

PRYSMIAN TELECOM CABLES & SYSTEMS UK LIMITED
STANDARD CONDITIONS OF SALE

Issued: 04/2007

1. **DEFINITIONS**

For the purposes of these Conditions:

- 1.1 **"Affiliate"** means any company which controls Prysmian, is under the control of Prysmian or is under common control with Prysmian;
- 1.2 **"the Buyer"** means any party to which Prysmian has agreed to supply Products or Services, whether or not for value;
- 1.3 **"Contract"** means the contract (whether or not in writing) between Prysmian and the Buyer for the supply to the Buyer of Products and/or Services, which shall be deemed to incorporate these Conditions;
- 1.4 **"Currency Variation"** means a variation to the Price made under Condition 10.4;
- 1.5 a **"Default"** occurs when the Buyer either:
 - 1.5.1 fails to make any payment due to Prysmian on or before the due date (whether or not such payment is due under the Contract); or
 - 1.5.2 commits any breach of the terms of the Contract; or
 - 1.5.3 enters into any arrangement with any of its creditors; or
 - 1.5.4 has a receiver, receiver and manager, administrator, administrative receiver or liquidator appointed over all or any part of its undertaking or assets; or
 - 1.5.5 has a petition for an administration order or for a winding-up order brought against it; or
 - 1.5.6 has proceedings equivalent to 1.5.4 or 1.5.5 above taken against it outside the UK; or
 - 1.5.7 ceases to carry on its business or becomes unable to pay its debts;
- 1.6 **"Metal Variation"** means a variation to the Price made under Condition 10.2;
- 1.7 **"Order"** means the order for Products and/or Services placed by the Buyer;

- 1.8 **"Prysmian"** means Prysmian Telecom Cables & Systems UK Limited (formerly Pirelli Telecom Cables & Systems UK Limited), having its registered offices at Chickenhall Lane, Eastleigh, Hampshire SO50 6YU (registered in England No. 4115331) which trades as agent of Prysmian Cables & Systems Limited having its registered offices at Chickenhall Lane, Eastleigh, Hampshire SO50 6YU (registered in England No. 958507);
- 1.9 **"Price"** means the total amount payable by the Buyer for the relevant Goods and/or Services;
- 1.10 **"Products"** means any cable, cable accessories or other products to be supplied by Prysmian under the Contract;
- 1.11 **"Right"** means any patent, trade mark or registered design, any application for any of the same and any copyright or design right;
- 1.12 **"Services"** means any installation or other services to be supplied by Prysmian under the Contract;
- 1.13 **"Third Party"** means any company, corporation, partnership or individual, other than Prysmian or the Buyer, including an Affiliate;
- 1.14 **"UK"** means the United Kingdom of Great Britain and Northern Ireland;
- 1.15 **"VAT"** means value added tax (or any replacement tax) at the appropriate rate;
- 1.16 **"Warranty Period"** means the applicable period specified in Condition 6.1.

2. **THE CONTRACT**

- 2.1 These Conditions shall apply to any Contract to the entire exclusion of any standard terms or conditions specified by the Buyer. Acceptance of the Products or Services by or on behalf of Buyer shall be deemed to be full and unconditional acceptance of these Conditions.
- 2.2 The Contract shall consist solely of the following documents, which shall take priority in the following order:
- 2.2.1 Prysmian's acceptance of the Order;
 - 2.2.2 the Order and any documents referred to expressly in it;
 - 2.2.3 any special terms and conditions agreed in writing between the Buyer and Prysmian in respect of the Contract; and
 - 2.2.4 these Conditions.

- 2.3 All implied terms, conditions and warranties (including without limitation any implied terms as to satisfactory quality and fitness for purpose) are hereby excluded from the Contract to the fullest extent permitted by law.

3. **AVAILABILITY OF MATERIALS**

- 3.1 If Prysmian 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 Prysmian or any Services already performed by Prysmian, 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 Prysmian may reasonably determine in respect of such Products or Services.
- 3.2 Prysmian shall have the right at any time prior to delivery or collection of the Products to change their specification where, in the opinion of Prysmian, 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 Prysmian 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, 14.2 or 15.

4. **QUOTATIONS**

Unless otherwise expressly agreed in writing by Prysmian, a quotation shall remain valid for 30 days and shall be subject to Metal Variation and (if it is expressed in a currency other than pounds sterling) to Currency Variation.

5. **DELIVERY**

- 5.1 While Prysmian will use all 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. Prysmian shall not be liable to the Buyer in damages or otherwise for any delay in delivery of the Products or performance of the Services.
- 5.2 If any details of the Contract are altered by the Buyer by agreement with Prysmian (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 Prysmian by such period as shall be reasonable in all the circumstances.

- 5.3 Unless otherwise specified or agreed by Prysmian, prices are quoted and shall be deemed to be on an ex works delivery basis, and if the Buyer requests Prysmian to deliver the Products to any particular destination, Prysmian 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. Claims in respect of Products which arrive damaged or in damaged packaging or are short delivered must be notified to Prysmian in writing within 5 working days after receipt. Delivery notes unsigned or signed "unchecked" (or similar) shall cause any such claim to be rejected by Prysmian. Product returns agreed by Prysmian shall be collected by Prysmian or its nominated contractor only from the Buyer's account address held by Prysmian unless agreed otherwise in writing.
- 5.4 Except where Prysmian has agreed to store the Products, once any Products are ready for delivery or collection Prysmian may give written notice to the Buyer requiring the Buyer to take delivery of the Products or (where the Products are sold ex works or FOB UK port) to arrange for collection of or to provide delivery instructions for the Products within 7 days. If the Buyer fails to do so Prysmian shall be entitled:
- 5.4.1 to give written notice to the Buyer stating that all risk in the Products shall pass to Buyer; and/or
 - 5.4.2 to invoice the Buyer for the full value of the Products; and/or
 - 5.4.3 to require the Buyer to take delivery of or to collect the Products within 14 days. Failure to do so shall be a breach of the Contract.
- 5.5 Where 5.4 above applies or where Prysmian agrees to store any Products, Prysmian shall be entitled to store the Products at Prysmian's works or elsewhere. All costs incurred by Prysmian for storage (including appropriate insurance) shall be paid by the Buyer within 30 days after submission of a supplementary invoice by Prysmian. Prysmian shall also be entitled to charge for storage at Prysmian's works at a commercial rate, which shall be paid for in the same way.
- 5.6 If the Buyer requests Prysmian to delay delivery by a significant period and Prysmian agrees to do so, Prysmian shall have the right to increase the Price and shall notify the Buyer of the new Price.
- 5.7 If the Buyer fails to pay any amount due to Prysmian (whether or not under the Contract) on or before the due date, Prysmian shall be entitled to suspend all deliveries under the Contract and any other contract between Prysmian and the Buyer until the overdue amount has been paid together with any accrued interest. This Condition 5.7 and any exercise of such right of suspension is without prejudice to the provisions of Condition 15.

- 5.8 Cables will be supplied to a length tolerance of plus or minus 3% unless otherwise agreed.
- 5.9 Orders for cable accessories may for convenience be rounded up by Prysmian to the closest pack quantity, and shall be paid for accordingly by the Buyer.
- 5.10 Orders for cables for values of less than £500, and orders for cable components for values less than £100, will incur a small order charge of up to £100, together with any additional costs incurred by Prysmian in arranging special delivery.

6. **GUARANTEE**

6.1 Prysmian shall repair or (at its option) replace any Products which prove to be defective under proper use within a period of 12 calendar months from the date of resale or use of the Products by the Buyer or 18 months from the date of delivery of the Products by Prysmian (whichever period first expires), provided that:

- 6.1.1 notice in writing giving details of the defects is given to Prysmian as soon as the defects become apparent;
- 6.1.2 where the Products were manufactured by Prysmian, the defects are shown to Prysmian's satisfaction to have arisen solely from Prysmian's faulty design, workmanship or materials;
- 6.1.3 the defective Products are returned to Prysmian's works at the Buyer's expense, if so requested by Prysmian; and
- 6.1.4 in the case of components or accessories not manufactured by Prysmian, Prysmian's liability under this Condition shall not in any circumstances be greater than any corresponding liability of the supplier of such components or accessories to Prysmian. Details of the supplier's liability shall be made available to the Buyer on request.

Any repaired or replaced Products shall be redelivered by Prysmian free of charge to the original point of delivery.

6.2 Prysmian shall not be liable in respect of any defect or damage to the Products which is caused by ordinary wear and tear, lack of maintenance, inappropriate use, misuse or abuse, improper or unsuitable installation, alterations, modifications or dismantling, any third party or parties or any other cause beyond Prysmian's reasonable control.

- 6.3 As an alternative to repair or replacement of the defective Products under 6.1 above, Prysmian shall be entitled in its absolute discretion to refund the price paid by the Buyer for the defective Products.
- 6.4 For the purposes of this Condition "improper use" means a use which has not been either approved for the relevant Product in Prysmian's sales literature or quotation or otherwise approved by Prysmian in writing.

7. CABLE DRUMS

- 7.1 This Condition shall only apply where cable is supplied by Prysmian to a destination within the UK.
- 7.2 Where cable is supplied by Prysmian on drums, the Buyer shall use all reasonable endeavours to allow their prompt return to Prysmian or its nominated contractor.
- 7.3 When any drum is empty the Buyer shall immediately contact the phone number shown on the Drum Label attached to the drum. Prysmian or its nominated contractor will be responsible for arranging collection of the drum.
- 7.4 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 Prysmian and paid for by the Buyer at the price set out in Prysmian'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 in good condition 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.

8. TECHNICAL DATA

All catalogues, brochures, specifications or other technical characteristics, data or other descriptive matter included in any sales promotional material or in Prysmian's tender are intended to give a general description of the Products offered and shall not form part of the Contract unless Prysmian expressly agrees otherwise in writing.

9. CONFIDENTIAL INFORMATION

The Buyer shall keep confidential and shall not disclose to any third party without Prysmian's prior written consent any information (whether of a commercial or technical nature) acquired from Prysmian in connection with its tender or the Contract, including without limitation any information concerning the prices at which Prysmian sells the Products.

10. PRICES

- 10.1 All prices shown in Prysmian's current price lists are subject to alteration without notice. Such alteration shall not affect any order placed by the Buyer and accepted by Prysmian in writing prior to such alteration, subject to any Metal or Currency Variation.
- 10.2 Where Prysmian's quoted prices for the Products are based on a metal price for Copper, Lead or Aluminium, then unless otherwise agreed by Prysmian 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 Prysmian of the Order. The metal price for Copper Grade A shall be the official London Metal Exchange "Settlement" Price and producers premium or such other basis as may apply. The metal price for Lead and Aluminium shall be the London Metal Exchange "Settlement" Price or such other basis as may apply. The Buyer shall also reimburse Prysmian for any Contango costs incurred by it.
- 10.3 The Buyer shall reimburse Prysmian on demand for all costs and losses (including without limitation Contango and Backwardation and financing costs) which are incurred by Prysmian 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 within the period stated in the Prysmian offer or on the Order Acknowledgement or any longer period agreed by Prysmian in writing.
- 10.4 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 Prysmian on demand for all costs and losses incurred by Prysmian 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.
- 10.5 Prysmian's prices include the cost of routine testing carried out in accordance with Prysmian's standard procedures. Where additional tests are requested by the Buyer, these will be charged extra and may affect delivery. If the Buyer wishes to witness any tests all costs so incurred including inspection fees, travelling and other expenses shall be paid by the Buyer.
- 10.6 If the cost to Prysmian of fulfilling any of its obligations under the Contract is increased by any act or omission on the part of the Buyer or 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, then the Price shall be adjusted to cover such additional costs.
- 10.7 All prices are net of any discounts, unless otherwise so stated.

11. PAYMENT

- 11.1 Payment for the Products or Services or for storage charges under Condition 5.5 (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. Prysmian shall be entitled to statutory interest and to a fixed sum in respect of any late payment in accordance with the Late Payment of Commercial Debts (Interest) Act 1998 as amended. Payment on time is of the essence.
- 11.2 Any consignment or part consignment of the Products or supply of Services shall, if so directed by Prysmian, be treated as the subject of a separate contract and be paid for accordingly.
- 11.3 Prysmian shall be entitled to require adequate credit references from the Buyer and to require security for payment by means of a guarantee from such party as Prysmian deems appropriate.

12. VAT

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 11.

13. RISK

Subject to Condition 5.4, risk in any consignment of the Products shall pass to the Buyer on delivery of the Products to the Buyer or on collection of the Products by or on behalf of the Buyer.

14. RETENTION OF TITLE

- 14.1 Legal and beneficial ownership of any consignment of the Products shall pass to the Buyer only when all amounts due from the Buyer to Prysmian in respect of such Products and all other products and services supplied by Prysmian to the Buyer have been received in full. Until such time, the Buyer shall hold the Products as bailee for Prysmian and in such a way as to be clearly identifiable as Prysmian's property, and the Buyer shall keep the Products separate and identifiable from any other products held by the Buyer. The Buyer shall also ensure that the Products are covered by insurance for an amount equal to the Price against all normal commercial risks, and shall provide Prysmian on demand with evidence of such insurance.
- 14.2 If any Default occurs then:
- 14.2.1 any right of sale that the Buyer may have in respect of the Products shall automatically cease;

- 14.2.2 Pysmian shall be entitled to enter upon the premises of the Buyer and to reclaim the Products; and
 - 14.2.3 upon Pysmian reclaiming the Products or part of them the Contract shall be deemed to have been cancelled in respect of the reclaimed Products only and Pysmian shall repay to the Buyer the purchase price for such Products less (a) all amounts due from the Buyer to Pysmian on any account whatsoever and (b) the cost of reclaiming such Products.
- 14.3 Pysmian may at any time serve a written notice on the Buyer stating that legal and beneficial ownership of all or part of the Products shall pass to the Buyer. Ownership of such Products shall thereupon immediately pass to the Buyer without prejudice to the Buyer's obligation to pay for such Products.

15. CANCELLATION

- 15.1 If a Default occurs then Pysmian shall in its discretion be entitled:
- 15.1.1 to terminate the Contract; and/or
 - 15.1.2 to terminate any other agreement between Pysmian and the Buyer for the supply of products and/or services which has not been completely performed.
- 15.2 Such termination shall become effective either (a) when Pysmian gives written notice to the Buyer to that effect or (b) when Pysmian reclaims the Products under Condition 14.2. Such notice may be sent by ordinary or recorded delivery post or by telex or fax. Upon such termination:
- 15.2.1 the Buyer's obligations to make payments under the Contract or other agreement shall cease other than amounts due in respect of any Metal or Currency Variation; and
 - 15.2.2 Pysmian shall be entitled to retain any payment already made by the Buyer; and
 - 15.2.3 Pysmian shall cease to be liable to supply any Products or Services to the Buyer under the Contract or such other agreement.

16. VARIATIONS

- 16.1 The Buyer shall not be entitled to make any variation to the Order without Pysmian's written consent. If the Buyer makes any variation to the Order with such consent, Pysmian shall be entitled to require the Buyer to pay any amount due in respect of any Metal or Currency Variation that was recoverable from the Buyer before such variation.

- 16.2 Pysmian shall also 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.
- 16.3 Pysmian shall also have the right to increase the prices applicable to the Order where Pysmian purchases metals or sells forward currency at a less advantageous rate as a result of an agreed variation.

17. THIRD PARTY RIGHTS

- 17.1 Subject to 17.3 below, Pysmian shall indemnify the Buyer against any valid claim that the sale or use of the Products by the Buyer infringes any Right of any third party, provided that:
- 17.1.1 Pysmian is given written notice of the claim immediately upon the same coming to the Buyer's attention; and
 - 17.1.2 Pysmian is allowed to conduct the defence of such claim at its own expense.
- 17.2 This Condition shall not apply:
- 17.2.1 if and to the extent that any such claim arises from a design or specification supplied by the Buyer; or
 - 17.2.2 to the sale or use of the Products in a territory which has not been approved by Pysmian or which could not reasonably have been known to Pysmian as the destination for the Products at the time that the Contract was made.
- 17.3 Pysmian shall not in any circumstances be liable under this Condition for any costs or losses of the kind described in Condition 18.2.
- 17.4 If the Products are manufactured to the Buyer's specification, the Buyer shall indemnify Pysmian against any valid claim that the manufacture or sale of the Products infringes any Right of any third party, provided that:
- 17.4.1 the Buyer is given written notice of the claim immediately upon the same coming to Pysmian's attention; and
 - 17.4.2 the Buyer is allowed to conduct the defence of such claim at its own expense.

18. LIABILITY

- 18.1 Prysmian's liability in respect of any defect in the Products or Services whether for breach of contract, in tort (including without limitation negligence), by way of indemnity or otherwise howsoever shall be limited to replacing the defective Products or Services without further charge or, where this is feasible and at Prysmian's option, to repairing defective Products. Prysmian shall not be liable for any defect appearing in the Products due to improper use, or for the cost of removing defective Products or installing replacement Products.
- 18.2 Prysmian shall not in any event be liable whether for breach of contract, in tort (including without limitation negligence), by way of indemnity or otherwise for:
- 18.2.1 any loss of revenue, profit, contracts, business or goodwill or any indirect or financial losses suffered by the Buyer; or
 - 18.2.2 any liquidated damages or penalties or for any claims made against the Buyer by any third party, whether or not Prysmian has been made aware of any such potential claim prior to or at the date of the Contract.
- 18.3 The aggregate liability of Prysmian under the Contract whether for breach of contract, in tort (including without limitation negligence), by way of indemnity or otherwise shall not in any circumstances whatsoever exceed one-half of the total amount payable by the Buyer under the Contract.
- 18.4 No claim may be made against Prysmian in respect of defective Products after the end of the Warranty Period.
- 18.5 The Buyer shall be fully responsible for ensuring the safe and proper installation and use of all Products. The Buyer shall ensure that instructions and warnings supplied by Prysmian shall be drawn to the attention of its employees handling 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 Buyer.

19. FORCE MAJEURE

Prysmian shall not in any event be liable to the Buyer in damages or otherwise for any failure to deliver or delay in the delivery of the Products which arises from any cause beyond Prysmian's reasonable control, including but not limited to shortages of raw materials or components, strikes, lock-outs, other industrial action, acts of warfare (whether or not declared) or acts of God.

20. EXPORT SALES

- 20.1 Where the Products are supplied by Prysmian to a destination outside the UK, this Condition 20 shall apply by way of modification to these Conditions.
- 20.2 Unless otherwise stated in the Contract, the Products are sold FOB, CIF or CIP (as defined in INCOTERMS 2000) at Prysmian's option and Prysmian shall not be required to give notice to the Buyer in accordance with Section 32(3) of the Sale of Goods Act 1979.
- 20.3 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 7 shall not apply.
- 20.4 In the case of FOB UK 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 Prysmian upon request in respect of such VAT.
- 20.5 The Buyer shall be responsible for any import duties and local taxes outside the UK.
- 20.6 The Uniform Laws on International Sales Act 1967 shall not apply to the Contract.

21. LAW

- 21.1 The Contract (including these Conditions) shall be governed by and construed in accordance with English law.
- 21.2 Headings to these Conditions shall be ignored for the purposes of construction.

22. GENERAL

- 22.1 The Buyer shall not be entitled to assign, subcontract or declare any trust in respect of any of its rights or obligations under the Contract without Prysmian's prior written consent.
- 22.2 Prysmian shall be entitled to sub-contract all or any of its rights and obligations under the Contract to a Third Party. Prysmian shall remain fully liable to the Buyer under the Contract.
- 22.3 Prysmian may, without the consent of the Buyer, assign the whole or any part of its rights and obligations under the Contract to any Affiliate. Any such assignment shall be effective when written notice thereof has been given to the Buyer.

- 22.3.1 Prysmian may, without the consent of the Buyer, assign all or any of its rights under this Contract to any other person, trust, fund or other entity. Any such assignment of Prysmian's rights 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 Prysmian's obligations under this Contract. Prysmian 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 Prysmian in all respects in relation to this Contract as if no such assignment had taken place.
- 22.4 Failure by Prysmian to enforce any term of the Contract shall not be deemed to be a waiver of any of its rights under the Contract.
- 22.5 If any provision of the Contract which is not of a fundamental nature is held to be illegal or unenforceable, this shall not affect the validity or enforceability of the remainder of the Contract.
- 22.6 No amendment to the Contract shall be valid unless made in writing and signed by an authorised representative of both the Buyer and Prysmian.
- 22.7 Nothing in the Contract shall confer on any third party any benefit or the right to enforce any term of the Contract.
- 22.8 At Prysmian's sole discretion and only upon written terms and conditions satisfactory to and agreed in advance by Prysmian shall Products be returned to Prysmian as a result of the Buyer's stock cleansing.