

# AUTO MARINE CABLES LTD. TERMS AND CONDITIONS OF BUSINESS

These terms and conditions govern all contracts for the sale or supply of goods (including any instalment(s) of such goods or any parts for them) (together the "Goods") by Auto Marine Cables Limited (the "Company") to any person who accepts the Company's quotation for the sale of the Goods or whose order for the Goods is accepted by the Company (each a "Buyer") to the exclusion of any other terms and conditions subject to which any quotation is accepted or purported to be accepted, or any order is made or purported to be made, by any Buyer

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## **1. ACCEPTANCE AND TELEPHONE ORDERS**

- 1.1 Any specific Quotation is open for acceptance for a period of 30 days from the date of issue. If the buyer purports to accept after that date the Company may proceed or decline at its discretion.
- 1.2 The company does not accept responsibility for errors arising from telephone orders. These must be confirmed in writing and marked clearly "CONFIRMATION ONLY". The company does not accept responsibility for duplication of dispatch in the absence of such marking.

## **2. PAYMENT**

- 2.1 Unless special terms are agreed, payment is due at the end of the month following invoice or following notification that the Goods are ready for dispatch whichever date is sooner, but notwithstanding the foregoing, the Company reserves the right to vary these payment terms from time to time as it in its discretion deems fit whether generally or as they apply to any one or more Buyers upon giving notice to the Buyer or Buyers concerned.
- 2.2 All payments are to be made to the Company's registered office.
- 2.4 If payment is delayed for more than 21 days, the Company may treat this as a repudiation of the Contract and without prejudice to its other rights the Company may elect to be released from its obligations under the Contract (including any obligation to supply further Goods in an instalment Contract).
- 2.5 The Buyer is not entitled to withhold any payments or to refuse payment on the grounds of counterclaims, which are disputed by the Company.

## **3. PRICE**

- 3.1 Any price appearing in any price list is an invitation to treat and any order placed is an offer which the Company may accept or refuse.
- 3.2 Any price quoted is Ex Works Worsley and is exclusive of carriage unless the contrary is expressed.
- 3.3 All prices quoted or listed are net of value added tax which will be added as appropriate.
- 3.4 Any price quoted may be adjusted to take account of variations in the cost of labour, materials, or components prior to completion of the Order.

## **4. CREDIT ACCOUNTS**

This clause applies if and whenever the Company agrees in Writing to allow the Buyer a credit facility.

- 4.1 The Buyer will only be allowed a credit facility if the credit checks carried out by the Company in respect of the Buyer are wholly satisfactory to the Company.
- 4.2 The Company will notify the Buyer in Writing when the Buyer's account with the Company has been opened and of the credit limit imposed on that account. The Buyer will only be permitted to use the credit facility when its account has opened and then only to the credit limit imposed on the account.
- 4.3 Unless otherwise agreed by the Company in Writing, the full price of all Goods sold or supplied must be paid in cleared funds no later than the end of the month following the Company's invoice for the same.
- 4.4 The Company may require the Buyer to set up and maintain a direct debit facility with its bankers as a condition of the Company permitting the Buyer to use a credit facility.
- 4.5 The Company reserves the right to vary the terms upon which it allows the Buyer a credit facility, or to withdraw a credit facility at any time for any reason. Any variation in such terms will be notified to the Buyer in Writing and will take immediate effect.
- 4.6 Where any valid warranty claim is made in respect of Goods or Services supplied on credit and the Company decides to refund to the Buyer some or all of the price of the Goods and/or charge for the Services, such refund will be made by credit to the Buyers account.
- 4.7 Notwithstanding any warranty claim made by the Buyer, the Buyer must nevertheless pay the price of the Goods and/or Services which are the subject of the claim in accordance with clause 4.4 above pending the determination of the validity of such claim.

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- 4.8 Without prejudice to the provisions of clause 4.6, the Company shall be entitled to withdraw the Buyer's facility with immediate effect if the Buyer breaches any of the provisions of this clause 4.
- 4.9 Where the Buyer's credit facility is withdrawn then without prejudice to any other rights or remedies available to the Company, the full price of all the Goods sold or supplied but not yet paid for shall become immediately due and payable notwithstanding any previous arrangements or agreements to the contrary.

### 5. RETENTION OF TITLE AND RISK

- 5.1 The Goods are at the risk of the Buyer from the time of delivery.
- 5.2 Ownership of the Goods shall not pass to the Buyer until the Company has received in full (in cash or cleared funds) all sums due to it in respect of:
- 5.2.1 the Goods; and
- 5.2.2 all other sums which are or which become due to the Company from the Buyer on any account.
- 5.3 Until ownership of the Goods has passed to the Buyer, the Buyer shall:
- 5.3.1 hold the Goods on a fiduciary basis as the Company's bailee;
- 5.3.2 store the Goods (at no cost to the Company) separately from all other goods of the Buyer or any third party in such a way that they remain readily identifiable as the Company's property;
- 5.3.3 not destroy, deface or obscure any identifying mark or packaging on or relating to the Goods; and
- 5.3.4 maintain the Goods in satisfactory condition and keep them insured on the Company's behalf for their full price against all risks to the reasonable satisfaction of the Company. On request the Buyer shall produce the policy of insurance to the Company.
- 5.4 The Buyer may resell the Goods before ownership has passed to it solely on the following conditions:
- 5.4.1 any sale shall be effected in the ordinary course of the Buyer's business at full market value; and
- 5.4.2 any such sale shall be a sale of the Company's property on the Buyer's own behalf and the Buyer shall deal as principal when making such a sale.
- 5.5 The Buyer's right to possession of the Goods shall terminate immediately if:
- 5.5.1 the Buyer has a bankruptcy order made against him or makes an arrangement or composition with his creditors, or otherwise takes the benefit of any statutory provision for the time being in force for the relief of insolvent debtors, or (being a body corporate) convenes a meeting of creditors (whether formal or informal), or enters into liquidation (whether voluntary or compulsory) except a solvent voluntary liquidation for the purpose only of reconstruction or amalgamation, or has a receiver and/or manager, administrator or administrative receiver appointed of its undertaking or any part thereof, or documents are filed with the court for the appointment of an administrator of the Buyer or notice of intention to appoint an administrator is given by the Buyer or its directors or by a qualifying floating charge holder (as defined in paragraph 14 of Schedule B1 to the Insolvency Act 1986), or a resolution is passed or a petition presented to any court for the winding-up of the Buyer or for the granting of an administration order in respect of the Buyer, or any proceedings are commenced relating to the insolvency or possible insolvency of the Buyer; or
- 5.5.2 the Buyer suffers or allows any execution, whether legal or equitable, to be levied on his/its property or obtained against him/it, or fails to observe or perform any of his/its obligations under the Contract or any other contract between the Company and the Buyer, or is unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 or the Buyer ceases to trade; or
- 5.5.3 the Buyer encumbers or in any way charges any of the Goods.
- 5.6 The Company shall be entitled to recover payment for the Goods notwithstanding that ownership of any of the Goods has not passed from the Company.
- 5.7 The Buyer grants the Company, its agents and employees an irrevocable licence at any time to enter any premises where the Goods are or may be stored in order to inspect them, or, where the Buyer's right to possession has terminated, to recover them.
- 5.8 Where the Company is unable to determine whether any Goods are the goods in respect of which the Buyer's right to possession has terminated, the Buyer shall be deemed to have sold all goods of the kind sold by the Company to the Buyer in the order in which they were invoiced to the Buyer.
- 5.9 On termination of the Contract, howsoever caused, the Company's (but not the Buyer's) rights contained in this clause 5 shall remain in effect.

### 6. DAMAGE IN TRANSIT

No claim for damage in transit, shortage of delivery or loss of Goods will be entertained unless in the case of damage in transit or shortage of delivery, a separate notice in writing is given to the carrier concerned and to the Company within 3 days of receipt of the Goods, followed by a complete claim in writing within 14 days of receipt of Goods and, in the case of loss of Goods, notice in writing is given to the carrier concerned and to the Company and a complete claim in writing made within 14 days of the date of consignment. Where Goods are accepted from the carrier concerned without being checked, the delivery book of the carrier concerned must be signed "not examined". Any goods damaged in transport, if accepted, must be signed "damaged".

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## 7. WARRANTIES AND LIABILITY

- 7.1 Subject to the conditions set out below, the Company warrants that the Goods will correspond with their specification at the time of delivery and will be free from defects in materials and workmanship for a period of twelve months from delivery.
- 7.2 The above warranty is given by the Company subject to the following conditions:
- 7.2.1 the Company shall be under no liability in respect of any defect arising from fair wear and tear, wilful damage, negligence, abnormal working conditions, failure to follow the Company's instructions (whether oral or in writing), misuse or alteration or repair of the Goods without the Company's approval.
  - 7.2.2 the Company shall be under no liability under the above warranty (or any other warranty, condition or guarantee) if the total price for the Goods has not been paid by the due date for payment.
  - 7.2.3 the above warranty does not extend to parts, materials or equipment not manufactured by the Company, in respect of which the Buyer shall only be entitled to the benefit of any such warranty or guarantee as is given by the manufacturer to the Company.
- 7.3 Subject as expressly provided in these Conditions and except where the goods are sold to a person dealing as a consumer (within the meaning of the Unfair Contract Terms Act 1977) all warranties, conditions or other terms implied by statute or common law are excluded to the fullest extent permitted by law.
- 7.4 Where the Goods are sold under a consumer transaction (as defined by the Consumer Transactions (Restrictions on Statements) Order 1976) the statutory rights of the Buyer are not affected by these Conditions.
- 7.5 Any claim by the Buyer which is based on any defect in the quality or condition of the Goods or their failure to correspond with specification shall (whether or not delivery is refused by the Buyer) be notified to the Company within 7 days from the date of delivery or (where the defect or failure was not apparent on reasonable inspection) within a reasonable time after discovery of the defect or failure. If the delivery is not refused, and the Buyer does not notify the Company accordingly, the Buyer shall not be entitled to reject the Goods and the Company shall have no liability for such defect or failure, and the Buyer shall be bound to pay the price as if the Goods had been delivered in accordance with the Contract.
- 7.6 Where any valid claim in respect of any of the Goods which is based on any defect in the quality or condition of the Goods or their failure to meet specification is notified to the Company in accordance with these Conditions, the Company shall be entitled to replace the Goods (or the part in question) free of charge or, at the Company's sole discretion, refund to the Buyer the price of the Goods (or a proportionate part of the price), but the Company shall have no further liability to the Buyer.
- 7.7 Except in respect of death or personal injury caused by the Company's negligence, the Company shall not be liable to the Buyer by reason of any representation, or any implied warranty, condition or other term, or any duty at common law, or under the express terms of the Contract, for any consequential loss or damage (whether for loss or profit or otherwise) costs, expenses or other claims for consequential compensation whatsoever (and whether caused by the negligence of the Company, its employees or agents or otherwise) which arises out of or in connection with the supply of the Goods or their use or resale by the Buyer, except as expressly provided in these Conditions.
- 7.8 The Company shall not be liable to the Buyer or be deemed to be in breach of the Contract by reason of any delay in performing, or any failure to perform, any of the Company's obligations in relation to the Goods, if the delay or failure was due to any cause beyond the Company's reasonable control. Without prejudice to the generality of the foregoing, the following shall be regarded as causes beyond the Company's reasonable control:
- 7.8.1 Act of God, explosion, flood, tempest, fire or accident
  - 7.8.2 war or threat of war, sabotage, insurrection, civil disturbance or requisition
  - 7.8.3 acts, restrictions, regulations, bye-laws, prohibitions or measures of any kind on the part of any governmental, parliamentary or local authority
  - 7.8.4 import or export regulations or embargoes
  - 7.8.5 strikes, lock-outs or other industrial actions or trade disputes (whether involving employees of the Company or of a third party)
  - 7.8.6 difficulties in obtaining raw materials, labour, fuel, parts or machinery
  - 7.8.7 power failure or breakdown in machinery

## 8. INSOLVENCY OF BUYER

- 8.1 This clause applies if:
- 8.1.1 the Buyer 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 purposes of amalgamation or reconstruction) or
  - 8.1.2 an encumbrancer takes possession, or a receiver is appointed, of any of the property or assets of the Buyer or
  - 8.1.3 the Buyer ceases, or threatens to cease, to carry on business or
  - 8.1.4 the Company reasonably apprehends that any of the events mentioned above is about to occur in relation to the Buyer and notifies the Buyer accordingly.
- 8.2 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 or suspend any further deliveries under the Contract without any liability to the Buyer, and if any Goods

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have been delivered but not paid for, the price shall become immediately due and payable notwithstanding any previous agreement or arrangement to the contrary.

## 9. DELIVERY

- 9.1 Whilst every effort is made to adhere to delivery dates, any time or date given by the Company is intended as an estimate only and the Company shall not be liable for any damages or losses direct, indirect or consequential upon delay and the Company makes no representation that delivery of the Goods shall be made by a certain date or at all.
- 9.2 Deliveries may be wholly or partially suspended and the time of such suspension added to the original Contract in the event of a stoppage or delay or interruption of work in the Company's establishment during the delivery period as a result of any cause beyond the reasonable control of the Company (and without prejudice to the generality of the foregoing those items listed in the clause 7.8 shall be regarded as such causes). The Company shall be entitled at any such time, on notice to the Buyer, to make partial deliveries only or to determine the Contract without prejudice in any case to rights accrued in respect of deliveries already made. The Buyer shall pay for the part of Goods delivered, the same proportion of the price as the part delivered bears to the whole of the Goods agreed to be sold.
- 9.3 Delivery shall be taken by the Buyer within the period (if any) named in the quotation (extended in accordance with clause 9.2) or within 7 days of notification by the Company that the Goods are ready for delivery. If the Buyer is unable or fails to accept delivery of the Goods at the time when the Goods are due and ready for delivery, the Company shall, if its storage facilities permit, store the Goods and take all reasonable steps to prevent their deterioration until their actual delivery and the Buyer shall be liable to the Company for the cost of the storage at the rate of 1% per month of the price of the Goods in question plus the actual cost of insurance of its so doing. This provision shall be in addition to and not a substitution for any other payment of damages for which the Buyer may become liable in respect of its failure to take delivery at the appropriate date.

## 10. INFRINGEMENT

- 10.1 The Buyer shall indemnify the Company against all damages, penalties, costs and expenses to which the Company may become liable as a result of work done in accordance with the Buyers drawings and/or specifications (whether supplied by the Buyer directly or indirectly) which involves the infringement of any letters patent registered design copyright or other intellectual property rights.
- 10.2 If any claim be made against the Buyer alleging infringement of any letters patent registered design copyright or other intellectual property rights in relation to Goods otherwise supplied by the Company, the Buyer shall make no admission in respect thereof but shall notify the Company in writing forthwith and supply copies of all letters and documents relating to such allegations.

## 11. DRAWINGS AND SPECIFICATIONS

- 11.1 All descriptive matter and dimensions submitted with any quotation or contained in the Company's catalogue, price list or in any advertising matter or given orally or in any correspondence are approximate representations only, intended to present a general idea unless the contrary is stated expressly.
- 11.2 Whilst every reasonable precaution will be taken to ensure accuracy of the weights and dimensions shown on delivery notes, no term warranty or condition shall be implied thereby and any errors and/or omissions and/or discrepancies shall not be made the basis of any claim against the Company.

## 12. EXTRA COST

If, as a result of the Buyer's instructions, extra costs are incurred in varying the specification or, the work is suspended, or, for reasons outside the Company's control, there are interruptions, delays, overtime, unusual hours, mistakes or extra work in relation to the Contract, such extra costs and any stand-by time of the Company's employees on site, or elsewhere, shall be added to the Contract price and paid by the Buyer.

## 13. LIMITS OF CONTRACT

- 13.1 There shall be included in the Contract only such items as are specified in any quotation or acceptance and save as provided therein the Company shall not be bound by any statement, agreement or representation, oral and otherwise howsoever or by whomsoever made.
- 13.2 No alteration to addition to, or qualification of these Terms and Conditions shall be binding upon the Company unless expressly accepted in writing by the Company.

## 14. EXPORT TERMS

- 14.1 In these Conditions "Incoterms" means the international rules for the interpretation of trade terms of the International Chamber of commerce as in force at the date when the Contract is made. Unless the context otherwise requires, any term or expression which is defined in or given a particular meaning by the provisions of Incoterms, shall have the same meaning in these Conditions, but if there is any conflict between the provisions of Incoterms and these Conditions, the latter shall prevail.
- 14.2 Where the Goods are supplied for export from Great Britain, the provisions of this clause 14 shall (subject to any special terms agreed in writing between the Buyer and the Company) apply notwithstanding any other provisions of these Conditions.
- 14.3 The Buyer shall be responsible for complying with any legislation or regulations governing the importation of the Goods into the country of destination and for the payment of any duties thereon.

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- 14.4 Unless otherwise agreed in writing between the Buyer and the Company, the Goods shall be delivered f.o.b. the air or sea port of shipment and the Company shall be under no obligation to give notice under section 32(3) of the Sale of Goods Act 1979.
- 14.5 The Buyer shall be responsible for arranging for testing and inspection of the Goods at the Company's premises before shipment. The Company shall have no liability for any claim in respect of any defect in the Goods which would be apparent on inspection and which is made after shipment, or in respect of any damage during transit.
- 14.6 Payments of all amounts due to the Company shall be made by irrevocable letter of credit opened by the Buyer in favour of the Company and confirmed by a London clearing bank acceptable to the Company or, if the Company has agreed in writing on or before acceptance of the Buyer's order to waive this requirement, by acceptance by the Buyer and delivery to the Company of a bill of exchange drawn on the Buyer payable 60 days after sight to the order of the Company at such branch of Barclays Bank Plc in England as may be specified in the bill of exchange.

### 15. GENERAL

- 15.1 Any notice required or permitted to be given by either party to the other under these Conditions shall be in writing addressed to that other party at its registered office or principal place of business or such other address as may at the relevant time have been notified pursuant to this provision to the party giving the notice.
- 15.2 No waiver by the Company of any breach of the Contract by the Buyer shall be considered as a waiver of any subsequent breach of the same or any other provision.
- 15.3 If any provision of these Conditions is held by any competent authority to be invalid or unenforceable in whole or in part, the validity of the other provisions of these Conditions and the remainder of the provision in question shall not be affected thereby.

### 16. LEGAL CONSTRUCTION

This Contract is or shall be deemed to be made in England and shall be construed according to English Law and the Buyer hereby submits to the jurisdiction of the English Courts.