

Terms and Conditions of Sale and Delivery of LANCIER CABLE GmbH



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1. Scope of Application

- 1.1. The following terms and conditions apply to all deliveries and performances of LANCIER CABLE GmbH, regardless of whether the individual case is a sales contract or a contract for work and/or services or a contractual relationship of whatsoever nature.
- 1.2. Other terms and conditions of sale or business of the customer do not apply, even if LANCIER CABLE GmbH has not expressly objected to said terms and conditions.

2. Conclusions and Modification of Contract, Assignment of Rights

- 2.1. The documents which are part of the offer, such as samples, photographs, drawings as well as data about the extent of the delivery, appearance, performance, dimensions, weight and consumption etc., are only approximate values unless they have expressly been designated as binding. LANCIER CABLE GmbH retains rights of ownership and copyrights to samples, cost estimates, drawings and other documents. They must not be made available to third parties and shall be returned upon request.
- 2.2. The contract shall be deemed concluded when LANCIER CABLE GmbH has confirmed acceptance of the order in writing or has commenced delivery or performance. If LANCIER CABLE GmbH has submitted an offer which is subject to a time limit, the contract shall be deemed concluded when the client has submitted written acceptance of the offer in due time.
- 2.3. Oral secondary agreements and amendments to the contract shall not become effective until LANCIER CABLE GmbH has confirmed them in writing. Obvious spelling or calculation errors may be corrected retroactively.

3. Prices

- 3.1. The prices are valid ex works, including loading in the works, but excluding packaging. Value-added tax will be added in conformity with the applicable provisions of the delivery or performance country.
- 3.2. Engineering works, installation and commissioning will be invoiced separately. The amount to be invoiced may be calculated at either a flat rate or according to actual expenditure, plus travel cost, subsistence allowance and overnight expenses, overtime and surcharges for Saturdays, Sundays and public holidays.
- 3.3. If cost or charges are included in the prices and the former will be raised, or if they become due after the conclusion of the contract, LANCIER CABLE GmbH is entitled to invoice the client for the additional amount.

4. Payment, Default of Payment, Set-Off, Retention

- 4.1. In the absence of deviating agreements, payment for all deliveries become due within 30 days after date of invoice without any deductions.
- 4.2. Any and all outstanding receivables shall become due and payable immediately – even if an extension or other delay of payment has been granted – as soon as the client is more than 5 workdays in default of fulfilment, in whole or in part, of his obligations to LANCIER CABLE GmbH or if circumstances arise which substantially reduce the creditworthiness of the client. LANCIER CABLE GmbH may in this case refuse further deliveries or performances and request the provision of reasonable security for its claims.
- 4.3. The client may offset LANCIER CABLE GmbH's claims solely against undisputed or non-appealable claims.
- 4.4. If the client is in default of payment, interest at a rate of 8.0 % above the basic interest rate shall be paid on LANCIER CABLE GmbH's claims. This provision is without prejudice for LANCIER CABLE GmbH's claim for compensation for additional damage.

5. Delivery time, Partial Performances, Delay of Acceptance

- 5.1. Delivery and installation periods do not commence until LANCIER CABLE GmbH and the client have reached agreement on all details of the performance and all terms and conditions of the transaction and LANCIER CABLE GmbH has confirmed the order. Said periods shall be suspended as long as the client is in default of fulfilment of his contributory obligations from this contract (e.g. provision of documents, supply of materials, permits, releases) or an agreed advance payment.
- 5.2. The delivery-period is valid under the provision of on-time and right supplies from pre-suppliers.
- 5.3. The delivery-period shall be deemed as observed if the object of the delivery has left the works or if notification of readiness for shipping has been given before lapse of the period.
- 5.4. If at the request of the client the dispatch is delayed, LANCIER-CABLE GmbH may bill either the storage and maintenance costs actually incurred or a flat rate in the amount of ½% of the invoice amount per month. This provision has no effect on the client's payment obligations.
- 5.5. The delivery-period shall be extended by a reasonable amount in the event of force majeure, strike, lock-out and other unusual circumstances without fault. This provision shall also apply if a pre-supplier is affected.
- 5.6. If LANCIER CABLE GmbH's performance is delayed, LANCIER CABLE GmbH shall nevertheless not be in default of performance to the extent that the delay is caused by circumstances which LANCIER CABLE GmbH could not foresee and prevent when taking reasonable precautions and which LANCIER CABLE GmbH could not overcome by taking reasonable measures.
- 5.7. LANCIER CABLE GmbH is entitled to withhold its performance as long as the client does not fulfil his obligations to LANCIER CABLE GmbH from this or another contract or due to other legal reasons.
- 5.8. If the terms and conditions of payment are not observed, if the delivery is not accepted in due time or if the acceptance thereof is refused or if security which has been agreed has not been provided, LANCIER CABLE GmbH

is entitled, following fruitless lapse of a reasonable extension to withdraw from the contract and to claim damage compensation. LANCIER CABLE GmbH may claim without further proof damage compensation from the client in the amount of 25 % of the order total for mass produced products and 75 % for the order total for custom produced products, to the extent that the client does not prove that no damage, or only minor damage, has resulted. This provision is without prejudice for a claim of greater damage upon substantiation.

6. Transfer of Risk, Shipping and Acceptance

- 6.1. The risk shall pass to the client no later than the point in time of the dispatch of the object of the delivery. This provision shall also apply to partial performance, or if LANCIER CABLE GmbH has agreed to bear the costs for shipping or installation. No liability is accepted for the most favourable freight charges or transport time.
- 6.2. If the delivery, the shipping or the acceptance of the object of the delivery is delayed by the client due to no fault of LANCIER CABLE GmbH, all risks – including the risk of deterioration or loss of the object of the delivery as well as all risks resulting from the object itself – shall pass to the client as of the notification of the readiness for shipping or notification of completion.
- 6.3. Upon written request, the consignment will be insured at the client's expense for the cover sum he requests.
- 6.4. The client is liable for any and all damage which he causes by his negligence during or before acceptance of the object of the delivery (e.g., sampling, any acceptance procedure to be performed, etc.).
- 6.5. Delivered objects shall be accepted by the client, even if they are defective, without prejudice for his rights.

7. Security

- 7.1. The object of delivery remains the property of LANCIER CABLE GmbH until full payment of the agreed price and of all other claims, including future claims, from the business relationship with the client.
- 7.2. The client assigns now to LANCIER CABLE GmbH the claims arising from the further sale of the objects of the delivery in the amount of the value of the objects of the delivery and all secondary rights. The client is authorized to collect the claim. The authority of LANCIER CABLE GmbH to collect the claim itself remains unaffected hereby.
- 7.3. As long as the client fulfils his obligations to LANCIER CABLE GmbH, he is entitled to dispose of the object of delivery in the course of orderly business and subject to retention of title, to the extent that the claims effectively pass to LANCIER CABLE GmbH in accordance with item 7.2. Extraordinary disposals such as pledges, transfer by way of security and any and every assignment are not permissible. LANCIER CABLE GmbH shall be given written notification immediately of any attachment by third parties on the object of the delivery or assigned claims, in particular pledges.
- 7.4. During the period of the retention of title, the client is in principle entitled to possess and make use as intended of the object of delivery. In the event of actions in breach of contract by the client – in particular if the client is in default of payment – as well as in the cases of item 4.2, however, LANCIER CABLE GmbH may repossess the object of the delivery and revoke the authorization to collection of the claims resulting from the further sale. The client is – under exclusion of rights of retention – obligated to surrender the object. The client shall bear any and all costs of the repossession and exploitation. LANCIER CABLE GmbH is entitled to private sale. The client shall upon request immediately submit to LANCIER CABLE GmbH a catalogue of the claims assigned in conformity with item 7.2 as well as all additional information and documents necessary for exercise of the claims to which LANCIER CABLE GmbH is entitled, and inform the debtors of the assignment.
- 7.5. The client shall maintain the object of the delivery in proper condition during the retention of title and allow LANCIER CABLE GmbH or a workshop authorized by LANCIER CABLE GmbH to perform immediately all of the maintenance and repair work prescribed by LANCIER CABLE GmbH at his cost.
- 7.6. The exercise of the retention of title and pledge of the object of the delivery by LANCIER CABLE GmbH shall not be deemed withdrawal from the contract.
- 7.7. If the retention of title or the assignment is not effective according to the law of the country in which the goods are located, the security closest in nature to retention of title or assignment in this country shall be deemed as agreed. If a contribution of the client is required for this purpose, the client shall perform all legal actions necessary to establish and preserve such right.

8. Complaint of Defects, Warranty, Warranty Period

- 8.1. The client shall examine the object of the delivery immediately after receipt and lodge written complaint of any defects without delay. The client shall also examine the object of the delivery for defects before every commissioning, in particular regarding safety and suitability for use. During its use, the object of the delivery shall be monitored constantly with regard to safety and defects. If there are even slight reservations concerning the suitability for use or the slightest reservations concerning safety, the object must not be used or its operation must be shut down immediately. LANCIER CABLE GmbH shall be given written notification immediately, specifying the reservations or the defect within the scope of a complaint of defects. The client shall allow LANCIER CABLE GmbH the time and opportunity required to perform any and all remedies and replace-

Gildestrasse 15
48317 Drensteinfurt
Germany

Fon:
+49(0)2508/99378-0

Fax:
+49(0)2508/99378 10

eMail :
mail@lancier-cable.de

Internet :
www.lancier-cable.de

Geschäftsführung
General Management
Dipl.-Kfm.
Thomas Vohl

Registergericht
Registered Office
LANCIER
CABLE GMBH
Amtsgericht Münster
HRB 6421

Ust.IdNr. / VAT No. :
DE813506059
Steuer-Nr. / Tax No. :
336/5802/2438

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Volksbank Münster eG
IBAN:
DE13401600502720312300
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Sparkasse
Münsterland-Ost
IBAN:
DE60400501500034007179
BIC/Swift Code:
WELA DED1 MST

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ment deliveries which LANCIER CABLE GmbH regards as necessary. Otherwise, LANCIER CABLE GmbH is released from liability for any consequences resulting therefrom.

8.2. If LANCIER CABLE GmbH's performance is defective at the time of the transfer of risk, LANCIER CABLE GmbH shall perform subsequently, at his discretion remedying the defect or delivering a defect-free object in exchange for the defective object. Replaced parts become the property of LANCIER CABLE GmbH. If subsequent performance regarding a defect for which LANCIER CABLE GmbH is responsible is not possible, has finally failed, is unreasonable for the purchaser, or if LANCIER CABLE GmbH has refused both types of subsequent performance, or if a reasonable extension for subsequent performance granted to LANCIER CABLE GmbH has fruitlessly lapsed, the client may at his discretion reduce the remuneration for the supplier or withdraw from the contract. If there is only a minor defect, however, the client has only the right to reduce the remuneration.

8.3. If LANCIER CABLE GmbH has fraudulently concealed a defect or given a warranty for the quality of the object, the statutory regulation shall apply.

8.4. Unauthorized remedy of defects by the client or third parties shall result in the loss of all claims due to defects on LANCIER CABLE GmbH. LANCIER CABLE GmbH will not bear the costs for the remedy of defects by the client or third parties without the express prior agreement of LANCIER CABLE GmbH. This provision does not apply in urgent cases – especially when delay is not possible – in which the operating safety is endangered or in order to prevent unreasonably great damage. In such cases LANCIER CABLE GmbH shall be notified immediately and shall be obligated to reimburse only the necessary costs.

8.5. In particular, LANCIER CABLE GmbH does not accept any warranty obligation for damage in the following cases: unsuitable or improper use, defective installation or commissioning by the client or third parties, natural wear and tear, defective or negligent handling, improper maintenance, excessive load, unsuitable operating materials and replacement materials, poor work, chemical, electrotechnical/electronic or electric influences. This exclusion does not apply if LANCIER CABLE GmbH is responsible for the damage in conformity with the more specific provision of item 9.5. There shall also be no liability and warranty obligation for LANCIER CABLE GmbH in particular for the following measures and actions taken by the client or third parties and the consequences thereof: improper remedy of defects, change of the object of the delivery without the prior agreement of the supplier, addition and insertion of parts, in particular of spare parts which do not come from LANCIER CABLE GmbH or which LANCIER CABLE GmbH has not expressly approved for insertion, and failure to follow the operating instructions.

8.6. LANCIER CABLE GmbH does not grant any warranty for material provided by the client or acquired on the basis of specifications predetermined by the client or for designs predetermined by the client.

8.7. LANCIER CABLE GmbH does not grant any warranty for possible material defects for the sale of used machines, devices or parts LANCIER CABLE GmbH even does not guarantee any quality and points out that used machines and parts frequently do not have the same quality as newly manufactured machines and parts. This will even apply to the performance of the used machines and parts.

8.8. The client's claims for subsequent performance as well as his possible claims for damage compensation or reimbursement for expenditures due to defects shall be time-barred after one year following delivery of the goods for deliveries. If the acceptance of the object of the delivery or the acceptance of the delivery and performance is delayed due to no fault of LANCIER CABLE GmbH, the warranty shall expire no later than 12 months after readiness. This will even apply to subsequent performance. If LANCIER CABLE GmbH has fraudulently concealed the defect or has given a guarantee for the quality of the item, the statutory regulation shall apply to the time-barring of any claims on the part of the client based thereon. The statutory regulation shall also apply to the time-barring of any damage compensation claims of the client because of defects if LANCIER CABLE GmbH is guilty of intention or gross negligence or if the damage compensation claim is based on an injury to life, body or health.

8.9. Any and all other further claims of the client are excluded, in particular for damage compensation, including compensation for damage which did not result on the object of the delivery itself. Item 9.5. applies accordingly.

9. Withdrawal, Damage Compensation and Limitation of Actions

9.1. The client may withdraw from the contract if the complete performance finally becomes impossible for LANCIER CABLE GmbH before the transfer of risk. A claim by the client for damage compensation due to final impossibility of the performance is excluded unless the supplier is guilty of gross negligence. Any claim for damage compensation is limited to the damage foreseeable at the time of conclusion of the contract and resulting from the usual course of events and is limited in amount to a maximum of 15 % of the contract sum. The client may also withdraw from the contract if, for an order of identical items, the delivery of a part of the ordered items in terms of quantity becomes impossible and the client has a justified interest in refusing a partial delivery. If this is not the case, the client may reduce the counter-performance accordingly.

9.2. If the impossibility occurs during delay of acceptance or due to the fault of the client, the latter remains obligated to counter-performance.

9.3. The client may withdraw from the contract if LANCIER CABLE GmbH is in default of his performance, to the extent that said performance is due, the client has previously set a reasonable extension without success, and

LANCIER CABLE GmbH is responsible for his non-performance. A claim by the client for damage compensation due to LANCIER CABLE GmbH's default of performance is excluded unless LANCIER CABLE GmbH is guilty of gross negligence. Any claim for damage compensation is limited to the damage foreseeable at the time of conclusion of the contract and resulting from the usual course of events and is limited in amount to ½ % for each full week of delay, in total to a maximum of 5 % of the value of that part of the total delivery which cannot be used in due time because of the delay.

9.4. The client's right to withdraw from the contract – beyond the cases regulated above in items 9.1. and 9.3. – in accordance with statutory regulations in the event of a violation of obligations for which LANCIER CABLE GmbH is responsible and which does not result from a defect remains unaffected.

9.5. Any and all other more extensive claims of the client, in particular for termination and for damage compensation, including claims for damage compensation in lieu of performance and claims for compensation of damage of any type, for any legal reason whatsoever, including the violation of pre-contractual and contractual obligations, for actions in tort committed during development, conclusion and performance of the contract as well as for damage which did not result on the object of the delivery itself, are excluded. This exclusion of liability does not apply if LANCIER CABLE GmbH is guilty of gross negligence. Furthermore, this exclusion of liability does not apply to any claim of the client for damage compensation based on an intentional or grossly negligent injury of life, body or health. Finally, this exclusion of liability does not apply in those cases in which liability is compulsory in accordance with the Product Liability Act for personal injury or material damage to privately used objects. If these cases result in LANCIER CABLE GmbH's liability – or in deviation from the above provisions in other cases due to contractual or statutory basis for claim – said liability shall be limited to compensation for the foreseeable damage resulting from the usual course of events and which has been proven in each individual instance. However, this limitation of liability does not apply to any liability in accordance with the Product Liability Act due to defects of the object of the delivery for personal injury or for material damage to privately used objects. Furthermore, this limitation of liability does not apply if LANCIER CABLE GmbH is guilty of intention or of gross negligence.

9.6. Damage compensation claims of the client on LANCIER CABLE GmbH – whether due to the violation of pre-contractual or contractual obligations, to actions in tort committed during the development, conclusion and performance of the contract or due to other legal reasons – shall be time-barred no later than one year after the end of the year in which the claim arose and the client learned of the circumstances substantiating the claim and of the person of the debtor, or would have learned thereof without gross negligence. If the debtor is guilty of intention or gross negligence, the statutory regulation shall apply. Furthermore, the statutory regulation shall apply to any damage compensation claim based on an intentional or grossly negligent injury of life, body or health.

10. Industrial Property Rights

10.1. If LANCIER CABLE GmbH is to perform according to drawings or models, samples, or using parts supplied by the client, the client shall warrant that industrial property rights of third parties are not infringed hereby. The client shall indemnify LANCIER CABLE GmbH from any and all claims by third parties due to infringement of industrial property rights and shall compensate LANCIER CABLE GmbH for any resulting damage and for his costs and expenditures.

11. Proper Law, Place of Performance, Jurisdiction

11.1. Sole proper law is the law of the Federal Republic of Germany. In case of doubt, the German language version of all contractual provisions shall be decisive.

11.2. Place of performance is D-48317 Drensteinfurt, Federal Republic of Germany.

11.3. If the client is a merchant, a legal person under public law or a special fund under public law, the courts of Drensteinfurt shall have jurisdiction for any and all disputes arising under this contractual relationship, including disputes regarding its creation and its effectiveness as well as for bill of exchange and cheque litigation. LANCIER CABLE GmbH may apply to any other court which has jurisdiction according to statutory provisions.

11.4. If one of the provisions of these terms and conditions of sale and delivery is invalid, in whole or in part, the validity of the remaining provisions shall not be affected. The invalid provision should be replaced by a provision which comes close to the invalid one.

Gildestrasse 15
48317 Drensteinfurt
Germany

Fon:
+49(0)2508/99378-0

Fax:
+49(0)2508/99378 10

eMail :
mail@lancier-cable.de

Internet :
www.lancier-cable.de

Geschäftsführung
General Management
Dipl.-Kfm.
Thomas Vohl

Registergericht
Registered Office
LANCIER
CABLE GMBH
Amtsgericht Münster
HRB 6421

Ust.IdNr. / VAT No. :
DE813506059
Steuer-Nr. / Tax No. :
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Bankers
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BIC/Swift-Code:
GENO DEM 1MSC

Sparkasse
Münsterland-Ost
IBAN:
DE60400501500034007179
BIC/Swift Code:
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