

Terms and Conditions of Trade

1. DEFINITIONS

- 1.1 "ES3" shall mean ES3 Limited or any agents or employees thereof.
- 1.2 "Customer" shall mean the Customer, any person acting on behalf of and with the authority of the Customer, or any person purchasing the goods and services from ES3.
- 1.3 "Goods" shall mean:
- 1.3.1 All Goods of the general description specified on the front on this agreement and supplied by ES3 to the Customer; and
 - 1.3.2 All Goods supplied by ES3 to the Customer; and
 - 1.3.3 All inventory of the Customer that is supplied by ES3; and
 - 1.3.4 All Goods supplied by ES3 and further identified in any invoice issued by ES3 to the customer, which invoices are deemed to be incorporated into and form part of this agreement; and
 - 1.3.5 All Goods that are marked as having been supplied to ES3 or that are stored by the Customer in a manner that enables them to be identified as having been supplied by ES3; and
 - 1.3.6 All of the Customer's present and after-acquired Goods that ES3 has performed work on or to or in which goods or materials supplied or financed by ES3 have been attached or incorporated.
 - 1.3.7 The above descriptions may overlap but each is independent of and does not limit the others.
- 1.4 "Goods" shall also mean all goods, products, services and advice provided by ES3 to the Customer and shall include without limitation all charges for labour, hire charges, insurance charges, or any fee or charge associated with the supply of Goods by ES3 to the Customer.
- 1.5 "Price" shall mean the cost of the Goods as agreed between ES3 and the Customer and includes all disbursements e.g. charges ES3 pay to others on the Customer's behalf subject to clause 4 of this contract.

2. ACCEPTANCE

2.1 Any instructions received by ES3 from the Customer for the supply of Goods shall constitute a binding contract and acceptance of the terms and conditions contained herein.

3. COLLECTION AND USE OF INFORMATION

- 3.1 The Customer authorises ES3 to collect, retain and use any information about the Customer, for the purpose of assessing the Customer's credit worthiness, enforcing any rights under this contract, or marketing any Goods provided by ES3 to any other party.
- 3.2 The Customer authorises ES3 to disclose any information obtain to any person for the purposes set out in clause 3.1.
- 3.3 Where the Customer is a natural person the Authorities under clauses 3.1 and 3.2 are authorities or consents for the purposes of the Privacy Act 1993.

4. PRICE

- 4.1 Where no price is stated in writing or agreed orally the Goods shall be deemed to be sold at the current amount as such Goods are sold by ES3 at the time of the contract.
- 4.2 The price may be increased by the amount of any reasonable increase in the cost of supply of the Goods that is beyond the control of ES3 between the date of the contract and delivery of the Goods.

5. PAYMENT

- 5.1 Payment for Goods shall be made in full on or before the 20th day of the month following the date of the invoice ("the due date").
- 5.2 Interest may be charged on any amount owing after the due date at the rate of 2.5% per month of part month.
- 5.3 Any expenses, disbursements and legal costs incurred by ES3 in the enforcement of any rights contained in this contract shall be paid by the Customer, including any reasonable solicitor's fees or debt collection agency fees.
- 5.4 Receipt of a cheque, bill or exchange, or other negotiable instrument shall not constitute payment until such negotiable instrument is paid in full.

6. QUOTATION

- 6.1 Where a quotation is given by ES3 for Goods:
- 6.1.1 Unless otherwise agreed the quotation shall be valid for thirty (30) days from the date of issue; and
 - 6.1.2 The quotation shall be exclusive of goods and services tax unless specifically stated to the contrary;
 - 6.1.3 ES3 reserves the right to alter the quotation because of circumstances beyond its control.
- 6.2 Where Goods are required in addition to the quotation the Customer agrees to pay for the additional cost of such Goods.

7. RISK

- 7.1 The Goods remain at ES3's risk until delivery to the Customer.
- 7.2 Delivery of Goods shall be deemed complete when ES3 gives possession of the Goods directly to the Customer or possession of the Goods is given to a carrier, courier, or other bailee for purposes of transmission of the Customer.

8. TITLE AND SECURITY (PERSONAL PROPERTY SECURITIES ACT 1999)

- 8.1 Title in and Goods supplied by ES3 passes to the Customer only when the Customer has made payment in full for all Goods provided by ES3 and of all other sums due to ES3 by the Customer on any account whatsoever. Until all sums due to ES3 by the Customer have been paid in full, ES3 has a security interest in all Goods.
- 8.2 If the Goods are attached, fixed, or incorporated into any property of the Customer, by way of any manufacturing or assembly process by the Customer or any third party, title in the Goods shall remain with ES3 until the Customer has made payment for all Goods, and where those Goods are mixed with other property so as to be part of or a constituent of any new Goods, title to these new Goods shall be deemed to be assigned to ES3 as security for the full satisfaction by the Customer of the full amount owing between ES3 and Customer.
- 8.3 The Customer gives irrevocable authority to ES3 to enter any premises occupied by the Customer or on which Goods are situated at any reasonable time after default by the Customer or before default if ES3 believes a default is likely and to remove and repossess any Goods and any other property to which Goods are attached or in which Goods are incorporated. ES3 shall not be liable for any costs, damages, expenses or losses incurred by the Customer or any third party as a result of this action, nor liable in contract or in tort or otherwise in any way whatsoever unless by

statute such liability cannot be excluded. ES3 may either resell any repossessed Goods and credit the Customer's account with the net proceeds or sale (after deduction of all repossession, storage, selling and other costs) or may retain any repossessed Goods and credit the Customer's account with the invoice value thereof less such sum as ES3 reasonably determines on account of wear and tear, depreciation, obsolescence, loss or profit and costs.

8.4 Where Goods are retained by ES3 pursuant to clause 8.3 the Customer waives the right to receive notice under s.120 of the Personal Property Securities Act 1999 ("PPSA") and to object under s.121 of the PPSA.

8.5 The following shall constitute defaults by the Customer:

- 8.5.1 Non-payment of any sum by the due date.
- 8.5.2 The Customer intimates that it will not pay any sum by the due date.
- 8.5.3 Any Goods are seized by any other creditor of the Customer or any other creditor intimates that it intends to seize Goods.
- 8.5.4 Any Goods in the possession of the Customer are materially damaged while any sum due from the Customer to ES3 remains unpaid.
- 8.5.5 The Customer is bankrupted or put into liquidation or a receiver is appointed to any of the Customer's assets or a landlord distrains against any of the Customer's assets.
- 8.5.6 A Court judgment is entered against the Customer and remains unsatisfied for seven (7) days.
- 8.5.7 Any material adverse change in the financial position of the Customer.

9. PAYMENT ALLOCATION

9.1 ES3 may in its discretion allocate any payment received from the Customer towards any invoice that ES3 determines and may do so at the time of receipt or at any time afterwards and on default by the Customer may reallocate any payments previously received and allocated in the absence of any payment allocation by ES3, payment shall be deemed to be allocated in such manner as preserves the maximum value of ES3's purchase money security interest in the Goods.

10. DISPUTES

10.1 No claim relating to Goods will be considered unless made in writing with thirty (30) days of delivery.

11. LIABILITY

11.1 The Consumer Guarantees Act 1993, the Fair Trading Act 1986 and other Statutes may imply warranties or conditions or impose obligations upon ES3 which cannot by law (or which can only to a limited extent by law) be excluded or modified. In respect of any such implied warranties, conditions or terms imposed in ES3, ES3's ability shall, where it is allowed, be excluded or if not able to be excluded only apply to the minimum extent required by the relevant statute.

11.2 Except as otherwise provided by clause 11.1 ES3 shall not be liable for:

11.2.1 Any loss or damage of any kind whatsoever, arising from the supply of Goods by ES3 to the Customer, including consequential loss whether suffered or incurred by the Customer or another person and whether in contract or tort (including negligence) or otherwise and irrespective of whether such loss or damage arises directly or indirectly from Goods provided by ES3 to the Customer; and

11.2.2 The Customer shall indemnify ES3 against all claims and loss of any kind whatsoever however caused or arising and without limiting the generality of the foregoing of this clause whether caused or arising as a result of the negligence of ES3 or otherwise, brought by any person in connection with any matter, act, omission, or error by ES3 its agents or employees in connection with the Goods.

12. WARRANTY

12.1 No representation, condition, warranty or premise expressed or implied by law or otherwise applies to goods except where goods are supplied pursuant to the Consumer Guarantees Act 1993 or except where expressly provided to the Customer at the time of sale.

12.2 ES3 does not provide any warranty that the goods are fit and suitable for the purpose for which they are required by the Customer and shall not be liable if they are not.

13. CONSUMER GUARANTEES ACT

13.1 The guarantees contained in the Consumer Guarantees Act 1993 are excluded where the Customer acquires Goods from ES3 for the purposes of a business in terms of section 2 and 43 of that Act.

14. PERSONAL GUARANTEE OF COMPANY DIRECTORS OR TRUSTEES

14.1 If the Customer is a company or trust, the director(s) or trustee(s) signing this contract, in consideration for ES3 agreeing to supply Goods and grant credit to the Customer at their request, also sign this contract in their personal capacity and jointly and severally personally undertake as principal debtors to ES3 the payment of any and all monies now or hereafter owned by the Customer to ES3 and indemnify ES3 against non-payment by the Customer. Any personal liability of a signatory hereto shall not exclude the Customer in any way whatsoever from the liabilities and obligations contained in this contract. The signatories and Customer shall be jointly and severally liable under the terms and conditions of this contract and for payment of all sums due hereunder.

15. MISCELLANEOUS

- 15.1 ES3 shall not be liable for delay or failure to perform its obligations if the cause of the delay or failure is beyond its control.
- 15.2 Failure by ES3 to enforce any of the terms and conditions contained in this contract shall not be deemed to be a waiver of any of the rights or obligations ES3 has under this contract.
- 15.3 If any provision of this contract shall be invalid, void, or illegal or unenforceable the validity, existence, legality and enforceability of the remaining provisions shall not be affected, prejudiced or impaired.
- 15.4 The Law of New Zealand applies to this contract.