

3M™ ACCR TERMS AND CONDITIONS OF SALE

1. **General:** The following terms and condition of sale shall govern the sale of 3M Aluminum Conductor Composite Reinforced ("ACCR") any associated accessories (the "Accessories"), as well as the provision of technical support and training (the "Services") by 3M to Buyer as described in the mutually agreed upon quote details listed above and/or such other documentation provided by 3M to Buyer (the "Quote"). Unless otherwise stated in a written agreement signed by authorized officers for 3M and the Buyer, to the extent that any purchase orders or previous communications are inconsistent with these Terms and Conditions, these Terms and Conditions will prevail. All orders are subject to acceptance by 3M.
2. **Payment Terms:** Net 30 days from the date of shipment. Buyer may not take any unauthorized deduction from a 3M invoice.
3. **Pricing and Freight Charges:** Prices for products are quoted in U.S. dollars, FOB shipping point. Freight charges are pre-paid by 3M and invoiced to the Buyer.
4. **Delivery:** 3M will provide a delivery date(s) when an order is received and accepted by 3M.
5. **Warranty and Limited Remedy (ACCR and Accessories):** 3M warrants that 3M ACCR will, at the time of shipment, conform to the attached specifications for such product for a period of eighteen (18) months from the date of shipment to Buyer or one year from installation by Buyer, whichever occurs first. If during the warranty period for ACCR: (a) the Buyer notifies 3M promptly in writing upon discovery of any nonconformance to the warranty, including a detailed description of such nonconformance, (b) representative samples are returned to 3M, F.O.B. 3M's facility, and (c) a determination is made that such products do not conform to the specifications and that nonconformance was not caused by accident, misuse, abuse, neglect, alteration or other error on the part of Buyer or Buyer's agent, then Buyer's exclusive remedy and 3M's sole obligation shall be, at 3M's option, to either repair, replace, or refund the purchase price of the nonconforming product. Buyer is solely responsible for determining whether 3M ACCR is fit for a particular purpose and suitable for Buyer's application and Buyer assumes all risk and liability in connection with installation and use of the 3M ACCR. THIS WARRANTY IS EXCLUSIVE. 3M MAKES NO OTHER WARRANTIES, EXPRESS OR IMPLIED WITH RESPECT TO 3M ACCR, INCLUDING BUT NOT LIMITED TO ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, OR ANY WARRANTY ARISING OUT OF A COURSE OF DEALING OR USAGE OF TRADE.
With respect to Accessories made by entities not controlled by 3M but sold to Buyer by 3M under this contract, including, but not limited to, Accessories manufactured by AFL Telecommunications LLC ("AFL"), a wholly-owned subsidiary of America Fujikura Ltd. and/or Preformed Line Products Company ("PLP"), Buyer is entitled to the warranties, if any, made available to Buyer by AFL, PLP, or such other provider of Accessories. The foregoing constitutes the exclusive remedy of Buyer and sole obligation of 3M for any defects in such Accessories. 3M MAKES NO WARRANTIES, EXPRESS OR IMPLIED, WITH RESPECT TO SUCH ACCESSORIES, INCLUDING BUT NOT LIMITED TO ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, OR ANY WARRANTY ARISING OUT OF A COURSE OF DEALING OR USAGE OF TRADE.
6. **Warranty and Limited Remedy (Services):** Buyer acknowledges that it is responsible for the training of its employees, contractors and subcontractors and compliance with all laws and regulations applicable to Buyer as an employer, contractor and sub-contractor and that 3M is not, by providing the Services, assuming any aspect of that responsibility. 3M will provide the Services in accordance with the specifications detailed in the Quote and in accordance with applicable laws and industry best practices. **In the event of a breach of the foregoing warranties, 3M's exclusive liability, and Buyer's exclusive remedy, shall be for 3M, at its option, to either: (i) re-perform the Services, where possible, at its expense, or (ii) refund to Buyer any amounts paid for the Services that fail to meet this warranty. THIS WARRANTY IS EXCLUSIVE. 3M MAKES NO OTHER WARRANTIES, EXPRESS OR IMPLIED WITH RESPECT TO THE SERVICES, INCLUDING BUT NOT LIMITED TO ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, OR ANY WARRANTY ARISING OUT OF A COURSE OF DEALING OR USAGE OF TRADE.**
7. **No other warranties.** Buyer acknowledges that no warranties, representations, promises, or statements whatsoever, whether verbal or written, other than those contained in this contract, have been made by 3M or relied on by Buyer. Buyer also acknowledges that it is the Buyer's sole responsibility to properly install and use both 3M ACCR and any Accessories associated with 3M ACCR. Under no circumstances shall 3M be responsible for any damage done to 3M ACCR during installation.
If Buyer makes any express or implied warranties regarding a product that differs from 3M's warranty in this paragraph, Buyer will indemnify, defend and hold harmless 3M, its successors, assigns, officers, directors, employees, and agents from any claim, liability, loss, damage, lien, judgment, expense and cost including reasonable attorneys' fees and other litigation expenses with respect to any alleged express or implied warranties by Buyer.
8. **Limitation of Liability: EXCEPT FOR THE LIMITED REMEDY STATED IN PARAGRAPH 5 AND 6, AND AS IS PROHIBITED BY APPLICABLE LAW, 3M SHALL NOT UNDER ANY CIRCUMSTANCES BE LIABLE FOR ANY LOSSES OR DAMAGES OF ANY KIND, INCLUDING WITHOUT LIMITATION, DIRECT, INDIRECT, SPECIAL, INCIDENTAL, OR CONSEQUENTIAL DAMAGES (INCLUDING, BUT NOT LIMITED TO, LOSS OF PROFITS, REVENUE, OPPORTUNITY, BUSINESS, OR BUSINESS INTERRUPTION OR INCONVENIENCE) ARISING OUT OF OR RELATING TO (I) THIS CONTRACT, (II) THE INSTALLATION, USE OR INABILITY TO USE 3M ACCR OR ANY ASSOCIATED ACCESSORIES, OR (III) THE SERVICES, EVEN IF 3M HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH LOSS OR DAMAGES.**
9. **Patents/Trademarks/Copyright 3M Indemnification:** 3M warrants that 3M ACCR purchased hereunder does not knowingly violate or infringe upon any patent, copyright or trademark, of any third party and that 3M at its own cost and expense will indemnify and hold and defend Buyer for any suit or claim that may arise in respect thereto. Such indemnification extends only to the extent that the claim or suit alleges that 3M ACCR standing alone infringes such rights and provided further that 3M is promptly notified in writing of any such action and is given the right to control the defense and settlement thereof.
10. **Buyer Indemnification:** Buyer will indemnify, defend and hold harmless 3M, its affiliates, and their successors, assigns, officers, directors, employees, and agents from any claim, liability, loss, damage, lien, judgment, expense and cost including reasonable attorneys' fees and other litigation expenses with respect to all third party claims (including, without limitation, those by governmental entities, Buyer's employees, and employees of Buyer's subcontractors or agents) related to (a) any third party's purchase or use of the products and services; (b) Buyer's sale or use of the products and services; or (c) Buyer's breach of obligations under this agreement, except if solely and directly caused by 3M's gross negligence.
11. **Buyer Insurance:** Buyer will maintain, at its own expense, on an occurrence basis commercial general liability insurance including the following matters: premises-operations, products and completed operations, and contractual liability providing coverage limits of at least Five Million Dollars per occurrence. Buyer will supply 3M with insurance certificate(s) showing compliance with these insurance requirements.

3M™ ACCR TERMS AND CONDITIONS OF SALE

- 12. Compliance with Laws. Buyer will comply with all international, national, state and local laws, regulations and rulings that apply to Buyer and its use and resale of the products, as well as comply with the standard industry practice for the installation of the products. It is 3M policy to comply with all applicable anti-bribery laws, including but not limited to the U.S. Foreign Corrupt Practices Act, the U.K. Bribery Act, and all applicable local laws where 3M operates, and to accurately reflect all transactions on 3M's books and records. Agents, consultants and business partners who work on 3M's behalf must comply with these same laws and practices. Before 3M will accept a Purchase Order for the products, Buyer shall furnish relevant business conduct information and certifications of compliance.
13. Force Majeure: 3M shall not be liable to Buyer or any third party for any failure or delay in delivery of the products to the extent such failure or delay is due in whole or in part to a cause beyond 3M's reasonable control.
14. Governing Law: This agreement will be construed and enforced according to the laws of the State of Minnesota, without regard to its conflicts of law rules.
15. Entire Agreement: This agreement, which consists of the 3M Quote, these Terms and Conditions of Sale, the conductor and accessory list, and the 3M ACCR material specification, contains the entire understanding of the parties. No modification, termination, amendment or waiver shall be binding upon the parties unless agreed to in writing.
16. Invalidity of Provisions. If any provision of this Agreement is determined by a court of competent jurisdiction to be invalid, illegal or unenforceable in any respect, such determination shall not impair or affect validity, legality or enforceability of the remaining provisions of this Agreement and each provision is declared to be separate, severable and distinct.
17. Headings. The headings of this Agreement are for convenience only and shall not affect the interpretation of this Agreement.
18. No waiver. No failure on the part of any party in exercising any right or remedy under this Agreement (regardless how long such failure continues) shall operate as a waiver of this Agreement, nor shall any single or partial exercise of any such right or remedy preclude any further exercise of this Agreement or the exercise of any other right or remedy in law, or by statute, equity or otherwise conferred. No waiver of any provision of this Agreement, including this section, shall be effective otherwise than by written document dated subsequent to the date of this Agreement, executed by the party making such waiver.
19. Amendment. This Agreement shall not be varied or amended in its terms by oral agreement or by representations or otherwise than by written document dated subsequent to the date of this Agreement, executed by all parties to this Agreement.
20. Assignment. This Agreement may not be assigned by the Company without the prior written consent of 3M. Subject thereto, this Agreement shall endure to the benefit of and be binding upon the parties and their successors and permitted assigns, if any.

3M Company Designated Representative:

Signature: [Handwritten Signature]

Printed Name: TODD A. SCHWARZENBACH

Title: VICE PRESIDENT

Date: October 19, 2023

City of Santa Clara Designated Representative:

Signature: _____

Printed Name: _____

Title: _____

Date: _____