

## **ESCATEC GROUP**

### **GENERAL TERMS AND CONDITION OF SALE , SUPPLY AND WARRANTY**

#### **1. SCOPE**

1.1. These General Conditions of Sale, Supply and Warranty ("Terms & Conditions") shall apply to all sales and supplies of products made and services provided by the ESCATEC group of companies ("ESCATEC")<sup>1</sup> to its customers ("CUSTOMER") as well as to ESCATEC's liability under the warranty terms for such products and services (collectively "Products"). ESCATEC and CUSTOMER shall hereinafter also be referred to individually as "Party" and collectively as "Parties".

1.2. These Terms and Conditions shall be deemed included by reference to and made an integral part of all quotations ("Quotation"), order confirmations ("Order Confirmation"), deliveries ("Delivery") and invoices ("Invoice") issued by ESCATEC. CUSTOMER acknowledges and agrees that these Terms & Conditions supersede any and all of its own or third parties' terms and conditions that may be included with the requests for a Quotation ("RFQ") or a purchase order ("Order") or any other correspondence, unless there is a prior express agreement in writing to the contrary by ESCATEC.

1.3. No legally binding sales agreement shall be deemed to be in force and effect and no Order deemed legally binding upon the Parties unless and until ESCATEC has confirmed its acceptance thereof in writing by way of Order Confirmation.

1.4. ESCATEC's obligation to supply the Products shall be subject to the terms and conditions set forth in ESCATEC's Quotation and/or Order Confirmation. In particular, the coming into force of the legally binding sales agreement between the Parties ("Coming into Force") shall be subject to the conditions precedent set out in the Quotation or Order Confirmation such as, without limitation, the receipt by ESCATEC of the prepayment or advance payment of the Price, the opening of a letter of credit, the receipt of the export authorization from the relevant export agencies and such other conditions set out in the Quotation and/or Order Confirmation.

#### **2. PRODUCTS AND PRICE, RETENTION OF TITLE**

2.1. ESCATEC shall sell the Products at the prices set forth in its Quotation and/or Order Confirmation ("Price"). ESCATEC shall have the right to change the Prices, if its material, labor, operating costs and/or foreign exchange rates change by no less than plus or minus five percent (+/- 5.0%) of the total cost of manufacture of any of the Products, such change of costs to be reasonably evidenced by ESCATEC.

2.2. Unless otherwise agreed in writing, all Prices for Products shall be net of any deduction, "EXW" ESCATEC's premises in Malaysia, or Switzerland (INCOTERMS 2010),

<sup>1</sup> These Terms & Conditions apply to each of the following ESCATEC group companies:

1. ESCATEC Electronics Sdn. Bhd., Free Industrial Zone III, 11900 Penang, Malaysia
2. ESCATEC Medical Sdn. Bhd., Free Industrial Zone III, 11900 Penang, Malaysia
3. ESCATEC Mechatronics Sdn. Bhd., 8 Jalan Firma 2/1, Kawasan Perindustrian Tebrau I, 81100 Johor Bahru, Malaysia
4. ESCATEC Switzerland AG, Heinrich-Wild-Strasse, CH-9435 Heerbrugg, Switzerland

as the case may be, depending on the ESCATEC group company set out in the Quotation. Price shall be exclusive of, freight, insurance, discounts and rebates. CUSTOMER shall bear all charges, such as, but not limited to, cost of packaging, freight and insurance; costs for export, transit, import, and other permits and certificates, any and all taxes including any value added or sales taxes (but excluding ESCATEC's taxes on its income), as well as any and all fees, duties, dues, and customs charges. Prices for repairs and alterations shall be deemed "EXW" ESCATEC's service workshop (INCOTERMS 2010) at the location indicated to CUSTOMER in ESCATEC's sole judgment.

2.3. Prices for products are based on components and materials purchased from vendors at standard lead-times. Any premiums associated with accelerated deliveries requested by CUSTOMER shall be payable by CUSTOMER.

2.4. The Parties acknowledge and agree that pricing information provided by either Party to the other shall be deemed confidential information.

2.5. ESCATEC shall be entitled at its sole option but at CUSTOMER's cost and expense to require from CUSTOMER a right of retention of title to the Products and/or a security interest in such Products, as the case may be, according to CUSTOMER's local law. Should CUSTOMER refuse to cooperate with ESCATEC to perfect such retention of title and/or security interest, ESCATEC shall be free to withhold the delivery of such Products until such time when such retention of title and/or security interest has been perfected or the payment of the Price to ESCATEC has been made in full.

#### **3. TERMS OF DELIVERY, INVOICING AND PAYMENT**

3.1. All Products to be delivered to CUSTOMER by ESCATEC shall be delivered EXW (as defined in INCOTERMS 2010), unless otherwise specified and accepted in writing by ESCATEC.

3.2. ESCATEC shall make commercially reasonable efforts to meet the delivery dates set out in the Order Confirmation. ESCATEC shall at all times promptly inform CUSTOMER of any delay in delivery and shall undertake all commercially reasonable measures to minimize such delay. Any claim for loss and damage under any title by CUSTOMER as a consequence of such delay is hereby expressly excluded.

3.3. For any manufacturing set-up and/or test equipment ordered by CUSTOMER, 100% of the agreed price shall be invoiced and payable upon receipt of the Order. Payment for plastic injection tools and other tooling costs shall be according to the schedule agreed in writing.

3.4. Payment terms shall be net thirty (30) days from the date printed on ESCATEC's invoice. The foregoing credit terms are subject to review by ESCATEC based on CUSTOMER's credit rating and/or on-time payment record. ESCATEC reserves the right to change the foregoing credit terms and/or stop shipments due to late payment by CUSTOMER without it being considered a failure to perform. Invoice balances remaining unpaid thirty (30) days after the original due date become subject to an interest charge of one (1.0) percent per full calendar month.

#### **4. ORDERING AND PLANNING PROCEDURE**

4.1. Only written or electronically-dispatched Orders issued by CUSTOMER shall be valid and changes to the prevailing conditions shall be legally binding between the Parties if they have been confirmed in writing by fax or electronic means by CUSTOMER and accepted by ESCATEC in writing. ESCATEC shall confirm forecasted Orders within five (5) working days and un-forecasted Orders within ten (10) working days.

4.2. CUSTOMER shall issue a monthly, rolling, twelve (12) month forecast ("Forecast") for each of the Products, to be updated and re-issued in writing before the 15th of every month. CUSTOMER expressly authorises ESCATEC to purchase components that have a longer than twelve (12) week lead time in order to secure the supply of such long lead time components according to CUSTOMER orders and forecast. CUSTOMER shall be responsible and liable for all Material inclusive of standard minimum Order quantities (MOQs), partial reels open boxes and the like.

4.3. The first twelve (12) weeks (referred to as the "Firm Product Period") of the Forecast shall constitute firm and binding Orders from CUSTOMER. ESCATEC is expressly authorised by CUSTOMER to complete the manufacture to the finished goods level. CUSTOMER shall not change the Order quantity and/or cancel and/or reschedule Orders within the Firm Product Period. In the event that CUSTOMER requests increases in delivery quantities, ESCATEC shall notify the customer within ten (10) working days whether the request can be fulfilled and notify any price premiums associated with such a request.

4.4. If for any reason, including obsolescence or discontinuation of Products, cancellation or reduction of an Order, all or only a portion of the material purchased by ESCATEC for the purpose of fulfilling CUSTOMER's Order becomes dormant (whereby "dormant" shall mean material in stock which has not been used within the past twelve (12) weeks), ESCATEC shall have the right to charge CUSTOMER an amount equal to two (2.0%) percent per month (referred to as the "Dormant Material Charge") of the dormant material cost. Once such dormant material has remained dormant for three (3) months, such dormant material must be purchased in its entirety by CUSTOMER at ESCATEC's cost plus eight (8.0%) percent ("Burdened Cost").

4.5. In the event that CUSTOMER requires ESCATEC to purchase Material from it, the purchase price will be at ESCATEC's standard price as provided in writing to CUSTOMER. ESCATEC will purchase only quantities needed to support production of the Products covered by CUSTOMER's Orders.

4.6. Where CUSTOMER consigns (free issues) material to ESCATEC, such material shall be sufficient to cover normal manufacturing yield loss of one percent (1.0%). Higher yield losses on consigned materials may still be claimed by ESCATEC from CUSTOMER in the event that they are due to causes which are not the fault of ESCATEC, e.g., relating to design or component quality. Material supplied by CUSTOMER shall be delivered DDP to ESCATEC's designated manufacturing location (INCOTERMS 2010) and CUSTOMER shall bear the responsibility for the quality and timely delivery of such material.

#### **5. QUALITY ASSURANCE**

5.1. General workmanship shall be in accordance with ESCATEC's standards. PCBAs will follow IPC-A-610D Class II standards and the agreed product specification.

5.2. CUSTOMER shall inspect each shipment within five (5) working days as of date of delivery and notify ESCATEC whether the shipment is accepted or rejected. Details of any non-conformance shall be faxed/mailed to ESCATEC. Upon instructions of ESCATEC, rejected samples may be returned by express courier to ESCATEC at CUSTOMER's cost.

#### **6. PRODUCT WARRANTY**

##### **6.1. Express Warranty:**

6.1.1. ESCATEC hereby warrants that the Products are free of workmanship defects under normal use, for a period of twelve (12) months after date of invoice to CUSTOMER. Defects and/or non-conformances which are related to material and design issues are expressly excluded from ESCATEC's warranty.

6.1.2. ESCATEC's obligation under this express warranty shall be, at ESCATEC's sole option and expense, to replace or repair the Product or part thereof. ESCATEC warrants the repaired or replaced Products or part thereof for a period of ninety (90) days from the date of shipment to CUSTOMER or through the end of the original warranty period, whichever period is longer. All Products or parts replaced become automatically property of ESCATEC.

6.1.3. Subject to the exclusions of warranty set out in the Clause 6.3, the terms "defect" or "defective" shall mean only defects of workmanship on the part of ESCATEC which result in a Product that does not fulfill ESCATEC's quality standards and/or the technical specifications attached to the Order, and for which CUSTOMER has not granted an exemption.

6.2. Obtaining Warranty Service: CUSTOMER must contact ESCATEC within the applicable warranty period to obtain a return material authorization ("RMA"). ESCATEC will not accept Products or parts thereof received without a RMA and will return them to CUSTOMER at CUSTOMER cost and expense. Any Product returned to ESCATEC must be in its original packaging or the equivalent. CUSTOMER must ship the defective Products at its own cost and expense to ESCATEC while repaired or replacement Products will be shipped to CUSTOMER at ESCATEC's cost and expense.

6.3. Warranty Exclusive: CUSTOMER sole remedy for breach of the warranty shall be the express warranty set out in Clause 6.1. The express warranty is exclusive and in lieu of all other warranties, terms or conditions express or implied, either in fact or by operation of law, statutory or otherwise, including warranties, terms or conditions of merchantability, fitness for a particular purpose, satisfactory quality and non-infringement, all of which are expressly disclaimed. ESCATEC shall not be liable if the alleged defect or malfunction was caused by any cause beyond the range of the Products' intended use or is not due or attributable to ESCATEC. This warranty does not cover physical damage to the Product or malfunctions resulting from the use of the Product in conjunction with any sort of ancillary or peripheral equipment if ESCATEC determines that there is no fault with the Product itself.

6.4. In the event of a defect due to deficient material, ESCATEC obligations shall be limited to working with CUSTOMER on a commercially reasonable efforts basis to mitigate costs and expenses associated with such defect and to negotiate with the relevant material supplier. In this context, ESCATEC shall transfer and assign all product warranties received from its suppliers to CUSTOMER.

#### **7. LIMITATION OF LIABILITY, PRODUCT LIABILITY**

TO THE FULLEST EXTENT PERMITTED UNDER APPLICABLE LAW, ESCATEC'S LIABILITY SHALL BE LIMITED TO THE RESPONSIBILITIES CONTAINED IN CLAUSE 6 (PRODUCT WARRANTY). NOTWITHSTANDING THE FOREGOING AND ANYTHING TO THE CONTRARY IN THIS AGREEMENT, ESCATEC EXCLUDES ANY AND ALL LIABILITY, WHETHER BASED IN CONTRACT, STRICT LIABILITY, WARRANTY OR TORT (INCLUDING NEGLIGENCE), OR ANY OTHER BASIS WHATSOEVER, FOR DIRECT, INCIDENTAL, CONSEQUENTIAL, INDIRECT, SPECIAL, OR PUNITIVE DAMAGES OF ANY KIND, OR THIRD-PARTY CLAIMS AND OTHER INCIDENTAL OR SPECIAL LOSSES, WHICH MAY ARISE FROM NON-FULFILLMENT OF CONTRACTUAL OBLIGATIONS BY

ESCATEC AND/OR FROM THE OPERATION OR INTERRUPTION OF THE OPERATION OF THE PRODUCTS SUPPLIED BY ESCATEC, OR ANY COSTS OF PROCUREMENT OF SUBSTITUTE PRODUCTS BY CUSTOMER, OR FOR THE LOSS OF REVENUE OR PROFITS, LOSS OF BUSINESS, LOSS OF INFORMATION OR DATA, OR FINANCIAL LOSS ARISING OUT OF OR IN RELATION WITH THE SALE, INSTALLATION, MAINTENANCE, USE, PERFORMANCE, FAILURE, OR INTERRUPTION OF THE PRODUCT, EVEN IF ESCATEC HAS BEEN ADVISED OR SHOULD HAVE KNOWN OF THE POSSIBILITY OF SUCH DAMAGES OR LOSSES. WITHOUT LIMITING THE FOREGOING AND NOTWITHSTANDING ANYTHING TO THE CONTRARY HEREIN, ESCATEC LIMITS ITS LIABILITY, AT ITS SOLE OPTION, TO REPLACEMENT OR REPAIR OF THE PRODUCT PURSUANT TO THE PROVISIONS UNDER CLAUSE 6. THIS LIMITATION OF LIABILITY FOR DAMAGES WILL NOT BE AFFECTED IF ANY REMEDY PROVIDED HEREIN SHALL FAIL OF ITS ESSENTIAL PURPOSE.

7.1. In the event that ESCATEC is found liable in a specific incident under the applicable product liability law, ESCATEC'S LIABILITY TO THIRD-PARTY PRODUCT LIABILITY CLAIMS RAISED DIRECTLY OR BY WAY OF RECOURSE AGAINST ESCATEC SHALL BE LIMITED TO THE SUM ACTUALLY RECOVERED FROM ESCATEC'S PRODUCT LIABILITY INSURANCE. Liability and responsibility to pay any claim in excess of such sum recovered from ESCATEC's product liability insurance shall be borne entirely by CUSTOMER. The sum insured by ESCATEC shall be in aggregate at least CHF 1,000,000 (one million Swiss Francs) per year and incident. CUSTOMER shall hold ESCATEC harmless and indemnified for all costs and expenses reasonably incurred by ESCATEC (including reasonable attorneys' and other legal costs) in case of a product liability claim being raised in a specific incident directly or by way of recourse against ESCATEC and CUSTOMER is found to be liable under the applicable product liability law.

#### **8. TOOLING & TEST EQUIPMENT**

8.1. Tooling & Test Equipment paid by CUSTOMER shall remain exclusive property of CUSTOMER and ESCATEC shall keep it in good serviceable condition. If major repair or replacement is required, ESCATEC shall provide a quotation to CUSTOMER for such refurbishment or replacement. ESCATEC shall not be responsible of any interruption of supply. Past the warranty period of Tooling & Test Equipment, ESCATEC will charge CUSTOMER the cost of any special maintenance as may be required to maintain quality and yield.

#### **9. TERM & TERMINATION OF THE ORDER**

9.1. The Order shall become effective upon Order Confirmation by ESCATEC and shall remain in force and effect for the duration of the Order execution by ESCATEC.

9.2. Either Party may terminate the Order by written notice to the other Party at any time in the event that either Party

9.2.1. files a petition of bankruptcy, or is adjudicated bankrupt, or makes a general assignment for the benefit of the creditors, or becomes insolvent or otherwise unable to meet its financial or business obligations in a reasonable manner after they become due and has failed to provide

securities in a form satisfactory in the sole judgment of the terminating Party, or

9.2.2. fails to perform any of its material obligations under the Order and these Terms & Conditions and such failure is not remedied within thirty (30) calendar days after a notification of default by the non-defaulting Party.

#### **10. FORCE MAJEURE**

Neither Party shall be liable for delays in or failures of performance beyond such Party's reasonable control, including, without limitation, natural disasters, epidemics, a shortage of energy or raw materials or electronic components, times of war or civil unrest, terrorist attacks, fire, extensive damage to or long-term suspension of the operations of the Parties, official acts or omissions, embargoes, disruption of the means of transport, industrial action and so forth. The performance of the affected Party shall be deemed suspended so long as and to the extent that any such force majeure continues, provided however, that after ninety (90) consecutive or cumulative calendar days of such suspension, the other Party may terminate the Order without liability.

#### **11. ENTIRE AGREEMENT**

These Terms & Conditions are included by reference to and made an integral part of all Orders and appendices thereto, constitute the entire agreement between the Parties and supersede any previous agreement or representation regarding the subject matter of the Order.

#### **12. GOVERNING LAW, ARBITRATION**

These Terms & Conditions and all conditions herein SHALL BE SUBJECT TO AND CONSTRUED IN ACCORDANCE WITH SWISS LAW under exclusion of its conflict of law provisions and the United Nations Convention on Contract for the International Sale of Goods of 11 April 1980 (the "Vienna Convention"). All disputes arising out of or in connection with these Terms & Conditions shall be finally settled under the RULES OF ARBITRATION OF THE INTERNATIONAL CHAMBER OF COMMERCE (ICC) by one or more arbitrators appointed in accordance with said rules. PLACE OF ARBITRATION SHALL BE ZURICH, Switzerland. The arbitration procedure shall be held in the English or German language.

#### **13. SEVERABILITY**

If any provision of this Agreement shall be illegal, invalid or unenforceable in any respect under applicable law, the legality, validity and enforceability of the remaining provisions contained herein shall not in any way be affected or impaired. The Parties undertake to replace the provisions that are invalid by new provisions, which correspond as far as possible to the economic intent of the Parties of the provisions to be replaced.

#### **14. MODIFICATIONS AND WAIVER**

No supplement, modification or waiver of these Terms & Conditions and/or a contract of which these Terms & Conditions are part shall be binding unless executed in writing by both Parties. No waiver of any of the provisions of this Agreement shall constitute, or shall be deemed constituting, a waiver of any other provisions hereof (whether or not similar), nor shall any such waiver constitute a continuing waiver unless otherwise expressly provided.