

## 1. SCOPE

1.1 The following conditions apply to any business relations with our customers (hereinafter referred to as "the Purchaser") as far as they are entrepreneurs in terms of § 14 German Civil Code, legal entities of public law or special funds under public law. The conditions apply particularly to contracts on the sale and/or the delivery of movable goods, regardless of whether we produce the goods or purchase them from subcontractors. The present conditions in their respective version also provide the master agreement to future contracts on the sale and/or the delivery of movable goods with the same Purchaser, excluding the necessity to refer to them in each particular case.

1.2 The Purchaser's General Terms and Conditions of Purchase are hereby expressly vetoed. They shall in no case be mandatory to us, even if we do not expressly contradict them at the conclusion of a contract. The sales terms below apply, even if we implicitly execute the Purchaser's order despite being aware of adverse or divergent conditions.

## 2. SALES TERMS

2.1 Any order of goods by the Purchaser shall be deemed a binding contractual offer. Unless otherwise indicated in the order, we shall be entitled to accept this contractual offer within 8 business days upon receipt. Acceptance shall be effected by means of order acknowledgement. Orders shall not be regarded as accepted until they have been confirmed by us. Our sales agents act as negotiators, not as contracting representatives. The Purchaser shall not be permitted to assign claims arising out of the contractual relationship established with us to any third parties.

2.2 Prices indicated in our order acknowledgement shall prevail to the account of services rendered.

2.2.1 The price basis of any order acknowledgement is formed by the price list valid on the respective day of acknowledgement in correspondence with the metal quotation agreed upon (usually the day of order receipt). If the metal quotation is omitted on that day, the subsequent metal quotation shall apply.

2.2.2 If we have received a purchase offer in the form of an order we are able to finally acknowledge including the scheduled delivery date (cleared order), we shall calculate the price according to the price list and metal quotation agreed upon. Any final order acknowledgement requires clarification of the customer, the customer's address, the address for invoicing and delivery, the order content stating article quantities and types to be delivered, discounts, delivery requests or delivery dates respectively and special conditions, where applicable.

2.2.3 For business to be processed within 4 months after contract conclusion we shall be entitled to increase prices agreed upon with regard to a short-term change in the metal quotation. The reason for this is that significant variations compared to prices indicated in the order acknowledgement may arise due to the daily redefinition of the metal quotation.

2.2.4 The metal quotation forms the basis of the raw material calculation or the raw material accounting respectively. It is calculated on the basis of the quotation of the non-ferrous metalworking industry for electrolytic copper wire bars for conducting purposes (DEL notice) plus incurred purchase costs. The DEL notice is published in the business section of leading daily newspapers.

2.2.5 If stocking up on metal and procurement on DEL notice is impossible or not ensured at full volume, we shall account for the actual metal procurement prices plus purchase costs incurred.

2.2.6 For delivery ex distribution centre, prices from the price list valid on the date of distribution and the metal quotation (DEL notice or metal procurement price) on the date of distribution shall apply.

2.2.7 If copper is provided to the supplier by the Purchaser, we shall charge the hollow price. The copper shall be consigned to the supplier's control no later than 5 weeks prior to the acknowledged delivery date.

2.3 Our prices are based on the cost conditions of raw material market procurement costs stated to us at the time of order acknowledgement. If these cost conditions change, we shall be entitled to implement a subsequent price adjust-

ment or, as the case may be, to rescind from the aggregated or remaining order, provided that we notify the Purchaser immediately after the changed conditions have become known to us and, in case of rescission, return payments already received from the Purchaser.

### 2.4 Call orders

If delivery on call is agreed, the Purchaser undertakes to determine and communicate the time of complete delivery within an appropriate period of one month maximum from the date of order acknowledgement. This shall also apply in case of delivery arrangements for certain acceptance dates. Unless a separate agreement on call-off dates is concluded, call orders shall always be delivered within 3 months from the date of order acknowledgement. If the Purchaser does not adhere to the call commitment, we shall be entitled to sue for acceptance and payment. After expiration of the call commitment the prices of the company T.K. Kabel oHG., valid at the time of delayed calls, shall apply to further call arrangements.

## 3. DELIVERY TERMS

3.1 Our delivery commitment implies that we are able to stock up with raw materials necessary for the order on raw material quotations prevailing on the date of order acknowledgement. If this precondition is not given, paragraph 2.3 of our General Terms and Conditions shall apply.

3.2 Periods and dates of delivery are always approximated statements. Any delivery period shall start with the despatch of our written order acknowledgement and the delivery date stated therein at the earliest, but, however, not prior to the provision of documents to be procured or materials to be provided by the Purchaser and the observance of payment terms agreed upon.

3.3 The delivery period shall be deemed observed after the delivery item has left our factory or warehouse or if the readiness for shipment is communicated prior to its expiration.

3.4 If subsequent changes or amendments of the delivery contract are agreed, a new delivery period shall be agreed at the same time if the original period cannot be observed due to the changes or amendments. The new delivery period shall not start prior to the despatch of our new order acknowledgement.

3.5 Events of force majeure shall authorize us to delay performance of services for an appropriate period of time or to rescind because of contractual parts not yet fulfilled, provided that we notify the Purchaser immediately after these conditions have become known to us and, in case of rescission, return payments already received from the Purchaser. Strike, lockout, mobilisation, war, embargo, ban on exports and imports, shortage of raw materials and fuels, fire, traffic blockage, interruption of operations or transport as well as similar conditions, even if such conditions occur on the part of sub-suppliers, shall be deemed equivalent to force majeure. Indemnity claims of the Purchaser shall be excluded in cases of force majeure, provided that neither intent nor an act of culpable negligence occurred on our part. This limitation of liability shall not apply to damages resulting from injuries inflicted to the body, life or health.

3.6 The aforementioned conditions shall not even be covered by us if they occur during a current event of default. We shall notify the Purchaser of the beginning and end of such impediments at earliest convenience.

3.7 Delivery commitments and delivery periods shall only be agreed reserving correct and due receipt of the subcontractor's deliveries. If this is not ensured, we shall be entitled to rescind from the contract without compensation, provided that we notify the Purchaser immediately after these conditions have become known to us and, in case of rescission, return payments already received from the Purchaser. We shall not assume any risk of procurement.

3.8 If any delivery period is exceeded, the Purchaser shall be committed to grant us an appropriate grace period, which may not be less than three weeks.

3.9 After expiration of any acceptance period in accordance with the provision stipulated under paragraph 2.4 of these General Terms and Conditions, we shall no longer be committed to deliver. In this case we reserve the discretionary decision to rescind from the contract, to demand advance payment or to condition our delivery on adequate collate-

ral. This shall also apply in the case of conditions becoming known to us, which justify doubts about the Purchaser's creditworthiness, particularly if the Purchaser does not pay promptly or immediately, despite reminders and overdue claims.

3.10 We reserve the right to deliver up to 10 % of the order quantity in excess or short lengths. Divergences related to raw materials or production remain reserved. Customary excess or short lengths shall be permitted.

3.11 Orders on special services shall exclusively be delivered in manufacturing lengths according to the production conditions.

### 3.12 Shipping charges

We deliver free to the door for a net merchandise value of € 1500,- or more (on metal basis) or free station of the recipient respectively, this shall apply to inland shipment (mainland). In case of international shipment we deliver free up to the German border. We shall charge additional freight for small orders with a net merchandise value of less than € 1500,- (on metal basis).

### 3.13 Packaging charges

Packaging shall be free of charge for a net merchandise value of € 250,- or more. Packaging shall be charged at cost price if the value is less than € 250,-.

3.13.1 Returnable drums and barrels belonging to T.K. Kabel and loaned to the Purchaser with our deliveries shall be charged separately. Barrels and drums shall be taken back and credited with 2/3 of the charged value if they are in a good and reusable condition. Any delivery of skeleton containers and euro-pallets shall be effected on exchange. In case of exchange delays caused by the Purchaser, the Purchaser will be charged with the costs incurred by it.

3.13.2 KTG drums (flange diameter 50 to 280 cm) for cables and wires are the property of Kabeltrommel GmbH & Co. KG (KTG), Cologne, and shall be provided to the Purchaser according to KTG's conditions on the transfer of cable drums.

3.13.3 We shall not grant any freight reimbursement for the collection of goods.

3.13.4 The Purchaser shall indemnify the supplier from the obligation to accept returnable products according to § 4 of the Packaging Directive.

## 4. PAYMENT TERMS

4.1 Invoicing shall be made upon delivery or completion notification. We shall be entitled to assign claims arising out of our business connection.

4.2 Invoices issued to the Purchaser shall be payable as indicated in the invoice.

4.3 In the event of non-compliance with the payment terms we shall be entitled to add interest in the amount of the legal default interest rate currently in force to the invoice amount. The right to enforce further damages, particularly proven increased interest rates, shall remain unaffected thereof. The default consequences shall arise automatically, i.e. independent from the enforcement of default. In the event of default all our accounts receivable, including bills accepted but not yet discharged, shall become due in cash immediately. The Purchaser shall no longer be entitled to sell goods being in our ownership or co-ownership (see clause 6 Retention of title) and shall be committed to provide adequate collateral to us. We reserve the same right in the event of reasonable doubts regarding the Purchaser's creditworthiness. In this case we shall furthermore be entitled to make the delivery of other goods only after the provision of adequate collateral and/or cash in advance.

4.4 Payment shall principally be made in the form of bank transfer. Any payment shall be made with the effect of discharging the debt and exclusively to the bank indicated in the invoice, to which we have assigned our claims arising out of our business connection.

4.5 The Purchaser shall only be entitled to offset or retain payments if the Purchaser's counterclaim(s) is/ are not disputed and legally ascertained. The retention arising out of the same contractual relationship shall, however, remain unaffected thereof.

4.6 Our regional agents do not hold any power for collection.



## 5. TRANSFER OF RISK

5.1 Any risk shall be transferred to the Purchaser after the Purchaser has been notified by us that the goods are reported to be ready for collection or shipment, but no later than on the date on which the goods have left our factory or have been taken over by the Purchaser in our factory. This shall also apply in the event of carriage paid delivery and if the goods are shipped by us upon request of the Purchaser. In the event of shipment being delayed at the Purchaser's request or due to reasons attributable to the Purchaser, the risk shall be transferred to the Purchaser for the duration of the delay.

## 6. RETENTION OF TITLE

6.1 We reserve the title to the property in goods supplied until full payment of any accounts, including accounts accruing in the future, arising out of the business connection, even if payments referring to particularly identified accounts are made. In the event of open account the reserved property shall be deemed collateral to our current account balance claims.

6.2 Goods subject to retention of title may only be sold according to the rules of business transactions. This shall no longer apply in the event of the Purchaser being on default. The Purchaser shall not be entitled to pledge or assign goods as collateral. Pledging on the part of any third parties shall immediately be notified to us.

6.3 Any manipulation, processing or connection of our goods performed by the Purchaser shall in all cases be made for us without the event of liabilities accruing to us. In the event of processing, manipulation or connection to other items not under our ownership, we reserve the right of co-ownership to the new item in an amount resulting from the ratio of the invoice value of processed, manipulated or connected goods subject to retention of title to the value of the new item.

6.4 For collateral purposes the Purchaser shall fully assign to us all claims against any third parties, including any current account balance claims on an open item basis, attributable to the Purchaser in connection with the use of goods subject to retention of title, particularly through resale, manipulation and processing or due to another legal cause (e.g. unlawful act) in the amount of the invoice value of our goods. Any assignment shall act as collateral to any of our claims and particularly to indemnity claims raised against the Purchaser. The Purchaser shall be entitled to collect assigned claims prior to our revocation. In the event of default or other indications of the Purchaser's financial difficulties, the direct debit authorisation shall expire without express revocation.

6.5 If the total realisable value of existing collateral exceeds our claims by more than 10 %, we shall in this extent be committed to release collateral selected by us on the Purchaser's request.

6.6 In the event of default, the Purchaser shall, upon our request, be committed to provide particulars suitable for the enforcement of our rights of retention of title, in particular to issue a statement on goods subject to retention of title and their destination.

6.7 If the Purchaser fails to accomplish the Purchaser's commitments arising out of the mutual business connections, the Purchaser's right to own goods subject to retention of title shall expire. We shall in such cases be entitled to take back goods subject to retention of title. We shall also be entitled to enter the Purchaser's company grounds or other premises for the purpose of taking possession of goods subject to retention of title. Taking back goods subject to retention of title shall constitute rescission from the contract. We shall be entitled to commercialise goods subject to retention of title after their return. Proceeds resulting from the valorisation shall be reduced by reasonable valorisation costs and then be offset against amounts owed by the Purchaser.

## 7. WARRANTY

Unless other directives or references based on special written agreements are to be observed and become an integral part of the contract, we deliver subject to and in accordance with the requirements stipulated by the regulations of the Association for Electrical, Electronic and Information Technologies (VDE).

7.1 The Purchaser's claims for defects shall only be in force if the Purchaser duly observes the Purchaser's obligation stipulated by § 77 HGB (Code of Commercial Law) to inspect the goods and give notice of defects. The Purchaser shall conduct factual and functional inspection and testing of incoming goods immediately upon receipt and by reference to our shipping documents. The Purchaser cannot be exonerated of the obligation to perform inspection. Costs incurred to the Purchaser due to processing of goods without prior inspection shall always be borne by the Purchaser.

7.2 Shortfall quantities and/or apparent defects shall only be warranted upon written notice of the complaint specifying the order and delivery note data and within a period of 10 workdays after distribution.

7.3 If apparent defects have not been contested within the aforementioned period, any claims of the Purchaser in this respect shall be excluded.

7.4 Unapparent defects emerging in the course of time shall immediately be communicated to us by the Purchaser.

7.5 The return of goods necessary in the event of defect requires our prior consent. In this respect the legal regulation on the taxing of costs applies. Returns made without our prior consent shall not require our acceptance. In this case the Purchaser shall solely bear the total costs of return.

7.6 In the event of supplementary performance in the form of a new delivery due to a justified notice of defects, the provisions on the delivery period apply accordingly. We require an appropriate period of time of at least three weeks to be granted to us for rectifying the defects in the form of subsequent improvement.

7.7 The presence of a defect shall constitute the following rights to the Purchaser:

7.7.1 In the event of defectiveness, the Purchaser shall first of all have the right to demand supplementary performance from us. Any supplementary performance can according to the Purchaser's choice be effected by means of removal of the defect or delivery of new goods. We reserve the right to refuse the form of supplementary performance chosen by the Purchaser, if it would only be possible at disproportional cost.

7.7.2 In the event of failed efforts to provide supplementary performance, we reserve the additional right to undertake further supplementary performance according to the conditions indicated under 7.7.1 and within an appropriate period of time. The Purchaser shall have the right to rescind from the contract or to abate the purchase price only if the repeated supplementary performance has failed.

7.7.3 Claims of the Purchaser due to expenditures required for the purpose of supplementary performance, particularly for carriage, route, labour and material costs, shall be excluded insofar as the expenditures are increasing because the delivery item has subsequently been transferred to a location other than the Purchaser's establishment, unless the transfer corresponds to its intended use.

7.7.4 Unless the defect has been fraudulently concealed by us, the warranty period shall principally last one year from the date of delivery of the goods. The Purchaser shall in any case furnish proof of the defect being already present on delivery.

7.7.5 Warranty claims shall principally be excluded if inappropriate modifications, repairs or other interventions have been performed by the Purchaser or any third parties without absolute necessity and the contested defect was caused, or may have been caused, in this way.

## 8. RIGHTS IN TOOLS

8.1 The Purchaser or any third parties shall not acquire any rights (transitional right, rights of use etc.) by reimbursing portions of the costs for tools. In the event of industrial property rights of third parties being infringed due to deliveries according to drawings or other information provided by the Purchaser, the Purchaser shall indemnify us against any claims thereto.

## 9. LIABILITY

9.1 Unless otherwise specified in these General Terms and Conditions including the provisions below, we shall be liable for any breach of contractual and noncontractual obligations according to the relevant legal regulations.

9.2 Unless none of the regulations below applies, we shall in the event of damages – for whatever legal reason – principally be liable only in case of malice and culpable negligence: In the event of ordinary negligence we shall only be liable:

a) for damages resulting from injuries to the body, life or health;

b) for damages resulting from the violation of an integral contractual obligation (i.e. an obligation of such importance that its accomplishment facilitates due execution of the contract in the first place and its observance is and may regularly be trusted by the contractual partner); in this case our liability shall, however, be limited to the reimbursement of the predictable damage typically occurring.

9.3 The limitation of liability according to subparagraph 9.2 shall not apply if we have fraudulently concealed any defect or have assumed warranty for the quality of the goods. The same shall apply to claims of the Purchaser according to the Product Liability Law.

## 10. EXPORT REGULATIONS

If a national Purchaser exports goods abroad, the Purchaser is committed to verify whether the exported goods are subject to restrictions of the German Foreign Trade and Payments Act. The exporter of the goods bears the sole responsibility for observing the respective export regulations. This also applies to the provisions of US foreign trade legislation. We shall in no case assume any warranty that products supplied by us comply with such regulations.

## 11. PLACE OF JURISDICTION

As far as the customer is a merchant in accordance with the Code of Commercial Law, a legal entity of public law or a special fund under public law, our company headquarters shall be the exclusive place of jurisdiction for any legal action taken against us.

In the event of legal action against the Purchaser, we shall also be entitled to bring legal proceedings before a court locally competent for the headquarters or a subsidiary of the Purchaser.

## 12. APPLICABLE LAW

These General Terms and Conditions and any legal relationships between us and the Purchaser shall exclusively be governed by the law of the Federal Republic of Germany.

The UN Convention on Contracts for the International Sale of Goods (CISG) shall be excluded.

## 13. FINAL PROVISIONS

In the event of any regulation under these General Terms and Conditions being void or becoming unenforceable, the effectiveness of the other conditions shall remain unaffected thereof. In this case both parties shall be committed to introduce an effective and enforceable clause, corresponding as far as possible to the economic and non-material goals within the legal restrictions, in place of the void and unenforceable clause.

