



Terms & Conditions of Sale

Orders are accepted on condition that the following Conditions of Sale be accepted by the Customer to the exclusion of the Customer's conditions and any other conditions of sale or purchase and that in the event of re-sale the Customer undertakes the responsibility of ensuring that the ultimate purchaser is also fully acquainted with and accepts the said Conditions.

1. Preliminary: In these terms and conditions "the Terms" means these terms and conditions in full, "quotation" means any quotation supplied to the Customer by the Company, "tender" means any tender supplied to the Customer by the Company, "Customer" means the party placing an order for the supply of Goods with the Company, "the Goods" means cables supplied by the Company and/or any specified accessories or goods, "the Company" means Cablenet Trackmaster Ltd, "Contract" means a contract for the supply of Goods from the Company to the Customer formed in accordance with clause 3.
2. Quotations and Tenders: All quotations and tenders are "ex-works" unless otherwise stated and are subject to a firm order being placed within 28 days unless otherwise stated. For the avoidance of doubt quotations and tenders submitted by the Company do not constitute an offer for the sale of Goods.
3. Basis of Sale:
 - (a) Each order for Goods shall constitute a separate offer to form a Contract. Orders may be made by the Customer in writing (including by email) or by telephone. Orders must be accompanied by sufficient information to enable the Company to proceed with the order forthwith. No order from the Customer shall constitute a binding contract for the supply of Goods.
 - (b) The Contract for the supply of Goods shall be made on the earlier of the date that the Company confirms the order to the Customer in writing (including confirmation by email) and the time when the Goods ordered are delivered to the Customer. Any variation of the Contract must be in writing and signed by the Company and the Customer.
 - (c) Unless firm prices are agreed in the order the Contract price is based upon the cost of materials, labour, transport, fuel and other relevant factors applying, and statutory obligations at the time of the tender or quotation, and if between that date and the date of actual delivery, variation either by rise or fall shall occur in these costs, then the Contract price shall be amended to provide for these variations.
4. Customer Requirements:
 - (a) When supplying Goods in respect of a particular purpose every endeavour is made to meet the requirements of Customers from the information supplied by them. As full information will be supplied at the request of the Customer regarding the manufacture and capabilities of the Goods no responsibility is accepted as to the suitability of any Goods, except under the terms of the Company's Guarantee (as defined within clause 16). Without prejudice to the generality of the foregoing the Company will furnish upon request data relating to the application or use of the Goods but the Company will not be responsible and does not assume any liability whatsoever for the damage of any kind sustained either directly or indirectly by any person in or through the adoption or use of such data in whole or in part.
 - (b) The Company reserves the right prior to delivery to effect minor modifications or changes to the Goods without notice without materially affecting the specifications or performance of the Goods. Any such modifications or changes shall not entitle the Customer to reject the Goods.
5. Cancellation:
 - (a) The Company reserves the right to cancel any Contract within 7 days of the order being accepted in accordance with clause 3 if one or more of the Goods ordered was listed or quoted at an incorrect price due to a typographical or other error or omission. If the Company cancels the Contract the Company will notify the Customer in writing and re-credit the Customer's account any sum deducted, charged or invoiced but in any event within 10 days of the cancellation.
 - (b) No order which has been accepted by the Company may be cancelled by the Customer except with the agreement in writing of the Company and on terms that the Customer shall indemnify the Company in full against all loss (including loss of profit) costs (including the cost of all labour and materials used), damages, charges and expenses incurred by the Company as a result of cancellation.
6. Delivery and Completion Dates:
 - (a) In the event of either:
 - (i) The Company being delayed in or prevented from making delivery or completing the Contract owing to act of God, force majeure, war, civil disturbance, requisitioning, government or parliamentary restriction prohibition or enactment of any kind, import or export regulations, strike, lock-out, trade dispute, difficulty in obtaining workmen or materials, breakdown of machinery, shortage of fuel, fire, accident or any other cause whatsoever beyond the Company control; or
 - (ii) Non-delivery by the Company's suppliers, the Company shall be at liberty to cancel or suspend the Contract without incurring any liability for any loss or damage resulting therefrom.
 - (b) Whilst delivery and completion dates are given in good faith based upon information available to the Company at the time of quotation or tender, such dates are not guaranteed and the Company accepts no liability for delay (as defined in clause 6(a)(i)) in delivery or completion and no delay (as defined) shall entitle the Customer to reject any delivery or any further instalment or part of the order or to repudiate the Contract or the order or any part thereof or to claim any damages or compensation in respect of the said delay.
7. Delivery: Loss or Damage in Transit: When the Company delivers to the Customer, delivery will take place when the Goods are delivered to the Customer's premises or unloaded from transport whichever occurs last, and risk will thereupon pass to the Customer. When the Customer collects from the Company delivery will take place when the Goods are loaded on transport or leave the Company's works whichever occurs first, and risk will thereupon pass to the Customer.

The Company accepts no responsibility for any loss or damage to Goods, howsoever arising, after delivery has taken place. The Company accepts responsibility only for repair or replacement of damaged or lost Goods where the cause of damage or loss was the result of negligence of the Company's employee or agent. Customers are strongly advised to make suitable insurance arrangements in respect of goods in transit out of the Company's works. Claims in respect of loss or damage in transit should be made within 7 days of delivery. Requests for proof of delivery must be made within 28 days of delivery.
8. Quantities: Whilst every endeavour will be made by the Company to deliver the exact quantity of Goods ordered, the Company reserves the right to deliver any quantity within 10% above or below the quantity ordered and to invoice the Customer for the quantity so delivered. Any claim that the quantity delivered is less than the quantity invoiced must be submitted to the Company within seven days of delivery.
9. Storage: If the Company does not receive forwarding instructions nor the Customer collect the Goods within five working days after notification to the Customer that the Goods are ready for delivery, the Customer shall arrange for storage at its own expense and risk, failing which the Company shall be at liberty to store or arrange for storage of the Goods at the Customer's expense and risk and the Goods shall be paid for by the Customer

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by reference to the time when the Goods are ready for delivery or are due to be delivered, whichever is the later. Any charges for storage or demurrage after delivery will be paid for by the Customer.

10. Packing: Where Goods are sold packed the extent of packing and/or protection will be at the discretion of the Company unless the Customer specifically requests special packing. The Customer is hereby informed that certain large items of equipment require special packing. In all instances the Customer will be charged extra for special packing.
11. Returns:
 - (a) Subject to the Customer obtaining prior written consent of the Company the Company may within 30 days of the date of delivery and in its sole discretion accept the return of such of the Goods supplied being surplus to the Customer's requirements and which shall not have been used or altered in any respect and shall be in the same condition as at the date of delivery.
 - (b) Where the Company has agreed to take any Goods by way of return such Goods shall be delivered to the Company within 2 days of the date specified by the Company. Credit shall be made by the Company in respect of the purchase value of the Goods so returned in the invoice submitted to the Customer for payment less a handling charge which sum shall be agreed between the Customer and the Company prior to any written consent to the return of such Goods by the Company.
 - (c) No Goods shall be accepted for return and no credit given in respect of the purchase value of the same where upon inspection by the Company the Goods are found to be in any way defective notwithstanding that prior written consent to the return shall have been given by the Company.
12. Title to Goods:
 - (a) Notwithstanding risk in the Goods passing in accordance with clause 7 hereof title in the Goods shall not pass to the Customer until payment is received by the Company in full for the Goods and there are no other amounts outstanding from the Customer to the Company.
 - (b) Before title has passed to the Customer under the terms of this clause and without prejudice to any of its other rights, the Company shall have the right to recover or re-sell the Goods or any of them and may enter upon the Customer's premises by its servants or agents for that purpose and in respect thereof the Customer shall take all reasonable precautions to protect the Goods from damage or loss arising from any cause and shall indicate that the Goods are the property of the Company.
 - (c) In the event of a sale of the Goods by the Customer in the ordinary course of its business to a third party the Customer shall assign to the Company in writing its rights to recover the selling price from the third party concerned if so required by the Company.
 - (d) As the insurable risk in the Goods shall pass to the Customer as soon as the materials are delivered to him or to his order and pending disposal of the Customer shall keep the Goods insured in the amount of the price at which the Goods are sold to the Customer against all insurable risks.
 - (e) If the Goods are destroyed by an insured risk prior to the same being paid for by the Customer, the Customer shall receive the proceeds of any such insurance as trustee for the Company.
13. Statutory Obligations: The Company will offer every co-operation in observing any such obligations but the responsibility for the observance of all obligations the performance of which is necessary to comply with the Law of the Country where the Goods are used or installed rests with the Customer who shall indemnify the Company against all claims arising under any such Act or by reason of non-compliance with any of the said obligations and against all costs and expenses arising from any such claim.
14. Payment: Prices quoted are net. Subject to credit being approved accounts are due for payment no later than 30 days from the last day of the calendar month in which delivery is made, otherwise payment must be received by the Company before delivery. When deliveries are spread over a period each consignment will be invoiced as despatched and each month's invoices will be treated as a separate account and be payable accordingly. The Company reserves the right to charge interest on all overdue accounts at three per cent above current bank rates. Failure to pay for any Goods or for any delivery or instalment shall entitle the Company to suspend further deliveries both on the same order and on any other order from the Customer without prejudice to any other right the Company may have. The Company reserves the right where a Customer fails to adhere strictly to the agreed credit terms or where genuine doubts arise as to a Customer's financial position to suspend delivery of any order or any part or instalment without liability until payments or satisfactory security for payment has been provided. Where Goods are to be delivered outside the U.K. payment must be made against delivery of the Goods or shipping documents f.o.b. U.K. Port unless credit arrangements approved by the Company have been made.
15. Licences etc: The Customer will be responsible in all instances for obtaining any necessary import licences and complying with all regulations governing admission of the Goods into the country of destination and for payment of all customs, duties, port duties and charges.
16. Guarantee: The Goods supplied by this Company are supplied with the following express guarantee: The Company takes all precautions to ensure the quality of Goods and materials and guarantees all Goods against faulty material for a period of twelve months from the date of delivery. The Company will repair or replace free of charge, any Goods that are, to the Company's reasonable satisfaction, shown to be defective within that period ('Guarantee'). The terms of this Guarantee apply only to the first owner/user of the Goods. The Company will in no circumstances accept responsibility for any defects whatsoever arising from misuse of any Goods or arising out of situations outside the control of the Company. Any claim under this Guarantee must be made within 30 days of discovery of the defect.
17. Restrictions on Company's Liability:
 - (a) Subject as aforesaid, all express or implied warranties, conditions, representations, undertakings or liabilities, whether imposed by statute, common law, custom or otherwise regarding damage or loss are hereby expressly excluded insofar that such matters are within the bounds of reasonableness and in the light of these terms and conditions; in particular, without impairing the generality of the foregoing, no statement or description contained in any catalogue or advertisement issued by the Company or any communication from the Company or made verbally or in writing by any of the Company's agents, representatives, officers or employees shall give or imply or be construed as giving or implying any such warranty, condition, representation, undertaking or liability as aforesaid nor shall such statement or description enlarge, vary or override or be construed to enlarge, vary or override in any way any of the conditions herein save that nothing in these Terms shall exclude the Company's liability for fraudulent misrepresentation.
 - (b) A claim in respect of any defect or failure to comply with the specification or order or in respect of any delivery or instalment of an order or any part thereof shall not entitle the Customer to cancel or refuse delivery of or payment for any other order, delivery or instalment or any part of the same order, delivery or instalment.
 - (c) The Company's liability in connection with the sale of Goods to the Customer shall be as follows:
 - (i) in respect of physical damage to the Customer's tangible property to the extent that it results from wilful default or negligence of the Company, its employees, agents or contractors, the Company's liability to be limited to an amount of £ 100.00 in respect of each incident or series of connected incidents;



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- (ii) in respect of all other direct loss, or whether in contract, tort or otherwise, the Seller's liability shall not exceed £100.00; and
- (iii) in respect of any loss of goodwill or any type of consequential, special or indirect loss or damage the Company's liability shall be nil.
- (d) Nothing in these Terms excludes or limits liability of the Company for death or personal injury caused by the negligence and/or breach as set out in the Terms shall exclude or limit the liability of the Company for death or personal injury caused by the negligence of the Company.

18. Insolvency of Customer:

(a) This clause applies if:-

- (i) the Customer makes any voluntary arrangement with its creditors or (being an individual or a firm) becomes bankrupt or (being a company) becomes subject to an administration order or goes into liquidation (otherwise than for the purposes of amalgamation or reconstruction); or
- (ii) an encumbrancer takes possession of or a receiver is appointed over any of the property or assets of the Customer; or
- (iii) the Customer ceases, or threatens to cease, to carry on the business, or the Company reasonably apprehends that any of the events mentioned above is met in relation to the Customer and notifies the Customer accordingly.

(b) If this clause applies then, without prejudice to any other right or remedy available to the Company, the Company shall be entitled to cancel the Contract and suspend any further deliveries under the Contract without any liability to the Customer, and if the Goods have been delivered but not paid for, all of the Company's outstanding invoices to the Customer become immediately due and payable notwithstanding any previous agreement or arrangement to the contrary.

19. Legal Construction: The Contract shall in all respects be construed and operate as an English contract and shall be governed by English Law.

20. Notices etc: It is agreed between the parties' that:-

All communications between the parties shall be by means of email, facsimile transmission or by letter sent by first class ordinary post. The former shall be deemed to arrive at the time when transmission without any fault of the entire document is completed. The letter shall be deemed to arrive on the working day next after posting when posted within the UK and within 7 days of posting when posted outside the UK.

21. Sub-Contractors: The right is reserved by the Company to sub-contract all or any part of the Contract without prior notice to the Customer.

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

23. Severance: If any provision of these Terms is held by any competent authority to be invalid or unenforceable in whole or in part the validity of the other provisions of these Terms shall remain in full force and effect.

24. Waiver: The waiver by either party of the breach or default of any provisions of these Terms by the other party shall not be construed as a waiver of any succeeding breach of the same or other provisions, nor shall any delay or omission on the part of either party to exercise or avail itself of any right power or privilege that it has or may have whereunto operate as a waiver of any breach or default by the other party.

25. Data Protection Act 1998:

We may transfer information about you to our bankers/financiers for the purposes of providing services and for the following purposes:-

- Obtaining credit insurance
- Making credit reference agency searches
- Credit control
- Assessment & analysis (including credit scoring, market, product & statistical analysis)
- Securitisation
- Protecting our interests

We will provide you with details of our bankers/financiers & that of any credit reference agencies used on request.

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