



## Batt Cables Limited

### Standard Terms of Business for Sale of Goods

#### 1. Interpretation:

##### 1.1 Definitions:

- (a) **Buyer** means any legal body or person entering into a contract with the Seller for the purchase of any goods.
- (b) **Contract** means any contract, agreement or arrangement entered into by the Seller with the Buyer for the sale to the Buyer of any Goods.
- (c) **Dispatch** means the loading of Goods onto a vehicle at the Seller's premises for onward transit to a location specified in the Order Confirmation whether such Goods are being delivered to such other location by the Seller or the same are being collected by the Buyer so that delivery takes place simultaneously with such loading.
- (d) **Goods** means the goods (or any part of them) set out in any Order or Order Confirmation.
- (e) **Intellectual Property Rights** means patents, utility models, rights to inventions, copyright and related rights, trade marks and service marks, trade names and rights in domain names, rights in get-up, goodwill and the right to sue for passing off or unfair competition, rights in designs, rights in computer software, database rights, rights to preserve the confidentiality of information (including know-how and trade secrets) and any other intellectual property rights, including all applications for (and rights to apply for and be granted), renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist, now or in the future, in any part of the world.
- (f) **Order** means an order in whatever form for the Goods by the Buyer, the Buyer's acceptance of a quotation by the Seller.
- (g) **Order Confirmation** means a written confirmation by the Seller that it accepts an Order and will deliver the Goods referred to in the Order Confirmation on these Terms and on the basis set out in the Order Confirmation.
- (h) **Seller** means BATT CABLES LIMITED whether selling through its "BATT CABLES" or "BATT NETWORKS" divisions.
- (i) **Terms** means these terms and conditions.

##### 1.2 Interpretation:

- (a) Unless otherwise defined in these Terms, any expression used in these Terms will have the meaning given to it by the relevant Order Confirmation.
- (b) A **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).
- (c) A reference to a party includes its [personal representatives,] successors and permitted assigns.
- (d) A reference to legislation or a legislative provision is a reference to it as amended or re-enacted. A reference to legislation or a legislative provision includes all subordinate legislation made under that legislation or legislative provision.



## **2. Basis of Contract**

- 2.1 The Goods are intended for purchase by businesses and, therefore, the Seller assumes that the Buyer is purchasing Goods for business and commercial purposes and use. The Seller does not intend to and does not knowingly sell to any person dealing as consumer.
- 2.2 These Terms apply to all sales of goods by the Seller to the Buyer to the exclusion of all and any other terms and conditions including any which the Buyer may seek to impose or incorporate or which are implied by law, trade, custom, practice or course of dealing.
- 2.3 All orders for Goods will be deemed to be an offer by the Buyer to purchase goods pursuant to these Terms. An Order will only be deemed to be accepted when the Seller issues an Order Confirmation, at which point the Contract will come into existence.
- 2.4 Acceptance or delivery of Goods is conclusive evidence of the Buyer's acceptance of these Terms.
- 2.5 No variation to these Terms is valid unless confirmed in writing by the Seller.
- 2.6 These Terms together with the relevant Order Confirmation set out the entire agreement between the parties in relation to the supply of the Goods to the Buyer and supersede all prior discussions between the parties or their representatives. Accordingly, the Buyer confirms that unless contained in these Terms or the Order Confirmation, the Buyer places no reliance upon any oral or written statement, representation, or warranty of any kind.
- 2.7 The Buyer waives any right it might otherwise have to rely on any term endorsed upon, delivered with or contained in any of the Buyer's documents that is inconsistent with these Terms.
- 2.8 A quotation for Goods, issued by the Seller will not constitute an offer. A quotation will be valid for the period stated therein or when no period is so stated, then for 30 days from the date of the quotation.

## **3. Price**

- 3.1 This paragraph 3.1 applies if, for whatever nature and for whatever reason, there is any increase in any of the Seller's costs of supplying the Goods to the Buyer, which occurs after the date of the Contract and is outside the Seller's reasonable control. When this paragraph 3.1 applies, the Seller may at any time up to 7 days before delivery inform the Buyer that the Price will be increased by up to the amount of such increase in cost. If the Buyer does not accept such increase it may terminate the Contract cancelling its purchase of the Goods provided it does so within 5 days of being informed of the increase in price.
- 3.2 The price of the Goods excludes VAT which will be due at the rate applicable on the date of the Seller's VAT invoice.
- 3.3 [\*The price of the Goods excludes the costs and charges of packaging, insurance and transport of the Goods, which will be invoiced separately to the Buyer, where applicable.\*]

## **4. Payment**

- 4.1 The Seller may invoice the Buyer for the Goods on or at any time after delivery.
- 4.2 The Price will be payable in full on or before the last day of the calendar month following the month of Dispatch and will be paid without deduction or set off.(30 Days End of Month)
- 4.3 Interest will be charged on all overdue accounts at 6% per annum above Lloyds TSB Bank's base lending rate for the time being.



4.4 Without prejudice to any other rights of the Seller, if any payment from the Buyer is overdue under this Contract or any other contract, agreement or arrangement between the parties, the Seller may at its option suspend, terminate or cancel this and/or such other contract.

4.5 If at any time the Buyer is in default of any of these Terms of this or any other contract between the Seller and the Buyer, particularly failure to pay any accounts due by the correct dates, all monies payable by the Buyer under all contracts will immediately become due.

## **5. Delivery**

5.1 The Seller will use reasonable endeavours to meet any delivery dates quoted, promised or requested but time is not of the essence in relation to delivery or any other the Seller's obligations under the Contract and the Seller will not be liable for any delay. The Buyer will be bound to accept delivery and to pay for Goods in full provided that delivery is tendered within 3 months of the agreed delivery date.

5.2 UK Mainland deliveries will be delivered free of charge by such means as the Seller decides provided these are above the Seller's minimum order value as published by the Seller from time to time. All other deliveries will incur a carriage charge.

5.3 Unless the Buyer has requested to collect the Goods from the Seller's premises, the Seller will arrange for carriage of the Goods to the Buyer's address or any other location stated on the Order Confirmation. The Buyer will make all arrangements necessary to take immediate delivery of the Goods whenever they are tendered for delivery.

5.4 Unless the Buyer has opted to collect the Goods, delivery will be completed on the completion of unloading of the Goods at the location to which they are to be delivered as provided in paragraph 5.3. If the Buyer has opted to collect the Goods, delivery will be completed when all Goods are loaded onto the Buyer's vehicle(s) at the Seller's premises or any other location specified in the Order Confirmation.

5.5 The Seller may deliver the Goods in instalments. Each instalment will be invoiced and paid for in accordance with the provisions of the Contract.

**6. Returnable Packaging** Where Goods are supplied on wooden drums the Buyer will promptly return the drums to the Seller in good condition to the Seller or to such person and destination as the Seller directs in the Order Confirmation or otherwise. The Seller may agree to collect such drums from a UK mainland address if the Buyer so requests in writing but is not obliged to do so.

**7. Late Shipment due to inspection or shipping not within the control of the Seller** Where the Seller has given appropriate notice that Goods are available for inspection and/or shipping, then if a delay occurs in inspecting and/or shipping through no fault of the Seller, the Buyer will pay against invoice for the value of the Goods held awaiting inspection and/or shipping.

## **8. Damage or loss in transit**

8.1 As provided in paragraph 10.1, risk in the Goods will pass in accordance with the Incoterm specified in the relevant Order as applicable to the Goods and responsibility for damage or loss in transit will rest with the relevant party accordingly.

8.2 If the Buyer has not received Goods within 7 days of Dispatch, advice or invoice (whichever is earlier) the Buyer will inform the Seller immediately in writing, email or fax.



8.3 If the Buyer fails to comply with the provisions of sub-clause 8.2, the Buyer will be liable to pay for the Goods which are the subject of the contract as though they had been delivered in full.

**9. Fitness for purpose, technical advice and specifications**

9.1 The Seller does not warrant or give any assurance of any kind that the Goods are or will be fit for any particular purpose whether known or communicated to the Seller or not. The Buyer will determine the fitness for purpose of the Goods for the Buyer's intended use and assume all risk and liability in this respect.

9.2 The Seller does not and will not offer advice to the Buyer in relation to the Goods, their use, application or fitness for any purpose.

9.3 The Seller is not responsible for the consequences of any inadequacies, inaccuracies or other deficiencies in any drawing, specification or other information provided by the Buyer to the Seller.

**10. Title of goods and risk**

10.1 Risk in the Goods will pass in accordance with the Incoterm specified in the relevant Order as applicable to the Goods.

10.2 Title in the Goods will not pass to the Buyer until the earlier of:

(a) the Seller receiving payment in full (in cash or cleared funds) for the Goods and any other goods that the Seller has supplied to the Buyer in respect of which payment has become due; and

(b) the resale by the Buyer of the Goods, when title in the Goods will pass to the Buyer at the time specified in paragraph 10.4.

10.3 Until title in the Goods has passed to the Buyer, the Buyer will:

(a) store the Goods separately from all other goods held by the Buyer so that they remain readily identifiable as the Seller's property;

(b) not remove, deface or obscure any identifying mark or packaging on or relating to the Goods;

(c) maintain the Goods in satisfactory condition and keep them insured against all risks for their full price from the date of delivery;

(d) notify the Seller immediately if it becomes subject to any of the events listed in paragraph 15.1(b) to paragraph 15.1(d); and

(e) give the Seller such information as the Seller may reasonably require from time to time relating to:

(i) the Goods; and

(ii) the ongoing financial position of the Buyer.

10.4 Subject to paragraph 10.5, the Buyer may resell or use the Goods in the ordinary course of its business (but not otherwise) before the Seller receives payment for the Goods. However, if the Buyer resells the Goods before that time:

(a) it does so as principal and not as the Seller's agent; and

(b) title in the Goods will pass from the Seller to the Buyer immediately before the time at which resale by the Buyer occurs.



- 10.5 At any time before title in the Goods passes to the Buyer, the Seller may:
- (a) by notice in writing, terminate the Buyer's right under paragraph 10.4 to resell the Goods or use them in the ordinary course of its business; and
  - (b) require the Buyer to deliver up all Goods in its possession that have not been resold, or irrevocably incorporated into another product and if the Buyer fails to do so promptly, enter any premises of the Buyer or of any third party where the Goods are stored in order to recover them.

## **11. Quality, Inspection and Alleged Defects**

- 11.1 The Goods will be manufactured and supplied in accordance with any description contained in the Seller's catalogue or Order Confirmation and manufactured in accordance with all applicable British or ISO Standards which relate specifically to the Goods or to such other standards and/or certification requirements as our set out on the Order Confirmation.
- 11.2 The Seller may from time to time make changes in the specification of the Goods as required to comply with any applicable safety or statutory requirements or which do not materially affect the quality of the Goods.
- 11.3 The Buyer will take delivery of the Goods tendered notwithstanding that the quantity so delivered are more or less than the quantity referred to in the Order Confirmation provided that the discrepancy in quantity does not exceed 5%. The Price will be adjusted pro rata to any such discrepancy so that the Buyer is charged and pays for the quantity of Goods actually delivered.
- 11.4 The Buyer will inspect the Goods on delivery and will within 7 days of delivery notify the Seller of any alleged defect, shortage in quantity, damage or failure to comply with description.. The Buyer will afford the Seller an opportunity to inspect any Goods in respect of which it makes any such allegation within a reasonable time following delivery and before any use is made of them. If the Buyer does not comply with this paragraph 11.4, the Goods will be conclusively presumed to be in accordance with the Contract and free from any defect or damage which would be apparent on reasonable examination. Accordingly, the Buyer will be deemed to have accepted the Goods.
- 11.5 Unless the Buyer requests a copy of the proof of delivery within 7 days of Dispatch of the Goods, the Seller will have no obligation to provide the same.
- 11.6 The Seller warrants that the Goods will match any description set out in the Order Confirmation and will remain of satisfactory quality for 12 months from the date of their Dispatch. If the Goods are not in accordance with this warranty for any reason other than damage in transit (for which the Seller is not liable per paragraph 8.1) the Buyer's sole remedy will be limited to the Seller making good any shortage or, at the Seller's election, by refunding a proportionate part of the Price save that the Seller's maximum liability will be limited to 20% of the price of the Goods.

## **12. Limitation of Liability**

- 12.1 The limits and exclusions in this paragraph 12 reflect the insurance cover the Seller has been able to arrange and the Buyer is responsible for making its own arrangements for the insurance of any excess risk or liability in respect of which it wishes to be covered or protected.
- 12.2 References to liability in this paragraph 12 include every kind of liability arising under or in connection with the Contract including liability in contract, tort (including negligence), misrepresentation, restitution or otherwise.

- 12.3 Nothing in the Contract limits any liability which cannot legally be limited, including liability for:
- (a) death or personal injury caused by negligence;
  - (b) fraud or fraudulent misrepresentation;
  - (c) breach of the terms implied by section 12 of the Sale of Goods Act 1979; and
  - (d) defective products under the Consumer Protection Act 1987.
- 12.4 Subject to paragraph 12.3, the Seller's total liability to the Buyer will not exceed the price paid for the Goods excluding value added tax.
- 12.5 Subject to paragraph 12.3, the following types of loss are wholly excluded:
- (a) loss of profits;
  - (b) loss of sales or business;
  - (c) loss of agreements or contracts;
  - (d) loss of anticipated savings;
  - (e) loss of use or corruption of software, data or information;
  - (f) loss of or damage to goodwill; and
  - (g) indirect or consequential loss.
- 12.6 Subject only to paragraph 12.3, the Seller will have no liability for any claim of whatever nature in relation to the Goods or a Contract unless the Buyer notifies the Seller thereof within 12 months after Dispatch.
- 12.7 Save as otherwise provided in these Terms all warranties whether implied by statute or otherwise are excluded from the contract provided that nothing in these Terms will restrict or exclude liability for death or personal injury caused by the negligence of the Seller or affect the statutory rights of a Buyer dealing as consumer.
- 12.8 This paragraph 12 will survive termination of the Contract.
- 13. Third party Intellectual Property Rights** The Buyer warrants that where Goods are supplied to meet or comply with the Buyer's drawings, designs or specification, their manufacture, supply or sale by the Seller will not infringe any third party's Intellectual Property Rights. The Buyer will indemnify and keep indemnified the Seller against all losses, liabilities, actions, proceedings, claims, costs, demands and expenses resulting directly or indirectly from any such infringement and any allegation that any such infringement has occurred.
- 14. Cancellation**
- The Seller may cancel the contract at any time before the Goods are delivered by notifying the Buyer. On giving such notice, the Seller will repay to the Buyer all sums paid in respect of the Price. The Seller will not be liable for any loss or damage whatever arising from such cancellation beyond its obligation to make such repayment.
- 15. Termination**
- 15.1 Without limiting its other rights or remedies, the Seller may terminate a Contract with immediate effect by giving notice to the Buyer if:

- (a) the Buyer commits a material breach of the Contract and (if such a breach is remediable) fails to remedy that breach within 14 days of being notified do so;
  - (b) the Buyer takes any step or action in connection with its entering administration, provisional liquidation or any composition or arrangement with its creditors (other than in relation to a solvent restructuring), obtaining a moratorium, being wound up (whether voluntarily or by order of the court, unless for the purpose of a solvent restructuring), having a receiver appointed to any of its assets or ceasing to carry on business or, if the step or action is taken in another jurisdiction, in connection with any analogous procedure in the relevant jurisdiction;
  - (c) the Buyer suspends, threatens to suspend, ceases or threatens to cease to carry on all or a substantial part of its business; or
  - (d) the Buyer's financial position deteriorates so far as to reasonably justify the opinion that its ability to give effect to the terms of the Contract is in jeopardy.
- 15.2 Without limiting its other rights or remedies, the Seller may suspend supply of the Goods under the Contract or any other contract between the Buyer and the Seller if the Buyer becomes subject to any of the events listed in paragraph 15.1(b) to paragraph 15.1(d), or the Seller reasonably believes that the Buyer is about to become subject to any of them, or if the Buyer fails to pay any amount due under this Contract on the due date for payment.
- 15.3 Without limiting its other rights or remedies, the Seller may terminate the Contract with immediate effect by giving written notice to the Buyer if the Buyer fails to pay any amount due under the Contract on the due date for payment.
- 15.4 On termination of the Contract for any reason the Buyer will immediately pay to the Seller all of the Seller's outstanding unpaid invoices and interest and, in respect of Goods supplied but for which no invoice has been submitted, the Seller will submit an invoice, which will be payable by the Buyer immediately on receipt.
- 15.5 Termination of the Contract, however arising, will 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 Contract which existed at or before the date of termination.
- 15.6 Any provision of the Contract that expressly or by implication is intended to come into or continue in force on or after termination of the Contract will remain in full force and effect.

## **16. General Provisions**

### **16.1 Force Majeure**

The Seller will not be liable if it is unable to deliver any Goods or fulfil any other its obligations by reason of a Force Majeure Event. For the purposes of this paragraph 16.1, a **Force Majeure Event** means any circumstance beyond the Seller's reasonable control including (but without limitation) act of God, war, strike, lockouts, industrial disputes, epidemic, pandemic, fire, explosion, failure of the Seller's sources of supply, shortage or delay in obtaining fuel supplies, interruption of transport, government action.

### **16.2 Assignment and other dealings.**

- (a) The Seller 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 Contract.





- (b) The Buyer 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 Contract without the Seller's written consent.

### 16.3 Notices.

- (a) Any notice given to a party under or in connection with the Contract will be in writing and will 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)[\*; or\*]
- (b) Any notice will be deemed to have been received:
  - (i) if delivered by hand, at the time the notice is left at the proper address; or
  - (ii) 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.
- (c) Whilst due service of any notice and the timing of such service will depend only upon delivery of such notice as provided in paragraphs 16.3(a) and 16.3(b), a party serving any notice will send a copy of such notice by email to the email address set out for the party to be served in the Order Confirmation and will do so no later than the time of dispatch of the original notice by the serving party.
- (d) This paragraph 16.3 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.

### 16.4 Third party rights.

- (a) The Contract does not give rise to any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of the Contract.
- (b) The rights of the parties to rescind or vary the Contract are not subject to the consent of any other person.

### 16.5 Waiver.

- (a) [Except as set out in paragraph 2.7, a **OR A**] waiver of any right or remedy is only effective if given in writing [and will not be deemed a waiver of any subsequent right or remedy].
- (b) A delay or failure to exercise, or the single or partial exercise of, any right or remedy will not waive that or any other right or remedy, nor will it prevent or restrict the further exercise of that or any other right or remedy.

16.6 **Severance.** If any provision or part-provision of the Contract is or becomes invalid, illegal or unenforceable, it will be deemed deleted, but that will not affect the validity and enforceability of the rest of the Contract. If any provision of the Contract is deemed deleted under this paragraph 16.6 the parties will negotiate in good faith to agree a replacement provision that, to the greatest extent possible, achieves the intended commercial result of the original provision.

17. **Proper Law** These Conditions and all contracts to which they apply will in all respects be governed by and construed in accordance with the Laws of England and Wales and be subject to the exclusive jurisdiction of the English Courts.