

# General Terms and Conditions for the Sale of Goods and Services

(Last updated: February 2022)

## 1. General provisions

The following terms and conditions shall apply exclusively for all goods and services delivered by Bayerische Kabelwerke AG (hereinafter referred to as the „supplier“) to its purchasers even if no express reference is made to them in future business transactions or if purchasers reference other terms and conditions. The latter as well as any ancillary agreements are only binding if confirmed in writing by the supplier.

The ordered quantity will be delivered in the agreed standard lengths within the permissible tolerances. Nevertheless, up to 10% of the order may be delivered in other lengths. Deviations in quality, quantity, weight, dimensions, appearance, or colour such as may be customary in the trade or due to variations in the raw materials or production processes are permitted. The supplier is entitled to supply its products and services, e.g. cables, wires, semi-finished products, colour concentrates, mixtures, etc. in excess or short lengths depending on fabrication. Any pieces that must have a precise length are to be indicated as such by the purchaser in the order. Purchasers are entitled to demand subsequent delivery (at their cost) in form of a standard length in the case of a shortfall quantity. Partial deliveries are permitted. Any return of delivered goods to the supplier for whatever reason requires the supplier's prior consent.

The rights associated with ownership and copyright of any prepared documents or records (e.g. drawings, data sheets, cost estimates, etc.) remain unconditionally with the supplier. They may be disclosed to third parties only with the prior written consent of the supplier and must be returned immediately upon request.

## 2. Offer, order confirmation

Offers are always subject to change without notice and are not binding even for repeat orders. Unless otherwise agreed, all offers are valid only for 10 days. The order is deemed to be clarified if the supplier is in a position to confirm a binding order confirmation with regard to quantity, type, delivery time, etc. If it is impossible to procure the raw materials required to fulfil the order, the supplier may withdraw from the contract. All information about diameter and properties of the cable products is approximate. The supplier reserves the right to deviations to the same, caused by fabrication and the properties of the raw materials used insofar as this is reasonable for the purchaser and does not impair the quality of the product. Once clarified, the supplier always confirms orders in the form of an order confirmation. Only then shall the price and performance details as well as other declarations or assurances be binding for the supplier.

## 3. Prices

A distinction is made between the following price types:

### Power cable

Price without metal:	corr. list price
Net price without metal:	corr. list price less discount
Net market price:	corr. list price less discount plus metal price (Cu, Al, Pb)

### Telecommunications, railway, and signal cable

Base price:	corr. list price (Cu basis €100, potential Pb basis €50)
Net base price:	corr. list price (Cu basis €100, poss. Pb basis €50) less discount
Net market price:	corr. list price (Cu basis €100, poss. Pb basis €50), less discount, plus metal price (Cu, Pb)

### Cables

Base price:	corr. list price (Cu basis €150)
Net base price:	corr. list price (Cu basis €150) less discount
Net market price:	corr. list price (Cu basis €150) less discount, plus metal price (Cu, Pb)

### Metal value:

The metal prices are calculated by multiplying the metal numbers stated in the sales catalogue or in the

supplier's offer by the metal quotation plus procurement costs.

The metal prices are those quoted on the market on the day following the receipt of the clarified order at the supplier's plant. If no quotation is posted on this day, the next market price quoted shall apply.

Quotations used in offers are not binding. If metals are supplied by the purchaser, the price without metal will be charged. Reworking jobs are agreed separately. Metal or reworked goods which the purchaser has agreed to provide must be delivered to the supplier's plant no later than 6 weeks before the delivery deadline. Prices are agreed in Euro and do not include VAT. This will be invoiced separately at the respectively applicable rate in accordance with the respectively applicable tax regulations.

## 4. Payment terms

The payment period begins when the invoice is issued or notice is given that the order is ready for dispatch. The supplier will not cover any fees associated with purchaser payments.

Unless otherwise agreed, the payment period is 14 days net. The supplier reserves the right to demand advance or immediate payment at any time, as well as to make delivery dependent on collateral or other security if there are doubts about the purchaser's creditworthiness. If the purchaser is in default either in whole or in part, default interest at a rate equal to nine points above the base interest rate set by the European Central Bank shall be payable, unless the supplier can prove higher damages. This does not affect any other rights pertaining to the supplier. In the event of default, we reserve the right to process further orders/ deliveries only when paid in advance.

If the purchaser stops payment, is overdrawn, or has filed for bankruptcy, all claims shall become due immediately. The same shall apply in the event of a significant deterioration in the purchaser's financial situation. In such cases, the supplier may demand sufficient security or withdraw from the contract. If metals (copper, aluminium, lead) are covered at the purchaser's request without a specific order for cable products being placed at the same time, the metals will be invoiced separately. This invoice for the metal purchase is due immediately and payable without discount. After payment has been received, title to the metal transfers to the purchaser.

## 5. Packaging

Product packaging (paper, foil, cardboard, etc.) for standard products is included in product prices. Shipment packaging will be charged separately.

The delivery of crates and flat pallets is done on an exchange basis. If delays occur in the exchange, the costs incurred by the supplier will be passed on to the purchaser. If possible, all goods to be delivered on drums with a diameter between 0.50 and 2.80 m are sent on Kabeltrommel GmbH & Co. KG, Cologne (KTG) drums. These drums are owned by KTG and are supplied on its behalf in accordance with its General Terms and Conditions for the Supply of Cable and Rope Drums. KTG drums are marked with the KTG logo. The delivery of cables on KTG drums is indicated in offers and order confirmations. KTG's General Terms and Conditions for the Supply of Cable and Rope Drums are available for inspection at our offices. They can also be viewed at [www.kabeltrommel.de](http://www.kabeltrommel.de) or sent on

request. It should be noted that KTG will charge rent for any drums not returned on time. All drums from our plant remain our property. We are merely lending them to purchasers. Purchasers are liable for any loss or damage. Our drums are to be returned in good condition once emptied. The purchaser bears the return costs. The drums are lent at no extra charge for 3 months or as agreed. From the fourth month or after the expiry of the agreed lending period, the drum rent for each month or part thereof shall be 15% of the drum deposit value. Drums that have not been emptied within 12 months will be charged at the full deposit value.

For drums which the supplier then subsequently takes back within 3 years from the original delivery date, the supplier will reimburse 25% of the deposit value. The export of drums will be agreed separately. Drum supports and casings are charged at cost and will not be taken back.

## 6. Retention of title

The goods shall remain the property of the supplier until all its claims against the purchaser have been satisfied, even if the individual goods have been paid for. Pledging or using the goods as security is not permitted. In the event that the reserved goods are further sold or leased as part of the purchaser's ordinary course of business, the purchaser hereby assigns the supplier a security interest in any of its claims against its customers arising therefrom, such interest persisting until all of the supplier's claims have been settled. No further notice of this security interest is required. The assignment shall also extend to the purchaser's accounts receivable from transactions with its customers.

In the event that a legitimate interest is confirmed, the purchaser must provide the supplier with the information required to assert its rights against the customer, and hand over the necessary documents. Where the reserved goods are further sold or leased together with other items and no individual prices were stipulated for the reserved goods, the purchaser hereby grants the supplier a priority claim to that fraction of the total combined price equivalent to the value of the reserved goods.

Until revoked, the purchaser is entitled to collect these assigned claims on behalf of the supplier, bearing all associated collection costs. If there are grounds, specifically default of payment, cessation of payments, protest of a bill, the opening of insolvency proceedings, or other comparable well-founded indications suggesting insolvency on the part of the purchaser, the supplier may revoke the purchaser's authority to collect these claims on its behalf. In addition, after giving adequate warning, the supplier may disclose the purchaser's assignment of his claims, collect the assigned claims, or demand that the purchaser disclose the assignment of his claims to the customer.

In the event that the payments for the claims assigned to the supplier are received by the purchaser or its financial institution, the purchaser shall notify the supplier immediately and redirect them to the supplier's account. If the purchaser processes the reserved goods, transforms them, or combines them with other objects, this work is done on the supplier's behalf. The latter shall become the direct owner of the item thus produced. Should this not be possible for legal reasons, the purchaser agrees to transfer title to the same to the supplier.

The purchaser shall store said new item on the supplier's behalf with all due diligence. This new item shall be deemed to be the reserved goods. In the event of any processing, transformation or combination with other items not belonging to supplier, the supplier shall have joint ownership of the new item in proportion to the value contributed by the reserved goods it supplied thereto. If the new item is further sold or leased, the purchaser hereby assigns the supplier a security interest in any of its claims against its customers arising therefrom. No further notice of this security interest is required.

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If the reserved goods are combined to property or movable assets, the purchaser hereby assigns the supplier a security interest in any of its claims arising therefrom. No further notice of this security interest is required. If the purchaser is the owner of the property or has some other legal claim to the rent from this property, this rent shall also be assigned to the supplier. This assignment is limited to that amount invoiced by the supplier for the goods it supplied. That portion of the claim assigned to the supplier has priority over any other claims.

In the event of seizures or other third-party attempts to intervene with the reserved goods, the purchaser must inform the supplier immediately.

If the purchaser is derelict in his duties, especially default in payment, the supplier shall be entitled to repossess the goods. The purchaser is obliged to surrender the same. If the supplier repossesses the goods or asserts its associated claims, this does not constitute withdrawal from the contract unless expressly declared. After issuing a prior warning, the supplier has the right to sell or use the repossessed goods otherwise and to satisfy its outstanding claims from the proceeds.

## 7. Delivery

Delivery deadlines are only binding if expressly confirmed as such by the supplier. The countdown on the delivery deadline commences on the day the order has been clarified and an order confirmation has been provided. The delivery deadline is met if the goods have left the factory or warehouse by the agreed deadline. If dispatch or collection is delayed for reasons for which the supplier is not responsible, the deadline is deemed to be met if it has provided notice that the goods were ready for dispatch/collection within the agreed deadline. If non-compliance with the deadline is due to force majeure, e.g. storms, mobilisation, sanctions, war, riot, strike, lockout, incorrect or untimely delivery from the supplier's vendors, or the occurrence of unforeseen obstacles beyond the control of the supplier or its vendors, the deadline shall be extended accordingly. If the supplier is in default, the purchaser may set a reasonable grace period for the supplier to remedy this situation. This does not apply in cases of intent, gross negligence, or injury to human life, body, or health which are legally subject to liability. This does not entail a change in the purchaser's burden of proof. If the supplier fails to deliver within the grace period set by the purchaser, the latter's right to rescind the contract remains unaffected.

At the supplier's request, the purchaser shall declare within a reasonable period of time whether it wishes to withdraw from or await fulfilment of the contract. If there is a delay in the dispatch or delivery of the goods due to the purchaser's actions, the supplier is entitled to invoice the purchaser for any additional costs thus incurred.

## 8. Transfer of risk, Incoterms

For deliveries ex works, the transport and remuneration risk shall pass to the purchaser when the goods have left the supplier's works or warehouse, regardless of whether the goods are transported by the supplier or by a third party. For deliveries with free delivery to the purchaser included, the risk shall pass to the purchaser upon arrival of the goods at the designated destination, but prior to unloading.

If dispatch is delayed due to circumstances for which the purchaser is responsible or if dispatch has been postponed at the purchaser's request, the risk is nevertheless transferred to the purchaser from the date on when the notice was given that the goods were ready to deliver; and for the whole duration of delay. The supplier agrees to arrange any insurance cover requested for the same by the purchaser at the latter's expense. Unless specifically requested by the purchaser, deliveries will not be insured against theft, breakage, transport, or fire damage. If the purchaser requests such cover, it shall be at his expense. For export transactions, the current version of Incoterms shall apply.

## 9. Material defects

The supplier accepts liability for material defects as follows:

- a)** Any parts which have become unusable or largely unusable due to a material defect that existed prior to the transfer of risk shall be repaired or replaced at the supplier's choice, provided notice is made before the deadline for such. This applies regardless of the hours of operation.
- b)** Material defects of cable products are only those which have caused malfunctions when handled properly in normal circumstances.
- c)** The purchaser must identify and provide written notice of any short deliveries and visible material defects immediately upon receipt, stating the order and delivery note numbers. Otherwise, the purchaser waives any claims to such defects.
- d)** Inspections for material defects must be based on the usual standards for cables or any other agreed specifications.
- e)** If this inspection shows that there is no material defect, the costs shall be borne by the purchaser.
- f)** The right to assert claims for material defects expires 12 months after delivery or after notice of readiness for dispatch.
- g)** The purchaser shall grant the supplier reasonable time and opportunity to remedy defects. If the purchaser refuses, the supplier's obligation to provide remedy is waived.
- h)** If the supplier allows a reasonable period to expire without providing the remedy required, if such remedy is impossible, refused, or fails to remedy the defect, and if the purchaser cannot reasonably be expected to accept another attempt at a remedy, the purchaser has the right to reduce the amount invoiced by the seller in proportion to the material defects, its claims under Art. 11 notwithstanding. If the parties cannot agree on a corresponding reduction, the purchaser is entitled to withdraw from the contract.
- i)** The purchaser's claims are forfeited if the goods have been damaged as a result of improper handling or storage or if modifications or repairs made to them without the supplier's written consent have caused the material defect.
- j)** The parts replaced when providing such remedies shall revert to the supplier's ownership upon removal.
- k)** The supplier shall be liable for repair work and replacement parts to the same extent as for the original delivery item within the limitation period applicable to the original delivery item.
- l)** Any claims made by the purchaser for costs in connection with the supplementary performance, such as the cost of transport, travel, labour hours, and materials are excluded when the costs are increased because the delivered goods have been moved to another location other than the original delivery destination unless it was originally intended for that purpose.
- m)** The purchaser may not assert any claims made with its customers against the supplier that go beyond the statutory provisions. The purchaser's claims for recourse against the supplier are subject to paragraph k) as well. Art. 11 applies to all other claims for damages. Any further claims against the supplier and its agents other than those for material defects as agreed herein are excluded.

## 10. Intellectual property rights

The supplier hereby indemnifies and holds harmless any domestic purchasers from any third-party industrial property rights; provided, however, that the purchaser informs the supplier immediately of the same and coordinates its response with the supplier. If the purchaser fails to meet these conditions, the supplier is released from its obligations. If the supplier's breach of third-party industrial property rights makes the use of the goods legally impossible either in whole or in part, the supplier shall, at its own expense and at its own discretion, either:

- a)** acquire the right to use the goods on the purchaser's behalf or

- b)** redesign the goods to be free from such third-party rights, or

- c)** replace the goods with another item of equal value which does not infringe such rights, or
- d)** accept the return of the same and reimburse the purchase price.

The supplier is not liable if the purchaser makes changes to the goods, installs additional pieces, or combines it with other devices or equipment and thus causes a breach of third-party rights.

The supplier is also not liable for any infringement of third-party rights caused by a product made to drawings, designs, or other information provided by the purchaser. The purchaser hereby indemnifies and holds the supplier harmless against such third-party claims. The purchaser is not entitled to any further claims arising from the infringement of third-party industrial property rights. In particular, the supplier will not pay any consequential damages, such as loss of production, use, or profit. This does not apply insofar to any liability for damages resulting from intent or gross negligence. The purchaser is not acquiring any claims to the use of the supplier's property rights that affect the interaction of the goods with other items.

## 11. Other claims for damages

Unless otherwise stipulated above, the supplier and its vicarious agents shall be liable for purchaser claims for damages arising from breaches of duty as follows:

- a)** Liability for personal injury is based on the statutory provisions.
- b)** Liability for property damage is limited to €500,000 per incident and €1 million total.
- c)** Liability for financial losses is excluded. The limitation under b) and the exclusion under c) do not apply to any situation where liability is mandatory, e.g. under the Product Liability Act, in cases of intent, gross negligence, injury to life, body or health, or breach of cardinal contractual obligations. The above provisions do not imply a change in the purchaser's burden of proof. Inasmuch as the purchaser is entitled to claim damages under this Art. 11, such claims must be asserted by the end of the period for making claims for material defects per art. 9e.

## 12. Place of performance, place of jurisdiction, obligation

The place of performance for all legal and contractual claims shall be the supplier's plant or warehouse. The choice is at the supplier's discretion. The place of jurisdiction for all disputes is Schwabach, Germany. Should individual provisions of these terms and conditions be invalid, this shall not affect the validity of the remaining provisions or the contract itself. This contract is subject to German law. The UN Convention on Contracts for the International Sale of Goods (CISG) is excluded.

## 13. Data processing and protection

Bayerische Kabelwerke AG is entitled to collect, save and process all necessary data and information regarding customers as required in the course of the business relationship. Bayerische Kabelwerke AG will comply with the requirements of the EU General Data Protection Regulation (GDPR). Further details on data processing and data protection can be found in the Privacy Policy published on our website.