

- General Scope and Acceptance:** These Terms and Conditions of Sale ("terms") for quotations, Orders, payments, invoices and contracts stipulated by NER Data Corporation (hereinafter referred to as "the Seller" or "NER"), are deemed to be an acceptance by the Purchaser (hereinafter referred to as "the Customer" or "Buyer"). Any variation or modification to the foregoing terms must be agreed to by the Seller in writing. Any and every Purchase Order issued by Buyer to Seller shall be subject to and shall be deemed to incorporate by reference these Terms and Conditions, whether or not such Terms and Conditions are affixed to the Purchase Order or whether the Purchase Order makes any reference to such Terms and Conditions. These Terms and Conditions shall supersede and replace any standardized terms and conditions affixed to the Purchase Order and any and all terms and conditions set forth on Seller's quotation upon which the Purchase Order is based and/or on any acknowledgement of the Purchase Order sent by Seller to Buyer.
- Quotations:** Quotations do not constitute an offer by the Seller to supply goods or supplies or to carry out work referred to therein, and no Order placed in response to a quotation will be binding unless accepted by the Seller via an Order Confirmation. All quotes are provided in good faith based upon information available to the Seller and documentation provided by the Buyer at time of quotation. The Seller reserves the right to adjust prices or charges based on any quantities ordered differing from the quantity specified in the quotation, and for any alteration, additions or any other work undertaken at the request of the Customer. All prices are in U.S. dollars, unless otherwise stipulated.
- Orders:** All Orders must be made by the Customer by way of written Purchase Order ("Order") - mailed, faxed, e-mailed, or sent via secure online quote tool to Seller. All Orders will be acknowledged by Seller within 24 hours of receipt. If the Customer does not receive an Order Confirmation, the Purchase Order is deemed not received by the Seller. No terms or conditions set forth in said Order shall be binding upon the Seller or supersede the terms set forth here within. The Seller shall not provide any services, fabricate or assemble any supplies, procure required materials, nor ship any Products, except to the extent specifically authorized by the Customer's Order. The Customer shall be obligated to purchase supplies and those Products and materials fabricated or acquired by the Seller in reliance on an Order that established a firm or fixed quantity. The Customer warrants that the price in an Order shall be complete and accurate and as the Seller has stipulated.

While the Seller will make every reasonable effort to attain the exact order quantity, the manufacturing process for certain items may result in an over/under quantity variance (+/- 10%). Unless otherwise agreed upon in writing, the Buyer is obligated to take the quantity of the run.

All custom Product or Service Orders may, at Seller's discretion, require a 50% deposit before manufacturing begins or services are rendered. Buyer may not alter or modify its order or any part thereof once the Purchase Order has been acknowledged by the Seller. In the event that Seller agrees, in writing, to alter or modify the order, Seller reserves the right to review and modify the price, terms of payment and delivery dates for said Products or Services affected by alteration or modification.
- Services:** The Seller agrees to provide and complete the Services that are listed in the Scope of Work. Any changes to this Agreement or to the Scope of Work must be in writing signed by duly authorized representatives of Buyer and Seller that expressly reference this Agreement and/or the Scope of Work. Neither the Agreement nor the Scope of Work may be changed, waived, modified, discharged, or otherwise terminated by the terms and conditions of any Purchase Order or other terms and conditions which may be issued by Buyer for the Services. Seller is solely responsible for choosing the manner and methods of performing the Services and the performance of such Services by its employees, agents, and/or independent contractors.
- Customer Responsibilities:** The Customer is responsible for accuracy of all part numbers, models, layouts, drawings, images and technical information required to provide quotes or Scopes of Work as it relates to products or services to be provided by Seller. Seller may request additional information for clarification or verification of services or products needed. Any information provided by the Buyer to the Seller after the quote or Scope of Work is submitted to Buyer that substantively affects the accuracy of the work will nullify the Agreement.

In the course of providing Services, the Seller may give advice or an opinion regarding the impact of certain products or services on the business of the Buyer. However, the Customer is responsible for investigating and validating any information provided and as such will not hold Seller liable for any costs, direct or otherwise, arising from implementation.
- Cancellations:** Buyer may cancel a Product or Service Order provided that such cancellation is delivered in writing to Seller at least ten (10) business days prior to the scheduled shipping date. Any Order for Custom Products cannot be cancelled once Seller receives and acknowledges Buyer's Purchase Order. In the event of any cancellation, Customer shall pay Seller's cancellation charges which include, among other things, all costs and expenses incurred, and, to cover commitments made, by the Seller. Seller's determination of such cancellation charges shall be conclusive.
- Delivery Dates:** Delivery dates given by the Seller are approximate only and no liability can be accepted for any loss, injury, damage or expenses incurred consequent upon any delay in delivery from any cause whatsoever. Customer may cancel Purchase Orders only in accordance with those terms defined in section 6 "Cancellations". Seller will use commercially available services to deliver Products at the times specified in the Order.
- Packing:** Where the Seller dispatched goods packed, the extent of the packing and/or protection will be at the Seller's discretion unless the Customer stipulates special packing, in which case and extra charge will be made. Seller uses standard commercial packaging practices.

9. **Shipping:** Seller ships its Products according to standard commercial shipping practices. All Products are shipped F.O.B. Origin to the shipping address by the mode of shipment and with the urgency indicated by the Customer on the Order. Since the Customer takes ownership once the Products are released to the commercial shipping carrier, the Products are considered the Customer's property.
10. **Title & Risk:** Title to, and risk of loss for, the Products shall pass to Buyer upon delivery of the Products to a designated carrier.
11. **Export Compliance:** NER Data Corporation exports commodities, technology or software from the United States in accordance with the U.S. Export Administration Regulations. When exporting or re-exporting, any diversion contrary to U.S. Law is strictly prohibited.

Refer to U.S. Census Bureau Export Administration Regulations at ([www.access.gpo.gov/bis/ear/ear\\_data.html](http://www.access.gpo.gov/bis/ear/ear_data.html)) or the U.S. Department of Commerce's Bureau of Industry and Security at (<http://www.bis.doc.gov/index.htm>) for more information.

12. **Invoices & Payments:** The Customer is responsible for the payment of all applicable taxes and shipping charges, measured by or imposed upon or with respect to the transaction, the property, its value or service performed in connection there within. Customer is required to provide Seller with their Certificate of Sales / Use Tax Exemption for Resale. Seller shall submit invoices to the Customer within five (5) business days of shipping goods which include the date, Customer's Order number, shipping charges, delivery address and quantity of delivery.

Seller requires payment in full net thirty (30) days from invoice date. International purchases require pre-payment. Payment terms are subject to credit approval by the Seller. A credit application and three trade and bankers references must be submitted and approved by the Seller before a normal trading account can be established.

Any account thirty (30) to sixty (60) days past due will be placed on credit hold until the account is made current. New Orders submitted must be pre-paid prior to shipping. Seller shall have the right, among other remedies, either to terminate this agreement or to suspend further performance under this and/or other agreements with Buyer in the event Buyer fails to make any payment when due, which other agreements Buyer and Seller hereby amend accordingly. Buyer shall be liable for all expenses, including attorneys' fees, relating to the collection of past due amounts. If any payment owed to Seller is not paid when due, it shall bear interest, at a rate to be determined by Seller, which shall not exceed the maximum rate permitted by law, from the date on which it is due until it is paid.

13. **Shortages:** No claim for shortages of goods supplied will be considered unless the Seller is notified within seven (7) days from receipt of goods. In addition, any claim for non-delivery by carriers must be made in writing within such time as will enable the Seller to comply with the time limit laid down by the carriers.
14. **Returns:** Product must not be returned without first obtaining written permission and shipping instructions from the Seller. All returns are subject to a 25% restocking fee and must be accompanied by a Purchase Order. Items returned must be shipped transportation prepaid to Seller's specified location. All items must be in their original packaging and never installed or opened. All associated parts, documentation, software, etc. originally shipped with the equipment must also be returned. If the preceding conditions are not met, Seller may elect to decline return authorization or charge up to a 50% restocking fee.

Custom Products can not be returned after the merchandise has been manufactured.

15. **Over-shipments:** Product must not be returned without first obtaining written permission and shipping instructions from the Seller. The Customer may return over-shipments to the Seller at the Seller's expense for all packing and transportation charges when it is determined the over-shipment is the result of the Seller.
16. **Warranty:** Seller warrants that all Products furnished under a valid Order will be free from defects in materials and workmanship. These warranties shall remain in effect for a period of time according to the following:

NER Media Rack (Lifetime), NER Media Packs (5 Years), NER Media Transport (5 Years) and NER Enclosure Products (Lifetime on Steel).

Warranty for items distributed by NER, but not manufactured by NER, are subject to the expressed terms and conditions of the Original Manufacturer.

This warranty does not extend to any losses or damages due to misuse, accident, abuse, neglect, normal wear and tear, negligence (other than Seller's), unauthorized modification or alteration, use beyond rated capacity, unsuitable environmental conditions, improper installation, repair, handling, maintenance or application or any other cause not the fault of Seller.

- a. **Scope:** This warranty shall be exclusive of any and all other warranties express or implied and may be modified only by writing signed by any officer of the Seller. This warranty shall extend to the Customer, but to no one else. Accessories supplied by Seller but manufactured by others carry any warranty the manufacturers have made to Seller which can be passed on to the Customer. Customer has not relied and shall not rely on any oral representation regarding the Product sold hereunder and any oral representation shall not bind Seller and shall not be part of any warranty.
- b. **Liability:** Products are not life and safety certified. In no event shall the Seller be liable for loss, damage, or expense directly or indirectly arising from the use of the units, or from any other cause, except as expressly stated. Seller makes no warranties, express or implied,

including any warranty as to merchantability or fitness for a particular purpose or use. Seller is not liable for and Customer waives any right of action it has or may have against Seller for any consequential or special damages arising out of any breach of warranty, and for any damages Customer may claim for damage to any property or injury or death to any person arising out of its purchase or the use, operation, or maintenance of the Product. Seller will not be liable for any labor subcontracted or performed by Customer for preparation of warranted item for return to Seller's factory or for preparation work for field repair or replacement. Invoicing of Seller for labor either performed or subcontracted by Customer will not be considered as a liability by the Seller.

The liability of Seller hereunder is limited to replacing or repairing at Seller's factory or on the job site at Seller's option, any part or parts which have been returned to the Seller and which are defective or do not conform to such specifications, drawings or other written descriptions; provided that such part or parts are returned by the Customer within ninety (90) days after such defect is discovered. Seller shall have the sole right to determine if the parts are to be repaired at the job site or whether they are to be returned to the factory for repair or replacement. All items returned to Seller for repair or replacement must be sent freight, prepaid to its factory. Customer must obtain Seller's Return Goods Authorization prior to returning items. The above conditions must be met if warranty is to be valid. Seller will not be liable for any damage done by unauthorized repair work, unauthorized replacement parts, from any misapplication of the item, or for damage due to accident, abuse, or act of God.

- c. **Infringement:** Seller makes no warranty with respect to whether the Products sold hereunder infringe any patent, U.S. or foreign, and Customer represents that any Custom Ordered Products do not infringe any patent. Customer agrees to indemnify and hold Seller harmless from any liability by virtue of any patent claims where Customer has ordered a Product conforming to Customer's specifications, or conforming to the Customer's specific design.
17. **Indemnification:** The Customer shall defend and indemnify the Seller and its employees, contractors, agents or representatives against any and all liabilities, claims, damages and reasonable expenses (including reasonable attorney fees) incurred because of property damages, personal injury, or other claims arising out of the condition, labeling, engineering, use, sale, storage, design, safety, etc. of the supplies, material and/or goods whether or not incorporated in another Product.
18. **Force Majeure:** Should the Seller be delayed in or prevented from delivery owing to Act of God, war, civil disturbance, requisition, government or parliamentary restrictions, prohibition, or enactment of any kind, import or export restrictions, strike, lockout, trade dispute, difficulty in obtaining workmen or materials, breakdown of machinery, fire, flood, drought, accident, or any other cause whatsoever beyond the Seller's control, the Seller shall be at liberty to cancel or suspend the contract without incurring any liability for loss of damage resulting there from.
19. **Safe Use:** Seller shall provide with the materials and/or goods all information necessary for the safe installation, use and maintenance of the materials and/or goods which assist to maximize their efficient use and useful life.
20. **Non-Solicitation:** Buyer shall not solicit, directly or indirectly, or employ any employee of Seller during the period any Goods are being provided to Buyer and for a period of one (1) year after the last provision of Goods.
21. **General Lien:** Without prejudice to any other remedies, the Seller shall in respect of all sums of monies due to them from the Customer have a general lien on all goods and materials in the Seller's possession or which may at any time come into their possession, and the Seller shall be entitled fourteen (14) days after sending notice to the Customer's last known address to dispose of such good and apply the proceeds toward all sums of money due.
22. **Law of Contract:** Unless otherwise agreed, the contract shall be subject to the laws of New Jersey.
23. **General Provisions:** These terms and conditions supersede all other communications, negotiations and prior oral or written statements regarding the subject matter of these terms and conditions. No change, modification, rescission, discharge, abandonment, or waiver of these terms and conditions shall be binding upon the Seller unless made in writing and signed on its behalf by a duly authorized representative of Seller. No conditions, usage of trade, course of dealing or performance, understanding or agreement purporting to modify, vary, explain, or supplement these terms and conditions shall be binding unless hereafter made in writing and signed by the party to be bound, and no modification or additional terms shall be applicable to this agreement by Seller's receipt, acknowledgment, or acceptance of Purchase Orders, shipping instruction forms, or other documentation containing terms at variance with or in addition to those set forth herein. Any such modifications or additional terms are specifically rejected and deemed a material alteration hereof. If this document shall be deemed an acceptance of a prior offer by Buyer, such acceptance is expressly conditional upon Buyer's assent to any additional or different terms set forth herein. No waiver by either party with respect to any breach or default or of any right or remedy, and no course of dealing, shall be deemed to constitute a continuing waiver of any other breach or default or of any other right or remedy, unless such waiver be expressed in writing and signed by the party to be bound. All typographical or clerical errors made by Seller in any quotation, acknowledgment or publication are subject to correction.