

General Purchase Conditions

KAMAT Pumpen GmbH & Co. KG

I. Scope

These Conditions and any other agreements shall regulate the legal relationship between the Supplier and the Customer. Any amendments or supplements shall be in writing. Any other standard terms and conditions shall not be applicable, notwithstanding the failure in any particular case to expressly object to such in writing.

II. Orders

1. Supply contracts (order and acceptance) and requests for delivery as well as any amendments or supplements shall be in writing. Requests for delivery may also be made by way of data transfer.
2. If the Supplier fails to reject an order within 2 weeks, such order shall be binding. If the Supplier fails to expressly accept an order within 3 weeks of receipt at the request of the Customer, the Customer may cancel such.
3. If the Supplier fails to reject a request for delivery within 1 week of receipt of such, such delivery shall be binding.
4. The Customer may, as is reasonable for the Supplier, require changes to the design and type of the delivered goods. In such cases the consequences, particularly in relation to increased or reduced costs as well as delivery dates, shall be regulated by way of reasonable mutual agreement.

III. Delivery Dates and Deadlines/Dispatch Clauses/Delay in Delivery

1. Agreed dates and deadlines are binding. The effective date of delivery for determining delivery dates or delivery deadlines shall be the date of receipt of the goods at the Customer's premises. The Supplier shall make the goods available in good time taking into account the normal time required for loading and dispatch.
2. Delivery shall be free to Customer's address unless otherwise previously agreed in writing. The Supplier shall pack, identify and externally label the goods in accordance with the requirements of the Customer and the carrier. The Supplier shall use the identification description of the Customer on all delivery documentation and delivery notes. At the request of the Customer the Supplier shall take back and correctly dispose of all shipping packaging and outer packaging at its own risk and expense. In other respects delivery shall take place in accordance with the directions of the Customer.
3. The Supplier shall be obliged to compensate the Customer for damage resulting from delay. This shall not apply to loss of profit and damage arising from interruption of operations. In cases of slight negligence on the part of the Supplier any damages shall be limited to additional shipping costs, re-equipping costs and, subject to a further deadline being set and not held or in cases of the interest of the Customer no longer existing in relation to the supply, damages shall be limited to the additional costs of replacement purchase.
4. The Customer may seek damages in accordance with paragraph 3 by way of lump sum compensation. The lump sum compensation shall be 2.5 % of the delivery value for each completed calendar week of delay, but in total no more than 10 % whereby the right of the Customer to claim a higher level of damages for proven damage shall not be affected. The Supplier may prove that no actual damage or reduction of value resulted or that any actual damage is substantially lower than the lump sum compensation.
5. In case of delay the Customer may demand from the Supplier a penalty of 0.5 % of the delivery value for each completed calendar week of delay but in total no more than 5 %. The Customer may demand the penalty in addition to performance of the contract. The Customer shall declare its reservation of the right to claim a penalty upon acceptance of any late delivery. Any forfeited penalty shall be set off against the damages for delay in accordance with paragraphs 3 and 4.

IV. Prices and Payment

1. The agreed prices are fixed prices all inclusive in relation to all matters necessary for the Supplier to fulfil its duties.
2. Payment shall be, at the discretion of the Customer, within one week of receipt of delivery and invoice with 3 % discount, within 30 days of receipt of delivery and invoice with 2 % discount, or within 60 days without any discount. In case of any receipt of early deliveries the due date shall be in accordance with the agreed delivery date. Payment shall be, at the discretion of the Customer, by bank transfer or cheque.
3. In cases of defective delivery the Supplier may withhold payment proportionately until performance is duly completed.
4. The Customer may in response to claims by the Supplier declare a set off or exercise any rights of retention with all related rights and duties arising from the delivery itself or from the complete business relationship.
5. The Supplier may not assign, pledge or have collected by any third party its claims against the Customer without the prior written consent of the Customer, which may not be withheld except for good reason. In cases of extended retention of title the consent shall be deemed to have been given. The provisions of § 354 a of the German Commercial Code (HGB) shall remain unaffected in relation to any claims for money.

V. Force Majeure

The Parties shall be released from their duty to perform by any Acts of God, labour disputes, civil unrest, acts of any authority or any other unexpected, unavoidable and major event for the period of such event and to the extent of its effect. This shall also apply if such event occurs at the time when a Party is in delay. The Parties shall be obliged to

immediately provide the necessary information as is reasonable and shall adjust in good faith their respective duties to the altered circumstances.

VI. Liability for Defects

In the event of the delivery of defective goods, the Customer shall at its discretion, provided that the applicable legal provisions and the following prerequisites are present and insofar as nothing to the contrary has been agreed, be entitled to exercise any of the following rights:

1. The Customer may demand subsequent performance in accordance with § 440 No. 1 of the German Civil Code (BGB) in connection with § 439 sections 1, 3 and 4 of the German Civil Code (BGB) as follows:
 - a) Before the commencement of production (processing or installation), the Customer shall give the Supplier opportunity to sort out the goods as well as to rectify any defect or provide subsequent or replacement delivery, insofar as such is not unreasonable for the Customer. In the event that the Supplier is unable to do so or is unable to do so immediately, the Customer may terminate the contract without setting any further deadline and return any goods to the Supplier at the risk of the Supplier. In urgent cases the Customer may, after consultations with the Supplier, undertake to rectify the defect itself or arrange for a third party to do so. Any costs thereby resulting shall be borne by the Supplier.
 - b) In the event that the Customer detects the defect after the commencement of production even though the Customer has complied with the requirements of section VII (Notification of Defects), the Customer may demand from the Supplier subsequent performance and damages for the necessary transport as well as dismantling and instalment costs (work time and material costs).
3. Subject to the further prerequisites of § 440 of the German Civil Code (BGB) the Customer may in accordance with § 440 No. 2 of the German Civil Code (BGB) terminate the contract or demand damages or reimbursement of unnecessary expenses in accordance with § 440 No. 3 of the German Civil Code (BGB).
4. In the event that the same defective goods are repeatedly delivered, the Customer may, after written notice in the event of a further repeated delivery, terminate the contract also in relation to any duties or performance not yet executed.
5. The Supplier shall immediately make available any replacement parts upon demand and at the expense of the Supplier.
6. Any claims for defect shall extinguish upon the expiry of 2 years and 6 months from the commencement of operations of the final product in relation to which the Customer used the supplies, but in no case later than 3 years after delivery to the Customer. If the final product is, in keeping with the normal applications of the supplies, a building or construction, the time limitation shall be 5 years and 6 months from the commencement of operation but no more than 6 years from the date of delivery to the Customer. In relation to rail fastening systems and components, the normal method of use shall include use in a building or construction.
7. Claims for defects shall not arise if any defect arises from a breach of operational, maintenance or instalment regulations, unsuitable or incorrect use, defective or negligent use or natural wear and tear or if any defect arises from changes made by the Customer or third parties to the delivered goods.
8. In the cases of defective delivery any claims by the Customer in relation to the Product Liability Act, torts or conducting affairs without authority shall be unaffected by this section VI.
9. Any warranties as to nature or durability shall be made expressly in writing and in individual cases agreed and designated as such.

VII. Notification of Defects

The Customer shall notify the Supplier immediately and in writing of any defects in the delivery as soon as the Customer identifies such in accordance with the normal circumstances of due business procedure. To this extent the Supplier waives any objection to a late notification of defects.

VIII. Quality and Documentation

1. The Supplier itself shall perform on its own premises unless the Customer previously consents in writing to the performance of contractual duties by way of third party products or by sub-suppliers. The Customer may refuse such consent only for an important reason. If consent is granted, these General Purchase Conditions shall apply in relation to third party products and sub-suppliers whereby the Supplier shall assume the liability for such to the extent stated in section X. The Customer may, subject to the granting of a reasonable period of notice, revoke any consent granted for an important reason taking into account the legitimate future interests of the Supplier.
2. In regard to its supplies the Supplier shall comply with the recognised principles of science and technology, as well as safety regulations and the agreed technical data. Supplier shall maintain a quality assurance system that conforms to at least the recommendations of DIN ISO 9001 of 2000. Reference is made to the VDA paper, "Safeguarding the Quality of Deliveries – Selection of Suppliers / Production Processing and the Releasing of Products / Quality Performance in Series", Frankfurt am Main 1998 for the first sample testing. Only after the Customer has accepted the first sample may series delivery be commenced. Any changes to the goods to be delivered require the prior written approval of the Customer. Notwithstanding that, the Supplier shall constantly verify the quality of the goods to be delivered. The Parties shall inform each other as to the possibilities for improving quality.

3. In the event that the type and scope of the testing as well as the testing devices and methods in terms of quality assurance are not agreed between the Supplier and the Customer, the Customer is, at the request of the Supplier in terms of its knowledge, experience and possibilities, prepared to discuss the testing with the Supplier and to determine the necessary state of the testing technology. Furthermore, the Customer shall inform the Supplier upon request as to the applicable safety regulations.
 4. Further, the Supplier shall in relation to technical documentation or by way of specially agreed marked parts, record the time and place of testing and by whom the goods to be delivered have been tested in relation to those characteristics requiring documentation and shall further record the results provided by the necessary quality control tests. The testing documentation shall be kept for 10 years and shall be presented to the Customer as required. The Supplier shall make its sub-suppliers subject to the same duties insofar as such is permissible by law.
 5. Insofar as official authorities responsible for the supervision or control of safety or the operation of the final product in which the Customer has utilised parts or services of the Supplier, demand access to the production procedure or the testing documentation of the Customer for the purposes of verifying certain requirements, the Supplier declares that it is prepared, at the request of the Customer, to grant the same rights to the official authorities in their operations and provide all possible assistance.
 6. The Supplier shall make available to the Customer at its request original evidence (e.g. in accordance with EU, EFTA or NAFTA provisions) with all necessary details and duly signed. The Supplier shall inform the Customer if any goods to be delivered are subject to legal export limitations or export limitations ordered by an authority.
- IX. Confidentiality**
1. The Parties undertake to treat as a trade secret all commercial and technical details which are not obvious and which become known as a result of the business relationship.
 2. The Supplier may not without authority use or inform third parties of, or make available or otherwise make accessible any templates or rules of a technical nature, in particular drawings, models, templates, patterns, instructions on elements or samples or similar for competitive purposes or for its own use. The copying of any such objects is only permissible in terms of operational necessities and copyright regulations.
 3. Sub-suppliers shall be subject to corresponding
 4. duties in relation to the above.
 5. The Parties may advertise their business relationship only with the prior written approval of the other party.
- X. Liability**
- Insofar as no other provision for liability is made under these Conditions, the Supplier shall be obliged to compensate for any damage resulting directly or indirectly to the Customer as a result of defective delivery, due to a breach of official safety regulations or as a result of any other legal ground related to the Supplier.
1. Liability to pay damages shall only exist if the Supplier is at fault in relation to any damage caused.
 2. If the Customer is made subject to third party claims on the basis of mandatory law the Supplier shall, in relation to the Customer, be liable to the extent of any direct liability, had it existed. For the purposes of the settlement of any damages claims between the Customer and the Supplier the principles of § 254 of the German Civil Code (BGB) shall apply accordingly. This shall also apply in case of a direct claim against the Supplier.
 3. The duty to pay damages shall be excluded insofar as the Customer has effectively limited liability in relation to its subsequent customers. The Customer shall strive to ensure that any limitation as to liability is agreed within the legally permitted limits also in relation to the Supplier.
 4. Any claims by the Customer are excluded insofar as the damage results from breach of operational, maintenance or instalment regulations, unsuitable or incorrect use, defective or negligent use or natural wear and tear or a defective repair caused by the Customer.
 5. In relation to any measures of the Customer taken to limit liability (e.g. recall) the Supplier shall be liable to the extent of the law.
 6. The Customer shall consult with and inform the Supplier immediately and extensively in the event that it wishes to make a claim under the abovementioned provisions. The Customer shall provide the Supplier with the opportunity to examine the damage. The Parties shall reach an agreement as to the necessary measures to be taken in particular in relation to any settlement negotiations.
 7. The principles set out in section III paragraph 3 shall apply accordingly insofar as the Supplier is inadequately insured or has no insurance.
- XI. Property Rights**
1. The Supplier shall be liable for any claims resulting from the use of the goods delivered in accordance with this Contract arising from the infringement of property rights and property rights applications (Property Rights) in relation to which at least one of the property rights group was published in the home country of the Supplier, at the European Patent Agency or in one of the following countries: Federal Republic of Germany, France, Great Britain, Spain, Italy, Austria, Japan or the United States of America.
 2. The Supplier shall indemnify the Customer and its subsequent customers from all claims arising from the use of such Property Rights.
 3. This shall not apply insofar as the Supplier has manufactured the goods delivered in accordance with templates or regulations of a technical nature, in particular drawings, models, templates, patterns, instructions on elements or samples or similar and does not know or, in connection with the goods produced by the Supplier, is not required to know that Property Rights would have been infringed thereby.
4. Insofar as the Supplier is not liable in terms of paragraph 3, the Customer shall indemnify the Supplier against all claims by third parties.
 5. The Parties undertake to inform each other of any infringement risks and alleged infringement cases which become known and shall give each other the opportunity to act jointly against any respective claims.
 6. The Supplier shall at the request of the Customer give information as to the use of its own and licensed, published and unpublished Property Rights and Property Right applications in relation to the goods for delivery.
 7. The principles as to the limitation of liability contained in section III paragraph 3 shall apply accordingly.
- XII. Use of Production Devices and Confidential Details of Customer**
- Models, moulds, templates, samples, tools and other production devices as well as confidential information made available by the Customer to the Supplier or completely paid for by the Customer may only be used for deliveries to third parties after prior written approval of the Customer has been obtained.
- XIII. Retention of Title**
- The Supplier retains title to all delivered goods until such time as complete payment has been made. This shall apply to all deliveries as a common delivery transaction. In relation to current invoices the title retained shall be security for the balance owed. In the event that the goods are incorporated by the Customer with any other objects to form a new object and such new object is regarded as a substantial object, the Customer shall transfer to the Supplier a title to the substantial object proportional to the goods incorporated insofar as such title belongs to the Customer. In the event that the Customer duly resells the delivered goods, the Customer hereby assigns to the Supplier, until such time as the payment of all outstanding debts is made, all claims against the subsequent customer with all supplementary rights. The Customer shall, for good cause, and at the request of the Supplier, make such assignment known to a third party purchaser and provide the Supplier with all necessary information and provide all documentation for the purposes of the enforcement of the Supplier's rights. The Supplier shall release any security it retains insofar as the value exceeds the claim by more than 20 % in total.
- XIV. General Conditions**
1. In relation to determining the amount of compensation to be paid by the Supplier in accordance with sections III, VI, VIII, X and XI the following shall be taken into account in favour of the Supplier: the commercial circumstances of the Supplier, the type, extent and duration of the business relationship, any matters of liability or cause in relation to the Customer in accordance with § 254 of the German Civil Code (BGB) and any particularly disadvantageous installation location for the delivery component. In particular, any compensation costs and expenses to be borne by the Supplier shall be in a reasonable relationship to the value of the delivery component.
 2. If any Party does not pay or insolvency proceedings in relation to the assets of the Party or out-of-court settlement proceedings are applied for, the other Party may terminate the contract in relation to that part not yet performed.
 3. In the event that any provision of these Conditions and the related contracts is or becomes ineffective so the validity of the contract shall not otherwise be affected. The Parties undertake to replace the ineffective provision with a provision that most closely reflects the intended commercial result.
 4. The Law of the Federal Republic of Germany shall apply exclusively as it would apply between residents of Germany unless otherwise specifically agreed.
 5. The application of the United Nations Convention on the International Sale of Goods (CISG) of 11.04.1980 is hereby excluded.
 6. INCOTERMS shall apply in relation to all commercial clauses.
 7. The place of performance shall be the seat of the Customer. Further agreements may be entered into in relation to delivery.
 8. The place of jurisdiction shall be the seat of the Customer.

Date: 01.10.2008
KAMAT Pumpen GmbH & Co. KG