



## General Terms and Conditions for Transactions with Entrepreneurs

### § 1 Scope of Application

- 1.1. These present General Terms and Conditions contain the terms and conditions which apply exclusively between you and us, the company KAMA GmbH, insofar as these are not amended by the Parties by written agreement. Deviating or contrary terms shall not be recognized by us unless we have expressly agreed thereto.
- 1.2. Our General Terms and Conditions of Sale and Delivery shall also apply if we make delivery to the Customer without reservation with knowledge of terms of the Customer which are contrary or deviate from our General Terms and Conditions of Sale and Delivery.
- 1.3. Our General Terms and Conditions of Sale and Delivery apply only with transactions **with entrepreneurs** within the meaning of § 14 German Civil Code (*Bürgerliches Gesetzbuch, BGB*).
- 1.4. Insofar as we maintain an ongoing business relationship with the Customer, our General Terms and Conditions of Sale and Delivery shall also apply for all future business transactions with the Customer.
- 1.5. Amendments to these General Terms and Conditions of Sale and Delivery shall be notified to you in writing per telefax or per e-mail. Should you fail to object to said amendment within four weeks after receipt of the notification, the amendments shall be deemed to be recognized by you. In the case of the amendment of the General Terms and Conditions of Sale and Delivery, you shall be separately notified of the revocation right and the legal consequences of silence.

### § 2 Offer, Offer Documents, Conclusion of Contract

- 2.1. Our offers are subject to change without notice. If your order is to be qualified as an offer pursuant to § 145 BGB, we can accept this offer within four weeks. The contract first comes into effect upon our written confirmation and in accordance with the content thereof or by delivery.
- 2.2. We assume no warranty for the correctness and completeness of the planning with the making of an offer on the basis of specifications of services.
- 2.3. We reserve the right to make construction and form changes of the contract object due to technical progress as well as to undertake slight or standard deviations regarding measurement, weight or quality without prior notification.
- 2.4. We reserve the ownership and copyright rights to illustrations, drawings, calculations and other documents. This shall also apply for such written documents which we designate to be “confidential”. The Customer shall require our express written consent prior to the transfer thereof to third parties.
- 2.5. We reserve the right to secure the business through a credit insurance policy and to transfer the insurer the necessary data of the Customer. The same shall apply for factoring and the involvement of debt collection companies.
- 2.6. The data of the Customer shall be stored through EDP for the processing of the transactions.

### § 3 Prices and Payment Terms

- 3.1. Insofar as not otherwise stated in the order confirmation, our prices are “ex works”, excluding packaging and excluding transport insurance which shall be respectively invoiced separately.
- 3.2. The statutory VAT is not included in our prices; it shall be separately listed in the invoice in the statutory amount effective on the date of the invoicing.
- 3.3. We reserve the right to increase our prices reasonably if costs increase take place after the conclusion of the contract for which we are not responsible, in particular, due to the conclusion of collective bargaining agreements or changes in the price of materials. We shall prove these to the Customer upon demand.
- 3.4. Unless otherwise separately agreed, payment shall be made immediately net (without deduction).
- 3.5. Should the Customer be in default of payment or concrete indications exist for an upcoming insolvency of the Customer or should it become discernible in another manner after conclusion of the contract that our claim for counter-performance is put at risk due to the absence of performance of the Customer, we can discontinue further work on ongoing orders, demand the immediate advance payment of all – also not yet due – accounts receivable and deferred amounts or respective payments of security. Should the Customer not meet our demand for advance payment, we shall be entitled to rescind the contract and to invoice the Customer the costs accruing up to this date including lost profits.
- 3.6. The Customer shall be entitled to a set-off or retention right only if his counterclaim is undisputed or is recognized by us, is determined with final, res judicata effect or is ready for a decision.
- 3.7. In the case of the existence of defects, payments of the Customer may only be retained which are in a reasonable relationship to the defects occurring.

### § 4 Delivery Period

- 4.1. The delivery period shall start with the dispatch of our confirmation letter but not, however, prior to the complete production of the documents, approvals and releases to be obtained by the Customer, the clarification of all technical questions as well as the receipt of an agreed advance payment.
- 4.2. With measures within the framework of labor disputes, in particular, strike and lock-outs as well as the occurrence of unforeseen obstacles which are beyond our control such as, e.g. force majeure or non-delivery to us, the delivery period shall be extended reasonably. The same shall apply if the named circumstances occur with our suppliers. Should the contractual performance be impossible for the afore-mentioned reasons, in whole or in part, we shall be released from our delivery obligation. The afore-described circumstances are also not within our responsibility in the case that they occur during an already existing delay.
- 4.3. The delivery period is deemed to be complied with if the delivery object has left our works up to the expiration thereof or the availability for delivery has been notified. We are entitled to make installment deliveries.
- 4.4. Should the Customer be in default of acceptance or should he infringe other cooperation obligations, we shall be entitled to demand the reimbursement of the damage incurred by us in this respect, including any additional expenses. Additional claims are reserved.

### § 5 Transfer of Risk and Shipment

- 5.1. Insofar as not otherwise stated in the order confirmation, the delivery is agreed to be “ex works”.

- 5.2. Insofar as not otherwise agreed, the shipment shall be insured by us at the cost of the Customer.
- 5.3. The risk of accidental destruction or deterioration of the purchase object shall be transferred to the Customer as soon as the goods leave our warehouse. Should the shipment be delayed as a consequence of circumstances for which the Customer is responsible, then the risk shall be transferred to the Customer as of the date of the availability for shipment.
- 5.4. Should the Customer not accept the contract object in a timely manner, we shall be entitled to fix a reasonable subsequent time period for acceptance by the Customer, to dispose of the contract object in another manner after the expiration of this subsequent period and to deliver to the Customer within a reasonably extended time period.
- 5.5. Transport and all other packaging according to the packaging ordinance shall not be taken back with the exception of pallets. The customer is obligated to assure the disposal of the packaging at his own cost.

## **§ 6 Defects and Warranty**

- 6.1. Insofar as the delivered goods are defective, you shall be entitled to first demand subsequent performance within the framework of the statutory provisions. We have the right of choice with regard to the type of subsequent performance. In the case of the failure of the subsequent performance, you shall be entitled to reduce the purchase price or to rescind the contract. The prerequisite for all warranty rights is that you have properly performed all examination and objection requirements pursuant to § 377 German Commercial Code (*Handelsgesetzbuch, HGB*). The objection of defects must be received by us within two weeks after receipt of the performance in writing (also per telefax).
- 6.2. The claim of useless expenditures by the Customer is precluded.
- 6.3. The goods objected to are to be returned to us in the original or a comparable packaging for examination.
- 6.4. In the case of rescission, the Customer shall be liable for deterioration, destruction and benefits which it has failed to derive from the goods not only if it exercised the usual standard of care but also for all negligent and intentional fault.
- 6.5. Our liability for defects of the purchase objects shall be cancelled by improper changes or repair work by the Customer or third parties undertaken without our prior approval.
- 6.6. As far as third party products or parts not manufactured by us ourselves are concerned, our warranty and liability are limited to the assignment of the claims against our suppliers, insofar as a defect does not fall within our area of responsibility. Should the satisfaction from the assigned right fail, we shall be liable according to the remaining terms named in § 7.
- 6.7. The statute of limitations period for warranty claims for the delivered goods, except in the case of damage claims, shall be 12 months as of the receipt of the goods.

## **§ 7 Limitation of Liability**

- 7.1. We shall be liable for wrongful intent and gross negligence. Furthermore, we shall be liable for the negligent breach of obligations, the performance of which first make the proper performance of the contract possible to begin with, the breach of which places the achieving of the contract purpose at risk and the observance of which you as a customer generally rely upon. In the last named case, we shall be liable however only for the foreseeable damages typical for this type of contract. We shall not be liable for ordinary negligent breach of obligations other than those named in the afore-mentioned sentences.
- 7.2. The afore-mentioned limitation of liability shall not apply with death, injury to body and health. Liability pursuant to the German Product Liability Act (*Produkthaftungsgesetz*) remains unaffected.
- 7.3. Insofar as our liability for damages is precluded or limited, this shall also apply with regard to the personal liability for damages of our employees, workers, co-workers, representatives and vicarious agents.

## **§ 8 Reservation of Title**

- 8.1. The goods remain our property until full payment of all claims from the business relationship with the Customer.
- 8.2. The Customer is obligated to treat the purchase object with care; in particular, he is obligated to insure these at his own cost against damage caused by fire, water, and theft. Insofar as maintenance and inspection work are necessary, the Customer must undertake such at his own cost in a timely manner.
- 8.3. The Customer must inform us in writing without undue delay in the event of attachment or any other third party interference.
- 8.4. The Customer is entitled to resell the purchase object within the course of ordinary business; he assigns to us, however, already now all accounts receivable in the amount of the net invoice amount (including VAT) of our claim which he gains from the resale against his purchaser or third party, regardless of whether the purchase object is resold without or after processing. The Customer shall remain authorized to collect this claim also after the assignment. Our authority to collect the claim ourselves remains unaffected herefrom. We agree, however, not to collect the claim as long as the Customer meets his payment obligations from the proceeds received, is not in default of payment and no petition for the opening of an insolvency proceeding has been filed or discontinuation of payment exists. If this is the case, however, we can demand that the Customer give notice to us of the assigned claims and the debtor thereof, provide all information necessary for the collection, deliver the documents related thereto and notify the debtor of the assignment.

## **§ 9 Miscellaneous**

- 9.1. Amendments or supplements to these Terms and Conditions must be in writing. This shall also apply for the cancellation of this writing requirement.
- 9.2. The law of the **Federal Republic of Germany** applies to the exclusion of the UN sales law (CISG).
- 9.3. Place of performance is Dresden. Exclusive jurisdiction for all disputes arising from or in connection with this contract is **Hamburg**.

As per 8 July 2010