

Kampmann GmbH - General Terms and Conditions
Date 03/2018

1. Scope

All Kampmann deliveries, services and quotes are based exclusively on these Kampmann General Terms and Conditions. These also form an integral part of all contracts that Kampmann concludes with the Customer. The Customer's or third parties' terms and conditions of business do not apply, even if Kampmann does not object to their application in individual cases.

2. Offer and Conclusion of Contract

All our offers are non-binding. Oral collateral agreements are binding only if confirmed in writing. The Customer is bound by its purchase orders for two weeks. The contract will only come into effect if Kampmann accepts the purchase order by confirming it or effecting delivery within this period.

3. Prices and Payment

3.1

The prices quoted by us are net prices. The statutory value added tax applicable at the time of delivery is to be added to these prices; freight, packaging and shipping costs must also be added if the goods are to be sent to the place of performance specified by the Customer. In case of permanent, call or successive delivery contracts, the sales prices applicable on the day of delivery plus the ancillary costs mentioned above apply, e.g. value added tax, freight, packaging and shipping costs. If deliveries are made after the originally planned date for reasons for which the Customer is responsible and if wage and material costs or the prices of upstream suppliers increase after this point in time, we have the right to increase our prices by a corresponding percentage. Confirmed prices apply only to the order in question and are not binding for repeat orders.

3.2

The invoiced amount is due immediately on receipt of delivery without any deduction, however within 10 days from the invoice date, at the latest. The receipt of payment is relevant in determining whether the payment was made on time or not. Any discounts agreed become void if the Customer is in default of payment for earlier deliveries. In the event of delayed payment, we charge interest at a rate of 9 percentage points above the applicable base interest rate. We reserve the right to advance claims for higher damages. In the event of a payment delay regarding a claim for consideration we are entitled to a lump sum of € 40.00, which is to be offset against any damages owed, if the damages are caused by the cost of prosecution. In the event of delayed payment of amounts invoiced for earlier deliveries, the invoiced amount is due for payment immediately upon receipt of delivery. The same shall apply if the Customer filed for insolvency.

3.3

The Customer may offset counter claims only if the counter claims were recognised by declaratory judgement or are undisputed. Any right of retention as specified in statutory provisions is excluded from this prohibition.

4. Delivery / Passing of Risk

4.1

All deliveries are made ex Kampmann works.

4.2

Delivery times and delivery dates proposed by Kampmann are always only approximations unless they were expressly agreed as fixed dates in writing.

4.3

The delivery times and delivery dates refer to the time of transfer to the carrier if the goods were agreed to be shipped by Kampmann. The risk passes to the Customer at the moment of delivery of the objects purchased to the carrier. Incoterms do not apply.

4.4

Kampmann is entitled to make partial deliveries only to the extent to which such deliveries are reasonable for the Customer. This shall be the case if it is possible for the Customer to use the partial delivery in line with the contractual and intended purpose, the delivery of the remaining goods is ensured and the Customer will not incur additional work and expenses, unless Kampmann agrees to bear such expenses.

4.5

Kampmann is liable for any impossibility of delivery or delay in delivery only if Kampmann is responsible for them. This does not apply in the event of force majeure or other unforeseeable events.

4.6

Kampmann may refuse delivery in cases where it becomes apparent after conclusion of the contract that the entitlement for the consideration is at risk due to a lack of financial capacity on the Customer's part unless the Customer provides security within a reasonable time limit set by Kampmann, on expiry of which Kampmann can withdraw from the contract.

4.7

In the event of delayed delivery, the Customer can withdraw from the contract in accordance with the legal provisions if Kampmann is responsible for the delay and an additional period of time of at least 14 days was granted to Kampmann in writing (article 314 paragraph 2 Bürgerliches Gesetzbuch (BGB – German Civil Code)). This does not shift the burden of proof to the Customer's disadvantage. Kampmann's liability in case of nondelivery or delayed delivery is based on Section 6.6.

4.8

Goods free of defects purchased from and delivered by Kampmann are not taken back unless Kampmann concluded an according individual agreement with the Customer.

5. Reservation of title

5.1

We retain title to the goods supplied until fulfilment of all our claims (including any current account balance receivables) due to us from the Customer now or in the future under the business relationship (goods subject to retention of title).

5.2

Upon assignment of the claims resulting from the above the Customer is entitled to sell the goods subject to retention of title in the ordinary course of business as long as the Customer is not in arrears. Pledging as collateral or transfer by way of security is not permitted. By way of security, the Customer already now assigns to us in full any receivables and claims from resale or any other cause in law (e.g. insurance event, tortious act) related to the goods subject to retention of title. If the goods subject to retention of title are sold together with other goods not owned by us without or after further processing or combination, the assignment of the receivables from the sale shall apply only in the amount of the value of the goods subject to retention of title. We accept this assignment.

5.3

Upon request the Customer is obliged to provide us with the names of the Customer's debtors and the amount of the billing receivables. The Customer is obliged to insure the goods subject to

retention of title against loss and damage. If we exercise our rights under the retention of title due to the Customer being in breach of contract, we are entitled to access the Customer's premises to retrieve the goods subject to retention of title.

5.4

We undertake to release the collateral due to us under the above provisions if the value of such collateral in the event of realisation exceeds the claim being secured by at least 10%.

6 . Warranty and Liability

6.1

The Customer is obliged to check all goods – even packaged goods – immediately on receipt for obvious defects and to report these in writing to Kampmann within seven calendar days from receipt of the goods, indicating their nature in a comprehensible manner. Defects that cannot be detected in a thorough check must be reported to Kampmann in the same way and within the same period of time from the moment of their detection. In the event of a sale by delivery to a place other than the place of performance, obvious damage to the goods from transit must be reported in writing to the freight carrier immediately upon receipt of the goods by the Customer, or to Kampmann if the goods were shipped at Kampmann's risk.

6.2

In case of defects, Kampmann is entitled to choose either to eliminate the defect or deliver an item free of defects. Supplementary performance on our part is deemed failed only if an existing defect was not remedied after the second attempt at supplementary performance. The Customer's rights in the event of failure, refusal and unreasonableness of supplementary performance remain unaffected.

6.3

The Customer's material defect claims become statute-barred after a period of twelve months. This does not apply if the law pursuant to article 438 paragraph 1 No. 2, article 445 b paragraph 3, article 79 paragraph 1, article 634 a paragraph 1 BGB specifies longer periods of time or in the event of death, injury to body or health, in the event of intentional or grossly negligent breach of duty or fraudulent concealment of a defect. The statutory provisions governing the suspension of expiration and the recommencement of time periods remain unaffected.

6.4

The item purchased is not deemed defective in the event of insignificant deviations from the agreed quality, particularly in terms of colour and execution, in the case of normal use or damage caused after the passage of risk as a result of incorrect or negligent handling or maintenance or as a result of special external influences.

6.5

We are at all times liable, in accordance with the mandatory provisions of the German Product Liability Act, for damage due to death, injury to body or health for which we, our legal representatives or vicarious agents are responsible as well as for any damage caused intentionally or through gross negligence by us or our legal representatives or vicarious agents.

6.6

In the event of slight negligence, except in the cases set out in Section 6.5, we are liable only in the event of breach of material contractual obligations. In this case, our liability for material damage and financial loss is limited to foreseeable damage and loss typical for this type of contract. In the event of delayed and/or incorrect deliveries, we are not liable for consequential damage, except for the cases set out in Section 6.5.

6.7

If we make any suggestions on the application or use of our products, these are not planning services on our part, and any liability extending beyond the product description is excluded.

7. Work Performance / Work Delivery Performance

A contract for work and services exists only if Kampmann was charged with delivering and installing components manufactured by Kampmann, e.g. ceiling-mounted radiant panels, floor ducts or cooling ceilings. In such cases, Kampmann's warranty obligation is reduced to two years from the date of acceptance. Acceptance cannot be refused for insignificant defects. In all other cases where Kampmann was only required to supply movable components or plant parts, the law governing the sale of goods including Kampmann's General Terms and Conditions mentioned above applies.

8 . Place of Performance, Place of Jurisdiction and Final Provisions

8.1

The place of performance for deliveries is the place of dispatch, for payments it is Kampmann's place of business.

8.2

If the Customer is a merchant, an entity incorporated under public law or a special fund under public law, the place of jurisdiction for all disputes arising out of this contract – including actions on bills of exchange and cheques – is, at our discretion, our place of business or the Customer's place of business. The same applies if the Customer does not have a general place of jurisdiction in Germany or if the place of residence or habitual residence is unknown at the time legal proceedings are initiated.

8.3

German law with the exception of the United Nations Convention on Contracts for the International Sale of Goods (CISG) applies to all contracts concluded between the Customer and us.