



NextInput, Inc. Terms and Conditions of Purchase

[Download at <http://www.nextinput.com/legal/terms>]

Any purchase by NextInput Inc. (hereinafter "Buyer") is expressly made conditional on Seller's acceptance of these Terms and Conditions of Purchase.

- 1. ACCEPTANCE:** Seller shall be deemed to have assented to all terms and conditions contained herein upon Seller's acknowledgment of an order ("Order") placed by Buyer for goods ("Goods") or commencement of performance pursuant hereto. Conditions stated in Seller's acknowledgement or acceptance of an Order or in any quotation or invoice shall not be binding unless expressly agreed to in writing by an authorized representative of Buyer. Seller may not ship under reservation. Buyer's failure to object to provisions contained in any communication from Seller shall not be deemed a waiver of any of the provisions contained herein. From time to time, Buyer may accept certain of Seller's terms and conditions of sale by signing Seller's proposed sale agreement. If such acceptance is preceded or accompanied by Buyer's interpretation of Seller's terms and conditions, such interpretation shall control the construction or interpretation of the meaning of Seller's terms and conditions.
- 2. PAYMENT:** Payment will be 2%/10 net 45 calendar days from Buyer's receipt of Seller's correct and valid invoice for Goods delivered and accepted or services rendered and accepted. Payment may be withheld or setoffs made against Seller if Seller is not performing work pursuant to an Order. If Buyer returns an invoice to Seller for any reason not attributable to the fault of Buyer, any applicable discount period will commence on the date of receipt of a corrected invoice by Buyer. Payment of any item will not be deemed an acceptance of the Goods or a waiver of any right to test or inspect the Goods.
- 3. PRICES:** Unless otherwise specified on the face of an Order, prices are inclusive of all taxes and other charges such as shipping and delivery charges, duties, customs, tariffs, imposts and government-imposed charges, other than Value Added Tax. Seller will, at Buyer's request, break-out from the price all such taxes and other charges, in its invoices. Seller shall assist Buyer in all legal efforts to minimize the taxes resulting from the performance of an Order and shall credit Buyer for any tax refund or credit adjustments received by Seller on taxes paid to Seller by Buyer with respect to Goods provided under any Order. Prices will remain firm and will not be subject to renegotiation and shall not be higher than last quoted or charged to Buyer unless otherwise agreed in writing.
- 4. DELIVERY:** Time is of the essence for the Order. Failure by Seller to meet delivery dates specified in the Order will constitute a material breach of the Order and Purchaser may, at its option, take one or more of the following actions: (a) extend the time for delivery; (b) cancel the Order in whole or in part; (c) require Seller to ship all or part of the Goods by prepaid air freight at Seller's expense until Seller's deliveries are in accordance with the requirements of the Order. Seller agrees to pay Buyer any penalty and/or damages imposed upon or incurred by Buyer resulting from Seller's failure to deliver the Goods on the specified delivery dates. Title and risk of loss shall pass to Buyer upon receipt of the Goods by Buyer.
- 5. CANCELLATION/RESCHEDULE:** Buyer may cancel, reschedule or modify all or any part of an Order at any time for convenience upon written notice to Seller. Upon receipt of Buyer's notice, Seller shall cease all work under the Order. Buyer shall only be liable to Seller for services satisfactorily performed to the date of termination and Goods delivered and accepted by Buyer. Any claim by Seller for reimbursement, if any, shall be presented to Buyer in writing within thirty (30) days of Seller's receipt of Buyer's written notice. Seller shall mitigate its claim to the maximum extent, and Buyer shall have the right to audit Seller's books and records related to such reimbursement claim. Cancellation or termination by Buyer will not constitute a waiver or release of any rights and remedies of Buyer in contract or provided by law.
- 6. QUANTITIES:** Seller will furnish the specific quantity of Goods called for in the Order. Except as otherwise specified in the Order or by prior written agreement signed by Buyer, no variation in these quantities will be accepted. If the shipped quantity is in excess of the Buyer's order, Buyer, at their sole discretion, may either delay payment on such excess shipments until 60 days after the material is consumed or return excess shipments at Seller's expense. If the shipped quantity is less than the Buyer's order, Seller will use all reasonable commercial efforts to expedite the balance at no cost to the Buyer.
- 7. PACKAGING AND SHIPPING INSTRUCTIONS:** All Goods are to be suitably packed for safe transportation and handling, or otherwise prepared for shipment in accordance with Buyer's instructions or specifications. Unless otherwise specified in the Order, Buyer is not responsible for any costs for packing, crating or carriage. Any losses resulting from Seller's failure to follow Buyer routing instructions will be charged to Seller's account. Each shipping container and all intermediate containers must be marked to show Buyer's Order number, part number with revision letter and quantity, a packing list showing this information must be included in each shipments. All materials to be shipped on a given day via the same mode of transportation from a common shipping point to a common address are to be consolidated into one shipment. Seller shall ship only the quantity specified in the Order and at the lowest freight charges, unless otherwise agreed in writing by Buyer.
- 8. INSPECTION:** Prior to shipment of Goods, Seller shall carefully inspect and test all Goods for compliance to applicable specifications. Seller shall retain proper records of such inspections and tests and provide copies to Buyer, if requested. Unless otherwise specified in the Order, final acceptance or rejection of the Goods shall be made after delivery to the final destination, however Buyer's failure to accept or reject Goods or detect defects during inspection does not relieve Seller from its responsibility to provide Goods in accordance with Order requirements.
- 9. WARRANTY:** Seller warrants and certifies that: (a) the Goods will conform to the specifications, drawings, sample or other descriptions furnished or specified by Buyer or furnished by Seller and accepted by Buyer; (b) all Goods will be merchantable, of good workmanship, and free from defects; (c) unless otherwise specified herein, all Goods and its components are new and have not been previously used; (d) the Goods are fit for use for their ordinary intended purposes as well as any special purpose specified by Buyer; (e) and all Goods and the sale thereof do not, and the use of the same for their ordinary intended purpose as well as any special purpose specified will not infringe upon any third party's Intellectual Property Rights, right of publicity or privacy, or any other proprietary rights, whether contractual, statutory or common law; (f) Seller has good title to the Goods free from all encumbrances; (g) the price or prices to be paid do not exceed applicable ceiling prices established by law, regulation or order of any governmental authority; and (h) the Goods, if produced in the United States, were or will be produced in compliance with the Fair Labor Standards Act of 1938, as amended or supplemented. These warranties will survive any inspection, delivery, acceptance or payment by Buyer for the Goods and are in addition to, and shall not be construed as restricting or limiting any warranties of Seller, express or implied, that are provided by law or exist by operation of law. In addition to the warranties above,



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Seller shall extend all warranties that it receives from its vendors to Buyer and Buyer customers. If any of the Goods and/or services furnished under the Order are found at any time to be defective in design, material or workmanship, including latent defects, or otherwise not in conformance with Seller's warranty or the requirements of the Order, Buyer, in addition to other remedies under all applicable warranties or otherwise, may at Buyer's option (i) require Seller to promptly correct any defective or nonconforming Goods by repair or replacement at the location specified by Buyer or (ii) return such defective or nonconforming Goods to Seller at Seller's expense and recover from Seller the Order price. Seller will pay or reimburse Buyer promptly for all costs incurred by Buyer with regard to any defective or nonconforming Goods and/or services.

10. **INFRINGEMENT:** Seller agrees to indemnify, hold harmless and defend Buyer, its subsidiaries and affiliates and their respective officers, directors, agents and employees from any and all loss, expenses, damage, liability, claims or demands for actual or alleged infringement of any patent, trademark, copyright or trade secret arising from the purchase, use or sale of Goods or services furnished under the Order, except where such infringement or alleged infringement arises by reason of a design originally furnished to Seller by Purchaser. If the Goods or services or any part thereof or any use thereof be held to constitute infringement and the use enjoined, Seller shall promptly and at its own expense either: (1) procure for Buyer the right to continue using the Goods or services; or (2) replace same with non-infringing Goods or services satisfactory to Buyer or (3) modify the Goods or services in a way satisfactory to Buyer so they become non-infringing.
11. **INDEMNITY: SELLER AGREES TO INDEMNIFY AND HOLD HARMLESS BUYER, ITS SUBSIDIARIES AND AFFILIATES AND THEIR RESPECTIVE OFFICERS, AGENTS, AND EMPLOYEES, AND BUYER CUSTOMERS FROM ANY AND ALL LOSSES, EXPENSES, DAMAGES, LIABILITY, CLAIMS OR DEMANDS ARISING OUT OF OR INCIDENTAL TO THE PERFORMANCE, MANUFACTURE, DELIVERY OR INSTALLATION OF GOODS OR THE FURNISHING OF SERVICES UNDER BUYER'S ORDER, INCLUDING WITHOUT LIMITATION ANY RECALL, LATENT DEFECTS, REPLACEMENT OR CORRECTION OF THE GOODS, DEATH OR INJURY TO ANY PERSON, PROPERTY DAMAGE OR LOSS OR ANY ACT OR OMISSION OF SELLER, ITS AGENTS, EMPLOYEES OR SUBCONTRACTORS.**
12. **ASSIGNMENT:** Seller will not delegate any duties, nor assign any rights or claims under the Order, or for breach thereof, without the prior written consent of Buyer. Any attempted delegation or assignment will be void.
13. **NOTICE OF LABOR DISPUTES:** Whenever any actual or potential labor dispute delays or threatens to delay the timely performance of the Order, Seller will immediately give notice of that dispute to Buyer. Seller agrees to insert the substance of this clause in any lower tier subcontract and to require that in the event its lower tier subcontractors' timely performance is delayed or threatened by delay by any actual or potential labor dispute, the lower tier subcontractor will immediately notify its next higher tier contractor of all relevant information with respect to those disputes.
14. **CONFIDENTIAL INFORMATION:** Any knowledge or information that Buyer discloses to Seller under Buyer's Order, including, without limitation, specifications, technical or business information, forecasts, or schedules, shall be deemed Buyer confidential, proprietary information; and Seller shall not disclose such information, including without limitation, denial or confirmation, relative to the Order without the prior written consent of Buyer. All tools, equipment, dies, drawings or other materials paid for or furnished by Buyer under the Order shall be and remain the sole property of Buyer.
15. **MODIFICATIONS:** No modification, amendment or rescission of the Order may be made without the prior written agreement of Buyer. Any changes to qualified critical materials are subject to Buyer's prior written approval, and substitutes will not be accepted unless authorized in writing by Buyer's duly authorized management. Any overrun quantities will be subject to Buyer's prior written approval. Buyer reserves the right to and Seller agrees to accept reasonable changes to the Order, including, without limitation, changes to quantities, packing, testing, destinations, specifications, designs and delivery schedules, but these changes will be authorized only by Buyer's written Order. If an Order affects delivery or price, Seller will notify Buyer immediately and an equitable adjustment in prices or other terms hereof will be agreed upon in a written amendment to the Order.
16. **FORECASTS:** Any Buyer forecasts furnished under an Order are presented in good faith and are nonbinding on Buyer. Buyer shall only be liable for actual Order releases made by Buyer's Purchasing Department.
17. **GOVERNING LAW:** The validity, interpretation, and performance of an Order and the transactions contemplated thereby shall be controlled by and construed under the laws of California. Seller hereby consents to the exclusive jurisdiction of the Courts of Santa Clara County in all matters regarding it, except to the extent that the Buyer invokes jurisdiction of the Courts of any other country. The applicability of the UN Convention on Contracts for the International Sale of Goods is hereby expressly waived by the parties and does not apply to the interpretation or enforcement of an Order.
18. **REMEDIES:** The remedies reserved in the Order are cumulative and additional to any other further remedies at law or in equity; however, in no event will Buyer be liable to Seller for incidental or consequential damages. All of the terms of the Order are material terms and no waiver of or exception to any of the terms, conditions or provisions contained in the Order shall be valid unless specifically agreed to in writing by Buyer.
19. **NON-WAIVER DEFAULT:** Each shipment made under any Order shall be treated as a separate sale and transaction, but in the event of any default by Seller, if Buyer elects to continue to accept shipments, its action shall not constitute a waiver of any default by Seller or in any way affect Buyer's legal remedies for any such default.
20. **COMPLIANCE WITH LAWS:** Seller represents and warrants that it will comply fully with all applicable laws and regulations pertaining to its performance of its obligations under this Order, including, without limitation, applicable employment, tax, EU and US export control and environmental laws relating in any way to the production, manufacture, sale and delivery of the Goods. In particular, Seller shall not participate or encourage, directly or indirectly, the offering, giving or promising to offer or give, directly or indirectly, money or anything of value to any official of a government, political party



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or instrumentality, to assist Seller or Buyer in obtaining or retaining business or in carrying out the Services. Seller's failure to comply with the terms of this paragraph shall constitute a material breach of an Order.

21. **FORCE MAJEURE:** Neither party shall be liable for delay in performance or failure to perform in whole or in part the terms of this Agreement due to strike, labor dispute, war, riot or civil commotion, acts of the public enemy, fire, flood or other acts of God, or causes beyond the reasonable control of such party. The period for performance for the party affected by such a cause shall be extended by the duration of the condition.
22. **TERMINATION:** In the event Seller enters into liquidation (whether compulsorily or voluntarily) or has a receiver appointed of the whole or any assets or undertaking or has an examiner appointed to manage its affairs, business and property or it takes or suffers any similar action in consequence of debt, such events shall be deemed a material breach hereunder, entitling Buyer to immediately terminate any agreement hereunder, to cease performance hereunder, and to avail itself of any and all legal or equitable remedies it may have against Seller. Seller agrees to give written notice to Buyer of such insolvency or bankruptcy proceedings at least 30 days prior to such proceedings.
23. **DISCONTINUED GOODS:** In the event that Seller permanently discontinues any Goods covered under Buyer's Order, Seller will give at least six (6) months prior written notice of such discontinuance for standard Goods and nine (9) months prior written notice for sole source or custom Goods. Seller shall accept Orders from Buyer for quantities of discontinued Goods required by Buyer during the notice period(s). The unit price for ordered quantities of the discontinued Goods shall be at the unit price(s) listed in Buyer's Order. Discontinued Goods are not subject to termination or cancellation by Buyer and will be considered Buyer's firm, final orders for such Goods. In the event that Buyer purchases Goods hereunder with a purchase price exceeding \$2,500.00/unit or an annual purchase price total of at least \$25,000.00, Seller will give Buyer at least three (3) years prior written notice of such discontinuance. In the event that continuous improvements of the Goods cease or are made obsolete by Seller hereunder, Buyer may, at its sole discretion, pursue any means necessary to perpetuate the life cycle and continued improvement of the Goods. Seller and Seller's agents will provide Buyer with the necessary hardware and software details required, including, but not limited to artwork, schematics, vendor names, bills of material and software source code(s).
24. **ISO 9000:** In accordance with ISO 9000 quality control systems and related certification, a physical inspection of Seller's facility may be required by the Buyer and/or the Buyer's customer to satisfy certification requirements. Upon written notice from Buyer and/or Buyer's customer, Seller agrees to make its facilities, personnel, and procedures reasonably available for a site inspection for physical audit to ensure Seller's compliance with all laws, rules and regulations in accordance with minimum ISO 9000 requirements of the revision in effect at the time of the inspection.
25. **EXPORT CONTROL CLASSIFICATION NUMBER:** If applicable, Seller shall provide Buyer at time of sale with the appropriate U.S. Export Control Classification Number for your product, as determined on the Commerce Control List of the Export Administration Regulations of the U.S. Bureau of Industry and Security of the Department of Commerce. Seller agrees to assist Buyer if it is necessary to obtain an export/reexport license.
26. **NOTICE:** Any notice, instruction or other document given pursuant to these terms and conditions shall be in the English language, in writing and delivered by courier or sent by first class post or electronic mail ("email") transmission (such email transmission notice to be confirmed by letter posted within 24 hours) to the address of the other party set out in the Order or its registered office (or such other address or number as may have been notified). Such notice shall be deemed to have been duly served upon and received by the addressee at the time of delivery, (if sent by post) upon the expiration of 48 hours after posting or (if sent by email transmission) upon the expiration of 24 hours after dispatch (receipt confirmed and with a confirmation copy sent by post) during normal business hours of the recipient to the email address of the recipient.
27. **SEVERABILITY:** If any provision of these terms and conditions (or part of a provision) is found by any court or administrative body of competent jurisdiction to be invalid, unenforceable or illegal, the other provisions shall remain in force.
28. **ENTIRE AGREEMENT:** These terms and conditions are the entire agreement between the parties and supersede and terminate any prior agreements, understandings or representations, written or oral.
29. **BUYER CODE OF CORPORATE SOCIAL RESPONSIBILITY:** It is Buyer's policy to conduct its affairs in accordance with all applicable laws, rules and regulations of the jurisdictions in which it does business. Buyer and/or Buyer customers may conduct audits of Seller's facilities and any or all sites where work is being performed or materials are being delivered in performance of Seller's work for Buyer under an Order, including compliance with applicable laws, rules, and regulations. Seller shall permit access to Buyer and/or Buyer customers to Seller facilities to ensure Seller's compliance with all laws, rules and regulations, including Buyer's Code of Corporate Social Responsibility.