

HPM Legrand Terms and Conditions of Sale

1 Definitions and interpretation

1.1 In these terms and conditions:

Agreement means the agreement between HPM Legrand and the Purchaser comprising these terms and conditions and any other document which HPM Legrand provides to the Purchaser and which is expressed to include or be subject to these terms and conditions.

Australian Consumer Law means Schedule 2 to the Competition and Consumer Act 2010 (Cth).

Consumer means a "consumer" as that term is defined in section 3 of the Australian Consumer Law.

Consumer Contract means a contract for the supply of goods or services to a Consumer.

HPM Legrand means Legrand Australia Pty Limited (ABN 31 000 102 661) and, unless otherwise stated or the context otherwise makes clear, includes its Related Bodies Corporate.

Order has the meaning given in clause 3.1.

Order Confirmation has the meaning given in clause 3.1.

Products means all goods offered to or supplied to the Purchaser by HPM Legrand (including all products sold under the HPM, Legrand, Bticino, Cablofil and Nelson brands and trade marks).

Purchaser means any person or entity to whom HPM Legrand supplies or offers to supply Products.

Related Bodies Corporate has the same meaning as in section 50 of the Corporations Act 2001 (Cth).

Standard means an applicable standard or specification for a particular Product which is published by HPM Legrand or mandatory under applicable laws or both.

Taxes has the meaning given in clause 4.2(b).

Warranty Information Sheet means the document which forms part of these terms and conditions and which contains information HPM Legrand provides to Purchasers who are also Consumers under applicable provisions of the Australian Consumer Law.

2 Application of terms and conditions

- 2.1 These terms and conditions apply to all quotations, offers and purchase orders made or accepted by HPM Legrand and to all Products sold or otherwise supplied by HPM Legrand to a Purchaser.
- 2.2 So far as applicable, these terms and conditions also apply to the provision of any services accompanying the supply of, or provided in relation to, Products and, where the context allows, any reference to the sale or supply of Products includes the provision of such services.
- 2.3 These terms and conditions may not be varied or cancelled unless agreed in writing by HPM Legrand.
- 2.4 Other than these terms and conditions, any conditions or other terms which are set out in any offer, purchase order or other document submitted by or on behalf of the Purchaser are expressly excluded.

3 Orders

- 3.1 Each Purchaser's order must be in writing (Order) and will be binding on HPM Legrand only if HPM Legrand gives written acknowledgement of its acceptance on these terms and conditions (Order Confirmation).
- 3.2 Despite clause 3.1, if Products are supplied by HPM Legrand without an Order Confirmation, HPM Legrand's conduct in accepting and fulfilling an Order will be deemed to constitute the Order Confirmation and HPM Legrand's invoice will constitute evidence of the Order Confirmation.

4 Prices and payment

- 4.1 The prices of the Products are those set out in HPM Legrand's then-current applicable price list at the date of their dispatch, unless otherwise specified in the Order Confirmation. HPM Legrand also reserves the right to change prices for its Products and any applicable price list without notice to the Purchaser.
- 4.2 Unless otherwise specified, all prices are:
 - (a) inclusive of delivery costs to the Purchaser's nominated store or other delivery point in Australia; and
 - (b) exclusive of all taxes, including goods and services tax (GST), sales, consumption and value added taxes, duties, excises, imposts and levies relating to the supply or use of the Products (Taxes).
- 4.3 Unless otherwise agreed or specified by HPM Legrand, payment is due in full within 30 days of the end of the month of the date of the invoice.
- 4.4 HPM Legrand may at its discretion charge a minimum order fee of \$25.00 for any orders below \$150.00.
- 4.5 HPM Legrand may refuse, extend or withdraw credit to the Purchaser at any time and on such terms as it considers appropriate, in each case at its absolute discretion.
- 4.6 The Purchaser will pay all amounts due under these terms and conditions to HPM Legrand by direct transfer to HPM Legrand's nominated bank account or in any other manner specified by HPM Legrand from time to time.
- 4.7 HPM Legrand may charge interest up to a rate which is 2% higher than that applied to commercial overdraft balances of over \$100,000 by HPM Legrand's principal bank, such rate to be compounded and calculated daily on the amount outstanding (including Taxes) after expiry of the due date for payment until it has been paid in full.
- 4.8 If payment is not made in accordance with clause 4.3, 4.4 or 4.6, or if at any time the credit standing of the Purchaser, in the opinion of HPM Legrand, is at risk or has been impaired HPM Legrand may suspend or cancel an Order or delivery of any Products until alternative arrangements as to payment or credit in terms satisfactory to HPM Legrand have been agreed.

4.9 Despite any other provision of this clause 4, the Purchaser must pay or reimburse HPM Legrand all Taxes. Without limiting that obligation, if GST is payable on any supply made by HPM Legrand under these terms and conditions, the Purchaser must pay HPM Legrand an additional amount equivalent to the GST at the time the relevant payment to HPM Legrand is due. HPM Legrand will provide the Purchaser with a tax invoice.

4.10 The Purchaser may not withhold or set off any payment or make deductions from any amount owing to HPM Legrand without HPM Legrand's prior written consent.

5 Cancellation and variation of Orders

- 5.1 Notices of cancellation or variation of Orders submitted by the Purchaser must be in writing and may be accepted or rejected by HPM Legrand at its discretion.
- 5.2 If a Purchaser gives a notice under clause 5.1, without prejudice to its other rights, HPM Legrand reserves the right to charge for all work it has performed and will need to perform in fulfilling an Order or, if the work is substantially complete or the Products were made to order or are otherwise not immediately available for sale to another customer at an equivalent price, to charge for the full amount set out in the applicable Order Confirmation in addition to any other costs it incurs on the Purchaser's behalf.

6 Delivery and return

- 6.1 HPM Legrand will deliver the Products to the Purchaser by means of HPM Legrand's preferred carriers. If the Purchaser wishes the Products to be delivered by another carrier, that delivery will be at the Purchaser's cost and risk.
- 6.2 Unless HPM Legrand otherwise agrees, and subject to any additional charges incurred in delivery and transport, delivery of Products will be made to the delivery point in Australia specified in the applicable Order.
- 6.3 Stated delivery times are no more than an estimate by HPM Legrand and will not be binding upon HPM Legrand. HPM Legrand is not liable for any costs or other loss caused by reason of any delay in delivery.
- 6.4 If the quantity of Products delivered does not correspond with the quantity stated in an Order the Purchaser will only be liable to pay for the quantity delivered in the case of short-delivery and for the contract price in the case of over-delivery (subject in the latter case to permitting HPM Legrand to collect the surplus Products) provided that in no event will such short or over-delivery entitle the Purchaser to damages or give the Purchaser a right to rescind the Agreement.
- 6.5 Any surplus Products delivered to the Purchaser will remain the property of HPM Legrand and the Purchaser will take all necessary precautions for the safe custody and protection of such surplus Products until the time of their collection by HPM Legrand.
- 6.6 If the Purchaser refuses or fails to take delivery of Products HPM Legrand may, at its discretion and without prejudice to any of its other rights, store those Products at the Purchaser's risk and expense.
- 6.7 Except as specified in clause 6.5 Products may only be returned to HPM Legrand with its prior written consent and subject to the following:
 - (a) all returned Products must be delivered to HPM Legrand at the Purchaser's cost within 21 days of their receipt by the Purchaser in good order and condition, unused and in their original packaging together with a despatch note stating the original Order and invoice numbers and the date of purchase;
 - (b) HPM Legrand may at its discretion charge the Purchaser a restocking fee of up to 20% of the original net invoice price of any Products returned to it pursuant to this clause 6.7; and
 - (c) HPM Legrand will generally not accept for return Products which have been manufactured to order unless those Products do not conform to an applicable Standard, are otherwise proven to HPM Legrand's satisfaction to be defective or are supplied under a Consumer Contract and the provisions of clause 10 apply.

7 Passing of risk and title

- 7.1 Risk in the Products will pass to the Purchaser when the Products are tendered for delivery at the delivery point specified in an Order or when the Products are collected by the Purchaser for loading into the vehicle of the Purchaser, its carrier or other agent.
- 7.2 Legal and beneficial title (ownership) in the Products will remain with HPM Legrand until:
 - (a) all amounts in respect of the Products under an applicable Order; and
 - (b) any other amounts the Purchaser may owe HPM Legrand, whether under these terms and conditions, under any other agreement or pursuant to any other Order, have been paid in full.
- 7.3 Until such time as ownership in the Products passes to the Purchaser, the Purchaser will:
 - (a) store the Products in a manner which makes them readily identifiable as the property of HPM Legrand;
 - (b) hold the Products as bailee of HPM Legrand;
 - (c) keep, and provide HPM Legrand at any time on reasonable request, proper and complete stock records covering the receipt, identification, storage, location, sale and movement of the Products; and
 - (d) keep the Products insured against theft, damage and destruction.
- 7.4 Despite clauses 7.2 and 7.3 the Purchaser is entitled, until notified by HPM Legrand or until the happening of any of the events set out in clause 7.7, to sell the Products in the normal course of its business, in which case the proceeds of resale must be held in trust for HPM Legrand in a separate account.
- 7.5 HPM Legrand is entitled, at any time while any debt remains outstanding by the Purchaser beyond its due date of payment in respect of the amounts referred to in clause 7.2(a) and clause 7.2(b), to notify the Purchaser of its intention to take possession of the Products and for this purpose to enter upon the land and buildings of the Purchaser with all necessary equipment to take possession of the Products.
- 7.6 On receipt of notice from HPM Legrand or on the happening of any of the events set out in clause 7.7, the Purchaser's authority to sell or otherwise deal with the Products as set out in clause 7.4 is withdrawn.

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- 7.7 The Purchaser will give immediate notice to HPM Legrand of:
- any notice to the Purchaser that a receiver or manager is to be or has been appointed over its assets or any part of its business or undertakings;
 - any notice to the Purchaser that a petition to wind up the Purchaser is to be or has been presented or any notice of a resolution to wind up the Purchaser;
 - a decision by the Purchaser that it intends to make any arrangements with its creditors; or
 - any act of bankruptcy by the Purchaser as defined in section 40 of the Bankruptcy Act 1966 (Cth).

8 Personal Property Securities Act 2009 (Cth) (PPSA)

- 8.1 The Purchaser acknowledges and agrees that:
- by agreeing to these terms and conditions (in particular, by virtue of clause 7) the Purchaser grants a security interest pursuant to the PPSA to HPM Legrand in any Products supplied by HPM Legrand to the Purchaser and any proceeds of the sale of such Products;
 - HPM Legrand may register on the Personal Property Securities Register ("PPS Register") a security interest or purchase money security interest ("PMSI") in the Products; and
 - HPM Legrand may, on demand, obtain reimbursement from the Purchaser for all costs and expenses incurred by HPM Legrand in relation to registering, maintaining or releasing any financing statement or financing change statement (each as defined in the PPSA) in respect of any security interest or PMSI under these terms and conditions.
- 8.2 The Purchaser undertakes:
- promptly to do all things, sign any further documents and provide any further information (which information the Purchaser warrants to be complete, accurate and up-to-date in all respects) which HPM Legrand may reasonably require to enable it to perfect, and maintain the perfection of, its security interest or PMSI (including by registration of a financing statement or financing change statement on the PPS Register);
 - not to register a financing statement or financing change statement in respect of the Products without HPM Legrand's prior written consent; and
 - to give HPM Legrand no less than 14 days' prior written notice of any proposed change in the Purchaser's name or any other change in the Purchaser's details (including, but not limited to, changes in its address, facsimile number or trading name).
- 8.3 The Purchaser waives its right under section 157 of the PPSA to receive notice of any verification of any registration pursuant to the PPSA.
- 8.4 The Purchaser agrees that pursuant to section 115(1) of the PPSA and to the maximum extent permitted by law the Purchaser waives its rights under, and with HPM Legrand's agreement contracts out of, sections 95, 118, 121(4), 125, 129(2) and (3), 130, 132(3)(d), 132(4), 135, 142 and 143 of the PPSA.

9 Warranty for defective Products

- 9.1 HPM Legrand undertakes that if Products are found upon inspection by or on behalf of HPM Legrand not to conform to a Standard or are otherwise defective in materials or workmanship, HPM Legrand will, at its option:
- replace or repair the Products;
 - bring the Products into conformity with the Standard;
 - take back the Products found not to conform to the Standard or which are otherwise defective and refund the appropriate part of the purchase price; or
 - pay for the cost of replacement or repair of the Products.
- provided that:
- the liability of HPM Legrand will never exceed the purchase price of the Products; and
 - the Purchaser has performed all its contractual obligations.
- 9.2 If any Products are damaged during transportation or delivery by HPM Legrand's carrier or do not comply with the description on the relevant Order, HPM Legrand will accept return of those Products and will credit the Purchaser with any amount which it has paid for them.
- 9.3 Clauses 9.1 and 9.2 apply only if:
- any alleged defect or damage to the Products occurred within 12 months of the date of their installation or 18 months from the date of their purchase from HPM Legrand, whichever is the earlier;
 - the Products have been properly handled, stored and maintained and any instructions by HPM Legrand in relation to the Products and their installation and use (including operating instructions which specify applicable operating and environmental conditions for particular Products) have been fully observed;
 - the Purchaser gives written notice to HPM Legrand of the alleged defect in respect of the Products, such notice to be received by HPM Legrand within 14 days of the date when such defect appeared or ought to have been discovered;
 - the Products, being Products of the kind referred to in clause 9.2, are unsoiled and returned unopened to HPM Legrand accompanied by an itemised list including the batch number and the relevant statement date and number;
 - the Purchaser gives HPM Legrand a reasonable opportunity to inspect the Products; and
 - the Purchaser makes no further use of the Products after the Purchaser discovers or ought to have discovered that they were defective.
- 9.4 Clause 9.1 does not apply:
- to the extent the Products are damaged after risk passes to the Purchaser in accordance with clause 7.1;
 - to the extent the Products have been subjected to abnormal use (including excessive vibration, short circuiting, excessive voltage, interrupted or uneven power supply and negligent operation);
 - to the extent any Products have been repaired, altered or replaced by anyone other than HPM Legrand or its authorised representatives;
 - to the extent defects or damage to any Products are attributable to their installation or assembly by any third party;
 - to defects or damage arising from normal wear and tear; and

- to any components of the Products which are not manufactured or supplied by HPM Legrand or any one of its Related Bodies Corporate.
- 9.5 Certain Products manufactured and supplied by HPM Legrand (including lamps) are specified to have a nominal life or rating. HPM Legrand does not warrant and will not in any circumstance be liable for defects or failures in any such Products or for any reduction in any such Products' nominal life or rating attributable to external factors such as vibration, interrupted or uneven power supply or excessive voltage.
- 9.6 The warranty contained in this clause 9 is personal to the Purchaser and may not be assigned except with the prior written consent of HPM Legrand. In particular, it is hereby stated and acknowledged by the Purchaser that the warranty contained in this clause 9 confers no rights and is not intended to benefit end-users of Products who are Consumers.
- 9.7 HPM Legrand reserves the right to provide express warranties direct to end-users of Products. Such warranties may vary or extend the term of available warranty protection and may also be subject to different conditions than are set out in this clause 9.

10 Exclusion of liability

- 10.1 HPM Legrand acknowledges that certain legislation in Australia, including the Australian Consumer Law, provides Consumers with guarantees and rights which cannot be excluded, restricted or modified or which may in certain cases only be modified or restricted to a limited extent. Nothing in these terms and conditions excludes, restricts or modifies, or is intended to exclude, restrict or modify, any guarantee, condition, warranty, right or liability implied by law (including any guarantee, condition, right or liability imposed under the Australian Consumer Law) which cannot lawfully be excluded, restricted or modified.
- 10.2 To the extent permitted by the Australian Consumer Law, HPM Legrand's liability for goods or services supplied under a Consumer Contract that are not of a kind ordinarily acquired for personal, domestic or household use or consumption is limited, at HPM Legrand's option, to any one or more of the following:
- in the case of goods, the replacement, repair or payment of the cost of replacement or repair of the goods; and
 - in the case of services, supplying the services again or payment of the cost of having the services supplied again.
- 10.3 In the case of goods or services which are not supplied by HPM Legrand under a Consumer Contract:
- HPM Legrand accepts no liability for any economic, indirect or consequential loss, including loss of profit, loss of income, loss of contracts or business and loss of data; and
 - HPM Legrand's maximum aggregate liability for any cause and under any head of liability will not in any circumstances exceed the total price paid by the Purchaser for those goods and services.
- 10.4 These terms and conditions describe the full extent of HPM Legrand's obligations and liabilities in respect of the supply of the Products and, except as expressly stated or referred to in this Agreement or as otherwise specifically provided in writing by HPM Legrand, there are no guarantees, conditions, warranties or other terms that bind HPM Legrand nor will HPM Legrand otherwise be liable in contract, tort (including negligence) or for breach of statutory duty for any loss, damage, cost or expense of any kind.

11 Product specification and discontinuance

- HPM Legrand reserves the right to:
- discontinue Products;
 - substitute comparable products; and
 - modify the design, specifications and Standards (other than mandatory Standards) applicable to any of its Products,
- at any time including during the currency of these terms and conditions and any current Order and, in each case, without incurring any liability or other obligation to the Purchaser.

12 Termination

- 12.1 HPM Legrand may terminate the Agreement, or suspend or cancel any current Order, by written notice to the Purchaser if the Purchaser does not pay any amount in accordance with these terms and conditions.
- 12.2 Either party may terminate this Agreement, or suspend or cancel any current Order, by written notice to the other if:
- the other party commits or allows to be committed a material breach of these terms and conditions and does not within 21 days of receiving a written notice from the first mentioned party rectify that breach;
 - the other party commits a material breach of these terms and conditions which cannot be remedied;
 - the other party becomes, or resolves to become, subject to external administration or proceedings under Chapter 5 of the Corporations Act 2001 (Cth); or
 - an event of the kind described in clause 7.7 occurs in respect of the other party.
- 12.3 Upon the expiration or termination of this Agreement or the suspension or cancellation of any Order for any reason, the Purchaser must promptly pay all amounts owing to HPM Legrand under this Agreement.

13 Force majeure

Neither party will be liable for any loss or damage caused by delay in the performance or non-performance of any of its obligations occasioned by any cause whatsoever that is beyond its reasonable control including: Act of God; war; civil disturbance; requisitioning by governments or public authorities; governmental restrictions; prohibitions or enactments of any kind; import or export regulations; strikes; shipping and transport delays; lock-outs or other industrial disputes (whether involving its own employees or those of any other person); difficulties in obtaining materials; breakdown of machinery; fires; or accidents. If any such event occurs the affected party may to the extent necessary vary or suspend any Order, these terms and conditions or the

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Agreement, in each case at its discretion and without incurring any liability to the other party for any such loss or damage.

14 Intellectual property

- 14.1 HPM Legrand for and on behalf of itself, its Related Bodies Corporate and its licensees (if any) reserves ownership and intellectual property rights in all inventions, names, illustrations, drawings, plans, specifications, formulas and documents relating to the Products. Nothing in these terms and conditions operates or is intended to deny HPM Legrand, its Related Bodies Corporate or its licensees, or confer on the Purchaser, such rights or any other intellectual property rights in the Products.
- 14.2 If a third party asserts a claim for breach of its intellectual property rights arising from the supply or use of the Products the Purchaser will immediately inform HPM Legrand and HPM Legrand will be solely responsible for the defence, resolution and settlement of any such claim. The Purchaser will at HPM Legrand's cost and request render such reasonable assistance as HPM Legrand requires in defending any such claim. In no circumstances will the Purchaser acknowledge or concede the validity of any such claim except with HPM Legrand's express written consent. If any such claim against HPM Legrand succeeds, HPM Legrand will at its option use its best endeavours to obtain a right to use or license any such intellectual property rights or modify the Products or replace them at its cost.
- 14.3 The Purchaser will indemnify HPM Legrand for and in respect of claims by any third party in relation to the Products which arise from or can be attributed to the special processes, requirements or specifications of the Purchaser, including the use or transfer of designs, logos, trade marks and techniques, equipment and tools in the manufacture, production and labelling of the Products.
- 14.4 In this clause 14 a reference to intellectual property rights includes patents, trade marks, copyright, registered designs and licences and applications in respect of any of the above.

15 Assignment

This Agreement is personal to HPM Legrand and the Purchaser and any rights and obligations under this Agreement may only be assigned by the Purchaser with the prior written consent of HPM Legrand.

16 Waiver

No neglect, delay or indulgence on the part of HPM Legrand in enforcing these terms and conditions will prejudice the rights of HPM Legrand or be construed as a waiver of any such rights.

17 Severability

If any part of these terms and conditions (including any provision, part, paragraph, phrase or word) is illegal, invalid or unenforceable it will be read down so far as necessary to give it a valid and enforceable operation or, if that is not possible, it will be severed from these terms and conditions, but in any event the remaining provisions will remain in full force and effect.

18 Governing law

This Agreement and these terms and conditions are governed by and must be construed in accordance with the laws which apply in the State of New South Wales. The parties submit to the non-exclusive jurisdiction of the courts of that State and the Commonwealth of Australia in respect of all matters or things arising out of these terms and conditions and any other provision of this Agreement.

19 Privacy policy

HPM Legrand's Privacy Policy and Credit Reporting Policy is on our website at hpmlegrand.com.au. The Purchaser and its directors, partners or proprietors:

- (a) consent to the collection, use and disclosure of the personal information and credit information for the purpose of HPM Legrand supplying the Products and managing the Purchaser's account, assessing the credit worthiness of the Purchaser, registering HPM Legrand's security interests on the PPSR and otherwise implementing these terms and conditions and for any other purpose described in the Privacy Policy and Credit Reporting Policy, and warrant that all data provided by the Purchaser is accurate; and
- (b) consent to any personal information collected by HPM Legrand being disclosed to third parties operating outside Australia including New Zealand, France, and other European countries, United States of America, and any other country where HPM Legrand or its related entities have a presence or engage third parties, acknowledge and agree that Australian Privacy Principle 8.1 will not apply to such disclosures, that HPM Legrand will not be required to take such steps as are reasonable in the circumstances to ensure such third parties outside of Australia comply with the Australian Privacy Principles and will not be accountable under the Privacy Act (Cth) and the individual will not be able to seek redress against HPM Legrand under the Privacy Act (Cth) in the event such overseas third parties do not comply.

20 Exports and Embargoes

20.1 This section applies where the Purchaser undertakes export, re-export or resale of the Products or where our commercial arrangement is not restricted solely to the Australian market (Exports).

The Purchaser warrants and undertakes to HPM Legrand:

- (a) The Purchaser shall comply with all the (re-) export control regulations of Australia, France, the EU and the USA and those of any other applicable jurisdiction and it shall obtain all necessary licences, shipping documents and authorisations required under such legislation in respect of such Exports.
- (b) The Purchaser shall not export or re-export the Products to a country that is subject to embargo or sanction without having obtained all necessary authorisations from Australian, French, European or American authorities, the United Nations or any other country or organisation that imposes such restrictions.

- (c) The Purchaser shall not supply the Products to parties, organisations or entities subject to embargoes, sanctions or other restrictions imposed by Australia, France, the EU, the USA, the United Nations or by any other country, or to parties, organisations or entities if there is reason to believe that they fail to fully comply with all applicable national or international regulations, sanctions and embargoes.
 - (d) The Products are not intended to be used in connection with any sectors or use that is banned or subject to restrictions under any laws or regulations, unless all required authorisation by the relevant bodies have been obtained.
 - (e) All transfer and receipt of funds by the Purchaser comply with all national and international regulations.
 - (f) To enable authorities or Legrand to conduct compliance audits, the Purchaser upon request by HPM Legrand, shall promptly provide HPM Legrand with all relevant licences and authorisations, information as to the identity of the customer to whom the Products are supplied, the destination and intended use of the Products and the financial institutions or entities used to collect and issue payments.
 - (g) The Purchaser shall notify HPM Legrand if the Purchaser suspects that any person the Purchaser has supplied the Products to may not be complying with any embargo, sanction or export control regulation.
 - (h) Purchaser shall indemnify and hold harmless HPM Legrand from and against any and all claims, proceedings, actions, fines, losses, costs and damages arising out of or relating to any noncompliance by the Purchaser with any of the above undertakings or breach of any relevant export control regulations or sanction or embargo.
- 20.2 The Purchaser's compliance with all the above undertakings is a condition of HPM Legrand continuing to supply the Products to the Purchaser and HPM Legrand has the right to suspend such supply and terminate any agreement where we have a reasonable belief that the above undertakings are not being complied with or if any obligation under any agreement would constitute a breach of any national or international regulations or any embargo or sanction and HPM Legrand shall have no liability to the Purchaser or any third party by way of damages or otherwise in respect of such suspension or termination.