

# Terms and Conditions of Sales

## 1. Definitions

1.1 In these Conditions, unless the context otherwise requires: “Acknowledgment” means the acknowledgment of the Buyer’s order to purchase Goods as provided by the Company to the Buyer. “Buyer” means the party to whom the Company agrees to supply the Goods.

“Company” means Eland Cables Limited, company number 01229226, having its registered office at 10 Jamestown Road, London NW1 7HW.

“Conditions” means these terms and conditions of sale and any other terms and/or conditions as set out in a Quotation in respect of the Goods, as may be varied by the terms of an Acknowledgment.

“Contract” means each contract formed between the Company and the Buyer in respect of the sale of Goods by the Company to the Buyer.

“Goods” means all goods to be supplied by the Company to the Buyer.

“Quotation” means a quotation in respect of the Goods provided by the Company to the Buyer.

## 2. Application of Conditions

2.1 The Conditions will apply to all sales 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 will constitute an offer to sell any Goods to the Buyer or to any other person.

2.3 All orders for Goods submitted by the Buyer to the Company will be deemed to be an offer by the Buyer to purchase Goods pursuant to the Conditions and will not be deemed to have been accepted by the Company unless and until the Company delivers to the Buyer an Acknowledgment in respect of such order, or delivers the Goods to the Buyer, and then only on the terms of the Contract.

2.4 Any order form sent by the Buyer to the Company and accepted by the Company will not constitute an acceptance of any terms or conditions contained in that order form, but will (once accepted by the Company under clause 2.3) constitute an individual and legally binding contract between the Company and the Buyer subject to the Conditions only.

2.5 The Conditions will apply to each order by the Buyer for successive deliveries of Goods, and each such order will be treated as an individual and legally binding contract entered into between the Company and any Buyer in respect of the Buyer’s purchase of Goods. Any disputes arising out of or in connection with the delivery of any Goods made pursuant to a Contract between the Buyer and the Company will not affect the Buyer’s obligations to the Company under any other individual contract (including any Contract) between the Buyer and the Company.

2.6 Any purported variation to the Conditions or the terms of any Contract by the Buyer will be ineffective unless agreed in writing and signed by an authorised representative of the Company.

## 3. Alteration

3.1 The Company reserves the right to amend these Conditions from time to time by giving written notice of such alteration to the Buyer, and such amended Conditions will apply to each order for the purchase of Goods submitted by the Buyer following the giving of such notice.

3.2 The Company reserves the right to make improvements or non-material modifications to any Goods or any part of the Goods.

## 4. Price

4.1 The price of the Goods is the price agreed between the Buyer and the Company as specified in the Quotation or Acknowledgment or, if no price is specified, the price set out in the Company’s then-current price list as at the date the Buyer submits the order for such Goods (errors and omissions excepted).

4.2 Notwithstanding clause 4.1, the Company reserves the right, at any time before delivery, to increase the price of the Goods to reflect any increase in costs to the Company that are due to any factor beyond the control of the Company (including, without limitation, any increase in the costs of labour or materials, the increase or imposition of any tax, duty, or levy, or any variation in applicable exchange rates).

4.3 Unless otherwise stated in the Acknowledgment, all prices are quoted in GBP, and are quoted exclusive of United Kingdom Value Added Tax, which will be payable in addition by the Buyer (where applicable).

4.4 Unless otherwise stated in the Quotation, all prices quoted are exclusive of any import duties and any other local taxes and/or applicable duties or levies, which will be payable by the Buyer.

## 5. Rescheduling and Cancellations

5.1 Subject to clause 5.2, the Buyer may request changes to the date or place of despatch of all or some of the Goods no later than 48 hours prior to the agreed time of despatch of those Goods, in which case the Buyer will be liable to pay to the Company a rescheduling charge (as determined by the Company) to cover all of the Company's costs and expenses incurred as a result of such rescheduling.

5.2 Once an order has been placed, the Buyer may not cancel or vary such order (whether in whole or in part) unless the Company agrees in writing.

5.3 The Company reserves the right to cancel an order or to request payment prior to despatch of the Goods, should the credit status of the Buyer change following the Acknowledgement of the Buyer purchase order.

## 6. Payment

6.1 Unless otherwise agreed by the parties in writing:

(a) the Company will issue an invoice in respect of each delivery of Goods prior to despatch from the Company's premises; and  
(b) the Buyer must pay the amount of such invoice in full and in cleared funds and/or obtain a letter of credit in favour of the Company on terms acceptable to the Company (at its absolute discretion) prior to and as a condition of the despatch of the Goods.

6.2 Each invoice will be treated as a separate account.

6.3 The Company will not issue statements unless specifically requested by the Buyer.

6.4 Where the Company has agreed that payment of the invoice in respect of Goods may be made after delivery of the Goods, and unless otherwise agreed in writing:

(a) the Buyer must pay the full amount of each invoice within 30 days of the date of invoice;

(b) if the Buyer fails to pay the amount of any invoice when due, the Company may (without prejudice to any other right or remedy available to the Company):

(i) charge the Buyer interest on the amount outstanding, at the rate of 4 per cent per annum above the base lending rate for the time being of HSBC Bank plc accruing daily from the date payment becomes due until the date the Company receives payment in full;

(ii) charge the Buyer for any external or internal costs or expenses incurred by the Company in relation to the recovery of the outstanding amount;

(iii) suspend or cancel further deliveries of Goods under any Contract with the Buyer; and/or

(iv) alter the terms of payment (including, for example, requiring payment in advance or by letter of credit or similar instrument) in respect of future deliveries and/or orders.

6.5 All payments to be made by the Buyer under any Contract must be paid in full without any set-off or counterclaim and free from any deduction or withholding whatsoever (save as and only to the extent as may be required by law), in accordance with any instructions on the applicable invoice.

## 7. Delivery

7.1 Unless otherwise agreed in writing, delivery of the Goods will be made:

(a) by the Company delivering the Goods to such address as set out in the Quotation; or

(b) if no such address is specified, by the Company delivering the Goods to the Buyer's registered address or any other usual premises of the Buyer, in each case, as per the Incoterms set out in the Quotation or as otherwise agreed in writing.

7.2 Unless otherwise agreed in writing, the Buyer will be liable for all costs and expenses of delivery including (without limitation) the cost of any special delivery requirements and the cost of insurance. The Company reserves the right to make an additional charge, for which the Buyer will be liable, to cover any increase in transport costs occurring prior to delivery.

7.3 Any estimated timeframe by which delivery is to occur is given by the Company in good faith but for the avoidance of doubt is an estimate only and is not of the essence of any Contract. The Company will not be liable for any costs, losses, liabilities or damages of any kind, whether arising directly or indirectly out of any delay or failure to deliver any Goods by the estimated delivery date or time.

7.4 Without prejudice to clause 7.3, the Company will use reasonable endeavours to advise the Buyer of any material delay in delivery.

7.5 If the Buyer fails to take delivery of the Goods or fails to give the Company adequate delivery instructions at the time stated for delivery then (without prejudice to any other right or remedy available to the Company) the Company may:

(a) if it has not already done so, invoice the Buyer in respect of the full price of the Goods and store the Goods until actual delivery and charge the Buyer for the cost (including insurance) of storage; or

(b) sell the Goods at the best price readily obtainable and (after deducting all storage and selling expenses) charge the Buyer for any shortfall between the proceeds received and the price for the Goods under the Contract.

## 8. Part Delivery

8.1 If the Goods are to be delivered by instalment, no defect in any Goods delivered in any instalment or any failure to deliver an instalment will be grounds for cancellation of the remainder of the instalments under the relevant Contract and the Buyer will be bound to accept delivery of such instalments.

## 9. Acceptance

9.1 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 six 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. If no such claim is made within that time frame the Buyer will be deemed to have accepted the Goods as delivered.

## 10. Packaging

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

10.2 The Buyer must meet the cost of any special packaging required by the Buyer or that the Company otherwise deems necessary by reason of any special delivery requirements.

## 11. Risk

11.1 The risk of loss, damage or destruction of the Goods will pass to the Buyer upon delivery of the Goods in accordance with clause 7.1.

## 12. Title

12.1 Notwithstanding clause 11.1, title and property in the Goods, including full legal and beneficial ownership, will not pass to the Buyer until the Company has received in cash or cleared funds payment in full for such Goods as well as all other Goods delivered to the Buyer under each Contract, including the amount of any interest or other sum payable under the terms of any Contract.

12.2 Until title and property in the Goods is transferred to the Buyer in accordance with clause 12.1 above:

- (a) the Buyer must hold the Goods, on a fiduciary basis as the Company's bailee, in safe custody, separate from any goods which are the property of the Buyer or any third party and must properly store and protect the Goods in such a way that they are readily identifiable as belonging to the Company;
- (b) the Buyer must insure the Goods against all risks for their full price from the date of delivery; and
- (c) the Buyer will not be entitled to pledge or in any way charge by way of security for any indebtedness any of the Goods, provided that the Buyer may resell the Goods or use the Goods in the ordinary course of its business.

12.3 If the Buyer is in breach of its obligations under clause 12.2, all moneys owing by the Buyer to the Company will become immediately due and payable.

12.4 The Company may at any time require the Buyer to deliver up the Goods to which the Company has retained title and if the Buyer fails to do so, to enter upon any premises of the Buyer where the Goods are stored to repossess and resell any Goods. The Buyer hereby waives any right to claim from the Company damages caused to the Buyer's premises, business or reputation,

and/or any lost profits or business however arising as a result of the Buyer's entry onto the Buyer's premises for the purposes of repossessing the Goods.

12.5 The Company's consent to the Buyer's possession of the Goods and any right the Buyer may have to possession of the Goods will in any event cease:

- (a) if any sum owed by the Buyer to the Company (whether in respect of the Goods or otherwise) is not paid to the Company when it is due; or
- (b) upon the happening of any of the events set out in clause 16.1(b).

12.6 The Company is entitled to bring an action against the Buyer for the price of the Goods in the event of non-payment by the Buyer by the due date even though property in the goods has not passed to the Buyer and/or has the right by notice to the Buyer at any time after delivery to pass property in the Goods to the Buyer as from the date of such notice.

12.7 The exercise of any of the Company's rights under this clause 12 will be without prejudice to any other rights the Company may have whether under the Conditions, any Contract, or at law.

## 13. Warranties

13.1 Any warranties set out in the Conditions or implied by law are for the benefit of the Buyer of the Goods only and are not transferable or assignable.

13.2 The Company warrants to the Buyer that:

- (a) it has full and valid title to the Goods; and
- (b) the Goods at the time of delivery will be free from defects in material and workmanship to the extent required to satisfy the condition of "satisfactory quality" as defined in the Sale of Goods Act 1979 (as amended), and will be materially in accordance with specifications provided by the manufacturer of the Goods or as otherwise agreed in writing.

13.3 Unless agreed otherwise in writing, the warranty obligation of the Company for the Goods will continue for a period of 1 year ("Warranty Period") from the date of the sales invoice.

13.4 The Company hereby assigns to the Buyer (by way of a present assignment of future rights) the benefit of those warranties in respect of the Goods made to the Company by the manufacturers of such Goods ("Manufacturers' Warranties"), to the extent that the Manufacturers' Warranties are assignable to the Buyer.

13.5 The Company gives no other warranties and no other terms or conditions will apply in respect of the Goods other than those warranties as set out in clause 13.2 and the benefit of the Manufacturers' Warranties, which warranties are exclusive and in lieu of all other warranties, terms, and conditions in respect of quality, fitness for a purpose, or of any other type, whether express or implied.

13.6 If the Buyer makes a valid claim within the Warranty Period for breach of warranty under this clause, the Company will have the right to inspect and test the allegedly defective Goods. 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 may, at its option:

- (a) refund the price paid by the Buyer for the defective Goods;
- (b) replace the whole or such part of the Goods supplied as the Company may in its sole discretion deem reasonable in order to repair the defect; or
- (c) in respect of a breach of any Manufacturers' Warranties, require the Buyer to approach the relevant Manufacturer directly in respect of an appropriate remedy.

13.7 Notwithstanding the warranties given under this clause 13, the Company will not be liable to the Buyer in respect of any defects that have occurred as a result of:

- (a) misuse of the Goods or negligence on the part of any person other than the Company;
- (b) loss or theft of the Goods or any part of them;
- (c) damage from any cause other than negligence by the Company or the Company's personnel;
- (d) unauthorised modification, alterations or repair of any of the Goods; or
- (e) fair wear and tear.

13.8 In the event that the Company chooses to replace or refund the Goods, the Buyer must permit the Company to retake possession of the Goods originally delivered and the Company will use reasonable endeavours to deliver replacement Goods or process the refund within a reasonable time. The replacement Goods must be accepted by the Buyer in substitution for the Goods replaced.

#### 14. Limitation of Liability

14.1 Nothing in the Conditions excludes or restricts the Company's liability for death or personal injury of the Buyer resulting from the Company's negligence or from its fraudulent misrepresentation.

14.2 Subject to clause 14.1, the Company will not be liable to the Buyer, whether in contract, in tort (including for negligence or breach of statutory duty) or otherwise, and irrespective of cause for:

- (a) any loss of profit, business, contracts, revenues or anticipated savings suffered by the Buyer (in each case, whether direct or indirect); or
- (b) any special, indirect or consequential loss of any nature whatsoever suffered by the Buyer.

14.3 Subject to clause 14.1, the Company's aggregate liability to the Buyer arising out of any Contract, whether in respect of defective Goods or otherwise, and whether such liability arises in contract, in tort (including for negligence or breach of statutory duty) or otherwise, will be limited in all circumstances to the price of the Goods as specified in the invoice to which the Contract relates.

#### 15. Force Majeure

15.1 The Company will not be liable to the Buyer for any delay in or failure to perform its obligations under any Contract where such delay or failure results from an 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.

#### 16. Termination

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

- (a) if the Buyer commits a breach of the Conditions and (if such breach is capable of remedy) fails to remedy such breach within five days of notice from the Company requesting that the breach be remedied;
- (b) if:
  - (i) the Buyer becomes unable to pay its debts as they fall due or the value of the Buyer's assets is less than the amount of its liabilities taking into account its contingent and prospective liabilities;
  - (ii) in relation to the Buyer 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) in respect of the Buyer, 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 Buyer elsewhere than in England or Wales.

16.2 In the event that a Contract is terminated by the Company in accordance with clause 16.1 above, all sums due from the Buyer to the Company in respect of all Goods supplied by the Company to the Buyer will become immediately due and payable and the Company will be entitled, without prejudice to any other rights and remedies which it may have and without any liability whatsoever, upon serving notice in writing to the Buyer, to suspend or cancel all deliveries of Goods to the Buyer under any Contract.

#### 17. Intellectual Property Rights

17.1 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 will at all times and for all purposes vest and remain vested in the Company or such manufacturer, developer or third party and the Buyer will not acquire any such rights.

17.2 If at any time any allegation of infringement of patent rights, copyright or design rights is made in respect of the Goods or if in the Company's reasonable opinion such an allegation is likely to be made, the Company may at its option and at its own expense:

- (a) modify or replace the Goods so as to avoid the infringement;
- (b) procure for the Buyer the right to continue to use the Goods; or
- (c) repurchase the Goods at the price paid by the Buyer.

## 18. Technical Advice, Assistance, Product Information and Recommendations

18.1 The Company, at the request of the Buyer, may (but is not obliged to) furnish technical advice or assistance or recommendation with reference to the use of Goods, provided that any such advice or assistance or recommendation is given and accepted at the Buyer's sole risk and the Company will not be liable for any loss, damage costs or claims arising from such advice, assistance, or recommendation.

18.2 Any advice given or any recommendation made by the Company is solely designed to assist the Buyer to identify Goods offered for sale by the Company that meet the requirements of the Buyer (which requirements are to be determined solely by the Buyer in reliance on the Buyer's own judgment). Under no circumstances can such advice or recommendation be relied upon by the Buyer, nor will the Company in any way be liable as a consequence of the Buyer relying on such advice or recommendation.

18.3 The Company is not liable for any inadequacies, inaccuracies or other deficiencies in any drawing, specification or other information provided by the Buyer to the Company.

18.4 Any information published on the Company's website (being [www.elandcables.com](http://www.elandcables.com) or any other website used by the Company from time to time) ("Website") or through product datasheets is provided for convenience and should be used by the Buyer for information purposes only. Both the information, and the products to which such information refers, are subject to change without notice. The Company gives no representations or warranties (expressly or impliedly) as to the reliability, accuracy or completeness of such information.

18.5 The Buyer must not rely on any information displayed on the Website or contained in product datasheets but must use its own skill and judgment to ascertain whether any product is of a suitable nature for the Buyer's need and purpose and how such product is to be used.

## 19. General

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

19.2 No delay by the Company in enforcing its rights will prejudice or restrict the rights of the Company, 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.

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

19.4 In the event of any of the 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.

19.5 Any notice given under the 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 19.5 "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 will be necessary only to prove that the same was properly addressed and posted or faxed.

19.6 The Conditions, any Contract between the Company and the Buyer, and 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.

19.7 Each of the Company and the Buyer irrevocably agree, for the sole benefit of the Company, that (subject to clause 19.8) the English Courts will have exclusive jurisdiction over any dispute or claim arising out of or in connection with the Conditions or any Contract between the Company and the Buyer or their subject matter or formation (including non-contractual disputes or claims).

19.8 Nothing in clause 19.7 will limit the right of the Company to take proceedings against the Buyer in any other court of competent jurisdiction, nor will the taking of proceedings by the Company in any one or more jurisdictions preclude the Company taking proceedings in any other jurisdictions, whether concurrently or not, to the extent permitted by the law of such other jurisdiction.