

**Cable Coating Limited trading as Asset Cool**

**Terms and Conditions**

**1. Interpretation**

The following definitions and rules of interpretation in this clause apply in this agreement.

**1.1 Definitions:**

**Affected Party:** has the meaning given in **Error! Bookmark not defined.20.2.**

**Business Day:** a day, other than a Saturday, Sunday or public holiday in England, when banks in London are open for business.

**Business Hours:** the period from 9.00 am to 5.00 pm on any Business Day.

**Conditions:** the terms and conditions set out in this document as amended from time to time in accordance with these terms.

**Commencement Date:** the date of the Order.

**Confidential Information:** any information of a confidential nature concerning the business, assets, affairs, customers, clients or suppliers of the other party or of any member of its Group, including information relating to a party's operations, processes, plans, product information, know-how, designs, trade secrets, software, market opportunities and customers.

**Customer:** the person or firm who purchases the Products or Equipment from the Supplier.

**Delivery:** completion of delivery of the Order in accordance with clause 5.

**Delivery Date:** the date specified for delivery of Products specified in an Order in accordance with clause 2.7.

**Delivery Location:** the Location set out in the Order.

**Equipment:** means the equipment set out in set out in the Order.

**Force Majeure Event:** has the meaning given in clause 20.1.

**Group:** in relation to a company, that company, any subsidiary or holding company from time to time of that company, and any subsidiary from time to time of a holding company of that company.

**Improvement:** any improvement, modification or alteration of the Products or the Trade Secrets which materially improves the performance or properties of the Products.

**Intellectual Property Rights or IPRs:** patents, utility models, rights to inventions, copyright and neighbouring and related rights, moral rights, trade marks and service marks, business names and domain names, rights in get-up and trade dress, goodwill and the right to sue for passing off or unfair competition, rights in designs, rights in computer software, database rights, rights to use, and protect the confidentiality of,

confidential information (including know-how and trade secrets), and all other intellectual property rights, in each case whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from, any rights and all similar or equivalent rights or forms of protection that subsist or will subsist now or in the future in any part of the world.

**Mandatory Policies:** the Supplier's mandatory policies as amended by notification to the Customer from time to time.

**month:** a calendar month.

**Order:** an order for Products and or Equipment.

**Order Number:** the reference number to be applied to an Order by the Supplier in accordance with clause 2.8.

**Order Value:** the aggregate amount of the Order.

**Patent:** all patents owned by the Supplier in connection with the Products

**Products:** the products set out in the Order.

**Product Prices:** the prices of the Products as determined in accordance with clause 8.1 and **Product Price** means the price of an individual Product as determined in accordance with that clause.

**Specification:** the specification of the Products and Equipment set out in the Order.

**Supplier:** means Cable Coating Limited (trading as 'AssetCool'), a company incorporated and registered in England and Wales with company number 10096075 whose registered office is at Unit 13 10, Pepper Road, Hunslet, Leeds, United Kingdom, LS10 2EU

**Supplier IPRs:** the Trade Marks, Trade Secrets, and all Intellectual Property Rights of which the Supplier is the owner or licensee and which are disclosed, licensed or provided to the Customer pursuant to this agreement.

**Trade Marks:** all trademarks owned by the Supplier in connection with the Products.

**Trade Secrets:** any information relating to formulation, design or application of the Products or Equipment.

**VAT:** value added tax chargeable in the UK or elsewhere.

**year:** any period of 12 consecutive months from 1 January to the following 31 December.

1.2 Clause, Schedule and paragraph headings shall not affect the interpretation of this agreement.

1.3 A **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).

1.4 A reference to a **company** shall include any company, corporation or other body corporate, wherever and however incorporated or established.

- 1.5 A reference to a **holding company** or a **subsidiary** means a holding company or a subsidiary (as the case may be) as defined in section 1159 of the Companies Act 2006
- 1.6 Unless the context otherwise requires, words in the singular shall include the plural and vice versa.
- 1.7 Unless the context otherwise requires, a reference to one gender shall include a reference to the other genders.
- 1.8 These Conditions shall be binding on, and enure to the benefit of, the parties to these Conditions and their respective personal representatives, successors and permitted assigns, and references to any party shall include that party's personal representatives, successors and permitted assigns.
- 1.9 Unless expressly provided otherwise in this agreement, a reference to legislation or a legislative provision is a reference to it as amended, extended or re-enacted from time to time.
- 1.10 Unless expressly provided otherwise in this agreement, a reference to legislation or a legislative provision shall include all subordinate legislation made from time to time **OR** under that legislation or legislative provisions.
- 1.11 A reference to **writing** or **written** excludes fax and email.
- 1.12 Any obligation in these Conditions on a person not to do something includes an obligation not to agree or allow that thing to be done.
- 1.13 References to a document in **agreed form** are to that document in the form agreed by the parties and initialled by them or on their behalf for identification.
- 1.14 A reference to **these Conditions** or to any other agreement or document is a reference to these Conditions or such other agreement or document, in each case as varied from time to time.
- 1.15 References to clauses and Schedules are to the clauses and Schedules of this agreement; and references to paragraphs are to paragraphs of the relevant Schedule.
- 1.16 Any words following the terms **including, include, in particular, for example** or any similar expression shall be interpreted as illustrative and shall not limit the sense of the words preceding those terms.
- 2. Basis of contract**
- 2.1 These Conditions apply to the Order to the exclusion of any other terms that the Customer seeks to impose or incorporate, or which are implied by law, trade custom, practice or course of dealing.
- 2.2 The Order constitutes an offer by the Customer to purchase the Products and Equipment in accordance with these Conditions. The Customer is responsible for ensuring that the terms of the Order and any applicable Specification are complete and accurate.
- 2.3 The Order shall only be deemed to be accepted when the Supplier issues a written acceptance of the Order or otherwise fulfils the Order, at which point and on which date the Order shall come into existence.
- 2.4 The Customer waives any right it might otherwise have to rely on any term endorsed upon, delivered with or contained in any documents of the Customer that is inconsistent with these Conditions.
- 2.5 Any samples, drawings, descriptive matter or advertising produced by the Supplier and any descriptions or illustrations contained in the Supplier's catalogues or brochures are produced for the sole purpose of giving an approximate idea of the Products and Equipment referred to in them. They shall not form part of the Order nor have any contractual force.
- 2.6 A quotation for the Products and Equipment given by the Supplier shall not constitute an offer. A quotation shall only be valid for a period of 15 Business Days from its date of issue.
- 2.7 Each Order shall:
- (a) be given in writing or, if given orally, shall be confirmed in writing within two Business Days;
  - (b) specify the type and quantity of Products and Equipment ordered and the Products' and Equipment code numbers ; and
  - (c) specify the Delivery Date by which the Products specified in the Order are to be ready for collection.
- 2.8 The Supplier shall assign an Order Number to each Order it accepts and notify those Order Numbers to the Customer together with the Delivery Date by which the Products specified in an Order will be ready for collection. Each party shall use the relevant Order Number in all subsequent correspondence relating to the Order.
- 2.9 The Customer may within 7 days of placing an Order amend or cancel an Order by written notice to the Supplier. If the Customer amends or cancels an Order, its liability to the Supplier shall be limited to payment to the Supplier of all costs reasonably incurred by the Supplier in fulfilling the Order up until the date of deemed receipt of the amendment or cancellation, except that the Customer shall have no liability to the Supplier where the amendment or cancellation results from the Supplier's failure to comply with its obligations under this agreement.

- 3. Manufacture, quality and packing**
- 3.1 The Supplier shall manufacture, pack and supply the Products and Equipment in accordance with all generally accepted industry standards and practices that are applicable and such other guidelines as specified by the Supplier (the '**Storage Requirements**').
- 3.2 The Products and Equipment supplied to the Customer by the Supplier under these Conditions shall:
- (a) conform to the Specification;
  - (b) comply with all applicable statutory and regulatory requirements.
- 3.3 The Supplier shall ensure that the Products and Equipment are properly packed and secured in a manner to enable them to reach their destination in good condition.
- 3.4 The Supplier shall obtain and maintain all licences, permissions, authorisations, consents and permits needed to supply the Products and Equipment in accordance with the terms of this agreement.
- 3.5 The Supplier shall comply with all applicable laws, enactments, orders, regulations and other instruments relating to the packing, packaging, marking, storage, handling and delivery of the Products.
- 3.6 The Customer shall not use any third-party equipment in connection with the Products or the Equipment or will utilise any equipment which pre-dates these Conditions without the prior written consent of the Supplier.
- 3.7 The Products and Equipment shall be used to coat conductors and the Customer has a non-exclusive licence to use the Product granted by the Supplier's IPR in accordance with clause 15 for this purpose.
- 3.8 The Supplier reserves the right to amend the Specification if required by any applicable statutory or regulatory requirement, and the Supplier shall notify the Customer in any such event.
- 3.9 The Supplier shall not be liable for the Products and Equipment' failure to comply with clause 3.2 if:
- (a) the Customer makes any further use of such Products and Equipment after giving notice in accordance with clause 3.2;
  - (b) the defect arises because the Customer failed to follow the Supplier's oral or written instructions as to the storage, commissioning, installation, use or maintenance of the Products and Equipment or (if there are none) good trade practice regarding the same;
  - (c) the defect arises as a result of the Supplier following any drawing, design or specification supplied by the Customer;
  - (d) the Customer alters or repairs such Products or Equipment without the written consent of the Supplier;
  - (e) the defect arises as a result of fair wear and tear, wilful damage, negligence, or abnormal storage or working conditions; or
  - (f) the Products and Equipment differ from the Specification as a result of changes made to ensure they comply with applicable statutory or regulatory requirements.
- 3.10 Except as provided in this agreement, the Supplier shall have no liability to the Customer in respect of the Products and Equipment' failure to comply with clause 3.2.
- 3.11 The terms implied by sections 13 to 15 of the Sale of Products and Equipment Act 1979 are, to the fullest extent permitted by law, excluded from the Order.
- 3.12 These Conditions shall apply to any repaired or replacement Products and Equipment supplied by the Supplier.
- 4. Product liability**
- 4.1 If any claim is made against the Supplier arising out of or in connection or any defect in the Products or Equipment, including any defects or non-conformity arising from the Products or Equipment failing to be stored or packaged in accordance with the Storage Requirements, the Customer shall, indemnify the Supplier against all damages or other compensation:
- (a) awarded against the Supplier in connection with the claim;
  - (b) paid or agreed to be paid by the Supplier in settlement of the claim; and
  - (c) all reasonable legal costs and expense incurred by the Supplier in relation to the defence or settlement of the claim.
- 4.2 The Customer shall notify the Supplier as soon as practicable after becoming aware of the claim, and take all action reasonably requested by the Supplier to avoid, compromise or defend the claim and any proceedings in respect of the claim, subject to the Customer being indemnified and secured to its reasonable satisfaction against all costs and expenses which may be incurred in doing so.
- 5. Delivery**
- 5.1 The Supplier shall ensure that:

- (a) each delivery of the Products and Equipment is accompanied by a delivery note that shows the date of the Order, the type and quantity of the Products and Equipment (including the code number of the Products and Equipment, where applicable), special storage instructions (if any) and, if the Products and Equipment are being delivered by instalments, the outstanding balance of Products and Equipment remaining to be delivered; and
- (b) if the Supplier requires the Customer to return any packaging materials to the Supplier, that fact is clearly stated on the delivery note. The Customer shall make any such packaging materials available for collection at such times as the Supplier shall reasonably request. Returns of packaging materials shall be at the Supplier's expense.
- 5.2 The Customer shall collect the Products and or the Equipment specified in each Order from the Delivery Location on the Delivery Date.
- 5.3 Delivery is completed on the completion of loading of the Order at the Delivery Location.
- 5.4 Any dates quoted for delivery are approximate only, and the time of delivery is not of the essence. The Supplier shall not be liable for any delay in delivery of the Products or Equipment that is caused by a Force Majeure Event or the Customer's failure to provide the Supplier with adequate delivery instructions or any other instructions that are relevant to the supply of the Products or Equipment.
- 5.5 If the Supplier fails to deliver the Products and Equipment, its liability shall be limited to the costs and expenses incurred by the Customer in obtaining replacement goods of similar description and quality in the cheapest market available, less the price of the Products and Equipment. The Supplier shall have no liability for any failure to deliver the Products and Equipment to the extent that such failure is caused by a Force Majeure Event or the Customer's failure to provide the Supplier with adequate delivery instructions or any other instructions that are relevant to the supply of the Products and Equipment.
- 5.6 The Supplier may deliver the Products and Equipment by instalments, which shall be invoiced and paid for separately. Each instalment shall constitute a separate contract. Any delay in delivery or defect in an instalment shall not entitle the Customer to cancel any other instalment.
- 5.7 Delays in the delivery of an Order shall **not** entitle the Customer to:
- (a) refuse to take delivery of the Order;
- (b) claim damages;
- 5.8 The Supplier shall have no liability for any failure or delay in delivering an Order to the extent that any such failure or delay is caused by the Customer's failure to comply with its obligations under this agreement.
- 5.9 If the Customer fails to take delivery of an Order on the Delivery Date, then, except where that failure or delay is caused by the Supplier's failure to comply with its obligations under these Conditions or a Force Majeure Event:
- (a) delivery of the Order shall be deemed to have been completed at 9.00 am on the Delivery Date;
- (b) the Supplier shall store the Order until the Customer takes possession of the Order, and charge the Customer for all storage and related costs and expenses (including insurance); and
- (c) the Customer acknowledges that the Supplier accepts no liability in respect of the Order including any damage provided it is stored in accordance with the Storage Requirements.
- 5.10 If ten Business Days after the day on which the Supplier notified the Customer that the Products and Equipment were ready for delivery the Customer has not taken actual delivery of them, the Supplier may resell or otherwise dispose of part or all of the Products and Equipment and, after deducting reasonable storage and selling costs, account to the Customer for any excess over the price of the Products and Equipment or charge the Customer for any shortfall below the price of the Products and Equipment.
- 5.11 Each delivery of Products and or the Equipment shall be accompanied by a delivery note from the Supplier showing the Order Number, the date of the Order, the type and quantity of Products and or Equipment included in the Order and, in the case of Products and or Equipment being delivered by instalments, the outstanding balance of Products specified in an Order remaining to be delivered.
- 5.12 The parties agree that if, in respect of an Order, the Supplier delivers up to and including 50% more or less than the quantity of Products ordered, the Customer shall not be entitled to reject the Order, but a pro rata adjustment shall be made to the Order invoice.
- 5.13 Packaging materials shall remain the Supplier's property and the Customer shall make them available for collection at any times as the Supplier shall reasonably request. Returns of packaging materials shall be at the Supplier's expense.
- 5.14 The Supplier may deliver the Products and Equipment by instalments, which shall be invoiced and paid for separately. Each instalment shall constitute a separate contract. Any delay in delivery or defect in an instalment

shall not entitle the Customer to cancel any other instalment.

(b) require the Supplier to repay the price of the rejected Products or Equipment in full.

## 6. Acceptance and defective products

Once the Supplier has complied with the Customer's request, it shall have no further liability to the Customer for the rejected Products' or Equipment's failure to comply with clause 3.2.

6.1 The Customer may reject any Products or Equipment delivered to it that do not comply with clause 3.2, provided that:

(a) notice of rejection is given to the Supplier:

6.5 The terms of these Conditions shall apply to any repaired or replacement Products or Equipment supplied by the Supplier.

(i) in the case of a defect that is apparent on normal visual inspection, within one Business Day of Delivery;

6.6 If the parties dispute whether any Products or Equipment comply with clause 3.2, either party may refer the matter to the appropriate court in accordance with this agreement.

(ii) in the case of a latent defect, within a reasonable time of the latent defect having become apparent; and.

## 7. Title and risk

(b) none of the events listed in clause 6.3 apply.

7.1 Risk in Products and Equipment supplied to the Customer shall pass to the Customer on Delivery.

6.2 If the Customer fails to give notice of rejection in accordance with clause 6.1, it shall be deemed to have accepted the Products or Equipment.

7.2 Title to Products and Equipment shall not pass to the Customer until the Supplier receives payment in full (in cash or cleared funds) for the Products or Equipment that are or that become due to the Supplier from the Customer for sales of the Products or Equipment Delivered in which case title to these Products and Equipment shall pass at the time of payment of all such sums.

6.3 The Supplier shall not be liable for the Products' or Equipment's failure to comply with the warranty set out in clause 3.2 in any of the following events:

(a) the Customer makes any further use of those Products or Equipment after giving notice in accordance with clause 6.1;

7.3 Until title to Products and Equipment has passed to the Customer, the Customer shall:

(b) the defect arises because the Customer failed to follow the Supplier's oral or written instructions for the storage, commissioning, installation, use or maintenance of the Products or Equipment or (if there are none) good trade practice regarding the same;

(a) Store those Products and Equipment separately from all other goods held by the Customer so that they remain readily identifiable as the Supplier's property;

(c) the defect arises as a result of the Supplier following any drawing, design or specification supplied by the Customer;

(b) not remove, deface or obscure any identifying mark or packaging on or relating to those Products or Equipment;

(d) the Customer alters or repairs those Products or Equipment without the written consent of the Supplier;

(c) maintain those Products and Equipment in satisfactory condition and keep them insured on the Supplier's behalf for their full price against all risks with an insurer that is reasonably acceptable to the Supplier. The Customer shall obtain an endorsement of the Supplier's interest in the Products or Equipment on its insurance policy, subject to the insurer being willing to make the endorsement. On request the Customer shall allow the Supplier to inspect the insurance policy; and

(e) the defect arises as a result of fair wear and tear, wilful damage, negligence, or abnormal storage or working conditions; or

(d) give the Supplier such information as the Supplier may reasonably require from time to time relating to the Products and Equipment.

(f) the Products or Equipment differ from the Specification as a result of changes made to ensure they comply with applicable statutory or regulatory requirements.

6.4 If the Customer rejects Products or Equipment under clause 6.1 then the Customer shall be entitled to:

(a) require the Supplier to repair or replace the rejected Products or Equipment; or

7.4 Subject to clause 7.5, the Customer may resell or use Products in the ordinary course of its business (but not

- otherwise) before the Supplier receives payment for the Products or Equipment.
- 7.5 At any time before title to the Products or Equipment passes to the Customer, the Supplier may:
- (a) by notice in writing, terminate the Customer's right under clause 7.4 to use them in the ordinary course of its business;
  - (b) require the Customer to deliver up all the Products and Equipment in its possession that have not been resold, or irrevocably incorporated into another product and if the Customer fails to do so promptly, enter any premises of the Customer or of any third party where the relevant Products or Equipment are stored in order to recover them.
- 8. Product prices**
- 8.1 The Product Prices and the Equipment Prices for these Conditions shall be agreed to and determined in the Order.
- 8.2 The Product Prices and the Equipment Prices are exclusive of amounts in respect of VAT. The Customer shall, on receipt of a valid VAT invoice from the Supplier, pay to the Supplier any additional amounts in respect of VAT as are chargeable on a supply of Products or Equipment.
- 8.3 The Product Prices are exclusive of the costs of packaging, insurance and carriage of the Products, which shall be paid by the Customer.
- 9. Terms of payment**
- 9.1 The price of the Products and Equipment shall be the price set out in the Order, or, if no price is quoted, the price set out in the Supplier's published price list in force as at the date of delivery.
- 9.2 The Supplier shall be entitled to invoice the Customer for each Order on or at any time after Delivery. Each invoice shall quote the relevant Order Numbers.
- 9.3 The Customer shall pay invoices in full and in cleared funds within 14 days of receipt. Payment shall be made to the bank account nominated in writing by the Supplier.
- 9.4 If a party fails to make a payment due to the other party under these Conditions by the due date, then, without limiting the other party's remedies under clause 17.1, the defaulting party shall pay interest on the overdue sum from the due date until payment of the overdue sum, whether before or after judgment. Interest under this clause will accrue each day at 5% a year above the Bank of England's base rate from time to time, but at 5% a year for any period when that base rate is below 0%.
- 9.5 If the Customer disputes any invoice or other statement of monies due, the Customer shall immediately notify the Supplier in writing. The parties shall negotiate in good faith to attempt to resolve the dispute promptly. The Supplier shall provide all evidence as may be reasonably necessary to verify the disputed invoice or request for payment. If the parties have not resolved the dispute within 30 days of the Customer giving notice to the Supplier, the dispute shall be resolved in accordance with the appropriate court as determined in this agreement. The undisputed amount shall be paid on the due date as set out in clause 9.3.
- 9.6 All amounts due under these Conditions shall be paid in full without any set-off, counterclaim, deduction or withholding (other than any deduction or withholding of tax as required by law).
- 9.7 The Supplier may, by giving notice to the Customer at any time 10 Business Days before delivery, increase the price of the Products and Equipment to reflect any increase in the cost of the Products and Equipment that is due to:
- (a) any factor beyond the Supplier's control (including foreign exchange fluctuations, increases in taxes and duties, and increases in labour, materials and other manufacturing costs);
  - (b) any request by the Customer to change the delivery date(s), quantities or types of Products and Equipment ordered, or the Specification; or
  - (c) any delay caused by any instructions of the Customer or failure of the Customer to give the Supplier adequate or accurate information or instructions.
- 9.8 The price of the Products and Equipment:
- (a) excludes amounts in respect of value added tax (VAT), which the Customer shall additionally be liable to pay to the Supplier at the prevailing rate, subject to the receipt of a valid VAT invoice; and
  - (b) excludes the costs and charges of packaging, insurance and transport of the Products and Equipment, which shall be invoiced to the Customer.
- 9.9 The Customer shall pay each invoice submitted by the Supplier:
- (a) within 14 days of the date of the invoice or in accordance with any credit terms agreed by the Supplier and confirmed in writing to the Customer; and
  - (b) in full and in cleared funds to a bank account nominated in writing by the Supplier, and
- 9.10 Time for payment shall be of the essence of the Order.

<b>10.</b>	<b>Compliance with laws and policies</b>	(b) fraud or fraudulent misrepresentation;
10.1	In performing its obligations under the agreement, the Customer shall and shall procure that each member of its Group comply with:	(c) breach of the terms implied by section 12 of the Sale of Products and Equipment Act 1979 (title and quiet possession); and
	(a) all applicable laws, statutes, regulations and codes from time to time in force; and	(d) breach of section 2 of the Consumer Protection Act 1987.
	(b) the Mandatory Policies.	
10.2	The Supplier may terminate these Conditions with immediate effect by giving written notice to the Customer if the Customer commits a breach of clause 10.1.	12.6 Subject to clause 12.3, clause 12.4 and clause 12.5, the Supplier's total liability to the Customer shall not exceed the Order Value).
<b>11.</b>	<b>Product or Equipment recall</b>	12.7 The Supplier has given commitments as to compliance of the Products and Equipment with relevant specifications in clause 3.2. In view of these commitments, the terms implied by sections 13 to 15 of the Sale of Products and Equipment Act 1979 are, to the fullest extent permitted by law, excluded from this agreement.
11.1	If the Customer is the subject of a request, court order or other directive of a governmental or regulatory authority to withdraw any Products or Equipment from the market (the 'Recall Notice') it shall immediately notify the Supplier in writing enclosing a copy of the Recall Notice.	12.8 The Supplier shall not under any circumstances whatsoever be liable to the other for any of the following losses, whether arising in contract, tort (including negligence), breach of statutory duty, restitution, under any indemnity or otherwise:
11.2	Unless required by law, the Customer may not undertake any recall or withdrawal without the written permission of the Supplier and only then in strict compliance with the Supplier's instructions about the process of implementing the withdrawal.	(a) loss of profit;
<b>12.</b>	<b>Limitation of liability</b>	(b) loss of interest;
12.1	The limits and exclusions in this clause reflect the insurance cover the Supplier has been able to arrange and the Customer is responsible for making its own arrangements for the insurance of any excess liability.	(c) loss of goodwill;
12.2	References to liability in this clause 12 include every kind of liability arising under or in connection with these Conditions including liability:	(d) loss of business;
	(a) in contract, tort (including negligence), misrepresentation, restitution or otherwise; and	(e) loss of business opportunity;
	(b) arising out of any use made or resale of the Products by the Customer, or of any product incorporating any of the Products or Equipment.	(f) loss of business revenue or anticipated savings (whether direct, indirect or consequential in nature);
12.3	Neither party may benefit from the limitations and exclusions set out in this clause in respect of any liability arising from its deliberate default.	(g) loss or corruption of data or information;
12.4	Nothing in this clause 12 shall limit the Customer's payment obligations under this agreement.	(h) special, indirect or consequential damage; and
12.5	Nothing in these Conditions limits any liability which cannot legally be limited, including liability for:	(i) whether of the Customer or any third party and howsoever arising out of or in connection with the Agreement, even of such losses were foreseeable and notwithstanding that it has been advised of the possibility that such losses were in the contemplation of the Customer or any third party.
	(a) death or personal injury caused by negligence;	
		12.9 The Customer shall indemnify and keep indemnified, defend and hold harmless the Supplier in respect of:
		(a) all losses arising from the, delivery or storage of the Products or Equipment contrary to this agreement;
		(b) any act or omission (including negligence, wilful default or dishonesty) of the Customer or its agents, employees or subcontractors;
		(c) all losses, costs of expenses howsoever and whenever arising in connection with the Transfer of Undertakings (Protection of

- Employment) Regulations 2006 (or any associated legislation) in respect of any or all employees of the Customer or their sub contractors including, for the avoidance of doubt, on or after termination of this agreement;
- (d) any third party providing replacement services; and
- (e) any losses arising as a consequence of the Customer failure to act in accordance with applicable laws and legislation.
- 12.10 The Customer and the Supplier acknowledge that the above provisions of this clause are reasonable and are reflected in the prices.
- 12.11 Unless a party notifies the other party that it intends to make a claim in respect of an event within the notice period, the other party shall have no liability for that event. The notice period for an event shall start on the day on which the party wishing to make a claim became, or ought reasonably to have become, aware of its having grounds to make a claim in respect of the event and shall expire 6 months from that date. The notice must be in writing and must identify the event and the grounds for the claim in reasonable detail.
- 13. Confidentiality**
- 13.1 Each party undertakes that it shall not at any time during these Conditions and for a period of five years after termination of these Conditions disclose to any person any Confidential Information, except as permitted by clause 13.2.
- 13.2 Each party may disclose the other party's Confidential Information:
- (a) to its employees, officers, representatives, contractors, subcontractors or advisers who need to know such information for the purposes of exercising the party's rights or carrying out its obligations under or in connection with this agreement. Each party shall ensure that its employees, officers, representatives, contractors, subcontractors or advisers to whom it discloses the other party's confidential information comply with this clause 13.2; and
- (b) as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.
- 13.3 Neither party shall use the other party's Confidential Information for any purpose other than to exercise its rights and perform its obligations under or in connection with this agreement.
- 13.4 Each party reserves all rights in its Confidential Information. No rights or obligations in respect of a party's Confidential Information other than those

expressly stated in these Conditions are granted to the other party, or to be implied from this agreement.

**14. Ownership of Intellectual Property Rights**

- 14.1 The Customer acknowledges that the Supplier IPRs are and remain the exclusive property of the Supplier or, where applicable, the third-party licensor from whom the Supplier derives the right to use them.
- 14.2 The Customer acknowledges that all IPRs used for the manufacture of the Products and Equipment that originate from the Supplier shall remain the exclusive property of the Supplier or, where applicable, the third-party licensor from whom the Supplier derives the right to use them.
- 14.3 All IPRs in respect of any Improvement shall belong to the Supplier.
- 14.4 All Trade Secrets and the Patent belong to the Supplier for perpetuity.
- 14.5 The Products and Equipment shall be used to coat conductors and the Customer has an exclusive licence to use the Products and Equipment granted by the Supplier.
- 15. Licence to use Products and Equipment**
- 15.1 The Supplier grants to the Customer a non-exclusive, non-transferable, royalty-free licence to use the Supplier IPRs solely for the purpose of performing its obligations under this agreement. The Customer's use of the Supplier's trade marks and Trade Secrets is limited to applying them to the use of Products and Equipment in the form and manner specified by the Supplier from time to time, and not otherwise.
- 15.2 The Supplier shall at the request and expense of the Customer take all such steps as the Supplier may reasonably require to assist the Customer in maintaining the validity and enforceability of the Supplier IPRs.
- 15.3 The Customer shall not represent that it has any title in or right of ownership to any of the Supplier's Trade Marks, Patents or do or suffer to be done any act or thing which may in any way impair the rights of the Supplier in any of the Trade Marks or bring into question the validity of their registration.
- 15.4 The Supplier hereby grants (and where relevant, shall procure the grant), to the Customer, all necessary licenses, consents, and/or permissions to enable the Customer to freely use, benefit from and commercially exploit the goods and services to the fullest extent contemplated by the agreement.



**16. Restrictions on the Customer**

16.1 The Customer further undertakes in respect of the Products and the Equipment that:

- (a) the Customer shall not copy, reverse engineer, replicate or otherwise redesign the Products or Equipment, without the express prior written consent of the Customer;
- (b) the Customer shall not at any time reproduce, copy, design or replicate a product which is competitive with the Products or Equipment after expiration or termination of this agreement;
- (c) the Customer shall not disclose any technical, confidential or design information or other trade secrets concerning the Products or Equipment to any third party.
- (d) the Customer shall return all copies of technical information concerning the Products and the Equipment and Trade Secrets on termination or expiration of this agreement.
- (e) the Customer shall not at any time divulge, disclose or otherwise share any Trade Secrets with any individual, company, partnership, business, organisation or entity.
- (f) the Customer shall not re-sell the Product or the Equipment without express written confirmation from the Supplier.

**17. Termination and suspension**

17.1 Without affecting any other right or remedy available to it, either party may terminate these Conditions with immediate effect by giving written notice to the other party if:

- (a) the other party fails to pay any amount due under these Conditions on the due date for payment and remains in default not less than 14 days after being notified in writing to make such payment;
- (b) the other party commits a material breach of any other term of these Conditions and that breach is irremediable or (if that breach is remediable) fails to remedy that breach within a period of 30 days after being notified in writing to do so;
- (c) the other party repeatedly breaches any of the terms of these Conditions in such a manner to reasonably justify the opinion that its conduct is inconsistent with it having the intention or ability to give effect to the terms of this agreement;
- (d) the other party suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits

inability to pay its debts or is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 ('IA 1986') as if the words "it is proved to the satisfaction of the court" did not appear in sections 123(1)(e) or 123(2);

- (e) the other party begins negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with any of its creditors;
- (f) the other party applies to court for, or obtains, a moratorium under Part A1 of the IA 1986;
- (g) a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of the other party (being a company, limited liability partnership or partnership);
- (h) an application is made to court, or an order is made, for the appointment of an administrator or a notice of intention to appoint an administrator is given or an administrator is appointed over the other party;
- (i) the holder of a qualifying floating charge over the assets of that other party has become entitled to appoint or has appointed an administrative receiver;
- (j) a person becomes entitled to appoint a receiver over all or any of the assets of the other party or a receiver is appointed over all or any of the assets of the other party;
- (k) a creditor or encumbrancer of the other party attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of its assets and such attachment or process is not discharged within 14 days;
- (l) any event occurs, or proceeding is taken, with respect to the other party in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in clause 17.1(d) to clause 17.1(k) inclusive;
- (m) the other party ceases, or threatens to cease, to carry on all or substantially the whole of its business;
- (n) the other party's financial position deteriorates so far as to reasonably justify the opinion that its ability to give effect to the terms of these Conditions is in jeopardy; or
- (o) there is a change of control of the other party (within the meaning of section 1124 of the Corporation Tax Act 2010).

- 17.2 Without limiting its other rights or remedies, the Supplier may suspend provision of the Products or Equipment under the Order or any other contract between the Customer and the Supplier if the Customer becomes subject to any of the events listed in clause 17.1(d) to clause 17.1(l), or the Supplier reasonably believes that the Customer is about to become subject to any of them, or if the Customer fails to pay any amount due under these Conditions on the due date for payment.
- 17.3 Without limiting its other rights or remedies, the Supplier may terminate the Order with immediate effect by giving written notice to the Customer if the Customer fails to pay any amount due under the Order on the due date for payment.
- 17.4 On termination of the Order for any reason the Customer shall immediately pay to the Supplier all of the Supplier's outstanding unpaid invoices and interest and, in respect of Products and Equipment supplied but for which no invoice has been submitted, the Supplier shall submit an invoice, which shall be payable by the Customer immediately on receipt.
- 17.5 Termination of the Order, however arising, shall not affect any of the parties' rights and remedies that have accrued as at termination, including the right to claim damages in respect of any breach of the Order which existed at or before the date of termination.
- 17.6 Any provision of the Order that expressly or by implication is intended to come into or continue in force on or after termination of the Order shall remain in full force and effect.
- 18. Obligations on termination**
- 18.1 On termination of this agreement:
- (a) the Customer shall
- (i) immediately pay to the Supplier all of the Supplier's outstanding unpaid invoices and interest and, in respect of the Products supplied but for which no invoice has been submitted, the Supplier may submit an invoice, which shall be payable immediately on receipt;
- (ii) return all Suppliers IPR and Confidential Information that is required to be used in performance of this agreement; and
- (iii) return any unused Products of Equipment or comply with the provisions of clause 18.2.
- (b) each party shall promptly:
- (i) return to the other party all equipment, materials and property belonging to the other party that the other party had supplied to it or a member of its Group in connection with the supply and purchase of the Products or Equipment under this agreement;
- (ii) return to the other party all documents and materials (and any copies) containing the other party's Confidential Information;
- (iii) erase all the other party's Confidential Information from its computer systems (to the extent possible); and
- (iv) on request, certify in writing to the other party that it has complied with the requirements of this clause 18.
- 18.2 At all times following expiration or termination of this agreement, the Customer shall fully cooperate with the Supplier in respect of the transfer of the Products or Equipment, raw materials and services to an alternative supplier and shall provide the Supplier with the information or documents so required, promptly and at the Customer's cost.
- 18.3 For the avoidance of doubt, the Supplier shall have no liability in respect of the termination of any employment or any employment claims from the Customers employees.
- 19. Survival**
- 19.1 On termination of these Conditions the following clauses shall continue in force:
- (a) clause 12 (Limitation of liability);
- (b) clause 13 (Confidentiality);
- (c) clause 14 (Ownership of Intellectual Property Rights);
- (d) clause 16 (Restrictions on Customer);
- (e) clause 18 (Obligations on termination);
- (f) clause 30 (Governing law); and
- (g) clause 31 (Jurisdiction).
- 19.2 Termination of these Conditions shall not affect any rights, remedies, obligations or liabilities of the parties that have accrued up to the date of termination, including the right to claim damages for any breach of the Conditions that existed at or before the date of termination.

<p><b>20. Force majeure</b></p> <p>20.1 Force Majeure Event means any circumstance not in a party's reasonable control including:</p> <ul style="list-style-type: none"> <li>(a) acts of God, flood, drought, earthquake or other natural disaster;</li> <li>(b) epidemic or pandemic;</li> <li>(c) terrorist attack, civil war, civil commotion or riots, war, threat of or preparation for war, armed conflict, imposition of sanctions, embargo, or breaking off of diplomatic relations;</li> <li>(d) nuclear, chemical or biological contamination, or sonic boom;</li> <li>(e) any law or any action taken by a government or public authority, including imposing an export or import restriction, quota or prohibition;</li> <li>(f) collapse of buildings, fire, explosion or accident; and</li> <li>(g) any labour or trade dispute, strikes, industrial action or lockouts;</li> <li>(h) non-performance by suppliers or subcontractors (other than by companies in the same group as the party seeking to rely on this clause); and</li> <li>(i) interruption or failure of utility service.</li> </ul> <p>20.2 Provided it has complied with clause 20.4, if a party is prevented, hindered or delayed in or from performing any of its obligations under these Conditions by a Force Majeure Event (the '<b>Affected Party</b>'), the Affected Party shall not be in breach of these Conditions or otherwise liable for any such failure or delay in the performance of such obligations. The time for performance of such obligations shall be extended accordingly.</p> <p>20.3 The corresponding obligations of the other party will be suspended, and its time for performance of such obligations extended, to the same extent as those of the Affected Party.</p> <p>20.4 The Affected Party shall:</p> <ul style="list-style-type: none"> <li>(a) as soon as reasonably practicable after the start of the Force Majeure Event but no later than 7 days from its start, notify the other party in writing of the Force Majeure Event, the date on which it started, its likely or potential duration, and the effect of the Force Majeure Event on its ability to perform any of its obligations under the agreement; and</li> <li>(b) use reasonable endeavours to mitigate the effect of the Force Majeure Event on the performance of its obligations.</li> </ul>	<p>20.5 If the Force Majeure Event prevents, hinders or delays the Affected Party's performance of its obligations for a continuous period of more than 4 weeks, the party not affected by the Force Majeure Event may terminate these Conditions by giving 4 weeks' written notice to the Affected Party (the 'Force Majeure Termination Notice').</p> <p>20.6 If during the Force Majeure Termination Notice the Affected Party is able to resume the performance of the obligations under these Conditions then the Force Majeure Termination Notice is deemed to be invalid and these Conditions can only be terminated in accordance with Clause 17.</p> <p><b>21. Assignment and other dealings</b></p> <p>21.1 The Supplier may at any time assign, transfer, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with all or any of its rights or obligations under the Order.</p> <p>21.2 The Customer may not assign, transfer, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with any or all of its rights or obligations under the Order without the prior written consent of the Supplier.</p> <p><b>22. Costs</b></p> <p>Except as expressly provided in this agreement, each party shall pay its own costs incurred in connection with the negotiation, preparation and execution of these Conditions and any documents referred to in it.</p> <p><b>23. Severance</b></p> <p>23.1 If any provision or part-provision of the Order is or becomes invalid, illegal or unenforceable, it shall be deemed deleted, but that shall not affect the validity and enforceability of the rest of the Order. If any provision of the Order is deemed deleted under this clause 11.6 the parties shall negotiate in good faith to agree a replacement provision that, to the greatest extent possible, achieves the intended commercial result of the original provision.</p> <p><b>24. Further assurance</b></p> <p>At its own expense, each party shall, and shall use all reasonable endeavours to procure that any necessary third party shall, promptly execute and deliver such documents and perform such acts as may [reasonably] be required for the purpose of giving full effect to this agreement.</p> <p><b>25. Variation</b></p> <p>No variation of these Conditions shall be effective unless it is in writing and signed by both parties (or their authorised representatives).</p>
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**26. Waiver**

26.1 A waiver of any right or remedy under these Conditions or by law is only effective if given in writing and shall not be deemed a waiver of any subsequent right or remedy.

26.2 A failure or delay by a party to exercise any right or remedy provided under these Conditions or by law shall not constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict any further exercise of that or any other right or remedy. No single or partial exercise of any right or remedy provided under these Conditions or by law shall prevent or restrict the further exercise of that or any other right or remedy.

26.3 A party that waives a right or remedy provided under these Conditions or by law in relation to one party, or takes or fails to take any action against that party, does not affect its rights in relation to any other party.

**27. Notices**

27.1 Any notice given to a party under or in connection with these Conditions shall be in writing and shall be delivered by hand or by pre-paid first-class post or other next working day delivery service at its registered office (if a company) or its principal place of business (in any other case).

27.2 Any notice shall be deemed to have been received:

- (a) if delivered by hand, at the time the notice is left at the proper address;
- (b) if sent by pre-paid first-class post or other next working day delivery service, at 9.00 am on the second Business Day after posting; or

27.3 This clause does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution.

**28. Entire agreement**

28.1 These Conditions constitutes the entire agreement between the parties and supersedes and extinguishes all previous and contemporaneous agreements, promises, assurances and understandings between them, whether written or oral, relating to its subject matter.

28.2 Each party acknowledges that in entering into these Conditions it does not rely on any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in this agreement.

28.3 Nothing in this clause shall limit or exclude any liability for fraud.

**29. Third party rights**

Unless it expressly states otherwise, these Conditions does not give rise to any rights under the Orders (Rights of Third Parties) Act 1999 to enforce any term of this agreement.

**30. Governing law**

These Conditions and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with it or its subject matter or formation shall be governed by and construed in accordance with the law of England and Wales.

**31. Jurisdiction**

Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with these Conditions or its subject matter or formation.