

General Terms and Conditions for Purchasing by Kabel Deutschland GmbH and its Group companies AGB E – February 2009

§ 1 Area of Application

- (1) These General Terms and Conditions have exclusive application. Any conflicting or supplementary conditions of the Contractor shall not apply, unless the application is expressly consented to by the Customer upon conclusion of the Contract. These General Terms and Conditions also have exclusive application if the performance of the Contractor is unconditionally accepted with knowledge of conflicting or supplementary Conditions of the Contractor. In the same manner any previously agreed Conditions of the Contractor conflicting with or supplementing these General Terms and Conditions shall no longer apply.
- (2) If the Contractor does not agree to the exclusive application of these General Terms and Conditions, he shall inform the Contractor hereof in a separate letter without delay. In this case the Customer reserves the right to withdraw the order.

§ 2 Conclusion of Contract

- (1) The order alone determines the scope and type of performance. The Contractor shall provide to the Customer after receipt of the order an order confirmation without undue delay. The Customer can revoke the order if the Contractor has not accepted the order in writing or carried it out without reservation within two weeks after receipt of the order.
- (2) Orders, requests, terminations, contract amendments or supplements or other declarations must be made in writing or in text form. Orders, requests, terminations, contract amendments or supplements or other declarations made orally or by telecommunication are only binding if they are set down in writing or in text form by the Customer.

§ 3 Quality management, packaging material and environmental protection

- (1) The Contractor shall comply with the agreed specifications as well as the applicable statutory provisions, the regulations and guidelines of public authorities, trade associations and professional associations. All performances must correspond to the most recent state of technology.
- (2) The Contractor is obliged to recover, free of charge, the packaging material and electronic scrap related to the agreed services and to collect and dispose of it properly. The Contractor shall provide proof to the Customer of any required registration (e.g. Stiftung für Elektro-Altgeräte Register).
- (3) The Contractor shall provide proof that as initial distributor of the packaging material on the market he participates in a return system pursuant to § 6 para. 3 of the Regulation on Packaging (VerpackV) as amended by the 5th Amendment Regulation (Änderungsverordnung) dated 2 April 2008 (German Federal Law Gazette Vol. I., page 531 et seq.). The Customer can request the submission of the participation agreement between the Contractor and the return system or provision of equivalent documentation. The Customer is entitled to disclose submitted documentation to third parties if he is also subject to such an obligation to provide proof. If the Contractor is not the initial distributor, he shall provide proof that the initial distributor is participating in a return system. Sentences 2 and 3 above shall apply accordingly.
- (4) The Contractor shall upon request provide proof of the disposal in compliance with the law and provide to the Customer the documents and information necessary for proof to the public authorities in this regard.
- (5) If the Contractor does not comply with the obligations in § 3 (2) within a set time period despite being requested to do so, the Customer is entitled to have the collection and the disposal done at the expense of the Contractor.
- (6) The Contractor shall save and hold harmless the Customer from all claims of third parties arising from a breach of the obligations mentioned in § 3 involving fault.

§ 4 Obligations of the Contractor, changes in the subject matter of performance

- (1) The Contractor shall review whether the order, the description of performance or other instructions issued by the Customer in connection with the order are incorrect, incomplete, unclear or otherwise unsuited for the proper completion of the order and shall inform the Customer thereof as well as the resulting consequences in writing without delay, providing proposals for changes.
- (2) The Customer is entitled to request a change in the subject matter of performance even after conclusion of the contract up until the full completion of performance. The Contractor shall inform the Customer of the consequences of such a change (e.g. additional or reduced costs, delays) and implement the change in the subject matter of performance upon request, unless this cannot be reasonably expected of the Contractor.
- (3) During the contractual performance the Customer can request from the Contractor at any time a written interim report regarding the status of the performance and the material results previously achieved by the Contractor. The Contractor shall provide to the Customer upon request the documents and information directly or indirectly connected with the per-

formance. Any review of the performance made in this connection shall not be a (partial) acceptance.

- (4) If deviations from the agreed performance are necessary for technical reasons, they shall be notified to the Customer prior to commencement of production respectively in the event of subsequent deviations prior to their implementation. Deviations from the agreed subject matter of performance require the consent of the Customer.

§ 5 Integrity

The Contractor shall take all necessary measures to avoid actions causing economic damage (e.g. corruption). The Customer is entitled to terminate the agreement without notice if such actions become known.

§ 6 Performance time, partial performance, force majeure, default, contractual penalty

- (1) The delivery and performance dates indicated in the order are binding. The Contractor shall inform the Customer in writing without delay regarding the reason and probable duration of a delay, if it is recognisable that an agreed date cannot be complied with. This applies accordingly if the agreed quality can likely not be met.
- (2) Partial deliveries as well as performance prior to the agreed delivery or performance date are only permissible if the Customer expressly consents thereto. Agreed partial deliveries as well as performance prior to the agreed delivery or performance date do not have any influence on agreed payment targets and periods.
- (3) Events involving force majeure which prevent any necessary participation actions of the Customer or the acceptance of performance by the Customer shall extend the period for acceptance respectively the period to perform the respective action reasonably in accordance with the duration of the hindrance. As soon as it becomes recognisable for the Customer that he cannot perform any participation actions or obligations in a timely manner, he shall inform the Contractor.
- (4) If the performance is delayed due to force majeure or if the Contractor is in default of delivery, after the expiry of a reasonable grace period the Customer can withdraw from the Contract. A grace period is not required if the Contractor earnestly and definitively refuses performance, the compliance with the delivery date is essential for the Customer (fixed date transaction) or other circumstances exist which justify immediate withdrawal, taking account of the interests on both sides. The Customer is entitled to keep partial deliveries and withdraw from the remainder of the Contract.
- (5) If agreed delivery or performance dates are not complied with for reasons for which the Contractor is responsible, the Customer is entitled to claim for each commenced work day of delay a contractual penalty due to improper performance in the amount of 0.2%, but at most 5% of the total order. The assertion of further damage claims remains unaffected. In the event further damage claims are asserted, the contractual penalty shall however be set off. The Customer can assert the reservation of the contractual penalty until the final payment.
- (6) The statutory rights of the Customer in the event of default of the Contractor shall remain unaffected.
- (7) The acceptance of a delayed delivery or performance shall not constitute a waiver of any damage claims.

§ 7 Scope of performance, prices and terms of payment

- (1) The price agreed in the order covers the delivery „free of charge to the destination“. The price covers the entire transport, insurance, packaging and other incidental costs and charges for delivery and unloading at the place of delivery indicated by the Customer, unless otherwise agreed. Additional costs due to a shipping requirement which is not complied with or due to missing information on bills of delivery (§ 7(3)) or invoices (§ 18) shall be borne by the Contractor.
- (2) The documents necessary for the operation, use and service of the performance or other use of the performance shall be provided – unless otherwise agreed – at least in German and English and are included in the agreed price.
- (3) A bill of delivery shall be attached to each delivery. Bills of delivery and – as far as separately agreed – dispatch notes must contain at least: SAP order number, file number and date of order, a reference to any partial delivery, number and issue date of the bill of delivery, date, month and year of shipping, information regarding the nature and the scope of the delivery as well as item numbers, position numbers, and the method of shipping indicated in the order.
- (4) Travel time and waiting periods as well as travel expenses shall not be compensated separately.
- (5) The payment target is at the discretion of the Customer: within 14 days with a discount of 3% or within 30 days with a discount of 2% or within 60 days net.
- (6) Payment targets and payment periods start upon receipt of the bookable invoice pursuant to § 18, but not prior to delivery and acceptance (as far

as acceptance is necessary). Determinative for the fulfilment of the payment target or the payment period is the date on which the Customer issues the transfer order. The Customer shall only be in default upon issuance of a warning notice of the Contractor after the due date.

- (7) The unconditional payment of the invoice amount by the Customer does not involve the recognition of the performance of the Contractor as being in accordance with the Contract.
- (8) If the Contractor refrains from insisting on the fulfilment of the contractual obligations once or several times, this does not involve a waiver or renunciation of future rights. The contractual obligations of the Contractor in such a case continue to apply and are fully valid for the future.

§ 8 Rescission, termination for good cause

- (1) The Customer can in particular rescind or terminate the Contract with immediate effect if (i) insolvency proceedings are instituted with respect to the Contractor's assets or if the institution of such proceedings has been rejected due a lack of insolvency assets, (ii) the proper performance of the Contract is placed at risk through the Contractor's discontinuance of his payments for a more than temporary time period, (iii) the Contractor has discontinued his business operations or an essential part of his business operation or (iv) execution proceedings to collect payment obligations under this Contract have been unsuccessful.
- (2) The statutory rights to rescission and extraordinary termination shall remain unaffected.

§ 9 Transfer of risk, inspection of defects, acceptance

- (1) The risk shall transfer to the Customer only upon the arrival of the delivery at the receiving location and countersignature of the bill of delivery respectively upon acceptance, as far as this is necessary.
- (2) Every performance under a contract for work and services requires an acceptance, unless an acceptance is excluded for technical reasons. The Contractor will notify the Customer that the work is ready for acceptance on at least ten working days written notice prior to the acceptance date. The receipt of the final invoice respectively the receipt of the notification of completion as well as the use respectively the start-up operation during a trial test run shall not be an acceptance.
- (3) The Customer shall inspect deliveries as to apparent defects and shipping damage. If a defect is found, the Customer shall give a notice of objection within two weeks after delivery. If a defect arises later, the objection shall be made within two weeks after recognition of the defect. To maintain the rights it shall be sufficient if the Customer sends the notice of objection within this time period.

§ 10 Liability for defects, rights of third parties

- (1) The Contractor ensures that its performance is free from physical and legal defects according to the statutory provisions and in accordance with the following paragraphs.
- (2) The Contractor shall at his expense and at the option of the Customer eliminate defects or deliver respectively provide a defect free object. The Contractor shall bear all expenses arising in connection with his liability for defects.
- (3) Claims due to defects are subject to a limitation period of three years after delivery respectively acceptance. The continuance of the limitation period is suspended through the notice of a defect to the Contractor and for the duration of the replacement performance.
- (4) If the Contractor does not carry out a replacement performance within a reasonable period set by the Customer or if the replacement performance was unsuccessful or unreasonable, the Customer is entitled to himself carry out or have carried out the replacement performance or replacement delivery at the expense of the Contractor.
- (5) The Contractor warrants that in connection with his delivery as well as through his performance no rights of third parties are violated.
- (6) If claims are made by third parties against the Customer due to a violation of rights of third parties, the Contractor shall save and hold harmless the Customer from such claims upon initial written request. The duty of indemnification also includes all expenses which the Customer incurs in connection with the claims by third parties.

§ 11 Liability of Contractor

The Contractor is fully liable for wilful actions and any type of negligence according to the statutory provisions. In addition he shall indemnify the Customer against all claims of third parties which third parties make against the Customer in connection with the contractual relationship of the party, unless the Contractor is not responsible for the damages claimed.

§ 12 Liability of Customer

Damage claims against the Customer, regardless of the legal ground, are excluded, unless the Customer or his agents act wilfully or with gross negligence or the damage claim results from the breach of material contractual duties. If the Customer is liable in cases of slight negligence, the liability is restricted to the indemnification of the typically foreseeable damage. The liability for damages arising from injury to life, body or health as well as liability under the Product Liability Act shall remain unaffected.

§ 13 Product liability

As far as the Contractor is responsible for damages due to product liability, he shall save and hold harmless the Customer from damage claims of third parties.

The Customer shall inform the Contractor without undue delay regarding the assertion of such damage claims and not make any payments or recognize claims without consultation.

§ 14 Provided documents

- (1) The Customer reserves ownership and copyright to pictures, illustrations, calculations, models, samples and other documents provided to the Contractor.
- (2) Such pictures, illustrations, calculations, models, samples and other documents may only be used to develop or provide the agreed performance. They may not be made accessible to third parties without consent of the Customer and shall be returned after completion of the order, including any copies, on the Contractor's own initiative.

§ 15 Ownership, provision of material

- (1) A prolonged or extended retention of title ("verlängerter oder erweiterter Eigentumsvorbehalt") of the Contractor is only binding if it was separately agreed in writing (outside any General Terms and Conditions of the Contractor).
- (2) Material provided by the Customer shall be separated by the Contractor from other materials, marked as property of the Customer and stored with the care of a reasonable businessman. The Contractor is obligated to prevent access by third parties and to inform the Customer of changes in quality (e.g. theft, loss of the item) and condition (e.g. restriction of usability) of the provided materials without delay.
- (3) Adaptions or processing of the material provided by the Customer shall be made for the Customer. If materials which are the property of the Customer are adapted with other objects not belonging to the Customer, the Customer acquires co-ownership to the new object in the ratio of the purchase value of the object belonging to the Customer to the purchase value of the other adapted objects at the time of adaptation. If the Contractor acquires sole ownership to the new item, the Contractor shall grant to the Customer co-ownership in the ratio of the purchase value of the object belonging to the Customer to the new object. This also applies if objects belonging to the Customer are mixed and combined with other objects.

§ 16 Confidentiality, data protection

- (1) The Contractor agrees to treat confidentially all information of which he becomes aware during and in connection with the performance of the order and to use the information only for contractually agreed purposes. Confidential information within the meaning of this provision is information (e.g. business and trade secrets, conclusion of contract, data as well as their sequence and results, other technical or commercial information of any type) respectively documents or other information which are marked as confidential or according to their nature are to be considered as confidential. The Contractor agrees to only grant such employees or third parties access to confidential information of the Customer who are necessarily involved with the performance under this agreement. The Contractor shall ensure that they treat the information confidentially and only in the scope which is necessary for them. The Contractor may disclose confidential information due to obligations imposed by law or public authorities or for the purposes of a due diligence review in the respectively necessary scope. The Contractor shall inform the Customer prior to disclosure of confidential information. The Contractor shall not pursue any property right filings for confidential information as well as for documents provided to him (§ 14). The duty of confidentiality continues to apply for three years beyond the contract term.
- (2) The Contractor agrees to comply with the respective data protection regulations in the performance of this agreement and also to require employees and agents to comply with these regulations. In the case of the processing of personal data by the Contractor, he shall require his employees and agents to comply with the duty of data secrecy. The Contractor agrees to prove to the data protection officer of the Customer upon request the compliance with this obligation in the form required by the statutory provisions. As far as it is necessary that the Contractor processes personal data on instructions, the parties shall conclude an agreement for contract data processing pursuant to §11 of the Federal Data Protection Act which the Customer shall provide. The Contractor shall use the data only for the purposes set down in writing in a particular case and not transfer them to third parties without prior consent of the Customer.

§ 17 Fulfilment of Contract by third parties

The engagement of third parties as sub-contractors requires the consent of the Customer.

§ 18 Invoice/tax

- (1) The Contractor shall verifiably itemise and bill his performances in the invoice. Instalment, partial, partial final and final invoices shall be marked as such, and listed individually in numbered sequence. The invoice shall contain the department placing the order, the SAP order number, as well as the place of receipt. The invoice shall be in accordance with §§ 14, 14 a UStG (VAT Act). Any defaults in payment due to an invoice which does not comply with the aforementioned requirements is not the fault of the Customer.
- (2) Work performance and services shall be submitted by the Contractor to the Customer for acceptance in the form of written, comprehensible performance records prior to invoicing. The performance records signed by

the Customer shall be attached to the invoice. Performance records must contain at least: SAP order number, time and quantity information, place of performance and a description of services.

- (3) In the case of other services and deliveries of works which are subject to VAT in Germany and performed by foreign contractors, the tax liability passes to the Customer (§ 13 a, b UStG). In the invoices for these services the Contractor may not include any German VAT. If, when performing the above-mentioned services, the Contractor brings objects from a third country to Germany and if in this connection import taxes are incurred, they shall be borne by the Contractor. For construction services pursuant to § 13 b UStG, the Customer and the Contractor agree that the conditions of § 13 b UStG for transfer of the tax liability are met and that the provision applies accordingly (cf. section 182 a, 17 VAT guidelines).
- (4) The Customer may deduct from the gross price any withholding taxes (in particular building withholding tax pursuant to § 48 Income Tax Act and withholding tax pursuant to § 50a Income Tax Act) and pay them to the tax authorities for the account of the Contractor unless a valid certificate of exemption is provided by the Contractor.

§ 19 Assignment of claims

The Contractor's claims against the Customer may only be assigned to third parties upon prior consent of the Customer.

§ 20 Retention, offset

- (1) The Contractor has no rights of retention in so far as they are based on counterclaims resulting from other legal transactions with the Customer.
- (2) The Customer may set off claims which the Contractor has against the Customer against claims which other companies affiliated with the Customer within the meaning of §§ 15 et seqq. Stock Corporation Act have against the Contractor. The Customer is further entitled to set off claims which the Contractor has against companies affiliated with the Customer against claims of the Customer.
- (3) The Contractor may only set off claims which are undisputed or recognised by final and binding judgement.

§ 21 Security

Upon request of the Customer, the Contractor shall obtain payment, performance or warranty guarantees in favour of the Customer, or, within ten working days after the contract signature, provide to the Customer a legally valid comfort letter from his sole shareholder (only relevant for subsidiaries).

§ 22 Safety

The Contractor and his agents shall comply with the applicable regulations and recognised rules of technology in the performance of the contract, in particular regarding work safety and health protection, as well as the building, trade and traffic regulations (in particular supervisory and traffic safety duties on construction sites and other work locations) as well as to comply with the management rules and the safety provisions of the Customer and to assign corresponding commitment declarations.

§ 23 Advertising

The Contractor is not entitled to use information regarding an intended or existing contractual cooperation for reference and marketing purposes without prior consent of the Customer. The taking of photos on properties respectively construction sites of the Customer as well as publications of any type in this regard are prohibited without the prior consent of the Customer.

§ 24 Final provisions

- (1) The place of performance shall be the place of receipt indicated by the Customer.
- (2) The laws of the Federal Republic of Germany, excluding German conflicts of law provisions and the United Nations Convention on Contracts for the International Sale of Goods, shall apply.
- (3) The exclusive court venue shall be the court of jurisdiction at the location of the Customer's unit concluding the Contract. However, the Customer is also entitled to have recourse to the court of jurisdiction at the Contractor's principal place of business.
- (4) If a provision in this Agreement should be or become invalid, this shall not affect the validity of the remaining provisions. In such a case the parties agree to participate in the conclusion of provisions through which a legally valid result coming as close as possible to the commercial intent of the invalid provision shall be achieved. The above applies accordingly for any contract gaps.
- (5) The Customer is entitled to transfer individual or all rights and/or obligations under this agreement as well as the agreement as a whole to third parties without consent of the Customer. This applies in particular for transfers to an affiliated company within the meaning of §§ 15 et seqq. Stock Corporation Act.