



General Terms and Conditions of Delivery (May 2018)

1. SCOPE

1.1. Unless otherwise agreed, these “General Terms and Conditions of Delivery” apply to contracts, deliveries and other services regarding transactions with business customers. Other terms and conditions, particularly the Purchasers’ terms and conditions of purchase, do not apply.

1.2. In the framework of an existing business relationships with companies, the T&Cs are of the essence also if the Seller did not expressly refer to them being included in individual cases.

1.3. Special duties resulting from manufacturer partnership contracts (distribution restraint regulations) for “brown goods” applicable to wholesalers and retailers of the same producer prevail over these T&Cs in the event of contents deviations.

2. OFFERS, CONTRACT CONCLUSION, CANCELLATION, SURCHARGE FOR SMALL QUANTITIES

2.1. The Seller’s catalogue, sales documents and web shop offers are always subject to change, that is, they are to be understood as requests for submitting an offer, unless they are expressly identified as binding in individual cases.

2.2. Orders placed via the web shop are subject to the below terms and conditions:

2.2.1. In the web shop, the Purchaser may select products and – after indicating the number and, if need be, the quantity in the form of selling units (“SUs”) – place them in the virtual shopping cart by clicking on “Add to shopping cart”. By clicking first on “To the shopping cart” and then on “Next”, the Purchaser can start the order process. By clicking on “Place the order”, the Purchaser places a binding order and at the same time accepts the “General Terms and Conditions of Sale and Supply”. Those T&Cs are available at the “AGB” link and can be saved in a reproducible form.

2.2.2. The Seller will immediately confirm the receipt of web shop orders by email or by fax.

2.2.3. The Seller saves the contract wording and delivers this to the Purchaser after order receipt in the context of receipt confirmation by email or fax. The Seller also archives the contract wording on the web shop where the Purchaser may

freely access it via the customer account by entering the relevant log-on data.

2.2.4. Prior to placing an order, the Purchaser may correct their entries at any time by using standard keyboard and mouse functions. Also, all entries will be displayed on the "Order shopping cart" page prior to order placing where correction is possible through standard keyboard and mouse functions.

2.2.5. Contracts can only be concluded in German.

2.3. Orders are deemed accepted if the Seller confirms or executes them immediately after order receipt in which case the delivery note and/or the invoice is deemed the order confirmation. A mere receipt confirmation does not represent order acceptance; this applies also to confirmations of web shop orders by email, unless this provides for both receipt confirmation and acceptance.

2.4. The Seller's employees and sales agents are generally prohibited from making verbal ancillary agreements for written contracts, guarantees or other promises which extend the Seller's duties beyond the written contract contents. This does not apply to declarations from individuals whose power to representation is legally determined (holders of commercial powers of attorney and managing directors).

2.5. Services by the Seller which go beyond their duties as a seller, such as the acceptance of consultancy and planning services which the Purchaser must provide to third parties, require separate arrangements and will be accepted only against remuneration. To the extent the Seller oversees planning/programming for the installation of complex controlling and network systems in the building sector (such as EIB), the Purchaser, being an installer, must comply with these plans and may deviate from them, including minor deviations as to both installation and later repairs, only if they obtained the Seller's approval. The Seller will pay no compensation for damage and expenses, regardless of the kind, which result(s) from the Purchaser arbitrarily deviating from the instructions.

2.6. Purchaser requests for subsequent reduction or cancellation of binding orders can only be considered based on special agreements and – in the case of goods on stock – only to the extent that upstream suppliers agree to taking the goods back; the Seller is not obliged to conclude such agreement. In each case, the Seller may reduce the credit note by a reasonable share in the net invoice amount to cover processing, review and re-packing costs if goods were ordinarily returned after their approval; no refunds will be made for damaged goods. The above provisions do not limit the Purchaser's statutory claims based on withdrawal, objection and similar remedies.

2.7. If the minimum order quantity of € 150.00 (net amount) is not met, the Seller may request a surcharge of €10.00, plus VAT, per order. For cutting lengths with all cable and pipe types, the Seller may invoice a cutting length surcharge of € 10.00, plus VAT.

3. DATA PROTECTION

The Seller complies with applicable data protection laws, particularly with the General Data Protection Regulation (GDPR) and the *Bundesdatenschutzgesetz* (BDSG [German Federal Data Protection Act]), and they implemented technical and organisational measures to ensure that the Seller and their external service providers fulfil data protection regulations.

4. DELIVERY, TRANSFER OF RISKS, DEFAULT, FORCE MAJEURE AND RESERVATION OF SUB-SUPPLIER DELIVERIES

4.1. The goods will be delivered at the Purchaser's expense and risks, whereby the risks are transferred to the Purchaser upon goods delivery. In the case of goods delivery or shipment, the risks are transferred to the Purchaser upon goods hand-over to the haulage contractor or the shipper, but not later than upon leaving the Seller's premises, also if the Seller uses their own vehicles for delivery. This applies also in the case of delivery from third-party premises (drop-shipping). If this is technically required, the Purchaser must provide the means or staff required for unloading. Should delivery be delayed upon the Purchaser's request or for other reasons within their control, the goods will be stored at their expense and risks; in this case, notification of readiness for delivery is equivalent to delivery and the risk is transferred to the Purchaser once they are in default of acceptance or payment. Unless otherwise agreed, the Seller decides on the delivery routes and means. Upon the Purchaser's request and at their expense, the Seller will purchase insurance for the goods.

4.2. Unless there is a written confirmation of the Seller expressly identified as binding or a verbal confirmation of the company managers and/or any other individuals authorised to unlimited representation, delivery terms are non-binding. These terms begin after any technical and other order details were clarified, submission of all required documents and, if applicable, making advance payments, and they are extended by the periods in which the Purchaser fails to fulfil their contractual duties, also from other contracts in the framework of an existing business relationship.

4.3. Partial deliveries are admissible to a reasonable extent. Customary excessive or short cable/pipe shipments of up to 10% of the order quantity are admissible, unless contract quantity deviations are intolerable for the Purchaser in individual cases.

4.4. The delivery term is reasonably extended – also while the Purchaser is in arrears – in the event of force majeure and other unforeseeable circumstances occurring after contract conclusion which are beyond the Seller's control (including operational disruptions, strikes, lockouts or transport route interruptions) to the extent this clearly impacts on the delivery of purchased goods. This also applies if the Seller's suppliers and their sub-suppliers are affected by such circumstances. The Seller will inform the Purchaser about the beginning and the expected end of such disruptions as soon as possible. Should the delay or uncertainty as to the actual time of delivery be unacceptable for the other Party, it is entitled to withdraw from the contract. Claims for damages concerning the above cases are mutually excluded.

4.5. Correct, complete and timely supply by the Seller's sub-suppliers is reserved.

4.6. The Seller is liable to timely delivery only based on their own culpability and that of their vicarious agents, whereby they are not liable for their sub-suppliers since they are no vicarious agents.

4.7. Due to their type, purpose or final destination, the export of certain goods may require approvals to be obtained. The Purchaser is exclusively responsible for checking whether or not export is admissible based on applicable national and international export regulations, such as the EU Export Control Regulations.

4.8. Deliveries to the Purchaser are subject to national or international foreign trade regulations, embargoes or other statutory prohibitions.

5. PACKAGING

5.1. Packaging is invoiced separately.

5.2. The return of packaging materials is excluded to the extent the Seller commissions adequate waste management companies according to the Packaging Regulations as amended. In this case, the Purchaser must preserve the packaging materials and hand them over to the waste management company. To the extent that the Seller and the Purchaser agree that the latter waives their right to return against the payment of a waste disposal cost lump sum, they must hand over used packaging to a recognised waste management company which guarantees correct disposal pursuant to the Packaging Regulations.

5.3. Reusable packaging is provided for the Purchaser by way of lending. The Purchaser must inform the Seller about returning the packaging unit within 14 days in writing and provide the packaging. If they fail to do so, the Seller may, from the third week onwards, request a lending fee of 20% of the costs (but not more than the full purchase price) for each week following a warning or directly invoice the packaging costs, whereby this is immediately due for payment. Cable reels which are the property of Kabeltrommel GmbH & Co. KG (KTG), Cologne, or other third parties will be supplied in the name and on behalf of these owners pursuant to their terms and conditions, particularly the applicable KTG terms and conditions for the provision of cable and winding drums; these terms and conditions are available for inspection at the Seller's premises and/or will be provided upon request. We hereby point out that the cable reel suppliers invoice rental fees to be borne by the Purchaser if the cable reels are not returned on time, unless the reasons for the delay are beyond their control.

6. PRICES AND PAYMENT

6.1. The prices are exclusive of VAT. Unless otherwise agreed, the purchase price is immediately due upon goods receipt without any deductions; this applies also to repairs.

6.2. If discount regulations exist, metal surcharges, lending fees, delivery and other costs are excluded from such discounts. Any existing contractual discounts will not be granted if the Purchaser is in arrears with the payment for other deliveries.

6.3. The statutory provisions apply to payment delays; the Seller may particularly request default interest of 9% above the base lending rate.

6.4. If the Seller becomes aware of facts, including the Purchaser being in arrears with payments for other deliveries, after contract conclusion which, at dutiful commercial discretion, give reason to believe that the claim for purchase price payment is at risk due to the Purchaser being unable to pay, the Seller may grant a reasonable grace period, request the Purchaser to gradually pay or provide adequate securities and, if the Purchaser refuses to do so, withdraw from the contract, whereby invoices on the performance of partial deliveries will be accelerated; other rights of the Seller under sec. 321 of the German Civil Code (*BGB [Bürgerliches Gesetzbuch]* – defence of insecurity) remain unaffected.

6.5. Should the Purchaser be in arrears, the Seller may enter the Purchaser's premises and take the goods away if prior warnings were unsuccessful. They may also prohibit the Purchaser from relocating the supplied goods.

6.6. The Purchaser has a right to withhold payments or to offset against counter-claims only if their counter-claims are undisputed or were legally determined. However, this does not apply to the Purchaser's counter-claims directly relating to defect rectification or contract reversal due to any defects which the Seller failed to remove or rectify by way of subsequent performance and based on the same contract relationship on which the Seller's claim for payment is also based.

7. RETENTION OF TITLE

7.1. The Seller reserves the title to the delivered products until the claims under the business relationship with the Purchaser were fully paid.

7.2. The Purchaser processes goods subject to retention of title on the Seller's behalf without the latter incurring any obligations from this. The Seller is the owner of the new object in its respective processing state. Should the Seller's goods subject to retention of title be processed, mixed or connected with other goods which are not their property, they will become co-owners of the new objects in the ratio of the invoice price of the goods subject to retention of title to that of the other products.

7.3. The Purchaser may sell products subject to retention of title under the Seller's sole or co-ownership in the ordinary course of business; pledging, transfer or assignment by way of security is inadmissible. The Purchaser assigns to the Seller, right from the beginning and in advance, all claims which they have from reselling the goods subject to retention of title or from the products created by processing, mixing or connecting them. This also applies if the products are sold at a global price together with other products of which the Seller is not the owner. If third parties, based on legal provisions, gained (sole) ownership rights in the products due to processing, mixing or connection, the Purchaser assigns to the Seller claims towards such third parties right from the beginning and in advance. Assignment under this paragraph means assignment to the full invoice amount of the goods subject to retention of title. The Purchaser is authorised to collect assigned claims until the time of revocation which is possible at any time. The Seller accepts the Purchaser's assignments in terms of the above right from the beginning.

7.4. The Seller undertakes to release the securities to which they are entitled in terms of the above at their discretion upon the Purchaser's request to the extent that their value exceeds the claims to be secured by more than 10%.

7.5. If the Purchaser's cooperation is required for retention of title to be effective, such as with registrations necessary under the Purchaser's domestic law, the Purchaser must do so.

7.6. Should the Purchaser be in arrears with payment, the Seller may totally or, at their discretion, partially prohibit them from disposing of the goods subject to retention of title, e.g. only their sale or processing.

7.7. In the event that third parties attempt to gain access to goods subject to retention of title, e.g. by their seizure, the Purchaser must object to this, indicate the retention of title and immediately inform the Seller about this attempt.

7.8. If the Purchaser objectively fulfils the requirements for a duty to apply for insolvency proceedings, they must – without the need for a relevant request – refrain from disposing of the goods subject to retention of title. The Purchaser must immediately notify the Seller of the number of goods subject to retention of title. In this case, the Seller may also withdraw from the contract and request the goods subject to retention of title to be returned. If the goods subject to retention of title were processed, mixed or connected to other products, the Seller may request the surrender of such items to a trustee and the Purchaser must indicate all the co-owners of the goods subject to retention of title, including their (company) names, addresses and co-ownership shares. This also applies to claims assigned to the Seller in terms of the above. Additionally, the Purchaser must communicate to the Seller the names and addresses of all the debtors and copies of documents substantiating the claims.

8. DEFECT NOTIFICATION, WARRANTY AND LIABILITY FOR DEFECTS

The Seller is liable for material defects in terms of sec. 434 *BGB* only as follows:

8.1. The Purchaser must immediately check received goods for correct quantities and quality and notify the Seller in text form of apparent defects. To the extent defects are detected later, the Purchaser must notify the Seller thereof in text form immediately following detection. If the Purchaser fails to do so in due time, the goods are deemed to be accepted in which case the Purchaser's claims due to defects lapse. Sec. 377 of the German Commercial Code (*HGB* [*Handelsgesetzbuch*]) is not affected in the case of transactions between entrepreneurs.

8.2. In the event of intended installation or attachment of the goods, the Purchaser must, at the time of goods receipt, check the relevant properties of the goods relevant for installation, attachment and the final intended use and immediately inform the Seller of defects in text form if checking the goods for type and quality at this time is possible and reasonable. Should the Purchaser notify of defects in terms of sent. 1 not at all or not on time despite checks being possible and reasonable, the goods are deemed to be accepted, in which case, the Purchaser has no claims with regard to these defects. Sec. 377 of the German Commercial Code (*HGB* [*Handelsgesetzbuch*]) is not affected in the case of transactions between entrepreneurs.

8.3. If the Purchaser fails, in the case of goods instalment or attachment, to check verifiable external and internal features of the goods required for this or of the later intended uses by applying reasonable efforts prior to installation and/or attachment, they act in a grossly negligent way in terms of sec. 439 para. 3 and sent. 2 of sec. 442 para. 1 *BGB*. In this case, the Purchaser's claims for defects regarding these features will be considered only if the Seller intentionally concealed such defect or if they granted a guarantee for certain features of the goods.

8.4. Once the Purchaser identifies goods defects, they must provide the Seller with the rejected goods or samples thereof to check the complaint within a reasonable period; if they refuse, the warranty lapses. Until the Seller completed these checks, the Purchaser may not dispose of rejected goods, that is, they may not be divided, sold and/or processed.

8.5. In the case of justified complaints, the Seller may determine the type of subsequent performance (replacement, rectification) considering the type of defect and the Purchaser's legitimate interests. If subsequent performance fails or if the Seller does not subsequently perform despite a reasonable (grace) period granted by the Purchaser, the latter may request a reduction or, in the event of major defects, withdrawal from the contract at their choice without prejudice to

claims for damages under sec. 9 of these General Terms and Conditions of Supply

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8.6. If the Purchaser installed or attached defective goods at the time of risk transfer pursuant to their intended purpose, they may request compensation from the Seller in terms of sec. 439 para. 3 *BGB* for removing defective goods and installing/attaching subsequently repaired or delivered goods free from defects ("removal and installation costs") only pursuant to the provisions under para. 8.7 and 8.8.

8.7. Only those removal and installation costs are required in terms of sec. 439 para. 3 *BGB* which relate to the removal and installation and/or attachment of identical products, which were incurred at market conditions and for which the Purchaser produces evidence to the Seller in the form of receipts at least in text form. The Purchaser has no right to advances for removal and installation costs and they are prohibited from setting off the Seller's purchase price or other payment claims against claims for damages regarding the removal and installation costs without the Seller's approval; however, para. 6.6 remains unaffected. Claims exceeding the Purchaser's required removal and installation costs, particularly costs for consequential damage such as loss of earnings, including profit margins, operational disruption costs and additional replacement procurement costs, are no removal and installation costs so that they are not subject to compensation in the context of subsequent performance in terms of sec. 439 para. 3 *BGB*.

8.8. If the subsequent performance costs, including expenses claimed by the Purchaser in terms of sec. 439 para. 3 *BGB*, are unreasonable – particularly with regard to the purchase price of goods free from defects and considering the extent of contract violation – the Seller may refuse to subsequently perform and pay compensation.

8.9. The Purchaser's claims for reimbursement of expenses required for subsequent performance, including transport, road, working and material costs, are excluded to the extent they increase since the goods were later transported to places other than the Purchaser's premises or the place agreed upon in the contract, unless relocation complies with the intended use of the goods.

8.10. In the event of unjustified defect notifications, the Purchaser must reimburse to the Seller the relevant costs if they recognised or negligently failed to recognise that there is no defect, but that the reason for the matter they complained about falls within their scope of responsibility.

8.11. Claims for material defects become time-barred twelve months from delivery. This term applies, unless sec. 438 para. 1 no. 2 (Buildings and Building Materials), sec. 438 para. 3 (Malicious Concealment), sec. 445b para. 1 (Right of Recourse) for final consumers and sec. 634a para. 1 no. 2 (Building Defects) of the *BGB* provide for longer terms. These terms do not apply to claims for damages based on defects with the sold good, in relation to which the statutory provisions apply. The statutory period of limitations also applies to claims for damages resulting from us being in arrears with defect rectification requested by the Purchaser and to be performed by us.

8.12. Claims for recourse in terms of sec. 445a and sec. 478 *BGB* only apply to the extent that the Purchaser had a right to claim and only to the legal extent, however not to goodwill agreements between the Seller and the Purchaser. Apart from that, they require compliance with the duties of the party entitled to a recourse, in particularly with that of defect notification duties.

8.13. With work and delivery contracts, the free cancellation right for the Purchaser (including that under sec. 651 and 649 *BGB*) is excluded. Apart from that, the statutory provisions and legal consequences apply.

9. GENERAL LIMITATION OF LIABILITY

9.1. Any claims for damages against the Seller, their legal representative and vicarious agents are excluded, unless they are based on intention, gross negligence or a violation of essential contractual duties, whereby "essential contractual duty" means duties whose fulfilment is required for ordinary contract fulfilment and upon whose fulfilment the Purchaser may generally rely. However, liability is limited to compensation for foreseeable damage typical of such contracts, unless wilful intention applies. The above liability restrictions and exclusions do not apply to liability under product liability law or to cases of injuries to life, limb or health. The Purchaser waives their claims for damages in terms of sec. 284 *BGB* to the extent a claim for damages instead of performance is excluded under the above provisions. The provisions under this paragraph have no impact on the statutory distribution of the burden of proof.

10. SUPPLEMENTARY REGULATIONS FOR REQUESTED REPAIRS

10.1. Should submission of binding cost estimates be required prior to performing any repairs, this must be expressly indicated. To the extent that the Seller and the Purchaser have a business relationship subject to these General Terms and Conditions, cost estimate preparation costs must be remunerated if the repair works are not performed.

10.2. The Seller decides if repairs are to be performed in their own or third-party workshops

10.3. and repair works invoices are immediately due for payment.

11. PLACE OF FULFILMENT, LEGAL VENUE AND APPLICABLE LAW

11.1. The Seller's registered office is the place of fulfilment.

11.2. If the Purchaser has their registered office in the EU/EEA, the following applies: The courts of Hamburg are the exclusive legal venue if the Purchaser is an entrepreneur, a body corporate organised under German public law or a German public-law special fund or if they have no legal venue in Germany.

11.3. However, should the Purchaser have their registered office outside the EU/EEA, the Arbitration Court of the German Arbitration Institute (DIS) is exclusively responsible for any disputes resulting from an in relation to contracts concluded under these General Terms and Conditions and this shall finally decide by excluding legal recourse. In this case, the place of arbitration is Hamburg (Germany) and the proceedings will be held in German. However, both Parties may make their pleadings in English and submit documents in the English language. Common-law proceedings principles, including those concerning document production, do not directly or accordingly apply.

11.4. The relationship between the Contractual Parties is exclusively regulated by German law and the CISG provisions are excluded.

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