



Corporate Offices  
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1-800-265-2633  
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# NCC Electronics Inc.

## TERMS AND CONDITIONS OF SALE

**1. Acceptance.** All sales made by NCC Electronics Inc., a Michigan corporation ("NCC") to its customers (each a purchaser) are subject to these terms and conditions. Orders are not binding until they have been acknowledged in writing by NCC. Acceptance of orders by NCC is subject to credit approval, other terms that may be set by NCC, and purchaser's acceptance of the terms and conditions set forth in NCC's acknowledgment. Purchaser's acceptance of these terms and conditions shall be conclusively presumed from either (i) purchaser's receipt of NCC's acknowledgment of purchase order without prompt written objection thereto or (ii) purchaser's acceptance of all or any part of the goods or services ordered. No addition to or modification of said terms and conditions shall be binding upon NCC unless specifically agreed to by an authorized representative of NCC in writing. If purchaser's purchase order or other correspondence contains terms or conditions contrary to or in addition to the terms and conditions contained in NCC's acknowledgment, acceptance of such order by NCC shall not be construed as assent to such contrary or additional terms and conditions or constitute a waiver by NCC of any of the terms and conditions contained in NCC's acknowledgment. Any reference to purchaser's purchase order noted on NCC's acknowledgment shall not affect or limit the applicability of the terms and conditions contained herein

**2. Governing Law.** Unless otherwise specified in NCC's acknowledgment, all approved transactions shall be governed by and interpreted in accordance with the internal laws of the State of Michigan, U.S.A. excluding its conflicts or choice of law rule or principles which might refer to the law of another jurisdiction, and purchaser agrees to resolve all issues in the State of Michigan, U.S.A. and submits to the jurisdiction of the State of Michigan and the courts of Oakland County, Michigan and the United States District Court for the Eastern District of Michigan.

**3. Warranty and Warranty Restrictions.** NCC warrants its product(s) to be free from defects of material and workmanship and will, without charge, replace, repair or provide a credit equal to the product's invoice price, at NCC's sole election, for any equipment and/or product(s) found defective upon inspection at the NCC Westland, Michigan facility, or other designated point provided the equipment and/or product(s) has been returned in accordance with Section 4 below, within one (1) year from the later of the date of shipment or the date of installation and not to exceed eighteen (18) months from the date of shipment by NCC to purchaser.

THE FOREGOING WARRANTY IS IN LIEU OF AND EXCLUDES ALL OTHER WARRANTIES NOT EXPRESSLY SET FORTH HEREIN, WHETHER EXPRESSED OR IMPLIED BY OPERATION OF LAW OR OTHERWISE, INCLUDING BUT NOT LIMITED TO ANY IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. No representation or warranty, express or implied, made by any sales representative, distributor, or other agent or representative of NCC that is not specifically set forth herein shall be binding upon NCC. Samples provided by NCC shall not be considered

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a warranty. NCC shall not be liable for any incidental or consequential damages, losses, expenses, penalties or fines, directly or indirectly arising from the sale, handling, improper application or use of the equipment and/or product(s) or from any other cause relating thereto and NCC's liability hereunder, in any case, is expressly limited to the repair or replacement (at NCC's option) of equipment and/or product(s).

Warranty applies only to equipment and/or product(s) returned to the NCC facility as directed by NCC in accordance with Section 4 below. Any on-site service will be provided at the sole expense of purchaser at standard field service rates. Properly rated electronic / electrical protection devices must protect all associated equipment. NCC shall not be liable for any damage due to improper engineering or installation by the purchaser or third parties. Proper installation, operation and maintenance of the equipment and/or product(s) become the responsibility of the user upon receipt of the equipment and/or product(s). NCC shall not be obligated to repair, replace, or issue credit to purchaser for products rendered defective, in whole or in part, by causes external to the products, including, but not limited to, catastrophe, power failure or transients, overvoltage on interface, environment extremes, improper use, maintenance or application of the products or use of unauthorized parts. Purchaser shall bear all risks of loss when returning defective products.

Notwithstanding the foregoing, product warranties provided to NCC by its suppliers shall be passed on to purchaser as if purchaser was the original purchaser of the product(s).

**4. Return Policy.** The return by purchaser of equipment and/or product(s) to NCC for credit must take place within 12 months of purchase date, and must be authorized by NCC personnel in advance. The return by purchaser of equipment and/or product(s) as a result of a defect, for repair or otherwise, must be authorized by NCC in advance. NCC personnel will assign a Return Material Authorization Number ("RMA") which must appear on all related papers, the outside of the shipping carton and the shipping label. The NCC personnel will also designate the proper address to which to ship the equipment and/or product(s). The NCC Shipping / Receiving Department will refuse all incoming shipments from purchasers that do not contain an RMA. Returns must be shipped at the purchaser's expense. NCC does not accept any collect incoming shipments. All returned equipment and/or product(s) is subject to inspection and final review by NCC. Returns may be subject to restocking charges, as determined by NCC.

**5. Force Majeure Clause.** Fulfillment of any order is contingent upon the availability of materials. NCC shall not be liable for any delay in delivery or non-delivery in whole or in part caused by the occurrence of any contingency beyond the control of either NCC or suppliers to NCC including, but not limited to war, sabotage, terrorist acts, acts of civil disobedience, failure or delay in transportation, act of any government or agency thereof, judicial action, labor dispute, fire, accident, epidemic, pandemic, quarantine, restrictions, storm, flood, earthquake or acts of God, shortage of labor, fuel, raw material, machinery or technical failure where NCC exercised ordinary care in the prevention thereof. If any such contingency occurs, NCC may allocate production and deliveries among NCC's customers at its discretion. If NCC, at its sole discretion, determines that NCC's performance hereunder would result in a loss to NCC on an order as computed under NCC's normal accounting procedures, due to causes beyond NCC's control, then NCC may terminate the subject agreement or purchase



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order in whole or in part without any liability for any delay in the delivery of or failure to deliver the equipment and/or product(s) sold pursuant to such agreement or purchase order.

**6. Terms and Credit.** All invoices are mailed the day the product(s) is shipped. Payment shall be made net thirty (30) days after date of invoice, unless otherwise agreed in writing by NCC. There are no discounts. All invoices paid after the date due may be assessed a late payment service charge of two percent (2%) per month, twenty-four percent (24%) per annum, or the maximum allowed by applicable law, whichever is lower, on outstanding balances. Until an invoice is paid in full, NCC retains, and purchaser hereby grants NCC by submitting a purchase order, a security interest in all equipment and/or product(s) sold hereunder in accordance with the Uniform Commercial Code in the State where the purchaser is located (or the Personal Property Security Act of Ontario (c.P.10), if applicable), to secure payment in full, and purchaser authorizes NCC to execute and file any additional documents necessary to perfect such security interest. Purchaser shall furnish NCC all financial information reasonably requested by NCC from time to time for the purpose of establishing or continuing purchaser's credit limit. Purchaser agrees that NCC shall have the right to decline to extend credit to purchaser and to require that the applicable purchase price be paid prior to shipment. Purchaser shall promptly notify NCC of all changes to purchaser's name, address, or of the sale of substantially all of its assets. If, in NCC's judgment, the financial condition of the purchaser at the time merchandise is ready for shipment does not justify the terms specified, NCC reserves the right to change these terms or to require full or partial payment in advance. NCC may, at any time, suspend performance of any order or require payment in cash, security, or other adequate assurance satisfactory to NCC when, in NCC's opinion, the financial condition of purchaser, or other grounds for insecurity, warrant such action. Purchaser shall not deduct any amounts owing from any NCC invoice without NCC's express written approval, which approval shall be contingent upon purchaser providing all supporting documentation for such deduction as required by NCC. All sales are subject to the approval of NCC's credit department.

**7. Prices.** All prices are subject to change without notice and will be established at time of order acceptance by NCC. Prices are exclusive of all insurance, shipping charges and taxes, which insurance, shipping charges and taxes are the purchaser's sole responsibility.

**8. Risk of Loss.** Delivery shall occur and risk of loss shall pass to the purchaser for sales in the U.S.A. F.O.B. Westland, Michigan, and for sales in Canada F.O.B. Windsor, Ontario, as applicable. Transportation shall be at purchaser's sole risk and expense, and any claim for loss or damage in transit shall be against the carrier only.

**9. Delivery.** The promised delivery date is the best estimate possible based upon current and anticipated manufacturing capabilities of when the equipment and/or product(s) will be shipped. NCC assumes no liability for loss, damage, or consequential damages due to delays. All packages should be opened by purchaser immediately and inspected for concealed damage, shipment discrepancies, etc. Purchaser must report to the carrier any concealed damage within seven (7) days of delivery. Purchaser must keep all original packaging for carrier inspection. Purchaser must notify NCC of any discrepancies with the order within thirty (30) days of receipt. Such notice shall be reasonably detailed and explain the discrepancy. If purchaser does not give NCC

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such notice as stated herein, purchaser agrees that such products have been accepted by purchaser as of the date of shipment.

**10. Transportation.** All shipping charges are the responsibility of purchaser. Purchaser must specify the method of shipping on all purchase orders. NCC will use all reasonable efforts to comply with purchaser's requests as to method of transportation, but NCC reserves the right to use an alternate method of transportation, whether or not at a higher cost to purchaser, if the method specified by purchaser is deemed by NCC to be unavailable or otherwise unsatisfactory. In any such case, NCC shall promptly notify purchaser of any such change.

**11. Quotations.** Any price, quantity, or condition of sale stated in any quotation is effective for thirty (30) days from the date of quotation, unless otherwise agreed in writing by NCC. No quotation shall have any force or effect after thirty (30) days from date of quotation, unless expressly extended in writing by NCC.

**12. Claims.** Unless otherwise expressly agreed in NCC's acknowledgment, claims respecting the condition of the equipment and/or product(s), compliance with specifications, or any other matter affecting the equipment and/or product(s) shipped to purchaser must be made promptly and unless otherwise agreed to in writing by NCC, in no event later than ninety (90) days after receipt of the equipment and/or product(s) by purchaser. Purchaser shall set aside, protect, and hold such equipment and/or product(s) without further processing until NCC has an opportunity to inspect and advise of the disposition, if any, to be made of such equipment and/or product(s). In no event shall any equipment and/or product(s) be reworked or scrapped by purchaser without the express written authorization of NCC.

**13. Default in Payment.** If purchaser fails to make payments on any order between purchaser and NCC in accordance with NCC's terms, NCC in addition to any other remedies available to it, may at its option, (i) defer further shipment until such payments are made and satisfactory credit arrangements are reestablished, or (ii) cancel the unshipped balance of any order.

**14. Taxes.** Purchaser shall bear applicable federal, state, municipal, and other government taxes (such as sales, use, etc.). Any tax which NCC may be required to pay or collect through assessment or otherwise, under any existing or future law upon or with respect to the sale, purchase, delivery, transportation, import, export, storage, processing, use, or consumption of any goods or services described herein, including, without limitation, taxes upon or measured by receipts from sales or services, shall be for the account of purchaser and may be added to the price of such goods or services. Purchaser shall promptly pay the amount thereof to NCC upon demand but may, in lieu of such payment, furnish to NCC evidence of the issuance of tax exemption certificates acceptable to the appropriate taxing authorities.

**15. Technical Assistance.** Unless otherwise expressly agreed in NCC's written acknowledgment: (a) any technical advice provided by NCC with respect to the use of the equipment and/or product(s) furnished to purchaser shall be without charge; (b) NCC assumes no obligation or liability for any such advice, or for any results occurring as a result of the application of such advice; and (c) purchaser shall have sole responsibility for

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selection and specification of the equipment and/or product(s) appropriate for the end use of the equipment and/or product(s).

**16. Patent and Trademark Indemnity.** NCC shall have no duty to defend, indemnify, or hold harmless purchaser from and against any or all damages and cost incurred by purchaser arising from the infringement of patents or trademarks or the violation of copyrights by products.

**17. Compliance with U.S. Export Laws.** If purchaser delivers the products to its customer who may use the products outside the United States, purchaser acknowledges and shall advise its customer that the products are controlled for export by the U.S. Department of Commerce and that the products may require authorization prior to export from the United States to re-export. Purchaser agrees that it will not export, re-export, or otherwise distribute products, or direct products thereof, in violation of any export control laws or regulations of the United States. Purchaser warrants that it will not export or re-export any products with knowledge that they will be used in the design, development, production, or use of chemical, biological, nuclear, or ballistic weapons, or in a facility engaged in such activities, unless purchaser has obtained prior approval from the U.S. Department of Commerce. Purchaser further warrants that it will not export or re-export, directly or indirectly, any products to embargoed countries or sell products to companies or individuals listed on the Denied Persons List published by the U.S. Department of Commerce.

**18. LIMITATION OF LIABILITY.** NCC SHALL NOT BE LIABLE TO PURCHASER OR ANY OTHER PARTY FOR ANY LOSS, DAMAGE, OR INJURY THAT RESULTS FROM THE USE OR APPLICATION BY PURCHASER OR ANY OTHER PARTY, OF PRODUCTS DELIVERED TO PURCHASER, UNLESS THE LOSS OR DAMAGE RESULTS DIRECTLY FROM THE INTENTIONALLY TORTIOUS OR FRAUDULENT ACTS OR OMISSIONS OF NCC. IN NO EVENT SHALL NCC BE LIABLE TO PURCHASER OR ANY OTHER PARTY FOR LOSS, DAMAGE, OR INJURY OF ANY KIND OR NATURE ARISING OUT OF OR IN CONNECTION WITH THESE TERMS AND CONDITIONS, OR ANY AGREEMENT INTO WHICH THEY ARE INCORPORATED, OR ANY PERFORMANCE OR NONPERFORMANCE UNDER THESE TERMS AND CONDITIONS BY NCC, ITS EMPLOYEES, AGENTS OR SUBCONTRACTORS, IN EXCESS OF THE NET PURCHASE PRICE OF THE PRODUCTS OR SERVICES ACTUALLY DELIVERED TO AND PAID FOR BY PURCHASER HEREUNDER. IN NO EVENT SHALL NCC BE LIABLE TO PURCHASER OR ANY OTHER PARTY FOR INDIRECT, SPECIAL OR CONSEQUENTIAL DAMAGES, INCLUDING BUT NOT LIMITED TO LOSS OF GOODWILL, LOSS OF ANTICIPATED PROFITS, OR OTHER ECONOMIC LOSS ARISING OUT OF OR IN CONNECTION WITH NCC'S BREACH OF, OR FAILURE TO PERFORM IN ACCORDANCE WITH ANY OF THESE TERMS AND CONDITIONS, OR THE FURNISHING, INSTALLATION, SERVICING, USE OR PERFORMANCE OF ANY PRODUCTS OR INFORMATION NCC SHALL PROVIDE HEREUNDER, EVEN IF NOTIFICATION HAS BEEN GIVEN AS TO THE POSSIBILITY OF SUCH DAMAGES. PURCHASER HEREBY EXPRESSLY WAIVES ANY AND ALL CLAIMS FOR SUCH DAMAGES.

**19. Notices.** All notices, requests, demands, and other communications that either party may desire to give the other party must be in writing and may be given by (i) personal delivery to an officer of the party, (ii) mailing

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the same by registered or certified mail, return receipt requested, or via nationally recognized courier services to the party at the address of such party as set forth herein, at the official corporate address of such party, or such other address as the parties may hereinafter designate, or (iii) facsimile subsequently to be confirmed in writing pursuant to item (ii) above. Notices to NCC shall be sent to: NCC Electronics, Inc., 6471 Commerce Drive, Westland, Michigan 48185, telefax number (734) 467-7311.

**20. General Provisions.** Any cause of action arising from the subject agreement or purchase order, or breach of it, must be commenced within one (1) year after the cause of action occurs, provided any warranty claim shall be subject to the restrictions outlined in Section 3 above. NCC has the right to correct any stenographical or clerical errors in any of the writings issued by it. These terms and conditions of sale constitute a complete and exclusive statement of the terms and conditions for the sale of the equipment and/or product(s) by NCC to purchaser. There are no other promises, conditions, understandings, representations, or warranties. This agreement may be modified only in writing signed by NCC. No waiver of any right will be effective against NCC unless supported by consideration and expressly stated in writing signed by NCC. The failure of NCC to enforce any right will not be construed as a waiver of NCC's rights to performance in the future. Purchaser may not assign any rights to, or delegate any performance owed under any agreement between purchaser and NCC without the written consent of NCC. NCC shall have the right to credit any sums which may now or hereafter be owed to purchaser by NCC toward payment of any monies that may become due NCC hereunder. If any provision of these terms and conditions shall be held to be invalid, illegal or unenforceable, such provision shall be enforced to the fullest extent permitted by applicable law and the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired thereby. These terms and conditions, as published on NCC's Website located at [www.nccelectronics.com](http://www.nccelectronics.com) at the time of sale, are the official terms and conditions of sale between NCC and purchaser and may be amended from time to time without notice at NCC's sole discretion.