



TERMS AND CONDITIONS WITH CUSTOMERS

- 1. GENERAL.** Buyer hereby agrees, without limitation or qualification, to be bound by, and to comply with, these Terms and Conditions. These terms and conditions are pertinent to the goods and/or services (hereinafter "items") described within the sales order acknowledgement or relative agreement(s) as approved by Netcom, Inc. Acceptance shall be deemed to be the use of any items or the expiration of seven calendar days after the delivery of items, whichever comes first. Netcom rejects any additional or inconsistent terms and conditions offered by Buyer at any time, whether or not such terms or conditions materially alter the order and irrespective of Netcom's acceptance of payment for Buyer items. Unless preceded by a Contract as referenced in Section 17, these terms and conditions constitute the entire agreement between the parties and no change to or modification of the order shall be binding upon Netcom unless in writing and signed by Netcom and an authorized representative of Buyer's procurement or purchasing department.
- 2. DELIVERIES AND SHIPMENTS.** Delivery of the items and related data and/or documentation and/or performance of required services shall be completed in accordance with the terms defined within the agreement or quote as accepted by the Buyer. All items shall be packaged in accordance with good commercial practice in a manner sufficient to ensure arrival in an undamaged condition. Risk of loss to items shall pass to Buyer at the F.O.B. point specified on the face of Sales Order Acknowledgement or as defined within the relative contract or agreement. In the event the Buyer refuses a delivery without Netcom's agreement, Buyer must pay Netcom's expenses or loss resulting from that refusal, including any shipping and storage costs, until Buyer accepts delivery. Title shall be passed to Buyer upon receipt of payment in full.
- 3. INSPECTION.** It is the responsibility of Buyer and/or its customers to inspect all items within seven calendar days of delivery. Netcom shall provide and maintain a test and inspection system acceptable to Buyer and its customers, if required.
- 4. WARRANTY.**

A. Netcom warrants to Buyer, its successors and customers that for a period of twelve (12) months after delivery of items or completion of services, that all items furnished to Buyer will be free from defects in material and workmanship, will conform to applicable drawings, designs, specifications and samples, will meet all functional and performance requirements and, to the extent this order calls for services to be performed, that such services will be free from defects in workmanship, will meet all of the requirements of this order and will be performed to the highest standards of workmanship in the industry (all of which are hereinafter collectively called "conforming products and/or services").

B. In the event that nonconforming product is returned to Netcom, Netcom at its sole discretion shall repair or replace such nonconforming products and/or correct such nonconforming services.

C. The warranty period shall be suspended upon notice from Buyer that nonconforming items have been returned to Netcom until such time that they have been repaired or replaced and redelivered to Buyer postage or freight prepaid, or in the case of nonconforming services, have been corrected. The un-expired portion of the warranty shall be applicable to the repaired, replaced or corrected conforming products and/or services.
- 5. CHANGES.** Buyer may, by a written change order, make changes in any one or more of the following: (i) drawings, designs, specifications, where the items to be furnished are to be specially manufactured for Buyer in accordance therewith; (ii) method of shipment or packing; (iii) place or time of inspection, delivery, or acceptance; (iv) the quantity and/or type of services ordered, and (v) the work or service schedules. If any such change causes an increase in the cost of or time required for performance of this order, whether or not changed by the order, an equitable adjustment shall be made in the price or delivery schedule or both and the order shall be modified accordingly. Only changes made by Buyer's Subcontract Administrator or designated Purchasing Agent shall be recognized by Netcom.
- 6. DESIGN CHANGES.** During the performance of this order, Netcom shall not make any changes in the design of items to be furnished without advance written notification to and written approval of Buyer.
- 7. EXCUSABLE DELAYS.** Neither party shall be in default for any delay or failure to perform hereunder due to causes beyond its control and without its fault or negligence.
- 8. NEW MATERIAL.** Netcom warrants that none of the items furnished under this order are used, remanufactured or reconditioned or of such age or so deteriorated as to impair the usefulness or safety thereof, unless otherwise specifically agreed to in writing prior to the delivery of this order.
- 9. TAXES.** Buyer shall be responsible for the reporting and payment of all taxes, duties, fees and tariffs if any, on product as imposed by federal, state, local or other government entities on or with respect to the items provided by Netcom to Buyer.
- 10. PAYMENT TERMS.** Payment periods and cash discount periods will be computed from the date of delivery of the items ordered. Netcom terms of payment Net 30.
- 11. OWNERSHIP OF DESIGNS, DRAWINGS AND DATA.** Information provided by Buyer to Netcom shall be and remain the property of Buyer. Both Buyer and Netcom must treat all information received from the other party and marked "confidential", or reasonably obvious to be confidential, as it would treat its own confidential information.
- 12. INTELLECTUAL PROPERTY INDEMNITY.** Buyer shall indemnify and hold harmless Netcom from any and all damages, costs, including legal fees, losses, and liabilities resulting from a suit, claim or proceeding of alleged infringement of any intellectual property right by reason of the sale or use of any item sold to Buyer hereunder, and from reasonable expenses incurred by Netcom in defense of such suit or proceeding. In the event of an injunction or restraining order, Buyer shall, at its own expense, either procure for Netcom the right to continue to manufacture and use the item, or replace or modify the item so that it becomes non-infringing.
- 13. INDEMNIFICATION.** Buyer shall indemnify and hold harmless Netcom, its directors, officers, employees, agents

and invitees from and against all liability, demands, claims, losses, costs, damages and expenses, including but not limited to attorneys' fees, by reason or on account of property damage, death and personal injury of whatsoever nature or kind arising out of, as a result of, or in connection with the items of this order that is occasioned by the actions or omissions of Buyer.

14. STANDARDS OF CONDUCT, INTEGRITY, AND COMPLIANCE.

Netcom conducts its business in strict compliance with applicable laws, rules, and regulations with honesty and integrity and with a strong commitment to the highest standards of business ethics. In addition, it is the policy of Netcom to enter into representation or Supplier agreements only with companies which have a demonstrated record of, and commitment to, the highest ethical standards. Buyer agrees that Buyer will fully comply and take all necessary steps to assist Netcom in complying with customary standards of business conduct prescribed by law or regulation. Buyer shall, at all times, carefully comply with all rules, laws and regulations pertaining to entertainment or providing gratuities.

15. FOREIGN MANUFACTURE OF ARTICLES:

A. If Netcom has received technical data, manufacturing drawings, specifications, software or similar type items from Buyer, it is the responsibility of Buyer to provide all entity names, program names, applications, data and information pertinent to Netcom's compliance with all U.S. export laws and regulations. These laws include, but are not limited to, (a) Section 38 of the Arms Export Control Act as enumerated in 22 CFR Parts 120-130, the International Traffic in Arms Regulations (ITAR), and (b) Export Administration Act of 1979, as amended in 15 CFR Parts 730-774 of the Export Administration Regulations (EAR).

B. No technical data, manufacturing drawings, specifications, software or similar type items shall be transferred, disclosed or exported to "Foreign Persons" without specifically obtaining approvals from the U.S. Department of State's Office of Defense Trade Controls or from the U.S. Department of Commerce's Bureau of Industry and Security, as required.

16. COMPLIANCE WITH LAWS.

A. Netcom and Buyer each agree to comply with all applicable federal, state and local laws, Executive Orders, rules and regulations during performance of this order, including but not limited to, the Occupational Safety and Health Act of 1970 as amended ("OSHA"); Toxic Substances Control Act as amended ("TSCA"); the Fair Labor Standards Act of 1938 as amended ("FLSA"); the Clean Air Act as amended; the International Traffic in Arms Regulations ("ITAR") as amended; and the Anti-Kickback Act of 1986 as amended.

B. Buyer agrees to furnish information regarding payment, offer, or agreement to pay "political contributions" or "fees or commissions" (as those terms are defined at 22 C.F.R. 130) with respect to any sale by Netcom for which a license or approval is required from the Office of Defense Trade Controls, Department of State or any sale pursuant to a contract with the Department of Defense under Section 22 of the Arms Export Control Act (22 U.S.C. § 2762).

C. Buyer warrants that all representations and certifications furnished by Buyer as required by law or regulation in

connection with this order are accurate, current and complete as of the effective date of this order, and that to Buyer's knowledge no person has been paid a kickback or illegal gratuity in connection with this order. Buyer agrees to indemnify and hold Netcom and its affiliates harmless for any loss, damage or expenses sustained because any certification or representation herein or required by law or regulation made by Buyer was inaccurate, non-current or incomplete or due to Buyer's non-compliance with any applicable law or regulation.

17. ORDER OF PRECEDENCE. Except as provided otherwise in a written document executed by authorized representatives of Buyer and Netcom, in the event of any conflict among the provisions of this order, the following order of precedence shall apply in interpreting this order:

- A. Contract Documents
- B. These Terms and Conditions
- C. The text of the order.
- D. Other.

18. DISPUTE RESOLUTION. Any controversy, claim or dispute arising out of or relating to this Agreement or the transactions contemplated by this Agreement, or the breach, termination, enforcement, interpretation or validity of this Agreement, including the determination of the scope or applicability of this Agreement to arbitrate, shall be determined by arbitration to be conducted in the state of Illinois, country of the United States of America, before a sole arbitrator. The arbitration shall be administered by the American Arbitration Association ("AAA") pursuant to its commercial rules and, if applicable, its supplementary procedures for large complex disputes.

19. CHOICE OF LAW. This Agreement shall in all respects be interpreted, construed and governed by and in accordance with the laws of the State of Illinois, disregarding any conflict of laws provision which may require the application of the laws of another jurisdiction.

20. RIGHTS AND REMEDIES. The rights and remedies of either Party as set forth herein shall be in addition to any other rights and remedies provided in law or equity and the failure or delay by either party to exercise any rights or remedies under this order shall not operate as a general waiver thereof.

21. NON-WAIVER. No failure by either Party to assert its rights under any provision of this order, or failure of Netcom to perform any provision of this order, shall be effective as a waiver thereof unless consented to in writing by both Parties; nor shall any such waiver constitute an advance waiver of any other provision or failure to perform.

22. ASSIGNMENT AND SUBCONTRACTING. Any assignment or subcontract affecting this order shall be void unless agreed to in writing by both Parties.

23. HEADINGS. Headings and captions set forth in this order are for convenience of reference only and are not intended to, nor do they, alter the meaning, content or enforceability of any Article hereof.

24. SEVERABILITY. In the event any provision of this order is held to be unenforceable or invalid by any court of competent jurisdiction, the validity and enforceability of the remaining provisions of this order will not be affected and, in lieu of such invalid or unenforceable provision, there will be added automatically as part of this order one or more provisions as similar in terms as may be valid and enforceable under applicable law.