

# Terms and Conditions of Purchase

## 1. DEFINITIONS

"Buyer" means Eland Cables Limited, company number 01229226 and having its registered office at 120 Highgate Studios, 53-79 Highgate Road, London, NW5 1TL or any subsidiary, associated or holding company thereof. For the avoidance of doubt, it is hereby declared that the Buyer may perform any of its obligations under these 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 Buyer.

"Contract" means the Purchaser Order and the Conditions.

"Conditions" means these terms and conditions of purchase.

"Goods" means all goods purchased by the Buyer from the Seller.

"Purchase Order" means the Buyer's standard purchase order to which these Conditions shall apply.

"Seller" means the person, firm or company named in the Purchase Order.

## 2. CONDITIONS APPLICABLE

2.1 These Conditions shall govern all contracts for the purchase of Goods placed by the Buyer with the Seller and shall prevail over any inconsistent terms or conditions contained in or referred to in the Seller's quotation, acceptance of order, correspondence or elsewhere or implied by trade custom, practice or course of dealing.

2.2 No addition to or variation of or exclusion or attempted exclusion of the Purchase Order and these Conditions or any of them, shall be binding upon the Buyer unless made in writing and signed by a duly authorised representative of the Buyer. No other condition shall apply to the Contract except as agreed by the Buyer in writing.

2.3 Goods supplied before a Purchase Order shall have been placed or before acknowledgement by the Seller shall be subject to these Conditions.

## 3. BASIS OF PURCHASE

3.1 The Purchase Order constitutes an offer by the Buyer to purchase the goods from the Seller subject to these Conditions. No verbal or written order, request or enquiry for goods is binding on the Buyer unless set out in a Purchase Order signed by the duly authorised representative of the Buyer.

3.2 Execution or acknowledgement by the Seller of a Purchase Order in accordance with the provisions of Clause 4 in whole or in part, constitutes acceptance thereof.

## 4. ACCEPTANCE

The Buyer shall be bound by the Purchase Order only if the Seller accepts it in writing within 7 days of the date of the Purchase Order or such other time as may be specified in the Purchase Order. Any Seller's conditions shall not apply and the Seller's acceptance of the Purchase Order shall be deemed to be unconditional.

## 5. VARIATIONS

5.1 The Buyer shall not permit or be bound by any purported variation, waiver of or addition to the Purchase Order or these Conditions except as agreed by the Buyer in writing. Claims for extras will not be accepted unless previously agreed in writing under this Condition.

5.2 The Buyer reserves the right to alter these Conditions from time to time by giving reasonable prior written notice of such alteration to the Seller.

## 6. PRICE AND PAYMENT

6.1 Subject to Clause 6.1.1 all prices for Goods shall be as stated in the Purchase Order and no increase in price shall be permitted unless agreed by the Buyer in writing.

6.1.1 A variation in the price for Goods shall be accepted by the Buyer only where such variation refers directly to London Metal Exchange metal variations or has been agreed otherwise in writing.

6.2 Where a price for the Goods has not been stated within the Purchase Order, the Seller shall be responsible for seeking confirmation of the price from the Buyer before the Purchase Order is processed.

6.3 All prices are fixed and inclusive of delivery and all other like charges (if any) due and payable on or in respect of the Goods supplied under the Contract and are not subject to adjustment unless agreed in writing between the parties. Customs duties, import taxes and other equivalent charges (if any) shall be for the Buyer's account.

6.4 The Seller shall be entitled to invoice the Buyer on or at any time after delivery of all the Goods, and each invoice shall quote the Buyer's Purchase Order number.

6.5 Unless otherwise stated in the Purchase Order, the Buyer shall make payment of the invoice within 60 days after the end of the month of receipt by the Buyer of a proper invoice or, if later, within 60 days after acceptance of the Goods by the Buyer. Any invoice which fails to state clearly the correct reference of the Goods as set out in the relevant Purchase Order shall not be a proper invoice for the purpose of this Clause.

6.6 The Buyer shall be entitled to set off against the price any sums owed to the Buyer by the Seller on whatever account.

## 7. SPECIFICATION

7.1 The Seller shall make due and diligent enquiry of the Buyer as to what purpose or purposes the Goods ordered are to be used for. The Buyer shall respond fully and accurately to all such requests for information from the Seller.

7.2 All Goods supplied by the Seller to the Buyer shall:

7.2.1 Conform as to quantity, quality and description with the Purchase Order;

7.2.2 Conform to any specification, drawing or sample specified in the Purchase Order and subject thereto, be the best of their kind and of first class workmanship, conforming to the latest British Standards Specification or if none exists, with the best industry standards;

7.2.3 Be capable of any standard of performance specified in the Purchase Order; and

7.2.4 Be fit for the purpose for which they are required and which the Seller is aware of in terms of its inquiries made pursuant to Clause 7.1.

7.3 Any specification supplied by the Buyer to the Seller, or specifically produced by the Seller for the Buyer, in connection with the Contract, together with any dies, moulds, tools and materials and any intellectual property rights in the specifications shall be and shall

remain the exclusive property of the Buyer.

7.4 The Seller shall not disclose to any third party or use any specification except to the extent that it is or becomes within public knowledge otherwise than as a result of a breach by the Seller of this Clause 7.3, or as required for the purpose of the performance by the Seller of the Contract.

## 8. SUB-CONTRACTING

8.1 The Seller shall not assign or sub-contract all or part of the Contract without the Buyer's consent in writing.

8.2 Any permitted assignment or sub-contracting shall be made subject to the terms of the Contract.

8.3 The Seller shall provide copy orders of all permitted sub-contracted work on the day following the placing of such orders which must include the Buyer's Purchase Order number.

## 9. BUYER'S INSPECTION AND TESTING

9.1 The Buyer's representatives will be entitled access to the Seller's premises or works or the works of any of the Seller's sub-contractors to inspect and test the Goods during manufacture, processing or storage and to assess progress towards meeting the delivery date. Such inspection and testing by the Buyer shall not relieve the Seller of any obligations to the Buyer to which the Seller would otherwise be subject nor shall create any estoppel in favour of the Seller against the Buyer.

9.2 The Seller shall if requested by the Buyer give the Buyer reasonable notice of all tests which it intends to carry out on the Goods and the Buyer shall be entitled to be represented at such tests.

9.3 The Buyer reserves the right to call for certificates as the Buyer may require for the Goods at any stage of manufacture or assembly.

9.4 If, as a result of inspection or testing, the Buyer is not satisfied that the Goods will comply in all respects with the Contract, then the Buyer shall be entitled within seven days thereafter to terminate the Contract and the Seller shall indemnify the Buyer in full against all direct, indirect and consequential liability, loss (including loss of profit), damages, costs and expenses (including legal expenses) awarded against or incurred or paid by the Buyer arising from or in connection therewith.

## 10. DELIVERY

10.1 The Goods shall be delivered to the address for delivery specified in the Purchase Order on the date or within the period stated therein, between 09.00 and 17.00 hours on a week day which is not a bank holiday.

10.2 Where the date of delivery of the Goods may be specified after acceptance of the Purchase Order, the Seller shall give the Buyer reasonable notice of the specified date.

10.3 The date of delivery of the Goods is of the essence of the Contract. The Seller shall notify the Buyer immediately if for any reason they are unable to deliver the Goods on the specified date.

10.4 A packing note quoting the number of the Purchase Order must accompany each delivery or consignment of the Goods and must be displayed prominently.

10.5 If the Goods are to be delivered by instalments, the Contract will be treated as a single contract and not severable.

10.6 The Buyer shall be entitled to reject any Goods delivered which are not in accordance with the Contract, and shall be deemed not to have accepted any Goods until the Buyer has had a reasonable time to inspect them following delivery or, if later, within a reasonable time after any latent defect in the Goods has become apparent.

10.7 If Goods are not supplied in accordance with the Contract, then without prejudice to any other remedy to which it shall be entitled whether pursuant to these Conditions or otherwise, the Buyer shall be entitled to terminate the Contract and to be repaid forthwith any price paid or to obtain equivalent Goods or rectification of the Goods from a suitable source, the cost whereof shall be reimbursed by the Seller to the Buyer.

## 11. PACKAGING

11.1 Goods shall be properly and securely packed and properly labelled or otherwise identified and shall bear the Buyer's Purchase Order number.

11.2 Unless otherwise agreed by the Buyer in writing, the Seller will provide all cases and packing material free of charge. When required, the Buyer will use its best endeavours to have drums or reels returned to the Seller at the Seller's risk and expense.

11.3 Without prejudice to the Buyer's right of rejection and/or cancellation, damage to Goods not properly or securely packed will be charged to the Seller.

## 12. RISK AND PROPERTY

12.1 Risk of damage to or loss of the Goods shall pass to the Buyer upon delivery to the Buyer in accordance with the Contract.

12.2 Property in the Goods, including any components thereof and/or raw materials incorporated therein, shall pass to the Buyer upon delivery.

12.3 All property of the Buyer (including without limitation the Goods and the specification) for the time being in the custody or possession of the Seller shall be at the risk of the Seller which shall at its own expense insure such items against the risk of loss and/or damage from whatever cause and all other usual risks.

12.4 All tooling in the custody or possession of the Seller shall be maintained in good condition at the Seller's expense.

### 13. WARRANTY

13.1 The Seller warrants that the design, construction and quality of the Goods to be supplied under the Contract comply in all respects with all relevant requirements of any statute, statutory rule, regulation or order, or any other instrument having the force of law in the United Kingdom which may be in force at the time when the Goods are supplied.

13.2 The Seller warrants to the Buyer that the Goods are of a merchantable quality and fit for their purpose (as ascertained by the Seller in accordance with the provisions of Clause 7.1) and will for twelve months after delivery, be free from defects, whether of design, material, workmanship or otherwise, correspond with any relevant specification or sample, and comply with all statutory requirements and regulations relating to their supply.

13.3 Without prejudice to any other remedy, if the Goods or any of them are not delivered in accordance with the Contract, the Buyer is entitled to require the Seller either to repair the Goods or to supply replacement Goods in accordance with the Contract or to treat the Contract as discharged by the Seller's breach and to require immediate repayment of any part of the price which has been paid.

13.4 The Seller shall indemnify the Buyer in full against all direct, indirect and consequential liability, loss (including loss of profit), damages, costs and expenses (including legal expenses) awarded against or incurred or paid by the Buyer as a result of or in connection with:

13.4.1 late delivery of, or breach of any warranty given by the Seller in relation to, the Goods;

13.4.2 any claim or alleged claim that the Goods infringe, or their importation, use or resale, infringes, any intellectual property or other right of any other person, except to the extent that the claim arises from compliance with any specification supplied by the Buyer;

13.4.3 any liability under the Consumer Protection Act 1987 in respect of the Goods; and

13.4.4 any breach of the Contract and any other act or omission of the Seller or its employees, agents or sub-contractors in supplying, delivering or installing the Goods.

13.5 The Seller represents warrants and undertakes to the Buyer that it has carried out all testing and evaluation and other work necessary to eliminate any risk to health or safety from the use of the Goods and that if in any circumstances there is or may be any such risk then no later than the delivery of the Goods, the Seller will bring such circumstances to the attention of the Buyer in writing and provide free of cost full and proper information about such circumstances and the safeguards to be observed to ensure that the Goods are used safely and without risk to health.

13.6 The Seller warrants and undertakes to the Buyer that it will maintain full and proper records of all Goods supplied by it to the Buyer for a period of five years from the date of delivery of the Goods or such longer period as may be required by law.

### 14. REJECTION OF GOODS

14.1 The Buyer may by notice in writing to the Seller reject Goods if the Seller fails to comply with its obligations under the Contract. In such case if so required by the Buyer, the Seller shall within a reasonable time replace such rejected Goods, with Goods which are in all respects in accordance with the Contract.

14.2 Any money paid by the Buyer to the Seller in respect of any rejected Goods or services not so replaced by the Seller together with any additional expenditure over and above the Contract price reasonably incurred by the Buyer in obtaining other Goods in replacement shall be reimbursed by the Seller to the Buyer.

### 15. SUSPENSION AND FORCE MAJEURE

If the Buyer or the Seller are unable to perform their respective obligations under the Contract due to war or preparation for war, acts of terrorism, government intervention, labour disputes, strikes or lock outs, riots, civil commotion or insurrection, epidemics, unusual inclemency of weather, fire, accident or any other cause whatsoever wholly or partly beyond that party's control, then such party may by notice, verbal or in writing, wholly or partly suspend future performance of the Contract.

### 16. TERMINATION

16.1 In addition to and without prejudice to the rights conferred on it by Clause 10, the Buyer shall be entitled at any time to terminate the Contract in any of the following events:

16.1.1 The Seller committing any irremediable breach of its obligations under the Contract or any other contract between the Buyer and the Seller;

16.1.2 The Seller failing within seven days of written notice requiring it so to do to remedy any remediable breach of its obligations under the Contract or any such other contract;

16.1.3 The Seller compounding with or negotiating for any composition with its creditors generally or failing to satisfy any final judgement within seven days thereof or suffering any execution over any of its assets; and

16.1.4 The Seller being insolvent, ceasing business, or entering into liquidation or bankruptcy or any receiver or administrator of the Seller or any of its assets being appointed.

### 17. GENERAL

17.1 The Seller shall obtain all requisite licences and permissions needed for its performance of the Contract. The Seller shall indemnify the Buyer against all liability, loss, claim, proceedings or costs whatsoever for infringement of patent, design or copyright or similar rights by the sale or use by the Buyer of Goods supplied under the Contract.

17.2 The indemnity granted in terms of Clause 17.1 above shall extend to any country where the Seller knows or has reason to believe that the Buyer intends to use, transfer or market the Goods and the Seller shall defend all such claims or actions and proceedings brought against the Buyer at the Seller's expense.

17.3 The Seller shall not permit any information, including photographs, regarding the Contract or the Goods to be supplied under the Contract to be published without first obtaining the Buyer's written consent.

17.4 The headings in these Conditions are for reference only and shall not affect interpretation.

17.5 No delay by the Buyer in enforcing its rights shall prejudice or restrict the rights of the Buyer, 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.

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

17.7 The provisions of the Contracts (Rights of Third Parties) Act 1999 shall be excluded.

17.8 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:-

17.8.1 if delivered personally, at the time of delivery;

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

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

17.8.4 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.

For the purposes of this Clause 17.8 "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.

17.9 These Conditions and any Contract between the Buyer and the Seller shall be governed by and construed in accordance with the laws of England. The Buyer and the Seller agree to submit to the non-exclusive jurisdiction of the English Courts.