

GENERAL TERMS AND CONDITIONS OF SALE of KERPEN DATACOM GmbH (last updated 06/2022)

1. Scope

1.1 These General Terms and Conditions of Sale shall apply to all contracts, declarations of contracts, goods and services of KERPEN DATACOM GmbH (hereinafter "KERPEN") unless otherwise expressly agreed. These General Terms and Conditions of Sale shall apply also to all future provision of goods and services offers made by KERPEN, even if no separate further agreement has been entered into in respect thereof. However, these Terms and Conditions shall not apply to consumers within the meaning of § 13 German Civil Code (BGB).

1.2 Any general terms and conditions of the Purchaser shall not apply even where KERPEN has not separately objected to them in any individual case. Even if KERPEN refers to any letter or writing containing or referring to the general terms and conditions of the Purchaser or any third party, this shall not constitute consent to the application of such general terms of business. The same shall apply correspondingly in relation to any deliveries or payments.

2. Definitions

2.1 Some of the terms used related to the copper business in contractual documents of KERPEN are not used consistently in the industry. KERPEN, however, endeavors to use terminology consistently in the interests of transparent business relationships and customer communication. In order to avoid difficulties in their interpretation, we refer to the following definitions of the terms. These definitions form part of the contract. If the terms defined below are used in contractual documents, they have the meaning given below:

2.1.1 Effective cross section: The effective cross section is the actual geometric cross section of a conductor (where applicable, inside a cable). Small tolerances are possible due to production processes.

2.1.2 Total price: For copper cables, the total price is generally made up of the adder price and the final sales price for the copper product.

2.1.3 GIRM: The GIRM (Groupement d'Importation et de Répartition des Métaux) publishes a copper value based on the LME. It can be accessed at www.kme.com/fr. The listing is mainly used in France.

2.1.4 Adder price: The adder price gives the price for the cable without the metal content, which is calculated separately.

2.1.5 Copper base/copper base price: The copper base price is a standard value agreed with the customer (e.g. EUR 100/100 kg). Stating the copper base price (e.g. EUR 100/100 kg) is intended to make it easier to compare quotations. On the basis of a hypothetical copper listing of, for example, EUR 100/100 kg, a total price is calculated, which can be compared to other quotations that are calculated based on a different or the same hypothetical copper listing. The actual price to be paid may deviate significantly upwards or downwards depending on the actual copper listing as a considerable copper surcharge may have to be paid in some cases. It is therefore not possible to ascertain the actual invoice amount or a ballpark indication of its amount from this price.

2.1.6 (Copper) premium/fabrication charge/fabrication adder: The term describes the costs incurred when transforming the raw copper ore into a usable form, i.e. up into continuous cast wire rod.

2.1.7 Final sales price for the copper product: The final sales price for the copper product is calculated based on the agreement with the customer. Calculation factors are normally the delivery quantity, the type of cable, the copper sales factor and a copper price model (e.g. copper average for the month prior to delivery plus 1% procurement costs).

2.1.8 Copper price model: The copper price model is a copper invoicing model agreed with the customer which determines which amount, taking various factors into consideration, such as a certain listing over a certain period, is to be used as an invoicing value for the copper component when invoicing the customer. Example: 3-month copper average plus 1% procurement costs.

2.1.9 Copper sales factor: The copper sales factor is a purely commercial calculation factor that is used to calculate the total price of a cable. Although customarily expressed in the business in kg/km, the copper sales factor does not indicate the quantity or weight of the actual copper contained in the cable. It is a purely arithmetic calculation factor that does not give any direct indication of the quantity of copper used in the cable.

2.1.10 Copper surcharge: The copper surcharge is calculated based on the difference between the copper price model agreed with the customer and the copper base price agreed with the customer, which is multiplied by the copper sales factor. The following formula is used to calculate the copper surcharge:
Copper surcharge [€/km] = Copper sales factor [kg/km] × $\frac{(\text{agreed copper price model [€/100 kg]} - \text{copper base price [€/100 kg]})}{100}$

2.1.11 LME: Exchange price on the London Metal Exchange, one of the world's largest metal trading centers. The exchange determines global reference and cash settlement prices for metals on a daily basis.

2.1.12 MK: The "metal listing for copper" (German: Metallnotierung Kupfer) refers to the metal base price calculated by the largest European manufacturer of semi-finished copper products. The MK price is based on the LME listing plus additional price components and is accessible at www.westmetall.com.

2.1.14 Nominal cross section: Nominal cross section is the cross section specified in certain documents. This does not always correspond to the actual cable cross section, but it is a good basis for standardization and calculations. The electrically effective cable cross section for metal cables is determined by measuring the electrical resistance (generally the DC resistance) and, due to the different constructions of the individual types of cable and additional processing effects, does not categorically correspond to the geometric cable cross section, which would be derived from the nominal cross section and the standard values for specific resistances. It is therefore a nominal value that indicates certain operational characteristics and possible uses. This is to be expressly indicated when using the term.

2.1.15 Nominal: The use of the term "nominal" with reference to a number indicates that it refers to an abstract indicator. The specific number indicated may differ from the actual number; however, a number given as "nominal" indicates an approximate value that is generally present based on the standards and experience.

2.1.16 WME/Westmetall: Westmetall GmbH & Co. KG is an internationally oriented trading company for non-ferrous metals. Its core business is trading the commodity metals copper, tin, nickel and lead as well as copper alloys. Daily prices for these metals are published online at www.westmetall.com. KERPEN uses these mainly for alloys.

3. Contract Formation / Deliveries

3.1 Any contracts for the supply of goods (order and acceptance) shall be valid only if made in writing. If, in any individual case, the Parties make other arrangements or agreements, such arrangements or agreements must be confirmed in writing in detail without delay. Orders must conform to KERPEN's offer or contain express references to any departures therefrom.

3.2 Unless otherwise agreed, call-off orders must be apportioned and accepted by the Purchaser within six months of the formation of the contract with KERPEN or from KERPEN's confirmation of the order. Upon expiry of the acceptance period or where the Purchaser does not make any use of an agreed call-off order within six months of the date the order being issued, after having set a grace period of two weeks, KERPEN shall be entitled, at its option, to either demand immediate acceptance and payment for the goods or to withdraw from the contract or to demand compensatory damages for breach.

3.3 If, subsequently to the conclusion of any contract, any circumstances come to light which justify doubts regarding the creditworthiness of the Purchaser, KERPEN shall be entitled to set a reasonable period within which the Purchaser must either simultaneously exchange payment for delivery of goods or shall provide security. After the expiry of such a period without the condition being satisfied, KERPEN may withdraw from the contract or demand advance payment, in cases of such withdrawal, the Purchaser shall not be entitled to assert any claims for breach.

3.4 Unless binding delivery periods have been agreed, delivery periods indicated shall constitute approximations of the date of delivery ex works after all of the prerequisites to production have been met. KERPEN does not assume any warranty with respect to any specific transport period.

3.5 KERPEN's compliance with agreed delivery periods shall be subject to the condition precedent that the duties of cooperation incumbent on the Purchaser have been discharged (in particular, receipt of all documents, plans, drawings, data, material supplies, necessary approvals and clearances) in a timely manner and compliance with agreed terms of payment and other obligations by the Purchaser is achieved. Where such conditions precedent are not promptly met, the periods shall be deemed to have been extended by an appropriate time; the foregoing shall not apply where KERPEN is responsible for the delay.

3.6 Force majeure, labour disputes, unrest, measures of public authorities and other unforeseeable, unavoidable and serious events ("force majeure") shall relieve the Parties to the contract of their respective duties to perform the contract for the duration of the disruption and to the extent of the impact thereof. Force majeure in respect of a supplier of KERPEN and any delay by KERPEN in effecting delivery which results therefrom shall be deemed the equivalent of direct force majeure. This shall apply even where such events occur at a point in time at which the Party in question is already in default, except where the Party caused the preceding delay in a manner which was intentional