



Iles Systems Ltd – Terms and Conditions

1. Interpretation

1.1 In these Conditions:

"ACKNOWLEDGEMENT OF ORDER" shall mean the document by which the Seller's authorised representative accepts the Order.

"BUYER" shall mean the purchaser of the Goods from the Seller. "CONDITIONS" means the terms and conditions of sale set out herein and includes any special terms and conditions included in the Acknowledgement of Order.

"CONTRACT" shall mean the contract for the sale and purchase of the Goods made pursuant to these Conditions.

"GOODS" shall mean the goods which the Seller has agreed to supply to the Buyer pursuant to these Conditions.

"LOSS" shall mean all actions, claims, demands, losses (direct, indirect, consequential or otherwise), expenses, costs, actions and proceedings.

"ORDER" shall mean the Buyer's order for Goods. "SELLER" shall mean Bownet Cable Management Systems Ltd., a company registered in England and Wales under company number 02358940.

"SPECIFICATION" shall mean the description of the Goods set out in the Acknowledgement of Order.

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. Basis of Sale

2.1 These Conditions shall be incorporated into each Contract and shall prevail and be effective notwithstanding any variations or additions whether contained or referred to in the Order, or other document submitted by the Buyer or in correspondence or elsewhere, or implied by trade, custom, practice or course of dealing, and shall supersede all other and any prior promises, representations or undertakings.

2.2 No variation to these Conditions shall be binding unless agreed in writing by an authorised representative of the Seller.

3. Orders and Specifications

3.1 Each Order shall be deemed to be an offer by the Buyer to purchase Goods subject to these Conditions

3.2 No Order submitted by the Buyer shall be deemed to be accepted by the Seller unless and until confirmed by an Acknowledgement of Order.

3.3 The Buyer shall be responsible to the Seller for ensuring the accuracy of the terms of any Order (including any applicable specification) submitted by the Buyer and for giving the Seller any necessary information relating to the Goods within a sufficient time to enable the Seller to perform the Contract in accordance with its terms.

3.4 If the Goods are to be manufactured by the Seller in accordance with a specification or instructions submitted by the Buyer:

3.4.1 the Buyer shall indemnify the Seller against all Loss suffered by the Seller in connection with any claim by a third party that the manufacture and/or supply of the Goods to such specification or instructions infringes the rights of any third party; and

3.4.2 the Buyer shall be responsible for supplying reliable and accurate information to the Seller (including, without limitation, drawings, plans and designs) to enable the Seller to manufacture the Goods.

3.5 The Seller reserves the right to make any changes in the Specification of the Goods which are required to conform with any applicable UK safety or other statutory requirements and/or where such changes do not materially affect the quality or performance of the Goods

3.6 No Order which has been accepted by the Seller may be cancelled by the Buyer except with the agreement in writing of the Seller and on terms that the Buyer shall indemnify the Seller in full against all Loss incurred by the Seller as a result of cancellation.

4. Price of the Goods

4.1 Any Price quoted or accepted is exclusive of VAT (which will, where applicable, be charged at the current rate) and of any other duties and taxes which may be payable in respect of the Goods which will be paid by the Buyer. The price shall be the price quoted in the Acknowledgement of Order. The Seller reserves the right by giving notice to the Buyer at any time before delivery to increase the price to reflect any increase in the cost to the Seller which is due to any factor beyond the control of the Seller (such as without limitation any foreign exchange fluctuation, currency regulation, alteration of duties, significant increase in the costs of labour materials, or other costs of manufacture), any change in delivery dates, quantities or specifications for the Goods which is requested by the Buyer or any delay caused by any instructions of the Buyer or failure of the Buyer to give the Seller adequate information or instructions. 4.2 Except as otherwise stated in an Acknowledgement of Order all prices are given by the Seller for delivery as defined in clause 6.1. Where the Seller agrees to deliver the Goods otherwise than as defined in clause 6.1 the Buyer shall be liable to pay the Seller's charges for transport packaging and insurance where requested.

5. Terms of Payment

5.1 Subject to any special terms agreed in writing between the Buyer and the Seller, the Seller shall be entitled to invoice the Buyer for the price of the Goods on or at any time after delivery of the Goods. If the Goods are to be collected by the Buyer or the Buyer wrongfully fails to take delivery of the Goods, the Seller shall be entitled to invoice the Buyer for the price at any time after the Seller has notified the Buyer that the Goods are ready for collection or (as the case may be) the Seller has tendered delivery of the Goods.

5.2 The Buyer shall pay the price without deduction within 30 days of the date of the Seller's invoice notwithstanding that delivery may not have taken place and the property in the Goods has not passed to the Buyer. The time of payment of the price shall be of the essence of the Contract. Receipts for payment will be issued only upon request

5.3 If the Buyer fails to make any payment in accordance with clause 5.2 then without prejudice to any other right or remedy available to the Seller the Seller shall be entitled to:-

5.3.1 cancel the Contract or suspend any further deliveries to the Buyer;

5.3.2 appropriate any payment made by the Buyer to such of the Goods (or the goods supplied under any other contract between the Buyer and the Seller) as the Seller may think fit (notwithstanding any purported appropriation by the Buyer);

5.3.3 charge the Buyer interest on the amount unpaid at the rate of 5 percent per annum above Lloyds Bank base rate from time to time until payment in full is made (a part of a month being treated as a full month for the purpose of calculating interest); and

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5.4 Except where insolvency laws provide otherwise the Buyer shall not be entitled to withhold or set off payment for Goods for any reason whatsoever. All Goods for which payment has not been made in accordance with clause 5.2 and which are held by the Seller at its premises are so held at the Buyer's risk.

6. Delivery

6.1 Except as otherwise stated in an Acknowledgement of Order delivery shall take place when the Seller places the Goods at the disposal of the Buyer at the Seller's premises

6.2 Any delivery date is approximate only. The Seller shall not be liable for any Loss arising from failure to deliver the Goods on the delivery date howsoever caused. Time for delivery shall not be of the essence unless previously agreed by the Seller in writing. The Goods may be delivered by the Seller in advance of the quoted delivery date upon giving reasonable notice to the Buyer.

6.3 Where the Goods are to be delivered in instalments each delivery shall constitute a separate contract and failure by the Seller to deliver any one or more of the instalments in accordance with these Conditions or any claim by the Buyer in respect of any one or more instalments shall not entitle the Buyer to treat the Contract as a whole as repudiated.

6.4 If the Seller fails to deliver the Goods for any reason other than any cause beyond the Seller's reasonable control or the Buyer's fault and the Seller is accordingly liable to the Buyer the Seller's only liability shall be limited to the excess (if any) of the cost to the Buyer (in the cheapest available market) of purchasing similar goods to replace those not delivered.

6.5 If the Buyer fails to take delivery on the delivery date then without prejudice to any other right or remedy available to the Seller the Seller may:

6.5.1 store the Goods until actual delivery and charge the Buyer for the costs (including insurance) of storage; or

6.5.2 treat the Contract as repudiated by the Buyer and without prejudice to any other right it may have against the Buyer the Seller shall be entitled to resell the Goods and be indemnified by the Buyer for any Loss which it suffers.

7. Risk and Property

7.1 Risk of damage to or loss of the Goods shall pass to the Buyer on delivery of the Goods;

7.2 Notwithstanding delivery and the passing of risk in the Goods or any other provision of these Conditions the property in the Goods shall remain with the Seller until the Seller has received in cash or cleared funds payment in full of the price and any other monies due to the Seller in respect of the Goods and all other goods agreed to be sold by the Seller to the Buyer for which payment is then due under the Contract or any other contract between the Seller and the Buyer (including without limitation costs of delivery).

7.3 Until such time as the property in the Goods passes to the Buyer the Buyer shall hold the goods as the Seller's fiduciary agent and bailee and shall keep the Goods separate from those of the Buyer and third parties and properly stored protected and insured and identified as the Seller's property. 7.4 Until such time as the property in the Goods passes to the Buyer the Buyer shall be entitled to resell or use the Goods in the ordinary course of its business but shall account to the Seller for the proceeds of sale or otherwise of the Goods whether tangible or intangible including insurance proceeds and shall keep all such proceeds separate from any monies or property of the Buyer and third parties and in the case of tangible proceeds properly stored protected and insured.

7.5 If the Goods are prior to sale by the Buyer made up or incorporated in or mixed with other goods, then if they remain separately identifiable the Seller shall retain property and title thereof and if they do not remain separately identifiable the Seller shall become a joint owner of the goods in or which the Goods are incorporated or mixed in such proportion as the value of the Goods bears to the value of the Goods in which the Goods are so incorporated or mixed.

7.6 If the Buyer sells the Goods or the goods in which the Goods have been incorporated or mixed the sale shall be on behalf of the Seller as the joint owner thereof as the case may be and the proceeds of any such sale for the Seller's share thereof if the sale is of jointly owned property shall be held on trust for the Seller and in a separate identified account.

7.7 Until such time as the property in the Goods passes to the Buyer (and provided the Goods are still in existence and have not been resold) the Seller shall be entitled at any time to require the Buyer to deliver up the Goods to the Seller and if the Buyer fails to do so forthwith to enter the premises of the Buyer or any third party where the Goods are stored and take possession of any Goods in which property remains in the Seller and remove and dispose of them as the Seller thinks fit. The Seller shall apply the proceeds of disposal (after deduction of all expenses) in discharge of the amount unpaid by the Buyer.

7.8 The Buyer shall not be entitled to pledge or in any way charge by way of security for any indebtedness any of the Goods which remain the property of the Seller without the Seller's consent but if the Buyer does so all moneys owing by the Buyer to the Seller shall (without prejudice to any other right or remedy of the Seller) forthwith become due and payable.

8. Confidentiality and Proprietary Rights

8.1 The Buyer agrees and undertakes that it will keep confidential and will not disclose or use for any purpose (other than to perform its obligations under the Contract) any confidential information. Any confidential Information supplied to the Buyer by the Seller shall at all times remain the property of the Seller. The Buyer shall not acquire any rights in the confidential Information, which shall be returned to the Seller immediately upon request.

8.2 Unless otherwise agreed in writing all intellectual property rights in relation to the Goods including without limitation their method of manufacture shall vest in the Seller and remain the property of the Seller notwithstanding the purchase of the Goods by the Buyer and the Buyer undertakes to do all acts and/or enter into such agreements or deeds as the Seller shall require to vest any such intellectual property rights in the Seller. 8.3 Unless otherwise agreed in writing and notwithstanding that the Buyer may have contributed towards the costs of such items all tooling (and all intellectual property rights in relation to such tooling) produced or acquired by the Seller in relation to the manufacture of the Goods shall be and remain the property of the Seller.

9. Warranty

9.1 The Seller warrants that upon delivery the Goods accord with the Specification and are free from defects in material and workmanship developing out of normal use for a period of one year from the date of delivery.

9.2 The Seller shall not be liable for any breach of warranty unless: (a) the Buyer gives written notice of the defect to the Seller and (if the defect is as a result of damage in transit) to the carrier, within 24 hours of the time when the Buyer discovers or ought to have discovered the defect; and (b)

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the Seller is given a reasonable opportunity after receiving the notice of examining such Goods and the Buyer (if asked to do so by the Seller) returns such Goods to the Seller's place of business at the Seller's cost for examination.

9.3 The Seller shall not be liable for a breach of warranty if: (a) the Buyer makes any further use of such Goods after giving such notice; or (b) the defect arises because the Buyer failed to follow the Seller's oral or written instructions as to the storage, installation, commissioning, use or maintenance of the Goods or (if there are none) good trade practice; or (c) the Buyer alters or repairs such Goods without the written consent of the Seller.

9.4 Subject to conditions 9.2 and 9.3 if any of the Goods do not conform with the warranty in condition 9.1 the Seller shall at its option repair or replace such Goods (or the defective part) or refund the price of such Goods at the pro rata Contract rate provided that, if the Seller so requests, the Buyer shall, at the Seller's expense, return the Goods or the part of such Goods which is defective to the Seller. 9.5 The Seller complies with condition 9.4 it shall have no further liability whatsoever for warranty claims.

10. Limitation of liability

10.1 Subject to clause 9, the following provisions set out the entire financial liability of the Seller (including any liability for the acts or omissions of its employees, agents and sub-contractors) to the Buyer in respect of:

(a) any breach of these Conditions; and

(b) any representation, statement or tortious act or omission including negligence arising under or in connection with the Contract.

10.2 All warranties, conditions and other terms implied by statute or common law (save for the conditions implied by section 12 of the Sale of Goods Act 1979) are, to the fullest extent permitted by law, excluded from the Contract.

10.3 Nothing in these Conditions excludes or limits the liability of the Seller for death or personal injury caused by the Seller's negligence or fraudulent misrepresentation

10.4 Subject to clauses 10.2 and 10.3:

(a) the Seller's total liability in contract, tort (including negligence or breach of statutory duty), misrepresentation, restitution or otherwise, arising in connection with the performance or contemplated performance of this Contract shall be limited to all sums paid under the Contract; and

(b) the Seller shall not be liable to the Buyer for any indirect or consequential loss or damage (whether for loss of profit, loss of business, depletion of goodwill or otherwise), costs, expenses or other claims for consequential compensation whatsoever (howsoever caused) which arise out of or in connection with the Contract.

11. Insolvency of Buyer

11.1 In the event that:

11.1.1 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);

11.1.2 an encumbrancer takes possession or a receiver or administrator is appointed of any of the property or assets of the Buyer;

11.1.3 the Buyer ceases or threatens to cease to carry on business;

11.1.4 the Seller reasonably apprehends that any of the events mentioned above is about to occur in relation to the Buyer and notifies the Buyer accordingly, then without prejudice to any other right or remedy available to the Seller the Seller shall be entitled to suspend further performance of the Contract for such time as it shall in its absolute discretion see fit or treat the Contract as wrongfully repudiated by the Buyer and forthwith terminate the Contract (either with or without notice to the Buyer) without any liability to the Buyer and if the Goods have been delivered but not paid for the price shall become immediately due and payable notwithstanding any previous agreement or arrangement to the contrary.

12. Force Majeure The Seller shall be excused from the performance of any of its obligations if and in so far as, and for so long as, such performance is delayed or prevented by circumstances beyond its reasonable control including but not limited to strikes, lock-outs or labour disputes of any kind (whether relating to its own employees or others), fire, flood, explosion, natural catastrophe, terrorism, military operations, blockade, sabotage, revolution, riot, civil commotion, war or civil war.

13. Export Terms 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.

14. General

14.1 Any notice required or permitted to be given by either party to the other under these Conditions shall be given in writing at its registered office or principal place of business or such other address as may be notified for such purpose to the party giving notice.

14.2 No waiver by the Seller of any breach of these Conditions shall be considered as a waiver of any subsequent breach of the same or any other provision.

14.3 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.

14.4 A party who is not a party to the Contract shall have no right under the Contracts (Rights of Third Parties) Act 1999 to enforce any of its terms.

14.5 The Conditions shall be governed by the laws of England and each party submits to the non-exclusive jurisdiction of the English Courts.

14.6 These Conditions are binding on the Seller and its successors and assignees and the Buyer and its successors and permitted assignees.