



GENERAL CONDITIONS OF SALE FOR CORNING CABLE SYSTEMS PRODUCTS

1. **Acceptance**

No binding contract shall exist or be deemed to exist until Corning Cable Systems (hereinafter referred to as "Seller") dispatches a written acceptance of Buyer's order. Thereafter no changes to the contract shall be accepted without the written consent of an authorised representative of Buyer and Seller.

2. **Terms of Contract.**

Unless otherwise confirmed by Seller in writing, these General Conditions of Sale shall apply to the contract between us to the exclusion of all other inconsistent terms, conditions and warranties (whether express, statutory or implied) in Buyer's order, request for quotation, or any other supporting documentation. No alteration, variation, deletion, modification, amendment, or addition may be made to these General Conditions of Sale (notwithstanding anything to the contrary in Buyer's order or supporting documentation) unless confirmed in writing by an authorised representative of Seller. Any additional typed and/or written terms and conditions contained in any documentation exchanged between us shall be for administrative purposes only, i.e. to identify the types and quantities of goods to be supplied, line item prices, delivery schedule, and other similar ordering data.

3. **Shipping; Payment**

This is an EXW shipment, Incoterms (2000 version). Delivery dates shall be as agreed between Buyer and Seller and shall be set forth by Seller in its written acceptance of Buyer's order. Delivery dates shall be extended appropriately if Seller is delayed by reason of an event of Force Majeure (see Clause 9 below). Without limiting the provisions of Clause 4 below, Seller shall not, in any event, be liable for any damages (direct, consequential, foreseeable or otherwise) for late delivery, nor under any other liability in respect thereof. Unless otherwise agreed, payment shall be due and payable within 30 days after the date of Seller's invoice.

4. **Warranty.**

- (a) Seller warrants that the goods manufactured by it and delivered to Buyer pursuant to this contract shall conform to their Specifications. Such warranty shall remain in force for a period of 12 months from the date of delivery. If the goods manufactured by Seller are in breach of the above warranty ("Non-Conforming Goods"), Seller will, at its option, either repair or replace the Non-Conforming Goods. The remedy selected by Seller shall be Buyer's exclusive remedy for any reason based on Non-Conforming Goods. Seller's liability shall be limited to the delivery of repaired or replacement goods only, free to the original contractual place of delivery. The remainder of the original warranty period shall apply to the repaired or replacement goods. The delivery of repaired or replacement goods shall not extend the term of the original warranty beyond the original 12-month period.
- (b) The foregoing warranty is conditioned on satisfaction of each of the following: (i) all claims regarding Non-Conforming Goods must be made by in writing to Seller (with appropriate samples, to the extent available, in such amounts as Seller reasonably requests) not later than 12 months after the date of delivery of the goods; and (ii) the Non-Conforming Goods shall have been maintained by Buyer in accordance with standard operating procedures; and (iii) the Non-Conforming Goods shall not have had alteration performed on them; and (iv) Buyer shall have installed and used the Non-

Conforming Goods properly; and (v) if any repair or alteration of the Non-Conforming Goods has been done (whether or not approved by Seller) this is not a cause of the goods being non-conforming.

- (c) Buyer agrees that it is relying on its own skill and judgement as to suitability of all goods supplied by Seller for any particular purpose or for use under any specific conditions. Seller disclaims any warranty or responsibility relating to any design made, furnished or specified by Buyer.
- (d) Seller warrants the goods provided by it under this contract only to the extent set forth in this Clause 4. THIS WARRANTY CONSTITUTES THE SOLE GUARANTEE OR WARRANTY RELATED TO THE GOODS PROVIDED HEREUNDER BY SELLER, AND IS IN LIEU OF ALL OTHER WARRANTIES (WHETHER WRITTEN, ORAL OR IMPLIED), INCLUDING BUT NOT LIMITED TO ANY WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE OR LIABILITY FOR ANY SPECIAL, INDIRECT OR CONSEQUENTIAL DAMAGES. Seller's liability to Buyer whether in contract, tort, or under any other legal theory, shall be limited exclusively to repairing or replacing the Non-Conforming Goods. Seller shall not be liable for special, punitive, consequential or indirect damages that Buyer may suffer, including, without limitation, the loss of capital, use, substitute performance, production, profits, or claims of Buyer or Buyer's customers. Seller makes no warranty against and shall not be liable regarding any damage to goods installed, operated or maintained negligently in any manner or otherwise not due to Seller's fault. Seller shall be allowed a reasonable period to investigate any claim for Non-Conforming Goods and shall be given access to Buyer's relevant records and data for this purpose. Seller shall not be liable for any latent defects or any other defects that might appear after the 12-month warranty period. Notwithstanding anything to the contrary, Seller's aggregate liability hereunder shall be limited to the purchase price paid by the Buyer for the Non-Conforming Goods.

5. **Patent Indemnity**

Buyer shall indemnify Seller against all damages, penalties, costs and expenses to which Seller may become liable as a result of work done in accordance with specifications or designs provided to Seller by Buyer which involve or are alleged to involve the infringement of any copyright, letters patent, patent rights, trade secrets or registered design or similar rights of a third party.

6. **Intellectual Property**

All rights in the design of the goods and all intellectual property rights existing or coming into existence in relation to the goods are wholly owned by Seller.

EXPORT LICENSING

BUYER CERTIFIES THAT IT WILL NOT EXPORT OR RE-EXPORT, OR FACILITATE THE EXPORT OR RE-EXPORT, OF THE GOODS FURNISHED HEREUNDER UNLESS SUCH EXPORT OR RE-EXPORT COMPLIES FULLY WITH ALL LAWS, RULES, EXECUTIVE ORDERS AND OTHER REGULATIONS OF ANY EUROPEAN COUNTRY AND THE UNITED STATES OF AMERICA RELATING TO SUCH EXPORT OR RE-EXPORT. ANY DIVERSION OF THESE GOODS CONTRARY TO THE LAWS, RULES, REGULATIONS OR EXECUTIVE ORDERS OF ANY EUROPEAN COUNTRY AND THE United States of America IS PROHIBITED.

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7. **Contract Suspension**

If Buyer is in default of any material provision of this contract (including the failure to make any payment when due or a failing to purchase the agreed upon commitments of goods), and such default is not cured within thirty (30) days after written notice is provided by Seller, then Seller may at its option suspend its performance under this contract until Buyer cures the default. The rights granted under this Clause are in addition to any other rights, claims or damages that Seller may have at law.

8. **Force Majeure.**

If the performance of this contract or of any obligation hereunder, other than the payment of any money, is prevented, restricted or interfered with by reason of any act of God, civil disorder, industrial dispute, governmental act (including by statute, rule, regulation, order or requisition), war, or any other cause not within the control of a party hereto, then the party so affected, upon giving 90-days advance written notice to the other party, shall be entitled to terminate this contract.

9. **Confidentiality**

Buyer and Seller each agree that all confidential commercial (including all pricing) and technical information provided hereunder to one party by the other (which the transmitting party designates in writing as being confidential) will be kept confidential by the receiving party using the same standard of care as the receiving party uses to protect its own similar confidential information, though not less than a reasonable standard of care; and shall not be sold to or disclosed in any other manner to any third party by the receiving party. The preceding sentence shall not apply to: (a) information which at the time of disclosure hereunder is in the public domain; (b) information which after disclosure hereunder is published or otherwise becomes part of the public domain through no fault of the receiving party; or (c) information which the receiving party can document through written records as having been in its possession at the time of its disclosure. In no event, however, will Buyer transmit to Seller any information deemed confidential by Buyer relating to the design and manufacture of optical components (passive and active) and applications for use of such components, the design and manufacture of optical amplifiers and applications for use of such amplifiers, the composition, design, and performance characteristics of optical fibres and coatings therefor, processes for manufacturing such fibres and applying such coatings, and the ultimate use of such fibres and coatings in particular applications; or the design and manufacture of optical cable or processes for manufacturing optical cable. The obligations under this Clause shall survive the termination of this contract for any cause whatsoever.

10. **Storage**

If Buyer does not make arrangements with a carrier for the transport of the goods from Seller's facility within 21 days of notification to Buyer that they are ready for transport, then Seller shall be entitled to arrange for storage of the goods so delayed at Buyer's risk either at Seller's works or elsewhere and all charges for storage, insurance or demurrage in respect thereof shall be added to the price payable under the contract. Seller shall be entitled to present full invoices for such goods, accompanied by appropriate warehouse receipts where storage is made outside Seller's own works, payment of which shall be due 30 days after the date of the invoice.

11. **Drums**

Unless otherwise agreed, if the goods are supplied on drums, they are to be returned to Seller. The drums will be loaned to Buyer, free of charge, for a period of three months from the date of delivery. At the expiration of this three-month period, any drums not already returned to Seller will be invoiced to Buyer at the full price of replaceable drums.

12. **Reservation of Title**

Risk of loss associated with the goods shall pass to Buyer on delivery, but neither legal nor equitable title shall pass until receipt by Seller of the full purchase price therefor.

13. **Governing Law**

This contract shall in all respects be construed and operate as an English contract in conformity with English law. The United Nations Convention on Contracts for the International Sale of Goods of April 11, 1980 shall not apply to this contract.

14. **Arbitration**

Any dispute between the parties arising from the execution of or in connection with this contract (including any termination thereof) shall first be discussed through friendly negotiations for a period of at least 30 days. If the parties are unable to resolve the dispute amicably, either party may submit the dispute for arbitration to the International Chamber of Commerce whose proceedings shall be conducted in accordance with the Rules of Conciliation and Arbitration. The venue of any such proceedings shall be London, England.

15. **Miscellaneous**

This contract is not assignable by either party without the prior written consent of the other. Either party may cancel the whole or any part of this contract in the event of insolvency, bankruptcy, reorganisation, or liquidation proceedings involving the other. In the event that either party fails to perform any term herein and the other party does not enforce that term, the other party has not thereby waived its rights to do so in the future. Buyer agrees to pay or reimburse Seller for any VAT, sales, use or similar taxes (including interest and penalties, but excluding tax on Seller's net income) arising from the sale of goods hereunder. If any provision of this contract is held invalid or unenforceable, the remaining provisions shall not be affected thereby, and the parties shall in good faith attempt to amend this contract to eliminate such invalidity or unenforceability. The terms and conditions set forth herein constitutes the entire agreement between us with respect to the sale of the goods.

Corning Cable Systems Ltd
October 2000