

## **TERMS AND CONDITIONS**

of the private company with limited liability Kampa B.V., having its registered office in Oosterhout, KvK number 2011775, VAT number NL 8139.63.382.B01, [info@kampabv.nl](mailto:info@kampabv.nl), tel. +31(0)162700520, filed at the registry of the District Court of Zeeland-West Brabant in Breda under number \*\*/2017.

### **Article 1. DEFINITIONS**

Insofar as these terms and conditions do not indicate otherwise, the terms used in these terms and conditions and in all offers, quotations, orders, agreements (however called and under whatever title) and expressions of/with the User shall be deemed to have the meaning given to them in the Laws and Regulations and shall be understood to mean:

**Business activities:** The User's business activities, consisting of, but not limited to, trading (brokering) in rail-related or non-rail-related machinery, technical supplies and other products and performing anything related to these in the broadest sense.

**User:** Kampa B.V.

**Agreement:** The agreement concluded between the User and the Other Party.

**Counterparty:** Any (group of) natural person(s) and/or legal person(s) to whom the User makes an offer or a quotation and/or with whom the User enters into an agreement.

**Laws and Regulations:** any regulation and/or set of regulations issued by any supranational, international, national, provincial, municipal or otherwise, whether by delegation or mandate or otherwise, with (governmental) authority, institution or court in any relevant jurisdiction, including, but not limited to, relating to the Business, and, in addition, any regulation and/or set of regulations, whether or not in the context of deregulation, issued by any other organization involved in the Business and the execution of the Agreement.

### **Article 2. APPLICABILITY**

These terms and conditions apply to: all offers, quotations, agreements, legal relationships and expressions, however called, between the User and the Other Party as well as to all work to be carried out, services to be rendered and/or goods to be supplied by the User on the basis thereof. These terms and conditions apply accordingly when the User, pursuant to Laws and Regulations outside of an Agreement, performs work for the benefit of, provides services or supplies goods to, or acts as a fiduciary for, the Other Party. The applicability of the Other Party's general terms and conditions is expressly excluded by the User. Supplements to and/or deviations from these terms and conditions will only apply if they have been confirmed in writing by the User to the Other Party. If the User has deviated from these terms and conditions in any Agreement or in any situation outside of an Agreement, the Other Party cannot rely on them in other agreements or in other situations. In case of ambiguity regarding the interpretation of one or more provisions as laid down in these terms and conditions, an explanation should be given according to the meaning given by the User to the relevant provision in the specific case.

### **Article 3. ELECTRONIC COMMUNICATION AND PRIVACY**

The User and the Other Party may communicate and contract with each other by electronic means, but shall not be liable to each other for damages arising to one or each of them as a result of the use of electronic means of communication, including (but not limited to) damages resulting from non-delivery or delay in delivery of electronic communications, interception or manipulation of electronic communications by third parties or by software/equipment used to send, receive or process electronic communications, transmission of viruses and failure of the telecommunications network or other means of electronic communication to function properly or at all, except insofar as the damage is the result of intent or gross negligence. The data extracts from the sender's computer systems provide compelling evidence of (the contents of) the electronic communication sent by the sender until such time as evidence to the contrary is provided by the recipient. When processing personal data, the Personal Data Protection Act will be observed at all times. User and the Other Party shall take adequate and appropriate technical and organizational measures to secure personal data against loss and unlawful processing and/or use. Both the User and the Other

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Party will do or refrain from doing everything that can reasonably be expected of each of them to prevent the occurrence of the aforementioned risks.

#### **Article 4. LAW AND REGULATIONS, APPLICABLE LAW, DISPUTES AND FORUM CHOICE**

User and the Other Party shall perform and comply with the Agreement in compliance with the Laws and Regulations. The Other Party shall always and fully cooperate with the obligations arising for the User from the Laws and Regulations. The User excludes any liability for damage incurred by the Other Party as a result of the User's compliance with the Laws and Regulations. The Other Party is liable to the Client for all damage suffered by the User as a result of the Other Party's failure to comply with the Laws and Regulations and is obliged to indemnify the User against third party claims on that account. All legal relationships between the User and the Other Party are governed exclusively by Dutch law. The applicability of the Vienna Sales Convention (CISG) is expressly excluded. All disputes shall be settled by the competent court in the district in which the User has its registered office. Another court will only have jurisdiction if mandatory provisions of law so indicate, or if the User (as yet) opts for the jurisdiction of the court competent by law.

#### **Article 5. INTELLECTUAL PROPERTY RIGHTS.**

1. The User retains the copyrights and all industrial property rights to the offers made by it, designs, images, drawings, (test) models, software, etc. provided by it.
2. The rights to the data mentioned in paragraph 1 remain the property of the User regardless of whether the Other Party has been charged for their production. These data may not be copied, used or shown to third parties without the express consent of the User. Upon violation of this provision, the Other Party shall owe the User a penalty of Euro 50,000. This penalty may be claimed in addition to damages under the law.
3. The Other Party must return the information provided to it as referred to in paragraph 1 at its first request within the period set by the User. If this provision is violated, the Other Party shall owe the User a penalty of Euro 1,250 per day. This penalty can be claimed in addition to damages under the law.

#### **Article 6. ADVICE, DESIGN AND MATERIALS**

1. The Other Party cannot derive any rights from advice and information received from the User if they do not directly relate to the Agreement.
2. The Other Party is responsible for the drawings and calculations made by it or on its behalf and for the functional suitability of materials prescribed by it or on its behalf.
3. The Other Party shall indemnify the User against any claim by third parties regarding the use of drawings, calculations, samples, models and the like provided by or on behalf of the Other Party.
4. The Other Party may examine (or have examined) the materials the User wishes to use before they are processed at its own expense. If the User suffers damage as a result, this shall be at the expense of the Other Party.

#### **Article 7. OFFER, ACCEPTANCE, AGREEMENT, COMPLIANCE AND DELIVERY**

1. All offers and statements made by or on behalf of the User, as well as the information provided therein, are always completely non-binding and revocable; even if they contain a time clause. Information, in whatever way provided by or on behalf of the User, is subject to change and the User is not obliged to inform the Other Party about this individually except insofar as the obligation to do so arises from laws and regulations. All time provisions stated by or on behalf of the User are made exclusively for the User's benefit and are never to be considered as deadlines.
2. If the Other Party provides the User with drawings and other data, the User may assume their accuracy and base its offer on them.
3. Offers made and/or prices quoted by the User are in euros, based on delivery ex works ("ex works", unless stated otherwise in accordance with Incoterms 2000) and are therefore, where applicable, to be increased with packaging, freight and/or other delivery costs and VAT. The prices quoted by the User are based on exchange rates and the costs of materials, fuel, wages, taxes and levies, import duties and other price-determining factors applicable on the day of the offer made or on the day the Agreement is concluded. User is at all times entitled to adjust the prices without prior notice; even after the offer and/or after the conclusion of the Agreement if any increase in the price-determining factors as referred to in this paragraph occurs before the

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performance and/or delivery under the Agreement and even if this occurs as a result of circumstances foreseeable or unforeseeable at the time of the offer or the conclusion of the Agreement. When the latter situation occurs, the User will notify the Other Party of this price change as soon as possible and in a specified manner.

4. Notwithstanding the provisions of Article 6:217 et seq. of the Dutch Civil Code, an Agreement shall not be formed by the mere acceptance of an offer made by the User. Such acceptance shall only be deemed to be an order issued and yet to be accepted by the User. An agreement is only concluded when the User has confirmed it to the Other Party in writing, whether or not electronically and/or by e-mail, or when the User has partially or fully executed an order that has been issued.  
The date of conclusion of the Agreement shall be the day on which the confirmation is sent or the day on which the User has partially or fully executed the Agreement. Complaints against a confirmation must, under penalty of cancellation, be submitted in writing to the User within three days of the date, and in any case before partial or full performance of the Agreement. If the Other Party does not accept an offer made by the User at its request, the User shall be entitled to charge the Other Party for all costs incurred in this connection.
5. If work has been performed and/or services have been rendered and/or goods have been delivered that are not recorded in the confirmation, then based on entries in the User's records, such work and/or services and/or goods shall be presumed to have been performed and/or rendered and/or delivered (i) pursuant to a verbal order and/or (ii) pursuant to any Laws and Regulations and/or (iii) under any other title such as fiduciary.
6. The Other Party must ensure that all permits, exemptions and other decisions necessary to carry out the work are obtained in good time. The price for the work does not include: (i) the costs of earthwork, pile driving, demolition, foundation work, masonry, carpentry, plastering, painting, wallpapering, repairs or other construction work; (ii) the costs of connecting gas, water, electricity or other infrastructural facilities; (iii) the costs of preventing or limiting damage to any objects present at or near the work; (iv) the costs of disposing of materials, building materials or waste and (v) travel and accommodation expenses.
7. The Other Party shall ensure that the User can carry out his work undisturbed and at the agreed time and that in carrying out his work he has access to the necessary facilities, such as: (i) gas, water and electricity; (ii) heating; (iii) lockable dry storage space and (iv) facilities prescribed under the Working Conditions Act and regulations. The Other Party shall be liable for all damages resulting from loss, theft, burning or damage to tools, materials and other property of the User located at the place where the work is performed. If the Other Party fails to fulfill its obligations as described in this paragraph and this causes a delay in the performance of the work, the work shall be performed as soon as the User's schedule permits. In addition, the Other Party shall be liable for all resulting damage for the User.
8. The Other Party shall be bound by the Contract and in the event of non- (full) or amended performance thereof, shall be liable to the User for all losses incurred by the User as a result thereof; also in the event the User acquiesces in the amended or non- (full) performance. An appeal to force majeure on the part of the Other Party is excluded.
9. Changes in the work will result in more or less work in any case if:
  - a. There is a change in design or specifications;
  - b. the information provided by the Other Party does not correspond to reality;
  - c. deviation from estimated quantities by more than 10%.
10. Additional work is calculated on the basis of the value of the price determinants applicable at the time the additional work is performed. Reduced work is settled on the basis of the value of the price determinants applicable at the time the contract was concluded. If the balance of the reduced work exceeds that of the additional work, the User may charge the Other Party 50% of the difference of the balances in the final invoice. This provision does not apply to less work resulting from a request of the Other Party.
11. In appropriate cases, loss of profit shall be deemed to amount to at least 50% of the principal sum that would be due in the event of unaltered performance/fulfillment of the Agreement, whereby User reserves the right to claim a higher amount of damages.
12. An agreed deadline for fulfillment and/or delivery by the User is only approximate as this deadline is partly based on the assumption that performance can be achieved as foreseen at the time of the offer and/or conclusion of the Agreement and that any third parties, including the User's suppliers, will also faithfully fulfill their obligations. The User is not liable for deviation from the

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agreed deadlines, due to whatever cause, and the Other Party is nevertheless obliged to comply if they are deviated from. Exceeding any term by the User never gives the Other Party any right to compensation, rescission or modification of the Agreement, nor to non-fulfilment of any obligation arising from the Agreement unless there is intent or gross negligence on the part of the User. Any penalty imposed on exceeding the agreed period for performance and/or delivery by the User will not be payable if the excess is the result of force majeure. Without prejudice to the provisions of this paragraph, an agreed term for fulfillment and/or delivery shall not take effect until after a given order has been accepted by the User in writing, all information necessary for the execution of the Agreement is in the User's possession in writing and in full and, if partial or full payment in advance has been stipulated, after it has been made.

13. Every Agreement is entered into by the User under the condition that the Other Party is sufficiently creditworthy. The User is entitled to require the Other Party to provide adequate security for the fulfilment of its obligations towards the User to the satisfaction of the User. The User is entitled to suspend the performance of its obligations until the requested security has been provided.
14. In case of delivery of goods, delivery is deemed to have taken place when those goods leave the User's premises, or the premises of its supplier, for shipment and/or transport to/from the address specified by the Other Party. All deliveries are on an "ex works" basis, unless expressly agreed otherwise. The shipment and/or transport of goods shall always take place, even when delivery "free domicile" has been agreed, at the expense and risk of the Other Party; even then when the carrier claims on consignment bills that all damages during transport are at the expense and risk of the sender. In case of delivery of goods the User is free, if part of the goods are ready for delivery, to deliver this part or to wait until all goods are completely ready for delivery. In the event of partial delivery, the Other Party shall be obliged to pay the invoices relating thereto in accordance with the provisions of these terms and conditions.
15. Uncollected goods remain at the disposal of the Other Party and are stored at its expense and risk, on the understanding that the User may make use of its powers under Article 6:90 of the Dutch Civil Code.
16. Agreed work is considered delivered when: (i) the Other Party has approved the work; (ii) the work has been put into use by the Other Party; if the Other Party puts part of the work into use then that part will be considered completed; (iii) the User has notified the Other Party in writing that the work has been completed and the Other Party has not indicated in writing within 5 days of that notification whether or not the work has been approved; and/or (iv) the Other Party does not approve the work on the grounds of minor defects or missing parts which can be repaired or delivered within 30 days and which do not prevent the work from being put into use. If the Other Party does not approve the work, it will be obliged to notify the User of this in writing, stating the reasons, and will give the User the opportunity, subject to a reasonable period of time, to still comply properly. The provisions of this paragraph will apply again.
17. The Other Party is not entitled to assign its rights and obligations under any Contract to third parties and waives all rights to rescind the Contract pursuant to Section 6:265 of the Dutch Civil Code or other statutory provisions.

#### **Article 8. FORCE MAJEURE, SUSPENSION, RISK, LIABILITY AND INDEMNITIES**

1. If and as long as the User is unable to fulfil its obligations under the Agreement, or is unable to do so properly or on time, due to a circumstance as referred to in Article 5(3) of these terms and conditions or due to force majeure within the meaning of Article 6:75 of the Dutch Civil Code, those obligations will be suspended until the User is still able to fulfil them. In the event of force majeure, the User is entitled to terminate the Agreement in full or in part and with immediate effect by means of a written statement to that effect, without the Other Party being able to claim any compensation. When the Agreement ends in this way, the User is entitled to payment for work performed, services rendered and/or goods delivered insofar as they have been performed, rendered and/or delivered. Force majeure is defined as any circumstance, independent of the will or actions or omissions of the User, even if already foreseeable at the time of entering into the Agreement, as a result of which the fulfillment and/or timely performance of the Agreement can no longer be required by the Other Party in accordance with reasonableness and fairness and which in any case includes, but is not limited to: war and threat, revolution, terrorism, riot, strike, lockout, transport difficulties, meteorological conditions, fire and/or failure in the User's company or in that of one or more of its suppliers and/or co-makers, delayed delivery of raw and auxiliary materials, parts and other materials, breakdowns in radio and/or internet connections and/or in

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other means of communication, flooding, storm, whirlwind, hail, rain, fog, frost, snowfall, black ice, smoke, traffic disruption, interruption or incorrect supply of energy and/or drinking water, measures taken by (inter)national (governmental) organizations.

2. The Other Party shall be liable for all damage to persons and/or goods of the User and/or third parties caused by acts or omissions of the Other Party itself, its employees or auxiliary persons engaged by it, or which comes at its risk under the Laws and Regulations, including, but not limited to, fire and water damage, trading loss, environmental damage, theft and embezzlement. If the User has stipulated in the Contract that the goods to be delivered to the Other Party must be exported abroad within a period to be specified by the User and this obligation has not been fulfilled, or has not been fulfilled on time, in the opinion of the Dutch government, the Other Party shall be obliged to reimburse the User on first demand for all taxes, duties, fines, interest and costs which the Dutch government has claimed and/or will claim from the User, all this also in the event that the Other Party is of the opinion that the claim of the Dutch government is unjustified. The Other Party must be insured against liability as referred to in this paragraph and the User is entitled to demand a copy of the policy as proof thereof.
3. Any damage to persons and/or goods of the Other Party suffered on the User's or its supplier's premises shall be for the Other Party's own account and risk unless there is intent or gross negligence on the part of the User. The User shall not be liable for any damage caused by the fact that the site, a part thereof or any premises thereon cannot be made available temporarily at its discretion or the discretion of any other authority.
4. If the User has relied on incomplete and/or incorrect information provided by or on behalf of a Counterparty and/or if the Counterparty is not liable for any damage. If the User turns out to be liable at any time, such liability will be limited to the direct damage suffered and will never extend to any consequential damage, missed savings, lost profit, trading loss or any other indirect damage under any title whatsoever. Nor is the User liable for supervision damage, which is understood to include damage caused by or during the execution of work of agreed work to objects on which work is being carried out or to objects located in the vicinity of the place where work is being carried out, nor for damage caused by intent or deliberate recklessness of auxiliary persons. The User only accepts liability if and insofar as liability is covered by his insurance and therefore to a maximum of the amount of the payment made by the insurer. The User's liability in all cases is limited to no more than the invoice value of that part of the Agreement from which the liability arises.
5. The Other Party shall indemnify the User against any third-party claim for compensation for any reason whatsoever, including that arising from product liability, and shall be liable to the User for all resulting costs.

#### **Article 9. PAYMENT AND DEFAULT**

1. Payment shall be made at the User's place of business or to a bank account designated by the User and must be made:
  - a. in case of counter sales: in cash;
  - b. in case of agreed installment payment:
    - 40% by assignment;
    - 50% after supplying material;
    - 10% at (up)livering.
  - c. in all other cases within 30 days of the invoice date.
2. Payment by or on behalf of the Other Party of the amounts owed to the User shall always, without the Other Party being entitled to any deduction, discount or set-off, be made in good time within the agreed and/or stated payment term on the invoice. If the Other Party has not paid on time, it shall be in default by operation of law and the User shall be entitled to charge the statutory commercial interest as referred to in Articles 6:119a to 6:120 of the Dutch Civil Code from the due date of the invoice, whereby part of a month shall always be counted as a full month. Furthermore, all judicial and extrajudicial costs incurred by the User will be borne by the Other Party, with the extrajudicial costs being calculated in accordance with the Staffel Buitengerechtigke Incassokosten (BIK).
3. If the Other Party is in default and/or its goods have been seized and/or it is in any situation that it has lost free management of its assets, the User shall be entitled to dissolve the Agreement in part or in full by means of a written statement to that effect and to cease carrying out work and/or providing services and/or supplying goods without itself being liable for any compensation and

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without prejudice to the User's right to compensation for the Other Party's attributable failure and the right to convert the Agreement into an agreement for alternative compensation

#### **Article 10. RECLAMING**

1. Complaints relating to the work performed and/or services rendered and/or goods supplied or invoices issued in this respect must be made known to the User in writing, stating reasons, immediately after the performance and/or provision and/or delivery or immediately after receipt of the invoice in respect of which the complaint is made, or within 5 days after the discovery of any defect or inaccuracy if the Other Party demonstrates that it could not reasonably have discovered the defect or inaccuracy any earlier, on pain of the lapse of all rights which the Other Party could have asserted in this respect.
2. A complaint as referred to in the first paragraph of this article does not release the Other Party from its payment obligation nor does it suspend it. The User's obligations in the event of a timely and justified claim are limited to, at its choice and discretion, partial or full crediting or proper fulfillment.

#### **Article 11. WARRANTY**

1. User guarantees the proper execution of the agreed performance for a period of six months after delivery or completion. If the agreed performance consists of contracting work, the User warrants the soundness of the construction delivered and the materials used during this period, provided he was free to choose such materials. If it appears that the delivered construction or the materials used are not sound, the User shall repair or replace them. The parts repaired or replaced at the User's premises must be sent to the User carriage paid. Disassembly and assembly of these parts and any travel and accommodation costs incurred shall be borne by the Other Party.
2. If the agreed performance consists of the processing of materials provided by the Other Party, the User guarantees the soundness of the processing carried out during the period referred to in paragraph 1. If it appears that an operation has not been performed properly, the User will choose whether (i) to perform the operation again, in which case the Other Party must supply new material at its own expense, or (ii) rectify the defect, in which case the Other Party must return the material to the User carriage paid, or (iii) credits the Other Party for a proportionate part of the invoice.
3. If the agreed performance consists of the delivery of an item, the User guarantees the soundness of the delivered item during the period referred to in paragraph 1. If it appears that the delivery was unsound, the item must be returned to the User carriage paid. Thereafter, the User will choose whether to (i) repair or (ii) replace the item or (iii) credit the Other Party for a proportionate part of the invoice.
4. If the agreed performance (partly) consists of the installation and/or assembly of a delivered item, the User guarantees the soundness of the installation and/or assembly during the period referred to in paragraph 1. If it appears that the installation and/or assembly has not been carried out properly, the User shall remedy this. Any travel and accommodation expenses incurred shall be borne by the Other Party.
5. For those parts for which the User and the Other Party have expressly agreed in writing, the factory guarantee shall apply. If the Other Party has had the opportunity to become acquainted with the content of the factory guarantee, it will replace the guarantee under this article.
6. In all cases, the Other Party must give the User the opportunity to repair any defect or redo the processing.
7. The Other Party may only invoke a warranty after it has fulfilled all its obligations to the User.
8. No guarantee is given in case of normal wear and tear; injudicious use; non- or incorrectly performed maintenance, installation, assembly, modification or repair by the Other Party or by third parties; for delivered goods that were not new at the time of delivery.

#### **Article 12. RETENTION AND TRANSFER OF TITLE.**

1. All goods remain the property of the User until the Other Party has fulfilled all its obligations under the Agreement and/or related obligations towards the User.

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2. Until the last mentioned moment, the Other Party shall be deemed to have the goods on loan and may therefore, among other things, not mix, process, deform, trace, encumber, sell or deliver the goods. If, nevertheless, the User's retention of title becomes illusory as a result of commingling, deformation or accession, the Other Party shall be obliged to establish a lien in favor of the User on the goods formed therefrom.
3. Until that time, the Other Party expressly waives its right to invoke the formation of property, mixing or other ways of acquiring ownership after delivery of goods that are suitable for this purpose and is deemed to hold the goods exclusively for the User for no consideration, so that the User remains the possessor of the goods in addition to being the owner through the Other Party.
4. In case of non- (timely) or defective compliance by the Other Party, the User is entitled to take possession of the goods delivered by it without any notice of default and without the intervention of the court.

**Article 13. DEADLINE**

Rights of action and other powers of the Other Party for whatever reason against the User will in any case expire after 12 months from the moment the Other Party became aware or could reasonably have become aware of the existence of these rights and powers.

