

## **General Terms and Conditions Issued 6/2003 KRANIA Kabel-Stecker GmbH**

### **1. Sales Conditions**

**1.1** The Seller hereby agrees to sell goods subject to the General Terms and Conditions contained herein. Conflicting conditions of purchase, even if not expressly refused by the Seller, shall not be binding on the Seller unless specifically agreed to by the Seller in writing. Withdrawal from the contract - cancellation of an order - by the Purchaser, even in the case of deferred delivery, shall not be binding on the Seller until expressly confirmed by the Seller in writing.

**1.2** Any agreement shall become null and void unless expressly confirmed by the Seller in writing within 8 business days. The Purchaser shall not be entitled to transfer the contract, in whole or in part, to third parties.

**1.3** Price quotations shall not be binding on the Seller and shall be submitted subject to confirmation. Only the prices confirmed in the acknowledgement of order shall be binding on the Seller.

**1.3.1** Any acknowledgement of order shall be based on the gross price list valid on the day of confirmation and on the official metal prices quoted on the date of issue of the acknowledgement of order. If no official metal prices are quoted on the date of issue, the subsequent quotations shall be relevant.

**1.3.2** If the Seller is submitted a purchase order on the basis of which he is able to furnish a final confirmation - including the scheduled delivery date - (settled order), the price shall be calculated on the basis of the gross price list and the official metal prices quoted on the business day following the receipt of the order or following the settlement of the order (raw materials market price on reporting date). The issue in writing of the final acknowledgement of order shall be conditional on the following data being available: purchaser identification, purchaser's address, address the invoice is to be mailed to, address the goods are to be delivered to, contents of the order, i.e. amount and execution of the goods to be delivered, discounts, specific customer requirements regarding delivery, delivery dates, and special conditions, where applicable.

**1.3.3** If contracts are to be executed within 4 months after conclusion of the contract, the Seller shall be entitled to increase the agreed prices in the event of a sudden change in the official metal prices.

**1.3.4** Official metal prices form the basis for the calculation and settlement of raw material prices. Official metal prices are determined on the basis of quotations by the non-ferrous metal working industry for electrolytic copper wire bars for use as conductors (DEL quotation). The DEL quotation is published in the commercial and financial columns of major daily newspapers.

**1.3.5** In the event of the Seller's partial or complete failure to procure metal at a price equivalent to the DEL quotation, the goods shall be invoiced on the basis of the actual metal purchase price.

**1.3.6** Deviations of the DEL quotation from the basis of the gross price list shall change the selling price (gross price  $\cdot$  discount) by the product of the copper number and the raw materials price difference (EUR/kg). The DEL quotation relevant for these calculations is the DEL quotation on the day following the date of receipt of the order (incoming mail stamp).

**1.3.7** Goods dispatched from an external warehouse shall be invoiced at prices that are based on the price list valid on the date of dispatch and on the official metal price (DEL quotation or metal purchase price) on the date of dispatch.

**1.3.8** If the Seller is furnished with copper (free issue), the Seller agrees to exclude the copper from the invoiced amount. The Purchaser shall make the copper available to the Seller no later than 5 weeks before the confirmed delivery date.

**1.4** The prices quoted by the Seller are based on the raw material procurement costs to be paid on the raw materials market on the date of the acknowledgement of order. In the event of a change in these costs, the Seller shall be entitled to change the prices even after the acknowledgement of order has been issued or withdraw from the entire order and/or from the order concerning the remainder of the consignment, where necessary.

**1.5** Call orders. If delivery is agreed to be performed on call the Purchaser shall determine the date of the total delivery within a reasonable period of time and inform the Seller in writing hereof. This also applies to scheduled partial deliveries due on specified delivery dates. The Seller shall be informed of scheduled partial deliveries, due upon callforward notice, no later than 3 months (90 days) from the acknowledgement of order, unless a separate written agreement has been entered into with respect to call dates. In the event of the Purchaser's failure to perform the aforementioned obligation, the Seller shall be entitled to bring action against the Purchaser and claim acceptance of the goods and payment. After expiration of the Purchaser's obligation to inform the Seller within the said period, further partial deliveries to be performed on call shall be subject to the prices specified by KRANIA on the date of deferred call-forward notices.

**1.6** Orders shall not be deemed to have been accepted until an acknowledgement of order has been issued by the Seller's headquarters.

### **2. Terms of delivery**

**2.1** The Seller's obligation to perform delivery is conditional on the Seller being able to procure the raw materials required for the execution of the order at the official raw material prices quoted on the date of the acknowledgement of order. In the event of such requirement not being met, clause 1.4 of the General Terms and Conditions contained herein shall be applicable.

**2.2** The indicated delivery date determines the approximate date of dispatch of the goods from the Seller's premises, provided all requirements for uninterrupted production have been fulfilled. If performance of delivery is delayed by reason of interruptions to the production sequence or unforeseen events or by reason of delays attributable to the Seller's subcontractors, which, despite every practicable precaution, result in the Seller's failure to perform delivery, then the Seller's delivery deadline shall be extended by a reasonable period of time. In the event of delivery being precluded as a result of the aforementioned events, the Seller shall be relieved of his obligation to perform delivery.

**2.3** The delivery period agreed upon shall commence on the date a written agreement is reached between the Seller and the Purchaser with respect to the order. Compliance with the delivery deadlines is conditional on all documents concerning the order

being submitted to the Seller in due time and on the Purchaser making payments when they become due and performing any other necessary obligations under the order.

**2.4** In the event of the Seller's failure to procure the raw materials required for the execution of the order, the Seller shall be entitled to withdraw from the contract. The Purchaser's right of rescission is governed by § 326 BGB [German Civil Code]. The Seller shall not be liable to pay damages unless the Purchaser can furnish proof of the Seller's intention and gross negligence.

**2.5** After a specified deadline for taking delivery has expired, the Seller shall no longer be under any obligation to perform delivery. In the event of reasonable doubts arising after conclusion of the contract with respect to the Purchaser's creditworthiness, the Seller may, at his option, withdraw from the contract, demand advance payment or make delivery conditional on collateral. The Seller shall be entitled to such action particularly if overdue payments are not immediately settled by the Purchaser despite the Purchaser having been delivered a reminder.

**2.6** The Seller reserves the right to deliver up to 3 % of the ordered goods short of the specified length. The Seller also reserves the right to deliver goods presenting variations attributable to material-related or production-related factors. The Seller shall be entitled to deliver goods in excess or short of the specified length within usage of trade and custom of the industry.

**2.7** If orders are placed for special goods, the lengths of the goods to be delivered shall be made dependent on production-related conditions.

**2.8** Shipment. For domestic orders, shipment shall be free of charge to the address of the Purchaser or to the railroad station of destination, provided the net value of merchandise is a minimum of EUR 1500. For orders from abroad with a minimum net value of merchandise of EUR 1500, shipment shall be free German border. For small orders with a net value of merchandise of less than EUR 1500, the Seller delivers ex factory.

**2.9** KTG cable drums (with a flange diameter of 50-280 cm) used for cables and conductors are the property of Kabeltrommel GmbH & Co. KG (KTG), Cologne, and are placed at the Purchaser's disposal on the basis of KTG conditions.

**2.10** The Purchaser shall not be reimbursed any freight charges in the event of the goods being collected by the Purchaser.

### **3. Payment conditions**

**3.1** Invoices shall be forwarded to the Purchaser upon delivery. The Seller shall be entitled to assign claims arising from the business transaction to third parties.

**3.2** Invoices forwarded to the Purchaser shall be payable as specified below: (domestic orders)

**3.2.1** 3 % discount for payment within 10 days.

**3.2.2** within 30 days net cash without discount.

The discount period shall commence with the date of the invoice. No discount shall be deducted from increased or reduced copper prices.

**3.3** No other payment conditions shall be binding on the Seller unless specifically agreed to by the Seller in writing.

**3.4** Invoices in the total amount of less than EUR 50 shall be payable net cash.

**3.5** In the event of the Purchaser's failure to make payment when it becomes due, the Seller shall be entitled, without prior agreement, to charge interest in an amount equal to the interest of comparable short-term bank loans. Irrespective of whether such action is taken, delayed payment will have the following consequences. In the event of delayed payment, all accounts receivable, including discounted bills of exchange that have not yet been paid, shall become due in cash immediately. The Purchaser shall no longer be entitled to sell goods that are the Seller's property in whole or in part (cf. clause 5 Retention of title) and agrees to furnish collateral security in an amount equal to the payment due. The same procedure shall be applicable if reasonable doubts arise with respect to the Purchaser's creditworthiness.

**3.6** Payment shall be made by bank or bank credit transfer, or postal remittance. Payment in the form of bills of exchange or cheques and bills of exchange shall be accepted no later than 10 days from the date of the invoice, provided such payment is expressly agreed to by the Seller. Payment in such form shall not be deemed effected until the bill of exchange has been paid by the drawee and the Seller has been relieved of all liabilities under the bill of exchange. The Seller's right to retention of title shall not terminate until the bill of exchange has been paid to the credit of the Seller. All payments shall be made in full satisfaction of debt and exclusively to the HELLER Bank AG, Mainz, to which the Seller has assigned all claims arising from his business relations.

**3.7** Bank charges and interest and other forms of financing charges shall be borne by the Purchaser.

**3.8** The Purchaser shall not be entitled to set off sums against any payment due or withhold payment unless compensating counterclaims are accepted by the Seller.

**3.9** The Seller's regional agents are not entitled to collect payment.

### **4. Passing of risk in goods**

Any risk in the goods shall pass to the Purchaser after the Purchaser has been notified by the Seller that the goods are ready to be collected or shipped, or after the goods have left the Seller's premises or after they have been collected by the Purchaser from the Seller's premises. This also applies if carriage is paid by the Seller. In the event of shipment being delayed at the Purchaser's

request or due to reasons attributable to the Purchaser, the risk in the goods shall pass to the Purchaser for the duration of the delay.

#### **5. Retention of title**

The Seller reserves title to the ownership of the goods supplied and to the products obtained from the processing of the goods supplied until all debts to be paid by the Purchaser to the Seller, including liabilities on current account, have been paid. Conflicting conditions of purchase shall not be binding on the Seller; the Seller reserves title to the ownership of the goods and shall not transfer ownership of the goods until all payments have been made. The Seller's retention of title also applies to the value added to the goods by machining or processing. The new product obtained from the machining or processing of the goods shall be the property of the Seller. The new product obtained from the machining or processing of the goods shall substitute the original goods owned by the Seller by way of security. In the event of the original goods owned by the Seller by way of security being machined or processed and joined with goods not in the property of the Seller, the Seller shall become co-owner of the new product, with the Seller's fractional share in the ownership of the product amounting to a sum equal to the total invoice amount of the original goods owned by the Seller by way of security. At the Seller's request, the Purchaser shall inform his debtors about the transfer of ownership. In the event of the collateral exceeding the Seller's receivables by over 20 %, the Seller shall release ownership by way of security with respect to goods to be determined at the Seller's discretion and at the Purchaser's request. The retention of title shall also be applicable to the proceeds obtained from the sale of the goods supplied and to all rights and claims replacing the original goods. The Purchaser shall assign in advance all receivables he is entitled due as a result of such transactions to the Seller by way of security. The Purchaser shall be entitled to collect the receivables assigned to the Seller for as long as the Purchaser meets his contractual obligations to pay. The Purchaser shall notify the Seller immediately of any access of third parties to goods supplied to which the Seller has reserved title or to any receivables assigned to the Seller. The Purchaser shall transfer any payments assigned to and collected on behalf of the Seller immediately to the Seller, provided payment is due. In the event of the Purchaser not complying with this obligation, the collected amounts shall still be due to the Seller and shall be retained separately. Any intervention costs shall be borne by the Purchaser. We are entitled to obtain without recession from the contract of sales our rights of retention of title – in particular the revoking of the delivered goods under retention of title.

#### **6. Warranty**

The Seller warrants that the goods delivered conform with the regulations and requirements stipulated by the Verband Deutscher Elektrotechniker [Association of German Electrotechnical Engineers] unless other guidelines or recommendations are specified in writing and form an integral part of the contract.

**6.1** The Purchaser shall carry out an inspection of incoming shipments on the basis of the Seller's shipping documents and check the goods immediately upon receipt for completeness of supply and compliance with the specification. The Purchaser cannot be relieved of the obligation to perform inspection. Costs incurred by the Purchaser as a result of processing goods without prior inspection shall be borne by the Purchaser.

**6.2** The Seller's warranty shall not cover shortfalls in the quantities delivered and/or patent external defects unless the Purchaser notifies the Seller in writing of the shortfall or defect within 10 business days from the dispatch of the goods, quoting all relevant data contained in the order and delivery note.

**6.3** The Purchaser shall be entitled to make claims arising from a patent or concealed defect or in the event of the goods not corresponding to the agreed specification. Such claims shall not be accepted unless they are brought forward within 6 months from the date of the delivery note.

**6.4** Complaints shall not be accepted by the Seller unless he is notified of the defect immediately upon discovery and a sample of the faulty goods is made available to the Seller at the Purchaser's expense.

**6.5** If goods are found to be defective or in the event of the goods not corresponding to the specification, the Seller shall, at his option, rectify the defect or replace the goods at his cost. Such obligation applies exclusively to defects that are proved to be attributable to circumstances, in particular faulty design, materials or workmanship, that have occurred prior to the passing of the risk in goods and have rendered the goods unusable or considerably reduced their usability.

**6.6** In the event of a justified complaint, the Purchaser shall grant the Seller a reasonable period of time to rectify the defect or replace the goods delivered. In the event of the Purchaser's failure to grant such reasonable period of time, the Seller shall be relieved of any warranties and delivery obligations.

**6.7** In the event of the Seller's failure to rectify the defects within a reasonable period of time or if there are compelling reasons that preclude rectification, the Purchaser shall be entitled to demand a reduction of the purchase price. In the event of the Seller's and Purchaser's failure to reach an agreement with respect to the reduction, the Purchaser shall be entitled to terminate the contract.

**6.8** In the event of the Purchaser or third parties performing modifications, repair work or other measures on the goods in an improper manner, the Seller shall be relieved of all warranties.

**6.9** In the event of the Purchaser submitting a complaint, he shall not be entitled to withhold payment unless the complaint is justified beyond all doubt.

**6.10** Any claims of the Purchaser resulting from defects or from the goods supplied not corresponding to the specification shall be barred by the statute of limitation after 24 months from the date of the complaint.

**6.11** Other claims of the Purchaser or third-party claims, in particular for damages in the event of defects not concerning the goods supplied or consequential damage, shall be excluded unless in cases of intention and gross negligence in which the Seller shall be obliged to assume liability.

**6.12** The Seller shall accept no goods returned by the Purchaser unless the prior consent hereto is obtained from the Seller.

#### **7. Rights in tools**

Should the Purchaser or third parties assume a share of the tool costs, they do not acquire any rights in the tools (transitional rights, rights of use etc.). If goods supplied by the Seller according to drawings or other information furnished by the Purchaser infringe industrial property rights of third parties, the Purchaser shall indemnify the Seller against all claims arising as a result of such infringement.

#### **8. Liability**

Unless otherwise specified in the terms and conditions contained herein, the Seller shall be liable for the Purchaser's claims for damages arising from positive violation of contractual duties, from the violation of duties in the course of negotiations preceding the conclusion of the contract and from unlawful acts. The Seller's liability shall be as set forth in the following: liability for personal injury is determined by EUR 10,000,000. damage to property is limited to EUR 51,129 per occurrence of damage to property and the double of these sums for all insurance cases of one year Those sums obtain for the range of product liability. The limitation of liability as per sub-clause b) and the exclusion of liability as per sub-clause c) shall not be applicable if liability is mandatory in the event of damage to privately used goods according to the product liability law or in the event of intention or gross negligence.

#### **9. Export regulations**

A purchaser exporting goods outside of BRD or EU has the liability to oblige to the appropriate legal laws. The exporter is solely liable for his exports. This applies as well to the export-regulations of the USA.

#### **10. Place of performance and jurisdiction**

The place of jurisdiction for either party with respect to liabilities, including legal proceedings related to bills of exchange and legal documents, shall be Erfurt. All relations arising out of the contract shall be governed by German law, not including the United Nations Convention on Contracts for the International Sale of Goods (CISG).

#### **11. Final provisions**

In the event of one or several of the provisions of the General Terms and Conditions contained herein becoming ineffective, the validity of the other provisions shall remain unaffected.