

## Standard Terms & Conditions

ESE Direct Limited (the "Company" / "We" / "Us" / "Our") is fully committed to providing all customers with the best customer service, quality products and lowest prices, because "we want you to want to buy from us again and again".

### 1. General

- (1). The Company is primarily a business to business supplier. Acceptance by the Company of an order for the supply of goods, irrespective of how it is received, will be subject to these conditions of sale, to the exclusion of all other conditions referred to, relied on or tendered by the customer unless explicitly agreed by the Company in writing.
- (2). Any reference in these terms and conditions to "in writing" is deemed to include email and fax.

### 2. Prices

- (1). Unless otherwise specified, all prices are exclusive of VAT and carriage paid to the kerb side UK Mainland, excluding Highlands and Islands, for orders over £45, with the exception of large products requiring a crane / hiab offload. Where a crane / hiab offload is required, this may be charged for separately but the Company will notify you prior to despatch of goods if this is the case and you will have the right to cancel at that point.
- (2). Whilst We shall endeavour to maintain the prices shown online and in our printed materials (errors and omissions excepted), this We cannot guarantee and We reserve the right to charge the price ruling at date of order. In the event of a price alteration, notification will be made prior to despatch of goods and you will have the right to cancel at this point.

### 3. Orders / specifications

- (1). No order submitted by you shall be deemed to be accepted until confirmed in writing by the Company. Any subsequent amendments must also be confirmed by you and the Company in writing. Due to continual design and manufacturing improvements, strict accuracy of descriptions, specifications, colours, sizes, capacities and illustrations cannot be guaranteed. The Company will inform you in writing of any change in specification. In the event of a specification alteration, notification will be made prior to despatch of goods and you will have the right to cancel at that point. Product weights are approximate and any stated load capacities are for evenly distributed loads and must not be exceeded.
- (2). The images of the goods on our website or in our catalogues or brochures are for illustrative purposes only. Although We have made every effort to display the colours accurately, We cannot guarantee that your computer's display of the colours or the printed pictures accurately reflect the colour of the goods and your goods may vary from those images. Where images of individual products are unavailable, images may show multiple goods alongside a description of which goods are included. For goods not manufactured by the Company, the Company is provided with images, codes, descriptions of goods displayed online and in printed material direct from its suppliers and the Company is not responsible for those images, codes or descriptions.
- (3). If you require specific colours, sizes, options, capacities, delivery dates or other criteria, these must be marked clearly on your order.
- (4). We will acknowledge your order during normal working hours (Monday – Friday 8.30am – 5.30pm) with a confirmed cost and estimated delivery date. If this is not acceptable, We will try to resolve any issues to your full satisfaction. If we cannot, you can cancel your order without charge prior to despatch of goods unless products are being made to order.

### 4. Delivery

- (1). Lead times are estimates of normal delivery. Unless otherwise agreed in writing, delivery of the goods shall take place at the address specified by you as close as possible to the estimated date specified by the Company. If We are not able to deliver the whole of the order at one time due to operational reasons or shortage of stock, We will deliver the order in instalments. We will not charge you extra delivery costs for this.
- (2). Goods are usually delivered to "goods inwards" or "reception" and always to kerbside / ground floor (unless previously agreed in writing). Further transfer or installation, particularly for large or heavy items, can only be arranged with prior notice (sometimes extra charges apply).
- (3). You or your authorised person must be present to receive and sign for delivery. Any failed attempts may result in a return delivery charge and leaving goods without a signature is entirely at your own risk. The Company

cannot accept claims for shortage or damage after the goods have been delivered, unless the carrier's note has been marked as damaged or signed "unexamined" and the Company is notified in writing within 24 hours of delivery of any issue. Some products may require a small amount of assembly by you after delivery to keep transport costs down. Total non-delivery due to loss in transit must be notified within 7 days of date of invoice.

- (4). Whilst We shall endeavour to deliver your goods to you as quickly as possible, at the very latest delivery will take place within 30 days after the day on which We accept your order (unless stated otherwise for those goods in our website or catalogues).

### 5. Return of goods

- (1). Standard goods will only be accepted for return unused, undamaged and in the original packaging within 14 days of delivery with the prior agreement of the Company, subject to our right to charge a restocking fee and carriage for the outward journey. Please refer to the price list on our website for restocking fees and carriage charges.
- (2). Unfortunately, We cannot accept the return of made-to-order goods if the reason for the return is because you provided us with incorrect measurements or because you no longer require the goods for any reason. However, this will not affect your legal rights as a consumer in relation to made-to-order goods that are faulty or not as described.
- (3). Cancellations / credits are issued by the payment method originally used. Cheques will be issued up to 10 days after your original payment date to allow sufficient time for security checks. Refunds to credit or debit cards will be issued quicker but may take up to 14 working days to show on your statements dependent on your bank (We are afraid this is totally beyond our control).

### 6. Payment

- (1). If credit terms are agreed by the Company, payment in full shall be made within 30 days of the invoice date. Failure to meet these payment terms shall result in you being liable to pay interest at the annual rate of 8% above the HSBC Bank Plc base lending rate on outstanding monies until payment in full is received. This interest shall accrue on a daily basis from the due date until the date of actual payment of the overdue amount, whether before or after judgment. You must pay the Company interest together with any overdue amount.
- (2). If credit terms are not required / agreed, payment of fully cleared funds will be required in advance of despatch of goods. Please note you may have to wait up to 5 working days for cheque payments to be confirmed as valid and cleared by HSBC Bank Plc before your goods can be despatched.

### 7. Risk / title

- (1). The risk in the goods shall pass to you on completion of delivery.
- (2). Title to the goods shall not pass to you until the earlier of:
  - (a) the Company receives payment in full (in cash or cleared funds) for the goods and any other goods that the Company has supplied to you in respect of which payment has become due, in which case title to the goods shall pass at the time of payment of all such sums; or
  - (b) You resell the goods in the ordinary course of business, in which case title to the goods shall pass to you at the time specified in clause 7(4) below.
- (3). Until title to the goods has passed to you, you shall:
  - (a) store the goods separately from all other goods held by you so that they remain readily identifiable as the Company's property;
  - (b) not remove, deface or obscure any identifying mark or packaging on or relating to the goods;
  - (c) maintain the goods in satisfactory condition;
  - (d) give the Company such information relating to the goods as the Company may require from time to time.
- (4). Subject to clause 7(5), you may resell or use the goods in the ordinary course of its business (but not otherwise) before the Company receives payment for the goods. However, if you resell the goods before that time:
  - (a) You do so as principal and not as the Company's agent; and
  - (b) title to the goods shall pass from the Company to you immediately before the time at which resale by you occurs.
- (5). Until such time as property in the goods passes from the Company to you, you shall upon request deliver up to the Company such of the goods as have not ceased to be in existence or re-sold by you. If you fail to do so the Company may enter upon any premises owned, occupied or controlled by you where the goods are situated and repossess the goods.

## 8. Warranty / liability

- (1). All of the Company's products have a minimum one year warranty. Where goods are found to be defective within their warranty period the Company shall repair or in its sole discretion replace defective goods free of charge, subject to, the remainder of this clause 8 and you notifying the Company in writing immediately upon a defect becoming apparent due to faulty design, materials or workmanship.
- (2). If the Company fails to comply with these terms and conditions, it is, subject to the other provisions in this clause 8, responsible for loss or damage you suffer that is a foreseeable result of its breach of the terms or its negligence, but the Company is not responsible for any loss or damage that is not foreseeable. Loss or damage is foreseeable if it is an obvious consequence of its breach or if it was contemplated by you and the Company at the time you entered into this contract.
- (3). The warranties described in this clause 8 do not apply to any defect in the goods arising from:
  - (a) fair wear and tear;
  - (b) wilful damage, abnormal storage or working conditions, accident, negligence by you or by any third party;
  - (c) your failure to operate or use the goods in accordance with the user instructions;
  - (d) any alteration or repair by you or by a third party who is not one of the Company's authorised repairers; and
  - (e) any specification provided by you.
- (4). The warranties described in this clause 8 are in addition to, and do not affect, your legal rights in relation to the goods that are faulty or not as described.
- (5). Nothing in these terms and conditions shall limit or exclude the Company's liability for:
  - (a) death or personal injury caused by its negligence, or the negligence of its employees, agents or subcontractors;
  - (b) fraud or fraudulent misrepresentation;
  - (c) breach of the terms implied by section 2 of the Supply of Goods and Services Act 1982 (title and quiet possession);
  - (d) breach of the terms implied by section 12 of the Sale of Goods Act 1979 (title and quiet possession); or
  - (e) defective products under the Consumer Protection Act 1987.
- (6). The terms implied by sections 13 to 15 of the Sale of Goods Act 1979 and the terms implied by sections 3 to 5 of the Supply of Goods and Services Act 1982 are, to the fullest extent permitted by law, excluded from the contract.
- (7). The Company shall be liable for loss or damage in an amount not exceeding the total price of the goods.

## 9. Events outside our control

- (1). The Company shall not be liable for any delay or failure to perform its obligations resulting from circumstances outside its reasonable control, including but not limited to, acts of god, strikes, lockouts, accidents, terrorism, war or riot, sabotage, plant / machinery failure or shortage of raw materials.

## 10. Intellectual property rights / copyright

- (1). The display of, or sale of, goods by the Company shall not transfer or affect ownership of any intellectual property rights / trademarks etc of the goods. No use, distribution or copying of any information contained within the Company's publications or websites is permitted without prior written consent.

## 11. Data protection

- (1). The placing of orders will require you to provide the Company with names, addresses and other relevant detail to enable an efficient transaction to take place. Where you have indicated your consent, the Company may contact you about similar products or services that the Company offers. To stop receiving this information, please either amend your online account settings or send an email to [directors@esedirect.co.uk](mailto:directors@esedirect.co.uk) with 'No Other Information' written in the subject and include your postal address and account number.

## 12. Your rights to cancel and applicable refund

- (1). Before the goods are delivered, you have the following rights to cancel an order for goods (other than made-to-order goods):
  - (a) you may cancel any order for goods at any time before the Company despatches the goods by contacting the Company as described in clause 15(3) below. The Company will confirm your cancellation in writing to you;

- (b) if you cancel an order under clause 12(1)(a) and you have made any payment in advance for goods that have not been despatched to you, the Company will refund these amounts to you and any delivery charges;
- (c) unfortunately, if you cancel an order for goods under clause 12(1)(a) and the Company has already despatched the goods to you, the Company will not be able to cancel the order until it is delivered. In this case, if you return the goods to the Company, the Company will have to charge you the cost of collection or you will have to pay the cost of returning the goods back to the Company. This will not affect your refund for the goods themselves, but the Company will not refund any charges for delivery and any charge for collection will be deducted from the refund that is due to you.

- (2). Unfortunately, as the made-to-order goods are made to meet your requirements, you will not be able to cancel the order once manufacture has started (but this will not affect your legal rights in respect of made-to-order goods that are faulty or not as described).

## 13. Our rights to cancel and applicable refund

- (1). The Company may have to cancel an order before the goods are delivered, due to an event outside our control or the unavailability of stock. If this happens:
  - (a) the Company will promptly contact you to let you know;
  - (b) if you have made any payment in advance for goods that have not been delivered, the Company will refund these amounts to you;
  - (c) where the Company has already started work on an order for made-to-order goods by the time the Company has to cancel under clause 13(1)(a), the Company will not charge you anything and you will not have to make any payment.

## 14. Other important terms

- (1). The Company may transfer its rights and obligations under these terms and conditions to another organisation, and it will always tell you in writing if this happens, but this will not affect your rights under the contract or the obligations owed to you under the contract.
- (2). You may only transfer your rights or obligations under these terms and conditions to another person if the Company agrees in writing.
- (3). This contract is between the Company and you. No other person shall have any rights to enforce any of its terms. However, subject to clause 14(2) the purchaser of your property will have the benefit of the warranty at clause 8.
- (4). Each of the paragraphs of these terms and conditions operates separately. If any court or relevant authority decides that any of them are unlawful, the remaining paragraphs will remain in full force and effect.
- (5). If the Company fails to insist that you perform any of its obligations under these terms and conditions, or if the Company does not enforce its rights against you, or if the Company delays in doing so, that will not mean that the Company has waived its rights against you and will not mean that you do not have to comply with those obligations. If the Company does waive a default by you, it will only do so in writing, and that will not mean that the Company will automatically waive any later default by you.
- (6). These terms and conditions are governed by English law. The Company and you both agree to submit to the non-exclusive jurisdiction of the English courts. However, if you are a resident of Northern Ireland you may also bring proceedings in Northern Ireland, and if you are a resident of Scotland, you may also bring proceedings in Scotland.

## 15. Information about the Company and its contact details

- (1). The Company is registered in England and Wales under registration number 01279230. The Company's registered office is at Wensum Works, 150 Northumberland Street, Norwich, Norfolk, NR2 4EE and the Company's registered VAT number is 287826210.
- (2). If you have any questions or if you have any complaints, please contact the Company. You can contact the customer service team by telephone on 0800 161 3437 or by email to [customerservice@esedirect.co.uk](mailto:customerservice@esedirect.co.uk).
- (3). If you have a query relating to an order you can contact the sales team by telephone on 0800 161 3436 or by email to [sales@esedirect.co.uk](mailto:sales@esedirect.co.uk).

**Note:** Supplemental Conditions apply if Supply & Installation Services required, please see following page for details.

## **SUPPLEMENTAL ~ TERMS & CONDITIONS ~ FOR SUPPLY AND / OR INSTALLATION SERVICES.**

**ESE Direct Ltd / ESE Projects** (a trading style of ESE Direct Ltd) (the “**Company**”) submits all quotations, and accepts all orders, from the customer subject to these supplemental terms and conditions and ESE Direct Limited’s standard terms and conditions (both as current at the time of the quotation), which shall apply to all goods supplied or work undertaken thereunder by the Company, its servants, agents or sub-contractors to the exclusion of all other conditions and warranties whether expressed or implied. No variation of these supplemental and standard terms and conditions shall have any effect unless agreed in writing by the Company.

### **A. QUOTATIONS**

- (1) Quotations shall not be deemed to constitute an offer and orders are subject to acceptance by the Company.
- (2) All quotations are based on prices ruling at the date of quotation. In the event of fluctuation in material or labour prices between the date of quotation and completion of any contract the Company reserves the right to make reasonable adjustments accordingly (with prior notice) whether before or after acceptance of the customer order.
- (3) No provision has been made for VAT, surveyor or local authority fees, or for any other charges levied under authority of HMRC unless specifically detailed. This quotation is subject to the payment by the customer of such charges and/or fees.
- (4) This quotation is made on the assumption that the customer has taken all necessary steps to ensure the work to which this quotation refers is acceptable to the appropriate authorities in England, Wales, Scotland and Northern Ireland and complies with their requirements by law. The customer shall also be responsible for obtaining any necessary planning permission, building regulations or other necessary approvals and for ensuring the building structure and floors are suitable for the proposed works unless specifically detailed in the quotation.

### **B. DRAWINGS / BROCHURES**

- (1) All drawings prepared for both design and layout remain the property of the Company. The drawing is confidential and is the exclusive property of the Company. No unauthorised use copy or disclosure of the drawing is to be made.
- (2) Advertising matter, brochures and price lists are only an indication of the type of goods offered. Prices contained therein shall not be deemed to be binding or a term of the contract unless expressly stated in the quotation.
- (3) The Company reserves the right to modify designs at any time, both before and after the Company’s acceptance to the order.
- (4) Where necessary, layout drawings are submitted to the customer for approval prior to manufacture. These drawings show nominal dimensions relating to the work contained in the quotation. The Company accepts no responsibility in the event of these drawings being used by the customer for any other purposes.

### **C. DELIVERY AND INSTALLATION PROGRAMMES**

- (1) The Company shall not be held liable for any delay arising out of strikes, lockouts and non-delivery of materials, goods not of its manufacture or circumstances which are beyond its control.
- (2) The Company will not accept any charges arising from its inability to comply with delivery or installation programmes howsoever caused.
- (3) Unless otherwise specified, the unloading and placement of materials in dry storage under protection from weather or other damage and conveyance to actual erection area shall be carried out by the customer or his agent, free of charge to the Company.
- (4) Unless the quotation shall provide otherwise, delivery will be effected to site. All goods on site, fixed or unfixed, are at the sole risk of the customer who will be responsible for the safekeeping thereof.
- (5) Unless we are notified within 2 working days of receipt of goods and the delivery note is marked “unchecked”, any claims for damage or discrepancies of materials will not be accepted.

### **D. SUPPLY AND INSTALL OR INSTALL ONLY CONTRACT CHARGES**

- (1) The customer is requested to supply suitable artificial lighting if necessary, a 230/240 Volt AC electrical supply with a point suitable for portable electric tools, along with welfare / lavatory facilities. Delays or costs incurred caused by lack of this equipment / facilities may be charged as extra.
- (2) Unless otherwise detailed in quotation, it is assumed that the floor on which goods are to be installed is level. The time and/or materials taken to make

alteration to the goods to accommodate any uneven floors may be charged for as extra.

- (3) Unless otherwise detailed in the quotation, it is assumed the installation area will be cleared to enable the Company’s workmen to operate without hindrance and they will not be prevented from working continuously. In the event of the Company’s workmen being required to wait or stop working for the convenience of the customer or other trades, downtime may be charged for at the current day-work rates.
- (4) Should the Company’s workmen be required to leave site through circumstance beyond the Company’s control, the travelling time and additional expenses incurred may be charged for as extra.
- (5) The Company shall not be liable for the cost of making good any damage to the customer’s buildings or fittings that howsoever may have been caused by their employees during the execution of the work, unless the employees have acted negligently or are in breach of their statutory duty. Adequate steps must be taken by the customer or his agent to provide protection against any such damage.
- (6) All cut outs for pipes, conduits, trunking, beams or any other structural obstructions and infill to windows etc. may be subject to an extra charge unless included in the Company’s quotation.
- (7) Where alteration to the customer’s premises or change in the layout from that shown in the Company’s drawing involve additional goods or work, an extra charge will be made.

### **E. INSURANCE**

- (1) Employees of the Company are fully covered in respect of employer’s liability and public liability (third party) insurance.

### **F. SUPPLEMENTAL PAYMENT PROVISIONS**

- (1) The Company reserves the right to call for up-front payments or payments by instalments comprising interim progress payments and a final payment in accordance with schedules which have previously been agreed with the customer. All such invoices are payable on receipt unless specifically detailed in the quotation.
- (2) Should there be a default in payment of an instalment or any invoice as herein before provided the Company reserves the right to withdraw any previously agreed discount or special terms.
- (3) In the event of default in payment the Company reserves the right to stop work on the contract and to take any action it deems necessary to recover payment of any debt in respect of the goods that have been provided and the works that have been carried out (notwithstanding the works being incomplete). This clause shall not affect any rights that the Company has under Clause F(1) above.
- (4) In the event that the Company enters your premises to repossess any goods belonging to it pursuant to the Company’s standard terms and conditions, the Company will use reasonable care and skill to remove any goods fixed to your premises but the Company will not be liable for any loss or damage caused by removal of the goods except those losses caused by the negligence of the Company.
- (5) The customer shall, if required by the Company, provide two satisfactory written trade references and complete credit application forms.

### **G. CANCELLATION**

- (1) Cancellation will only be accepted by the Company on condition that all costs and expenses and all loss of profits and other loss or damage sustained by the Company (as to which the absence of agreement between the Parties the Certificate of the Auditor of the Company shall be inclusive) will be reimbursed by the customer to the Company forthwith and without delay.