

TERMS AND CONDITIONS

1. Definitions

The following terms have the corresponding meanings:

"Customer" means the entity or person acquiring the goods under these terms and conditions;

"Custom Goods" means either:

- a) Standard Goods which are to be modified or customised; or
- b) goods which are to be designed and manufactured,

in accordance with the Customised Order Form;

"Force Majeure Event" means any occurrence or omission as a direct or indirect result of which the party relying on it is prevented from or delayed in performing any of its obligations under this agreement and which is beyond the reasonable control of that party and could not have been prevented or mitigated by reasonable diligence or precautionary measures, including forces of nature, natural disasters, acts of terrorism, riots, revolution, civil commotion, epidemic, industrial action and action or inaction by a government agency, shortage of suitable parts, components, materials including ink, chemicals and paper, labour or transportation;

"Goods" means Custom Goods and Standard Goods;

"ESA Industries" means ESA Industries Pty Ltd ACN 075 855 757;

"Product List" means the list of Goods and their Price which available to be purchased by the Customer from ESA Industries (as amended from time to time);

"Standard Goods" means the Goods described in the Schedule which is designed, manufactured and listed on the Product List by ESA Industries;

2. Formation of Contract

- 2.1. A contract for the sale of the Goods from ESA Industries to the Customer is formed when an order is received and accepted by ESA Industries. The only contractual terms which are binding upon ESA Industries are those outlined in these terms and conditions of sale or otherwise agreed to in writing by ESA Industries and those, if any, which are imposed and cannot be excluded by law. These terms and conditions supersede any other terms appearing on any purchase order, statement of work, proposal, quotation, Customer's document or other document related to the provision of Goods and these terms and conditions apply to the provision of Goods to the exclusion of all such other terms.
- 2.2. The Customer acknowledges that these terms and conditions apply to each and every contract for the sale of goods from ESA Industries to the Customer.

3. Agreement to buy and sell

In return for payment of the Price, ESA Industries sells and the Customer buys the Goods on the terms and conditions of this agreement.

4. Payment Terms

- 4.1. The Price is due and payable is 30 days from the end of the month following the date of this agreement or such other date as agreed in writing by the parties.
- 4.2. If you do accept the Price, either expressly or by paying the Price, these terms and conditions will be binding on you.
- 4.3. For avoidance of doubt, ESA Industries is not required to deliver the Goods to the Deliver Address until the Customer has paid the Price in full.
- 4.4. Time for payment of the Price is of the essence.

5. Delivery of Goods

- 5.1. ESA Industries must use its best endeavours to deliver the Goods to the Delivery Address no later than the Delivery Date.
- 5.2. The delivery of the Goods will be arranged by ESA Industries and each customer, and whether the Goods are to be transferred, or picked up from a chosen location.
- 5.3. ESA Industries must use best endeavours to ensure each order is safely and securely packed for transportation to the Customer having regard to the fragility of the Goods, distance the Goods are likely to travel and method of transportation used to transport the Goods.
- 5.4. ESA Industries is not responsible to the Customer or any person claiming through the Customer for any delay, loss or damage to Goods in transit caused by any event of any kind or by any person reasons outside the control of ESA Industries.
- 5.5. Risk and title to the Goods will pass to the Customer upon delivery of the Goods at the Delivery Address.
- 5.6. ESA Industries is under no obligation to assist in the installation of the Goods, or enter a site where the Goods are to be installed.

6. Return and claims

- 6.1. The Customer acknowledges that expressly or impliedly by this agreement no warranty, condition, description or representation in relation to the Goods is given by ESA Industries and all warranties, conditions, guarantees and terms in relation to the state, quality or fitness of the Goods and of every other kind whether expressed or implied by use (except those guarantees implied by statute and cannot be excluded) are excluded.
- 6.2. If the Customer is of the reasonable opinion that the Goods delivered are defective, damaged or do not match the Goods ordered under this agreement, the Customer may within 7 days of delivery of the Goods at the Delivery Address make a written request to ESA Industries to return of the Goods which request must contain a copy of the Schedule, a copy of the Customer Order Form is applicable and the reason for the return ('Return Request').

- 6.3. If no Return Request of the Goods has been issued by the Customer pursuant to clause 6.2, the Customer shall be deemed to have accepted the Goods free from any defect or damage and will have forfeited their right to an exchange, repair, replacement or refund for any reason (except those as implied by statute and cannot be excluded).
- 6.4. Following receipt of a Return Request, ESA Industries shall have the right to examine the Goods and the Customer must either:
 - 6.4.1. return the Goods concerned to ESA Industries within seven (7) days in the same condition as delivery including all accessories, papers and other ancillary materials and advise ESA Industries of the postal tracking number for the return parcel; or
 - 6.4.2. make the Goods available for inspection by ESA Industries at reasonable times and permit ESA Industries to take the Goods.
- 6.5. All transportation charges incurred in returning the Good/s, or any of its component parts, for repair, replacement or exchange together with the cost of returning them to the Customer must be paid by the Customer. ESA Industries will not accept cash on delivery (COD) returns parcels.
- 6.6. Inspection of the Good/s may take 7 to 14 days.
- 6.7. ESA Industries reserves the right to deny any return, refund, exchange, replacement or repair to the extent permitted by law.
- 6.8. If ESA Industries determines that the Customer's Return Request is valid, and the said fault or damage to Good/s did not arise from:
 - 6.8.1. improper adjustment, calibration or operation by the Customer;
 - 6.8.2. the use of the Goods with accessories, consumables, hardware, or software which were not manufactured by ESA Industries;
 - 6.8.3. any modifications of the Goods by the Customer which were not authorised in writing by ESA Industries;
 - 6.8.4. any misuse of the Goods by the Customer; or
 - 6.8.5. inadequate or improper maintenance of the Goods,ESA Industries will at its discretion pay the cost of:
 - 6.8.6. the returned Goods;
 - 6.8.7. repairing the Goods; or
 - 6.8.8. providing the replacement goods if replacing the Goods.
- 6.9. To the extent permitted by law, the Customer is not entitled to:
 - 6.9.1. a repair, replacement or refund of the Goods if the Customer has a change of mind;
 - 6.9.2. an exchange of Custom Goods with any other Goods if the Customer has a change of mind; or
 - 6.9.3. a refund of the Price, unless the Good/s are determined by ESA Industries to be damaged, faulty or do not match the Goods ordered pursuant this clause 6.

- 6.10. ESA Industries' liability for breach of the terms of this agreement (including those implied by statute and cannot be excluded) is limited to any of the following as determined by ESA Industries:

- 6.10.1. the refund of the price paid by the Customer for the Goods; or
- 6.10.2. the replacement of the Goods or supply of equivalent Goods.

7. Design

- 7.1. The Customer agrees that ESA Industries will not be liable for any loss or damage, and the Customer releases ESA Industries from any claims, in respect of any error, fault, defect, breaches of any copyright or intellectual property rights of a third party arising of the design and specifications from the Customer, and other particulars contained in the Customised Order Form.
- 7.2. The specification and design of the Goods including all material provided by ESA Industries to the Customer (being all intellectual property, including but not limited to, copyright, design right, trade marks or other intellectual property) remains the property of ESA Industries.

8. Default

- 8.1. Each of the following events is an Event of Default:
 - 8.1.1. ESA Industries ascertains that the Customer has made any false, inaccurate or misleading statements having a material effect in relation to the making of this agreement.
 - 8.1.2. the Customer fails to pay any moneys due and payable under this agreement;
 - 8.1.3. a party fails to perform or observe any of the covenants or provisions of this agreement or of any other agreement incorporating these terms and the defaulting party fails to remedy the breach for a period of ten (10) business days after receipt of a notice from the other party requiring rectification of breach.
- 8.2. If an Event of Default occurs, the non-defaulting party may at its option:
 - 8.2.1. (Enforce performance) by proceeding by appropriate court action, either at law or in equity, enforce performance by the Customer of the applicable terms and provisions of this agreement or recover damages for the breach concerned; or
 - 8.2.2. (Termination) terminate this agreement.
- 8.3. ESA Industries will not be liable for any special, indirect or consequential loss or damage including but not limited to claims for faulty design, negligent or misleading advice, damages arising from loss or use of the Goods, and any indirect, special or consequential damages or injury to any person, corporation or other entity.
- 8.4. The Customer assumes all risk and liability for loss, damage or injury to persons or to property of the Customer, or to others arising out of the use or possession of any of the Goods sold to the Customer, whether such Goods are used singularly or in a combination with any other goods, substance or in any process.

8.5. The Customer assumes all responsibility for ascertaining from any federal, state or local government, semi-government, statutory, public, licensing or other authority or body having jurisdiction, power, responsibility or authority over the permitted use of a product incorporation the Goods prior using the Goods or incorporating the Goods into an end product.

8.6. The Customer hereby further agrees at all times to keep ESA Industries indemnified from and against all losses which it might incur as a consequence of any breach by the Customer of this agreement and the Customer agrees to pay any costs (legal or otherwise) incurred by the ESA Industries in the event that it refers the collection and/or recovery of any outstanding monies pursuant to this agreement at the rate paid by ESA Industries for the provision of those costs.

9. Force Majeure

9.1. Neither party has any liability under or shall be deemed to be in breach of this agreement for any delays or failures in performance of this agreement which result from a Force Majeure Event.

9.2. The party affected by such circumstances must promptly notify the other party in writing when such circumstances cause a delay or failure in performance and when they cease to do so.

9.3. If such circumstances continue for a continuous period of more than one (1) month, either Party may terminate this agreement by written notice to the other Party.

10. Tax

10.1 When, or after delivery is made, there may be fees, duties, import/export and excise taxes, as well as other fees or assessments which may be assessed or levied by any Federal, State, or Local Government and any of their departments and subdivisions in relation to the Goods. These charges are not included in the original shipping charge, and is the responsibility of the Customer. If the Customer fails to pay the required fees, duties, taxes or assessments, the Goods may not be released by the delivering authority. The Customer will not be entitled to payment or reimbursement by ESA Industries for those charges.

10.2 Goods and Service Tax (GST):

10.2.1 Unless the contrary intention appears, the terms and phrases used in this clause 10.2 have the same meanings as the meanings given to those terms and phrases in *A New Tax System (Goods And Services Tax) Act 1999* (Cth).

10.2.2 Unless otherwise specified in this Agreement, the consideration expressed in this Agreement for any taxable supply made under or in connection with this Agreement does not include GST (GST exclusive consideration).

10.2.3 The recipient of a taxable supply under this Agreement must in addition to and at the same time as the GST exclusive consideration is payable under or in connection with this Agreement, pay to the supplier of the taxable supply, an amount equal to the amount of GST imposed by GST law from time to time on the taxable supply.

11 Miscellaneous

11.1 Any notice or other communication under this agreement must be given in writing, in the English language and given to the other party:

11.1.1 by hand;

11.1.2 by pre-paid post to the address stated in this agreement, and is deemed to be received on the third business day after posting; or

11.1.3 by email to the recipient's email address stated in this agreement or as last notified, and is deemed to be received when the email was sent if at the time of delivery if no delivery notification error is not received.

11.2 Failure by ESA Industries to insist upon strict performance of any term or condition in this agreement shall not be deemed to be a waiver thereof of any rights that ESA Industries may have and no express waiver shall be deemed a waiver of any subsequent breach of any term.

11.3 This agreement shall be governed by the laws of South Australia, notwithstanding the place in which the Goods or any part of them are transported. Nothing in this clause is intended to undermine the jurisdiction of the Federal Court of Australia or Federal Circuit Court of Australia.

11.4 The Customer submits to the exclusive jurisdiction of the Courts of the State of South Australia.

11.5 This agreement contains the entire agreement between the parties with respect to its subject matter and supersedes all prior agreements and understandings between the parties in connection with it.

11.6 This agreement may be executed in any number of counterparts. Counterparts may be exchanged by facsimile or email. Each executed counterpart is deemed an original of this agreement and taken together will be deemed to constitute the same document.

11.7 If any provision of this agreement is prohibited, invalid or unenforceable in any jurisdiction, that provision will, as to that jurisdiction, be ineffective to the extent of the prohibition, invalidity or unenforceability without invalidating the remaining provisions of this agreement or affecting the validity or enforceability of that provision in any other jurisdiction.