

AX COLEMAN - General Sales Conditions

Terms and Conditions of Sales

1. Definitions

1.1 In these Conditions, unless the context otherwise requires: "Acknowledgment" means the acknowledgment of the Buyer's order to purchase Goods as provided by the Company to the Buyer. "Buyer" means the party to whom the Company agrees to supply the Goods.

"Company" means AX Coleman Pte Ltd, company number 200716603Z, having its registered office at 33 Ubi Avenue 3 #08-50 Vertex Tower A Singapore 408868.

"Conditions" means these terms and conditions of sale and any other terms and/or conditions as set out in a Quotation in respect of the Goods, as may be varied by the terms of an Acknowledgment.

"Contract" means each contract formed between the Company and the Buyer in respect of the sale of Goods by the Company to the Buyer.

"Goods" means all goods to be supplied by the Company to the Buyer.

"Quotation" means a quotation in respect of the Goods provided by the Company to the Buyer.

2. Application of Conditions

2.1 The Conditions will apply to all sales of Goods by the Company to the Buyer to the exclusion of all other terms and conditions, including any terms or conditions which the Buyer may purport to apply under any purchase order, confirmation of order or similar document.

2.2 No Quotation, advertisement or issue of a catalogue by the Company will constitute an offer to sell any Goods to the Buyer or to any other person.

2.3 All orders for Goods submitted by the Buyer to the Company will be deemed to be an offer by the Buyer to purchase Goods pursuant to the Conditions and will not be deemed to have been accepted by the Company unless and until the Company delivers to the Buyer an Acknowledgment in respect of such order, or delivers the Goods to the Buyer, and then only on the terms of the Contract.

2.4 Any order form sent by the Buyer to the Company and accepted by the Company will not constitute an acceptance of any terms or conditions contained in that order form, but will (once accepted by the Company under clause 2.3) constitute an individual and legally binding contract between the Company and the Buyer subject to the Conditions only.

2.5 The Conditions will apply to each order by the Buyer for successive deliveries of Goods, and each such order will be treated as an individual and legally binding contract entered into between the Company and any Buyer in respect of the Buyer's purchase of Goods. Any disputes arising out of or in connection with the delivery of any Goods made pursuant to a Contract between the Buyer and the Company will not affect the Buyer's obligations to the Company under any other individual contract (including any Contract) between the Buyer and the Company.

2.6 Any purported variation to the Conditions or the terms of any Contract by the Buyer will be ineffective unless agreed in writing and signed by an authorised representative of the Company.

3. Alteration

3.1 The Company reserves the right to amend these Conditions from time to time by giving written notice of such alteration to the Buyer, and such amended Conditions will apply to each order for the purchase of Goods submitted by the Buyer following the giving of such notice.

3.2 The Company reserves the right to make improvements or non-material modifications to any Goods or any part of the Goods.

3.3 The Company reserves the right to freely assign or subcontract any contract or purchase order or any part thereof, to any subsidiary or affiliate of the Company or to any legal successor as a result of a legal reorganization such as spin-off, merger or solvent amalgamation. The Buyer shall in no event be entitled to claim any right of termination of any contract or purchase order or to any indemnity whatsoever based on such assignment. The Buyer shall not be entitled to assign any of its rights or obligation hereunder without the Company's prior written consent.

4. Price

4.1 The price of the Goods is the price agreed between the Buyer and the Company as specified in the Quotation or Acknowledgment or, if no price is specified, the price set out in the Company's then-current price list as at the date the Buyer submits the order for such Goods (errors and omissions excepted).

4.2 Notwithstanding clause 4.1, the Company reserves the right, at any time before delivery, to increase the price of the Goods to reflect any increase in costs to the Company that are due to any factor beyond the control of the Company (including, without limitation, any increase in the costs of labour or materials, the increase or imposition of any tax, duty, or levy, or any variation in applicable exchange rates).

4.3 Unless otherwise stated in the Quotation, all prices quoted are exclusive of any import duties and any other local taxes and/or applicable duties or levies, which the Buyer shall be liable to pay to the Company.

4.4 If Export Packing is required, an additional charge will be borne by the Buyer. The price for the Goods does not include any sales, privilege, or use tax or taxes of any kind including any customs duties, which may arise in connection with the transactions which are the subject matter hereof, and the Buyer agrees to pay or reimburse the Company for any such taxes or duties.

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5. Rescheduling and Cancellations

5.1 Subject to clause 5.2, the Buyer may request changes to the date or place of despatch of all or some of the Goods no later than 48 hours prior to the agreed time of despatch of those Goods, in which case the Buyer will be liable to pay to the Company a rescheduling charge (as determined by the Company) to cover all of the Company's costs and expenses incurred as a result of such rescheduling.

5.2 Once an order has been placed, the Buyer may not cancelled, or changed, or altered or vary such order (whether in whole or in part), except with the written agreement of the Company, and the Buyer shall indemnify the Company in full against all loss (including loss of profit), costs, damages, charges and expenses incurred or suffered by the Buyer from such cancellation, change or alteration.

5.3 The Company reserves the right to cancel an order or to request payment prior to despatch of the Goods, should the credit status of the Buyer change following the Acknowledgement of the Buyer purchase order.

6. Payment

6.1. Subject to any special terms agreed in writing between the Buyer and the Company or any other agreement on prepayment or payment of a deposit by the Buyer, the Company shall be entitled to invoice the Buyer for the price at any time on or after delivery of the Goods. The Company shall be entitled to apply any prepayment or deposit made by the Buyer for an order towards any outstanding invoice even if for any other order.

6.2 In the event the Buyer fails to take delivery of the Goods for whatever reason other than from the Company's breach of these Conditions, the Company shall be entitled to invoice the Buyer for the price at any time either after (i) the Company has notified the Buyer that the Goods are ready for collection or (ii) the Company tendered delivery of the Goods (as the case may be).

6.3. The Buyer shall pay the amount reflected in the invoice within the agreed terms thereof. The Company shall be entitled to recover any amounts outstanding under any invoice, notwithstanding that the delivery may not have taken place and/or the goods have not been passed to the Buyer. Time of payment shall be of the essence.

6.4. Quantities may vary up to +/- 10% between the ordered and delivered quantities and the Buyer shall not be entitled to make any claim therefor. The invoices will correspond to the actual quantities delivered. (This is specific to cabling products.)

6.5. In case of delayed delivery attributable to the Buyer, the Company shall be entitled to invoice the payment due at delivery and the warranty period shall commence as if delivery had taken place on the initially agreed upon delivery date. In addition, the Buyer shall pay the Company resulting storage costs and as liquidated damages, an amount equal to ten percent (10%) of the price of the Products in compensation of the hedging and financing costs of the metal content of the Products incurred in connection with the postponement of the delivery date.

6.6. If the Buyer fails to make any payment on the due date then, without prejudice to any other right or remedy available to the Company, the Company shall be entitled to:

- (i) terminate the Contract or suspend any further deliveries to the Buyer; and
- (ii) appropriate any payment made by the Buyer to such of the Goods (or goods and/or services supplied under any other contract between the Buyer and Company) as Company may think fit (notwithstanding any purported appropriation by the Buyer); and
- (iii) charge the Buyer interest (both before and after any judgment) over the amount unpaid, at the rate of 4% per cent per month from the due date till the payment in full is made (a part of a month being treated as a full month for the purpose of calculating interest) before and after judgment.
- (iv) recover title to and possession of the Goods. If after delivery, but prior to full effective payment, the Goods is attached, or the Buyer is subject to a bankruptcy proceeding, whether voluntary or not, the Company may then, at its option, recover title to and possession of the Product. The exercise of this option under this condition subsequent shall not affect the Company's other remedies.

7. Delivery

7.1 Unless otherwise agreed in writing, delivery of the Goods will be made:

- (a) by the Company delivering the Goods to such address as set out in the Quotation; or
- (b) if no such address is specified, by the Company delivering the Goods to the Buyer's registered address or any other usual premises of the Buyer, in each case, as per the Incoterms set out in the Quotation or as otherwise agreed in writing

7.2 Unless otherwise agreed in writing, the Buyer will be liable for all costs and expenses of delivery including (without limitation) the cost of any special delivery requirements and the cost of insurance. The Company reserves the right to make an additional charge, for which the Buyer will be liable, to cover any increase in transport costs occurring prior to delivery.

7.3 Any estimated timeframe by which delivery is to occur is given by the Company in good faith but for the avoidance of doubt is an estimate only and is not of the essence of any Contract. The Company will not be liable for any costs, losses, liabilities or damages of any kind, whether arising directly or indirectly out of any delay or failure to deliver any Goods by the estimated delivery date or time.

7.4 Without prejudice to clause 7.3, the Company will use reasonable endeavours to advise the Buyer of any material delay in delivery.

7.5 If the Buyer fails to take delivery of the Goods or fails to give the Company adequate delivery instructions at the time stated for delivery then (without prejudice to any other right or remedy available to the Company) the Company may:

- (a) if it has not already done so, invoice the Buyer in respect of the full price of the Goods and store the Goods until actual delivery and charge the Buyer for the cost (including insurance) of storage; or
- (b) sell the Goods at the best price readily obtainable and (after deducting all storage and selling expenses) charge the Buyer for any shortfall between the proceeds received and the price for the Goods under the Contract.

8. Part Delivery

8.1 If the Goods are to be delivered by instalment, no defect in any Goods delivered in any instalment or any failure to deliver an instalment will be grounds for cancellation of the remainder of the instalments under the relevant Contract and the Buyer will be bound to accept delivery of such instalments.

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9. Acceptance

9.1 Any claim by the Buyer for loss or damage apparent on inspection or for non-delivery must be made in writing by the Buyer within six days of the earlier of delivery or receipt of the Company's invoice. In the case of damage, the said notice must contain full particulars of the alleged damage. If no such claim is made within that time frame the Buyer will be deemed to have accepted the Goods as delivered.

10. Packaging

10.1 Unless otherwise agreed in writing, all Goods will be packaged in accordance with the Company's standard practice.

10.2 The Buyer must meet the cost of any special packaging required by the Buyer or that the Company otherwise deems necessary by reason of any special delivery requirements.

11. Risk

11.1 The risk of loss, damage or destruction of the Goods will pass to the Buyer upon delivery of the Goods in accordance with clause 7.1.

12. Title

12.1 Notwithstanding clause 11.1, title and property in the Goods, including full legal and beneficial ownership, will not pass to the Buyer until the Company has received in cash or cleared funds payment in full for such Goods as well as all other Goods delivered to the Buyer under each Contract, including the amount of any interest or other sum payable under the terms of any Contract.

12.2 Until title and property in the Goods is transferred to the Buyer in accordance with clause 12.1 above:

(a) the Buyer must hold the Goods, on a fiduciary basis as the Company's bailee, in safe custody, separate from any goods which are the property of the Buyer or any third party and must properly store and protect the Goods in such a way that they are readily identifiable as belonging to the Company;

(b) the Buyer must insure the Goods against all risks for their full price from the date of delivery; and

(c) the Buyer will not be entitled to pledge or in any way charge by way of security for any indebtedness any of the Goods, provided that the Buyer may resell the Goods or use the Goods in the ordinary course of its business.

12.3 If the Buyer is in breach of its obligations under clause 12.2, all moneys owing by the Buyer to the Company will become immediately due and payable.

12.4 The Company may at any time require the Buyer to deliver up the Goods to which the Company has retained title and if the Buyer fails to do so, to enter upon any premises of the Buyer where the Goods are stored to repossess and resell any Goods. The Buyer hereby waives any right to claim from the Company damages caused to the Buyer's premises, business or reputation, and/or any lost profits or business however arising as a result of the Buyer's entry onto the Buyer's premises for the purposes of repossessing the Goods.

12.5 The Company's consent to the Buyer's possession of the Goods and any right the Buyer may have to possession of the Goods will in any event cease:

(a) if any sum owed by the Buyer to the Company (whether in respect of the Goods or otherwise) is not paid to the Company when it is due; or

(b) upon the happening of any of the events set out in clause 17.1(b).

12.6 The Company is entitled to bring an action against the Buyer for the price of the Goods in the event of non-payment by the Buyer by the due date even though property in the goods has not passed to the Buyer and/or has the right by notice to the Buyer at any time after delivery to pass property in the Goods to the Buyer as from the date of such notice.

12.7 The exercise of any of the Company's rights under this clause 12 will be without prejudice to any other rights the Company may have whether under the Conditions, any Contract, or at law.

13. Warranties

13.1 Any warranties set out in the Conditions or implied by law are for the benefit of the Buyer of the Goods only and are not transferable or assignable.

13.2 The Company warrants to the Buyer that:

(a) it has full and valid title to the Goods; and

(b) the Goods at the time of delivery will be free from defects in material and workmanship to the extent of satisfactory quality, and will be materially in accordance with specifications provided by the manufacturer of the Goods or as otherwise agreed in writing.

13.3 Unless agreed otherwise in writing, the warranty obligation of the Company for the Goods will continue for a period of 1 year ("Warranty Period") from the date of the sales invoice, under proper and normal use and service.

13.4 The Company hereby assigns to the Buyer (by way of a present assignment of future rights) the benefit of those warranties in respect of the Goods made to the Company by the manufacturers of such Goods ("Manufacturers' Warranties"), to the extent that the Manufacturers' Warranties are assignable to the Buyer.

13.5 The Company gives no other warranties and no other terms or conditions will apply in respect of the Goods other than those warranties as set out in clause 13.2 and the benefit of the Manufacturers' Warranties, which warranties are exclusive and in lieu of all other warranties, terms, and conditions in respect of quality, fitness for a purpose, or of any other type, whether express or implied.

13.6 If the Buyer makes a valid claim within the Warranty Period for breach of warranty under this clause, the Company will have the right to inspect and test the allegedly defective Goods. In the event that any Goods or any part thereof are found to be (and agreed by the Company to be) materially defective, the Company may, at its option:

(a) refund the price paid by the Buyer for the defective Goods;

(b) replace the whole or such part of the Goods supplied as the Company may in its sole discretion deem reasonable in order to repair the defect; or

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(c) in respect of a breach of any Manufacturers' Warranties, require the Buyer to approach the relevant Manufacturer directly in respect of an appropriate remedy.

Any remedy provided to the Buyer in respect of a breach of warranty under this clause 13.5 will be the Buyer's sole remedy against the Company for the breach of such warranty.

13.7 Notwithstanding the warranties given under this clause 13, the Company will not be liable to the Buyer in respect of any defects that have occurred as a result of:

- (a) misuse of the Goods or negligence on the part of any person other than the Company;
- (b) loss or theft of the Goods or any part of them;
- (c) damage from any cause other than negligence by the Company or the Company's personnel;
- (d) unauthorised modification, alterations or repair of any of the Goods; or
- (e) fair wear and tear.

13.8 In the event that the Company chooses to replace or refund the Goods, the Buyer must permit the Company to retake possession of the Goods originally delivered and the Company will use reasonable endeavours to deliver replacement Goods or process the refund within a reasonable time. The replacement Goods must be accepted by the Buyer in substitution for the Goods replaced.

13.9 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.

13.10 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.

14. Limitation of Liability

14.1 Nothing in the Conditions excludes or restricts the Company's liability for death or personal injury of the Buyer resulting from the Company's negligence or from its fraudulent misrepresentation.

14.2 Subject to clause 14.1, the Company will not be liable to the Buyer, whether in contract, in tort (including for negligence or breach of statutory duty) or otherwise, and irrespective of cause for:

(a) any loss of profit, business, contracts, revenues or anticipated savings suffered by the Buyer (in each case, whether direct or indirect); or

(b) any special, indirect or consequential loss of any nature whatsoever suffered by the Buyer.

14.3 Subject to clause 14.1, the Company's aggregate liability to the Buyer arising out of any Contract, whether in respect of defective Goods or otherwise, and whether such liability arises in contract, in tort (including for negligence or breach of statutory duty) or otherwise, will be limited in all circumstances to the price of the Goods as specified in the invoice to which the Contract relates.

15. Insolvency of The Buyer

15.1 If the Buyer makes any voluntary arrangement with its creditors or becomes bankrupt or becomes subject to an administration order or goes into liquidation or Company reasonably apprehends that any of the events mentioned above is about to occur, the Company shall be entitled to terminate 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.

16. Force Majeure

16.1 The Company will not be liable to the Buyer for any delay in or failure to perform its obligations under any Contract where such delay or failure results from an Act of God, fire, accident, war, terrorism, rebellion, riot, sabotage, official strike, lock-outs or official labour disputes, inability to obtain energy or suitable components, material, equipment, transportation services or any other causes beyond the Company's reasonable control.

17. Termination

17.1 In addition to and without prejudice to the rights conferred on it by the Conditions, the Company may terminate any Contract immediately by notice in writing to the Buyer:

(a) if the Buyer commits a breach of the Conditions and (if such breach is capable of remedy) fails to remedy such breach within five days of notice from the Company requesting that the breach be remedied;

(b) if:

(i) the Buyer becomes unable to pay its debts as they fall due or the value of the Buyer's assets is less than the amount of its liabilities taking into account its contingent and prospective liabilities;

(ii) in relation to the Buyer a statutory demand is served, a receiver is appointed, or any insolvency procedure, is instituted or occurs or notice of intention to institute such a procedure is given;

(iii) in respect of the Buyer, any order is made for or there occur proceedings constituting main proceedings; or

(iv) any analogous demand, appointment, or procedure is instituted or occurs in relation to the Buyer elsewhere than in Singapore.

17.2 In the event that a Contract is terminated by the Company in accordance with clause 17.1 above, all sums due from the Buyer to the Company in respect of all Goods supplied by the Company to the Buyer will become immediately due and payable and the Company will be entitled, without prejudice to any other rights and remedies which it may have and without any liability whatsoever, upon serving notice in writing to the Buyer, to suspend or cancel all deliveries of Goods to the Buyer under any Contract.

18. Intellectual Property Rights

18.1 The Buyer hereby acknowledges that any patent, copyright, design, trade mark or other industrial or intellectual property rights in relation to the Goods in which the Company or the respective manufacturer, developer or third party has an interest will at all times

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and for all purposes vest and remain vested in the Company or such manufacturer, developer or third party and the Buyer will not acquire any such rights.

18.2 If at any time any allegation of infringement of patent rights, copyright or design rights is made in respect of the Goods or if in the Company's reasonable opinion such an allegation is likely to be made, the Company may at its option and at its own expense:

- (a) modify or replace the Goods so as to avoid the infringement;
- (b) procure for the Buyer the right to continue to use the Goods; or
- (c) repurchase the Goods at the price paid by the Buyer.

19. Technical Advice, Assistance, Product Information and Recommendations

19.1 The Company, at the request of the Buyer, may (but is not obliged to) furnish technical advice or assistance or recommendation with reference to the use of Goods, provided that any such advice or assistance or recommendation is given and accepted at the Buyer's sole risk and the Company will not be liable for any loss, damage costs or claims arising from such advice, assistance, or recommendation.

19.2 Any advice given or any recommendation made by the Company is solely designed to assist the Buyer to identify Goods offered for sale by the Company that meet the requirements of the Buyer (which requirements are to be determined solely by the Buyer in reliance on the Buyer's own judgment). Under no circumstances can such advice or recommendation be relied upon by the Buyer, nor will the Company in any way be liable as a consequence of the Buyer relying on such advice or recommendation.

19.3 The Company is not liable for any inadequacies, inaccuracies or other deficiencies in any drawing, specification or other information provided by the Buyer to the Company.

19.4 Any information published on the Company's website (being www.axcoleman.com or any other website used by the Company from time to time) ("Website") or through product datasheets is provided for convenience and should be used by the Buyer for information purposes only. Both the information, and the products to which such information refers, are subject to change without notice. The Company gives no representations or warranties (expressly or impliedly) as to the reliability, accuracy or completeness of such information.

19.5 The Buyer must not rely on any information displayed on the Website or contained in product datasheets but must use its own skill and judgment to ascertain whether any product is of a suitable nature for the Buyer's need and purpose and how such product is to be used.

20. General

20.1 The headings in these Conditions are for reference only and do not affect its interpretation.

20.2 No delay by the Company in enforcing its rights will prejudice or restrict the rights of the Company, and no waiver of any such rights or of any breach of any contractual terms will be deemed to be a waiver of any other right or any other breach.

20.3 The Buyer may not assign any of its rights or benefits under any Contract without the prior written consent of the Company.

20.4 In the event of any of the Conditions being judged illegal or unenforceable for any reason, such conditions (or the appropriate part thereof) will be deleted and the remaining provisions will continue in full force and effect.

20.5 Any notice given under the Conditions must be in writing and in English, and must be served by leaving such notice or communication at, or by sending such notice by facsimile or by first class recorded delivery post or by air-mail to, the business address of the relevant party. Any notice so served will be deemed to have been received:

- (a) if delivered personally, at the time of delivery;
- (b) if sent by first class recorded delivery post, 48 hours after the date of posting;
- (c) if sent by air-mail, 96 hours after the date of posting; and
- (d) if sent by facsimile, if the notice was sent during the business hours of the addressee, on the day of transmission, and otherwise on the next following business day.

For the purposes of this clause 20.5 "business hours" and "business day" means the hours of 9 a.m. to 5 p.m. local time in Singapore. In proving that any notice or document was given or served, it will be necessary only to prove that the same was properly addressed and posted or faxed.

20.6 If a dispute arises between the Buyer and the Company, out of or in connection with any Contract, the parties hereto shall endeavor to resolve the dispute through negotiations. If negotiations fail, the parties hereto shall refer the dispute for mediation at the Singapore Mediation Centre in accordance with the Mediation Rules for the time being in force. For the avoidance of doubt, prior reference of the dispute to negotiations between the parties hereto or to mediation under this Clause shall not be a condition precedent for resolution of any disputes by arbitration in Singapore under clause 20.7 below.

20.7 Each of the Company and the Buyer irrevocably agree, for the sole benefit of the Company, that (subject to clause 20.8) the Singapore Courts will have exclusive jurisdiction over any dispute or claim arising out of or in connection with the Conditions or any Contract between the Company and the Buyer or their subject matter or formation (including non-contractual disputes or claims).

20.8 Nothing in clause 20.7 will limit the right of the Company to take proceedings against the Buyer in any other court of competent jurisdiction, nor will the taking of proceedings by the Company in any one or more jurisdictions preclude the Company taking proceedings in any other jurisdictions, whether concurrently or not, to the extent permitted by the law of such other jurisdiction.

20.9 The Contract and its performance shall be governed by the laws of Singapore. The parties agree that any dispute, controversy or claim arising out of or relating to this Contract, or the breach, termination or invalidity thereof, shall be settled by arbitration in Singapore in accordance with the UNCITRAL Arbitration Rules as at present in force. The arbitration shall be administered by Singapore International Arbitration Centre ("SIAC") in accordance with its practice rules and regulations. The appointing authority shall be the Chairman or Deputy Chairman of SIAC. The number of arbitrators shall be one. The language to be used in the arbitral proceedings shall be English.