

**General Terms and Conditions of Business for Procurement by
König-mtm GmbH, Spanntechnik
and
Wilhelm König Maschinenbau GmbH**

Version 01 September 2011

1. Conclusion of Contract

- 1.1. The legal relations arising from this contract between the contractor and König-mtm GmbH / Wilhelm König Maschinenbau GmbH are based on these General Terms and Conditions of Business for Procurement (GTCBP) and possibly other written agreements.
- 1.2. Orders and acceptances of orders as well as their changes and additions must be made in written form. Oral side agreements made when the contract is concluded take effect only if they have been confirmed by the customer in writing.
- 1.3. If the contractor does not accept an order within 10 days, then König-mtm GmbH / Wilhelm König Maschinenbau GmbH are entitled to revoke the order in writing.
- 1.4. The parties to the contract agree to treat as business secrets all commercial and technical details that they become aware of through the business relationship, insofar as such details are not generally obvious. Such secrets may not be turned over to third parties or otherwise made accessible, and they may be used for the deliveries to third parties only with the prior written consent of König-mtm GmbH / Wilhelm König Maschinenbau GmbH. A corresponding obligation is to be imposed on all sub-suppliers.

2. Drawings and Other Documents

- 2.1. Before commencement of workshop activities, all drawings are to be thoroughly discussed with König-mtm GmbH / Wilhelm Maschinenbau GmbH. After execution of the work, the contractor shall send the customer – at the contractor’s expense, in the required number and format, and without delay – the drawings and computations the pertain to the actual work product as well as technical documents the pertain to other deliveries.
- 2.2. The contractor is obliged to transfer ownership of these drawings, computations and technical documents to König-mtm GmbH / Wilhelm König Maschinenbau GmbH free of charge, whereby this shall not affect the intellectual ownership of the same.
- 2.3. König-mtm GmbH / Wilhelm König Maschinenbau GmbH or third parties may use them free of charge to execute repairs and changes and to manufacture replacement parts. The fact the contractor is solely responsible in respect to the delivery shall not be affected by the fact that König-mtm GmbH / Wilhelm König Maschinenbau GmbH approve drawings, computations and other technical documents.
- 2.4. Insofar as the contractor does not object in writing, this shall also apply to proposals and recommendations of König-mtm GmbH / Wilhelm König Maschinenbau GmbH as well as to changes discussed by the contractor and König-mtm GmbH / Wilhelm König Maschinenbau GmbH.
- 2.5. All execution documents, auxiliary equipment, tools, models, etc. which have been placed at the disposal of the contractor continue to be owned by König-mtm GmbH / Wilhelm König Maschinenbau GmbH, they may be used only for the contractually agreed purposes and they shall be made accessible to third parties only to the extent required to perform under the contract. König-mtm GmbH / Wilhelm König Maschinenbau GmbH reserves all rights to the drawings prepared in accordance with its specifications and all rights to the procedures developed by it.

3. Proofs of Origin

- 3.1. The contractor shall fill in proofs of origin requested by König-mtm GmbH / Wilhelm König Maschinenbau GmbH (e.g. supplier declarations, origin of goods certificates within the meaning of EEC-EFTA) with all required information, sign them properly and place them at the disposal of König-mtm GmbH / Wilhelm König Maschinenbau GmbH without delay.

4. Prices / Payment

- 4.1. The agreed prices are fixed prices exclusive of packaging and freight costs, which are borne by the contractor, and exclusive of the applicable value added tax.
- 4.2. If a price is agreed "ex works" or "ex warehouse", then König-mtm GmbH / Wilhelm König Maschinenbau GmbH assumes only the lowest possible freight costs.
- 4.3. All costs that arise before transfer to the freight driver, including the costs of cartage and loading, are borne by the contractor.
- 4.4. The agreement on place of fulfilment is not affected by the type of pricing.
- 4.5. The customer reserves the right to recognize excess and short deliveries.
- 4.6. König-mtm GmbH / Wilhelm König Maschinenbau GmbH pays within 14 days after delivery and receipt of invoice with 3% discount or until the end of delivery and receipt of invoice of the following month, insofar as nothing else is agreed.
- 4.7. If payment is rendered by König-mtm GmbH / Wilhelm König Maschinenbau GmbH in acceptances, then the bill of exchange tax shall be remunerated at a reasonable discount rate.
- 4.8. Payments by the customer do not entail acknowledgement that the invoice is correct, but are rendered with reservation.
- 4.9. König-mtm GmbH is entitled to offset all claims that the contractor has against it with all claims against the contractor that are held by it, Wilhelm König Maschinenbau GmbH, or the domestic companies with which Wilhelm König Maschinenbau GmbH is directly or indirectly affiliated. König-mtm GmbH will provide the contractor with a list of the fellow subsidiaries covered by this clause upon request.
- 4.10. Claims of the contractor arising from this contract may be assigned to third parties only with the written consent of König-mtm GmbH / Wilhelm König Maschinenbau GmbH. For assignments made on the grounds of an extended retention of ownership, this consent is deemed to have been granted in advance.
- 4.11. The delivery and shipping regulations stated must be observed. None of the substances that fall under the German Prohibition of Chemicals Ordinance may be contained in the products, construction parts, work materials or auxiliary and operating materials delivered to us unless they evaporate when used.

5. Administrative Processing and Delivery

- 5.1. The deadlines agreed for delivery and services are binding. If any delays are anticipated or have already occurred, then the contractor shall notify König-mtm GmbH / Wilhelm König Maschinenbau GmbH at once by spoken word and then confirm this in writing without delay.
- 5.2. If the contractor fails to deliver or perform within a grace period set by König-mtm GmbH / Wilhelm König Maschinenbau GmbH, then König-mtm GmbH / Wilhelm König Maschinenbau GmbH shall be entitled, without further warning, to refuse acceptance, to withdraw from the contract or to demand compensation for damages because of non-performance. König-mtm GmbH / Wilhelm König Maschinenbau GmbH shall also be entitled to withdraw from the contract if the contractor is not at fault for the delay. The additional costs incurred by König-mtm GmbH / Wilhelm König Maschinenbau GmbH because of the delay, especially those that arise through necessary alternative coverage of supplies, shall be borne by the contractor.

- 5.3. Subcontracts, with the exception of those for purchasing parts that are readily available on the market, may be awarded only with the consent of König-mtm GmbH / Wilhelm König Maschinenbau GmbH. Delivery call-offs are binding both in respect to type and quantity as well as delivery time. Partial deliveries require approval by König-mtm GmbH / Wilhelm König Maschinenbau GmbH.

6. Passage of Risks, Acceptance, Ownership Rights

- 6.1. There is an incoming goods inspection in respect to obvious defects. Concealed defects will be reported by König-mtm GmbH / Wilhelm König Maschinenbau GmbH as soon as they are detected and established as such within the course of regular operations. The contractor hereby waives the objection of tardy defect reports in the case of all defect reports that are notified within 14 days of being established.
- 6.2. If König-mtm GmbH / Wilhelm König Maschinenbau GmbH returns defective goods, then König-mtm GmbH / Wilhelm König Maschinenbau GmbH is entitled to reverse the payment plus 5% of the price of the defective goods as an administration charge. König-mtm GmbH / Wilhelm König Maschinenbau GmbH expressly reserve the right to prove greater expenses. In this case the contractor has the right to show there were no such costs or that they were lower.

7. Warranty for Material and Legal Defects

- 7.1. Defective deliveries are to be replaced without delay by deliveries free of defects, and defective services are to be repeated free of defects. In the cases of development and construction errors, König-mtm GmbH / Wilhelm König Maschinenbau GmbH are entitled, at their discretion, to withdraw from the contract, to reduce the compensation or, in both these cases, to demand compensation for damages.
- 7.2. Supplementary performance of defective deliveries / services requires the consent of König-mtm GmbH / Wilhelm König Maschinenbau GmbH. The contractor bears all risks during the time in which the subject of delivery or service is not in the custody of König-mtm GmbH / Wilhelm König Maschinenbau GmbH.
- 7.3. If the contractor fails to remedy a defect, not even during a period of grace set by König-mtm GmbH / Wilhelm König Maschinenbau GmbH, then König-mtm GmbH / Wilhelm König Maschinenbau GmbH may, at its discretion, withdraw from the contract, reduce the compensation or, in both these cases, to demand compensation for damages.
- 7.4. In urgent cases (especially if operating safety is at risk or if extraordinarily high damages must be warded off) König-mtm GmbH / Wilhelm König Maschinenbau GmbH is entitled, in order to remedy minor defects or if the contractor is in default with remedying a defect, to remedy, possibly through a third party, the defects and any damages that have arisen in connection with them at the contractor's expense, whereby the contractor shall first be notified and given a short period of grace that is appropriate for the given situation.
- 7.5. The limitations period for the claims of König-mtm GmbH / Wilhelm König Maschinenbau GmbH based on material defects is 36 months from transfer of risks; the limitations period for claims from legal defects is 10 years from transfer of risks. These limitations periods apply exclusive of the periods that start when a defects notification is sent to the contractor and end when the claim to rectification has been met.
- 7.6. The above applies without prejudice to the legal rights of König-mtm GmbH / Wilhelm König Maschinenbau GmbH.

8. Indemnification with Material and Legal Defects

- 8.1. The contractor shall indemnify König-mtm GmbH / Wilhelm König Maschinenbau GmbH against all claims lodged by third parties - regardless of the legal grounds - because of a material or legal defect or other error in a product delivered by the contractor and reimburse König-mtm GmbH / Wilhelm König Maschinenbau GmbH the costs required to protect its rights in this respect.

9. Discontinuation of Deliveries

- 9.1. If the contractor discontinues its deliveries or if insolvency proceedings are opened against its assets or if there is an application for settlement proceedings out of court, then König-mtm GmbH / Wilhelm König Maschinenbau GmbH is entitled to withdraw from the contract. If they do not withdraw from the contract, König-mtm GmbH / Wilhelm König Maschinenbau GmbH, may retain an amount of at least 5% of the contractor's compensation as collateral for fulfilment of their contractual claims until the contractually agreed warranty period has expired.

9. Other

- 9.1. Changes and supplements to the contract and these general conditions must be made in writing.
- 9.2. The ineffectiveness or nullity of any of the foregoing provisions shall not affect the validity of the remaining provisions. If a provision of these general contractual terms and conditions is ineffective, then it shall be replaced by a valid provision that takes account of the other provisions and comes as close as possible to the economic purpose of the ineffective provision.
- 9.3. The place of fulfilment is the applicable delivery address.
- 9.4. Sole jurisdiction for any disputes that result from the contractual relationship either directly or indirectly is Wertheim.
- 9.5. The legal relations between König-mtm GmbH / Wilhelm König Maschinenbau GmbH and the contractor are subject solely to the law of the Federal Republic of Germany. Application of the uniform, international law on sale of goods is barred.