



TERMS AND CONDITIONS OF SALE

DEFINITIONS

Buyer	Shall mean the organization or person from whom an order to supply the goods and/or services is received by the Seller.
Seller	Means K. LACEY (Engineers & Designers) Ltd (K. Lacey Wire and Cable) Unit 4 Brookside Avenue Trading Estate Rustington West Sussex BN16 3LF.
Conditions	“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	“Goods” means the goods and/or services which the Buyer agrees to buy from the seller
Price	“Price” means the price set out in the list of prices of the Goods maintained by the Seller as amended from time to time or such other price as the parties may agree in writing plus such carriage, packing, insurance or other charges or interest on such as may be quoted by the Seller or as may apply in accordance with these conditions;
Delivery Date	“Delivery date” means the date specified by the Seller when the Goods are to be delivered.
Intellectual Property	“Intellectual Property” means all patents, registered and unregistered designs, copyright, trademarks, know-how and all other forms of intellectual property wherever in the world enforceable.

2. CONDITIONS

- 2.1 These conditions shall apply to all contracts for the sale of Goods by the Seller to the Buyer to the exclusion of all other terms and conditions including any terms or conditions which the Buyer may seek to apply under any purchase order, order confirmation or similar document.
- 2.2 All orders for Goods shall be deemed to be an offer by the Buyer to purchase Goods pursuant to these Conditions.
- 2.3 Acceptance of delivery of the Goods shall be deemed conclusive evidence of the Buyer's acceptance of these Conditions.
- 2.4 Any variation to these Conditions (including any special terms and conditions agreed between the parties including without limitation as to discounts) shall be inapplicable unless agreed in writing by the Seller.
- 2.5 Any advice, recommendation or representation given by the Seller or its employees or agents to the Buyer or its employees or agents as to the storage, application or use of the Goods or otherwise which is not confirmed in writing by the Seller is followed or acted upon entirely at the Buyer's own risk, and, accordingly, the Seller shall not be liable for any such advice, recommendation or representation which is not so confirmed.

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2.6 Nothing in these Conditions shall effect the statutory rights of any Buyer dealing as a consumer.

2.7 These Conditions supersede any other conditions previously issued.

3. GOODS DESCRIPTION

Any description given or applied to the Goods or service is given by way of identification only and the use of such description shall not constitute a sale by description. For the avoidance of doubt, the Buyer hereby affirms that it does not in any way rely on any description when entering into the contract.

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 on or after acceptance to meet any rise or fall in such costs.

4.2 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 acceptance of the Buyer's purchase order.

4.3 The Price stated is for stipulated quantity only and does not hold for lesser quantities.

4.4 All goods are subject to +/- 10 percent quantity tolerance (chargeable).

4.5 The price is exclusive of VAT which shall be due at the rate in force on the date of the Sellers 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.

4.6 Where carriage, packing, storage, or any other charges are stated separately from the price they will be payable to 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 of the invoice for the Goods supplied and VAT shall be due within 30 days Nett of the Sellers 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 We reserve the right to exercise our Statutory Right of Interest under the Late Payment of Commercial Debts (interest) Act 1998 if we are not paid according to our credit terms.

5.3 Unless otherwise agreed in writing, in the case of international sales payment shall be made forthwith against the delivery of the Goods by the payment method 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:

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- (i) require payment in advance of delivery in relation to any Goods not previously delivered.
- (ii) refuse to make delivery of any undelivered Goods whether ordered under the contract or not and without incurring any liability whatever to the Buyer for non-delivery or any delay in delivery.
- (iii) appropriate any payment made by the Buyer to such of the Goods (or Goods supplied under any other contract) as the Seller may think fit;
- (iv) Terminate the contract.

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.

6 DELIVERY

- 6.1 Unless otherwise agreed in writing, delivery of the Goods shall take place at the address specified by the Buyer on the date specified by the Seller. The Buyer shall make all arrangements necessary to take delivery of the Goods whenever they are tendered for delivery.
- 6.2 The date of delivery specified by the Seller is an estimate only. Time for delivery shall not be of the essence of the contract and while every reasonable effort will be made to comply with such dates compliance is not guaranteed and the Buyer shall have no right to damages or to cancel the order for failure for any cause to meet any delivery date stated.
- 6.3 If the Seller is unable to deliver the Goods for reasons beyond its control, then the Seller shall be entitled to place the Goods in storage until such time as delivery may be effected and the Buyer shall be liable for any expense associated with such storage.
- 6.4 If the Buyer fails to accept delivery of Goods on the delivery date or within 3 days of notification that they are ready for despatch whether prior to or after the delivery date the Seller reserves the right to invoice the Goods to the Buyer and charge him therefore. In addition the Buyer shall then pay reasonable storage charges or demurrage as appropriate in the circumstances until the Goods are either despatched to the Buyer or disposed of elsewhere.
- 6.5 The Seller shall be entitled to deliver the Goods by instalments and where the Goods are so delivered, each delivery shall constitute a separate contract and failure by the Seller to deliver any one or more of the instalments in accordance with these Conditions or any claim by the Buyer in respect of any one or more instalments shall not entitle the Buyer to treat any other related contract as repudiated.
- 6.6 Where the Buyer requires delivery of the Goods by instalments, rescheduling requires the Seller's written agreement and will not be possible unless at least 3 month's written notice is provided and so agreed. Each delivery shall constitute a separate contract and failure by the Buyer to pay the Price in respect of any instalment shall entitle the Seller to treat any other related contract as repudiated in addition to any other rights of the Seller pursuant to these Conditions.
- 6.7 Notwithstanding that the Seller may have delayed or failed to deliver the Goods (or any of them) promptly the Buyer shall be bound to accept delivery and to pay for the Goods in full provided that delivery shall be tendered at any time within 3 months of the delivery date.

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7 ACCEPTANCE OF THE GOODS

- 7.1 The Seller is a supplier of goods and producer of 'make to print' cable and wire assemblies, and the Buyer is exclusively responsible for detailing the specification of the Goods and for ascertaining the use to which they will be put and for determining their ability to function for that purpose.
- 7.2 The Buyer shall be deemed to have accepted the Goods within 48 hours after delivery to the Buyer.
- 7.3 The Buyer shall carry out a thorough inspection of the Goods within 72 hours of delivery and shall give written notification to the Seller within 5 working days of delivery of the Goods of any defects which a reasonable examination would have revealed.
- 7.4 The buyer shall not remove or otherwise obliterate any marks or numbers on the goods.
- 7.5 Where the Buyer has accepted, or has been deemed to have accepted the Goods, the Buyer shall not be entitled to reject Goods which are not in accordance with the contract.

8 TITLE AND RISK

- 8.1 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 when they are delivered at the sellers premises, or, 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.
- 8.2 Notwithstanding delivery and the passing of risk in the Goods, or any other provision of these conditions, the property in the Goods shall not pass to the Buyer until the Seller has received in cash or cleared funds payment in full of the Price of the Goods and of all other Goods agreed to be sold by the Seller to the Buyer for which payment is then due.
- 8.3 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.
- 8.4 Until payment of the Price protected, shall be entitled to resell or use the Goods in the course of its business but shall account to the Seller for the proceeds of sale or otherwise of the Goods, whether tangible or intangible including insurance proceeds, and shall keep all such proceeds separate from any monies or property of the Buyer and third parties and, in the case of tangible proceeds, properly stored, protected and insured.
- 8.5 Until such time as the property in the Goods passes to the Buyer (and provided that the Goods are still in existence and have not been resold) the Seller shall be entitled at any time to require the Buyer to deliver up the Goods to the Seller and if the Buyer fails to do so forthwith to enter upon any premises of the Buyer or of any third party where the Goods are stored and repossess the Goods.
- 8.6 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 monies owing by the Buyer to the Seller shall (without prejudice to any other right or remedy of the Seller) forthwith become due and payable.

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8.7 The Seller shall be entitled to recover the Price notwithstanding that property in any of the Goods has not passed from the Seller.

9 INSOLVENCY OF BUYER

9.1 If the Buyer fails to make payment for the Goods in accordance with the contract of sale or commits any other breach of this contract of sale or if any distress or execution shall be levied upon any of the Buyer's property or the Goods or if the Buyer offers to make any arrangement with its creditors or commits an act of bankruptcy or if any petition in bankruptcy is presented against the Buyer or the Buyer is unable to pay its debts as they fall due or if being a limited company any resolution or petition to wind up the Buyer (other than for the purpose of amalgamation or reconstruction without insolvency) shall be passed or presented or if a receiver, administrator administrative receiver or manager shall be appointed over the whole or any part of the Buyer's business or assets or if the Buyer shall suffer any analogous proceedings under foreign law or if any such matter as provided for in this clause is reasonably apprehended by the Seller all sums outstanding in respect of the Goods shall become payable immediately.

9.2 The Seller may in the circumstances set out in clause 9.1 above also in its absolute discretion, and without prejudice to any other rights which it may have, exercise any of its rights pursuant to clause 8 above.

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 indemnified against any loss incurred wholly or in part by such cancellation or suspension.

11 REJECTION AND RETURN OF GOODS

Goods incorrectly ordered or found to be surplus to the Buyer's requirements will be taken back by the Seller only if they are in an unused condition and purchased within the preceding thirty working days. Goods deemed as Nonstock Goods or custom/ special order Goods may not be returned or cancelled. A handling charge will be levied. Carriage costs are not refundable against non-faulty Goods. Faulty Goods or Goods supplied incorrectly by the Seller will not incur any handling charges. Notice in writing must be given by the Buyer and accepted by the Seller before the return of Goods take place.

12 WARRANTY

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.

- (i) Whilst every 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. The Seller in any circumstances will not be liable for any consequential loss or damage.
- (ii) 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.

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- (iii) 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.
- (iv) In the event of a defect in any Goods supplied by the Seller due to faulty material or workmanship the Seller will if satisfied that such defect is due to faulty material or workmanship and not to unsuitable storage conditions by the Buyer accept back Goods for return to the manufacturer for credit or replacement as agreed with them at that time.
- (v) Where the Seller supplies Goods to the design of the Buyer the Buyer warrants 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 proprietary right and the Buyer will indemnify the seller against all loss, costs, damages, or injury resulting from a breach of this warranty.
- (vi) The remedies contained in this Clause are without prejudice and subject to the other Conditions herein, including, but without limitation, to conditions 13 and 14 below.

13 LIMITATION OF LIABILITY

- 13.1 Where any court or arbitrator determines that any part of Clause 11 above is, for whatever reason, unenforceable, the Seller shall be liable for all loss or damage suffered by the Buyer but in an amount not exceeding the Price.
- 13.2 Nothing contained in these Conditions shall be construed so as to limit or exclude the liability of the Seller for death or personal injury as a result of the Seller's negligence or that of its employees or agents.

14 INTELLECTUAL PROPERTY RIGHTS

- 14.1 Where any Goods supplied by us embody, include or contain computer program(s) and/or related documentation the copyright in which is owned by a third party, all rights and liabilities associated with the use and/or reproduction thereof will be subject to the terms of the applicable end user licence, to the exclusion of all liabilities and obligations on our part.
- 14.2 The Buyer will indemnify us against all liabilities for infringement of third-party intellectual property rights arising from our compliance with the Buyer's specific requirements regarding design or specification for the Goods or arising from the use of the Goods in combination with other products.
- 14.3 In the event that all the Goods or the use thereof (subject as aforesaid) are held to constitute an infringement of any intellectual property rights and the use is thereby prevented, the will at its own expense and option either procure for the Buyer the right to continue using the Goods or replace the same with a non-infringing product, or modify the Goods so that they become non-infringing, or may elect to retake possession of the Goods and refund the Price. Subject to the foregoing, the Seller shall be under no liability to the Buyer for any loss, damage, or enquiry, whether direct or indirect, resulting from any intellectual property right infringement of the Goods.

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14.4 All Intellectual Property Rights produced from or arising as a result of the performance of any contract shall, so far as not already vested, become the absolute property of the Seller, and the Buyer shall do all that is reasonably necessary to ensure that such rights vest in the Seller by the execution of appropriate instruments or the making of agreements with third parties.

15 FORCE MAJEURE

The Seller shall not be liable for any delay or failure to perform any of its obligations if the delay or failure results from events or circumstances outside its reasonable control, including but not limited to acts of God, strikes, lock outs, accidents, war, fire, breakdown of plant or machinery or shortage or unavailability of raw materials from a natural source of supply, and the Seller shall be entitled to a reasonable extension of its obligations. If the delay persists for such time as the Seller considers unreasonable, it may without liability on its part, terminate the contract or any part of it.

16. RELATIONSHIP OF PARTIES

Nothing contained in these Conditions shall be construed as establishing or implying any partnership or joint venture between the parties and nothing in these Conditions shall be deemed to construe either of the parties as the agent of the other.

17. WAIVER

The failure by either party to enforce at any time or for any period any one or more of the Conditions herein shall not be a waiver of them or of the right at any time subsequently to enforce all Conditions of this Agreement.

18. SEVERABILITY

If any term or provision of these Conditions is held invalid, illegal, or unenforceable for any reason by any court of competent jurisdiction such provision shall be severed and the remainder of the provisions hereof shall continue in full force and effect as if these Conditions had been agreed with the invalid, illegal or unenforceable provision eliminated.

19. NO SET OFF

The Buyer may not withhold payment of any invoice or other amount due to the Seller by reason of any right of set-off or counterclaim which the Buyer may have or allege to have for any reason whatsoever.

20. ENTIRE AGREEMENT

These Conditions and any documents incorporating them or incorporated by them constitute the entire agreement and understanding between the parties.

21. GOVERNING LAW AND JURISDICTION

This Agreement shall be governed by and construed in accordance with the law of England and the parties hereby submit to the exclusion jurisdiction of the English courts.

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