



K. Lacey
ENGINEERS & DESIGNERS LIMITED

Unit 4 • Brookside Avenue Trading Estate • Rustington • West Sussex • BN16 3LF
Tel. +44 (0)1903 771336 • Fax. +44 (0)1903 772120 • Email. sales@klaceycables.co.uk

K. LACEY (ENGINEERS & DESIGNERS) LIMITED

TERMS AND CONDITIONS OF SALE

1 DEFINITIONS

1.1 In these Conditions:

- Buyer** means the individual, firm, company or other party from whom an order to supply the goods and/or services is received by the Seller.
- Seller** means K. LACEY (Engineers & Designers) Limited (trading as K. Lacey Wire and Cable) (company number 1031406) whose registered office is at Unit 4, Brookside Avenue Trading Estate, Rustington, West Sussex BN16 3LF.
- Conditions** means the terms and conditions of sale as set out in this document and any special terms and conditions agreed in writing by the Seller.
- Goods** means the goods and/or services which the Buyer agrees to buy from the Seller.
- Price** means the price for the Goods, excluding VAT and any carriage, packaging and insurance costs.

1.2 Any reference in these Conditions to any provision of a statute shall be construed as a reference to that provision as amended, re-enacted or extended at the relevant time.

1.3 The headings in these Conditions are for convenience only and shall not affect their interpretation.

2. CONDITIONS

- 2.1 These Conditions shall form the basis of the contract between the Seller and the Buyer in relation to the sale of Goods, to the exclusion of all other terms and conditions, including the Buyer's standard conditions of purchase or any other conditions which the Buyer may purport to apply under any purchase order or any other document, unless specifically agreed to in writing by the Seller.
- 2.2 A quotation by the Seller does not constitute an offer and the Seller reserves the right to withdraw or amend the same at any time prior to the Seller's acceptance of a purchase order.
- 2.3 A quotation by the Seller is not binding unless and until it has been acknowledged in writing by the Seller or the Goods are delivered by the Seller to the Buyer pursuant to the order.
- 2.4 All orders for Goods shall be deemed to be an offer by the Buyer to purchase Goods from the Seller pursuant to these Conditions and any relevant quotation.
- 2.5 No order submitted by the Buyer shall be deemed to be accepted by the Seller unless and until confirmed in writing by the Seller.
- 2.6 Acceptance of delivery of the Goods shall be deemed to be conclusive evidence of the Buyer's acceptance of these Conditions.
- 2.7 These Conditions may not be varied except by the written agreement of a Director of the Seller.
- 2.8 These Conditions supersede any other conditions previously issued.

3. GOODS

- 3.1 Any quantity and description of the Goods given by the Seller has been given by way of identification only and the use of such description shall not constitute a sale by description.
- 3.2 The Buyer shall be responsible to the Seller for ensuring the accuracy of the terms of any order (including any applicable specification) submitted by the Buyer, and for giving the Seller any necessary information relating to the Goods within a sufficient time to enable the Seller to perform the contract in accordance with its terms.
- 3.3 The quantity, quality and description of and any specification for the Goods shall be those set out in the Seller's quotation (if accepted by the Buyer) or the Buyer's order (if accepted by the Seller).
- 3.4 The Seller reserves the right to make any changes in the specification of the Goods which are required to conform with any applicable safety or other statutory requirements or, where the Goods are to be supplied to the Buyer's specification, which do not materially affect their quality or performance.

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4. PRICE

- 4.1 All quotations and estimates issued by the Seller are, unless otherwise stated, based on the current cost of production and are subject to amendment by the Seller on or after acceptance to meet any rise or fall in such costs.
- 4.2 The Price stated is for the stipulated quantity only and does not hold for lesser quantities.
- 4.3 All goods are subject to +/- 10 percent quantity tolerance (which is chargeable to the Buyer).
- 4.4 The Price is exclusive of VAT which shall be due and payable by the Buyer at the rate in force on the date of the Seller's invoice and any other taxes or duty relating to the manufacture, transportation, export, import, sale or delivery of the Goods (without limitation) which directly effects the cost to the Seller of supplying the Goods.
- 4.5 Where carriage, packing, storage or any other charges are stated separately from the Price they will be payable by the Buyer at the same time as if they formed part of the Price and shall be treated as such.

5. PAYMENT AND INTEREST

- 5.1 Payment for the Goods supplied, VAT and any other charges shall be due within 30 days of the date of the Seller's invoice, unless otherwise agreed in writing by the Seller. Any extension of credit allowed to the Buyer may be changed or withdrawn by the Seller at any time. All credit accounts are subject to satisfactory credit checks by the Seller. Credit terms may be changed or withdrawn by the Seller at anytime.
- 5.2 The Seller reserves the right to exercise its statutory right to interest under the Late Payment of Commercial Debts (Interest) Act 1998 if payment is not received according to agreed credit terms.
- 5.3 Unless otherwise agreed in writing by the Seller, in the case of export sales payment shall be made immediately against the delivery of the Goods by irrevocable letter of credit, accepted bill of exchange or other bankers credit or payment unless specifically agreed by the Seller in writing.
- 5.4 If payment of the invoice or any part thereof is not made by the due date, the Seller shall be entitled :
 - 5.4.1 To require payment in advance of delivery of undelivered Goods; and/or
 - 5.4.2 To refuse to make delivery of any undelivered Goods whether ordered under the same or any other purchase order.
- 5.5 The Buyer shall pay all accounts in full and not exercise any rights of set-off or counter claim against invoices submitted by the Seller.
- 5.6 If:
 - 5.6.1 the Buyer makes any voluntary arrangement with its creditors or becomes subject to an administration order or (being an individual or firm) becomes bankrupt or (being a company) goes into liquidation (otherwise than for the purposes of a bona fide amalgamation or reconstruction); or
 - 5.6.2 an encumbrancer takes possession, or a receiver is appointed, of any of the property or assets of the Buyer; or
 - 5.6.3 the Buyer ceases, or threatens to cease, to carry on business; or
 - 5.6.4 the Seller reasonably apprehends that any of the events mentioned above is about to occur in relation to the Buyer and notifies the Buyer accordingly;then, without prejudice to any other right or remedy available to the Seller, the Seller shall be entitled to cancel the contract or suspend any further deliveries under the contract without any liability to the Buyer, and if the Goods have been delivered but not paid for the Price and all charges shall become immediately due and payable notwithstanding any previous agreement or arrangement to the contrary.

6 WARRANTY AND LIABILITY

- 6.1 The Seller warrants that the Goods will at the time of delivery correspond to the description given by the Seller in the confirmation of order given by the Seller to the Buyer.
- 6.2 Whilst reasonable care is taken in providing suitable Goods and in giving particulars of capacity and performance, the Seller gives no warranty as to their quality or fitness for any purpose whether or not that purpose is known to the Seller. All express or implied warranties or conditions statutory or otherwise are expressly excluded to the extent permitted by law.
- 6.3 Where the Seller gives advice or approval concerning the suitability of the Goods supplied, such advice or approval is given subject to the condition that the Seller shall be under no liability of any kind in connection therewith.
- 6.4 Any drawings or descriptions submitted by the Seller are approximate only and intended as a general guide and the Seller will not be liable for any error or omission therein or regard thereto.

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- 6.5 In the event of a defect in any Goods supplied by the Seller due to faulty material or workmanship covered by the relevant manufacturer's liability, the Seller will, if satisfied that such defect is solely due to the fault of the manufacturer and covered by the manufacturer's liability and not to unsuitable storage conditions by the Buyer or any other act or omission of the Buyer, use all reasonable endeavours to accept back Goods for return to the manufacturer for credit or replacement as agreed with the manufacturer at that time.
- 6.6 Nothing in these Conditions shall exclude or limit in any way the Seller's liability for fraud, fraudulent misrepresentation, death or personal injury caused by its fault or negligence or the fault or negligence of its employees, agents or contractors and which liability shall be unlimited.
- 6.7 Subject to Condition 6.6:
- 6.7.1 the Seller's liability to the Buyer, whether for breach of contract, tort (including negligence), breach of statutory duty or otherwise shall in no event exceed 125% of the price paid for the relevant Goods in aggregate; and
- 6.7.2 the Seller shall in no event be liable to the Buyer for any indirect, consequential or special loss or damage including, without limitation, any loss of profits, business, business opportunity or goodwill.
- 6.8 If the Buyer does not consider that the Seller's limit of liability will be sufficient to protect its interests, the Buyer should contact the Seller and the Seller will discuss with the Buyer whether it is able to amend its limits and/or increase its insurance cover accordingly. The Buyer accepts that the Seller shall be entitled to charge the Buyer, and the Buyer shall pay, an additional charge for accepting any different limit if the Seller agrees to do so.

7 DELIVERY

- 7.1 Any delivery dates given by the Seller for delivery or performance are given as an estimate only and are to be regarded as a guide only. The Seller will use its reasonable endeavours to despatch the Goods on time, but does not guarantee to do so.
- 7.2 The Seller shall not be liable to the Buyer for any loss or damage whether arising directly or indirectly from the late delivery or short delivery of the Goods. If short delivery does take place, the Buyer undertakes not to reject the Goods but to accept the Goods delivered as part or complete performance of the contract.
- 7.3 If the Buyer fails to take delivery of the Goods on the agreed delivery date or, if no specific delivery date has been agreed, when the Goods are ready for despatch, the Seller shall be entitled to store and insure the Goods and to charge the Buyer the reasonable costs of doing so.

8 ACCEPTANCE OF THE GOODS

- 8.1 The Buyer shall be deemed to have accepted the Goods and the Buyer shall have no right to reject and no claim against the Seller in respect of any defects which should have been apparent on a reasonable visual examination of the Goods unless written notification of any such defects is given to the Seller in accordance with the following Conditions.
- 8.2 If the quantity of Goods delivered does not correspond with the quantity required to be delivered in that consignment, the Buyer shall not be entitled to reject that consignment but shall be entitled only:
- 8.2.1 if the quantity delivered be less than the contract quantity, at the Seller's option, to a further delivery of the Goods to make up the deficiency or a refund of the appropriate part of the purchase price; or
- 8.2.2 if the quantity delivered exceeds the contract quantity, to return the excess or to retain the whole, in which case the price shall be adjusted at the Seller's price then prevailing provided that the Buyer shall have no entitlement whatsoever in respect of that deficiency unless the conditions in Condition 8.4 are satisfied.
- 8.3 The Buyer shall have no claim in respect of the fact the Goods delivered are of the wrong description unless the conditions in Condition 8.4 are satisfied.
- 8.4 The conditions before referred to are that:
- 8.4.1 the receipt for the Goods is qualified by a remark to that effect; and
- 8.4.2 the claim is made upon the Seller within 48 hours of delivery and is confirmed in writing by letter within 5 working days of delivery.
- 8.5 In any event, the Buyer shall be treated as having accepted any consignment of the Goods if it retains them for longer than 7 working days after their delivery.



9 TITLE AND RISK

- 9.1 Risk of the Goods shall pass to the Buyer from the time at which they cease to be in the possession of the Seller and in particular when they are delivered into the possession or custody of a carrier, forwarding agent, warehouseman or other agent for the purpose of transmission whether such person is in contract with or is instructed to accept delivery by either the Buyer or the Seller.
- 9.2 Notwithstanding the earlier passing of risk, title in the Goods shall remain with the Seller and shall not pass to the Buyer until the amount due under the invoice for them (including interest and costs) has been paid in full.
- 9.3 Until title passes the Buyer shall hold the Goods as bailee for the Seller and shall store or mark them so that they can at all times be identified as the property of the Seller. Where any Goods delivered under the contract have been sold by the Buyer, the Buyer shall so sell as agent for the Seller and shall be trustee for the Seller of the proceeds of the sale thereof, whether tangible or intangible, including insurance proceeds, and shall keep all such proceeds separate from any moneys or property of the Buyer and third parties and, in the case of tangible proceeds, properly stored, protected and insured until such time as the Seller shall have been paid in full for such Goods. The Buyer shall not be entitled to pledge or in any way charge by way of security for any indebtedness any of the Goods which remain the property of the Seller, but if the Buyer does so all moneys owing by the Buyer to the Seller shall (without prejudice to any other right or remedy of the Seller) forthwith become due and payable.
- 9.4 The Seller may at any time before title passes and without any liability to the Buyer:
- 9.4.1 Repossess and dismantle and use or sell all or any of the Goods and by doing so terminate the Buyer's right to use, sell or otherwise deal in them; and
- 9.4.2 For that purpose (or determining what if any Goods are held by the Buyer and inspecting them) enter any premises of or occupied by the Buyer or any third party where the Goods are stored.
- 9.5 The Seller may maintain an action for the Price of any Goods and any other charges relating thereto notwithstanding that title in them has not passed to the Buyer.

10 CANCELLATION AND VARIATION OF ORDERS

Orders for Goods may not be cancelled or suspended without the Seller's written consent and on such terms as the Seller may reasonably require. Any cancellation or suspension if accepted shall be upon the express term that the Seller shall be fully and effectively indemnified against any loss (including profit), costs and expenses incurred wholly or in part by such cancellation or suspension.

11 REJECTION AND RETURN OF GOODS

- 11.1 Goods incorrectly ordered or found to be surplus to the Buyer's requirements will be taken back by the Seller from the original delivery address only if they are in a good, unused condition and purchased within the preceding 30 working days.
- 11.2 Faulty Goods can only be rejected and/or returned in accordance with Conditions 6.5 and 8.
- 11.3 Non stock Goods / special order Goods may not be returned or cancelled.
- 11.4 A 15% handling charge (or a £15.00 minimum charge if greater than the 15%) will be levied for returns under this Condition provided that faulty Goods or Goods supplied incorrectly by the Seller will not incur any handling charges.
- 11.5 Carriage costs are not refundable against non-faulty Goods.
- 11.6 Notice in writing must be given by the Buyer and accepted by the Seller before the return of Goods take place.

12 THIRD PARTY RIGHTS

Where the Seller supplies Goods to the design of the Buyer, the Buyer warrants and represents that no design, sketch or other matters submitted to the Seller for inclusion in the work contains anything that is an infringement of any copyright (or any other intellectual property right) or proprietary right of any third party and the Buyer will fully and effectively indemnify the Seller against all claims, proceedings, actions, penalties, loss, costs, expenses (including legal costs and expenses), damages or injury resulting from a breach of this warranty.



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13 FORCE MAJEURE

If delivery is delayed or the Seller otherwise fails to comply with any of its obligations under these Conditions, due to any cause beyond the Seller's reasonable control (which includes, without limitation, fire, accidents, adverse weather conditions, defective materials, delays in receipt of raw materials or bought-in Goods or components, strikes, lockouts, trade dispute or other industrial action (whether involving its own employees or those of any other person), difficulties in obtaining workmen or materials, breakdown of machinery, act of God, war, civil disturbance, terrorism, requisitioning, governmental or parliamentary restrictions, prohibitions or enactments of any kind, import or export regulations), a reasonable extension of time for delivery shall be granted if appropriate. The Seller shall not have any liability, for late delivery or otherwise, in any of these circumstances.

14 INDEMNITY

The Buyer shall fully and effectively indemnify the Seller in respect of all damage or injury occurring to any personal property and against any claims, proceedings, actions, penalties, costs and expenses (including legal costs and expenses) in that connection for which the Seller may become liable in respect of the Goods sold if the same is caused by the fault or negligence of the Buyer or its employees, agents or contractors.

15 LAW

15.1 Quotations, contracts and these Conditions shall be construed according to and governed by English Law.

15.2 In the event of any dispute arising that cannot be agreed and resolved between the parties concerned, the Buyer and Seller jointly resolve to submit to the exclusive jurisdiction of the English Courts.

16 GENERAL

16.1 A person who is not a party to the contract has no rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of the contract but this does not affect any right or remedy of a third party which exists or is available apart from that Act.

16.2 Any notice required or permitted to be given by either party to the other under these Conditions shall be in writing addressed to that other party at its registered office or principal place of business or such other address as may at the relevant time have been notified pursuant to this provision to the party giving the notice.

16.3 No waiver by the Seller of any breach of the contract by the Buyer shall be considered as a waiver of any subsequent breach of the same or any other provision.

16.4 If any provision of these Conditions is held by any competent authority to be invalid or unenforceable in whole or in part the validity of the other provisions of these Conditions and the remainder of the provision in question shall not be affected thereby.