

**DRAKA COMTEQ UK LIMITED**  
**GENERAL CONDITIONS OF SALE**  
**(May 2022 Edition)**

**1. DEFINITIONS**

For the purposes of these Conditions:

- 1.1 "**Affiliate**" means any company which controls the Seller, is under the control of the Seller or is under common control with the Seller; where control with respect to any entity shall mean the possession, directly or indirectly, of the power to direct or cause the direction of the management or policies of such entity, whether through the ownership of voting securities, partnership interests, by contract or otherwise;
- 1.2 "**Buyer**" means any party to which the Seller has agreed to supply Products or Services, whether or not for value;
- 1.3 "**Conditions**" mean these General Conditions of Sale and "Condition" means each one of them;
- 1.4 "**Contract**" means the agreement (whether or not in writing) between the Seller and the Buyer for the supply to the Buyer of Products and/or Services, which shall be deemed to incorporate these Conditions;
- 1.5 "**Currency Variation**" means a variation to the Price made under Condition 9.4;
- 1.6 a "**Default**" occurs when the Buyer either:
  - 1.6.1 fails to make any payment due to the Seller on or before the due date as noted in the applicable Order or under any other separate agreement entered into between the parties; or
  - 1.6.2 fails to receive delivery on the agreed date; or
  - 1.6.3 commits any breach of the terms of the Contract; or
  - 1.6.4 enters into any arrangement with any of its creditors; or
  - 1.6.5 has a receiver, administrator, administrative receiver or liquidator appointed over all or any part of its undertaking or assets; or
  - 1.6.6 has a petition for an administration order or for a winding-up order brought against it; or
  - 1.6.7 has proceedings similar or equivalent to 1.6.5 or 1.6.6 above taken against it wherever in the world; or
  - 1.6.8 suspends or ceases to carry on its business or becomes unable to pay its debts;
  - 1.6.9 fails to comply with any one of the provisions of the Ethical Code as defined under Condition 18.
- 1.7 "**Force Majeure**" shall mean any event beyond the reasonable control of the Seller and shall include, without limitation, the following: an act of God, war, hostilities or warlike operations (whether a state of war be declared or not); rebellion, revolution, insurrection, mutiny, usurpation of civil or military government, conspiracy, riot, civil commotion, terrorist acts; confiscation, nationalisation, mobilisation, commandeering or requisition by or under the order of any government or de jure or de facto authority or ruler or any other act or failure to act of any local state or national government authority; strike, sabotage, lock-out, embargo, import restriction, port congestion, lack of usual means of public transportation and communication, industrial dispute, shipwreck, shortage or restriction of power supply, epidemics or pandemics (including, without limitation, the Covid 19 outbreak), quarantine, plague; earthquake, landslide, volcanic activity, fire, flood or inundation, tidal wave, typhoon or cyclone, hurricane, storm, lightning, or other inclement weather condition, nuclear and pressure waves, or other natural or physical

disaster; shortage of labour, materials or utilities where caused by circumstances that are themselves Force Majeure. For the avoidance of any doubt, any epidemic or pandemic (such as the Covid-19 outbreak), as event of Force Majeure, shall be construed to include, without limitation, (i) the closure or slowdown of industrial and commercial activities (whether by order or recommendation of any governmental or other authorities or due to workforce absenteeism), goods and/or raw material shortage, travel and/or logistics restrictions, in either case above affecting the Seller, any of its Affiliates or any third parties of the Seller's supply chain and deriving from or in connection with any laws, regulations, decrees or orders of any governmental or other authorities with the aim to limit, contain and/or avoid the spread of said epidemics or pandemics and/or preserve the health and safety of the people ("Containment Regulations") and (ii) all those measures which the Seller (any of its Affiliates and/or any third parties of the Seller's supply chain) shall adopt in compliance with any said Containment Regulations or following any recommendations given by any governmental or other authorities yet with the aim to limit, contain and/or avoid the spread of said epidemics or pandemics and/or preserve the health and safety of the people;

- 1.8 "**Metal Variation**" means a variation to the Price made under Condition 9.2;
- 1.9 "**Order**" means the order for Products and/or Services placed by the Buyer;
- 1.10 "**Other Costs Variation**" means a variation to the Price based on the cost of any other component of the Product other than Metal Variation;
- 1.11 "**Price**" means the total amount payable by the Buyer for the relevant Products and/or Services;
- 1.12 "**Products**" means any cable, cable accessories or other products to be supplied by the Seller under the Contract;
- 1.13 "**Seller**" means Draka Comteq UK Limited, having its registered office at Chickenhall Lane, Eastleigh, Hampshire, SO50 6YU (registered in England No. 5040573) and being the party which has agreed to supply the Product(s) or Service(s) stated in the applicable Order.
- 1.14 "**Services**" means any services to be supplied by the Seller under the Contract;
- 1.15 "**Third Party**" means any company, corporation, partnership or individual, other than the Seller or the Buyer, including an Affiliate;
- 1.16 "**VAT**" means value added tax (or any replacement tax) at the appropriate rate;
- 1.17 "**Warranty Period**" means the applicable period specified in Condition 11.1.

When used in these conditions the term "written" or "in writing" refers to a document signed by both parties or a letter, fax, electronic mail or other means of communication agreed to by the parties.

## 2 CONTRACT

- 2.1 These Conditions shall apply to all supplies of Products and/or performance of Services made by the Seller in executing any Orders issued by Buyer. Accordingly, the Buyer expressly waives its general or specific terms and conditions of purchase (whether or not attached to its Orders) which shall in no way be applicable to any supplies of Products and/or performance of Services even if the Seller signs a document which includes, among others, a reference to such terms and conditions. Acceptance or use of or payment for the Products or Services by or on behalf of Buyer shall be deemed to be full and unconditional acceptance of these Conditions.

- 2.2 Any modification or integration of these Conditions and/or of the Orders has to be agreed by the Seller in writing and will be limited to the particular case for which it has been agreed upon.
- 2.3 The Contract shall consist solely of the following documents, which, in the event of a conflict or inconsistency, shall take precedence in the following order :
- (a) the Seller's acceptance of the Order (deemed to accept clauses, which may be reported under Buyer's Order or Buyer's general or specific terms and conditions of purchase, are hereby excluded);
  - (b) these Conditions; and
  - (c) the Order and any documents referred to expressly in it.
- 2.4 All implied terms, conditions and warranties (including without limitation any implied terms as to quality and fitness for purpose) are hereby excluded from the Contract to the fullest extent permitted by applicable law.

### **3 AVAILABILITY OF MATERIALS**

- 3.1 If the Seller is unable to obtain any raw materials or components required for the Products or Services without incurring significant additional expense or delay, it may give written notice to that effect to the Buyer. Upon receipt of such notice by the Buyer, the Contract shall cease to have effect except as regards any consignment of Products already manufactured by the Seller or any Services already performed by the Seller, which shall be paid for in full at the price stated in the Contract. Where relevant, the Contract price shall be apportioned in such manner as the Seller may reasonably determine in respect of such Products or Services.
- 3.2 The Seller shall have the right at any time prior to delivery or collection of the Products to change their specification where, in the opinion of the Seller, such change constitutes an improvement to the Products, does not in any way adversely affect the performance of the Products and constitutes proper performance of the Contract. Any such change shall not affect the price for the Products.
- 3.3 Where the Seller purchases new tooling for the purposes of the Contract, it shall be entitled to recover the cost of such tooling from the Buyer if the Contract is terminated in whole or in part under Condition 3.1 or Condition 15.

### **4 QUOTATIONS**

- 4.1 Unless otherwise expressly agreed in writing by the Seller, a quotation shall remain valid for 15 days and shall be subject to Metal Variation, Other Costs Variation and (if it is expressed in a currency other than pounds sterling) to Currency Variation.

### **5 PRODUCTS INFORMATION – LIMITS OF USE**

- 5.1 The Products shall be in accordance with the technical specifications agreed upon by the parties hereto. Data sheets sent to Buyer but not objected explicitly shall be deemed to be accepted. Weight and dimensions of the Products shall be deemed as indicative only, unless there are supplies for which the price has been expressly and specifically agreed with reference to Products' weight and/or dimensions.

- 5.2 Data relating to the Products' characteristics or technical specifications contained in marketing material, price lists and/or similar documents as well as any other Products' information are binding only to the extent they are expressly referred to in the Contract.
- 5.3 Unless otherwise agreed, the Buyer shall accept in any event tolerances of plus or minus 5% on cable lengths and on the total supply quantity (for avoidance of doubt, in the event of shorter cable length being delivered, the Buyer shall not be entitled to claim the missing quantity). The Price shall be adjusted accordingly to reflect the actual quantity delivered. Orders for cable accessories may for convenience be rounded up by the Seller to the closest pack quantity and shall be paid for accordingly by the Buyer. Orders for cables for values of less than £3,000, and orders for cable components for values less than £500, will incur a small order charge of up to £500, together with any additional costs incurred by the Seller in arranging special delivery.
- 5.4 Any changes to the Contract's scope of works proposed by the Buyer after the Contract formation may be subject to negotiations among the parties, provided, however, that the implementation of any Buyer's proposed changes shall always be subject to the prior written agreement of the parties upon the effect of such changes in respect to the Contract price, time for completion and any other relevant provision. Should the parties fail to reach an agreement, the terms and conditions originally agreed and set forth under the Contract shall remain valid and effective. The Seller shall be entitled, in its sole discretion and without incurring in any liability whatsoever, to suspend the production/operation of the original scope of works while the discussion on the changes proposed by the Buyer are ongoing. In the case of said suspension, the Seller shall further be entitled to extend the delivery date/s by such period as shall be reasonable in all the circumstances.
- 5.5 All technical documentation regarding the Product/s or its manufacturing submitted by the Seller to Buyer, prior or subsequent to the formation of the Contract, shall remain the property of the Seller. The Buyer shall be entitled to use such documentation solely for the purpose of handling, installing, laying, using, storage and maintaining the Product/s. In any event, they shall not, without the consent of the Seller, be copied, transmitted or otherwise communicated to a third party.

## **6 PRODUCTS TEST**

- 6.1 Where a test on the Products has been agreed, it shall, unless otherwise agreed, be carried out at the premises where the Product is being manufactured, during normal working hours and solely in compliance with such safety rules, confidentiality, and any other premise specific rules. If technical requirements for the test have not been agreed upon by the parties, the test shall be carried out in accordance with the Seller's standard procedures.
- 6.2 Where the Contract provides that the test shall be performed at the presence of Buyer's representatives, the Seller shall notify the Buyer in writing of the test in sufficient time, in any event by giving at least 5 (five) business days prior notice, to permit the Buyer to be present at the test. If the Buyer has received such notice, the test may be carried out even if the Buyer is not represented at the test. the Seller shall make a report of the test. The test report shall be sent to the Buyer. The report shall be considered to correctly describe the execution of the test and its results.

- 6.3 If the Buyer wishes to witness any tests; all costs so incurred including travelling and other expenses shall be paid by the Buyer.

## **7 DELIVERY TERMS**

- 7.1 If the Seller finds that he will not be able to deliver the Products (or perform the Services) at the agreed time, the Seller shall without undue delay notify the Buyer thereof in writing, stating the reason for the delay and if possible the time when delivery can be expected.
- 7.2 While the Seller will use reasonable endeavours to adhere to any agreed delivery date, the time of delivery of the Products or performance of the Services shall not be of the essence. The Seller shall not be liable to the Buyer in damages or otherwise for any delay in delivery of the Products or performance of the Services howsoever arising.
- 7.3 Not used.
- 7.4 Not used.
- 7.5 If any details of the Contract are altered by the Buyer by agreement with the Seller (including but not limited to the design or quantity of the Products or Services) or if any queries are raised by the Buyer, the delivery date may be extended by the Seller to such period as shall be reasonable in all the circumstances.
- 7.6 If delay in delivery (or performance of Services) is caused by a circumstance which under Condition 14 constitutes ground for relief or by an act or omission on the part of the Buyer, including suspension by the Seller for late payments under Condition 10.7, the time for delivery shall be extended to a period of time, which is reasonable having regard to the then relevant circumstances. The time for delivery shall be extended even if the reason for delay occurs after the originally agreed time for delivery.
- 7.7 If the Buyer finds that he will be unable to receive delivery of the Product on the agreed date, or if delay on his part seems likely, the Buyer shall without undue delay notify the Seller thereof in writing stating the reason for the delay and, if possible, the time when the Buyer will be able to receive delivery. For the avoidance of doubt, regardless of said notification, Condition 7.8 continues to apply.
- 7.8 Except where the Seller has agreed to store the Products (and any storage for more than 3 months from the delivery date shall be charged at commercial rates), once any Products are ready for delivery or collection the Seller may give written notice to the Buyer requiring the Buyer to take delivery of the Products. If the Buyer either (i) informs the Seller in writing that he will not receive delivery of the Products on the agreed date or (ii) fails to receive delivery on the agreed date, the Seller shall nevertheless be entitled to issue the relevant invoice and the Buyer shall accordingly make any payment which is dependent on delivery as if the Products had been delivered on the agreed date. In such an event, the Seller shall arrange storage of the Product at the Seller's premises or elsewhere, in either case above, at the Buyer's risk and expense. If the Buyer so requires and provided that the Buyer pays the relevant premium, the Seller shall insure the Product at the Buyer's expense. The Seller shall also be entitled to charge for storage at the Seller's works at a commercial rate, which shall be paid for in the same way.

- 7.9 The Seller may by written notice require the Buyer to receive delivery within a reasonable period which shall in no event be longer than 15 (fifteen) days. If, for any reason for which the Seller is not responsible, the Buyer fails to receive delivery within such period, the Seller may, by written notice to the Buyer, terminate the Contract in respect of that part of the Product which is ready for delivery but has not been delivered due to the Buyer's Default. the Seller shall then be entitled to compensation for the losses the Seller has suffered due to the Buyer's Default.
- 7.10 If the Buyer requests the Seller to delay delivery by a significant period and the Seller agrees to do so, the Seller shall have the right to increase the Price and shall notify the Buyer of the new Price.
- 7.11 Buyer waives its right to reject early or partial deliveries and the Seller will be deemed to have delivered in case Buyer rejected such deliveries solely on such grounds.

## **8 PASSING OF PROPERTY AND RISKS**

- 8.1 If no trade term has been agreed, the delivery shall be "Ex Works" (EXW), according to the INCOTERMS in force at the formation of the Contract, and if the Buyer requests the Seller to deliver the Products to any particular destination, the Seller may agree to do so by arranging for the transportation, in which case all transportation and related extra costs shall be reimbursed by the Buyer.
- 8.2 The risks relating to the Products shall pass on to the Buyer upon delivery in accordance with the trade term agreed upon by the parties under the Order (or in the absence of such trade term, pursuant to the delivery term set forth under Condition 8.1 above) , or on the agreed delivery date in case of Buyer's failure to receive delivery as per Condition 7.8 above, regardless as to whether or not the Seller shall bear the relevant transport costs.
- 8.3 Any claim relating to the packaging, quantities or external characteristics of the Products (apparent defects) must be notified to the Seller in writing by means of registered letter, under penalty of forfeiture, within 5 working days from the delivery of the Products. Delivery notes unsigned or signed "unchecked" (or similar) shall cause any such claim to be rejected by the Seller. Product returns agreed by the Seller shall be collected by the Seller or its nominated contractor only from the Buyer's account address held by the Seller unless agreed otherwise in writing. Any claim relating to defects which cannot be detected through a diligent search conducted at the time of delivery (hidden defects) must be notified to the Seller in writing by means of registered letter, under penalty of forfeiture, within 5 working days from their discovery and, in any event, before the expiry of the Warranty Period.
- 8.4 It remains agreed and understood that the existence of any claim raised by the Buyer shall not entitle him to suspend or delay the payment of the Products subject to the relevant claim nor that of the Products provided under the same or different Contracts.
- 8.5 The Buyer acknowledges and accepts that, as security against the risk that Buyer does not pay the purchase price in full, the Products shall remain the property of the Seller until the relevant purchase price has been paid for in full. Notwithstanding the foregoing, the Buyer shall assume the risks of loss or damage to the Products since the date of their delivery pursuant to Condition 8.2 above. In the event the Buyer fails or delays to pay, in whole or in part, any or more installment of the purchase price, then the Seller shall be entitled to

forthwith terminate the Contract and/or withhold deliveries to the Buyer under the same or another contract. Should the Seller elect to terminate the Contract due to the Buyer's Default, without limiting any other right or remedy the Seller may have, the Seller shall be entitled to retain, by way of indemnity, the installments of the purchase price already paid by the Buyer up and until the date of Contract's termination.

- 8.6 Until title to the Products has passed to the Buyer, the Buyer, provided that said Products have not been stored by Seller on behalf of Buyer pursuant to article 7.8, shall:
- 8.6.1 hold the Products on a fiduciary basis as bailee for the Seller;
  - 8.6.2 store the Products separately from all other goods held by the Buyer so that they are readily identifiable as the Seller's property;
  - 8.6.3 maintain the Products in satisfactory condition and keep them insured against all risks for their full price from the date of delivery;
  - 8.6.4 notify the Seller immediately if any Default occurs;
  - 8.6.5 not remove, deface or obscure any identifying mark or packaging on or relating to the Products;
  - 8.6.6 give the Seller such information relating to the Products as the Seller may require from time to time; and
  - 8.6.7 take all those steps which the Seller may require in order to render effective and enforceable its rights over the Products vis-a-vis any third party,

but the Buyer may re-sell or use the Products in the ordinary course of its business.

## **9 PRICES**

- 9.1 All prices shown in the Seller's current price lists are subject to alteration without notice. Such alteration shall not affect any Order placed by the Buyer and accepted by the Seller in writing prior to such alteration.
- 9.2 Where the Seller's quoted prices for the Products are based on a metal price for Copper, Lead or Aluminum, then unless otherwise agreed by the Seller in writing the Price shall be adjusted in respect of the metal content of the Products to the price ruling on the next market day following receipt by the Seller of the Order (or receipt of any agreed variation thereof, as the case may be). The metal price shall be the official London Metal Exchange Cash Seller & Settlement Price for Copper Grade A, High Grade Primary aluminum and Lead of 99.97% purity minimum, respectively. The Buyer shall also reimburse the Seller for any Contango costs (calculated as of Products' delivery date) incurred by it.
- 9.3 The Buyer shall reimburse the Seller on demand for all costs and losses (including, without limitation, Contango and financing costs) which are incurred by the Seller in respect of metals booked or purchased in order to fulfil the Contract and/or which arise from failure by the Buyer to take delivery of all the Products or any of them within the period stated in the Seller offer or on the Order acceptance or any longer period agreed to by the Seller in writing.
- 9.4 Where the Price is in a currency other than pounds sterling, the Price shall be adjusted at any time prior to acceptance of the Order to take account of any adverse change in the relevant currency exchange rate against pounds sterling. The Buyer shall reimburse the Seller on demand for all costs and losses incurred by the Seller in respect of foreign currency sold forward to cover payments due under the Contract which arise from the Buyer's failure to take delivery of and pay for the Products in accordance with the Contract.

- 9.5 Unless otherwise agreed, the purchase price shall cover the Products packed in accordance with general practice in the industry concerned in the country where the Product is being manufactured (having regard to the relevant means of transport) and delivered EXW. Further, the Seller's prices include the cost of routine testing carried out in accordance with the Seller's standard procedures. Where additional tests are requested by the Buyer, these will be charged extra and may affect delivery. Any other costs or expenses (e.g. for particular protection during transport) shall be at Buyer's sole account.
- 9.6 Unless otherwise agreed, where cable is supplied on drums by the Seller to a destination within the United Kingdom, the Buyer shall use all reasonable endeavours to allow their prompt return to the Seller or its nominated contractor. When any drum is empty the Buyer shall immediately contact the telephone number shown on the drum label attached to the drum. The Seller or its nominated contractor will be responsible for arranging collection of the drum. If any drum is still held by the Buyer 6 months (or such other period as may be agreed) after delivery, the drum will be invoiced by the Seller and paid for by the Buyer at the price set out in the Seller's Schedule of Drum Charges, a copy of which will be provided to the Buyer on request. The full invoiced price will be refunded if the drum is received back within a period of 6 months after the date of such invoice. After the expiry of this further period, part of the invoiced price will be refunded (subject to the same condition) in accordance with the Schedule of Drum Charges. In any event, the refund shall be conditional upon the relevant drum being in good quality conditions and free from any defects and/or damages. Where cable is supplied to any other location other than those expressly set out above, drums and reels shall not be returned to the Seller. Unless otherwise agreed, any other type of packaging shall not be returned to the Seller.
- 9.7 If the cost to the Seller of fulfilling any of its obligations under the Contract is increased by (i) any act or omission on the part of the Buyer; or (ii) by the coming into force after the date of the Contract of any law or regulation having the force of law in any part of the world; or (iii) by any movement in exchange rate where costs are being incurred in a currency other than pounds sterling; or (iv) by any other events or circumstances beyond the Seller's reasonable control, then the Price shall be adjusted to cover such additional costs.
- 9.8 All prices are net of any discounts, unless otherwise so stated. All prices quoted are exclusive of VAT which shall, if required by law, be added at the appropriate rate and paid by the Buyer in accordance with Condition 10.

## **10 PAYMENT TERMS**

- 10.1 Payment for the Products or Services or for storage charges (including insurance costs) under Condition 7.8 (where applicable) shall be made in pounds sterling or another mutually agreed currency within 15 days of the end of the month in which the invoice is dated, or as otherwise agreed.
- 10.2 If the Buyer fails to pay on time, the Seller shall be entitled to statutory interest from the due date at the rate of interest determined by the applicable law on late payments. Payment on time is of the essence.
- 10.3 Without prejudice to the foregoing, the Seller may establish a credit limit and thereby limit the total monetary amount that may be payable by Buyer to the Seller at any time. In establishing



a credit limit, the Seller will perform a credit assessment using such policies, procedures, and practices as the Seller may determine in its sole discretion. the Seller has the right to adjust (i.e., increase or lower) the credit limit established by it for Buyer at any time after first informing Buyer (usually through the account representative designated by the Seller). Notwithstanding the Seller's acceptance of any Order, the Seller may suspend manufacturing and/or shipments of Products or performance of Services to Buyer until such time as the total amount due by Buyer to the Seller (including the amount which is expected to be paid by Buyer for Products ordered but not yet delivered) is below the credit limit established by the Seller; further, the Seller may limit future shipments of Products or performance of Services if any requested delivery or performance of Services would cause the total amount payable by Buyer to the Seller to exceed the credit limit established by the Seller. Any suspension or limitation in shipments of Products or performance of Services by the Seller pursuant to the rights provided herein shall not be deemed a breach or default by the Seller of the obligations assumed by it under the Contract.

- 10.4 Any consignment or part consignment of the Products or performance of Services shall, if so directed by the Seller, be treated as the subject of a separate contract and be paid for accordingly.
- 10.5 the Seller shall be entitled from time to time to require adequate credit references from the Buyer and to require security for payment by means of a guarantee from such party as the Seller deems appropriate.
- 10.6 The Buyer shall not be entitled, for whatsoever reason, to deduct or set off any sums owed to the Buyer by the Seller, from the payment due to the Seller.
- 10.7 In the event of late payment by the Buyer, whether under the Contract or under any other contract/order entered into by and between the Buyer and the Seller or any Seller's Affiliates, or where the Seller has reasons to believe that the Buyer cannot or will not make the relevant payment/s when it becomes due, the Seller shall be entitled, without incurring in any liability whatsoever whether under the Contract and/or at law and/or under any other legal theory, to suspend manufacturing, withhold and/or postpone all deliveries under the Contract and any other contract between the Seller and the Buyer until the overdue amount has been paid together with any accrued interest or the Buyer has given adequate securities, to the Seller's satisfaction, to secure its payment obligations. This Condition 10.7 and any exercise of such right of suspension is without prejudice to the provisions of Condition 15.

## **11 LIABILITY FOR DEFECTS**

- 11.1 Save as otherwise provided under the Contract, the Seller warrants, for a period of 12 months from the date of delivery or, in the case of Products stored at the Buyer's request, the date on which delivery should have taken place if it was not for the Buyer's request for storage (the "**Warranty Period**"), that the Products provided by the Seller shall comply in all material respects with the agreed upon technical specifications set forth under the Contract and that they will not be affected by defects due to the Seller's faulty design, materials or workmanship. Notwithstanding the foregoing, the Seller shall in no event be held responsible for defects caused by ordinary wear and tear; lack of maintenance, improper use (i.e. a use which has not been either approved for the relevant Product in the Seller's sales literature or quotation or otherwise approved by the Seller in writing); misuse; abuse; improper or unsuitable installation; external accidents; or other causes beyond the reasonable control of the

Seller. Further, in the case of defective items or accessories not manufactured by the Seller, but supplied by the Seller, the Seller's liability under this Condition shall not in any circumstances be greater than any corresponding liability of the supplier of such items or accessories to the Seller. Details of the supplier's liability shall be made available to the Buyer on request. During the Warranty Period, the Seller shall, at its sole option and within a reasonable period of time, repair or replace any Products which proved to be affected by defects due to the Seller's faulty design, materials or workmanship. The liability of the Seller shall be limited solely to the repairing of the defective Products or, in case of replacement, the supply, free of charge, of new cable of the same length of that found defective pursuant to the same delivery terms applied to the Products found defective and shall in no event include the costs of removal of the defective Products and/or the re-installation of the new products. As an alternative to repair or replacement of the defective Products above, the Seller shall be entitled in its absolute discretion to refund the price paid by the Buyer for the defective Products.

In the event that the Contract includes the provision of Services then, the Seller warrants that such Services shall be performed with reasonable skill and care and in relation to such Services, the Warranty Period applicable to such Services shall be deemed to mean 12 months following completion of such Services. In the event that any of the Seller's Services is found to not conform with the warranty set forth in this Condition within the Warranty Period, the Seller shall re-perform such Services at no additional charge.

- 11.2 The foregoing warranty shall apply, provided that all claims regarding defective Products or not conforming Services must be made by Buyer to the Seller (in the case of defective Products, with appropriate samples and all relevant data, in amounts as the Seller requests, of such claimed defective Products) in compliance with the provisions set forth under Condition 8.3 above.
- 11.3 As a result of any investigation by the Seller that shows the defects do not come within clause 11.1 above, the Seller reserves the right to invoice the Buyer and the Buyer shall pay promptly the reasonable costs of such investigation.
- 11.4 The activities of repair or replacement shall be performed, at the Seller's sole discretion, either at the Seller premises or Buyer premises or on the site. For works to be executed on site, the Buyer shall be responsible to provide, at its own costs and expenses, all support (both in terms of personnel and tools) required by the Seller. The costs of removal of the defective Products and/or the re-installation of the new products shall be as well to the Buyer's sole account. The defective Products replaced by the Seller shall remain the property of the Seller and the Buyer shall return them, free of charge, to the Seller.
- 11.5 The Seller guarantees and warrants the Products and Services only to the extent set forth in this Condition 11. The warranties and remedies set forth under this Condition 11 constitute the sole warranties of the Seller and Buyer's sole remedies in the event of a breach of such warranties by Seller. For avoidance of doubt, it is clarified that the warranty set forth above is in lieu of any and all warranties (whether written, oral or implied) set forth under the applicable law, including but not limited to any warranties of merchantability or fitness for a particular purpose or possession of particular qualities. Accordingly, any remedies available to Buyer under the applicable law in case of defective Products or Services or lack of essential qualities for the Products' intended use are expressly excluded as well as any liability on the part of the Seller for the indemnification of any damages, whether direct and/or indirect (such as, for example, loss of profits), suffered by the Buyer as a consequence thereof.

## **12 LIMITATION OF LIABILITY**

- 12.1 Without prejudice to the limitations set forth under Condition 11.5 above, it is also agreed that the Seller's aggregate liability arising out of or in connection with the Contract, including without limitation in the event of its termination by Buyer, whether for breach of contract, in tort (including without limitation negligence), by way of indemnity or otherwise, shall in no event exceed 50% of the Price actually paid by the Buyer to the Seller under such Contract to the maximum extent possible under law.
- 12.2 Further, the Seller shall not be liable, whether for breach of contract, in tort (including without limitation negligence), by way of indemnity or otherwise, for any loss of business opportunity, loss of profit, loss of use, loss of production, loss of power, loss of income, loss of data, loss of contracts, loss of anticipated savings, loss of reputation, loss of financing benefits, loss of incentives or subsidies, increase in operating costs, increase in costs of replacement of power, any damages and/or penalties (including, without being limited to, any cancellation fees, liquidated damages, legal fees and expenses) paid by the Buyer to any third party whether as a result of a claim, indemnity or otherwise, loss due to increasing of financing costs or costs of capital, loss for downtime or for any special, indirect, punitive, incidental or consequential damages or losses of any kind, whether in contract or in tort and whether or not the Seller has been advised of the possibility of any such damages.
- 12.3 No claim may be made against the Seller under or in connection with the Contract (including, without limitation, any claim in respect of defective Products or Services) after the end of the Warranty Period.
- 12.4 The Buyer shall be fully responsible for ensuring the safe and proper installation and use of all Products. The Buyer shall use all reasonable endeavours to comply with any request for quarantine or recall of Products ensuring that any such request by the Seller or the relevant licensing authority, and any separate Product instructions and warnings supplied by the Seller shall be drawn to the attention of its employees or sub-contractors involved with the Products and, where relevant, to the attention of Buyer's customers purchasing the Products, or any product in which the Products are comprised, from the Buyer.
- 12.5 Nothing in this Contract will limit or exclude any liability which cannot legally be limited, including but not limited to the liability of either party for fraud or fraudulent misrepresentation or for death or personal injury arising out of its negligence.

## **13 SERVICES**

- 13.1 Should the Seller undertake to provide any of the Services, the Buyer shall execute, at its own expense and risks, all those activities and works which are necessary to allow the Seller to perform the Services and shall provide the Seller, free of charge, those facilities, materials (such as energy, water, tools etc.), personnel and anything else reasonably necessary to allow the Seller to perform the Services.

## **14 FORCE MAJEURE**

- 14.1 If the Seller is prevented, hindered or delayed from or in performing any of its obligations under the Contract by an event of Force Majeure (affecting the Seller, any of its Affiliates and/or any third party of its supply chain), then the Seller shall notify the Buyer in writing of the occurrence of such event and the circumstances thereof promptly after the occurrence of such event.
- 14.2 If the performance of the Contract by the Seller is prevented, hindered or delayed for a single period of more than 4 weeks or an aggregate period of more than 6 weeks on account of one or more events of Force Majeure during the currency of the Contract, the Seller shall be entitled to either (i) terminate the Contract by giving a 10 (ten) days prior written notice to the Buyer or (ii) renegotiate the price, delivery terms and any other relevant provision of the Contract in light of the then current circumstances; in such an event, if the parties fail to renegotiate the terms of the Contract, then the Seller shall yet be entitled to terminate the Contract. In the event the Contract is terminated by the Seller pursuant to this Condition 14.2, then Condition 15.2 shall apply.

## **15 TERMINATION**

- 15.1 Without prejudice to any other remedies available under the applicable law, if a Default occurs, the Seller shall be entitled to terminate the Contract (and/or any other agreement between the Seller and the Buyer for the supply of products and/or services which has not been completely performed), by serving a written notice to the Buyer.
- 15.2 Upon such termination, without limiting any other right or remedy the Seller may have, the Seller:
- 15.2.1 shall be entitled to retain any payment already made by the Buyer; and
  - 15.2.2 shall cease to be liable to supply any Products or Services to the Buyer under the Contract; and
  - 15.2.3 shall be entitled to be indemnified for any and all costs, expenses and losses suffered as a result of termination (including, without being limited to, costs for hedging the metals and losses suffered to unwind any metal position).

## **16 VARIATIONS**

- 16.1 The Buyer shall not be entitled to make any variation to the Order without the Seller's written consent.
- 16.2 The Seller shall be entitled to recover from the Buyer any metal, currency or manufacturing losses caused by an agreed variation to an Order or an agreed cancellation of an Order.

## **17 MISCELLANEOUS**

- 17.1 The Buyer may not assign the Contract or any rights or obligations accruing hereunder, in whole or in part, without the Seller prior written consent. The Seller may assign the Contract as well any rights or obligations accruing hereunder, in whole or in part, to any of its Affiliates or to any third party in connection with the transfer, in whole or in part, of the business to which the Contract refers. Any such assignment shall be effective when written notice thereof has been given to the Buyer.

- 17.2 Without prejudice to the generality of the foregoing the Seller may, without the consent of the Buyer, assign all or any of its receivables arising out under this Contract to any third party. Any such assignment of the Seller's receivables shall not affect in any way its obligations or any right of set off or any other right or claim which the Buyer might have in relation to the performance of the Seller's obligations under the Contract. The Seller may, notwithstanding any restrictions on disclosure, disclose to the assignee and others in connection with any such assignment any information reasonably required including a copy of any invoice, the name and address of the Buyer and a copy of this Contract but excluding any technical or proprietary information. Notwithstanding any such assignment, until notified to the contrary by the assignee, the Buyer shall continue to deal with the Seller in all respects in relation to this Contract as if no such assignment had taken place.
- 17.3 The Seller may subcontract, in whole or in part, the supplies of Products or the proviso of Services hereunder to any third party, including without limitation any of its Affiliates.
- 17.4 The Seller failure to enforce any of its rights under the Contract does not operate as nor shall it be construed as a waiver of any right that the Seller may have under the Contract and/or at law.
- 17.5 The Buyer shall keep confidential and shall not disclose to any third party without the Seller's prior written consent any information (whether of a commercial or technical nature) acquired from the Seller in connection with its tender or the Contract, including without limitation any information concerning the prices at which the Seller sells the Products or provides the Services.
- 17.6 If any court or competent authority finds that any provision of the Contract (or part of any provision) is invalid, illegal or unenforceable, that provision or part-provision shall, to the extent required, be deemed to be deleted, and the validity and enforceability of the other provisions of the Contract shall not be affected.
- 17.7 No amendment to the Contract shall be valid unless made in writing and signed by an authorized representative of both the Buyer and the Seller.
- 17.8 Nothing in the Contract shall confer on any third party any benefit or the right to enforce any term of the Contract.
- 17.9 The Buyer shall not use the Seller's trademark or any Seller owned trade mark (registered or not), the Seller logo or name or get up in any of its advertising, marketing campaigns, in-store or external product promotion and the like, or imply that the Seller supports any of the Buyer's advertising, marketing or promotion of the Products without the Seller's prior written consent.

## **17A EXPORT SALES**

Where the Products are supplied by Seller to a destination outside the United Kingdom, this Condition 17A shall apply by way of modification to these Conditions.

- 17A.1 Unless otherwise stated in the Contract, the Products are sold "Free Carrier" (FCA), according to the INCOTERMS in force at the formation of the Contract, at the Seller's option

and the Seller shall not be required to give notice to the Buyer in accordance with Section 32(3) of the Sale of Goods Act 1979.

17A.2 All cable will be supplied on suitable export quality, non-returnable drums and reels. All other Products will be supplied in suitable export quality, non-returnable packaging. Condition 9.6 shall not apply.

17A.3 In the case of FCA United Kingdom port contracts, where VAT is claimed by HM Customs and Excise on the sale by reason of there being insufficient proof of the Products being exported the Buyer shall indemnify the Seller upon request in respect of such VAT.

17A.4 The Buyer shall be responsible for any import duties and local taxes outside the United Kingdom.

17A.5 The Uniform Laws on International Sales Act 1967 shall not apply to the Contract.

17A.6 If any export licence or government or other agency approval is required for export of the Products to the Buyer's country, the Buyer shall be responsible for making a timely application for the licence or approval and the Seller shall have no liability for any delay caused thereby.

## **18 ETHICAL CODE**

18.1 The Buyer (a) declares to know and accepts the Ethical Code and the Lines of Conduct (jointly defined "**Ethical Code**"), approved by the Seller, attached hereto or otherwise available at <https://www.prysmiangroup.com/en/company/ethics-integrity> and forming an integral part of these Conditions; and (b) undertakes, with respect to the performance of the Contract, to exactly comply with the provisions of the Ethical Code and to ensure compliance with said provisions by all the persons employed, for whichever reason, by the same in the performance of the Contract.

18.2 The parties agree that the Seller shall be entitled to terminate this Contract for Buyer's Default, by written notice to the Buyer, in case the latter (and/or any of the persons employed, for whichever reason, by the same in the performance of the Contract) does not comply with any one of the provisions of the Ethical Code.

## **19 APPLICABLE LAW – JURISDICTION**

19.1 The Contract shall be governed by and construed in accordance with the laws of England (excluding its conflicts of laws provisions). Any dispute, controversy or claim arising out of or relating to the Contract, the breach, termination or invalidity thereof, shall be subject to the exclusive jurisdiction of the Courts of England.