

Standard Terms and Conditions of Trade

Effective 7 September 2026

To the fullest extent legally possible, all dealings between ESS Earth Sciences ACN: 006 058 395 ("ESS") and any Customer ("the Customer") relating to any products or services are subject to the following Terms & Conditions of Trade ("these Terms") unless otherwise agreed in writing.

1. Payments

Payments to be within 30 days of invoice date without deduction, unless otherwise agreed.

2. Interest

Interest is payable on overdue accounts at ESS' election at the rate prescribed under the Penalty Interest Rates Act 1983 (Vic) plus an additional 3% per month.

3. Property

- a. Property in products shall not pass until payment in full of all monies owed to ESS on any basis
- b. ESS reserves the right to take possession & dispose of products as it sees fit at any time until full payment & the Customer grants permission to ESS to enter any property where any product is in order to do so with such force as necessary
- c. Immediately upon delivery the Customer accepts liability for the safe custody of products
- d. A certificate signed by an officer of ESS identifying ESS products & certifying that monies are owing to ESS shall be conclusive evidence of ESS' title thereto
- e. Upon sale or disposition of products prior to payment in full the Customer agrees to hold all proceeds Upon Trust for ESS in a separate bank account agrees not to mix proceeds with any other monies & will upon request immediately account to ESS therefore even if ESS may have at any time granted any credit facility &/or time to pay
- f. Until full payment the Customer agrees
 - i. to keep all products as fiduciary and Bailee for ESS & store them in a manner which shows ESS as owner
 - ii. only to sell products in its usual course of business
 - iii. sale on terms, at cost or less than cost shall not be "in the usual course"
- g. Clause 3 is not intended to create a charge & shall be read down to the extent necessary to avoid being a charge
- h. if the Customer uses or incorporates any products in any production, process, manufacture or construction or combines them with anything to create a finished or combined new thing for disposition by the Customer then upon such disposition prior to payment in full of all monies owing, the Customer agrees to hold such part of the proceeds thereof (& until payment is received by the Customer, that part of any applicable book debt of the Customer) as equals the costs of the products used and/or incorporated therein (at the prices invoiced by ESS to the Customer for them) Upon Trust for ESS until payment in full of all monies.

4. Limitation of Liability

- a. The Customer will limit any claim upon ESS relating to products, to the cost of replacement of products or the supply of equivalent products and relating to services, to the cost of having services supplied again
- b. ESS will not be liable in any way for any contingent consequential direct indirect special or punitive damage arising whether due to ESS's negligence or otherwise & the Customer acknowledges this limit of liability & agrees to limit any claim accordingly
- c. No other term condition agreement warranty representation or understanding whether express or implied in any way extending to or otherwise relating to or binding upon ESS is made or given
- d. ESS will not be liable for any claim re any alleged fault or defect caused or contributed to by the Customer or any 3rd party nor for any transport installation rectification labour or other cost.

5. Returns

- a. Any products which are accepted by ESS as defective may be returned and
 - i. be replaced free of charge or
 - ii. be the subject of a credit for the invoiced value. Replacement free of charge does not include labour transport or material costs.

6. Specific Orders

Customer specific orders may be rejected by ESS at its election, unless accompanied by a non-refundable deposit of at least 50% of the total order price.

7. Placement of Orders

- a. if any dispute arises concerning any order (& including any measurement quality quantity identity or authority or any telephone facsimile e-mail or computer generated order) the internal records of ESS will be conclusive evidence of what was ordered
- b. each order placed shall be & be deemed to be a representation made by the Customer at the time that it is solvent & able to pay all of its debts as & when they fall due
- c. failure to pay in accordance with these Terms shall be & be deemed to be conclusive evidence that the Customer had no reasonable grounds for making the representation referred to in 7.b) & that the representations were unconscionable, misleading and deceptive
- d. when any order is placed, the Customer shall inform ESS of any material facts which would or might reasonably affect the commercial decision by ESS to accept the order &/or grant credit in relation thereto. Any failure to do so shall create & be deemed to create an inequality of bargaining position shall constitute & be deemed to constitute the taking of an unfair advantage of ESS & to be unconscionable, misleading and deceptive.

8. Delivery

- a. ESS accepts no responsibility for delivery but may elect to arrange delivery at its discretion & without any liability & at the Customer's costs & responsibility in all things
- b. ESS reserves the right to charge for any delivery
- c. the Customer shall be deemed to have accepted delivery & liability for the products immediately ESS notifies that they are ready for collection or when they are delivered to a carrier or to the Customer's business premises or site whether attended or not
- d. a certificate purporting to be signed by an officer of ESS confirming delivery shall be conclusive evidence of delivery as shall any signed delivery docket
- e. ESS will not be liable for delay, failure or inability to deliver any products
- f. once the Customer has been notified that products are ready for collection, the Customer agrees to pay all costs of holding or handling products
- g. Frustrated Delivery: If the time spent in attempting to or effecting delivery exceeds 30 minutes or requires more than one attempt, the Customer agrees to pay all costs relating thereto together with a loading of 10% to cover administration costs.

9. Variation or Cancellation

Variation or cancellation of any order dealing or arrangement must be agreed in writing

10. Purchase Price

- a. All sales are made by ESS at its quoted price at the time of order placement
- b. government imposts and any GST ("imposts") will be to the Customer's account
- c. ESS's price lists exclude imposts unless expressly noted thereon.

11. Exclusions

- a. No dealing with the Customer shall be or be deemed to be a sale by sample or description
- b. If ESS publishes material about its products & prices, any part which is incompatible with these Terms is expressly excluded
- c. the Customer will rely on its own knowledge & expertise in choosing any product for any purpose
- d. Any advice or assistance given for or on behalf of ESS shall be accepted at the Customer's risk & shall not be or be deemed given as expert or adviser nor to have been relied upon.

12. Default

Default or breach by the Customer of these Terms or in any dealings with ESS will entitle ESS to retain all monies paid, call-up all monies owing, cease further deliveries & recover from the Customer all loss of profits without prejudice to any other of its rights.

13. Severability

Any part of these Terms can be severed without affecting any other part.

14. Products

- a. ESS may update modify make substitution or alter any of its products or any component or raw material incorporated in or used in forming any party of any products as part of its ongoing business. The Customer agrees to accept current products in substitution for any products ordered provided they are not materially different
- b. ESS disclaims any responsibility or liability relating to any products
 - i. processed or made to designs drawings specifications or measurements etc or with materials which are provided or approved (whether in part or fully) by or on behalf of the Customer
 - ii. utilised stored handled or used incorrectly or inappropriately
- c. The Customer agrees to check products for compliance with all applicable Standards & regulatory bodies before use, on-sale or application & only to use on-sell or apply products in accordance therewith and with any manufacturer's or ESS' recommendations & directions as well as with sound commercial practice.

15. Other Terms & Conditions & Notice

No terms &/or conditions sought to be imposed by the Customer upon ESS shall apply unless agreed in writing by ESS.

16. Recovery Costs

The Customer will pay all costs & expenses of ESS, its legal advisers, mercantile agents & others acting on its behalf in respect of anything instituted or being considered as a result of any breach of these Terms or of any dealings with ESS.

17. Attornment

To give effect to its obligations arising under in these Terms the Customer hereby irrevocably appoints any solicitor for ESS from time to time, as its attorney.

18. Customer Restructure

The Customer will notify ESS of any change in its structure or management including any change in director shareholder management partnership or trusteeship or sale of any material part of its business within 7 days of any such change.

19. Jurisdiction

All contracts made with ESS shall be deemed to be made in Victoria & the parties submit to the jurisdiction of the appropriate Courts in or nearest Melbourne.

20. Credit Limit

ESS can vary or withdraw any credit facility or limit at any time at its discretion & without any liability to the Customer or any other party.

21. Waiver

If ESS elects not to exercise any rights arising as a result of breach of these Terms it shall not constitute a waiver of any rights relating to any subsequent or other breach.

22. Notice

The Customer will be deemed to have notice of any change to these Terms, immediately they are adopted by ESS in its business.

23. Security for Payment

The Customer

- a. agrees on written request to charge in favour of ESS
 - i. by way of a fixed charge, all its books of account goodwill documents of title & current & later acquired real & intellectual property &
 - ii. by way of a floating charge the whole of the Customer's other undertaking property & assets with payment of all monies owed to ESS
- b. grants a lien to ESS over any of its property in the possession or control of ESS for any monies due and owing to ESS under these Terms or otherwise.

24. Force Majeure

ESS will not be in default or breach of any dealing with the Customer as a result of Force Majeure (ie: anything beyond ESS' reasonable control).

25. Patents etc

If ESS utilises any design patent or intellectual property or follows any instruction provided by or on behalf of the Customer the Customer indemnifies ESS against any claim proceeding damages or liability for any loss cost or expense arising as a result whether for any alleged infringement of any intellectual property or otherwise.

26. Specifications

- a. Any illustration drawing or specification supplied by ESS ("Specs") are drafts and approximates
- b. Any tangible or intellectual property rights in Specs shall remain the property of ESS and may be recalled at any time
- c. Specs to be treated at all times as confidential and not made use of without the prior written consent of ESS.

27. Materials

All materials supplied by the Customer must be shipped by the Customer to the factory or site nominated by and in accordance with ESS instructions & at the cost and risk of the Customer. Such materials will remain at the Customers risk at all times.

28. Stock Discretion

ESS has a continuing discretion to allocate available stock and gives no warranty as to certainty of supply unless expressly agreed in writing in advance.

29. Partial Delivery / Forward Orders

If the Customer places forward orders or request partial or instalment delivery, the Customer agrees

- a. to pay for so much of any order as is from time to time delivered by ESS

- b. that no delay or failure to fulfil any part of any order shall entitle the Customer to cancel or vary any order or delay or reduce any payment.

30. On-Sale

The Customer agrees that upon on-sale of any products to inform any third party involved of these Terms and in particular the provisions of clause 4 and sub-clause 4.

Indemnity

The Customer indemnifies ESS against any claim or loss arising from or related in any way to any contractor dealing between ESS & the Customer or anything arising therefrom or arising as a result of or subsequent to any breach of these Terms

Insurance

The Customer agrees to insure ESS from any liability claim or damage arising in any way; whether directly or indirectly under part VA of the Trade Practices Act, these Terms, which insurance will note the insured interest of ESS