

## König Maschinen GesmbH – Terms and Conditions of Sale (per 1st of March 2012 – 3 Pages)

### I. SCOPE

1. All offers, offer acceptances, order confirmations, legal transactions, deliveries and services are subject to the Terms and Conditions of Sale stated herein, even if they have not been expressly referred to.
2. The Terms and Conditions herein apply to all future legal transactions between the Buyer and König Maschinen GesmbH regardless of any other agreements.
3. No other terms or conditions contained in any documents of the Buyer are accepted, unless expressly approved in writing by König Maschinen GesmbH.
4. All legal transactions as well as offers, offer acceptances and order confirmations are made subject to the Incoterms valid on the day of order acceptance.

### II. CONTRACT CONCLUSION

1. Our offers, our order acceptance and all deliveries and services are subject to the Terms and Conditions contained herein. Any conditions and purchasing terms of the Buyer shall not be recognised, even if König Maschinen GesmbH does not expressly object when concluding the contract. By accepting the goods the Buyer accepts König's Terms and Conditions of Sale. Our Terms and Conditions of Sale do not apply to legal transactions with consumers.
2. Our offers shall be without engagement. Declarations of acceptance as well as orders of the Buyer shall not become legally effective until confirmed by us in writing.  
The same applies in the event of amendments, alterations and additional agreements; oral acceptances of our representatives or any auxiliary persons require written confirmation by König Maschinen GesmbH.
3. Offers of the Buyer submitted in electronic form are subject to our express declaration of acceptance. Silence shall not be qualified as acceptance. The same applies to electronically deposited declarations of acceptance by the Buyer unless electronic transmission has been mutually agreed for the business connection and the declaration has been electronically transmitted to the expressly agreed address for such kind of electronic transmissions.
4. Drawings, figures, measurements, weights and other performance data shall only be binding if expressly agreed in writing.
5. The Buyer shall be obliged to seek building and other permissions by the competent authorities.

### III. PRICES

1. The prices stated in our order confirmation plus the statutory value-added tax shall be applicable. Unless otherwise agreed, the prices are quoted without discount or other rebates or reductions and ex our works resp. ex warehouse ("Ex Works").
2. Any additional costs shall be met by the Buyer. Custom duties, consulate costs, freight costs, insurance premiums and other extra charges shall be born by the Buyer. Certificates, sales tax and other taxes as well as public charges shall always be met by the Buyer, even if "carriage paid to" is agreed. The Buyer shall carry the currency risk for sales in foreign currency after contract conclusion.
3. In case of unforeseen events after contract conclusion outside the control of König Maschinen GesmbH, which influence the price calculation, including, without limitation, increases of freight charges, insurance premiums, prices of raw material, auxiliary supplies, operating materials and suchlike, introduction of new respectively increase of existing governmental charges, we reserve the right to adjust our prices accordingly. The same applies to additional charges arising from the fact that the route of transportation has to be altered for whatever reason. In any of these events the Buyer shall not be entitled to a right of withdrawal nor to a right to claim frustration of contract.

### IV. TERMS OF PAYMENT

1. Unless otherwise agreed in writing, payment is due within thirty days of delivery ex works without any deductions.
2. In the event of call-off orders or similar, which obligate the Buyer to take delivery of the goods within a certain period after receiving notice from König Maschinen GesmbH that the goods are ready for collection, König Maschinen GesmbH shall be entitled to issue the final invoice as of the given date of readiness for collection. In such cases payment is due within thirty days of the date of issue of the invoice, notwithstanding the provisions in III.) 3.).
3. Payment shall be effected without any reductions by the due date. Notwithstanding any defects, claims or counter-claims, the Buyer shall be obligated to pay the full invoice amount. No set-off, retention or reduction may be deducted from any payment due.
4. Discountable bills of exchange and cheques shall be accepted by us only after preceding agreement. Acceptance of bills of exchange and cheques is only effected on account of performance. König Maschinen GesmbH does not undertake any commitment to submit or to protest against a bill of exchange in time. Any discount charges etc. – minimum the charges levied by private banks – shall be born by the Buyer.

5. All payments requested by us shall be due immediately, independently of the duration of received and credited bills or of any respites allowed, in the event that the agreed payment conditions are not fulfilled or we receive information after contract conclusion regarding circumstances that, in our opinion, reduce the creditworthiness of the Buyer. Moreover, we shall then be free to make outstanding deliveries subject to advanced or secured payment and withdraw from the agreement after having granted a suitable grace period. Furthermore, we shall also reserve the right to call back the delivered goods or forbid their resale as well as to request their return or oblige the Buyer to reassign indirect possession to König Maschinen GesmbH at the expense of the Buyer.
6. In the event of difficulties in transferring the invoice amount to the Republic of Austria for whatever reason, including without limitation interferences in the execution of intergovernmental trade or payment agreements, the costs for such disadvantages shall be to the Buyer's account.
7. In the event of payment by instalments and delayed payment, König Maschinen GesmbH shall be entitled to charge interest for the amount not paid in the amount of 8% above the refinancing interest rate of the European Central Bank applicable at the due date of the payment.

### V. DELIVERY AND RISK

1. Unless otherwise agreed in writing, all goods shall be sold „ex works“.
2. The delivery shall be considered fulfilled at the time the goods have been transferred to the forwarder or freight carrier and all risk shall be transferred to the Buyer at this time, even in the event that freight-free delivery has been agreed.

### VI. DELIVERY

1. The delivery time commences with the date of the order confirmation providing all documents and information to be supplied by the Buyer have been received by us.
2. Acts of force majeure, including without limitation shortage of raw materials and strikes shall entitle us to either postpone the manufacture and delivery of the goods for the duration of the obstacle in addition to a reasonable start-up period or withdraw from the agreement due to the non-fulfilled part of the order, without entitling the Buyer to claim compensation.
3. The goods shall be regarded as contractually delivered and taken over by the Buyer with dispatch ex works or ex warehouse, with or without acceptance.
4. In the absence of specific shipping instructions, the dispatch shall be carried out at our best discretion without obligation for the cheapest, shortest or quickest means of transport or its maximum utilisation. Pickups by trucks shall be subject to appointments arranged in due time. König Maschinen GesmbH shall not be liable for any waiting times caused by the pickup by trucks.

### VII. DELIVERY DATES

1. The delivery dates confirmed by König Maschinen GesmbH shall apply.
2. Delays due to causes beyond our control, including manufacturing delays beyond the control of König Maschinen GesmbH or their suppliers, and delays due to events of force majeure, shall extend the confirmed delivery time automatically according to item VI.).
3. We shall be entitled to cancel the contract in case of events beyond our or our suppliers' control which would make it substantially more difficult and incalculable for us to fulfil the contract. In this case the Buyer shall not be entitled to claim compensation.

### VIII. DEFAULT OF DELIVERY AND DELIVERY TIMES

1. König Maschinen GesmbH shall not be in default of delivery for exceeding the confirmed delivery time if the Buyer is behind schedule with regard to his contractual obligations.
2. In the event of delayed delivery the Buyer shall be obliged to provide a reasonable grace period of at least 20 working days.
3. The grace period shall be provided by means of a registered letter and shall commence on the working day following the delivery date indicated on the acknowledgement of receipt.
4. In the event the goods ready for dispatch cannot be sent for reasons not attributable to us, we shall be entitled to store them at the expense and risk of the Buyer. The goods shall be regarded as contractually delivered at the time the shipment is defined as ready for dispatch. Graz shall be deemed place of performance regardless of any contractual delivery place or taking-over of relevant transport charges.

### IX. CALL-OFF ORDERS

1. Call-off orders have to be released in time and without reminder. Specifications issued prior to the call-off order shall not be amended later on.
2. In the event that the Buyer has reserved the right to call-off a machine respec-

tively goods, he shall be obligated to take delivery within one year from the date of order at the latest, unless individually agreed otherwise in writing.

3. Should the Buyer exceed this period, he shall be deemed to be in default of acceptance.
4. Should the call-off order not be released in time and should the grace period have expired in vain, König Maschinen GesmbH shall be entitled either to deliver the machines respectively the object of sale or to withdraw from the outstanding part of the agreement and to claim compensation after expiration of the period of grace in vain.

#### X. DISPATCH AND PACKING

1. Dispatch shall take place at the risk of the Buyer.
2. All risk is transferred to the Buyer at the time the goods leave the place of manufacture (König Maschinen GesmbH works), even if freight-free delivery or an additional service have been agreed upon.
3. Transport insurance shall only be covered at the Buyer's request and expense; freight, customs duties or other transit or export expenses shall be borne by the Buyer unless otherwise agreed in writing.
4. Packing material shall be charged separately at cost price and shall not be taken back by us unless agreed. Furthermore, the Buyer shall be responsible for the duly disposal of packing material according to the local regulations.

#### XI. TITLE TO GOODS

Unless all our claims regarding our delivered goods have been fully satisfied, these goods shall be deemed "conditional goods", with the following amplifications:

1. All delivered goods shall remain our property until satisfaction of all claims to which we are entitled, regardless of their date of origin and legal basis. This shall also apply in the event payments were made on specially defined claims. This reservation of title shall guarantee our balance claims in a current account relationship.
2. The Buyer shall not be entitled to obtain property of conditional goods for whatever legal reason.
3. The Buyer shall only have the right to dispose of or resell conditional goods in ordinary business transactions in accordance with the normal business conditions and as long as he is not at default; however, provided that the outstanding debts of resale are transferred to us as payment.
4. The Buyer shall be obliged to inform König Maschinen GesmbH of any attachment or other interference of property rights by Third Parties without delay. The Buyer shall be obliged to bear the costs for measures to defend against the third-party measures, in particular any third-part action.
5. As soon as the Buyer has settled all our claims in full, he shall be entitled to obtain property of the conditional goods and to collect any receivables.
6. In the event the reservation of title or the assignment according to the applicable law is not effective, the security that corresponds to the reservation of the respective title or the respective assignment shall apply.
7. If involvement of the Buyer is necessary to obtain these rights, the Buyer shall take all measures required for the substantiation and maintenance of such rights.
8. In the event of the Buyer's breach of the contract – especially in case of default payment – König Maschinen GesmbH shall be entitled to take back the goods or if necessary to insist on the assignation of the Buyer's claims towards Third Parties. Neither our taking back of the conditional goods nor any restraint thereof shall be regarded as cancellation of the contract.
9. We shall reserve the property and copy right of all documents delivered by us. The recipient shall not be entitled to make them accessible to Third Parties. On request the documents must be returned to us immediately.

#### XII. WARRANTY AND LIABILITY

On delivery to the Buyer, his carrier or his freight forwarder, the goods shall be immediately inspected with due diligence pursuant to §§ 377, 378 UGB (Austrian Commercial Code) and any obvious defects have to be noted on the acknowledgement of acceptance, the consignment note or the carrier's shipping document, otherwise any claims are excluded.

In the event the goods cannot be inspected immediately upon delivery, this fact has to be noted on the acknowledgement of acceptance, the consignment note or the carrier's shipping document and König Maschinen GesmbH shall be notified in writing of any obvious defects three days after delivery at the latest. Otherwise any claims are excluded.

1. In the event the Buyer verifies any defect in the delivery, we shall only be obliged to rectify the defect or provide a replacement delivery ex works within a reasonable period free of charge. The faulty component shall be returned to König Maschinen GesmbH as evidence at the Buyer's expense. Unless otherwise

agreed in writing, the Buyer shall not be entitled to any further claims, such as claims for price reduction, for whatever legal basis.

2. The Buyer shall be obliged to comply with all application hints received by König Maschinen GesmbH and to contact us for advice in case of doubts. König Maschinen GesmbH shall not be liable for defects or faults occurring from non-observance of our hints or failure to obtain our opinion.
3. The Buyer shall have no right to claim compensation for damages unless he proves that we have acted with gross negligence or intent.
4. Any compensation shall generally be limited to the amount covered by our insurance.
5. Any warranty claims for our products shall be lodged within six months. Claims are generally excluded in the event of delinquency. The warranty period is automatically extended for another six months provided the Buyer transfers us the duly filled in and signed Takeover Protocol within one month after handover of the goods.
6. If the delivered goods have been modified, amended or adapted, any warranty or liability claims regarding serviceability, life time respectively damages resulting thereof shall expire.
7. The Buyer's right of recourse pursuant to § 933 b ABGB (Austrian General Civil Code) is excluded.
8. There shall be no warranty for used products.
9. König Maschinen GesmbH shall not be liable for any dough-specific technological problems the buyer may have.
10. Any verbal or written advice of König Maschinen GesmbH is non-binding and does not release the Buyer from his own examination of the goods for their suitability for the intended purpose. The Buyer shall prove evidence regarding the existence of a defect at time of transfer, the arrangements of presumption according to § 924 of the Austrian General Civil Law Code are excluded. König Maschinen GmbH guarantees the usual pre-supposed product qualities. Product characteristics exceeding these specifications, in particular those of promotional or advertising messages, shall not be deemed to be quality specifications of a contractually binding nature unless confirmed in our order confirmation. Our warranty applies to the functional ability of our plants, spare parts and machines and does not apply to their mere appearance. König Maschinen GesmbH may settle a claim by replacement, repair, price reduction or rescission at our election. The assignment of warranty claims or claims for compensation and suchlike is excluded with the exception of monetary claims.

#### XIII. PRODUCT LIABILITY

1. The Buyer shall be obliged to strictly comply with the Operation Manual including Safety Regulations supplied by König Maschinen GesmbH.
2. The Buyer is aware of the fact that König Maschinen GesmbH shall not be liable under Product Liability Law in the event the Buyer has contravened or failed to comply with the regulations of our Operation Manual and the Safety Regulations.
3. Claims against König Maschinen GesmbH under Product Liability Law associated with damages suffered by the Buyer as businessman due to the use of products delivered by König Maschinen GesmbH shall be excluded as far as legally admissible.
4. Under no circumstances, including whatever legal reason, the Buyer shall undertake to sell, surrender or otherwise pass on goods manufactured only for the purpose of business use to consumers respectively people who are no businessmen.
5. Any liability out of this agreement towards third parties is excluded. In the event of resale the Buyer shall be obliged to agree the same conditions and disclaimers of product liability with any consignee of the goods. Failure to do so shall obligate the Buyer to reimburse us for all disadvantages arising thereof.

#### XIV. APPLICABLE LAW

1. All of König Maschinen GesmbH's contractual relationships shall be governed by Austrian Law, with the exception of the relevant provisions on Conflict of Laws. This shall also apply to export trade, notwithstanding the regulations of the export country, the Buyer or the commission agent.
2. Should, despite the agreement regarding jurisdiction and venue under provision XV.) of these Terms and Conditions of Sale, legal proceedings between Parties be pending in the Buyer's country and should one or more provisions of these Terms and Conditions of Sale become invalid due to the Ordre Public, this shall not affect the validity of the remaining provisions of the Terms and Conditions of Sale.
3. The regulations of the UN Convention on Contracts for the International Sale of Goods (CISG) and similar international agreements shall be excluded from any contractual relationships of König Maschinen GesmbH.

**XV. PLACE OF JURISDICTION AND VENUE**

1. Unless the Parties have agreed upon a legally effective arbitration regulation, Graz shall be the exclusive place of jurisdiction for any agreements with König Maschinen GesmbH.
2. The Parties agree that in the event of any disputes the courts located in Graz, Austria, which have jurisdiction thereof, shall have exclusive jurisdiction and venue over the dispute.
3. The Parties shall be obliged to consider Graz the exclusive place of performance for all current and future claims arising from a business agreement.

**XVI. DATA PROCESSING**

The Buyer gives his consent to König Maschinen GesmbH for storing and processing all personal data needed for executing the order. The Buyer shall be able to prove that he has informed König Maschinen GesmbH about any changes in his business address immediately and without special request prior to complete and mutual performance of the legal transaction under the contract. In the event the Buyer fails to notify König Maschinen GesmbH thereof, all notices shall be considered as delivered if sent to the last known address. The Buyer shall be obliged to prove that he has provided the notification of address change.

Plant drawings, sketches and other technical documents as well as examples, catalogues, brochures, diagrams and such like, remain the intellectual property of König Maschinen GesmbH, the Buyer shall not acquire any rights whatsoever, such as for example rights of use and exploitation.

**XVII. VALIDITY**

Unless otherwise agreed in writing, our Terms and Conditions of Sale contained herein shall equally apply to all our agreements.