

## NVIS TERMS AND CONDITIONS OF SALE

**1. Orders.** All orders for NVIS product are governed by the NVIS terms and conditions of sale set forth herein. These terms are also posted on NVIS's website at <http://www.nvisinc.com/termsforsale.pdf>. No agreement or other understanding that alters these terms shall be binding on unless expressly set forth in the NVIS Order or Invoice.. All orders are subject to final acceptance by NVIS at its principal place of business in Virginia. For products not specifically fabricated to Buyer's specifications, Buyer may cancel an order or part thereof upon written notice to NVIS at least than fifteen (15) days prior to the requested delivery date. In the event of a cancellation of an order or any portion thereof, NVIS may charge Buyer a cancellation charge of 15% of the price of the items cancelled. Buyer cannot cancel an order (1) for specially fabricated product, or (2) after NVIS has tendered it to a carrier for shipment. NVIS reserves the right to cancel any uncompleted order or to suspend delivery in the event Buyer (1) becomes insolvent, files for or is the subject of any bankruptcy action, or has a receiver appointed for it; or (3) breaches any term of this agreement

**2. Delivery and Title.** Unless otherwise noted, all goods shall be delivered F.O.B. NVIS's Virginia offices and risk of loss or damage shall pass to Buyer upon NVIS' delivery of goods to shipper or carrier for delivery. Buyer is responsible for all shipping, handling and insurance charges. Unless Buyer specifically requests a method of shipment, NVIS shall exercise its reasonable discretion in selecting a carrier. If Buyer requests delivery via an insured and express courier such as Federal Express, Airborne or DHL, where possible, Buyer can provide NVIS with its account number with such courier to facilitate shipment. Times quoted for shipment will be from the date of order confirmation to Buyer. Unless the parties specifically agree to the contrary, time will not be deemed of the essence in the transaction.

**3. Taxes.** All applicable taxes, levies or duties (of whatever nature) will be paid by Buyer, or in lieu thereof, the Buyer shall provide NVIS with a tax exemption certificate acceptable to the taxing authorities.

**4. Payments.** All orders are subject to credit approval before acceptance. All invoices are due and payable thirty (30) days from date of shipment of product. Overdue accounts shall bear interest at a rate of the lesser of 1.5% per month or the highest rate allowed by state law. Each shipment shall be considered a separate transaction and payment shall be made accordingly. In the event of default by Buyer, NVIS may decline to make further shipments without in any way affecting its rights under other orders. Should NVIS decide to continue to make shipments despite any default by Buyer, its action shall not constitute a waiver of such default or in any way offset or limit NVIS's legal remedies for such default.

### **5. Limited Warranty.**

A. NVIS warrants the following with respect to Product manufactured by NVIS or bearing the NVIS label: (1) that the Product is free from defects in material and workmanship and when used in accordance with the user manual supplied with the Product, will operate substantially in accordance with the applicable functional specifications applicable to the product release purchased; and (2) that upon payment in full for the Product, they shall be rendered free and clear of liens, claims or encumbrances of any

B. The above Product warranty shall extend to the original end user purchaser of the Product for a period of twelve (12) months from the date of shipment. With respect to any products sold but not manufactured by NVIS or bearing the NVIS label, NVIS will assign to Customer all available manufacturer warranties. The warranty period for repaired or replaced Products shall be the remainder of the original warranty period for the repaired or replaced item.

C. NVIS's sole liability under this warranty shall be (a) either to repair or to replace, at NVIS's option, the defective Product component(s) in accordance with NVIS's return and repair procedures, or (b) if after repeated efforts NVIS is unable to resolve the defect by repair or replacement, to refund the purchase price upon return of the defective item. NVIS shall incur no obligation under this warranty if (1) the allegedly defective Product is returned to NVIS more than thirty (30) days after the expiration of the applicable warranty period; (2) if NVIS's verifiable tests disclose that the alleged defect is not due to defects in material or workmanship; or (3) if, in NVIS's sole judgment, the Product has been subjected to misuse or neglect, alteration, improper maintenance or damage due to excessive physical or heat or stress. This Product warranty is void if the serial number of the Product has been defaced, altered or removed.

### **6. Warranty Limitations And Exclusions.**

A. THE WARRANTIES SET FORTH ABOVE FOR THE PRODUCTS PROVIDED HEREUNDER ARE COMPLETE AND ARE IN LIEU OF, AND CUSTOMER HEREBY WAIVES, ALL OTHER CONDITIONS,

REPRESENTATIONS, AND WARRANTIES, EXPRESS OR IMPLIED BY STATUTE, USAGE, CUSTOM OF THE TRADE OR OTHERWISE, INCLUDING WITHOUT LIMITATION, THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. NOTWITHSTANDING ANY OTHER OR PRIOR STATEMENT, WRITTEN OR ORAL, NVIS MAKES NO OTHER WARRANTIES REGARDING THE QUALITY OF ITS PRODUCT(S) OR THE MATERIALS COMTEMPLATED HEREUNDER AND NVIS EXPRESSLY DISCLAIMS ANY WARRANTIES OF DURABILITY, THAT THE PRODUCT WILL MEET ALL OF CUSTOMER'S NEEDS OR THAT THE OPERATION OF THE PRODUCTS WILL BE ERROR FREE.

B. Customer acknowledges and agrees that the Products supplied under this Agreement are intended for standard commercial uses and are not specifically designed, manufactured or intended for use or resale in critical applications or hazardous environments requiring fail-safe performance and in which the failure of Products could lead directly to death, personal injury, or severe physical or environmental damage ("High Risk Activities"). NVIS and its suppliers explicitly disclaim any express or implied warranty of fitness for any such use and the customer hereby agrees to release and hold NVIS harmless from liability resulting out of or in connection with implementation of these Products in High Risk Activities.

C. **LIMITATION OF LIABILITY.** NVIS'S LIABILITY SHALL BE LIMITED TO THE PRICE PAID BY CUSTOMER FOR THE GOODS OR TO REPLACEMENT OF THE GOODS, AND CUSOMTER SHALL BE ENTITLED TO NO OTHER REMEDY, REGARDLESS OF THE FORM OF THE CLAIM. NVIS SHALL NOT BE LIABLE FOR INDIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL OR PUNITIVE DAMAGES ARISING FROM OR RELATING TO THE USE OF OR INABILITY TO USE THE PRODUCT, WHETHER OR NOT SUCH DAMAGES ARE FORESEEABLE AND WHETHER OR NOT CUSTOMER HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, INCLUDING BUT NOT LIMITED TO LOST PROFITS OR REVENUE, ATTORNEYS' FEES, DAMAGE TO BUSINESS, LOSS OF USE OF EQUIPMENT, DOWN-TIME COSTS OR DAMAGES FOR DELAY, OR FOR DAMAGES FOR ECONOMIC LOSSES OR PROPERTY DAMAGE ARISING FROM ANY ACTS OR OMISSIONS, WHETHER IN NEGLIGENCE, STRICT LIABILITY, OR OTHER PRODUCT LIABILITY THEORIES. THE LIMITATIONS OF LIABILITY AND WARRANTY DISCLAIMERS STATED IN THIS AGREEMENT FORM AN ESSENTIAL BASIS OF THE BARGAIN BETWEEN THE PARTIES AND APPLY REGARDLESS OF WHETHER ANY LIMITED REMEDY HEREUNDER FAILS OF ITS ESSENTIAL PURPOSE.

**7. Product Repair And Return Procedures.** No Product shall be returned without prior authorization from NVIS. Inoperative or malfunctioning Product must be returned by Customer in protective material, securely packaged to prevent damage in transit with the original proof of purchase, and shipped prepaid to: NVIS, 11495 Sunset Hills Road, Suite 202, Reston, VA 20190 Attn: Repair Services, Phone: (703) 891-1130

NVIS will return repaired/replaced Product via surface freight to Customer's location. The cost of expedited freight, if requested, shall be at Customer's expense. Product found to be operable after testing (i.e. no trouble found), may be subject to NVIS's then-current handling charge. Repairable out-of-warranty Product will be repaired at NVIS's then-current repair charges upon receipt of the Product and Customer's applicable purchase order or other written authorization to repair.

**8. Entire Agreement; Assignment.** This constitutes the entire agreement of the parties and supercedes all prior written or oral agreements, representations or understandings relating to the subject matter hereof. Buyer will not assign its order or any interest therein or any rights under this agreement without the prior written consent of NVIS.

**9. Force Majeure.** Neither party shall be liable for any failure or delay in performance of its obligations under this agreement where such performance is prevented or delayed by causes beyond its reasonable control, including without limitation, flood, war, embargo, strike or other labor dispute, riot, acts of God or the intervention of any government authority.

**10. Governing Law; Disputes.** The rights and obligations of the parties arising under or in connection with the sale of NVIS product shall be governed by the laws of the Commonwealth of Virginia. In the event of a dispute relating to NVIS product, it is agreed that the parties shall first submit their dispute to mediation pursuant of the Commercial Mediation Rules of the American Arbitration Association to be held in Fairfax County within 30 days from receipt of written notice of a claim or dispute. The parties shall make a good faith attempt to resolve their dispute through mediation before seeking any other legal remedy. A party's failure to respond to a request for mediation or to attend a scheduled mediation shall entitle the other party to seek other legal relief.