

# **General Terms and Conditions of KAMAKA Electronic Bauelemente**

## **Vertriebs GmbH**

This is an English translation for information purposes only. For all legal purposes reference should be made to the German original.

**Date: 06/2018**

### **1. General**

These general terms and conditions for delivery and payment are valid for the whole business connection with our customers. Our deliveries and services are exclusively executed according to the conditions of sales contained herein. Other conditions of the purchaser are only binding if we agree to them in writing. Hereby, we contradict general terms and conditions of the purchaser.

### **2. Validity of the conditions**

2.1. Our deliveries, services and offers are only valid within these conditions of delivery and payment. These conditions are effective – at the latest – with the acceptance of the goods or of the services.

2.2. Without written agreement, other or additional conditions of the purchaser are not binding for us, even if we do not contradict them explicitly. Each agreement between us and the purchaser requires a written form.

### **3. Offers and conclusion of contract**

Our offers are non-binding and valid for 30 days after the submission of the offer. Our delivery proposals are non-binding and only contain solicitations for offers made by the purchaser. Conclusions of contracts and other agreements, especially oral collateral agreements and promises of our salespersons are only binding after the written confirmation of our executive board.

### **4. Prices**

Our prices are valid ex warehouse exclusive packaging and insurance plus the respective legal sales tax. In case of change of the rates of duty or currency fluctuations, we are allowed to increase the prices stated in the confirmation of order appropriately.

### **5. Delivery**

5.1. The shipment of goods always follows the order of the purchaser and at the expense of him or her via a transporter of his or her choice. As soon as the goods are ready for collection or as soon as the supplier hands the goods over to the transporter, the purchaser is responsible for the transfer of risk in case of accidental loss or destruction.

With the receipt of the goods, the purchaser has to examine the goods for transport damages and to report such damages immediately to the supplier and the carrier in written form.

5.2. The delivery date mentioned by the supplier is approximate and non-binding. The deliveries take place according to our operational circumstances. We do not take over any liability concerning the fulfillment of the delivery date. The delivery deadline begins with the day of issue of the order confirmation.

All delivery obligations are subject to the own in-time and correct supply. All delivery deadlines are subject to the fulfillment of the purchaser's contract obligations. Short selling needs our explicit confirmation. Partial deliveries are permissible unless they are unacceptable for the purchaser. If KAMAKA isn't supplied in time or correctly, KAMAKA will report it immediately to the purchaser and in case of withdrawal refund the respective return.

5.3. Call orders shall be undertaken within one year starting with the order confirmation. Non-purchase leads to delay.

### **6. Payment**

6.1. Unless there are no other agreements, the payment is due within 30 days after the date of invoice. The purchaser is only allowed to use an agreed discount if he or she is not in delay with any other payments. All our claims are immediately due if the conditions of payment are not fulfilled or if we learn about circumstances which reduce the purchaser's creditworthiness. In this case, we are allowed to execute a delivery only if payment is made in advance. If this advance payment is not fulfilled, we are allowed to withdraw, after an appropriate period of time, or to demand compensation due to non-fulfillment. Furthermore, we can forbid further sale and the processing of the delivered goods and demand their return at the purchaser's expense. In case of change of company name or legal person, we are allowed to withdraw.

6.2. If the customer is in default of payment, without proof, KAMAKA is allowed to demand annual default interests in the amount of 9% over the base interest rate. We reserve the right to prove and claim higher damage caused by delay. In this case, the customer is allowed to prove KAMAKA that KAMAKA has no or only a lower damage as consequence of this default in payment.

6.3. If the conclusion of contract and delivery date are more than one month away from each other and our procurement costs have increased after the conclusion of contract and before the supply of the goods, KAMAKA reserves the right to increase the agreed price by the same amount through unilateral explanation. In this case, the customer is allowed to withdraw from the contract (right of termination and withdrawal) as long as KAMAKA receives the respective explanation within 2 weeks after the notification about the price increase

6.4. The customer is obliged to take all ordered goods within 12 months after the date of order in order to receive a uniform quantity discount for the respective delivery. The granting of this quantity discount is subject to the punctual batch of the ordered quantity.

6.5. The customer only then has the right to an off-set when his or her counterclaims have been established as absolute, are undisputed and acknowledged by KAMAKA. In case of damages of the delivery, the customer has no right of retention, unless the delivery is obviously damaged or the customer obviously has the right to reject the delivery. In this case, the customer only then has the right of retention if the amounts retained are appropriate.

The customer is not allowed to claim rights and remedies because of damage if he or she did not pay due payments and if the amount due (including respective payments made by the customer) is appropriate. The customer does not have the right of retention because of disputed counterclaims.

## **7. Reservation of title**

7.1. The delivery item (referred to as "reserved goods" herein after) remains the property of KAMAKA until all claims against the customer are fulfilled. In case of several claims or current invoices, the reservation of title serves as security for the payment balance request, even when single deliveries of goods have already been paid.

7.2. The reserved goods have to be stored separately to other stock levels of the customer.

7.3. The customer is allowed to sell the reserved goods in the ordinary course of business. In case of the selling of the delivery item or the new goods, the customer transfers his or her right from the resale against his or her buyer with all subsidiary rights to KAMAKA, as security, without further explanation. The transfer includes any current account receivables. However, the transfer is only valid for the amount which corresponds to the price of the delivery item charged by KAMAKA. The claim assigned to KAMAKA shall be fulfilled first.

7.4. Pledges or mortgaging of the goods before the acquisition of ownership are not allowed. Until the withdrawal, the customer is allowed to collect the claims assigned to KAMAKA according to 7 "Reservation of title". The customer will immediately forward payments made according to the claims assigned to KAMAKA. In case of default in payment, suspension of payment, insolvency proceedings, bill protest or signs of excessive debts or inability to pay on the part of the customer, KAMAKA is allowed to withdraw the customer's collection authority. Moreover, KAMAKA is allowed – after notification in advance and an appropriate period of time – to reveal the assignment for security, to utilize the claims assigned and to demand the disclosure of the assignment for security by the customer over the purchaser.

During the existence of the reservation of title, pledges or mortgaging are forbidden. The customer has to notify KAMAKA immediately about pledges, mortgaging or other availabilities or intervention of third parties. The resale of the delivery item or the new goods in the ordinary course of business is only allowed if the payment of the countervalue of the delivery item is made to the customer. The customer has to agree with the purchaser that the purchaser acquires the property only after this payment.

7.5. The customer is allowed to process or remodel the delivery item. By processing or remodeling the delivery item, the customer is considered as manufacturer according to § 950 BGB. However, if the value of the delivery item not belonging to KAMAKA is lower than the delivery item belonging to KAMAKA and/or the processing, KAMAKA will require a co-ownership of the new goods in relation to the value (gross invoice amount) of the processed delivery item and the value of the other processed goods and/or the processing at the moment of processing. If KAMAKA does not acquire property according to the previous provision, the customer and KAMAKA agree that the customer grants co-ownership of the new goods to KAMAKA in relation to the value (gross invoice amount) of the delivery item belonging to KAMAKA and the other goods processed at the moment of processing. The preceding sentence is also valid in case of the inseparable mixing or combination of the delivery item and the goods not belonging to KAMAKA. If KAMAKA acquires property or co-ownership according to this § 7 (reservation of title), the customer keeps the goods for KAMAKA with the diligence of a prudent businessman.

7.6. In case of breaches of duty on the part of the customer, especially in case of default in payment, KAMAKA is allowed – even without setting a deadline – to demand that the customer returns the delivery item or the new goods and/or – after

setting a deadline (if necessary) – to withdraw from the contract; the customer is obliged to return the goods. Any demand for the return of goods shall not be deemed to include a simultaneous declaration of withdrawal, unless KAMAKA declares it explicitly.

7.7. If the feasible value of all security interests granted to KAMAKA is more than 10% higher than all secured claims, KAMAKA will – upon the customer's wish – release an appropriate part of the security interests. It is presumed that the conditions of the preceding sentence are fulfilled if the estimated value of the security granted to KAMAKA is higher than 150% (or more) of the value of the secured claims. In case of release, the customer can choose between different security interests.

## **8. Warranty and deficiency claim**

8.1. Our goods are manufactured according to recognized rules of technology, so that they possess the explicitly assured properties and so that they don't have any faults reducing their value or their suitability for the usual use or the use stated in the contract. Even with the rules of technology, exceptions cannot be prevented. Thus, the purchaser shall run incoming tests. If there is the need or wish for any special tests which shall be run by us, it has to be explicitly stated in the contract.

8.2. The delivered goods shall be immediately examined according to commercial principles. Identified defects shall be indicated in writing two weeks after the delivery, non-identified defects shall be indicated in writing two weeks after their discovery. In case of legitimate deficiency claim, the customer can choose between the repair of the defected goods and their replacement. In this case, the customer has to grant an appropriate period of time and opportunity to provide the rejected goods – otherwise, the claims become void. If KAMAKA cannot fulfill the duty to repair or replace the goods, the customer has the right of withdrawal or reduction, but not to compensation.

8.3. The sending of the defected goods to KAMAKA has to be in the original packaging. If the complaint is illegitimate, the customer has to compensate KAMAKA for the costs of the tests and the costs of the repairing of the defect. Incorrect changes and repairs on the part of the customer or of third parties invalidates KAMAKA's warranty.

8.4. If the sold goods miss an assured property at the moment of the transfer of risk, the purchaser is allowed to withdraw.

8.5. Any claims against KAMAKA resulting from the delivery of the defected goods become time-barred according to the legal regulations.

## **9. General limitation/exclusion of liability**

9.1. In case of gross negligence on the part of KAMAKA or a representative or any other auxiliary persons as well as in case of culpably caused violations of life, body or health according to legal regulations, KAMAKA is held liable. In cases of gross negligence, KAMAKA's liability is reduced to foreseeable damage typical for this contract. Moreover, KAMAKA is only held liable according to the product liability law, due to culpable violations of essential contractual duties or if KAMAKA maliciously kept the defect secret or if KAMAKA overtook the warranty for the quality of the delivery item. The claim for damages for the violation of essential contractual duties is only reduced to foreseeable damage typical for this contract.

9.2. The regulations of the preceding paragraph 1 are valid for all claims of damages (especially for compensation in addition to and instead of performance) resulting from any legal ground, defects, the violation of duties as well as the conclusion of contract or unauthorized actions.

They are especially valid for the claims for reimbursement of expenses and lost profit or any other financial losses of the customer.

Liability for delay, however, is defined according to clause 10 of these conditions and the liability for impossibility in accordance with clause 11.

## **10. Limitation of liability due to delay in delivery / Force majeure, industrial actions**

10.1 If deadlines cannot be met due to force majeure, such as mobilization, war, riots, or similar events which cannot be controlled by the seller, such as strike for example, the delivery times shall be extended for the period during which the event or its effects continue.

10.2 In case of gross negligence on the part of KAMAKA or a representative or any other auxiliary persons as well as in case of culpably caused violations of life, body or health according to legal regulations, KAMAKA is held liable. In cases of gross negligence, KAMAKA's liability is reduced to foreseeable damage typical for this contract.

In cases excluded from paragraph 1 and 2, KAMAKA's liability due to the delay for the compensation in addition to performance shall be reduced to 5% and for the compensation instead of performance (including the replacement of fruitless expenditures) to 10% of the value of the delivery / performance.

Further claims of the customer are excluded – even after the expiration of a deadline for performance defined for

KAMAKA. The limitation is not valid for culpable violations of essential contractual duties. The claim for compensation for the culpable violation of essential contractual duties is reduced to foreseeable damage typical for this contract. The customer's right to withdraw from the contract is not affected. No change of burden of proof to the disadvantage of the customer is connected with the preceding provisions.

#### **11. Limitation of liability in case of impossibility**

In cases of intent or gross negligence on the part of KAMAKA or a representative or any other auxiliary persons as well as in case of culpably caused violations of life, body or health according to legal regulations, KAMAKA is held liable. In cases of gross negligence, KAMAKA's liability is reduced to the for this contract typical, foreseeable damage.

In cases excluded from paragraph 1 and 2, KAMAKA's liability due to the delay for the compensation in addition to performance shall be reduced to 5% and for the compensation instead of performance (including the replacement of fruitless expenditures) to 10% of the value of the delivery / performance. Further claims of the customer are – even after the expiration of a deadline for performance defined for KAMAKA– are excluded. The limitation is not valid for culpable violations of essential contractual duties. The claim for compensation for the culpable violation of essential contractual duties is reduced to the for this contract typical, foreseeable damage. The customer's right to withdraw from the contract is not affected. No change of burden of proof to the disadvantage of the customer is connected with the preceding provisions.

#### **12. Withdrawal**

12.1. In case of unforeseeable events, especially in the sense of clause 6 of these conditions, the respective delivery contract has to be adopted adequately if the events have economic impact or if they change the content of the performance considerably or if they affect KAMAKA's business substantially. This is also valid for an impossible execution of our delivery duty which might turn out later.

12.2. The customer can only withdraw from the contract – within a legal framework – if KAMAKA is responsible for the breach of duty. In case of breaches of duty, the customer has to declare – within an appropriate period of time and upon request by KAMAKA- whether he or she withdraws from the contract or whether he or she demands the payment.

12.3. If the conditions mentioned in 12.1. are met and as long as it is economically feasible, KAMAKA has the right to withdraw completely or partially from the contract without incurring any claims for compensation whatsoever to KAMAKA.

12.4. If a customer's withdrawal from the contract is accepted by KAMAKA, KAMAKA can demand the reimbursement for the expenses and the reimbursement of the lost profit from the customer.

#### **13. Export limitations**

The customer is obliged to export goods delivered by KAMAKA and technical information given by KAMAKA according to the export regulations of his or her home country and those of the United States of America. Furthermore, the customer is obliged to demand the same duty from his or her customers without prejudice to the other provisions of the contract. The customer is exclusively held liable for any breaches of this duty.

#### **14. Patents and copyright**

We retain the copyright and ownership of circuit diagrams, drawings, drafts, descriptions, analyses and other documents. They may not be shared with third parties without written consent by KAMAKA. Without explicit consent by KAMAKA in advance, the copying is also forbidden. Any copies have to be returned to KAMAKA upon request.

#### **15. Place of Performance and Jurisdiction and Law applicable**

15.1. Place of Performance and exclusive place of jurisdiction for deliveries and payments (including cheque and bill actions) as well as for any disputes arising between the parties is the place of business of KAMAKA Electronic Bauelemente Vertriebs GmbH.

15.2. The law of the Federal Republic of Germany under exclusion of the UN Purchasing Law (CISG) shall apply for these delivery and payment conditions as well as all legal relations

#### **16. Partial ineffectiveness**

In case of ineffectiveness of any of these regulations, KAMAKA is allowed to replace the ineffective provision by an effective arrangement whose economic success corresponds to the ineffective provision as well as possible. This shall not affect the validity of all other provisions or agreements.