

# STANDARD CONDITIONS OF SALE

## 1 DEFINITIONS

### 1.1 In these Conditions:

**BUYER** means the person who buys or agrees to buy the Goods from the Seller;

**CONDITIONS** means the terms and conditions of sale set out in this document and any special terms and conditions agreed in writing by the Seller;

**CONTRACT** means a contract between the Seller and the Buyer for the sale and purchase of Goods in accordance with these Conditions and shall include the order form and/or proforma invoice, which sets out the Buyer's details;

**DATA PROTECTION LAWS** -, all applicable data protection and privacy legislation in force from time to time which applies to Tama CE GmbH, and all other legislation and regulatory requirements in force from time to time which apply to a party relating to the use of Personal Data (including, without limitation, the privacy of electronic communications);

**DELIVERY DATE** means the date specified by the Seller when the Goods are to be delivered, or the date on which delivery takes place, whichever is later;

**DELIVERY DESTINATION** means the location specified in a Contract for the delivery of the Goods ordered by the Buyer under that Contract;

**GOODS** means the articles which the Buyer agrees to purchase from the Seller; and

**SELLER** means Tama CE GmbH from An den Loddenbüschen 81a, 48155 Münster, Germany

**SERVICES** - means as defined in cause 14.1.

## 2 CONDITIONS APPLICABLE

2.1 These Conditions shall apply to all Contracts to the exclusion of all other terms and conditions including any terms or conditions which the Buyer may purport to apply under any purchase order, confirmation of order, or similar document.

2.2 All orders for Goods shall be deemed to be an offer by the Buyer to purchase Goods pursuant to these Conditions.

2.3 Acceptance of delivery of the Goods shall be deemed Buyer's acceptance of these Conditions.

2.4 Any variation to these Conditions (including any special terms and conditions agreed between the parties) shall be inapplicable unless expressly agreed in writing by the Seller. The Buyer acknowledges that it has not relied on any statement, promise or representation made or given by or on behalf of the Seller which is not set out in the Contract.

2.5 Quotations issued by the Seller do not constitute an offer by the Seller to supply the Goods referred to therein.

2.6 The images and/or drawings of the Goods displayed on the website are for illustration purposes only and do not bind the Seller. It is agreed and clarified that the Seller will make every effort to provide the Buyers with images and data as accurate as possible regarding the Goods.

2.7 The Seller makes every effort to ensure that the information provided on the website is the most complete and accurate information possible, it is made clear that it may contain, in good faith, inaccuracies or errors for which the Seller will not bear any liability arising from or related to them.

2.8 The Seller does not undertake to maintain inventory of all the Goods whose images appear on the website. ↓

### 3 PRICE

- 3.1 The price payable for the Goods shall be the price stipulated in the Seller's published price list current at the date on which the Goods were ordered by the Buyer. Otherwise, the price payable for the Goods shall be the price agreed upon by the Seller and the Buyer in writing.
- 3.2 The Seller reserves the right to increase from time to time the current price list without giving written notification to the Buyer due the volatile nature of the raw materials used and specific market conditions.
- 3.3 The price is exclusive of VAT (or any similar tax) or any tax or duty relating to manufacture, transport, export, import, sale or delivery of the goods which shall be due at the rate ruling on the date of the Seller's invoice.
- 3.4 All prices are quoted in Euro (EUR) unless otherwise specified, and all payments must be made in EUR unless otherwise agreed in writing by the Seller.

### 4 DELIVERY

- 4.1 Subject to clause 5.2, Delivery shall take place by such method as the Seller may in its absolute discretion decide, to the location specified by the Buyer (the „Delivery Destination“), on or as close to the Delivery Date as is reasonably practicable in all the circumstances. For the avoidance of doubt, the Delivery Date is approximate only.
- 4.2 Costs of packaging and delivery shall be included in the price of the Goods, unless otherwise stated in the Sale Invoice.
- 4.3 No delay in the delivery of the Goods shall affect the price of the Goods or entitle the Buyer to reject any delivery or any further instalment or part of the order or any other order from the Buyer or to repudiate the Contract or the order.
- 4.4 If, for any reason, the Buyer fails to accept delivery of any of the Goods when they are ready for delivery, or the Seller is unable to deliver the Goods on time because the Buyer has not provided appropriate instructions, documents, licenses or authorizations, then Seller may store the Goods until delivery, whereupon the Buyer shall be liable for all related costs and expenses (including, without limitation, storage and insurance). This provision is without prejudice to any of the Seller's rights in relation to a failure by the Buyer to take delivery of the Goods or pay for them in accordance with the terms of the Contract.
- 4.5 Subject to the other provisions of these Conditions the Seller shall not be liable for any direct, indirect or consequential loss (all three of which terms include, without limitation, pure economic loss, loss of profits, loss of business, depletion of goodwill and similar loss), costs damages, charges or expenses caused directly or indirectly by a delay in the delivery of the Goods (even if caused by the Seller's negligence).
- 4.6 Subject to the other provisions of these Conditions the Buyer shall not entitle to terminate or rescind the Contract unless such delay exceeds sixty (60) days.

### 5 PAYMENT

- 5.1 Unless the Contract provides otherwise, subject to 5.3, payment of the price, VAT and any other tax, duty, insurance, storage or delivery charges shall be due within thirty (30) days of the end of the month of invoice.
- 5.2 The Contract shall stipulate whether deposits or other interim payments shall be required prior to delivery.
- 5.3 In the event that payment is to be made by a letter of credit then it shall be an express condition of the Contract that the letter of credit is irrevocable and is drawn on or confirmed by a first class German bank paid over German counter and all the documentation is presented to the Seller when requested by the Seller or otherwise in accordance with the terms of the Contract.



- 5.4 All payments payable to the Seller under the Contract shall become due immediately on its termination despite any other provision.
- 5.5 Time for payment shall be of the essence.
- 5.6 The Buyer may not withhold payment of any invoice or other amount due to the Seller by reason of any right of set-off or counterclaim which the Buyer may have or allege to have or for any reason whatsoever.

## 6 LATE PAYMENT

- 6.1 In the event that the Buyer fails to make payment of any invoice within its due date for payment then the Seller shall be entitled to (without limitation):
- 6.1.1 charge interest on such invoice from the day following the due date at a rate of 5%points or 8%points if the Buyer is dealing as an entrepreneur (section 14 German Civil Code) above the base rate of interest and such interest shall accrue at such rate after as well as before judgment;
- 6.1.2 charge additional commercial maturity interest in accordance with the provisions of section 353 German Commercial Code at such rates from the due date if the Buyer is dealing as a merchant;
- 6.1.3 suspend or cancel deliveries of any Goods due to the Buyer;
- 6.1.4 appropriate any payment made by the Buyer to such of the Goods (or any other Goods supplied under any other Contract with the Buyer) as the Seller may in its sole discretion think fit.
- 6.2 For the avoidance of doubt, the rights and remedies of the Seller set forth hereto are cumulative, not exclusive, and the exercise of one thereof shall not deprive the Seller of the right to exercise others.
- 6.3 The Seller shall be entitled to exercise the remedies in Condition 6.1.1-6.1.4 above notwithstanding that risk and / or title to the Goods may not have passed to the Buyer.

## 7 RISK AND TITLE

- 7.1 Risk in the Goods shall pass to the Buyer:
- 7.1.1 Risk of loss shall pass to Buyer according to delivery terms specified in the Sale Invoice (Incoterms 2020). ; or
- 7.1.2 if the Goods are kept at the Seller's premises under the provisions of Condition 4.4, or otherwise to the Seller's order, upon collection of the Goods by the Buyer, or upon the expiry of fourteen (14) days from the Seller's written notice to the Buyer that the Goods are ready for delivery, whichever is the earlier.
- 7.2 The Seller accepts no responsibility for any loss, damage or shortage which may occur to the Goods in transit after risk has passed to the Buyer, and in the event that the Buyer has a claim arising in respect of any such loss, damage or shortage, then such claim should be notified to both the Seller and the Carrier as soon as is reasonably practicable. The Buyer undertakes in such circumstances to comply in full with the carrier's standard conditions for claims for damage, shortage or loss in transit, and agrees to indemnify the Seller against any loss resulting from a failure to so comply.
- 7.3 Notwithstanding that delivery may have taken place and / or risk in the Goods may have passed to the Buyer, title to the Goods shall not pass to the Buyer until such time as the Seller has received in cash or other cleared funds full payment of the price of the Goods and all other goods agreed to be sold by the Seller to the Buyer for which payment is then due. ↓

- 7.4 Until such time as title in the Goods passes to the Buyer:
- 7.4.1 the Buyer shall hold the Goods as the fiduciary agent of the Seller, and shall keep the Goods separate from those of the Buyer and third parties, and shall keep the Goods properly stored, protected and insured against all normal risks, to the reasonable satisfaction of the Seller and identified as the Seller's property and shall not destroy, deface or obscure any identifying mark or packaging on or related to the Goods;
- 7.4.2 the Buyer shall be entitled to use, re-sell or distribute the Goods in the ordinary course of its business (save that such entitlement may be terminated forthwith by notice from the Seller to the Buyer, and shall automatically terminate without notice in the event that a receiver or administrator is appointed over any of the assets or the undertaking of the Buyer, or a winding up order is made against the Buyer, or the Buyer goes into voluntary liquidation (other than for the purpose of a solvent reconstruction or amalgamation) or calls a meeting or makes any arrangement or composition with its creditors or any act analogous to the foregoing in any jurisdiction, and in the event of a liquidator or receiver being appointed then they shall pay into a separate bank account any sums received from third parties in respect of the sales to them of Goods by the Buyer up to the amount of any indebtedness of the Buyer to the Seller for the sole benefit of the Seller); and
- 7.4.3 provided that the Goods are still in existence and have not been sold by the Buyer in accordance with Condition 7 hereto, the Seller shall be entitled at any time to require the Buyer to deliver up the Goods to the Seller, and if the Buyer fails to do so forthwith to enter upon any premises of the Buyer or any third party where the Goods are stored and repossess the Goods.
- 7.5 Any Goods repossessed by the Seller may be resold on such terms as the Seller may in its absolute discretion determine and the Buyer shall remain liable to the Seller for the difference between the net proceeds or such resale and all outstanding sums due to the Seller in respect of the Goods and for all costs and expenses incurred by the Seller in repossessing, storing, insuring and re-selling the same.
- 7.6 The Buyer shall not pledge in any way, charge by way of security for any indebtedness for any of the Goods which remain the property of the Seller. Without prejudice to the other rights of the Seller, in the event that the Buyer purports to do so then all sums whatever owing to the Seller by the Buyer shall immediately become due and payable.
- 7.7 The provisions of these Conditions relating to payment for the Goods shall apply equally (and without limitation) to payment for fees or charges incurred by the Seller in undertaking any extra work, requirement, modification, test or inspection.
- 7.8 Upon termination of the Contract, howsoever caused, the Seller's (but not the Buyer's) rights contained in this Condition 7 shall remain in effect.
- 7.9 Except where, prior to shipment, Seller agrees in writing to accept return of the Goods sold hereunder, Seller reserves the right to decline at its sole discretion requests from Buyer to return quantities of the Goods ordered but not utilized by Buyer for any reason. No returns may be made without Seller's written approval. For approval and issuance of Goods return instructions, Buyer should contact Seller. Buyer shall pay all return shipping charges to the location designated by Seller. Buyer may not set off from payments due to Seller any amounts for returns or expected returns except with Seller's written permission. Seller shall not be obligated to issue any payments or credits for returned amounts where Buyer is in default of any of its payment obligations. Restocking fees may be charged at Seller's discretion.

## 8 WARRANTY PERIOD

Subject to the provisions of Condition 9 below, the Seller warrants that the Goods will correspond with their specification at the time of delivery and will be free from defect in both materials and workmanship for a period of twelve (12) month from the Delivery Date. These Conditions 8 and 9 shall not apply in cases where the Buyer is dealing as a consumer (section 13 German Civil Code). ↓

## 9 LIMITATION OF LIABILITY AND WARRANTY

- 9.1 Without prejudice to the generality of Condition 8 above, the Seller shall be under no liability to the Buyer:
- 9.1.1 In respect of any defect arising from wear and tear, wilful damage, negligence, abnormal working conditions, a failure to follow the Seller's instructions (whether oral or in writing), misuse or alteration or repair of the Goods without the Seller's approval;
- 9.1.2 whatsoever in the event that the full price (including, without limitation, those matters set out in Condition 7) for the Goods has not been paid by the due date for payment;
- 9.1.3 or otherwise be deemed to be in breach of the Contract by reason of any delay in performing, or any failure to perform any of the Seller's obligations in relation to the Goods if the delay or failure was due to any cause beyond the Seller's reasonable control. Without prejudice to the generality of the foregoing, the following shall be regarded as causes beyond the Seller's reasonable control:
- (a) act of God, explosion, flood, tempest, fire or accident;
  - (b) war or threat of war, sabotage, insurrection, civil disturbance or requisition, pandemic;
  - (c) acts, restrictions, regulations, by-laws, prohibitions or measures of any kind on the part of any governmental, parliamentary or local authority;
  - (d) import or export regulations or embargoes;
  - (e) strikes, lock-outs or other industrial actions or trade disputes (whether involving employees of the Seller or of a third party);
  - (f) difficulties in obtaining raw materials, labour, fuel, parts or machinery;
  - (g) power failure or breakdowns in machinery.
- 9.2 Where any valid claim in respect of any of the Goods is based on any defect in the quality or condition of the Goods or their failure to meet their specification is notified to the Seller in accordance with these Conditions then the Seller shall be entitled to fix or replace the Goods (or the part in question) free of charge, or at the Seller's sole discretion refund to the Buyer the price of the Goods (or a proportionate part thereto), but upon the Seller undertaking either of the steps in this Condition 9.2 the Seller shall have no further liability to the Buyer. In any event, and notwithstanding anything else to the contrary, Buyer shall not be entitled to any additional amounts or any other reimbursement, except as explicitly set forth in the preceding sentence of this Condition 9.2. For the removal of doubt, Buyer shall not be entitled to any reimbursement due to defect in the quality or condition of the Goods or their failure to meet their specification, unless Seller was notified of such defect and decided, at its sole discretion, not to replace the Goods (or any applicable component thereof) with conforming Goods or components. Notwithstanding anything else to the contrary in these Conditions, Seller shall not be under any obligation to fix or replace the Goods, or refund the price of such Goods, unless (i) it was notified of the defect in the quality or condition of the Goods or their failure to meet their specification, and (ii) it had the opportunity to inspect the Goods within a reasonable time after it was notified of the defect/non-conformity of the Goods. Except in respect of death or personal injury caused by the Seller's gross negligence, the Seller shall not be liable to the Buyer by reason of any representation (unless fraudulent), or any implied warranty, condition or other term, or any duty at common law, or under the express terms of the Contract, for loss of profit or for any indirect, special or consequential loss or damage, costs, expenses or other claims for compensation whatsoever (whether caused by the negligence of the Seller, its employees or agents or otherwise) which arise out of or in connection with the supply of the Goods.



- 9.3 Any claim (including any relating to the quality of the Goods) by Buyer arising out of this Contract shall be provided to Seller by written notice setting forth fully the facts on which it is based immediately after the date when the facts were discovered or reasonably should have been discovered, but in any event no later than 90 days after the date the Goods were delivered by Seller. Buyer unconditionally waives any and all claims that are not made during the requisite period required by this Contract and Seller shall not be obliged to accept any such claims made after such period.
- 9.4 Where the Buyer is dealing as a merchant, any claim (including any relating to the quality of the Goods) by Buyer arising out of this Contract shall be provided to Seller by written notice setting forth fully the facts on which it is based immediately after the date when the facts were discovered or reasonably should have been discovered (section 377 German Commercial Code).

## 10 INTELLECTUAL PROPERTY RIGHTS

- 10.1 All intellectual property rights and all other rights in the Goods and the Seller's website shall be owned or licensed by the Seller.
- 10.2 The Buyer shall indemnify the Seller on a full indemnity basis against any and all actions, costs (including, without limitation, the costs of defending any legal proceedings), claims, proceedings, accounts and damages in respect of any infringement of any patent, registered design, copyright, trademark or other industrial or intellectual property rights resulting from compliance by the Seller with the Buyer's specific instructions relating to the use of the Buyer's intellectual property rights.

## 11 DATA PROTECTION

- 11.1 The Buyer acknowledges and agrees that details of the Buyer's personal details will be processed in accordance with the relevant Data Protection Laws and the Seller's privacy notice available here: [insert link of Tama CE Privacy Policy]. Details of the Buyer's name, address and payment record may be submitted to a credit reference agency, and personal data will be processed by and on the Seller's behalf in connection with the Goods (all in accordance with the applicable law and regulations).

## 12 TERMINATION

- 12.1 Unless otherwise agreed by Seller and Buyer or stipulated hereafter, no Contract or work order may be terminated by Buyer except by mutual agreement in writing.
- 12.2 Termination of a work order is subject to the following conditions: (i) Buyer will pay for all undelivered Goods which are completely manufactured and allocable to Buyer at the time of Seller's receipt of notice of termination; and (ii) Buyer will pay all costs, direct and indirect, which have been incurred by Seller with regard to Goods which have not been completely manufactured at the time of Seller's receipt of notice of termination, plus a pro rata portion of normal profit on the Contract.

## 13 GENERAL PROVISIONS

- 13.1 These Conditions shall be governed by and construed exclusively in accordance with German law with exclusion of CISG and the parties hereby submit to the exclusive jurisdiction of the courts at the registered seat of the Seller.





- 13.2 Any dispute, controversy or claim arising out of or in connection with the Contract whether in tort, contract, under statute or otherwise, including any question regarding its existence, validity, interpretation, breach or termination of the Contract shall be settled by consultation between the Parties. In the event of failure of such consultations within 60 days (unless otherwise extended by mutual agreement) after receipt by the respondent party of the written notice of such matter, then the matter shall be subject to the jurisdiction stated above.
- 13.3 No forbearance or indulgence by the Seller shown or granted to the Buyer whether in respect of these Conditions or otherwise shall in any way affect or prejudice the rights of the Seller against the Buyer or be regarded as any waiver of any of these Conditions.
- 13.4 The Seller may cancel any Contract at any time before the Goods are delivered by giving written notice. Upon giving such notice the Seller shall promptly repay to the Buyer any sums paid in respect of the Goods. Without prejudice to the limitation of Condition 9 above, the Seller shall not be liable for any loss or damage whatever arising from any cancellation in accordance with this Condition 13.4
- 13.5 The Seller reserves the right to sub-contract the whole or any part of the Contract.
- 13.6 Any provision of these Conditions or any Contract which is, or may be, void or unenforceable shall, to the extent of such invalidity or unenforceability be deemed severable and shall not affect any other provision the contract. If any court or competent authority finds any provision of these Conditions unenforceable because of the breadth of area, subject or time to which it applies, the parties agree that the provision shall be enforced to the fullest extent permissible by law of the jurisdiction where enforcement is sought.
- 13.7 Any notice under or in connection with these Conditions or any Contract shall be in writing and shall be served by first class post or by hand on the party or sent by recorded delivery to the address of the party set out in the Contract or at such other address as may subsequently be notified by one party to the other, and in the absence of any evidence of earlier receipt any notice shall be deemed to have been received: (i) if delivered by hand when left at the address for service; or (ii) if sent by registered post, on the fifth day after posting; or (iii) if sent by email on the date sent (unless a delivery failure notification or similar is received by the sender). This clause does not apply to notices given in legal proceedings or arbitration for which emails will not be accepted.
- 13.8 No one other than a party to this Contract shall have any right to enforce any of its provisions.

## 14. TECHNICAL ADVICE OR OBSERVATION

- 14.1 At Buyer's request, Seller (or representative it may designate) may provide certain limited observation and/or technical advice associated with the sale and/or use of the Goods sold under this Contract ("Services"). Seller reserves the right to establish limits on the total time allocated to Buyer for such Services. Where Buyer and Seller contract in writing for additional or extended services, if any, those terms shall be controlling, within the scope of those extended services described.
- 14.2 Services are offered in an advisory capacity only, and Buyer assumes full responsibility for its use or non-use of such Services and agrees that Seller shall have no liability for Buyer's use or non-use thereof and Seller makes no warranty, expressed or implied, as to the services.
- 14.3 When visiting each other's premises, Buyer and Seller and their respective personnel shall observe all rules or regulations that are in force on such premises. Buyer shall inform Seller of hazards, reasonably associated with the provision of the Services. A Party may keep or withdraw its personnel from any site of the other Party without any liability for delay or otherwise if, in the opinion of the first Party, that site represents a danger to the safety of its personnel.

\*\*\*\*\*