

# General Terms and Conditions of the CabTec AG

For the deliveries of the CabTec AG (hereinafter called "CabTec") are the General Terms and Conditions (hereinafter called "GTC"), and the Swiss Contract-Law are to apply with exclusion of the "Vienna Convention".

## 1. General information

- 1.1 This GTC shall be considered as completely acknowledged by the buyers. Contradictory conditions of the buyers are not binding for the CabTec.
- 1.2 For all declarations or agreements, which differ from this GTC, the clear written confirmation of CabTec is required to be effective.

## 2. Offers

- 2.1 The statements of price in the offers and in the contracts are, in the absence of any other comments, not binding.
- 2.2 Written offers, which are considered as binding, are valid for 30 days from the date of issue, until there is another validity date on the offer.
- 2.3 For the correctness of the order documents, especially drawings, material specifications...etc, sent by the buyer the CabTec shall refuse to accept any responsibility.

## 3. Object and form of the contracts

- 3.1 The contracts of sales or contracts for work are to be considered concluded only, if CabTec has confirmed the acceptance of the order in a written form. Sending e-mail or through fax is deemed considered as written in form.
- 3.2 The written order confirmation can be replaced in case of short-term deliveries by the invoice issued.
- 3.3 The buyer acknowledges that for the validity of declarations by the employees of CabTec in oral form or per phone, the written form is required. The representatives of CabTec have no special authorization to make agreements which are different from this GTC.

## 4. Tolerance levels in the production

- 4.1 For the CabTec products are the production tolerance levels of CabTec applied. If needed, these can be required from CabTec. The buyer agrees that tolerance levels in the production can be altered without prior notice.
- 4.2 The CabTec have several places and countries of certified production plants and enjoys the freedom to decide in which plant the products, ordered by the buyer, should be partly or completely produced.

## 5. Components, acquired and made available

- 5.1 If the buyer delivers components for the CabTec products ordered by him, then he is obliged to an excess delivery of 3%, but at least 3 pieces additionally.
- 5.2 CabTec reserves the right for a supplementary acquisition at the costs of the buyer, and for the charging of the production costs incurred, if the components delivered by the buyer are damaged, not appropriate, or not suitable for production of the CabTec products.

## 6. Prices

- 6.1 Until there is no other information in the offer, the prices of CabTec are in Swiss Franc, excluding VAT, without package and sending fees (delivery costs, charges and indirect costs are charged to the customer) and ex works. The recommended sales prices of the copper cables contain usually a calculation base of EUR 150,00/100 kg, unless CabTec has not given any other values at the price statement. The calculation base of the selling price is the DEL-quotation of the copper on the day preceding the registration of the order, plus 1% for the metal acquisition costs. The selling price to be charged will either increase or decrease with the difference of the copper base and the DEL-quotation. In case of using any other metals the calculation is similar to that with copper. In case of articles without specification of the metal base, that is in case of full price forming (e.g. cable boltings, copper cables, incl. copper), CabTec may adjust the prices in case of significant or exceptional changes in the prices of raw materials. The metal and raw material prices, extra charges and subtractions are always meant as a clear net amount.
- 6.2 In case of prototypes and sample deliveries CabTec insists upon reimbursement of his costs, according to his expenditures.
- 6.3 The minimum value of a cable confection order and the minimum value of the delivery is, excludes VAT (= net order value) EUR 500 or CHF 700. In case of orders with a lower net value we will charge EUR 150 or CHF 210 proportionate costs.
- 6.4 For ordering of commercial components below a total value of EUR 70 or CHF 100 CabTec will charge a general surcharge of EUR 30 or CHF 50.
- 6.5 If between signing of the contract and the delivery date the costs for materials, wages or delivery costs increase, or the taxes, resp. duties will be increased beyond of the extent in point 6.1, CabTec may adjust the prices respectively.

## 7. Terms of delivery

- 7.1 The delivery deadlines and delivery terms are considered as met, if the commodity is available for the buyer at the place of delivery at that time, which is stated in the order confirmation of CabTec.
- 7.2 If the delivery term is given at as a time span, this time span begins with the date of arrival of the order. If CabTec does not receive the appropriate data and documents at the right time, or if these are modified afterwards with the approval of CabTec, the delivery deadline will be postponed respectively.
- 7.3 If not meeting the delivery deadline is not the exclusive failure of CabTec, it shall not make CabTec responsible, neither to entitle buyer to recede from the contract nor to enforce claim for compensation.
- 7.4 In case of fortuitous event without negligence of Cabtec making the delivery impossible, CabTec may restrict or stop the delivery until it becomes possible to deliver the same or at the option of Cabtec, cease from the contract without any claim for compensation.
- 7.5 In case of delay of CabTec are any kind of compensations excluded.

- 7.6 In case of frame orders with calling in – in absence of any other agreement – within one year from the date of order the entire volume has to be called in. CabTec is entitled to require payment for the entire volume of commodities placed at disposal after expiration of the one year term.
- 7.7 CabTec has the right to charge the costs of storage of at least 0,5% of the invoice value for each begun month when a shipment at the request of buyer was delayed either because of any other occasions or delayed caused by negligence of buyer, after one month of reporting his ability to ship. The sum of all storing charges is restricted to 5% of the value of the invoice, except if higher costs were arisen at CabTec, which has to be proven.
- 7.8 In case of deliveries differences can be at most 10%, both for the whole contract volume and for each part shipment.
- 7.9 Part shipments are allowed. In case of general contracts each part shipment should be considered as a separate transaction. In case of impossibility or delay of a part shipment, the buyer is not entitled to recede from the whole contract or to enforce claims for compensation.
- 7.10 If the confirmed delivery deadline has to be shortened at the demand of the buyer, CabTec is allowed, if agreed, to charge an express surcharge of EUR 500 or CHF 700. The necessary expenditures, as for example bonuses for extra shifts, weekend works, and special travels costs can be charged beside of the express surcharge.
- 7.11 CabTec is obliged to deliver only in that case, if the buyer has fulfilled all of his payment obligations, laid down in the agreements. If the payments are performed in delay, or unjustified subtractions (e.g. quality costs) are carried out, CabTec may withhold the delivery.

## **8. Reservation of proprietary rights**

- 8.1 The CabTec reserves the proprietary right on the delivered commodity until the full settlement of all claims from the delivery contract. CabTec may carry out all of the necessary registrations, and is also entitled to take back the object of sale, if the buyer behaves contrary to the terms of the contract.
- 8.2 The buyer is obliged to treat the object of the sale carefully – until the property right has not passed on him. He is especially obliged, after the demand of CabTec, to insure it at his own expenses against damages caused by theft, fire, and water, on its new value. Until the transfer of the property right to the buyer, the buyer has the obligation to inform CabTec the quickest possible time if the delivered commodity is confiscated, or exposed to other intervention of a third party. If the third party is not able to reimburse the judicial and other costs, then the buyer is liable for the losses of CabTec.
- 8.3 The buyer is entitled to sell the reserved commodity under normal business conditions. Buyer assigns his claims against the purchaser from the selling of the reserved commodity to CabTec in the extent of the grand total of the invoice from his agreement with CabTec (inclusive of VAT) right now. This assignment is valid apart from the fact, whether the object of sale was sold without or with processing. The right of the buyer to collect the debt remains valid after the assignment. This will not affect the right of CabTec to personally collect the debt. CabTec will however not collect the debt, until the buyer meets his payment obligations from the collected incomes, he will not be in default in payment, and especially there is no request for bankruptcy proceedings, and no suspension of payment exists.
- 8.4 The treating, processing, or transformation of the object of sale by the buyers occurs always in the name and on behalf of CabTec. In this case will the expectancy of the buyer related to the object of sale continue on the transformed object. If the object of sale will be processed with other objects, which are not the property of CabTec, CabTec will acquire a shared ownership on the newly created object, in a proportion of the objective value of the object of sale to the objective value of the other objects at the time of processing. The same is valid in the case of mixing. If the mixing occurs in a way, that the object of the buyer has to be considered as the principal object, it is agreed, that the buyer will assign proportional a shared ownership to CabTec, and keeps the created sole ownership or shared ownership for CabTec. As securities for the debts of the buyer against CabTec, will the buyer assign even those of his claims for CabTec, which have arisen by connection of the reserved commodity with a real estate against a third party. CabTec accepts this assignment right now.
- 8.5 CabTec promises to set free the securities, he is entitled to, on the request of the buyer, as far as the value of these will surpass the claims to be secured by more, then 20%.

## **9. Passing of risk and shipment**

- 9.1 In the absence of any other agreement of the parties are the relating rules of Incoterm 2000 about ex works effective.
- 9.2 In the absence of a specific instruction about packing and shipment, these operations will be carried out at the discretion of CabTec and at the costs of the buyer.
- 9.3 Shipment occurs at the risk of the buyer. Insurances will be signed by CabTec on the explicit demand and at the costs of the buyer only.

## **10. Conditions of payment**

- 10.1 In the absence of any other agreement between the parties, CabTec will issue an invoice for a delivery or for a part-delivery.
- 10.2 Payments have to be performed net in the given currency within 30 days from the date of the invoice. Unjustified deductions will be charged at the costs of the buyer afterwards.
- 10.3 The settlement of any kind of counter-claims is barred.
- 10.4 The keeping back or shortening of payments, because of complaints is only allowed with the consent of CabTec.
- 10.5 In case of default in payment CabTec is entitled to charge at least 6% interest on default p.a. for the buyer.
- 10.6 In case of default in payment CabTec has the right, regardless of his other rights, to refuse any further deliveries from this contract, or make them depend on advance payment or on providing securities.

## **11. Warranty**

- 11.1 Regarding the quality the technical data laid down in the agreement or in absence of these the technical data of the catalogues and the data sheets of CabTec are normative. If the products are manufactured according to the instructions of the buyer, warranty will be restricted to keep these instructions. Any further warranties from the side of CabTec are absolutely excluded.
- 11.2 For any miss or wrong instructions of the order and for all risks in connection with the use of the product bear the buyer the exclusive responsibility, especially for product imperfections and for consequential damages resulting from these.
- 11.3 All buyers, users and customers of the CabTec products are obliged to control the suitability of the product for the intended purpose.

- 11.4 The buyer is obliged to control the commodity immediately after taking over, and to perform the prescribed notice of defect immediately – in case of patent mistakes at the latest within 10 days from arriving of the commodity to the place of destination, with displaying of the delivery note and the invoice number – in written form.
- 11.5 In case of notice of defect in the right time CabTec can according to his own choice either repair the product (elimination of the failure) or deliver a faultless product. The buyer is obliged to grant the necessary time and opportunity for the supplementary performance. If two attempts of supplementary performance remain unsuccessful (unsuccessful supplementary performance), or CabTec refuses the supplementary performance, or a supplementary performance cannot be expected from him, the buyer may recede from the contract, or may reduce the purchasing price.
- 11.6 Any other claims of the buyer, especially for compensation, for reimbursement of losses because of imperfections, for reimbursement of the unrealized profit, or for cancelling of the contract are completely excluded.
- 11.7 Claims for warranty and rights for complaints because of the imperfections of the commodity will be forfeited and expire within 12 months from passing of risk.
- 11.8 We will not undertake neither any warranty, nor any liability for damages, resulting from fair wear and tear or damage of the object of delivery, resp. or damage resulting from inadequate treatment.
- 11.9 The responsibility of CabTec will cease, if the buyer himself, or a third person will carry out any repairs or modifications on the product without the prior consent of CabTec, or if components will be used, which are not delivered or consented by CabTec.
- 11.10 Tacking back of the whole shipment cannot be required, if only specific parts of it are damaged.
- 11.11 CabTec shall not be liable for any claims by third persons because of violation of patent or trade mark of the delivered commodity.
- 12. The effectivity of the contract**
- 12.1 If any regulations of this GTC would be or would become ineffective, this would not affect the legal effect of the other regulations. The ineffective regulation should be replaced by another new regulation, which would fulfil the same legal and economic goal as much as possible.
- 12.2 CabTec otherwise reserves the right to modify this GTC any time.
- 13. Place of performance and jurisdiction**
- 13.1 The place of performance for any payments of CabTec is Rotkreuz, Switzerland.
- 13.2 Place of jurisdiction is Zug, Switzerland.