



ESCO OPTICS, INC STANDARD TERMS AND CONDITIONS

Supersedes All Previous Terms and Conditions | Jan 2022

Acceptance of Terms and Conditions

The acceptance of the Terms and Conditions contained herein is an essential prerequisite to any contract of sale made by Esco Optics, Inc (hereinafter "Esco" or "Seller"). Any offer or acceptance by Seller is made subject to the terms and conditions contained herein and no additional or different terms offered by Purchaser shall become a part of the Agreement of Sale between Seller and Purchaser unless such terms have been expressly approved in writing by an authorized agent of Seller. If this document is an offer, acceptance of this offer is expressly limited to the terms hereof, and the Seller reserves the right to withdraw this offer at any time before its acceptance by Purchaser. If this document has been issued by Seller in response to a written offer made by Purchaser, Seller's acceptance of Purchaser's offer is expressly conditioned on Purchaser's assent to the additional or different terms contained herein. These terms and conditions are not subject to negotiation. If these terms and conditions are not acceptable, Purchaser shall notify Seller in writing at once. For online purchases, Esco Optics offers the website, including all information, tools, and services available from this site to you, the user and/or Purchaser, conditioned upon your acceptance of all terms, conditions, policies and notices stated here. Any reference to the Seller's website shall related exclusively to online sales.

Purchaser's action in (a) accepting any goods manufactured and delivered hereunder, or (b) accepting a sales order from the Seller without disaffirmance within three (3) business days of receipt shall constitute an unqualified acceptance by Purchaser of the Terms and Conditions contained herein.

Delivery

Shipping dates are approximate and are based on prompt receipt of all necessary information. The Seller shall not be liable for delays in delivery or failure to manufacture or deliver (1) due to causes beyond its reasonable control, or (2) acts of the Purchaser or (3) due to acts of God, acts of civil or military authorities, priorities, fires, strikes, floods, epidemics, war, riot, delays in transportation or car shortages, or (4) inability due to causes beyond its reasonable control to obtain necessary labor, materials, components or manufacturing facilities. In the event of any such delay, the date of delivery shall be extended for a period equal to the time lost by reason of the delay. In all cases, risk of loss or damage to goods in transit shall fall upon the Purchaser, whose responsibility it shall be to file claims with carrier. In addition, Seller will attempt to accommodate Purchaser's requests to re-schedule delivery of product or performance of services, provided however, such re-scheduling shall be in the sole and absolute discretion of Seller. Any re-schedule requests will be limited to one (1) re-schedule per line item over the duration of the order at the discretion of Seller. Further, any requests to reschedule shipments that are scheduled to be sent within 45 days thereof, will not be considered by Seller.

Payments

Each shipment shall be considered a separate and independent transaction and payment therefore shall be made accordingly. If shipments are delayed due to Purchaser's actions, payments shall become due on the date when the Seller is prepared to make shipment. If the work to be performed hereunder is delayed by the Purchaser, payments shall be made based on the purchase price and the percentage of completion. Products held for the Purchaser, at any time, does not justify continuance of the work to be performed by the Seller hereunder on the terms of the payment as agreed upon; the Seller may require full or partial payment in advance or shall be entitled to cancel any order then outstanding and shall receive reimbursement for its reasonable and proper cancellation charges and in the event of bankruptcy or insolvency of the purchaser or in the event any proceeding is brought against the Purchaser, voluntary or involuntary under the bankruptcy or any insolvency laws, the Seller shall be entitled to cancel any order then outstanding any time during the period allowed for filing claims against the estate and shall receive reimbursement for its reasonable and proper cancellation charges.

Tax

Taxes are not directly affiliated with the parties' transaction, any manufacture's tax, sales tax, use tax, excise tax, custom, inspection or testing fee, or any other tax, fee or charge of any nature whatsoever imposed by government authority, on or measured by the transaction between Seller and Purchaser shall be paid by Purchaser in addition to the prices quoted or invoiced or in lieu thereof the Purchaser shall provide the Seller with a tax-exemption certificate acceptable to the taxing authorities. Purchaser shall hold harmless and indemnify Seller from and against any liability arising from Purchaser's action or inaction in the recording, paying, depositing or reporting of these taxes.



Cancellation

If cancellation is made prior to events noted above, it must be executed by written notification subject to payment to the Seller of the reasonable and proper cancellation charges. Written notice of cancellation will only be considered within 48 hours of order date.

Returns

No return requests, for refund or exchange, will be considered 30 days past the date of receipt of goods. Also, no returns will be accepted without prior written approval from the Seller. Approval will be granted in the form of an RMA (return authorization) number. To be eligible for a return, the item must be unused and in the same condition that Purchaser received it. It must also be in the original packaging and return must be accompanied by the original invoice, packing slip and assigned RMA number. Once issued an RMA number, the customer has 60 days to return the goods for QC inspection. If not returned within the 60 day period, the RMA will be cancelled and no refund or exchange will be granted.

Custom products are not eligible for returns unless they're found to be defective or received already damaged at a customer's location. All such shipping damages are expected to be reported within two (2) days of receipt of product to be considered for return.

Returns may be subject to a restocking fee.

If a return or exchange of product is granted due to product being damaged or defective Purchaser will be provided with an address as well as our UPS account number to cover the related cost of sending the product back to Seller. If the Purchaser requests return of product, which is approved by the Seller, for a reason other than damages or defects, a 20% restocking fee will be assessed to the return and offset against any refund issued.

LIMITATION OF DAMAGES AND LIABILITY

IN NO EVENT WILL SELLER BE LIABLE FOR LOSS OF PROFITS OR FOR ANY OTHER INDIRECT, SPECIAL OR CONSEQUENTIAL DAMAGES IN CONNECTION WITH OR ARISING OUT OF THE FURNISHING, PERFORMANCE OR USE OF THE PRODUCTS AND SERVICES. SELLER'S TOTAL LIABILITY, IF ANY, INCLUDING BUT NOT LIMITED TO LIABILITY ARISING OUT OF CONTRACT, TORT, AND BREACH OF WARRANTY OR CONDITIONS, INFRINGEMENT OR OTHERWISE, SHALL NOT EXCEED THE AMOUNTS PAID BY CUSTOMER TO SELLER UNDER THE PARTICULAR PURCHASE ORDER OR INVOICE IN DISPUTE.

Product Warranty Disclaimer

Seller makes no warranties express or implied and specifically EXCLUDES without limitation any and all WARRANTIES OF MERCHANTABILITY AND OF FITNESS FOR A PARTICULAR PURPOSE. If any of the Products in any shipment do not conform to the warranty contained herein all rejected Products must be promptly returned after rejection at Buyer's expense. Buyer's sole remedy will be to notify Seller of such nonconformity within thirty (30) days of the receipt of such product, and Seller will at its option either promptly repair or replace the non-conforming product with a product which conforms to the warranty or refund the purchase price of the non-conforming product.

INTELLECTUAL PROPERTY AND PROPRIETARY RIGHTS

Seller will not be liable for any claim or infringement unless due to infringement by the Products in the form supplied and without regard to the particular use by Buyer. Buyer shall be obliged to promptly notify Seller of any such claim of infringement, and if so requested, Buyer shall authorize Seller to defend or settle any suit or controversy involving such claim, subject to the limitations of liability set forth herein. *The foregoing expresses Seller's entire and exclusive warranty and liability as to intellectual property infringement, and it will not be liable for any damages whatsoever suffered by reason of any infringement except as provided herein.*

Seller shall retain all rights, title and interest (including intellectual property rights) in the good sold to Buyer and in all documentation and other materials distributed by Seller in conjunction with the sale of such goods (collectively the "Documentation"). The names and logos, and all product documentation (collectively, "Confidential Information") shall be kept confidential by you and not disclosed to any person or entity unless such information becomes publicly available, is received by you from a third party or is independently developed by you.



Security Title

Title and right of possession of the products sold hereunder shall remain with the Seller and such products shall remain personal property until all payments hereunder (including deferred payments whether evidenced by notes or otherwise) shall have been made in full in each, and the Purchaser agrees to do all acts necessary to perfect and maintain such right and title in the Seller.

Variations

Unless otherwise specified in writing, any variation in quantities shipped not exceeding 10% of the quantities ordered shall constitute compliance with the order and the unit price will continue to apply.

Prices on the website for Seller's products are subject to change without notice. We reserve the right at any time to modify or discontinue the Website Service (or any part or content thereof) without notice at any time. We shall not be liable to Purchaser or to any third-party for any modification, price change, suspension or discontinuance of the Service.

Delivery Terms

All prices are F.O.B. Factory, Esco Optics, Oak Ridge, New Jersey. Shipping carrier chosen at Esco Optics' discretion unless specified on order. Insurance is purchased through the Carrier at Purchaser's option and cost. Esco will not be responsible for product once it leaves the factory and all invoices are due to Esco with Purchaser's terms upon shipment of product.

Terms of Payment – USA

All invoices are due and payable in accordance with the Purchaser's credit terms with Seller. If the purchaser choose to pay via credit card (American Express, Visa or MasterCard) a 3% convenience fee will be added. If Purchaser does not have credit terms established with Esco, purchaser's order will be on a proforma basis.

Terms of Payment – Foreign

Orders must be paid, F.O.B. Oak Ridge, NJ either by wire transfer, MasterCard, Visa, or American Express, U.S. FUNDS ONLY. If the purchaser chooses to pay via credit card a 3% convenience fee will be added. For banking information, please contact accounts receivable at accountsreceivable@escooptics.com. All fees incurred by the Purchaser for invoice payments executed via wire or ACH is solely the cost of the purchaser and may not be offset against any payments issued to the Seller which would thereby cause invoices to not be paid in full.

An extra charge will be made for special containers, but refund will be considered if returned in good condition to the factory or other point designated by the Seller within 60 days from the date of original shipment, charges prepaid. Any assignment or this order or any rights hereunder, by the Purchaser without written consent of the Seller shall be void. The recipient of the goods is responsible for the payment of any applicable customs charges, VAT, duties and/or taxes.

Website Service

Purchaser agrees that from time to time Seller may remove the service for indefinite periods of time or cancel the service at any time, without notice to you. Purchaser expressly agrees that the use, or inability to use, the service is at his or her sole risk. The service and all products and services delivered to Purchaser through the service are (except as expressly stated by Seller) provided 'as is' and 'as available' for Purchaser use, without any representation, warranties or conditions of any kind, either express or implied, including all implied warranties or conditions of merchantability, merchantable quality, fitness for a particular purpose, durability, title, and non-infringement. In no case shall Esco Optics, our directors, officers, employees, affiliates, agents, contractors, interns, suppliers, service providers or licensors be liable for any injury, loss, claim, or any direct, indirect, incidental, punitive, special, or consequential damages of any kind, including, without limitation lost profits, lost revenue, lost savings, loss of data, replacement costs, or any similar damages, whether based in contract, tort (including negligence), strict liability or otherwise, arising from your use of any of the service or any products procured using the service, or for any other claim related in any way to Purchaser's use of the service or product, including but not limited to, any errors or omission in any content, or any loss or damage of any kind incurred as a result of the use of the service or any content (or product) posted, transmitted, or otherwise made available via the service, even if advised of their possibility. Because some states or jurisdictions do not allow the exclusion or the limitation of liability for consequential or incidental damages, in such states or jurisdictions, our liability shall be limited to the maximum extent permitted by law.



Compliance

The Seller will comply with all applicable Federal, State and local laws, and specifically represents that any goods to be delivered hereunder will be produced in compliance with the requirements of the Fair Labor Standards Act of 1938, as amended.

Purchaser acknowledges and agrees that based on the relationship between Seller and Purchaser, the Purchaser has possessed and learned valuable trade secrets and other proprietary information relating to the Seller's business and personnel. Accordingly, as an inducement for the Seller to enter into this Agreement, the Purchaser agrees that during the period that Purchaser remains a customer of Seller and for a period of two (2) years thereafter (such period being referred to herein as the "Restricted Period"), Purchaser, or any of its personnel shall not, directly or indirectly, either for itself or for any other person or entity:

- (a) take any actions which are calculated to persuade any person or entity who is a director, officer or agent of the Seller to terminate their association with the Seller; or
- (b) solicit or hire any person or entity who is or was a director, officer, employee or agent of the Seller to perform services for any entity other than the Seller.

Modification

No waiver, alteration, or modification of any of the provision hereof shall be binding unless in writing and signed by a duly authorized representative of the Seller.

Usage

The product sold hereunder was not designed or manufactured for use in or with any nuclear installation or activity, or for any other use than expressly manufactured for. If so used, the Seller disclaims all responsibility of every kind, including negligence and in addition the Purchaser shall indemnify and hold the Seller harmless for any liability or damage whatsoever arising out of the use of the product in such a manner. As well, the products sold hereunder cannot be resold or used within the countries of Burma, Cuba, Iran, Sudan and Syria.

Power to Execute Agreement

By agreeing to these Terms of Service, Purchaser represents that Purchaser is at least the age of majority in your state or province or residence. Purchaser may not use our products for any illegal or unauthorized purpose nor may you, in the use of the Service, violate any laws in your jurisdiction (including but not limited to copyright laws).

Seller reserve the right to refuse service to anyone for any reason at any time. Purchaser understands that his or her content (not including credit card information), may be transferred unencrypted and involved (a) transmissions over various networks; and (b) change to conform and adapt to technical requirements of connecting networks or devices. Credit card information is always encrypted.

INDEMNIFICATION

To the fullest extent permitted by law, and to the limits of proceeds paid by applicable policies of insurance, the Purchaser shall save, defend, indemnify and hold harmless Seller and its contractors, consultants, officers, directors, disclosed agents, and employees from and against claims, damages, losses and expenses, including but not limited to reasonable attorney's fees and expenses, arising out of or resulting from performance of this Agreement, provided that such claim, damage, loss or expense is attributable to bodily injury, sickness, disease, or death or to injury to or destruction of tangible property other than the purchased item itself, caused by the acts or omissions of Purchaser or its contractors, consultants, disclosed agents, or employees, and anyone directly or indirectly contracted or employed by them or anyone for whose acts they may be liable, regardless of whether or not such claim, damage, loss or expense, but only to the extent of the negligent acts or omissions of Purchaser or its contractors, consultants, disclosed agents, or employees, and anyone directly or indirectly contracted or employed by them or anyone for whose acts they may be liable. Such obligation shall not be construed to negate, abridge or reduce other rights or obligations of indemnity that would otherwise exist as to a party or person described in this agreement. In claims against any person indemnified hereunder by an employee of the Purchaser, its contractors, consultants, disclosed agents, employees or anyone directly or indirectly employed by them or anyone for whose acts they may be liable, the indemnification obligation under this article shall not be limited by a limitation on amount or type of damages, compensation, or benefits payable by or for the Purchaser or its contracts, consultants, agents, or employees under workers' compensation acts, disability benefit acts or other employee benefit acts.



Severability

In the event that any provision of these Terms of Service is determined to be unlawful, void or unenforceable, such provision shall nonetheless be enforceable to the fullest extent permitted by applicable law, and the unenforceable portion shall be deemed to be severed from these Terms of Service, such determination shall not affect the validity and enforceability of any other remaining provisions.

Termination

The obligations and liabilities of the parties incurred prior to the termination date shall survive the termination of this agreement for all purposes.

If in Seller's sole judgment Purchaser fails, or suspects that Purchaser has failed, to comply with any term or provision of these Terms of Service, Seller also may terminate this agreement at any time without notice and Purchaser will remain liable for all amounts due up to and including the date of termination; and/or accordingly may deny Purchaser access to their Services (or any part thereof).

Jurisdiction and Law

This website, any sale, transaction or Agreement shall be governed by, and its terms interpreted in accordance with, the laws of the State of New Jersey, USA regardless of any conflict of law principles requiring the application of any other law. The Convention of the International Sale of Goods shall not apply to this website, sale or Agreement. Venue shall be exclusively within the State or Federal courts located in Morris County, in the State of New Jersey.

Force Majeure

Esco Optics shall not be responsible to Purchaser for costs incurred resulting from delay or failure to perform arising out of force majeure including: acts of God, acts or restraints of government authorities, fire, explosions, storms, wars, hostilities, blockades public disorders, quarantines, embargoes, strikes, loss or shortage of transportation facilities, or any other act or event that is not within Seller's reasonable control which renders Seller unable to perform its obligations.

Nonwaiver

Seller's failure to enforce any provision of these Terms and Conditions or to protest any breach or default of this Agreement by Purchaser shall be construed as evidence of (or evidence to interpret) the rights or obligations of the parties, or as a waiver of any Purchaser obligation or Seller's right provided under these Terms and Conditions or applicable law.

Title and Headings

The titles and headings of the Terms and Conditions are for convenience and shall not be interpreted as supplementing or superseding the intent of the parties as expressed in Terms and Conditions.

Third Parties

Nothing contained in these Terms and Conditions shall create contractual relationship with, or a cause of action in favor of, a third party against Seller.

Waiver of Breach

The waiver by any party hereto of a breach of any provisions herein shall not operate nor be construed as a waiver of any subsequent breach.

Binding Effect; Benefits

The contract documents shall inure to the benefit of, and shall be binding upon the parties hereto, affiliates and their representatives, successors and permitted assigns, including any entity with which either party may merge or consolidate or to which it may transfer all of substantially all of its assets.

Assignment

The agreements of the contract documents are not assignable by the Purchaser without the prior written consent of the Seller.

End of Standard Terms and Conditions