

# NER DATA PRODUCTS, INC.

## TERMS AND CONDITIONS FOR PURCHASE ORDERS

1. **ACCEPTANCE:** By accepting a purchase order ("Purchase Order") from NER Data Products, Inc. ("NER" or "Buyer"), a supplier ("Supplier") of goods and/or services (hereinafter "Articles" and "Services", respectively; the term "Articles" shall include toner and/or ink if the Supplier provides Buyer with toner and/or ink as goods under the Purchase Order) thereby enters into a binding contract with NER, subject to the terms and conditions contained herein, when accepted by acknowledgement and/or commencement of performance thereon. No change, modification or revision of the Purchase Order shall be valid unless in writing and signed by a representative of Buyer. In case of any conflict between the terms of the Purchase Order and the terms and conditions set forth below, the terms of the face of the Purchase Order shall control.
2. **PRICE, QUANTITY:** This Purchase Order must not be filled in greater quantities or at higher prices than shown on the Purchase Order without written approval of Buyer. If price is not shown on the Purchase Order, it is agreed that Supplier will furnish at no higher price than last purchased, or shall notify and obtain written approval of Buyer before proceeding with the Purchase Order. If Buyer and Supplier cannot agree on a new price, Buyer shall have the right to cancel the Purchase Order without further obligation. Any applicable state or local sales, use or similar taxes shall be separately stated and itemized as part of the amount billed. No charge for packing or drayage will be allowed unless specifically authorized on the Purchase Order.
3. **TERMS:** Terms of payment will be those shown on the face of the Purchase Order. Time of payment period will begin upon receipt of complete Purchase Order at designated location in approved condition. Invoice in triplicate to address indicated on Purchase Order. Prepaid freight shipments will be accompanied with copy of freight invoice.
4. **DELIVERY:** The time and rate of delivery of all Articles and Services to be delivered under the Purchase Order are of the essence and shall be as specified on the Purchase Order, or in the acknowledgement copy which Supplier completes and sends to Buyer. In addition to any other rights in law or equity, Buyer reserves the right to cancel the Purchase Order or any unshipped portion thereof if delivery does not meet such time and rate. Buyer reserves the right to defer the time and rate of delivery specified in the Purchase Order without penalty. Packing slips shall be included in each shipment showing NER Purchase Order number, NER part number and description and quantity of the articles therein. Title to the property covered by the Purchase Order passes to Buyer when delivered to designated location in approved condition.
5. **WARRANTIES:** Supplier expressly warrants that the Articles and Services delivered hereunder will be merchantable, free from defects in material and workmanship, suitable for the use intended where said use is known to Supplier and will conform to applicable specifications, drawings, samples and descriptions; and, if of Supplier's design, will be

free from design defects. All warranties herein shall run to Buyer, its customers, and users of the Articles or the product in which the Article may be incorporated, and shall be construed as conditions for which rejection or revocation of acceptance may be made by Buyer. Supplier, in consideration of the Purchase Order, covenants and warrants to defend and indemnify Buyer and save it harmless from all costs, damages, or expenses (including reasonable attorney's fees payable in advance) arising out of any breach of the foregoing warranties and/or any claim of loss, harm, damage or liability whatever attributable to defects of the Articles or Services or for any claim of patent infringement of patent, copyright, or other intellectual property right, based on or arising out of the use or sale of the Articles or Services ordered.

6. INFRINGEMENT – NER reserves the right, at its option and at Supplier's expense, to return any Articles and cancel any Purchase Order if a claim is made (whether founded or unfounded) that the use or re-sale of the Articles by NER infringes any alleged patent, design, trademark, copyright, right of privacy, or any other tangible or intangible personal or property rights of any party. In addition to and not in limitation of or substitution for any other provision hereof, Supplier agrees to indemnify, defend and hold NER harmless from and against any and all liability, claims, suits, actions, losses, causes of action, judgments, damages, penalties, costs, disbursements, or expenses (including reasonable attorneys' and experts' fees, both payable in advance) (collectively "Damages") which may be asserted, alleged, demanded, claimed, recovered or otherwise incurred or sustained by NER related to any alleged or actual infringement by the Articles or Services of any third party's patent, copyright, trade secret, trademark or other intellectual property right, whether or not NER furnishes specifications.
7. LATENT DEFECTS OR DANGEROUS CONDITIONS – In addition to and not in limitation of or substitution for any other provision hereof, Supplier agrees to indemnify, defend and hold NER harmless from and against any and all Damages relating to or arising by virtue of any claim or demand of any kind or nature arising from the purchase, or use of such Articles or Services or from any apparent or hidden defects in the quality of such Articles and/or Services or dangerous condition thereof, whether based on claim of breach of express or implied warranty or any other legal theory based on contract or tort law or if brought pursuant to a class action statute or not.
8. INSPECTION: All Articles are subject to inspection by Buyer notwithstanding prior payment to obtain discounts. If inspection or use of Articles or Services discloses that they are not in accordance with specifications and/or other warranties contained herein, Buyer shall, in addition to any other rights it may have in law or equity for such breach hereof, have the right to reject, and/or revoke acceptance, and return any Articles at Supplier's expense for full credit or cash refund at its option; and shall have the right to cancel any remaining undelivered portion of the Purchase Order without obligation. If it is impractical to make an inspection at the time of receipt, the foregoing shall apply to whenever inspection may reasonably be made. Final inspection shall be at Buyer's plant unless otherwise agreed upon in writing.
9. DESIGNS, DATA TOOLS, ETC.: Title to all material and information, including without limitation, tools, patterns, equipment, designs, drawings, engineering data or other technical or proprietary information, furnished to Supplier by or for Buyer or, if furnished by Supplier especially for the Purchase Order and included in the price of and relating to the performance of the Purchase Order shall remain in Buyer. All molds, dies, special fixtures, jigs, patterns, plates, and models, paid for by Buyer, unless expressly stated on

the Purchase Order to the contrary, are to be used exclusively for the manufacture of Articles for the Buyer; are to be delivered to Buyer on demand; are to be maintained in first class operative condition by Supplier at Supplier's expense for at least one year following the last Purchase Order utilizing said items; and are required to be marked for identification as required by Buyer. Buyer will be notified in any event before disposal is made to approve disposition.

10. **WORK DONE ON BUYER'S PREMISES:** If the Purchase Order covers labor, contract or construction work or work of any nature upon Buyer's premises or premises of one of Buyer's customers, Supplier agrees and covenants in consideration of the placing of the Purchase Order, that Supplier has no authority to hire any persons on Buyer's behalf and that each person employed or used by Supplier shall be Supplier's and not Buyer's employee, servant, or agent and further that Supplier is performing all work as an independent contractor. Supplier further agrees and does hereby defend, indemnify, and save Buyer harmless from any and all claims, demands, judgments, costs, expenses, including attorney's fees and claims on account of damaged property or personal injuries (including death) which may be sustained by Supplier, Supplier's employees or Buyer's employees or third persons, or member of the general public, arising out of or in any way connected with the work done under the Purchase Order. Upon Buyer's request, Supplier will provide evidence of adequate insurance coverage indemnifying Supplier and Buyer against all such claims.
11. **COMPLIANCE WITH LAW AND REGULATIONS:** Supplier's acceptance of the Purchase Order shall constitute a warranty that all goods to be furnished hereunder shall be manufactured in compliance with all Federal, State and Local laws now in effect, including but not limited to Fair Labor Standards Act of 1938, as amended, Title VII of the Civil Rights Act, Executive Order 11246, as amended, the Vietnam Era Veterans Readjustment Assistance Act of 1974 the Rehabilitation Act of 1973, and the Americans with Disabilities Act and the rules and regulations thereunder. Supplier agrees to defend, indemnify, and hold Buyer harmless from any and all claims or liabilities resulting from failure of any such compliance.
12. **CONTRACT:** The parties hereto agree that the Purchase Order and the acceptance thereof shall be a contract made in the State of New Jersey and governed by the laws thereof. This Agreement shall take effect as a sealed instrument, sets forth (together with the Purchase Orders) the entire agreement between the parties, shall be binding upon and inure to the benefit of the parties hereto and their respective successors, representatives, heirs, and assigns, and may be modified or amended only by a written instrument signed by the parties. This Agreement may be signed in one or more counterparts, each of which shall constitute an original and all of which shall constitute one and the same agreement. This Agreement may be executed by the parties by facsimile transmittal of the parties' signature hereto, which shall be binding upon the parties and their successors and assigns with the same force and effect as an original signature.