

Terms & Conditions of Sale

CABLE MANAGEMENT PRODUCTS LIMITED STANDARD TERMS AND CONDITIONS FOR THE SALE OF GOODS

1. DEFINITIONS AND INTERPRETATION

1.1 In these Terms and Conditions the following expressions will have the following meanings unless inconsistent with the context:

"Buyer"	the person(s), firm or company whose order for the Goods is accepted by the Company;
"Business Day"	any day other than a Saturday or Sunday or a public or bank holiday in England;
"Company"	Cable Management Products Limited;
"Confidential Information"	all information in respect of the business of the Company including, but not limited to, know-how or other matters connected with the Goods or Services, and information concerning the Company's relationships with actual or potential clients, customers or suppliers and the needs and requirements of the Company and of such persons and any other information which, if disclosed, will be liable to cause harm to the Company;
"Contract"	any contract between the Company and the Buyer for the sale and purchase of the Goods formed in accordance with Condition 2;
"Force Majeure"	any cause preventing the Company from performing any or all of its obligations which arises from or is attributable to acts, events, omissions or accidents beyond the reasonable contemplation and control of the Company including, without limitation, strikes, lockouts or other industrial disputes (whether involving the work force of the Company or otherwise), protest, act of God, war, or national emergency, an act of terrorism, riot, civil commotion, malicious damage, compliance with any law or governmental order, rule, regulation or direction, accident, breakdown of plant or machinery, fire, explosion, flood, storm, epidemic or default of suppliers or subcontractors
"Goods"	any goods which the Company supplies to the Buyer (including any of them or any part of them) under a Contract
"Intellectual Property Rights"	all intellectual and industrial property rights including patents, know-how, registered trade marks, registered designs, utility models, applications for and rights to apply for any of the foregoing, unregistered design rights, unregistered trade marks, rights to prevent passing off for unfair competition and copyright, database rights, topography rights and any other rights in any invention, discovery or process, in each case in the United Kingdom and all other countries in the world and together with all renewals and extensions
"Terms and Conditions"	the standard terms and conditions of sale set out in this document together with any special terms agreed in writing between the Buyer and the Company.

1.2 The headings in these Terms and Conditions are for convenience only and will not affect their construction or interpretation.

2. FORMATION

- Subject to any variation under Condition 2.7, the Contract will be upon these Terms and Conditions to the exclusion of all other terms and conditions and all previous oral or written representations, including any terms or conditions which the Buyer purports to apply under any purchase order, confirmation of order or similar document, whether or not such document is referred to in the Contract.
- Each order or acceptance of a quotation for Goods will be deemed to be an offer by the Buyer to purchase Goods upon these Terms and Conditions. The Contract is formed when the order is accepted by the Company, by way of a written acknowledgement of order. No contract will come into existence until a written acknowledgement of the order is issued by the Company.
- Any quotation is valid for a period of 30 days only from its date, provided the Company has not previously withdrawn it.
- The Buyer must ensure that the terms of its order and any applicable specification are complete and accurate.
- Acceptance of delivery of the Goods will be deemed conclusive evidence of the Buyer's acceptance of these Terms and Conditions.
- Subject to Conditions 7.4 and 11, the Buyer may not cancel the Contract. The Company may cancel the Contract at any time prior to delivery.
- Save as set out in the Contract, these Terms and Conditions may only be varied or amended in writing and signed by a director of the Company.
- Minimum order values will apply as notified to the Buyer by the Company from time to time.

3. THE GOODS

- The quantity and description of the Goods will be as set out in the Company's acknowledgement of order.
- All samples, drawings, descriptive matter, specifications and advertising issued by the Company (or the manufacturer of the Goods) and any descriptions or illustrations contained in the Company's catalogues or brochures are issued or published for the sole purpose of giving an approximate idea of the Goods or Services represented by or described in them. They will not form part of the Contract and this is not a sale by sample.
- The Company may make any changes to the specification, design, materials or finishes of the Goods which are required to conform with any applicable safety or other statutory or regulatory requirements.
- The Company may deliver to the Buyer Goods up to 2% more or 2% less than the quantity ordered without any adjustment in the price, and the quantity delivered will be deemed to be the quantity ordered.

4. PRICE

- The price for the Goods will be the price set out in the Company's published price list current at the date of acceptance of order and is exclusive of:
 - where the Goods are below the minimum order value as notified to the Buyer by the Company, any costs of packaging and carriage of the goods; and
 - any value added tax or other applicable sales tax or duty which will be added to the sum in question.
- The Company will be entitled to increase the price of the Goods following any changes in the specification made both at the request of the Buyer and agreed by the Company or to cover any extra expense as a result of the Buyer's instructions or lack of instructions, or to comply with the requirements referred to in Condition 3.3.

5. PAYMENT

- The Company may invoice the Buyer for the Goods on or at any time after delivery and subject to Condition 5.4, payment is due in pounds sterling 30 days after service of such invoice.
- Time for payment will be of the essence.
- No payment will be deemed to have been received until the Company has received cleared funds.
- All sums payable to the Company under the Contract will become due immediately upon termination of the Contract.

- Goods will be packed in suitable containers for which no charge will be made. However, where (at the request of the Buyer) large or special packing cases are used an appropriate charge will be made.
- All payments to be made by the Buyer under the Contract will be made in full without any set-off, restriction or condition and without any deduction or withholding for or on account of any counterclaim or any present or future taxes, levies, duties, charges, fees, deductions or withholdings of any nature, unless the Buyer is required by law to make any such deduction or withholding.
- The Company may appropriate any payment made by the Buyer to the Company to such of the invoices for the Goods as the Company thinks fit, despite any purported appropriation by the Buyer.
- Without prejudice to any other rights the Company may have, the Company will have the right to suspend performance of its obligations under the Contract if the Buyer does not make any payment in accordance with this Condition 5.
- If any sum payable under the Contract is not paid when due then, without prejudice to the Company's other rights under the Contract, that sum will bear interest from the due date until payment is made in full, both before and after any judgment, at the rate prescribed under the Late Payment of Commercial Debts (Interest) Act 1998 from time to time and the Company will be entitled to suspend deliveries of the Goods until the outstanding amount has been received by the Company from the Buyer.

6. INSTALMENTS

- The Company may deliver the Goods by separate instalments. Each separate instalment will be invoiced and paid for in accordance with the provisions of the Contract.
- Each instalment will be a separate Contract and no cancellation or termination of any one Contract relating to an instalment will entitle the Buyer to repudiate or cancel any other Contract, instalment.

7. DELIVERY

- Delivery of the Goods will be made ex-works as defined in INCOTERMS 2000 unless otherwise agreed in writing by the Company.
- If the Company agrees in writing to deliver the Goods other than at its premises in accordance with Condition 7.1, then risk of damage to or loss of the Goods arising from off-loading the Goods shall be borne by the Customer whether or not it is the Company's obligations to off-load the Goods.
- The Buyer will take delivery of the Goods within 2 days of the Company giving it notice that the Goods are ready for delivery, unless otherwise agreed in writing. Delivery of the Goods will be made during the Company's usual business hours.
- The Company will use reasonable endeavours to deliver each of the Buyer's orders for the Goods within the time agreed when the Buyer places an order and, if no time is agreed, then within a reasonable time, but the time of delivery will not be of the essence. If, despite those endeavours, the Company is unable for any reason to fulfil any delivery or performance on the specified date, the Company will be deemed not to be in breach of this Contract, nor (for the avoidance of doubt) will the Company have any liability to the Buyer for direct, indirect or consequential loss (all three of which terms include, without limitation, pure economic loss, loss of profits, loss of business, depletion of goodwill and like loss) howsoever caused (including as a result of negligence) by any delay or failure in delivery except as set out in this condition. Any delay in delivery will not entitle the Buyer to cancel the order unless and until the Buyer has given 5 days' written notice to the Company requiring the delivery to be made and the Company has not fulfilled the delivery within that period.
- If the Buyer fails to take delivery of any of the Goods when they are ready for delivery or to provide any instructions, documents, licences or authorisations required to enable the Goods to be delivered on time (except solely on account of the Company's default), the Goods will be deemed to have been delivered on the due date and (without prejudice to its other rights) the Company may:
 - store or arrange for storage of the Goods until actual delivery or sale in accordance with Condition 7.5.2 and charge the Buyer for all related costs and expenses (including, without limitation, storage and insurance); and/or
 - following written notice to the Buyer, sell any of the Goods at the best price reasonably obtainable in the circumstances and charge the Buyer for any shortfall below the price under the Contract or account to the Buyer for any excess achieved over the price under the Contract, in both cases having taken into account any charges related to the sale.

8. RISK / OWNERSHIP AND ACCEPTANCE OF GOODS

- Risk of damage to or loss of the Goods will pass to the Buyer on delivery (or deemed delivery in accordance with Condition 7.5.1) .
- Ownership of the Goods will not pass to the Buyer until the Company has received in full (in cash or cleared funds) all sums due to it in respect of:
 - the Goods; and
 - all other sums which are or which become due to the Company from the Buyer on any account.
- Until ownership of the Goods has passed to the Buyer, the Buyer must:
 - hold the Goods on a fiduciary basis as the Company's bailee;
 - store the Goods (at no cost to the Company) separately from all other Goods of the Buyer or any third party in such a way that they remain readily identifiable as the Company's property;
 - not destroy, deface or obscure any identifying mark or packaging on or relating to the Goods; and
 - maintain the Goods in satisfactory condition insured on the Company's behalf for their full price against all risks to the reasonable satisfaction of the Company, and will whenever requested by the Company produce a copy of the policy of insurance.
- The Buyer may resell the Goods before ownership has passed to it solely on the following conditions:
 - any sale will be effected in the ordinary course of the Buyer's business at full market value and the Buyer will account to the Company accordingly; and
 - any such sale will be a sale of the Company's property on the Buyer's own behalf and the Buyer will deal as principal when making such a sale.
- The Buyer's right to possession of the Goods will terminate immediately if any of the circumstances set out in Condition 11.1 occur.
- The Company will be entitled to recover payment for the Goods notwithstanding that title in any of the Goods has not passed from the Company.
- The Buyer grants the Company, its agents and employees an irrevocable licence at any time to enter any premises where the Goods are or may be stored in order to inspect them, or, where the Buyer's right to possession has terminated, to recover them.
- Where the Company is unable to determine whether any Goods are the goods in respect of which the Buyer's right to possession has terminated, the Buyer will be deemed to have sold all goods of the kind sold by the Company to the Buyer in the order in which they were invoiced to the Buyer.
- The Buyer shall ensure that it will inspect the Goods and notify the Company within 2 days of receipt of the Goods of any shortages.
- On termination of the Contract, howsoever caused, the Company's (but not the Buyer's) rights contained in this Condition 8 will remain in effect.

9. WARRANTY, EXCLUSION OF LIABILITY AND INDEMNITY

WARRANTY

- The Company will, free of charge, within a period of 6 months from the date of delivery of Goods which are proved to the reasonable satisfaction of the Company to be damaged or defective due to defects in material or workmanship, repair, or at its option replace, such Goods. This obligation will not apply where:

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- 9.1.1 the Goods have been improperly altered in any way whatsoever, or have been subject to misuse or unauthorised repair;
- 9.1.2 the Goods have been improperly installed or connected;
- 9.1.3 any maintenance requirements relating to the Goods have not been complied with;
- 9.1.4 any instructions as to storage of the Goods have not been complied with in all respects;
- 9.1.5 any identifying mark, serial number or packaging on or relating to the Goods have been destroyed, defaced or obscured; or
- 9.1.6 the Buyer has failed to notify the Company of any defect or suspected defect within 2 days of the delivery where the defect should be apparent on reasonable inspection, or within 2 days of the same coming to the knowledge of the Buyer where the defect is not one which should be apparent on reasonable inspection, and in any event no later than 6 months from the date of delivery.
- 9.2 Any Goods which have been replaced will belong to the Company. Any repaired or replacement Goods will be liable to repair or replacement under the terms specified in Condition 9.1 for the unexpired portion of the 6 month period from the original date of delivery of the replaced Goods.
- EXCLUSION OF LIABILITY**
- 9.3 In the event of any breach of the Company's express obligations under Conditions 7.4, 9.1, and 9.2 above the remedies of the Buyer will be limited to damages.
- 9.4 The Company does not exclude its liability (if any) to the Buyer:
- 9.4.1 for breach of the Company's obligations arising under section 12 Sale of Goods Act 1979 or section 2 Sale and Supply of Goods and Services Act 1982;
- 9.4.2 for personal injury or death resulting from the Company's negligence;
- 9.4.3 under section 2(3) Consumer Protection Act 1987;
- 9.4.4 for any matter for which it would be illegal for the Company to exclude or to attempt to exclude its liability; or
- 9.4.5 for fraud.
- 9.5 Except as provided in Conditions 7.4 and 9.1 to 9.4, the Company will be under no liability to the Buyer whatsoever (whether in contract, tort (including negligence), breach of statutory duty, restitution or otherwise) for any injury, death, damage or direct, indirect or consequential loss (all three of which terms include, without limitation, pure economic loss, loss of profits, loss of business, depletion of goodwill and like loss) howsoever caused arising out of or in connection with:
- 9.5.1 any of the Goods, or the manufacture or sale or supply, or failure or delay in supply, of the Goods by the Company or on the part of the Company's employees, agents or sub-contractors;
- 9.5.2 any breach by the Company of any of the express or implied terms of the Contract;
- 9.5.3 any use made or resale by the Buyer of any of the Goods, or of any product incorporating any of the Goods;
- 9.5.4 any statement made or not made, or advice given or not given, by or on behalf of the Company or otherwise under the Contract.
- 9.6 Except as set out in Conditions 7.4 and 9.1 to 9.4, the Company hereby excludes to the fullest extent permissible in law, all conditions, warranties and stipulations, express (other than those set out in the Contract) or implied, statutory, customary or otherwise which, but for such exclusion, would or might subsist in favour of the Buyer.
- 9.7 Each of the Company's employees, agents and sub-contractors may rely upon and enforce the exclusions and restrictions of liability in Conditions 7.3 and 9.4 to 9.6 in that person's own name and for that person's own benefit, as if the words "its employees, agents and sub-contractors" followed the word Company wherever it appears in those clauses.
- 9.8 The Buyer acknowledges that the above provisions of this Condition 9 are reasonable and reflected in the price which would be higher without those provisions, and the Buyer will accept such risk and/or insure accordingly.
- 9.9 The Buyer agrees to indemnify, keep indemnified and hold harmless the Company from and against all costs (including the costs of enforcement), expenses, liabilities, direct, indirect or consequential loss (all three of which terms include, without limitation, pure economic loss, loss of profits, loss of business, depletion of goodwill and like loss), damages, claims, demands, proceedings or legal costs (on a full indemnity basis) and judgments which the Company incurs or suffers as a consequence of a direct or indirect breach or negligent performance or failure in performance by the Buyer of the terms of the Contract.
- 10. FORCE MAJEURE**
- 10.1 The Company will be deemed not to be in breach of the Contract or otherwise liable to the Buyer in any manner whatsoever for any failure or delay in performing its obligations under the Contract due to Force Majeure, provided that it has and continues to comply with its obligations set out in Condition 10.2.
- 10.2 If the Company's performance of its obligations under the Contract is affected by Force Majeure:
- 10.2.1 it will give written notice to the Buyer, specifying the nature and extent of the Force Majeure, as soon as reasonably practicable after becoming aware of the Force Majeure and will at all times use all reasonable endeavours to bring the Force Majeure event to an end and, whilst the Force Majeure is continuing, mitigate its severity;
- 10.2.2 subject to the provisions of Condition 10.3, the date for performance of such obligation will be deemed suspended only for a period equal to the delay caused by such event; and
- 10.2.3 it will not be entitled to payment from the Buyer in respect of extra costs and expenses incurred by virtue of the Force Majeure.
- 10.3 If the Force Majeure in question continues for more than three months, either party may give written notice to the other to terminate the Contract. The notice to terminate must specify the termination date, which must not be less than 15 days after the date on which the notice is given, and once such notice has been validly given, the Contract will terminate on that termination date.
- 11. TERMINATION**
- 11.1 The Company may by notice in writing served on the Buyer terminate the Contract immediately if the Buyer:
- 11.1.1 is in material breach of any of the terms of the Contract and, where the breach is capable of remedy, the Buyer fails to remedy such breach within 30 days service of a written notice from the Company, specifying the breach and requiring it to be remedied. Failure to pay any sums due in accordance with Condition 5.1 is a material breach of the terms of the Contract which is not capable of remedy;
- 11.1.2 being a company, summons a meeting of its creditors, makes a proposal for a voluntary arrangement, becomes subject to any voluntary arrangement, is unable to pay its debts within the meaning of section 123 Insolvency Act 1986, has a receiver, manager or administrative receiver appointed over any of its assets, undertakings or income, has passed a resolution for its winding-up (save for the purpose of a voluntary reconstruction or amalgamation previously approved in writing by the party serving notice), is subject to a petition presented to any Court for its winding-up (save for the purpose of a voluntary reconstruction or amalgamation previously approved in writing by the party serving notice), has a provisional liquidator appointed, has a proposal made for a scheme of arrangement under section 425 Companies Act 1985, has an administrator appointed in respect of it or is the subject of an application for administration filed at any court or a notice of appointment of an administrator filed at any court or a notice of intention to appoint an administrator given by any person or is the subject of a notice to strike off the register at Companies House;
- 11.1.3 has any restraint, execution or other process levied or enforced on any of its property; or
- 11.1.4 ceases or threatens to cease to trade;
- 11.1.5 has a change in its senior management and/or control as defined by section 416 Income and Corporation Taxes Act 1988; or
- the equivalent of any of the above occurs to the Buyer under the jurisdiction to which the Buyer is subject.
- 11.2 The termination of the Contract howsoever arising is without prejudice to the rights, duties and liabilities of either the Buyer or the Company accrued prior to termination the conditions which expressly or impliedly have effect after termination will continue to be enforceable notwithstanding termination.
- 11.3 The Company will be entitled to suspend any deliveries otherwise due to occur following service of a notice specifying
- a breach under Condition 11.1.1, until either the breach is remedied or the Contract terminates, whichever occurs first.
- 12. INTELLECTUAL PROPERTY**
- 12.1 No right or licence is granted to the Buyer in respect of the Intellectual Property Rights of the Company, except the right to use, or re-sell the Goods in the Buyer's ordinary course of business.
- 12.2 The Buyer will not without the Company's prior consent allow any trade marks of the Company or other words or marks applied to the Goods to be obliterated, obscured or omitted nor add any additional marks or words.
- 13. CONFIDENTIALITY**
- 13.1 The Buyer will keep confidential any and all Confidential Information that it may acquire.
- 13.2 The Buyer will not use the Confidential Information for any purpose other than to perform its obligations under the Contract. The Buyer will ensure that its officers and employees comply with the provisions of this Condition 13.
- 13.3 The obligations on the Buyer set out in Condition 13.1 and 13.2 will not apply to any information which:
- 13.3.1 is publicly available or becomes publicly available through no act or omission of the Buyer; or
- 13.3.2 the Buyer is required to disclose by order of a court of competent jurisdiction.
- 14. TECHNICAL ADVICE**
- 14.1 The Company may at its discretion furnish technical advice to the Buyer relating to goods manufactured or supplied by the Company or use of them, but on the basis that the same is given at the Buyer's risk and the Company be under no liability to the Buyer whatsoever (whether in contract, tort (including negligence), breach of statutory duty, restitution or otherwise) for any damage or direct, indirect or consequential loss (all three of which terms include, without limitation, pure economic loss, loss of profits, loss of business, depletion of goodwill and like loss) howsoever caused arising therefrom nor shall the Buyer be entitled to rescind the Contract.
- 15. AEROSPACE**
- 15.1 Goods supplied by the Company are not supplied for aerospace or aeronautical applications and the Buyer shall not use the Goods in such applications. The Company be under no liability to the Buyer whatsoever (whether in contract, tort (including negligence), breach of statutory duty, restitution or otherwise) for any, damage or direct, indirect or consequential loss (all three of which terms include, without limitation, pure economic loss, loss of profits, loss of business, depletion of goodwill and like loss) howsoever caused arising from the Buyer, or any third party the Buyer has supplied the Goods to, from using the Goods for aerospace or aeronautical applications.
- 16. GENERAL**
- 16.1 Time for performance of all obligations of the Buyer under the Contract is of the essence.
- 16.2 Time for performance of all obligations of the Company under the Contract is not of the essence.
- 16.3 Each right or remedy of the Company under any Contract is without prejudice to any other right or remedy of the Company under this or any other Contract.
- 16.4 If any condition or part of the Contract is found by any court, tribunal, administrative body or authority of competent jurisdiction to be illegal, invalid or unenforceable then that provision will, to the extent required, be severed from the Contract and will be ineffective without, as far as is possible, modifying any other provision or part of the Contract and this will not affect any other provisions of the Contract which will remain in full force and effect.
- 16.5 No failure or delay by the Company to exercise any right, power or remedy will operate as a waiver of it nor will any partial exercise preclude any further exercise of the same, or of some other right, power or remedy.
- 16.6 The Company may assign, delegate, license, hold on trust or sub-contract all or any part of its rights or obligations under the Contract.
- 16.7 The Contract is personal to the Buyer who may not assign, delegate, license, hold on trust or sub-contract all or any of its rights or obligations under the Contract without the Company's prior written consent.
- 16.8 Save as set out in Condition 9.7, the parties to the Contract do not intend that any of its terms will be enforceable by virtue of the Contracts (Rights of Third Parties) Act 1999 by any person not a party to it.
- 16.9 The Contract contains all the terms which the Company and the Buyer have agreed in relation to the Goods and supersedes any prior written or oral agreements, representations or understandings between the parties relating to such Goods. The Buyer acknowledges that it has not relied on any statement, promise or representation made or given by or on behalf of the Company which is not set out in the Contract. Nothing in this Condition 16.9 will exclude any liability which one party would otherwise have to the other party in respect of any statements made fraudulently.
- 17. COMMUNICATION**
- 17.1 Any notice, demand or communication in connection with the Contract will be in writing and may be delivered by hand, first class post, or facsimile, addressed to the recipient at its registered office or its address or facsimile number as the case may be stated in Condition 17.4 below and will be marked for the attention of the Director of Sales (or such other address or facsimile number or person which the recipient has notified in writing to the sender in accordance with this Condition 17, to be received by the sender not less than seven Business Days before the notice is despatched).
- 17.2 The notice, demand or communication will be deemed to have been duly served:
- 17.2.1 if delivered by hand, at the time of delivery;
- 17.2.2 if delivered by first class post or Special Delivery post, 48 hours after being posted or in the case of Airmail 14 days after being posted (excluding days other than Business Days);
- 17.2.3 if delivered by facsimile, at the time of transmission;
- provided that, where in the case of delivery by hand or transmission by facsimile, such delivery or transmission occurs either after 4.00 pm on a Business Day, or on a day other than a Business Day, service will be deemed to occur at 9.00 am on the next following Business Day (such times being local time at the address of the recipient).
- 17.3 Service by facsimile is a valid means of service only where service of the original notice, demand or communication is not required.
- 17.4 The addresses and facsimile numbers for the Company are as follows:
Cable Management Products Limited
Address: Station Rd, Coleshill, Birmingham B46 1HT
Fax no: 01675-464-930
- 17.5 For the avoidance of doubt, where proceedings have been issued in the Courts of England and Wales, the provisions of the Civil Procedure Rules must be complied with in respect of the service of documents in connection with those proceedings.
- 18. JURISDICTION**
- The formation, existence, construction, performance, validity and all aspects whatsoever of the Contract or of any term of the Contract will be governed by English law. The English Courts will have exclusive jurisdiction to settle any disputes which may arise out of or in connection with the Contract. The parties agree to submit to that jurisdiction.