



## GENERAL TERMS AND CONDITIONS

OF: Kamet Trading B.V.

### **Article 1 Definitions**

- Kamet : Kamet Trading B.V., the user of the General Terms and Conditions, the seller, the service provider, the contractor;  
Other Party : Kamet's counterparty, the buyer and the principal;  
The Carrier : the party providing the logistics services;  
The Shipper : the party where the goods are collected;  
Addressee : the consignee, tenant or co-tenant or employee working at the delivery address where the Carrier is to deliver the goods;  
Agreement : the agreement between Kamet and the other party.

### **Article 2 General**

- 2.1 These General Terms and Conditions will apply to every offer and Agreement between Kamet and the Other Party, to the extent the parties have not expressly deviated from these Terms and Conditions in writing.
- 2.2 The current Terms and Conditions will also apply to all agreements with Kamet for the performance of which Kamet uses the services of third parties.
- 2.3 Any applicability of the Other Party's general conditions will be expressly excluded, unless the parties have agreed otherwise in writing.
- 2.4 If Kamet concludes agreements with the Other Party more than once, the present General Terms and Conditions will apply to all subsequent agreements, irrespective of whether same have been explicitly declared applicable.
- 2.5 In addition to these General Terms and Conditions, the General Terms and Conditions of Carriage 2002 [*Algemene Vervoerscondities 2002*, or *AVC*], filed with the Registries of the District Courts of Amsterdam and Rotterdam, will apply in the event of domestic transport, and the Convention on the Contract for the International Carriage of Goods by Road (CMR), concluded in Geneva on 31 August 1956, will apply in the event of cross-border carriage by road, to the extent that these Terms and Conditions do not deviate from same.
- 2.6 If one or more provisions of these General Terms and Conditions are fully or partially null and void or are nullified, the remaining provisions of these General Terms and Conditions will continue to apply (fully or partially, as the case may be).

### **Article 3 Offers/orders/prices**

- 3.1 All of Kamet's offers, in whatever form, will be free of obligation, unless a term for acceptance is stated in the offer.
- 3.2 If a natural person concludes an Agreement on behalf or at the expense of another natural person, his/her signature on the form/order will also serve as certification that he/she is duly

authorised to do so. This person, in addition to the other natural person, will be jointly and severally liable for all obligations ensuing from the Agreement.

- 3.3 Agreements to which Kamet is a party will not be deemed to have been concluded until Kamet has accepted in writing an order placed by the Other Party or until Kamet has actually delivered the goods sold from its warehouse to the Other Party or to the actual storage location.
- 3.4 In the event of an oral Agreement, the invoice will be considered to contain a correct and complete representation of the Agreement, unless a complaint is lodged within 30 days of the invoice date.
- 3.5 The prices stated in the offers/catalogues/price lists will be based on delivery ex Kamet's warehouse, in euro, and exclusive of Dutch VAT, government levies, shipping costs, freight charges, export levies, insurance costs, loading costs, packaging costs and handling expenses, unless the parties have explicitly agreed otherwise.
- 3.6 The Seller may pass on any price rises after two months, if, between the time of the offer/acceptance and the commencement of the performance of the contract, a VAT increase or another statutory or cost-price increase of more than 5% has occurred.
- 3.7 Kamet will be entitled to adjust its prices each year, or at least to index same for inflation.
- 3.8 Discounts may only be agreed in writing.
- 3.9 Kamet may refuse an order or part of an order or attach conditions to an order without stating its reasons.

#### **Article 4 Delivery**

- 4.1 Delivery will be made by Kamet, unless the parties agree otherwise.
- 4.2 If Kamet is to deliver the goods, it will always do so at the delivery address most recently communicated to Kamet by the Other Party.
- 4.3 Kamet will be entitled to charge the Other Party an advance. After payment of the advance has been effected, delivery will be made to the Other Party, unless the parties have agreed otherwise.
- 4.4 The Other Party will be obliged to take delivery of the goods when Kamet delivers same to it or has same delivered to it by third parties, or when the goods are made available to it pursuant to the Agreement.
- 4.5 If the Other Party refuses to take delivery of the goods or has neglected to provide information or instructions that are necessary for the delivery, Kamet will be entitled to store the goods at the Other Party's expense and risk. If the Other Party does not take delivery of the goods within two months, the Other Party will continue to owe Kamet the sales prices and Kamet will be entitled to sell the goods to another party. If it is unable to do so, Kamet will be entitled to destroy the goods. The damage incurred by Kamet due to such resale or destruction of the goods will be borne by the Other Party.
- 4.6 If delivery is effected C.O.D. (Cash on Delivery), Kamet will charge the Other Party C.O.D. charges.
- 4.7 If Kamet has stated a delivery term, that term will be indicative only. A stated delivery term may therefore never be considered a firm deadline. If a term is exceeded, the Buyer must

give the Seller written notice of default and grant it a reasonable period of time to perform its obligations.

- 4.8 If Kamet requires information from the Other Party within the context of the Agreement's performance, the delivery period will commence after the Other Party has made such information available to Kamet.
- 4.9 Kamet will be entitled to make partial deliveries. Kamet will be entitled to invoice partial deliveries separately.

#### **Article 5 Models, illustrations**

- 5.1 The models, illustrations, figures, measurements, weights or descriptions included in offers/advertisements/price lists must be considered as merely indicative.
- 5.2 If the Other Party has been shown a sample or an illustration, the parties will presume that such has been shown as an indication only, unless it has been explicitly agreed that the good to be delivered will be completely identical.

#### **Article 6 Inspections, complaints**

- 6.1 The Other Party will be obliged to inspect the goods delivered, or have others do so, at the time of delivery. In doing so, the Other Party should inspect whether the quality and quantity of the goods delivered are in accordance with the agreements made. Any visible defects and deviations must be stated on the consignment note/packing list and reported by telephone within 48 hours, in default of which the goods delivered will be presumed to be sound.
- 6.2 Any shortfalls must be reported to Kamet in writing within eight days of delivery.
- 6.3 Any complaints regarding the invoice must be submitted in writing within 30 days of the invoice date.
- 6.4 After the end of the term during which a complaint may be lodged, the Other Party will be deemed to have approved the goods delivered or the invoice, as appropriate.
- 6.5 If a timely complaint is submitted, the Other Party will remain obliged to take delivery of and pay for the goods purchased. If the Other Party wishes to return defective goods, this may only be effected with Kamet's prior written permission. Return shipments must be effected carriage paid, undamaged and in the original packaging using a return form.
- 6.6 The following situations will under no circumstances justify lodging a complaint:
  - deviations in colour, weight and measurements of less than 10%;
  - any typesetting, printer's or typographical errors in the offer, advertisements or price list;
  - natural irregularities.
- 6.7 Complaints will be passed on to the manufacturer, as the manufacturer is the party that has warranted the soundness of the good sold. The manufacturer will investigate the complaint and determine whether it has been substantiated.
- 6.8 If a complaint has been substantiated, Kamet will replace the good delivered, unless this has become demonstrably pointless to the Other Party by that time. If this is the case, the Other Party should communicate this by means of a written notification. Kamet, however, will in all events only be liable within the limits of the provisions set out in the Article "Liability".

## **Article 7 Payment**

- 7.1 Payment must be made in euros within the agreed term, or in the absence of an agreed term, within eight days of the invoice date in the manner designated by Kamet, unless the parties have agreed otherwise. Objections to the amounts stated in invoices will not relieve the Other Party of its payment obligation.
- 7.2 If the Other Party fails to effect payment within the agreed term, the Other Party will be in default by operation of law. In that event, the Other Party will owe 1.5 % in interest per month or part of a month, unless the statutory interest rate or the statutory commercial interest rate is higher, in which case the highest interest rate will apply. The interest with respect to the payable amount will be calculated from the time that the Other Party is in default until the time of full payment.
- 7.3 If the Other Party is wound up, is declared bankrupt or files for bankruptcy, is admitted to statutory composition pursuant to the Dutch Natural Persons Composition Act [*Wet schuldsanering natuurlijke personen*], is placed under guardianship, dies, or the Other Party's enterprise is transferred or discontinued, an attachment is levied against the Other Party or the Other Party is granted a suspension of payments, provisional or otherwise, Kamet's claims in respect of the Other Party will become immediately exigible.
- 7.4 Kamet will be entitled, if so agreed, to charge the Principal a 2% surcharge on late payments, which will not be payable if payment is effected within eight days of the invoice date.
- 7.5 Payment must be made to Kamet, unless Kamet has transferred or pledged its claim in respect of the Other Party to a third party. In such case, Kamet will inform the Other Party that it will be relieved of its payment obligation if it effects payment to that third party.
- 7.6 Payments will first be used to cover the costs, then to cover any interest due and finally to cover the principal sum and the accrued interest.

## **Article 8 Collection costs**

- 8.1 If the Other Party is in breach of contract or in default of performing its obligations or performing same in time, all reasonable costs incurred in obtaining extra-judicial payment will be borne by the Other Party. The collection costs will be calculated in accordance with the collection rate recommended by the Netherlands Bar Association [*Nederlandse Orde van Advocaten*] in collection cases, subject to a minimum of EUR 350.
- 8.2 If Kamet has incurred higher costs which were reasonably necessary, such costs will also qualify for reimbursement. Any reasonable judicial and enforcement costs will also be charged to the Other Party.

## **Article 9 Retention of title**

- 9.1 All goods Kamet delivers will remain Kamet's property until the Other Party has fulfilled all of its obligations ensuing from the agreements concluded with Kamet.
- 9.2 The Other Party will not be entitled to pledge or lease the goods covered by the retention of title or to resell them to customers outside the Benelux territory, or to encumber them in any other manner, unless the parties have agreed otherwise.
- 9.3 If third parties levy an attachment on the delivered goods subject to the retention of title or wish to create or enforce rights to same, the Other Party will be obliged to inform Kamet of this fact as soon as possible.

- 9.4 The Other Party must insure the goods covered by the retention of title at replacement value. Any damages paid by the insurer will replace the aforementioned goods and will accrue to Kamet.
- 9.5 Any goods supplied by Kamet that are covered by the retention of title pursuant to paragraph 1 of this Article may not be sold on without Kamet's permission and may never be used as a means of payment.
- 9.6 Should Kamet wish to exercise its proprietary rights as referred to in this Article, the Other Party hereby grants its unconditional and irrevocable permission to Kamet or any third parties to be designated by Kamet to enter those places where Kamet's goods are located and to recover those goods.

## **Article 10 Suspension and dissolution**

- 10.1 Kamet will be entitled to suspend performance of its obligations or to dissolve the Agreement in the following events:
- if the Other Party fails to perform the obligations arising from the Agreement or fails to perform them in time or in full; circumstances arise following the Agreement's conclusion that provide good reason for fearing that the Other Party will not perform its obligations, or will not perform such in good time or in full;
  - there is good reason to fear that the Other Party will only perform its obligations in part or will not perform such properly, suspension will be permitted only to the extent that such is justified by the relevant failure; or
  - the Other Party was requested upon the Agreement's conclusion to provide security for the performance of its obligations ensuing from same Agreement and such security has not been provided or is insufficient. As soon as security has been provided, the right to suspend performance will lapse, unless the performance has been unreasonably delayed as a result.
- 10.2 In addition, Kamet will be entitled to dissolve the agreement or have it dissolved if circumstances arise of such nature that performance of the agreement is impossible or can no longer be required pursuant to the standards of reasonableness and fairness, or if any other circumstances arise of such nature that continued unamended maintenance of the agreement can no longer reasonably be expected.
- 10.3 If the agreement is dissolved, Kamet's claims in respect of the Other Party will become immediately due and payable. If Kamet suspends performance of its obligations, it will retain its rights and claims under the law and the Agreement.
- 10.4 Kamet will at all times retain the right to claim damages.

## **Article 11 Cancellation**

- 11.1 If the Other Party wishes to cancel an Agreement after same has been concluded with Kamet but before Kamet has effected delivery to the Other Party, the Other Party will be charged 10% of the order price agreed upon, including Dutch VAT, in cancellation costs, without prejudice to Kamet's right to full damages, including loss of profit.
- 11.2 Notice of cancellation must be given in writing.
- 11.3 Orders for goods purchased especially for the Other Party cannot be cancelled.

11.4 If the Other Party has already paid Kamet the order price, the Other Party will be reimbursed the order price less 10% and the freight charges in the event of cancellation.

## **Article 12 Warranty**

12.1 The goods supplied by Kamet will satisfy the requirements and specifications set by Dutch law.

12.2 This warranty will be limited to:

- manufacturing defects and will therefore not include any damage resulting from wear and tear, improper, negligent or inexperienced use or faulty or improper processing, handling, maintenance or storage;
- deliveries to Other Parties within the EU;
- replacement or repair of the good; and
- the manufacturer's warranty, unless otherwise agreed.

12.3 This warranty will lapse:

- in the event of adaptations of, alterations to or changes to the delivered good by the Other Party or a third party; or
- in the event of use for a purpose other than that indicated.

12.4 As long as the Other Party fails to perform its obligations ensuing from the Agreements concluded between the parties, it cannot invoke this warranty.

## **Article 13 Liability**

13.1 If Kamet is liable for direct loss/damage, that liability will be limited to the amount paid out by its insurer, or in any event to the invoice amount, or in any event to that part of the invoice to which the liability pertains.

13.2 Kamet will under no circumstances be liable for indirect damage, including consequential damage, loss of turnover and profit, lost savings and any damage due to an interruption in business operations.

13.3 Kamet will under no circumstances be liable for damage resulting from materials on or in the good that have been declared unfit because of changes in environmental law since the Agreement's conclusion.

13.4 Kamet will under no circumstances be liable for any deterioration of the good due to improper storage, processing, use or maintenance by the Other Party or a third party.

13.5 The Other Party will indemnify Kamet against any claims of third parties that may incur damage relating to the Agreement's performance, which damage is attributable to the Other Party.

13.6 Kamet will under no circumstances be liable for damage ensuing from incorrect use of the good or from use for a purpose other than that for which the good is intended.

13.7 Under no circumstances will Kamet be liable for any loss/damage resulting from any advice given. Advice will always be given on the basis of the facts and circumstances known to Kamet and in mutual consultation, in which respect Kamet will always use the Other Party's intention as a guideline and starting point.

- 13.8 The Other Party should ascertain in advance whether the purchased goods are suitable for the purpose for which it intends to use same. Should it emerge in retrospect that the purchased good is not suitable for its intended use, Kamet cannot be held liable for any ensuing damage/loss.
- 13.9 If Kamet approves a return shipment, Kamet will be entitled to charge the Other Party a handling fee amounting to 15% of the invoice amount.
- 13.10 The limitations of liability with respect to direct damage/loss set out in these Terms and Conditions will not apply if the damage is attributable to an intentional act or omission or gross negligence on the part of Kamet or its employees.

#### **Article 14 Passing of risk**

- 14.1 The risk with respect to the loss of or damage to the goods that are the subject of the Agreement will pass to the Other Party when same are constructively and/or actually delivered to the Other Party and therefore come under the Other Party's control or under the control of a third party designated by the Other Party.

#### **Article 15 Transport and Services**

- 15.1 Kamet will make deliveries subject to, *inter alia*, the following transport terms and conditions (Incoterms):
- a. **DDU (Delivered Duty Unpaid – carriage paid, exclusive of duties)**  
DDU entails that Kamet will meet its delivery obligations if the goods are made available to it in the designated location in the country of import. Kamet will bear the costs and risks associated with transport to that location, with the exception of duties, taxes and other official levies owed upon import and with the exception of the costs of satisfying customs formalities. If the Other Party wants Kamet to fulfil said customs formalities and to bear the related costs and risks or pay the associated taxes, this must be expressly agreed in writing between the parties.
  - b. **CIF (Cost, Insurance and Freight)**  
CIF means that Kamet will pay the freight costs of bringing the goods to the designated port of destination, but the risk of loss of, or damage to, the goods, as well as any extra costs ensuing from events that occur after the goods have been put aboard the ship, passes from Kamet to the Other Party once the goods pass the ship's railing in the port of origination. Kamet will be subject to the extra obligation of obtaining seagoing transport insurance against the Other Party's risk of loss of, or damage to, the goods during transport. Kamet will obtain an insurance policy and will pay the associated insurance premiums. The Other Party is obliged to acknowledge that Kamet's CIF delivery will only require Kamet to obtain insurance providing minimal cover. The term CIF also obliges Kamet to clear the goods through customs. This condition only applies in situations involving seagoing transport and transport via inland waterways.
  - c. **CIP (Carriage and Insurance Paid To)**  
CIP means that Kamet will pay the freight costs of transporting the goods to their designated destination. The risk of loss of, or damage to, the goods, as well as any extra costs ensuing from events that occur after the goods have been delivered for transport, passes from Kamet to the Other Party once the goods are first transferred to the Carrier. Kamet will be subject to the extra obligation of obtaining seagoing transport insurance against the Other Party's risk of loss of, or damage to, the goods during transport. Kamet will obtain an insurance policy and will pay the associated insurance premium. The Other Party is obliged to acknowledge that Kamet's CIP delivery will only require Kamet to

obtain insurance providing minimal cover. The term CIP also obliges Kamet to clear the goods through customs.

- 15.2 Unless explicitly agreed otherwise in writing, all assignments will be performed in the order determined by the Carrier, in which context the capacity of the equipment available to the Carrier and the extent of its use will determine, in part, the times of commencement and completion of the assignments. The Carrier will be free to determine the manner in which it performs assignments, unless more detailed provisions have been agreed in that respect.
- 15.3 The Other Party will be obliged to settle all customs and other formalities that must be performed for the delivery of the goods, to add the necessary documents to the consignment note and make these available to the Carrier and provide the Carrier with all necessary information.
- 15.4 The Carrier will not be liable for damage, of whatever nature, resulting from the fact that the Carrier has operated on the basis of incorrect and/or incomplete information provided by the Other Party or the Shipper, unless this incorrectness or incompleteness should have been apparent to the Carrier.
- 15.5 Where possible, the Carrier will park its lorries during overnight stops in car parks where more trucks are parked and in the vicinity of a petrol station. The Carrier's duty of care is expressly limited to the above, even if third parties have agreed otherwise or if foreign insurers expressly require a more comprehensive duty of care.
- 15.6 The Other Party shall indemnify the Carrier against any claims of third parties that may incur damage in connection with the performance of the Agreement, which damage is attributable to the Other Party.
- 15.7 The Carrier will collect the amounts chargeable as C.O.D. (cash on delivery) from the recipient upon delivery of the shipment and, if so agreed, it will pay same amounts to the Other Party. The Carrier will be entitled to deduct the costs of transport from the amounts received.
- 15.8 If a Recipient refuses to take possession of the shipment offered subject to C.O.D., or refuses to pay the amount chargeable as C.O.D., the Carrier will take back the shipment and deliver it to the Shipper or the Other Party at the Other Party's expense.
- 15.9 The Carrier will be entitled to keep goods, funds and documents, the latter in the broadest sense of the terms, from any party requiring that such be surrendered, at the Other Party's expense and risk, until all of Kamet's or the Carrier's exigible claims have been paid or, if the goods are forwarded, to receive the payable amount C.O.D. and set it off.
- 15.10 All goods, documents and funds which the Carrier may obtain or have in its possession, on whatever basis and intended for whatever destination or purpose, will serve as a possessory pledge for the Carrier with respect to all current and future claims which the Carrier may have in respect of the Other Party.
- 15.11 In the event of non-payment of a claim, the custodial pledge will be sold in the manner prescribed by law or, if agreement has been reached in that respect, by private treaty.
- 15.12 Further to a request to that effect, the Carrier may allow the custodial pledge to be replaced by security determined at its exclusive discretion that is either of identical or of greater value.
- 15.13 Under no circumstances may the Other Party invoke against the Carrier any deferment of payment granted to it, explicitly or otherwise, with respect to prior assignments.

## **Article 16 Force majeure**

- 16.1 A party will not be obliged to fulfil any obligation if it is prevented from doing so due to a circumstance which cannot be attributed to gross negligence or an intentional act or omission on its part, or for which it is not liable pursuant to the law, a juristic act or generally prevailing opinion.
- 16.2 In these General Terms and Conditions, the term '*force majeure*' must be understood to mean, in addition to its meaning according to statutory and case law, all external causes, foreseen or unforeseen, which Kamet cannot influence, but as a result of which Kamet is fully or partially unable to perform its obligations, or unable to perform them on time. This will include strikes at Kamet's company, transport strikes, traffic congestion, tailbacks, car trouble, theft, fire, export impediments, power failures and delays in the supply of goods by suppliers.
- 16.3 Kamet will also have the right to invoke *force majeure* if the circumstance preventing fulfilment, or further fulfilment, arises after it should have fulfilled its obligations.
- 16.4 The parties may suspend the obligations ensuing from the Agreement while the situation of *force majeure* lasts. If this period continues for more than two months, either party will be entitled to dissolve the Agreement without being obliged to pay the other party damages.
- 16.5 To the extent that Kamet has performed part of its obligations arising from the Agreement or is able to perform part of same at the time that the situation of *force majeure* first occurs, and that part performed or to be performed has independent value, Kamet will be entitled to invoice the part performed or to be performed separately. The Other Party will be obliged to pay that invoice as though it pertained to a separate Agreement.

## **Article 17 Copyrights**

- 17.1 Without prejudice to the provisions of these General Terms and Conditions, Kamet reserves the rights and powers vested in it pursuant to the Dutch Copyright Act [*Auteurswet*].
- 17.2 All brochures, catalogues, price lists, documents and other materials or electronic or other files made available by Kamet will remain Kamet's property, irrespective of whether same have been made available to the Buyer or to third parties, unless provisions to the contrary have been agreed. Such goods are exclusively intended for the Other Party's use and may not be reproduced, made public or be brought to the notice of third parties without Kamet's prior permission, unless the contrary ensues from the nature of the documents provided.

## **Article 18 Authentic version**

The Dutch-language version of these Terms and Conditions is the only authentic version. In the event of any discrepancy between the Dutch text and a translation, the Dutch text will prevail.

## **Article 19 Disputes**

The competent court in the city or town where Kamet has its registered office will be competent to take cognisance of any disputes between the parties, to the exclusion of all other courts. Nevertheless, Kamet will be entitled to submit any disputes to the competent court according to the law.

**Article 20 Applicable law**

All Agreements between Kamet and the Other Party will be governed by Dutch law.

**Article 21 Filing of these Terms and Conditions**

These Terms and Conditions have been filed at the office of the Chamber of Commerce and Industry in Hilversum on 10-05-2010 under number 32109762 KvK02/1099080.