

TERMS AND CONDITIONS OF SALE

All sales made by NCast Corporation ("Seller") to the issuer of a purchase order or electronic mail order ("Buyer") are made under the following terms and conditions:

1. Orders:

All orders shall be placed by Purchase Order. Purchase Orders shall state the Billing Address, Shipping Address, Buyer, Buyer's Phone, Buyer's E-Mail, Ship Method and account, and shall state the quantities, products and prices of the product to be ordered.

2. Acceptance:

These terms of sale apply to all quotations made and sales orders entered into by Seller. Seller's acceptance is conditional on Buyer's assent to these terms in lieu of those in Buyer's purchase order. Any changes in these terms must be agreed in writing by an officer of Seller before becoming binding. All orders or contracts must be approved and accepted by Seller at its home office. These terms will be applicable whether or not they are enclosed with the products sold hereunder. Any terms and conditions of Buyer's purchase order that are inconsistent with or in addition to these terms will be deemed stricken.

3. Payment:

(a) Payment Terms. Payment is due either in advance by check, confirmed wire transfer, Paypal, or bank draft, or, with Seller's approval, on account. All invoices issued by Seller are payable thirty (30) days from date of invoice. Amounts past due will incur interest at a rate equal to one and one-half percent (1.5%) per month or the highest rate permitted by applicable law, whichever is lower. Seller may at any time require that shipments be made on a C.O.D. or cash-with-order basis.

(b) Security Agreement. Seller reserves a security interest in the products, and all proceeds from any sale thereof, sold to the extent of the invoice amount. If Buyer defaults in any obligation hereunder, Seller, in addition to all other rights and remedies under these terms and conditions, will be entitled to all rights, powers and remedies, available to a secured party under the California Commercial Code. Buyer acknowledges that this Section 2(b) constitutes a security agreement and hereby authorizes Seller to file a copy of this acknowledgment. A copy of the invoice may be filed with appropriate authorities at any time as a financing statement. On request of Seller, Buyer will execute any instruments Seller will desire to perfect its security interest.

(c) Breach of Agreement. Seller reserves the right to declare all sums immediately due and payable and to cancel any order or shipment, without liability to Buyer, in the event that Buyer is in breach of a material obligation hereunder, including but not limited to failure to comply with credit terms, or termination hereof.

3. Taxes:

Any present or future sales, revenue, excise, withholding or other tax, fees or charge of any nature, imposed by any public authority, applicable to the transaction, will be added to the purchase price and will be paid by Buyer, or in lieu thereof, Buyer will provide Seller with an exemption certificate acceptable to the taxing authorities.

4. Title:

All sales are made F.O.B. point of shipment at which point title passes to Buyer, and Seller's liability as to delivery ceases. Transportation charges will be collected from, or if prepaid, will be subsequently invoiced to Buyer. The carrier acts as Buyer's agent. Unless Buyer specifies which shipping method is to be used, Seller will exercise its own discretion.

5. Delivery:

Shipping dates are approximate. In no event will Seller be liable for any procurement costs, delay or non-delivery or any other failure to perform an obligation due to causes beyond its reasonable control. In the event of any such delay, the date of delivery or other performance will at the request of Seller be deferred for a period of equal to the time lost by reason of the delay. In the event Seller's production is curtailed for any of the above reasons so that Seller cannot deliver the full amount released hereunder, Seller may allocate production deliveries among its various customers then under contract for similar goods. The allocation will be made in a commercially fair and reasonable manner. When location has been made, Buyer will be notified of the estimated quota made available.

6. Inspection and Return:

Upon receipt of a shipment of products from Seller, Buyer will inspect such shipment to determine that it conforms to Seller's acknowledgment. If Buyer does not notify Seller in writing within five (5) business days after receipt of such shipment, such shipment will be deemed accepted by Buyer. If Buyer so notifies Seller of a nonconformance, Buyer will afford Seller a reasonable opportunity to inspect such shipment. No products will be returned to Seller without Seller's consent. Buyer must obtain from Seller a Returned Material Authorization, which must accompany any returned shipment. Freight must be prepaid by Buyer. All products must be returned in the same packing conditions in which it left Seller's premises (anti-static rails and boxes, adequately protected, etc.). If products are returned to Seller, Seller will repair or replace the product within thirty (30) days of receipt of returned products.

7. Intellectual Property Rights:

If Seller is notified promptly in writing and given sole control of the defense and all related settlement negotiations, Seller will indemnify, defend and hold harmless Buyer against any and all claims, costs, liabilities and responsibilities based on an allegation by any third party that any products supplied to Buyer hereunder infringe a U.S. patent issued as of the date such products were shipped by Seller, U.S. copyright or U.S. trademark. Seller will pay any such resulting costs, damages and attorneys' fees finally awarded by a court, and not subject to further appeal, with respect to any such claims only to the extent of payments made by Buyer to Seller hereunder by the date of such final award. If any such products in the possession of Buyer, or the operation thereof, become, or in Seller's opinion are likely to become, the subject of such a claim, Buyer will permit Seller, at Seller's option and expense, either to procure the right for Buyer to continue marketing the relevant products, or to replace or modify them at Seller's expense so that they become noninfringing. If neither of the foregoing alternatives is available on terms that Seller in its sole discretion deems reasonable, Buyer will return such products on written request from Seller. In such event, Seller will refund to Buyer the price paid by Buyer for such returned products as are in undamaged condition. Seller will not be liable to Buyer for any claim arising from or based upon the combination, operation or use of any product of Seller, with equipment or data not supplied by Seller or arising from any alteration or modification or products of Seller by anyone other than Seller or its agents authorized to do so. Buyer will hold

Seller harmless against any expense or loss resulting from infringement of the above-mentioned or unfair competition arising from compliance with Buyer's designs, specifications or instructions. Seller will have no obligation to Buyer with respect to infringement beyond that stated in this Section 7.

THE FOREGOING ARE SELLER'S SOLE AND EXCLUSIVE OBLIGATIONS, AND BUYER'S SOLE AND EXCLUSIVE REMEDIES, WITH RESPECT TO INFRINGEMENT OR MISAPPROPRIATION OF INTELLECTUAL PROPERTY RIGHTS.

8. LIMITED WARRANTY:

Seller warrants to Buyer that the Seller product shall be free from defects in material and workmanship for a period of one (1) year from the date of delivery when given normal, proper and intended usage, and agrees to repair or replace, without cost and at Seller's sole option, any part manufactured by Seller, provided that: (i) Seller is promptly notified in writing upon discovery by Buyer that any product fails to conform to the above limited warranty, along with a detailed explanation of any alleged deficiencies; (ii) such product is returned, freight prepaid, to Seller's plant from which such was shipped, appropriately packaged and prominently marked with a return authorization number from Seller; and (iii) Seller's examination of such product shall disclose that such alleged deficiencies actually exist and were not caused by accident, misuse, neglect, alteration, improper installation by Buyer, unauthorized repair or improper testing. Seller shall have a reasonable time to make any repairs to or to replace such product, at which time Seller will return such product reight prepaid to Buyer.

THE FOREGOING LIMITED WARRANTY IS THE EXCLUSIVE WARRANTY WITH RESPECT TO THE PRODUCT, AND NCAST HEREBY DISCLAIMS ALL OTHER WARRANTIES, EXPRESS AND IMPLIED, WRITTEN AND ORAL, INCLUDING WITHOUT LIMITATION ALL IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. BUYER'S SOLE REMEDY FOR A BREACH OF THE FOREGOING LIMITED WARRANTY IS SELLER'S OBLIGATION TO REPAIR OR REPLACE, AS SET FORTH ABOVE.

This Limited Warranty gives you specific legal rights, and you also may have other rights that vary from state to state. Some states do not allow limitations on how long an implied warranty lasts, so the above limitation may not apply to you.

LIMITED WARRANTY FROM BUYER TO ULTIMATE CONSUMER; INDEMNIFICATION OF SELLER:

If Buyer is not the ultimate consumer of the product, Buyer agrees to deliver to each customer a limited warranty, substantially identical to the above Limited Warranty. By accepting the product, Buyer assumes all liability for, and agrees to indemnify and hold Seller harmless against and defend Seller from, all suits, claims, demands, causes of action and judgment relating to damages, whether to personal injury or to personal property suffered by any person, firm, corporation or business association arising out of Buyer's acts or omissions.

RETURNS FOR CREDIT: Prior approval from Seller's Customer Service Department is required for all product returned for credit. Product returned for credit must be unused, in original factory condition, and packaged in original factory packaging. All returns must be returned to Seller's factory in Sunnyvale, California, freight prepaid. Product will not be accepted for credit if returned after thirty (30) days from the date of invoice. Returns for credit through no fault of Seller are subject to a restocking charge of 15% of invoice value. An authorization number will be issued by Seller's Customer Service Department and must be written on the outside of the carton for correct processing of credit.

9. LIMITATION OF LIABILITY: THE LIABILITY OF SELLER FOR ANY LOSS OR DAMAGES FROM ANY CAUSE OF ACTION WHATSOEVER, INCLUDING BUT NOT LIMITED TO ANY FAILURE OF THE PRODUCT TO FUNCTION, REGARDLESS OF WHETHER THE CLAIM IS BASED ON BREACH OF CONTRACT, ON BREACH OF WARRANTY, IN TORT, INCLUDING STRICT LIABILITY AND NEGLIGENCE, OR OTHERWISE, SHALL BE LIMITED TO A REFUND OF BUYER'S PURCHASE PRICE FOR THE PRODUCT. IN NO EVENT SHALL SELLER BE LIABLE FOR ANY SPECIAL, INCIDENTAL, INDIRECT, CONSEQUENTIAL OR PUNITIVE DAMAGES, EVEN IF THE BUYER HAS STATED THE POSSIBILITY OF SUCH DAMAGES IN ADVANCE.

(Some states do not allow the exclusion or limitation of incidental or consequential damages, so the above limitation or exclusion may not apply to you.)

10. General:

(a) Governing Law and Disputes. This Agreement will be governed by and construed in accordance with the laws of the State of California applicable to agreements entered into, and be performed entirely, within California between California residents. The U.N. Convention on the International Sale of Goods will not apply. Any suit hereunder will be brought solely in the federal or state courts in the Northern District of California, and Buyer hereby submits to the personal jurisdiction thereof.

(b) Remedies. If Buyer is in breach of its obligations under this order, Buyer will remain liable for all unpaid charges and sums due to Seller and will reimburse Seller for all damages suffered or incurred by Seller as a result of Buyer's breach. The remedies provided herein will be in addition to all other legal means and remedies available to Seller.

(c) Subcontractors. Buyer acknowledges that all or part of the products purchased hereunder may be manufactured and/or assembled at any of Seller's or its sub-contractors' facilities, domestic or foreign.

(d) Tooling. Seller will retain title to and possession of all tooling of any kind used in the production of products furnished hereunder.

(e) Export Restrictions. Buyer, by accepting these products, certifies that it will not export or re-export the products furnished hereunder unless it complies fully with all laws and regulations of the United States relating to such export or re-export.

(f) No Waiver. Failure of Seller to enforce at any time any of the provisions hereof will not be construed to be a waiver of the right of Seller thereafter to enforce any such provisions.

(g) Severability. If any provision of this Agreement is held to be invalid, such provision will be enforced to the maximum extent permissible, and the remaining provisions will remain in full force and effect.