

## TERMS AND CONDITIONS OF SALE

All quotes, offers of products for sale and sales by Neilsen-Kuljian, Inc. (sometimes also doing business as NK Technologies) or its affiliates are subject to these terms and conditions.

The term "Neilsen-Kuljian, Inc." may hereinafter be referred to as "NK Technologies" or the "Company" or "we" or "us" or "our" or "Seller" and the term "Buyer" or "Customer" or "you" or "your" hereinafter refers to the customer purchasing from Neilsen-Kuljian, Inc.

**1. PRICE AND DELIVERY:** All prices quoted, and deliveries made, will be "EXWORKS (EXW)" or "Free On Board (FOB)" from our factory located in San Jose, California, United States of America. Delivery shall be established by mutual agreement or as determined by NK Technologies. All orders are subject to a minimum order amount of One Hundred U.S. Dollars (\$100) in total. Drop shipments can be arranged as needed and may incur additional handling fees.

**2. CONFLICTING OR MODIFYING TERMS:** No modification of, additions to or conflicting provisions to these terms and conditions of sale and shipment, whether oral or written, incorporated into Buyer's order or other communications are binding upon the Company unless specifically agreed to by the Company in writing and signed by an officer of the Company. Failure of the Company to object to such additions, conflicts or modifications shall not be construed as a waiver of these terms and conditions or an acceptance of any such provisions.

**3. WARRANTY:** NK Technologies warrants its products to be free of defects in material and workmanship for a period of five (5) years after receipt by Buyer unless otherwise stated in the product literature. This warranty does not apply to any products or parts not purchased as new from NK Technologies or its authorized distributors or any products or parts not manufactured by NK Technologies; provided however, NK Technologies does agree to assign and transfer to Buyer, insofar as it is permitted by contract or law, the manufacturer's warranty pertaining to any such products. If any NK Technologies' manufactured product fails to conform to the warranty applicable to such product, NK Technologies' sole and exclusive liability shall be, at its option, to repair, replace or credit Buyer's account an amount equal to the price paid for such products which are returned during the acceptable warranty period by Buyer with such product's manufacturing date code intact. This warranty shall not apply to products damaged by abuse, neglect, accident, modification, alteration or mis-use. Normal wear is not warranted. Notice of defects must be received within the warranty period or the warranty is void. NK TECHNOLOGIES NEITHER ASSUMES NOR AUTHORIZES ANY PERSON TO ASSUME ANY OTHER LIABILITIES IN CONNECTION WITH THE SALE OR USE OF ANY PRODUCTS. THE FOREGOING WARRANTIES ARE IN LIEU OF ALL OTHER WARRANTIES, EXPRESS OR IMPLIED. THIS EXCLUSION MEANS THERE IS NO IMPLIED WARRANTY OF MERCHANTABILITY AND NO IMPLIED WARRANTY OF FITNESS FOR ANY PARTICULAR PURPOSE, TECHNICAL ASSISTANCE OR INFORMATION PROVIDED BY NK TECHNOLOGIES OR THE COMPANY'S PERSONNEL. ANY SUGGESTIONS BY THE COMPANY REGARDING USE, SELECTION, APPLICATION OR SUITABILITY OF THE PRODUCTS SHALL NOT BE CONSTRUED AS AN EXPRESS WARRANTY UNLESS SPECIFICALLY DESIGNATED AS SUCH IN WRITING, SIGNED BY AN OFFICER OF THE COMPANY. THIS EXCLUSION ALSO MEANS THAT NK TECHNOLOGIES GRANTS NO IMPLIED WARRANTIES ARISING WITH RESPECT TO USAGE OF TRADE, COURSE OF DEALING OR COURSE OF PERFORMANCE, AND NONE SHALL ARISE OUT OF ANY SALE UNDER THIS AGREEMENT OR OUT OF EITHER PARTY'S CONDUCT.

**4. PAYMENTS:** Unless otherwise agreed by the Company, all orders are due for payment immediately upon confirmation of the order by the Company; provided, however, the Company, at its sole discretion, may grant payment terms of net thirty (30) days from date of shipment. Under certain circumstances (sales outside of the United States, special order products and/or lack of acceptable Buyer credit history), the Company reserves the right to require the prepayment of all or a portion of an invoice in advance of shipment. If an invoice is paid by credit card, a processing fee may be charged and paid by Buyer at the Company's discretion. In addition, a transaction fee may be applied if an invoice is paid with a foreign credit card. These credit card fees will be applied and added to the invoice. International Buyer(s) must pay incoming and outgoing wire transfer fees unless otherwise agreed. A finance charge of one percent (1.0%) per month will be calculated on a daily basis and shall be payable on any outstanding balance from the date payment was due until the date payment is received by the Company; without prejudice to the Company's other rights with respect to nonpayment or a late payment. Buyer shall not withhold payment or make any deduction or set off from the price. If Buyer is placed on credit hold by the Company due to past due outstanding invoice(s) or if at any time Buyer's credit becomes unsatisfactory, Buyer agrees that NK Technologies has the right to withhold delivery of any pending product shipments and suspend Buyer's existing net payment or credit terms and change such terms to prepayment. All costs and expenses incurred by the Company as a result (direct or indirect) of such suspension and any commencement shall be payable by Buyer upon demand. The Company reserves the right to submit any late unpaid invoices to a third party for collection and Buyer shall pay all reasonable costs including, but not limited to, debt collection expenses, legal fees, court costs and other charges to settle such collection in addition to the invoice amount. All quoted prices and payments shall be in U.S. Dollars (USD).

**5. TAXES:** Any sales taxes, use taxes, excise taxes, tariffs, duties, customs, inspection and testing fees, value-added taxes, customs storage fees, Shipper's Export Declaration (SED) fees, special handling fees, any applicable international trade fees of any nature imposed or collected by any government authority must be paid by Buyer in addition to the amount invoiced. In the event the Company is required to pay any such tax, fee or charge, Buyer agrees to reimburse NK Technologies upon demand. In the event Buyer claims an exemption from the imposition of such tax, fee or charge, Buyer will be required to provide a resale certificate or similar document acceptable to the authority imposing such tax, fee or charge. Buyer shall indicate at time of order placement any sale is tax exempt.

**6. SHIPPING METHOD AND CHARGES:** NK Technologies shall package products for normal shipping conditions. The Company shall select the freight carrier, method and routing. Shipping charges are prepaid and added to a Buyer's invoice; however, the Company reserves the right to ship freight-collect at its discretion. Shipping charges may include a charge for any special packaging, at the Company's discretion. Certain handling fees may be added to the product price if additional cost is incurred/required for any special labeling and/or packaging requirements or due to regulations imposed by any Government. No third-party freight billing will be permitted without the Company's prior written consent.

**7. RETURNS:** Unless otherwise agreed in writing by the Company, all sales of products by NK Technologies become final, non-cancelable, non-returnable and non-refundable at the time an order is confirmed by the Company. Written authorization must be obtained from the Company before returning any product for which Buyer expects replacement, exchange, repairs, or credit within the warranty period. Return goods can only be returned when approved by the Company under strict compliance with NK Technologies' return shipment instructions. Product(s) that have been opened and used will not be accepted for return. Prior to returning any products, Buyer must obtain a preapproved Return Material Authorization (RMA) number issued by NK Technologies. At its discretion, NK Technologies may allow the return of product purchased within the prior one hundred and eighty (180) day period in exchange for: (1) a restocking fee of twenty five percent (25%) of the invoice amount in addition to other costs incurred by the Company and/or (2) an offsetting order for a value amount equal to or exceeding that of the product returned. Return of products categorized as "NCR", non-cancelable or non-returnable or those made with non-standard material or other material provided specially to meet Buyer's specifications shall not be returnable for any reason. If qualified for return, Buyer is responsible to arrange and pay for shipping and handling and any other charges, including any insurance or custom charges, if applicable. The Company at its discretion may pay standard ground freight charges for items being returned to Buyer which are repaired or replaced within the warranty period. Approved credit memos will be applied to Buyer's account and Buyers may use such credit against future purchases from NK Technologies. Buyer agrees that NK Technologies will not issue any refund payments or checks for such credit amount or credit memo.

**8. DELIVERY SCHEDULES/FORCE MAJEURE:** Orders are generally shipped on the date specified and acknowledged on the Company's order confirmation sent to Buyer upon acceptance of an order(s). NK Technologies does not guarantee the date of shipment nor the date of Buyer's receipt of the items. In the event Buyer requires delivery of product(s) prior to the Company's scheduled shipment date, NK reserves the right to charge an expedite fee. NK Technologies will not be liable for any loss, damage or penalty due to delays in delivery or for the failure to perform its obligations due to causes beyond its reasonable control including, but not limited to, material shortages, transportation delays, unforeseen circumstances, embargo or other governmental act, regulation or request affecting the conduct of Company's business, acts of God, acts or omissions of other parties including Buyer, acts or omissions of civil or military authorities, Government priorities, fires, explosions, accidents, thefts, vandalism, lightning, windstorm, floods, severe weather conditions, computer interruptions, terrorism, epidemics, quarantine restrictions, strikes, riots or war, labor disputes, other labor difficulties and failure in manufacturing, inability to obtain necessary labor, fuel, materials, supplies or parts at current prices. NK Technologies' time for delivery or performance will be extended by the period of any such delay or NK Technologies may, at its option, cancel any order or remaining part thereof, without liability, by giving notice to Buyer.

**9. TITLE:** Title to the products will pass to Buyer upon delivery to the carrier at the EXWORKS or FOB point; provided however, NK Technologies will retain a purchase money security interest in each product until all of its claims arising out of the furnishing of such products have been satisfied in full. All risk of loss or damage to the products will pass to Buyer upon delivery to the carrier at the FOB or EXWORKS point; the carrier acting as Buyer's agent.

**10. LIABILITY:** BUYER AGREES THAT NK TECHNOLOGIES SHALL NOT BE RESPONSIBLE OR LIABLE FOR ANY SPECIAL, INDIRECT, INCIDENTAL, CONSEQUENTIAL OR SPECIAL DAMAGES OF ANY KIND, HARM AND/OR ACCIDENT RESULTING FROM THE SALE AND ANY USE OR FAILURE OF THE PRODUCTS, EVEN IF NK TECHNOLOGIES HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGE INCLUDING WITHOUT LIMITATION, LIABILITY FOR LOSS OF USE, LOSS OF WORK IN PROGRESS, DOWN TIME, LOSS OF DATA, LOSS OF GOODWILL, LOSS OF REVENUE OR PROFITS, FAILURE TO REALIZE SAVINGS, LOSS OF PRODUCTS OF BUYER OR OTHER USE OR ANY LIABILITY OF BUYER TO A THIRD PARTY ON ACCOUNT OF SUCH LOSS, OR FOR ANY LABOR OR ANY OTHER EXPENSE, DAMAGE OR LOSS OCCASIONED BY SUCH PRODUCT INCLUDING PERSONAL INJURY OR PROPERTY DAMAGE. NK Technologies and its officers, shareholders, directors, employees, agents and vendors will not be held liable for any kind of loss, direct or indirect damages including, but not limited to, business interruptions, injury, loss of any kind, damages of any kind resulting in any way from any errors or omission or any services or product, warranties of quality and merchantability, accuracy, and fitness for any particular purpose.

**11. INDEMNIFICATION:** It is the sole and exclusive responsibility of Buyer to determine the suitability and ability to use any and all NK Technologies' products for Buyer's use. Buyer agrees to indemnify, defend, and hold NK Technologies and NK Technologies' employees, officers, directors, owners and agents harmless from and against all claims, losses, expenses, damages and costs (including, but not limited to, direct, incidental, special, consequential, punitive, exemplary and indirect damages), and agrees to reimburse NK Technologies its reasonable attorneys' fees in defending any claim resulting from or arising out of Buyer's use, misuse or inability to use the products, or any related activities, or any violation by Buyer of these conditions of order. It is Buyer's sole responsibility to review and observe all the terms and condition stated hereby carefully prior to operating NK Technologies' products to make an informed decision.

**12. INTELLECTUAL PROPERTY RIGHTS:** THE COMPANY EXPRESSLY DISCLAIMS ALL REPRESENTATIONS AND WARRANTIES CONCERNING THE SCOPE OR VALIDITY OF ANY INTELLECTUAL PROPERTY RIGHTS ASSOCIATED WITH ITS PRODUCTS AND EXPRESSLY DISCLAIMS ANY WARRANTY THAT THE DESIGN, DEVELOPMENT, ADVERTISING, MARKETING OR SALE OF THE PRODUCTS OR THE USE OF THE PRODUCTS BY BUYER WILL NOT INFRINGE UPON ANY PATENT, COPYRIGHT, TRADEMARK OR OTHER PROPRIETARY RIGHTS OF ANY THIRD PARTY. ANY WARRANTY THAT MAY BE PROVIDED IN ANY APPLICABLE PROVISION OF THE UNIFORM COMMERCIAL CODE OR ANY OTHER COMPARABLE LAW OR STATUTE IS EXPRESSLY DISCLAIMED. BUYER HEREBY ASSUMES ALL RISK OF INFRINGEMENT.

**13. CALIFORNIA'S PROPOSITION 65 NOTICE:** NK Technologies has no actual knowledge of any cancer or birth defect causing chemical being used in its product(s) and, unless otherwise expressly agreed in a written instrument (signed by both parties), does NOT agree to indemnify, defend and/or hold a Buyer of its products harmless from the Company's potential violation of law and/or any claim arising from the Company's failure to properly label NK Technologies' products as may be required by California's Proposition 65 (as amended).

**14. GOVERNING LAW:** This contract shall be governed by and construed according to the laws of the State of California, U.S.A. The parties agree that any and all legal proceedings pursuant to this contract shall take place under the jurisdiction of the courts of the State of California in the judicial district of Santa Clara County.

**Terms and Conditions are subject to change without prior notice. The latest version of Terms and Conditions take precedence, and can be found on our website @ [www.nktechnologies.com](http://www.nktechnologies.com)** May 29, 2019

