

General Terms and Conditions of Purchase

of Egon Nesper GmbH & Co.KG

§ 1 Scope

- (1) Any and all contracts (“Contracts”) entered into by and between Nesper GmbH & Co. KG (“Nesper”) and any supplier (“Supplier”), from which Nesper shall purchase goods or services (“Goods”), including any associated pre-contractual obligations, shall be exclusively governed by these general terms and conditions of purchase (“T&C”), unless otherwise expressly agreed upon in writing by the parties thereto. No other terms and conditions of purchase (“Other Terms”) shall govern any Contract, even if Nesper (i) omits to reject such Other Terms, (ii) accepts delivery of Goods while having knowledge of such Other Terms without objection thereto or (iii) Nesper was notified in writing of such Other Terms. Nesper’s non-rejection of Other Terms included in any order confirmation shall not be deemed an acceptance of such Other Terms.
- (2) In the event of a previous or current business relationship by and between Nesper and Supplier, those T&C in the form as published at www.nesper.com/agb shall govern any subsequent similar Contract made by and between Nesper and Supplier, even if Nesper did not expressly refer to the T&C, unless otherwise agreed upon by Nesper and Supplier. Upon Supplier’s request, Nesper shall provide Supplier with a hardcopy of the most current version of the T&C free of charge.
- (3) The Contract, these T&C and Nesper’s purchase offers shall exclusively govern the contractual agreement by and between Nesper and Supplier.

§ 2 Conclusion of Contract

- (1) The terms of Nesper’s purchase offer shall exclusively govern any Contract. Oral purchase offers and additional side agreements shall become valid only if memorialized in writing.
- (2) Nesper shall be bound by its purchase offer for a period of two (2) weeks upon receipt of such purchase offer by Supplier. Supplier shall have two (2) weeks to accept Nesper’s purchase offer. If Supplier will not accept such purchase offer during the two (2) week period, Nesper shall no longer be bound by such purchase offer. In the event that Supplier will not or will not be able to accept Nesper’s purchase offer, Supplier shall immediately notify Nesper of such decision or inability.
- (3) Supplier shall confirm Nesper’s purchase offer in writing. Such confirmation shall state pricing information, any discounts granted, delivery dates and any other information contained in the purchase offer.

- (4) Drawings, blueprints and other relevant documents (“Documents”), which are necessary for the purchase offer, shall remain the sole property of Nesper. Any intellectual property associated therewith shall remain at all times with Nesper. Supplier shall immediately return any and all Documents to Nesper if Supplier will not accept Nesper’s offer pursuant to subsection (2) above.

§ 3 Prices, Payment, Offset

- (1) The prices stated in Nesper’s purchase offer shall be binding. Prices shall include delivery to Nesper’s facilities and cost of packaging, unless otherwise agreed upon in writing.
- (2) Supplier shall send all invoices to Nesper’s business address. All invoices shall be in compliance with all legal requirements and state all information as required by Nesper (item and order numbers, quantities, etc.). Any invoices submitted not in compliance with the aforementioned sentence shall be deemed as not having been issued.
- (3) Invoices shall be paid upon proper issuance within fourteen (14) days with a three percent (3%) discount or within thirty (30) days net. If Nesper accepts early delivery, payments shall be due based on the agreed upon delivery date.
- (4) In the event of a delivery not in compliance with the purchase offer, Nesper shall be entitled to withhold partial payment for the non-compliant part of the delivery until Supplier rectifies such non-compliant delivery. Nesper shall not be deemed to have accepted any such non-compliant delivery or to have waived any rights against Supplier based on such non-compliant delivery against Supplier if it pays in full for such non-compliant delivery.
- (5) Nesper, to the fullest extent, retains all rights to set-off and withholding. Supplier may only set-off against claims which are either undisputed by Nesper or legally established to be final and absolute. Notwithstanding § 354 a HGB (German Commercial Code), Supplier may assign claims based on the Contract to third parties only with Nesper’s prior written consent, such consent not to be unreasonably withheld. Supplier shall have a right to withhold performance or to claim non-performance by Nesper only with respect such claim arising from the Contract.

§ 4 Time of Performance, Delays in Delivery

- (1) The delivery dates and schedules stated in Nesper’s purchase offer or as otherwise agreed upon by the parties shall be binding. Delivery shall be deemed perfected upon Nesper’s receipt of the Goods.

- (2) Supplier shall immediately notify Nesper of any anticipated or actual delay in delivery, the reasons therefore and the anticipated duration of such delay. Such notification, however, shall not be deemed as a waiver of Nesper's rights based on such delay in delivery.
- (3) Nesper reserves its rights based on any delay in delivery.

§ 5 Packaging, Dispatch, Partial Performances, Passing of Risk of Loss

- (1) Supplier shall ship and deliver the Goods at Suppliers cost and risk to Nesper's business address or such other place as requested by Nesper. Supplier shall bear all costs for packaging, freight and insurance. Supplier shall package the Goods in a manner which is customary in the industry so as to safeguard and protect the Goods until delivered to Nesper. Nesper may return any packaging to Supplier.

If delivery ex works was contracted for, Supplier shall elect the most cost efficient mode of shipment and shall make all proper declarations (based on the cost of shipped Goods). Supplier shall bear responsibility for any damages to the Goods during shipment for any ex works deliveries.

- (2) All Goods shall be accompanied by appropriate shipping documents in duplicate, which shall exactly describe each shipment as to type of Goods, quantities and article numbers. If Supplier fails to do so, processing of the shipment might be delayed and Nesper shall bear no responsibility whatsoever for any such delay in processing.
- (3) Any partial delivery shall only be deemed accepted by Nesper if Nesper expressly agrees therewith. Any partial delivery shall be accompanied by a list of all non-delivered Goods.
- (4) Risk of loss for any shipped Goods will pass from Supplier to Nesper upon the Goods' arrival at the place of delivery as determined by Nesper.

§ 6 Defects in Goods or Title to Goods, Duty to Inspect and Object, Deficiency Claims

- (1) Unless otherwise agreed upon by Nesper and Supplier, Supplier represents and warrants that all Goods delivered will comply with all latest technical standards, all applicable laws, regulations and other legal requirements governing the place of delivery and all legal requirements, directives and policies of any public authority, occupation cooperative and industrial union. Should Supplier deviate from the requirements set forth in the immediately preceding sentence, Supplier shall obtain Nesper's prior written consent to do so. Supplier shall immediately notify Nesper of any concerns it has pertaining to its performance as requested by Nesper.

- (2) Supplier represents and warrants to deliver the Goods free and clear of, and that such delivery will not infringe on, any third-party rights. In the event of a violation of the representations and warranties under this subsection, Supplier shall, upon Nesper's first request, to the fullest extent, indemnify Nesper against any and all liability it will incur therefrom.
- (3) §377 HGB (German Commercial Code), with respect to Nesper's duty to inspect the Goods and to notify Supplier of any objections, shall hereby be modified as follows:
 - Nesper will notify Supplier of any defects in Goods within five (5) business days after receipt of the Goods, if such defects are detectable through inspection in the ordinary course of business. Nesper will notify Supplier of any defects in Goods which are not detectable through inspection in the ordinary course of business within five (5) business days after detection. Notice of defects shall be deemed timely given if dispatched to Supplier within such respective five (5) business day period.
 - Nesper shall only be required to inspect received Goods as to apparent deviations in identity and number and apparent shipping damage. With respect to the immediate foregoing, Supplier hereby hereby waives its right to exception due to a delayed notification of defects in Goods or an acceptance without reservation on the part of Nesper.
- (4) § 377 HGB (German Commercial Code) shall not be applicable, neither directly nor by way of analogy, to any contract for services, in just the same way as Nesper, with respect to other contracts which are not governed by §377 HGB (German Commercial Code), has no duty to object and object to defects in Goods.
- (5) Nesper reserves, to the fullest extent, all of its statutory warranty rights, without limitations.
- (6) In addition to its statutory warranty rights, if Supplier, with respect to any contract for services, shall be required to remedy any defective Goods by supplemental performance, Nesper shall have the right to request, at its sole discretion, Supplier to either rectify any such defect or to deliver replacement Goods which are free of any defect.
- (7) Notwithstanding §634a Par. 3-5 BGB (German Civil Code) for contracts for services, §438 Par. 3-5 BGB (German Civil Code) for purchase contracts and §479 Par.2 and 3, any claim based on any defect shall survive the transfer of risk of loss for thirty-six (36) months, unless otherwise agreed upon in writing by Nesper and Supplier, or if statutory law requires a longer statute of limitation.
- (8) Nesper's written defect notice shall suspend the running of the limitation period set forth in subsection (7) above. The suspension of the running of the limitation period shall continue until two (2) months after Supplier (i) has successfully completed its supplementary performance or (ii) has rejected in writing any warranty obligation. If Supplier delivers replacement Goods, the limitation period shall commence anew upon delivery.

§ 7 Product Liability, Indemnity, Product Liability Insurance

- (1) Supplier hereby agrees to indemnify, defend and hold Nesper, upon first demand, harmless from and against all loss resulting from a damage claim by a third party (including any costs incurred by Nesper to defend against such claim) based on a defective product, for which defect Supplier bears responsibility, provided that Supplier set the cause for such defect under its control and within its area of organization
- (2) If, due to a damage claim under subsection (1) above, Nesper will be required to conduct a product recall, Supplier hereby agrees to indemnify and hold Nesper harmless from all costs incurred by Nesper associated with such recall. Nesper will, if feasible and reasonable in time, notify Supplier as to content and extent of the recall and provide Supplier with an opportunity to comment. Nesper hereby expressly reserves all of its statutory rights.
- (3) Supplier shall at all times carry and maintain products liability insurance in an amount adequate to cover its products. Nesper hereby expressly reserves all of its statutory rights; this subsection (3) shall not be construed as any limitation of Supplier's liability whatsoever.

§ 8 Other Obligations of Supplier

- (1) Supplier hereby represents and warrants that it will ensure delivery of replacement Goods or spare parts thereof at reasonable conditions for a period of ten (10) years following the conclusion of the Supplier relationship with Nesper.
- (2) It shall be Supplier's responsibility to timely obtain knowledge of all data and circumstances which are relevant to fulfil its contractual obligations as well as Nesper's intended use of Supplier's delivered Goods. Supplier hereby represents and warrants that it will conduct its deliveries in a manner so as to ensure, that (i) Nesper may use the Goods in a legal, safe and economical manner, (ii) the Goods are suitable for the intended usage and (iii) the Goods comply with the state-of-the-art scientific and technical standards.
- (3) Supplier shall provide Nesper with all information pertaining to any necessary approval by and notification to any public authority associated with the import and operation of the delivered Goods.
- (4) Supplier hereby represents and warrants to continuously monitor the quality of its deliveries and performances. It shall be Supplier's duty to adhere to Nesper's quality assurance directive for suppliers in its then current version. Any modification with respect to the Goods to be delivered shall require Nesper's prior written approval. Supplier shall maintain written records for any Goods delivered to Nesper, and such records shall include information as to

when, in which manner and by whom the production of such Goods without defects was accomplished. Any and all such records with respect to special characteristics shall be kept for a minimum of twenty (20) years, and all other records shall be kept for a minimum of ten (10) years after delivery, and Supplier shall, upon request, make such records accessible to Nesper.

- (5) All other obligations of Supplier shall remain in full force and effect.

§ 9 Samples, Tools, Drawings and Other Documentation

- (1) Supplier acknowledges Nesper's exclusive right, title and interest in Nesper's, tools, drawings and other documents provided to Supplier or acquired by Supplier with Nesper's funds. If Supplier maintains custody of such tools, drawings and other documents, Supplier and Nesper hereby agree that such custody shall be construed as Supplier's contractual constructive possession to the benefit of Nesper in accordance with §930 BGB (German Civil Code).
- (2) Supplier acknowledges Nesper's exclusive right, title and interest in Nesper's materials or parts provided to Supplier. Supplier hereby represents and warrants to make use of such materials and parts only with respect to the order. Any processing of such materials or assembly of such parts by the Supplier shall be deemed to be made on behalf of Nesper. If Supplier joins, mixes or processes Nesper's materials and parts with other products not owned by Nesper, then Nesper shall become co-owner of the newly produced product at the ratio of the value of Nesper's supplied materials and parts to the value of all other products at the time of joining, mixing or processing. If Nesper's part will become the essential component of the new product, then Supplier hereby agrees to assign its partial co-ownership to Nesper. Supplier hereby represents and warrants to keep custody of Nesper's co-ownership or single-ownership at no cost.

§10 Confidentiality

- (1) Supplier hereby represents and warrants keeping confidential any and all knowledge and information, including technical details, provided by Nesper, while processing the order.
- (2) Supplier hereby represents and warrants to use such knowledge and information only for the purpose of processing a particular order and to disclose such knowledge and information only to those of its employees, which are involved the processing of the order and which have been obligated by Supplier to the same confidentiality standard. Supplier shall not disclose any such knowledge to third parties without Nesper's prior written approval. In this event, Supplier shall cause such third parties to agree to adhere to the same confidentiality standard.
- (3) Supplier hereby represents and warrants returning, upon Nesper's demand, all confidential records, regardless of whether these were provided to him at the beginning of the cooperation

or created during order processing. This obligation shall particularly be applicable upon conclusion of the cooperation. For that event, Supplier hereby represents and warrants to return all confidential records and not to retain any copies.

- (4) Supplier shall have no right whatsoever to withhold any confidential records, irrespective of any legal basis.

§ 11 Written Form Clause

Any revisions and supplements to the Contract must be in writing to be valid. Nesper and Supplier shall be deemed to comply with this requirement if they transmit documents in text form, in particular by means of facsimile or e-mail, unless otherwise provided for particular declarations. This written form requirement may only be repealed in writing.

§ 12 Applicable Law

The law of the Federal Republic of Germany shall apply, under exclusion of the United Nations Convention on the International Sale of Goods.

§ 13 Jurisdiction; Venue

- (1) Place of performance for all obligations under this Contract shall be Nesper's headquarters at the time of Contract execution, unless otherwise agreed upon in writing.
- (2) Supplier hereby irrevocably agrees and consents to the exercise of jurisdiction over it by the courts having jurisdiction over the city of Pforzheim, notwithstanding that Supplier is a merchant, a public authority or a special fund under public law, or if it is equally treated as such, or if Supplier maintains its headquarters or establishment abroad. Nesper reserves the right to commence any legal action in any appropriate jurisdiction.

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