

Südkabel GmbH

General Conditions of Sale - Export -

03/2004 - for commercial transactions between businesses -

1. Conclusion and Terms of Contract

The written order confirmation of the Supplier in conjunction with these "General Conditions of Sale – Export" (herein: Conditions of Sale) shall be binding for the contract, even if the Buyer expressly specifies otherwise. These Conditions of Sale shall be generally applicable unless stated otherwise in the order confirmation. The Buyer's conditions of purchase shall not be binding on the Supplier, and shall not be deemed as accepted by the Supplier, even if the Supplier does not object against the same, and even if the Buyer does not expressly declare his consent with the Conditions of Sale set forth herein. The Buyer shall be deemed to have agreed to the provisions of the order confirmation, including these Conditions of Sale, not later than at the moment of acceptance of the goods furnished by the Supplier.

2. Prices

2.1 Prices are EUR prices, unless another currency is expressly specified.

2.2 The price list valid on the date of delivery shall apply. The prices in the offer are not binding on Supplier and shall not be binding for any repeat orders.

2.3 The offer prices are based on the actual costs of non ferrous metals and do not include sales tax.

2.4 For calculating the final order prices the prices shall be adjusted by the Supplier to the current prices for non ferrous metals. The prices of the metal used shall be fixed on the basis of the official quotation for metals ruling the day after receipt of the accepted offer, plus premiums and procurement costs. If no metal quotation is fixed at the metal exchange on that day, then the prices shall be based on the next quotation.

2.5 For transactions with Buyers within the Federal Republic of Germany sales tax will be additionally charged at the legal rate valid on the day of delivery. The sales tax shall be payable immediately upon receipt of the invoice.

2.6 The terms of delivery shall be agreed upon from case to case. The terms of delivery as well as the prices for consignments below 1000 kgs shall in all cases apply ex works. Additional costs incurred by special shipping instructions and consignments delivered by post shall be at the expense of the Buyer. Supplier reserves the right to levy a reasonable surcharge for small orders.

2.7 Packings, e.g. containers, barrels, cartons, cases, pallets, reels, drums, crates, etc., shall be charged to the Buyer.

3. Conditions of Payment

3.1 Unless otherwise agreed in writing the invoices for power cables, accessories and installation services shall be payable net, without any deduction or discount within 30 days, unless otherwise agreed.

3.2 Unless otherwise agreed in writing, payments shall be made in Euro (EUR) net, without deduction or discount, to the place of payment of the Supplier. Subject to prior agreement, cheques and bills of exchange meeting the purchasing conditions of the Deutsche Bundesbank shall be accepted as payment. Discount charges and collection charges incurred by the Supplier must be reimbursed by Buyer.

3.3 Terms of payment shall commence from the date of invoice or from the date of notification of the Supplier to the Buyer that the goods are ready for shipment, whatever occurs first. All payments shall be deemed to have been effected on the day on which the Supplier can dispose freely of the amount paid. Should the Buyer fail to comply with the agreed conditions of payment, then all claims which the Supplier has against the Buyer shall be due immediately, regardless of whether any bills have been accepted for collection. In such a case, the Buyer shall be in delay without any reminder being necessary. Without prejudice to any other or further

rights or claims, interest on defaulted payment shall be charged at the rate (in per cent) being the sum of 8 plus the amount of the then actual base rate under § 247 BGB (German Civil Code).

3.4 The Buyer shall be entitled to set off counter-claims only to the extent that such counterclaims are undisputed or have become due by final finding of a court.

3.5 In the event that metals (copper, aluminium, lead) are put in stock at the request of the Buyer, without a specific order being placed at the same time, then these metals shall be invoiced. The invoice for these metals shall be payable immediately without any deduction. Ownership of the metals shall pass to the Buyer only after full payment.

4. Excess Deliveries, Short Deliveries

4.1 The following plus and minus variations from the ordered quantity are permissible for Supplier on delivery, both with respect to the total quantity ordered and to part deliveries: Power cable +/- 5 %

4.2 All specifications on the diameters and weights of the cables are approximate values only and are not binding. Length markings are also approximate measurements only and cannot be taken as the basis for the calculation of prices.

4.3 The scales of the Supplier's works, tested and approved by the Office of Weights and Measures (Eichamt), shall be the accepted means of determining the shipping weights.

5. Passing of Risk

The risk shall pass to the Buyer when the consignments (goods and packing) leave the works, or when the Buyer is notified by the Supplier that the consignments are ready for collection, even if the place of dispatch is not the place of performance.

6. Defects as to Quality

6.1 The compliance with non-German technical rules shall require an express written agreement.

6.2 The Supplier shall be liable for defects as to quality ("Sachmängel", hereinafter referred to as "Defects") as follows:

1. All parts or services where a Defect becomes apparent within the limitation period shall, at the discretion of the Supplier, be repaired, replaced or provided again free of charge irrespective of the hours of operation elapsed, provided that the reason for the Defect had already existed at the time when the risk passed.

2. Claims based on Defects are subject to a limitation period of 12 months. This provision shall not apply where longer periods are prescribed by law according to Sec. 438 para. 1 No. 2 (buildings and things used for a building), Sec. 479 para. 1 (right of recourse), and Sec. 634a para. 1 No. 2 (defects of a building) of the German Civil Code ("BGB"), as well as in cases of injury of life, body or health, or where the Supplier intentionally or grossly negligently fails to fulfil its obligation or fraudulently conceals a Defect. The legal provisions regarding suspension of expiration ("Ablaufhemmung"), suspension ("Hemmung") and recommencement of limitation periods remain unaffected.

3. The Buyer shall notify Defects to the Supplier in writing and without undue delay.

4. The Supplier shall first be given the opportunity to supplement its performance ("Nacherfüllung") within a reasonable period of time. If supplementary performance is unsuccessful, the Buyer shall be entitled to cancel the contract or reduce the remuneration, irrespective of any claims for damages it may have according to Clause 12 (Other Claims for Damages).

5. There shall be no claims based on Defect in cases of insignificant deviations from the agreed quality, of only minor impairment of usefulness, of natural wear and tear or damage arising after the transfer of risk from faulty or negligent handling or installation, excessive strain, unsuitable equipment,

installation of accessories manufactured by third parties, defective workmanship, inappropriate foundation soil or from particular external influences not assumed under the contract. Claims based on defects attributable to improper modifications or repair work carried out by the Buyer or third parties and the consequences thereof shall be likewise excluded. The Supplier hereunder shall not give nor assume any special guarantee in view of the properties and/or the durability (Beschaffenheits- oder Haltbarkeitsgarantie) of the Supplies; the Supplier shall not be liable for any defect of the Supplies which Supplier procures in unchanged form from sub-suppliers.

6. The Buyer shall have no claim with respect to expenses incurred in the course of supplementary performance, including costs of travel and transport, labour, and material, to the extent that expenses are increased because the subject-matter of the Supplies was subsequently brought to another location than the Buyer's branch office, unless doing so complies with the intended use of the Supplies.

7. Furthermore, the provisions of Clause 12 (Other Claims for Damages) shall apply in respect of claims of damages. Any other claims of the Buyer against the Supplier or its agents or any such claims exceeding the claims provided for in this Clause 6.2, based on a Defect, shall be excluded.

6.3 If the goods are to be tested in accordance with particular conditions, then the acceptance inspection shall be carried out in the Supplier's works. The costs of the technical acceptance tests shall be borne by the Supplier, any other cost (f.i. the travelling and subsistence costs for the personnel authorized by the Buyer) shall be borne by the Buyer.

7. Delivery Periods, Delay

7.1 The delivery period quoted in the offer shall not be binding. The delivery period agreed in the order confirmation shall commence on the date of complete clarification of the order. This date shall be of relevance of the time of delivery ex works and is only an approximate indication. In the event of military mobilization, war, rebellion, strike, lockout or in the event of unforeseeable circumstances beyond the control of the Supplier, the delivery period shall be extended accordingly.

7.2 Unless otherwise expressly agreed, the Supplier shall be permitted to make part deliveries.

7.3 Any delays in part deliveries shall not entitle the Buyer to derive any claims for the remaining part deliveries. The individual part deliveries shall be called off at regular intervals and in uniform quantities with such notice that proper manufacturing and delivery is possible within the contractual period.

7.4 If the Supplier is responsible for the delay (hereinafter referred to as "Delay") and the Buyer demonstrably suffered a loss therefrom, the Buyer may claim a compensation as liquidated damages of 0.5 % for every completed week of Delay, but in no case more than a total of 5 % of the price of that part of the Supplies which because of the Delay could not be put to the intended use. Buyer's claims for damages due to delayed Supplies as well as claims for damages in lieu of performance exceeding the limits specified in this Clause 7.4 shall be excluded in all cases of delayed Supplies even upon expiry of a time set to the Supplier to effect the Supplies. This shall not apply in cases of mandatory liability based on intent, gross negligence, or due to injury of life, body or health. Cancellation of the contract by the Buyer based on statute shall be limited to cases where the Supplier is responsible for the delay. The above provisions do not imply a change in the burden of proof to the detriment of the Buyer. If the Supplier's request the Buyer shall declare within a reasonable period of time whether the Buyer cancels the contract due to the delayed Supplies or insists on the Supplies to be carried out.

8. Reservation of Delivery, Supplier's Right to Security, Supplier's Right of Rescission

8.1 Supplier's Right of Rescission

The Supplier's obligation to deliver is dependent on the credit worthiness of the Buyer. If, after conclusion of the contract, the Supplier receives information or circumstances arise which give cause doubt in the credit worthiness of the Buyer, in particular in the event of a considerable deterioration in the financial status of the Buyer, suspension of payments, bankruptcy, closure, transfer, etc. then the Supplier shall be entitled to rescind the contract or the claim indemnification for non-fulfillment of the contract. Insofar as some form of payment other than cash has been agreed, the Supplier shall be entitled in such cases to demand cash payment. In the same circumstances, the Supplier shall be entitled at any time to visit the Buyer's stores, to demand the return of materials supplied under property reservation and to secure possession of these materials in any way deemed appropriate by the Supplier. In such circumstances, the Supplier shall furthermore be entitled to forbid resale of the materials supplied under property reservation and to demand the immediate return of the materials or the transfer of indirect possession at the expense of the Buyer.

8.2 The possibility of advance purchasing of the raw materials and foreign exchange is reserved, i.e. the Supplier shall only be obliged to deliver the sold goods insofar as advance purchase of the necessary raw materials at the agreed prices is possible.

9. Retention of Title

9.1 Items pertaining to the Supplies ("Retained Goods") shall remain the property of the Supplier until each and every claim the Supplier has against the Buyer on account of the business connection has been fulfilled. If the combined value of the security interests of the Supplier exceeds the value of all secured claims by more than 20 %, the Supplier shall release a corresponding part of the security interest if so requested by the Buyer.

9.2 For the duration of the retention of title, the Buyer may not pledge the Retained Goods or use them as security, and resale shall be possible only for resellers in the ordinary course of their business and only on condition that the reseller receives payment from its customer or makes the transfer of property to the customer dependent upon the customer fulfilling its obligation to effect payment.

9.3 Machining and processing of the supply items („reserved goods“) will be carried out for the Supplier without imposing any obligation on him. In case of processing (including union) or mixture with other goods not belonging to the Supplier, the Buyer and Supplier hereby agree, that Supplier - to the extent he has no statutory rights - shall have co-ownership in the new good or mixed goods respectively (hereinafter collectively „new goods“) in the proportion of the value of Supplier's reserved goods being processed or mixed to the value of the other processed or mixed goods, each at the time of the processing or mixture. Buyer shall hold the new goods in safe custody for the Supplier, exercising due care and diligence consistent with good commercial practice.

9.4 The Buyer shall keep the reserved goods and new goods separately and shall mark such goods as Supplier's property. Furthermore the Buyer shall maintain insurances in view of such goods, in particular against the risk of fire or theft, and shall provide evidence of such insurance coverage to Supplier on its demand.

9.5 In case Buyer will resell the reserved goods or new goods, he hereby assigns by way of security to Supplier all claims arising from such resale together with all ancillary rights thereto or substitute thereof, provided that such assignment shall be limited to the amount invoiced by Supplier for the reserved goods being processed or mixed. To the extent Buyer's claims are assigned to Supplier they shall have priority over the part which is not assigned to Supplier, if any. Buyer shall be authorized, until Supplier's revocation, to collect the assigned claims arising from resale. On Supplier's demand the Buyer shall inform his customers of the assignment and shall give to Supplier all information and documents

necessary for asserting the claims against Buyer's customers.

9.6 Any costs of the collection shall be borne by Buyer. The Buyer, at his own expense, shall take all measures necessary to prevent the reserved goods or new goods respectively from damage, loss or other impairment. In case of any non-compliance by Buyer with his obligations under this Clause 9, the Supplier shall be entitled to compensation.

9.7 The Buyer shall inform the Supplier forthwith of any seizure or other act of intervention by third parties.

9.8 Where the Buyer fails to fulfil its duties, including failure to make payments due, the Supplier - even without granting a reasonable time to Buyer - take back the Retained Goods and Reserved Goods and/or to cancel the contract ; the Buyer shall be obliged to return such goods, in the case of a demand by Supplier to return such goods, this shall not be considered as a declaration of cancellation of the contract, safe in case of an express cancellation declaration."

10. Industrial property rights; Defects in Title

1. Unless otherwise agreed, the Supplier shall provide the Supplies free from third parties' industrial property rights and copyrights (hereinafter referred to as "IPR") with respect to the country of the place of destination. If a third party asserts a justified claim against the Buyer based on an infringement of an IPR with respect to the Supplies made by the Supplier and then used in conformity with the contract, the Supplier shall be liable to the Buyer within the time period stipulated in Clause 6.2.2 as follows:

a) The Supplier shall choose whether to acquire, at its own expense, the right to use the IPR with respect to the Supplies concerned or whether to modify the Supplies such that they no longer infringe the IPR or replace them. If this would be unreasonable to demand from the Supplier, the Buyer may cancel the contract or reduce the remuneration pursuant to the applicable statutory provisions.

b) The Supplier's liability to pay damages shall be governed by Clause 12 (Other Claims for Damages).

c) The above obligations of the Supplier shall only apply if the Buyer (i) immediately notifies the Supplier of any such claim asserted by the third party in writing, (ii) does not concede the existence of an infringement and (iii) leaves any protective measures and settlement negotiations to the discretion of the Supplier. If the Buyer stops using the Supplies in order to reduce the damage or for other good reason, it shall be obliged to point out to the third party that no acknowledgement of the alleged infringement may be inferred from the fact that the use has been discontinued.

2. Claims of the Buyer shall be excluded if it is itself responsible for the infringement of an IPR or if the infringement of the IPR is caused by specifications made by the Buyer, to a type of use not foreseeable by the Supplier or to the Supplies being modified by the Buyer or being used together with products not provided by the Supplier.

3. Where other defects in title occur, Clause 6.2 shall apply mutatis mutandis.

4. Any other claims of the Buyer against the Supplier or its agents or any such claims exceeding the claims provided for in this Clause 10, based on a defect in title, shall be excluded.

5. To the extent that Supplier is not responsible under the provisions of this Clause 10, the Buyer shall indemnify and hold him harmless against any third party claims.

11. Return shipments

Return shipments are subject to prior agreement.

12. Other claims for damages

1. Any claims for damages and reimbursement of expenses the Buyer may have (hereinafter referred to as "Claims for Damages"), based on whatever legal reason, including infringement of duties arising in connection with the contract or tort, shall be excluded.

2. The above shall not apply in the case of mandatory liability, e. g. under the German Product Liability Act ("Produkthaftungsgesetz"), in the case of intent,

gross negligence, injury of life, body or health, or breach of a condition which goes to the root of the contract ("wesentliche Vertragspflichten"). However, Claims for Damages arising from a breach of a condition which goes to the root of the contract shall be limited to the foreseeable damage which is intrinsic to the contract, unless caused by intent or gross negligence or based on liability for injury of life, body or health. The above provision does not imply a change in the burden of proof to the detriment of the Buyer.

3. To the extent that the Buyer has a valid Claim for Damages according to this Clause 12, it shall be time-barred upon expiration of the limitation period applicable to Defects pursuant to Clause 6.2.2. In the case of claims for damages under the German Product Liability Act, the statutory provisions governing limitation periods shall apply.

13. Severability clause, Assignment

The legal invalidity of one or more provisions of this contract shall in no way affect the validity of the remaining provisions. This shall not apply if it would be unreasonable for one of the parties to continue the contract. Without Supplier's written consent, the Buyer shall not be entitled to assign any rights or claims under this Agreement.

14. Place of fulfillment, venue and applicable law

1. If the Buyer is a businessperson, sole venue for all disputes arising directly or indirectly out of the contract shall be the Supplier's place of business. However, the Supplier may also bring an action at the Buyer's place of business.

2. Legal relations existing in connection with this contract shall be governed by German substantive law, to the exclusion of the United Nations Convention on Contracts for the International Sale of Goods (CISG).

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