

# Terms and conditions of delivery and payment



## SECTION 1 - General

1. These general terms and conditions of delivery and payment ("General Terms") shall form a material part of all offers made and contracts entered into with companies falling within the definition of §310 of the German Civil Code ("BGB") for deliveries and performance by Baude Kabeltechnik GmbH („Seller“), including but not limited to any consultation furnished by the Seller as well as any continuing and future business relations, without the need for any express inclusion or reference of the same.

2. Varying agreements and conditions are only binding when they are confirmed in writing with a signature. All references made by the buyer to its own terms and conditions are hereby expressly rejected. Oral promises and agreements are only binding upon their written confirmation.

3. When Incoterms are used, the 2010 version shall be applied.

## SECTION 2 - Contract Formation

1. The offers of the Seller are to be understood as revocable invitations to enter into a contract. A contract arises only when the Seller accepts the offer of the Buyer by way of a written confirmation of the offer or the performance of the order.

2. The Seller is entitled to rescind the contract without compensating the Buyer if the performance of the contract by it is made impossible by force majeure.

3. A right of rescission of the Buyer on account of deterioration of assets of the Seller after the conclusion of the contract is excluded.

4. All orders, which are made orally, by telephone or by telegraph shall only be deemed to be effective and enforceable after a written confirmation of the order.

## SECTION 3 - Prices

1. The applicable price for a purchase contract entered into shall be established by means of the Seller's latest price list at the relevant time, which the buyer has had notice of. Earlier price lists shall become void as soon as the application of new price lists is made known to the buyer. The introduction of new price lists shall not affect or cause any changes to be made to the purchase contracts already entered into.

2. Sales prices are only firm when the order is confirmed in writing by the Seller. They apply ex works Sarstedt (EXW), plus the existing value added tax at the time of the delivery and costs of packaging.

3. The prices include a copper base of 150 Euro per 100 kg copper (except underground cables: Cu-Base 0 and telephone cables: Cu-Base 100 Euro). The calculation basis for the sales price is the DEL rating for copper valid the previous day of the incoming order plus procurement costs (min. 1%).

4. The minimum order value for cable and circuits shall amount to 150 Euros net value. In the event that any orders are made, which have values lower than the aforesaid minimum values, a surcharge amounting to 25 Euros will be charged.

5. For required cutting lengths smaller than 50 m we charge cutting costs amounting 25 Euro.

6. For the printing of cables and circuits we invoice per order EUR 30,00 for a lettering and EUR 60,00 for a logo.

## SECTION 4 - Delivery and Transfer of Risk

3. If the Seller at the request of the Buyer sends the sold goods to a place other than the place of performance, the risk of accidental loss and accidental deterioration is transferred to the Buyer when the Seller hands over the goods to the transporter, freight forwarder or other person entrusted with the shipment. This also applies where the Seller assumes the cost of shipment or ships the goods itself. If the goods are ready to be picked up, the transfer of risk occurs when the Buyer is notified that the goods are ready for pick-up.

4. The Buyer takes over the costs of disposal of the packing materials.

4a. KTG drums remain the property of the company KTG GmbH & Co KG Troisdorf and are exclusively subject to their charge system. Please also consult [www.kabeltrommel.de](http://www.kabeltrommel.de)

5. The Buyer shall only be entitled to enforce the rights it is entitled to for delay in delivery or delivery deadlines after he has granted the Seller a reasonable period of time consisting of at least 15 working days grace unless this grace period is statuto-

rily unenforceable.

6. The non-observance of delivery dates and periods by the Seller entitles the Buyer to make use of the rights he has only when the Buyer has given the Seller an appropriate notice period, at least 15 workdays, unless this is unnecessary as a matter of law.

7. If the Seller is prevented by unforeseeable circumstances from performing its obligations, which circumstances were not avoidable in spite of reasonable care, the delivery period will be delayed for the period of the hindrance. This is also the case in the event of labor disputes, disruptions of production, disruptions in production by suppliers (insofar as a replacement order is not reasonable to expect) including freight carriers, disruption caused by public measures and disruptions of transport means.

8. The Seller is entitled to make partial deliveries insofar as this does not inappropriately disadvantage the Buyer.

## SECTION 5 - Payment

1. For each delivery a bill will be separately issued with the date of shipment. This also applies for agreed upon partial deliveries. Pre-payments will be proportionately spread over the particular partial deliveries.

2. The net amount of the invoice is payable within 30 days as of the date of invoice. If the payment is made within 14 days a discount of 2% will be granted. Copper and other surcharges are not discountable.

3. Payment by bill of exchange is conditioned on clearance for payment and requires the consent of the Seller; discount points, fees for cashing bills of exchange and related costs are borne by the Buyer unless otherwise agreed.

4. The Buyer is permitted to temporarily withhold, in the event of a justified notice of complaint for defective goods, only that part of the sales price which corresponds to the part of the delivery that is subject of the claim.

5. Interest for late payment is in accordance with German Civil Code § 288.

6. For the second and every further payment reminder the Seller is entitled to a fee of EUR 5. Costs of collection litigation shall be borne by the Buyer.

7. Set-off of claims is permitted only for undisputed claims or claims that have been reduced to a final judgment. An over- or underdelivery of 10% is agreed.

## SECTION 6 - Product Condition, Liability for Deficiencies

1. For the contractual product condition of the goods, the statements in the Internet shall fundamentally apply. The fitness of the goods for the intended purposes of the Buyer is not part of the product conditions warranted by the Seller. The contractual product condition includes commercially customary and minor technical deviations, ordinary wear and tear in the nature of the goods, deviations from product brochures and similar descriptions or conditions described in offers (form and color), insofar as these result from natural inconsistencies of the materials used. These do not constitute a deficiency.

2. The Buyer is obligated to verify adequacy of the contractual goods for the purpose for which the goods are intended to be used by the Buyer.

3. Notice of apparent deficiencies is to be given without delay and at the latest within 10 days after receipt of the goods. If the deficiency appears only at a later time, the Buyer is required to give the Seller notice without delay after discovery. In the case of merchants, the provisions of German Commercial Code §§ 377 et seq. are applicable.

4. Any liability for deficiencies in quality or materials is terminated when the goods are transformed or processed in a manner that exceeds a use dictated by the state of technology or that indicated by the Seller.

5. If the goods are deficient at the time of the transfer of risk, the Seller can, at its option as part of the Buyer's right to subsequent performance, repair or replace the goods within a reasonable time after receipt of the returned product.

6. Damage compensation to the Buyer on account of deficient products are limited to foreseeable and unavoidable damages. The Buyer is obligated to minimize any possible damage by prompt inspection of the goods at the earliest possible time.

7. Warranty claims are subject to the statutory periods of limitation. The limitations

period is deemed to be tolled for the period of repair or replacement calculated from the date that the returned product that is claimed to be deficient is received by the Seller.

### **SECTION 7 - Retention of Title**

1. The delivered goods remain property of the Seller until complete payment of the purchase price and any incidental claims.
2. As to Buyers who are merchants, the Seller retains ownership until complete satisfaction of all claims resulting from the business relationship.
3. The retention of title is extinguished in the case of a bill of exchange only when it is cashed by the Seller as drawee.
4. In the case of rescission of contract by the Seller (in particular on account of late payment by the Buyer), the Seller is entitled to take back the goods subject to a retention of title. To effectuate this right, the Seller is permitted to enter the business premises of the Buyer during ordinary business times. Rescission of contract is deemed to be declared when the Seller demands the return of the goods subject to the retention of title.
5. The Buyer will maintain the sold goods as well as new goods arising from their use with the care of an ordinary merchant.
6. As long as the Buyer is not in delay with its performance, it is entitled to resell the goods delivered by it from the Seller. In this case, the Buyer assigns now to the Seller all claims (including value added tax) that arise from the Buyer's contractual relationship with the person ordering from it or with third parties.
7. The Buyer remains entitled to collect the assigned claims in a capacity as trustee (collection authority). The authority of the Seller to collect the sums remains undisturbed; the Seller will nonetheless not make use of its collection authority as long as the Buyer fulfills its contractual duties, and in particular, does not become late in payment.
8. The right of the Buyer of resale and use of the goods under retention of title and the appointment of the Buyer to collect the assigned claims are extinguished upon any cessation of payment; the filing of a petition to open an insolvency proceeding, whether voluntary or involuntary; or by the rejection of payment of a check or bill of exchange.
9. If the value of the collateral provided by the Buyer exceeds the claim by more than 10%, the Seller will give up the excess collateral on request of the Buyer.

### **SECTION 8 - Liability**

1. In the event of a breach of its contractual or non-contractual obligations owned by the Seller, the Seller shall be liable to the Buyer for instances of intentional action and gross negligence. This liability shall extend to acts undertaken by the Seller's statutory agents, employees or fiduciaries. This liability is however limited to such damages, which are normal and foreseeable in such contracts as the purchase contract entered into with the buyer. The right to claim any other damages, regardless of the legal basis for such claims and in particular claims for such damages which have not been caused by the delivered goods themselves, are expressly excluded. The buyer shall retain the right to rescind the purchase contract on the basis of the breach made by the Seller.
2. The limitation of liability contained in section 8 number 1 hereinabove shall not apply in cases in which the Seller breaches (regardless of gravity of negligence) one of the main or significant obligations contained in the purchase agreement such that the aggrieved party would not be able to achieve the aim intended upon the execution of the purchase agreement. The limitation of liability would also not be applicable in the event that and to the extent that the Seller had assumed a procurement risk or a guarantee for quality. A guarantee for quality would be only relevant when the guarantee had been undertaken for the purposes that the Buyer would not bear any risk arising outside of the goods, such as in the case of fraudulent concealment of a defect and the initial frustration.
3. In the event of mere negligence due to defective goods, the Seller shall be liable for damages caused to the extent of its product liability insurance, both for the basis of the claim as well as for the amount, which shall not exceed 5.000.000 Euros.
4. In the case of any other obligations, the Seller shall not be liable for acts of mere negligence, except in cases of death, damage to health or bodily injury.
5. The Seller is not liable for breaches of contract or damages due to force majeure. The contracting parties recognize in particular interruptions in transportation, official measures, weather events, non-availability of raw materials, labor disputes, interruptions in one's own production process, interruptions in the production process of

transport companies and suppliers (insofar as a substitute procurement is not reasonable) as force majeure.

### **SECTION 9 - Miscellaneous**

1. All amendments and supplements to this agreement shall be made in written form.
2. This terms of this agreement shall reflect the full agreement entered into between the Parties with regards to the subject matter contained in this agreement. For the moment.
3. Any failure of the Seller to enforce his rights against the Buyer shall not be deemed to be a waiver of such rights.

### **SECTION 10 - Place of Performance and Choice of Forum**

1. Place of performance for payment of the purchase price as well as for the other obligations of the Buyer is the registered place of business of the Seller. Performance place for the obligations of the Seller is the registered place of business of the Seller.
2. It is agreed that the place of performance and the exclusive forum is the registered place of business of the Seller. The Seller is entitled at its option to also bring suit at the place where the Buyer has its normal judicial forum.
3. The Seller is further entitled to enforce his claims against the Buyer by means of arbitration proceedings, in which case the enforcement of such claim by means of ordinary court proceedings would be excluded. Such arbitration proceedings shall take place in the Chamber of Industry and Commerce in Hannover pursuant to the German Institution for Arbitration Rules.

### **SECTION 11 - Foreign Business**

The following additional conditions apply to foreign business:

1. All transactions, including bills of exchange and check transactions, are governed by German civil and commercial law including UN-sales law.
2. Insofar as the purchase agreement is entered into in more than one language, the version in the English version shall prevail.
3. In the case of foreign delivery the seller can demand payment in advance or by letter of credit. Insofar as nothing else is agreed the delivery occurs under the condition of payment against documents (PID). Insofar as nothing else is agreed the payment shall be made in Euro.
4. Customs duties, fees, charges and any taxes arising out of performance of the sales contracts and deliveries are paid by the Buyer except for taxes that are imposed from the country where the Seller has its registered place of business.
5. The Seller has the right to sue the Buyer also in the Buyer's home country.
6. The Seller is further entitled to bring claims against the Buyer in an arbitration proceeding in place of suing in court. The proceeding is to be conducted by the Industrie- und Handelskammer in Hannover according to the current UNCITRAL international commercial arbitration rules.

### **SECTION 12 - Validating Clauses**

1. Should present or future provisions of this contract be entirely or partly invalid or unenforceable or later lose their validity or enforceability, the validity of the remaining provisions of the contract shall not be disturbed. The same applies if this contract should have gaps.
2. In place of the invalid or ineffective provision or to fill a gap, that fitting rule will apply that the parties would have used had they considered the point when concluding the contract. This also applies when the invalidity of a provision rests on a denominated measure of performance or time (period of time or due date); in such cases that legally permissible measure of performance or time (period of time or due date) that comes closest to that intended shall replace that in the contract.
3. Should the validity of a provision in the above-described sense be attainable only by way of agreement under adhesion to particular requirements of form, the parties are obligated to do the required acts and give the required declarations.