

Terms and Conditions of Purchase

1. Definitions

1.1 In these Conditions, unless the context otherwise requires:

“Buyer” means Eland Cables Limited, company number 01229226 and having its registered office at 120 Highgate Studios, 53-79 Highgate Road, London, NW5 1TL.

“Contract” means each contract for the purchase of Goods pursuant to a Purchase Order and these Conditions that is formed upon the Seller’s acceptance of a Purchase Order.

“Conditions” means these terms and conditions of purchase.

“Goods” means all goods to be purchased by the Buyer from the Seller as specified in a Purchase Order.

“Information” has the meaning given to that term in clause 5.2.

“Purchase Order” means any purchase order submitted by the Buyer in respect of the purchase of Goods from the Seller.

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

2. Application of Conditions

2.1 These Conditions will apply to all purchases of Goods by the Buyer from the Seller to the exclusion of all other terms and conditions, including (without limitation) any terms or conditions which the Seller may purport to apply under any quotation, acceptance of order, correspondence or elsewhere or any terms and conditions that may be implied by trade custom, practice or the course of dealing between the Buyer and the Seller.

2.2 Any Goods supplied before a Purchase Order has been placed or before acknowledgement by the Seller will be deemed to have been supplied by the Seller subject to these Conditions.

2.3 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.

2.4 The Seller will be deemed to have accepted these Conditions and those conditions set out in the Purchase Order upon the earliest to occur of:

(a) the date that is five days from the date of the relevant Purchase Order;

(b) the date the Seller engages in any other conduct in confirmation of the Purchase Order; or

(c) upon the delivery of any Goods,

unless prior to the earliest of the above the Buyer expressly indicates otherwise in writing.

2.5 The Buyer will be bound by the offer to purchase Goods as set out in a Purchase Order only if the Seller accepts the offer in writing within five days of the date of the Purchase Order or such other time as may be specified in the Purchase Order.

2.6 Any terms and/or conditions set out by the Seller in the Seller’s written acceptance will be deemed to have been rejected by the Buyer and the Seller’s acceptance of the Purchase Order will be deemed to be an unconditional acceptance to supply the Goods subject to these Conditions and the Purchase Order.

2.7 No addition to, variation of, or exclusion or attempted exclusion of:

(a) these Conditions or any of them, or

(b) any Purchase Order, will be binding upon the Buyer unless made in writing and signed by a duly authorised representative of the Buyer.

3. Alteration

3.1 The Buyer reserves the right to amend these Conditions from time to time by giving written notice of such alteration to the Seller, and such amended Conditions will apply to each Purchase Order submitted by the Buyer following the giving of such notice.

4. Price and Payment

4.1 All prices for Goods will be as stated in the Purchase Order and no increase in price will be permitted unless agreed by the Buyer in writing. Unless otherwise stated in the Purchase Order, the price is:

(a) exclusive of any applicable value added tax (which will only be payable by the Buyer subject to receipt of a validly-issued VAT invoice);

(b) inclusive of all other duties, taxes, or levies; and

(c) inclusive of all charges for packaging, carriage, insurance, and delivery of the Goods to the address for delivery as stated in the Purchase Order.

4.2 The Seller must invoice the Buyer upon the delivery of all Goods to which each Purchase Order relates, and each invoice must quote the Buyer’s Purchase Order number. The Seller may not invoice any delivery of Goods made by way of instalment unless previously agreed by the Buyer in writing. Any invoice which fails to state clearly the correct reference of the Goods as set out in the relevant Purchase Order will not be a proper invoice for the purpose of this clause.

4.3 Unless otherwise agreed in writing, the Buyer must make payment of the invoice within 60 days of receipt by the Buyer of the invoice or, if later, within 60 days after acceptance of the Goods by the Buyer.

4.4 If the Buyer fails to pay the amount of any invoice when due, the Buyer must pay interest on the overdue portion of such amount (other than in the case of a bona fide dispute) at the rate of 2% above the base rate from time to time of HSBC Bank plc.

4.5 The Buyer will be entitled to set off and deduct against the amount of any invoice any sums owed to the Buyer by the Seller or any of its subsidiaries, or by its holding company or any subsidiaries of its holding company, on whatever account.

5. Specifications

5.1 The Seller must make due and diligent enquiry of the Buyer as to the purpose or purposes for which the Buyer requires the Goods. The Buyer will use reasonable endeavours to respond fully and accurately to all such requests for information from the Seller.

5.2 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, proprietary information (including, without limitation, know-how, specifications, inventions, processes, or initiatives) and any intellectual property rights in the specifications (together, the "Information") will be and will remain the exclusive property of the Buyer.

5.3 The Seller must treat the Information as strictly confidential and must not use or disclose the Information excepts as strictly required in the course of performance of a Contract. The Seller agrees that:

- (a) it will not use nor permit the use of the Information for the production, manufacture, or design of any goods or materials other than the Goods ordered from time to time by the Buyer nor for larger quantities of goods than those ordered by the Buyer;
- (b) it will indemnify the Buyer against loss of or damage to the Information which is at any time in the Seller's possession or control; and
- (c) it will at the request of the Buyer at any time immediately deliver up to the Buyer all or any of the Information and/or all copies of the Information in its possession or control.

6. Sub-contracting and Delegation

6.1 The Seller must not delegate or sub-contract any or all of the Seller's obligations under any Contract without the Buyer's consent in writing.

6.2 Any delegation or sub-contracting permitted under clause 6.1 must be made subject to such terms and conditions as determined by the Buyer, and unless otherwise agreed by the Buyer in writing, the Seller will remain primarily liable for any obligation so delegated or sub-contracted.

6.3 The Seller must provide to the Buyer copies of all orders of work delegated or sub-contracted in accordance with clause 6.2 on the day following the placing of such orders, which must include the Buyer's Purchase Order number.

7. Inspection and Testing

7.1 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 will not relieve the Seller of any obligations to the Buyer to which the Seller would otherwise be subject.

7.2 The Seller must give the Buyer reasonable notice of all tests which it intends to carry out on the Goods and the Buyer will be entitled to be represented at such tests.

7.3 The Seller must provide the Buyer with test certificates and such other certification as may be required by the Buyer.

7.4 If, as a result of inspection or testing, the Buyer is not satisfied (acting reasonably) that the Goods will comply in all respects with the Contract (including, without limitation, that the Goods will be delivered by the due date for delivery), then the Buyer may terminate the Contract by five days' notice in writing to the Seller. The Seller must indemnify the Buyer and keep the Buyer indemnified from and against all liability, loss, damages, costs and expenses (including legal expenses) incurred by the Buyer arising from or in connection with such termination.

8. Delivery

8.1 Unless otherwise specified in the Purchase Order the Seller must deliver the Goods DAP (as per Incoterms 2010) the address for delivery specified in the Purchase Order, on the date and at the time stipulated by the Buyer. The Buyer accepts no responsibility for Goods delivered outside such date and/or time.

8.2 The Seller must confirm the delivery time and date with the Buyer prior to delivery.

8.3 If the date of delivery of the Goods is not specified in the Purchase Order but may be specified by the Seller after acceptance of the Purchase Order, the Seller must give the Buyer reasonable notice of the specified date which date must be no later than 28 days from the date of the Purchase Order.

8.4 The date and time of delivery of the Goods is of the essence of the Contract.

8.5 The Seller must notify the Buyer immediately if for any reason the Seller is unable to deliver the Goods on the due date.

8.6 The Seller must ensure that a packing note quoting the number of the Purchase Order accompanies each delivery or consignment of the Goods and is displayed prominently.

8.7 If the Goods are to be delivered by instalments, the Contract will be treated as a single contract and not severable provided that if any order for Goods is only partially fulfilled by the due delivery date, the Buyer may (without prejudice to any other right or remedy) either accept or reject those Goods that have been delivered and, in either case, cancel the order in respect of those Goods that have not been delivered (in which case the price of the Goods will be apportioned accordingly).

8.8 The Buyer will be entitled to reject any defective Goods or for Goods delivered otherwise than in accordance with the Contract. The Buyer will not be deemed to have accepted any Goods until the Buyer has had a reasonable time to inspect them following delivery (being no fewer than 10 days from the date of delivery).

8.9 If any Goods delivered are rejected by the Buyer in accordance with these Conditions, the Seller must collect such Goods from the delivery address at the Seller's expense. The Buyer may charge the Seller a daily storage charge for the period during which any rejected Goods remain uncollected.

8.10 The Seller must indemnify and keep the Buyer indemnified from and against all liability, loss, damages, costs and expenses (including legal expenses) incurred by the Buyer arising from or in connection with the Seller's failure to deliver the Goods strictly in accordance with these Conditions, including (for the avoidance of doubt, and without limitation):

- (a) all costs incurred by the Buyer in handling, testing, storing and preparing reports in relation to faulty Goods;
- (b) all costs incurred by the Buyer to repair and repackage Goods damaged in transportation or delivered in a condition unsuitable for resale; and
- (c) all losses of the Buyer arising from claims from the Buyer's customers or any other third party.

9. Packaging

9.1 The Seller must ensure that all Goods are properly and securely packed and properly labelled or otherwise identified and that all consignments of Goods bear the relevant Purchase Order number.

9.2 Unless otherwise agreed by the Buyer in writing, the Seller must provide all cases, packaging, drums, reels, and other packing material free of charge. If requested by the Seller, the Buyer will use reasonable endeavours to have such packing materials returned to the Seller at the Seller's risk and expense.

10. Risk and Title

10.1 The risk of loss, damage or destruction of the Goods will only pass to the Buyer upon delivery of the Goods in accordance with clause 8.

10.2 Title and property (including full legal and beneficial ownership) in the Goods and any components of the Goods and/or any raw materials incorporated in the Goods, will pass to the Buyer of the Goods in accordance with clause 8 regardless

of whether the Company has made payment in respect of such Goods, unless payment of the Goods is made prior to delivery in which case title and property will pass to the Company with effect from the date and time of payment.

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

10.4 The Seller must maintain in good condition, at the Seller's expense, all dies, moulds, tools and materials in its custody or possession.

11. Warranties

11.1 The Seller warrants to the Buyer that the design, construction and quality of the Goods comply in all respects with:

- (a) all applicable laws, including (without limitation) all statutes, regulations, orders, standards, directives, and any other instrument having the force of law in the United Kingdom in force at the time when the Goods are supplied; and
- (b) all guidelines, industry directives, and other standards applicable to participants in the industry in which the Goods are distributed, manufactured, or used.

11.2 The Seller warrants to the Buyer that, for the longer period of (i) eighteen months after the date of delivery (ii) twelve months after the date of installation (iii) such other warranty period as offered from time to time by the Seller to its customers or agreed in writing by the parties with respect to the Goods, all Goods:

- (a) will be fit for their purpose (as ascertained by the Seller in accordance with the provisions of clause 5.1);
- (b) will be free from defects in material and workmanship;
- (c) will conform in all respects as to quantity, quality and description with the Purchase Order;
- (d) will conform to any specifications, standards, drawings or samples specified in the Purchase Order or otherwise notified by the Buyer to the Seller; and
- (e) will be capable of any standard of performance specified in the Purchase Order.

11.3 Without prejudice to any other right or remedy available to the Buyer whether under these Conditions, a Contract, or at law, if the Goods (or any of them) do not comply with the warranties given by the Seller under this clause 11, the Buyer may:

- (a) require the Seller to repair the Goods;
- (b) require the Seller to supply replacement Goods within such timeframe as specified by the Seller;
- (c) treat the Contract as discharged by the Seller's breach and require the immediate repayment of any part of the price which has been paid; and/or
- (d) at the cost of the Seller, obtain goods equivalent to the Goods and/or procure the repair of the Goods itself or by a third party.

11.4 The Seller must indemnify the Buyer and keep the Buyer indemnified from and against all liability, loss, damages, costs and expenses (including legal expenses) incurred by the Buyer arising from or in connection with:

- (a) a breach of any warranty given by the Seller in relation to the Goods whether under these Conditions or otherwise;
- (b) any claim or alleged claim that the Goods infringe, or their importation, use or resale, infringes, any intellectual property rights or other rights of any other person (including, without limitation, patent rights, design rights, and copyrights);
- (c) any liability incurred by the Buyer under the Consumer Protection Act 1987 in respect of the Goods; and
- (d) any breach of the Contract by the Seller and any other act or omission of the Seller or its employees, agents or sub-contractors.

11.5 The Buyer's rights under these Conditions are in addition to and not in substitution for the statutory terms and conditions implied in favour of the Buyer under the Sale of Goods Act 1979.

11.6 The Seller 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.

12. Termination

12.1 In addition to and without prejudice to the rights conferred on it by these Conditions, the Buyer may terminate any Contract immediately by notice in writing to the Seller:

- (a) if the Seller commits a breach of these Conditions and (if such breach is capable of remedy) fails to remedy such breach within five days of notice from the Buyer requesting that the breach be remedied;
- (b) if:
 - (i) the Seller becomes unable to pay its debts as they fall due or the value of the Seller's assets is less than the amount of its liabilities taking into account its contingent and prospective liabilities;
 - (ii) in relation to the Seller a statutory demand is served, a receiver is appointed, or any insolvency procedure under the Insolvency Act 1986 is instituted or occurs or notice of intention to institute such a procedure is given;
 - (iii) any order is made for or there occur proceedings constituting main proceedings in any member state of the European Union; or
 - (iv) any analogous demand, appointment, or procedure is instituted or occurs in relation to the Seller elsewhere than in England or Wales.

13. General

13.1 The Seller must obtain and/or maintain all licences, permits, and any other permissions required to enable it to carry out its obligations under a Contract.

13.2 The headings in these Conditions are for reference only and do not affect its interpretation.

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

13.4 The Seller may not assign any of its rights or benefits under any Contract without the prior written consent of the Buyer.

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

13.6 Any notice given under these Conditions must be in writing and in English, and must be served by leaving such notice or communication at, or by sending such notice 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 will be deemed to have been received:

- (a) if delivered personally, at the time of delivery;
- (b) if sent by first class recorded delivery post, 48 hours after the date of posting;
- (c) if sent by air-mail, 96 hours after the date of posting; and
- (d) if sent by facsimile, 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 13.6 "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 will be necessary only to prove that the same was properly addressed and posted or faxed.

13.7 These Conditions, any Contract between the Seller and the Buyer, and any dispute or claim arising out of or in connection with it or its subject matter, whether of a contractual or non-contractual nature will be governed by and construed in accordance with the laws of England. The Seller and the Buyer agree to submit to the non-exclusive jurisdiction of the English Courts.

13.8 Each of the Seller and the Buyer irrevocably agree, for the sole benefit of the Buyer, that (subject to clause 13.9) the English Courts will have exclusive jurisdiction over any dispute or claim arising out of or in connection with these Conditions or any Contract between the Seller and the Buyer or their subject matter of formation (including non-contractual disputes or claims).

13.9 Nothing in clause 13.8 will limit the right of the Buyer to take proceedings against the Seller in any other court of competent jurisdiction, nor will the taking of proceedings by the Buyer in any one or more jurisdictions preclude the Buyer taking proceedings in any other jurisdictions, whether concurrently or not, to the extent permitted by the law of such other jurisdiction.