

# Fixed Price Work Terms & Conditions (ESR-FP-SF-Issue 1a)

LAW	1	Acceptance of this offer constitutes an Agreement made in England and subject to the laws of England and the sole jurisdiction of the courts of England between the Customer and ESR Technology.
PAYMENT	2(a)	The Customer shall pay in Sterling the charges made by ESR Technology in respect of the Work within thirty (30) days of the submission of any invoice by ESR Technology. Such payment to ESR Technology shall mean that payment exclusive of any taxes and duties chargeable thereon by any central government, local government or statutory body whatsoever, all of which taxes and duties shall be paid by the Customer. ESR Technology reserves the right to charge interest on late payments.
INFORMATION	3	Unless specified to the contrary in the Work, all relevant information resulting from the Work shall be described in a written report which shall be sent to the Customer. Copyright in the report shall vest in ESR Technology and the Customer shall have the right to use such information for the purposes notified in writing to ESR Technology prior to ESR Technology's offer to undertake the Work.
INFRINGEMENT OF THIRD PARTY RIGHTS	4	ESR Technology makes no warranty or representation that the use of any information arising from the Work will not infringe the rights of third parties but, if any of ESR Technology's employees whilst engaged on the Work becomes aware of any apparent infringement, ESR Technology will inform the Customer.
WARRANTY & LIMITATION OF LIABILITY	5 (a)	ESR Technology warrants to the Customer that: <ul style="list-style-type: none"><li>i) ESR Technology will undertake the Work exercising reasonable care and skill</li><li>ii) ESR Technology has full right, power and authority to undertake the Work for the Customer in accordance with the terms of this Agreement.</li></ul>
	(b)	The following provisions in sub-clauses 5(b) to 5(m) set out ESR Technology's entire liability (including any liability for the acts and omissions of its employees, agents or sub-contractors) in respect of: <ul style="list-style-type: none"><li>(i) any breach of ESR Technology's contractual obligations under this Agreement; and (ii) any representation or statement arising under or in connection with this Agreement; and</li><li>(iii) any tortious act or omission arising under or in connection with this Agreement.</li></ul>
	(c)	Any act or omission on the part of ESR Technology or its employees, agents or sub-contractors, falling within sub-clause 5(b) shall, for the purposes of this clauses be known as an "Event of Default". ESR Technology shall not be deemed to have breached its obligations under this Agreement to the extent that any act or omission on its part is due to any delay or failure by the Customer or his representatives to give instructions, authority or information or where the act or omission on ESR Technology's part is due to an act or omission on the part of the Customer.
	(d)	ESR Technology will accept unlimited liability for: <ul style="list-style-type: none"><li>(i) death or personal injury caused by the negligence of ESR Technology;</li><li>(ii) any breach of its obligations implied by Section 12 of the Sale of Goods Act 1979 or Section 2 of the Supply of Goods and Services Act 1982 or under section 2(3) Consumer Protection Act 1987;</li><li>(iii) any matter which it would be illegal for ESR Technology to exclude or to attempt to exclude its liability for; and</li><li>(iv) fraud committed by ESR Technology.</li></ul>
	(e)	Except in the case of any liability on the part of ESR Technology referred to in sub-clause 5(d), ESR Technology's aggregate liability for all Events of Default shall not exceed a sum equal to the value of the Order that gave rise to the claim.
	(f)	Except as provided in sub-clauses 5(d) and 5(e), ESR Technology will be under no liability to the Customer whatsoever (whether in contract, tort (including negligence), breach of statutory duty, restitution or otherwise) for any injury, death, damage or direct, indirect or consequential loss (all three of which terms include, without limitation, pure economic loss, loss of profits, loss of business, depletion of goodwill, and like loss) howsoever caused arising out of or in connection with this Agreement even if such loss was reasonably foreseeable or ESR Technology had been advised of the possibility of the Customer incurring the same.
	(g)	If a number of Events of Default give rise substantially to the same loss, then they shall be regarded as giving rise to only one claim under the Agreement.
	(h)	The Customer hereby agrees to afford ESR Technology not less than <b>sixty (60)</b> days from the date on which the Customer gives notice of an Event of Default, or such longer period as may be reasonable in all the circumstances, in which to remedy any Event of Default before making any claim in respect of such Event of Default.

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- (i) Except in the case of Event of Default arising under sub-clause 5(d), ESR Technology shall have no liability to the Customer in respect of any Event of Default unless the Customer shall have served written notice of the same upon ESR Technology within two years of the date it became aware of the circumstances giving rise to the Event of Default, or the date when it ought reasonably to have become so aware.
- (j) Nothing in this clause 5 shall confer any right or remedy upon the Customer to which it would not otherwise be entitled.
- (k) Except as set out in sub-clause 5(d), ESR Technology hereby excludes to the fullest extent permissible in law, all conditions, warranties, and stipulations, express (other than those set out in this Agreement) or implied, statutory, customary or otherwise which, but for such exclusion, would or might subsist in favour of the Customer.
- (l) Each of ESR Technology's employees and agents may rely upon and enforce the exclusions and restrictions of liability in these sub-clauses 5(b) to 5(m) in that person's own name and for that person's own benefit, as if the words "its employees and agents" followed the word "ESR Technology" wherever it appears in those clauses.
- (m) The parties each confirm that all the exclusions and limitations of liability set out in these clauses are fair and reasonable having regard to all relevant circumstances.
- PUBLICITY** 6 ESR Technology shall have the right to make general references to the Work in press releases or promotional materials but shall not include any detailed results of the Work without the written consent of the Customer.
- CONFIDENTIALITY** 7(a) Each party shall take all reasonable measures to keep confidential for the period of seven (7) years next following the date of acceptance of this offer all information which is received from the other party under this Agreement and which is specified by the disclosing party to be confidential at the time of disclosure or which may come to one party's knowledge or is disclosed to it as a result of visiting the premises of the other party.
- (b) This obligation shall not apply to information which either at the time of disclosure or after disclosure is published or generally available to the public other than through a breach hereof or information already in the receiving party's possession at the time of receipt and which was not acquired directly or indirectly from the disclosing party or information acquired by the receiving party in good faith from a third party or information which the receiving party is obliged to disclose in order to comply with applicable laws.
- THIRD PARTY RIGHTS** 8 Save as may be expressly stated nothing in this Agreement confers or purports to confer on any third party any right or benefit under the Contracts (Rights of Third Parties) Act 1999 to enforce any terms of this Agreement.
- CUSTOMER'S PROPERTY, INFORMATION ETC.** 9 As soon as practicable after acceptance of this offer, the Customer shall arrange, free of charge and risk to ESR Technology, the delivery to ESR Technology of any samples, equipment, materials and/or information ("Customer's Property") required by ESR Technology in order to carry out the Work. On completion of the Work, the Customer's Property shall be treated as detailed in the Work or, if no provision is made in the Work, the Customer's Property shall be retained by ESR Technology for the period of two (2) months next following the completion of the Work, during which time the Customer may make arrangements for their collection. Should the Customer not make such arrangements, ESR Technology shall be entitled to dispose of the Customer's Property at the Customer's expense.
- DELAYS, ACCESS AND SAFETY** 10 ESR Technology shall not be considered in default in the performance of its obligations under this Agreement to the extent that the performance of such obligations is prevented or delayed by any cause beyond its reasonable control. Such cause shall include but shall not be limited to, being denied access to the premises where the Work is being undertaken, the Customer's failure to ensure such premises are safe in accordance with all relevant Health and Safety legislation, the Customer's failure to provide information in the format detailed or other such Customer property required by ESR Technology in the timescales indicated in the Work. ESR Technology shall charge the Customer for any additional fees associated with any such delays.
- CUSTOMER'S ORDER** 11 Unless specifically agreed otherwise in writing by the Customer and ESR Technology, the terms contained in any purchase order, or any other form of contract document issued by the Customer to ESR Technology shall not apply in any way whatsoever to the performance of the Work except for the purposes of specifying the Customer's contract reference number(s) and the Customer's relevant invoicing address(es).
- SEVERABILITY** 12 If any provision of this Agreement is illegal, invalid or unenforceable in any jurisdiction, such illegality, invalidity or unenforceability shall not invalidate the remaining provisions hereof or affect the legality, validity or enforceability of such provision in any other jurisdiction. The parties hereto agree in such event to substitute legal, valid and enforceable provisions for the illegal, invalid or unenforceable provisions so as to implement the intentions of the parties hereto to the extent that this is legally possible.