



## Conditions of Purchase of KAMA GmbH (KAMA)

### Section 1: General

- 1.1. Our Conditions of Purchase shall govern the contract exclusively; any contradictory or divergent provisions of the supplier are rejected unless these are expressly accepted in writing by us. Our Conditions of Purchase govern the contract even if we accept the delivery of the supplier without any reservation although we are informed about contradictory or divergent conditions of purchase of the supplier.
- 1.2. Our Conditions of Purchase shall apply only to entrepreneurs within the meaning of Sec. 14 German Civil Code (BGB).
- 1.3. As far as we have on-going business relations with the supplier these Conditions of Purchase shall apply to all future transactions between us and the supplier.

### Section 2: Offers, Specifications, Tools

- 2.1. The supplier needs to accept our order within six days.
- 2.2. We reserve property rights and copyrights to illustrations, drawings, calculations, and other documents; they must not be disclosed to third parties without our explicit written consent. The buyer is not allowed to pass them to third parties without our prior explicit written consent. They are to be used solely for the manufacturing based on our order; after the execution of the order they are to be returned to us without being asked. They are to be kept secret from third parties.
- 2.3. We acquire title to the tools and other manufacturing devices owned by the manufacturer or tools and other manufacturing devices purchased or manufactured during the contract term that are needed in particular for the production of the goods to be supplied and are fully paid by us ("KAMA-Manufacturing Devices"); title and possession passes to us upon our full payment. For the purpose of the passing of title it is agreed that the supplier shall hold the KAMA-Manufacturing Devices as borrower on our behalf. The KAMA-Manufacturing Devices are to be marked appropriately and clearly visible as our property. The KAMA-Manufacturing Devices must not be used for the execution of orders of delivery of other customers, unless we give our written consent to it. The KAMA-Manufacturing Devices have to be rendered to us on our request if the contract is terminated or the supplier is temporarily unable to supply us.
- 2.4. If we pay only in part for the tools or manufacturing devices in the possession of the manufacturer or those purchased or manufactured during the contract term that are needed in particular for the production of the goods to be supplied, Sec. 2.3 shall apply correspondingly; we acquire pro rata joint ownership.

### Section 3: Prices and Payment Terms

- 3.1. The purchase price set forth in the order is binding. Unless otherwise agreed in writing, the purchase price includes delivery free our plant, including packaging. We do not bear the cost for an insurance effected by the supplier or the transport agency.
- 3.2. The statutory VAT is included in the purchase price.
- 3.3. Unless explicitly agreed otherwise in writing, we effect payment of the purchase price within 14 days, as from the delivery and receipt of invoice, with 2 % discount or within 30 days, as from the delivery and receipt of invoice, without discount.
- 3.4. We are entitled to claim set-off and rights of retention as provided by statutory law.

### Section 4: Term of Delivery

- 4.1. The term of delivery set forth in the order is binding.
- 4.2. The supplier is obliged to give us immediate written notice if circumstances occur or if such circumstances become apparent that will make it impossible to meet the agreed term of delivery.
- 4.3. We are entitled to statutory claims in case of belated delivery.
- 4.4. The delivery notice has to be transmitted in sufficient time prior to the delivery date. If we receive incorrect or incomplete delivery notices, bills of lading, or other transport documents the supplier is obliged to pay compensation for the damage incurred therefrom at our end.
- 4.5. The supplier shall send us invoices twofold, which have to be marked explicitly as original and copy.
- 4.6. We are entitled to return the packaging to the supplier.

### Section 5: Liability for Faults

If the goods purchased are faulty we shall have the rights provided for by statutory law. The same applies to the limitation period of our claims based on faults.

### Section 6: Jurisdictional Venue, Place of Performance, Applicable Law

- 6.1. The exclusive place of jurisdiction is Hamburg.
- 6.2. Unless not otherwise stipulated in our order, the place of performance for the delivery is our receiving plant. The place of performance as to the payment is Dresden, Saxony in Germany.
- 6.3. This contract is governed by the laws of the Federal Republic of Germany, excluding CISG.

as per 1 January 2002



## **KAMA GmbH - General Terms and Conditions of Sale and Delivery**

### **Section 1: General**

- 1.1. Our general terms and conditions of sale and delivery (General Terms and Conditions of Sale and Delivery) shall govern the contract exclusively; any contradictory or divergent general terms and conditions of sale and delivery of the buyer are rejected unless these are expressly accepted in writing by us. Our General Terms and Conditions of Sale and Delivery shall govern the contract even if we supply the buyer without any reservation although we are informed about contradictory or divergent terms and conditions of sale and delivery of the buyer.
- 1.2. Our General Terms and Conditions of Sale and Delivery shall only apply to entrepreneurs within the meaning of Sec. 14 German Civil Code (BGB).
- 1.3. As far as we have on-going business relations with the buyer these General Terms and Conditions of Sale and Delivery shall apply to all future transactions between us and the buyer.

### **Section 2: Offers, Specifications, Conclusion of Contract**

- 2.1. All our offers are without obligation. We are not liable for accuracy and completeness of the planning by offering performance specifications based on the specification of services.
- 2.2. If the order is to be characterised as offer according to Sec. 145 BGB, we are allowed to accept it within four weeks. The contract is concluded only upon receipt of our written confirmation and according to its content or upon delivery.
- 2.3. We reserve the right to modify without prior notification the design and the shape of the sold goods due to technical improvements or with regard to minor or customary changes of measurements, weights, and quality.
- 2.4. We reserve property rights and copyrights to illustrations, drawings, calculations and other documents. This applies also to written documents marked as confidential. The buyer is not allowed to pass them to third parties without our prior explicit written consent.
- 2.5. We reserve the right to secure the transaction by credit insurance and to inform the insurance company about all necessary data regarding the buyer. The same shall apply to factoring and the inclusion of collection service.
- 2.6. To complete the business, the data of the buyer are stored by means of ADP.

### **Section 3: Prices, Payment Terms**

- 3.1. Unless stipulated otherwise in the confirmation of order our prices are "ex works" exclusive packaging and transport insurance, which are charged separately.
- 3.2. The statutory VAT is not included in our prices; it will be included in the invoice as a separate item at its statutory amount on the date of invoicing.
- 3.3. We reserve the right to increase our prices reasonably if increases in costs occur after conclusion of the contract that are beyond our control, in particular due to conclusions of collective agreements or changes in materials costs. We will provide evidence of this to the buyer on demand.
- 3.4. Unless agreed otherwise, payment has to be effected immediately net cash (without deduction). The deduction of discount requires a separate written agreement. Our representatives are not authorised to receive payments.
- 3.5. If the buyer falls into arrears with a payment or if there are any concrete grounds for a forthcoming insolvency of the buyer or if it becomes evident by other means after the conclusion of contract that our claim for consideration is at risk due to buyer's lack of ability, we may stop further work on current orders and ask for immediate prepayment of all accounts receivable – even if not payable then – and deferred amounts or a corresponding lodging of security. If the buyer does not comply with our demands for prepayment or lodging of security within a reasonable time period, we are entitled to rescind the contract and to charge the buyer for the costs, including any loss of profits, incurred up to this time.
- 3.6. Any further or more extensive statutory claims against the buyer, in particular those for damages, compensation for expenses or rescission, shall remain unaffected.
- 3.7. The buyer is only entitled to assert a right of retention or to set off a counterclaim if the counterclaim is undisputed, has been accepted by us, has become res judicata or is ready for decision by the court.
- 3.8. In the case of defects the buyer is only entitled to retain payments in adequate proportion to the defects.

### **Section 4: Delivery Period**

- 4.1. The delivery period starts on the date our confirmation letter was sent, but not before: (a) all documents, authorisations, and releases to be provided by the buyer have been submitted, (b) the clarification of all technical issues, and (c) receipt of the agreed down payment from the buyer.
- 4.2. In the event of measures in the context of workforce disputes, particularly strikes and lockouts, and in the event of unforeseen events not intended by us, such as an Act of God or non-delivery from our suppliers, the delivery period is extended appropriately. The same applies if the above-mentioned events occur at our sub-suppliers'. If due to these causes it is completely or partially impossible for us to perform our contractual obligations, we are released from our obligation to supply. We are not responsible for the above-mentioned events, even if they occur during an already existing delay.
- 4.3. The delivery period is complied with if the delivery item leaves our plant or its readiness to be dispatched is announced before expiration of the delivery period.
- 4.4. We may deliver by partial shipments.
- 4.5. If the buyer is in default of acceptance or else fails to comply with its obligations to co-operate we are entitled to claim reimbursement of damages arising therefrom, including any additional expenses. Further or more extensive shall remain unaffected.

### **Section 5: Passing of the Risk and Delivery**

- 5.1. Unless otherwise agreed in the confirmation of order, the delivery is to be effected "ex works".
- 5.2. The delivery is insured at the expense of the buyer, unless agreed otherwise.
- 5.3. The risk of an accidental loss or an accidental deterioration of the purchase item passes to the buyer as soon as the goods leave our plant or stock. If the dispatch is delayed due to circumstances for which the buyer is responsible, the risk passes to the buyer from the day when the goods are ready for dispatch. If the buyer is in default of acceptance or else fails to meet its obligation to co-operate, the risk passes to the buyer at the latest at the moment when the default of acceptance or the debtor's delay starts.
- 5.4. If the buyer does not accept the sold goods within the time limit, we are entitled to set an appropriate grace period, to use the goods for a different purpose thereafter, and to supply the buyer within a reasonably extended period.

5.5. Transport and all other packages according to the packing regulation, with the exception of pallets, are not taken back. The buyer is obliged to dispose of the packages at its own expenses.

#### **Section 6: Liability for Faults and Obligation for Notices of Defects**

6.1. Claims of the buyer due to faults of the sold goods require that the buyer has duly met its obligation to examine and to give notice of faults as set forth in Sec. 377 HGB. As for obvious faults, notices of faults with regard to our delivery must be received by us within two weeks after receipt of the good, otherwise the delivery is deemed accepted. Decisive is the date of receipt of a written notice of faults (also via facsimile) at our end.

6.2. Instead of the limitation period for claims based on faults stipulated in Sec. 438 Para 1 Number 3 BGB a one year period shall apply. For other claims the statutory limitation periods apply.

6.3. The buyer must return those goods for which a complaint has been lodged in their original packaging or one that is equivalent to the original packaging for examination. If the complaint is justified and filed within the prescribed time we will remedy the fault by repair or delivery of goods without fault at our option. We are entitled, pursuant to statutory provisions, to reject the remedy of faults. In case the remedy of faults is rejected, has failed or is intolerable for the buyer, the buyer is entitled to rescind the contract or to reduce the purchase price in accordance with the provisions set forth in the following paragraph.

The buyer is entitled to rescind the contract – as far as a rescission is not excluded by law – or to reduce the purchase price only if the appropriate period for remedy set by the buyer has passed without remedy, unless setting of the period is legally superfluous (Sec. 323 Para 2, Sec. 440 BGB, Sec. 441 Para 1 BGB). In the case of rescission the buyer is liable for deterioration in quality, for loss or for use or benefits not taken not only with regard to diligentia quam in suis rebus, but also with regard to any negligent and intentional fault.

Possible claims for damages and for reimbursement of expenses of the buyer are subject to the provisions of Sec. 7.

If we fraudulently conceal a fault or warrant a certain state of a device at the moment the risk passes to the buyer as set forth in Sec. 444 BGB (declaration of the seller that the object of purchase has a defined quality at the moment the risk passes to the buyer and that the seller will be liable without fault for all consequences of their absence) the buyer's rights shall be those that are stipulated by statutory law. Sec. 478 BGB is reserved.

6.4. We are – in addition to the statutory reasons for rejection – entitled to reject remedy also if and as long as the buyer has not returned the defective item or a sample of it on our request; the buyer may not rescind the contract or reduce the purchase price because of such rejection.

6.5. Improper modification or repair work of the buyer or third parties without our previous permission terminates our warranty obligations.

6.6. For any products manufactured by our suppliers or for parts not manufactured by us our warranty and liability is limited to the assignment of claims against our suppliers, unless the fault has arisen in our sphere of responsibility. If the compensation by means of an assigned right fails, we are liable in accordance with the other provisions of this Section 6.

#### **Section 7: Liability on Damages and Reimbursement of Expenses**

7.1. In case of pre-contractual, contractual and extra-contractual breach of duty, also in case of faulty delivery, tortious act, and product liability we are liable to pay damages and reimbursement of expenses – subject to further contractual or statutory preconditions for liability – only in the case of intent, gross negligence and in case of slightly negligent violation of an essential contractual obligation (contractual obligation, the violation of which endangers the completion of the contractual purpose). But our liability is – with the exception of intent – limited to damages that are foreseeable at the time the contract is concluded and also typical for this kind of contract. The buyer may not claim compensation for useless expenses.

7.2. In case of slight negligence, we are liable for delay damage only up to 5 % of the contractually agreed purchase price.

7.3. Unless essential obligations are violated, liability for slight negligence is excluded, but in any case it is limited to the amount of the purchase price. Sec. 7.2 remains unaffected.

7.4. The exclusions and limitations of liability provided for in Sec. 7.1 – 7.3 shall not apply to the extent that we warrant the quality of a device as regulated in Sec. 444 BGB, or to the extent that we fraudulently conceal a fault, or to the extent that a damage is caused by injuries harming life, body, or health, or in the case of a compulsory liability pursuant to the Product Liability Act.

7.5. All claims for damages against us that are no claims based on faults (see Sec. 6.2), regardless on which legal ground they are based, but with reserve to Sec 479 BGB, are subject to a limitation period of one year beginning with the delivery of the item to the buyer, in case of tortious liability beginning with the notice or grossly negligent lack of knowledge of the circumstances substantiating the claim and the person liable for the damages. The liability for intent and the cases set forth in Sec. 7.4 are not subject to the provisions of this paragraph but to the provisions of statutory law. Shorter statutory limitation periods take priority.

7.6. To the extent that our liability for damages is excluded or limited, the personal liability of our employees, jobholders, staff, representatives, and vicarious agents for damages is also excluded or limited.

#### **Section 8 Reservation of Title**

8.1. We retain title to the supplied goods until we have received all payments resulting from the business relations with the buyer.

8.2. The buyer is obliged to take good care of the supplied goods, the buyer is in particular obliged to sufficiently insure the supplied goods against damage caused by fire, water, and theft at replacement value at its own expense. In case maintenance and inspection are necessary, the buyer has to perform them timely at its own expense.

8.3. The buyer must immediately inform us in writing about garnishment or other interference by a third party to enable us to file an action according to Sec. 771 German Code of Civil Procedure (ZPO). If the third party is not able to reimburse the judicial and extra-judicial costs of an action according to Sec. 771 ZPO the buyer is liable for our shortfall.

8.4 The buyer is entitled to re-sell the goods in the ordinary course of business; but the buyer assigns to us in the amount of our invoice value (inclusive VAT) and until all our claims are compensated all of buyer's accounts receivable that accrue from further transactions with its customers or third parties, irrelevant whether the reserved goods are sold with or without processing them. The buyer is entitled to collect these accounts receivable. Our right to collect the accounts receivable ourselves remains unaffected. We undertake, however, not to collect the accounts receivable as long as the buyer fulfils its payment obligations from the collected proceeds, does not fail to pay on due date, has not stopped payments, and no insolvency proceedings concerning the buyer have been applied for. If, however, any of this is the case we are entitled to demand that the buyer discloses the assigned accounts receivable and the pertinent debtors, gives us all necessary information for collection, submits to us the corresponding documents and informs the debtors (third parties) about the assignment.

#### **Section 9: Jurisdictional Venue, Place of Performance, Applicable Law**

9.1. The place of performance for deliveries and payments is the headquarters of our company in Hamburg.

9.2. Exclusive venue is Hamburg.

9.3. This contract is governed by the laws of the Federal Republic of Germany, excluding CISG.

as per 1 January 2002