

Electronic Security Sales Pty Ltd

Terms and Conditions of Trade – May 2016

1. Definitions and Interpretations

- 1.1 In these terms and conditions:
- a) 'Agreement' means the agreement between Electronic Security Sales Pty Ltd and the Purchaser to provide Goods to the Purchaser to these terms and conditions as defined in clause 2 below;
 - b) 'ESS' means Electronic Security Sales Pty Ltd, ABN: 45 137 163 369;
 - c) 'Goods' means the purchaser of the Goods;
 - d) 'Purchaser' means the purchaser of the Goods;
 - e) 'Quotation' means any quotation given by ESS to the Purchaser;
 - f) 'PPSA' refers to the *Personal Property Securities Act 2009* (Cth).

2. Terms

- 2.1 Electronic Security Sales Pty Ltd may amend these terms and conditions by giving notice in writing. Any amended terms and conditions shall apply immediately after giving such notice.
- 2.2 The purchaser agrees that, upon placement of an order for Goods with ESS, the Goods will be supplied by ESS under these terms and conditions and the Purchaser will accept the purchase of the Goods under these terms and conditions.
- 2.3 These terms and conditions, the credit application, credit terms, and any other written instruction or authority provided by ESS to proceed constitutes the entire agreement between the Purchaser and ESS to the maximum extent permitted by law.

3. Quotations

- 3.1 Any quotation will remain valid for 30 days from the date of issue.
- 3.2 The purchaser acknowledges and agree that:
- a) It is their responsibility to verify that Goods are fit for purpose;
 - b) Prices in the Quotation unless specifically stated otherwise are exclusive of GST, freight and other taxes, duties and charges;
 - c) All Quotations are strictly confidential and will not be disclosed to any other party;
 - d) The prices in the Quotation may vary after the date of issue of the Quotation and that it will pay for additional charges as required by ESS or any other party.

4. Orders and Cancellations

- 4.1 Orders will not be binding upon ESS until accepted either formally in writing or by way of positive action to invoice or dispatch the Goods.
- 4.2 ESS may in its discretion refuse to supply any order for any reason whatsoever.
- 4.3 Any order for customised Goods or non-stocked Goods by the Purchaser cannot be cancelled.
- 4.4 Furthermore, no order may be varied or cancelled except with the written consent of ESS, which consent may include such terms which will indemnify ESS from any losses incurred due to the cancellation.
- 4.5 The Purchaser acknowledges and agrees that each order placed by it is a representation to ESS that the Purchaser is solvent and able to pay ESS's accounts as and when they are due.

5. Price

- 5.1 Subject to these terms and conditions, the price of all Goods supplied by ESS to the Purchaser will be set at:
- a) ESS's listed price current at the time of delivery; or
 - b) ESS's listed price less any discount agreed to in writing by ESS (trade price).
- 5.2 If currency exchange rates or custom duties for goods imported by ESS change between Quotation or Order and time of delivery, ESS may adjust the price to reflect such changes.
- 5.3 All prices unless specifically stated otherwise are exclusive of GST. Any GST payable must be paid by the Purchaser to ESS in the same manner and at the same time as the consideration for the supply is required to be paid by the Purchaser under these terms and conditions.
- 5.4 Price are subject to change at any time without notice.

6. Terms of Payment

- 6.1 Payment terms are strictly Cash on Delivery unless a credit account is granted by ESS to the Purchaser.
- 6.2 ESS will invoice the Purchaser for Goods at the time of supply. All invoices are due and payable within 14 days from Invoice date to which Goods relate is issued.
- 6.3 The Purchaser acknowledges and agrees that ESS is authorized to allocate the payment of any monies received from the Purchaser against any outstanding ESS account of the Purchaser.
- 6.4 If the Purchaser defaults in making payment in accordance with these terms and conditions, ESS may in its absolute discretion and without notice:
- a) Suspend payment discounts;
 - b) Withdraw the approval of a credit facility and refuse and subsequent orders from the Purchaser for the supply of goods;
 - c) Charge the Purchaser interest on that portion of the Purchaser's account overdue at the penalty rate fixed under the *Penalty Interest Rates Act 1983* (Victoria), calculated from the due date until the invoice is paid in full;
 - d) Require the Purchaser to reimburse ESS for all legal costs and expenses on a solicitor/client basis as a consequence of ESS instructing its solicitor to provide advice in connection with the default and/or to commence any recovery process and any other costs, expenses, losses or damages arising out of a breach of the Agreement.

- 6.5 The Purchaser agrees at the request of ESS to procure its directors to sign a personal guarantee and indemnity of the Purchaser's obligations to pay any amount due and payable to ESS, if and when required.
- 6.6 Any credit application approved by ESS for the Purchaser is granted by ESS on the basis on its reliance on information supplied by, and representations made on behalf of, the Purchaser.
- 6.7 The Purchaser must inform ESS of any changes to the ownership of the Purchaser by notice in writing immediately. Until such notice is received by ESS the Purchaser, and if the Purchaser is a trustee each of the trustees, will hold ESS indemnified against all losses of whatsoever nature incurred or suffered by ESS in trading with any person, company or other entity which may have purchased the Purchaser's business or any interest therein and used the Purchaser's previously approved credit account for trading.
- 6.8 The Purchaser hereby grants ESS the authority to lodge a consent caveat over any real property owned or partly owned by the Purchaser to protect its interests in respect of, and to secure any monies that are owned by the Purchaser to ESS.

7. Delivery and Freight

- 7.1 ESS accepts no responsibility either to deliver or to load Goods at the point of dispatch.
- 7.2 ESS may in its sole discretion elect to arrange delivery of the Goods and charge the Purchaser a freight charge. If ESS elects to arrange delivery, it is at the Purchaser's cost and risk.
- 7.3 ESS will make all reasonable efforts to deliver the Goods by the agreed delivery date but will not be liable in any way should delivery not be made on this date.

8. Reservation of Title

- 8.1 The Purchaser acknowledges that the ownership of Goods delivered by ESS is only transferred to the Purchaser when the Purchaser has paid all sums owing to ESS on any account whatsoever and that until such time ESS has the right to call for or recover the Goods at ESS's option (for which purposes ESS's employees or agents may enter the Purchaser's premises) and the Purchaser is obliged to deliver up the Goods if so directed by ESS.
- 8.2 The Purchaser agrees to keep the Goods in a fiduciary capacity for ESS until such time as ownership is transferred to the Purchaser.
- 8.3 Notwithstanding clause 8.2, the Purchaser may sell the Goods to a third party in the ordinary course of business provided that the Purchaser will hold on trust for ESS the proceeds of such sale and will keep those amounts in a separate bank account and immediately apply same in payment to ESS.

9. PPSA

- 9.1 The Purchaser acknowledges and agrees that it grants ESS a security interest in the Goods and their proceeds including any accounts and accessions by the virtue of these terms and conditions.
- 9.2 The Purchaser agrees that:
 - a) These terms and conditions, or such other terms and conditions as ESS may adopt from time to time, apply to the supply of Goods by ESS to the Purchaser to the exclusion of all other terms and conditions of trade;
 - b) No variation to these terms and conditions will be of any effect unless agreed to be ESS in writing;
 - c) The Goods supplied by ESS secure the payment of the purchase price of those goods and of any other Goods supplied by ESS;
 - d) It will do all things necessary including providing all information required to register a financing statement of financing change statement on the Personal Property Securities Register (PPSR) as a security interest and a purchase money security interest and a purchase money security interest (PMSI) pursuant to the PPSA;
 - e) It will not change its name, ACN or ABN or other details required on the PPSR without first notifying ESS.
 - f) It waives its right to receive any notice under the PPSA including a verification statement in respect of any financing statement or financing change statement in respect of the security interest created pursuant to these terms and conditions;
 - g) It must pay ESS's costs of any discharge or necessary amendment of any financing statement or financing change statement.
- 9.3 To the maximum extent permitted by law, the Purchaser agrees that the following sections of the PPSA will not apply:
 - a) Section 116;
 - b) Section 121(4);
 - c) Section 125;
 - d) Section 130;
 - e) Section 142; and
 - f) Section 143.
- 9.4 To the maximum extent permitted by law, the Purchaser waives any rights it may have pursuant to, and hereby contracts out of the following sections of the PPSA:
 - a) Section 95;
 - b) Section 118;
 - c) Section 121(4);
 - d) Section 123;
 - e) Section 129(2);
 - f) Section 130;
 - g) Section 132;
 - h) Section 134(2);
 - i) Section 135;
 - j) Section 157; and
 - k) Part 4.3.
- 9.5 Unless otherwise defined in these terms and conditions, the terms and expressions used in this clause have the meanings given to them or by virtue of the PPSA.

10. Risk

10.1 Notwithstanding the provisions of clauses 8 and 9 the Purchaser accepts all risk of loss and damage of the Goods, whether caused by the Purchaser or not, once the Goods have left the ESS premises.

11. Returns Policy

11.1 ESS will not accept returns for credit without prior authorization.

11.2 Any customised or non-stocked Goods may not be returned for credit under any circumstances.

11.3 ESS may allow returns for credit as its sole discretion, but in any event:

- a) Requests for return and credit must be made within 30 days of invoice, and will be refused after 30 days of invoice;
- b) The Goods which the Purchaser wishes to return for credit must be in their original unmarked and undamaged packaging and in 'as new' and saleable condition free of any damage whatsoever;
- c) The Goods must be accompanied by ESS's completed Goods Return Request Form;
- d) The Purchaser will be responsible for the cost of and for effecting delivery of the Goods returned to ESS, unless the return is due to incorrect supply or faulty goods;
- e) Upon receipt of the returned goods, ESS will credit the Purchaser's account less a 10 percent in its sole discretion.

11.4 This clause is subject to the Purchaser's statutory rights under the *Competition and Consumer ACT 2010* (Cth).

12. Claims

12.1 Any claims by the Purchaser for short delivery must be made within 7 days of the delivery.

12.2 Any other claims for adjustment to any invoice for any reason whatsoever must be made in writing within 30 days of the invoice date.

13. Withholding Supply

13.1 ESS reserves the right, irrespective of whatever or not an order has been accepted and without notice to the Purchaser, to withhold supply to the Purchaser and ESS will not be liable for loss or damage resulting directly or indirectly from such action where:

- a) The Goods ordered have been discontinued; or
- b) ESS has determined, in its absolute discretion, that credit should no longer be extended to the Purchaser.

14. Non-availability

14.1 Whilst every effort will be made to fulfil the Purchaser's order for the Goods, ESS will not be liable for any loss or damage whatsoever resulting directly or indirectly from non-availability of the Goods.

15. Licenses and Regulations

15.1 It is the Purchaser's responsibility to obtain any license, consent or approval required by any government or other authority for the purchase or use of the Goods.

15.2 The Purchaser must comply with all applicable laws, regulations and requirements in connection with its use, re-sale or other on-supply of the Goods to third parties, including but not limited to the *Competition and Consumer Act 2010*.

16. Warranty and Liability

16.1 ESS warrants that the Goods are free from defects in materials and workmanship. This warranty is for 12 months from the effective date of delivery of the Goods, or such period provided in the manufacturer's warranty documentation accompanying the Goods, whichever is the lesser.

16.2 If the Purchaser makes a valid warranty claim, ESS will, at its option, either repair the Goods, supply replacement Goods, or reimburse the Purchaser for the price. ESS shall not be liable for defects arising from fair wear and tear or misuse of the Goods.

16.3 The Purchaser is liable for the transport or other cost of sending warranty claim Goods to ESS, and for collection of repaired or replacement Goods.

16.4 ESS does not exclude or limit the application of any provision of any applicable statute, legislation or other regulation (including the *Competition and Consumer ACT 2010*) where to do so would contravene that statute, legislation or regulation or cause any part of these terms and conditions to be void and nothing in these terms and conditions is to be interpreted as doing so.

16.5 Subject always to clause 16.4, ESS excludes all statutory or implied conditions and warranties to the maximum extent permitted by law, except any implied term, condition, guarantee or warranty the exclusion of which would contravene any statute or cause this clause to be void ('Non-excludable Condition').

16.6 To the fullest extent permitted by law, ESS's liability to the Purchaser for breach of any Non-excludable Condition which is applicable is limited to, at the option of ESS. If the breach relates to Goods:

- a) The replacement of the goods or the supply of equivalent goods, the repair of the goods;
- b) The payment of the cost of replacing the goods or acquiring equivalent goods; or
- c) The payment of the cost of having the goods repaired.

16.7 To the maximum extent permitted by law, ESS excludes its liability (including, but not limited to, liability in tort, contract and for breach of statute) to the Purchaser or any other person for:

- a) Any loss or damage consequential or otherwise for any special, incidental, indirect or consequential damages or injury including, but not limited to, any loss of profits, contracts, or revenue arising out of or in connection with the provision of the Goods and whether as a result of any breach, default, negligence or otherwise by ESS suffered or incurred by the Purchaser or any other person in relation to the Goods; and
- b) In particular, but without limiting clause 16.7(a) any loss or damage consequential or otherwise suffered or incurred by the Purchaser or any other person caused by or resulting directly from any failure, defect or deficiency of any kind of or in the Goods.

17. Force Majeure

17.1 ESS will not be liable for any loss or damage sustained by the Purchaser through delay in delivering the Goods caused by circumstances outside of the reasonable control of ESS.

18. Intellectual Property Rights

18.1 The Purchaser acknowledges that it does not have any intellectual property rights, whether by way of copyright or registered design, or otherwise, in the goods and that ESS retains ownership of all such intellectual property.

19. Indemnity

19.1 Except as otherwise provided herein, the Purchaser indemnifies and holds harmless ESS against any and all actions, claims, proceedings, costs, losses, expenses, liabilities, including legal fees, whatsoever and howsoever caused or arising out of, connected with, or resulting from the Goods themselves or use of the Goods including without limitation the manufacture, selection, delivery, possession, use, operation, return or any and all damages or injuries caused thereby to anyone whatsoever.

20. Termination

20.1 ESS may immediately terminate all outstanding obligations to supply Goods, and/or suspend the Purchaser's credit facility, if the Purchaser:

- a) Breaches this Agreement;
- b) Commits an act of bankruptcy or makes an arrangement with all or any number of its creditors, or has a receiver or liquidator appointed.

20.2 Upon termination provided by clause 20.1:

- a) ESS may enforce its rights under this Agreement without prejudice to any other rights it may have;
- b) All other obligations upon the Purchase shall remain, and any amounts owing to ESS then unpaid whether or not due under the terms of this Agreement shall immediately become due and payable.

21. General

21.1 The invalidity or unenforceability of any provision of the Agreement shall not adversely affect the validity or enforceability of the remaining provisions.

21.2 Any failure by ESS to insist on strict compliance with any term of the Agreement shall not be deemed a waiver of such term. Such failure shall in no way affect the right later to enforce such term.

21.3 ESS reserves the right to correct clerical errors without notification.