

# ITM Communications Ltd STANDARD TERMS & CONDITIONS OF SALE



<b>1. DEFINITIONS</b>	<b>14</b>	<b>WARRANTY</b>
"Goods"	14.1	The Company will make good by repair, or at the Company's option by the supply of a replacement, defects which under proper storage and use appear in the Goods within the period of 12 (twelve) months after the Goods have been delivered or installed whichever shall be the later and arise solely from faults in design or materials or workmanship.
"Services"	All work to be done by the Company as specified or implied in the Order.	The warranty given in this clause is subject to the following provisos namely:
"Order"	Means the Customer's purchase order for the Goods or Services specified in the contract.	14.2 that the Customer has operated the Goods in line with industry best practice.
"Business Day"	Means any day which is not a Saturday, Sunday or a public holiday in the place to which the notice is sent.	14.2.1 that in the case of defects which would have been reasonably apparent to the Customer upon reasonable examination of the Goods on delivery, the Customer shall notify the Company pursuant to clause 11 hereof.
"Company"	Mears ITM Communications Limited, whose registered office is at 41 Alston Drive, Bradwell Abbey, Milton Keynes MK13 3HA.	14.2.2 that where in discharge of its obligation under the warranty given in this clause the Company agrees that the Customer undertake any repair or remedial work on its behalf the cost of such work shall be agreed in writing between the Customer and the Company before the commencement of any such repair or remedial work.
"Contract"	Means any contract for the sale of Goods or Services by the Company to the Customer	14.2.3 In the event that patch leads are installed that are of differing manufacture to the installed structured cabling system, the Customer should be aware that damage can occur to the pins within either the patch panel or outlet. Should this arise, the damage and any subsequent replacement products and/or remedial works will not be covered by any manufacturer or installation warranty.
"Customer"	Means the company or persons referred to in the Order as the party purchasing the Goods and Services.	14.2.4
<b>2. GENERAL</b>		<b>15. SCOPE OF CONTRACT.</b>
2.1 The following terms are the standard terms of contract of the Company. The Company concludes contracts for the supply of Goods and Services subject to these terms only and any person, firm, agency or company seeking to be supplied with Goods or Services by the Company accepts the terms shall govern relations between himself and the Company to the exclusion of any other terms, including conditions warranties or representations, written or oral, express or implied, even if contained in any of the Customer's documents which purports to provide that the Customer's own terms prevail.	14.2.5	Under no circumstances shall the Company have any liability of whatever kind for:
<b>3. ACCEPTANCE</b>		15.1 any defects resulting from wear and tear, accident, improper use by the Customer or use by the Customer except in accordance with the instructions or advice of the Company or the manufacturer of any Goods or neglect or from any instructions or materials provided by the Customer;
3.1 Any Order made by the Customer shall be deemed to be an unqualified acceptance that these terms shall apply to any contract concluded between the Company and the Customer for the supply of Goods and Services, and by dispatching the same the Customer waives his own terms.		15.1.1 any Goods which have been adjusted, modified or repaired except by the Company;
3.2 Written or verbal statements of intent and or instructions to proceed or anything causing ITM to undertake any act with fulfilling the order made by the Customer shall be deemed as unqualified acceptance of the Company's quotation and Terms & Conditions of Sale.		15.1.2 the suitability of any Goods for any particular purpose or use specific conditions whether or not the purpose or conditions were known or communicated to the Company;
<b>4. REFUSAL OF ORDER</b>		15.1.3 any substitution by the Company of any materials or components not forming part of any specification of the Goods agreed in writing by the Company;
4.1 The Company reserves the right at its sole discretion to accept or refuse any Order placed by the Customer on the basis of quotations issued, and in the event of refusal, no damages or expenses of any kind whatsoever shall be payable by the Company to the Customer.		15.1.4 any descriptions, illustrations, specifications, figures as to performance, drawings and particulars of weights and dimensions submitted by the Company contained in the Company's catalogues, price lists or elsewhere since they are merely intended to represent a general idea of the Goods and not to form part of the Contract or be treated as representations;
<b>5. PRICE</b>		15.1.5 any technical information, recommendations, statements or advice furnished by the Company its servants or agents not given in writing in response to a specific written request from the Customer before the Contract is made; or
5.1 The price contained in the Company's quotation is based upon the cost to the Company of labour and materials at the date of such quotation, and in the event of an increase in such cost caused by any reason, the Company shall be entitled to vary its prices accordingly whether or not such increase was foreseeable by the Company. Where a contract is for the supply of fibre optic cable in continuous lengths exceeding 2000 metres the length of cable provided may vary between -0% and +5% of the Order requirement due to manufacturing tolerances and accordingly any such difference will be paid for by the Customer pro rata the cost per metre of the cable stated in the Order.		15.1.7 any variations in the quantities or dimensions of any Goods or changes of their specifications or substitution of any materials or components, if the variation or substitution does not materially affect the characteristics of the Goods, and the substituted materials or components are of a quality equal or superior to those originally specified.
5.2 Where the price includes Services, it is based upon free and uninterrupted access to and possession of fully prepared working areas being made available to the Company during normal working hours. In the event that such access and possession are not made available, or that the working areas are not duly prepared to the Company's requirements for immediate provision of the Services and or installation of the Goods, without prejudice to any other right which the Company may have the Company shall at its own discretion be entitled to vary the price accordingly.		<b>16. EXTENT OF LIABILITY</b>
5.3 Unless otherwise stated in the Company's quotation the cost of delivery from the Company's works to the place of delivery stated in such quotation is not included in the price.		16.1 The Company shall have no liability to the Customer for any loss or damage of any nature, including but not limited to any consequential loss, loss of contracts, profits or business, or for any extra operating expenses or other indirect loss arising from any breach of any express or implied warranty or condition of the Contract or any negligence, breach of statutory or other duty on the part of the Company or in any other way out of or in connection with the performance or purported performance of or failure to perform the Contract except for:-
5.4 Prices are subject to alteration and revision without notice in the case of errors and omissions.		16.1.1 death or personal injury resulting from the Company's negligence, and
<b>6. VALUE ADDED TAX</b>		16.1.2 as expressly stated in these conditions.
6.1 The Company shall be entitled to charge the amount of VAT, at the prevailing rate, chargeable at the time of invoice.		16.2 If the Customer establishes that any Goods have not been delivered, have been delivered damaged, are not of the correct quantity or do not comply with their description the Company shall, at its option, replace with similar Goods any Goods which are missing, lost or damaged or do not comply with their description, allow the Customer credit or their invoice value or repair any damaged Goods.
<b>7. PAYMENTS</b>		16.3 If the Customer establishes that any Goods are defective the Company shall, at its own option, replace with similar Goods or repair any defective Goods, allow the Customer credit for their invoice value or to the extent that the Goods are not of the Company's manufacture, assign to the Customer (so far as the Company is able to do so) any warranties given by the manufacturer of the Goods to the Company.
7.1 Unless otherwise stated in the Company's quotation all prices are strictly net and payment shall be made within 30 (thirty) days of receipt of the Company's invoice or invoices without any discount or other reduction and without deferral on account of disputes or cross claims.		16.4 The delivery of any repaired or replacement Goods shall be at the Company's premises or other delivery point specified for the original Goods.
7.2 The Company may at its sole discretion require at any time by invoice that all or part of the price shall be paid in advance or on account and sums so invoiced shall be immediately payable, any balance remaining payable as otherwise provided herein.		16.5 Where the Company is liable in accordance with this condition in respect of only some or part of the Goods the Contract shall remain in full force and effect in respect of the other or other parts of the Goods and no set-off or other claim shall be made by the Customer against or in respect of such other or other parts of the Goods.
7.3 Should the Customer default in payment for whatever reason on the due date of any sum, without prejudice to any other right which the Company may have, the Company shall be entitled to be paid interest on such sum accruing from the due date at 4% per annum above Barclays Bank plc. base rate from time to time.		16.6 No claim against the Company shall be entertained for any defect arising from any design or specification provided or made by the Customer or if any adjustments, alterations or other work has been done to the Goods by any person except the Company.
<b>8. INSOLVENCY</b>		16.7 The Company shall not be liable where any Goods the price of which does not include carriage are lost or damaged in transit and all claims by the Customer shall be made against the carrier. Replacements for such lost or damaged Goods will, if available, be supplied by the Company at the prices ruling at the date of dispatch.
8.1 In the event that any of the following occur:		16.8 In no circumstances shall the liability of the Company to the Customer under this condition exceed the invoice value of the Goods.
8.2 Any distress or execution levied on the property of the Customer; or		<b>17. IMPOSSIBILITY OF PERFORMANCE AND CANCELLATION</b>
8.3 The Customer offers to make an arrangement with or for the benefit of its creditors; or		17.1 The Company shall be entitled by written notice to the Customer to cancel any contract concluded between the Company and the Customer should the Company be hindered or prevented by any cause beyond its reasonable control from performing the same, including a cause which renders performance commercially difficult or expensive.
8.4 Bankruptcy proceedings are instituted by or against the Customer; or		17.2 Orders for Goods which have to be made especially for the Customer will be charged in full unless written notice of cancellation is received not later than 8 (eight) weeks before the expected delivery date quoted in the Company's Order acknowledgement and manufacture of them or any components for them has not commenced at the date of that notice. Orders for stock items may be cancelled by written notice at any time before the Goods are allocated to the Contract but if a cancellation notice is received after the Goods have been allocated to the Contract then a packing and handling charge will be payable by the Customer.
8.5 Being a limited company, the Customer has a receiver or administrator appointed over its undertakings or assets or any part thereof; or		17.3 If the Goods are manufactured in accordance with any design or specification provided or made by the Customer the Customer shall compensate the Company in full on demand for all claims, expenses and liabilities of any nature in connection with them, including any claim, whether actual or alleged, that the design or specification infringes the rights of any third party.
8.6 Save for the purposes of a reconstruction or amalgamation without insolvency, the Customer goes into liquidation or shall be unable to pay its debts as they fall due or is otherwise insolvent; or		<b>18. STAND DOWN</b>
8.7 The equivalent or something similar occurs in any jurisdiction in which the Customer resides or operates, then, the Company shall be entitled without prejudice to its other rights, forthwith to suspend all further deliveries of Goods and or Services until such time as the Company sees fit to determine the Contract or any unfulfilled part thereof 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.		18.1 In the event that the Company is unable to install the Goods and/or provide the Services (where goods are provided free-issue) due to no fault of its own the Customer shall pay the Company the full amount shown on the quotation and the Customer shall submit a further Order for the installation provided that the Company shall at its sole discretion be entitled to increase the original quote price.
<b>9. TIME FOR DELIVERY</b>		<b>19. SUB-CONTRACTING</b>
9.1 Any times stated or agreed by the Company for delivery, dispatch or completion either in its quotation or by any other means are not of the essence of any contract, either as to supply of Goods or as to Services. Such times are given by way of general information only and in the event that delivery, dispatch or completion is not made for any reason whatsoever at the times so stated, the Company shall not be liable for any loss or damage whatsoever sustained by the Customer.		19.1 The Company shall be entitled to sub-contract or assign without consent all or any of its obligations hereunder.
9.2 In the event that the Customer does not take delivery of the Goods or Services forthwith upon being notified by the Company that manufacture has been completed, the Company shall be entitled to charge and recover reasonable storage rates which shall be added to the price stated in the Company's quotation and shall be paid in accordance with clause 7 of these Terms. The storage will be at the Customer's risk and will not entitle the Customer to postpone payment for the Goods.		<b>20. FRESH INSTRUCTIONS</b>
<b>10. DELIVERY AND RISK</b>		20.1 The Customer may, prior to dispatch of the Goods or any part thereof from the Company's works but in good time to enable the Company to withhold such dispatch, give notice in writing to the Company requesting that the Goods shall be altered to meet the Customer's requirements or that other or new arrangements be made as to the place of delivery of the Goods. The Company shall use its best endeavours to comply with any such reasonable request, provided always that in complying with any such request the Company shall be entitled to vary delivery times and to vary the price accordingly, as well as to impose such other conditions as the Company at its sole discretion may require.
10.1 It shall be the responsibility of the Customer entirely at his own cost and at his own risk, to unload. Where the price includes Services, it shall further be the responsibility of the Customer at his own cost to provide adequate dry and secure storage of the Goods pending and during such installation. All risks in the Goods shall pass to the Customer upon completion of delivery, at which time a delivery note will usually be handed to the Customer or his representative or left with the Goods. The Company's liability to the Customer for missing or damaged Goods shall be limited to the invoice value of the Goods and this clause shall only apply if the Company is notified of such an event in accordance with clause 11 hereof.		<b>21. TERMINATION</b>
<b>11. CLAIMS NOTIFICATION</b>		21.1 The Company may without incurring further liability terminate the Contract by written notice if in its reasonable opinion the Customer is unable to make payment in accordance with the terms hereof. Without prejudice to any other right which the Company may have, upon such termination the Company shall be entitled to receive payment on a quantum meruit basis in respect of work completed or in progress at the date of termination.
11.1 The Customer must inspect the Goods as soon as is reasonably practicable after delivery and shall within 5 days of delivery give notice to the Company in detail of any defect in the Goods or of any other complaint which the Customer may have in relation to the Goods.		<b>22. VARIATION OF TERMS</b>
11.2 If the Company fails to give such notice then the Goods shall be deemed to be in all respects in accordance with the contract and free from defect and the Customer shall be deemed to have accepted the Goods accordingly.		22.1 No variation of these terms or of any quotation or of any contract shall be valid unless agreed to in writing and signed by a Director.
11.3 In the event that the Customer establishes to the Company's reasonable satisfaction that the Goods are not in accordance with the contract or are defective, the Customer's sole remedy in respect of such non-accordance or defects shall be limited to the replacement of the Goods or where sums are owed by the Customer to the Company the issue of a credit note against return of the Goods.		<b>23. FURTHER SERVICES</b>
11.4 Queries regarding shortages of Goods must be made within 5 working days of the delivery date and must be accompanied by the delivery note.		23.1 The terms hereof shall apply mutatis mutandis in regard to any further Services after completion of the contract which the Company may in its discretion perform.
11.5 After acceptance the Customer shall not be entitled to reject Goods which are not in accordance with the contract.		<b>24. WAIVER</b>
11.6 Except as set out above in no circumstances shall the Company be liable to compensate the Customer in damages or otherwise for non-delivery or late delivery of the Goods or any of them for whatever reason or for any loss consequential or otherwise arising from non-delivery or late delivery.		24.1 The failure on the part of the Company to exercise or enforce any rights conferred under the contract shall not be deemed to be a waiver of any such right nor operate so as to bar the exercise or enforcement thereof or of any other right on any later occasion.
11.7 Notwithstanding that the Company may have delayed or failed to deliver the Goods (or any of them) promptly the Customer shall be bound to accept delivery and to pay for the Goods in full provided that delivery shall be tendered at any time within 4 weeks of the Delivery Date.		<b>25. ASSIGNMENT</b>
11.8 Goods must be returned to the Company in their original condition and in their original packaging within 10 days of delivery in order to be entitled to a refund or credit note as may be applicable.		25.1 The Customer shall not assign any of its rights or obligations under the contract without the Company's prior written consent. The Company shall have the right to assign or otherwise delegate all or any of its rights or obligations under the contract upon notification to the Customer.
11.9 Where Goods are returned the Company reserves the right to levy a handling restocking fee. Goods accepted for return will be credited at invoice value less the applicable restocking fee.		<b>26. NOTICES</b>
<b>12. TITLE AND PROPERTY</b>		26.1 Any notice given hereunder shall be in writing and signed by or on behalf of the party giving it and shall be served by delivering it personally or by sending it by pre-paid recorded delivery or Special Delivery to the Registered Office address of the Company.
12.1 Notwithstanding the passing of risk in the Goods title and property in the Goods supplied against the quotation shall not pass to the Customer until payment has been received by the Company of the full purchase price for the Goods and all other amounts due from the Customer to the Company or in the case of the Company accepting tender of a cheque bill of exchange or promissory note, until the same has been honoured.		26.1.1 If delivered personally, at the time of delivery.
12.2 If payment has not been received at any time after payment is due, the Company may require the products to be returned at the Customer's expense or be entitled to enter the Customer's premises to remove or check the stock of the Goods.		26.1.2 In the case of recorded delivery or special delivery, two working days after the date of posting.
12.3 Until title and property in the Goods passes to the Customer the Customer shall hold the Goods as the Company's bailee and shall store or mark them so that they can at all times be identified as the Company's property.		Provided that if deemed receipt occurs before 9 a.m. on a Business Day the notice shall be deemed to have been received at 9 a.m. on that day and if deemed receipt occurs after 5 p.m. on a Business Day the notice shall be deemed to have been received on the next Business Day.
12.4 The Company shall be entitled at any time before title and property passes to the Customer to enter the Customer's premises to repossess and move any of the Goods and in doing so shall be entitled to dismantle any Goods from equipment or products to which they have been attached without being liable for any damage caused thereby whereupon the Customer's right to use or deal in the Goods shall terminate.		<b>27. CONTRACTS (RIGHTS OF THIRD PARTIES) ACT 1999</b>
12.5 Until title and property in the Goods passes to the Customer any proceeds of the sale of the Goods by the Customer shall be held in trust for the Company.		27.1 For the avoidance of doubt nothing in these standard terms of contract shall confer on any third party any benefit or the right to enforce any term of the Contract.
12.6 The Company shall be entitled to maintain an action for the price of any Goods notwithstanding that property and title in them has not passed to the Customer.		<b>28. INTERPRETATION</b>
12.7 The Customer may not withhold payment of any invoice or other amount due to the Company by reason of any right of set-off or counterclaim which the Customer may have or alleges to have or for any reason whatever.		28.1 The contract shall in all respects be construed and have effect according to English Law, and the parties agree to submit to the jurisdiction of the English Courts.
<b>13. ON-SITE INSTALLATION</b>		
13.1 The Customer will ensure that premises where the Company's employees or agents are installing Goods, and the plant and equipment thereon, are in a fit condition for the sale carrying out of the installation work and shall indemnify the Company against all loss suffered by the Company, and against its employees or agents or any damage to the Company's property caused by the unfitness of such premises, plant or equipment.		