery is delayed for reasons attributable to the Customer or its agents, storage and any other reasonable costs will be payable by the Customer on demand by Seller and notwithstanding Clause 3.5 the Products shall be at the Customer's risk from the commencement of the delay. Seller reserves the right to invoice the Customer for the Products and to commence the warranty period given in Clause 8 with effect from the original due delivery date.

4. PRICE

4.1 The price shall be the Seller's quoted price, or, in the event of any conflict, the price in the Acknowledgement.

4.2 The price includes packaging in accordance with the Seller's normal practice.

4.3 The price excludes (as applicable) any and all:

a) Value-Added or other similar sales or other taxes levied upon Products supplied by Seller, and

b) additional costs and charges incurred by Seller for shipping, insurance and special handling from applicable Seller's facility; all of which shall be charged in addition to the price.

4.4 Customer agrees to pay all such amounts due and payable pursuant to Clause 4.3, or supply exemption documentation. Also, if applicable, Customer shall be responsible for any personal

property taxes arising in relation to each item of the Products from the date of Delivery.

4.5 Reference in these Terms to "tax" or "taxes" include excise, duties, levies and all such similar forms of taxes.

5. PRICE VARIATION

The Seller reserves the right to vary the price of the Products to be supplied pursuant to the Contract in proportion to any verifiable change of costs to the Seller between the date of the Acknowledgement and the date of Delivery (including but not limited to exchange rate variations, labor costs, material costs, transport costs and taxes) or where the change is due to any act or default of the Customer.

6. PAYMENT

6.1 Subject to Clause 6.2, Customer shall pay amounts due within thirty (30) days of the invoice date in the same currency as stated in the Seller's invoice. Customer shall be liable to pay interest on any late payments at the rate of eighteen percent (18%) per annum (one and one half percent (1½%) per month). Additionally, if any payment is more than fifteen (15) days past due, Seller shall be entitled to suspend performance of any or all of its obligations under the Contract until all such payments are made.

6.2 The Seller reserves the right to require payment by an irrevocable letter of credit confirmed by a high-rated world bank (chosen at Seller's discretion) to be established in favor of the Seller and to have an initial validity period not less than the Delivery period in the Acknowledgement plus one calendar month. The letter of credit shall permit part shipments and provide for the release of one hundred percent (100%) of the Contract value of the Products comprising each shipment. The Seller shall be under no liability to deliver any Products until a letter of credit has been opened in accordance with this Clause 6.2.

6.3 Legal and beneficial title in the Products shall remain in the Seller until payment in full has been received by the Seller for all sums due to the Seller by the Customer under all contracts between them. Until such time the Customer shall hold the Products as the Seller's fiduciary agent and bailee and the Seller may require return of the Products. For the purpose of recovery of the Products the Customer grants the Seller an irrevocable license to enter on any premises where the Products are situated (or are reasonably thought to be situated) to repossess them and the Customer agrees to pay any costs of repossession. The customer will store the Products separately and in such a way to enable them to be clearly identified as the Seller's property. Notwithstanding the above risk in the Products shall pass as in Clause 3.5.

6.4 The Customer shall not be entitled to exercise any right of sell-off or counter claim against Sellers invoices.

7. SPECIFICATION & CHANGES

7.1 The specifications for Products shall be set forth in the Acknowledgement ("Specifications"). No other specification, descriptive material, written or oral representation, correspondence or statement, shall form part of or be incorporated by reference into the Contract.

7.2 Seller may make alterations to any Product as necessary to ensure compliance with specifications, changed safety or environmental standards or governmental regulations, to make a Product non-infringing with respect to any patent, copyright or other proprietary interest, or to otherwise improve a Product. Seller will use reasonable endeavors to promptly notify Customer of any such material changes.

8. WARRANTY OF PRODUCTS.

8.1 Seller warrants that the Products, but not related services,

- i) are free from defects in materials and workmanship and
- ii) conform in all material respects to the Specifications.

For Products that contain an optoelectronic component subject by its nature to a normal degree of performance degradation with operational use and / or time such degradation shall not constitute a "defect" for purposes of this warranty.

8.2 The warranty period for Products shall be twelve (12) months from the date of shipment unless otherwise stated on the Acknowledgment.

8.3 If any Product is found by Seller not to function as warranted during the warranty period, Seller will determine at its sole option to either

- i) make it do so, or
- ii) replace it with equivalent conforming Product.

8.4 If Seller determines, at its sole option, that repair or replacement, cannot be made using commercially reasonable efforts, Seller will refund to Customer the price paid for the Product.

8.5 Any replacement Product will conform to the original applicable specification and will be equivalent to the exchanged Product in all material respects. Seller shall own the replaced Product.

8.6 The warranty period for the replacement Product shall be the greater of ninety (90) days from

the date of such replacement or the remaining replaced Product warranty period.

8.7 Seller shall be responsible for loss of, or damage to, Customer returned Product while it is in Seller's possession during warranty service until re-delivery to Customer or until delivery of replacement or until repayment pursuant to Clause 8.4 (as applicable).

8.8 No warranty is provided for

- i) supply items normally consumed during operation of the Products;
- ii) failures caused by non-Seller products;
- iii) failures caused by a Product's inability to operate in conjunction with other Customer hardware or software;
- iv) performance failures resulting from services not performed by Seller or
- v) development, pre-production or any form of prototype whatsoever.

8.9 Warranty will be voided by misuse, improper handling or storage, improper installation or repair, accident, damage or modification, accident, damage or modification, failure to maintain proper physical or storage/operating environment or improper Customer maintenance not approved by Seller in writing.

8.10 The terms of this Clause 8 set out the Seller's entire liability to remedy any defect or default in the Products.

ALL WARRANTIES, REPRESENTATIONS, TERMS OR CONDITIONS, EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO THE IMPLIED WARRANTIES OR CONDITIONS OF SATISFACTORY QUALITY AND FITNESS FOR A PARTICULAR PURPOSE ARE HEREBY EXPRESSLY EXCLUDED TO THE FULLEST EXTENT PERMITTED BY LAW. THE PRODUCTS ARE NOT AUTHORIZED FOR USE BY CUSTOMER OR ANY THIRD PARTY AS CRITICAL COMPONENT IN LIFE SUPPORT PRODUCTS OR SYSTEMS OR FOR USE IN AVIATION, NUCLEAR OR ANY OTHER INHERENTLY DANGEROUS APPLICATION WITHOUT THE EXPRESS WRITTEN APPROVAL OF SELLER. LIFE SUPPORT PRODUCTS OR SYSTEMS ARE THOSE WHICH ARE INTENDED TO SUPPORT OR SUSTAIN LIFE AND WHOSE FAILURE TO PERFORM CAN REASONABLY BE EXPECTED TO RESULT IN A SIGNIFICANT INJURY TO THE USER. CRITICAL COMPONENTS ARE THOSE COMPONENTS WHOSE FAILURE TO PERFORM CAN REASONABLY BE EXPECTED TO CAUSE FAILURE OF A LIFE SUPPORT DEVICE OR

SYSTEM OR AFFECT ITS SAFETY OR EFFECTIVENESS.

9. WARRANTY CLAIM PROCEDURE

9.1 Seller will provide warranty services to Customer consistent with Seller's current standard practices and response times. Where applicable, before Seller provides warranty services, Customer agrees to follow the problem determination, problem analysis, and warranty services request procedures that Seller provides.

9.2 When returning Product to Seller for warranty service, Customer agrees to ship it prepaid and suitably packaged to a location Seller designates.

9.3 If not found by Seller to be in breach of warranty the Products will be returned to the Customer at Customer's expense and the Seller may charge an evaluation and test fee not exceeding fifteen percent (15) of the price of the Products so affected. If the Products are found to be in breach of warranty, any replacements or repaired Products will be returned to the Customer at the Seller's expense.

9.4 Post warranty services may be available at Seller's then-current prices.

10. INTELLECTUAL PROPERTY

10.1 All intellectual property and other proprietary rights relating to Products (including, but not limited to, patents, copyright and trademarks) and all technical, business and similar information of Seller or which is created by the Seller in course of the Contract shall be, and shall remain, the Sellers property.

10.2 Customer agrees not to remove, alter, obscure or deface any marks, names, notices or numbers affixed to the Products without the Sellers written consent.

10.3 Customer agrees not to, and will not encourage, assist or authorize any other person to reverse engineer, decompile, or disassemble the Product or any software contained therein, or otherwise attempt to derive software source code or other technology related to the Product.

10.4 If a third party claims that Products provided to Customer under the Contract infringe that party's patent or copyright, Seller will defend Customer against that claim at Seller's expense and pay all costs and damages that a court finally awards or are agreed in settlement, provided that Customer

- a) promptly notifies Seller in writing of the claim and
- b) allows Seller to control, and cooperates with Seller in, the defense and any related settlement negotiations.

10.5 If such a claim is made or appears likely to be made, Seller agrees to secure the right for Customer to continue to use the Product, or to modify it, or to replace it with one that is equivalent. If Seller determines that none of these alternatives is reasonably available, Customer agrees to return the Product to Seller on Seller's written request. Seller will then give Customer a credit equal to the depreciated value for the Product.

10.6 Any such claims against the Customer or liability for infringement arising from use of the Product following a request for return by Seller are the sole responsibility of Customer. This represents Seller's entire obligation to Customer regarding any claim of infringement.

10.7 Seller has no obligation regarding any claim based on any of the following:

- a) anything Customer provides which is incorporated into the Product;
- b) functionality provided by Seller at the instruction of Customer;
- c) Customer's modification of Product;
- d) the combination, operation, or use of Product with other products not provided by Seller; or
- e) Customer's failure to install any upgrade provided by Seller at no cost.

11. LIMITATION OF LIABILITY

11.1 IN NO EVENT WILL SELLER OR ITS SUPPLIERS BE LIABLE FOR ANY COSTS OF PROCUREMENT OF SUBSTITUTE GOODS OR SERVICES, INDIRECT, CONSEQUENTIAL, EXEMPLARY, PUNITIVE, SPECIAL, OR INCIDENTAL DAMAGES, INCLUDING WITHOUT LIMITATION ANY DAMAGES FOR LOSS OF USE, OPPORTUNITY, MARKET POTENTIAL, GOODWILL, REVENUE OR PROFITS, ARISING FROM OR RELATING TO THE CONTRACT, HOWEVER CAUSED AND ARISING UNDER ANY THEORY OF LIABILITY, INCLUDING BUT NOT LIMITED TO CONTRACT OR TORT (INCLUDING PRODUCTS LIABILITY, STRICT LIABILITY AND NEGLIGENCE), AND EVEN IF SUCH PARTY KNEW OR SHOULD HAVE KNOWN OF THE POSSIBILITY OF SUCH DAMAGES. IN NO EVENT WILL SELLER'S AND ITS SUPPLIERS' TOTAL AGGREGATE LIABILITY ARISING FROM OR RELATED TO THE CONTRACT EXCEED THE LESSER OF

(A) THE AMOUNTS ACTUALLY RECEIVED BY SELLER FROM CUSTOMER DURING THE SIX (6) MONTH PERIOD IMMEDIATELY PRECEDING THE MOST RECENT CLAIM BROUGHT BY CUSTOMER

AGAINST SELLER UNDER OR RELATED TO THE CONTRACT, OR

(B) **TWO HUNDRED FIFTY THOUSAND DOLLARS (US\$250,000)**. THE FOREGOING LIMITATIONS SHALL APPLY NOTWITHSTANDING THE FAILURE OF ESSENTIAL PURPOSE OR ANY OTHER FAILURE OR INADEQUACY OF ANY LIMITED REMEDY STATED IN THE CONTRACT.

THE CONTRACT STATES THE ONLY AND EXCLUSIVE REMEDIES FOR ANY AND ALL CLAIMS MADE AGAINST SELLER OR ITS SUPPLIERS WITH RESPECT TO SELLER PRODUCTS AND/OR THE CONTRACT. THE PARTIES AGREE THAT THIS CLAUSE 11 REPRESENTS A REASONABLE ALLOCATION OF RISK.

11.2 This limitation will not apply to claims for damages for bodily injury (including death) and damage to real property and tangible personal property caused by the negligence of Seller or in the case of fraudulent misrepresentation by Seller.

11.3 In no event shall Seller or its agents or suppliers be liable for any of the following:

- a) damages based on any third party claim except as expressly provided in Clauses 10 and 11; or
- b) loss of, or damage to, Customer's records, files or data, even if Seller is informed of their possibility.

12. TERMINATION

The Seller may terminate the Contract forthwith if the Customer breaches any of the Terms or becomes insolvent or enters any arrangement with creditors or goes or is put into liquidation or suffers the appointment of a receiver. Upon termination the Seller shall have no more obligations to the Customer under the Contract. Termination shall not prejudice the Seller's right to payment for Products delivered prior to termination but not paid for by the Customer.

13. CONFIDENTIALITY

13.1 "Confidential Information" means any information disclosed by one party (and with respect to Seller, including its affiliates and subsidiaries) (the "Disclosing Party") to the other Party (the "Receiving Party") that:

- (a) if disclosed in tangible form, is conspicuously marked with a "confidential", "proprietary" or some similar legend to indicate its confidential nature;
- (b) if disclosed orally, is clearly designated as confidential at the time of disclosure and is specifically identified in a confirmatory writing sent to the Receiving Party within thirty (30) calendar days after initial disclosure; or

(c) would otherwise reasonably expected to be treated in a confidential manner under the circumstances of disclosure.

Neither party may disclose the existence and the general nature of the Contract nor the terms and conditions of the Contract. Notwithstanding the above, the Receiving Party shall not have any obligations under this Clause 13 with regard to any Confidential Information of the Disclosing Party that:

(i) was generally known and available in the public domain at the time it was disclosed or becomes generally known and available in the public domain through no act or omission of the Receiving Party;

(ii) can be documented as previously known by the Receiving Party without confidentiality obligations prior to disclosure thereof by the Disclosing Party to the Receiving Party;

(iii) is disclosed without confidentiality obligations with the prior written approval of the Disclosing Party;

(iv) was independently developed by the Receiving Party without any use of the Disclosing Party's Confidential Information; or

(v) becomes known to the Receiving Party without confidentiality obligations from a third party who was permitted to disclose such information.

13.2 The Receiving Party shall not use any Confidential Information of Disclosing Party for any purpose except to perform its obligations and exercise its rights under the Contract. The Receiving Party shall not disclose any Confidential Information of Disclosing Party to third parties or to such party's employees and independent contractors, except that, subject to the provisions below, the Receiving Party may disclose the Disclosing Party's Confidential Information to those employees and independent contractors of the Receiving Party who are required to have the information in order to perform the Receiving Party's obligations and exercise the Receiving Party's rights under the Contract. The Receiving Party shall take at least those measures that it takes to protect its own confidential information of a similar nature but in no event less than reasonable care. The Receiving Party shall ensure that its employees and independent contractors who have access to Confidential Information of the Disclosing Party have signed a non-use and non-disclosure agreement in content at least as protective of the Disclosing Party's Confidential Information as the provisions of the Contract, prior to any disclosure of the Disclosing Party's Confidential Information to such employees and independent contractors. If the Receiving Party is required by applicable law or regulation to make any disclosure that is prohibited or otherwise constrained by the Contract, the Receiving Party will provide the Disclosing Party with prompt written notice of such

requirement prior to such disclosure so that the Disclosing Party may seek a protective order or other appropriate relief. Subject to the foregoing sentence, the Receiving Party may furnish that portion (and only that portion) of the Confidential Information that it is legally compelled or is otherwise legally required to be disclosed; provided, however, that the Receiving Party provides such assistance as the Disclosing Party may reasonably request in obtaining such order or other relief at the Disclosing Party's option and expense. Notwithstanding the other provisions of the Contract, each party may disclose the terms of the Contract: Disclosing Party to third party's

(a) in connection with the requirements of an initial public offering or other filing in connection with applicable securities law so long as the Disclosing Party redacts information to the maximum extent allowed by law;

(b) in confidence, in connection with a merger or acquisition or proposed merger or acquisition, or the like,

(c) in confidence, to accountants, banks, attorneys and financing sources and their advisors; and/or

(d) in confidence, in connection with the enforcement of the Contract or rights under the Contract.

13.3 Each party agrees that any violation or threatened violation of the Contract may cause irreparable injury to the other party, entitling the other party to seek injunctive relief in addition to all legal remedies.

14. ITEMS SUPPLIED BY CUSTOMER

Any items supplied by Customer for the purposes of the Contract ("Infeed Item") shall be of suitable quality, in accordance with the relevant specification and shall be provided free of charge in sufficient quantities and at the times required by Seller.

Customer shall indemnify Seller from and against all actions, demands, claims, proceedings, losses, or costs resulting from a defective Infeed Item, or from any liability for infringement of a third party's intellectual property rights arising from the supply or subsequent use or sale of Infeed Items.

15. GENERAL PROVISIONS

15.1 Customer agrees not to assign, or otherwise transfer the Contract or Customers rights under it, or delegate Customers obligations, without Sellers prior written consent, and any attempt to do so is void.

15.2 Customer represents and warrants that it is buying Products for its own internal use and/or for incorporation in other Customer hardware or software to be sold to third parties as an aggregate product or system. Customer agrees that it shall not resell

Products to third parties in the same or similar form as sold by Seller to Customer without receiving prior written consent from Seller.

15.3 Seller and Customer agree to comply with all applicable laws including, without limitation, all applicable export and import laws and regulations. Customer shall not export any Products or technical data received from Seller pursuant to the Contract except in accordance with applicable laws and regulations.

15.4 Neither party shall have any liability under the Contract for any matter beyond its reasonable control including but not limited to act of God, fire, floods, war, terrorism and civil disturbances or riot, acts of Government, currency restrictions, labor disputes, strikes, difficulty in obtaining materials, failure of carrier or sub-contractor or inability to obtain any necessary import or export license or other consent or permit required of any relevant authority.

15.5 Except for non-payment, neither Customer nor Seller will bring a legal action under the Contract more than two years after the cause of action arose.

15.6 In the event that any provision of the Contract including these Terms or portions thereof are held to be invalid or unenforceable, the remainder will remain in full force and effect.

15.7 The Contract including these Terms forms the complete and exclusive agreement between Customer and Seller and replaces any prior oral or written proposals, correspondence or communications regarding the subject matter hereof.

15.8 No forbearance, delay or indulgence by either party in enforcing the provisions of these Terms shall prejudice or restrict the rights of that party nor shall any waiver of its rights operate as a waiver of any subsequent breach.

15.9 Any changes to these Terms and/or to the Contract must be made by mutual agreement in writing.

15.10 The parties shall execute and do all such further deeds, documents and things as may be necessary to carry the provisions of the Contract into full force and effect.

15.11 The Contract shall be governed by and construed under and according to the laws of the State of California, United States of America, without regard to its conflict of law provisions other than such provisions directing application of California law. The United Nations Convention on Contracts for the International Sale of Good does not apply to this Agreement.

15.12 All disputes arising out of or relating to this Contract will be resolved by binding arbitration to take place in County of Santa Clara, State of California, United States of America, under the Rules of Arbitration of the International Chamber of Commerce (the "RAICC"). The arbitration administration and appointing authority will be the International Chamber of Commerce (the "ICC"), and the arbitrators shall apply the laws the State of California, United States of America, to decide the dispute. The arbitration will be conducted by one arbitrator appointed by the ICC in accordance with the RAICC, and experienced in international arbitration, the RAICC, and the legal principals related to the claim. Each party shall pay an equal share of the fees and expenses of the arbitrator and the ICC administrative expenses, as well as the fees and expenses of any experts appointed by arbitrator. The proceedings will be confidential and conducted in English. The arbitral tribunal will have the authority to grant any equitable and legal remedies that would be available in any judicial proceeding applying the laws of the State of California, United States of America. The arbitration award will be final and binding on the parties, and not subject to further review. The award may be entered by any court of competent jurisdiction, and each of the parties irrevocably submits to the jurisdiction of such court for confirmation and/or recognition and/or enforcement of any award rendered by the arbitral tribunal in accordance with, *inter alia*, the United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards. Notwithstanding the foregoing, each party will have the right at any time to immediately seek injunctive relief, an award of specific performance or any other equitable relief against the other party in any court or other tribunal of competent jurisdiction. During the pendency of any arbitration or other proceeding relating to a dispute between the parties, the parties will continue to exercise their remaining respective rights and fulfill their remaining respective obligations under this Contract, except with regard to the matters under dispute. Customer hereby consents to being served outside the State of California, United States of America with any documents relating to any dispute, or proceedings in any court, permitted under this Contract.