

## Terms & Conditions Of Electric Wholesalers for transactions with business customers

### - As of 2018 -

#### 1. APPLICATION OF TERMS

1.1 These Conditions apply to all contracts concerning the sales and delivery of Goods and any other related business transactions of the Seller with companies, legal entities, or special estates under public law. Variations to these Conditions and/or the Buyer's Terms and Conditions of Purchase shall have no effect unless expressly agreed.

1.2 In existing business relations, all transactions between merchants are subject to the following Terms & Conditions, unless the Buyer expressly objected, even if they are not referred to specifically in each individual case.

1.3 In case of doubt, the most recent version of the Incoterms applies for the interpretation of commercial terms.

#### 2. QUOTATIONS AND CONTRACTS

2.1 Prices displayed in any catalogue, price list or on websites are – unless otherwise stated – an invitation to place an order only and subject to change.

2.2 No order placed by the Buyer shall be deemed accepted by the Company until a written confirmation is issued by the Company or (if earlier) the Company delivers the Goods to the Buyer. If Goods are dispatched immediately after the order is placed, the delivery note and/or invoice shall confirm the Company's order acceptance.

2.3 Any oral condition, warranty, or representation given or made by Company staff shall not be binding unless confirmed in writing. Oral agreements between the Buyer and the Seller or authorised representatives remain unaffected by this.

2.4 If the Company – after signing the Contract – becomes aware of facts, i.e. late payment for prior deliveries, or has any other reasonable grounds to believe that, on the balance of probabilities, the Buyer may be unable to pay the Price of the Goods, the Company reserves the right (pursuant to section 321 of the German Civil Code) to demand – within an appropriate period of time - additional security is provided, or payment is matched with delivery. In case of refusal or upon expiration of time the Company reserves the right to terminate the Contract.

2.5 If the Buyer fails to and/or is unable to pay its debts, resolves to appoint an administrator or a petition or an application for an administration order is made, or any step is taken to appoint an administrator of the Buyer out of court, or the Buyer enters into administration, or the Buyer enters into liquidation (whether voluntary or compulsory), or a resolution is passed or a petition presented to any court for the winding-up of the Buyer, or any other proceedings are commenced relating to the insolvency or possible insolvency of the Buyer, the Company reserves the right to immediately terminate any Contract then in force.

#### 3. PRIVACY

The Company collects, stores, and uses personal data (name, address, e-mail, telephone number) of the Buyer. The processing of this personal data is a necessary requirement to fulfil contractual obligations. Without the provision of relevant data and the Buyer's consent to store and use the information, the Company is unable to fulfil its obligation. Data will be stored for the duration of the business relationship and/or as long as required by legal or statutory retention periods, as long as legal claims may arise and as long as other legitimate reasons justify further storage. In compliance with legal provisions, the Buyer has the right to obtain information about the personal data stored about them, the right to demand correction, the right to request deletion and/or the restriction of processing, the right to revoke declaration of consent, the right to data portability and the right to file a complaint with a supervisory authority.

The contact detail of the Company's Data Protection Officer is:

Edmund Hilt  
E-Mail: [datenschutz@hilt-evolution.com](mailto:datenschutz@hilt-evolution.com)  
Phone: +49 160 7464344  
Web: [www.hilt-evolution.com](http://www.hilt-evolution.com)

#### 4. ADDITIONAL SERVICES

Additional services including advisory services, planning, and design services are incumbent upon the Buyer and shall not be transferred to the Company unless agreed otherwise. Any statement or advice is given without any commitment and not subject of the Contract. If the Company provided additional services, i.e. the planning/programming for the installation of complex building control systems, building management systems, and network systems (e.g. EIB) the Buyer is obliged to follow these instructions without any changes and without any minor deviation – during the installation and subsequent repairs – unless the Company agrees otherwise in writing. The Company is not liable for damages and/or expenditure caused by unauthorized deviations from the specifications provided by the Company.

#### 5. DELIVERY, RISK, DELAY, AND EXPORT REGULATIONS

5.1 Delivery of the Goods shall be made at the Company's premises, unless some other place for delivery is specified in the order confirmation.

5.2 Risk of damage to or loss of the Goods shall pass to the Buyer upon delivery. The risk shall pass to the Buyer once the Goods have been handed to the carrier, at the latest when the Goods leave the Company's premises, even if the delivering vehicles belong to the Company. The same applies if Goods are dispatched from third party premises (so called drop shipping).

5.3 At Buyer's request and expense, the Company may arrange adequate insurance for the transportation of the Goods.

5.4 In the event of delivery delay caused by the Buyer's failure or expressed wish, the Company stores and insures the Goods at Buyer's risk, request, and expense. In this case, the time of notification that the Goods are ready for dispatch shall be deemed the time of delivery. Risk of damage to or loss of the Goods shall pass to the Buyer as soon as the Buyer failed to take the delivery or failed to pay its debts.

5.5 The Company may deliver the Goods by separate instalments to an acceptable extent.

5.6 The term for delivery may extend – even if there already is a delay – in the event of force majeure and all other unforeseen hindrances or circumstances beyond the Company's control, including but not limited to industrial disruption, strike, lock-out, traffic conditions, adverse weather, or cyber attacks on the IT system, unless those hindrances are demonstrably of no consequence for the delivery of the Goods ordered by the Buyer. Delays by subcontractors and suppliers caused by force majeure or unforeseen conditions are deemed to be beyond the control of the Company. The Company shall notify the Buyer of the nature, the beginning, and end of any delivery obstacle without undue delay. The Buyer is entitled to demand a statement of the Company, whether or not the Company intends to withdraw from the Contract or plans to deliver the Goods within an appropriate period of time. If the Company fails to declare itself, the Buyer has the right to withdraw from the Contract. In this case, claims for damages are excluded. The same regulations apply if the Buyer is subject to an event of force majeure or any other adverse condition beyond the Buyer's reasonable control.

5.7 The Company shall not be liable for any delivery delay unless caused by the Company itself or its vicarious agent. The Company shall not be liable for delay caused by upstream suppliers, as they are not its vicarious agents. However, the Company shall transfer any and all claims and entitlements against its upstream supplier to the Buyer upon request.

5.8 In event of delivery delay the Buyer shall notify the Company upon request whether or not the Buyer insists on delivery or intends to withdraw from the Contract and/or claims damages instead of fulfilment of the Contract.

5.9 Where Goods are supplied for export from Germany special legal, administrative, or regulatory requirements may apply in the territory of importation depending on the nature and/or intended use of the Goods. In the event of export, the Company will notify the Buyer of relevant national and international export regulations, e.g. the Export Control Regulations of the European Union.

5.10 Deliveries to the Buyer are subject to national or international foreign trade legislation, embargos and any other legal prohibition whatsoever.

#### 6. PACKING

6.1 The Price does not include the costs of packing.

6.2 In case the Company involves a waste management enterprise under German Packaging Regulations as amended from time to time or (as of 1 January 2019) under the Packaging Act, the Buyer shall have the packaging material ready and hand it to the waste management enterprise upon request. If – against payment of waste disposal compensation – the Buyer agrees not to exercise the right to return packaging materials, the Buyer shall hand waste packaging to an approved waste management enterprise that ensures recycling and disposal pursuant to legal requirements.

6.3 Reusable packaging remains property of the Company. Within 14 days from the date of delivery, the Buyer shall notify the Company in writing when packaging units are ready for collection. In case the Buyer fails to notify the Company upon request, the Company may charge a lending fee of ...% of the purchase price per week (full purchase price at most) or invoice the Buyer for the packaging material in which case the invoice is due and payable immediately upon receipt.

6.4 Cable reels owned by Kabeltrommel GmbH & Co. KG, Cologne, [KTG] or other third parties are delivered for and on behalf of their Owners and under their Owner's Terms and Conditions – especially under the KTG Leasing Terms and Conditions for Cable Reels and Rope Drums as amended from time to time. Copies of these Terms and Conditions are available on request or online at the KTG website (<http://www.kabeltrommel.de/unse-re-pulen/ueberlassungsbedingungen.html>). If the Buyer fails to return reels in due time, the Company will pass additional lending fees charged by cable reel suppliers on to the Buyer.

6.5 The KTG Leasing Terms and Conditions also apply for KTG plastic cable reels with a diameter of up to 600 mm, unless German Packaging Regulations as amended from time to time or (as of 1 January 2019) the Packaging Act impose additional take-back obligations. The first sentence of subparagraph 6.2 applies accordingly.

#### 7. PRICES AND PAYMENT

7.1 The Price for the Goods is exclusive of any value added tax or any other applicable tax which the Buyer shall pay in addition when it is due to pay for the Goods.

7.2 Invoice is due and payable in full immediately upon receipt of the Goods, unless agreed otherwise. The same applies for maintenance and repair invoices.

7.3 The Company does not accept bills of exchange unless previously agreed. Payment by bills of exchange and/or cheques is conditional and is defeated as between the parties by dishonour of the bill of exchange and/or the cheque on due presentment.

7.4 In case of late payment, statutory regulations apply. I.e., in the event of late payment, the Company is entitled to charge interest of 9 percent above the base rate and a fixed fee of 40 Euros for payment claims. The Company reserves the right to cancel any discount offered to the Buyer in the event of late payment for prior deliveries.

7.5 If the Buyer fails to fulfil its obligations under the Terms of Payment or the Company becomes aware of facts that provide reasonable grounds to believe that, on the balance of probabilities, the Buyer may be unable to pay the Price of the Goods, the full amount of all claims shall be immediately due and payable, regardless of the maturity of any bills of exchange taken in or possibly granted deferrals. In this case, the Company reserves the right to demand additional security is provided or payment is matched with delivery.

7.6 If the Buyer is in default, the Company is entitled to revoke authorisation granted to the Buyer under subparagraph 8.6 of these Terms and Conditions. In such event, the Company is furthermore entitled to demand payment is matched with delivery. However, the Buyer may provide additional securities to cover the amounts due to the Company and thus avoid legal consequences.

7.7 Any fault or defect, which was specifically drawn to the Buyer's attention before the Contract was made, does not entitle the Buyer to refuse or delay Payment. The same

applies if the Buyer due to negligence was unaware of any faults or defects unless the Company failed to disclose known defects and/or expressly warranted that the Goods are of satisfactory quality. Apart from that, the Buyer may only reduce Payment to a reasonable sum.

7.8 The Buyer is not entitled to reduce Payment unless the Company accepts the Buyer's claims and/or the Buyer's claims are undisputed and legally established. Furthermore, the Buyer's claims need to be based on the same Contract with the Company and/or the Buyer is entitled to refuse Payment under section 320 of the German Civil Code.

## **8. PROPERTY**

8.1 Ownership of the Goods shall not pass to the Buyer until the Company has received Payment in full. In existing business relations, ownership of the Goods shall not pass to the Buyer until the Company has received in full all sums which are or which become due to the Company from the Buyer on any account (reservation of title). The same regulations apply if the Buyer and the Company agreed to invoice the Buyer for current account deficits. Reservation of title does not apply to pre-payment, cash transactions, or if payment is matched with delivery. In the event the Buyer makes Payment by a bill of exchange issued by the Company, ownership of the Goods shall not pass to the Buyer until the Buyer pays the bill of exchange upon maturity. In the event of Buyer's default, the Company, on reasonable notification, reserves the right to reclaim the Goods and the Buyer is bound to return the Goods.

8.2 If Goods subject to retention of title should be converted into new products, the conversion shall be deemed to have been effected on behalf of the Company but without any obligations on the Company's part. The Company shall have the full legal and beneficial ownership of the new products. In the event such conversion involves the admixture of any other good, the Company shall acquire co-ownership of the new products corresponding to the ratio of the value of Goods subject to retention of title to the value of the new products. In the event such conversion involves the admixture of any other goods not in the possession of the Buyer in accordance with sections 947, 948 of the German Civil Code, the Company shall acquire co-ownership of the new products pursuant to statutory regulations. If in the process of such conversion the Buyer acquires sole ownership of the new products, the Buyer transfers co-ownership to the Company corresponding to the ratio of the value of the Goods subject to retention of title to the value of the new products at the time of conversion. In all such events the new products are Goods subject to retention of title and the Buyer is bound to preserve such Goods on behalf of the Company at the expense of the Buyer.

8.3 The Buyer is entitled to sell Goods subject to retention of title to a third party in the ordinary course of business on condition that the Buyer transfers to the Company the claims against such third party emanating from such transaction at the time such contract is made. The Company shall accept such transfer. Value of the Goods subject to retention of title is the amount invoiced by the Buyer unless third parties' rights are involved. If the Buyer sells Goods subject to retention of title and co-owned by the Company to a third party in the ordinary course of business, the Buyer is bound to transfer claims against such third party to the Company. The amount of the claim transferred to the Company corresponds to the ratio of the title owned by the Company to the title owned by the Buyer.

8.4 If the Buyer installs Goods subject to retention of title into property, ships, ships under construction, or aircrafts in the possession of any third party, the Buyer transfers to the Company the claims, ancillary claims, and prior-ranking equitable mortgages against such third party emanating from such instalment at the time such instalment is made. The amount of the claim transferred to the Company corresponds to the ratio of the title owned by the Company to the title owned by the Buyer. The Company shall accept such transfer. Subparagraph 8.3, sentences 2 and 3 of these Terms and Conditions apply accordingly.

8.5 The Buyer is entitled to sell, use and/or install Goods subject to retention of title only in the ordinary course of business and only on condition that the Buyer – pursuant to subparagraphs 8.3 and 8.4 respectively – transfers to the Company all claims against any third party emanating from such transaction at the time such contract is made. The Buyer is not entitled to pledge, charge, or assign to third parties the Goods subject to retention of title or allow any lien to arise thereon. If the Buyer sells Goods subject to retention of title to any third party, the Buyer is entitled to sell receivables to a factor only on condition that proceeds from factoring exceed the amount due by the Buyer and on condition that the Buyer immediately notifies the Company of the factor and all accounts involved. The invoice amount is due and payable immediately upon receipt of proceeds from factoring.

8.6 The Company grants the Buyer revocable authorisation to collect on behalf and to the benefit of the Company all receivables assigned to the Company under subparagraphs 8.3 to 8.5 of these Terms and Conditions. The Company will exercise its own right to collect such receivables only if the Buyer fails to pay the amount due to the Company and/or any amount due to any third party or if fulfilment of obligations appears to be at risk. On request, the Buyer is obliged to notify the Company of all debtors of the receivables and to give notice of the assignment to all debtors involved. However, the Company is also entitled to notify such debtors of the assignment of receivables.

8.7 The Buyer is obliged to immediately notify the Company of any debt enforcement by third parties into the Goods subject to retention of title and/or into receivables assigned to the Company. Furthermore, the Buyer shall immediately transfer to the Company all documents to support legal objection.

8.8 If the Buyer fails to and/or is unable to pay its debts or a petition or an application for an administration order is made, the Buyer forfeits the right to sell, use and/or install Goods subject to retention of title. In such event, the Buyer furthermore forfeits the right to collect receivables assigned to the Company. In the event of any act of protest of a cheque or bill of exchange, the Buyer equally forfeits the right to collect receivables on behalf of the Company. Nothing in this section affects the rights of insolvency administrators.

8.9 In the event the total value of the Goods subject to retention of title exceeds by more than 10 percent of the amount due by the Buyer, the Company on request assigns part of its security interest to the Buyer. However, the Company determines the nature of the security interests assigned to the Buyer.

8.10 The value of the Goods subject to retention of title is the gross amount invoice for Goods issued by the Company.

## **9. WARRANTY, WARRANTY CLAIMS AND LIABILITY**

Pursuant to section 434 of the German Civil Code the Company is only liable if:

9.1 The Buyer inspects the Goods immediately upon delivery for quantity, conformity with Contract, and fitness of purpose and notifies the Company in writing of any apparent defects and/or non-conformity without undue delay. In the event of the later discovery of a defect, the Buyer informs the Company immediately in writing. If the Buyer fails to report deficiencies, the Goods are considered as approved. In this case, the Buyer forfeits all claims arising from a defect. In the event of transactions between merchants, nothing in this section affects the parties' rights under section 377 of the German Commercial Code.

9.2 In the event of intended installing, mounting, or attaching of the Goods, the Buyer is obliged to check the characteristics of the Goods upon receipt for conformity with the intended use. Any defect or lack of conformity shall be immediately reported to the Company in writing, insofar as an examination of characteristics is reasonable at this point of time. If the Buyer fails to notify the Company of any defects in the Goods characteristics as specified in sentence 1, although an examination would have been reasonable, or if the Buyer fails to notify the Company of any defects within an appropriate period of time, Goods are considered as approved and the Buyer forfeits all claims arising from these defects. In the event of transactions between merchants, nothing in this section affects the parties' rights under section 377 of the German Commercial Code.

9.3 If the Buyer fails to check the external and internal characteristics of the Goods with special regards to their intended use prior to installing, mounting, or attaching the Goods, the Buyer acts with gross negligence pursuant to section 439 subsection 3, section 442 subsection 1 sentence 2 of the German Civil Code. In this case, the Buyer forfeits all claims arising from these defects, unless the Company fraudulently concealed the defects, or explicitly guaranteed a certain quality of the Goods.

9.4 If the Buyer discovers any defect or lack of conformity, the Buyer shall grant the Company access to the rejected Goods. The Company has the right to inspect, test, and sample the Goods to determine the conformity or condition of the Goods within an appropriate period of time. In case of denial, the company does not assume liability. The Buyer shall not exercise ownership of the Goods, i.e. the Buyer shall not divide, re-sell, and/or process the Goods before the Buyer and the Company agree to the settlement of the claim.

9.5 The Company has the right to remedy faulty Goods. Any question as to the remedy (replacement, repair) is to be determined by reference to the lack of conformity and the Buyer's justified interests. If the Company fails to remedy within a reasonable time despite setting a deadline and granting extension of time, the Buyer may require the Company to reduce the purchase price or rescind the Contract without prejudice to other claims for damages pursuant to subparagraphs 10.1 to 10.5 of these Terms and Conditions. The Buyer is not entitled to have the Contract rescinded if the lack of conformity is minor.

9.6 If the Goods lack conformity with the intended use upon the passing of the risk and the Buyer has installed or attached the Goods, the Buyer may claim reimbursement of the cost of removing the defective Goods and installing or attaching the replacement Goods pursuant to section 439 subsection 3 of the German Civil Code („removal and installation costs“) only in accordance with provisions set out in subparagraphs 9.7 and 9.8 of these Terms and Conditions.

9.7 Necessary costs under section 439 subsection 3 of the German Civil Code are only those costs for removing the defective Goods and installation of replacement Goods that comply with standard market conditions and are documented in text form. The Buyer is not entitled to claim any advance money for removal and installation costs. Furthermore, the Buyer is not entitled to reduce Payment for any Invoice issued by the Company to settle claims for reimbursement of removal and installation costs unless the Company agrees otherwise in writing. Subparagraph 7.8 of these Terms and Conditions remains unaffected. Apart from the removal of defective Goods and the installation of replacement Goods the Company is not liable for any other costs, in particular not for consequential damages caused by defects, including but not limited to loss of profit, calculated profit margins, business interruption loss, and additional costs for replacement goods. Those costs are not part of subsequent performance and will not be reimbursed under section 439 subsection 3 of the German Civil Code.

9.8 In the event of disproportionate costs for expenses under section 439 subsection 3 of the German Civil Code – disproportionate especially with regard to the value that the Goods would have if there were no lack of conformity and to the significance of the lack of conformity – the Company is entitled to refuse subsequent performance and replacement of defective Goods.

9.9 If the Goods have been transferred to a place other than the Buyer's place of business or the place for delivery specified in the Contract, the Company shall not be held liable for any additional expenses including travel and transport costs, labour costs, and cost of material in the event of cure for defective Goods, unless the transfer complies with the intended use of the Goods.

9.10 In the event of unjustified damage claims, the Buyer shall reimburse the Company all costs incurred if the Buyer was aware of or negligently not aware of the lack of a defect upon passing of risk and the cause of defect lies within the Buyer's responsibility.

9.11 Any claims for defects of quality shall be time-barred after the expiry of 12 months from the date of delivery, unless longer periods are prescribed by German law – including buildings and objects used for buildings under section 438 subsection 1 number 2, fraudulent concealment under section 438 subsection 3, recourse claims under section 445 b subsection 1 (provided that the final buyer is a consumer), and construction defects under section 634 a subsection 1 number 2 of the German Civil Code.

9.12 Claims for recourse under sections 445 a and 478 of the German Civil Code are justifiable only if the customer was entitled to recourse and only within the limits of statutory regulations and not to any other extend possibly hold out as a courtesy of the Buyer. Claims for recourse are justifiable only if the person entitled to recourse fulfils its obligations including the fulfilment of the duty of inspection, notification, and rejection.

9.13 The Company's liability for damages and/or liability for wasted expenditure caused by defects as to quality is subject to subparagraph 10.1 to 10.5 (Limitation of Liability) of these Terms and Conditions.

## **10. LIMITATION OF LIABILITY**

10.1 The Company's liability for damages and loss is subject to statutory regulations and limited to the extent caused by any wilful or negligent acts or omissions (torts) of the Company or its vicarious agent. The Company is liable for any failure to fulfil its fundamental

obligations under this Contract within the limits of statutory regulations. Fundamental obligations are obligations essential for the duly performance of the Contract and obligations whose fulfilment both Contract parties may typically rely on. Furthermore, liability is limited to damages and/or loss foreseeable and typical for this type of contract. The above shall not constitute a reversal of the burden of proof to the disadvantage of the Buyer. Statutory rights, such as liability in the case of personal injury or death remain unaffected. Furthermore, the above shall not affect the Product Liability Act.

10.2 Any other liability other than described above in this section is hereby expressly excluded. The same regulations apply if the Buyer does not claim for damages but demands compensation for wasted expenditure instead.

10.3 Statutory limitation periods apply in case of liability for damages and loss caused by any wilful or negligent acts or omissions of the Company or in case of liability for personal injury or death.

10.4 In all other cases, limitation periods for defects as to quality shall be pursuant to subsection 9.11 of these Terms and Conditions.

## **11. REPAIRS**

11.1 Place of Delivery and Payment for Contracts under these Terms and Conditions is the registered office of the Company.

11.2 If any dispute arises between the parties with respect to the performance of any Terms and Conditions of the Contract or the Payment for the Goods including action on a bill of exchange and action on cheques or any other dispute between the Company and the Buyer, such dispute will be settled by the competent court of the Company's registered office provided that the Buyer acts as merchant, corporate body under public law, or special fund under public law. However, the Company may apply to the competent court of the Buyer's place of business to file action against the Buyer.

11.3 Both parties understand and agree that all agreements between the Company and the Buyer shall be governed by and construed in all respects in accordance with the law of the Federal Republic of Germany. All agreements are not to be subject to and interpreted according to the application of the United Nations Convention of International Sale of Goods.

**Ernst Granzow GmbH & Co. KG, Hertichstr. 27, DE-71229 Leonberg**

**TeL. +49 7152 18 0**

**Fax +49 7152 18 108**

**[www.granzow.de](http://www.granzow.de)**

## **LANGUAGE**

The German version of the above Terms and Conditions shall prevail, and the English translation thereof is for reference only. You hereby confirm that you have read and understood the relevant German version.