

# General Terms and Conditions (Kampmann GmbH)

Dated 02/2017

## 1. Scope of application

The following General Terms and Conditions will, in the respective version valid at the time the contract is concluded, apply to all our current and future business relationships with business entities as defined in Article 14 Bürgerliches Gesetzbuch (BGB – German Civil Code) („Customer“ hereinafter). The current version of our General Terms and Conditions is available under the legal-information section on our website at [www.kampmann.de](http://www.kampmann.de) or will be sent to the Customer on request. The Customer's different, opposing or supplemental General Terms and Conditions will not become constituent to the contract if they are not expressly confirmed in writing.

## 2. Quotations and the conclusion of contracts

All our quotations are subject to change and are not binding. All contracts that are concluded with us will only come into effect on the basis of our General Terms and Conditions. Oral secondary agreements will only become binding if they have been confirmed in writing. The Customer will be bound to orders for two weeks. The contract will only come into effect if we accept the order through a confirmation of order or if delivery is made within this period. Objections regarding confirmations of order must be made immediately, at the latest within one week. We will be entitled to correct mistakes or errors in quotations, order confirmations, catalogues and invoices. The Customer will not be able to make any claims based on any apparent inaccuracies that were made in error.

## 3. Prices and payment

**3.1.** The prices are net prices to which the statutory value added tax, freight, packaging and shipping costs must be added. The sales prices valid on the day of delivery will be applied in the event of ongoing delivery-, call- and successive-shipment contracts. If shipments are made after the originally scheduled date for reasons for which the customer is responsible and if the wage and material costs or prices charged by upstream suppliers increase from this time on, we will be entitled to raise our prices accordingly. Confirmed prices will only apply to the respective order and will not be binding for follow-up orders.

**3.2.** If not otherwise agreed, the invoiced amount will become due without deduction within 10 days of the invoice date. Receipt of payment will be the relevant factor in determining whether a payment has been made on time or not. Any agreed cash discounts will not be granted if the Customer has fallen behind with payments for previous deliveries. In the event of payment arrears, we will charge interest to the amount of nine percentage points above the base lending rate. We reserve the right to make claims for greater damages. We will be entitled to charge € 40.00 for each payment reminder issued. In the event of payment arrears or if an insolvency application has been made against the Customer, all invoices will immediately become due for payment.

**3.3.** The Customer will only be entitled to offset or withhold payments if its counter claims have been determined in a legally effective manner, are ready for a decision or if we do not dispute them. In the event of defects, and with the same provisos, the Customer may only withhold payment to an amount that is proportionate when the defect is taken into account.

## 4. Delivery

**4.1.** Insofar as not otherwise agreed, we ship ex works. It is agreed that the stated delivery dates are approximate dates only. Fixed delivery dates require our express written confirmation as a fixed date. If we are obliged to deliver an item, we will have fulfilled this obligation with the handover to the freight carrier. The time limit for deliveries will be appropriately extended in the event of delays resulting from labour disputes and unforeseen events (e.g. lack of raw materials, operational malfunctions, natural catastrophes) that are beyond our sphere of influence. This will also apply in the event that upstream suppliers experience such circumstances and in the event that supplies do not reach us on time or in the event that supplies have not been correctly made.

**4.2.** In the event of delayed delivery, the Customer may within the scope of legal provisions only withdraw from the contract if we are responsible for the delay and if we were given a subsequent time limit of 14 days in writing. This does not shift the burden of proof to the Customer's detriment.

**4.3.** We are entitled to make part deliveries if and to the extent such are reasonable for the Customer. The risk of the goods perishing or worsening will pass to the Customer when they are handed over to the freight carrier. If we are obliged to carry out assembly or installation work, the risk will pass to the Customer with the acceptance of such work or when usage commences. We are entitled to demand acceptance of parts of the delivery.

**4.4.** If, subsequent to the conclusion of the contract, circumstances arise (e.g. out-of-court settlements, negative credit checks) that have a considerable negative effect on the Customer's creditworthiness, we may refuse to perform until the counter-performance has been effected or the Customer has provided collateral. If the Customer does not meet this demand within a suitable time limit, we will be entitled to withdraw from the contract.

**4.5.** Should an agreement to take back goods that have been supplied in accordance with the contract have been reached, written information of the handling costs will be provided. In no event will the Customer be entitled to return goods that were manufactured specifically for the Customer. Where call orders are concerned, we will, after a period of two months from the confirmation of order, be entitled to set a subsequent time limit of 14 days within which the goods must be accepted. Should this time limit expire without success, we will at our discretion be able to demand payment or withdraw from the contract. We reserve the right to make claims for further damages.

## **5. Reservation of title**

**5.1.** We are reserving title in the supplied goods until all our claims (including all receivable balances from current accounts) to which we are entitled now or in future as a result of the business relationship with the Customer have been satisfied (goods in which title has been reserved).

**5.2.** The Customer will – on assignment of the claims resulting from the above – be entitled to sell the goods in which title has been reserved within the course of proper business as long as it has not fallen into arrears with payments. Pledging as collateral or transfer by way of security is not permitted. The Customer is already assigning in full any claims arising out of the onward sale or as a result of other legal reasons (e.g. insurance case, unauthorised action) pertaining to the goods in which title has been reserved by way of security. If the goods in which title has been reserved are sold with other goods not belonging to us without or subsequent to further processing or combination, the claim from the sale will only be deemed to have been assigned to the amount that equals the value of the goods in which title has been reserved. We accept this assignment.

**5.3.** The Customer will on request be obliged to provide us with the names of its debtors and inform us of the total amount of the invoice claim. The Customer will be obliged to insure the goods in which title has been reserved against loss and damage. If we exercise our rights pertaining to the goods in which title has been reserved as a result of the Customer being in breach of contract, we will be entitled to enter the Customer's premises to enable us to retrieve the goods in which title has been reserved.

**5.4.** We undertake to release the collateral to which the above provisions entitle us at our discretion and on the Customer's request to the extent that the in the event of recovery realisable value of this collateral exceeds that of the claims being secured by at least 10 %.

## **6. Warranty and liability**

**6.1.** The Customer will be obliged to immediately check goods – even if the goods are packaged – for apparent defects on receipt and to report any such defects in a manner that is verifiable in writing within 7 calendar days of receipt of the goods. Defects that could not be determined by careful checking must be reported in writing in the same way and within the same time limit starting with the time they were discovered, at most, however, within six months of receipt of the goods. Apparent transport damage must be reported in writing to the freight carrier immediately on receipt of the goods by the Customer.

**6.2.** In the event of a defect obtaining, we will at our discretion be entitled to improve or replace the goods or issue a credit note free of charge. Subsequent fulfilment will have only failed if an existing defect has not been eliminated even after a second attempt at subsequent performance has been made. The Customer's rights in the event of such failure, refusal or unreasonableness of subsequent performance will remain unaffected.

**6.3.** The Customer's claims due to defects will lapse after 12 months. This will not apply if the law set out in Articles 438, Section 1, No. 2, 479, Section 1, 634a, Section 1 BGB specifies longer time limits or in the event of injury to life, limb and health, wilful or grossly negligent breach of duties or in the event of fraudulent concealment. The legal provisions regarding suspensions of the statute of limitations and the resumption of time limits will remain unaffected.

**6.4.** Warranty claims cannot be made for minor deviations from the agreed composition, particularly where colour and execution is concerned, in the event of natural wear or damage caused after the passage of risk as a result of incorrect or negligent treatment or maintenance or as a result of special outside influences.

**6.5.** We will always be liable in accordance with the mandatory provisions of the product-liability law, in the event of harm caused by injury to life, limb or health for which we, our legal representatives or vicarious agents are responsible and for all wilful or grossly negligent damage caused by us, our legal representatives or vicarious agents.

**6.6.** In the event of minor negligence, we will, except for cases set out in Section 6.5, only be liable if material contractual duties have been breached. In the event of damage to property and economic loss, our liability will in such cases be limited to the contract-typical and foreseeable damages. We will in the event of late and/or incorrect deliveries not be liable for consequential damage except in the cases set out in Section 6.5.

**6.7.** In the event that we are obliged to bear the cost of removal and installation within our statutory duty of fulfilment from a purchase contract, any claim on the part of the ordering part for reimbursement of costs for removal and installation, where our delivery is the sole type of fulfilment, is restricted to an amount appropriate for the value of the defective goods and the importance of the infringement of the contract, providing this does not undermine the right of the ordering part for reimbursement of removal and installation costs.

## **7. Assembly and works contracts**

The General Terms and Conditions for Works Contracts will also apply to the execution of assembly and works contracts.

## **8. Place of fulfilment, place of jurisdiction and final provisions**

**8.1.** The place of fulfilment for shipments is the place of dispatch, for payments it is our place of business.

**8.2.** If the Customer is a business entity, an entity incorporated under public law or a special entity under public law, the place of jurisdiction for all disputes arising out of this contract – including actions on bills of exchange and cheques – will be our place of business or the Customer's place of business. The same will apply if the Customer doesn't have a general place of jurisdiction in Germany or the place of residence or the habitual abode is not known at the time an action is brought.

**8.3.** German law will apply on exclusion of the United Nations Convention on Contracts for the International Sale of Goods to all contracts between the Customer and us.