



**FIBRE OPTIC
COMMUNICATIONS**

Fibre Optic Communications (FOC) Ltd

General Conditions of Sale

1. DEFINITIONS

In these conditions the expression the "Seller" shall mean Fibre Optic Communications (FOC) Ltd or if a different company is named overleaf that company which shall be a subsidiary (as defined in Section 136 English Companies Act 1985) of the said Fibre Optic Communications (FOC) Ltd. The registered office of the Seller is "The Oakley" Kidderminster Road Droitwich Worcestershire WR9 9AY.

The expression 'Buyer' shall mean the person, firm, company, local government, government and government department, state, state department, federal state, federal government or federal government from whom an order for goods is received by the Seller.

The expression 'the Goods' shall mean articles, thing, materials or commodities or any of them described in the Order.

The expression 'Specification' means the technical description (if any) of the goods contained or referred to in the Order.

The expression 'Order' means the Order placed by the Buyer with the Seller for the supply of Goods.

2. GENERAL

These conditions contain the entire obligations between the Seller and the Buyer and in the case of any inconsistency between any letter or quotation incorporating or referring to these Conditions and any order, letter or form of contract set to the Buyer to the Seller whatever may be their respective dates, the provisions of these Conditions shall prevail. No variation of these Conditions shall be binding unless made in writing and signed by a Director or other duly authorised representative of the Seller on behalf of the Seller and similarly signed on behalf of the Buyer. Any concession made or latitude allowed by the Seller to the Buyer shall not affect the strict right of the Seller under these Conditions. If in any particular case any or part of these Conditions shall be held to be invalid or shall not apply to the Contract of the other Conditions shall continue in full force and effect. The headings contained in these Conditions are for reference only and shall be disregarded in interpreting the Conditions.

3. ORDERS

Quotations are only submitted and orders are only accepted subject to these conditions. All prices quoted are exclusive of Value Added Tax and unless previously withdrawn or extended in writing quotations remain open for acceptance for a period of thirty days from the date on the quotation and thereafter any offer made in such quotation shall for all purposes be deemed to have been rejected. Rental and leasing terms quoted are subject to acceptance by the Seller.

The Seller reserves the right to withdraw or revise any quotation after it has been made so that the order shall not be binding on the Seller unless and until it has been confirmed in writing on behalf of the Seller by a Director or other duly authorised representative.

4. PRICES

(a) The Seller's prices for the time being in force are subject to variation at any time to take account inter alia of variations in wages, materials or other costs and if applicable fluctuations in currency rates and although under no obligation to do so, the Seller will endeavour to inform the Buyer immediately of any price change since the date of the quotation.

The Seller accordingly reserves the right to adjust the invoice price by the amount of any increase or decrease in such costs after the prices quoted and the invoice price so adjusted shall be payable as if it were the original contract price.

(b) If after an Order has been confirmed in accordance with Condition 4 above the Seller's costs are increased by:

- (i) Legislation in measures of any government or legislature involving new or additional duties or charges or
- (ii) any increase in road haulage rates, railway rates, air freights or shipping freights or when goods are sold at a price which includes insurance any increase in the cost of insurance.

The Seller reserves the right to adjust the invoice price by the amount of any such increase and the invoice price shall be payable as if it were the original contract price.

(c) In respect of Orders for delivery in the UK

- (i) all prices are inclusive of packing. Prices ex-Depot.
- (ii) all invoices must be paid in sterling.

(d) In respect of Orders for delivery outside the UK

- (i) F.O.B. C.I.F. F.A.S. or otherwise as the case may be and all prices are exclusive of packing which is charged extra at cost.
- (ii) Where goods are sold F.O.B. the Seller shall be under no obligation to give the notice specified in section 32(3) Sale of Goods Act 1979 or any Statutory modification amendment or re-enactment of the same.
- (iii) If required by the Buyer the Seller may but shall be under no obligation to arrange insurance and transportation on the Buyer's behalf and at the Buyer's expense and all such insurance or transport arranged by the Seller shall be deemed to have been arranged by the Seller as agent for the Buyer.

5. SHIPMENT

The Seller will issue a confirmation to the Buyer with a shipment date indicated. This is an estimate only and does not form part of a contract. Time is not of the essence in the Seller's fulfilment of a Buyer's order.

6. CONFIRMATION

The confirmation issued to the Buyer forms the contract between the Buyer and Seller and is subject only to these terms and conditions. It is the responsibility of the Buyer to check the validity and correctness of all elements of the confirmation and advise the Seller of any discrepancies.

7. INSTALLATION

The Buyer shall at the time of ordering specify whether installation is required and if so will at his own expense make available a suitable place for the installation of the Goods with all facilities as specified by the Seller.

8. ADDITIONAL COSTS

The Buyer agrees to pay for any loss or extra costs incurred by the Seller through the Buyer's instructions or lack of instructions or through failure or delay in taking delivery or providing a suitable place for installation or through any act or default or negligence on the part of the Buyer, its servants, agents, officers or employees.

If after the contract has been made the Buyer seeks to cancel the order the Buyer shall pay the Seller by way of agreed damages a sum equal to 10% of the order value.

9. ACCEPTANCE TESTS

(a) All the Goods supplied by the Seller will be tested at the Seller's premises using the Seller's standard test procedures and programmes applicable to each individual item of the Goods.

(b) When special tests are requested by the Buyer these will be accepted by the Seller only if the Buyer supplied correct information in a form required by the Seller enabling the Seller to agree test procedures schedules and programmes. Subject to such agreement the buyer may call for special tests at the Seller's premises or on the site provided for installation PROVIDED THAT the buyer gives the Seller at least ten days prior notice thereof in writing. In the case of delay or failure on the part of the Buyer to attend such tests, the tests will proceed in his absence and shall for the purpose of the contract be considered to have been carried out in his presence and the Goods shall accordingly be deemed to be acceptable to the Buyer if the person conducting the test on behalf of the Seller shall certify in writing that the Goods have satisfied the tests. Unless specifically included in an order any test specifically requested by the Buyer will be charged to the quoted price on such terms and conditions as the Seller shall determine.

10. TERMS OF PAYMENT

(a) In respect or orders for delivery outside the UK the order shall specify the terms on which payment is to be made.

(b) In respect of orders for delivery inside the UK unless otherwise stated in the order the price of Goods shall be due in full 30 days after the date shown on the invoice. Interest will be charged on overdue accounts at the rate of three per cent (3%) over HSBC plc's base rate from time to time in force and will be added to the amount owing each month or pro rata if the account is overdue for part of a month.

(c) The price of the goods whether for delivery inside or outside the UK shall be due in full from the Buyer in accordance with the terms of the Order and the Buyer shall not be entitled to exercise any set off lien of any similar rights or claim. The Seller may invoice the Buyer for the goods as soon as the goods have been shipped.

11. GOODS DELIVERED IN INSTALMENTS

(a) If the Goods are delivered in instalments payments shall be due in respect of the instalments whereof delivery has been made.

(b) If upon the terms applicable to any order the price shall be payable by instalments or if the Buyer has agreed to take specified quantities of Goods at a specified time, a default by the buyer.

(c) Every delivery of instalments and every delivery of any quantity of Goods under the terms of an Order shall be deemed to constitute a separate contract to which the conditions hereof shall apply and failure by the Seller to deliver any one or more of the instalments or any part of any instalment shall not permit the Buyer to treat such failure as a repudiation of any further instalment.

(d) If the Buyer fails to pay for a delivery of any instalment or for a delivery of any quantity of Goods in accordance with the terms of the Order, the Seller may at its discretion, without prejudice to any other rights whether as to damages or otherwise which it may have against the Buyer, terminate the contract and if the Seller so terminates the contract the Buyer shall have no claim whatsoever against the Seller.

(e) Without prejudice to any other rights the Seller may have under these conditions, if the Seller receives information which throws doubt on the credit worthiness of the Buyer, then the Seller shall have the right to demand immediate payment on account in respect of orders which have been placed and confirmed in writing by the Seller but for which no invoices have been submitted and if no payment in advance is made in respect of such orders, the Seller may at its absolute discretion, without any liability whatsoever, cancel such order.

12. DELIVERY

(a) The date or period for shipment shall be the date or period stated in the contract.

(b) All times or dates given for shipment of the goods are given in good faith but without any responsibility on the part of the Seller. Time shall not be of the essence of any contract nor shall the Seller be under any liability for delay in delivery for any reason whatsoever whether or not such reason is beyond the Seller's reasonable control unless otherwise expressly agreed in writing at or before the date of the Order in which case the Seller's liability shall be limited to such liquidated damages as may be specifically agreed in writing without prejudice to the generality of the foregoing, any delay in delivery of any instalment of Goods shall not entitle the Buyer to refuse any subsequent instalment or otherwise repudiate the contract. Seller shall not be responsible for any delays due to the carrier. Seller may offer Buyer specific timed deliveries offered by the carrier but is not responsible for the carrier's failure to meet such commitments.

(c) All the Goods for delivery in the UK shall cease to be at the risk of the Seller at the point when the goods arrive at the premises of the Buyer, thereafter all such Goods shall be at the risk of the Buyer. The Buyer will at its own expense insure the goods to the full value thereof and shall procure that a note of the Seller's interest in the Goods in endorsed on the policy concerned.

(d) All Goods for delivery outside the UK shall cease to be at the risk of the Seller in accordance with the contract and depending on whether the Goods are sold F.O.B. C.I.F. F.A.S. or otherwise as the case may be.

(e) If the Goods are to be delivered outside the UK the Buyer will be responsible for obtaining all consents and licences which are necessary to enable it to import and use the goods and for all necessary consents (including Exchange Control consent) to enable it to make payment for the Goods and the Buyer shall pay all expenses whatsoever incurred in connection with such matters including all import duties, fees and charges and all taxes on importation.

If for any reason whatsoever delivery is not accepted by the Buyer then without prejudice to any other claim or remedy which the Seller may have against the Buyer the Seller shall have the option either to sell the Goods or any of them elsewhere and charge the Buyer the difference in the sale price and the Buyers expense. In the event of the warehouse charges not being paid by the Buyer then the Seller shall have the



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right to sell all or any of the Goods to defray the cost of warehousing the charge the Buyer for any difference between the sale price and contract price of such goods.

13. NON-DELIVERY

(a) The Seller shall not be liable for any claim for non-delivery, partial loss or damage to the Goods during transportation unless the Seller notified in writing by the Buyer to the Seller (with a copy to the carrier if a carrier has been used to delivery the Goods):-

(i) within seven days of receipt of the goods concerned for partial loss or damage followed by a complete claim in writing within fourteen days of receipt of the Goods and

(ii) within ten days of the date of when the Goods concerned should have been received. For non-delivery followed by a complete claim in writing within fourteen days of receipt of the consignment.

(b) Without prejudice to any other provision of these conditions unless notice of loss or damage to the Goods and the general nature of the complaint be given in writing to the Seller and to the Carrier at the place of delivery before or at the time of delivery or removal of the Goods from the custody of the person entitled to delivery thereof or if the loss of damage be apparent within fourteen days thereafter such delivery or removal shall be prima facie evidence of delivery of the Goods as described by the contract.

(c) The Seller's liability in the event of a substantiated claim for non-delivery, partial loss or damage is limited either to giving the Buyer a reasonable credit or allowance in respect thereof (or at the option of the Seller to replace the Goods or any of them). It shall be in the discretion of the Seller which option it decides to take but so that the Buyer may only have the advantage of one of the options and not both. In no circumstances whatsoever shall the maximum liability of the Seller for non-delivery, partial loss or damage exceed the invoice value of the Goods concerned. Where any credit or allowance is made or the Goods are replaced as aforesaid the Buyer shall make no further claim against the Seller whatsoever in respect of the Goods concerned or for any alleged consequential loss arising from non-delivery, partial loss or damage and the Seller shall forthwith be wholly and completely discharged from all an any liability whatsoever for any claim in respect of such goods.

14. OTHER CLAIMS

Any other claim of whatever nature must be made in writing by the Buyer to the Seller within fourteen days of shipment of the Goods. No liability will be accepted by the Seller after this time.

15. RETENTION OF TITLE

(a) The title in all goods delivered by the Seller will remain vested in the Seller and shall not pass to the Buyer until the Buyer has paid in full to the Seller all sums owing by the Buyer to the Seller under or ensuing from any transaction or sale on any account whatsoever.

(b) Until payment has been made in accordance with (a) above the Buyer will so keep the Goods that they can be clearly identified as the property of the Seller and are separate from other goods and products purchased by the Buyer.

(c) If the Buyer does not pay for any Goods supplied by the Seller in accordance with the terms of payment of any of the events referred to in (d) below the Seller shall be entitled to enter upon the Buyer's premises and take possession of any Goods supplied to the Buyer by the Seller.

(d) Upon the happening of any one of the following events including the levying of any distress or execution against the Buyer or the making of any composition with its creditors or the commencement of any proceedings which could lead to the bankruptcy, liquidation or the appointment of a receiver or manager of the Buyer, all sums in respect of Goods delivered by the Seller to the Buyer or arising from or under transaction sales or account whatsoever shall become due immediately and the Seller may enter on the premises of the Buyer to recover the Goods in accordance with (d) above.

16. FORCE MAJEURE

(a) The Seller shall not be liable to the Buyer for any loss or damage or expense whatsoever suffered or incurred by the Buyer due to any cause beyond the Seller's control including (without prejudice to the generality of the foregoing expression) acts of government departments, cancellation of any import or export licence or any prohibition or restriction relating to the Goods, act of war, civil war, civil commotion, seizure, requisition, fire, lightning, aircraft, shipping, transport, explosion, flooding, act of God, force majeure, illegality, break-down, accident, theft.

(b) The Seller shall not be liable to the Buyer for any loss or damage or expense whatsoever suffered or incurred to the Buyer if the Seller's supplier or intended supplier as the case may be is unable for any reason whatsoever to supply the Goods or any of them or refuses to supply the Goods or the Seller is unable to obtain the Goods or any of them, whether due to a scarcity or shortage of the Goods or for any reason whatsoever.

(c) After the cessation of any such occurrence as is mentioned in (a) above subject to the rights of the Seller referred to in (d) below, the Seller shall not be called upon to make suspended deliveries in one lot but the Seller can recommence delivery upon restored conditions subject to a variation in contract price to cover any increase in costs arising from any such occurrence as is mentioned in (a) above and the contract period shall be extended accordingly.

(d) In the event of an occurrence as is mentioned in (a) above or the circumstances mentioned in (b) or (c) above the Seller shall have the option in its absolute discretion of cancelling all or any deliveries under the contract and there shall be no liability whatsoever on the Seller as a result of such cancellation.

17. WARRANTIES

(a) No condition is made or to be implied relating to the Goods and in particular to their life or wear or merchantable quality or that they will be suitable for any particular purpose or for use under any specific conditions notwithstanding that such purpose or conditions may be known or made known to the Seller other than the warranty as to defects contained in sub-clause (c) below.

(b) The Buyer acknowledges that it is a commercial trading organisation and is entering into a contract for the purchase of Goods from the Seller with full knowledge of these conditions and is relying on its own skill, knowledge and experience in entering into such contract.

(c) In respect of the Goods manufactured by the Seller (except those which are the subject of development or prototype work) the Seller warrants for a period of twelve months following the date of despatch of the Goods from its premises that the Goods or parts manufactured by the Seller are free from defects in material and workmanship but the liability of the Seller shall be limited to the replacement or repair at the option of the Seller free of charge at a site selected by the Seller of the defective part. The Buyer shall be responsible for notifying the Seller in writing of such failure or defect as soon as the same has come apparent. This warranty shall not extend to any defect which is due to fair wear and tear or to alteration neglect negligence improper storage or handling or any form of use or operation or repair (other than those

specified in the manuals or as otherwise specified in writing by the Seller) on the part of any third party including the Buyer.

The Seller advises the Buyer to enter into a maintenance contract for the Goods to ensure that the Goods give their continued best performance.

(d) The Seller shall not be liable to the Buyer for loss of market or profit, actual, contingent or consequential losses, expenses or damages howsoever arising, suffered or incurred by the Buyer.

(e) Goods represented by the Buyer to be defective shall not form the subject of any claim for work done by the Buyer or for any loss, damage or expense whatsoever arising directly or indirectly from such defects and the Buyer shall be entitled only to such benefits (if any) as the Seller may receive under any guarantee or warranty given to the Seller by a supplier in respect of the Goods or any of them. Defects in quality shall not be a ground for cancellation of the contract or if it is a contract for delivery by instalments, future instalments.

18. TRADE MARKS, COPYRIGHT AND PATENTS

(a) The Buyer shall not use in relation to any Goods the registered trademarks of the Seller or any other trademark registered from time to time by the Seller.

(b) Design and patent rights relating to the Goods shall remain the absolute property of the Seller.

(c) All drawings and designs shall not be reproduced or disclosed to any third party without the written consent of the Seller and the Seller reserves copyright in all such drawings and designs.

(d) The Seller reserves the right to take over defence of any patent trademark or copyright action in which any of its products is involved or likely to be involved and the Buyer agree promptly to notify the Seller of any likely or threatened action and to give the Seller all necessary authority information and assistance in such defence.

(e) The Buyer shall be solely responsible for the consequences of any patent, trade mark, design or copyright infringement or any other infringement or a third party's rights resulting from the Buyer uses or sale of the Goods and the Buyer shall fully and completely indemnify the Seller in respect of all damage costs, charges and expenses for which the Seller may be liable as a result of any such infringement or alleged infringement.

19. STOPPAGE OF DELIVERIES - TERMINATION

If the Buyer shall make default in or commit a breach of the contract including any of these conditions or of any other of its obligations to the Seller whether under this contract and these conditions or otherwise, or if any distress or execution shall be levied upon the Buyer's property or assets, or if the Buyer shall make an offer to make an arrangement or composition with its creditors, or commit an act of bankruptcy, or if any petition or receiving order shall be presented or made against it or if the Buyer is a limited company any petition or resolution to wind up such company shall be presented or passed or if a receiver and manager of such company's undertaking property assets or any part thereof shall have been appointed the seller shall have the right forthwith at its discretion to terminate any contract then subsisting with the Buyer and upon written notice of any such termination being given to the Buyer any such contract shall be deemed to be terminated without prejudice to any claim or right the Seller might make or exercise.

20. DETAILS - SPECIFICATION-MATERIALS

(a) Details, drawings, specifications, dimensions and other descriptions used by the Seller in connection with the Goods are intended to be accurate but shall not import into the contract any conditions or warranty in this respect. Furthermore, no statement description, information, warranty condition or representation contained in any catalogue, price list, advertisement, or communications or made verbally by any agent, representative, employees or offices of the Seller shall be construed to enlarge, vary, or override in any way any of these conditions. The Seller reserves the right in its absolute discretion at any time to change any specifications in respect of the Goods.

(b) All materials and dimensions are unless otherwise stated subject to reasonable variations resulting from the raw materials, tools or goods in connection with his orders it does so at its own risk and the Seller accepts no responsibility for insuring such property. All patterns, jigs, tools or equipment provided by the Seller shall remain the absolute property of the Seller and shall at the request of the Seller be returned to its premises by the Buyer.

21. SEVERANCE

In the event that any clause, clauses or part of parts thereof set out in these conditions shall be held by any Court to be invalid or inapplicable to the contract such clauses or part or parts thereof shall be severed and the remainder of the conditions shall remain in full force and effect.

22. NOTICE

Any notice required to be given hereunder shall be in writing and shall be sufficiently given if delivered or sent by first class post facsimile electronic mail or by telex to the address for the time being of the party which at the date of this agreement is the address shown on the first page of this agreement and any notice shall be deemed to be given if delivered by hand at the time of delivery and if sent by first class post or facsimile 48 hours after the same shall have been posted and if given by electronic mail or telex 24 hours after the issue of the electronic mail or telex and any notice given by electronic mail or telex shall be confirmed by letter as soon as possible thereafter. If either party changes its address from the address shown on the first page of this agreement it will give the other party 7 days notice of such change of address and if such notice is not given notice served at the last known address will be deemed to be good service for the purposes of this agreement.

23. BUYER CANNOT ASSIGN

The Buyer hereby acknowledges that it cannot assign its right under this agreement.

24. GOVERNING LAW

These conditions and any contract of which they form a part shall in all respects be governed by English Law and shall be deemed to have been made in England. The parties hereby submit to the exclusive jurisdiction of the English Courts other than in the case of a dispute relating to the Acceptance Tests in which case the provision of Condition 8 shall apply.