

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

**Version 01 September 2011**

**1. Validity and Conclusion of Contract**

- 1.1. Deliveries and services of all types are made exclusively on our General Terms and Conditions of Business for Sales (GTCBS), which the customer accepts when placing an order or accepting a service. The validity of deviating conditions is barred even if we have not objected to them. Our GTCBS also apply to all future business relationships even if they are not expressly agreed again.
- 1.2. Offers from us are non-binding. A contract is not brought about until we have confirmed the order in writing carried it out. The contents of offer confirmations, delivery notes and other confirmatory writings are acknowledged by the customer as being correct unless the customer objects in writing without delay and within 4 work days of delivery. When an order is placed for goods, the customer declares with binding effect that the customer wants to place the order. Then we are entitled to accept the offer of a contract that is implicit in the order within two weeks of receipt by us. Acceptance can be declared in writing or by handing over the goods to the customer. The documents contained in the offer, such as pictures, drawings, weights and measurements, are only approximate unless these have been specially marked as binding on us. Documents containing offers may be passed on to third parties only with our consent.
- 1.3. We reserve the right to make technically necessary or expedient changes to the products insofar as this is not unreasonable for the customer. Measurements, pictures and drawings serve the sole purpose of providing the customer with preliminary information and must be confirmed in writing by us if they are to be binding. Statements about characteristics and performance attributes of the products are of illustrative nature and are not binding.
- 1.3. Insofar as nothing else is explicitly agreed, the contents of the contract are supplemented by the following items in the order indicated: the provisions and specifications in the letters of offer, the construction plans and descriptions of performance, these General Terms and Conditions of Business, and the general regulations of the German Civil Code and the German Commercial Code.
- 1.4. The contract is concluded subject to correct, punctual deliveries to us by our suppliers. This applies only for the case that we cannot be held responsible for non-delivery, in particular in connection with concluding corresponding covering transactions with our suppliers. The customer will be informed without delay in the event of non-availability and any counter-performance rendered will be returned by us without delay.

**2. Delivery**

- 2.1. Delivery dates and periods are only binding if they have been agreed with the customer or confirmed by us in writing. Delivery periods start with the date of order confirmation, clarification of any technical questions and receipt of any documents or plans from the customer.
- 2.2. Unforeseeable events such as force majeure, delivery and transport delays, and labour disputes release us for their duration from our obligation to deliver on time insofar as we cannot be held responsible for such delays. Delivery periods are extended by the duration of the disruption. If the disruption lasts longer than 6 months, each party has the right to withdraw from the contract. In these cases the customer is not entitled to compensation for damages.

- 2.3. If we end up in default, the customer will not be entitled to withdraw from the contract unless we have been issued a reminder that sets a reasonable period of grace for rendering performance or supplementary performance, but to no avail. Claims for compensation for damages shall be barred unless these GTCBS imply otherwise.
- 2.4. If the customer is in default in accepting delivery or can otherwise be held responsible for a delay in dispatch, we shall be entitled to store the products at the risk and expense of the customer. If we set the customer a deadline for accepting the products, but to no avail, then we may withdraw from the contract and demand compensation for damages in lieu of performance, without prejudice to further rights.
- 2.5. The risk of accidental loss or deterioration of the goods passes to the customer when the goods are handed over to the customer or to a forwarding agent, freight carrier or other person or institution designated to send the goods to the customer. The goods shall also be deemed to have been handed over to the customer if the customer is in default in accepting delivery.
- 2.6. We are entitled to make partial deliveries and to make excess and short deliveries (+/- 10%). Our obligation to deliver is suspended for as long as the customer is in default with a liability that arises from the business relationship. The entire amount of call-off orders shall be accepted within 12 months.
- 2.7. Insofar as nothing else has been agreed, our delivery and performance shall be deemed to have been accepted, at the very latest, when they are put in use. We are entitled to demand acceptance of partial deliveries and performance.

### **3. Prices and Payment Conditions**

- 3.1. All prices are calculated in accordance with the price list that was valid when the order was confirmed, insofar as nothing else was agreed or is directly implied by the order confirmation. These prices are prices ex works exclusive of all transport costs, transport insurance costs and statutory value added tax. If more than 4 months lie between conclusion of the contract and delivery, we shall be entitled to demand at our fair discretion a surcharge in accordance with our increased costs up until delivery
- 3.2. Payments may be made by the customer with 2% discount within 8 days after receipt of invoice, or payment shall be due in full without deduction within 30 days after receipt of invoice, insofar as the contract does not stipulate something else.
- 3.3. The value date of payments by bank credit transfer, cheque or bill of exchange is the date of credit to our account. Cheques and bills of exchange are accepted by us only on the basis of special agreement and then only on account of performance and assumption of all cheque and bill charges by the customer.
- 3.4. If payment is not received by the due date, then the customer shall have entered payment default. Insofar as the customer is an enterprise, the customer shall pay interest on this debt in the amount of 8% points per annum above the base interest rate of the Deutsche Bundesbank without prejudice to our rights to assert and prove greater damages in consequence of payment default.
- 3.5. If the customer has not complied with its payment obligations in accordance with the contract, or if the customer discontinues payments or if we become aware of other circumstances which place the customer's creditworthiness in question, then we shall be entitled to demand immediate payment of the entire residual debt as well as advances or collateral. In these cases we may also withdraw from the contract insofar as it has not yet been fulfilled, without allowing the customer a period of grace.
- 3.6. The customer has a right to offset only if its counter-claims have been recognised by us or established by a final court judgment (not subject to appeal). The customer may exercise a right of retention only if its counter-claim is based on the same contractual relationship.

- 3.7. In the event of subsequent changes of design, construction, dimensions or other measurements relative to our offer of letter of confirmation, say because of wishes of the customer, technical necessities, unforeseeable difficulties or other circumstances beyond our influence, we shall be entitled to charge the customer for the additional effort required.
- 3.8. Our claims to payment become statute barred in five years.

#### **4. Retention of Ownership**

- 4.1. We retain ownership of the goods until full payment of all claims resulting from a current business relationship (“conditional goods”).
- 4.2. The customer is obliged to treat the conditional goods with care. Insofar as maintenance and inspection work is required, the Customer shall carry out this work on a regular basis at its own expense. The customer shall be obliged to notify us without delay of any attempt by a third party to access the conditional goods, as in the case of an attachment or seizure, and of any damages to or destruction of the conditional goods. The customer shall also notify us without delay if the goods pass into possession of a third party or if the customer changes its place of residence. In the event that the customer acts contrary to the contract, especially in the cases of payment default and breach of this provision, we shall be entitled to withdraw from the contract and demand surrender of the conditional goods.
- 4.3. The customer may sell the products only in the regular course of business and with an agreement of a corresponding retention of ownership, whereby the customer herewith already assigns to us the resulting claims in the amount of our open claims on the customer as well as the rights resulting from the customer’s retention of ownership. This right to sell the products can be revoked. We reserve the right to collect the claim on our customer’s customers ourselves if our customer does not meet its payment obligations to us and thus slips into payment default.
- 4.4. Insofar as the customer processes or combines the conditional goods, then the customer herewith already transfers to us ownership of the processed or combined products in the amount of the price of the conditional goods as security and keeps the conditional goods gratuitously for us. The customer processes the conditional goods for us without this imposing any obligations on us. If conditional goods are processed with objects that do not belong to us, then we acquire co-ownership of the new things in accordance with the ratio of the value of the goods delivered by us to that of the other processed objects. The same applies when the goods are mixed with other objects that do not belong to us.
- 4.5. Insofar as the value of the collateral we hold exceeds the nominal value of our open claims by more than 10%, we shall release this collateral upon demand.
- 4.6. The customer is obliged to sufficiently insure all commodity goods or objects resulting from combining, mixing or processing commodity goods against all typical risks, especially fire, burglary and water damages, and to treat them with care.

#### **5. Warranty**

- 5.1. The customer must inspect each delivery immediately upon receipt and notify us in writing without delay of any complaints or open or concealed defects, within one week of receipt or detection at the latest. The customer shall lose all warranty and replacement claims in respect to lack of guaranteed characteristics if the customer does not inspect the delivery immediately upon receipt, at the very latest before processing, consumption, use, installation or resale, or does not report any complaints to us in writing within one week. All warranty and claims for compensation for damages are barred upon expiry of this notification period. This deadline is met if written notification is sent on or before the deadline. The entire burden of proof for all prerequisites of claims, especially for the defect itself, for the time at which the defect was

detected and for the timeliness of the complaint lies with the customer. There is no defect when permissible tolerances are adhered to.

- 5.2. For a given defect, we first decide on whether to repair or replace the goods. The warranty claim vis-à-vis us is restricted to repairs and replacements of the parts delivered. All follow-on costs associated with repairs and replacements, namely the costs of disassembly and assembly, other installation costs as well as damages due to breakdowns and idle time are barred vis-à-vis us. We reacquire ownership of any parts that are replaced (insofar as we were not already the owner). If we seriously and with finality refuse to fulfil the contract, if we refuse to remedy a defect and render supplementary performance (repairs / replacements) because of disproportional costs, if supplementary performance is unsuccessful or if supplementary performance would constitute an imposition on the customer, then the customer may, at the customer's discretion, only reduce the price to be paid or else reverse the contract (withdrawal) and demand compensation for damages in lieu of performance within the limitations of our liability. However, the customer is not entitled to withdraw from the contract in case of a minor breach of contract, in particular in case of minor defects. If there is a legal or material defect, if supplementary performance fails and if the customer therefore decides to withdraw from the contract, then the customer shall not also be entitled to claim compensation for damages because of the defect. If supplementary performance has failed and the customer decides to claim compensation for damages, then the goods remain with the customer insofar as this would not be an imposition. Compensation for damages is limited to the difference between purchase price and the value of the defective object. This will not apply if we fraudulently caused the breach of contract. There are no warranty claims if the goods delivered are defective because of improper maintenance and cleaning, because of damages, or because of improper use, handling or repairs. Warranty claims and claims for compensation for damages against us are barred for third party materials or products that are connected with deliveries and services from us or that are used together with these products from us, whereby we would then assign to the customer any liability claims that we had against the supplier or third party delivery. Except as may be otherwise agreed, we assume no warranty for the functional capability of our deliveries and services insofar as the customer has connected them with third party products or operated them together with third party products. If a delivery from us consists of two or more parts and some but not all of these parts are defective, then the customer's claims against us shall be confined to the defective parts. The warranty period is one year from date of dispatch. This does not apply when the customer has failed to notify us of a defect in time (number 1 of this section).
- 5.3. If we cannot be held responsible for the violation of duty inherent in a given defect, the customer shall not be entitled to withdraw from the contract. The short limitations period does not apply if we can be accused of gross negligence, nor does it apply in a case of bodily injury, damage to health or loss of life of the customer that can be attributed to us. Our liability under the German Product Liability Law is likewise not affected.
- 5.4. Further claims remain unaffected in cases of fraudulent concealment of defects or assumption of a guarantee of specific properties. We do not issue any guarantees as this term is defined by law.
- 5.5. Further claims, in particular because of consequential damages are barred insofar as this is legally permissible. Insofar as is legally permissible, all claims for compensation for damages, including those based on positive breach of contract, tort and in particular product liability or other legal grounds exist against us, only in cases of intent or gross negligence. In cases of simple negligence we are liable only if essential contractual duties have been violated and the violation of duty is based on our company organisation. These claims become statute barred in six months, whereby the limitations periods begin on the date of dispatch. Insofar as we are obliged to keep spare parts in stock, this obligation is restricted to a period of 5 years after delivery.
- 5.6. Further going claims are barred insofar as nothing else is stated in these GTCBS.

## **6. Liability**

- 6.1. In cases of slightly negligent violations of duty, our liability is restricted to direct average damages that can be foreseen for the type of product and typical for the type of contract. This also applies to slightly negligent violations of duty on the part of our legal representatives and assistants.
- 6.2. If our customer is an enterprise, we shall not be liable for slightly negligent violation of minor contractual duties.
- 6.3. The foregoing limitations of liability do not apply to claims of the customer based on the Product Liability Law. Furthermore, these limitations of liability do not apply to cases of bodily injury, damage to health or loss of life of the customer that can be attributed to us.

## **7. General Provisions**

- 7.1. Changes and supplements to this contract and these GTCBS must be made in writing.
- 7.2. The ineffectiveness or nullity of any of the foregoing provisions shall not affect the validity of the remaining provisions. If any provision of these GTCBS 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.
- 7.3. The legal relations between us and the customer are subject solely to the law of the Federal Republic of Germany. Application of the uniform, international law on sale of goods is barred.
- 7.4. Insofar as the customer is a merchant within the meaning of the German Commercial Code, a legal entity of public law or a special fund under public law, the sole place of jurisdiction for all disputes that arise from the contractual relationship directly or indirectly is agreed to be Wertheim with the proviso that we are also entitled to sue the customer at its general place of jurisdiction. The same applies if the customer does not have a general place of jurisdiction in Germany or if the customer's place or residence or habitual abode is not known when an action is to be brought against the customer.
- 7.5. The customer is aware that its personal data will be recorded and processed in our normal business process to the extent required by the business at hand. The Customer agrees with this and is hereby deemed to have been informed within the meaning of § 33 par. 1 of the Federal Data Protection Law.