

**STANDARD TERMS & CONDITIONS OF SALE**

**1. General:** These terms and conditions shall without further notice apply to all future transactions between ESAP and the Customer in relation to the sale and purchase of goods and 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 Customer (whether on the Customer's order form or otherwise). 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 Customer acknowledges that these terms and conditions embody the whole agreement between the parties and agrees to be bound by them. All Purchase Orders supplied by the Customer are subject to acceptance by ESAP and no Contract between ESAP and the Customer comes into existence until ESAP issues an Order Confirmation in relation to that Purchase Order.

**2. Payment:** The Customer shall make payment to ESAP for all goods supplied, work performed and services rendered in accordance with the terms stated on the Order Confirmation.

(a) Credit Terms Customers: payment is due thirty (30) days from the end of the month in which the Invoice is dated. The Customer acknowledges that any breach of this will enable the company to exercise all of its rights contained herein including (but without in any way limiting its rights) the right to cancel further credit and to take legal action for the recovery of all sums outstanding.

(b) Cash on Delivery Customers: a minimum order value of \$250 (excluding applicable freight & handling charges, excluding GST) applies to all COD Customers. Payment is required prior to the goods being delivered or the services being provided. ESAP reserves the right to require payment prior to the production of goods.

If the Customer fails to make payment in full by the due date ESAP may treat the Contract as repudiated by the Customer and may suspend delivery of the goods subject to the Contract or any goods subject to any other Contract with the Customer. ESAP reserves the right to recover all costs including legal costs and mercantile fees incurred in recovering any outstanding amounts owed by the Customer.

**3. Delivery & Returns:** In the event that a delivery date is specified by the Customer, ESAP shall use its best endeavors to comply with the customer's requests. In no circumstances will ESAP be liable for any loss or damage of any kind whatsoever in the event that it is not able to comply with the Customer's request for delivery at a certain time/date. The Customer acknowledges and agrees that it will not make any claim against ESAP for any loss or damage incurred as a result of late delivery. ESAP reserves the right to make partial deliveries or deliveries by instalment in any amount it may determine and each such partial delivery or delivery by instalment shall be deemed to be a separate Contract and these conditions shall apply to each partial delivery or delivery by instalment. The acceptance of shipment by a common carrier shall constitute proper delivery. If the Customer requests goods are to be delivered by ESAP to their store, a freight cost will be incurred by the Customer and charged on the Invoice. The Customer will be deemed to have accepted the goods as being in accordance with their Purchase Order, unless they notify ESAP in writing of a claim within seven (7) days of receipt of the goods. No return will be accepted by ESAP unless a Return Authorization has been raised by ESAP prior to the return of the goods. The Customer acknowledges and agrees that it will have no right to deduct or set-off any monies owed to ESAP without prior written approval from ESAP.

**4. Risk & Title:** The goods supplied by ESAP to the Customer shall be at the Customer's sole risk immediately on their delivery to the Customer. Property and title in the goods supplied by ESAP to the Customer will not pass to the Customer until such time as the goods the subject of the Contract and all other goods supplied by ESAP to the Customer have been paid in full. If any payment for goods sold by ESAP to the Customer is overdue or if the Customer pays ESAP by cheque (in full or in part) and such cheque is not met on presentation, ESAP reserves the right to retake physical possession of the goods in full or in partial satisfaction of the debt and for this purpose the Customer hereby consents to the Company or its representatives entering upon the Customer's premises. Monies owed by the Customer to ESAP shall become due immediately upon the commencement of any act or proceeding in which the Customer's solvency is involved.

**5. Warranty:** All warranties whether expressed or implied and whether statutory or otherwise with regard to the goods supplied by ESAP as to quality, fitness for purpose or any other matter are hereby excluded except in so far as any such warranties are incapable of exclusion at law. The liability of ESAP for damages arising out of the Contract shall be limited to the costs of rectification of any faulty workmanship or material or the replacement of any faulty goods and ESAP accepts no responsibility or liability what so ever including liability for negligence, goods that do not correspond with the description on ESAP's Invoices and /or the packaging of the goods sold or any liability for consequential loss however arising.

**6. Change of Ownership:** The Customer agrees to notify in writing any change of ownership of the Customer 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 Customer's failures to notify the Company of any change.

**7. Cancellation:** Orders accepted by ESAP cannot be cancelled by the Customer without written approval from ESAP. In the event that ESAP accepts the cancellation of an order, ESAP reserves the right to charge a reasonable fee for any work performed on behalf of the Customer to the date of the cancellation including a fee for processing and acceptance of the Customer's order and request for cancellation.

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

**9. Force Majeure:** If for any reason beyond the control of ESAP (including without limitation as a result of any strike, trade dispute, fire, tempest, theft or breakdown), orders cannot be filled at the time stipulated by the Customer, ESAP shall be entitled to determine the Contract and the Customer shall not have any claims for damages arising out of such cancellation, without prejudice to the rights of ESAP to recover all sums owing to it in respect of deliveries made or services provided prior to the date of such determination.

**10. Information, drawings and documentation:** All descriptive specifications, illustrations, drawings, data, dimensions and weights furnished by ESAP or otherwise contained in ESAP publications including brochures, catalogues, electronic media and other advertising material of ESAP are approximate only and are intended to be by way of general description of the Goods and shall not form part of the agreement between ESAP and the Customer unless otherwise specified by ESAP in writing, in which case, they shall be subject to recognised tolerances and rejection limits. ESAP does not agree to comply with any specifications and drawings referred to in any order unless such specifications and drawings have been produced to ESAP prior to the delivery of Goods and have been agreed to in writing and signed by a duly authorised representative of ESAP. Following agreement to purchase, if the Customer requests ESAP to provide certified drawings, ESAP may, at its discretion, provide such certified drawings at the Customer's reasonable expense. Any drawings, studies or other documents submitted by ESAP to the Customer remain the property of ESAP and constitute the confidential information, intellectual property and copyright of ESAP. The Customer must not use them for any purpose other than in accordance with these Terms of Sale and must not transmit, disclose or make them available to any third parties without the prior written consent of ESAP.