



## TERMS AND CONDITIONS WITH SUPPLIERS

**1. ACCEPTANCE-AGREEMENT.** Netcom, Inc. (herein called "Buyer") shall not be bound by this Order until written acknowledgement hereof is returned by Seller (as identified on the front page of this Order) within (i) ten (10) days of the Order date, (ii) delivery by Seller, or (iii) commencement of work by Seller under this Order, whichever occurs earlier. Any proposal for additional or different terms or any attempt to vary in any degree any of the terms of this offer and Seller's acceptance or acknowledgement hereof is hereby objected to and shall not be binding upon Buyer. **IF FOR ANY REASON THIS ORDER SHALL BE DEEMED AN ACCEPTANCE OF A PRIOR OFFER MADE BY SELLER, SUCH ACCEPTANCE IS EXPRESSLY CONDITIONED UPON SELLER'S ASSENT TO THE TERMS CONTAINED HEREIN. BUYER WILL PROCEED WITH THIS TRANSACTION ONLY IF SELLER ASSENTS TO THE TERMS CONTAINED IN THIS ORDER.**

**2. DELIVERY.** Shipment shall be made in the quantities and at the time or times specified in this order or in supplementary schedules furnished by Buyer. Unless otherwise stated herein, time is of the essence. Should the "Promised Deliver Date" be 12/31/2099, Seller is to regard that line item(s) as product to be rescheduled by the Buyer in the future. Buyer reserves the right to reject and return any product shipped by the Seller against any delivery date of 12/31/2099. In addition to Buyer's other remedies, and without liability, Buyer reserves the right (i) to refuse and to return at Seller's risk and expense, including, without limitation, warehouse or other storage costs and extra handling costs, any shipments made in excess of the exact quantity or quantities ordered and shipments made before or after the time or times specified in this order or in supplementary schedules furnished by Buyer, and (ii) if delivery is not made in the exact quantity or quantities and/or by the time or times specified, to take either or both of the following actions: (a) terminate this contract without liability by notice effective when received by Seller and to purchase elsewhere and charge the Seller with any resultant loss, including, without limitation, consequential or incidental damages, unless deferred shipment has been authorized, or (b) direct Seller to make expedited routing of goods, and the difference in cost between any such expedited routing and the order routing costs shall be paid by Seller. Seller shall not, however, be liable for delays or defaults in deliveries due to fires, floods, earthquakes, tornadoes, hurricanes, or other acts of God, or due to war or other national emergency. If at any time Seller has reason to believe that deliveries will not be made as scheduled, it shall immediately give Buyer written notice setting forth the cause or causes of the anticipated delay. Should Seller make delivery of product earlier than three (3) working days prior to the due date set forth in the purchase order, Buyer reserves the right to receive the material and pay the accompanying invoice from Seller based on the terms and dating set forth in the Purchase Order. Buyer may, at its option, refuse delivery of any early material and return the material to Seller at Seller's cost.

**3. CANCELLATION.** Buyer reserves the right to cancel this order (in whole or in part) at any time. Liability for cancellation of this order shall be limited to material scheduled for delivery within eight (8) calendar weeks of the date of cancellation. Seller agrees not to impose a cancellation fee, penalty or any other such charge on unshipped quantities after cancellation unless agreed to by Buyer in writing. Said cancellation shall be conveyed to Seller either by fax, e-mail or any other method Buyer deems appropriate.

**4. INSPECTION AND TITLE.** All goods covered by this order shall be received subject to Buyer's right of inspection and rejection. Payment for goods delivered hereunder shall not constitute acceptance of such goods, and all payments shall be made with a reservation of rights by Buyer for defects, including, without limitation, defects apparent on the face thereof. When goods are made to Buyer's instructions, specifications or other requirements, Buyer and/or Buyer's customer may inspect such goods at Seller's plant and any other place of manufacture during production (or at any time deemed necessary) without waiving its rights subsequently to reject or revoke acceptance of such goods for undiscovered or latent defects. Seller, at its expertise, shall furnish or cause to be furnished, facilities and assistance reasonably necessary to insure the safety and convenience of each such inspection. Unless otherwise agreed, title to the goods covered by this order and the risk of their loss or damage shall pass from Seller to Buyer upon the completion of unloading of the goods at the destination specified on the front of this order, subject in all cases to Buyer's right of inspection and rejection within a reasonable time after arrival. In the event Buyer rejects any shipment or shipments of goods, Buyer further reserves the right, in addition to Buyer's other remedies, to take either or both of the following actions: (a) direct Seller to make expedited routings of goods, and the difference in cost between any such expedited routing and the order routing costs shall be paid by Seller; or (b) conduct, at Seller's sole expense, a piece-by-piece manual inspection of each individual item in any shipment or shipment of goods for the purpose of determining which items, if any, are not defective.

**5. WARRANTIES.** Seller expressly warrants that all goods covered by this order will: (a) conform to any and all final specifications, drawings, plans, instructions, samples or other description, whether expressed or implied, furnished by Buyer or by Seller, (b) be fit and sufficient for the purpose(s) for which they were manufactured and sold, and if Seller knows or has reason to know of any other particular purpose for which Buyer intends to use such goods, the goods will be fit for such particular purpose, (c) be new and merchantable, and (d) be of good material and workmanship and free from defects, whether latent or patent. The foregoing warranty shall survive Buyer's inspection, acceptance, use and subsequent dispossession or sale of the goods. Seller hereby extends to Buyer any and all warranties received from Seller's suppliers and agrees to enforce such warranties on Buyer's behalf. All Seller's warranties shall run to Buyer, its successors, assigns, customers and users of products sold by Buyer. Seller agrees to promptly correct all defects in any goods not conforming to the foregoing warranties, or replace such goods, without expense to Buyer, when notified by Buyer. In the event of Seller's failure to correct or replace such defective or non-conforming goods, Buyer may, after reasonable notice to seller, make such correction or replacement at Seller's expense. The foregoing warranties and remedies shall be in addition to any warranties and remedies of additional scope herein or otherwise provided by Seller to Buyer or otherwise provided by law, including, but not limited to, any and all warranties provided in the Uniform Commercial Code. In addition to the foregoing, Seller shall indemnify and hold Buyer harmless from and against any and all damages, including incidental and consequential damages, claims, liabilities, and expenses (including court costs and attorneys' fees) arising out of or relating to or resulting in any way from a breach of any warranty, whether express or implied, or from any act or omission of Seller, its officers, agents, employees or subcontractors.

**6. PRICE WARRANTY.** Seller warrants that the prices for the goods delivered or sold hereunder are not less favorable than those currently extended to any other customer of Seller for the same or similar goods in similar quantities. If Seller reduces its price for such goods prior to final delivery of the goods to Buyer, Seller shall reduce the price or prices in this order in a corresponding manner.

**7. PATENTS.** Seller warrants that manufacture or use of the goods covered by this order and the sale or offer for sale of such goods will not infringe any United States or foreign patent, copyright or trademark of either Seller or any third party. Seller agrees to defend, indemnify and hold harmless Buyer, its directors, officers, employees, successors, assigns, customers and users of its products, from and against any damages, claims, liabilities, losses, costs and expenses (including, without limitation, court costs, attorneys' fees, profits, penalties or punitive damages) arising out of or relating to any actual or alleged infringements of such patent, copyright or trademark, or any unfair competition resulting from similarity in design, trademark or appearance, by reason of the manufacture, use, sale or offer of sale of the goods covered by this order. Buyer reserves the right to control, actively participate in or monitor, through its own counsel, at Seller's expense, any such claim of infringement or other such action brought against it.

**8. BUYER'S RIGHT TO MAKE CHANGES.** Buyer shall have the right to make changes to this order at any time in: (a) drawings, designs or specifications; (b) the method of shipment or packing; and (c) the place or time of delivery, including temporary suspension of shipments. If such changes cause an increase or decrease in the cost of performing this order, or in the time required for its performance, an equitable adjustment will be made by the parties and the purchase order shall be modified in writing accordingly.

**9. EXTRA COMPENSATION.** Before proceeding with any work or shipping any goods upon or for which it may have a possible claim for extra compensation above the price specified on the reverse side hereof, Seller shall submit to Buyer a detailed statement of such items, together with the prices thereof. If Buyer desires to have the work done or the goods furnished at the prices so stated, its purchasing agent will issue written instructions to the Seller. Claims for compensation above the prices specified in this order shall be allowed by Buyer only upon the presentation of such written instructions of its purchasing agent.

**10. TOOLS AND MATERIALS OWNED BY BUYER.** Seller shall keep in good condition, be responsible for and protect against loss of or damage to materials, tools, dyes, molds, and other articles owned by Buyer (including such items made or provided by Seller at Buyer's cost) that are in the possession or control of Seller, provided, however, that Seller shall not be responsible or liable for normal loss of or damage to such items arising from processing or manufacturing in accordance with good shop practices. Seller shall not use such items except for performance of work hereunder or as authorized by Buyer in writing. All such items shall be plainly marked or otherwise adequately identified by Seller as property of Buyer and shall be safely stored separately and apart from Seller's property. Unless otherwise directed by Buyer, Seller, upon completion of deliveries made on this order, or upon cancellation of this order for any reason, shall return all such items to Buyer at Buyer's direction and expense. In addition, Buyer shall have the right to take possession of any such items and the right of entry for such purpose.

**11. INDEMNITY.** Seller agrees to indemnify and hold harmless Buyer and Buyer's directors, officers, employees, successors, assigns, customers and users of its products from and against any and all damages, claims, liabilities, losses, costs and expenses (including, without limitation, court costs, attorneys' fees, penalties, or punitive damages) arising out of or relating to resulting in any way from (a) any actual or alleged death or injury to any person, damage to any property or any other damage or loss that results, or is claimed to result, in whole or in part, from any actual or alleged (i) defects, whether latent or patent, in the goods sold to Buyer including, without limitation, actual or alleged improper construction or design; (ii) breach of any expressed or implied warranty, or (iii) violation by such goods or their manufacturer, possession, use or sale of any law, statute, or ordinance of any governmental or administrative order, rule or regulation, (b) any breach of any covenants and agreements contained in this order, or (c) any act or admission of Seller, its directors, officers, employees, agents or subcontractors. Seller will maintain such public liability insurance, including without limitation, products liability insurance, and other insurance as will adequately protect Buyer against such damages, claims, liabilities, losses, and expenses (including without limitation court costs, attorneys' fees, penalties or punitive damages). Seller agrees to submit certificates of insurance evidencing its insurance coverage when requested by Buyer.

**12. CONFIDENTIALITY.** Seller shall consider all specifications, plans, instructions, samples and other information furnished by Buyer, or prepared by Seller specifically for Buyer in connection with this order to be confidential and shall not (i) disclose any such information to any other persons, or (ii) use such information itself for any purpose other than performing this contract. Without Buyer's prior written permission, Seller shall not advertise or publish the fact that Buyer has contracted to purchase goods from Seller, disclose information relating to the order, nor use the name of Buyer, or any of its customers, in advertising or other publication.

**13. GOVERNING LAW.** The rights and obligations of purchaser and Netcom shall be governed by the laws of the State of Illinois, without giving affect to principles of conflicts of law. Any lawsuit between purchaser and Netcom shall be filed exclusively in a court either located in or having jurisdiction over Cook County, Illinois. Unless otherwise exempt, Seller agrees to comply with all provisions of the Executive Order 11246, as amended, the Vietnam Era Veterans' Readjustment Act of 1974, as amended, the Rehabilitation Act of 1973, as amended, and all related rules, regulations, and relevant orders of the Secretary of Labor in effect on the date of this order.

**14. FAIR LABOR STANDARDS ACT.** Seller certifies that the goods covered by this order will be produced in compliance with all applicable requirements of the Fair Labor Standards Act, as amended, including Sections 6, 7, and 12 thereof, and of Regulations and Orders of the U. S. Department of Labor, issued under Section 14 thereof.

**15. ENTIRE AGREEMENT.** This order merges all prior communications of the parties, supersedes all prior agreements and constitutes the entire agreement between Buyer and Seller with respect to the goods specified on the front of this order.