



Purchasing Terms and Conditions

Instructions To Seller

The purchase order, together with these terms and conditions, and any attachments and exhibits, specifications, drawings, notes, instructions and other information, whether physically attached or incorporated by reference (collectively the "Purchase Order"), constitutes the entire and exclusive agreement between ESS Technologies, Inc. (the "Buyer") and the Seller (the "Seller") identified in the Purchase Order. ESS Technologies, Inc. submission of the Purchase Order is conditioned on Seller's agreement that any terms different from or in addition to the terms of the Purchase Order, whether communicated orally or contained in any purchase order confirmation, invoice, acknowledgment, release, acceptance or other written correspondence, irrespective of the timing, shall not form a part of the Purchase Order, even if Seller purports to condition its acceptance of the Purchase Order on ESS Technologies, Inc. agreement to such different or additional terms. Seller's electronic acceptance, acknowledgment of this Purchase Order, or commencement of performance constitutes Seller's acceptance of these terms and conditions. Notwithstanding the foregoing, if a master agreement covering procurement of the Products or Work described in the Purchase Order exists between Supplier and ESS Technologies, Inc., the terms of such master agreement shall prevail over any inconsistent terms herein.

Conditions Of Purchase

(Paragraph headings are for purposes of convenience only and are not intended to form a part nor to be used for purposes of interpretation of the text hereof.)

1. **General.** These terms and conditions (face, reverse side and attachments):
 - a. Shall be deemed to be exclusive and complete.
 - b. Shall not in any way be modified or waived, except by agreement in writing by a duly authorized representative of Buyer.
 - c. The word "items" herein insofar as applicable refers to goods or any part thereof and/or services furnished under this order. Time is of the essence of this order.
 - d. Excess unauthorized shipments and shipments arriving in advance of specific PO dates, per instructions, may be returned at Seller's risk and expense.
 - e. Buyer will not be responsible for additional charges of any kind, including charges for boxing, crating, carting or storage unless specifically agreed by Buyer in writing on face hereof.
 - f. Attach bill of lading or express receipt to each invoice showing Purchase Order Number, equipment description and ESS Technologies, Inc. part numbers, if any.
2. **Payment.** The terms of payment are net cash within the specified, negotiated terms listed on the Purchase Order, on which the correct invoice is received by Buyer, or the date on which the invoiced items are received by Buyer at the delivery point designated by Buyer, whichever is later. Buyer may withhold payment pending receipt of evidence from Seller, as reasonably required by Buyer, to establish the absence of liens, encumbrances and claims against the goods or services that are the subject of the order. Seller is responsible to ensure the value documented on the Purchase Order matches the Invoiced amount. Failure to provide matching documents may result in a delay of payment. Seller certifies that at the time of its acceptance of this order, the prices stated herein are not in excess of the price then currently being charged by Seller to other customers for the same or similar quantities of like goods or services with similar delivery or performance schedules.
3. **Changes.** Buyer shall have the right to make changes to this order including changes to the shipping schedule, and Seller agrees to promptly implement such changes upon receipt of Buyer's written notice of change. If any such change causes an increase or decrease in the cost of or the time required for performance of this order, an equitable adjustment shall be negotiated in the contract price or performance schedule or both. Any claim by Seller for adjustment hereunder shall be deemed waived unless asserted in writing within five (5) days from receipt by Seller of notice of the change.



4. **Risk of Loss.** Notwithstanding any agreement with respect to delivery terms or payment of transportation charges, risk of loss or damage shall pass to Buyer, and delivery shall be deemed to be complete, only upon actual receipt and acceptance of the items by Buyer. Risk of loss or damage as to items rejected by Buyer or as to which acceptance has been revoked shall be upon Seller.
5. **Warranty.** Seller warrants to Buyer, its successors, assigns and customers that the items supplied are merchantable, of good quality, comply with specifications, drawings and data submitted to or by Buyer in connection with this order, are free from defects, whether patent or latent, in design, material and workmanship and are suitable for the particular use for which the items are purchased, and that services are performed in accordance with the highest professional standards. Seller shall, at Buyer's option, repair, replace or re-perform, at no cost to Buyer, the goods or services, or parts thereof, found to be nonconforming herewith. Any replacement parts and materials or corrections to workmanship or services are likewise warranted.
6. **Inspection/Nonconformity.** All items ordered will be subject to inspection and approval, at Buyer's election, at Seller's plant or other Buyer-designated location or, if services, at the site of such services. If any of the items are found at any time to be not in conformity with the requirements of this order, Buyer shall have the right to reject and return, or to hold such items for Seller's instructions at Seller's risk and expense or, in the case of services, to have such services re-performed by Seller at no cost or expense to Buyer, such items not to be replaced or re-performed without authorization from Buyer. Buyer's inspection of goods whether during manufacture, prior to delivery or within a reasonable time after delivery, shall not constitute acceptance of any work-in-process or finished goods. All costs related to transportation of nonconforming goods will be for Seller's account.
7. **Indemnity and Insurance.** Seller shall to the furthest extent permitted by law indemnify and hold harmless Buyer, its successors, assigns and customers, from and against claims, liability, loss and damage, including without limitation, costs, expenses, and attorneys' fees, arising out of or relating to this order or the items or services furnished hereunder, or any litigation based thereon. Seller shall further indemnify and hold harmless Buyer, its successors, assigns and customers from and against any and all liens upon the premises of Buyer or its customers including without limitation, liens for labor performed and material furnished, attaching as a result of any act or omission by Seller or its subcontractors, and Seller shall also at its own expense procure the discharge, release or satisfaction of any and all notices of intention or other evidence of such lien or claim thereto. Seller warrants that it has obtained, or will obtain, such public liability, property damage, employer's liability and compensation insurance as will protect Buyer from all of the aforesaid risks and from any liability under applicable Workmen's Compensation and Occupational Disease Acts. At Buyer's request, Seller shall furnish to Buyer certificates of insurance setting forth the amounts of coverage, policy numbers and dates of expiration for insurance maintained by Seller and, if further requested by Buyer, such certificates will provide that Buyer shall receive thirty (30) days prior written notification from the insurer of any termination or reduction in the amount or scope of coverage.
8. **Intellectual Property Protection.** Seller shall indemnify and hold harmless Buyer, its successors, assigns and customers from and against claims, demands, liability, loss and damage, including, without limitation, costs, expenses, and attorneys' fees arising out of or relating to any claim of patent or copyright or other intellectual property right infringement by or in any way related to the items or parts thereof or processes, furnished hereunder or any litigation based thereon. In addition, Seller shall procure at Seller's expense for Buyer and its customer the right to continue using the items or parts or processes found to have been infringing. Alternatively, Seller may modify, supplement or replace such items and parts or processes so as to eliminate such infringement provided, however, that there shall be no performance degradation due to such actions.
9. **Litigation.** If requested to do so in writing by Buyer, Seller shall defend, at its own expense, any litigation for which Seller is required to indemnify Buyer under Article 7 or 8. Buyer shall have the right to participate in such defense with counsel of Seller's own choice at Seller's expense and, if Seller shall fail to promptly assume the defense of such litigation when requested to do so by Buyer, Buyer may defend with counsel of its own choice at the expense of Seller.



10. **Information.** Any knowledge or information concerning the design, manufacture, sale or use of the items covered by this order which Seller may disclose to Buyer incident to the performance, manufacture or delivery of items covered by this order shall be deemed to have been disclosed as a deliverable under the order and to be free from all restrictions as to the use or disposition thereof by Buyer, and Seller agrees not to assert any claim against Buyer by reason of Buyer's use or disposition thereof. Seller shall keep confidential all information, drawings, specifications, data or any other details furnished by Buyer or prepared by Seller specifically in connection with this order.
11. **Property Supplied by Buyer.** Buyer shall retain title to any drawings, sketches, designs, patterns, dies, molds, tooling, equipment and materials of every description paid for or supplied by Buyer for use in the performance of this order. Any such articles shall be retained by Seller on consignment, suitably identified as Buyer's property. Seller shall hold and maintain any such articles at its risk and expense, shall keep such articles insured at its expense while in its custody or control in an amount equal to the replacement cost thereof, with loss payable to Buyer, and shall not use such articles except in filling Buyer's orders. All such articles shall be delivered to Buyer upon demand, in the same condition as when received, except for reasonable wear and tear, and except to the extent such articles have been incorporated into items delivered to Buyer, or consumed in the normal performance of work for Buyer.
12. **Termination.** (a) Buyer may, without cost or liability to it, except for conforming deliveries or services previously made and accepted, terminate this order if one or more of the following events or similar shall occur: (i) failure of Seller to perform any of its obligations under this contract including Seller's warranties, (ii) any adverse change in the position, financial or otherwise, of Seller or (iii) the insolvency of, or the filing of a petition under any federal or state bankruptcy or insolvency laws by or against Seller, and, in any termination identified in this sentence, Seller shall be responsible for any damages suffered by Buyer, its successors, assigns or customers. (b) In addition to the preceding rights of termination, Buyer may, on reasonable notice to Seller, terminate all or any part of this order at Buyer's convenience without cost or liability to it as to any items not received and accepted by Buyer; any items shipped or service performed after the effective date of such termination may, at the sole option of Buyer, be accepted by Buyer under this order or be returned to Seller at the risk and expense of Seller.
13. **Remedies.** The remedies expressly provided for in these conditions shall be cumulative and in addition to any other remedies which Buyer may have under the Uniform Commercial Code or other applicable law or in equity.
14. **Set-Off.** All amounts due Seller shall be considered net of indebtedness of Seller to Buyer, and Buyer shall be entitled at all times to set-off any amount owing or to become owing from Seller to Buyer or any of its affiliated companies against any amount payable or to become payable from Buyer to Seller on this or any other order.
15. **Compliance with Certain Laws.** Seller agrees to comply with all federal, state and local laws, executive orders, rules, regulations and ordinances which may be applicable to Seller's performance of its obligations under this Order. Seller certifies to Buyer that the items purchased hereunder were produced or performed in compliance with all applicable requirements of the Fair Labor Standards Act of 1938, as amended. If this order is subject to government contracting mandates, Buyer will so state on the face hereof, and if so stated, as a condition to the effectiveness of this order, Seller agrees to certify to Buyer, by separate writing, that it complies with all government contracting requirements applicable to Buyer, Seller and the goods.
16. **Governing Law.** This order shall be governed by the law of the State of Virginia, including the Uniform Commercial Code adopted therein, but excluding the provisions of the United Nations Convention on Contracts for the International Sale of Goods, and excluding Virginia law with respect to conflicts of law. Seller agrees that all causes of action against Buyer in connection with this order shall be brought in the State Courts of the State of Virginia, or the U.S. District Court for the State of Virginia.



17. **Miscellaneous.** (a) Assignment of this order or of any interest herein, or of any payment due hereunder, without the prior written consent of Buyer, shall be void. (b) Any provision of this order which is invalid or unenforceable shall be ineffective to the extent of such invalidity or unenforceability without invalidating the remaining portions hereof. (c) The failure of either party at any time to require performance by the other party of any provision of this order shall in no way affect the right to require such performance at any time thereafter, nor shall the waiver by either party of a breach of any provision of this order constitute a waiver of any succeeding breach of the same or any other provision. (d) The obligations of Seller under this order shall survive any inspection, delivery, acceptance or payment of and for the items.
18. **Software.** (a) Seller grants to Buyer a non-exclusive, royalty-free perpetual license to use any software provided by Seller hereunder. Buyer shall not be bound by the terms and conditions that may be contained in Seller's forms. (b) Seller grants to Buyer an unlimited, exclusive and perpetual license to use, modify, copy and sublicense any software provided by Seller hereunder on behalf of Buyer and its customers.
19. **Limit of Liability.** In no event will Buyer be liable for indirect or consequential damages.
20. **Hazardous Materials.** Seller shall notify Buyer of all "hazardous materials" (as that term is defined in applicable Federal, state and local statutes) and such other identification of materials included in the products as may be required by Buyer from time to time which are contained in the products, and provide any appropriate special handling instructions. Seller shall furnish Buyer with copies of all applicable "material safety data sheets" for products no later than the shipment date under this order.
21. **Quality Assurance.** Seller shall qualify as an acceptable vendor in compliance with the requirements of Buyer's Supplier Qualification Assessment program, which may include in-plant audits both for initial assessment and follow-up, within a reasonable time after Buyer issues its initial order for items.
22. **Bribery and Corruption.** (a) Seller hereby warrants that it will not directly or indirectly, and it has no knowledge that other persons will directly or indirectly, make any payment, gift or other commitment to its customers, to government officials or to agents, directors and employees of Buyer or any other party in a manner contrary to applicable laws (including but not limited to the U.S. Foreign Corrupt Practices Act and, where applicable, legislation enacted by member States and signatories implementing the OECD Convention Combating Bribery of Foreign Officials) and shall comply with all relevant laws, regulations, ordinances and rules regarding bribery and corruption; (b) nothing in this order shall render Buyer liable to reimburse the Seller for any such consideration given or promised; (c) the Seller's material violation of any of the obligations contained in (a) above may be considered by Buyer to be a material breach of this Agreement and shall entitle Buyer to terminate this order with immediate effect and without prejudice to any further right or remedies on the part of Buyer under this order or applicable law. The Seller shall indemnify Buyer for all liabilities, damages, costs or expenses incurred as a result of any such violation of the above-mentioned obligations and termination of this order.
23. **Non-Solicitation.** Vendor agrees that while doing business with Buyer, Vendor will not induce or attempt to induce any Person who is or was a customer, supplier, licensee or other business relation of the Company or its Affiliates (a) at any time during the term of this Agreement (in the case of such prohibited activity occurring during such time) or (b) during the 12-month period preceding such prohibited activity (in the case of such prohibited activity occurring during the Restricted Period but after the termination of this Agreement), in each case, to cease doing business with the Company or its Affiliates or in any way interfere with the relationship between any such customer, supplier, licensee or business relation and the Company or its Affiliates; or Directly or indirectly solicit with the purpose of hiring any person who is or, within 60 days after such person ceased to be an employee of the Company or its Affiliates, was an employee of the Company or its Affiliates; provided, however, that this shall not prohibit the solicitation or hiring of any person who approaches you or any Company with which you are associated on his or her own volition or who responds to a solicitation or advertisement directed generally to the public, industry or trade.
24. **Entire Agreement.** This order, together with the specifications, drawings, attachments, exhibits and supplements specifically referenced in the order, constitutes the entire agreement between Seller and Buyer with respect to the matter contained herein and supersedes all prior oral or written representations and agreements. This order may only be modified by an amendment/alteration issued by Buyer. Any invoice, acknowledgment or other communication issued by seller in connection with this order shall be construed to be for record and accounting purposes only and shall have no effect on these terms.