

The following terms and conditions (“the Conditions”) are the terms on which ESI Technology Ltd (“Seller”) sells to other businesses (“Buyer”) (together “Parties”).

1. General

- 1.1 These Conditions shall apply to all contracts for the sale of Goods by the Seller to the Buyer to the exclusion of all other terms and conditions referred to, offered or relied on by the Buyer whether in negotiation or at any stage in the dealings between the parties, including any standard or printed terms tendered by the Buyer, unless the Buyer specifically states in writing, separately from such terms, that it wishes such terms to apply and this has been acknowledged by the Seller in writing.
- 1.2 Any variation to these Conditions shall be inapplicable unless agreed in writing by the Seller.

2. Quotation, Orders and Order Acknowledgement

- 2.1 The Seller’s quotation shall be without any obligation up through definite order acknowledgement.
- 2.2 The Buyer’s order shall be a binding quotation. The Seller is entitled to accept that quotation within two weeks by sending a written order acknowledgement. An order acknowledgement lacking a signature and indication of the signer’s name generated by automatic equipment shall be deemed to be in writing. Where the order acknowledgement obviously contains errors, typos or calculation errors, it shall not be binding on Seller.
- 2.3 The written order acknowledgement shall be definitive in regard to the scope of the delivery. Changes in the scope of delivery shall only be valid if confirmed by Seller in writing. Seller reserves the right to make modifications in design and shape where such modifications are not significant and can reasonably be expected of the Buyer.
- 2.4 The Seller unlimitedly reserves ownership title and commercial intellectual property rights to cost estimates, blueprints, samples and other documentation. Such documentation may only be made available to third parties upon Seller’s prior written consent. Upon Seller’s demand, all documentation may only be made available to third parties upon our prior reproductions, or, where applicable, must be deleted or destroyed.
- 2.5 Seller also reserves the right to all modifications after order acknowledgement which are in the interest of technical progress.

3. Prices and Payment

- 3.1 The prices shall be the quoted price of the Seller, exclusive packing, freight, shipping insurance, customs duties and applicable statutory VAT unless otherwise agreed in writing between Seller and Buyer. Carriage shall be paid for by the Buyer.
- 3.2 Seller shall be entitled to vary the price if Buyer fails to take delivery of the indicated quantity within the delivery period, or if outside the delivery period, within a reasonable time.
- 3.3 Payment of the Price and VAT and any other applicable costs shall be due within 30 days of the date of receipt of the invoice supplied by Seller. Time for payment shall be of the essence. If the price is not paid by due date Seller is entitled:
 - (a) to charge interest on money overdue in accordance with the Late Payment of Commercial Debts (Interest) Act 1998 (as amended) until payment in full is made,
 - (b) to suspend delivery to terminate the contract in respect of any undelivered Goods, and
 - (c) appropriate any payment made by the Buyer as Seller thinks fit.

4. Delivery

- 4.1 The delivery of the Goods will be effected ex works Wrexham.
- 4.2 A delivery date specified by Seller shall be treated as being approximate and without commitment by or obligation on the part of the Seller. Seller shall not be held liable for any delay in delivery unless Seller does not use commercially reasonable efforts to meet the delivery date.
- 4.3 Where Goods are to be delivered in instalments, each delivery shall constitute a separate contract; failure by Seller to deliver any one or more instalments or any claim by Buyer under these Conditions shall not entitle the Buyer to reject further instalments or cancel any further contract.

5. Acceptance

- 5.1 If the Goods delivered by Seller are not on first appearance in conformity with any agreement, the Buyer is bound to notify Seller immediately upon delivery. Complaints relating to defects which are not visible upon delivery must be made immediately after the Buyer has observed these defects or could reasonably have observed these defects, but at the latest 7 days after delivery.
- 5.2 Failure to notify Seller of a complaint within the timescale will result in the Goods being deemed unconditionally accepted.
- 5.3 Seller’s liability for any defective Goods shall be limited to (at Seller’s option) replacing any defective Goods or refunding the purchase price (or a proportionate part of the price), in which case Seller shall have no further liability to the Buyer. Seller’s liability is subject to the limitations in Sec. 8 and also the following conditions and limitations:
 - (a) the Buyer notifying Seller of any defect in accordance with Sec. 5.1;
 - (b) the Goods having been properly stored and used by the Buyer prior to the defect occurring;
 - (c) the Goods having been used in accordance with Seller’s instructions;
 - (d) that Seller has received the total price for the Goods by the due date for payment.

6. Title and risk

- 6.1 Risk in the Goods will pass to Buyer immediately upon delivery.
- 6.2 Title in the Goods shall not pass to Buyer until Seller has received full payment for the Goods and for any other Goods that Seller has sold to Buyer for which payment is outstanding.
- 6.3 Until title passes to Buyer, Buyer shall hold the Goods as bailee for Seller and Buyer must keep the Goods free from any charge, lien or other encumbrance and shall store or mark them identifiable and separate from other property in its possession so that they can at all times be identified as Goods of the Seller.

7. Warranty

- 7.1 Seller hereby warrants that the Goods will at the time of delivery correspond with their specification and will be free from defects in material and workmanship for the relevant warranty period, subject to the following conditions.

Seller shall be under no liability in respect of:

- (a) any defect in the Goods arising from designs or specifications supplied to Seller by the Buyer;
- (b) any defect arising from the Buyer’s failure to follow Seller’s instructions in relation to proper use and storage of the Goods;

(c) any defect arising as a result of: excessive wear and tear; the Goods being incorrectly fitted; subjected to neglect; carelessness or abnormal conditions; accident; or any attempt at repair, replacement or modification has been made without the prior written agreement of Seller;

7.2 Seller shall be under no liability under section 7.1. where the terms of payment set out in section 3 have not been complied with by the Buyer.

7.3 If Buyer notifies Seller subject to Sec. 5.1. that it has a claim and if Seller reasonably agrees that the claim is valid, Seller has the option to refund the cost of the Goods, or repair or replace the Goods.

7.4 The relevant warranty period is one year.

8. Liability, Remedies

8.1 The following sets out the entire Liability of Seller, and the sole and exclusive remedies of the Buyer, in respect of performance, non-performance, purported performance, delay in performance or mis-performance of the contract or of any goods or services in connection with the contract; or otherwise in relation to the contract entering into the contract.

8.2 Seller does not exclude or limit its liability for its fraud, death or personal injury caused by its negligence (which has the meaning given to it under English law including as defined by Sec. 1 of the Unfair Contract Terms Act 1977), or any breach of the obligations implied by Sec. 12 Sale of Goods Act 1979; or supply of defective Goods, to the extent that it is not possible to exclude or limit its liability under Part I of the Consumer Protection Act 1987; or any other liability which cannot be excluded or limited by applicable law.

8.3 Subject to the Sec. 8.2., Seller shall not have any liability in respect of any:

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| (a) indirect or consequential losses, damages, costs or expenses; | (g) loss of goodwill; |
| (b) loss of actual or anticipated profits; | (h) loss of reputation; |
| (c) loss of contracts; | (i) loss of business; |
| (d) loss of use of money; | (j) loss of operation time; |
| (e) loss of anticipated savings; | (k) loss of opportunity; or |
| (f) loss of revenue; | (l) loss of, damage to or corruption of, data; |

whether or not such losses were reasonably foreseeable, direct or indirect or Seller had been advised of the possibility of the losses being incurred.

8.4 Subject to the Sec. 7.4, 7.6, 8.2, the total liability of Seller arising out of or in connection with all claims (in aggregate) shall be limited to 125% of the aggregate of:

- the total sums paid; and
- the total other sums payable; and
- the total other sums that would be payable, or would have been payable, under the Contract should Seller perform or have performed its obligations under the Contract;

in each case by the Buyer to Seller under the Contract in respect of the particular Goods for which there are such claims.

8.5 Subject to Sec. 6.2, where Seller has liability for a defect in Goods or parts of Goods purchased by Seller from a third party other than a parent or associated company, Seller's maximum liability shall be the amount received by Seller in settlement of the liability of Seller's supplier.

8.6 It is the sole responsibility of the Buyer and not part of the Seller's obligation or services to choose the right product for his application. The Seller cannot be made responsible for any misuse of the product or any damage caused by using the wrong product.

9. Supply of software

9.1 Where software is supplied, the Buyer shall be granted a non-exclusive and non-transferable right to use of the software and the accompanying documentation for operation of the goods for which the software has been supplied. Apart from making a backup copy, the Buyer may not produce any reproductions of the software. Copyright notices, serial numbers as well as other features serving to identify the software may not be removed or modified.

9.2 The Buyer shall be obliged to prevent access to the software and the documentation by unauthorised third parties by taking suitable precautions. It shall store the original data media supplied as well as the backup copies in a safe place secured against access by unauthorised third parties. Its employees shall be explicitly advised of compliance with these Delivery Terms as well as with the provisions of copyright law.

9.3 The Seller's Liability for loss or modification of data shall be limited to the typical restoration expenses that would have been incurred in case of regular generation of backup copies commensurate with the dangers involved.

10. Force Majeure

The Seller shall not be liable for any delay or failure to perform any of its obligations due to any circumstances or events outside its reasonable control, including but not limited to acts of God, war, civil unrest, riot, strike, lock-out, accidents, acts of civil or military authorities, terrorism, fire, flood, earthquake, breakdown of plant or machinery or shortage or unavailability of raw materials from natural source of supply and the Seller shall be entitled to a reasonable extension of its obligations. If the delay persists for such time as the Seller considers unreasonable, it may, without liability on its part, terminate the contract.

11. General

11.1 These Conditions may not be amended, modified or varied unless in writing and signed by a duly authorised representative of each of the Parties.

11.2 If any particular provision of these Conditions is or becomes invalid, illegal and/or unenforceable -in whole or in part-, such provision shall be severed and the remainder of the provisions hereof shall continue in full force and effect as if these Conditions had been agreed with the invalid, illegal or unenforceable provision eliminated.

11.3 Failure or delay by either party in (partially) enforcing any provision of these Conditions shall not be construed as a waiver of any of its rights under any contract.

11.4 The Conditions shall not be construed as to the benefit of, and shall not be enforceable by any person who is not named at the date the order is placed by Buyer, under the Contract Rights of Third Parties) Act 1999 or otherwise; neither of the Parties shall declare itself a trustee of the rights under it for the benefit of any third party.

11.5 Any Condition which by their nature extends beyond expiration or termination of these Conditions shall survive and remain in effect.

11.6 These Conditions, the order of the Buyer and Seller's acknowledgement of the order constitute the entire agreement and understanding of the Parties with regard to the subject matter.

12. Governing Law and Jurisdiction

12.1 This Agreement shall be governed by and construed in accordance with the law of England and Wales and the parties hereby submit to the exclusive jurisdiction of the English and Welsh courts.

12.2 The application of the Vienna Sales Convention (CISG) is expressly excluded.