Vendor / Reseller Agreement: Terms & Conditions

Last Revised April 2008

This agreement is made on the _____ day of the month of _____, 20___ between the following parties with their principle place of business located at their respective addresses:

BUYER / RESELLER / VENDOR

_____

_____

_____

_____

SELLER / MANUFACTURER

ESR International, LLC

4245 N Central Expressway

Suite 590

Dallas, Texas 75205, USA

CONFIDENTIAL

EXCLUSIVITY (YES NO) – skip section if non-exclusive

This agreement hereby grants Buyer / Vendor / Reseller the exclusive right to sell _____ to _____ in the jurisdiction of _____, for a period of _____. Buyer and this agreement will be subject to a performance-based review before subsequent renewal. Renewal period will be for 1 year. All requests for product from other suppliers, retailers or customers that hail from said jurisdiction of less than a 20' container will be forwarded on to Reseller. As a courtesy, Seller will list the Reseller in our online directory as an exclusive supplier of product in said jurisdiction to help generate additional sales. Reseller will make every possible effort to maintain adequate trademark, patent, and copyright protection of Seller's intellectual property in said jurisdiction for the duration of this agreement. Responsibility of protection reverts to Seller upon termination of this Agreement.

Exceptions. For orders received from other entities that Buyer cannot service, or refuses to service, Seller reserves the right to work directly with said entity. If Seller discovers that Reseller is using this Agreement to delay or prevent entry of product line into any part of jurisdiction, Seller reserves the right to negotiate directly with interested parties. Manufacturer will prohibit but cannot prevent foreign resellers outside of jurisdiction from the selling of individual units to customers within jurisdiction, as we have no way of monitoring all internet transactions in our retail network.

Additional Products. Buyer will be offered MFN status for said jurisdiction when other products become available. A separate addendum to this agreement will be required for all new products added to the exclusivity clause above.

NON-EXCLUSIVE RIGHT TO SELL (YES NO)

Authorized Reseller shall have a non-exclusive right to sell product anywhere and to anyone, provided Reseller abides by the terms and conditions of this Agreement, and maintains high standards of business professionalism and ethics. Neither Seller nor any of its agents or representatives has the right to control or direct the details, manners or means by which buyer sells products to its customer base. Seller does retain the right to offer preferential territories or markets to key distributors and select government entities. As a courtesy, Seller will list the Reseller in our online directory as a supplier of product to help generate sales. To avoid conflicts with contracted distributors, Buyer may NOT sell or market in regions with exclusive distribution. As of APRIL 2008, those exclusive territories are:

- AUSTRALIA
- VIETNAM

PAYMENT TERMS

Buyer shall make prompt payment for the goods at the terms granted upon approval of credit application (see **ATTACHMENT B**), or as stated on the individual billing invoices. Excessively late payments may be subject to a monthly assessment of 1.5% of the invoice amount. Seller prefers payment in the form of a company check in US funds, with invoice and purchase orders appearing at the top or in the memo section. A 2% transaction fee may be

assessed to all payments made by credit card. If there are more than 6 (six) orders per payment cycle, please itemize in a separate spreadsheet file, retaining past orders in the same document.

International Vendors. Buyer shall make prompt payment or prepayment for the goods at the terms stated on the individual billing invoice. Wire transfer is the preferred method. Optionally, Buyer may use an escrow account from which funds will be drawn upon after completion and inspection of manufactured goods. An official bank letter will be required to verify available funds

RIGHTS OF BUYER (RESELLER)

Buyer shall have the right to inspect the inventory goods upon arrival and, within 5 business days after delivery, Buyer must give notice to Seller of any claim for damages or shortages, and Buyer must specify the basis of the claim in writing. The failure of Buyer to comply with these conditions shall constitute irrevocable acceptance of the goods by buyer. Seller agrees that said goods upon delivery are free from any security interest, liability, lien or encumbrance.

RETAIL PRICING

All vendors must agree to abide by a MAP pricing strategy (see **ATTACHMENT F**) that is fair to both consumers and other Resellers. We will not tolerate predatory pricing or allow our Resellers to flood the market with low prices in order to drive away other competitors. Exceptions to MAP rates are seasonal or promotional sales, exclusive territories, subsidy programs, fundraising, quantity discounts, or closeouts. Ongoing sales without end are not considered legitimate exceptions.

DISTRIBUTOR / WHOLESALE PRICING

The discounted pricing schedule is included in a separate sheet (see **ATTACHMENT A)**. All pricing is in US dollars, and does not take into account currency fluctuations. The Reseller acknowledges that all vendor prices, discount rates and transaction fees are subject to change. Notification of price changes will be no shorter than 10 days in advance, in order to give Reseller an opportunity to make necessary changes to their marketing materials and pricing structure, or to place a last-minute order.

BRANDING / TERMS OF USE

Seller authorizes Reseller to use our name and logo in respectable marketing and sales literature relevant to our product line. Reseller agrees without liability that we may terminate this Agreement at any time if Reseller is using our products, name, or logos in association with unsolicited commercial e-mail ("spam"), morally objectionable, or illegal activities. All name changes to product lines must be authorized by seller before usage in commerce begins. To help maintain a favorable product line reputation, vendors will provide Seller with copies and/or links to relevant marketing materials generated and utilized by Reseller.

TERMS OF USE: MATERIALS

All authorized Resellers have exclusive access to, and approved usage of product samples, knowledge database, copy, high resolution images, banner ads, trademarks and copyrights. Reseller understands that Seller retains ownership rights to any and all of the aforementioned materials, including other forms of intellectual property not specifically listed. Resellers may not alter the materials in a way that derogates or cheapens the product line or Seller. Unless purchased by Reseller, samples and image disks must be returned to seller within 30 days, so that they may become available to other vendors.

PRODUCT CLAIMS

Truth in advertising and accuracy of product descriptions are essential for credibility to be maintained in the marketplace. Reseller must not exaggerate or fabricate pertinent product claims in any way. Reseller must make every possible effort to have their customer support team explain product features, benefits, and functionality to consumer, to the best of their abilities. Seller reserves the right to change, modify or update the materials (listed in Terms of Use section above) as the product line evolves. To maintain consistency and avoid confusion with customers, Reseller must update their relevant advertisements and marketing materials, if functionally applicable, within 30 days of receiving notification of that change by manufacturer.

SHIPPING FEES, TAXES, CUSTOMS, DUTIES & BONDS

Reseller agrees to pay all fees and surcharges associated with shipping of goods to their customers, vendors, or distribution warehouses. Any additional taxes or duties that may be levied at the local or federal level due to government decree are the sole responsibility of the Reseller. Calculating, collecting and remitting the applicable sales tax are the responsibly of the Reseller; if you have a business office in the US, we MUST have a Valid Reseller's Permit Number (issued by your state sales tax board) on file in order to waive sales tax on goods sold to any US-based Reseller.

LINES OF CREDIT

All authorized vendors in good standing have assigned terms of credit established during the approval process. If you have credit terms of NET 10, 15 or 30 days, and have past due invoices that exceed the 2 week grace period, seller will HALT all shipments of goods to, or on behalf of Reseller, until the account is made current. To immediately resume processing of orders, Reseller may pay their past due account via credit card (VISA / MC), provided they accept the 2% credit card surcharge that we are charged by the processor.

DROP SHIPMENTS

Seller realizes that not every vendor has the ability to inventory product. So at the request of Reseller, Seller will drop ship single product or small quantity orders directly to Reseller's customers. Reseller may provide Seller with their 3rd party shipper number *****, or we can add the actual shipping charges to the relevant invoice. Seller reserves the right to recoup processing costs associated with shipping out these orders. A DROP SHIP FEE of $6.75 per address will apply to all domestic shipments within the 48 contiguous states. Due to carrier regulations and complexity of shipping logistics to Alaska, Hawaii, USVI, Puerto Rico, and Guam we can only ship via air to those destinations. **We will NOT drop ship to international addresses, including military bases overseas.** In those cases, product may be shipped directly to Reseller, where re-labeling, declarations, and customs forms can be generated by Reseller's shipping dept. Assuming inventory is in stock, seller will make every possible effort to ship out product to drop ship customers within 1-2 business days after receiving purchase order from Reseller. As stated previously, please honor our vendor contracts by not shipping to regions where exclusivity agreements are in place.

** Your signature on this Agreement constitutes permission to Seller for use of your 3rd party shipper number(s) for shipment of your goods*

RETURNS

Seller understands that returns are necessary from time to time. However, Sell will NOT accept unauthorized returns to any of our offices, warehouses, or contracted facilities. Before any product is sent back, you MUST request and be issued a Return Merchant Authorization Number (RMA #), which must appear on the address label. The ONLY circumstances where we will permit a return are: manufacturer defects, damage in transport, or misdirected shipments due to address mis-matches or duplications. All shipping charges associated with a return must be prepaid. We will not accept COD parcels.

CONFIDENTIALITY

It is understood and agreed to that the discloser of confidential information may provide certain information that is and must be kept confidential. To ensure the protection of such information, and to preserve any confidentiality necessary under patent and/or trade secret laws, it is agreed that the Reseller shall limit disclosure of any materials marked '**Confidential Information**' within its own organization to its directors, officers, partners, members, employees and/or independent contracts (collectively referred to as "affiliates") having a need to know. The Reseller and affiliates will not disclose the confidential information obtained from the discloser unless required to do so by law.

The Confidential Information to be disclosed can be described as and includes:

> Invention description(s), technical and business information relating to proprietary ideas, patentable ideas and prototypes, trade secrets, drawings and/or illustrations, patent searches, existing and/or contemplated products and services, samples, photographs, business documents, research and development, production, costs, profit and margin information, finances and financial projections, customers, clients, marketing, and current or future business plans and models, regardless of whether

such information is designated as 'Confidential Information' before, after, or during the time of its disclosure.

PRODUCT WARRANTIES & REPLACEMENT PARTS

Seller agrees to honor all product warranties, either actual or implied, for ONE (1) YEAR from the date of final retail sale to end user. Warranties are not transferable unless the item was return to the Reseller unused and intact, and then resold to a subsequent customer. Manufacturer warranty is limited to credit or replacement of defective or missing parts only; customer or Reseller must cover all costs associated with the shipping of all parts. Seller agrees to provide reasonable assistance to Reseller with warranty claims filed by customers for non-conforming product. Previously owned or used products that have been resold are not eligible for free warranty support; however replacements parts are available for a nominal fee (see **ATTACHMENT C**).

LIMITATIONS OF LIABILITY

In no event shall Seller be liable to Reseller or end user for any lost profits or savings, consequential, incidental, special or punitive damages arising from use, misuse, or inability to use products purchased from seller. Reseller officially agrees to indemnity, defend, and hold harmless seller, employees and affiliates, and their respective successors from any liability, lost, cost, damage, expense, or payment (including reasonable attorney fees) incurred by Reseller for failure to pay tax bills, 3rd party shipping invoices, custom house brokerage charges, duties, fuel surcharges, chargeback fees, return check fees, fraudulent orders, or customer refunds.

DURATION & TERMINATION

***Exclusive Vendors* – skip section if non-exclusive**

The term of this Agreement will begin upon Buyer being approved as an authorized vendor, and will end when terminated by either party. There is a 120 day evaluation period that begins upon authorization of this Agreement. During the evaluation period, either party may terminate this Agreement at any time, with or without cause, by giving the other party written notice of termination. After the evaluation period, a notice to terminate must be no less than 90 days from the next renewal date. Termination of Agreement at any other time must be mutually agreed to by both parties, unless warranted by a serious breach of this Agreement. Upon the termination of this Agreement for any reason, Reseller will immediately cease use of, and remove from affiliated websites and print media, all links to our site, and all trademarks, images, and logos, and all other materials provided by or on behalf of us to you pursuant hereto or in connection with the Agreement. You are still eligible to receive vendor support until unsold inventory is liquidated, or warranty expires (which ever is less).

Non-Exclusive Vendors

The term of this Agreement will begin upon your being approved as an authorized vendor, and will end when terminated by either party. Either party may terminate this Agreement at any time, with or without cause, by giving the other party written notice of termination. Upon the termination of this Agreement for any reason, you will immediately cease use of, and remove from your website, all links to our site, and all trademarks, images, and logos, and all other materials provided by or on behalf of us to you pursuant hereto or in connection with the Agreement. You are still eligible to receive vendor support until unsold inventory is liquidated, or warranty expires (which ever is less).

GOVERNING LAW

This Agreement shall be construed in accordance with the laws of the State of Texas, except as to its provision relating to the conflicts of laws of choice of law. The parties hereto hereby irrevocably consent that the venue of any action related to this Agreement and permissible under this Agreement shall be solely in the state and federal courts located in Dallas County, Texas, and the parties hereby consent to the jurisdiction and venue of the such courts and agree to remove this Agreement from any applicability of the U.N. Convention on Contracts for the International Sale of Goods.

SEVERABILITY

In the event that any court or competent jurisdiction shall determine that any provision of this Agreement is invalid, such determination shall not affect the validity of any other provision, and the balance of this Agreement shall remain in full force and effect, and construed to be legally valid under applicable law.

AUTHORIZATION

Seller and Reseller each hereby represent and warrant to the other party that the undersigned officers have the power and authority to execute and deliver this Agreement.

YOU ACKNOWLEDGE THAT YOU HAVE READ THIS AGREEMENT AND AGREE TO ALL ITS TERMS AND CONDITIONS.

AUTHORIZED SIGNATURES

SELLER _____ **DATE** _____

AGENT _____ **TITLE** _____

RESELLER _____ **DATE** _____

AGENT _____ **TITLE** _____

Additional Documentation Requirements:

1. Copy of Valid Business License
2. Copy of State Issued Reseller Permit w/ Valid #
3. Completed W-9 Form w/ Federal Tax ID #
4. Completed Credit / Dealer Application

ATTACHMENTS:

A – Dealer Price List ✓
B – Credit / Dealer Application ✓
C – Replacement Parts List (n/a at this time)
D – Holiday Schedule ✓
E – Instructions (n/a at this time)
F – MAP Policy ✓
G – Drop Ship Agreement & Procedures ✓
H – Credit Card Authorization Form ✓