

## **TERMS AND CONDITIONS OF SALE AND DELIVERY OF MIDLAND WIRE CORDAGE COMPANY LIMITED**

### **1. Interpretation**

#### 1.1 In these terms:

“Buyer”	means the person who accepts the Seller’s written quotation for the sale of the Goods whether in paper or electronic form;
“Contract”	means the contract for the sale and purchase of the Goods;
“Goods”	means the goods which the Seller is to supply in accordance with these Terms;
“Premises”	Wire Rope House, Eagle Road, North Moons Moat, Redditch, Worcestershire B98 9HF;
“Seller”	means Midland Wire Cordage Company Limited (company number: 01976990) whose registered office is at Wire Rope House, Eagle Road, North Moons Moat, Redditch, Worcestershire B98 9HF;
“Terms”	means the standard terms of sale set out in this document and (unless the context otherwise requires) includes any special terms agreed in Writing between the Buyer and the Seller;
“Writing”	and any similar expression, includes facsimile transmission including electronic mail or other forms of electronic communication.

1.2 A reference in these Terms to a 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 Terms are for convenience only and shall not affect their interpretation.

1.4 Words in the singular include the plural and the plural include the singular.

1.5 A reference to one gender includes a reference to another gender.

### **2. Basis of Sale**

2.1 These Terms shall apply to all orders for the Seller’s Goods and services to the entire exclusion of all or any terms and conditions of the Buyer.

2.2 All orders, any variations to orders and cancellations of orders shall be subject to acceptance in Writing by the Seller.

2.3 The Seller’s employees or agents are not authorised to make any representations concerning the Goods or any services to be performed unless confirmed by the Seller in Writing. In entering into the Contract the Buyer acknowledges that it does not rely on and waives any claim for breach of any such representations which are not so confirmed.

2.4 Any advice or recommendation given by the Seller or its employees or agents to the Buyer or its employees or agents as to the storage, application or use of the Goods which is not confirmed in Writing by the Seller is followed or is acted upon entirely at the Buyer’s own risk and accordingly, the Seller shall not be liable for any such advice or recommendation which is not so confirmed.

2.5 Any typographical, clerical or other error or omission in any sales literature, quotation, price list, acceptance or offer, invoice or other document or information issued by the Seller shall be subject to correction without any liability on the part of the Seller.

### **3. Orders and Specifications**

3.1 The Buyer shall be responsible for the accuracy of the terms of any order and for giving the Seller any necessary information relating to the Goods (including any applicable specification) submitted by the Buyer within a sufficient time to fulfil the Buyer’s requirements.

3.2 Each order or acceptance of a quotation for Goods by the Buyer from the Company shall be deemed to be an offer by the Buyer to buy Goods subject to these conditions.

3.3 No order placed by the Buyer shall be deemed to be accepted by the Company until a written acknowledgement of order is issued by the Company or (if earlier) the Company delivers the Goods to the Buyer.

3.4 The Buyer shall ensure that the terms of its order and any applicable specification are complete and accurate.

- 3.5 Any quotation is given on the basis that no Contract shall come into existence until the company despatches an acknowledgement of order to the Buyer. Any quotation is valid for a period of 30 days only from its date (unless otherwise stated), provided that the Company has not previously withdrawn it.
- 3.6 The Seller reserves the right to make any changes in the specifications of the Goods which are required to conform with any applicable EU, safety, statutory or industry requirements. The Seller shall also have the right to make production changes to any Goods contracted to be sold to the Buyer provided that the Seller shall have first obtained the approval of the Buyer (such approval not to be unreasonably withheld).
- 3.7 If any Goods are to be manufactured or any process is to be applied in accordance with a specification supplied by the Buyer, the Buyer shall indemnify the Seller against all loss, costs, expenses, claims and damages awarded against or incurred by the Seller as a result of any claim for infringement of intellectual property rights of any other person or any defect in the specification.
- 3.8 The Seller reserves the right to deliver up to 10 per cent more or 10 per cent less than the quantity ordered and the Buyer shall accept and pay for the same, and the quantity so delivered shall be deemed to be the quantity ordered.
- 3.9 Unless otherwise agreed in writing, all tooling shall at all times remain the property of the Seller (whether or not the cost of producing the same is reflected in the price charged to the Buyer).
- 3.10 The Company may deliver the Goods by separate instalments. Each separate instalment shall be invoiced and paid for in accordance with the provision of the Contract.
- 3.11 When Goods are to be delivered in instalments, each delivery shall constitute a separate contract and the failure by the Seller to deliver any one or more instalment shall not entitle the Buyer to treat the Contract as a whole as repudiated.

#### **4. Price**

- 4.1 The price of Goods agreed to be sold by the Seller shall be the price agreed in Writing or if no such price has been agreed, the price listed in the Seller's published price list current at the date of acceptance of the order, and unless otherwise so stated shall be exclusive of any applicable value added tax and any duties, imposts or other levies and exclusive of all charges for carriage, insurance and delivery of the Goods to the address specified by the Buyer.
- 4.2 The Seller reserves the right, by giving written notice to the Buyer at any time before delivery, to increase the price of the Goods 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.
- 4.3 The Seller shall have the right to invoice the Buyer and the Buyer agrees to pay the same for all or any costs, charges, expenses and damage the Seller may suffer as a result of the Buyer failing to supply any materials or other matters agreed to be supplied by the Buyer for the purposes of the Seller carrying out the order or for supplying any such materials or matters which are defective or otherwise not suitable (as the Seller shall in its absolute discretion decide) for carrying out the order of the Buyer.

#### **5. Terms of Payment**

- 5.1 The Buyer shall be invoiced for the Goods on or at any time after the Buyer's order has been accepted by the Seller.
- 5.2 Unless otherwise stated in the order or otherwise agreed, the Buyer shall pay the price of order without any deductions or set-off whatever (whether legal or equitable) by the date specified on the invoice or if no date is specified then within 30 days of the last day of the month in which the invoice is received and notwithstanding that delivery has not taken place or that property in the Goods has not passed to the Buyer. Payment shall be in pounds sterling. The time of payment of the price shall be of the essence of the Contract.
- 5.3 If the Buyer fails to make any payment on the due date then without prejudice to any other right or remedy available to the Seller, the Seller shall be entitled to cancel the Contract or suspend any further deliveries and/or charge the Buyer interest (both before and after any judgement) on the amount unpaid at the rate of 8% above the base rate from time to time of HSBC Bank plc, or if that base rate ceases to exist such other comparable rate of interest as the Seller may from time to time specify in Writing.

#### **6. Delivery**

- 6.1 The Goods shall either be collected from the Seller's Premises or delivered by the Seller to the address specified by the Buyer.
- 6.2 Any dates quoted for delivery are approximate only and the Seller shall not be liable for any delay in delivery howsoever caused. Time for delivery or performance (as the case may be) shall not be of the essence of the Contract. The Goods may be delivered in advance of the quoted delivery date on giving reasonable notice to the Buyer.

- 6.3 Subject to the other provisions of these conditions the Company shall not be liable for any direct, indirect or consequential loss (all three of which terms include, without limitation, pure economic loss, loss of profits, loss of business, depletion of goodwill and similar loss), costs, damages, charges or expenses caused directly or indirectly by any delay in the delivery of the Goods (even if caused by the Company's negligence), nor shall any delay entitle the Buyer to terminate or rescind the Contract unless such delay exceeds 180 days.
- 6.4 If the Buyer fails to take delivery or fails to give the Seller adequate delivery instructions at the time stated for delivery (otherwise than by reason of any cause beyond the Buyer's reasonable control) then without prejudice to any other rights or remedy available to the Seller, the Seller may store the Goods until actual delivery and charge the Buyer for the reasonable costs (including insurance) of storage or sell the Goods at the best price readily obtainable and (after deducting all reasonable storage and selling expenses) account to the Buyer for the excess over the price or charge the Buyer for any shortfall below the price quoted.
7. **Non-Delivery**
- 7.1 The quantity of any consignment of Goods as recorded by the Company upon despatch from the Company's place of business shall be conclusive evidence of the quantity received by the Buyer on delivery unless the Buyer can provide conclusive evidence proving the contrary.
- 7.2 Save in respect of a total loss or non-delivery of Goods, the Company shall not be liable for any non-delivery of Goods (even if caused by the Company's negligence) unless the Buyer gives details of any loss or damage on the copy of the consignment note or delivery documents signed by the Buyer and advised to the Company within 48 hours of delivery and confirmed in writing to the Company with full particulars within 3 days of delivery.
- 7.3 In respect of total loss or non-delivery of Goods, the Company shall not be liable for any non-delivery of Goods unless the Buyer gives details of such loss or non-delivery to the Company in writing (otherwise than on a consignment note or delivery document) with full particulars within 7 days of the date of the Company's invoice in respect of the Goods.
- 7.4 Any liability of the Company for non-delivery of the goods shall be limited to replacing the Goods within a reasonable time or issuing a credit note at the pro-rata Contract rate against any invoice raised for such Goods.
8. **Risk and Property**
- 8.1 Risk shall pass to the Buyer upon the Goods leaving the Seller's premises or the premises of any supplier, distributor or agent of the Seller.
- 8.2 Notwithstanding delivery and the passing of risk in the Goods, or any other provision of these Terms, legal title in the Goods shall not pass to the Buyer until the Seller has received in cash or cleared funds payment in full of the price of the Goods and all other goods agreed to be sold by the Seller to the Buyer for which payment is then due.
- 8.3 Until such time as title 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 but the Buyer may resell or use the Goods in the ordinary course of business.
- 8.4 Until such time as title in the Goods passes to the Buyer (and provided the Goods are still in existence and have not been resold), the Seller may at any time require the Buyer to deliver up the Goods to the Seller and, if the Buyer fails to do so forthwith, enter on any premises of the Buyer or any third party where the Goods are stored and repossess the Goods.
- 8.5 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, but if the Buyer does so all monies owing by the Buyer to the Seller shall (without limiting any other right or remedy of the Seller) forthwith become due and payable.
9. **Warranties and Liability**
- 9.1 Subject to Clause 7, the Seller warrants to the Buyer that for the period of six months from the date of delivery any Goods supplied by the Seller will be free from defects in materials and workmanship. The Seller shall have the right to repair or remedy any such defects or to provide replacement Goods as the Seller shall in its absolute discretion decide.
- 9.2 Subject as expressly provided in these conditions, and except where the Goods are sold to a person dealing as a consumer (within the meaning of the Unfair Contract Terms Act 1977), all warranties, conditions or other terms implied by statute or common law are excluded to the fullest extent permitted by law.
- 9.3 Except in respect of death or personal injury caused by the Seller's negligence and save as provided herein, the Seller shall not be liable to the Buyer by reason of any representation, or any implied warranty condition or other term, or any duty at common law or under the express terms of the Contract for loss of profit, or for any indirect, special or consequential loss or damage (whether for loss of profits or otherwise) costs, expenses or other claims for compensation whatsoever (and whether caused by the negligence of the Seller, its employees or agents or otherwise) which arise out of or in connection with the supply of the Goods (including any delay in supplying or any failure to supply the Goods in accordance with the Contract or at all) or their use or resale by the Buyer or the performance of any services and the entire liability of the Seller under or in connection with the Contract shall not exceed the price of the Goods, except as expressly provided in these Terms.

9.4 The Seller shall not be liable to the Buyer or be deemed to be in breach of contract by reason of any delay in performing or any failure to perform any of its obligations in relation to the Goods if the delay or failure was beyond its reasonable control and for the avoidance of doubt factors outside of the Seller's reasonable control include but are not limited to strikes, lock-outs or other industrial actions or trade disputes (whether involving employees of the Seller or a third party).

9.5 Where the Goods are sold under a consumer transaction (as defined by the Consumer Transactions (Restrictions on Statements) Order 1976) the statutory rights of the Buyer are not affected by these conditions.

## 10. **Termination**

10.1 The Seller shall be entitled not to fulfil orders previously accepted by it if the Buyer commits or allows to occur any material breach of any of the terms of these conditions which is not remedied within 14 days of receipt of a written notice from the Seller requiring such breach to be remedied.

10.2 Notwithstanding the foregoing, the Seller shall also be entitled to cancel the Contract or suspend any further deliveries under the Contract 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 if:

10.2.1 the Buyer makes a composition or voluntary arrangement with its creditors or (being an individual or firm) becomes bankrupt or (being a company) enters administration or goes into liquidation (otherwise than for the purposes of amalgamation or reconstruction), or a moratorium comes into force in respect of the Buyer (within the meaning of the Insolvency Act 1986); or

10.2.2 where appropriate, the Buyer ceases, or threatens to cease, to carry on business; or

10.2.3 anything analogous to any of the foregoing occurs in any jurisdiction in which the Buyer has a place of business; or

10.2.4 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.

10.3 The exercise of the Seller's rights shall not prejudice or affect any accrued action or right of remedy of either party.

## 11. **Intellectual Property Rights**

11.1 Notwithstanding any other provision herein all intellectual property rights in all and any materials, drawings, designs, exhibits, software designs, products, goods, services, prototypes, samples, presentations, exhibitions and any other matter whatsoever provided or shown to the Buyer whether before the acceptance of the Buyer's order or in contemplation of it or during the course of carrying out any services hereunder shall be and shall remain the property of the Seller and subject as herein provided the Buyer may use the same only for the purposes specified by the Seller and shall not use or disclose the same to any third parties without the prior written consent of the Seller and shall not copy, reproduce or otherwise imitate the same in any form whatsoever.

## 12. **General**

12.1 The order is personal to the Buyer, no waiver by the Seller or any breach of the Contract by the Buyer shall be considered as a waiver of any subsequent breach of the same or any other provision.

12.2 The Company may assign the Contract or any part of it to any person, firm or company.

12.3 The Buyer shall not be entitled to assign the Contract or any part of it without the prior written consent of the Company.

12.4 The parties to the Contract do not intend that any term of the Contract shall be enforceable by virtue of the Contracts (Rights of Third Parties) Act 1999 by any person that is not a party to it.

12.5 Any notice required or permitted to be given by either party to the other hereunder shall be in writing and shall be served by pre-paid first class post, personally or by facsimile to that other party at its registered office or principal place of business or such other address as may at the relevant time have been notified pursuant to this provision to the party giving the notice.

12.6 The construction, validity and performance of the Contract shall be governed by the laws of England and the parties hereto submit to the non-exclusive jurisdiction of the English Courts.

12.7 Nothing herein shall be construed as an assignment to the Buyer of any intellectual property rights in the Goods being sold and purchased.

12.8 If any provision of the Contract is held by a court or other competent authority to be invalid or unenforceable in whole or in part the validity of the other provisions of the Contract and the remainder of the provision in question shall not be affected.