

## Standard Terms and Conditions of Contract of Kampmann GmbH

### I. Application

1. *The Terms and Conditions of Sale, Delivery and Payment are part of all offers and contracts regarding deliveries of goods and other performances of Kampmann GmbH.*
2. *For future business relations, the terms and conditions shall apply in the commerce with enterprises, legal persons under public law or special public-law funds for future transactions, even without a new, separate agreement. The effectiveness of conditions to the contrary may not be derived from the execution of an order placed.*
3. *These terms and conditions shall not apply in the commerce with consumers within the meaning of section 13 of the German Civil Code [Bürgerliches Gesetzbuch (BGB)].*

### II. Conclusion of the Contract

1. Orders shall only be binding through an acknowledgement of the order in text form by Kampmann GmbH. Cancellations, changes and amendments shall only be effective if they are confirmed in text form by Kampmann. This shall also apply to the amendment of the text and written form clauses respectively. All offers are subject to change, unless they are indicated as fixed offers.
2. The data, drawings and specification of services contained our prospectuses, catalogues, price lists or in the supporting documents belonging to our offer are approximate values usual in the our particular trade, unless they are expressly indicated as binding. They do not entail the warranty of any particular product qualities.
3. Terms and conditions of business of the party placing the order shall not apply, unless they are expressly recognized in text form by Kampmann GmbH. Changes to these terms and conditions of business shall likewise only become effective through confirmation in text form by Kampmann.

### III. Prices

1. The prices are quoted in euros ex works excluding freight, customs, import charges, incl. a usual packaging suitable for domestic transport plus VAT in the current statutory amount.

### IV. Payment conditions

1. The due date of our outstanding debts shall be in accordance with the statutory provisions.
2. Our invoices must be paid without deductions immediately on receipt. In the event of payment within 10 days, the party placing the order is entitled to carry out a cash discount deduction in the amount of 2 % of the invoiced amount. The payment with bills of exchange shall require a corresponding informal written agreement. If cheques or bills of exchange are accepted by us, this shall only take place on account of performance. Discounting charges shall be charged from the due date of the invoiced amount on. A warranty for the correct presentation of the bill of exchange and for the drawing up of a protest of a bill of exchange shall be excluded. The acceptance of bills of exchange shall take place subject to the condition of their discountability.
3. If, notwithstanding item III, no. 1, a term of payment has been agreed, which is chargeable in accordance with the calendar year, no dunning letter shall be required for the occurrence of default. The dunning letter shall be replaced by the expiry of the period allowed for payment. In other respects, the occurrence of default shall be in conformity with the statutory provisions.
4. In the event of default in payment by the party placing the order, after notifying the party placing the order, we may suspend the fulfilment of further obligations, even from other orders, until our receipt of the payments. With regard to further performances, we reserve the right to render these exclusively against prepayment.
5. The party placing the order may only set off against debt claims of Kampmann GmbH with claims for which the reason and the amount are undisputed or recognized by declaratory judgement. A right of retention by the party placing the order shall only exist if and insofar as it is based on a claim for which the reason and the amount are undisputed or recognized by declaratory judgement.

### V. Obligations of delivery and acceptance

1. Delivery periods shall commence upon the sending off of the acknowledgement of the order after the receipt of all supporting documents required for the execution of the order. Unless agreed otherwise, they shall not constitute fixed dates.
2. If an agreed delivery period is not observed as a consequence of own fault by Kampmann GmbH, unless it has acted with gross negligence or intentionally, to the exclusion of further claims by the party placing the order, it is entitled, after the expiry of a reasonable extension, to demand compensation for default or rescind the Contract. No setting of a time limit for compliance shall be required, unless this is indispensable according to the law. The compensation for default shall be limited to no more than 5 % of the part of the delivery that has not been made in accordance with the terms of the Contract. A rescission of the Contract shall be excluded if the party placing the order finds itself in default in acceptance. The party placing the order reserves the right to furnish documentary proof of higher damage or loss.
3. If the party placing the order fails to fulfil its obligations to take delivery, without prejudice to its further rights, Kampmann GmbH shall not be bound by the regulations regarding the public auction of chattels by the

debtor when the creditor is in default in acceptance; rather, after notifying the party placing the order beforehand, we may sell the delivery item freehand.

4. Occurrences of force majeure shall entitle Kampmann GmbH to defer the delivery by the duration of the hindrance and an appropriate run-up period or rescind the Contract in whole or in part on account of the as yet unperformed part. Force majeure shall be identical with strike, lock-out or unforeseeable, unavoidable circumstances e.g. operational breakdowns, which makes it impossible for Kampmann GmbH to deliver in good time despite reasonable efforts; the documentary proof regarding this must be furnished by Kampmann GmbH. This shall also apply if the above-mentioned hindrances occur during default or at the business premises of a sub-supplier. The party placing the order may call upon Kampmann GmbH to declare within two weeks whether Kampmann GmbH wishes to rescind the Contract or deliver within a reasonable extension. If it fails to declare, the party placing the order may rescind the unperformed part of the Contract. Kampmann GmbH shall notify the party placing the order without undue delay if a case of force majeure occurs. Kampmann GmbH must keep the detriment to the party placing the order as minimal as possible. If a transaction for delivery at a fixed date is agreed in the individual date, the above-mentioned regulations shall not affect the rights of the party placing the order.
5. Returns must be sent free of charge for Kampmann GmbH. They shall require the prior consent in text form of Kampmann GmbH. In the event of a breach of warranty, the costs of an appropriate mode of dispatch from the place at which the returned goods were located according to the terms of the Contract shall be reimbursed.

#### VI. Packaging, forwarding, passing of the risk and default in acceptance

1. Unless agreed otherwise, Kampmann GmbH shall select packaging, mode of dispatch and dispatch sequence.
2. The risk shall pass to the party placing, even in the event of freight-free delivery, upon the departure from the supplying factory. This shall also apply if the transport is supposed to be carried out through Kampmann GmbH itself. If the event of delays for which the party placing the order is held responsible, the risk shall pass already upon the notification of the readiness to dispatch the goods.
3. At the written request of the party placing the order, the goods shall be insured against risks to be indicated by it at its own expense.

#### VII. Retention of title

1. Kampmann GmbH shall retain title to the deliveries until all claims to which it is entitled against the party placing the order have been satisfied, even if the purchase price for the delivery specifically concerned has been paid. In the event of a purchase for current account, the retained title to the deliveries (goods to which title is retained) shall be considered as security for the invoice for a balance of Kampmann GmbH. If liability resulting from a bill of exchange of Kampmann GmbH is established in connection with the payment of the purchase price, the retention of title shall not expire before the payment of the bill of exchange by the purchaser as drawee.
2. *The party placing the order is obliged to insure the goods to which title is retained against the risk of perishing, loss or damage through fire, water and theft for the time after the passing of the risk. Furthermore, it is obliged to insure the risk of the perishing, loss or damage of the goods to which title is retained on the transport route. In the case of loss, perishing or damage of the goods to which title is retained, the party placing the order must inform us without undue delay and make available to us upon request all supporting documents concerning damage to the goods to which title is retained, in particular expert's reports, notify us of existing insurance and at its option make available either the insurance policy or however a risk coverage certificate issued by the insurer for our goods to which title is retained.*
3. A treatment or processing by the party placing the order shall take place to the exclusion of the acquisition of title in accordance with section 950 BGB by order of Kampmann GmbH; this party placing the order shall become co-owner of the item thus resulting in accordance with the proportion of the net invoice value of its goods to the net invoice value of the goods to be treated or processed, which as goods to which title is retained shall serve to provide security for the claims of Kampmann GmbH as provided in paragraph 1.
4. In the event of processing (combining/mixing) with other goods not belonging to Kampmann GmbH by the party placing the order, the provisions of sections 947, 948 BGB shall apply with the consequence that the share of the co-ownership of Kampmann GmbH in the new item are henceforth considered as goods to which title is retained within the meaning of these terms and conditions.
5. The party placing the order is only permitted to resell the goods to which title is retained in the ordinary course of business and subject to the condition that it likewise agrees a right of retention as provided in paragraphs 1 to 3 with its customers. The party placing the order is not entitled to other disposals of goods to which title is retained, in particular pledging and security transfer of title.
6. In the case of a resale, the party placing the order hereby assigns in advance the debt claims to which it is entitled from the resale and other justified claims against its customers with all collateral rights to Kampmann GmbH until all claims of Kampmann GmbH have been satisfied. Kampmann GmbH hereby accepts the assignment. However, the party placing the order shall remain entitled to collect the debt claims until revoked at its own expense. At the request of Kampmann GmbH, the party placing the order is obliged to furnish all information and hand out all supporting documents to Kampmann GmbH without undue delay, which are required to assert the rights of Kampmann GmbH against the customers of the party placing the order.
7. If the goods to which title is retained are resold by the party placing the order after processing in accordance with paragraph 2 and/or 3 together with other goods not belonging to Kampmann GmbH, the assignment of

the purchase price claim as provided in paragraph 5 shall only apply in the amount of the invoiced value of the goods to which title is retained of Kampmann GmbH.

8. If the realized value of the securities existing for Kampmann GmbH, taking into account all costs of administration and realization of the security collateral exceeds its total debt claims by more than 10%, at the request of the party placing the order, Kampmann GmbH is in this respect obliged to release securities according to the choice of Kampmann GmbH.
9. Attachments / seizures or confiscation of the goods to which title is retained by third parties must be notified to Kampmann GmbH without undue delay. Intervention costs resulting from this shall in each case be borne by the party placing the order, unless they are borne by third parties.
10. If Kampmann GmbH makes use of its retention of title by taking back goods to which title is retained in accordance with the above-mentioned provisions, it is entitled to sell the goods freehand or have them sold at auction. The assertion of the retention of title and in particular the demand for restitution shall constitute a rescission of the Contract. The goods to which title is retained shall be taken back for the proceeds obtained, however no higher than for the agreed delivery prices. We reserve the right to assert further claims for damages, in particular lost profit.

#### VIII. Notices of defects

1. a) If the provisions of section 377 of the German Commercial Code [*Handelsgesetzbuch* (HGB)] and sections 381, 377 HGB respectively are applicable to the Contract, for the periods for making a claim specified there, this following is agreed: the party placing the order must, if it is a business owner within the meaning of section 14 BGB, notify us of recognizable defects in text form without undue delay, however no later than 2 weeks after the delivery. Hidden defects must be notified to us in text form and without undue delay after discovery, however 2 weeks after discovery. In other respects, the preconditions and consequences of a late notice of defects shall be in conformity with the statutory provisions (section 377 HGB and sections 377,381 HGB respectively).

b) The above-mentioned provisions in item VIII. No.1 letter a shall not apply if we have given a warranty for freedom from defects regarding the defect to be notified or a claim for damages based on injury to life, limb or health or the freedom of a person is asserted against us. In these cases, the preconditions and consequences of a late notice of defects shall be exclusively in conformity with the statutory provisions (section 377 HGB and sections 377, 381 HGB respectively).

2. If the party placing the order omits to give notice of defects in good time in accordance with the terms of sections 377 and 377, 381 HGB respectively in the course of a mutual commercial transaction, this shall also lead to the exclusion of the claims in tort of the party placing the order that have arisen or arise as a consequence of the defect. This shall not apply if the claims are based at least on grossly negligent conduct by the contractor or its vicarious agents. Furthermore, the exclusion shall not apply to claims that are based on the Product Liability Act [*Produkthaftungsgesetz*] or on injury to life, limb or health or the freedom of a person.

#### IX. Warranty, liability and limitation of actions

1.a) Our warranty for defects as to quality shall be restricted as provided by the statutory provisions to supplementary performance (subsequent delivery or remedy of the defect), rescission or reduction of the price

b) If the party placing the order is a business owner, Kampmann GmbH shall first of all assume a warranty for the goods, at its choice, by remedy of the defect or a replacement delivery.

c) If the purchaser is a consumer, in the event of a defective item from a sales contract, it shall have the choice whether the supplementary performance is to take place through remedy or a replacement delivery.

Kampmann GmbH is entitled, however, to refuse the type of the supplementary performance chosen if this is only possible at disproportionate costs and the other type of supplementary performance remains without significant disadvantages for the consumer. In the event of the defectiveness of work produced by Kampmann GmbH, Kampmann GmbH shall, at its choice, carry out supplementary performance through remedy of the defect or a replacement delivery.

d) If the supplementary performance is unsuccessful, the customer may in principle, at its choice, demand a reduction of the remuneration (reduction of the price) or a rescission of the Contract. In the event of an only insignificant lack of conformity with the Contract, in particular in the case of only minimal defects, however, the customer shall be entitled to no right to rescind the Contract.

e) Arbitrary reworking and improper handling shall result in the loss of all claims based on defects. The party placing the order is only entitled to remedy a defect, after notifying Kampmann GmbH beforehand, in order to avert disproportionately great damage or loss or in the event of default in the remedy of defects by Kampmann GmbH and demand reimbursement of appropriate costs for this.

f) Wear and tear or deterioration through the use in conformity with the Contract shall entail no warranty claims.

2. We shall only pay damages for defects as to quality for which we are held responsible in the framework of the contractual liability subject to the statutory preconditions in the following cases:

a) The claim for damages asserted against us is based on a defect as to quality and has as its object the payment of compensation for material damage that has occurred at other legal assets than the object of sale. Other pecuniary losses that are the consequence of material damage caused to other legal assets than the object of sale (consequential pecuniary losses) shall be treated as equivalent to material damage. The amount of our liability shall be restricted in accordance with the terms of item IX no. 5.

b) We shall be held responsible for the defect as to quality as a consequence of intent, fraudulent intent or gross negligence.

c) For the freedom of the goods from damage or loss-causing defects as to quality, we have assumed a separate contractual assurance or warranty going beyond a quality agreement.

d) The claim for damages asserted against us is based on injury to life, limb health or the freedom of a person.

e) We are liable for damage or loss from the point of view of the default.

The above-mentioned provisions shall not restrict our extra contractual liability, in particular under the regulations regarding tortious acts and the Product Liability Act.

3.a) Save as provided hereinafter, the limitation period for the claims stated in sections 437, 634 BGB, which are based on defects as to quality, shall be one year. With respect to consumers within the meaning of section 13 BGB, this shall only apply to claims for damages for a defect to a newly manufactured item or work produced by Kampmann GmbH.

If and insofar as warranty claims asserted against us purport to damages for injury to life, limb, health or the freedom of a person as well as in the case of claims based on the Product Liability Act, the statutory limitation periods shall continue to apply. Furthermore, the statutory limitation periods shall continue to apply if with have fraudulently concealed the defect or we are held responsible for the defect as a consequence of intent or gross negligence. Finally, the statutory limitation periods shall also apply if we have assumed a contractual warranty for freedom from defects regarding the specific defect.

4. If deliveries are replaced or defects remedied by us in the scope of the warranty, the limitation period for warranty claims shall also not be extended for the parts repaired or subsequently delivered through this. This shall not affect the statutory provisions regarding the extension and restart of the limitation period.

5.a) For consequential damage of a defect as to quality, our liability –for any legal reason whatever – shall be restricted in terms of its amount for each breach of duty to the sum of 2,000,000.00 €, insofar as we furnish documentary proof of third party liability insurance that on its own merits is under an obligation to settle the insurance claim with a sum insured available for the claim in the amount of at least 2,000,000.00 €. The same shall apply to our liability for damage or loss based on an intentional or negligent breach of a collateral duty. If several cases of damage or loss occur under the terms of a contract of sale or other transaction, which are based on the same cause, e.g. the supply of several items with the same defect within a contract of sale, this shall be considered as a uniform breach. At the written request of the party placing the order, a higher sum insured may be concluded at its expense. In this case, the maximum liability limit shall be increased accordingly.

b) This restriction of liability shall not apply if our liability is based on intent, fraudulent intent or gross negligence. Furthermore, it shall not apply to claims based on the Product Liability Act, for contractual claims for defects for whose absence we have contractually assumed a warranty or for claims for damages asserted against us which are based on injury to life, limb, health or the freedom of a person. Inasmuch, in terms of the amount our liability under the statutory provisions is unrestricted.

6.a) Our warranty and liability – for any legal reason whatever – shall be excluded for defects which are based on defects of the planning, drawings, materials or products delivered by the party placing the order, unless the defectiveness of the planning, drawings, materials or products delivered by the party placing the order was not recognized by us as a consequence of gross negligence. If a first sampling is carried out by the party placing the order, without defects being notified to us without undue delay, our liability – for any legal reason whatever – for defects which could have been detected upon a careful first sampling shall be excluded.

b) Also in this respect, item 5, letter b) shall apply.

7. If the party placing the order receives defective assembly instructions, Kampmann GmbH is merely obliged to deliver assembly instructions free from defects; this shall also apply if the defect of the assembly instructions is an obstacle to the assembly in proper form.

#### X. General restrictions of liability

In all cases in which, notwithstanding the above-mentioned terms and conditions, Kampmann GmbH is obliged to pay damages or reimburse expenses by virtue of contractual or statutory provisions, it is only liable insofar as it, its managerial employees or vicarious agents are held responsible for intent, gross negligence or injury to life, limb or health. This shall not affect the liability independent of fault under the Product Liability Act and the liability for the fulfilment of the warranty as to a particular quality. This shall also not affect the liability for the culpable breach of material contractual obligations; inasmuch, apart from the cases in sentence 1 however, the liability shall be restricted to the foreseeable damage or loss typically occurring under contracts. No change of the burden of proof to the detriment of the party placing the order shall be connected with the above-mentioned regulations.

#### XI. Statements made by the party placing the order, provisions of additional materials

1. If materials are delivered by the party placing the order, these must be delivered at its own expense and risk with an appropriate surcharge on quantities of at least 5% in good time and in perfect quality. In the event of non-compliance with these preconditions, the delivery period shall be extended appropriately. Apart from in the cases of force majeure, the party placing the order shall also bear the additional costs arising for manufacturing disruptions.
2. Liability for the behaviour of the material sent in by Kampmann GmbH shall be excluded apart from for intent and gross negligence when dealing with these. In principle, this shall not affect the claim for remuneration by Kampmann GmbH. If the order cannot be completed as a consequence of the uselessness of the materials,

Kampmann GmbH shall retain its claim to the agreed remuneration. It shall however allow the expenses saved as a consequence of the discontinuation of the order to be deducted from the claim.

3. The statements and supporting documents made available by the party placing the order such as samples and suchlike shall be binding for Kampmann GmbH. Supplementary verbal statements, in particular regarding dimensions, shall only be binding if confirmed in text form.

#### XII. Industrial property rights and defects of title

1. If Kampmann GmbH must deliver in accordance with drawings, models or using parts additionally provided by the party placing the order, the party placing the order shall guarantee that property rights of third parties in the country of designation of the goods are infringed through this. Kampmann GmbH shall notify the party placing the order of the rights known to it. The party placing the order must indemnify Kampmann GmbH against the claims of third parties and pay the damages incurred. If the party placing the order is enjoined from manufacturing or delivering by a third party invoking a property right belonging to it, Kampmann GmbH is entitled - without checking the legal position - to suspend the work until the legal position has been clarified by the party placing the order and the third party. Should it no longer be reasonable to expect Kampmann GmbH to continue to carry out the order through the delay, it shall be entitled rescind the Contract.
2. Drawings and samples entrusted to Kampmann GmbH which have not led to the order shall be returned upon request; otherwise, Kampmann GmbH is entitled to destroy them three months after placing the offer. This obligation shall apply to the party placing the order correspondingly. The party entitled to destroy the drawings and samples must inform the other party to the Contract of its intention to destroy these in good time beforehand.
3. Kampmann GmbH shall be entitled to the copyright and if applicable industrial property rights, in particular all rights of use and exploitation to the models, patterns, devices, designs and drawings created by it or third parties on its behalf.
4. Should other defects of title exist, no. VI. shall apply correspondingly to these.

#### XIII. Place of performance, place of jurisdiction and applicable law

1. The place of jurisdiction for the contractual obligations of both parties to the Contract shall be the registered business office of Kampmann GmbH (Werl).
2. If the party placing the order is a merchant, a legal person under public law or special public-law funds, the exclusive place of jurisdiction for all disputes arising from this Contract shall be the registered business address of Kampmann GmbH (Werl). Kampmann GmbH may however also bring an action at the registered office of the party placing the order. The same shall apply if the party placing the order has no general place of jurisdiction in the Federal Republic of Germany the permanent or usual place of residence at the time of bringing the action are unknown.
3. For all claims in connection with the implementation of this contractual relationship, German law shall apply in application of the regulations of the Vienna Convention on Contracts for the International Sale of Goods of April 11, 1980.

#### XIV. Safeguarding clause

Should one provision of these Standard Terms and Conditions of Sale and Delivery be or become ineffective, this shall not affect the effectiveness of the remaining provisions. In this case, a provision that approximates as closely as possible to the purpose pursued by the ineffective provision shall apply.

Kampmann GmbH (Status: 11/2005)