

Standard Terms and Conditions of Dätwyler Kabel + Systeme GmbH for Deliveries and Services (01.12.2005)

1. General provisions - scope of application

1.1 All of our deliveries and services shall be exclusively based on our Standard Terms and Conditions. Adverse or deviating standard terms and conditions of our customers shall be explicitly rejected. Our Standard Terms and Conditions shall also be applicable if we execute deliveries or other services without any reservation knowing that the standard terms and conditions of our customers are adverse to or deviating from our Standard Terms and Conditions.

1.2 Our Standard Terms and Conditions shall only be applicable to customers who are entrepreneurs in the sense of § 14 BGB (Civil Code) as well as to legal entities under public law ("juristische Personen des öffentlichen Rechts") and public law special assets ("öffentlich-rechtliches Sondervermögen").

1.3 Our Standard Terms and Conditions shall also be applicable to all future business transactions with our customers.

2. Offer - offer documentation

2.1 Our offers are not binding. Contracts come into being only upon our written confirmation within 2 weeks after receipt of the order or by delivery.

2.2 We reserve the ownership and proprietary rights in images, drawings, plans, calculations and other documentation. They may neither be copied nor duplicated in any other manner nor made accessible to third parties without our explicit written consent.

If a contract does not come into force, the customers shall be obliged to return the documentation left with him immediately.

3. Prices

3.1 The prices for our goods shall be "ex works" including loading but excluding the costs of the drum, packaging and the costs for cutting the cables; these shall be separately invoiced with the costs for cutting the cables being charged at a lumb sum of € 50.-- plus the currently applicable value added tax.

Concerning the determination of our prices we refer to the currently valid price list which has already been given to the customers or which the customer can obtain from us.

We shall charge a mark-up for small-volume purchases of € 75.- for each order with a net price of up to € 500.--. Rebates, special offers and/or other discounts shall not be granted on small-volume purchases.

Prices for copper cables (e.g. data and power cables) include a copper basis of € 150.--, telecommunication cables a copper basis of € 100.--. The sales price of copper cables shall be computed on basis of the DEL (German Electrolyte Copper for Conduction Purposes) exchange quotation of the day preceding the receipt of the order plus 1% MPC (Material Procurement Costs). The difference between the DEL quotation and the copper price increases or decreases the sales price respectively.

3.2 Services for the erection of machinery as well as repair work outside of our premises and at our workshops shall require prior written agreement. Such work shall be settled according to the actual time and material involved. The time shall be charged on basis of our cost rates for service engineers applicable at the time of the realisation of the work and the actually incurred personnel costs plus an appropriate surcharge. Material shall be charged as proven by evidence and an additional lumb sum for minor parts.

3.3 The prices for our goods and the prices for our services shall be net prices. They shall not include value added tax. The same shall be separately shown in the invoice and added at the rate applicable at the time of invoicing.

3.4 We reserve the right of changing our prices in an appropriate manner if cost reductions or cost increases occur after the conclusion of the contract, particularly due to collective agreements or material price increases. We shall provide evidence of the same upon customer's request.

4. Terms of payment - default in payment - counterclaims

4.1 Our invoices for the delivery of goods shall always be immediately due and payable within 14 days from the date of invoice with a cash discount of 2% or within 30 days from the date of invoice without any deduction. Different and longer periods of payment shall also always be calculated from the date of invoice and shall be stated in our order confirmation.

No cash discount shall be granted for small-volume purchases with a net price of up to € 250.--.

4.2 Invoices for services and other work in the sense of Item 3.2 shall be payable within 14 days from the date of invoice without any deduction.

4.3 If the customer does not pay within 30 days after the date of invoice (service and other work in the sense of Item 3.2 not within 14 days from the date of invoice), the customer shall be in default of payment even without a reminder. In this case, we shall charge interest on arrears amounting to 8 % above the base interest rate. As far as we are in a position of proving higher damage caused by delayed performance, we shall also be entitled to assert the same. Dunning costs incurred by us shall be charged in addition.

4.4 In case of a payment in arrears, cessation of payments and if circumstances become known which might be suited to diminish the credit standing of the customer, all of our accounts receivable shall become due immediately.

In such cases we shall also be entitled to execute outstanding performance only against prepayment or the provision of a security or to repudiate the contract.

4.5 Our customer can assert a right of retention in relation to a pecuniary claim only with objections based on the same contractual relationship as such pecuniary claim.

The customer shall only be entitled to offsetting if the counterclaim is uncontested or has been determined by a court in a final and absolute manner.

4.6 Claims of the customer against us can only be assigned to third parties or pledged with our prior written consent.

5. Passage of risk in deliveries - packaging

5.1 If the order confirmation does not state anything to the contrary, delivery "ex works Hattersheim" shall have been agreed. Loading and dispatch shall be uninsured at customer's risk.

5.2 If we deliver "franco domicile" in exceptional cases, the customer shall be obliged to assert possible, externally recognisable transport damage against the carrier upon delivery and to inform us immediately in writing. If this is omitted, the customer shall be liable to us for the resulting loss.

5.3 Cables can be delivered preferably on our own on re-usable drums or non-returnable drums. Non-returnable drums shall not be returned to us. Our own re-usable drums shall be collected by the agent after notification for pick-up by principal. (Pick-up notification: Phone: 06190-88 80 91, Fax: 06190-88 80 99, (<http://www.daetwyler.net/d/sonstige/trommelrueckholung.htm>))

Should delivery be made on KTG re-usable drums, the agent shall arrange this with the principal prior to delivery.

5.4 The standard terms and conditions of KTG shall be applicable to the handing over of cable and rope drums. The standard terms and conditions as well as notifications for pick-up can be obtained or reported for pick up at the following address: Kabeltrommel GmbH & Co. KG, Schanzenstraße 30, 51063-Köln, Tel. (0221) 67 88-0, Fax (0221) 67 88-205.

- 6. Terms of delivery - periods for delivery and services - consequences of delayed performance**
- 6.1 We shall be entitled to deliver up to 5 % more or less than the ordered quantity, on principle, if nothing to the contrary has been explicitly agreed.
- 6.2 Partial shipments shall be permitted in appropriate volume.
- 6.3 Our goods shall be delivered by collective goods transport within the Federal Republic of Germany, carriage forward on principle, to the delivery address - ground floor in case of building sites - or to the border duty unpaid. Deliveries starting at a net goods value of 500.- EUR shall deviate from this provision and shall be forwarded carriage paid.
- 6.4 Deadlines for deliveries and services shall only have been approximately agreed.
Correct and on-time delivery to us shall be reserved.
The period of delivery shall commence with the day of the dispatch of the order confirmation and shall have been adhered to if the goods have left our plant until the expiry of the period or readiness for shipment has been advised by us in case the dispatch is delayed through no fault of our own.
- 6.5 Keeping the deadlines for deliveries and services presupposes the compliance of the customer with its contractual duties.
- 6.6 If non-compliance with a deadline for deliveries or services is provably due to mobilisation, war, uprising, strike, lockout or the occurrence of unforeseen impediments, the deadline shall be appropriately extended. This shall also be applicable if the impediments occur at our suppliers' or during a current delay in performance.
- 6.7 If our deliveries or services are delayed for circumstances for which we are responsible, the customer shall be entitled to demand, for every completed week, a lump sum compensation for the delay amounting to 0.5 %, maximum 5 % of the net order value of the delayed delivery or the delayed service. This shall not affect the compensation in damages instead of performance according to Item 9.
- 6.8 If the customer stipulates an appropriate period of grace while we are already in delay, the customer shall be entitled to repudiate the contract after the unsuccessful expiry of this deadline.
- 7. Late taking of delivery - delivery on call**
- 7.1 If our customer does not take the contract-conforming delivery, the customer shall have to effect, nevertheless, the payments related to the delivery as if the taking of delivery had occurred. The same shall be applicable if delivery is based on call and the customer does not call off the delivery or an agreed partial delivery during the contractually agreed period.
- 7.2 The customer shall be obliged to refund to us the damage caused by the delay including possible additional expenses.
- 7.3 If the customer does not comply with its duty to take delivery or call off within an appropriate period of time stipulated by us in writing we shall be entitled to reject the performance of the contract and demand compensation in damages instead of performance. Our supply commitment in relation to the delivery which has not been accepted or called off shall be cancelled.
The same shall be applicable to (partial) deliveries which have not been called off as well as to those possibly to be called off in future.
- 8. Claims for defects of the customer**
- 8.1 Claims for defects shall presuppose that the customer has properly complied with its duty of examination and complaint according to § 377 HGB (Commercial Code).
- 8.2 Our product description shall be exclusively authoritative for the agreed quality in the sense of § 434 paragraph 1 sentence 1 BGB (Civil Code). Public comments, recommendations or advertising statements do not represent additional contractual quality details.
- 8.3 If a delivery or service is deficient, we shall be entitled to rectify the defect or provide a replacement at our discretion. We shall be obliged to bear the required expenditure, particularly transport, travel, labour and material costs if these have not been increased by the fact that the goods were taken to a place different from the business establishment of the customer after delivery or service.
- 8.4 If we are not prepared or not in a position to rectify a defect/provide replacement, if the same is delayed beyond a reasonable period of time for which we are responsible or if the rectification of the defect/provision of replacement fails for other reasons, the customer shall be entitled to repudiate the contract or reduce the payment and demand compensation in damages instead of performance according to Item 9 in case of a non substantial defects.
- 8.5 Claims for damages shall become statute-barred after one year. However, if the delivered goods have been used in accordance with their usual type of utilisation for a building and if the goods have caused the defectiveness of the same, the statutory limitation period shall be five years unless the delivered goods have been used on basis of a contract for the building in which Part B of the Standard Building Contract Terms (VOB/B) has been included in its entirety. In such a case the shorter statutory limitation periods of VOB/B shall be applicable.

The statutory limitation periods shall start with the delivery of the goods, for services in the sense of Item 3.2. with their acceptance, alternatively with the final refusal of acceptance by the customer.
- 9. General liability**
- 9.1 Claims for damages – irrespective of their kind – against us shall be excluded if we, our legal representatives or persons employed in performing an obligation have caused the damage by ordinary negligence. This exclusion of liability shall neither be applicable to bodily injury nor to the assumption of a contractual guarantee nor to an infringement of material contractual obligations endangering the performance of the contract purpose. Our liability shall, however, be limited to the extent of the guarantee or, in case of negligent infringement of material contractual obligations, to the damage typical for the contract and foreseeable. Claims under the Product Liability Act shall not be affected.
- 9.2 With the exception of claims resulting from the liability for defects according to the Product Liability Act and for injury to life, body or health, claims in damages shall become statute-barred one year after the customer got to know of the damage and its obligation to pay damages or would have had to get to know without gross negligence.
- 10. Reservation of ownership**
- 10.1 We reserve ownership in all goods until all of our receivables due from the customer and resulting from the business relationship including future receivables, also from contracts concluded simultaneously or later, have been paid. This shall also be applicable if individual or all receivables have been included by us in a current account and the balance has been drawn and accepted.

- 10.2 In case of a seizure of the reserved goods or any other impairment of the reserved goods by a third party, the customer shall be obliged to refer immediately to our ownership and to inform us by telephone with a subsequent written statement by fax or e-mail so that we may be able to file a suit in accordance with § 771 ZPO (Code of Civil Procedure). If the third party is not in a position of refunding the costs of a suit according to § 771 ZPO (Code of Civil Procedure) in court and out of court, the customer shall be liable for the loss suffered by us.
- 10.3 If the reserved goods are mixed, combined or processed with other items, this shall be without any charge for us. In processing we shall acquire joint ownership in the new item at the ratio of the invoice value of our reserved goods to the other items at the time of the activity. If an item is to be considered the main item, we shall acquire joint ownership in the main item at the ratio of the value of our reserved goods to the overall value of the same at the time of the activity. The customer shall keep all items for us in safe custody free of charge.
- 10.4 The customer may sell the reserved goods only in the proper course of business. The customer assigns to us, already at this point in time, the receivables corresponding to our final invoice amount (including value added tax) with all accessory rights against its clients which will accrue to the customer from the sale of the reserved good. We accept the assignment. The customer shall be entitled to collect such receivables as long as it meets its obligations towards us. If rights of thirds parties exist in relation to the reserved goods, the receivables of the customer shall be transferred to us at the ratio of the value of our joint ownership share to the overall value of the items. The customer shall transfer collected amounts immediately to us if our receivables are due.
- 10.5 The right of the sale and the collection of receivables assigned to us in the proper course of business shall be cancelled in case of a backlog in payments and a cessation of payments. In such cases and upon our request, the customer shall be obliged to release the goods serving as a security and make available to us all of the documentation and details which will enable us to assert the security rights ourselves.

11. Place of fulfilment, place of jurisdiction and applicable law

- 11.1 The place of fulfilment for all obligations from the contractual relationship shall be our business domicile if the order confirmation does not state anything to the contrary.
- 11.2 The local court and the court of appeal competent for our business domicile in Neufahrn shall be the place of jurisdiction for all legal disputes resulting from the contractual relationship as well as its creation and its effectiveness if our customer is a businessperson.
We shall, however, also be entitled to bring a matter before the local court or court of appeal of the customer at our discretion irrespective of the value in dispute.
- 11.3 The law applicable in the Federal Republic of Germany shall be applied with the exception of the UN Convention on Contracts for the International Sale of Goods dated 11.04.1980.