

**STANDARD TERMS & CONDITIONS OF PURCHASE**

**1. General:** These terms and conditions and any other terms and conditions described in the Purchase Order, together with the Supply Agreement (if any) shall without further notice apply to all future transactions between ESAP and the Supplier in relation to the sale and purchase of Goods and/or Services (referred to as the Contract), whether or not the terms and conditions have been delivered by way of a written document. These terms and conditions shall apply to the exclusion of all others including any terms and conditions of the Supplier (whether on the Supplier's Order Acknowledgement or otherwise). The Supply Agreement (if any) is the separate written agreement between the parties contemplating the issue by ESAP of a Purchase Order. To the extent of any inconsistency between the Supply Agreement and these Standard Conditions of Purchase, unless provided otherwise in the Supply Agreement, the terms of the Supply Agreement prevail. No variation or abrogation of these terms and conditions shall be effective unless it is evidenced in writing and signed on behalf of ESAP. The Supplier acknowledges that these terms and conditions embody the whole agreement between the parties and agrees to be bound by them. In providing any Goods and/or Services, the Supplier shall be deemed to have accepted the terms and conditions of the Contract for the purposes of that supply and any Supplier terms and conditions will be of no legal effect and will not constitute part of the Contract except as expressly agreed in writing by ESAP (provided always that ESAP shall not be deemed to have so agreed in writing merely by signing any Supplier documentation provided with the Goods and/or Services in taking delivery thereof or by otherwise acknowledging receipt of the Goods and/or Services whether by payment or other means).

**2. Delivery Date:** The Supplier shall provide written confirmation to ESAP prior to any Delivery that the Delivery will be made at the Requested Date. The Goods and/or Services shall be supplied by the Supplier to ESAP on the date specified in the Purchase Order (referred to as the Requested Date). Goods delivered prior to or after the Requested Date without prior written approval by an ESAP representative shall be accepted at ESAP's discretion. If the Supplier fails to Deliver the Goods and/or Services by the Requested Date, the Supplier must pay ESAP any amount payable by ESAP under any contract under which the Goods and/or Services are to be onsold, together with any amount stipulated in the Supply Agreement (if any) as liquidated damages in respect of the period thereafter up to the date upon which Delivery is achieved. ESAP reserves the right to claim actual damages for delay where no amount or 'nil' is stipulated for liquidated damages. ESAP reserves the right to cancel the Purchase Order in total or any part thereof if Delivery is not made by the Requested Date and if necessary to resource the Purchase Order with an alternative Supplier and to charge the original Supplier with any additional costs involved in resourcing the Purchase Order. ESAP may by notice in writing given at any time prior to actual Delivery postpone the time for Delivery or require the Supplier to Deliver the Goods and/or Services in instalments.

**3. Price:** The Price given on the Purchase Order shall be the final price. Any increase in the cost of manufacture and/or Delivery of the Goods and/or Services between the date of the Purchase Order and the date of Delivery shall be borne by the Supplier. At any time prior to Delivery of the Goods and/or Services, ESAP may direct the Supplier to alter, add to or omit all or part of the Goods and/or Services without cause and for its own convenience and for the purpose of having all or part of the Goods and/or Services provided by another supplier. Unless the parties agree upon a price for such variation the price in respect thereof shall be a reasonable price.

**4. Payment:** Unless this Contract provides for periodic progress payments or payment by instalments, the Supplier may only submit a payment claim after all of the Goods and/or Services have been Delivered and accepted by ESAP. Each claim for payment under the Contract shall take into account all adjustments in accordance with the Contract (or as otherwise agreed in writing by ESAP) for the period and in respect of the matters the subject of the claim, including without limitation, adjustments agreed by ESAP for any variation to the scope of the Goods and/or Services. ESAP shall be entitled to deduct any amount due from the Supplier to ESAP (whether under the Contract or otherwise) and/or any additional costs, loss or damage (including, without limitation, any liquidated damages) which ESAP has incurred (or which in ESAP'S reasonable opinion it will incur) or to which it is entitled by reason of any breach, act, omission or default of the Supplier under the Contract. Provided the Supplier submits any payment claim it is entitled to submit under the Contract by the 25th of a calendar month, ESAP shall pay the Supplier the amount due on the payment claim (less any amounts to be deducted by ESAP) within 60 days after the end of the month in which the payment claim is submitted. A payment claim submitted after the 25th day but by the end of a month shall be considered to have been submitted in the following month. Should Supplier Invoice for any ESAP Purchase Order not be forthcoming within 120 days of any deliverable goods and/or services to validate acceptance & purchase order completion; ESAP reserve the right to deem any subsequent invoice of claim for goods and/or services payment as void, regardless of whether the goods have been received or not.

**5. Insurance:** The Supplier shall, until acceptance of the Goods by ESAP, at its own cost and in a form acceptable to ESAP, insure the Goods and any Materials provided by ESAP to the Supplier. The Supplier shall have in effect for the duration of the Contract the following insurances:

- (a) where required and permitted by law, adequate Workers Compensation insurance, endorsed to insure ESAP as principal, for principal's liability in respect of statutory and common law liability and shall further include a waiver of subrogation in favour of ESAP;
- (b) Public and Products Liability insurance for an amount of at least \$20,000,000 per occurrence and in the annual aggregate, which is primary and without any right of contribution from any insurance effected by ESAP;
- (c) adequate Motor Vehicle Third Party Liability insurance for all vehicles in the ownership of the supplier; and
- (d) where the Supplier is providing Services in a professional capacity, adequate Professional Indemnity insurance for an amount of at least \$2,000,000 per claim and in the annual aggregate on a claims made basis; and
- (e) other insurances required by law.

A copy of the Certificate of Currency of any or all of these insurances must be provided at ESAP's request.

**6. Warranty:** Without limiting any of ESAP's rights, and without limiting any other obligation or warranty provided elsewhere in the Contract, the Supplier hereby warrants to ESAP and agrees that:

- (a) the Goods and/or Services correspond to the description in the Contract and conform to all relevant specifications, drawings, samples and/or descriptions set out in the Contract;
- (b) the Goods and/or Services are fit and sufficient for the purpose for which they are intended;
- (c) the Goods and/or Services are of the quality specified or, if no quality is specified, in the case of Goods, new and of the best merchantable quality, and in the case of Services, are performed with all due care, skill and diligence, and to the standard that may reasonably be expected of a skilled professional person, suitably qualified and experienced in the provision of the Services or services in the nature of the Services;
- (d) the Goods are free of all defects and will operate satisfactorily and reliably under all conditions;
- (e) the Goods are free of all liens and encumbrances and the Supplier has good title to them; and
- (f) the Goods and/or Services strictly comply with all applicable laws, regulations, standards and codes.

Without limiting any other rights of ESAP, where any breach of warranties by the Supplier exhibits or is identified within 24 months of the date of any Delivery under the Contract, the Supplier shall, at the option of ESAP:

- (a) refund the Price for and, where applicable, remove at Supplier's expense, such of the Goods as do not conform with the Contract;
- (b) repair, modify or replace at the Supplier's expense, such of the Goods as do not conform with this Contract; and/or
- (c) resupply the Services which, in the reasonable opinion of ESAP, do not so conform with the Contract, and the Supplier shall be liable for all resulting costs and expenses incurred by ESAP, including but not limited to, where applicable, any costs and expenses incurred by ESAP in recovering the Goods, testing them, returning them to the Supplier, reinstalling and recommissioning them.

ESAP may, at its option, have any repair, modification or replacement of the Goods or resupply of the Services under warranties undertaken by a third party or undertake the repair, modification, replacement or resupply itself, and all resulting costs and expenses shall be borne by the Supplier and/or shall be a debt due from the Supplier.

**7. Indemnity:** The Supplier shall indemnify, and keep indemnified, ESAP, its Related Bodies Corporate and their officers, employees and agents (in this clause referred to as "those indemnified") from and against any cost, loss, damage or liability (including legal costs and expenses on a solicitor/own client basis) reasonably incurred or suffered by any of those indemnified (including without limitation pursuant to any claim, suit, demand, action or proceeding by any person against any of those indemnified) in respect of:

- (a) Any damage to property;
- (b) Personal injury or death;
- (c) Infringement of any rights in respect of intellectual property where such loss or liability was caused by any unlawful or negligent act or omission of the Supplier and/or its Related Persons in connection with the Contract or a breach of the Contract by the Supplier.

**8. Materials Supplied by ESAP:** ESAP shall provide to the Supplier any patterns, designs, specifications, drawings, samples, dies, tools, jigs, technical information, equipment and other materials specified in the Contract or which ESAP has agreed in writing to provide to enable the Supplier to produce the Goods and/or supply the Services. All Materials, and ESAP's intellectual property rights therein (if any), remain the property of ESAP. The Supplier must return the Materials to ESAP within 7 days after delivery of the Goods and/or Services unless otherwise agreed to by ESAP in writing. The Supplier must not use the Materials for any purpose except the Delivery of the Goods and/or Services to ESAP.

**9. Cancellation:** ESAP may terminate the Contract by written notice to the Supplier:

(a) in its absolute discretion 21 days prior to the date of Delivery stated in the Purchase Order;

(b) if the Goods and/or Services are not Delivered by the requested date stipulated in the Contract;

(c) if the Supplier is in breach of a term of the Contract and fails to remedy the breach within 14 days of the receipt by it of a notice in writing from ESAP specifying the breach and requiring the Supplier to remedy it;

(d) if ESAP is of the reasonable opinion that the Supplier is unable or unwilling to comply with its obligations under the Contract with due diligence or in a competent manner; or

(e) if the Supplier becomes bankrupt or makes an assignment of its estate for the benefit of its creditors or makes a composition or other arrangement with its creditors or if, being a company, the Supplier goes into liquidation whether voluntary or compulsory (except for the purposes of reconstruction) or has a receiver appointed over all or any of its assets or if any person or corporation goes into possession of or appoints an agent overall of any of the assets of the Supplier. Termination of the Contract pursuant to this clause shall be without prejudice to the rights of either party accruing prior to termination.

**10. Assignment:** The Supplier must not assign, sub-licence, sub-contract or transfer in whole or in part any of its interest or obligations under the Contract without ESAP's prior written consent, which consent may be granted, withheld or granted subject to conditions in ESAP's absolute and unfettered discretion.

**11. Change of Ownership:** The Supplier agrees to notify in writing any change of ownership of the Supplier within seven (7) days from the date of such change and indemnifies ESAP against any loss or damage incurred by it as a result of the Supplier's failures to notify ESAP of any change.

**12. Jurisdiction:** The Proper law of all contracts arising between ESAP and the Supplier is the law of the State of Victoria and the parties agree to submit to the jurisdiction of the Courts of that State.