

General Terms and Conditions of Sale and Services

Nesper International, Inc.

Effective as of October 1, 2009

1. General

These Terms and Conditions of Sale and Services (“Terms and Conditions”) form an integral part of any acceptance by Nesper International, Inc. (“Nesper”) of any purchase order (“Order”) placed and sales or services transaction resulting therefrom (“Transaction”) and shall supersede all printed terms and conditions on any request for proposal, purchase order, or other form, if any, of or presented by a customer of Nesper (“Customer”) and any other inconsistent terms submitted by a Customer prior to acceptance by Nesper of an Order. 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 Order or other writing of Customer shall not be construed as a waiver of these Terms and Conditions nor an acceptance of any terms and conditions of Customer. Except only as otherwise agreed in writing by a duly authorized representative of Nesper, the sale of any of Nesper’s products or services (“Products”) shall be governed only by these Terms and Conditions. Customer shall be deemed to have accepted these Terms and Conditions if Customer accepts any shipment of Products to which these Terms and Conditions relate. Nesper hereby expressly rejects any portion of any Order that attempts to modify these Terms and Conditions. The Terms and Conditions in the form as published at www.nesper.com shall govern any Transaction between Nesper and a Customer without Nesper’s express reference to these Terms and Conditions, if both parties have a preexisting business relationship and the new Transaction is similar to a previously made Transaction.

2. Offer and Acceptance

The Order is an offer to purchase upon these Terms and Conditions and shall be considered accepted upon (i) Nesper’s receipt of an Order from Customer for the Products and Nesper’s acceptance (“Order Acceptance”) of the Order (such an Order is an “Accepted Order”), (ii) the mutual execution of a contract for sales and/or services (“Sales Contract”) or (iii) Nesper’s commencement of its performance as requested in the Order. Customer acknowledges that Nesper shall have the right to (i) reject any Order for any reason or for no reason, (ii) to accept any Order within three (3) weeks from receipt of such Order, and (iii) to request from Customer written confirmation of its verbal declarations with respect to any proposed Transaction. After Order Acceptance, Customer may not cancel any Accepted Order without Nesper’s written consent.

3. Scope

3.1 The scope of the Transaction (“Scope”) shall be determined, in that priority, by (i) the Sales Contract, (ii) the Accepted Order or (ii) Nesper’s solicitation of an Order from Customer (“Order Solicitation”). Additional specifications or requirements beyond the terms of an Accepted Order or subsequently introduced to expand or limit the Scope must be expressly agreed upon by Nesper in writing to be valid.

3.2 Product descriptions, illustrations and technical data are mere descriptions of the Products for illustrative purposes and shall in no event be construed as a limited warranty.

- 3.3 Nesper reserves the right to make minor modifications to the Products (“Modifications”), provided that these modifications are of non-material nature and may be reasonably imposed on Customer. In particular, Customer shall be deemed to have accepted any commercially customary Modifications, including, but not limited to quality, quantity, weight or other deviations, even if Customer referred to brochures, illustrations or pictures upon placing an Order, unless Nesper specifically agrees in writing to not make any Modifications.

4 Time of Performance, Delays, Partial Performances, Place of Performance

- 4.1 Any information with regard to time of delivery and performance shall be non-binding, unless otherwise expressly stated by Nesper in writing. All terms of delivery and performance shall be subject to correct and timely availability of supplies and raw materials.
- 4.2 The time of delivery shall commence with Nesper’s dispatch of the Accepted Order, but in no event before Customer and Nesper have resolved all commercial and technical questions and Customer has fulfilled all of its obligations associated with an Accepted Order (including, but not limited to obtaining necessary governmental authorizations and approvals or the timely payment of any down payments).
- 4.3 The time of delivery and performance shall be extended by the period of time in which Customer is in default of its obligations under the Accepted Order or for as long as it does not meet its contributory obligations thereunder, including, but not limited to the failure to provide information, grant access, or supply its employees.
- 4.4 If Customer requests any changes to an Accepted Order, and Nesper agrees thereto in writing, then the time of delivery with respect to such changed Accepted Order shall be extended by a reasonable period of time to accommodate the changes.
- 4.5 Nesper shall be in compliance with agreed-upon delivery dates (i) if the Products were released into the custody of the common carrier (“Carrier”) on the agreed upon date of delivery or (ii) as soon as Nesper has communicated to Customer its de facto readiness for shipment.
- 4.6 In the event that Nesper’s supplier ultimately fails to deliver necessary parts or raw materials, despite Nesper’s careful selection of such supplier, and Nesper’s order with such supplier complies with the requirements of Nesper’s delivery obligation to Customer, Nesper shall be entitled to fully or partially withdrawal from the proposed Transaction, provided that Nesper notifies Customer of the failed supply, and – as far as legally permissible – to offer the assignment of Nesper’s claims against such supplier to Customer.

5. Shipment; Risk of Loss; Shipping Schedule

- 5.1 Shipments shall be made F.O.B. Nesper’s factory or warehouse, unless otherwise specified in writing.
- 5.2 Nesper’s Products are packaged carefully, using standard approved methods. The shipment shall be deemed accepted in good and undamaged condition by the Carrier and title to, and the risk of loss or theft, damage or destruction to, the Products shall pass and shift to Customer upon releasing the Products to the Carrier and upon that acceptance by the Carrier.
- 5.3 Nesper will use its commercially reasonable efforts to ship the Products as agreed upon by Nesper and Customer. However, Customer acknowledges and agrees that lead time will vary according to availability of supply, delays in transportation, manufacturing problems and other conditions, and, consequently all delivery dates communicated by Nesper are estimates and shall be subject to change without notice. Delay in delivery of any shipment of Products shall not relieve Customer of its obligations to accept such shipment or any other shipment. Under no circumstances shall Nesper on account of late

delivery or non-delivery be liable to Customer, its agents or any other persons for any special or consequential damages, whether based upon lost goodwill, lost profits, work stoppage, impairment of or breach of contract, negligence or such other actions as may be deemed or alleged to be the cause of a loss or damage to such a person.

- 5.4 Nesper's shipments are NOT insured. Customer must request insurance coverage, if required, and the insurance cost will be added to the freight charge. All uninsured shipments are the responsibility of Customer. Nesper assumes no responsibility for any such loss or damage.
- 5.5 All shipments shall be made by a Carrier of Nesper's choice. Any special arrangements requested by Customer shall be at Customer's additional expense.
- 5.6 Nesper reserves the right to deliver in installments. Delay in delivery of any installment shall not relieve Customer of its obligation to accept remaining deliveries.

6. Prices, Compensation, Payment

- 6.1 All prices are valid ex works unless otherwise agreed upon by Nesper in writing. All prices and compensations are in US\$ plus applicable transportation costs, expenses, packaging, dispatch and, if applicable, insurance of goods in transit.
- 6.2 Customer shall pay the prices stated in the Accepted Order in accordance with the terms of this Section 6.
- 6.3 Unless otherwise agreed upon by Nesper in writing, payments are due without discount immediately after Nesper's delivery of the Products and Customer's receipt of invoice and are payable within fourteen (14) days after invoice date.
- 6.4 Upon Customer's default of payment, interest will accrue at a rate of the lower of (i) eight percentage (8%) points above the currently applicable legal interest rate or (ii) the maximum interest rate permitted by applicable law. Customer shall pay all costs of collection, including legal fees. Nesper reserves the right to seek any additional remedies allowed by law.
- 6.5 If Customer requests a change in delivery date or time of performance and Nesper agrees thereto in writing, Customer shall pay Nesper at that time when such payment would have been due without such change.

7. Taxes

Customer shall pay, in addition to any invoiced amount, all taxes, if applicable, upon the production, sale, shipment, or use of the Products, including, without limitation, all federal, state, or local property, license, privilege, sales, use, excise or gross receipts taxes or other like taxes and tariffs. In the event that Nesper is required to pay any such taxes, Customer shall indemnify, pay or reimburse Nesper on demand for such payments and any penalties or fees related thereto.

8. Purchase Money Security Interest

With the submission of the Order, and Nesper's issuance of an Order Acceptance, Customer grants a purchase money security interest in all Products delivered by Nesper to Customer and in all proceeds from the sale of the Products by Customer to any third party, including accounts receivable, contract rights and cash receipts arising therefrom. Such security interest shall remain in Nesper until Nesper receives full payment of the purchase price for all Products. Customer authorizes Nesper to timely prepare and file such financing statements or other writings as may be necessary to perfect such purchase money security interest. Customer agrees that Nesper has the right to immediate possession to any Products that have not been paid for in full by Nesper.

9. Inspection; Claims; Return

- 9.1 Customer shall inspect the Products immediately upon their delivery and shall give written notice in accordance with Section 21 below to Nesper of any damage to the Products (“Damage or Loss”) within eight (8) business days from the date of their delivery. If Customer does not provide such notice, the Products shall be deemed to conform to their description and the Products shall be deemed accepted by Customer in accordance with the terms of the Accepted Order. Customer expressly waives any rights Customer may have to reject or revoke acceptance of the Products after such notification period has lapsed.
- 9.2 For any Damage or Loss not immediately apparent, Customer shall notify Nesper within eight (8) business days of discovery of such Damage or Loss. If Damage or Loss is ascertainable by Customer upon delivery, Customer must immediately file a claim with the Carrier and notify Nesper in writing as set forth above within two (2) business days after delivery. Notations regarding any such claim shall be made on all copies of Carrier’s waybill and the driver must sign all copies to acknowledge notification of the claim. Upon Nesper’s request, Customer shall furnish to Nesper all original delivery records so as to assist Nesper in assessing the validity of the claim.
- 9.3 Customer shall not refuse acceptance of shipment because of transit damage as this causes unnecessary shipping expense and delay.
- 9.4 Time is of the essence for purposes of this Section 9.

10. Force Majeure

Nesper shall not be liable for damages as a result of any delay or failure of delivery due to any cause beyond Nesper’s control, including, without limitation, acts of nature or God, act of Customer or any of its representatives, any statute, ordinance, regulation, order or other governmental agency or judicial action, fire, storm, flood, earthquake, explosion, accident, war or rebellion, sabotage, epidemic, quarantine restrictions, strike, riot, terrorism, war, transportation embargoes, failure or delay in transportation or inability to obtain or delay in obtaining necessary labor, products, fuel or manufacturing locations or failures of manufacturing machinery. In the event of any such delay, the date of delivery shall be extended for a period equal to the time loss by reason of such delay and, if such delay is caused by act of Customer or any of its representatives, Nesper shall be reimbursed for any additional costs arising from such delay.

11. Limited Warranty

- 11.1 Nesper provides for a limited warranty for any of the Products furnished hereunder for any defect in workmanship or materials under normal usage or as otherwise agreed upon by the parties in the Accepted Order. Nesper shall only be responsible for the Products to be free from defects according to the current state of technology. It shall be Customer’s sole responsibility to provide for the fitness and safety of Nesper’s Products for any end customer application, if not otherwise expressly agreed upon by Nesper in writing. Customer must notify Nesper in writing with respect to any limited warranty claim upon which notification Nesper shall determine the validity of such claim. Nesper shall have the right, in its sole discretion, to correct the defect or to deliver Products that are free of any such defect. Nesper retains the right to at least two (2) attempts to remedy any limited warranty claim. Replaced Products shall become the property of Nesper. This limited warranty shall not apply to Products which, upon Nesper reasonable determination, have been subjected to misuse, neglect, improper installation, repair, alterations, or other damaging conditions.

- 11.2 Nesper may demand from Customer reimbursement for any expenses if no defect can be ascertained. Customer shall bear the burden of proof. If expenses, including cost of transport, travel, work and material increase while Nesper attempts to remedy any defects, Nesper shall not be responsible for such increased expenses, if such increase in expenses is due to the fact that the delivered Products were subsequently transported by Customer to a place other than the place of delivery, unless such transport complies with delivered item's intended use.
- 11.3 EXCEPT AS SET FORTH IN SECTION 11.1 ABOVE, NESPER MAKES NO EXPRESS OR IMPLIED WARRANTY, STATUTORY OR OTHERWISE, CONCERNING ANY PRODUCT, INCLUDING WITHOUT LIMITATION ANY WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE OR ANY WARRANTY OF MERCHANTABILITY.

12. Damages Disclaimer and Limitation

IN NO EVENT SHALL NESPER BE LIABLE TO ANY CUSTOMER OR ANY OTHER PERSON FOR ANY (A) INDIRECT, INCIDENTAL, CONSEQUENTIAL OR PUNITIVE DAMAGES, INCLUDING LOSS OF PROFIT OR GOODWILL OR (B) DIRECT DAMAGES TO BODY, HEALTH OR PROPERTY FOR ANY MATTER ARISING OUT OF OR RELATING TO THE PRODUCTS, WHETHER SUCH LIABILITY IS ASSERTED ON THE BASIS OF CONTRACT, TORT OR OTHERWISE EVEN IF NESPER HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. IN NO EVENT SHALL NESPER'S TOTAL AGGREGATE LIABILITY FOR DAMAGES EXCEED THE GREATER OF THE AMOUNT OF (A) TOTAL COMPENSATION PAID CUSTOMER TO NESPER FOR THE PRODUCTS, OR (B) PROCEEDS AVAILABLE FROM ANY INSURANCE POLICY IN EFFECT AND APPLICABLE TO THE EVENT GIVING RISE TO SUCH LIABILITY.

13. Intellectual Property

- 13.1 Customer acknowledges Nesper's exclusive right, title and interest in Nesper's patents, trademarks, service marks, trade names, emblem, designs and methods relating to Products (the "Intellectual Property"). Customer acknowledges that Nesper has certain ideas and information concerning financial matters and trade secrets and corporate proprietary information, written and unwritten (the "Information and Ideas") which Nesper is willing to disclose to Customer from time to time as it becomes necessary to promote a Transaction. Customer shall not acquire any right, title or interest in the Intellectual Property or the Information and Ideas by virtue of any Transaction under these Terms and Conditions, or at any time describe or represent itself to others as having such right, title or interest. Should any law or regulation vest Customer with any rights and any of the Intellectual Property or the Information and Ideas, Customer hereby assigns and agrees to assign to Nesper all such rights contemporaneously with their vesting. Customer shall promptly notify Nesper of any and all infringements of the Intellectual Property or the Information and Ideas of which it becomes aware and will assist Nesper in taking action against any such infringements.
- 13.2 Customer acknowledges and agrees that irreparable harm would be suffered by Nesper in the event of a breach of this Section 13 and that Nesper shall have the right to seek injunctive relief in the event of a breach or threatened breach of this Section. Customer agrees that the rights of Nesper provided in the sentence above and under the terms of these Terms and Conditions shall be in addition to, and not in lieu of, all other rights Nesper may have at law or in equity to protect the Intellectual Property and the Information and Ideas.

14. Indemnification

Customer hereby agrees to indemnify, defend, at Customer's expense, and hold Nesper harmless from and against all loss, costs, damages or expenses arising out of any Customer's breach of any term of an Accepted Order including, but not limited to, these Terms and Conditions or any provision thereof and any alleged infringements of patents, trademarks, copyrights or any other intellectual property right relating to the use of Products.

15. Default

Nesper reserves the right to cancel all or any part of a current Accepted Order and any other Accepted Orders outstanding, without liability to Customer, if Customer fails to perform under any applicable provision of these Terms and Conditions or of any applicable Accepted Order and the failure is not cured within ten (10) days after notice to Customer by Nesper. In the event of termination, Nesper may exercise all rights and remedies available to it hereunder and under the laws of the state of Georgia.

16. Bankruptcy or Insolvency

If Customer files any petition under any bankruptcy reorganization, composition or insolvency law, or if any other person or entity files such petition with regard to Customer, or if a receiver has been appointed to manage Customer's affairs or property, Nesper, in its sole discretion, may terminate any Accepted Order by written notice to Customer. Nesper's termination shall not prejudice its rights to the amounts then due under this Proposal or to any other remedies available. In the event an action is brought by Nesper to collect the monies due hereunder, Customer shall pay all cost of collection, including reasonable attorney's fees, and interest allowed by law.

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 Products under these Terms and Conditions, Customer 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 Customer brings the action, it shall be instituted in one of the courts specified in Subsection (i) above. Service of process provided to Customer 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

The Accepted Order, including these Terms and Conditions and any Transaction resulting thereof 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 Accepted Order, including 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 Accepted Order, including these Terms and Conditions 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. Export

22.1 Nesper's Products are designed to remain in the country of delivery as agreed upon with the Customer. The export of Products supplied hereunder by the Customer may be subject to governmental approval. The Products are particularly subject United States export controls and embargo laws and regulations. It shall be Customer's duty to independently gather information with regard to these laws and regulations from all appropriate authorities. Nesper shall not be liable for any export permission or export fitness.

22.2 It shall be Customer's sole responsibility to obtain all necessary approvals from each respective export authority prior to exporting such Products. Any forwarding of Products governed hereunder by the Customer to third parties, with or without Nesper's knowledge, shall require the transfer of the export licensing conditions. The Customer shall at all times remain liable to Nesper for the correct adherence to this condition.

23. Assignment

Customer shall not delegate any duties or assign any rights under any Accepted Order without the prior written consent of Nesper. Any such attempted delegation or assignment shall be void.

24. Third Party Rights

Nothing in any Proposal, Order Acceptance or Accepted Order is intended to confer any rights or remedies on any persons other than Customer, Nesper, and their respective successors and permitted assigns.

25. Headings

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

26. 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 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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