

ENGINEERED SYSTEMS (ELECTRICAL) LTD - STANDARD TERMS AND CONDITIONS OF SALE

Customers are invited to read the following Conditions of Trading before accepting the offer of Engineered Systems (Electrical) Ltd so as to satisfy themselves that the terms of such offer are reasonable.

1. In these conditions ("these Conditions") "ESE" means Engineered Systems (Electrical) Ltd and "Customer" means the person entering into the contract with ESE. These conditions extend to the supply of services as well as equipment, and, in particular, apply to contract works executed away from ESE's premises whether on the Customers own site or elsewhere. Accordingly, references herein to Goods' should be understood, where applicable, to include the provision of services and materials and the Conditions should be read and construed accordingly. "contract" means the contract for the sale and purchase of Goods (in which these conditions apply). Site means the Customers premises or any other premises to which the Customer asks ESE to deliver goods or carry on works.

2. General

- Acceptance of ESE's offer shall not be binding until the Customer's order is accepted and acknowledged in writing by ESE.
- The acceptance of ESE's offer to supply goods and/or services includes the acceptance of the following terms and conditions.
- In all contracts between ESE and the Customer these Conditions shall be deemed to be incorporated except to the extent that they may be expressly varied in writing by ESE. No other condition or terms whatever whether oral or written regardless of the date or dates upon which they were sent or exhibited by the Customer shall affect or vary these Conditions and/or the terms or conditions upon which the contract is made. For the avoidance of doubt ESE shall not be deemed to accept such other conditions nor to waive any of these Conditions by failing to object to provisions contained in any purchase order or any communication from the Customer.
- No representative agent or salesman who is not a director of ESE has any authority to amend or waive any of these Conditions or other provisions of the Contract.
- Unless previously agreed in writing by a Director of ESE and the Customer, ESE shall not be liable or bound by the terms and conditions of a main contract or head contract imposed by a third party.

3. Limits of Contract

- All offers are made subject to acceptance by the Customer within 30 days of the date thereof (unless otherwise stated) and subject to the goods being unsold and/or not withdrawn prior to acceptance. All Goods and/or electrical equipment are liable to be withdrawn without notice.
- All offers relate only to such Goods as are specified therein. Drawings, dimensions and weights submitted must be taken to be approximate and do not form part of the Contract. All extras and accessories ordered but not specified in ESE's offer will be charged for separately as will the costs of all alterations, additions and other work undertaken at the expense of the Customer.
- The acceptance of ESE's offer must be accompanied by sufficient information to enable ESE to proceed with the order forthwith, otherwise ESE shall be at liberty to amend the offer price(s) to cover any increased costs in labour or materials which may take place after acceptance. Any samples submitted to the Customer and not returned to ESE's works within one month from the date of receipt shall be paid for by the Customer.
- The Customer shall not assign or transfer his rights under any contract subject to these Conditions to any third party without prior consent in writing of ESE.
- ESE will make every effort to execute all orders at the price indicated (subject to Clause 3 (3) above) (the Offer Price) at the time of his acceptance but reserves the right to raise the Offer Price in the event of any increase in ESE's costs that may take place between the date of acceptance of ESE's offer and the date such Goods are ready for delivery.
- Unless otherwise agreed in writing by ESE the offer includes up to two sets of as made dye-line prints of drawings and diagrams produced for the manufacture of new equipment
- ESE's products are carefully inspected and submitted to standard tests (as outlined in the ESE offer document) at its works before despatch. If additional tests are required or if the Customer wishes that any test to which the Goods are to be subjected take place in the presence of the Customer, ESE shall give the Customer seven days' notice of when any tests are due to take place on the Goods. In the event of the failure of the Customer or his representative attending at the date and time specified by ESE, the tests shall proceed in their absence entirely without prejudice to the additional fee that may be payable in respect of those tests.

4. Delivery

- Except where otherwise stated Goods are deemed delivered when ready for collection at ESE's premises.
- Goods sold loaded at site will be despatched according to the Customer's instructions and shall be deemed to be at the Customers risk from the time of loading.
- Goods sold delivered (rather than ex works) will be despatched by any means of transport at ESE's option unless otherwise agreed in writing. All unloading and demurrage charges which may be incurred will be charged to the Customer. It is an implied condition that where ESE sells Goods delivered to the Customers premises or site that adequate facilities exist for so doing by road and/or rail and for unloading.
- Any packing or protection shall be at the discretion of ESE. All such packing will be charged to the Customer unless it is specifically included in the quoted price. Credit will be given to Customers within the United Kingdom in respect of cases returned carriage paid in good condition to ESE or as directed by ESE within 14 days of delivery.
- All prices quoted are ex works unless otherwise specified in ESE's tender.
- The Customer shall be solely responsible for the proper unloading of the Goods. If ESE assists the Customer to remove Goods from the point of delivery in such circumstances neither ESE nor any subcontractor of ESE shall have any liability whatsoever for loss or damage to the Goods or other property of the Customer or any third party and the Customer shall indemnify ESE with respect thereof.
- ESE reserves the right to make delivery by installments, unless otherwise expressly agreed in writing. The period during which delivery by installments may be made and the quantity of Goods delivered in each installment shall be at ESE's discretion. Where Goods are delivered in installments, each delivery shall constitute a separate contract (in which these Conditions apply) and failure by ESE to deliver any one or more of the installments or any claim by the Customer in respect of any one or more installments shall not entitle the Customer to treat the Contract as repudiated.
- Where ESE is to carry out work at the site, the Customer shall indemnify ESE against all loss or damage to equipment, materials or goods which ESE brings onto the site in order to carry out its work under the Contract.

5. Time for Delivery

- Delivery times where given will be approximate and date from the confirmation of the order by ESE; under no circumstances shall delivery times be or be capable of being made of the essence of the contract.
- ESE will not be liable for any loss, damage, injury or expense either direct or indirect which may be suffered by the Customer by reason of late delivery of the Goods from whatsoever cause such late delivery may arise.
- If ESE does not receive payment of the offer price (or relevant part thereof) within 14 days of notification that the Goods are available for despatch ESE shall be at liberty to arrange storage either at ESE's works or elsewhere at the Customer's risk and charge for storage insurance and demurrage at the rate of 2% of offer price per month or part month from the date of notification that the equipment is available for despatch until actual despatch.

6. Failure to Take Delivery

- If Goods manufactured to the Customer's order are ready for delivery and the Customer fails to take delivery at the time required by the Contract ESE shall be entitled:
 - to invoice such Goods forthwith, and
 - to charge at rates giving an economic return for the handling and storage of such Goods, and for their insurance, from the date of invoice to the date when the Customer takes delivery or ESE disposes of the same.
- If the Customer fails to take delivery within thirty days of date of invoice it shall be deemed to have repudiated the Contract and without prejudice to any other right which it may have against the Customer, ESE shall be entitled to resell the goods.

7. Loss or Damage in Transit

- In the event of loss or damage in transit from any cause whatsoever including causes which might be held to involve fundamental breach of contract) the liability of ESE shall be limited (at ESE's option) to replacing or repairing the Goods or electrical equipment or refunding the purchase money. In no circumstances shall ESE be liable to consequential loss.
- ESE shall not be liable for any such damage as is referred to in paragraph 6 (1) above unless ESE and the carriers are notified of such damage or loss within 7 days of delivery. It is the responsibility of the Customer to examine the Goods immediately on receipt.

8. Guarantee

- If any Goods manufactured, rebuilt or reconditioned by ESE are found to be faulty within 12 months (in the case of capacitors, this guarantee is limited to 3 months only) after the date of supply or installation than, provided that the fault was present at the date of supply or installation and has not been caused or aggravated by subsequent misuse, neglect, damage or otherwise (and in particular by any alteration or attempted repairs not authorised in writing by ESE), and that ESE is notified in writing, promptly and at the latest within 7 days of the discovery thereof, ESE undertakes to rectify the fault at its own cost, and will if, at ESE's sole discretion, it deems it necessary, replace the Goods or the faulty part. Provided that where a fault was initially present but has been aggravated, ESE may at its discretion apply this guarantee subject to the payment of a contribution towards the cost.
- ESE gives a guarantee in similar terms where it has undertaken works of repair or installation and the initial fault is due to faulty workmanship on its part or faulty materials introduced by it.
- A Customer who invokes this guarantee must return the Goods at his own risk and cost to ESE's works unless it is specifically agreed that ESE will do the work (or make a preliminary inspection) at the Customers premises.
- Engine driven generating sets, electronic components and engine repairs do not carry any warranty unless specifically given in writing.
- No guarantee is given in respect of equipment not manufactured, rebuilt or reconditioned by ESE. In such cases the Customer must satisfy himself that the equipment will meet his requirements and rely on the manufacturer's guarantee where available.
- Except by special arrangement, no guarantee is given for Goods exported or works executed outside the mainland of Great Britain, but where faults arise in such cases ESE may at its discretion apply this guarantee and in such cases the Customer must return the equipment at his own cost and risk after first obtaining the agreement of ESE in writing.
- The foregoing guarantee represents the whole liability of ESE and all implied terms as to description, quality, suitability or otherwise, and all liability for any misrepresentation or negligence by ESE, its servants or agents, is expressly excluded, except in respect of death or personal injury caused by ESE's negligence or willful default.
- On any claim for failure to fulfil this guarantee, damages shall not exceed the price charged by ESE for the faulty equipment or work.
- Where equipment is sold and the Customer is responsible for installation, testing and commissioning, the Customer shall carry out such testing and/or commissioning in accordance with the appropriate standards and codes of practice current at the time of commissioning and/or testing, or alternatively, as specified by ESE from time to time. To the extent that a fault is due to inadequate installation, testing or commissioning by the Customer, ESE shall not be liable for the fault or any losses arising as a result.

9. No Liability for Consequential Loss

ESE shall in no case be liable for loss of or damage to any premises, stocks or other property or for loss of profits or for any legal liability of the Customer to a third party or any other form of consequential loss, whether alleged to be due to breach of contract, negligence or any other head of legal liability. Customers should therefore check that their own property and liability insurance covers risks from electrical and other equipment supplied or installed by ESE and for contract work carried out by it on the Customers site or premises.

10. Plant Hire

- Goods supplied to the Customer by ESE on hire shall be the Customer's responsibility and at the Customer's risk from the time of leaving ESE's works or any other place until returned by the Customer.
- The Customer is responsible for insuring the Goods underwritten by a reputable insurance company and ESE has the right to inspect the insurance policy if they so wish. The Customer undertakes to return the Goods in the condition in which they were hired. The Customer shall keep the Goods in good and proper repair.
- All expressed or implied terms, conditions and warranties as to the quality of the Goods are excluded and all liability for any damage, loss or injury howsoever arising (including consequential loss) is excluded save that if a defect occurs which would have been covered by the Guarantee in Clause B if equipment had been purchased ESE agrees to accept the return of the equipment.

11. Cancellation and Variation by the Customer

Orders accepted by ESE cannot be varied or cancelled without ESE's written consent. ESE reserves the right to make charges to cover overheads, profit and direct costs incurred by ESE to the date of cancellation or to cover any amendments to the specification or otherwise of the Goods ordered as requested by the Customer.

12. Cancellation by ESE

- If, owing to hostilities (whether war has been declared or not) Government Restrictions, strikes, riots or civil commotion, difficulty or inability to obtain suitable raw materials, devaluation, major movements in international exchange rates, force majeure or causes of any other nature beyond ESE's reasonable control, ESE decides it to be unreasonable or uneconomical to deliver the whole or any part of an order, ESE shall have the right on giving notice in writing to the Customer to cancel the order or any undelivered balance of the order.
- Notice as aforesaid shall be deemed to have been received by the Customer 48 hours after the same has been posted in a first class prepaid ordinary letter addressed to the Customer at its last known address or immediately where such notice is sent by facsimile (upon receipt of the answerback code) or telex, or personal delivery.
- In the event of cancellation under this clause the Customer shall not be entitled to make any claim arising from such cancellation other than a refund (without interest) of any advance payment made or a reasonable proportion thereof in respect of the cancellation of part of such order as the case may be.

13. Payment

- Unless otherwise agreed in writing the following terms will apply:
 - net cash with order, or
 - in approved cases payment should be made within 30 days from the date of the invoice.
- The risk shall pass to the Customer on despatch of the Goods and thereupon the Customer shall be responsible for insurance.
- Notwithstanding delivery and the passing of risk in the Goods, or any other provision of these Conditions, the property in the Goods shall not pass to the Customer until ESE has received in cash or cleared funds payment in full of the price of the Goods and all other goods agreed to be sold by ESE to the Customer for which payment is then due, together with any interest or other sums payable under the relevant contract in respect of the Goods and such other goods. Until such time as the property in the Goods passes to the Customer, the Customer shall hold the Goods as ESE's fiduciary agent and bailee and shall keep the Goods separate from those of the Customer and third parties and property stored, protected, insured and identified as ESE's property. Until that time the Customer shall be entitled to resell or use the Goods in the ordinary course of its business, but shall account to ESE for the proceeds of sale or otherwise of the Goods, whether tangible or intangible, including insurance proceeds, and shall keep all such proceeds separate from any monies or property of the Customer and third parties and, in the case of tangible proceeds, property stored, protected and insured.
- Until such time as the property in the Goods passes to the Customer (and provided the Goods are still in existence and have not been resold) ESE shall be entitled at any time to require the Customer to deliver up the Goods to ESE and, if the Customer fails to do so, forthwith to enter upon any premises of the Customer or any third party where the Goods are stored and repossess the Goods. The Customer shall not be entitled to pledge or in any way charge by way of security for any indebtedness any of the Goods which remain the property of ESE, but if the Customer does so all monies owing by the Customer to ESE shall (without prejudice to any other right or remedy of ESE) forthwith become due and payable.
- ESE shall have a general lien on all goods and property of the Customer in its possession until payment is made in full and shall be entitled on the expiration of 14 days notice to dispose of such goods or property as ESE thinks fit and apply any proceeds towards such debts.
- No disputes as to quality or performance of the Goods or services shall entitle the Customer to delay payment, make a deduction or set off against any payment due, unless ESE shall agree in writing liability thereon in an agreed sum.
- In the event of the Customer failing to comply with ESE's terms of payment ESE (without prejudice to any legal rights of action) reserves the right without notice to discontinue forthwith the provision to the Customer of any further goods or services.
- When delivery of the Goods is made by installments ESE may invoice the Customer for each installment separately.
- All prices exclude VAT. Where applicable Value Added Tax will be added to invoices at the appropriate rate prevailing at the time of raising the invoice.
- ESE reserves the right at any time before proceeding or proceeding further with an order to demand full or partial payment of monies due and payable under the Contract and under any other contract between ESE and the Customer. If the Customer defaults in any payment ESE may, in addition to exercising the right contained in the above, suspend work, delay or withhold delivery or cancel the Contract or suspend work, delay or withhold delivery under or cancel any other contract between ESE and the Customer and retain any progress payments or payments on account already received under the Contract or under any other contract between ESE and the Customer.
- ESE reserves the right to charge interest at annual rate of four percent above the base rate from time to time of National Westminster Bank Plc on all overdue monies. All rights and remedies afforded to ESE in these Conditions for non-payment shall be in addition and without prejudice to all other rights and remedies available to ESE under the Contract or at law.
- The value of any variation or extra works shall be determined in accordance with ESE terms and conditions of sale and labour will be charged at the prevailing ESE standard rate.

14. Return

Goods may only be returned with the prior agreement in writing of ESE. Any Goods returned without the prior agreement of ESE will be returned to the Customer and a charge for handling (not exceeding 10% of the current selling price of the Goods) plus all carriage costs will be made.

15. Trade Marks, Patents and Other Industrial Rights

- If any claim is made against the Customer alleging that Goods infringe any patent rights, registered designs, copyright or other industrial property rights of another then:
 - the Customer shall forthwith notify ESE with full particulars, and
 - ESE or its suppliers or licensors (as case may be) shall be at liberty at its expense to conduct all negotiations and/or litigation in respect thereof and (if necessary) in the name of the Customer, and
 - except pursuant to a final award, the Customer shall not pay or accept any such claim or compromise any proceedings without the consent of ESE (which shall not be unreasonably withheld or delayed)and if, as a result of such negotiations or litigation, the Customer shall be unable to use the Goods substantially for purpose for which they were bought, ESE shall (except where Condition 14 below applies) take them back and refund the price thereof and such refund shall be in full satisfaction of all claims by the Customer against ESE.
- The Customer shall indemnify ESE against all actions, costs, (including cost of defending legal proceedings) claims, proceedings and demands in respect of any infringement or alleged infringement by ESE of patent rights, registered design, copyright, design rights or other industrial rights attributable to ESE complying with any special instructions from or requirements of the Customer relating to the Goods.

16. Goods Offered which are not ESE's Own Property

- Any information supplied by ESE concerning the location and other matters in respect of goods and equipment offered for sale by ESE but which are not ESE's property is given on the understanding that the enquirer will not make a direct approach to purchase the goods and equipment through the owners but will purchase them through ESE.
- The Customer agrees not to make any direct approach to the true owner and undertakes to reimburse ESE in respect of any loss of commission or other loss which may result to ESE as a breach of this clause.

17. Insolvency of the Buyer

- This Condition applies if
 - the Customer makes any voluntary arrangement with its creditors or (being an individual or firm) becomes bankrupt or (being a company) becomes subject to an administration order or goes into liquidation (otherwise than for the purposes of amalgamation or reconstruction); or
 - an encumbrancer takes possession or a receiver is appointed, of any of the property or assets of the Customer, or
 - the Customer ceases or threatens to cease, to carry on business; or
 - ESE reasonably apprehends that any of the events mentioned above is about to occur in relation to the Customer and notifies the Customer accordingly.
- If this Condition applies then, without prejudice to any other right or remedy available to ESE, ESE shall be entitled to suspend work, delay, withhold delivery or cancel the Contract without any liability to the Customer, and if the Goods have been delivered but not paid for the price shall become immediately due and payable notwithstanding any previous agreement or arrangement to the contrary.

18. Survival of Provisions

The expiration or determination of this Contract, howsoever arising, shall be without prejudice to any provisions of the Contract (including these Conditions) which are to have effect after the date of expiration or determination.

19. Waiver

No waiver by ESE or any breach or obligation of the Customer pursuant to this Contract shall constitute a waiver of any other prior or subsequent breach or obligation

20. Civil Works

Unless allowed for in our quotation or agreed by ESE in writing, the customer is liable to carry out all civil works required.

21. English Law

Unless otherwise agreed in writing the Contract shall in all respects be construed and operate as an English contract and in conformity with English Law
ESE and the Customer hereby irrevocably agree to submit to the jurisdiction of the English Courts.

22. Errors and omissions excepted.