

## General Terms and Conditions of Purchase

Nesper International, Inc.

Effective as of October 1, 2009

### 1. Scope

- 1.1 The legal relationship between Nesper International, Inc. (hereinafter referred to as “Nesper”) and the supplier (hereinafter referred to as “Supplier”) shall be subject to these Terms and Conditions (“Terms and Conditions”), which Terms and Conditions shall supersede all inconsistent terms submitted by Supplier, in writing or otherwise, prior to Nesper’s issuance of an Order.
- 1.2 These Terms and Conditions may not be varied or supplemented unless agreed to in writing by a duly authorized representative of Nesper. No sales representative shall have such authority. Failure of Nesper to object to conflicting or different provisions contained in any other writing of Supplier shall not be construed as a waiver of these Terms and Conditions nor an acceptance of any terms and conditions of Supplier. Except only as otherwise agreed in writing by a duly authorized representative of Nesper, the purchase by Nesper of any goods or works from Supplier (“Goods”) or services to be performed by Supplier (“Services”) shall be governed only by these Terms and Conditions, subject to Nesper’s modifications provided in any Order.
- 1.3 These Terms and Conditions in the form as published at [www.nesper.com](http://www.nesper.com) shall govern any purchase of Goods and/or Services by Nesper without Nesper’s express reference to these Terms and Conditions, if both parties have a preexisting business relationship and the new purchase of Goods and/or Services is similar to a previously made purchase.

### 2. Orders

- 2.1 All orders for Goods and/or Services submitted to Supplier by Nesper, which may include applicable delivery forecasts in connection therewith (“Orders”), and the acceptance thereof by Supplier, shall be delivered either orally, in writing or in electronic form, provided that all verbal Orders are binding only if such Orders are confirmed by the parties in writing.
- 2.2 By acceptance of the Order, Supplier agrees to these Terms and Conditions, in effect as of the issuance date of the applicable Order. Nesper rejects any additional or inconsistent terms and conditions offered by Supplier at any time and irrespective of Nesper’s acceptance of, or payment for, Supplier’s Goods or Services. Each Order shall be deemed accepted upon the return of the acknowledgment copy of the applicable Order or the commencement of performance by Supplier pursuant to such Order. These Terms and Conditions constitute the entire agreement between the parties and no change to or modification of these Terms and Conditions or any Order shall be binding upon Nesper unless signed by an authorized representative of Nesper.
- 2.3 In the event that Nesper does not receive an Order confirmation (“Order Confirmation”) from Supplier within two (2) weeks after Supplier’s receipt of any Order, Nesper is authorized to cancel the submitted Order and Nesper shall no longer be bound by such Order. Forecast delivery schedules delivered in connection with any Order will be binding with respect to such Order if Supplier does not object in writing within three (3) days following receipt of the applicable Order. Supplier’s Order Confirmation shall state pricing

information, discounts granted, delivery dates and any other information contained in the Order.

- 2.4 Nesper is authorized to request reasonable modifications to any Order at any time prior to the delivery of Goods or performance of Services, as applicable, provided that the parties agree to mutually negotiate in good faith any changes in price or delivery dates that may result from such modifications. Notwithstanding the above, the parties acknowledge and agree that in the interest of time certain matters of a practical business nature, such as material and product releases, minor changes in delivery dates, shipment instructions, variances in Orders and the like may be sent by Nesper to Supplier via electronic data interchange, telex or telephonic communication. The Parties agree that such communications and any deliveries thereunder shall constitute part of the Order and be subject to these Terms and Conditions.

### **3. Delivery**

- 3.1 Supplier is obligated to adhere to the quantity of Goods or Services, as applicable, as stated in the Order as well as the time and place of delivery provided therein. **Time is of the essence in making deliveries of Goods or performance of Services under each Order.**
- 3.2 If Supplier has any reason to believe that delivery or performance in conformance with any Order is not possible, in full or in part, Supplier must immediately notify Nesper of such belief in writing, which notice shall include the duration of expected delay and the reason therefore. The delivery of any such notification will not affect or alter any rights or claims of Nesper hereunder.
- 3.3 In the event that Supplier fails to issue a notification of delay as required hereinabove, Nesper is authorized to refuse acceptance of any Goods or Services that are not delivered in accordance with the terms of the applicable Order. Any such Goods may be returned, or Services rejected, at Supplier's sole cost and risk.
- 3.4 Partial or non-conforming deliveries or performances are permissible only upon prior written consent by Nesper.
- 3.5 Unless otherwise provided in the applicable Order, all deliveries shall be F.O.B. Nesper's point of destination, with title and risk of damage or loss to all Goods passing to Nesper upon Supplier's delivery, and any and all costs associated with delivery, including, but not limited to packaging, freight and insurance, shall be borne by Supplier.
- 3.6 Goods to be delivered must be packed in consideration of the general requirements of the respective carrier and in a manner sufficient to ensure arrival in an undamaged condition. The delivery must be insured against transportation damages at the Supplier's cost. Nesper may return any packaging to Supplier.
- 3.7 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.

### **4. Inspection and Quality Control**

- 4.1 Nesper shall not be required to perform incoming inspections of any Goods or Services delivered by Supplier, and Supplier waives any right to require Nesper to conduct any such inspections. Notwithstanding (i) payment, (ii) passage of title or (iii) any prior inspection or test, all Goods and Services are subject to the specifications and other requirements set forth in the applicable Order.

- 4.2 Nesper will, as soon as practicable in the normal course of business, inform Supplier in writing of any defects of the Goods or Service. Supplier waives its right to assert any objection of a delayed notice of defect.
- 4.3 Acceptance is made solely by written acceptance protocol by Nesper.

## **5. Prices and Payment Terms**

- 5.1 Supplier warrants that the price for all Goods and Services sold to Nesper pursuant to any Order will be no less favorable than that extended to any other customer of Supplier as of the scheduled, or actual, delivery date. Unless otherwise provided on the face of the applicable Order, the price applied to any Goods or Services shall include any and all applicable federal, state and local taxes.
- 5.2 All invoices must be prepared and delivered by Supplier immediately upon shipment of the Goods or performance of the Services, provided that with respect to any ongoing business relationship, such invoices shall be prepared and delivered monthly. All invoices shall state all information as required by Nesper, including, but not limited to type of Goods and/or Services, Order numbers, quantities, etc. Any invoices submitted not in compliance with the preceding sentence shall be deemed as not having been issued.
- 5.3 Unless otherwise provided on the face of the applicable Order, Nesper will, at its option, pay all undisputed invoices within fourteen (14) days subject to three percent (3 %) discount or within thirty (30) days net. All invoice payments will be made by bank transfer or check, at Nesper's discretion.
- 5.4 In the event of a Supplier's performance not in compliance with the Order, Nesper shall be entitled to withhold partial payment for the non-compliant part of such performance until Supplier rectifies such non-compliant performance. Nesper shall not be deemed to have accepted any such non-compliant performance or to have waived any rights against Supplier based on such non-compliant performance against Supplier if it pays in full for such non-compliant performance.
- 5.5 Nesper reserves its right to set-off and withholding.

## **6. Granting Rights**

- 6.1 As of the time of delivery of the Goods or performance of the Services, as applicable, Supplier grants to Nesper title, to the extent assignable, to all such Goods or the performed work product, as applicable.
- 6.2 This grant of title specifically includes the right to reproduce, distribute, process, redesign, modify, and expand upon any and all such delivered Goods and/or work products.

## **7. Third Party Property Rights**

- 7.1 Supplier warrants and guarantees that any and all materials and services, as well as the contents of such, that are used within the scope of fulfillment of the any Order, are free of third party property rights and Supplier hereby agrees to indemnify Nesper from any and all third party claims related to, or arising from, any infringement claims related thereto.
- 7.2 If the sale and/or use of any Goods or Services is enjoined or, in Nesper's sole judgment, is likely to be enjoined, Supplier will, at Nesper's election and Supplier's sole expense, either procure for Nesper the right to continue using such items, or replace the same with equivalent non-infringing items, or modify such items so they become non-infringing, or

remove same and refund the purchase price, including transportation, installation, removal and other charged incidental thereto.

## **8. Tools, Models**

- 8.1 Unless otherwise provided on the face of the applicable Order, any and all costs incurred by Supplier for the manufacture of any tools and models necessary for the fulfillment of any ordered Goods or Services, as well as any costs associated with the maintenance, service or repair of the same, are to be borne solely by Supplier.
- 8.2 Title to all property furnished to Supplier by Nesper, including, without limitation, any and all tools, models, die-plates, devices, samples and similar objects, as well as any drawings, material specifications, documents, data carriers, and other information carriers, in connection with any Order or ordered Goods or Services (all hereinafter collectively referred to as (“Nesper Property”), shall be and remain in Nesper with the right of possession in Nesper and Supplier will use Nesper Property only in the fulfillment of any Order as specified therein. All Nesper Property while in Supplier’s custody or control will: (a) be held at Supplier’s risk, (b) be kept insured by Supplier at Supplier’s expense against loss and damage in an amount equal to the cost of replacement, (c) be conspicuously marked “Property of Nesper” and such markings maintained, (d) not be commingled with the property of Supplier or with that of a third person, (e) not be moved from Supplier’s premises without Nesper’s written approval, and (f) be used in compliance with Nesper’s or the manufacturer’s instructions and in compliance with all applicable laws. All Nesper Property will be subject to removal at Nesper’s written request, in which event, Supplier, at its expense, will prepare such Nesper Property for shipment and will deliver it to Nesper in the same condition as originally received by Supplier, reasonable wear and tear excepted. If Supplier does not release and deliver any of Nesper Property in accordance with this Section, Nesper shall be entitled to obtain an immediate writ of possession, enter Supplier’s premises and take possession of such Nesper Property. Supplier will maintain accountability and property control records of all Nesper Property in accordance with sound industrial practices. Nesper will have the right to enter Supplier’s premises at all reasonable times to inspect any Nesper Property and Supplier’s records with respect thereto. Supplier, at its expense, will maintain all Nesper Property in good condition and repair or replace any Nesper Property to the extent necessary for performance of any Order. To the extent permitted by law, Supplier waives its right to object to the repossession of any Nesper Property by Nesper in the event Supplier is involved in bankruptcy proceedings. Nesper is not the manufacturer of any Nesper Property, nor the manufacturer’s agent nor a dealer therein, and NESPER HAS NOT MADE AND DOES NOT MAKE ANY WARRANTY OR REPRESENTATION WHATSOEVER, EITHER EXPRESS OR IMPLIED, AS TO THE FITNESS, CONDITION, MERCHANTABILITY, DESIGN OR OPERATION OF NESPER PROPERTY OR ITS FITNESS FOR ANY PARTICULAR PURPOSE. Nesper will not be liable to Supplier for any loss, damage, injury or expense of any kind or nature caused, directly or indirectly, by any Nesper Property, including without limitation, the use or maintenance thereof, or the repair, service or adjustment thereof, or by an interruption of service or for any loss of business whatsoever or howsoever caused, including, without limitation, any loss of anticipatory profits or any other indirect, special or consequential damages. Upon completion or termination of any applicable Order, Supplier will store the applicable Nesper Property at its expense until disposition directions are received from Buyer.

## **9. Implementation Standards**

- 9.1 All drawings, data, designs, engineering instructions, models, specifications or other technical information, written, oral or otherwise, supplied by or on behalf of Nesper, or prepared by Supplier specifically in connection with performance of any Order (hereinafter "Information") shall be and remain the property of Nesper. Supplier shall not use or disclose such Information except in the performance or fulfillment of Orders for Nesper and upon Nesper's request such Information and all copies thereof shall immediately be returned to Nesper. Supplier shall immediately return, without Nesper's express request, any and all Information if Supplier shall not confirm an Order within two (2) weeks after Supplier's receipt of an Order. Where Information is furnished to Supplier's suppliers for procurement of supplies by Supplier for use in the performance of Nesper's Orders, Supplier shall insert the substance of this provision in any purchase order or subcontract hereunder.
- 9.2 To the extent Nesper provides Supplier with any Information in connection with any Order, Supplier shall strictly adhere to the Information in the fulfillment or performance of such Order.
- 9.3 In the event that Nesper requests any sample in relation to an Order, mass production may commence only upon written approval of such sample. In the event of any issues or concerns on the part of Supplier with respect to any Information provided to Supplier by Nesper, Supplier shall immediately provide written notification of such issues or concerns prior to commencement of any mass production. In such a case, mass production may commence only upon written instruction by Nesper instructing Supplier to proceed with such production.
- 9.4 Supplier is obligated to review each Order, along with all Information provided therewith, to confirm the factual accuracy of such Order prior to the execution of the Order and will immediately inform Nesper of any possible errors. If any such errors are detected at a later point in time, Nesper is not obligated to accept any additional costs resulting from such delayed detection.

## **10. Printed Matter**

- 10.1 All Ordered proofs must be submitted in duplicate. In the event that any print error is recognized following the time of printing, Supplier is not entitled to rely on the fact that Nesper reviewed such the proof and returned it with approval for print. The responsibility for, and costs associated with, any and all overlooked print errors solely rests with Supplier. All typeset errors must be corrected free of charge.
- 10.2 Any corrections by the author that involve more than one hour may be can be invoiced.

## **11. Warranty Guaranty**

- 11.1 Unless otherwise stated in the Order or as required by law, Supplier warrants to Nesper its successors, assigns and customers that all Goods and Services (including all replacement items and all replacement or corrected components which Supplier furnishes pursuant to this warranty) will be free from defects in materials and workmanship, as applicable, for a period of [24] months from the date of delivery to the Nesper; will conform to applicable drawings, specifications, samples and other descriptions furnished or specified by Nesper. In the event Supplier is required to replace, correct or reperform any Goods or Services, as applicable, pursuant to a breach of the foregoing warranty, the running of the warranty period for such Goods or Services, shall be suspended from the date Supplier receives notice of the breach of warranty until the date of such replacement, corrected or reperformance. Nesper's approval of Supplier's samples shall not be construed as a waiver

by Nesper of any requirement of the drawings, specifications and/or other referenced descriptions applicable hereto or of any express or implied warranty.

- 11.2 Nesper will notify the Supplier in writing of any apparent defects as soon as practicable following delivery or service performance, as applicable.
- 11.3 In the event of any defect discovered following Supplier's delivery or performance or in the event of Supplier's breach of warranty, Nesper may at its election and in addition to any other rights or remedies it may have at law or equity or in connection with any Order, (a) return any defective Goods or Services at Supplier's risk and expense and recover from Supplier the price paid therefore and, if elected by Nesper, purchase or manufacture similar Goods or Services and recover from Supplier the costs and expenses thereof, (b) accept or retain the Goods and/or Services and equitably reduce their price, or (c) require Supplier, at Supplier's expense to promptly replace, correct or reperform, as applicable, such defective Goods or Services. If Supplier fails to replace, correct, or reperform, as applicable, such Goods or Services within forty-five (45) days of Supplier's receipt of notice alerting Supplier to such defect, Nesper may undertake, or arrange for, such replacement, correction or reperformance at Supplier's expense or purchase, manufacture or procure similar Goods or Services, as applicable, and recover from Supplier the reasonable costs and expenses thereof.
- 11.4 Any payment tendered in connection with any Order prior to the recognition of any defect does not constitute acceptance of the Goods free of defects.

## **12. Indemnification; Products Liability Insurance**

- 12.1 Supplier will indemnify, defend and hold harmless Nesper, its officers, employees, agents, successors, assigns, customers and users of Supplier's goods and services from and against any and all losses, expenses, damages, claims, suits and liabilities (including court costs and attorneys' fees) arising as a result of actual or alleged breach of any warranties or other terms contained herein or arising under any strict tort or negligence claims premised on either an actual or alleged defect in Supplier's Goods or Services provided. Supplier's indemnification obligation shall also extend to any product recalls of Nesper as a result of any actual or alleged breach of any warranties or other terms contained herein. At Nesper's request, Supplier will assume promptly full responsibility for the defense of any action described in this Section which may be brought or threatened by a third party against Supplier and/or Nesper.
- 12.2 Supplier shall at all times carry and maintain products liability insurance in an amount acceptable to Nesper and adequate to cover its products. This Subsection shall not be construed as a limitation of Supplier's indemnification obligations.

## **13. Termination**

- 13.1 Nesper may terminate any Order in whole or in part at any time for its convenience by written notice stating the extent and effective date of such termination. Upon receipt thereof, Supplier shall, to the extent directed by Nesper, (i) any stop work under the applicable Order and place no further orders relating thereto (ii) terminate work under any outstanding orders, which relate to work terminated by such notice and (iii) protect property in Supplier's possession in which Nesper has or may acquire an interest. Supplier shall submit to Nesper its written claim, if any, as soon as possible but not later than thirty (30) days from the effective date of termination. Supplier hereby gives Nesper the right to audit and inspect its books, records and other documents relating to its termination claim. If the parties cannot agree within a reasonable time upon the amount of fair compensation for

such termination, Nesper's liability to Supplier, and Supplier's sole remedy shall be limited to Nesper making prompt payment of the following amounts only, without duplication: (A) the contract price not previously paid for items delivered or performed and accepted by Nesper in accordance with the provisions of the applicable Order prior to the effective date of termination, and (B) the actual costs incurred by Supplier and properly allocable or apportionable to the applicable Order under the preceding sentence, and credit or pay the amounts so agreed or received as Nesper directs, with appropriate adjustment for delivery cost savings. Supplier shall, if directed by Nesper after payment for same, transfer title to and make delivery of any such Goods, Services, or works in progress not so retained or sold.

- 13.2 Nesper reserves the right to terminate any Order in whole or in part for default (i) if Supplier fails to perform in accordance with any of the requirements of the Order or to make progress so as to endanger performance thereunder; (ii) if Supplier fails to give Nesper, upon request, reasonable assurances of Supplier's future performance; (iii) if Supplier becomes insolvent or suspends any of its operations or if any petition is filed or proceeding commenced by or against Supplier under any state or federal law relating to bankruptcy, arrangement, reorganization, receivership or assignment for the benefit of creditors; or (iv) if any other event occurs that causes reasonable doubt as to Supplier's ability to render due performance hereunder. Any such termination will be without liability to Nesper for any or all property produced or procured by Supplier for performance of the work terminated except that Nesper shall pay to Supplier the value thereof not to exceed Supplier's cost.

**14. Compliance with Laws.**

Supplier shall comply with all applicable federal, state and local laws, executive orders, rules and regulations during performance of each Order. Supplier agrees to indemnify and hold Nesper and its customers harmless from and against any losses, damages and expenses sustained because of Seller's non-compliance with any applicable law.

**15. Assignment and Subcontracting.**

Any assignment of any Order or the work to be performed thereunder, in whole or in part, or of any other interest thereunder, without Nesper's written consent shall be void. Supplier agrees not to subcontract for any complete or substantially complete materials, supplies and/or services called for by any Order without the prior written approval of Nesper.

**16. Confidentiality**

Except as otherwise specifically agreed, all Information disclosed by Nesper to Supplier shall be Nesper's property and shall be held in confidence by Supplier and used solely for the performance of the applicable Order. Supplier shall take all reasonable precautions (a) to disclose such Information within Supplier's organization only to those employees and agents who have a need to know in order to fulfill Supplier's obligations under such Order and who have agreed to keep the Information confidential, and (b) to prevent any such Information from being divulged to third persons not employed by Supplier, including having recipients acknowledge the confidential status of such Information and agreeing to similar restrictions. This obligation of confidence shall survive termination of the final Order submitted by Nesper to Supplier and will continue for three (3) years thereafter, or for as long as the Information remains a trade secret, whichever is longer.

**17. Arbitration.**

In the event that the parties are unable to agree on any matter for which agreement is required under an Accepted Order, including these Terms and Conditions, or if either party commits a default hereunder, whether material or immaterial, either party shall have the right to submit the matter to binding arbitration in accordance with the rules of the American Arbitration Association (“AAA”), as then in effect. Each party shall pay one-half of the deposit required by AAA. If the matter in dispute exceeds twenty thousand Dollars (\$20,000.00), the matter shall be considered by a panel of three (3) arbitrators. If there are three (3) arbitrators, the parties shall request, within fifteen (15) days of receipt of notice of one party to the other party requesting arbitration, from AAA a list of approved arbitrators and, by way of elimination, shall agree on three (3) arbitrators. If the parties agree on less than three (3) arbitrators, they shall request a second list of approved arbitrators from AAA and again follow the process in the preceding sentence to select the remaining arbitrator(s). If the parties fail to elect two (2) arbitrators, then the AAA shall select the arbitrator panel. If the parties elect two (2) arbitrators, then such arbitrators shall elect the third arbitrator. If the matter in dispute is twenty thousand Dollars (\$20,000.00) or less, the matter shall be considered by a single arbitrator. The election of a single arbitrator shall be made in accordance with the process for selecting three (3) arbitrators. The non-prevailing party shall bear the costs of the arbitrator(s), witness fees, attorneys’ fees and all other costs associated with the arbitration proceeding. The arbitration proceeding shall occur in Atlanta, Georgia and the discovery proceedings shall be limited to the deposition of each one (1) C-level and management-level employee and one (1) expert witness for each party. The Federal Arbitration Act shall be applicable to the arbitration proceedings. The arbitrator(s) shall apply the law of the state of Georgia.

**18. Jurisdiction; Venue.**

For purposes of injunctive relief or should arbitration not be available, in any legal action relating to the sale and shipment of any Goods or Services under any Order, Supplier irrevocably agrees and consents (i) to the exercise of jurisdiction over it by the courts of the State of Georgia or the United States District Court for the Northern District of Georgia; and (ii) that if Supplier brings the action, it shall be instituted in one of the courts specified in Subsection (j) above. Service of process provided to Supplier in accordance with Section 21 below shall be effective and sufficient to establish jurisdiction and venue in such court in any such action. Should arbitration not be available, Nesper may institute legal action in any appropriate jurisdiction.

**19. Governing Law.**

All Orders and these Terms and Conditions shall be governed by and construed in accordance with the laws of the State of Georgia, United States of America but excepting any Georgia or United States rule, law or treaty which would result in the application of the law of a jurisdiction other than Georgia.

**20. Severability.**

If any provision of an Order or these Terms and Conditions shall be judged by a court of competent jurisdiction to be invalid, illegal or unenforceable in any respect, such adjudication shall not affect or modify any other provision of the Order or these Terms and Conditions, as applicable, and the effect thereof shall be confined to the provision as to which such adjudication is made.



**21. Notice.**

Any notice or other communication required or permitted by these Terms and Conditions to Nesper must be given in writing and must be delivered by personal delivery (including personal delivery by overnight courier such as Federal Express, DHL, or similar overnight courier), first class mail (registered or certified), telecopy or e-mail (with a copy sent by personal delivery or first class mail), in each case addressed to Nesper International, Inc., 107 Wiley Road, LaGrange, GA 30240, Telefax: (706) 812-1972. Notice shall be effective when received or delivered.

**22. Headings.**

The headings contained in these Terms and Conditions are included for mere convenience of reference and shall not affect the language included herein.

**23. Amendment.**

Nesper reserves the right to change, modify, add, or delete portions of these Terms and Conditions from time to time without further notice. Any such changes to these Terms and Conditions will be posted at [www.nesper.com](http://www.nesper.com) and will indicate at the top of that page the date that these Terms and Conditions were last revised ("Effective Date"). Any and all Services shall be performed pursuant to, and in accordance with, the Terms and Conditions as of the Effective Date which is contemporaneous with, or in effect as of, the date of the applicable Order.

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