

# Standard Terms & Conditions of Sale

**1. DEFINITIONS:** In these Terms & Conditions of Sale, "Seller" means ESI Process UK Ltd.; "Buyer" means the person, firm, company or corporation by whom the order is given; "Goods" means the goods described in Seller's Acknowledgement of Order form; "Services" means the services described in Seller's Acknowledgement of Order Form; "Contract" means the written agreement (including these Terms & Conditions) made between Buyer and Seller for the supply of the Goods and/or provision of Services.

## 2. THE CONTRACT:

**2.1** All orders must be in writing and are accepted subject to these Terms & Conditions of Sale. No terms or conditions put forward by Buyer and no representatives, warranties, guarantees or other statement not contained in Seller's quotation or Acknowledgement of Order nor otherwise expressly agreed in writing by Seller shall be binding on Seller.

**2.2** The Contract shall become effective only upon the date of acceptance of Buyer's order on Seller's Acknowledgement of Order form or upon the date of fulfillment of all conditions precedent stipulated in the Contract, whichever is the latter (the "Effective Date"). If the details of the Goods or Services described in Seller's quotation differ from those set out in the Acknowledgement of Order Form the latter shall apply.

**2.3** No alteration or variation to the Contract shall apply unless agreed in writing by both parties.

## 3. VALIDITY OF QUOTATION AND PRICES:

**3.1** Unless previously withdrawn, Seller's quotation is open for acceptance within the period stated therein or, when no period is so stated, within thirty days after its date.

**3.2** Prices are firm for delivery within the period stated in Seller's quotation and are exclusive of (a) Value Added Tax and (b) any similar and other taxes, duties, levies or other charges arising outside the Republic of Ireland in connection with the performance of the Contract.

**3.3** Prices (a) are for Goods delivered EXW (Ex works) Seller's shipping point, exclusive of freight, insurance and handling and (b) unless otherwise stated in the Seller's quotation, are exclusive of packing. If the Goods are to be packed, packing materials are non-returnable.

## 4. PAYMENT:

**4.1** Payment shall be made: in the currency of Seller's quotation within thirty days of date of invoice unless otherwise specified by Seller's Finance Department. Goods will be invoiced at any time after their readiness for dispatch has been notified to Buyer. Services will be invoiced monthly in arrears or, if earlier, upon completion. Without prejudice to Seller's other rights, Seller reserves the right to (i) charge interest on any overdue sums at 5% above the base lending rate (or such higher rate stipulated by applicable law) during the period of delay; (ii) suspend performance of the Contract (including withholding shipment) in the event that Buyer fails or in Seller's reasonable opinion it appears the Buyer is likely to fail to make payment when due under the Contract or any other contract, and (iii) at any time require such reasonable security for payment as Seller may deem reasonable.

**4.2** The Seller shall have the right in its absolute discretion and without assigning reason therefore and non withstanding any contract the Buyer may have with third parties, to terminate without notice an agreement to supply goods to any person, to refuse or to limit the amount of credit to be given to any person and to withhold supplies from any person.

**4.3** The Seller reserves the right to set credit limits for the Buyer, and request payment for any orders and customized product on a proforma basis.

## 5. DELIVERY PERIOD:

**5.1** Unless otherwise stated in Seller's quotation, all periods stated for delivery or completion run from the Effective Date and are to be treated as estimates only not involving any contractual obligations.

**5.2** If Seller is delayed in or prevented from performing any of its obligations under the Contract due to the acts or omissions of Buyer or its agents (including but not limited to failure to provide specifications and/or fully dimensioned working drawings and/or such other information as Seller reasonably requires to proceed expeditiously with its obligations under the Contract), the delivery/completion period and the Contract Price shall both be adjusted accordingly.

**5.3** If delivery is delayed due to any act or omission of Buyer, or if having been notified that the Goods are ready for dispatch, Buyer fails to take delivery or provide adequate shipping instructions, Seller shall be entitled to place the Goods into a suitable store at Buyers expense. Upon placing the Goods into the store, delivery shall be deemed to be complete, risk in the Goods shall pass to Buyer and Buyer shall pay Seller accordingly.

## 6. FORCE MAJEURE:

**6.1** The Contract (other than Buyer's obligation to pay all sums due to Seller in accordance with the Contract) shall be suspended, without liability, in the event and to the extent that its performance is prevented or delayed due to any circumstance beyond the reasonable control of the party affected, including but not limited to: Act of God, war, armed conflict or terrorist attack, riot, fire, explosion, accident, flood, sabotage; governmental decisions or actions.

**6.2** If either party is delayed or prevented from performance of its obligations by reason of this Clause for more than 180 consecutive calendar days, either party may terminate the then

unperformed portion of the Contract by notice in writing given to the other party, without liability provided that Buyer shall be obliged to pay the reasonable cost and expense of any work in progress and to pay for all Goods delivered and Services performed as at the date of termination. Seller may deliver by installments and if so each delivery shall constitute a separate contract and failure by Seller to deliver any one or more of the installments in accordance with their terms shall not entitle Buyer to terminate the whole Contract or treat it as repudiated.

## 7. DELIVERY, RISK & TITLE:

**7.1** Unless otherwise expressly stated in the Contract, the Goods will be delivered Carriage Paid, to the Seller, the destination named in the Contract; freight, packing and handling will be charged at Seller's standard rates. Risk of loss of or damage to the Goods shall pass to Buyer upon delivery as aforesaid and Buyer shall be responsible for insurance of the Goods after risk has so passed.

**7.2** The time, if any, specified for the commencement and completion of the supply and delivery of the Goods shall be deemed to be variable if delays are occasioned by force majeure, strike, lock-outs, accidents or any other cause being outside the Seller's control.

**7.3** Goods invoiced or supplied are not tested, and no warranty is given nor shall any warranty be implied to the effect that Goods supplied are suitable for any specific purpose. The Seller's liability in respect of any defects in goods shall be limited to an amount not exceeding the invoiced price of such Goods. No claim in respect of defects shall be considered by the Seller unless made within seven days of the date of delivery of the Goods concerned.

**7.4** Goods shall not be returned after delivery without the Seller's prior agreement and a re-stocking charge. Customized items are subject to 100% re-stocking charge.

**7.5** The Seller does not accept any 'time is of the essence' clauses.

**7.6** The Ownership of all Goods agreed to be sold by the Seller to the Buyer shall remain with the Seller until all debts due to the Seller from the Buyer have been discharged in full. Until all such Debts have been discharged in full the Buyer shall;

- (i) Store the Goods so as to clearly show them to be the property of the Seller.
- (ii) Not enter into any Sub-Sale of the Goods unless authorized by the Seller in writing.
- (iii) Hold all monies received from any authorized Sub-Sale as Trustee for the Seller.
- (iv) At the request of the Seller furnish the Seller with the names and addresses of Debtors, Sub-Purchasers and all appropriate particulars thereof so as to enable the Seller to recover sums owing from such Sub-Purchasers directly.
- (v) The risk in the Goods shall pass to the Buyer at the point of delivery.
- (vi) All payments received by the Seller shall be first utilized in settlement of Accounts which have been outstanding longest.

**7.7** The Seller shall be entitled to repossess any Goods agreed to be sold to the Buyer in respect of which payment is overdue and thereafter to resell the same. For this purpose, the Buyer hereby grants an irrevocable right and licence to the Seller through its servants and agents with or without vehicles on all or any premises of the Buyer on which such Goods may be.

**7.8.** The Buyer shall at all times keep the Seller indemnified against any claims for costs, damages, loss or injury to third parties arising out of or connected with the contract herein contained.

## 8. DEFECTS AFTER DELIVERY:

**8.1** The Seller shall not be liable for any consequential loss arising from the supply of Goods sold, whether the claim is founded in Contract or independently of Contract.

**8.2** The Seller shall not be liable for damage in transit or for shortage unless claims in writing are received within seven days of delivery.

**8.3** Goods or Services sourced by Seller from a third party for resale to Buyer shall carry only the warranty extended by the original manufacturer.

## 9. GOVERNING LAW AND JURISDICTION:

**9.1** These conditions and all other express terms of every contract shall be governed and constructed in all respects in accordance with the laws of England and Wales and the Buyer agrees to submit to the jurisdiction of the Courts of England and Wales and any other Courts in which the Seller may institute proceedings on foot thereof.

## 10. WARRANTY

ESI Process UK Ltd, warrants that all goods and work supplied under this contract shall be of the first quality and free from all defects in design, materials and workmanship. Goods or Services sourced by Seller from a third party for resale to Buyer shall carry only the warranty extended by the original manufacturer. In general, this means that the period of guarantee shall be 12 months from the date of the Owner's initial operation of the Facility or 18 months from the date of final delivery of the complete goods to Site, whichever period ends first. This shall be the entire extent of the guarantee period, which will not be renewed or extended after any repair under guarantee has been made. Any freight and labour costs in relation to providing replacement/repaired equipment under warranty shall be borne by the Owner. ESI Process UK Ltd would not be liable for consequential damages