

**I. Miscellaneous, scope of application, specifics regarding cable and cord spools, web-shop**

1. Our general terms and conditions apply exclusively to all contracts and deliveries and miscellaneous services including planning, engineering and consultancy services. We shall not recognise the customer's conflicting general terms and conditions or those which are divergent from our general terms and conditions even if we do not object their validity separately in individual cases. Our general terms and conditions also apply if we execute a delivery or provide a service to the customer without reservation albeit being aware of the customer's conflicting general terms and conditions or those that diverge from ours.
2. Our general terms and conditions are considered as the general agreement even for future contracts on the sale or delivery of chattel as well as the provision of planning, engineering and consultancy services with the same customer without us having to refer to them in every individual case.
3. **Our general terms and conditions only apply to companies, corporate bodies under public law and public separate estates according to § 310 of the German Civil Code (BGB).**
4. For the provision of cable and cord spools owned by Kabeltrommel Gesellschaft mit beschränkter Haftung & Co. Kommanditgesellschaft (Siegburg District Court, HRA 5205) (KTG), we refer to KTG's terms of provision of cable and cord spools dated June 2014 which shall be the content of our general terms and conditions in this respect and are available for downloading online on <http://www.kabeltrommel.de>. Should there be any contradictions between our general terms and conditions and KTG's aforementioned terms, KTG's terms will apply primarily. **Additionally, we would like to point out that the customer is obligated to pay rent to KTG for KTG's delivered cable and cord spools upon lapse of a rent-free period.**
5. For all contracts concluded via our web-shop, the special provisions of item number XII. of our general terms and conditions apply additionally, especially for contract conclusion.

**II. Offer and conclusion, limited power of presentation of our employees**

1. Our offers are non-binding.
2. The documents which form the basis of the offers such as illustrations, drawings, indications of weight and measurement, are only approximations unless usability for the contractually intended purpose stipulates an exact conformity. Aforementioned documents such as illustrations, drawings, indications of weight and measurement are not guaranteed quality features but descriptions or identifications of the delivery or service. Variations that are usual in trade and variations which are effected due to legal regulations or those that present technical improvements as well as the replacement of components with parts of the same value are allowed provided that the usability for the contractually intended purpose is not compromised.
3. All agreements which are reached by us and the customer for the purpose of executing the concluded contract are to be put down in writing in the contract in addition to the general terms and conditions. The contract including the general terms and conditions clearly shows all understandings between the contractual parties regarding the subject matter of the contract. Verbal commitments made by us prior to conclusion of this contract are legally non-binding and the contractual parties' oral agreements are replaced by the written contract provided that it doesn't emerge expressly from them that they continue to apply bindingly.
4. Addenda or amendments of the agreements reached including these terms and conditions need to be in writing for them to be effective. **With the exception of managing directors and authorised representatives, our employees or sales agents shall not make any verbal side agreements or promises which transcend the written contract. Such side agreements or promises must always be confirmed in writing by our managing director or authorised representatives.** In order to adhere to the written form, transmission by telecommunication suffices - especially via fax or e-mail - provided that the copy of the signed statement is forwarded.
5. We reserve the right of ownership and copyrights on illustrations, drawings, calculations and other documents. They shall not be made accessible to third parties. This applies especially to those written documents which are described as "confidential"; the customer requires our explicit written consent prior to transfer to third parties.

**III. Delivery time, time of performance, delays in delivery, liability in case of delayed delivery, withdrawal**

1. For call orders without agreement on term, delivery quantity or deadline, we can demand a binding commitment in writing at least three months after sending the order confirmation. If the customer does not fulfil this demand within three months after assertion, we are entitled to set a two-week grace period in writing and upon its lapse, withdraw from the contract or refuse delivery and demand compensation due to non-performance.
2. Adherence to our delivery and service obligations calls for the timely and proper fulfilment of the customer's obligations.
3. The term of delivery extends – even during a delay – by the duration of the impairments of performance caused by the subsequently mentioned circumstances, namely acts of God and all unforeseen hindrances which arise after contract conclusion for which we are not responsible, especially interruption of operations, strike, lock-out or traffic disruption if such hindrances have a demonstrable significant effect on the delivery of the sold item. This also applies if our suppliers and their sub-suppliers experience these circumstances. We will inform the customer about the onset and ending of such hindrances as soon as possible.
4. We are not liable for impossibility of delivery or for delivery delays if these are due to acts of God or other events that were unforeseen at the time of contract conclusion according to item number III.3 above. We are entitled to withdraw from the contract if such events considerably hamper delivery or performance or if they make delivery or performance impossible and the hindrances are not just temporary. If the customer is not expected to accept delivery or performance as a result of the delay, the customer can withdraw from the contract by sending us a written statement immediately.
5. The customer's claims for compensation due to delay in delivery persist only in accordance with the provisions of item number XIII. and are excluded in all other respects.

**IV. Technical goods issue inspections by the customer or his representative**

If the customer demands tests (e.g. material tests, function tests and dimension checks etc.) prior to accepting delivery or performance, the type and scope of those tests are to be agreed upon specifically. The costs of these tests shall be borne by the customer.

**V. Delivery, place of fulfilment, risk transfer, acceptance, default of acceptance**

1. Delivery will be effected ex store which is where the place of fulfilment is.
2. At the request and expense of the customer, the goods shall be delivered at another destination (**sale by dispatch**). Unless otherwise agreed, we are entitled to decide on the type of dispatch (particularly the transportation company, dispatch route, packaging). We shall only insure the consignment against theft, breakage, loss in transit, fire and water damage or other insurable risks at the customer's explicit request and at the customer's expense.
3. The risk of incidental loss and of incidental deterioration of goods is transferred to the customer upon delivery.

4. In case of sale by dispatch, the risk of incidental loss and incidental deterioration of the goods as well as the risk of delay are transferred upon delivery of goods to the forwarding agents, carriers or any other person or establishment commissioned with the execution of the dispatch.
5. If the customer defaults acceptance or culpably breaches other obligations to cooperate, the risk of incidental loss or incidental deterioration of the purchased good is transferred to the customer at the point in time in which the customer defaults acceptance.
6. If acceptance is agreed upon or we did not agree on setup or assembly as an ancillary service, acceptance for risk transfer is determinative. If the customer defaults acceptance, this shall be considered as acceptance.
7. If the buyer defaults acceptance, fails to cooperate or if we delay delivery due to reasons that the customer is responsible for, we are entitled to demand compensation for loss arising from this including additional expenditure (e.g. storage costs). Storage costs after transfer shall be borne by the customer. If we store the goods, the storage costs will amount to 0.25% of the invoice amount of the delivery items to be stored per lapsed week. The assertion and proof of further or lower storage costs remain reserved.

#### **VI. Price and payment**

1. On delivery, our prices are quoted "ex works" excluding value added tax at the statutory rate, packaging, transport and insurance unless otherwise stated in the order confirmation.
2. Cash discount deduction requires explicit agreement.
3. For contracts with an agreed upon delivery or performance period of more than four months, we reserve the right to increase our prices (wage) appropriately if cost increases occur especially due to labour agreements or material price increases. We will show this to the customer upon request.
4. If the customer defaults payment, we are entitled to assert damages caused by default and any other damages as per the legal provisions.
5. The customer is only entitled to rights of set-off and rights of retention if the customer's counterclaims are legally established or undisputed.

#### **VII. Reservation of proprietary rights**

1. We retain ownership of the goods delivered by us until all payments from the delivery agreement are received and all claims that we are entitled to are settled including claims arising in the future even from contracts concluded simultaneously or later. If there is a current account relationship between us and the customer, the reservation of proprietary rights refers to the recognised balance.
2. In case of conduct contrary to contract and culpable breach of significant contractual obligations by the customer, especially in case of payment default, we are entitled to take back the goods delivered under reservation of proprietary rights if there are requirements for withdrawal from the contract. We are entitled to turn the delivered goods to account after returning. The exploitation proceeds are to be credited against the customer's payables – less reasonable exploitation costs.
3. In case of attachments or other measures by third parties, the customer has to inform us immediately in writing so that we can file suit according to § 771 of the Code of Civil Procedure. If the third party is not in a position to reimburse us the judicial and extra-judicial costs of a suit as per § 771 of the Code of Civil Procedure, the customer shall be liable for the loss that we have incurred.
4. The customer is entitled to resell the delivered goods in the regular course of business; the customer assigns all claims now amounting to the invoice grand total (including value added tax) which accrue to him from the resale to his buyers or third parties irrespective of whether the delivered goods were resold without or after processing or mixing. We accept the assignment. The customer is authorised to collect claims even after the assignment.

Our authorisation to collect the claim ourselves remains unaffected by this. However, we commit not to collect the claim as long as the customer fulfils its payment obligations from the collected proceeds, is not in default and particularly no application for the institution of insolvency or composition proceedings has been filed or there is a suspension of payments. If this is the case, we can demand that the customer discloses the assigned claims and their debtors, gives all the information necessary for the collection, hands out the appertaining documents and informs the debtors (third parties) about the assignment.

5. The processing or alteration of delivered goods by the customer shall always be done for us. If the delivered item is processed using other objects that don't belong to us, we shall acquire co-ownership of the new item at the ratio of the value of the goods delivered by us to that of the other processed items at the time of processing. For the item that has resulted from processing, the same applies as for the goods delivered under reserve.
6. If the delivered item is inseparably mixed with another object that does not belong to us, we shall acquire co-ownership of the new item at the ratio of the value of the goods delivered to the other mixed items at the time of the mixing. If the mixing is done in such a way that the customer's item is considered as the main item, it is agreed that the customer shall transfer co-ownership to us proportionately. The customer shall reserve the resulting sole ownership or co-ownership for us.
7. The customer assigns claims for securing our claims against it which accrue against a third party due to linking the object of sale with a piece of land. We accept the assignment.
8. We commit to release the securities we are entitled to at the request of the customer to the extent that the realisable value of our securities exceeds the claims to be secured by more than 20%; it is up to us to choose the securities to be released.

#### **VIII. Setup and assembly**

Unless otherwise agreed, the following regulations apply for each type of setup and assembly:

1. The customer has to hire at its own cost and/or punctually provide the following:
  - a) the necessary number of assistants with tools,
  - b) all extra work that is unrelated to the industry including the required building materials as well as the consumer goods and materials that are necessary for assembly and start-up,
  - c) operating power, water, heating and lighting,.
  - d) suitable rooms for storing machine parts etc. as well as common rooms for our assembly personnel,.
  - e) protective clothing and protective devices which are necessary due to circumstances at the construction site and are not customary in the trade for us.
2. If there is a delay in setup, assembly or start-up as a result of the customer's default of acceptance, failure of the customer to cooperate or other reasons that the customer is responsible for, we are entitled to demand compensation for loss arising from this including additional expenses.

#### **IX. Packaging**

1. Packaging will be charged separately.

2. If according to the packaging regulation in its applicable version a suitable waste management company is called in for disposal, the customer is obligated to have the packaging materials ready and hand them over to the waste management company. If the customer agrees to waive its right of return by granting a waste management cost lump-sum, it is obligated to hand over the used packaging to a recognised waste management firm which will ensure proper disposal according to the provisions of the packaging regulation.
3. Reusable packaging shall only be provided to the customer as a loan. The customer shall notify us in writing about the return of the packaging unit within fourteen days and avail the packaging. If this does not happen, we are entitled to demand 10% of the cost price (the full cost price at most) as a fee after sending a demand note as from the third week for each week or to invoice the value of the packaging which will be due for payment immediately after receipt.
4. Cable reels which belong to KTG or other third parties will be delivered on behalf of and by order of these owners and according to their conditions. We would like to point out that KTG or other suppliers of cable reels shall charge rental fees if the cable reels are not returned on time. The customer has to pay the fees provided that they are apportionable to it (cf. for KTG also item I.4).
5. For plastic cable reels with a diameter of up to 600 mm which are manufactured by KTG, the conditions of KTG shall apply insofar, unless vis-à-vis the customer in accordance with the packaging regulation in its applicable version an exceeding return is necessary. Item IX.2 sentence 1 applies accordingly.

#### **X. Claims for warranty for defects, limitation**

1. If nothing else has been determined subsequently, the statutory provisions shall apply for the customer's rights in case of material defects and defects of title.
2. If there is a defect in the purchased item or our performance, we are first entitled to deliver a defect-free item at our own choice (replacement delivery), to produce a new piece in case of a service contract or to rectify the defect (rectification). In our choice of type of supplementary performance (replacement delivery/re-manufacture, subsequent delivery) we shall take the type of defect and the customer's justified interests into consideration.
3. For supplementary performance by us, the customer is entitled to retain a part of the remuneration that is appropriate in relation to the defect.
4. The customer must give us the necessary time and opportunity for supplementary performance and especially hand over the defective goods for inspection purposes. In case of replacement delivery, the customer must return the defective goods to us according to the statutory provisions.
5. We shall bear the expenses necessary for inspection and supplementary performance especially transport costs and toll, labour and material costs if there is actually a defect. If a customer's demand for rectification of defect turns out to be unjustified, we can demand that the customer reimburses the costs arising from this.
6. If supplementary performance fails or if a deadline for supplementary performance set by the customer lapses without success or is unnecessary according to the statutory provisions or supplementary performance is unjustifiably denied, the customer can withdraw from the purchase contract or service contract or reduce the purchasing price or the wage. There is no right of withdrawal if the defect is insignificant.
7. The customer's claims for compensation or reimbursement of wasted expenses due to material defects and defects of title only persist in accordance with item XIII. and are excluded in all other respects.
8. The general limitation period for claims due to material defects and defects of title is one year as from delivery. For a service contract, the limitation period commences with acceptance. However, if the item is a building or an item which has been used according to its usual manner of use for a building and it has caused its defectiveness (building material), the limitation period is five years as from delivery, transfer of the piece of land or acceptance according to the statutory provision. Statutory special regulations for third party restitution claims in rem, supplier's recourse claims in case of final delivery to the consumer, statutory special regulations if we act maliciously and the limitation periods from the Product Liability Act remain unaffected.

#### **XI. Special provisions for software licensing**

1. The preceding provisions of these terms and conditions apply to software which is transferred or licensed to the customer in connection with other items (switchgears, control modules) unless otherwise dictated subsequently.
2. The licensing or transfer of software is effected according to §§ 69 a et seqq. of the German Copyright Act. If nothing else has been explicitly agreed upon, we do not transfer any rights of utilisation or exploitation to the customer which exceed the usage of the obtained software package in the sold switchgears/control modules. The customer can use the already available functions of the software without restriction and adapt them to its operational needs. Any kind of programming activity that goes beyond what is permitted in §§ 69 a et seqq. of the German Copyright Act for example the further adaptation of software with respect to data to the customer's intended use as well as the further development of the software shall be carried out exclusively by the producer of the software.
3. The customer may resell the software to third parties. If it sells the software individually, it shall delete the sold software from its hardware. The customer shall delete every backup copy.
4. Unless otherwise agreed, the customer has no claim to the issuance of the source code of the licensed or transferred software.
5. Proprietary rights of use and exploitation which are granted on a permanent basis (continuous software licensing paid once) can be revoked until the purchase price and/or license fee is fully paid. The customer is entitled to resell the delivered item including the licensed software in the regular course of business. For this case, the customer is authorised to grant the buyer the same rights to use and exploitation rights which the customer would have been entitled to upon full payment of the purchase price and/or the license fee. The customer assigns all claims to us amounting to the invoice grand total (including value added tax), which accrue to him from the resale to buyers or third parties irrespective of whether the delivered goods have been resold without or after processing. The customer is authorised to collect this claim even after assignment. Moreover, the provisions of item number VII. apply accordingly.
6. The customer is aware that software programmes cannot be issued without fault. With regard to the delivery of the software, we do not guarantee that the software functions without interruption and without fault and that the functions contained therein can be executed in all imaginable combinations if due to the restrictions in this regard the suitability of the software for the usual or contractually stipulated usage is insignificantly affected. For software errors which do not or not only insignificantly affect the usage as stipulated in the contract, the rectification of defects can be done by information on rectification or on avoidance of the effects of the error. The guarantee does not include the rectification of errors which arise due to normal wear, external influences, operating and maintenance errors.
7. We are not liable for damages which arise due to alterations or adaptations of the source code particularly on the software and on the other delivery items and services carried out by the customer or a third party at the instigation of the customer.

#### **XII. Special regulations for transactions in the web-shop**

1. Registration in our web-shop is free. There is no claim for admission to our web-shop. **Those who are eligible are exclusively entrepreneurs according to § 14 of the German Civil Code, corporate bodies under public law and public separate estates according to § 310 of the German Civil Code.** In order to be admitted, the registration form that is on our website is to be filled out fully online and the application is to be forwarded to us. The data required for the application should be given in full and truthfully. The customer shall then receive the login details via e-mail. The customer is obligated to keep the password a secret and never give the password to third parties.
2. Just by registering with us does not mean you have to purchase the goods we are offering.

3. The presentation of our goods in the web-shop is not a binding offer. The ordering of goods by the customer is a binding offer as per § 145 of the German Civil Code. The customer can select products from our assortment and collect them in a so-called shopping cart via a button which shows a trolley. By clicking on the shopping cart icon, the customer gets to the next steps of the ordering process. Prior to sending the order, the customer can view and alter details such as name, address and ordered articles at any time. Via the "commit to buy" button, the customer submits a binding offer to purchase the goods that are in the shopping cart.
4. The contract comes into being when we forward an order confirmation with all order data automatically via a separate e-mail.
5. During the initiation, conclusion, processing and rescission of a purchase contract, we will collect, save and process data within the framework of the legal provisions. When browsing our website, the IP address currently being used on the customer's computer, date and time, the type of browser and the computer's operating system as well as the sites visited by the buyer shall be logged. We cannot and do not intend to draw inferences on personal data. We have issued a data privacy statement which can be seen on our website and can be downloaded.
6. If we refer or link to third party websites from our website, we shall not assume liability and guarantee for the accuracy or completeness of the contents and the data security of these websites. Since we have no influence on third parties adhering to data protection provisions, the customer must check the offered data privacy statements separately in each case.

### **XIII. General limitation of liability**

1. Our liability for compensation irrespective of the legal ground, particularly due to impossibility, delay, defective or wrong delivery, breach of contract, breach of obligations in contract negotiations and unauthorised action is limited according to this item number XIII. if it comes down to culpability.
2. We are not liable in case of simple negligence of our executive bodies, legal representatives, employees and other vicarious agents unless it involves a breach of essential contractual obligations (obligations whose fulfilment enables the proper execution of the contract and to whose adherence the contractual partners rely on such as the timely delivery of defect-free goods).
3. If according to the preceding item number XIII.2 we are liable for compensation on the merits, this liability is limited to damages which we foresaw during contract conclusion as a possible consequence of breach of contract or which we should have foreseen had we exercised due care. Indirect damages and subsequent damages which result from defects on the goods are moreover only compensable if such damages are to be typically expected when the goods are used as intended. This is not related to an alteration of evidence to the customer's detriment.
4. The preceding disclaimers and limitations of liability apply in the same scope in favour of our executive bodies, legal representatives, employees and other vicarious agents.
5. The limitations of item number XIII. do not apply to our liability due to intentional or gross negligent behaviour, to guaranteed quality features, due to injury to life, body or health or according to the Product Liability Act.

### **XIV. Place of jurisdiction, applicable law**

1. The law of the Federal Republic of Germany shall apply to the terms and conditions and all the legal relationships between us and the buyer. The provisions of the United Nations Convention on Contracts for the International Sale of Goods do not apply.
2. If the customer is a merchant, corporate body under public law or public separate estate or if it does not have a general place of jurisdiction in the Federal Republic of Germany, the place of jurisdiction for all disputes arising from the business relationship between us and the customer is Rheine at our option or the customer's location. However, Rheine is the exclusive place of jurisdiction for lawsuits against us. Compelling legal provisions on exclusive places of jurisdiction shall remain unaffected by this regulation.