

1 INTERPRETATION

1.1 In these Conditions:

“Goods”	Means all articles specified in the Order (including any instalment of the Goods or parts for them) which the Supplier is to sell in accordance with these Conditions.
“Order”	Means any Purchase Order issued to the Supplier to supply the Buyer with Goods.
“Buyer”	Means Clarke Telecom Ltd
“Contract”	Means the contract for the purchase of the Goods.
“Writing”	Includes facsimile and electronic transmission and comparable means of communication.
‘Supplier’	Shall mean the Person, Firm or Company to whom the Purchase Order is issued.

1.2 Any reference in these Conditions to any provision of a statute shall be construed as a reference to that provision as amended, re-enacted or extended at the relevant time.

1.3 The headings in these Conditions are for convenience only and shall not affect their interpretation.

2 THE ORDER

2.1 These Conditions shall apply to all Orders for the supply of Goods unless otherwise agreed between Clarke Telecom and the Supplier and will supersede all previous communications or agreements between the Supplier and Clarke Telecom whether oral or written relating to any Goods.

2.2 The Order constitutes an offer by Clarke Telecom to purchase the Goods referred to therein on the terms of the Contract. The Buyer will not accept responsibility for any Goods unless supplied in accordance with an issued Order duly issued on behalf of the Buyer.

2.3 The acceptance in Writing of the order or any other conduct which is consistent with acceptance of the Order by the Supplier shall constitute acceptance by the Supplier of the Order and all of the terms of the Contract.

2.4 No variation to the terms of the Contract shall be binding unless agreed in Writing between the authorised representatives of Clarke Telecom and the Supplier. The Supplier shall not unreasonably withhold its consent to a variation proposed by Clarke Telecom.

2.5 No indulgence shown by either party shall prevent that party subsequently insisting upon its rights and remedies and no waiver by Clarke Telecom of any breach of the Contract by the Supplier shall be considered as a waiver of any subsequent breach of the same or any other provision.

2.6 Clarke Telecom shall have the right to delegate any of its rights or powers under the Contract by written notice to the Supplier.

2.7 If any provision of the Contract is held by any competent authority to be invalid or unenforceable in whole or in part the validity of the other provisions of the Contract and the remainder of the provision in question shall not be affected.

3 DELIVERY CONDITIONS

3.1 Delivery of the Goods shall be made by the Supplier at the place and to the time schedule specified in the Order.

3.2 Any time or period for delivery dispatch or completion shall be of the essence.

3.3 All Goods must be properly and securely packaged to survive transit to the place of delivery, storage, and delivery to the Buyer's customer and to resist pilferage, distortion, corrosion or contamination. All Goods must be clearly and legibly labelled and addressed. Packaging is not returnable unless otherwise agreed.

3.4 Where Goods are forwarded to the Buyer from outside the United Kingdom the interpretation of shipping terms shall be in accordance with the latest published Incoterms.

3.5 Where the Supplier is located outside the United Kingdom the Buyer shall be responsible for obtaining all import licenses and the Supplier shall be responsible for obtaining all necessary export licenses. In the event that either party fails to obtain any necessary licenses the Contract shall be treated as frustrated with the

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consequences provided by the Law Reform (Frustrated Contracts) Acts 1943. If the Contract shall be so frustrated as to part only of the Goods, the Buyer shall be entitled at its option either to treat the contract as having been frustrated in whole, or as frustrated as to part only.

3.6 If so required the Supplier shall provide a Certificate of Conformance to Specification with each delivery, and failure to supply such Certificate will entitle the Buyer to reject the delivery in whole or at its discretion in part.

3.7 A packing note shall accompany each consignment and shall state the Order reference number together with the number of packages in the consignment.

3.8 The Goods shall be delivered, carriage paid to the Buyer's place of business or to such other place of delivery as is agreed by the Buyer in writing prior to delivery of the Goods. The Supplier shall off load the Goods as directed by the Company.

3.10 Where the Buyer agrees in writing to accept delivery by instalments the Contract will be construed as a single Contract in respect of each instalment. Nevertheless failure by the Supplier to deliver any one instalment shall entitle the Buyer at its option to treat the whole Contract as repudiated.

3.11 If the Goods are delivered to the Buyer in excess of the quantities ordered the Buyer shall not be bound to pay for the excess and any excess will be and will remain at the Supplier's risk and will be returnable at the Supplier's expense.

3.12 All Goods must be delivered at the delivery point specified in the Order. If Goods are incorrectly delivered, then subject to the Buyer's rights in clause 5, the Supplier will be held responsible for any additional expense incurred in delivering them to their correct destination in a timely manner.

4 INSPECTION AND REJECTION

4.1 Unless otherwise agreed in Writing the Buyer shall be under no duty to carry out any form of inspection or tests to the Goods on or after delivery.

4.2 The Buyer's representatives shall be allowed to visit the Supplier's premises at any reasonable time to check the progress of the work on the Goods and the Buyer's representative shall be entitled on the authority of the Buyer to inspect the Goods (including their tooling and raw materials in the course of manufacture of the Goods) which are the subject of the Order at any reasonable time at the Supplier's premises or at the premises of permitted sub-contractors.

4.3 The Buyer reserves the right to reject any of the Goods which do not comply with the specification or which are not of the best quality or do not reach approved standards of design, material, workmanship or quality or which are not in accordance with the Supplier's samples approved by the Buyer. The Buyer may return such rejected Goods to the Supplier at the Supplier's expense and risk and the Supplier shall at the Buyer's option credit the value of such Goods to the Buyer or supply replacement Goods free of charge within 7 days without prejudice to any further remedies by way of damage or otherwise which the Buyer may have against the Supplier. All costs in relation to rejection replacement and repair shall be paid by the Supplier.

4.4 Where Goods are imported, in order to allow the Buyer to obtain a refund of any import duty paid, the Supplier shall provide written acceptance of the rejection and shall state the refund replacement or repair action.

4.5 Payment by the Buyer in accordance with the agreed payment terms does not constitute any admission by the Buyer as to the performance by the Supplier of its obligations.

5 PASSING OF PROPERTY AND RISK TO BUYER

5.1 The risk in the Goods shall remain with Supplier until they are delivered at the point specified in the Purchase Order and delivery to the Buyer is complete (including off-loading and stacking) when ownership of the Goods shall pass to the Buyer.

6 QUALITY CONDITIONS

6.1 Without prejudice to any other condition hereof the Goods and any packaging labelling or wrapping (including the descriptions instructions and other markings thereon) shall comply in all respects with any applicable British Standard, other International Standard and any relevant UK laws and regulations including (but without limiting the foregoing) the Sale of Goods Act 1979, the Supply of Goods and Services Act 1982, Consumer Protection Act 1987, the Consumer Safety Act 1978 and the Health and Safety at Work Act 1974 and regulations made under them.

6.2 Unless otherwise expressly stated the Buyer relies entirely on the skill and judgment of the Supplier as

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regards all aspects of design and manufacture of the Goods and accordingly no knowledge of the same by the Buyer (whether resulting from inspection of the Supplier's processes or otherwise) or acceptance or agreement of the same by the Buyer shall relieve the Supplier of the sole responsibility, therefore.

6.3 The Supplier warrants that:

6.3.1 The Goods shall conform to the quality and specification stated in the Order; and

6.3.2 The Goods are free from defects in design, materials and workmanship; and

6.3.3 The Goods are of satisfactory quality and fit for the purpose for which they are required; and

6.3.4 Any services shall be provided with the exercise of professional care and skill.

These warranties shall survive any termination of this Order and are not affected by inspection, delivery, acceptance or payment and shall ensure to the benefit of the Buyer's successors, assigns, customers and users of the Goods.

6.4 Without prejudice to any other of these conditions or to any other rights and remedies of the Buyer, and whether or not such defect is revealed by the Buyer's inspection, the Supplier shall at the option of the Buyer promptly replace repair or refund the price of any Goods found to be defective within the period of 12 months from sale by the Buyer to a customer or 18 months from delivery to the Buyer whichever shall be the longer, whether such defect arises from faulty design, materials or workmanship or otherwise. All costs in relation to such replacement, repair and refund shall be paid by the Supplier

6.5 The Supplier will indemnify the Buyer against:-

6.5.1 Loss or damage or injury whatsoever and howsoever arising caused to the Buyer or for which the Buyer may be liable to third parties due to faulty design materials or workmanship of the Goods; and

6.5.2 Claims in respect of death or injury howsoever caused to any agent, subcontractor or employee of the Supplier while in or about the Buyer's premises; and

6.5.3 Consequential loss or damage sustained by the Buyer as a result of the failure of the Supplier to supply the Goods in accordance with this Order.

6.6 Nothing in these conditions shall prejudice any condition or warranty (express or implied) or any other right or remedy to which the Buyer is entitled in relation to the Goods by virtue of statute law common law or otherwise.

6.7 The Supplier shall pass to the Buyer and agrees that the Buyer shall pass to its customers and/or users all warranties and service guarantees relating to the Goods.

6.8 Without prejudice to any other right or remedy which the Buyer may have, if any Goods are not supplied in accordance with, or the Supplier fails to comply with, any of the terms of the Contract the Buyer shall be entitled to avail itself of any one or more of the following remedies at its discretion, whether or not any part of the Goods have been accepted by the Buyer:

6.8.1 To rescind the Contract;

6.8.2 To reject the Goods (in whole or in part) and return them to the Supplier at the risk and cost of the Supplier on the basis that a full refund for the Goods so returned shall be paid forthwith by the Supplier;

6.8.3 At the Buyer's option to give the Supplier the opportunity at the Supplier's expense either to remedy any defect in the Goods or to supply replacement Goods and carry out any other necessary work to ensure that the terms of the Contract are fulfilled;

6.8.4 To refuse to accept any further deliveries of the Goods but without any liability to the Supplier;

6.8.5 To carry out at the Supplier's expense any work necessary to make the Goods comply with the Contract; and

6.8.6 To claim such damages as may have been sustained in consequence of the Supplier's breach or breaches of the Contract.

7 PRICE

- 7.1 All prices for Goods should be fully inclusive of any packaging, insurance and carriage charges.
- 7.2 The Buyer should be informed of and benefit from price reductions, as soon as they are applicable.
- 7.3 All Invoices shall be addressed to the Buyer, marked for the attention of the Buyer's Purchase Ledger Dept.
- 7.4 Invoices should not cover multiple Orders, they should relate specifically to a single Order.
- 7.5 The Buyer shall be invoiced immediately after the Goods have been dispatched. Each invoice should clearly state as a minimum the following information: Invoice Date, Purchase Order No., Tax Point, Product Description, Unit Price, Quantity, Total, Cash Settlement Discount (where applicable), VAT Registration Number and address.
- 7.6 All invoices shall be in British Sterling and shall be:
- 7.6.1 Exclusive of any applicable value added tax (which shall be payable by the Buyer subject to receipt of a VAT invoice); and.
- 7.6.2 Inclusive of all charges for packaging, packing, carriage, insurance and delivery of the Goods and any duties, imports or levies other than value added tax.

8 PAYMENT

- 8.1 Unless otherwise agreed in writing payment for Goods shall become due 60 days after the end of the month in which the relevant invoice is forwarded. Subject to the goods being inspected and in the Buyer's possession.
- 8.2 Invoices should be submitted to the Buyer.
- 8.3 No interest surcharge will be accepted by the Buyer.
- 8.4 The Buyer may settle any invoice earlier if there is the benefit of a discount available in doing so.
- 8.5 The Buyer may set off against the invoice any sums owed to the Buyer by the Supplier.

9 CANCELLATION

- 9.1 In the event of a breach or non-observance of any of these Conditions by the Supplier or if the Buyer reasonably anticipates such breach the Buyer may give the Supplier written notice of such breach specifying the time after receipt of such notice in which to rectify the breach or non-observance. If in the event of such notice the Supplier should fail so to rectify then the Buyer shall have the right to give the Supplier notice forthwith terminating the Order and to obtain the Goods from another source. The Supplier shall indemnify the Buyer from and against any excess cost resulting from the termination of the Order and the arrangement of another source of supply of the Goods.
- 9.2 The Order and Contract may be terminated at any time by the Buyer giving the Supplier notice in writing. The Buyer shall not be liable to make any other payment to the Supplier (including payments in respect of economic or consequential loss or loss of profit) as a result of such termination.
- 9.3 Any termination of the Order shall not prejudice any rights which may have accrued to either party.

10 INSOLVENCY

- 10.1 This clause applies if:
- 10.1.1 The Supplier makes any voluntary arrangement with its creditors or becomes subject to an administration order or (being an individual or firm) becomes bankrupt or (being a company) goes into liquidation (otherwise than for the purpose of amalgamation or reconstruction); or
- 10.1.2 An encumbrance takes possession, or a receiver is appointed, of any of the property or assets of the Supplier; or
- 10.1.3 The Supplier ceases, or threatens to cease, to carry on business; or
- 10.1.4 The Buyer reasonably apprehends that any of the events mentioned above is about to occur in relation to the Supplier and notifies the Supplier accordingly.

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10.2 If this clause applies then, without prejudice to any other right or remedy available to the Buyer, the Buyer can cancel the Contract or suspend any outstanding obligation to take delivery of Goods without any liability to the Buyer.

11 BUYER'S PROPERTY

11.1 All items such as tools, gauges, fixtures, materials, parts and drawings provided by the Buyer to the Supplier shall be and remain the property of the Buyer. The Supplier shall maintain all such items in good order and condition (fair wear and tear excepted) and insure them against all risks whilst in his custody and on request shall return them to the Buyer. The Supplier shall not use or permit the use of such items other than in connection with the Order. The Supplier shall not be entitled to any lien over such items and shall not allow them to be charged or to become subject to any distraint.

12 INTELLECTUAL PROPERTY

12.1 The Supplier warrants that neither the sale nor the use of the Goods will infringe any British or foreign patent, copyright, trade mark, trade name, registered design, or other intellectual property right of any third party. The Supplier will indemnify the Buyer from all actions, costs, claims, demands, expenses and liabilities whatsoever resulting from any actual or alleged infringement of any such right or alleged right and at his own expense the Supplier shall defend or assist in the defense of any proceedings which shall be brought in that connection.

12.2 Materials, equipment, tools, dies, moulds, copyright, design rights or any other forms of intellectual property rights in all drawings, specifications and data supplied by the Buyer to the Supplier or used by the Supplier specifically in the manufacture of the Goods shall at all times be and remain the exclusive property of the Buyer but shall be held by the Supplier in safe custody at its own risk and maintained and kept in good condition by the Supplier until returned to the Buyer and shall not be disposed of other than in accordance with the Buyer's written instructions, nor shall such items be used otherwise than as authorised by the Buyer in writing.

12.3 All patents, registered designs, trademarks, copyright, and other intellectual property rights in or resulting from any design or development work carried out by the Supplier at the request of the Buyer in the execution of any Order shall vest exclusively in the Buyer.

13 CONFIDENTIALITY

13.1 All information designs, specifications and drawings provided by the Buyer to the Supplier shall be treated by the Supplier as confidential and shall not be disclosed to any third party. The Supplier shall not sell or supply directly or indirectly to any third party any item made in accordance with the Buyer's information, designs, specifications or drawings.

13.2 The Contract is confidential and shall not be disclosed in whole or in part by the Supplier to any other party without the Buyer's written consent.

14 GIFTS

14.1 The Supplier undertakes not to offer any gift or inducement whether financial or other to any employee or agent of the buyer.

15 GENERAL

15.1 Notices Any notice given under the provisions of this agreement shall be in writing and shall be deemed to have been sufficiently served if delivered personally or sent by fax or telex or (within the U.K.) by first class post or (outside U.K.) by airmail, and the address of service shall be that shown in this agreement or such other address as the relevant party shall notify from time to time. Any notice served by first class post shall be deemed to have been served 48 hours after the date of dispatch, any notice served by airmail shall be deemed to have been served 10 days after the date of dispatch and any notice served by telex or fax shall be deemed to have been served at 10 o'clock on the business day of the recipient next following the date of dispatch.

Notices or other communications sent by the Supplier to the Buyer shall be sent to the address given for the Buyer on the face of the Order.

15.2 Severance In the event that any term condition or provision of the Contract shall be nullified or made void by any governmental law, decree, regulation or order or by the decision or order of any Court having jurisdiction the remaining terms, conditions and provisions of the Contract shall remain in full force and effect.

15.3 Jurisdiction These conditions shall be governed by construed and shall take effect in accordance with the

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Laws of England and shall be subject to the sole jurisdiction of the English Courts.

15.4 Third Parties The parties to this Contract do not intend that any term of this Contract will be enforceable by virtue of the Contracts (Rights of Third Parties) Act 1999 by any person that is not a party to it.

15.5 Assignment The Buyer shall be entitled to perform any of the obligations undertaken by it and to exercise any of the rights granted to it under the Contract through any other company which at the relevant time is its holding company or subsidiary (as defined by section 736 of the Companies Act 1985) or the subsidiary of any such holding company and any act or omission of any such company shall for the purposes of the Contract be deemed to be the act or omission of the Buyer. The Buyer may assign the Contract or any part of it to any person, firm or company. The Supplier shall not be entitled to assign the Contract or any part of it without the prior written consent of the Buyer.