

# Terms and conditions of supply and payment

October 2023



## **1. General | validity | scope of application | written form**

These terms of delivery and payment apply exclusively, and we will not accept contrary or different customer conditions unless their applicability has been expressly agreed to by us in writing. Our terms of delivery and payment also apply if we execute a delivery to the customer without reservations in the knowledge of customer terms that contradict or differ.

Our terms of delivery and payment only apply vis-a-vis entrepreneurs, legal persons under public law and special funds under public law within the meaning of section 310.1 of the German Civil Code.

Side-agreements, reservations, amendments, addenda etc. including cancellation of this requirement of written form shall require our written confirmation in order to take effect.

References to the applicability of legal provisions only have a clarificatory meaning. Legal provisions therefore even apply without such clarification insofar as not directly changed or expressly excluded in these terms of delivery and payment.

## **2. Quotations**

To the extent not stated to the contrary, our quotations shall be subject to change without notice; the customer's order is to be qualified as a quotation pursuant to § 145 German Civil Code.

## **3. Prices**

All the prices stated by us shall be understood exclusive of the statutory turnover tax and from an order value of EUR 1,200.– net (i.e. without value added tax), before metal surcharge and without part deliveries, freight forward within the Federal Republic of Germany (mainland), albeit without unloading.

For required cutting lengths, we shall charge cutting costs to the amount of EUR 25.– per cut.

## **4. Metal quotes**

The sales prices include, depending on the product, a metal basic price of EUR 0.00/100.00/150.00 for 100 kg. The sales prices are increased/reduced by the difference between the metal basic price and the metal prices shown by FABER for copper or aluminium on the order date.

## **5. Metal index**

The shown metal index is a purely mercantile calculation factor for the metal content included in the calculation of the total cable price. The metal index is therefore no indication of the weight of the conductor metal actually contained in the cable. It is a purely arithmetical calculation factor that permits no direct conclusions to be drawn about the quantities of copper and/or aluminium used in the cable.

## **6. Modification and cancellation of orders**

Modifications of confirmed orders will only become valid when confirmed in writing by Faber. Customised goods or lengths can not be changed or canceled. Faber reserves the right to charge the customer for costs thus incurred.

## **7. Retention of title**

We reserve title to the goods supplied by us – hereinafter referred to as conditional commodities – until complete payment of all claims resulting from the business relationship with the customer. The retention of title shall also remain in existence if individual claims are incorporated in a current account (reservation of current account).

As long as the ownership has not passed to them, customers undertake to look after reserved goods and adequately insure them against theft, fire and water damage at the replacement value and at their own expense.

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Customers are entitled to resell reserved goods in the ordinary course of business, and already assigns payment claims arising against their clients from such sales to us by way of security to the extent of the value attributable to the reserved goods. Customers are revocably entitled to collect the claims assigned to us in their own name and on their own account.

Our right to collect claims ourselves remains unaffected by this. We will neither collect claims ourselves nor revoke the collection authorization as long as customers duly comply with their payment obligations, however. If they act contrary to contract, and especially default on their payment obligations, we can demand customers to disclose assigned claims and the respective debtors, inform the respective debtors of the assignment, and provide us with all the documents and information we require to assert the claims.

Sale in the ordinary course of business shall not exist if the customer pledges conditional commodities to a third party, transfers them by way of security and/or makes them the subject matter of factoring and/or sale-lease-back procedures and/or if the customer's contractual terms have ruled out assignment of the claims to remuneration. In all such cases, the customer shall always be obliged to obtain our written consent before undertaking the intended transaction.

In the event of processing and/or machining of conditional commodities, this shall be done by our order and on our behalf in the sense of §§ 950 et seqq. German Civil Code. In such a case, ownership of the object originating by machining/processing of the conditional commodities shall accrue to us in the ratio of the conditional commodities to the value of the new object at the time of machining or processing.

If other goods not belonging to the customer are processed at the same time, co-ownership of the new object shall accrue to us in the ratio of the invoice value of the individual processed goods to the total value achieved. To the extent that the customer sells the object newly produced by it, the claim accruing to the customer from this shall likewise be assigned to us by way of security to the amount of the value of the conditional commodities.

If the conditional commodities are damaged, destroyed or if the customer obtains claims against third parties from an impairment of the value of the conditional commodities, in particular against insurance companies, these claims shall also be assigned to us within the framework of the aforementioned and the following provisions as securing of our claim(s). If such claims originate, we shall be notified without delay.

If reserved goods are seized or exposed to other third-party interventions, customers are required, as long as the ownership has not passed to them, to inform the third party of our ownership rights and immediately inform us in writing so that we can assert them. The customer is liable for the judicial or extrajudicial costs arising in this context insofar as the third party is unable to reimburse them to us.

If the nominal value of the securities assigned to us sustainably exceeds the claim(s) that are due to us by more than 50 %, we are required to release no longer required securities at our dutiful discretion upon the customer's request.

If cheque/bill proceedings take place, the claims accruing to us shall only be redeemed with final and unreserved fulfilment of all the obligations entered into in connection with the aforementioned mode of payment, in particular only after complete honouring of the bill provided.

## **8. Payment terms | offset | rights of retention**

Our invoices are payable 14 days after the invoice date without any deductions.

If the agreed payment terms are not complied with, we are entitled to charge interest at 8 %-points above the basic rate; the right to assert further damages, especially proven higher interest, remains unaffected by this.

Independent of payment agreements made, claims accruing to us shall become due for payment immediately if the

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customer gives rise to circumstances making abiding by payment agreements which have been made no longer reasonable for us, in particular economic deterioration, application for insolvency proceedings, negative changes within the framework of insurability with commodity loan insurers etc.). In such a case, we shall additionally be entitled to make supply of further goods dependent on provision of matching collateral and/or of payment in advance.

Claiming a right of retention and/or offset with counterclaims against us has been ruled out unless the claim(s) being made by the customer is/are undisputed and / or legally effective.

## **9. Reservation of supply | part deliveries**

Unless expressly agreed to the contrary in writing, all delivery assurances on our part shall be subject to correct and punctual delivery to us.

We reserve the right to partial delivery at all times. We moreover reserve the right to customary over- and under-delivery by up to 10 % of the ordered quantity.

## **10. Delivery periods and dates**

If we are unable to meet binding delivery deadlines for reasons we are not answerable for (non-availability of the performance), we will inform the customer of this immediately, communicating the expected new delivery period at the same time. Should the performance not even be available within this new delivery period, we are entitled to withdraw from the contract in whole or in parts; we will immediately reimburse any consideration already provided by the customer. Non-availability of the performance is for example the case if our supplier fails to supply us on time, if we have entered into a congruent hedging transaction, in the event of other supply chain disruptions, e.g. owing to force majeure, or if procurement is not required from us in individual cases.

The start of our delivery default is based on the legal provisions. A reminder from the buyer is required in any case, however.

The statutory rights remain unaffected in all other respects.

Fixed-date transactions require express identification as such in writing. Otherwise the customer is always required to set us a reasonable grace period in writing if we fail to comply with promised deadlines and/or periods. If the grace period is not complied with either, the customer is entitled to withdraw from the contract.

In the event of force majeure and/or other extraordinary circumstances we are unable to foresee and/or not culpable for, also if they affect our sub-supplier, any delivery period confirmed by us will be extended until the aforementioned event is remedied. Should this point in time be unassessable, the customer and we are both entitled to withdraw from the concluded contract. Mutual damage claims are excluded in this case. We undertake to immediately inform the customer of aforementioned circumstances upon their becoming known.

If the meeting of a deadline depends on the customer providing us with specific information and/or plans, release declarations or the like, the delivery period will only start from the time of the customer's information being provided to us in full and in writing.

If a delivery is postponed past the contractually required date at the customer's request, we can charge the customer a storage fee amounting to 1 % of the invoice amount for every started month, but 5 % altogether at most, from no earlier than 10 working days after indicating readiness for shipment.

If goods are to be picked up by the customer at one of our stores, the customer will be informed of the collection date and time in writing. If the collection cannot take place at the named time, the customer is required to inform

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us immediately, and will then be provided with an alternative date that is realizable for us in writing. If the confirmed collection date has been postponed twice by the customer or a third party commissioned by the customer, we can charge the customer a storage fee amounting to 1 % of the invoice amount for every started month, but 5 % altogether at most, from no earlier than 10 working days after indicating readiness for shipment.

## 11. Call orders

If a call order is placed with us and no specific written agreements are made about the call dates, the customer shall be obliged to notify us of the individual call dates such that there are at least 14 working days between receipt of the call notification by us and dispatch and 90 days after our order confirmation for the last delivery.

## 12. Dimension and weight statements

All statements of diameters, weights, technical design, manufacture and scope of the goods to be supplied by us shall be subject to deviation within the admissible tolerances customary in the trade. Over and above this, we reserve the right to amendments serving technical improvement at all times. Colour deviations and/or deviations in the external properties of the goods to be supplied by us, which however have no effect on their quality and technical efficacy, shall not substantiate any claims to warranty for the customer.

## 13. Passage and bearing of risks

Deliveries are provided ex store, which is also the place of fulfilment for the delivery and a possible supplementary performance. The goods will be shipped to another destination at the customer's request and expense (sale by delivery to a place other than the place of performance). In the absence of other agreements, we are entitled to determine the nature of the shipment (especially the transport company, transport route, packaging) ourselves.

The risk of the goods' accidental destruction and deterioration passes to the customer with their handover at the latest. In a sale by delivery to a place other than the place of performance the risk of the goods' accidental destruction and deterioration as well as the risk of delay already passes to the forwarder, carrier or other person or institution appointed to execute the shipment upon the delivery of the goods to them. Customer default on acceptance is tantamount to handover.

If ordered goods are indicated to be ready for shipment by us and/or the shipment and/or call-off are delayed for reasons the customer is answerable for, we are entitled to demand a refund of the damage arising from this including additional expenses. We will charge a flat-rate compensation for this amounting to 0.5 % of the invoice amount for every started month, but 5 % altogether at most, starting from the delivery period and/or – lacking a delivery period – from the communication of the goods' readiness for shipment.

The proof of higher damages and our statutory claims (in particular reimbursement of additional expenses, reasonable compensation, termination) remain unaffected; the flat rate is to be offset against further monetary claims, however. The customer is at liberty to prove that we did not suffer any damages at all or only substantially fewer damages than the aforementioned flat rate.

Returns to us that have not been confirmed by us in writing beforehand are performed at the customer's sole risk.

## 14. Liability for defects

We are only liable for compliance with objective requirements regarding the goods if and insofar as no agreement on characteristics has been entered into between the party placing the order and us. The subjective requirements to be complied with prevail over the objective requirements to be complied with. In the event of doubt, the agreed requirements regarding the goods arise from the datasheet provided by us.

Any claims of the customer from liability for defects shall presuppose that it examines the goods sent to it for their correct properties without delay, i.e. as a rule immediately upon delivery (still in the transporter's

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presence), and notifies us in writing of visible defects immediately after receipt of the goods and hidden defects immediately after they have been established.

To the extent that a not only inconsiderable defect in the object of purchase notified in good time exists, we shall at our choice be entitled to remedying the defect or to replacement delivery.

Of the expenditure for subsequent performance, we shall bear the costs of work and material to the extent that they are necessary and not disproportionate; we shall not bear other costs, in particular costs of dismantling and examination. Bearing of costs has been ruled out to the extent that additional costs originate from transportation of the goods to a place other than the place of performance.

In no event do we bear installation or disassembly costs in the framework of subsequent performance if and insofar as at the time of the installation the defectiveness of the goods was known to the party placing the order or due to gross negligence was unknown to the party placing the order.

If we are not willing or not in a position to remedy the defect/make replacement delivery or if it is delayed over and above suitable periods for reasons for which we are answerable or fails for any other reason, the customer shall at its choice be entitled to withdraw from the contract or to demand a matching reduction of the purchase price.

Further-reaching claims of the customer, whatever the legal reason, have been ruled out or limited according to the more detailed regulations in the following Section 15. The barring periods for claims from liability for defects shall be based on the statutory directives.

The period of limitations for defect-liability claims is 24 months from handover of the goods.

## **15. Damages | overall liability**

We shall only be liable without limitation for malice aforethought and gross negligence as well as for damage from an injury to life, limb or health to be ascribed at least to negligent breaches of duties on our part or by our statutory representatives or vicarious agents; likewise, we shall be liable without limitation in the event of guarantees and assurances taken on by us to the extent that a defect covered thereby triggers our liability, and also in the event of liability according to the Product Liability Act or other situations of strict liability.

In the event of other culpable breaches of essential contractual duties ("cardinal duties"), our remaining liability shall be limited to the foreseeable damage typical for the contract.

Apart from this, liability – whatever the legal reason (including tort) – has been ruled out.

## **16. Cable drums**

For the supply of cable and rope drums (drums), our Faber cable drum terms and conditions shall apply and, as a supplement – for cable and rope drums supplied by KTG ("KTG drums") – the "Terms and Conditions for Provision of Cable and Rope Drums" of KTG. If desired, we will send these to the customer. Reference is made to the matching rules.

## **17. Miscellaneous**

The laws of the Federal Republic of Germany apply exclusively, excluding UN sales law (CISG).

The place of jurisdiction is at our option either Saarbrücken, the place of fulfilment of the delivery obligation, or the competent court for the customer's location insofar as the customer is a merchant, legal person under public law or special fund under public law, or has no general place of jurisdiction in Germany.

The online publication of these terms of delivery and payment renders all conditions used by us previously invalid.