

**I. Scope of application**

Unless otherwise agreed and confirmed by Kostwein Maschinenbau GmbH (hereinafter referred to as "Kostwein") in writing, the present General Business Conditions shall apply to all current and future offers, sales and deliveries. All agreements which differ from this General Business Conditions as well as any business conditions of the Customer shall only be applicable where Kostwein expressly accepts such conditions in writing. By ordering and/or accepting goods, the Customer accepts the Sales Conditions of Kostwein as binding.

**II. Conclusion of contract**

All offers of Kostwein shall be deemed to constitute non-binding proposals made without engagement. No contract shall exist between the parties until Kostwein issues a written order confirmation. The written order confirmation shall define the only content of the contract concluded. It is the Customer's obligation to check the order confirmation carefully and claim any deviation of his issued order immediately in written. Otherwise the contract is deemed to be valid with the content of the order confirmation.

**III. Prices, Terms of payment**

All prices indicated shall be – unless expressly stated otherwise – in EURO excl. value added tax (net prices) and payable without any deduction whatsoever. Regulatory given value added taxes will be stated additionally in the invoices to comply with legal requirements. Unless expressly agreed otherwise, all orders shall be invoiced according to Kostwein's calculation on actual costs basis. In case of cost increases after conclusion of the contract Kostwein is entitled to increase the prices accordingly.

All supplementary fees and insurances, public charges, taxes, duties, freight and crating costs as well as any increases thereof that directly or indirectly concern or increase the price of the delivered goods shall be borne by the Customer.

All payments shall be made in EURO. Invoices submitted by Kostwein shall be payable without any deduction whatsoever within 30 days from the date of issue and shall be considered to be paid if the funds are shown in Kostwein's bank accounts. In the event of a delay in payment, Kostwein shall be entitled to charge a penalty interest in the amount of 9,2% p. a. above the basis rate given from the Austrian National Bank (according to § 456 UGB). This shall not prejudice Kostwein's right to demand compensation for any further damages.

If Kostwein becomes aware of any significant deterioration of the Customer's financial situation or if the Customer fails to pay any of Kostwein's invoices by the due date, Kostwein shall be entitled to demand advance payment or the provision of other security for all outstanding deliveries. If these requirements are not met, Kostwein shall be entitled to withdraw from the contract and claim for damages.

Kostwein reserves the right to accept or refuse to accept cheques or bills of exchange. Such instruments shall only be accepted on account of performance, and all costs connected therewith shall be borne by the Customer. Payment shall not be deemed to be effected until the respective cheque or bill of exchange has been paid by the drawee.

**IV. Terms of delivery, delay in acceptance, force majeure**

The place of performance shall be Kostwein's respective plant delivering the ordered product. Products shall be shipped at the cost and risk of the Customer. Unless specific transport instructions are issued by the Customer, Kostwein shall be entitled to select, to the best of its knowledge and without providing any guarantee in this respect, the transport route, the method of transport and the type of packaging.

Partly deliveries are allowed.

In case of default in payment, Kostwein shall be entitled to store goods already produced at the cost of the Customer, invoicing such goods to the Customer as delivered.

The transfer of risk of the products to the Customer takes place if the products are handed over to the forwarder, not depending whether organised by Kostwein or the Customer. In case of a delay in acceptance of the Customer the risk is transferred to the Customer at dispatchability.

In case the Customer does not pick up the goods on time Kostwein will stock them for no longer than 6 weeks at the risk and expense of the customer. Locally common charges for stocking are getting invoiced on a square meter basis needed to store the goods professionally. For any reason whatsoever Kostwein reserves the right to store the goods at a third party warehouse supplier at the risk and expense of the customer. In case of delay in acceptance Kostwein will inform the customer about the stocking requirements accordingly. The notification justifies Kostwein to consider the contract to be fulfilled and to issue the respective invoices.

Above mentioned 6 weeks are considered to be the grace period for the Customer to pick up the goods. After such period Kostwein is entitled to withdraw from the contract and claim for damages as well as to dispose about the goods on Kostwein's goodwill at the risk and expense of the customer. In case of such a use or disposal it is the obligation of the customer to compensate Kostwein for all damage and subsequent cost including loss of profit and to prevent Kostwein harmless of any legal consequences.

Kostwein will provide information on the periods of delivery without, however, providing any guarantee in this respect. Periods of delivery shall commence upon receipt of the order and submission of all documents required for fulfilment of the order. Delivery deadlines shall be deemed to be met where a ready-for-shipment note is issued in due time. In the case of call orders, Kostwein shall be obliged to make delivery and the Customer shall be obliged to accept the ordered goods by the agreed final date or a reasonable final date at the latest. Delivery dates agreed shall be complied with unless an interruption of normal business operations occurs. In the event of force majeure, strikes, lockouts, material procurement problems, interruptions of business of any kind as well as in the event of other unforeseeable events affecting Kostwein or any of Kostwein's suppliers, Kostwein shall be

released from its obligation to deliver by the agreed date, if any. In this case, Kostwein shall be entitled to extend the period of delivery by a reasonably extension period or to partly or fully withdraw from the contract with respect to the part of the contract not yet fulfilled. In case Kostwein culpably exceeds the agreed lead times for more than 4 months the customer is entitled – after setting a grace period of at least further 4 weeks – to withdraw from the contract. Such delays shall not entitle the Customer to refuse acceptance or to demand compensation for any costs incurred in this connection, except the delay is based on gross negligence.

The Customer shall, in particular, not be entitled to demand reimbursement from Kostwein for penalty payments for delays in delivery, even if agreed between the Customer and third parties, exceeding 0,5% per full week of delay and max. 5% of the value of the delayed part of the delivery.

**V. Reservation of ownership**

The goods delivered shall remain the property of Kostwein until full payment of all amounts outstanding in connection with the existing business relationship (purchase price, interest, costs, supplementary fees, etc.). The Customer is fully responsible takes full risk for the reserved goods, especially but not limited to the risk of destruction, risk of loss or risk of deterioration. Goods delivered with retention of title are to be stored and treated properly by the Customer who is also responsible to insure them for all risks of an ordinary business operation. In case of destruction, loss or deterioration of such goods with retention of title the Customer hereby assigns its claims vis-à-vis any third party including but not limited to insurances as per the value of the invoice as well as all supplementary rights in this respect to Kostwein.

In the case of an attachment of property or any other claims enforced by third parties against the Customer, the Customer shall be obliged to enforce the ownership rights of Kostwein and to forthwith notify Kostwein of the respective situation. In the event that the Customer delivers goods supplied by Kostwein to a third party before full payment is made, Kostwein shall be fully entitled to all rights in connection with the consideration given by such third party. For this purpose, the Customer hereby assigns its claims vis-à-vis such third party as well as all supplementary rights in this respect to Kostwein, i.e. no separate act of assignment will be required, should Kostwein need to enforce such rights and claims at a future date. The Customer shall be obliged to record this assignment in the Customer's books. Kostwein shall be entitled to inform the respective third party of this assignment at any time. However, the present advance assignment shall not be deemed to entitle the Customer to sell products delivered by Kostwein and shall not prejudice the reservation of ownership agreed. Therefore, the Customer shall only be entitled to sell goods delivered by Kostwein if the reservation of ownership is expressly made binding on the respective third party as well. In cases where goods delivered by Kostwein are processed in the normal course of business, Kostwein shall, in the framework of the reservation of ownership, acquire proportionate ownership rights in the final product.

In case of a delay in payment Kostwein is entitled to secure the goods, not touching the contractual obligations of the customer including but not limited to the full payment.

**VI. Warranty, damages**

1. Agreed characteristics:

All deliveries and services supplied by Kostwein shall comply with the specifications indicated in brochures and other advertising materials. Product characteristics deviating from or exceeding these specifications shall only be deemed to be agreed and warranted if expressly agreed in writing. In the case of services and deliveries not based on brochures or other advertising materials, the product characteristics shall be as indicated in the order and the confirmation of order. The responsibility for unclear definition of expressly stipulated characteristics shall be borne by the Customer. The Customer bears the responsibility for verifying whether or not a product is suitable for a certain area of application and the customer shall take care about the usage and suitability risks for the intended usage even if Kostwein was involved and informed upfront.

Kostwein assumes no liability whatsoever for information provided by third parties in their brochures or advertising materials.

2. Complaints:

All goods delivered, even partly deliveries, shall be inspected immediately upon receipt. Otherwise the Customer shall lose all related rights. Any defects detected in the course of the inspection shall be communicated to Kostwein immediately but at the latest within 10 days from the date of receipt of the goods, also indicating the type and extent of the defect. Hidden defects shall also be communicated to Kostwein within 10 days after their detection. Delivered goods shall be considered as accepted if defects are not communicated to Kostwein within the stipulated period.

Kostwein shall have the exclusive right to verify whether or not the products in question are faulty and will examine the respective products within a reasonable period of time. The Customer shall, upon Kostwein's request and at the Customer's own cost, ship the defective goods to Kostwein or provide access to the goods for inspection at a place to be determined by Kostwein. The Customer shall not be entitled to correct faulty goods itself. In case of justified complaints submitted in due time in writing, Kostwein shall replace or correct the respective goods. Kostwein shall at its own discretion decide if products will be replaced or corrected.

In cases where replacement or correction cannot be effected within a reasonable period of time, Kostwein shall issue a credit note. Any further claims on the part of the Customer shall be excluded. Warranty is also excluded if the Customer or any third party which was not authorised by Kostwein maintained or changed the goods.

**In the case of defective goods, the Customer shall bear the burden of proof. Application of s. 924 of the Civil Code (ABGB) is hereby expressly excluded.**

The cost of services rendered by Kostwein's customer service department will be invoiced to the Customer where such services are not provided under warranty claims or on the basis of justified complaints.

The warranty period shall be 6 months from the date of delivery.

Claims for replacement or correction shall also be excluded where products were damaged as a consequence of improper storage, assembly or application as well as in the case of transport damage or damage caused by corrosion.

3. Recourse:

Any recourse against us as defined by s. 933b of the Civil Code (ABGB) is hereby expressly excluded.

**VII. Right to withhold payment**

In the case of justified complaints, the Customer shall not be entitled to withhold the entire payment but shall only withhold a reasonable share of the invoiced amount.

**VIII. No offsetting**

The Customer shall not be entitled to set off any counter-claims whatsoever against Kostwein's claims.

**IX. Product liability**

Any recourse claims asserted against Kostwein by contractual partners or third parties on grounds of "product liability" as defined by the Product Liability Act (PHG) are expressly excluded unless the party asserting recourse claims proves that the mistake in question can be allocated to Kostwein's sphere of responsibility and is attributable, at least, to gross negligence.

**X. Jurisdiction and venue**

The jurisdiction and venue of the Provincial Court of Klagenfurt in its capacity as a commercial court are hereby agreed. This provision, however, shall not prejudice Kostwein's right to bring action at any other legitimate venue. Application of Austrian law is hereby agreed. Application of the UN Sales Convention is expressly excluded. The German language is hereby established as language of contract.

**XI. Severability**

In the event that one or several of the provisions of the present General Business Conditions should be found to be ineffective in whole or in part, the validity of the remaining provisions of the present Conditions shall not be affected thereby. However, if any of the provisions should be found to be ineffective, invalid or unenforceable, the parties shall apply such other contractual arrangement which secures, as far as possible, the intended economic effect of the invalid provision. If individual provisions of the contract between Kostwein and the Customer should be legally ineffective, the validity of the remaining parts of the contract shall not be affected thereby.

Oral declarations representing additional obligations on the part of Kostwein shall only be valid if expressly confirmed in writing.

Agreements, modifications of the present General Business Conditions and supplementary agreements thereto as well as any promises made by employees of Kostwein shall not be valid unless properly executed in writing. This also applies to any departure from this requirement of writing.