

## General Delivery Terms and Conditions

### 1. General:

All our deliveries and services to entrepreneurs in the meaning of § 14 German Civil Code are based exclusively upon our general terms and conditions stated below which are agreed upon with acceptance of our delivery also without explicit approval by the customer. General contract terms and conditions of the customer do not apply, even if we do not contradict to them explicitly and perform delivery. Variations and amendments made by the customer are only valid, if explicitly confirmed by us in writing. They are applicable only for the transaction for which they are made. The terms and conditions below shall be valid for future contracts, even if such is not explicitly stipulated in the future.

### 2. Offer, Contract Conclusion, Writing Requirement:

Our offers are always without any engagement. After a purchase order has been placed by the customer, contract conclusion occurs by our written order confirmation, which shall be valid also when prepared automatically and without signature and name, or by our delivery of goods. Data given prior to placing of the order within the scope of order processing (for special cables, e.g. due to additional texts, drawings, sample cables, sample wires and cable glands) including but not limited to performance, consuming or other individual data shall only be binding, if confirmed by us together with the order confirmation or subsequently in writing. Information given in brochures and advertisements shall not be considered to represent an agreement on the properties of the product.

Our sales agents are not authorized to give guarantees or make arrangements varying from the general contract terms and conditions. Such eventual agreements must be confirmed by us in writing in order to be valid.

### 3. Prices:

The prices valid on the day of delivery are applicable plus value added tax. The prices for copper cables include a copper basis of € 150.00/100 kgs of copper except telecommunications cables with copper € 100.00/ 100 kgs of copper, power cable price without copper, if no other values are specified when prices are given. The basis for sales price calculation is the published DEL market exchange quotation for copper on the day before the day of order registration plus 1 % for metal procurement cost. The sales price increases or decreases by the difference between copper basis and DEL quotation. When other metals (e.g. aluminium, lead) are used, the calculation shall be made analog to the copper price handling. The values specified in the offer shall be used as an initial basis. For items without metal basis quotation, hence full price formation (e.g. cable glands), we reserve the right to make adjustments in case of unusual raw material price variations. Metal and/or raw material price, surcharges and abatements are always to be understood net.

3.1. Packing for shipment will be invoiced separately or made available on a lending basis. If delivery is made on drums of Kabeltrommel GmbH, Cologne (KTG), invoicing of the drum rent will be made by KTG directly according to their provisions. If delivery is made on disposable drums, no drum rent will be invoiced. The supplier reserves the right to ship KTG drums or disposable drums.

Delivery of grid box and Euro flat pallets will be made on an interchange basis. Unless marked as disposable, barrels are credited with 2/3 of the value invoiced upon return shipment free of freight charge, if they can be used again. In case of a special shipment requested by the purchaser, the cost will be charged to the purchaser. No freight charge reimbursement will be made, if the goods are collected.

3.2. The minimum order value is € 50.00 net. For orders with a lower net value, € 15.00 of proportionate cost are charged. For requested special lengths outside our catalog standards, i.e. in general 50/100/500/1000 m or ring and drum lengths available on stock, a cut length surcharge will be charged in the form of a rebate decrease and/or net price surcharge by 5 % , but € 15.00 minimum per special length. For accessories, which are not shown on the catalog, a surplus delivery and/or short delivery of 10 % is admissible.

3.3. Freight charge exemption: as from a net order value of € 300.00, we shall deliver free domicile (within the Federal Republic of Germany), including commodity packing, if it is not a customized order.

3.4. If between contract conclusion and delivery unforeseen increases in material, wage or transport cost, taxes or duties occur, we shall be entitled to adjust prices according to these factors, unless delivery is supposed to take place within four months after contract conclusion. If the customer makes modifications after contract conclusion, we shall be entitled to adjust prices in accordance with the surplus cost caused by the modification.

4. Short lengths and overlengths of +/- 10 % are admissible. Delivery may be made in partial lengths. In case of special fabrications, we reserve the right to deliver up to 10 % of the quantity ordered in short lengths or overlengths for items sold on a piece basis, and up to 15 % of the quantity ordered in short lengths and overlengths for items sold on a meter basis. The measuring tolerance due to lengths shall be  $\pm 0.4$  % . Special products sold on a meter basis are produced on a manufacturing length basis.

#### **5. Dates and Delays:**

We shall make every effort to observe the delivery dates and delays specified in the order confirmation. They reproduce, however, only the probable delivery time and not a fixed delivery time nor a delivery time agreed upon by calendar.

5.1. Delivery delays will start only after complete clarification of all details. Performance of deliveries requires timely response to all questions, forwarding of all necessary or required drawings and documents or factory parts to be supplied, granting of all necessary releases and approvals; otherwise the delivery time is extended accordingly.

5.2. The delay or date shall be deemed to have been kept, if the consignment has been shipped within the delay or at the date agreed upon, or its readiness for shipment has been communicated or the consignment has been collected.

5.3. We shall only be obliged to perform and deliver, if the customer has made all agreed upon payments. If payments are made late, we shall be entitled to extend the delivery delays accordingly.

5.4. If a delay or date is not kept due to Force Majeure, mobilization, war, riot, strike, lockout or other unforeseeable impediments concerning our enterprise, for which we are not liable and which have occurred and/or become known to us after contract conclusion, the delay and/or date shall be reasonably extended. This shall also be applicable to cases of unforeseeable events having an impact on the enterprise of our subsupplier and for which neither we nor the subsupplier liable.

5.5. If shipment is delayed on request by the customer or for other reasons for which he is liable, we shall be entitled to charge the cost caused by storage but at least storage fees in the amount of 0.5 % of the invoice value for each month started and beginning one month after notification of readiness for shipment. The storage fees shall be limited to in total 5 % of the invoice value, unless we can prove that higher cost have been incurred by us. The customer shall be permitted to prove that cost have not been incurred at all or that these are far lower than the lump sum.

5.6. Partial deliveries are admissible.

5.7. Decisive for calculation are the quantities and weights which have been supplied by us ex works or which have been forwarded by us for shipment.

5.8. In case of deliveries within the European Community, the customer shall be obliged to communicate its VAT-ID as well as to give us all other information necessary for tax exemption examination and to make available to us the evidence necessary for proof of tax exemption. If the customer does not fulfill these obligations in time, we will not treat the delivery as being tax-exempt. We shall then be entitled to invoice the respective value added tax incurred in addition and claim it. If we have assumed incorrectly that a delivery is tax-exempt due to incorrect information given by the customer, the customer must release us from the tax due and bear all additional expenditure.

#### **6. Shipment, Passing of Risk:**

Shipment shall be made at customer's risk. Insurance will only be effected by us on explicit demand by the customer who will bear the cost.

## **7. Supply, Use of Software**

7.1. When software is supplied, the customer shall be granted a non-exclusive and non-transferable right of use of the software and the related documentation for operating the goods for which the software is supplied. Except a backup copy, the customer shall not be allowed to make any reproductions. Copyright notices, serial numbers as well as other software identification features must not be removed or modified.

7.2. The purchaser shall be obliged to prevent unauthorized third party access to the software as well as the documentation by taking appropriate measures. He must store the original data carriers supplied as well as the backup copy in a location protected against unauthorized third party access. Its employees must be urgently requested to comply with the present delivery terms and conditions as well as copyright provisions.

## **8. Liability for damages as a result of breach of duty**

8.1. We shall not be liable for loss of profit. Indemnification shall be limited to 1 % for each finished week of delay and in total 10 % of the order amount. Indemnification instead of performance shall be limited to 10 % of the order value.

As far as we are liable for damages, such duty shall always be limited to the damage foreseeable at the time of contract conclusion.. These limitations of liability shall not be applicable, if a commercial transaction for delivery by a fixed date has been stipulated, if we are liable for intent or gross negligence or for violation of substantial contract obligations or if we are liable for damages to body, life and health. Claims from the breach of duty out of contractual obligation become barred by the statute of limitations within the same period of time than the warranty claims, unless these are substantial contract obligations. Claims from negligently omitted non-information on negative properties of our products are excluded, unless representing a redhibitory defect and unless explicit consultation of the customer had been accepted by us in addition. Our statutory liability from the product liability law remains unaffected by the above mentioned provisions.

8.2. Our liability for the loss or modification of data shall be limited to the typical expenditure for restoration which would have occurred in the event of regular production of backup copies in accordance with the risk.

## **9. Notifications of Defect and Warranty:**

The notification of defect specified in accordance with §§ 377, 381 para 2 HGB (commercial duty of investigation and notification of defect) must be raised immediately in writing - in case of recognizable defects within 10 days at the latest after receipt of the goods at the place of destination, by indicating the delivery slip and invoice number.

9.1. If a notification of defect was raised in time, the customer shall be entitled to request subsequent performance (elimination of the defect or delivery of a product free from defects). If two attempts of subsequent performance are unsuccessful (failed subsequent performance) or if we refuse subsequent performance or if subsequent performance is unreasonable, the customer may withdraw from contract or reduce the purchase price or demand damages instead of performance.

9.2. For impairments of the delivery object by natural wear and tear, damage after passing of risk or improper treatment no warranty shall be given.

9.3. The customer shall be obliged to grant us the necessary time and opportunity for subsequent performance.

9.4. Our liability expires, if the customer himself or third parties have performed rework and modifications on our consignment without our prior approval or if parts not supplied or not released by us have been used.

9.5. If for generosity, we accept to take back goods, such return shipments must be announced and carried out by the customer at his own charge.

## **10. Payment Terms and Conditions:**

The invoice will be made out upon shipment. If goods ready for shipment cannot be shipped for reasons, which are within the sphere of risk of the customer, the invoice will nevertheless be made out and becomes due. Our invoices shall be payable 30 days net as from date of invoice. If payment occurs within 10 days, 2 % discount on the goods' value shall be granted.

10.1. In case of default we shall be entitled to request default interest in the amount of 8 % above the basic interest rate without proof of loss. The exercise of further damage claims is not excluded. The customer shall be permitted to prove that no damage has occurred or that a damage far lower than the lump sum has occurred. Payments shall always be used for settlement of the oldest debt due including the default interest incurred on it, unless the customer specifies another explicit purpose. At first the interest will be paid.

10.2. The customer shall only be allowed to set off with undisputed debts or debts which have been validly established or exercise a retention right on goods for such debts, unless the customer pleads redhibitory defects. If payments are withheld, the debt must be based upon the same contractual relationship.

10.3. Bills of exchange shall only be accepted by us after explicit prior consent. Acceptance of bills of exchange or cheques will always be made in account of performance.

10.4. In the event of a contract for work and services, payment of our invoices without reservation shall be deemed as unreserved acceptance of our performance as well as a waiver of a penalty eventually forfeited.

## **11. Retention of Title**

11.1. The goods delivered by us remain our property until complete payment of all debts from the business relationship between us and the customer.

11.2. Unless otherwise specified below, the customer shall be entitled to resale and/or process the goods under retention of title in the normal course of business, but he shall not be permitted to pledge the goods or transfer them by way of security.

11.3. In case of processing, connection or mixing of the goods under retention of title with other goods or objects not owned by us, we are entitled to the joint ownership portion created in the new product in the ratio of the invoice value of the goods under retention of title to the other goods or objects at the time of processing, connection or mixing. If the customer acquires exclusive ownership in the new product, the contractual partners agree already now that the purchaser in the ratio of the invoice value of the goods under retention of title processed, connected or mixed to the invoice value of the remaining goods or objects processed grants us joint ownership in the new product. Direct labour cost, overhead expenses and other calculable cost factors shall not be considered when calculating our joint ownership portion.

The customer shall be obliged to disclose on request at any time calculation of his cost of goods sold for determination of our joint ownership portion. Custody free of charge of the goods in our joint ownership for us by the customer is agreed already now.

11.4. The customer assigns already now all debts from resale of our goods under retention of title to us in the amount of the purchase price agreed upon with us for security purposes; we accept this assignment. We agree to a resale only, if due to the above assignment declaration, a valid assignment of claim can occur. If the goods under retention of title are resold together with other goods regardless of this occurs without or after processing, connection or mixing, the above mentioned advance assignment shall only be valid in the amount of the invoice value of the goods under retention of title which are resold together with the other goods.

11.5. In case of contracts for services or work performance, on the execution of which our retention of title will expire, the wage claim of the customer will be assigned to us already now in the amount of the invoice value of the goods under retention of title processed; we accept this assignment.

11.6. Up to a cancellation by us, the customer shall be authorized to collect to our account in his own name the debts assigned to us in advance. The authorization to collect expires also without our explicit cancellation, if the customer does not fulfil his obligations to us or is verging on insolvency, especially if insolvency proceedings are filed or if it is to be suspected that collected amounts cannot be remitted to us. In case of partial payments on wage claims partially assigned to us, the customer shall be obliged to set off the partial payments at first against the claim portion not assigned to us. Between us and the customer at first always the partial amount not assigned to us shall be deemed to have been paid off with respect to partial payments collected by the customer.

11.7. The authorization to collect does not authorize any factoring. Neither do we agree to assignment of the resale or wage claim assigned to us within the scope of a genuine factoring contract.

11.8. In case of payments in cheque/bill-of-exchange proceedings, our retention of title and security rights remain unaffected and continue to exist, until our liability out of bill-of-exchange and check has ended.

11.9. On our request, the customer shall be obliged to give information in writing at any time on the whereabouts of the goods subject to our retention of title rights. He shall be obliged to indicate to us third parties entitled to ownership as well as the debtors of the debts assigned to us, to give us all information on the debts assigned required for collection, to make available the documents necessary for collection including but not limited to the contracts and invoices and to inform the debtor on the assignment on our request at any time. The customer must make available to us assignment notices at any time. He shall be obliged to inform us immediately on every prejudice to our retention of title rights or other securities, especially pledges.

11.10. In case of behaviour contrary to the contract terms and conditions by the customer including but not limited to delay of payment with respect to a claim resulting from the business relationship, as well as if the customer is verging on insolvency, is becoming insolvent, if legal insolvency proceedings are being instituted against the customer, or if he asks his creditors for a settlement out of court, we may withdraw from contract after having granted a reasonable extension of time and ask the product back.

11.11. We undertake to release the securities, to which we are entitled, on request by the customer in so far as the value of our securities exceeds the debts to be secured by more than 20 %; the choice of the securities to be released lies with us.“

## **12. Design and Programme Changes:**

We reserve proprietary rights and copyrights on cost estimates, drawings and other documents; they must not be disclosed to third parties without our explicit approval. Design and execution is subject to alterations in view of new experiences and improvements.

## **13. Redelivery of Goods abroad:**

If a domestic purchaser redelivers abroad, the customer shall be responsible for checking as to whether the goods to be exported are subject to restrictions of the external trade law of the Federal Republic of Germany, the Dual-Use Decree of the EC or external trade law of the US.

## **14. Place of Delivery, Venue, Conclusions:**

Place of delivery for all obligations out of the present contract including but not limited to payment of the purchase price as well as venue is Stuttgart, if the customer is a merchant within the meaning of § 38 para 1 ZPO [German Code of Civil Procedure]. This restriction does not apply, if the customer does not have a general venue within the country. We shall, however, be entitled to institute an action at the business place of the customer. The contract shall only be governed by the laws of the Federal Republic of Germany. Application of the United Nations Convention on Contracts for the International Sale of Goods (CISG) shall be excluded. If individual provisions of the present contract terms and conditions are or become invalid, validity of the remaining provisions shall not be affected, if a reasonable provision continues to exist on an overall contract level.