

Onsite Solutions by ENGINEERING SUPPLIES

Conditions of Sale for ENGINEERING SUPPLIES LIMITED (ESL on this document) June 2020

1. Formation and interpretation

1.1 In these Conditions: "Buyer" means the counterparty to the Contract; "Contract" means a contract between Buyer and ESL for the sale of Products; "Goods" means all goods purchased under a Contract; "IPR" means all registered or unregistered rights to exploit intellectual property worldwide including patents, trademarks, registered designs, design rights and copyright, moral rights, rights in computer software, rights in databases, rights in information, trade secrets, inventions, know-how, trade names, domain names, goodwill, the right to bring an action for passing off and any rights of a similar nature or having equivalent effect; "Order" means any order howsoever issued in relation to Products; "Products" means Goods and/or Services; "Quotation" means an invitation to treat delivered to Buyer in response to an enquiry; and "Services" means all services purchased under a Contract.

1.2 All Products are offered and all Contracts, however formed, are entered into subject to these Conditions to the exclusion of all other terms or conditions (other than any which cannot be excluded by law). No other terms and conditions are binding on ESL and Buyer waives any right to rely on the same. ESL performance of a Contract is conditional upon Buyer accepting these Conditions without amendment.

ESL pre-contractual quotations are non-binding.

1.3 Any Quotation issued by ESL is not valid unless it is signed by an authorised representative of ESL.

The Quotation will be valid for the period stated and may be amended, withdrawn or cancelled by ESL at any time. Any Order for some but not all of the Products in any Quotation may, at ESL discretion be subject to a revised quotation.

2. Orders and specifications

2.1 An Order constitutes an offer to purchase Products from ESL subject to these Conditions. An Order cannot be cancelled or varied after having been accepted by ESL except with the written agreement of ESL and Buyer undertaking to pay all costs incurred by ESL arising in connection with such cancellation or variation.

2.2 ESL relies on Buyer to place an accurate Order. Buyer is solely responsible for ensuring that each specification in a Contract is accurate and adequate and that there is no omission or imprecision in a Contract.

2.3 Provided that there is no material adverse effect on the qualities of Products, ESL reserves the right at any time to alter the specification for any Products to conform to applicable laws/ standards or otherwise.

2.4 Prototypes, samples or test work shall be at the risk of Buyer and ESL accepts no liability for the same. If Buyer approves any prototype, sample or test work, unless otherwise agreed in writing ESL has no liability for Products matching such prototype, sample and/or test work and Buyer cannot reject such Products.

2.5 All information and details contained in ESL' advertising, sales and technical literature are provided for guidance only and their accuracy is not guaranteed. No such data or information will form part of the Contract and ESL will not in any event be liable for any inaccuracies or omissions. Unless agreed by ESL in writing, ESL has no liability whatsoever in respect of any failure of the Products to achieve indicative performance targets.

- 2.6 Any advice of ESL relating to the use of the Products that is not confirmed in the Contract in writing cannot be relied upon by Buyer and therefore at all times it is for Buyer to satisfy itself of the suitability of the Products for its own particular purpose.
3. Delivery
- 3.1 Carriage for the Goods will be arranged by Buyer unless ESL otherwise agrees in writing. Time for delivery is not of the essence of the Contract. Section 32(2) of the Sale of Goods Act 1979 does not apply and ESL is not bound to give notice under section 32(3) of that Act. Buyer shall have no right to damages or to cancel an Order for late delivery due to ESL acts or omissions unless the due date for delivery has passed by more than 30 days.
- 3.2 Performance of the Contract is dependent upon prompt provision of all necessary information, drawings, final instructions and approvals by Buyer to ESL.
- 3.3 ESL warrants that the Goods will comply with the corresponding specification agreed by ESL in a Contract as from delivery and for a period expiring on the earlier of 18 months as from delivery or 12 months as from the Goods being put into service.
- 3.4 No compensation is due for shortage in the delivery quantity or defective Products unless a written complaint is received within 3 days of delivery, or where any defect is not apparent on reasonable inspection, within 3 days after the earlier of discovery or when it ought reasonably to have been discovered if earlier.
- 3.5 Buyer agrees to accept delivery in instalments. If Buyer declines to accept delivery, Buyer must pay for the Goods nevertheless and meet all of ESL reasonable storage and/or disposal charges. ESL may charge for the containers and packaging or require that they are returned to ESL.
- 3.6 Loading of Goods is the responsibility and cost of Buyer unless ESL otherwise agrees in writing. Buyer is responsible for unloading of Goods, without causing loss or damage to ESL in accordance with applicable laws and standards unless ESL otherwise agrees in writing. If ESL is responsible for delivery and unloading, Buyer must provide suitable access and facilities for delivery and unloading of Goods and Buyer is responsible for all loss of or damage to the Goods as a result of unsuitable access or facilities.
- 3.7 Services are performed with reasonable skill and care and are deemed accepted unless a written complaint is received within 14 days of performance.
- 3.8 All other warranties, terms and conditions implied by law relating to fitness, quality, description or adequacy are excluded to the fullest extent permitted by law.
4. Risk and title
- 4.1 Risk passes to Buyer and Buyer is responsible for damage, loss or deterioration of Goods when the Goods are made available for collection by Buyer or, if ESL arranges carriage, risk passes when the Goods are delivered to Buyer. Buyer must then insure the Goods for their replacement value.
- 4.2 Title (legal and equitable) to Goods passes to Buyer only upon the Buyer paying in full all sums (including interest) due to ESL under all Contracts between ESL and Buyer. ESL may recover Goods in respect of which title has not passed at any time and Buyer irrevocably allows ESL and its agents to enter any premises, with or without vehicles, to recover such Goods. Until title has passed to Buyer the Goods must be kept by Buyer as fiduciary agent and bailee of ESL and must be stored before title has passed ESL may claim the price of the Goods when due. If Buyer sells Goods prior to title passing in the ordinary course of business, Buyer shall account to ESL for the resulting proceeds of sale.
- 4.3 Buyer shall not be entitled to pledge or in any way charge by way of security for its indebtedness any Goods which remain the property of ESL.
- 4.4 If ESL undertakes investigative services, Buyer provides the items to ESL at Buyer's own risk and ESL provides no guarantee the items are repairable.

- 4.5 If, pursuant to clause 4.4, Buyer fails to collect any items within two weeks of ESL final diagnosis, Buyer agrees the items are no longer required by Buyer and ESL shall be free to dispose of such items as it sees fit without liability to Buyer.
5. Price and payment
- 5.1 Applicable prices for Products are those specified by ESL in the Contract. Unless otherwise agreed in writing by ESL an additional charge will be made for carriage of goods for delivery inside and outside the United Kingdom and/or for packaging. Prices are exclusive of VAT. Prices may be varied to take account of:
- (i) any increase in ESL costs of supplying Products;
 - (ii) any variations that ESL has agreed to;
 - (iii) delay or costs caused by Buyer's failure to provide accurate instructions or information;
 - (iv) any effect of the UK leaving the European Union.
- 5.2 Unless otherwise agreed in writing by ESL, payment for Products shall be due within 30 days of the date of ESL invoice, whether or not delivery has taken place, and shall be paid electronically. In the case of credit account customers, punctual payment is a condition precedent to further deliveries of Products. Time for payment is of the essence. Buyer shall pay in pounds sterling without set-off, deduction, counterclaim or other withholding. Payment is not deemed made until ESL has received cash or cleared funds in respect of the full amount outstanding. If Buyer fails to make payment in full on the due date, ESL may charge interest (both before and after judgment) daily on the amount unpaid at 4% above Bank of England's base rate from time to time together with ESL reasonable costs of pursuing payment. ESL may raise a separate invoice in respect of each consignment delivered under a Contract. If Buyer's credit status changes, ESL may revise any credit terms.
- 5.3 ESL shall have a lien over all property of Buyer which may be in ESL possession in respect of all sums due from Buyer to ESL. If monies due to ESL are not paid within 14 days of the due date, ESL may sell any property over which it has a lien and apply the sale proceeds to discharge any costs of sale, in repaying interest owed by Buyer to ESL, in payment of any principal sums owed to ESL and ESL shall account to Buyer for the remainder (if any).
6. Liability
- 6.1 Liability for fraud, death or personal injury resulting from ESL negligence, or any other liability which cannot be excluded or limited by law, is not excluded.
- 6.2 ESL is not liable for loss of profits, loss of business opportunities, loss of contracts, loss of production, increased costs of labour and/or materials, damage to goodwill, economic loss or any indirect or consequential losses.
- 6.3 Subject to clause 6.1, ESL liability arising in connection with the performance or contemplated performance of the Contract is limited to: (i) the cost of repairing or replacing faulty Goods; and (ii) the cost of reperforming any deficient Services, in each case limited to an amount equal to the moneys received by ESL under the Contract in respect of those Goods and Services. ESL is allowed the opportunity to remedy before Buyer can claim or remedy the matter itself.
- 6.4 Subject to clause 6.1, ESL is not liable:
- (i) until ESL has received payment in full under the Contract;
 - (ii) to the extent Buyer and/or any third parties do not follow any information, instructions and/or warnings supplied with the Products;
 - (iii) if Buyer and/or any third parties does not store, install, use and maintain the Goods suitably;
 - (iv) if Buyer and/or any third parties uses unsuitable lubricant, defective mounting or connection or any other factor causing a defect beyond the reasonable control of ESL;
 - (v) if any repairs or alterations are undertaken by or on behalf of Buyer without the prior written consent of ESL;
 - (vi) for fair wear and tear or damage due to accident, neglect or misuse;

(vii) for use of Products after Buyer and/or any third parties becomes or should reasonably have been aware of any defect;

(viii) for circumstances beyond ESL control such as: governmental actions, war, emergency, civil disturbance, terrorism, Act of God, fire, explosion, flood, epidemic, accident, power failure, breakdown of machinery, import or export embargo, labour dispute, national shortage of materials, fuel, parts, machinery or labour, or restraints or delays affecting carriers or inability or delay in obtaining supplies of adequate or suitable materials;

(ix) to the extent due to Products being supplied or the Services being performed in accordance with Buyer's specification or drawings;

(x) for Goods not of ESL manufacture where ESL will to the extent possible assign any rights it has against the manufacturer to the Buyer; or (xi) for any delay or effect on the Contract due to the UK leaving the European Union, including during any extensions to Article 50 or transitional periods

6.5 Buyer indemnifies ESL for losses and damages which ESL incurs (including for legal actions in which ESL is involved), if any claim is made against ESL relating to any composite into which the Goods are incorporated or other products with which the Goods are used where the Goods supplied by ESL are either (i) not the defective part of any composite or other product; or (ii) are rendered the defective part or become defective by reason of acts or omissions of Buyer or a 3rd party; or (iii) are rendered the defective part or become defective by reason of instructions or warnings given by the supplier of the composite or other products.

6.6 Buyer shall indemnify ESL, its employees, agents and subcontractors against loss or damage to any property or injury or death of any person caused by any negligent act or omission or wilful misconduct of Buyer, its employees, agents or subcontractors.

6.7 Prices for Products are based on the limitations and exclusions in these Conditions. Buyer is encouraged to take out insurance to cover losses for which liability is not ESL. Each limitation and exclusion herein applies to liability for breach of contract, liability in tort (including negligence), liability for breach of statutory duty and liability for breach of common law.

7. Tooling and IPR

7.1 Any tooling patterns and dies provided by or charged for as part of the Price by ESL is the property of ESL. ESL may charge for storing any Buyer's tooling and dispose of it without liability to Buyer if it is not collected within 14 days of notice in writing to do so by ESL.

7.2 IPR in the Products and related drawings, specifications and data is not transferred to Buyer.

7.3 Buyer fully indemnifies ESL against all liability, losses, costs, claims, damages, and expenses suffered directly or indirectly by ESL arising out of any infringement or alleged infringement of the IPR of any third party in relation to Products supplied to the specification or instructions of Buyer.

8. Dimensional Tolerances Dimensions stated by ESL are approximate unless ESL has agreed in writing that such dimensions should comply with precise tolerances.

9. Termination

9.1 ESL can terminate or suspend a Contract by giving written notice if:

(i) Buyer fails to pay money when due and payable;

(ii) Buyer fails to take delivery when due;

(iii) Buyer breaches the terms of the Contract or any other Contract in a material respect;

(iv) Buyer ceases or threatens to cease carrying on business;

(v) Buyer is declared or becomes insolvent or bankrupt, enters into receivership, administration, liquidation, administrative receivership or has a moratorium declared in respect of any of its indebtedness, or threatens to do any of the above;

(vi) in ESL reasonable opinion, Buyer is unable to fulfil its obligations under a Contract; or

(vii) ESL believes any of the above is about to occur;

(viii) ESL is unable to fulfil the Contract or if an event in Clause (viii) or (xi) occurs

- 9.2 Termination of a Contract is without prejudice to rights and duties arising prior to termination and without prejudice to any other Contract in force.
10. Compliance and Consents
- 10.1 Buyer warrants and represents that it:
(i) is not subject to any trade sanctions imposed by the US, EU and/or UN; and
(ii) shall comply with (and not engage any activity, practice or conduct which would constitute an offence under) all applicable laws, statutes, regulations and codes, including those relating to trade restrictions and/or export controls (including trade sanctions imposed by the UK, US, EU and/or UN) in respect of the Products sold to it by ESL.
- 10.2 Buyer and ESL undertake to each other that they will not, and will procure that their employees and any associated persons will not, in the course of performing their obligations under a Contract, engage in any activity which would constitute a breach of the Bribery Act 2010 or the Modern Slavery Act 2015 or any other applicable laws relating to anti-bribery and corruption and modern slavery and servitude and that they have in place compliance programmes designed to ensure compliance with the terms of those Acts and other applicable laws.
- 10.3 Buyer will provide evidence of compliance with the provisions of 10.1 and 10.2 as ESL may reasonably request from time to time.
- 10.4 ESL may suspend or terminate any Contracts without liability if ESL becomes aware Buyer has or may breach the provisions of clause 10 or reasonably believes ESL must suspend or terminate such Contracts to protect its reputation.
- 10.5 Buyer will be responsible for all consents, approvals, import or other licences, permissions or authorisations required by any legislation or regulations whether in the United Kingdom or elsewhere for the Buyers purchase and use of the Product and any failure to obtain the same, unless the Contract specifically provides otherwise. The Order constitutes a warranty and representation by Buyer that it has obtained every necessary consent, approval, licence, permit or authority that may be required in connection with the Products and their supply to Buyer.
11. Confidentiality
Buyer shall treat as confidential and shall not disclose to any third party any operational or pricing information of ESL obtained in connection with the Contract and this obligation shall continue after expiry or termination of the Contract.
12. Marketing
ESL will only capture and store information provided by Buyer on a voluntary basis and therefore with Buyer's consent including allowing ESL or ESL agent from time to time to contact Buyer or send Buyer information about ESL latest products, services and/or promotional activities. Should Buyer not wish to receive them, Buyer must inform ESL in writing.
13. General
- 13.1 Buyer represents that it is not a consumer, although nothing in these Conditions prejudice the statutory rights of any consumer.
- 13.2 By entering into a Contract, Buyer confirms the Contract contains the whole agreement between the parties and Buyer has not relied on any statement not expressly incorporated into the Contract, provided that liability for fraud is not excluded. No statement made to Buyer is binding on ESL unless it is in writing and ESL confirms in writing that Buyer can rely on it. No variation is binding on ESL unless in writing signed by ESL.
- 13.3 No Contract is enforceable by any person other than Buyer and ESL. Buyer cannot assign its rights or subcontract its obligations under a Contract. ESL may sub-contract in whole or part its obligations under a Contract.

- 13.4 Unenforceable conditions shall not affect the enforceability of the remainder of the Contract. Failure to enforce a provision is not a waiver of any rights under the Contract. ESL remedies are cumulative not exclusive.
- 13.5 Buyer agrees to abide by ESL policies and procedures stipulated as applicable in the Contract.
- 13.6 Any notice must be in writing addressed to that other party at its registered office or principle place of business or such other address as may at the relevant time be notified under this provision to the party giving the notice.
- 13.7 If bespoke terms and conditions are agreed, these Conditions remain binding on the parties to a Contract. Any discrepancy between these Conditions and any other agreed terms may only be construed against ESL if such other terms are in writing agreed by ESL
- 13.8 Buyer shall indemnify ESL against any losses and damages ESL incurs as a result of or in connection with the transfer of any employees to the Buyer pursuant to the Transfer of Undertakings (protection of Employment Regulations) 2006 in connection with the Contract.
- 13.9 The construction, performance, validity and all aspects of each Contract are governed by English law and the parties accept the jurisdiction of the English courts.