

General terms and conditions of business

böhm Kabeltechnik GmbH – Hall-Str. 8 – 58638 Iserlohn (Germany)

Goods and services shall be supplied, now and in the future, exclusively on the basis of the following General Terms. Any general terms of purchasing that the customer may use are hereby rejected and shall not be acknowledged even if we do not expressly reject them when we receive them again. At the very latest, these terms of sale shall be deemed to have been accepted when the goods are accepted.

1. Offers and confirmation of orders

Our offers shall be non-binding and shall not commit us to accept repeat orders. The basis for the price calculation shall be our most recent price list at the material time, although raw materials shall be calculated under the terms of Clause 3 below. The decisive factors here shall be the daily quoted prices for metals after the clarified order has been received at the plant. If this day is a Saturday, a Sunday, or a public holiday, the quoted price on the next working day shall apply. The customer shall have no claim to the supply of goods until the order has been clarified, which point shall be deemed to have been reached as soon as mutual agreement has been reached on all issues including the delivery period.

2. Pricing

Prices shall be defined as carriage paid to recipient's freight rail terminal, but excluding onward surface freight, for goods up to a total value of €1,250 excluding surcharges and the statutory Value Added Tax, or free on board ship at the port of departure, or free at German frontier. The customer shall bear any additional costs incurred by specific dispatch specification or by postal dispatch. There shall be no freight rebate when goods are collected from the delivery warehouse.

3. Raw materials quoted prices and calculation

The factors set out below shall be decisive in the calculation of raw materials figures.

For copper: the quoted price for electrolyte copper wire ingots published in the business newspapers under the heading of "Quoted prices of non-ferrous metals processors" ("DEL"-prices) plus a percentage surcharge for purchasing costs. If the DEL-price deviates from the underlying price basis, the price per length of 1,000 meters (metres in UK) shall be increased or decreased by the amount obtained by multiplying the stated copper figure by the copper price difference including purchasing costs (the charging price). Copper price surcharges or rebates including purchasing costs shall always be applied strictly net.

For lead: the quoted price of non-ferrous metals processors for lead in cables (as defined in DIN 17 640) as published in the business newspapers. If this deviates from the underlying price basis, the price per 1,000-meter length shall be increased or decreased by the amount obtained by multiplying the stated lead figure by the lead price difference. Lead price surcharges or rebates shall always be applied strictly net.

4. Terms of payment

A prompt-payment discount of 3 percent (per cent in UK) shall be granted if payment is received within 10 days of invoice date (or when notification is given that goods are ready for dispatch); otherwise terms are 30 days net. No prompt-payment discount shall be granted unless all our outstanding claims for payment have been settled. Invoices for installment (instalment in UK) payments shall be due for payment immediately without any deduction.

We reserve the right to require advanced or immediate payment in special cases. No payments shall be deemed to have been rendered until the day on which we can dispose freely over the amount. Payments shall be made in full without any deduction and without any right of off-set or retention. Checks (cheques in UK) and bills-of-exchange can be accepted by prior agreement in order to facilitate payment. Any discount expenses and interest shall be reimbursed.

If the customer fails to adhere to our terms of payment, all accounts receivable from him shall fall due for payment immediately regardless of any bills-of-exchange that may have been received, and he shall be deemed to have fallen into arrears without our having issued any separate payment reminder. Likewise, if the customer ceases to make payments or in the event of any application or moratorium relating to insolvency, our receivable accounts shall fall due for immediate payment. Interest shall be charged at a rate 5 percentage points above the discount rate of the German Bundesbank and the right shall be reserved to raise all other claims as well.

5. Retention of title

All goods that we supply shall remain our property (as "retained goods") until all claims to payment, including those arising in the future, and particularly receivable account balances, have been settled, regardless of their legal basis, even if payment has been rendered for specified goods or services. The customer shall be entitled to process and sell the goods under his normal terms of business but subject always to the conditions set out below.

5.1 The customer's authorization to sell, process, mix, and combine the retained goods in the correct and proper course of his business shall terminate, without prejudice to any revocation that we may issue at any other time so long as he is not in arrears of payment, no later than when he ceases to make payments or if an application is made for the opening of bankruptcy proceedings over his assets or an application is made for proceedings in or out of court for the compounding of debts, or if he applies for a moratorium.

5.2 There shall be no pledging or assignment of title of the retained goods by way of collateral, nor shall the receivables be assigned.

5.3 The customer shall acquire no title over the new object within the meaning of Article 950 of the Code of Civil Law by processing the retained goods. The customer shall be deemed to have processed them on our behalf. If the retained goods are processed together with other good belonging to us or with objects bought in under simple retention of title within the meaning of Article 455 of the Code, we shall acquire sole title to the resultant product. If the retained goods are processed with any third party's goods that are likewise under extended retention of title and thus to the exclusion of the legal consequences of Article 950, we shall acquire co-ownership of the resultant object in the same proportions as our invoice value bears to the invoice value of the third party's retained goods.

5.4 The customer hereby assigns to us his accounts receivable from his resale of the retained goods, including those that have been processed. If the processed product only contains such objects as belong to us or have only been supplied to him under so-called simple retention of title within the meaning of Article 455 of the Code, he hereby assigns to us the entirety of the receivable account; in other cases, i.e. when title has been assigned in advance to more than one supplier, we shall be entitled to a fraction of the receivable account in accordance with the provisions of sub-clause 5.3 above.

5.5 All rights under retention of title and all the special forms of them defined in these General Terms shall apply until we have been released from all contingent liabilities into which we entered in the customer's interests.

5.6 We shall be entitled to collect receivables from the resale of the retained goods until we revoke this right, which we may do at any time. If we so request the customer shall be under an obligation to inform his customers of the assignment of his receivables, unless we do this ourselves, and to provide us with all necessary information and documentation.

5.7 Once the collateral created by the retention of title exceeds the secured receivables by 20 percent, we will at our discretion release accounts that have been settled in full.

5.8 a) Any failure to adhere to our payment terms and any circumstances of which we become aware after entering into the relevant contract and that, in our view, tend to reduce the customer's creditworthiness shall result in all of our receivable accounts falling immediately due for payment without regard to their residual term or to any bills-of-exchange that have been accepted and credited. We shall also be entitled in any such case, and after having set an appropriate period of grace, to cancel the contract or to sue for damages on the grounds of non-fulfillment (non-fulfilment in UK).

b) We shall also have to right to prohibit the resale and the processing of the retained goods, require their return or the transfer of interim possession at the customer's expense, and revoke the customer's right to collect accounts on our behalf. The customer hereby gives his agreement here and now to our removing the goods in such cases. The customer shall be under an obligation, once he has ceased making payments, to provide us with a list, as soon as he has announced that he is ceasing to make payments, of the retained goods still in his possession and, if they have been processed, a list of the accounts receivable from third parties with their invoice addresses. Payments that the customer receives from assigned receivables shall be held separately until they can be passed on to us.

c) We shall be entirely free to decide on the way in which these circumstances are represented and shall be under no obligation to adhere to the provisions of the Code with regard to enforced sale.



6. Customer's obligation to surrender goods in the event of arrears of payment

Should the customer fall into arrears of payment within the meaning of these terms of sale, we shall be entitled to require the immediate surrender of the retained goods and to pay compensation for the fulfillment interest and arrears loss.

7. Packing

Cable drums with a disk diameter of 0.5 to 2.80 meters are the property of Kabeltrommel GmbH & Co. KG (KTG) and shall be lent to the customer on behalf and for the account of KTG. Crates, barrels, reels, and suchlike shall remain our property and only provided temporarily to the customer. The customer shall bear the risk, until these items return to us, of their accidental loss or deterioration. They shall be invoiced separately and two-thirds of their value shall be credited to the customer if they are returned immediately, carriage paid and in good condition. Planking and other forms of packaging such as supports and loading devices shall be invoiced at cost and will not be taking back.

8. Short lengths / over-lengths

We shall have the right to supply up to 10 percent short of or over the quantity ordered.

9. Delivery period

The delivery period stated in the offer shall be non-binding. The delivery period agreed in the confirmation of order shall start to run on the date on which all details of the order have been clarified. The delivery period shall be subject to all reservations that result from unforeseen obstacles in our own plant and at our suppliers' plants. Notification that the goods are ready for dispatch or collection shall be deemed tantamount to effecting delivery.

10. Transfer of risk

All risks shall be transferred to the customer when the consignment (goods and packing) leave our plant or the customer is notified that they are ready for dispatch or collection, even if the place of dispatch is not identical with the place of execution.

11. Warranty

The customer shall inspect the goods without delay after their arrival for any signs of damage and external defects and shall report any such damage or defects in writing within ten days of the arrival of the goods, stating the order and delivery note numbers; otherwise no rights can be derived from them.

If the goods we deliver are to be inspected, this shall be done before they are installed and in no case later than one month after delivery. Any such inspection shall show only whether the relevant VDE regulations and any agreed construction specifications have been adhered to, and whether the core and the insulation meet the requirements of the conditions laid down in the regulations and any other agreements.

Voltage tests shall be made on the basis of random samples. Once two-thirds of the goods delivered have been successfully tested the whole of the consignment shall be treated as in compliance with contract. We shall bear the costs of the tests if the goods have been found to be unsatisfactory, otherwise the customer shall bear the cost.

If serious external defects are discovered, or if a test shows that the agreed construction specifications have not been met, we will supply a replacement free of charge within a reasonable period of time provided we are to blame for the defect. The customer shall have no claims over and above the foregoing and in particular no claim to compensation for subsequent loss or damage.

The following liability for defects shall apply, in the case of low-voltage and high-voltage cables and fittings, for a period of one year from the date of installation or at the most for eighteen months after notification that the goods are ready for dispatch: We will rectify without delay, by repairing or replacing the faulty part, all defects that are notified to us during this time and for which we are to blame. Replaced parts shall become our property. However, we shall only be held to blame for those defects that can be demonstrated to be attributable to faulty materials or workmanship. If the cables have not been laid by us or under our supervision, or if the customer has installed fittings in them that have not come from us, we shall be entitled in any case of doubt to regard third parties' culpable acts as the cause of the breakdown. We shall accept no claims over and above the repair and replacement obligation described above. No complete production length of high-voltage cable will be replaced unless a disruptive discharge has occurred three times in a length of 200 meters, four times in a length of up to 1,000 meters, or five times in a length of 3,000 meters during the warranty period and as a result of different causes. The customer shall connect no excess-voltage protection equipment to the cable that we have not approved in advance for that purpose. There shall be no suspension or interruption of the warranty period under any circumstances. All warranty claims shall fall under the statute of limitations no later than on month after we have rejected the relevant complaint.

12. Third parties' industrial property rights

The customer shall bear all risks if any third party's industrial property rights have been violated by goods supplied in accordance with the customer's drawings and/or other specifications.

13. Weights and measurement data and deviations in construction

All data on the diameters and weights of our products shall be regarded as non-binding and approximate. We reserve the right to allow deviations in the construction of the product caused by manufacturing methods or by the raw material.

14. Return consignments

Returns are accepted on the phone by our sales staff, who then issue collection instructions. If no such instructions have been issued, or if the customer declines to sign them, the goods will not be taken back. We charge a restocking fee of 25 percent of the value of any goods we take back. Optical wave guides will not be taken back. If the wrong goods have been delivered they will be replaced. We expressly reject any claims over and above the foregoing.

15. Place of execution and jurisdiction

The place of execution and jurisdiction for all claims arising out of our contract shall be Iserlohn, Germany for both contractual parties if they are registered traders.

The laws of the Federal Republic of Germany shall apply to the exclusion of any foreign law and United Nations Convention on the International Sale of Goods. The German version of these General Terms and any related contract shall be decisive.

16. Partial invalidity

Should any of the foregoing provisions in these terms of sale prove for any reason to be invalid, ineffective, or unworkable, this shall not affect the validity of the other provisions or the underlying contract. The parties shall be under a mutual obligation in any such case to replace the ineffective provision with an agreement that comes as close to it as legally possible.