

## **General Terms and Conditions of Sale of KAMAG Transporttechnik GmbH & Co. KG**

### **I. General**

1. These General Terms and Conditions apply **exclusively** to all, including future, offers, supply contracts and other performances.
2. Any conflicting stipulations and clauses of the Buyer are hereby explicitly rejected. Conflicting stipulations and clauses only become part of the agreement if recognized by us in writing.
3. Any agreements shall be made in writing. This applies to ancillary agreements and warranties as well as to subsequent changes to the agreement
4. No assignment of rights and duties of the Buyer to third parties shall be made unless with our written approval.
5. Should any stipulations of these Terms and Conditions be / become invalid, this shall not affect the validity of the remaining stipulations.
6. These Terms and Conditions only apply to companies as defined by § 14 BGB (German Civil Code) and public law entities as well as public special funds.

### **II. Offers, prices**

1. Our offers are without engagement and only become binding from the time of our written confirmation of order. Reasonable technical changes and changes in shape, colour and/or weight are reserved.
2. Unless otherwise agreed, the price of the object sold is quoted ex supply plant plus the value-added tax at the rate applicable on the date of invoicing. Cash discounts may only be deducted following written agreement. Additional services (e.g. acceptance, transfers etc.) provided at the request of the buyer which are not part of our obligations under the written agreement or our confirmation of order, shall be invoiced separately by us.
3. The Buyer shall bear responsibility for all risks arising during transport – subject to other individual contractual agreements. Where transport is carried out by our staff, the risk shall pass to the Buyer from the time when the goods leave our company premises.
4. Where a delivery period of more than 4 months after execution of the agreement has been agreed for the goods ordered from us, we shall be entitled to a reasonable increase in our prices in case of any price increases by our suppliers and increases of other costs.

### **III. Payment, default in payment**

1. The purchase price and the price for any additional services shall be paid in cash at the time of transfer of the object sold – but no later than 8 days after receipt of the notification indicating readiness for collection – and delivery or transmission of the invoice. The Buyer shall be deemed in default if the invoice remains unpaid 30 days after receipt. The right to give written notice of default to the Buyer remains unaffected.
2. Even if a payment date or partial payments have been agreed, our complete claim shall become due for immediate payment irrespective of the due date of any bills of exchange handed over in case reasonable debts in the Buyer's ability to pay arise; this applies, in particular, if the Buyer is in default by more than 14 days, if he has ceased payments, or if a petition for insolvency proceedings has been filed with regard to the Buyer's assets.
3. Payment orders, cheques and bills of exchange shall only be accepted following special agreement and on account of payment whereby all collection and discount charges shall be charged to the Buyer.
4. The Buyer shall only be entitled to offset claims against our claims if the Buyer's counterclaim is undisputed or a legally enforceable decision exists. A right of retention can only be claimed in as far as it is based on claims under the same purchasing agreement.
5. If partial payments have been agreed and the Buyer defaults on the payment of two consecutive instalments despite an additional period of time of reasonable length for payment having been granted, we shall be entitled to withdraw from the agreement or claim compensation for failure to perform, notwithstanding our rights under Section 6, Para. 6.
6. Interest on arrears shall be charged at 8% p.a. above the base rate valid at the time. This interest shall be higher or lower if we are able to prove that we are charged a higher rate of interest or if the Buyer is able to prove a lower rate of interest.

7. We shall be entitled to offset any claims of the Buyer with counterclaims of whatever type. These counterclaims include, in particular, claims which we have established against the Buyer and which have been assigned to us by other companies.

**IV. Delivery, default of delivery, default in acceptance**

1. Unless otherwise agreed in writing, the delivery dates or periods indicated by us are not binding. Any delivery dates or deadlines, even when agreed as binding, shall be subject to complete and correct supplies reaching us from our suppliers, unless the failure or delay in delivery is caused by a reason for which we can be held responsible. The right to perform part deliveries is reserved.
2. The delivery period shall not commence until all technical and commercial details of the order handling have been finally clarified. The delivery period shall not commence until the Buyer has provided all required documents, approvals, releases and until the agreed payment, if any, has been received.  
The delivery period is deemed to have been fulfilled if before its expiry the goods have left our plant or the readiness for collection has been notified.
3. If we are in default of delivery for reasons for which we can be held responsible, our liability for any damage due to such default proven by the Buyer shall be limited to 0.5 % per calendar week of the value of that part of the delivery which could not be put into expedient operation due to the default in completing objects belonging to the delivery, but in total no more than 5% of the value of that part of the complete delivery which could not be used as intended.
4. The right of the Buyer to withdraw from the agreement due to a default of delivery or to claim compensation because of failure to perform shall be subject to the Buyer having granted us a reasonable period of grace after we had entered into a state of default. A reasonable period of grace is considered a period of up to 60 days. Under any circumstances our compensation shall be limited to damages which could typically be expected in this concrete transaction. Any claim to damages by the Buyer is limited to 15% of the value of the delivery unless the default of delivery is due to gross negligence on the part of our agents or our senior officers.
5. Compliance with our delivery promises shall be subject to the timely and correct fulfilment of the obligations concerning the Buyer by the Buyer. We shall be entitled to cease work on the delivery items or refuse delivery despite completed acceptance in case of reasonable doubt regarding the Buyer's ability to pay. In this case, we shall be entitled to make the delivery of the object sold dependent on the provision of a suitable surety for our claims.
6. In case of any cases of Force Majeure or interruptions in our or our suppliers' plants due to, for example, insurrections, strikes or lockouts, preventing us temporarily from delivering the object sold at the agreed time or within the agreed period for reasons for which we cannot be held responsible, the agreed dates and periods shall be extended by the duration of the interruption to our performance caused by such events. The Buyer shall be notified of such events.
7. Should the reasons given under Section 6 result in the inability to deliver, we shall be released from our obligation to deliver, and the Buyer shall have no right to claim compensation or rescission of contract.
8. If the delivery is delayed due to culpable behaviour on the part of the Buyer or for reasons for which the Buyer can be held responsible, the Buyer shall reimburse any costs (as well as storage costs etc.) arising as a result of such delay.
9. Changes in design and shape, deviations in shade and modifications of the scope of delivery shall be reserved during the delivery period, provided that the object sold is not changed significantly and that Buyer can be reasonably expected to accept these changes. These performance conditions shall not apply if the characteristics of the object sold have been expressly warranted by us in writing.
10. Any indications in descriptions valid at the time the agreement is concluded regarding the scope of delivery, appearance, performance, dimensions and weights, consumption of service fluids, operational costs etc. of the object sold shall be non binding and deemed approximate indications. These shall not be deemed warranted characteristics but shall serve as a measure to determine whether the object sold is free of defects, unless an express warranty has been given in accordance with Section 1, Para 3. No rights shall be derived from the mere fact that codes and numbers to designate the order of the object sold may have been used.

## **V. Acceptance**

1. The Buyer shall be entitled to inspect the object sold at the agreed place of acceptance within 8 days from receipt of the notification of readiness for collection of the object sold, and he shall be obliged to accept the object sold within that period. If the Buyer fails to accept the object sold within that period, we shall be entitled to levy a stall charge of € 5.00 plus valued-added tax for each calendar day.
2. If the Buyer does not fulfil his acceptance obligation under Para. 1 for reasons for which he can be held responsible, the object sold shall be deemed accepted as conforming to the agreement on expiry of the 8<sup>th</sup> day following receipt of the notification of readiness for collection; this stipulation will be indicated expressly in our notification of readiness for collection.
3. If the Buyer does not fulfil his obligation to cooperate, in particular with regard to his obligation to accept and collect the object sold despite a reasonable period of grace granted by us or should the Buyer refuse acceptance or collection seriously and finally, or if the Buyer is evidently unable to pay the purchase price, we shall be entitled to withdraw from the agreement or claim damages due to failure to perform. If we decide to claim compensation, such compensation shall amount to 15% of the purchase price. The amount of damages shall be set high or lower, if we are able to prove higher or the Buyer is able to prove lower damages.
4. If we decide to claim compensation, such damages shall amount to 15% of the purchase price, subject to evidence of concrete higher damages, in particular taking into account the cost of return, unless the Buyer is able to prove lower damages. There is no requirement to grant a period of grace within the context of claims for damages, if grounds for suspecting the Buyer's ability to pay should arise following the conclusion of the agreement such as default of payment and cessation of payments, filing of a petition in insolvency, assignment of current assets as security, unfavourable credit reports from banks or other lenders or credit insurers.

## **VI. Reservation of title**

1. The object sold shall remain our property until full payment of all our claims, irrespective of their legal grounds. In addition, the object sold shall remain our property (goods subject to reservation of title) until clearance of all cheques or bills of exchange accepted on account of payment, even if the purchase price is paid for specific designated claims. This reservation of title shall also continue for all claims against the Buyer acquired subsequently, e.g. as a result of repairs, spare parts supplies or out of the ongoing business relationship.
2. The Buyer shall keep the object sold in proper order during the duration of the reservation of title and have all maintenance work specified by the manufacturer and any necessary repair work performed immediately – with the exception of emergencies – by us or by a workshop recognized by the manufacturer for the support of the object sold.
3. During the duration of the reservation of title the Buyer shall conclude a fully comprehensive cover insurance with a reasonable excess stipulating that we shall be the beneficiaries of the rights under the insurance agreement. Should the Buyer fail to fulfil this obligation, we shall be entitled to conclude this fully comprehensive insurance at the Buyer's expense, to disburse the premium payments and to collect them as part of the claim under the purchase agreement. The Buyer hereby assigns any claims under an insurance concluded by the Buyer.  
Unless otherwise agreed, any payments under the fully comprehensive insurance shall be used in full for the reinstatement of the object sold. If, in case of severe damage, a reinstatement is waived with our agreement, the insurance payment shall be used to pay the purchase price and the prices for additional services as well as any costs disbursed by us. The Buyer hereby assigns any claims under an insurance concluded by the Buyer.
4. During the duration of the reservation of title, we shall have the right of possession of the vehicle document of ownership. The Buyer shall file a written application with the vehicle licensing authority to ensure that the ownership document is handed over to us.
5. During the duration of the reservation of title, the Buyer shall be entitled to have and to hold and to use the goods subject to reservation of title provided that he fulfils his obligation under the reservation of title in accordance with the stipulations contained in this Section and is not in default of payment (in accordance with Section III Para. 5).

6. If the Buyer is in default of payment or if he fails to fulfil his obligations under the reservation of title, we shall be entitled to demand the handover of the object sold from the Buyer, and the Buyer – to the exclusion of any rights of retention unless these are based on the purchasing agreement – shall surrender possession of the object sold to us without delay. Having demanded handover of the goods subject to reservation of title from the Buyer, we shall be entitled to exploit the goods in the best possible way by selling them by private contract following notification to the Buyer with a reasonable period of grace, offsetting them against the purchase price. All costs incurred as a result of the return and utilization of the goods subject to reservation of title shall be borne by the Buyer. Without the need for further evidence, the utilization costs shall be deemed to amount to 10% of the utilization proceeds including value-added tax. These costs shall be set higher or lower if we are able to prove higher costs or if the Buyer is able to prove lower costs. The proceeds shall be credited to the Buyer after deduction of all costs and any claims by us in connection with the purchasing agreement.
7. For as long as the reservation of title exists, no sale, pledge, assignment by way of security, renting out or other transfer, which would affect our surety, or modification of the goods subject to reservation of title shall be permitted without our approval.
8. The Buyer shall notify us in writing without delay of any attachment by third parties, in particular of any seizure of the object sold or execution of a company attachment right by a workshop, and the Buyer shall inform these third parties immediately of our reservation of title. The Buyer shall bear all costs incurred in the process of having the attachment lifted or in the replacement of the object sold where these cannot be redeemed from the third party.
9. Any processing or conversion of the object sold by the Buyer shall also be deemed to have been effected on our behalf, however, without any liabilities arising for us from such processing of conversion. If the object sold is processed or combined with other objects not belonging to us, we shall acquire joint ownership in the new object in proportion of the value of the object sold to the other processed objects at the time of processing. The same stipulations shall apply for the object created by processing or combination as for the object sold under reservation of title.
10. We shall release the sureties due to us at the request of the Buyer where the value of the sureties exceeds the value of the claims to be secured by more than 20%.
11. The Buyer hereby assigns as surety the claims arising in the case that the Buyer sells the goods subject to reservation of title or the joint property in the goods created in accordance with Para. 9, against his buyer with all ancillary rights to the amount of the total invoiced sum (including value-added tax). We shall inform the Buyer without delay of any enforcement measures by third parties against any assigned claims, and we shall provide him with any information and documentation required for the defence of such action.

## **VII. Warranty**

1. In the case of any well-founded warranty claims by the Buyer, we shall, at our own discretion, either remedy the defect by reworking the goods or replace the defective goods with defect-free goods (subsequent performance). In the case of subsequent delivery of defect-free goods the Buyer shall return the defective goods to us.
2. We shall be entitled to refuse subsequent performance where this would only be possible by incurring unreasonably high costs. In judging the reasonableness, the value of the goods in defect-free condition, the significance of the defect, and the question whether the other type of subsequent performance can be used without significant disadvantages for the Buyer shall be taken into account, in particular.
3. Reworking shall be carried out in accordance with technical requirements by replacing or repairing defective parts at our own discretion at our place of business or at the place of business of the Buyer. The costs of materials and of the repair of the actual defect shall be borne by us. If parts are replaced during the reworking process, we shall be entitled to receive possession of such replaced parts.
4. The Buyer shall not be entitled to remedy defects in the object sold or have them remedied unless with our agreement.
5. During the course of reworking we shall be entitled to rework all damages caused by the defect.

6. In so far as defects of third party bodies or tyres are included in the warranty claims, the Buyer shall address the relevant manufacturer/importer before taking recourse on us. We shall authorize the Buyer in this respect to assert any warranty claims in his own name. The Buyer shall only pursue warranty claims against us if the relevant manufacturer/importer has not reworked the defective goods within a reasonable period despite the best efforts of the Buyer.
7. The Buyer's right to rescind the agreement is excluded provided that the defect only represents an insignificant reduction in the value or merchantability of the object sold.
8. Within the framework of warranty, we shall only be liable with regard to our own publicly stated quality characteristics/indications. Any liability with regard to public statements of third parties concerning the quality of the object sold, in particular in advertising or during the characterization of certain properties of the object shall be excluded.
9. No warranty obligations exist if
  - the object sold has been treated improperly or excessively stressed, or
  - the object sold has previously been repaired, maintained or tended in a company not recognized by us for support, or
  - parts have been integrated into object sold whose use was not approved by us, or
  - the object sold has been modified in a way not approved by us, or
  - the Buyer has not observed the instructions regarding the treatment, maintenance and care of the object sold (e.g. operating instructions), unless it can be excluded that one of these circumstances was responsible for the occurrence of the defect.
10. Natural wear and tear is excluded under the warranty.
11. The Buyer shall check and examine the object sold carefully immediately on receipt and perform random sample testing, if applicable. Apparent defects shall be notified to us in writing without delay but no later than 8 days after receipt of the object sold.  
If no such immediate notification is made, any warranty claims shall be excluded. The object sold shall be stored properly and returned to us at our express request.
12. We perform any consultancy services to our best knowledge based on our expertise, but excluding any liability. Any statements and information regarding the suitability and application or use of the object sold are non-binding, unless expressly warranted in writing. Such information shall not release the customer from his duty to carry out his own tests.
13. The limitation period of § 438 Para. 1 Point 3 BGB (German Civil Code) for warranty claims shall be reduced to twelve months. This shall not apply to claims as contemplated by § 479 Para. 2 BGB (recourse in consumer goods sale).

#### **VIII. General limitation of liability**

1. Liability for property damage is excluded provided that the damage is caused by a slight negligence with regard to an accessory obligation – which does not result in any risk to the object of the agreement. This shall apply, in particular, if the damage caused is covered by the Buyer's insurance.
2. Irrespective of the reason of recourse to our company, our liability for damages shall be restricted to property damage and personal injury.
3. Our liability shall include – except in cases of intent – only such damages which can typically be expected in this concrete type of transaction.
4. Where our liability is excluded or restricted, this exclusion or restriction shall also apply to the personal liability of our officers, employees, representatives and agents.
5. Claims of compensation of the Buyer due to a defect shall expire one year from delivery of the goods. This stipulation shall not apply if we are culpable of gross negligence or in cases of personal injury or damage to health or in case of loss of life of the Buyer for reasons for which we can be held responsible.
6. The above liability restrictions do not apply to claims under the Product Liability Act (§ 1, Product Liability Act).

#### **IX. Terms and conditions of sale for used vehicles or parts**

1. Any warranty whatsoever shall be excluded with regard to the sale of used vehicles or parts by us. Such sales are performed "as seen" by the Buyer. No warranty statements or representations are made. The Buyer shall be responsible for checking the vehicle for its operational safety.



2. The used vehicle shall remain our property until complete payment of the purchase price. Otherwise the above terms and conditions shall apply mutas mutandis in as far as they can be used.
3. If used vehicles are traded in as part-exchange, the value to be determined on the day of takeover shall be authoritative if a reduction in value of or damage to the used vehicle has occurred between the conclusion of the agreement and takeover. If no agreement about the reduction in value can be achieved, this reduction shall be determined by an expert of our choice. If stipulated in the agreement that a used vehicle to be accepted by us in part-exchange must be handed over following testing by the TÜV testing organization, testing by any other official or officially approved testing organization is excluded. This test shall not be older than 14 days at the relevant time. Should the TÜV organisation detect defects, such defects shall be remedied by the Buyer at his own expense. The inspection report shall be presented before handover of the vehicle. If the Buyer fails to have such defects remedied, we shall be entitled to refuse the part-exchange of the used vehicles and demand the agreed part-exchange amount for immediate payment.

#### **X. Place of fulfilment and legal venue**

1. The place of business of our company is the exclusive place of fulfilment for all our obligations towards the Buyer under the contractual relationship including our warranty obligation.
2. The place of business of our company is the exclusive legal venue for all disputes arising from present and future claims from the business relationship with the Buyer, including any claims from bills of exchange and cheques.
3. The law of the Federal Republic of Germany shall apply. The stipulations of the UN Sales Convention shall not apply.