

# Terms and Conditions of Sale

## 1. DEFINITIONS

"Buyer" means the party to whom the Company agrees to supply the Goods. "The Company" means Eland Cables Limited, Company number 01229226 and having its registered office at 120 Highgate Studios, 53-79 Highgate Rd, London NW5 1TL or any subsidiary, associated or holding company thereof. For the avoidance of doubt, it is hereby declared that the Company may perform any of its obligations under these terms and conditions through any of its subsidiary or associated companies or its ultimate holding company. Acts or omissions of such companies shall be deemed to be acts or omissions of the Company. "Conditions" means these terms and conditions of sale. "Goods" means all goods to be supplied by the Company to the Buyer.

## 2. CONDITIONS APPLICABLE

2.1 These Conditions shall apply to all contracts for the sale of Goods by the Company to the Buyer to the exclusion of all other terms and conditions including any terms or conditions which the Buyer may purport to apply under any purchase order, confirmation of order or similar document.

2.2 No quotation, advertisement or issue of a catalogue by the Company shall constitute an offer. A contract shall be created only when the Company, through a duly authorized representative, has accepted either in writing or orally an offer from the Buyer to purchase Goods; such acceptance shall thereupon create an individual and legally binding contract to be governed by these Conditions.

2.3 All orders for Goods shall be deemed to be an offer by the Buyer to purchase Goods pursuant to these Conditions. For the avoidance of doubt, any order form or quotation sent by any Buyer to the Company and accepted by the Company shall not constitute an acceptance of any Conditions contained in that order form or quotation but shall constitute an individual and legally binding contract between the Company and the Buyer subject to these Conditions only.

2.4 Acceptance of delivery or the giving by the Buyer of any delivery instructions for the Goods or any other conduct of the Buyer in confirmation of the transaction shall be deemed conclusive evidence of the Buyer's acceptance of these Conditions.

2.5 These Conditions shall apply to each individual and legally binding contract entered into between the Company and any Buyer for successive deliveries of Goods. Where any Buyer places an order for successive deliveries of Goods, which is accepted by the Company, each delivery of Goods shall be treated as an individual and legally binding contract and disputes arising out of or in connection with one delivery shall not affect the balance of deliveries to be made in execution of the order from the Buyer.

2.6 Any variation to these Conditions (including any special terms and conditions agreed between the parties) shall be ineffective unless mutually agreed in writing by an authorised representative of the Company and the Buyer. In the event of any such material variation, the Buyer has the right to terminate the contract by written notice, without penalty, before any variation becomes effective, provided that all outstanding payments due to the Company are made.

## 3. ALTERATION

3.1 The Company reserves the right to alter these Conditions from time to time by giving written notice of such alteration to the Buyer. In the event of any such material variation, the Buyer has the right to terminate the contract by written notice, without penalty, before any variation becomes effective, provided that all outstanding payments due to the Company are made.

3.2 The Company reserves the right to make improvements or non-material modifications to any part of the Goods resulting from any variation in the specifications or technical data. The Company will not be liable in respect of any loss or damage caused by or resulting from any such improvements or non-material modifications. The Company will take all reasonable steps to advise the Buyer of any such impending variation.

## 4. QUOTATIONS

4.1 Quotations by the Company in respect of Goods to be supplied to the Buyer's order are issued by the Company on the basis that the terms quoted, will in the normal course of business remain open for the placing of orders for 30 days from the date of the quotation. On the expiry of the 30 day period, the Company reserves the right to vary or cancel any quotation without notice.

4.2 Without prejudice to Clause 4.1, at the discretion of the Company, a quotation may be withdrawn at any time, on immediate notice to the Buyer.

4.3 Quotations for Goods offered ex-stock are valid only for immediate acceptance and are otherwise subject to prior sale and any change in the Company's prices.

## 5. PRICE

5.1 Prices given by the Company in any catalogues, price lists or other advertising literature or material are intended only as a guide, are not binding on the Company, and may vary. All prices quoted are exclusive of United Kingdom Value Added Tax. In the case of goods sold outside the United Kingdom, all prices quoted are exclusive of import duties and any local taxes and/or applicable duties which shall be payable by the Buyer.

5.2 Goods are sold at the price at the date of order. All contracts of sale are subject to Value Added Tax where appropriate, at the rate applying on the date of order.

5.3 All quoted prices are based on the cost to the Company of supplying the Goods to a Buyer based in the United Kingdom.

## 6. RESCHEDULING AND CANCELLATIONS

6.1 The Buyer may request changes to the date or place of despatch of all or part of an order no later than 48 hours prior to despatch of the Goods. In this event, unless the circumstances fall under the terms of Clause 8.3, the Buyer will be liable to pay a reasonable rescheduling charge to be determined by the Company to cover the Company's expenses incurred as a result of such rescheduling.

6.2 Cancellation of orders in whole or in part cannot be accepted without the Company's consent in writing and will only be accepted on the basis that the Buyer indemnifies the

Company in respect of all losses, costs or expenses incurred by the Company up to the date upon which the Company accepts the Buyer's notice of cancellation.

## 7. PAYMENT

7.1 Unless otherwise agreed in writing, the Buyer must pay the full purchase price of each instalment of the Goods delivered to him as though each instalment was delivered under a separate contract at the end of the month following the month of delivery. If the purchase price has not been paid in full by this date, the Buyer will be liable to pay the full purchase price together with daily interest on the amount remaining outstanding at the rate of 4 per cent per annum above the base lending rate for the time being of the National Westminster Bank Plc from the date payment becomes due until the Company receives payment in full, and the Company may at its option (a) suspend or cancel further deliveries under any contract with the Buyer, and/or (b) resell the Goods.

7.2 If delivery of any Goods is delayed at the request of the Buyer in accordance with Clause 7.1 above, the Company shall give notice to the Buyer when the Goods are available for delivery and the Buyer shall pay for such Goods at the end of the month following the month in which they receive the Goods and the risk in such Goods shall pass to the Buyer on the date of giving such notice by the Company.

7.3 The Buyer shall pay the Company's storage costs for such goods.

## 8. DELIVERY

8.1 The Company shall deliver the Goods to the Buyer at such place (in the United Kingdom) as may be agreed in writing between the parties. Unless otherwise agreed, all costs and expenses of delivery from the Company to the Buyer are included in the contract price in accordance with the Company's standard delivery charges as applying at the time of delivery. The Company reserves the right to make an additional charge to cover any increase in transport costs occurring before the date of delivery.

8.2 Delivery commitments are entered into in good faith but any time quoted for delivery or despatch is an estimate only and shall not be deemed to be a term of the contract.

8.3 The Company shall not be liable for any loss or damage of any kind whatsoever arising directly or indirectly out of any delay or failure to deliver the goods by the estimated delivery date or time, unless the Company and the Buyer agree separately in writing that the Goods must be delivered by a certain date. The Company will take all reasonable steps to advise of any impending material delay in delivery.

8.4 Delivery of the Goods to the Buyer shall be effected, at the option of the Buyer, by one or other of the following methods:-

8.4.1 the Company shall deliver the Goods to the Buyer at the Buyer's address. In such event the risk of loss, damage or destruction of the Goods shall pass to the Buyer at the time of delivery to the Buyer or, if the Buyer wrongfully fails to take delivery of the Goods, the time the Company has tendered delivery of the Goods, and the Company shall insure the Goods until such delivery; or

8.4.2 the Company shall deliver the Goods to the Buyer at the Company's premises. In such event, the risk of loss, damage or destruction of the Goods shall pass to the Buyer at the point the Goods leave the Company's premises, the Buyer shall arrange collection of the Goods either by itself or by an independent carrier, and the Buyer shall insure the Goods from the point the Goods leave the Company's premises.

8.5 The Buyer shall accept delivery of the Goods within a period of five days of being notified by the Company that the Goods are available for delivery. If the Buyer shall fail to accept delivery as aforesaid the Company shall be entitled:-

8.5.1 to charge interest to the Buyer at the rate of 4% per annum above the base rate for the time being of the National Westminster Bank Plc (such interest being calculated daily and charged monthly by the Company and payable by the Buyer on demand by the Company) on all sums due to the Company in terms of the contract and for the time being unpaid in respect of the period from the expiration of the said period of five days until delivery of the Goods is accepted by the Buyer; and

8.5.2 to charge the Buyer storage and all other relevant costs.

8.6 The Company reserves the right to despatch and invoice any part of an order when available.

## 9. PART DELIVERY

Each delivery shall be considered as a separate contract and any failure in performance on the part of the Company in respect of any delivery shall not vitiate the contract as to other deliveries, and no defect or default in any part delivery shall entitle the Buyer to treat the contract repudiated for the balance of the Goods remaining to be delivered under it.

## 10. NON-DELIVERY OR DAMAGE TO GOODS IN TRANSIT

10.1 Any claim by the Buyer for loss or damage apparent on inspection or for non-delivery must be made in writing by the Buyer within 6 days of the earlier of delivery or receipt of the Company's invoice. In the case of damage, the said notice must contain full particulars of the alleged damage.

10.2 No claim for damage in transit or 'short' delivery will be considered by the Company unless the signature of the Buyer on the delivery note (if any) is appropriately qualified.

10.3 On being so notified, the Company shall have the right to inspect and test the Goods provided that the Company does so within 14 Business days from receipt of the Buyer's notice. In the event that any Goods or any part thereof are found to be (and agreed by the Company to be) materially defective the Company will at its option refund the price paid or replace, by delivery to the Buyer's address, the whole or such part of the Goods supplied as the Company shall in its sole discretion deem reasonable in order to repair the defect, provided that the Company is notified in writing within three days of discovery of any such defects.

10.4 There shall be no liability on the Company in terms of this Clause 10 for any defects which in the opinion of the Company, occur as a result of:-

10.4.1 misuse of the Goods or negligence on the part of any person other than the Company;

10.4.2 loss or theft of the Goods or any part of them;

10.4.3 damage from any cause other than negligence by the Company or the Company's personnel;

10.4.4 unauthorised modification, alterations or repair of any of the Goods; or

10.4.5 fair wear and tear.

10.5 In the event that the Company chooses to replace the Goods in question, the Buyer shall permit the Company to retake possession of the Goods originally delivered and the Company shall deliver the replacement Goods within a reasonable time. The replacement Goods shall be accepted by the Buyer in substitution for the Goods replaced.

10.6 The total liability of the Company in respect of all breaches of contract in relation to the Goods shall not exceed the difference between the value of the Goods in question at the time of delivery and their value as set out in the invoice.

10.7 Where the Goods are for delivery by instalments, any defect in any instalment shall not be a ground for cancellation of the remainder of the instalments and the Buyer shall be bound to accept delivery thereof.

#### 11. PACKAGING

Unless agreed otherwise in writing by the Company and the Buyer, all Goods will be packaged in accordance with the Company's standard practice.

#### 12. RISK

12.1 The risk of loss, damage or destruction of the Goods shall pass to the Buyer when either the Goods are collected from the Company's premises or the Goods have been delivered to the Buyer.

12.2 If the Company shall effect insurance over the Goods during transit (whether contractually bound to do so or not) such insurance will cease to become the responsibility of the Company when either the Goods are collected from the Company's premises or the Goods have been delivered to the Buyer.

#### 13. TITLE

13.1 The risk in the goods shall pass from the Company to the Buyer upon delivery of such goods to the Buyer. However, notwithstanding delivery and the passing of risk in the goods, title and property in the goods, including full legal and beneficial ownership, shall not pass to the Buyer until the Company has received in cash or cleared funds payment in full for all goods delivered to the buyer under this and all other contracts between the Company and the Buyer for which payment of the full price of the goods thereunder has not been paid. Payment of the full price of the goods shall include the amount of any interest or other sum payable under the terms of this and all other contracts between the Company and the Buyer under which the goods were delivered

13.2 Until the transfer or passing of property in the Goods under Clause 13.1 above:

13.2.1 the Buyer shall keep the Goods on its own premises in safe custody, separate from any goods which are the property of the Buyer or any third party, properly stored, protected and insured and in such a way that they are readily identifiable as belonging to the Company;

13.2.2 the Company shall be entitled at any time to require the Buyer to deliver up the Goods to the Company and, if the Buyer fails to do so forthwith, to enter upon any premises of the Buyer or any third party where the Goods are stored with such transport as may be necessary and repossess the Goods. In such circumstances the Buyer hereby waives any right to claim from the Company damages caused to the Buyer's premises, business reputation, profits or business whatsoever as a result of such entry. The exercise of such a right shall be without prejudice to any other rights the Company may have; and

13.2.3 the Buyer shall not be entitled to pledge or in any way charge by way of security for any indebtedness, any of the Goods, but if the Buyer does so all monies owing by the Buyer to the Company shall forthwith become due and payable.

13.3 The Buyer is hereby appointed as the Company's agent until such time as payment is received in full for the Goods and the Company grants authority to the Buyer to sell or use the Goods in the ordinary course of business. The Company reserves the right at any time to terminate the Buyer's power of sale or use hereby conferred at its discretion and, without prejudice to the generality of the foregoing, where the Buyer is in default for longer than seven days in the payment of any sum whatsoever due to the Company for whatever reason or if the Company have any reason to doubt the solvency of the Buyer.

13.4 Any power of sale or use which the Buyer may have over Goods which are the property of the Company shall automatically cease:-

13.4.1 if the Buyer (being an individual or firm) shall become apparently insolvent or commit any act of bankruptcy; or

13.4.2 if the Buyer (being a company) has a receiver or administrator appointed over the whole or any part of its property or undertaking or a petition is presented or a resolution proposed for its winding-up; or

13.4.3 if the Buyer ceases or threatens to cease to carry on business; or

13.4.4 if an administration order in relation to the Buyer is applied for under the provisions of Part II of the Insolvency Act 1986; or

13.4.5 if the Buyer is deemed unable to pay its debts within the provisions of Section 123 of the Insolvency Act 1986; or

13.4.6 if the Buyer enters into any composition or arrangement for the benefit of its creditors;

13.4.7 if the Buyer defaults in making payment in accordance with the terms hereof under any contract or any payment is not received by the Company when due; or

13.4.8 if any event occurs in relation to the Buyer which in any jurisdiction to which the Buyer is subject is analogous to any of the events set out in sub-clauses 13.4.1 to 13.4.7 above.

#### 14. WARRANTY

14.1 The Company warrants that it has full and valid title to and possession of the Goods.

14.2 Any warranties contained herein or implied by law apply to the original Buyer of the Goods only and are not transferable.

#### 15. ECONOMIC LOSS

The Company shall not be liable, whether in contract or in tort or otherwise, and irrespective of cause for:

15.1 any loss of profit, business, contracts, revenues or anticipated savings suffered by the Buyer; or

15.2 any special, indirect or consequential loss of any nature whatsoever suffered by the Buyer.

#### 16. LIMITATION OF LIABILITY

The Company's liability to the Buyer in respect of the alleged defective performance or non-performance of any Goods supplied, whether such liability arises in contract, tort or otherwise,

shall be limited in all circumstances to the price of the Goods specified in the invoice.

#### 17. FORCE MAJEURE

17.1 The Company shall not be liable to the Buyer for any delay in or failure to perform its obligations hereunder where such delay or failure results from force majeure, Act of God, fire, accident, war, terrorism, rebellion, riot, sabotage, official strike, lock-outs or official labour disputes, inability to obtain energy or suitable components, material, equipment, transportation services or any other causes beyond the Company's reasonable control. 17.2 Where the Company are prevented from carrying out further performance under the contract by reason of any of the events specified in Clause 17.1 above, the Buyer shall forthwith pay the Company the contract price less a reasonable sum for any part of the contract not performed by the Company.

#### 18. TERMINATION

18.1 In addition to the provisions of Clause 3.1, this contract may be terminated forthwith by notice in writing:

18.1.1 by the Company, if the Buyer fails to perform any of its obligations under these terms and conditions, and such failure continues for a period of 14 days after written notice has been served by one party on the other party requesting that the breach be remedied; or

18.1.2 by the Company if the Buyer, being an individual, firm or partnership becomes apparently insolvent (within the meaning of the Insolvency Act 1986) or the equivalent thereof in any foreign jurisdiction, or being an incorporated company, becomes unable to pay its debts within the meaning of Section 123 of the Insolvency Act 1986 or if a receiver or liquidator (including a provisional liquidator) is appointed over any of the assets or the undertaking of the Buyer or if an administrator is appointed to govern the affairs of the Buyer, or if a resolution is passed for the voluntary winding up of the Buyer or an application is made to the Court for the compulsory winding up of the Buyer, or if the Buyer generally makes any arrangement or composition with its creditors or becomes involved in any legal proceedings concerning its solvency or ceases trading.

18.2 In the event that the contract is terminated by the Company in accordance with Clause 18.1 above, all sums due from the Buyer to the Company in respect of Goods shall become immediately due and payable and the Company shall, without prejudice to any other rights and remedies which it may have and without any liability whatsoever, be at liberty forthwith upon serving notice in writing to the Buyer:-

18.2.1 to suspend or cancel all deliveries, orders and contracts or any part thereof remaining between the Company and the Buyer for the delivery of Goods; and

18.2.2 to enter onto and to have access to the Buyer's premises wherever situate, and acting either by itself or through agents appointed by it and using any transport necessary, for the purposes of removing, realising and disposing of any Goods in which property has not passed from the Company to the Buyer in accordance with Clause 13 of these Conditions and the Buyer hereby expressly authorises the Company and its agents to enter onto such premises for any such purposes.

#### 19. EXPORT

Where the Goods are supplied for export from the United Kingdom, Incoterms 2000 shall apply and the Goods shall be delivered by the Company either "EXW" (Ex Works), "FOB" (Free on Board), "CIF" (Cost, Insurance and Freight) or "DDP" (Delivered Duty Paid) as notified in writing in advance by the Company to the Buyer.

#### 20. INTELLECTUAL PROPERTY RIGHTS

The Buyer hereby acknowledges that any patent, copyright, design, trade mark or other industrial or intellectual property rights in relation to the Goods in which the Company or the respective manufacturer, developer or third party has an interest shall at all times and for all purposes vest and remain vested in the Company or such manufacturer, developer or third party and the Buyer shall not acquire any rights thereto.

#### 21. GENERAL

21.1 The headings in this Agreement are for reference only and shall not affect its interpretation.

21.2 No delay by the Company in enforcing its rights shall prejudice or restrict the rights of the Company, and no waiver of any such rights or of any breach of any contractual terms shall be deemed to be a waiver of any other right or any other breach.

21.3 The Buyer agrees not to assign any of its rights herein without the prior written consent of the Company.

21.4 In the event of any of these terms and conditions or any part of them being judged illegal or unenforceable for any reason, such terms and conditions (or the appropriate part thereof) shall be deleted and the remaining provisions hereof shall continue in full force and effect.

21.5 Any notice or other communication to be served under the contract shall be given in writing and may be served by leaving it at, or sending it by facsimile or by first class recorded delivery post or by air-mail to, the business address of the relevant party. Any notice so served shall be deemed to have been received:-

21.5.1 if delivered personally, at the time of delivery;

21.5.2 if sent by first class recorded delivery post, 48 hours after the date of posting;

21.5.3 if sent by air-mail, 96 hours after the date of posting; and

21.5.4 if sent by facsimile, copier or other electronic means of communication, if the notice was sent during the business hours of the addressee, on the day of transmission, and otherwise on the next following business day and for the purposes of this Clause

21.5 "business hours" and "business day" means the hours of 9 a.m. to 5 p.m. local time in the United Kingdom. In proving that any notice or document was given or served, it shall be necessary only to prove that the same was properly addressed and posted or faxed.

21.6 These terms and conditions and any contract between the Company and the Buyer shall be governed by and construed in accordance with the laws of England. The Company and the Buyer agree to submit to the non-exclusive jurisdiction of the English Courts.

#### 22. TECHNICAL ADVICE OR ASSISTANCE OR RECOMMENDATIONS

22.1 The Company at the request of the Buyer, may, but without obligation to do so, furnish technical advice or assistance or recommendation with reference to the use of the goods or materials sold hereunder, on the express condition that any such advice or assistance or recommendation is given and accepted at the Buyer's risk and the Company shall not be liable for any loss, damage costs or claims arising therefrom.

22.2 The Company is not responsible for the consequences of any inadequacies, inaccuracies or other deficiencies in any drawing, specification or other information provided by the Buyer to the Company