



GENERAL TERMS AND CONDITIONS OF SALE

Last revised: January 2023

1. **Terms Acceptance.** These General Terms and Conditions of Sale (“Terms”) apply to the sale, licensing, and/or delivery of Seller’s Products to Customer, except if and to the extent those are deviated from by a Purchase Agreement. These Terms are effective upon Your acceptance of the Purchase Agreement. A “Purchase Agreement” shall mean these Terms, all documents and agreements referenced herein or referencing these Terms, and all other documents and agreements expressly agreed upon by both parties regarding the provision of Products by Seller to Customer, which may include, without limitation, Seller’s quotations/proposals, Statement of Work (SOW), Product Specifications, any documentation accompanying Products, End User License Agreement, Software as a Service Agreement and Maintenance Agreement. “Seller” shall mean either Esko-Graphics BV, Esko- Graphics Inc. or any entity controlled by the same that enters into a Purchase Agreement with Customer. “Products” shall mean any hardware, software (licensed or hosted), and any other goods and Services provided to Customer by Seller pursuant to a Purchase Agreement. “Services” shall mean training, installation, repair, maintenance, support and any other services provided to Customer by Seller pursuant to a Purchase Agreement. Unless otherwise expressly agreed in a Purchase Agreement, no other terms and conditions apply, including any terms and conditions that appear on Customer’s order documents. Customer’s acceptance of Delivery of Products will constitute its acceptance of these Terms. Customer represents that the person accepting these Terms on behalf of Customer has authority to bind Customer.

In the event of a resale of third party products by Seller, including without limitation, third party software, hardware and/or services (collectively “Third Party Products”), these Terms shall apply to the extent the Purchase Agreement between Seller and Customer does not reference the applicable third party’s own terms (“Third Party Terms”). In the event that the Purchase Agreement references the Third Party Terms, such Third Party Terms will apply and govern the purchase of the Third Party Products. Such Third Party Terms shall be deemed to have been entered directly between Customer and the applicable third party. Seller makes no representation or warranties, and shall have no liability to Customer, regarding such Third Party Products.

2. **Delivery.**

(a) Delivery will, as per the Purchase Agreement, be (Incoterms 2020) as follows:

- either Free Carrier (FCA) Seller’s Facility for orders excluding transportation. Title and risk will transfer to Customer upon FCA delivery at Seller’s facility, subject to the provisions of Section 6.(c) below; OR
- Carriage Paid To (CPT) agreed destination for orders that include transportation. Title and risk will transfer to Customer upon loading to first carrier at location of Seller’s facility, subject to the provisions of Section 6.(c) below.

In the absence of any Delivery terms provided for by the Purchase Agreement, the applicable Delivery terms will be FCA Seller’s facility (Incoterms 2020).

Delivery or “shipment” of Software or SaaS Products will occur upon/by making the Software and/or SaaS Product available for download by or accessible to Customer.

(b) Seller will endeavor to deliver the Products in accordance with the delivery dates provided by Seller (“Delivery Date”) and will notify Customer without undue delay if it believes a Delivery Date cannot be met for reasons attributable to Seller. If Seller fails to meet a Delivery Date, Customer may request Seller to set a new delivery date, which the parties shall agree upon in good faith, or which in the absence of such agreement shall be set by Customer at least 15 days from the date of Customer’s written demand (the “New Delivery Date”). Seller will be responsible for any expedited shipping charges necessary to meet the New Delivery Date. If Seller fails to meet

such New Delivery Date for reasons attributable to Seller, Customer may cancel the Purchase Agreement as it pertains to the delayed Products and any other undelivered Products purchased under the same Purchase Agreement that cannot be used without the cancelled Products, and Seller shall refund any pre-payments already made by Customer pertaining to the same.

(c) Unless otherwise agreed in a Purchase Agreement, in the event that Customer wishes to postpone an agreed Delivery Date or a New Delivery Date due to Customer's own reasons but not due to Seller's fault, Seller will make reasonable efforts to deliver the Products by the Customer's requested Delivery Date ("Customer Requested Delivery Date"), provided that Seller shall be entitled to charge the Customer a fixed fee equal to 5% of the price of the Product to accommodate the Customer's request.

(d) Customer is responsible for complying with all applicable export and re-export restrictions and regulations. Products may not be exported or re-exported in violation of any applicable laws or regulations including but not limited to those of the United States of America, the European Union and the United Kingdom. Without limitation, if any Product is identified as an export-controlled item under the export laws of the United States of America, the European Union or the United Kingdom, Customer represents and warrant that it and the users of such Products are not a citizen, or otherwise located within an embargoed nation and that Customer and the users of such Products are not otherwise prohibited under applicable export laws from receiving or using the Product.

(e) Seller reserves the right to change or modify the design or construction of the Products prior to Delivery, provided that such change or modification does not materially affect the form or function of the Products.

3. **Software.** All software Products, including without limitation software incorporated in Seller's hardware, and updates and upgrades to software, are licensed to Customer and subject to Seller's End User License Agreement accompanying the software Products, attached hereto or otherwise available at www.esko.com/termsandconditions ("EULA"). All hosted software services (Software As A Service) are available to Customer and subject to the applicable Seller's Software as a Service Agreement attached hereto or otherwise available at www.esko.com/termsandconditions ("SaaS Agreement"). In case of any conflict, the EULA and SaaS Agreement will control over the terms herein, as the case may be.

4. **Installation; Training; Instruction Manuals.**

(a) Seller will provide installation, implementation and training Services only if and to the extent provided in a Purchase Agreement.

(b) To the extent a Purchase Agreement includes the provisioning of Product maintenance and support services, the same shall be provided by Seller in accordance with and subject to Seller's maintenance (Care Plan) terms and conditions attached hereto or otherwise available at www.esko.com/termsandconditions ("Maintenance Agreement") and any additional terms set forth in the Purchase Agreement. Customer may, without losing its entitlement to maintenance and support services, move hardware Products covered by maintenance services to another location if such location is within the same country, Seller is provided (60) days prior written notice, and with respect to Products installed by Seller, Seller is also permitted to supervise the dismantling, packing and reinstallation of the Products at Seller's then current rates. If a Product is no longer in good working order as a result of such activities, Seller may terminate the maintenance and support service relationship as it pertains to the affected Products or, if requested by Customer, make any necessary repairs at Seller's then applicable time and materials rates.

(c) Subject to availability and Seller's right to refuse to provide the same on a case-by-case basis, Seller shall provide parts and repair services not covered by warranty or maintenance obligations upon request, at the then applicable time and materials rates. Replacement parts and products may be new or refurbished but will always be equivalent to new in performance and functionality. Parts and products replaced will become Seller's property, and are required to be returned to Seller DDP (Incoterms 2020) Seller's designated facilities within fifteen (15) days from being replaced, in the state and condition such parts and products were in at the time of replacement. Title and risk in and to the same will transfer to Seller at the time of delivery to Seller. Seller reserves the right, in case Customer fails to return replaced parts or products within the timeframe set forth herein, to invoice Customer for

such parts and products.

(d) Seller will provide instruction manuals and other Product documentation ("Documentation") as provided in a Purchase Agreement, and as necessary for Customer's safe and proper use of the Products. Customer will comply, and ensure all of its users comply, with all instructions and restrictions set forth in the Documentation.

5. **Product Acceptance; Testing.**

(a) Customer shall inspect the Products upon Delivery for visible defects and will accept the Products if those materially conform to their Specifications.

(b) In case installation by Seller is not included in the Purchase Agreement, Products will be considered accepted upon the earliest of: (i) Customer's acknowledgement of acceptance; (ii) 5 business days after Delivery of the Products to Customer unless Customer, within such timeframe and acting reasonably, provides Seller with a written notice of rejection including a detailed description of the defects found ("Notice of Rejection"); or (iii) Customer's commercial use of the Products.

(c) In case installation by Seller is included in the Purchase Agreement, Seller will test the Products promptly after installation to verify they are free of defects and materially conform to all applicable technical specifications published by Seller or agreed to in writing by Seller ("Specifications") ("Testing"). Upon successful completion of Testing, Seller will submit an acknowledgement form indicating successful completion of testing, requesting acceptance of the Products ("COI", "Completion of Installation Form" or any similar document, jointly referred to as the "Acceptance Form") and the Products will be considered accepted upon the earliest of: (i) Customer's acknowledgement of acceptance; (ii) 5 business days from delivery of the Acceptance Form unless Customer, within such timeframe and acting reasonably, provides Seller with a Notice of Rejection; or (iii) Customer's commercial use of the Products.

(d) Products may only be rejected for material non-conformance to their Specifications. Minor deviations will not prevent acceptance. In case of Customer providing Seller with a Notice of Rejection, Seller will, at no cost to Customer, promptly address any material non-conformance and the foregoing acceptance procedure will be repeated until successful completion, provided that if the affected Products fail to materially conform to their Specifications after three (3) rounds of Testing for reasons attributable to Seller, Customer may either (i) accept the affected Products "AS IS" at a modified purchase price to be agreed upon by the parties at such time, or (ii) return the affected Products to Seller for a refund of the purchase price paid.

6. **Price, invoicing and Payment.**

(a) The purchase price is quoted either on an FCA or CPT basis depending on the delivery mode as set forth in Section 2. Except for CPT shipments (which including shipping), the purchase price excludes shipping, taxes, duties and any special delivery requirements, as per the applicable INCOTERMS. Customer is responsible for all taxes, except taxes based on Seller's income. Pertaining to Software, Customer agrees to be responsible for the payment of all taxes and duties applicable or levied as a result of the import or transfer of the Software or licenses into the country or geographical territory where the Software or licenses will be used, and agrees to indemnify and hold harmless Esko, its officers, agents and employees (the "Indemnitees") from and for any claims, suits and proceedings and any costs, fines and expenses awarded against or incurred by the Indemnitees as a result of its failure to pay such taxes or duties. Any costs for certificates of origin, legalizations, consular invoices and the like will be charged to Customer. If Customer, pursuant to a tax or similar regulation, is required to withhold or deduct any portion of any payment due to Seller under a Purchase Agreement, and provided that Customer promptly delivers to Seller an official receipt for any such taxes withheld or other documents necessary to enable Seller to claim a foreign tax credit, Customer may deduct such taxes from the amount owed to Seller in order to remit the same to the appropriate tax authority. Customer will use commercially reasonable efforts to minimize such payments to the extent permitted by the applicable tax treaty, and Customer shall indemnify Seller against any losses or costs incurred by Seller due to any failure by Customer to make such withholdings or deductions where required.

(b) Seller reserves the right to use electronic invoicing methods, and Customer consents to the same. In case of electronic invoicing Customer shall be responsible to provide Seller with a correct e-mail address to which the electronic invoices should be sent. The electronic invoice shall be deemed to be received on the same day as the sent date.

(c) In the event that a Purchase Agreement provides for deferred payments, then until Seller receives all payments due, title to all tangible Products under the Purchase Agreement shall remain with Seller. Customer is responsible to sign and execute all necessary documents and/or instruments to perfect Seller's claim of title in accordance with the above. Upon full payment, Seller will cooperate with Customer on necessary actions related to transfer of title to Customer. Seller further reserves the right to establish a security interest in all Products delivered to Customer, as a security for the payment of all fees that become due under the corresponding Purchase Agreement.

(d) Unless otherwise agreed in the Purchase Agreement, Customer will pay all invoices net 15 days from invoice date. Payments will be in the same currency as indicated in the invoice. Any taxes will be indicated on the invoice. Seller reserves the right, in case Customer is delinquent on any payment due under a Purchase Agreement, by means of a written notice to Customer (i) to declare any unpaid sums under the corresponding Purchasing Agreement immediately due and payable and/or (ii) to charge Customer a late-payment interest and collection fees (including attorney fees) at rates defined by applicable law, or in the absence thereof at a rate of 1.5 pct. per month.

(e) Unless otherwise agreed in the Purchase Agreement, Seller will invoice Customer 100% upon Delivery.

(f) All prices shall become firm and fixed as from the shipment of the Products by Seller. Until such date, prices communicated by Seller are indicative and subject to change; Customer understands and acknowledges that with a view of offering competitive prices, Seller is entitled to increase the price previously quoted to the extent Seller experiences any increases in labor costs, or in costs of materials and/or components used in the manufacture or supply of Products. In these circumstances, Customer accepts that Seller can increase the price in accordance with inflation as reflected in the Belgian consumer price index (CPI), or by charging Buyer the actual cost increase in case Seller can demonstrate such actual cost increase to be higher. Seller shall notify Customer of any such price increase.

In case of purchase of Perpetual software Licenses (as further described by the applicable EULA or Purchase Agreement), Seller further reserves the right to provide Customer with temporary licenses that expire after a predetermined period of time, until all fees have been paid in full, at which time Seller will promptly provide for a perpetual license.

In case of purchase of renewable term based software licenses (i.e. "Subscription Based" licenses or "Time Limited Licenses" as further described by the applicable EULA or Purchase Agreement), Seller further reserves the right to revise the price for such Subscription Based licenses before any renewal period comes into effect, provided that such new price is communicated to Customer at least thirty (30) days before the applicable renewal date. In case Customer does not agree with such changed pricing, Customer may terminate the affected license in accordance with the terms of the EULA.

(g) Customer must notify Seller of any disputes to an invoice within 15 days of the invoice date. If within that period Customer delivers written notice disputing an invoiced amount and describing the basis or the dispute with reasonable particularity, the Parties shall make a good faith effort to confer to resolve the dispute within ten (10) days of delivery of Customer's notice. Payments are not subject to setoff or recoupment for any present or future claim Customer may have.

(h) Without prejudice to any other remedy available (including but not limited to remedies, suspension and termination rights set forth herein, in the EULA, the SaaS Agreement or Maintenance Agreement), if a party is in material breach of any Purchase Agreement and fails to cure the same within 10 days of written demand, or becomes insolvent, makes an assignment for the benefit of creditors, files or has filed against it a petition in bankruptcy, has a receiver appointed for its assets, is dissolved or liquidated, the other party may immediately (i)

terminate all affected Purchase Agreements or (ii) temporarily suspend the performance of the affected Purchase Agreements, until the defaulting party has remedied any such breach.

(i) In case a Purchase Agreement includes the trade-in of existing software or hardware products, Customer will deliver such products to Seller DDP Seller's designated factory (INCOTERMS 2020), in the state and condition such products were in at the time of the signature of the Purchase Agreement. Title in and to such products shall transfer to Seller at the time of signature of the corresponding Purchase Agreement. Risk of loss shall transfer to Seller at the time of delivery to Seller.

7. **Intellectual Property.** Each party retains all right, title, and interest in its respective trade secrets, inventions, copyrights and other intellectual property. Customer does not acquire any ownership interest in any intellectual property incorporated into or related to the Products, including, without limitation, any Seller software licensed or to which Customer is provided access. Customer may not remove, modify, or obscure any copyright, trademark, or other proprietary rights notices that appear on any Products or other materials provided by Seller. Customer will not modify or remove any indications on the Products or packaging, such as trademarks, trade names and copyrights. Seller has the right to incorporate into its Products any comment, feedback review or other input by Customer free from any royalty and without giving rise to any intellectual property right for Customer in Seller's intellectual property.

8. **Personal Data.** Seller's Privacy Policy ("Privacy Policy") is located on Seller's website at www.esko.com. Seller's Privacy Policy may be amended from time to time in Seller's sole discretion and without prior notice and is hereby incorporated by reference into these Terms. Customer acknowledges that it has read and understood the Privacy Policy. Seller takes all reasonable steps to comply with all applicable privacy, cybersecurity and data protection laws, including but not limited to the General Data Protection Regulation ("GDPR"). If Seller, in performing its obligations under a Purchase Agreement, collects or otherwise processes any personal data, as defined by the applicable data privacy law, it shall comply with the applicable data protection laws and regulations. As a data Controller (as defined by the GDPR), Seller shall only process personal data in accordance with its Privacy Policy and/or the specific terms agreed upon as part of a Purchase Agreement or a separate agreement entered into with Customer. When acting as a data Processor (as defined by the GDPR), Seller shall only process personal data provided to Seller by Customer in accordance with Customer's instructions, including the terms agreed upon as part of a Purchase Agreement or a separate agreement entered into with Customer. While Seller does not intend to transfer personal data to a third country or internal organization, from time to time it may become necessary for Seller to do so. All transfers of personal data will be done in accordance with the Privacy Policy and/or the specific terms agreed upon as part of a Purchase Agreement or a separate agreement entered into with Customer. Data Subjects (as defined by the GDPR) can exercise their rights to request access to and rectification of personal data by contacting Seller at privacy@esko.com, or by sending a letter to the following address: Esko, Privacy Leader, Raymonde de Larochelaan 13, BE- 9051 Ghent Belgium.

9. **Warranty.** Seller warrants hardware Products in accordance with its standard warranty policy attached hereto or available at www.esko.com/termsandconditions. Seller warrants software Products in accordance with the terms of its EULA accompanying the software Products, attached hereto or available at www.esko.com/termsandconditions. THESE WARRANTIES ARE EXCLUSIVE AND IN LIEU OF ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND NON-INFRINGEMENT.

10. **Limitation of Liability.**

IN NO EVENT WILL SELLER, REGARDLESS OF LEGAL THEORY, BE LIABLE FOR ANY INDIRECT, INCIDENTAL, OR CONSEQUENTIAL DAMAGES, SUCH AS BUT NOT LIMITED TO ANY LOSS OF PROFIT, LOSS OF ANTICIPATED SAVINGS, OR ANY OTHER ECONOMICAL ADVANTAGE, ARISING OUT OF OR IN CONNECTION WITH A PURCHASE AGREEMENT OR ANY PRODUCTS OR MATERIALS DELIVERED BY SELLER. IN NO EVENT WILL SELLER'S LIABILITY, REGARDLESS OF LEGAL THEORY, EXCEED, FOR ALL CLAIMS IN AGGREGATE, AN AMOUNT EQUAL TO THE TOTAL AMOUNT PAID BY CUSTOMER IN RELATION TO THE PRODUCTS OR MATERIALS GIVING RISE TO THE CLAIM;

The previous shall apply to the maximum extent permitted by applicable law, and shall not operate to exclude or limit Seller's or its employees or agent's liability for fraud or fraudulent misrepresentation, willful intent or gross negligence.

11. **Confidential Information.** Customer acknowledges that, as part of the commercial transaction with Seller, it may be exposed to certain information that is not generally known to the public which would be considered confidential or proprietary by Seller ("Confidential Information"). Confidential Information includes, without limitation, any Purchase Agreement, Seller's pricing, and all competitively sensitive or secret business, marketing, and technical information disclosed by Seller to Customer. Customer agrees that, in the event it is exposed to such Confidential Information, it: (i) will protect Confidential Information from unauthorized disclosure using commercially reasonable care, (ii) will not disclose Confidential Information to any third party, and (iii) will not use Confidential Information (other than as authorized by these Terms) without the prior written consent of Seller. Within five (5) business days after a request by Seller, or upon termination of the Purchase Agreement, all materials or media containing any Confidential Information will either be returned to Seller or destroyed. Confidential Information does not include information which: (i) was already known to Customer prior to the time that it is disclosed by Seller, as evidenced in writing and without a duty of confidentiality; (ii) is or has entered the public domain through no breach of the Purchase Agreement or other wrongful act of Customer; (iii) has been rightfully received from a third party without breach of any duty of confidentiality; (iv) has been approved for release by written authorization of Seller; or (v) is required to be disclosed pursuant to the order of a court or governmental agency, provided that Seller has, if permitted by law, been given reasonable notice of the order and the opportunity to contest disclosure. The obligations set forth herein shall apply for a period of five (5) years from the date of disclosure of the Confidential Information concerned, except that trade secrets shall remain confidential for so long as information is considered a trade secret. Any specific non-disclosure agreement entered into between the parties pertaining to the subject matter of the Purchase Agreement shall control over this Section 11.

12. **Miscellaneous.**

(a) The parties acknowledge and agree that Seller's ability to provide the Products is subject to Customer meeting all of its obligations in the Purchase Agreements, including without limitation, as applicable, providing timely and sufficient access to the installation site, providing an installation site that conforms to the site requirements set forth in the Purchase Agreement or otherwise communicated by Seller to Customer, and providing the necessary resources typically expected of a Customer, including without limitation, adequate facilities, light, heat, ventilation, electrical currents/outlets, water, internet connectivity, and any other assistance agreed upon as part of a Purchase Order or reasonably requested by Seller.

(b) In case of any conflict between these Terms and the terms set forth in any Purchase Agreement, the latter will control. Any modifications to a Purchase Agreement must be in writing and signed by both parties.

(c) Customer may not assign or otherwise transfer any of its rights, interests or obligations under a Purchase Agreement without Seller's prior written consent. Any assignment contrary to this subsection will be null and void. Seller may assign any of its rights and obligations under any Purchase Agreement with Customer to any existing or future affiliate and/or to any third party involved in a merger or acquisition or the sale of assets, provided that (i) the corresponding affiliate or third party agrees to be bound by the provisions herein, and (ii) provided further that within a reasonable time following such assignment, Customer is provided with notice of the same; Seller may subcontract the performance of any of its obligations under a Purchase Agreement to any existing or future affiliate and/or to any third party subcontractor, provided that Seller remains responsible for the performance by the subcontractor of such obligations in accordance with the terms of the Purchase Agreement.

(d) The failure of either party to strictly enforce any of the terms or conditions in any Purchase Agreement will not be considered a waiver of any right therein. If any term is declared invalid or unenforceable to any extent, the remainder of the terms or conditions will not be affected thereby, and the ineffective, invalid, or unenforceable provision shall be deemed replaced by a provision that is valid and enforceable and that comes closest to expressing the commercial intention of the provision in question.

(e) The termination or expiration of any Purchase Agreement will not affect the survival and continuing validity of any provision which expressly or by implication is intended to continue in force after such termination or expiration.

(f) Neither party will be responsible for, nor be in default under a Purchase Agreement due to any delays or failure of performance (except payment obligations) resulting from acts or causes beyond its reasonable control, including without limitation acts of God, acts of war, third-party labor strikes, power failures, floods, earthquakes, pandemic, other natural disasters, or other similar events ("Force Majeure Event"). In the event that either party is unable to perform any of its obligations under a Purchase Agreement because of a Force Majeure Event, the party who has been so affected will promptly give notice to the other and will exercise all reasonable efforts to resume performance.

(g) All disputes arising from or related to a Purchase Agreement will be governed exclusively by and construed in accordance with the laws of the country and state, or other applicable geographic designation, where the Seller is located, without reference to its conflicts of law principles. Each party hereby consents to the exclusive personal jurisdiction and venue of the courts of the country and state or other applicable geographic designation where the Seller is located to hear and decide upon any dispute arising out of a Purchase Agreement or in relation to Products delivered by Seller. Notwithstanding the previous, Seller may choose to bring an action before the courts of the location where Customer is located if the action concerns the collection of a pecuniary debt or protection or enforcement of Seller's intellectual property rights. The parties expressly exclude the United Nations Convention on Contracts for the International Sale of Goods from applying to any Purchase Agreement.

(h) All Purchase Agreements between the parties (including these Terms) are entered into by the Parties knowingly and in full knowledge of the facts. The parties explicitly agree that the terms agreed as part of the Purchase Agreements entered into, reflect a balanced legal relationship between them within the scope of the general economic purpose, the common commercial practice and the specific Products to which these contracts relate. The parties' relationship is that of independent contractors. This Agreement does not create a partnership, franchise, joint venture, agency, fiduciary, or employment relationship between the parties. Each party will be solely responsible for payment of all compensation owed to its employees, as well as all employment-related taxes.