

General Terms and Conditions of Delivery of Draka Comteq Berlin GmbH & Co. KG

August 2009

1. General provisions
 - 1.1. The following general terms and conditions of delivery shall govern the legal relationship of Draka Comteq Berlin GmbH & Co. KG and its contracting parties, referred to as 'customer' in the following, except as otherwise provided for by individual contractual regulations.
 - 1.2. To all business with customers who are non-consumers as defined by paragraph 310, subparagraph 1 of the German Civil Code regarding the delivery of cable factory products, these provisions shall apply exclusively. Diverging or complementary provisions of the customer as well as collateral agreements shall be binding only if we have confirmed those provisions or agreements in writing. In all other cases, we herewith object to such provisions or agreements.
 - 1.3. Special provisions shall apply to any installation or commercial services; the customer can obtain these provisions at any time from us, or they are attached to these general terms and conditions.
2. Order and acceptance
 - 2.1. A contract between the customer and our company shall be concluded only by our written confirmation of the order placed by the customer. Our written confirmation of the order shall be authoritative for the scope of the delivery or service.
 - 2.2. Our offers are made without obligation; they shall be not binding for subsequent orders.
3. Time for delivery
 - 3.1. Times for delivery shall be binding only if we have confirmed these times expressly and in writing as binding.
 - 3.2. A precondition for observing the time of delivery is the timely and correct fulfilment of the customer's obligations, particularly the making of the agreed payments and, if applicable, the rendition of agreed guarantees.
 - 3.3. The time of delivery shall be deemed observed if the customer is notified that the goods are ready for shipment or if the items to be delivered have left the factory.
 - 3.4. The time of delivery shall be extended in case of measures taken within the scope of industrial actions, particularly strike and lock-out, and in case of the occurrence of unpredictable impediments beyond our control, e.g. interruptions of operations, delays in the delivery of essential materials, if such impediments have a significant provable effect on the delivery of the items to be delivered. This shall be true also if such measures and impediments occur at the sub-contractors. The time of delivery shall be extended in accordance with the duration of such measures and impediments.
 - 3.5. We shall also not be held responsible for the aforementioned circumstances if they occur in the course of an already existing delay. In urgent cases, we will notify the customer as soon as possible of the start and end dates of such impediments.
 - 3.6. In other respects the customer, in the case of a delay for which we shall be responsible, shall be entitled to enforce additional rights not before a period of grace, granted by the customer, of at least three weeks after the occurrence of the delay has expired without results.
 - 3.7. Except the case of wilful contract violation our liability is limited to typical foreseeable-occurring damages.
4. Scope of delivery
 - 4.1. We shall reserve the right during the time of delivery to make changes in construction and design, which are a result of technical enhancements or legal requirements or changes made by the producer, as long as the item of delivery will not be significantly altered and the customer can reasonably be expected to accept the items.
 - 4.2. The delivery of differences plus and minus in length shall be acceptable up to a deviation of 5%. The basis for the settlement of accounts shall be the amount delivered. However, the customer shall not have any claim to a subsequent delivery of a missing amount, to damages or to cancellation of the contract.
 - 4.3. Delivery by instalments shall be acceptable, if they do not result in disadvantages with respect to the use of the item.
5. Cancellation costs

If the customer cancels without justification a placed order, we shall have the right, notwithstanding the possibility to assert a higher actual damage, to demand 10% of the selling price to compensate the costs incurred due to the processing of the order as well as the lost profit. The customer shall be responsible for providing the proof of a non-existing or lower damage.
6. Packing and shipping
 - 6.1. The type of packing and shipping shall be selected at our best discretion.
 - 6.2. Shipping package shall be charged extra.
 - 6.3. For the shipment of goods on drums with a disc diameter of 0.50m to 2.80m drums of Kabeltrommel GmbH & Co. KG (KTG) are used. For these drums the general terms and conditions of KTG shall apply.
7. Acceptance and passing of risk
 - 7.1. The risk shall be passed to the customer when the goods have left our factory, irrespective of whether own or other means of transport are used.
 - 7.2. If the shipping is delayed due to a circumstance for which the customer shall be responsible, or if the shipping takes place at a later date than the agreed date of delivery upon the customer's request, the risk shall be passed to the customer at the time the customer is notified of the goods being ready for shipping. The costs incurred due to the delay (particularly storage charges) shall be borne by the customer.
8. Prices
 - 8.1. Our prices are free delivery ship to location, not unloaded, excluding packing. With a net value below 600€ shipment is unfree.
 - 8.2. We shall reserve the right, in the case of a time of delivery of more than 4 months, to increase the prices according to the increase in costs incurred because of raised labour, equipment and material costs. If the price increases by more than 4.5% of the agreed price, the customer, if he is no trader, shall have the right to cancel the contract; this right shall be exercised in writing within one week after receipt of the notification of the price increase.
 - 8.3. The quotations of the non-ferrous metals industry are authoritative for the determination of the metal prices.
Copper: The quotation of electrolyte copper for conductor production (DEL quotation of the day) plus procurements costs.
Aluminium: Al for conductor production 99.7% cash/sellers (London Metal Exchange, LME) plus additional charges.
Lead: Lead quotation i.a.w. German Industrial Standards (DIN) 17640.
Quotations used in offers shall not be binding. The quotation of the day after receipt of the clarified order shall be authoritative for the order. The order shall be deemed clarified if we are able to confirm the order in a binding manner with respect to amount, type, time of delivery and so forth. If the calculation of the price is made on the basis of a blank price or another fictitious price basis, and if the quotation of the day deviates from this basis, the prices per 1,000 m shall be adjusted by the amount resulting from the multiplication of the metal number (Cu, Al, Pb) with the metal price difference. All metal surcharges or discounts shall always be net amounts.
9. Liability for defects
 - 9.1. The customer shall be obliged to inspect the goods immediately after receipt of the shipment and to notify us in writing of existing defects as soon as possible (but not later than 5 days after receipt of the shipment). Defects which are notified out of time, i.e. in violation of the aforementioned obligation, shall not be taken into consideration by us and shall be excluded from the liability. We shall admit notices of defects only if they are submitted in writing. Notices of defects which are asserted toward field staff or third persons shall constitute no notices of defects submitted in due form and time.
 - 9.2. The customer shall be obliged to make the shipment or parts of the shipment to which objection was made available for us for the purpose of examination of the objection. If this is culpably denied, the liability shall be cancelled.
 - 9.3. If a rectification of defects or a substitute delivery is made as a result of a legitimate notice of defects, the provisions on the time of delivery shall apply mutatis mutandis.
 - 9.4. The existence of a defect determined as such and notified through an effective notice of defects shall constitute the following rights of the customer:
 - 9.4.1. In the case of defectiveness, the customer first of all shall have the right to demand a subsequent performance from us. We shall have the right to choose, at our own discretion, whether a new delivery of the goods or a rectification of the defects shall be conducted.
 - 9.4.2. In addition, in the case of failure of an attempted subsequent performance, we shall have the right to another subsequent performance, the

type of which shall again be chosen at our own discretion. Only if the repeated subsequent performance fails as well, the customer shall have the right to withdraw from the contract or to reduce the purchase price.

- 9.5. The warranty period shall be one year from the time of delivery. The customer shall be obliged to prove in any case that the defect already existed at the time of delivery.
 - 9.6. We shall not be liable for normal wear and tear.
 - 9.7. In the case of defects at components of other producers, which cannot be eliminated by us because of licence or other reasons, we shall at our own discretion assert our guarantee claims against producer and supplier on account of the customer or shall transfer the title to the customer. In the case of such defects guarantee claims can only be asserted against us under other requirements and according to these general terms and conditions of delivery if the legal implementation of before mentioned claims against the producer and supplier have been in vain or there is no reasonable chance, as e.g. in the case of insolvency. For the time of the legal action the limitation period for the respective guarantee claims of the customer against us shall be suspended.
10. Liability for compensation caused by negligence
- 10.1. Our liability on compensation, irrespective on which legal reason, especially caused by impossibility, delay, faulty or wrong delivery, default on contract, violation of duties with contract negotiations and unlawful acts, as far as in each case a fault is concerned, is limited according to this § 10.
 - 10.2. We are not liable
 - a) for slight negligence of our bodies, legal agents, staff or auxiliary persons
 - b) for gross negligence of non-executive staff or auxiliary persons, as far as violation of essential contractual obligations is not concerned.
 - 10.3. As far as we are liable in principle for compensation according to § 10.2, this liability is limited to failures which we, when concluding the contract, have foreseen as a possible result of a contract violation or taking in account the circumstances which we knew or must have known, or which we must have foreseen with the application of care and attention. Indirect and consequential damages, occurring as a result of failures of supplied goods are, moreover, only then compensable, as far as such damages are typically expectable with intended application of the goods supplied.
 - 10.4. In the case of liability for slight negligence our indemnifiability for damage to property or persons is limited to a sum of 2.500.000 per claim, even if essential contractual obligations are concerned.
 - 10.5. The before named disclaimer and liability limitations are valid to the same degree in favour of our bodies, legal agents, staff or auxiliary persons.
 - 10.6. As far as we are giving technical information or consultancy and these information and consultancy are not belonging to the contractually agreed performance scope, this service is free of charge, excluding any liability.
 - 10.7. The limitations of this § 10 shall be not valid for liability by reason of wilful intent, for guaranteed characteristics of state, by reason of violation of life, body or health, or according to the product liability act.
11. Exclusion of risk of procurement and guarantees
- We shall not assume any risks of procurement and guarantees whatsoever, unless an express agreement has been concluded in writing between the customer and us.
12. Reservation of title
- 12.1. Delivered goods shall remain our property until all of our claims against the customer arising from the business relation will have been settled.
 - 12.2. In the case of a breach of contract by the customer, and especially in the case of delay in payment, we shall be entitled to take back the goods after withdrawal from the contract, and the customer shall be obliged to hand over the goods.
 - 12.3. The processing or transformation of the goods by the customer shall always be performed on our behalf. If the delivered items are processed with other items not belonging to us, we shall acquire co-ownership of the new item in the ratio of the value of the delivered items to the other processed items at the time of processing.
 - 12.4. The customer shall have the right to resell the delivered goods in the ordinary course of business to resellers outside of a current account relation; however, the customer shall transfer already at this time all claims to the amount of the purchase price agreed between us and the customer (including VAT) which are accrued by the customer as a result of the reselling, independent of whether the delivered goods are being resold without or after processing. After having transferred the claim, the customer shall have the right to collect the claim. Our right to collect the claim by ourselves shall not be affected; however, we bind ourselves not to collect the claim as long as the customer properly meets his obligation to pay and no delay in payment occurs. As soon as such a situation arises, we shall have the right to demand that the customer disclose the transferred claims and their debtors, provide all information necessary for the collection of the claim, hand over the relevant documents and notify the debtors (third parties) of the transfer of the claim.
 - 12.5. Before the title has passed to the customer, the customer must neither pledge the delivered goods nor assign them by way of security. In the case of attachments or seizures or other dispositions by third parties, the customer shall be obliged to inform us accordingly as soon as possible and to provide us with all information and documents that are necessary for the safeguarding of our interests. Our property must be identified vis-à-vis law enforcement officers or third parties.
 - 12.6. We shall bind ourselves to release the securities due to us upon request of the customer insofar as the value exceeds the claims to be secured, as far as these claims have not yet been settled, by more than 20%.
 - 12.7. The enforcement of our rights arising from the reservation of title shall not release the customer from his contractual obligations. The value of the goods at the time they are taken back shall only be deducted from the existing claim against the customer.
13. Terms of payment
- 13.1. Our invoices shall be immediately due within the stipulated period allowed for payment. 30 days after due date and receipt of the invoice latest the customer is in default (§286 clause 3 BGB).
 - 13.2. If not expressly agreed otherwise, all payments shall be made in Euro. All payments shall be made without any kind of deduction and free of charges for us.
 - 13.3. We shall charge default interest of 8% p. a. above the basic interest rate of the European Central Bank. This interest shall be increased if we can prove a burden with a higher interest rate.
 - 13.4. It shall be not admissible to withhold payments because of any counterclaims of the customer which were neither accepted by us nor have become *res judicata*; an offsetting against such counterclaims shall not be admissible either.
 - 13.5. If a delivery takes place in instalments, the purchase price shall be due upon each delivery.
 - 13.6. All claims against the customer shall become immediately due if the customer defaults in fulfilment of one or more obligations, if the customer culpably does not comply with other essential obligations under the contract or if we take notice of circumstances which are suited to reduce the creditworthiness of the customer, particularly, among others, cessation of payments, pendency of a settlement or insolvency. In such cases, we shall have the right to retain still pending deliveries or execute such deliveries only against advance payment or security.
14. Place of performance and jurisdiction
- Insofar as the customer is businessman, Berlin as the seat of our company shall be the place of jurisdiction. We are however entitled to take legal action against the customer at the court of his place of business. All obligations under the contractual relationship shall be performed at the seat of our company.
15. Other provisions
- 15.1. For the relationship between the seller and the customer solely the law of the Federal Republic of Germany shall apply. The United Nations Convention on Contracts for the International Sale of Goods of 11th April 1980 (CISG) does not apply.
 - 15.2. For any transfer of the customer's rights and obligations under the contract concluded with us to take effect, our written consent shall be required.
 - 15.3. If any provision is or becomes void, the validity of the other provisions shall not be affected.