



# Standard Terms and Conditions of Supply

## 1. Definitions

In these Conditions:

**Buyer** means the person, firm or company whose order is accepted by the Seller.

**Contract** means the contract for the supply of goods and/or services.

**Conditions** means the terms and conditions set out in this document as amended from time to time in accordance with Clause 23.

**Force Majeure Event** has the meaning given to it in Clause 13.

**Goods** means the goods that are the subject of this Contract and which are further described in the SOA.

**Services** are to the services that are the subject of this contract and which are further described in the SOA.

**Seller** means **AFL Telecommunications Europe Ltd** (registered no 03971894) whose registered office is at Unit H, Newcombe Drive, Hawksworth Trading Estate, Swindon, Wiltshire, SN2 1DZ.

**SOA** means the sales order acknowledgement issued by the Seller to the Buyer to which these terms and conditions apply.

**Specification** means any specification for the Goods, including any related plans and drawings, that is agreed in writing between the Buyer and the Seller.

**VAT** means value added tax or any equivalent tax chargeable in the UK or elsewhere.

**Writing** means in writing and signed by an authorised signatory of the Seller.

## 2. Entire Agreement

2.1 All contracts shall be deemed to incorporate these Conditions which represent the complete Contract of the Seller and Buyer except:

2.1.1 for contracts or parts of contracts where AFL supplies the services of a field engineer or hires installation equipment to the Buyer where AFL's Terms and Conditions for the Supply of Field Engineers and/or Terms of Hire of Installation Equipment respectively shall be incorporated into the Contract and shall take precedence over these Conditions in matters relating to the services of a field engineer or to the hire of installation equipment as the case may be; or

2.1.2 as otherwise specifically agreed in Writing.

2.2 Without prejudice to Clause 2.1.1 and 2.1.2 these Conditions shall govern the Contract to the exclusion of any other terms and conditions stipulated, incorporated, or referred to by the Buyer in any order, correspondence, negotiations or any other way.

## 3. Acceptance

No order by the Buyer shall be deemed to be accepted by the Seller unless and until confirmed by an official SOA unless the Seller's quotation specifies that it is a bid in response to an invitation for bids in which event the order or award shall constitute acceptance of the bid in accordance with the bid terms. Accepted orders cannot be cancelled except where agreed in Writing, and on terms that the Buyer shall indemnify the Seller in full against all loss (including lost profit), costs (including the cost of labour and materials used), damages, charges and expenses incurred by the seller as a result of cancellation. Where an export licence is required in order to permit the Seller to supply the Goods acceptance is conditional on the grant of an export licence from the USA Department of Commerce and/or the UK Department of Trade and Industry.

## 4. Specification, etc.

Where the Seller supplies Goods or Services that are not to its standard specifications the Seller relies upon the Buyer supplying all necessary relevant and accurate specifications particulars and information. Any errors or omissions contained in such specification particulars and information supplied at any time resulting in any loss or damage to the Buyer shall be the Buyer's sole responsibility. Any drawings, illustrations, specifications or other material submitted by the Seller to the Buyer remains the property of the Seller and must not be communicated to a third party without the Seller's consent in Writing.

## 5. Prices

5.1 The price for the supply of the Goods and/or Services shall:

5.1.1 be as set out in the SOA (**Price**). The Price does not include costs that may arise from the requirement for type testing, bonds and guarantees, extra documentation, witnessing routine testing of cables, pre-shipment inspections or factory acceptance inspections or any other costs not expressly set out in the SOA;

5.1.2 exclude VAT; and

5.1.3 exclude the costs and charges of packaging, insurance and transport of the Goods, which shall be invoiced to the Buyer.

## 6. Customs, Duties & Taxes

6.1 All customs and excise duties import and/or export duties and all other taxes tariffs and surcharges of any nature whatsoever now or hereafter levied or imposed in any country or territory either directly or indirectly in respect of the supply of the Goods or Services shall be borne by the Buyer and are payable in addition to the Price.

6.2 The Buyer shall additionally be liable to pay to the Seller at the prevailing rate any amounts in respect of value added tax (VAT), subject to the receipt of a valid VAT invoice.

## 7. Payment Terms

7.1 The Buyer shall pay the Price in full within thirty days of the date of the Seller's invoice. Time of payment shall be of the essence. The SOA will state if a letter of credit is required in which case the Seller will not be obliged to carry out any part of the Contract until such letter of credit is provided to the satisfaction of the Seller.

7.2 If payment is not made on the due date, the Seller shall be entitled, without limiting any other rights it may have, to charge interest on the outstanding amount (both before and after any judgement) at the rate of 4 % above the Bank of England base rate from time to time from the due date until the outstanding amount is paid in full.

## 8. Delivery

8.1 Unless otherwise set out in the SOA, all sales are FCA (Incoterms 2010), Swindon, UK (or such other location as may be specified by the Seller from time to time) and delivery of the Goods to the carrier shall constitute delivery thereof to the Buyer. Time of delivery is not of the essence and any period or date for delivery or performance under the Contract is approximate only and is not a contractual commitment.

8.2 AFL cable will be supplied on non-returnable wooden drums in pre-determined quantities (lengths). Cables will be supplied either machine wound or layer wound. Unloading the materials and disposing of any materials is the responsibility of the Buyer. Unless otherwise agreed in Writing the actual metre quantity is supplied with an invoice tolerance per individual drum of + 2% / -2% and delivery of cable within this tolerance shall be deemed to be delivery of the contractual amount.

8.3 If the Seller fails to deliver the Goods, its liability shall be limited to the costs and expenses incurred by the Buyer in obtaining replacement goods of similar description and quality in the cheapest market available, less the price of the Goods. The Seller shall have no liability for any failure to deliver the Goods to the extent that such failure is caused by a Force Majeure Event or the Buyer's failure to provide the Seller with adequate delivery instructions or any other instructions that are relevant to the supply of the Goods.

8.4 If the Buyer fails to take or accept delivery of the Goods within three Business Days of the Seller notifying the Buyer that the Goods are ready, then, except where such failure or delay is caused by a Force Majeure Event or the Seller's failure to comply with its obligations under the Contract:

8.4.1 delivery of the Goods shall be deemed to have been completed at 9.00 am on the third Business Day after the day on which the Seller notified the Buyer that the Goods were ready; and

8.4.2 the Seller shall store the Goods until delivery takes place, and charge the Buyer for all related costs and expenses (including insurance).

8.5 If ten Business Days after the day on which the Seller notified the Buyer that the Goods were ready for delivery the Buyer has not taken or accepted delivery of them, the Seller may resell or otherwise dispose of part or all of the Goods and, after deducting reasonable storage and selling costs, account to the Buyer for any excess over the price of the Goods or charge the Buyer for any shortfall below the price of the Goods.

8.6 The Seller may deliver the Goods by instalments, which shall be invoiced and paid for separately. Any delay in delivery or defect in an instalment shall not entitle the Buyer to cancel any other instalment.

## 9. Invoicing

The Seller may invoice the Buyer in respect of the supply of Goods at the earlier of the following dates: the date the Goods are shipped or the date the Goods are ready for shipment if they are held at the Seller's factory by instructions of the Buyer or for lack of shipping instructions from the Buyer. The Seller may invoice the Buyer for the supply of Services at the earlier of the following dates: the date of the commencement of performance, or the date indicated in the Contract if performance is delayed by the instructions of the Buyer or by some other reason beyond the control of the Seller.

## 10. Passing of Risk and Title

10.1 The risk in the Goods shall pass to the Buyer on completion of delivery.

10.2 Title to the Goods shall not pass to the Buyer until the earlier of:

10.2.1 the Seller receives payment in full (in cash or cleared funds) for the Goods and any other goods that the Seller has supplied to the Buyer in respect of which payment has become due, in which case title to the Goods shall pass at the time of payment of all such sums; and

10.2.2 the Buyer resells the Goods, in which case title to the Goods shall pass to the Buyer at the time specified in clause 10.4.

10.3 Until title to the Goods has passed to the Buyer, the Buyer shall:

10.3.1 store the Goods separately from all other goods held by the Buyer so that they remain readily identifiable as the Seller's property;

10.3.2 not remove, deface or obscure any identifying mark or packaging on or relating to the Goods;

10.3.3 maintain the Goods in satisfactory condition and keep them insured against all risks for their full price from the date of delivery;

10.3.4 notify the Seller immediately if it becomes subject to any of the events listed in clause 15; and

10.3.5 give the Seller such information relating to the Goods as the Seller may require from time to time.

10.4 Subject to clause 10.5, the Buyer may resell or use the Goods in the ordinary course of its business (but not otherwise) before the Seller receives payment for the Goods. However, if the Buyer resells the Goods before that time:

10.4.1 it does so as principal and not as the Seller's agent; and

10.4.2 title to the Goods shall pass from the Seller to the Buyer immediately before the time at which resale by the Buyer occurs.

10.5 If before title to the Goods passes to the Buyer the Buyer becomes subject to any of the events listed in clause 15.1, then, without limiting any other right or remedy the Seller may have:

10.5.1 the Buyer's right to resell the Goods or use them in the ordinary course of its business ceases immediately; and

10.5.2 the Seller may at any time:

10.5.2.1 require the Buyer to deliver up all Goods in its possession that have not been resold, or irrevocably incorporated into another product; and

10.5.2.2 if the Buyer fails to do so promptly, enter any premises of the Buyer or of any third party where the Goods are stored in order to recover them.

## 11. Warranties and Liabilities

11.1 The Seller warrants that on delivery, and for a period of 12 months from the date of delivery (warranty period), the Goods shall:

11.1.2 conform in all material respects with their description and any applicable Specification; and

11.1.3 be free from material defects in design, material and workmanship; and

11.1.4 be of satisfactory quality (within the meaning of the Sale of Goods Act 1979); and

11.1.5 be fit for any purpose held out by the Seller in writing.

11.2 Subject to clause 11.3, if:

11.2.1 the Buyer gives notice in writing to the Seller during the warranty period within a reasonable time of discovery that some or all of the Goods do not comply with the warranty set out in clause 11.1;

11.2.2 the Seller is given a reasonable opportunity of examining such Goods; and

11.2.3 the Buyer (if asked to do so by the Seller) returns such Goods to the Seller's place of business at the Buyer's cost, the Seller shall, at its option, repair or replace the defective Goods, or refund the price of the defective Goods in full, but shall not be responsible for the cost of any re-installation or any other related Services.

11.3 The Seller shall not be liable for the Goods' failure to comply with the warranty set out in clause 11.1 in any of the following events:

11.3.1 the Buyer makes any further use of such Goods after giving notice in accordance with clause 11.2;

11.3.2 the defect arises because the Buyer failed to follow the Seller's oral or written instructions as to the storage, commissioning, installation, use and maintenance of the Goods or (if there are none) good trade practice regarding the same;

11.3.3 the defect arises as a result of the Seller following any drawing, design or Specification supplied by the Buyer;

11.3.4 the Buyer alters or repairs such Goods without the written consent of the Seller;

11.3.5 the defect arises as a result of fair wear and tear, wilful damage, negligence, abnormal use or storage, or working conditions; or

11.3.6 the Goods differ from their description as a result of changes made to ensure they comply with applicable statutory or regulatory requirements.

11.3.7 Except as provided in this clause 11, the Seller shall have no liability to the Buyer in respect of the Goods' failure to comply with the warranty set out in clause 11.1.

11.3.8 The terms implied by sections 13 to 15 of the Sale of Goods Act 1979 are, to the fullest extent permitted by law, excluded from the Contract.

11.3.9 These Conditions shall apply to any repaired or replacement Goods supplied by the Seller.

11.4 Services will be provided with reasonable care and skill. Where any Services are held to be defective, the Seller limits its liability to the reinstallation of the Goods only.

## 12. Limitation of Liability

12.1 Nothing in these Conditions shall limit or exclude the Seller's liability for:

12.1.1 death or personal injury caused by its negligence, or the negligence of its employees, agents or subcontractors (as applicable);

12.1.2 fraud or fraudulent misrepresentation;

12.1.3 breach of the terms implied by section 12 of the Sale of Goods Act 1979; or

12.1.4 any matter in respect of which it would be unlawful for the Seller to exclude or restrict liability.

12.2 Subject to clause 12.1:

12.2.1 the Seller shall under no circumstances whatsoever be liable to the Buyer, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, for any:

12.2.1.1 loss of profit; or

12.2.1.2 loss of use of the Goods; or

12.2.1.3 loss of goodwill; or

12.2.1.4 loss of business; or



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- 12.2.1.5 loss of business opportunity; or  
12.2.1.6 loss of anticipated saving; or  
12.2.1.7 loss or corruption of data or information; or  
12.2.1.8 cost of reinstatement of the Goods; or  
12.2.1.9 special, indirect or consequential damage, or any other indirect or consequential loss arising under or in connection with the Contract; and
- 12.2.2 the Seller's total liability to the Buyer in respect of all other losses arising under or in connection with the Contract, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, shall in no circumstances exceed the value of the Goods and/or Services subject to the Contract.

### **13. Force Majeure**

- 13.1 The Seller does not accept any liability incurred under the Contract wherever and to the extent to which the fulfilment of the Seller's obligations is prevented frustrated impeded and/or damaged due to any cause whatever beyond the control of the Seller, such to include, without prejudice to the generality of the following:
- 13.1.1 act of God, fires, floods, explosion or other casualties  
13.1.2 wars, riots, terrorist attacks, civil commotion, embargoes, governmental regulations or inability to obtain necessary materials from the Seller's usual sources of supply;  
13.1.3 shortage of transport facilities or delays in transit;  
13.1.4 existing or future strikes or other labour troubles affecting the performance hereof whether involving the Seller's employees or employees of others and regardless of the responsibility or fault on the part of the employers; or  
13.1.5 failure in whole or in part of power supplies.

### **14. Indemnity**

The Buyer agrees to indemnify the Seller against any loss, damage, costs (including legal costs), claims or expenses incurred by the Seller in respect of any liability established against the Seller by a third party arising out of or in connection with the Contract. When Goods are made or adapted by the Seller in accordance with the Buyer's specifications, the Buyer shall promptly fully and effectively indemnify and keep indemnified the Seller against all costs (including legal costs), claims and expenses incurred by the Seller in respect of the infringement or alleged infringement by such Goods of any patents, registered designs, trade marks or other rights belonging to third parties.

### **15. Termination**

- 15.1 Without limiting its other rights or remedies, the Seller may terminate this Contract with immediate effect by giving written notice to the Buyer if:
- 15.1.1 the Buyer commits a material breach of any term of the Contract and (if such a breach is remediable) fails to remedy that breach within 14 days of that party being notified in writing to do so;  
15.1.2 the Buyer takes any step or action in connection with its entering administration, provisional liquidation or any composition or arrangement with its creditors (other than in relation to a solvent restructuring), being wound up (whether voluntarily or by order of the court, unless for the purpose of a solvent restructuring), having a receiver appointed to any of its assets or ceasing to carry on business or, if the step or action is taken in another jurisdiction, in connection with any analogous procedure in the relevant jurisdiction;  
15.1.3 the Buyer suspends, threatens to suspend, ceases or threatens to cease to carry on all or a substantial part of its business; or  
15.1.4 the Buyer's financial position deteriorates to such an extent that in the Seller's opinion the Buyer's capability to adequately fulfil its obligations under the Contract has been placed in jeopardy.
- 15.2 Without limiting its other rights or remedies, the Seller may suspend provision of the Goods under the Contract or any other contract between the Buyer and the Seller if the Buyer becomes subject to any of the events listed in clause 15.1.1 to clause 15.1.4, or the Seller reasonably believes that the Buyer is about to become subject to any of them, or if the Buyer fails to pay any amount due under this Contract on the due date for payment.
- 15.3 Without limiting its other rights or remedies, the Seller may terminate the Contract with immediate effect by giving written notice to the Buyer if the Buyer fails to pay any amount due under the Contract on the due date for payment.
- 15.4 On termination of the Contract for any reason the Buyer shall immediately pay to the Seller all of the Seller's outstanding unpaid invoices and interest.
- 15.5 Termination of the Contract shall not affect any of the parties' rights and remedies that have accrued as at termination, including the right to claim damages in respect of any breach of this Contract that existed at or before the date of termination.
- 15.6 Any provision of the Contract that expressly or by implication is intended to come into or continue in force on or after termination shall remain in full force and effect.

### **16. Delivery by Instalments**

Where goods are to be delivered by instalments each delivery shall constitute a separate contract and failure by the Seller to deliver any one or more of the instalments or any claim by the Buyer in respect of any one or more instalments shall not entitle the Buyer to treat the whole contract as repudiated.

### **17. Buyer's Property**

Any material or property of the Buyer or material or property supplied to the Seller by or on behalf of the Buyer is supplied entirely at the Buyer's risk and the Seller will not be liable or held responsible for any loss or damage to such material or property whether or not attributable to the acts, defaults or negligence of the Seller or any of the Seller's employees or agents.

### **18. Disposal of Waste Materials**

The Buyer shall be responsible for the safe disposal (in accordance with all applicable laws from time to time in force) of all waste materials (including, but not limited to, packaging, cable off-cuts and fibre off-cuts) that arise from or are comprised in the Goods and shall indemnify the Seller against all loss, damage, costs (including legal and other professional fees on an indemnity basis), claims or expenses incurred by the Seller as a result of the breach or non observance by the Buyer of its obligations under this clause. The Seller will at the request of the Buyer provide to the Buyer all information which the Buyer reasonably requires in order to comply with its obligations under this clause"

### **19. Designs and Installation Equipment**

- 19.1 Where the Goods include the supply of SkyWrap®:
- 19.1.1 The Seller shall produce a SkyWrap cassette plan with information to be supplied by the Buyer. The customer must provide formal approval of the cassette plan before manufacture can commence, however if no formal approval of the cassette plan is received then the Buyer's order shall be deemed as the acceptance of the cassette plan;
- 19.1.2 To enable the Seller to prepare the required cassette plan, the Buyer shall complete document QD-10180 ("SkyWrap Questionnaire") and provide route details, tower drawings and profiles;
- 19.1.3 The price for SkyWrap assumes the use of the Seller's standard accessories, materials and installation equipment is used. Prices do not include non-standard items unless expressly stated on the SOA.
- 19.2 Where the Goods include supply of designs of routes for either ADSS, OPGW and/or Duct cable or a combination thereof (Routes); where no formal approval of the Routes is received by the Seller, the Buyer's order shall be deemed to be acceptance of the proposed Routes.

### **20. Confidential Information**

20.1 Each party undertakes that it shall not at any time during this Contract, and for a period of five years after termination of this Contract, disclose to any person any confidential information concerning the business, affairs, customers, clients or suppliers of the other party or of any member of the group of companies to which the other party belongs, except as permitted by clause 20.2.

- 20.2 Each party may disclose the other party's confidential information:
- 20.2.1 to its employees, officers, representatives or advisers who need to know such information for the purposes of carrying out the party's obligations under this Contract. Each party shall ensure that its employees, officers, representatives or advisers to whom it discloses the other party's confidential information comply with this clause 20; and
- 20.2.2 as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.
- 20.3 No party shall use any other party's confidential information for any purpose other than to perform its obligations under this Contract.

### **21. Assignment and Other Dealings**

The Customer shall not assign, transfer, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with any of its rights and obligations under this Contract.

### **22. Entire Agreement**

22.1 This Contract constitutes the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.

22.2 Each party acknowledges that in entering into this agreement it does not rely on, and shall have no remedies in respect of, any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in this agreement. Each party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in this Contract.

### **23. Variation**

No variation of this Contract shall be effective unless it is in writing and signed by the parties (or their authorised representatives).

### **24. No Partnership or Agency**

20.1 Nothing in this Contract is intended to, or shall be deemed to, establish any partnership or joint venture between any of the parties, constitute any party the agent of another party, or authorise any party to make or enter into any commitments for or on behalf of any other party.

20.2 Each party confirms it is acting on its own behalf and not for the benefit of any other person.

### **25. Further Assurance**

At its own expense, each party shall, and shall use all reasonable endeavours to procure that any necessary third party shall, promptly execute and deliver such documents and perform such acts as may be required for the purpose of giving full effect to this Contract.

### **26. Variation**

No variation of this Contract shall be effective unless it is in writing and signed by the parties (or their authorised representatives).

### **27. Waiver**

No failure or delay by a party to exercise any right or remedy provided under the Contract or by law shall constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.

### **28. Severance**

If any provision or part-provision of the Contract is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this clause shall not affect the validity and enforceability of the rest of the Contract.

### **29. Notices**

- 29.1 Any notice given to a party under or in connection with the Contract shall be in writing, addressed to that party at its registered office (if it is a company) or its principal place of business (in any other case) or such other address as that party may have specified to the other party in writing in accordance with this clause, and shall be delivered personally, sent by pre-paid first class post or other next working day delivery service, commercial courier, or email.
- 29.2 A notice shall be deemed to have been received:
- 29.2.1 if delivered personally, when left at the address referred to in clause 29.1; or  
29.2.2 if sent by pre-paid first class post or other next working day delivery service, at 9:00 am on the second Business Day after posting; or  
29.2.3 if sent by pre-paid air mail providing proof of postage, at 9:00am on the fifth Business Day after posting or at the time recorded by the delivery service, if applicable; or  
29.2.4 if delivered by international or domestic commercial courier, on the date and at the time that the courier's delivery receipt is signed; or  
29.2.5 if sent by email, one Business Day after transmission.
- 29.3 where a notice is sent by email:
- 29.3.1 from the Buyer to the Seller the email address is: Contract.Notices@AFLGlobal.com.  
29.3.2 from the Seller to the Buyer, to the email address provided by the Buyer to the Seller.
- 29.4 The provisions of this clause shall not apply to the service of any proceedings or other documents in any legal action.

### **30. Rights and Remedies**

Except as expressly provided in this Contract, the rights and remedies provided under this Contract are in addition to, and not exclusive of, any rights or remedies provided by law.

### **31. Third Party Rights**

For the avoidance of doubt nothing in this Contract shall confer on any third party any benefit or the right to enforce any term of this Contract and the provisions of The Contracts (Rights of Third Parties) Act 1999 are hereby excluded.

### **32. English Law**

The formation, construction and performance of all contracts for supply shall be governed in all respects by English Law. The Buyer and the Seller hereby agree to submit to the exclusive jurisdiction of the English Courts.

### **33. Disputes**

Any dispute arising under or in connection with this Contract shall be referred to arbitration at the London Chamber of Arbitration.