

Terms and Conditions for Sale, Payment and Delivery

Status: 10/2014



A. General information

1. We only deliver and provide services in accordance with the following terms and conditions for sale, payment and delivery, even if no express reference is made to them in ongoing business transactions. Changes to these conditions, in particular differing terms and conditions of business on the part of the customer are not allowed. Silence on our part with regard to differing terms and conditions of business cannot be taken as consent, and this includes the case where we deliver without any reservations. When our delivery is accepted, the customer declares that he or she consents to the exclusive validity of our terms and conditions of sale, payment and delivery.

2. All our offers are without obligation. Orders are not deemed to be accepted until they have been confirmed in writing by us.

3. All agreements concluded for the execution of this contract must be put down in writing.

4. If we provide the customer with a computer program or an update alone or in conjunction with a device delivered by us, our software transfer conditions that were valid at the time the said item was made available also apply.

B. Delivery and service scope

1. Technical changes with regard to our order confirmation or the contract are permissible if this is necessary due to legal provisions, administrative requirements or required to achieve the purpose of the contract based on the state of the art, or if by virtue of the said changes neither the guaranteed characteristics are affected nor the suitability of the delivery item is harmed for the contractually agreed use. To this end, the documents given to the customers such as diagrams, illustrations, information on size, weight, use and performance as well as physical and chemical characteristics are only approximate.

2. Special cables/wires are delivered in accordance with manufacturing lengths that are dictated by production conditions.

3. If the item is delivered on cable drums, we would like to point out that cable drums are only lent. The cable drums remain the property of KTG Köln Kabeltrommel GmbH & Co. KG in Cologne, Germany.

C. Prices and payment

1. The prices are given ex works and exclude packaging. Sales tax will be added to the agreed prices at the current legally valid rate.

2. The prices for materials that incorporate copper include a copper base of €150.00/100kg copper. The basis for calculating the sales prices is the published DEL metal exchange rate for copper of the day before the offer, to which will be added 1% for metal delivery charges. The sale price increases or decreases by the difference between the copper base and the DEL rate. The prices for materials that incorporate brass include a brass base (metal rate for MS 58) of €150.00/100 kg. If the daily rate on the day prior to the order differs from this price by €12.50 or a multiple thereof, the brass base increases or decreases for each €12.50 by 5%. In the event that other metals are used (e.g. aluminium), a statement is made out in a similar way as for copper prices.

3. For orders of cables and wires of under 50m, depending on the type and diameter, a minimum quantity supplement of 20% will be added. For lengths from 50 to under 100m, a minimum quantity supplement of 10% will be charged.

4. Payment is to be made within 30 days of the date of the invoice, net, or within 14 days of the date of the invoice with a discount of 2%, by money transfer to the bank account specified to the customer. Discounts are not granted if the customer is in arrears with the payment of earlier deliveries.

5. The customer can only offset or assert a right of retention against the seller if this counterclaim has legal force or is uncontested.

D. Delivery time

1. The delivery or execution of any services (delivery times, ie delivery deadlines/periods) are contingent upon the customer fulfilling his or her contractual obligations and duties. Delivery periods therefore commence when our order confirmation is received by the customer, but not before the customer has supplied the documents, information, authorisations etc. and also not before receipt of the agreed down payment, security etc.; in this case delivery deadlines will be postponed accordingly.

After conclusion of the contract, any agreed changes or extensions to the original scope of delivery or service extend or postpone the original delivery times/deadlines by the appropriate amount. The delivery time is deemed to have been respected if the item has left the factory, or it has been announced that the item is ready for dispatch. Partial deliveries are permitted.

2. Disruption to deliveries and services because of force majeure or following industrial action, administrative intervention, operational problems, difficulties acquiring materials or energy supply problems or any other unforeseeable, unusual situations or circumstances out of our control, whether the said circumstances occur within our company or with a sub-supplier, extend the delivery time by the length of this disruption. This does not include all cases in which we respected our deadline obligation despite the foreseeable nature of the circumstances, or did not take the possible and reasonable measures to prevent or avert the disruption to the services, or in which the impediment was our fault.

According to the above provision, we are not liable for the said circumstances if the latter occur during an ongoing delay. We must inform the customer immediately of the occurrence of such circumstances and the foreseeable duration of such disruptions.

If, following such circumstances, it is not possible or no longer economically reasonable for us to fulfil the terms of the contract, we may cancel the contract in whole or in part. The same applies if, following such circumstances, it is not possible to foresee when the contract can be fulfilled. The customer has no right to damages in the event that the contract is cancelled in this manner. If we wish to assert the right to cancel, we must inform the customer of this as soon as we are aware of the scope of the event, even if in the first instance an extension to the delivery time or a postponement of the delivery deadline has already been agreed with the customer.

3. If the customer suffers prejudice because of a delay for which we are responsible, the customer has the right to damages. The amount of such damages is limited to 0.75% for each week, even partial, of the delay, and may not exceed 7.5% of the value of the order. Our liability in accordance with section H of these terms and conditions of sale, payment and delivery is not affected by this.

4. If the dispatch is delayed at the request of the customer, the latter will be charged at least 0.5% of the amount of the invoice (for partial deliveries, of the partial invoice), starting a month after our announcing we were ready to deliver. This is to cover any costs that are incurred by us for storage. We are also permitted once an additional deadline has been exceeded to make use of the item in another manner, and to deliver the item to the customer within an appropriately extended period.

E. Transfer of risk and receipt

1. The items are usually sent at the cost and risk of the customer. The risk is transferred at the latest when delivery of the delivery parts to the customer has commenced, even if partial deliveries are made, and we have taken on other services such as, for example, shipping costs.

2. If the dispatch is delayed by circumstances for which we are not responsible, the risk is transferred to the customer from the day on which we were ready to dispatch.

3. Delivered items are to be accepted by the customer without affecting his or her rights as laid down in section G, even if the said items have considerable defects.

F. Title retention

1. The item remains our property (reserved item) until full payment of all debt claims ensuing from the business transaction with the customer has been made.

2. Until the transfer of ownership takes place, the customer must insure the reserved item against loss, breakage, fire, water and other damage. The customer transfers all rights ensuing from the insurance contracts and his or her claims against the insurer to us. We accept this transfer.

3. The customer may neither pledge nor transfer the reserved item for security. In the event of a pledge or seizure or any other such transfer of possession, the customer must inform us immediately.

If the customer acts contrary to the terms of the contract, in particular with regard to late payment, we are permitted to retrieve the reserved item. This also applies if the customer is in excessive debt or is in payment default, insolvency procedures have been initiated against the customer's assets, or there is a considerable worsening of the customer's financial situation. Asserting the right of retention or a seizure of the reserved item by us does not constitute cancellation of this contract.

4. The customer is permitted to dispose of the reserved item within the course of normal business in line with the normal terms and conditions. In the event of resale, the debt claims of the customer ensuing from the resale to the sum of the value of the invoice (including VAT) are ceded to us. We accept this transfer. The customer is authorised to collect these debt claims even after transfer. If the customer does not pay on time, an application to instigate an insolvency procedure will be made, and if the customer has excessive debt, is undergoing insolvency or there is a considerable worsening of the customer's financial situation, the right to resale and the authorisation to collect debt claims is terminated. In this case, we may also collect the transferred debt claims ourselves, unaffected by our authorisation, make use of them and demand that the customer inform his or her debtors of the transfer. Irrespective thereof, we may demand at any time that the customer announce the transferred debt claims and its debtors, provide all information on collecting the claims, and hand over the associated documents.

5. Processing or changing the reserved item by the customer is always undertaken for us. If the reserved item is processed with other objects not belonging to us, we will acquire joint ownership of the new item as proportion of the value of the reserved item to the other processed items at the time of processing. For the item that results through processing, the same applies for other reserved items (see above).

6. If the reserved item is combined with other objects not belonging to us, we will acquire joint ownership of the new item as a proportion of the value of the reserved item to the other combined items at the time of combining. If the combining takes place in such a way that the item of the customer may be seen as the main item, it is hereby agreed that the customer will transfer the proportionate amount of co-ownership. The customer will protect the resulting co-ownership for us. The conditions regarding combining apply to the case of mixing or blending. For new items that result from mixing, blending or combining, the same as for reserved items also applies (see above).

7. We will release the securities entitled to us as long as the value thereof exceeds the secured debt claims by more than 20%.

G. Defects

1. The customer must carefully check the item immediately upon delivery and inform us in writing immediately of any defects as soon as they are found.

2. In the event that a delivery or a service is defective, the customer has the right, as per our choice, to repair of the defect, or delivery of a defect-free item or the manufacture thereof at a different factory (additional fulfilment). If the additional fulfilment is refused by us, goes wrong, is attributable to the customer or does not take place within the appropriate time stipulated by the latter, the customer may, as per his wish, demand a discount or may cancel the contract or - in the event of a contract for work - have the defect repaired at our expense in accordance with §637 of the German Civil Code (BGB). It is not possible to cancel if the defect is insignificant. The customer may not carry out the work on its own initiative if we have legally refused to carry out the additional fulfilment. Moreover, we are only liable for section H of these terms and conditions of sale, payment and delivery.

3. A guarantee for the nature of the item or the work carried out by us within the meaning of §443 of the BGB must be expressly assumed by us. To claim such a guarantee, it is not sufficient to merely state the characteristics, as is the case, for example, with information on suitability, weight use and performance, or chemical or physical details. The same applies for simply stating "guaranteed".

4. The (express or conclusive) information we provide on the suitability of the item or the work to be carried out by us for a specific use is given to the best of our knowledge. If it is based on information from the customer, it must be complete and appropriate. Our information does not release the customer of the obligation to carry out checks and tests to establish the suitability. Unless otherwise agreed, the customer is solely responsible for the suitability of the item or the work to be carried out by us for a specific use and for its installation. In any case, we can only guarantee the suitability for a contractually assumed use within the boundaries of the agreed nature of the item. Information on suitability, weight, use, performance or chemical or physical details can only in principle be respected within the boundaries of the parameters recognised by the contracting parties.

5. Claims for defects are excluded, in particular, in the following cases: defective assembly by the customer or third parties, natural wear and tear, unsuitable or improper use, modifications without our consent, incorrect or negligent handling - in particular defective repairs by the customer or third parties, excessive load or bad maintenance, inappropriate means of production or replacement parts, chemical, electrochemical, mechanical or electrical influences, if not provided for in the contract. If, after completion of the contract, at the wish of the customer, the scope of the delivery or service changes and in so doing the nature or the suitability of the item or the item made by us, within the meaning of §§434, 633 of the BGB, is adversely affected, claims for defects by the customer are excluded if the damage can be attributed to the customer's wishes to make changes.

6. Claims for defects by the customer become invalid after a year. Clause 1 does not apply for a structure and a work, whose success consists in the execution of planning or monitoring services, or if the delivery item is used in accordance with its usual method of use for a structure and this caused the defectiveness thereof; this kind of defect claim ceases to be valid after the legally stipulated period. Clause 1 does not apply either for claims for defects as a result of damage ensuing from injury to life or bodily injury or damage to health due to intentional or negligent breach of obligations or owing to any other damage that is due to an intentional or a grossly negligent breach of obligations; such claims for defects also cease to be valid after the legally stipulated period.

7. We may refuse to carry out additional fulfilment if the customer is behind with payments.

8. In accordance with §478 of the BGB, the customer only has right to recourse if the said customer has not made any agreements over and beyond the legal claims for defects stipulated by the law with his or her purchaser.

H. Liability

1. Claims for damages by the customer due to any breaches of duty under the contractual obligation and due to unpermitted handling are - in particular with regard to subsequent damages (including loss of earnings) - excluded. The same applies to claims for reimbursement of expenses in accordance with §284 of the BGB.

2. Our liability for damage ensuing from injury to life or bodily injury or damage to health remains unaffected for claims in accordance with the German Product Liability Law, for guarantees (except for subsequent defect damage outside the guarantee), for intent and for all foreseeable damage through our gross negligence. For foreseeable material damages following simple negligence, we are responsible as long as we are able to receive cover through our existing liability insurance.

3. For culpable breach of important contractual obligations within the meaning of §307, paragraph 2, no. 2 of the BGB, we are also liable in the event of simple negligence, but only for foreseeable damage up to a limit of €500,000.00.

I. Contractual documents, trade mark rights

We shall retain title and copyright to all contractual documents such as drafts, drawings, calculations and cost estimates. They may not be copied nor made available to third parties without our consent. Any rights and patents, utility models etc. remain our exclusive property, even if this is not expressly stated. Our products may only be reproduced with our written consent.

K. Place of fulfilment, legal domicile and applicable law

1. The exclusive place of fulfilment for both contractual partners is our company headquarters in 71570 Oppenweiler. If our customers are sales people or have no legal domicile in the Federal Republic of Germany, it is agreed that legal domicile will be exclusively the legally competent state courts for our company headquarters at 71570 Oppenweiler. We are, however, authorised to assert claims via another legal domicile.

2. The legal relationship with our customers is exclusively subject to the substantive law of the Federal Republic of Germany. The UN sales convention may not be used.

L. Burden of proof, amendments, invalidity clause

1. Existing rules regarding the burden of proof in the favour of the customer do not affect these terms and conditions on sale, payment and delivery.

2. Amendments to these terms and conditions on sale, payment and delivery or other contractual agreements are to be made in writing.

3. Should individual parts of these terms and conditions on sale, payment and delivery cease to be valid because of a law or individual or special contractual agreements, the effectiveness of the other clauses is not affected by this.