

Cable & Wireless Isle of Man Limited

Terms and Conditions of Purchase

1. GENERAL

Unless agreed by us in writing, any order for the supply of goods or services to us is subject to these printed terms and conditions ("Conditions"). Any conditions other than these Conditions and any amendments signed by both parties in respect of this order, are expressly excluded. By taking action against this order you will be deemed to have accepted these Conditions except where otherwise agreed in writing. In the case of an order placed pursuant to acceptance of a written tender, all rights, obligations, and undertakings set out in or arising from the tender documents form part of, and are enforceable as if specifically set out in, these Conditions.

2. DURATION OR ORDER

- (a) In the case of an order for the supply of goods (or services) on an ongoing or periodic basis either party may, without special cause and without giving any reason, terminate it as respects any future supply by giving to the other not less than 21 days notice in writing, but without prejudice to the rights and liabilities of either accrued at the date of notice or arising thereafter in consequence of any action taken under this order or before this order.
- (b) The termination of this order by performance, or under the above or any other of these Conditions, shall not terminate your obligations under conditions 8 ("Passing of Property and Risk"), 12 ("Rejection and Cancellation"), 14 ("Confidentiality"), 15 ("Intellectual Property Rights"), 16 ("Insurance and Indemnity"), 17 ("Liability") and 18 ("Statutory and Other Requirements").

3. AUTHORISATION

We, Cable & Wireless Isle of Man Limited accept no liability for the costs of any goods (or services) supplied unless the order has been placed on our behalf by a duly authorised officer of Cable & Wireless Isle of Man Limited.

4. PRICE AND DETERMINATION

The price as stated on the order is firm unless otherwise stated or agreed by us in writing. The price includes (in respect of goods) delivery to the destination(s) stipulated, packing and insurance. Where the order is not made on a firm price basis, we are entitled to cancel the order as a whole or as regards any items in the event of not being able to agree a price. Any variation of fixed or previously agreed prices on an order for the ongoing or periodic supply of goods (or services) must be agreed by us in writing. If unable to agree a variation we may terminate the order in whole or part by not less than 21 days notice in writing, but without prejudice to our rights under these Conditions.

5. DOCUMENTATION

Every delivery of goods must be accompanied by a delivery note, on which is stated the make, grade, type and quantity and our order number. The invoice must be sent to the receiving site, or as otherwise directed by us in respect of goods supplied under this order.

6. PACKAGING

You will package and otherwise protect the goods in a manner suitable for transit and/or storage at no cost to us. We will not pay for, or return packaging materials, unless previously agreed in writing.

All packaging must be to the standard reasonably necessary for the protection of the goods in transit and/or storage.

7. DELIVERY

Time is of the essence. Unless otherwise agreed by us in writing, delivery shall be effected by you at your own risk and expense (including the risk of deterioration in the goods in transit) at the place, and the time on the date specified in the order. If the goods are not delivered when specified in the order we may cancel the order pursuant to Condition 12 ("Rejection and Cancellation"). We reserve the right to make alternative delivery arrangements and claim a reduction in the price otherwise agreed equal to any carriage charge included in the price for the goods.

8. PASSING OF PROPERTY AND RISK

The property and risk in goods shall pass on delivery or (in the case of delivery by instalments) on, where applicable, a pro rata basis on the delivery of each instalment. However, the property in any goods paid for in whole or in part before delivery shall pass immediately on such payment; any such goods will remain at your risk until delivered but must be appropriated to us and identified as our property.

9. INSPECTION, TESTING AND WARRANTIES

- (a) In respect of goods you warrant and represent that the goods will be fit for their purpose conform in every respect to the specification, drawings, samples or descriptions provided or agreed by us, be unencumbered and free from defects in material, workmanship or otherwise. If the goods are found not to comply with the above requirements, we may reject the whole or any part thereof and recover the cost of any testing from you.
- (b) We shall, at all reasonable times, and upon reasonable notice have access to your premises and shall be afforded facilities for inspecting and testing goods before delivery. Such tests or inspections that we may carry out shall not affect your obligations.
- (c) Any performance characteristics specified by you in any quotation or literature prepared by you or specified in the order are of the essence and form part of the quotation. You must inform us immediately of any modification affecting the performance or specified characteristics of the goods or any tooling associated with the goods as found necessary during commissioning or manufacture. We are not bound to accept any modification unless we have agreed to do so in writing.
- (d) In respect of services, you warrant and represent that you will perform all services with all reasonable skill and care and provide the services in a timely and efficient manner and subject to all applicable laws and any additional instructions provided to you by us.

10. GUARANTEE

The guarantee period applicable to goods shall be 12 months from putting into service or 18 months from delivery whichever is the shorter (subject to any alternative guarantee arrangements agreed in writing between us) and shall be in substitution for any shorter guarantee provided on the goods. If we give notice in writing to you of any defects in any of the goods during the guarantee period under proper and normal use you shall (without prejudice to any other rights and remedies that we may have) as quickly as possible remedy those defects, either by repair or replacement as agreed between use, without cost to us. If the goods can be neither repaired nor replaced then the full cost must be refunded to us, or goods of the same quality and substance must be used to replace the defective goods, irrespective of the costs incurred by your. The guarantee is in addition to your other liabilities,

and does not restrict the enforcement of our other rights, whether arising otherwise under the contract, or by statutory or customary law.

11. DETERIORATION OF GOODS

If goods are perishable or have a life expectancy of a fixed duration or if there are any circumstances known to you which would adversely affect the life-span of the goods you must advise us in writing, before taking any action against this order, of all such necessary and appropriate information relating thereto. If we do not thereupon cancel the order, that information will form part of the description of the goods.

12. REJECTION AND CANCELLATION

If goods do not comply with the order, or any of the Conditions of the order are broken and not complied with by you, or if it is clear that you will be unable to perform some or all of your obligations under the order, we shall at our discretion be entitled to reject the goods, or parts thereof and cancel the order or any part of the order by giving written notice to you and the following provisions shall where appropriate apply:

- a) we shall return to you at your risk and expense, or at our option shall require you to collect, any rejected goods or any goods already delivered which, by reason of non delivery of the balance, are not required by us.
- b) we may at our discretion require you to restore or rectify the goods to our satisfaction and at your expense or to replace any goods so rejected upon the same conditions as herein stated.
- c) you will forthwith repay to us any money paid by us in respect of rejected or undelivered goods or services not performed.
- d) we reserve the right to carry out at your expense such work as may be necessary to make the goods or any part thereof comply with the order.

13. ASSIGNMENT AND SUBCONTRACTING

You shall not without our written consent, assign, transfer, pledge, subcontract or give security over the order or any part of it to any third party.

14. CONFIDENTIALITY

The order and the subject matter thereof shall be treated as confidential between the parties and shall not be published to any third party by you without our prior written consent, not to be unreasonably withheld or delayed.

15. INTELLECTUAL PROPERTY RIGHTS

- (a) You warrant that the goods and services will not infringe any intellectual property rights, including those of any third party. You will indemnify us against any and all liability, loss, damages, claims, costs and expenses arising out of any claim in respect of any infringement of any patent, trade mark, registered design or copyright or other proprietary rights resulting from your design, manufacture, use, supply or re-supply of goods or the provision of services by you.
- (b) You must not apply for any letters patent or registered design for goods supplied against our specifications, drawings, samples or descriptions, nor claim any other intellectual property rights therein. Any specification provided by us to you and any intellectual property rights therein shall remain our property.
- (c) You shall not make use of the name of Cable & Wireless (including Sure or any other of our trademarks or trading names) or our customers or suppliers for any advertisement announcement or publicity without our prior written consent.

16. INSURANCE AND INDEMNITY

You will insure to their full value, any goods, tools, materials and other property provided by or through us to you for your use while they are in your possession or in the possession of any partner, servant, employee, agent, contractor or carrier acting on your behalf. Without prejudice to any other liability, however arising, you will indemnify us against and hold us harmless in respect of all liability, loss, damages, claims, costs and expenses that arise in respect of the following:

- a) damage or injury to any persons or property and any other loss or damage arising from any defect whatsoever in the goods or from any breach by you of any statutory duty or from acts or omission of your servants, agents or contractors;
- b) your failure to comply with condition 7 ("Delivery").

17. LIABILITY

- a) our aggregate liability to you (whether in tort or contract and including, but not limited to, negligence) or otherwise arising out of or in connection with the order the Conditions is limited to 100% of the fees payable by us to you under the order.
- b) we have no liability to you for any direct or indirect loss of profits, revenue, business contracts or anticipated savings or for any indirect or consequential losses or damages.
- c) Nothing in these Conditions shall limit your or our liability for personal injury or death caused by the negligence of the other party or for fraud.

18. STATUTORY AND OTHER REQUIREMENTS

You must in relation to services performed by you and any goods provided by you, comply and continue to comply with the provisions and requirements of any applicable law, statute, ordinance, statutory instrument, order, directive or regulation in force at the time of delivery of the services or goods in the jurisdiction where the services are performed and/or where goods are manufactured and also in the Isle of Man.

19. INSOLVENCY

We shall be entitled to terminate the order forthwith by notice in writing but without prejudice to any other right or action which we may have at the date of that action, if:

- (a) any court makes a declaration of insolvency or bankruptcy or a receiving order or administration order in respect of you;
- (b) a provisional vesting order is made against your real property in any part of the Isle of Man;
- (c) proceedings are commenced, or a resolution is passed for your winding up (otherwise than for the purposes of reconstruction or amalgamation);
- (d) a receiver or manager is appointed by any of your creditors;
- (e) you make or purport to make any composition or arrangement with, or conveyance or assignment of the benefit of, your creditors, or do any act which may cause any of the foregoing to occur;
- (f) any application is made by or against you under the Insolvency Act in the UK or under any similar or analogous legislation in any other jurisdiction;

20. CHARGES, TAX AND DUTY

- a) We will pay for the goods or services 30 calendar days after receiving a correctly rendered invoice, subject to such goods and services having been satisfactorily delivered.
- b) The charges payable by us exclude any applicable sales or value added taxes on the sale or measured by the sale price, which we shall pay in the manner prescribed by law against delivery by you of tax invoices in proper form.
- c) You alone shall bear any taxes related to your existence or gross or net income taxes based on your sales including any withholding tax that we must withhold from payments to you and remit to the relevant authority. You will not charge us or gross up or add onto the charges any amounts properly withheld by us and remitted by us to the relevant authority. We shall provide you with a copy of any relevant certificate of withholding tax on request. Each party shall provide to the other evidence of any tax exempt status, act in accordance with such status, and promptly advise of any change in such status. You shall be responsible for paying our personnel and making all deductions, payments, contributions and generally satisfying all personnel-related obligations required by law. If it is determined that any taxes paid by us to you were not required to be paid, you will promptly refund taxes to us.

21. SERVICE OF NOTICES

Any written notice given pursuant of the Conditions is deemed to have been duly given:

- a) by us to you, if delivered to you personally, or is sent by post to your address as stated in the order or any address notified by you in substitution.
- b) by you to us, if sent by post our address as stated in the order or any address notified by us in writing in substitution. Any notice sent by post is deemed to be given at the time when it would be expected to arrive in the ordinary course of posting.

22. FORCE MAJEURE

If we are unable to perform our obligations due to force majeure or to a matter beyond our reasonable control we shall have no liability to you for our failure to perform.

23. GENERAL

- a) any conflict between the terms of any relevant tender document and the Conditions shall be resolved in favour of the Conditions.
- b) the provisions of the Conditions are severable. If a provision in the Conditions is found to be un-enforceable, the conditions will be deemed amended to the minimum extent necessary to make the Conditions fully enforceable so long as the Conditions as amended are consistent with your and our original intentions.
- c) the order and Conditions represents the entire understanding between you and us in relation to its subject matter and supersedes all prior agreements, understandings or arrangements made by either party, whether oral or written.

24. DATA PROTECTION

You shall have in place adequate technical and organisational security measures so that any processing by you of personal data complies with the Data Protection Act 2002 (Isle of Man).

25. GOVERNING LAW AND JURISDICTION

The Conditions and the order are governed by the Law of the Isle of Man and both we and you submit to the exclusive jurisdiction of the appropriate Isle of Man court.

26. HEALTH AND SAFETY

Before any work is carried out you must ensure that you have read and understood our Health and Safety Policy and that you will abide by it at all times. The policy is located on our web site at www.surecw.com/healthandsafety or a hard copy is available upon request.

Signed by..... Date.....

Name of signatory:-.....

For and on behalf of..... (“The Supplier”)

Whose offices are located at:

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