

Terms and Conditions of Service

1. **Quality and Standards.** ESL will carry out the prescribed tests to the best of its ability, following the guidelines of good laboratory practice. Unless expressly stated otherwise, ESL makes no representation as to any third party accreditation or endorsement of its methods.
 - (a) ESL expresses no opinion as to whether the prescribed tests are adequate for the client's purposes. ESL does not endorse the tested products and shall have no liability for any subsequent use of the tested products.
 - (b) All specifications presented are quoted from information supplied by the client or the client's suppliers. ESL has not independently verified any specifications unless expressly stated otherwise.
 - (c) Operational checks, when required by the applicable standards, are to be performed by client's personnel, observed by ESL personnel. Alternatively, ESL can carry out simple operational checks if a complete procedure and the required instrumentation is supplied. *This service may incur additional charges.*
 - (d) Test levels/durations, if not specified in the standard, are to be supplied by the client. Unanticipated external pressure tests to failure will result in a 20% surcharge above the standard pressure test quote.
 - (e) Testing is inherently destructive by nature. ESL is not responsible for failure, destruction, or damage to any IUTs, fixtures, or auxiliary equipment that may occur, including but not limited to damage due to testing, testing equipment failure or malfunction, or force majeure incidents affecting the premises and/or equipment, as defined below at Section 10.
2. **Fixtures.** Required shock/vibration fixtures are to be supplied by the client and properly designed in accordance with recognized fixture design principles. ESL reserves the right to reject any fixture it deems to be inadequate for the test. As an alternative, ESL can design and fabricate fixtures at the client's expense.
3. **Quotes.** Written quotations expire 30 days from the date of quotation unless withdrawn sooner or otherwise noted. Verbal quotations expire within 24 hours after they are made and are required to be reduced to writing to be confirmed and binding. All prices are quoted exclusive of all delivery charges, federal, provincial, state, or local sales, excise, use or similar taxes, and cost of insurance. ESL assumes no liability for import/export duties, other taxes, or tariffs imposed by any foreign country that may be leveraged as a result of the delivery and return of the IUTs, fixtures, and/or auxiliary equipment.
4. **Orders.** All Purchase Orders ("PO") are subject to acceptance by ESL by a written purchase order acknowledgement ("PO Acknowledgement"). If the client's PO terms and conditions contradict or conflict with any of these Terms, ESL will not be bound by them, unless explicitly accepted in writing in the PO Acknowledgement. All testing services provided by ESL are solely governed by these terms, and all other terms and conditions are rejected unless expressly accepted in writing by ESL.
5. **Credit.** Clients not having established credit ratings with ESL should send satisfactory credit information with their first order or remit a certified cheque or bank draft, or otherwise pay in advance. ESL reserves the right at any time to seek updated credit information and to cancel credit terms and require payment in advance when credit information or payment performance are, in ESL's sole judgment, insufficient to extend credit. Letters of Credit must be irrevocable and confirmed by a bank acceptable to ESL.
6. **Prices, Invoicing, and Terms of Payment.** Prices are firm, based upon the methods given in the applicable standard or described herein. All prices are in USD unless otherwise specified on the PO Acknowledgment. Any deviation from the standard testing method and/or interruption/restart of tests may result in additional charges.
Terms of payment to a client of satisfactory credit worthiness are as follows:
 - (a) Each test segment is invoiced once the test segment has begun. For tests with longer durations, interim invoicing may be applied, at ESL's discretion.
 - (b) Invoice amount is due 30 days after the date of invoice, unless otherwise agreed and noted on the invoice (NET30).
 - (c) ESL reserves the right at any time to require full or partial payment before proceeding with testing if, in ESL's sole and absolute discretion, the financial condition of the client does not justify the terms of payment specified.
 - (d) If client defaults when payment is due, then the whole contract price shall become due and payable upon demand, or ESL, at its option, without prejudice to other lawful remedies, may defer or cancel testing services and, final test reports and certificates may be withheld, at ESL's absolute discretion, until payment for all outstanding invoices is received.
 - (e) Client shall pay interest on any late payments at the rate of 1.5% per month in advance. Additionally, if any payment is more than 15 days past due, ESL reserves the right to suspend performance of any or all of its obligations. In the event ESL, in its sole discretion, determines it necessary to take actions to collect unpaid amounts, client will reimburse ESL for all costs associated with such actions, including legal fees on a full indemnity basis.
 - (f) Any other terms of payment shall be as specified by ESL at time of quotation.
7. **Estimates.** Unless stated otherwise, estimates are based on personnel completing the work during the normal workday (8:00 am to 5:00 pm, Monday through Friday). If personnel are required to work outside of these hours in order to expedite the tests, an overtime surcharge at the rate of 50% of the regular hourly rate may be added to the order.
8. **Scheduling:** ESL will confirm a schedule for services/testing only upon: (i) receipt of an acceptable purchase order from the customer; and, (ii) receipt of the applicable deposit. ESL will use commercially reasonable efforts to adhere to services/ testing schedules. At the time of scheduling tests, ESL requires a non-refundable deposit of 20% of the quoted total for orders at or above \$5,000 and 25% for orders below \$5,000 to hold the scheduled dates, which deposits will be invoiced at the time of scheduling.

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| Revised by: CS | Reviewed by: AW | | Approved by: AW |
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This requirement may be waived, or invoicing delayed until client requests a postponement, at ESL's absolute discretion. Quoted or otherwise communicated schedules provided prior to a binding commitment as described above are provided to assist with planning and guidance but are not firm or binding.

9. **Cancellations and Postponements:** ESL recognizes that circumstances may require clients to postpone or cancel scheduled tests.
 - (a) **Postponed Tests:** To avoid postponement fees, ESL requires a minimum of 2 weeks' notice (10x business days) of any postponement. This will enable ESL to re-schedule and confirm a new test date as requested by the client. Anything less than 2 weeks' notice will impact ESL's ability to accommodate the client's requested new date. If the deposit on scheduling was waived, ESL may invoice the deposit amount at the time of rescheduling, at ESL's discretion. Multiple postponements may result in ESL invoicing a further non-refundable deposit amount on the order, at ESL's discretion.
 - (b) **Cancellation:** To avoid a cancellation fee, client must give ESL at least 5 business days' notice of the cancellation.
 - (c) **Short Notice:** If less than 48 hours' notice is given to ESL of a postponement or a cancellation, client may be charged up to 50% of the total amount of the order. If 24 hours or less notice is given, client may be charged up to 100% of the total amount of the order. Postponement and Cancellation fees will be charged at the sole discretion of ESL.
10. **Delay and Force Majeure.** All quoted or estimated testing times given by ESL are estimates only and time is not of the essence. Any rush or expedited dates to which ESL agrees will in writing and subject to additional surcharges. ESL shall not be liable for any delay or failure of performance of any services due to any cause beyond its control. Such force majeure causes include, but are not limited to, inability to obtain or delay in obtaining necessary materials or components, fire, earthquake, hurricane, flood, blizzard, power outage, embargoes, strike, insurrection, epidemic, quarantine restrictions, acts of God, war, or of client, interruptions of transportation, and civil unrest.
11. **Shipping.** Shipping of the test items to and from ESL's facility is the responsibility of the client. Notification of shipping arrangements is to be given to ESL 14 days prior to shipment. Items left on ESL's premises longer than 30 days from the invoice date will be disposed of at ESL's option unless prior arrangements have been made for long term storage or return.
12. **Limitations of Liability and Indemnities.** Client is solely responsible for selecting the testing specifications and standards appropriate to their needs. Client assumes full responsibility for the overall effectiveness, safety, and efficiency of the tested products and ESL shall have no liability for any subsequent use of the tested products.
 - (a) ESL SHALL NOT, UNDER ANY CIRCUMSTANCES AND UNDER ANY LEGAL THEORY, BE RESPONSIBLE FOR INDIRECT, INCIDENTAL, SPECIAL, CONSEQUENTIAL, OR PUNITIVE DAMAGES INCLUDING, BUT NOT LIMITED TO, INTERRUPTION OF SERVICE, LOSS OF DATA, LOSS OF REVENUE, LOSS OF ANTICIPATED PROFITS, DIMINUTION OF VALUE, BUSINESS INTERRUPTION COSTS, OR LOSS OF PRODUCTS, TIME, GOODWILL, OR BUSINESS, OR ANY SIMILAR DAMAGES, EVEN IF ESL HAS KNOWLEDGE OR SHOULD HAVE KNOWLEDGE OF CLIENT'S PURPOSE FOR OR USE OF THE TESTING SERVICES OR TESTING RESULTS. IN ADDITION, ESL'S AGGREGATE LIABILITY FOR ALL CLAIMS FOR DIRECT DAMAGES UNDER THESE TERMS SHALL BE LIMITED TO THE LESSER OF THE PRICE OF THE SERVICE PROVIDED, EVIDENCED BY ESL'S ACCEPTANCE, OR FIFTY THOUSAND DOLLARS USD.
 - (b) If ESL is made a party to any action, arbitration, claim, or proceeding involving Client, any persons deriving title from Client, or any other third party on the basis of breach of warranty, breach of contract, negligence, strict liability, or other tort arising out of or relating to Services provided by ESL, Client will, to the fullest extent permitted by law, defend, indemnify, and hold ESL harmless for all damages, costs, and expenses in connection with such action, arbitration, claim, or proceeding, including lawyers' fees on a substantial indemnity basis.
 - (c) CLIENT SHALL INDEMNIFY AND SAVE HARMLESS ESL FROM ANY THIRD-PARTY CLAIMS FOR ANY SPECIAL, CONTINGENT, INCIDENTAL, INDIRECT, OR CONSEQUENTIAL DAMAGES, WHETHER ARISING OUT OF BREACH OF WARRANTY, BREACH OF CONTRACT, TORT, STRICT LIABILITY, NEGLIGENCE, OR OTHERWISE.
13. **Hazardous Goods.** It is the duty of the client to inform ESL personnel of any dangerous goods or hazardous materials used in the test items or any safety precautions necessary for their operation or handling. Safety Data Sheets (SDS) must be included where necessary.
14. **CCGP or ITAR.** If any goods or data to be transferred to ESL's possession comes under the Canadian Controlled Goods Program or USA's ITAR regulations, ESL must be briefed on the nature of the controlled goods, including Export Control List Group and Category, and on any special provisions required to safeguard the goods or data prior to the transfer.
15. **General Terms and Governing Law.**
 - (a) The failure of ESL to insist upon the performance of any of or to exercise any of its rights under these Terms shall not be construed as a waiver or relinquishment of said rights and shall not affect ESL's right to insist on the strict performance and compliance of or with any other of these Terms.
 - (b) These Terms may be modified at any time with notice.
 - (c) Client acknowledges that they have read and understand these Terms and agree to be bound by them, and further agree that these Terms are the full and complete exclusive statement of agreement between the parties and supersede all other communications and proposals relating to this subject matter.
 - (d) Any agreement made between the client, except for clients in the USA, and ESL subject to these Terms shall be governed by the laws of the Province of Nova Scotia and any applicable Federal laws of Canada. For clients in the USA, such agreements shall be governed by the laws of the State of New York.

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