

## Conditions of Sale

### 1. Interpretation

- (a) In these Conditions, the following words shall have the following meanings:

“Buyer” means the person, firm or company whose particulars appear on the “order”;

“Goods” means any goods (or instalment or part thereof) howsoever ordered by the Buyer from the Seller;

“Order” means any order sent to the Seller by the Buyer for the supply of Goods and/or Services;

“Seller” means General Contracting (UK) Limited t/a Wrexham Mineral Cables (CRN: FC17178) whose registered office is at Canon’s Court, 22 Victoria Street, Hamilton, HM12, Bermuda;

“Services” means any services (or instalment or part thereof) howsoever ordered by the Buyer from the Seller.

- (b) A reference to a particular law is a reference to it as it is in force for the time being taking account of any amendment, extension, application or re-enactment and includes any subordinate legislation for the time being in force made under it.

### 2. Basis of Sale

- (a) An Order shall be accepted entirely at the discretion of the Seller and if accepted will only be accepted on the basis of these Conditions which shall (together with such conditions as may be agreed in writing by the Buyer and the Seller) form the entire agreement between the Buyer and Seller to the exclusion of any other conditions (including any terms or conditions which the Buyer purports to apply under any purchase order, confirmation of order, specification or other document).

- (b) Each Order which the Seller accepts (by way only of issue of the Seller’s standard order acknowledgement form or on delivery of the Goods and/or performance of the Services (as the case may be) to the Buyer’s address shown in the Order) shall constitute a separate legally binding contract between the Seller and the Buyer.

- (c) No addition, variation or substitution of these Conditions shall bind the Seller or form any part of any contract unless expressly accepted in writing by an authorised representative of the Seller.

- (d) The Seller’s employees or agents are not authorised to make any representations with regard to the subject matter of any contract between the Seller and the Buyer. In entering into a contract with the Seller, the Buyer acknowledges that if it relies on any representation, advice or recommendation given by the Seller, its employees or agents to the Buyer as to the Goods and/or the Services (as the case may be) it does so entirely at the Buyer’s own risk.

### 3. Specification

- (a) The Buyer shall be responsible to the Seller for ensuring the accuracy of the terms of any Order and specification submitted by the Buyer and for checking and ensuring the accuracy of any order acknowledgment form issued by the Seller.

- (b) The Buyer shall not be entitled to rely on any typographical, clerical or other error or omission in any sales literature, quotations, price-list, acceptance of offer, invoice or other document or information issued by the Seller which the Buyer acknowledges shall not form part of or be incorporated by reference into any contract between the Seller and the Buyer. Any such error or omission shall be subject to correction without any liability on the part of the Seller.
- (c) The Seller reserves the right to make changes in the specification of the Goods and/or the Services (as the case may be) which are required to conform with any applicable statutory or regulatory requirements and which do not materially affect quality or performance.
- (d) If the Goods are to be manufactured or any process is to be applied to the Goods by the Seller in accordance with a specification submitted by the Buyer, the Buyer shall indemnify the Seller against all loss, damages costs and expenses awarded against or incurred by the Seller in settlement of any claim for infringement of any patent, copyright, design, trade mark or other industrial or intellectual property rights of any other person which result from the Seller's use of the Buyer's specification.

#### 4. **Price of Goods and Services**

- (a) The Price for the Goods and/or the Services (as the case may be) shall be the Seller's price set out in the Seller's quotation issued to the Buyer or, in the absence of any such quotation, as set out in the Seller's published price list current at the date of acceptance of the Order. All prices quoted are valid for only 30 days from the date of quotation or until earlier acceptance by the Buyer, after which they may be altered by the Seller without giving notice to the Buyer.
- (b) Any quotation or estimate given by the Seller is an indication given in good faith and shall not become binding upon the Seller unless subsequently confirmed by the Seller in writing.
- (c) All prices quoted are based on information available at the date of quotation and the Seller reserves the right to vary prices at any time without notice prior to the date of issue of the relevant invoice and the price payable by the Buyer shall be the price applicable at the date of the invoice.
- (d) The price of the Goods and/or the Services (as the case may be) is exclusive of VAT and any other taxes and the cost of carriage and any other matters all of which the Buyer shall pay to the Seller in addition.
- (e) In the event of any increase in cost to the Seller which is beyond the control of the Seller (including (without limitation) any increases imposed upon the Seller by its own suppliers) and/or any variation or suspension of the work which is agreed to by the Seller upon the Buyer's request, or if the Buyer's instructions are incorrect or insufficient, the Seller shall be entitled to adjust the price of the Goods and/or the Services (as the case may be) to reflect the costs involved, and to adjust delivery dates as appropriate.
- (f) The Seller shall be entitled to bring an action for the price of the Goods and/or the Services (as the case may be) or part thereof notwithstanding that delivery and/or performance may not have taken place and/or that ownership in the Goods has not passed to the Buyer.

5. **Payment**

- (a) The Seller shall be entitled to invoice the Buyer for the price of the Goods and/or the Services (as the case may be) at any time prior, on or following delivery of the Goods and/or performance of the Services (as the case may be) unless the Buyer wrongfully fails to take delivery of the Goods in which event the Seller shall be entitled to invoice the Buyer for the full amount at any time after the Seller has notified the Buyer that the Goods are ready for collection or (as the case may be) the Seller has tendered delivery of the Goods.
- (b) Until a Credit Account has been opened by the Seller in favour of the Buyer, the Buyer shall pay the price for the Goods and/or the Services (as the case may be) on or prior to delivery and (where applicable) upon receipt of the Seller's invoice.
- (c) The time of payment of the price shall be of the essence of any contract between the Seller and the Buyer.
- (d) A Buyer in whose favour a Credit Account has been opened shall, unless otherwise agreed in writing by the Seller, pay the price for the Goods and/or the Services (as the case may be) on or before the 28th day (or the next working day if the 28th day of a particular month is a Saturday or a Sunday) of the month following the date of the Seller's invoice.
- (e) No payment shall be deemed to have been received until the Seller has received cleared funds. All payments payable to the Seller under the contract between the Seller and the Buyer shall become due immediately on its termination despite any other provision.
- (f) Where payment is not made by the due date, regardless of its other remedies, the Seller shall be entitled to (i) cancel the contract between the Seller and the Buyer or suspend any further deliveries to the Buyer; and (ii) claim interest and /or compensation for reasonable debt recovery costs under the Late Payment of Commercial Debts (Interest) Act 1998 as amended and supplemented by the Late Payment of Commercial Debts Regulations 2002.
- (g) In the event that the Seller is, for whatever reason, unable to claim interest and/or compensation under the Late Payment of Commercial Debts (Interest) Act 1998 as amended and supplemented by the Late Payment of Commercial Debts Regulations 2002, the Seller reserves the right to charge the Buyer interest (both before and after any judgment) on the amount unpaid at the rate of 4% (four per cent) per annum above the base rate from time to time of the Bank of England, accruing on a daily basis until payment is made in full, and for such purposes, the Buyer and the Seller agree that such rate is reasonable and reflects a genuine pre-estimate of the loss that the Seller would incur as a result of any default by the Buyer to make payment on the due date.
- (h) If any payment is dishonoured or countermanded by the Buyer, the Seller shall have the right to charge the Buyer an administration fee of £25.00 (or such other fee as may be notified to the Buyer from time to time).

6. **Delivery**

- (a) Delivery of the Goods shall be made by the Buyer collecting the Goods at the Seller's premises or, if some other place for delivery is agreed by the Seller, by the Seller delivering the Goods to that place.

- (b) Any delivery date quoted is given in good faith, but the Seller shall not be responsible for any delay in delivery of the Goods and/or the performance of the Services (as the case may be) howsoever caused. Time for delivery shall not be of the essence of the contract between the Seller and the Buyer and the Seller shall not be liable for any delay in delivery howsoever caused.
- (c) The Seller shall be entitled to make delivery by instalments (in which case each delivery shall constitute a separate contract), and to invoice the Buyer separately for each instalment. 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 the contract as a whole between the Seller and the Buyer as repudiated.
- (d) Except in the case of delivery at the Seller's premises, the Buyer shall at its own expense use all reasonable endeavours to ensure that the Seller is able to freely access and make any deliveries to any other place for delivery at such time(s) as may be specified by the Seller. Any failure by the Buyer to comply with the provisions of this condition or to otherwise accept delivery (save upon such grounds for rejection as are specified in the law relating to the Sale of Goods) shall be deemed to be a breach of contract. Any additional costs incurred by the Seller in re-delivering the Goods (either to the originally agreed place for delivery or to such other place as may be reasonably requested by the Buyer) will be charged to the Buyer.
- (e) The quantity of any consignment of Goods as recorded by the Seller upon despatch from the Seller's premises shall be conclusive evidence of the quantity received by the Buyer on delivery unless the Buyer can provide conclusive evidence proving the contrary. Notwithstanding the provisions of condition 8(e), the Seller shall not be liable for any under-delivery of Goods in whole or in part (even if caused by the Seller's negligence) unless the Buyer gives written notice to the Seller of the under-delivery within 48 hours of the date when the Goods would in the ordinary course of events have been received. Any liability of the Seller for under-delivery of the Goods shall be limited to replacing the Goods within a reasonable time or issuing a credit note at the pro rata contract rate against any invoice raised for such Goods.

## **7. Risk and Title**

- (a) Risk of damage to or loss of the Goods shall pass to the Buyer at the time of delivery.
- (b) Notwithstanding delivery and the passing of risk in the Goods, or any other provisions in these Conditions, ownership in the Goods shall not pass to the Buyer until the Seller 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 Seller from the Buyer on any account.
- (c) Until ownership of the Goods has passed to the Buyer in accordance with these Conditions, the Buyer shall:
  - (i) hold the Goods on a fiduciary basis as the Seller's bailee;
  - (ii) store the Goods (at no cost to the Seller) separately from all other Goods of the Buyer or any third party in such a way that they remain readily identifiable as the Seller's property;
  - (iii) not destroy, deface or obscure any identifying mark or packaging on or relating to the Goods;

- (iv) maintain the Goods in satisfactory condition insured on the Seller's behalf for their full price against all risks to the reasonable satisfaction of the Seller (and produce the policy of insurance to the Seller on request); and
  - (v) hold the proceeds of the insurance referred to in condition 6(c)(iv) on trust for the Seller and not mix them with any other money, nor pay the proceeds into an overdrawn bank account.
- (d) Except where the Buyer becomes insolvent, has a receiver appointed over the whole or any part of its assets, enters into any compound with creditors, or has an order made or resolution passed for it to be wound up (otherwise than in furtherance of a scheme for amalgamation or reconstruction) or if the ownership or control of it shall pass into the hands of any other legal person, or an event analogous occurs in respect of the Buyer in any jurisdiction to which the Buyer is subject, the Buyer may resell the Goods before ownership has passed to it solely on the following conditions:
- (i) any sale shall be effected in the ordinary course of the Buyer's business at full market value and the Buyer shall hold such part of the proceeds of sale as represent the amount owed by the Buyer to the Seller on behalf of the Seller and the Buyer shall immediately account to the Seller accordingly; and
  - (ii) any such sale shall be a sale of the Seller's property on the Buyer's own behalf and the Buyer shall deal as principal when making such a sale.
- (e) Until such time as ownership in the Goods passes to the Buyer, 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 any premises where the Goods are or may be stored and repossess the Goods.
- (f) On termination of the contract between the Seller and the Buyer, howsoever caused, the Seller's (but not the Buyer's) rights contained in this condition 7 shall remain in effect.
- (g) Following the transfer of ownership of the Goods to the Buyer in accordance with these Conditions, the Buyer shall (where applicable) (i) be responsible for financing the collection, treatment, recovery and environmentally sound disposal of all WEEE (as hereinafter defined) arising or deriving from the Goods; and all WEEE arising or deriving from goods placed on the market prior to 13 August 2005 where such goods are to be replaced by the Goods and the Goods are of an equivalent type or are fulfilling the same function as that of such goods; (ii) comply with all additional obligations placed upon the Buyer by the Waste Electrical and Electronic Equipment Regulations 2006 ("the WEEE Regulations") by virtue of the Buyer accepting the responsibility set out in section (i) above; (iii) provide the Buyer's WEEE compliance scheme operator with such data, documents, information and other assistance as such compliance scheme operator may from time to time reasonably require to enable such compliance scheme operator to satisfy the obligations assumed by it as a result of the Buyer's membership of such scheme; and (iv) be responsible for all costs and expenses arising from and relating to its obligations set out in this paragraph. Terms used in this Condition shall have the meaning ascribed thereto in the WEEE Regulations.

## 8. **Warranties and Liability**

- (a) The Seller warrants that, except in relation to intellectual property rights of third parties, it has good title to the Goods and (subject to the conditions set out below) the Goods shall correspond with their written specification (if any) at the time of delivery and will be

free from material defects in materials and workmanship for a period of 12 months or separately stated period from delivery, provided that the Seller shall be under no liability:

- (i) in respect of any defect arising from any drawing, design, specification or stipulation of the Buyer; or
  - (ii) in respect of any defect or lack of performance arising from fair wear and tear, wilful damage, negligence, abnormal working conditions, failure to follow Seller's instructions, or misuse, alteration or repair of the Goods without the Seller's approval; or
  - (iii) in respect of parts or materials not manufactured by the Seller, in respect of which the Buyer shall only be entitled to the benefit of any warranty or guarantee which is given by the manufacturer to the Seller; or
  - (iv) if the full price for the Goods has not been paid by the due date for payment.
- (b) The Seller warrants that the Services will be provided using reasonable care and skill and, as far as reasonably possible, in accordance with the contract between the Seller and the Buyer.
- (c) Subject as expressly provided in these Conditions, and except where the Goods and/or Services (as the case may be) are supplied to a person dealing as a consumer (within the meaning of the Unfair Contract Terms Act 1977), all warranties, conditions or other terms implied by statute or common law are excluded to the fullest extent permitted by law.
- (d) Where the Goods and/or the Services (as the case may be) are supplied under a consumer transaction (as defined by the Consumer Transactions (Restrictions on Statements) Order 1976) the statutory rights of the Buyer are not affected by these Conditions.
- (e) Any claim by the Buyer arising from any defect in the quality or condition of the Goods or their failure to correspond with the agreed specification shall (whether or not delivery is refused by the Buyer) be notified to the Seller in writing within 7 days of delivery or (where the defect or failure was not apparent on reasonable inspection) within a reasonable time of the defect or failure becoming apparent. If delivery is not refused, and the Buyer does not notify the Seller accordingly, the Buyer shall not be entitled to reject the Goods and the Seller shall have no liability for such defect or failure, and the Buyer shall be bound to pay the contract price as if the Goods had been delivered in accordance with the contract between the Seller and the Buyer.
- (f) Where the Seller accepts a claim made by the Buyer in respect of the Goods made in accordance with these Conditions, the Buyer's right shall be to a full or partial refund or replacement of the Goods (or the part(s) in question), at the Seller's option, but the Seller shall have no further liability to the Buyer.
- (g) Except in respect of death or personal injury caused by the Seller's negligence, the Seller shall not be liable to the Buyer by reason of any representation (unless fraudulent), or any implied warranty, condition, or other term, or any duty at common law, or under the express terms of the contract between the Seller and the Buyer, or in any manner whatsoever, for any indirect, special or consequential loss or damage (and in particular but without prejudice to the generality of the foregoing, the Seller shall not be liable for any costs, claims, damages or expenses arising out of any tortious act or omission including negligence, or any breach or statutory duty calculated by reference to

profit, income, production or accruals, or by reference to accrual of such costs, claims, damages or expenses on a time basis) which may arise out of, or in connection with the supply of the Goods and/or the Services or their use or resale by the Buyer (and whether caused by the negligence of the Seller, its employees or agents or otherwise) save as may be expressly provided in these Conditions, and the entire liability of the Seller under or in connection with the contract between the Seller and the Buyer shall not exceed the price of the Goods and/or the Services (as the case may be) save as otherwise expressly provided in these Conditions.

- (h) Any repair, replacement or refund of any monies made by the Seller to the Buyer shall not under any circumstances be deemed to be an admission of any liability on the part of the Seller to the Buyer (or any third party), and shall be without prejudice to the rights of the Seller which the Seller hereby reserves in full should it make any such repairs, replacements or refunds of monies.
- (i) The Seller shall not be liable to the Buyer, or be deemed to be in breach of contract by reason of any delay in performing, or any failure to perform any of the Seller's obligations in relation to any Goods and/or Services (as the case may be) if the delay or failure is due to any cause beyond the Seller's reasonable control.

9. **Design and Drawings**

- (a) All figures, statements, advice, recommendations, drawings, designs, suggestions and specifications contained or referred to in any documents supplied by the Seller to the Buyer are given in good faith, but shall be approximate only, and shall not (unless the Seller specifically warrants the same in writing) be warranted to be accurate. All such matters should be checked and verified for accuracy and suitability by the Buyer, and accordingly the Seller accepts no liability or responsibility whatsoever in relation to such matters unless specifically warranted in writing in the manner referred to above.
- (b) The Seller will make available information required in relation to the design, construction and testing of the Goods as is reasonably necessary for the Buyer to take appropriate steps to see that the Goods will be, when installed, safe and not constitute a risk to the health of any person provided always that the Buyer shall indemnify, and keep indemnified, the Seller against all claims, costs, actions, damages or liabilities resulting directly or indirectly (including economic and consequential loss) for any claim brought against the Seller arising out of the use of the Goods.

10. **Termination/Suspension**

- (a) The Buyer shall not be entitled to cancel the contract between the Seller and the Buyer and if the Buyer purports to do so it shall indemnify the Seller for all losses, costs and expenses incurred by the Seller in relation to the contract.
- (b) Without prejudice to any other right or remedy, the Seller shall be entitled to suspend forthwith further performance and/or terminate contractual relations with the Buyer without any liability to the Buyer if the Buyer:
  - (i) is in breach of any of these Conditions or (in the absolute opinion of the Seller) is likely to breach any Condition herein; or
  - (ii) becomes insolvent, has a receiver appointed over the whole or any part of its assets, enters into any compound with creditors, or has an order made or resolution passed for it to be wound up (otherwise than in furtherance of a scheme for amalgamation or reconstruction) or if the ownership or control of it

shall pass into the hands of any other legal person, or an event analogous occurs in respect of the Buyer in any jurisdiction to which the Buyer is subject.

11. **General**

- (a) The Seller is a member of a group of companies and accordingly the Seller may perform any of its obligations or exercise any of its rights hereunder by itself or through any other member of its group.
- (b) The Seller shall be entitled to subcontract the whole or any part of its obligations under the contract between the Seller and the Buyer to any third party which it may at its absolute discretion determine but any subcontract shall not relieve the Seller of its obligations hereunder.
- (c) Any notice required or permitted to be given by either party to the other under these Conditions shall be given in writing and addressed to the other party at its registered office, principal place of business or at such other address as may be notified to the other party from time to time.
- (d) No waiver by the Seller of any breach of contract by the Buyer shall be considered a waiver of any subsequent breach of the same or any other provision.
- (e) If any term of these Conditions prove illegal or unenforceable in whole or part, such term shall be deemed excised from these conditions without effect upon the validity of the remainder of these Conditions.
- (f) A person who is not a party to the contract between the Seller and the Buyer has no right under the Contracts (Rights of Third Parties) Act 1999 to enforce or enjoy the benefit of any term of such contract.
- (g) These Conditions and the contract between the Buyer and Seller shall be governed by the laws of England, and the English Courts shall have exclusive jurisdiction.

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