

## **§ 1 Validity of these Conditions**

1. The following sales conditions apply exclusively to all goods and services provided by EE for companies. E&E sales conditions in the currently-valid version shall also govern all legal relationships between E&E and Purchaser, including those in the future. Any conditions which deviate from these, in particular the purchasing conditions of Purchaser shall become a part of any contract only if this has been expressly agreed between the Parties in writing.
2. If framework contracts have been agreed between the Parties, then these shall take precedence over all others. The same applies to any special rulings in the delivery contract itself. Rulings shall be valid in the following order of precedence:
  - delivery contract / job order / individual purchase order
  - framework contract between the Parties (if any)
  - E&E sales conditions
  - the law
3. E&E sales conditions can be downloaded and printed out from the Internet under [www.eue-kabel.de](http://www.eue-kabel.de).

## **§ 2 Legal Effectiveness of Contracts / Offers**

1. Orders and delivery contracts and any warranty declarations only have legal effect if they have been confirmed in writing by E&E. This requirement for contracts, etc. to be in writing can only be waived if there is a written agreement to do so.
2. E&E offers are always without obligation and are valid for a maximum of 3 months following receipt by Purchaser.

## **§ 3 Prices / Payment Terms**

1. E&E shall provide its goods and services subject to the prices and conditions contained in the delivery contract, offer, or E&E order confirmation. The prices specified therein are binding.
2. Prices are generally ex-works or ex-E&E store plus packaging costs and sales tax (VAT) at the prevailing rate.
3. In addition to the agreed price E&E shall be entitled, in the case of a basic price, to add on a metals surcharge. The surcharge shall be calculated on the basis of the DEL quotation for electrolyte copper (*Deutsche Elektrolyt-Kupfer-Notiz*) as published on the day of receipt of the order, plus a 1 % charge for procuring the metal. In each case, the selling price shall increase or decrease by the difference between the basic price of copper and the DEL rating. The price for silver cables or cables made of other raw materials shall be fixed by separate agreement. There shall be no separate metals

pricing if Purchaser pays the price which includes the copper. Prices are based on the values given in the offer; any surcharges or deductions are always strictly net.

4. Unless agreed otherwise in writing, all E&E invoices are due and payable net within 30 days of the date of the invoice. For payments made within 10 days of the date of the invoice Purchaser shall receive a 2 % discount on the value of the goods shown on the invoice (except the metals surcharge and packaging costs). For purposes of calculating the above deadlines, the day when payment is considered effected shall be the day on which E&E is free to dispose of the funds. E&E shall charge interest on late payments at its discretion, either at the customary bank rate or at the statutory rate of interest pursuant to § 288 German Civil Code (*BGB*). If E&E accepts bills of exchange, then these are considered as conditional payment only (i.e. on condition that they can be cashed in) and not as an actual payment. E&E is entitled to revoke the deferment of payment (forbearance) contained in the bill of exchange at any time. The bank discount charges and collection fees due on the expiry date shall be borne by Purchaser. For orders from outside Germany and / or from new customers E&E shall be entitled to make delivery dependant on a down-payment (payment on account) on the purchase price or on prepayment (cash with order). The same applies to orders for goods with a delivery value of over 10,000 Euros net.
5. In the case of default, E&E shall also be entitled to withdraw from the contract and to claim compensation, after setting a reasonable period of grace for payment and even without having issued a formal threat to refuse performance.
6. Purchaser may only withhold payments or offset with claims against E&E demands if E&E accepts his claims or if they have been established by a court of law.

#### **§ 4 Storage of Call-off Goods**

1. If E&E have agreed a call-off contract with Purchaser (call-off goods) in the delivery contract, offer or order confirmation, then E&E shall hold the goods ready for Purchaser at the agreed volumes for the contractually-agreed period.
2. The Ordering Party undertakes to call off **all** the goods within the agreed call-off periods, at the latest however, six months after the supply contract or framework agreement on which the order is based has expired. If Orderer fails to do so, then E&E shall be entitled to invoice the remaining goods. In all other respects § 7 shall apply accordingly.
3. If Orderer calls off **all** the goods within the agreed call-off periods in each case, then E&E shall waive its right to charge the agreed storage fee. Exceptions to this are storage fees for the period following expiry of the supply contract or framework agreement on which the order is based.
4. Any further claims in law by E&E, in particular those arising from §§ 293 et seq. German Civil Code (*BGB*) and §§ 280 et seq. *BGB* shall remain unaffected by the above.

## **§ 5 Delivery**

1. All agreed delivery dates or dates of performance are non-binding unless expressly agreed otherwise in the written order confirmation, call-off, or contract.
2. The delivery deadline shall begin when the order confirmation is sent, however not before the required items, documents, approvals, or releases have been provided by Purchaser and not before receipt of any agreed down payments / payments on account. If Purchaser fails to comply with his obligation to co-operate in this way, then any agreed delivery deadlines shall be extended by a month for each month already started, plus a further month.
3. The delivery date (deadline) shall be considered kept if, on its expiry, the goods to be delivered have left the factory or E&E have signalled that the goods are ready for dispatch. The delivery deadline shall also be extended appropriately as a result of delays caused by labour disputes, in particular strikes, lockouts, or in the event of any unforeseen obstacles, inasmuch as these can be demonstrably shown to have significantly influenced the production or dispatch of the goods in question. This also applies if these situations arise at any of E&E's sub-contractors. E&E shall not be responsible for such situations even if they arise during an existing delay in the delivery of the goods. In important cases E&E shall inform Purchaser as soon as possible of the start and finish of such hindrances. No claims for compensation shall be possible in respect of delays of delivery of less than 2 months. In addition or in cases where compensation must definitely be paid, the following shall apply:
4. If dispatch or delivery are delayed, on request or as a result of the behaviour of Purchaser, by more than one month after E&E have signalled that the goods are ready for dispatch, then E&E reserves the right to charge storage fees for each month started at a rate of 0.7 % of the purchase price including the metal surcharges for the items to be delivered, up to a maximum, however, of 8.4 % of their value. Purchaser has the right to demonstrate that the storage costs have been lower. After setting a suitable deadline and after such deadline has passed without result, E&E is also entitled to dispose otherwise of the delivery items and to supply Purchaser, giving a suitably extended deadline. E&E retains the right to press any claims beyond this, in particular any rights arising from §§ 293 et seq. German Civil Code (*BGB*) or §§ 280 et seq. *BGB*. This also applies to the right to be able to fulfil a contractual obligation.

## **§ 6 Transfer of Risk**

1. The risk –even in the case of freight-free deliveries- transfers to Customer at the latest when the consignment leaves E&E's works premises.
2. If Purchaser is responsible for a delay in dispatch or delivery, then risk shall transfer to Purchaser even before the goods have left the works, namely from the day when E&E have signalled that the goods are ready for dispatch and have informed Purchaser in writing that he has defaulted on acceptance.

3. Notwithstanding his warranty rights under § 10, Purchaser must accept deliveries of goods which have only minor defects.
4. Part deliveries are admissible. Unless a different agreement has been reached in individual cases, all E&E deliveries are ex-works.

### **§ 7 Refusal to Accept**

If Purchaser refuses to accept the E&E contractual goods or services, then E&E can set Purchaser a reasonable deadline by which he must accept or take the goods. If Purchaser has neither accepted nor taken the E&E contractual goods or services within the deadline set, then E&E shall be entitled to withdraw from the contract or to claim damages for non-performance. Irrespective of E&E's right to enforce the damages actually incurred, E&E shall be entitled - in the case of orders for special cables which E&E cannot turn to account elsewhere after they have produced them – to claim 100% of the net order value (net value of the goods) as a lump sum by way of compensation. Purchaser has the right to show that the damages incurred are lower.

### **§ 8 Reservation of Title**

1. All E&E deliveries and services are subject to reservation of title. The items delivered shall remain E&E's property until Purchaser has paid the full purchase price, including all fees and expenses, and has settled all other claims on the part of E&E arising from that particular business. If Purchaser re-processes the goods or turns them to account, then the re-processing is considered to have been undertaken on behalf of E&E, with the result that E&E shall acquire ownership of the intermediate or end product as manufacturer in the sense as understood by §950 German Civil Code (*BGB*). If E&E goods are processed with other products not belonging to Purchaser, then E&E shall acquire part ownership of the newly-manufactured product in relation to the value of the goods it has delivered to the value of the non-E&E goods at the time of processing.
2. As part of proper and correct business operations Purchaser (Ordering Party) may re-sell the delivered items and transfer licences within the framework of the agreement reached. This can be revoked however, at any time. As a precaution, Purchaser, as of now, assigns to E&E all claims, together with any ancillary rights, to the value of the goods delivered, resulting from the further sale and its business connection to Purchaser's customer. E&E is authorised to declare this assignment to Purchaser's customers. On request Purchaser must inform E&E without any undue delay of the names and addresses of its customers.
3. As long as E&E is the owner of the delivered goods by virtue of retention of title, Purchaser is obliged to insure the delivered goods at his own cost against theft, breakage, fire, flood, and other insurable damage and to furnish E&E proof of this insurance on request. Purchaser hereby assigns to E&E any claims against the insurer arising from damage or theft or deterioration of the delivered goods which are under retention of title. E&E hereby accept the assignment. In the case of an

insurance claim, E&E is entitled to declare the assignment to the insurance company and to collect the insured sum from them.

4. Purchaser may not pledge the delivered goods, nor assign them as security. Purchaser must inform E&E without delay if the goods are attached or sequestered (confiscated) or given to a third party for him to dispose of. Purchaser must pay compensation to E&E if E&E incur damage (e.g. loss of rights) as a result of Purchaser failing to inform or not informing in due time.
5. If Purchaser infringes the contract, in particular if he is in default, then, following an unsuccessful reminder, E&E shall be entitled to take back the delivered goods and Purchaser is obliged to release the goods.
6. The enforcement of retention of title and the pledging of the delivered goods by E&E do not constitute a withdrawal from the contract unless the ruling on the consumer credit agreement (*Verbraucherdarlehnsvertrag*) pursuant to §§ 491 - 498 *BGB* applies.
7. E&E undertake to release the securities due to them at the request of Purchaser provided that the realisable value of the security exceeds the demands to be secured by more than 20%. E&E shall select the securities which they wish to release.

## **§ 9 Packaging**

1. In the case of cable deliveries, Purchaser shall receive the cables either on standard drums or on drums initially sold to him by E&E. If standard drums are used for cables and lines, these drums shall be placed at Purchaser's disposal in accordance with KTG conditions. These can be downloaded under [www.kabeltrommel.de](http://www.kabeltrommel.de) and printed out. Purchaser hereby accepts these in their entirety. The owner of the standard drums is, and remains, Kabeltrommel GmbH & Co. KG (KTG), even after they have been placed at Purchaser's disposal.
2. If Purchaser does not use standard drums to transport the cables or corresponding spools, then E&E hereby sell the respective drums and spools to Purchaser when they leave the factory. E&E shall calculate the price for these separately. If the drums/spools are returned to E&E free to the door within 6 months of being delivered to Purchaser in an undamaged state and in a condition in which they can be used again, Purchaser shall be reimbursed the purchase price in full.

## **§ 10 Warranty**

1. E&E products are produced in line with domestic and international regulations and according to the specifications agreed with the customer.
2. E&E warrants any defects by re-work or replacement, initially at its own discretion. No warranty is given for the typical wear and tear parts, or for unsuitable or incorrect use, for faulty assembly or commissioning of the delivered products by Purchaser or a third party commissioned by him. The same applies in the case of natural wear, incorrect or

negligent handling of the delivered goods, incorrect maintenance, the use of unsuitable resources and operating supplies, and in the case of chemical, electrochemical or electrical influence, unless E&E is responsible for these.

3. In the case of defects, Purchaser must initially allow E&E sufficient time and opportunity to carry out the supplementary performance (re-work or replacement). If this fails after at least two attempts, Purchaser may at his discretion demand that the price be reduced (diminution) or that the contract be rescinded (withdrawal). Withdrawal is not possible if the defects are only minor. Only in urgent cases where operational safety is endangered or to prevent a disproportionate amount of damage – whereby E&E must be fully and speedily informed beforehand – does Purchaser have the right to repair the damage himself or by a third party and to demand compensation for the necessary expenses incurred thereby. If Purchaser claims from E&E by way of regress, after Purchaser himself has been claimed against because of the fault, then, in respect of the Purchaser asserting his legal rights, the rulings in § 445 BGB and, in the case of the sale of consumer goods together with §478 BGB shall unrestrictedly apply.
4. E&E shall bear the costs of repair or replacement, provided that the complaint is justified, in addition to the costs of the replacement part or the repair of the faulty components the costs of installation and removal and for transport and disposal. Any claim against E&E for installation and removal pursuant to §439 (3) Sentence 1 BGB shall however, be excluded, if Purchaser has either installed the faulty item himself or via a third party in the knowledge that the item is faulty. The same applies if Purchaser has failed to recognise the fault due to gross negligence, either before or during assembly. In this case Purchaser can only press claims for a defect if, and inasmuch as, E&E has maliciously concealed the fault or if E&E has given a guarantee for the good workmanship of the item which is affected by the defect. In any case E&E can choose whether to do the installation, removal and disposal themselves or to reimburse the reasonable costs incurred, provided Purchaser can by way of priority demonstrate that he has a legitimate interest either in doing the installation and removal himself or in having the work done by a contractor of his choice.
5. Purchaser can only press his rights under the warranty if he has correctly undertaken all his obligations regarding inspecting the goods and notifying the defects pursuant to § 377 Commercial Code (*HGB*). Purchaser must inspect the delivered goods without delay, at the latest however within one week of the goods entering his company, for deviations in quantity, transport damage, and defects. He must also test the goods for correct functioning. Any defects found must be reported in writing to E&E within a further week of receipt of the goods.
6. In the case of claims, Purchaser may only withhold payments to an extent which is commensurate with the material defects found.
7. If, because of a substantiated material defect and after subsequent fulfilment has failed, Purchaser chooses to withdraw from the contract, then he has no further claims for damages due to the defect. If, after subsequent fulfilment has failed, Purchaser chooses to claim damages, then the goods shall remain at his factory, provided this is reasonable. The damages shall then be restricted to the difference between the

purchase price and the value of the defective part(s). This does not apply if E&E has caused the breach of contract in a malicious or fraudulent way.

8. The warranty period shall be one year after the goods have left E&E's factory or after acceptance of the goods or service by Purchaser, in the case of a warranty claim max. 18 months, calculated from the time when E&E stated that the goods were ready for dispatch, at the most however one year after the goods have left E&E's factory or after acceptance of the goods or performance (service) by Purchaser. These periods shall not apply if the law pursuant to §§ 438 Para. 1 No. 2 and 634a Para. 1 No. 2 BGB prescribes longer periods and in the case of a deliberate act by E&E or the devious or fraudulent concealment of the defect and if a guarantee to the effect that the product has certain properties has not been kept. The rulings on limitation contained in §445b BGB shall apply in the case of regress in the supply chain (§445a BGB).
9. The properties of the products are those contained in the concrete product description by E&E which has been agreed on in the contract. Any public statements, the extolling or advertising of the product by a third party manufacturer or a third party, do not constitute a contractually-valid description of the quality or condition of the goods. Data regarding the diameter and weight of the products are non-binding. Deviations of up to +/- 20 % in diameter and weight do not constitute a defect, unless a certain diameter or weight has been agreed on and guaranteed in the contract.
10. In the case of orders for special cables, a deviation from the ordered quantity of up to 10% up or down in the quantity delivered does not generally constitute a defect, as this is influenced by production factors. The same applies specifically to ordered quantities of up to 1,000 m (permissible deviation up to 15% up or down), orders up to 500 m (deviation plus or minus 20%) and up to 200 m plus or minus 30%. Sentence 1 in §10 above does not apply in the case of fixed-length orders for which the customer has before placing the order has reached a clear agreement with E&E about the type and scope of the order, in particular the cable lengths. In this case E&E will check to see if this is feasible and will take this into consideration when drawing up the quotation.
11. E&E cannot guarantee that goods which are exported or used abroad do in fact comply with import/export restrictions, the German Foreign Trade Act (*Außenwirtschaftsgesetz*) or the foreign trade legislation of the foreign countries who purchase the goods. Purchaser must himself make sure that he complies with these regulations and must take these into account when drawing up the specification or awarding the order.
12. Claims of Purchaser in respect of any costs incurred for rectifying defects such as transportation and materials costs shall be excluded, inasmuch as these costs have increased because the supplied item has been subsequently shipped by Purchaser to another location than that foreseen by the contractual documents, unless the shipment clearly complies with the appropriate use of the delivered item.

13. If the Purchaser (Ordering Party) receives faulty assembly or installation instructions from E&E, then E&E is only obliged to supply a set of fault-free instructions and this only if the fault in the instructions conflicts with a correct installation. In the case of assembly problems which are the result of faulty instructions, the Purchaser must contact E&E by telephone, so that E&E can either solve the installation problems by consultation or in another suitable way. E&E will reimburse the telephone costs incurred by Purchaser on request.

14. Instead of original spare parts, E&E is entitled to supply Purchaser with spare parts which are equivalent from a quality point of view, if the original parts can no longer be delivered. This also applies in particular to a situation where contractual items are no longer produced.

### **§ 11 Defects of Title / Intellectual Property Rights / Non-Disclosure**

1. All rights in respect of patents, utility models and design patents, trademarks, equipment, other proprietary rights and copyrights in respect of the contractual items and services shall remain with their respective owners. This also applies to product names/descriptions, to software and to naming and labelling rights.

2. E&E and Purchaser mutually undertake to treat as trade secrets any not obvious (apparent) commercial and technical details which become known to them as a result of their business relationship.

3. Any drawings, tooling, software, moulds, jigs, models, templates, specimens/prototypes and similar items which have been delivered, used, or made available by or for E&E, are, and shall remain E&E's property. They must not be surrendered or otherwise made accessible to unauthorized third parties. If the aforementioned items are produced for E&E, then they shall become E&E's property as soon as they are prepared or produced. It is only permitted to reproduce or copy such items as are actually required for the business at hand and in compliance with the legislation governing patents, labelling, copyright and the law governing competition.

4. If any claims are made against Purchaser by a third party on account of the direct infringement of proprietary rights, including copyright, as a result of E&E deliveries or services, then E&E shall only indemnify him against any claims in respect of damages against him which have been accepted or settled and any claims in respect of court and legal costs if the following conditions have been met:

- Purchaser informs E&E without any undue delay of the claim or warning of the third party, without having taken any steps to defend the claim and/or without having engaged a lawyer. Exceptions to this are immediate measures which must be taken before informing E&E;
- Only E&E shall be entitled to instigate defence measures and to commission lawyers to defend the claim and / or to make statements and / or to conduct other negotiations. At the request of E&E, Purchaser will employ a lawyer at E&E's cost to defend the claim;
- Purchaser informs E&E without delay and continuously about the progress of the case and in particular makes the necessary information and documentation available.

5. E&E's liability shall lapse if the infringement of the rights of a third party is the result of a modification of the delivered item or parts thereof, provided that the supplied item itself is not the reason for the infringement. Liability shall also cease inasmuch as Purchaser, after a warning from a third party or if he is in the knowledge of a possible infringement of the rights of a third party, has continued nevertheless to use the product, unless E&E has approved these further actions in writing.
6. If it has been established in court that further use of the supplied item has infringed the proprietary rights of a third party, including copyrights, or if in the view of Purchaser there is a danger of a lawsuit regarding the proprietary rights of copyrights, then E&E at its own cost and discretion can either procure for Purchaser the right to continue to use the supplied item or can exchange the supplied item or modify it in such a way that it no longer infringes, or at least that any infringement is less likely. Under no circumstances do such measures entitle Purchaser to enforce any further claims against E&E.

## **§ 12 Liability**

1. E&E shall only be liable if they have acted deliberately or as a result of gross negligence. In the cases of carelessness, E&E shall be liable only if the act results in damages arising from a loss of life, bodily injury, damage to health and for damage arising from the violation of a major contractual obligation, whereby in this case any liability shall be restricted to compensation for the foreseeable and typical damage in such a case.  
Major contractual obligations are those whose fulfilment makes possible the due and proper execution of the contract in the first place and on which Purchaser normally relies and can rely.
2. The limitations on liability given above do not apply if E&E have maliciously concealed a defect or has undertaken a guarantee for the property or quality. Claims arising from the Product Liability Act (*Produkthaftungsgesetz*) shall also remain unaffected.
3. Claims for compensation by Purchaser against E&E shall become time-barred within one year of the goods leaving the factory / acceptance of the delivery/or performance. This does not apply to claims for compensation pursuant to the Product Liability Act and to the cases described in § 10 Para. 8 of these Conditions of Sale. In these cases the legally-prescribed time-barred period shall apply in each case.

## **§ 13 Place of Fulfilment / Place of Jurisdiction**

The place of fulfilment for E&E supplies and services and the place of jurisdiction for all liabilities towards Purchaser arising from this contractual relationship shall be the head office of the E&E company which carried out the delivery or –at its choice- the place of the branch responsible for the supply or service. E&E shall at its choice also be entitled to file suits at the head office of Purchaser or at the place of fulfilment. The law of the Federal Republic of Germany shall apply to the exclusion of the United Nations Convention on Contracts for the International Sale of Goods (CISG). The contractual language shall be –unless agreed to the contrary- German.

**§ 14 Written Form**

Any side agreements shall only become effective if they are put down in writing. Any amendments and / or additions must also be in writing. If the parties wish to dispense with this ruling they must do so in writing.

**§ 15 Severability Clause**

If any of the provisions of this contract should be unworkable or become so, then the other provisions shall remain legally binding. Statutory regulations - if available - shall apply instead of the unworkable provision. The same applies in the case of omissions.

Ernst & Engbring GmbH, 2018