

# ESP SECURITY LIMITED - Terms & Conditions of Trade

## 1 Definitions

- 1.1 ESP Security limited its successors and assigns or any person acting on behalf of and with the authority of Electronic Security Protection.
- 1.2 "Customer" shall mean the person or entity described as such on the invoices, application for credit, quotation, work authorisation or any other forms to which these terms and conditions apply and shall mean any person acting on behalf of and with the authority of such person or entity.
- 1.3 "Guarantor" means that person (or persons), or entity, who agrees to be liable for the debts of the Customer on a principal debtor basis.
- 1.4 "Goods" shall mean Goods supplied by ESP Security limited to the Customer (and where the context so permits shall include any supply of Services as hereinafter defined) and are as described on the invoices, quotation, work authorisation or any other forms as provided by ESP Security limited to the Customer.
- 1.5 "Services" shall mean all services supplied by ESP Security limited to the Customer and includes any advice or recommendations (and where the context so permits shall include any supply of Goods as defined above).
- 1.6 "Price" shall mean the cost of the Goods and/or Services as agreed between ESP Security limited and the Customer subject to clause 3 of this contract.
- 1.7 "Installation Standard" shall mean the standard to which the Goods are to be installed and/or maintained, together with any formal requirements stipulated as a condition of the regulatory body by which the Seller is approved.

## 2 Acceptance

- 2.1 Any instructions received by ESP Security limited from the Customer for the supply of Goods and/or Services and/or the Customer's acceptance of Goods and/or Services supplied by ESP Security limited shall constitute acceptance of the terms and conditions contained herein.
- 2.2 Where more than one Customer has entered into this agreement, the Customers shall be jointly and severally liable for all payments of the Price.
- 2.3 Upon acceptance of these terms and conditions by the Customer the terms and conditions are irrevocable and can only be amended with the written consent of ESP Security Limited.
- 2.4 The Customer undertakes to give ESP Security limited at least fourteen (14) days notice of any change in the Customer's name, address and/or any other change in the Customer's details.

## 3 Price and Payment

- 3.1 At ESP Security limited sole discretion, the Price shall be either:
- a) as indicated on invoices provided by ESP Security limited to the Customer in respect of Goods and/or Services supplied; or
- b) ESP Security limited quoted Price (subject to clause 3.2) which shall be binding upon ESP Security limited provided that the Customer shall accept ESP Security Limited's quotation in writing within thirty (30) days.
- 3.2 ESP Security limited reserves the right to change the Price in the event of a variation to ESP Security Limited's quotation.
- 3.3 At ESP Security Limited's sole discretion, a deposit of 30% may be required.
- 3.4 For Goods under warranty at ESP Security Limited's sole discretion ESP Security limited will be entitled to charge the Customer for labour (including travel time) and replacement parts required due to:
- a) a service caused by wilful neglect, accident or misuse of the Goods by the Customer, their employees or Agents, or
- b) remedial maintenance where either:
- the Goods have not been installed by ESP Security limited, or
  - it is necessary as a result of neglect by the Customer, or
  - wear and tear and natural ageing; or
- c) faults occasioned by fluctuating voltage, or
- d) service required outside Normal Working Hours, or
- e) Service work that requires the Goods to be transferred to ESP Security Limited's workshop. In this case ESP Security limited will provide an estimate of cost to the Customer before proceeding with any overhaul.
- 3.5 Time for payment for the Goods and/or Services shall be of the essence and will be stated on the invoice or any other forms. If no time is stated, then payment shall be due thirty (30) days following the date of the invoice.
- 3.6 At ESP Security Limited's sole discretion:
- a) payment shall be due on delivery of the Goods and/or Services, or
- b) payment shall be due before delivery of the Goods and/or Services, or
- c) payment for approved Customers shall be made by instalments in accordance with ESP Security Limited's payment schedule, or
- d) Payment for approved Customers shall be due thirty (30) days following the end of the month in which an invoice is raised to the Customer.
- 3.7 Payment will be made by cash, or by cheque, or by bank cheque, or by credit card, or by direct credit, or by any other method as agreed to between the Customer and ESP Security limited.
- 3.8 VAT and other taxes and duties that may be applicable shall be added to the Price except when they are expressly included in the Price.

## 4 Delivery of Goods

- 4.1 At ESP Security Limited's sole discretion delivery of the Goods shall take place when:
- a) the Customer takes possession of the Goods at ESP Security Limited's address; or
- b) the Customer takes possession of the Goods at the Customer's address (in the event that the Goods are delivered by ESP Security limited or ESP Security Limited's nominated carrier); or
- c) the Customer's nominated carrier takes possession of the Goods in which event the carrier shall be deemed to be the Customer's agent.
- 4.2 At ESP Security Limited's sole discretion, the costs of delivery are:
- a) included in the Price, or
- b) in addition to the Price, or
- c) For the Customer's account.
- 4.3 The Customer shall make all arrangements necessary to take delivery of the Goods whenever they are tendered for delivery. In the event that the Customer is unable to take delivery of the Goods as arranged then ESP Security limited shall be entitled to charge a reasonable fee for redelivery.
- 4.4 Delivery of the Goods to a third party nominated by the Customer is deemed to be delivery to the Customer for the purposes of this agreement.
- 4.5 ESP Security limited may deliver the Goods by separate instalments. Each separate instalment shall be invoiced and paid for in accordance with the provisions in these terms and conditions.
- 4.6 The Customer shall take delivery of the Goods tendered notwithstanding that the quantity so delivered shall be either greater or lesser than the quantity purchased provided that:
- a) such discrepancy in quantity shall not exceed 5%, and
- b) The Price shall be adjusted pro rata to the discrepancy.
- 4.7 The failure of ESP Security limited to deliver shall not entitle either party to treat this contract as repudiated.
- 4.8 ESP Security limited shall not be liable for any loss or damage whatever due to failure by ESP Security limited to deliver the Goods (or any of them) promptly or at all.

## 5 Risk

- 5.1 If any of the Goods are damaged or destroyed following delivery but prior to ownership passing to the Customer, ESP Security limited is entitled to receive all insurance proceeds payable for the Goods. The production of these terms and conditions by ESP Security limited is sufficient evidence of ESP Security Limited's rights to receive the insurance proceeds without the need for any person dealing with ESP Security limited to make further enquiries.

## 6 Title

- 6.1 It is the intention of ESP Security limited and agreed by the Customer that ownership of the Goods shall not pass until:
- a) the Customer has paid all amounts owing for the particular Goods, and
- b) The Customer has met all other obligations due by the Customer to ESP Security limited in respect of all contracts between ESP Security limited and the Customer.
- 6.2 Receipt by ESP Security limited of any form of payment other than cash shall not be deemed to be payment until that form of payment has been honoured, cleared or recognised and until then ESP Security Limited's ownership or rights in respect of the Goods shall continue.
- 6.3 It is further agreed that:
- a) where practicable the Goods shall be kept separate and identifiable until ESP Security limited shall have received payment and all other obligations of the Customer are met; and
- b) Until such time as ownership of the Goods shall pass from ESP Security limited to the Customer ESP Security limited may give notice in writing to the Customer to return the Goods or any of them to ESP Security limited. Upon such notice the rights of the Customer to obtain ownership or any other interest in the Goods shall cease; and ESP Security limited shall have the right of stopping the Goods in transit whether or not delivery has been made; and
- c) if the Customer fails to return the Goods to ESP Security limited then ESP Security limited or ESP Security Limited's agent may enter upon and into land and premises owned, occupied or used by the Customer, or any premises as the invitee of the Customer, where the Goods are situated and take possession of the Goods; and
- d) the Customer is only a bailee of the Goods and until such time as ESP Security limited has received payment in full for the Goods then the Customer shall hold any proceeds from the sale or disposal of the Goods on trust for ESP Security limited; and
- e) the Customer shall not deal with the money of ESP Security limited in any way which may be adverse to ESP Security limited; and
- f) the Customer shall not charge the Goods in any way nor grant nor otherwise give any interest in the Goods while they remain the property of ESP Security limited; and
- g) ESP Security limited can issue proceedings to recover the Price of the Goods sold notwithstanding that ownership of the Goods may not have passed to the Customer; and
- h) Until such time that ownership in the Goods passes to the Customer, if the Goods are converted into other products, the parties agree that ESP Security limited will be the owner of the end products.

## 7 Customer's Disclaimer

- 7.1 The Customer hereby disclaims any right to rescind or cancel the contract or to sue for damages or to claim restitution arising out of any misrepresentation made to the Customer by ESP Security limited and the Customer acknowledges that the Goods are bought relying solely upon the Customer's skill and judgment.

## 8 Defects

- 8.1 The Customer shall inspect the Goods on delivery and shall within fifteen (15) days notify ESP Security limited of any alleged defect, shortage in quantity, damage or failure to comply with the description or quote. The Customer shall afford ESP Security limited an opportunity to inspect the Goods within a reasonable time following delivery if the Customer believes the Goods are defective in any way. If the Customer fails to comply with these provisions the Goods shall be presumed to be free from any defect or damage. For defective Goods, which ESP Security limited has agreed in writing that the Customer is entitled to reject, ESP Security Limited's liability is limited to either (at ESP Security Limited's discretion) replacing the Goods or repairing the Goods.

## 9 Warranty

- 9.1 The extent of the warranty given on The Installation by ESP Security limited is Twelve (12) months from purchase date. tside.
- 9.2 ESP Security limited shall not be bound by or responsible for any term, condition, representation or warranty other than that which is given by the manufacturer of the Goods.

## 10 Sale of Goods Act 1893 and Sale of Goods and Supply of Services Act 1980

- 10.1 This agreement is subject to the provisions of the Sale of Goods Act 1893 and the Sale of Goods and Supply of Services Act 1980 in all cases except where the Customer is contracting within the terms of a trade/business (which cases are specifically excluded).
- 10.2 Notwithstanding clause 11.1 nothing in this agreement is intended to have the effect of contracting out of any applicable provisions of the Sale of Goods Act 1893 (in particular sections 12-15), or the Sale of Goods and Supply of Services Act 1980, or any laws or legislation governing the rights of consumers, except to the extent permitted by those Acts laws or legislation. In particular where the Customer buys Goods and/or Services as a consumer the provisions of Clauses 8, 9 and 10 above shall be subject to any laws or legislation governing the rights of consumers.

## 11 Default & Consequences of Default

- 11.1 Notwithstanding clause 11.1 nothing in this agreement is intended to have the effect of contracting out of any applicable provisions of the Sale of Goods Act 1893 (in particular sections 12-15), or the Sale of Goods and Supply of Services Act 1980, or any laws or legislation governing the rights of consumers, except to the extent permitted by those Acts laws or legislation. In particular where the Customer buys Goods and/or Services as a consumer the provisions of Clauses 8, 9 and 10 above shall be subject to any laws or legislation governing the rights of consumers.
- 11.2 Default on overdue invoices shall accrue from the date when payment becomes due daily until the date of payment at a rate of 1.5% per calendar month and such interest shall compound monthly at such a rate after as well as before any judgment.
- 11.3 If the Customer defaults in payment of any invoice when due, the Customer shall indemnify ESP Security limited from and against all costs and disbursements incurred by ESP Security limited in pursuing the debt including legal costs on a solicitor and own client basis and ESP Security Limited's collection agency costs.
- 11.4 Without prejudice to any other remedies ESP Security limited may have, if at any time the Customer is in breach of any obligation (including those relating to payment); ESP Security limited may suspend or terminate the supply of Goods and/or Services to the Customer and any of its other obligations under the terms and conditions. ESP Security limited will not be liable to the Customer for any loss or damage the Customer suffers because ESP Security limited exercised its rights under this clause.
- 11.5 If any account remains overdue after thirty (30) days, then an amount of the greater of €20.00, or 10.00% of the amount overdue (up to a maximum of €200) shall be levied for administration fees which sum shall become immediately due and payable.
- Without prejudice to ESP Security Limited's other remedies at law ESP Security limited shall be entitled to cancel all or any part of any order of the Customer which remains unperformed in addition to and without prejudice to any other remedies and all amounts owing to ESP Security limited shall, whether or not due for payment, become immediately payable in the event that:
- any money payable to ESP Security limited becomes overdue, or in ESP Security Limited's opinion the Customer will be unable to meet its payments as they fall due; or
  - the Customer becomes insolvent, convenes a meeting with its creditors or proposes or enters into an arrangement with creditors, or makes an assignment for the benefit of its creditors; or
  - A receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Customer or any asset of the Customer.

## 12 Security and Charge

- 12.1 Despite anything to the contrary contained herein or any other rights which ESP Security limited may have howsoever:
- a) where the Customer and/or the Guarantor (if any) is the owner of land, realty or any other asset capable of being charged, both the Customer and/or the Guarantor agree to mortgage and/or charge all of their joint and/or several interest in the said land, realty or any other asset to ESP Security limited or ESP Security Limited's nominee to secure all amounts and other monetary obligations payable under the terms and conditions. The Customer and/or the Guarantor acknowledge and agree that ESP Security limited (or ESP Security Limited's nominee) shall be entitled to lodge where appropriate a caveat, which caveat shall be released once all payments and other monetary obligations payable hereunder have been met.
- b) should ESP Security limited elect to proceed in any manner in accordance with this clause and/or its sub-clauses, the Customer and/or Guarantor shall indemnify ESP Security limited from and against all ESP Security Limited's costs and disbursements including legal costs on a solicitor and own client basis.
- c) The Customer and/or the Guarantor (if any) agree to irrevocably nominate constitute and appoint ESP Security limited or ESP Security Limited's nominee as the Customer's and/or Guarantor's true and lawful attorney to perform all necessary acts to give effect to the provisions of this clause 14.1.

## 13 Cancellation

- 13.1 ESP Security limited may cancel these terms and conditions or cancel delivery of Goods at any time before the Goods are delivered by giving written notice. On giving such notice ESP Security limited shall repay to the Customer any sums paid in respect of the Price. ESP Security limited shall not be liable for any loss or damage whatever arising from such cancellation.
- 13.2 In the event that the Customer cancels delivery of Goods and/or service the Customer shall be liable for a cancellation fee of 15% for any loss incurred by ESP Security limited (including, but not limited to, any loss of profits) up to the time of cancellation.

## 14 Data Protection Act 1988 & Data Protection Act 2003

- 14.1 The Customer and the Guarantor/s (if separate to the Customer) authorises ESP Security limited to:
- collect, retain and use any information about the Customer, for the purpose of assessing the Customer's creditworthiness or marketing products and services to the Customer; and
  - to disclose information about the Customer, whether collected by ESP Security limited from the Customer directly or obtained by ESP Security limited from any other source, to any other credit provider or any credit reporting agency for the purposes of providing or obtaining a credit reference, debt collection or of listing (whether before or after judgement) a default by the Customer on publicly accessible credit reporting databases.
- 14.2 Where the Customer and/or Guarantor/s authorises (under clause 16.1) are authorities or consents for the purposes of the Data Protection Act 1988 & Data Protection Act 2003.
- 14.3 The Customer shall have the right to request ESP Security limited for a copy of the information about the Customer retained by ESP Security limited and the right to request ESP Security limited to correct any incorrect information about the Customer held by ESP Security limited.

## 15 Customer's Responsibilities

- 15.1 It is the Customer's responsibility to:
- accept the recommended specifications of ESP Security limited; and
  - ensure there is adequate access at the delivery point to accept the Goods; and
  - Make the installation site available on the agreed date and time. Should delivery be delayed or interrupted by the failure of the Customer to adhere to the delivery schedule agreed to between ESP Security limited and the Customer then any additional costs will be invoiced to the Customer as an extra; and
  - Have all areas clean and clear to enable scheduled work to be completed in accordance with the agreed schedule of installation. Delays to the installation caused by the Customer, their employees or agents will result in chargeable Downtime; and
  - Provide adequate and safe access to the site for all workmen and equipment necessary for the installation. Delays in gaining access to, or from, the site will attract chargeable Downtime; and
  - fully disclose any information that may affect ESP Security Limited's installation procedures; and
  - ensure that adequate lighting for efficient installation is provided in the working area; and
  - Remove all fragile items such as glassware, crockery, pot plants, furniture and ornaments. Breakages and damages are the responsibility of the Customer. All care is taken but no responsibility accepted by ESP Security limited in this regard; and
  - Provide adequate dustsheets to protect the Customer's furniture and décor. ESP Security limited will not accept any responsibility for cleaning or repair costs attributed to dust or damage caused by the works; and
  - Provide a suitable power source, including but not limited to standby batteries, necessary for the operation of the Goods.
  - The Customer shall allow ESP Security limited full access to the Goods for the purpose of service and/or inspection within Normal Working Hours and shall allow sufficient time for ESP Security limited to complete the work without interruption.
  - The Customer may not, without written permission from ESP Security limited,
    - Make or permit any alteration, addition or attachment to any item of the Goods, or
    - Assign or transfer any of its interest under the agreement.
- 15.2 The Customer agrees to give ESP Security limited minimum of four (4) weeks written notice of any planned relocation of the Goods.
- 15.3 The Customer agrees that they must have the written permission of ESP Security limited prior to the relocation of the Goods.

## 16 Installation by ESP Security limited

- 16.1 ESP Security limited shall ensure that all Goods installed by ESP Security limited conform to the Installation Standard.
- 16.2 Where ESP Security limited has not installed the Goods, ESP Security limited accepts no responsibility as to how the installation was carried out.
- 16.3 All maintenance of Goods shall be carried out in accordance with the relevant process standards.
- 16.4 Although Goods are designed to detect or deter intrusion and reduce the risk of loss or damage, ESP Security limited does not represent or warrant that the Goods may not be neutralised, circumvented or otherwise rendered ineffective by unauthorised persons and in such event ESP Security limited shall not be liable for any loss or damage suffered by the customer or other unauthorised persons.

## 17 Monitoring

- 17.1 Where 24-hour monitoring is in place, the Customer shall be responsible for providing ESP Security limited and the Alarm Receiving Centre with written instructions and lists of the authorities or persons to be notified in the event of an alarm.
- 17.2 The Customer shall promptly advise ESP Security limited, in writing of any changes, additions or deletions to the list of authorised employees, friends, relatives or other persons, including their telephone numbers.

## 18 General

- 18.1 Each clause of this contract is severable and distinct from the others. If any provision of these terms and conditions is or becomes invalid, void, illegal or unenforceable the validity, existence, legality and enforceability of the remaining provisions shall not be affected, prejudiced or impaired.
- 18.2 These terms and conditions and any contract to which they apply shall be governed by the laws of Ireland and are subject to the jurisdiction of the courts of Ireland.
- 18.3 ESP Security limited shall be under no liability whatever to the Customer for any indirect loss and/or expense (including loss of profit) suffered by the Customer arising out of a breach by ESP Security limited of these terms and conditions.
- 18.4 In the event of any breach of this contract by ESP Security limited the remedies of the Customer shall be limited to damages. Under no circumstances shall the liability of ESP Security limited exceed the Price of the Goods and/or Services.
- 18.5 The Customer shall not be entitled to set off against or deduct from the Price any sums owed or claimed to be owed to the Customer by ESP Security limited.
- 18.6 ESP Security limited may license or sub-contract all or any part of its rights and obligations without the Customer's consent.
- 18.7 ESP Security limited reserves the right to review these terms and conditions at any time. If, following any such review, there is to be any change to these terms and conditions, then that change will take effect from the date on which ESP Security limited notifies the Customer of such change. Except where ESP Security limited supplies further Goods and/or Services to the Customer and the Customer accepts such Goods and/or Services, the Customer shall be under no obligation to accept such changes.
- 18.8 Neither party shall be liable for any default due to any act of God, war, terrorism, strike, lock-out, industrial action, fire, flood, drought, storm or other event beyond the reasonable control of either party.