

# General Terms and Conditions

**XBK-KABEL**

Xaver Bechtold GmbH

Issued 3/2011

## 1. Scope of validity

1.1 The terms & conditions set out hereunder are effective for all our business relationships with our customers ("Order Party") insofar as they are business people in the meaning of § 14 German Civil Code (Bürgerliches Gesetzbuch, BGB), a legal person under public law or a public special fund. The terms and conditions apply in particular to contracts regulating the sale and / or delivery of chattels, irrespective of whether we manufacture said chattels ourselves or source them from suppliers. These terms & conditions (as amended) shall additionally serve as a framework agreement for future contracts regulating the sale and / or delivery of chattels with the same Order Party without us having to refer again thereto in each individual instance.

1.2 Any terms and conditions of purchasing of the Order Party are herewith expressly rejected and shall fail to obligate us, even if they are not expressly rejected anew at the time of contractual execution.

## 2. Conditions of sale

2.1 The ordering of the merchandise by the Buyer constitutes a binding offer of contract. Insofar as not otherwise provided for by the order, we are entitled to accept this offer of contract within 8 (eight) workdays of our receipt thereof. Our acceptance of the order will be notified by way of an order confirmation. Assignments shall only be deemed accepted if they have been confirmed by the company. Our commercial agents are authorised to negotiate business transactions, not to execute sales contracts. A contract shall not entitle the Order Party to transfer transfer the contract to a third party.

2.2 The prices communicated in the order confirmation are decisive.

2.2.1 Any acknowledgement of order shall be based on the gross price list valid on the day of confirmation and on the official quoted metal prices. If no official metal prices are quoted on this date, the subsequent quotations shall be relevant.

2.2.2 If we are submitted a purchase order on the basis of which we are able to furnish a final confirmation – including the anticipated delivery date – („Settled Order“), the price shall be calculated on the basis of the gross price list and the official metal prices quoted on the business day following the receipt of the order or following the settlement of the order „Raw Materials Market Price on Reporting Date“). The final confirmation of order shall be conditional on the following data being available: purchaser identification, purchaser's address, address the invoice is to be mailed to, address the goods are to be delivered to, contents of the order, i.e. amount and execution of the goods to be delivered, discounts, specific customer requirements, regarding delivery respectively delivery dates, and special conditions, where applicable.

2.2.3 If contracts are to be executed within four months after conclusion of the contract, we shall be entitled to increase the agreed prices in the event of a sudden change in the official metal prices.

2.2.4 Official metal prices form the basis for the calculation and settlement of raw material prices. Official metal prices are determined on the basis of quotations by the non-ferrous metal working industry for electrolytic copper wire bars for use as conductors (DEL quotation) plus any delivery costs. The DEL quotation is published in the commercial and financial columns of major daily newspapers.

2.2.5 In the event of our partial or complete failure to procure metal at a price equivalent to the DEL quotation, the goods shall be invoiced on the basis of the actual metal purchase price plus incurred delivery costs.

2.2.6 Deviations of the DEL quotation from the basis of the gross price list shall change the selling price (gross price less discount) by the product of the copper number and the raw materials price difference (EUR/kg). The DEL quotation relevant for these calculations is the DEL quotation on the workday following the date of receipt of the order plus incurred delivery costs (incoming mail stamp).

2.2.7 In the event of delivery from an external storage facility, the prices set out in the price list valid per the delivery date shall apply.

2.2.8 If the Supplier is furnished with copper, we agree to exclude the copper from the invoiced amount. The Order Party shall make the copper available to the Supplier no later than five weeks before the confirmed delivery date.

2.3 Our prices are based on the raw material procurement costs to be paid on the raw materials market on the date of the acknowledgement of order. In the event of a change in these costs, we shall be entitled to change the prices even after the acknowledgement of order has been issued or withdraw from the entire order and/or from the order concerning the remainder of the consignment, where necessary.

2.4 Call off orders. If delivery is agreed to be performed on call off basis, the Order Party shall determine the date of the total delivery within a reasonable period of time of no longer than one month and inform us in writing hereof. This also applies to scheduled partial deliveries due on specified delivery dates.

Call off orders must principally be delivered within three months (90 days) of order confirmation, unless a separate written agreement has been entered into with respect to call off dates. In the event of the Order Party's failure to perform the aforementioned obligation, we shall be entitled to bring action against the Order Party and claim acceptance of the goods and payment. After expiration of the Order Party's obligation to inform us within the said period, further partial deliveries to be performed on call off basis shall be subject to the prices specified by XBK-KABEL on the date of deferred call-forward notices.

## 3. Terms of delivery

3.1 Our obligation to perform delivery is conditional on us being able to procure the raw materials required for the execution of the order at the official raw material prices quoted on the date of the acknowledgement of order. In the event of such requirement not being met, clause 2.3 of the General Terms and Conditions contained herein shall be applicable.

3.2 Delivery deadlines and delivery dates are always only approximate. The delivery deadline commences no earlier than the time of despatch of our written acknowledgement of order and the delivery date stated therein, however not prior to the Order Party's furnishing of documents or materials as may be required and his compliance with the agreed terms of payment.

3.3 The delivery deadline shall be deemed met if by the time of its expiry the delivery item has left our plant / storage facility or its readiness for delivery has been communicated.

3.4 In the event that subsequent amendments or supplements are made to the delivery contract, it may be necessary to agree on a new delivery deadline at that time. In such case, the new delivery deadline shall not commence prior to us sending out our new acknowledgement of order.

3.5 Events relating to Acts of God entitle us to defer performance by a reasonable time or to withdraw from the part of the contract that has not been fulfilled at that time. Acts of God shall mean: strike, lockouts, mobilisation of troops, war, blockades, import and export bans, raw material and fuel shortages, fire, traffic blockages, plant or transport disruptions and similar circumstances, including those arising at up-stream suppliers. Claims for compensation of the Order Party are excluded for Acts of God insofar as we are neither guilty of intent nor gross negligence.

3.6 Aforementioned circumstances are also not attributable to us if they arise in an already existing delay. We shall inform the Order Party of the start and end of such hindrances at the earliest possible time.

3.7 Delivery obligations and delivery time are only agreed subject to our own receipt of correct and timely deliveries. In the absence thereof, we are entitled to withdraw from contract without compensation. We assume no form of procurement risk whatsoever. We will promptly reimburse any counter-performance already rendered by the Order Party.

3.8 In the event of a delivery deadline overrun, the Order Party shall grant us a reasonable follow up deadline of no less than three weeks.

3.9 After the expiry of an acceptance deadline, we shall no longer be obligated to deliver. We may at our own discretion withdraw from contract, claim advance payments, or bind our delivery to suitable collaterals should, after contractual execution, circumstances become known to us that justify doubt in the credit worthiness of the Order Party. Entitlement hereto arises in particular if the Order Party fails to pay immediately or without delay following a formal reminder and overdue receivables.

3.10 We reserve the right to deliver up to 10% of the order quantity as under-lengths or over-lengths. Raw material- or manufacturing related deviations remain reserved. Over- and under-deliveries, as customary in trade commerce, are permissible.

3.11 Orders for special performances will be delivered exclusively in production lengths determined by production circumstances.

3.12 Shipping. Delivery is franco domicile respectively free site to an address of the recipient within Germany for a net merchandise value of EUR 1500.00 metal-based and above. The same applies to a foreign address outside mainland Germany For small-scale orders with a net merchandise value of under EUR 1500.00 metal-based, we calculate an appropriate freight surcharge and a minimum order surcharge for small orders of EUR 50,00 min.

### **3.13 Packaging. Packaging is charged at cost price.**

3.13.1 The XBK loaned drums and loaned barrels provided for utilisation with our deliveries are calculated additionally. Drums and barrels that are returned immediately and free of charge to the Supplier's plant will, if in a good and reusable state, be taken back and credited at a rate of 2/3 of the invoiced value. Lattice box and Euro pallets are delivered on the basis of an exchange modality. Should exchange be delayed, any costs incurred by us will be billed to the Order Party.

3.13.2 KTG drums (disk diameter 50 – 280 cm) for cables and lines are the property of Kabeltrommel GmbH & Co. KG (KTG), Cologne, and are placed at the Order Party's disposal pursuant to KTG's Terms & Conditions for providing cable drums for utilisation.

3.13.3 Freight charges are not reimbursed if the merchandise is collected [by the Order Party].

3.13.4 The Order Party discharges the Supplier from his obligation to take back packaging under Section 4, German Packaging Act (Verpackungsordnung).

## **4. Terms of payment**

4.1 Billing occurs at the time of delivery. We reserve the right to assign the claims ensuing from our business relationship.

4.2 Invoices issued to the Order Party shall be payable as follows:

4.2.1 Within 10 (ten) days strictly net.

4.3 Alternative terms of payment require our consent and acknowledgement.

4.4 Failure to comply with the above-mentioned terms & conditions of payment will place the Order Party in default. For the duration of the default, we are entitled to charge interest on the invoice amount at the statutory default interest rate (as amended). Our right to assert further damages, especially provably higher rates of interest, remains unaffected hereby. Consequences of default shall nonetheless be instigated regardless thereof. In the event of delayed payment, all our receivables including discounted but not yet redeemed bills of exchange, shall be due immediately in cash. The Order Party may no longer dispose of merchandise in our possession or part possession (cf. Section 6) and shall furnish us with collaterals to cover the outstanding amounts. The same rights apply, should reasonable grounds exist to doubt the credit worthiness of the Order Party. In such case, we are further entitled to make the delivery of further merchandise conditional to the provision of appropriate collaterals and / or advance payments.

4.5 Payments shall always be settled in cash or by post office order. Payment by bill of exchange will only be accepted up to ten days after the billing date and under reserve and only with our express consent. These shall only be recognized as payment when the bill of exchange is redeemed by the drawee, thereby discharging us from the bill of exchange liability so that the reservation of ownership remains in our benefit until the time of redemption of the bill of exchange. All payments shall be made with full discharge of debtor exclusively to the bank specified in the invoice, to whom we have assigned our claims ensuing from our business connection.

4.6 The Order Party may only net off or retain payments if his counter claim(s) are undisputed or are or have been legally confirmed. Retention from the same contractual relationship is unaffected hereby.

4.7 Our regional representatives are not authorised to collect.

## **5. Passage of risk**

Every risk passes to the Order Party as soon as the merchandise has been communicated as being ready for collection of delivery or has left our plant or has been taken possession of by the Order Party at our plant. This applies also in the case of freight free delivery. If the delivery is deferred at the Order Party's request or for reasons for which he is responsible, the risk passes to the Order Party for the duration of the deferment.

## **6. Reservation of ownership**

6.1 We reserve ownership of the delivered merchandise until the full payment of all – including future – receivables from the business relationship, even if payments are made for specifically named receivables. For current accounts, the reservation of ownership serves to collateralize our receivables.

6.2 Merchandise subject to reservation of ownership may only be disposed of in orderly and proper business transactions. This no longer applies if the Order Party is in default. The Order Party is neither entitled to pledge nor assign the merchandise as security. We are to be notified immediately about a pledging by a third party.

6.3 Every processing and handling or connection of our merchandise by the Order Party is performed on our instructions without any obligations ensuing.

In the case of processing, re-formation or connection with other items that do not belong to us, we retain a right to co-ownership of the new item in the ratio of that share which results from the relationship of the billing value of the processed, re-formed or connected conditional merchandise to the value of the new item.

6.4 The Order Party assigns to us to the amount of the merchandise billing value all claims – including all current account receivables – against third parties which are due to him in connection to using the merchandise under reservation of ownership, in particular those relating to resale, processing and handling. The assignment serves as collateralisation for all receivables, especially including claims for damages asserted against the Order Party. The Order Party is entitled to collect the assigned receivables until revocation of said authorisation by us. The collection authorisation is annulled, even without express revocation, should the Order Party default or exhibit alternative signs of payment difficulties.

6.5 If the total realisable value of the existing collateral exceeds our receivables by more than 20%, we are at the Order Party's request obligated to release the collateral at our election.

6.6 In the event of delayed payment, the Order Party is at our request obligated to disclose all information that serve in enforcing our retention of ownership rights, especially to furnish us with a schedule of the conditional merchandise and their location.

6.7 The right of the Order Party to possess the conditional merchandise is annulled if failure to fulfill obligations from the mutual business relationships. In these cases, we have the right to access the premises or other property of the Order Party to repossess the conditional merchandise.

## **7. Warranty**

We warrant that the goods delivered conform with the regulations and requirements stipulated by the Verband Deutscher Elektrotechniker [Association of German Electrotechnical Engineers] unless other written agreements or guidelines or recommendations are specified in writing and form an integral part of the contract.

7.1 The Order Party shall carry out an inspection of incoming shipments on the basis of our shipping documents and check the goods immediately upon receipt for completeness of supply and compliance with the specification. The Order Party cannot be relieved of the obligation to perform inspection. Costs incurred by the Order Party as a result of processing goods without prior inspection shall be borne by same.

7.2 Our warranty shall not cover shortfalls in the quantities delivered and/or external defects unless the Order Party notifies us in writing of the defect within ten workdays from the dispatch of the goods, quoting all relevant data contained in the order and delivery note.

7.3 Patent defects whose notification is delayed i.e. which fail to be notified within the above deadline, shall be ignored by us and are thus excluded from the warranty.

7.4 The Order Party shall inform us immediately of non-patent defects which only become evident over time.

7.5 The return of the merchandise needed in the event of a defect is only possible with our prior consent. We are not obliged to accept merchandise returned without our prior consent. In such case, the Order Party bears the return shipping costs.

7.6 If, in the event of a justified defect claim, subsequent fulfillment is performed in the form of a new delivery, the conditions relating to delivery time shall apply accordingly. In the event of defect rectification through follow up improvement, the Order Party shall grant us a deadline of no less than three weeks.

7.7 The existence of a defect furnishes the Order Party with the following rights:

7.7.1 In the event of a defect, the Order Party initially has the right to demand follow-up performance from us. In doing so, we retain the right to elect at our own discretion between a new delivery of the item or a rectification of the defect.

7.7.2 In the event of an abortive attempt at follow up fulfillment, we additionally have the right to reattempt follow up fulfillment within a reasonable deadline, again with the form and manner elected at our discretion. Only when the repeated attempt at follow up fulfillment is abortive shall the Order Party have the right to withdraw from contract or reduce the purchase price.

7.7.3 Claims of the Order Party for expenditures for the purpose of follow-up performance, especially transport, mileage, labour and material costs, are excluded if the expenditures rise because the subject of the delivery was subsequently brought to a location other than the location of the Order Party, save the shipment corresponds to the intended use of the subject of the delivery.

7.7.4 The warranty period has a principal duration of one year from the time the merchandise are delivered. This does not apply in the event of us being accusable of deceit. In such event, the Order Party shall in all cases be required to prove that the defect had existed at the time of delivery.

7.7.5 Warranty claims are principally excluded if improper changes, repairs or other measures are performed by the Order Party himself or a third party without such actions being absolutely essential.

## **8. Rights**

### **8.1 Rights to tools**

Should the Order Party or third parties assume a share of the tool costs, they do not acquire any rights in the tools (transitional rights, rights of use etc.). If goods supplied by the Supplier according to drawings or other information furnished by the Order Party infringe industrial property rights of third parties, the Order Party shall indemnify us against all claims arising as a result of such infringement.

### **8.2 Rights to trademarks / article designations**

Our own trademarks and article designations set out in our pricelists are protected by copyright.

## **9. Liability**

9.1 Insofar as not otherwise provided for by these general terms & conditions including the undermentioned provisions, our liability for violation of contractual and extra-contractual obligations will be regulated by the pertinent statutory guidelines.

9.2 We shall accept liability for compensation in the event of premeditated and gross negligence, regardless of the legal grounds. In the event of ordinary negligence, we will only accept liability:

a) for death, bodily injury and health damage

b) for damage resulting from the violation of a cardinal contractual obligation (i.e. an obligation that requires to be fulfilled for the contract to be implemented correctly in the first place and whose fulfillment the Contractual Partner would and could expect under normal circumstances); in such case, our liability shall however be limited to compensation for damages which could foreseeably and typically arise.

9.3 The liability limitations pursuant to Item 9.2 will become null and void insofar as we guilefully concealed a defect or furnished a guarantee for certain characteristics of the merchandise. The same applies for claims of the Order Party under the German Product Liability Act (Produkthaftungsgesetz, ProdHaftG).

## **10. Export regulations**

An order party exporting goods from Germany is liable for ensuring that the exported merchandise are covered by the limitations of the export laws of the Federal Republic of Germany. The exporter is solely liable for observing the exports regulations. This applies as well to the export-regulations of the USA.

## **11. Trademark**

The trademarks below that are used in the pricelist and catalog is legally protected:

PYRO SET®, GLOBALFLEX®

## **12. Legal venue**

Insofar as the Customer is a businessperson in the meaning of the German Commercial Code (Handelsgesetzbuch, HGB), a legal person under public law or a public special fund, the legal venue is the place of our company's registered office. We are also entitled to take legal action at a court responsible for the registered office or a subsidiary of the Order Party.

## **13. Applicable legal system**

13.1 The legal system of the Federal Republic of Germany alone is applicable for these business relationships and the entire legal relationship between us and the Order Party.

13.2 Use of the United Nations Convention on Contracts for the International Sale of Goods (CISG) is excluded