

# GENERAL TERMS AND CONDITIONS OF SALE AND DELIVERY (HEREINAFTER „GTC“) OF KÖNIG MASCHINEN GESELLSCHAFT M.B.H. (PER 1ST OF SEPTEMBER 2025)

## I. SCOPE OF APPLICATION

1. **[Scope of application]** These General Terms and Conditions of Sale and Delivery (hereinafter referred to as “GTC”) apply to goods and other services of König Maschinen Gesellschaft m.b.H., FN 48768 v Graz Regional Court, AT-8045 Graz, Stattegger Str. 80 (hereinafter referred to as “König”); in particular, to the manufacture, delivery, installation, assembly, commissioning, modification, upkeep, maintenance, servicing and repair of machines, plants and equipment.

2. **[Exclusion of conflicting contractual conditions]** Contractual conditions of the purchaser/customer that conflict with these GTC, in particular in terms and conditions of business or contract forms, shall not become part of the contract.

3. **[Application to entrepreneurs only]** These GTC are addressed exclusively to entrepreneurs; any application to consumers within the meaning of consumer protection provisions is excluded.

## II. OFFERS, ORDER CONFIRMATION, ADVANCE PAYMENT, DOWN PAYMENT AND LETTER OF CREDIT

1. **[Non-binding invitation to submit a quotation]** Offers from König are understood as non-binding invitations from the purchaser/customer to submit a quotation.

2. **[Restrictions on use]** Technical or commercial information, layout plans, sketches, drawings and descriptions, in particular product and performance specifications, contained in or attached to offers from König may be used only for the purpose for which they were provided. They may not be transmitted or otherwise disclosed to third parties.

3. **[Order confirmation]** Orders/contracts shall only become legally effective upon König's acceptance by order confirmation.

4. **[Advance payment, down payment, letter of credit]** If the purchaser/customer has to make an advance payment or a down payment or open a letter of credit, orders/contracts shall, in addition, only become legally effective after the advance payment or down payment has been made in full or an irrevocable letter of credit confirmed by a first-class Austrian bank has been opened.

## III. PRODUCT AND SERVICE SPECIFICATIONS, MODIFICATIONS, CO-OPERATION OF THE PURCHASER/CUSTOMER

1. **[Product and service specifications, modifications]** The information in the order confirmation, in particular the product and service specifications, are controlling as regards the scope of König's obligations to provide goods and services. König is entitled to make modifications to the design, form, specifications and colour, provided that such modifications do not preclude the appropriate use of the delivered item.

2. **[Establishment of requirements by the purchaser/customer]** Unless the order confirmation specifies otherwise, the purchaser/customer shall establish the structural, supply, disposal and legal requirements for the installation, assembly, commissioning and operation of the machines, plants and equipment at its own expense.

## IV. FACTORY ACCEPTANCE TEST, DELIVERY, DEADLINES AND RETENTION OF TITLE

1. **[Factory acceptance test]** If a factory acceptance test has been agreed, this shall take place at König's factory (unless otherwise stated in the order confirmation, at the factory at Stattegger Str. 80, AT-8045 Graz). König shall provide the consumables required for factory acceptance testing. The purchaser/customer shall be invited to the factory acceptance test and shall attend at its own expense; the foregoing shall also apply in the event that the factory acceptance test is repeated. König shall prepare a written record of the factory acceptance test; any objections to the record must be made and included in the record if the purchaser/customer is present, or made in writing within one week of the record being sent if the purchaser/customer is absent. Objections must describe the alleged defect in a reproducible manner. The factory acceptance test shall be repeated only if the test identifies significant defects that preclude use in line with the product's purpose.

2. **[Incoterm FCA]** Unless the parties agree otherwise, the FCA Incoterm clause issued by the International Chamber of Commerce, Paris (ICC), at the time the contract is concluded shall apply to the delivery of machines, plants and equipment; the mode of transport shall be by truck and the named place of delivery shall be Stattegger Str. 80, Graz (Austria). The foregoing shall also apply to the delivery of machines, plants and equipment where König has to provide other services, such as installation, assembly and commissioning of the machines, plants and equipment. The purchaser/customer must conclude the forwarding contract and take out any insurance. Risk and hazards pass to the purchaser upon delivery

in accordance with the FCA Incoterm clause. Customs duties, taxes and other charges, as well as the costs of customs formalities incurred outside Austria, including all costs of transit through any other country and importation into any other country, shall be borne by the purchaser/customer.

3. **[Deadlines, early fulfilment of orders and partial deliveries, deadline extensions and postponements]** The deadlines specified in the order confirmation shall apply to the delivery or other provision of services. If no deadlines are specified in the order confirmation, and in the absence of any other agreements, a reasonable deadline is deemed to have been agreed in accordance with König's customary practice, depending on the respective item or service being delivered. König is entitled to fulfil orders ahead of time and to make partial deliveries but is not obliged to do so. Adherence to deadlines and dates is subject to the purchaser's/customer's fulfilment of all obligations in respect of specification, provision and due payment. Any delay or default on the part of the purchaser/customer in this respect shall lead to a corresponding extension of the deadlines and dates applicable to König. Obstacles to production or delivery for which König is not responsible, such as force majeure, strikes, operational disruptions, supply difficulties, curtailment or loss of working time, transport problems and measures taken by official authorities, shall give rise to a reasonable extension of the deadlines and dates.

4. **[Storage in the event of default of acceptance]** If the purchaser/customer is in default in performing its obligations in respect of specifications, customer deliverables and due payment, and in the event of default of acceptance on the part of the purchaser/customer, König shall be entitled to store the delivery item, or have the item stored by third parties, at the purchaser/customer's risk and expense.

5. **[Right of retention]** Where and to the extent that the purchaser/customer is in default of payment or König has objectively justified doubts as to whether the total price will be paid in accordance with the contract, whether due to a lack of willingness to pay or due to poor financial circumstances on the part of the purchaser/customer, König shall be under no obligation to deliver goods or provide any other services until payment of the total price has been made or secured. Security must be provided by submitting a first demand bank guarantee from a first-class Austrian bank. Should the purchaser/customer fail to make the payment or to provide security in such case, König shall be entitled to resile from the contract after setting a reasonable deadline; any claims for damages by König shall remain unaffected thereby.

6. **[Retention of title]** König shall retain title to machines, plants and equipment until payment has been made in full. In the event of default of payment, König shall be entitled to demand the return of the goods subject to retention of title and to collect them. In the event that the purchaser/customer disposes of the goods subject to retention of title, all resulting claims of the purchaser/customer vis-à-vis third parties shall be deemed assigned to König on account of payment up to the amount of the outstanding claims. In the event of seizures, confiscations, attachments and the like, the purchaser/customer must draw attention to König's title and inform König of such measures without delay.

## V. PRICES, PRICE ADJUSTMENT AND DUE DATE

1. **[Prices]** The prices stated in the order confirmation plus statutory VAT shall apply. Unless otherwise stated in the order confirmation, the prices for machines, plants and equipment do not include costs for packaging, dispatch and insurance. Goods and other services for which no specific price is agreed in the order confirmation shall be invoiced at König's list price applicable on the day of delivery or provision of the service.

2. **[Price adjustment based on the production index]** Unless fixed prices are specified as such in the order confirmation, the prices specified therein for goods and other services to be provided more than four months after the order confirmation is issued shall be adjusted based on the production index for the manufacturing sector (seasonally adjusted prices, main group capital goods) published monthly by Statistics Austria. The baseline for the price adjustment is the index figure published for the month in which the order confirmation is issued. Upward or downward fluctuations up to and including 5% are not taken into account. The basis for comparison is the index figure applicable for the month of delivery or other provision of services. In the event of delays attributable to König, no increase in the index figure will be taken into account for the periods affected.

3. **[Due date]** The prices to be paid for goods and other services plus statutory VAT shall be due within 30 days of delivery or other provision of services without any deduction and free of bank transfer fees for the recipient, unless the order confirmation provides for advance payment or down payment or other due dates. In the case of a letter of credit, payment shall be due upon fulfilment of the terms of payment specified in the letter of credit. For goods, if the purchaser/customer does not nominate a carrier within 14 days despite notification of readiness for dis-

patch by König, or if the nominated carrier fails to take delivery of the delivery item within 14 days of notification of readiness for dispatch by König, the purchaser/customer shall be in default of acceptance and the payment period shall begin upon expiry of the aforementioned 14 days.

4. **[Late payment interest]** In the event of late payment, the statutory late payment interest shall be payable.

## VI. WARRANTY

1. **[General terms]** König warrants that the delivery item corresponds to the agreed properties at the time of handover, where and to the extent required for the use of the delivery item in line with its purpose. König further warrants that the delivery item is free from defects of design, function, material and workmanship upon handover and that it shall pass to the ownership of the purchaser/customer free of any rights of third parties. König disclaims any and all further warranties. The presumption of Sec. 924, second sentence of the Austrian General Civil Code [German acronym: ABGB] shall not apply.

2. **[Exclusion of warranty in the case of purchaser/customer instructions or purchaser/customer deliverables, exclusion of warranty in the case of retrofitting or additions or replacement of system components]** No warranty is provided for defects attributable to designs, materials, specifications or production methods prescribed or provided by the purchaser/customer. In the case of goods for the purpose of retrofitting or adding system components, or in the event that system components are replaced, the warranty shall cover only the system component that is retrofitted, added or replaced, and not the other components.

3. **[Exclusion of warranty in the event of non-compliance with König's instructions, prescribed maintenance and services, and unauthorised modifications]** The warranty is excluded where (i) the assembly, operating, maintenance or service instructions of König are not complied with, (ii) the maintenance and services prescribed by König are not carried out, (iii) unauthorised modifications, additions, conversions or improper repairs are carried out or (iv) defects are caused by improper use of the delivery item or operating conditions or consumables not provided for in the contract.

4. **[Exclusion of warranty for dough technology]** No warranty is provided for defects caused by dough technology, i.e. in the process chain from the selection of the ingredients to the processing parameters, such as dough process, dough yield, kneading time, dough temperature, dough resting time, etc. through to the end of the baking process.

5. **[Exclusion of warranty for consumables, wear parts and used machines]** The warranty for any material defects is excluded for consumables and wear parts. The warranty for used machines, plants and equipment is excluded, other than for agreed properties that are required for the intended use of the delivery item.

6. **[Warranty period; requirement to give notice of defects]** The warranty period is 12 months. The purchaser/customer must inspect the machines, plants and equipment and notify König of any defects within a reasonable time, but no later than within 14 days (notice of defects). In all other respects, the provisions of Sec. 377 et seq. of the Austrian Entrepreneurial Code [German acronym: UGB] shall apply.

7. **[Priority of remedy, limitation on price reduction]** In the event of a defect for which König is liable under the warranty, the purchaser/customer shall initially be entitled only to demand remedy (repair or replacement), unless such remedy is impossible or would involve unreasonable cost for König in comparison to the alternative remedy. If König fails to perform such possible or reasonable remedy (or, at König's discretion, replacement of the defective item) despite a formal notice and the granting of a reasonable cure period, the purchaser/customer shall be entitled to request a reasonable price reduction or, if the defect is significant and renders the delivery item unusable for its intended purpose, to rescind the contract. However, König shall be entitled, but not obliged, to avert a price reduction by extending the warranty period by 12 months. All of the foregoing shall apply accordingly if the purchaser/customer asserts a claim for damages caused by a defect.

8. **[Place, implementation and costs of remedy]** König is entitled to choose the place of remedy. König is therefore entitled to carry out the remedy at the location of the delivery item within a facility of the purchaser/customer or to request that the delivery item be returned to König. If König decides to carry out the remedy within a facility of the purchaser/customer, the purchaser/customer shall grant König access and ensure the supply of energy and consumables. The costs of remedy (including transport and insurance costs for the return shipment) shall be borne by König, unless the notice of defect proves to be unfounded, in which case the purchaser/customer shall reimburse the costs of inspection, transport

and insurance of the delivery item.

9. **[Effect of the remedy on warranty periods]** The warranty period shall not be interrupted by the remedy (or, at König's discretion, by the replacement of the defective item); if, however, the remaining warranty period for the part of the delivery item affected by the remedy would otherwise be less than six months, it shall be extended to end six months after the date of remedy (or replacement).

10. **[Limitation of the right of retention in the case of remediable defects]** Defects for which the purchaser/customer is entitled to request remedy shall authorize the purchaser/customer to withhold payment only to the extent of an amount not exceeding twice the cost of remedying the defect.

## VII. COMPENSATION FOR DAMAGES, EXCLUSIONS AND LIMITATIONS OF LIABILITY

1. **[Exclusion of liability for financial losses]** König shall not be liable for financial losses caused by itself or its vicarious agents through slight negligence. This includes, in particular, loss of production, financing costs, loss of orders, loss of profit, and other consequential financial losses. This exclusion shall not apply where and to the extent that insurance cover exists; however, König shall not be obliged to take out a specific insurance policy for this purpose. König's liability for financial losses caused by gross negligence (with the exception of extreme gross negligence) in the foregoing sense shall be limited to 25% of the order value of the delivery or other service. Again, however, this limitation shall not apply where and to the extent that insurance cover exists, and König is not obliged to take out a specific insurance policy for this purpose. These exclusions or limitations also apply accordingly to financial losses in the event of rescission or any other termination of the contract.

2. **[Limitation of liability for defects]** König's liability for damages for defects caused by itself or by its vicarious agents through slight or gross negligence (with the exception of extreme gross negligence) is limited in amount to the remedy costs (repair or replacement). In the case of irreparable defects, monetary compensation shall be limited to the equivalent of a reasonable price reduction. König shall be entitled, but not obliged, to avoid such monetary compensation by extending the warranty period by 12 months. König shall not be liable for any consequential damages caused by a defect, including damages resulting from remediations König or its agents undertake or fail to undertake. The exclusion or limitation of liability for financial losses as a result of damage caused by a defect, including remediations König or its agents undertake or fail to undertake, shall apply accordingly.

3. **[Limitation of liability for other damage to tangible property or rights]** Where and to the extent that no losses due to defects are present, König's liability for damage to tangible property or to rights associated with the goods or other deliverable caused by it or by its vicarious agents through merely slight negligence is limited to 10% of the order value of the delivery or other service. This limitation shall not apply where and to the extent that insurance cover exists, and König is not obliged to take out a specific insurance policy for this purpose. For damage caused by gross negligence (with the exception of extreme gross negligence) in the foregoing sense, König's liability is limited to 25% of the order value of the goods or other service. Again, this limitation does not apply where and to the extent that insurance cover exists, and König is not obliged to take out a specific insurance policy for this purpose.

4. **[Further limitation of liability to foreseeable damage typical of a contract]** König's liability for damages for other losses caused by itself or by its vicarious agents through merely slight negligence (excluding losses caused by death, bodily injury or damage to health of persons) shall also be limited to foreseeable losses typical for a contract of the same type.

5. **[Burden of proof for gross negligence with the party suffering the damage]** The burden of proof for the existence of gross negligence lies with the party suffering the damage; Sec. 1298, second sentence of the Austrian General Civil Code (ABGB) shall not apply.

6. **[Extension to third parties]** The exclusions and limitations of liability also apply to third parties who are included in the scope of protection of the contract.

7. **[Reduction of the limitation period]** König's liability for damages for losses caused by defects and all other damage shall expire 12 months after the purchaser/customer becomes aware of the damage, but, irrespective of the date on which the damage occurred, three years after delivery or provision of the remainder of the service by König.

## VIII. FORCE MAJEURE

1. **[Force majeure pursuant to ICC clause]** The term, the mutual rights and

obligations and the legal consequences of or in the event of force majeure are governed by the force majeure clause of the International Chamber of Commerce, Paris (ICC) (March 2020, long version).

## **IX. EXCLUSION OF SET-OFF**

1. **[Exclusion of set-off]** The purchaser/customer shall not be entitled to offset any claims it may have against König with claims asserted by König, in particular for payment of prices for goods and other services.

2. **[Exceptions]** The exclusion of the right of set-off shall not apply where (i) König has expressly acknowledged the counterclaim in writing, (ii) the counterclaim has been adjudicated by court judgment, or (iii) insolvency proceedings have been opened over König's assets.

## **X. INTELLECTUAL PROPERTY RIGHTS AND COPYRIGHT**

1. **[Comprehensive reservation of rights]** Layout plans, sketches, drawings, descriptions, samples, models, brochures, illustrations and operating instructions remain the intellectual property of König and are subject to Austrian applicable law. Unless otherwise specified in the order confirmation, König reserves the right to use and exploit the aforementioned services and works in whole and/or in part for all types of use known today and in future, without any restrictions in terms of temporal, geographical or substantive scope.

2. **[Restriction of permissions to use the works]** Permissions to use the works shall only be deemed to have been granted in accordance with and within the scope of corresponding agreements.

## **XI. APPLICABLE LAW AND JURISDICTION/VENUE**

1. **[Applicable law, exclusion of the CISG]** These GTC, the contract and all claims arising out of or in connection with them shall be governed by Austrian substantive law (excluding its conflict of law rules). The applicability of the United Nations Convention on Contracts for the International Sale of Goods (CISG) shall be expressly excluded.

2. **[Jurisdiction/venue]** Unless the jurisdiction of an arbitration tribunal is agreed, these GTC, the contract and all claims arising out of or in connection with them shall be subject to Austrian domestic jurisdiction. The exclusive place of jurisdiction shall be the court with subject-matter jurisdiction for Graz. König shall, however, remain entitled to bring an action against the purchaser/customer at the latter's registered office.

## **XII. REDUCTION OF TERMS TO PRESERVE VALIDITY, CONTRACTUAL GAP**

1. The invalidity or unenforceability of any of the provisions of these GTC or of the contract shall not affect the validity of the remaining provisions thereof. In such a case, a valid provision that comes as close as legally possible to the original intent and purpose of the invalid or unenforceable provision shall be deemed agreed (contract-preserving reduction). The same shall apply in the event of a contractual gap.