



## **Terms and Conditions of Purchase of KAMA GmbH vis-à-vis Companies**

### **Section 1 Scope, form**

- 1.1 These Terms and Conditions of Purchase (T&CP) apply to all business relationships with business partners and suppliers ("Seller") and us, KAMA GmbH as "Buyer". The T&CP only apply if the Seller is a trader (Section 14 BGB (German Civil Code)), a legal entity under public law or a special fund under public law.
- 1.2 The T&CP apply in particular to contracts for the sale and/or delivery of movable goods ("goods"), irrespective of whether the Seller manufactures the goods itself or purchases them from suppliers (Sections 433, 650 BGB). Unless otherwise agreed, the T&CP as amended at the time of the Buyer's order or in any case in the version last notified to the Seller in text form shall also apply as a framework agreement for similar future contracts without any obligation on our part to make reference to them in each individual case.
- 1.3 These T&CP shall apply exclusively. Deviating, conflicting or supplementary Terms and Conditions of the Seller shall only become part of the contract insofar and inasmuch as we have explicitly consented to their application in writing. This requirement of consent shall apply in any case, for example even if the Seller refers to its T&C in the context of the order confirmation and we do not explicitly object to this.
- 1.4 Individual agreements (e.g. framework supply agreements, quality assurance agreements) and information in our order take precedence over the T&CP. In case of doubt, commercial clauses shall be interpreted in accordance with the Incoterms published by the International Chamber of Commerce in Paris (ICC) in the version as amended at the time the contract was concluded.
- 1.5 You will be notified of any changes to these T&CP in writing on the homepage of KAMA GmbH on the Internet or by email. The changes are deemed accepted by you if you do not object within four weeks after receipt of the notification. You will be notified separately of the right of withdrawal and the legal consequences of silence in the event of a change to the T&CP.
- 1.6 Legally relevant declarations and notifications by the Seller in relation to the contract (e.g. setting of deadlines, reminders, withdrawal) must be made in writing. Written form within the meaning of these T&CP includes written and text form (e.g. letter, email, fax). Legal form requirements and further proof, in particular in the event of doubts about the legitimacy of the party making the declaration, remain unaffected.
- 1.7 References to the applicability of statutory provisions are for clarification purposes only. Even without such clarification, the statutory provisions shall therefore apply unless they are directly amended or explicitly excluded in these T&CP.

### **Section 2 Conclusion of contract**

- 2.1 Our order shall be deemed binding at the earliest upon written submission or confirmation. Prior to acceptance, the Seller shall point out to us obvious errors (e.g. spelling and calculation errors) and incompleteness of the order, including the order documents, for the purpose of correction or completion. The contract shall otherwise be deemed void.
- 2.2 The Seller is obliged to confirm our order in writing within a period of 14 days or, in particular, to execute the order unconditionally by dispatching the goods (acceptance).
- 2.3 A delayed acceptance shall be deemed a new offer and requires acceptance by us.

### **Section 3 Delivery time and delays**

- 3.1 The delivery time stated by us in the order is binding. If the delivery time is not specified in the order and has not been agreed otherwise, it shall be 4 weeks from conclusion of the contract. The Seller is obliged to notify us without delay in writing if, irrespective of the reasons, it is unlikely to be able to fulfil agreed delivery times.
- 3.2 Where the Seller fails to perform or does not perform within the agreed delivery time or is in default, our rights – in particular to withdrawal and damages – shall be determined in accordance with the statutory provisions. The provisions in para. 3 remain unaffected.
- 3.3 If the Seller is in default, we may – without prejudice to additional statutory claims - demand lump-sum compensation for our default damages in the amount of 1% of the net price per completed

calendar week, but in total not more than 5% of the net price of the goods that are delivered later than agreed. We reserve the right to prove that higher damages have been incurred. The Seller reserves the right to prove that no damage at all or only significantly lower damage has been incurred.

#### **Section 4 Performance, delivery, transfer of risk, default of acceptance**

- 4.1 The Seller shall not be entitled to commission third parties (e.g. subcontractors) with fulfilment of the services it owes without our prior written consent. The Seller shall bear the procurement risk for its services unless otherwise agreed in individual cases (e.g. limited stocks).
- 4.2 Delivery shall be made "free domicile" within Germany to the place specified in the order. Where the designated destination has not been specified and no other agreement is in place, delivery shall be made to our registered office in 01237 Dresden, Kurt-Beyer-Straße 4. The designated destination in each case shall also be the place of performance for the delivery and any subsequent performance (obligation to deliver).
- 4.3 Deliveries must be accompanied by a delivery note stating the date (issue and dispatch), the content of the delivery (article number and quantity) and our order ID (date and number). If the delivery note is missing or incomplete, we shall not be responsible for any resulting delays in processing and payment. In addition to the delivery note, a corresponding dispatch notification with the same content must be sent to us separately.
- 4.4 The risk of accidental loss and deterioration of the item shall pass to us upon handover at the place of performance. Insofar as acceptance has been agreed, this shall be authoritative for the transfer of risk. In all other respects, the statutory provisions of the law on contracts for work and services shall also apply mutatis mutandis in the event of acceptance. Where we are in default of acceptance, this shall be deemed equivalent to handover or acceptance.
- 4.5 The statutory provisions shall apply to the occurrence of our default in acceptance. The Seller must explicitly offer us its performance even if a specific or determinable calendar time has been agreed for an action or cooperation on our part (e.g. provision of material). If we are in default of acceptance, the Seller may demand compensation for its additional expenses in accordance with the statutory provisions (Section 304 BGB). If the contract relates to non-fungible items to be manufactured by the Seller (custom production), the Seller shall only be entitled to further rights if we have entered into an obligation to cooperate and are responsible for the failure to cooperate.

#### **Section 5 Prices and terms of payment**

- 5.1 The price as stated in the order is binding. All prices are inclusive of statutory value added tax unless this is shown separately.
- 5.2 Unless otherwise agreed in the individual case, the price includes all services and ancillary services of the Seller (e.g. assembly, installation) as well as all ancillary costs (e.g. proper packaging, transport costs including any transport and liability insurance).
- 5.3 The agreed price is due for payment within 30 calendar days of complete delivery and performance (including any agreed acceptance) and receipt of a proper invoice. If we make payment within 14 calendar days, the Seller shall grant us a 3% discount on the net amount of the invoice. In the case of bank transfer, payment shall be deemed to have been made on time if our transfer order is received by our bank before expiry of the payment deadline; we shall not be responsible for any delays caused by the banks involved in the payment process.
- 5.4 We do not owe interest on arrears. The statutory provisions shall apply to default in payment.
- 5.5 We shall be entitled to rights of set-off and retention as well as the defence of non-performance of the contract to the extent provided by law. In particular, we are entitled to withhold payments due as long as we are still entitled to claims against the Seller arising from incomplete or defective performance.
- 5.6 The Seller shall only have a right of set-off or retention on the basis of counterclaims that have been legally established or are undisputed.

#### **Section 6 Confidentiality and retention of title**

- 6.1 We reserve the property rights and copyrights to illustrations, plans, drawings, calculations, application instructions, product descriptions and other documents. These documents shall be used exclusively for performance of the contract and returned to us after completion of the contract. The

documents must be kept secret from third parties, even after termination of the contract. The obligation to maintain secrecy shall only expire insofar and inasmuch as the knowledge contained therein has become generally known. Special confidentiality agreements and statutory regulations on the protection of secrets shall remain unaffected.

- 6.2 The above provision shall apply mutatis mutandis to substances and materials (e.g. software, finished and semi-finished products) as well as to tools, templates, samples and other items which we provide to the Seller for production. Such items shall – as long as they are not processed – be stored separately at the Seller's expense and insured to a reasonable extent against destruction and loss.
- 6.3 Any processing, mixing or combination (further processing) of items we provide by the Seller shall be carried out on our behalf. The same shall apply in the event of further processing of the goods supplied by us, so that we shall be deemed to be the manufacturer and shall acquire ownership of the product at the latest upon further processing in accordance with the statutory provisions.
- 6.4 The transfer of ownership of the goods to us shall be unconditional and without regard to the payment of the price. However, if we accept an offer submitted by the Seller in individual cases for transfer of ownership that is conditional on payment of the purchase price, the Seller's retention of title shall expire at the latest upon payment of the purchase price for the goods delivered. We shall remain authorised to resell the goods in the ordinary course of business even before payment of the purchase price with advance assignment of the claim arising therefrom (alternatively validity of the simple reservation of title extended to the resale). This excludes all other forms of retention of title, in particular the extended retention of title, a transferred retention of title and the retention of title extended to further processing.

#### **Section 7 Defective delivery**

- 7.1 The statutory provisions and, exclusively in our favour, the following additions and clarifications shall apply to our rights in the event of material defects and defects of title affecting the goods (including incorrect and short delivery as well as improper assembly/installation or defective instructions) and in the event of other breaches of duty by the Seller.
- 7.2 In accordance with the statutory provisions, the Seller shall be liable in particular for ensuring that the goods have the agreed quality when the risk is transferred to us. In any case, those product descriptions which – in particular by designation or reference in our order – are the subject matter of the respective contract or were included in the contract in the same way as these T&CP shall be deemed to be an agreement on the quality. It makes no difference whether the product description originates from us, from the Seller or from the manufacturer.
- 7.3 In the case of goods with digital elements or other digital content, the Seller owes the provision and updating of the digital content in any case to the extent that such actions result from a quality agreement pursuant to para. 2 or other product descriptions by the manufacturer or on its behalf, in particular on the Internet, in advertising or on the goods labelling.
- 7.4 We are not obliged to inspect the goods or make special enquiries about any defects upon conclusion of the contract. Notwithstanding in part Section 442 (1) sentence 2 BGB, we are therefore also entitled without restriction to claims for defects if we were unaware of the defect at the time of conclusion of the contract due to gross negligence.
- 7.5 The statutory provisions (Sections 377, 381 HGB (German Commercial Code) shall apply to the commercial duty to inspect and give notice of defects with the following proviso: our duty to inspect shall be limited to defects which become apparent during our incoming goods inspection under external appraisal including the delivery documents (e.g. transport damage, incorrect and short delivery) or which are recognisable during our quality control based on random samples. There shall be no obligation to inspect where acceptance has been agreed. This shall otherwise depend on the extent to which an inspection is feasible in the ordinary course of business, taking into account the circumstances of the individual case. Our obligation to give notice of defects identified at a later date remains unaffected. Notwithstanding our duty to inspect, our complaint (notice of defect) shall be deemed to have been made without delay and in good time if it is sent within 10 working days of discovery or, in the case of obvious defects, of delivery.
- 7.6 Subsequent performance shall also include the removal of the defective goods and their re-installation, provided that the goods were installed in another item or attached to another item in accordance with their type and intended use before the defect became apparent; our statutory claim for the reimbursement of corresponding costs (removal and installation costs) shall remain

unaffected. The expenses necessary for the purpose of inspection and subsequent performance, in particular transport, travel, labour and material costs and, if applicable, removal and installation costs, shall be borne by the Seller even if it transpires that no defect actually existed. Our liability for damages in the event of an unjustified request to remedy a defect shall remain unaffected; in this respect, however, we shall only be liable if we recognised or were grossly negligent in our failure to recognise that a defect did not actually exist.

- 7.7 Notwithstanding our statutory rights and the provisions in para. 5, the following shall apply: if the Seller fails to fulfil its obligation to provide subsequent performance – by remedying the defect (subsequent improvement) or by delivering a flawless item (replacement delivery) at our discretion – within a reasonable period extended by us, we may remedy the defect ourselves and demand reimbursement of the expenses required for this from the Seller or a corresponding advance payment. It shall not be necessary to extend a deadline if subsequent performance by the Seller has failed or is unreasonable for us (e.g. due to particular urgency, risk to operational safety or imminent occurrence of disproportionate damage); we shall notify the Seller of any such circumstances without delay, if possible in advance.
- 7.8 Otherwise, in the event of a material defect or defect of title, we shall be entitled to reduce the purchase price or to withdraw from the contract in accordance with the statutory provisions. In addition, we shall be entitled to claim damages and reimbursement of expenses in accordance with the statutory provisions.

### **Section 8 Supplier recourse**

- 8.1 Our legally determined claims for expenses and recourse within a supply chain (supplier recourse pursuant to Sections 478, 445a, 445b or Sections 445c, 327 (5), 327u BGB) shall accrue to us without restriction in addition to the claims for defects. In particular, we are entitled to demand exactly the type of subsequent performance (repair or replacement) from the Seller that we owe our customer in the individual case; this shall also apply to the provision of necessary updates in the case of goods with digital elements or other digital content. Our statutory right of choice (Section 439 (1) BGB) shall not be restricted in this regard.
- 8.2 Before we acknowledge or fulfil a claim for defects asserted by our customer (including reimbursement of expenses pursuant to Sections 445a (1), 439 (2), (3), (6) sentence 2, 475 (4) BGB), we shall notify the Seller and request a written statement, briefly stating the facts of the case. If a substantiated statement is not made within a reasonable period of time and if no amicable solution is reached, the claim for defects actually approved by us shall be deemed to be owed to our customer. In this case, the Seller shall be obliged to provide evidence to the contrary.
- 8.3 Our claims arising from supplier recourse shall also apply if the defective goods have been combined with another product or processed in any other way by us, our customer or a third party, e.g. by installation, attachment or assembly.

### **Section 9 Producer's liability**

- 9.1 If the Seller is responsible for product damage, it shall indemnify us against third-party claims to the extent that the cause lies within its sphere of control and organisation and it is itself liable in relation to third parties.
- 9.2 Within the scope of its indemnification obligation, the Seller shall reimburse expenses pursuant to Sections 683, 670 BGB arising from or in connection with a claim by third parties including recall actions carried out by us. Where possible and reasonable, we shall notify the Seller about the content and scope of recall measures and give the Seller an opportunity to make a statement thereon. Further legal claims remain unaffected.
- 9.3 The Seller shall take out and maintain product liability insurance with a lump sum coverage of at least EUR 10 million per personal injury/property damage.

### **Section 10 Limitation**

- 10.1 The mutual claims of the contracting parties shall become statute-barred in accordance with the statutory provisions, unless otherwise stipulated below.
- 10.2 Notwithstanding Section 438 (1) no. 3 BGB, the general limitation period for claims for defects shall be 3 years from the transfer of risk. Insofar as acceptance has been agreed, the limitation period shall begin with acceptance. The 3-year limitation period shall also apply mutatis mutandis to claims arising from defects of title, whereby the statutory limitation period for claims in rem of third parties

for surrender of goods (Section 438 (1) no. 1 BGB) shall remain unaffected; furthermore, claims arising from defects of title shall not become statute-barred in any case as long as the third party can still exercise the right against us, in particular in the absence of a limitation period.

- 10.3 The limitation periods of the law on sales including the above extension shall apply – in the extent stipulated by law – to all contractual claims for defects. Insofar as we are also entitled to non-contractual claims for damages due to a defect, the regular statutory limitation period (Sections 195, 199 BGB) shall apply, unless the application of limitation periods set out in the law on sales leads to a longer limitation period in individual cases.

### **Section 11 Choice of law and place of jurisdiction**

- 11.1 These T&CP and the contractual relationship between us and the Seller shall be governed by the law of the Federal Republic of Germany to the exclusion of international uniform law, in particular the UN Convention on Contracts for the International Sale of goods.

- 11.2 If the Seller is a merchant within the meaning of the German Commercial Code (HGB), a legal entity under public law or a special fund under public law, the exclusive – including international – place of jurisdiction for all disputes arising from the contractual relationship shall be our registered office in Dresden. The same shall apply if the Seller is a trader within the meaning of Section 14 BGB. However, we are also entitled in all cases to bring an action at the place of performance of the delivery obligation in accordance with these T&CP or a prior individual agreement or at the general place of jurisdiction of the Seller. Overriding statutory provisions, in particular on exclusive jurisdiction, shall remain unaffected.

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