



**KOSTWEIN Maschinenbau GmbH**  
**Berthold Schwarz Straße 51**  
**9020 Klagenfurt / Tessedorf**  
**Austria**



**Purchasing Conditions**  
**of**  
**Kostwein Maschinenbau GmbH,**  
**Berhold-Schwarz-Str. 51, 9020 Klagenfurt, Austria (= Buyer)**

## **1. Validity**

The buyer's General Terms and Conditions are definitive for the contractual relationship with the supplier; the supplier must acknowledge their validity at latest when delivery commences. The supplier's General Terms and Conditions or similar contract documents, whether listed in order confirmations or similar documents, are not valid; our acceptance of the delivery or service, or payment for it, does not imply consent to the supplier's conditions. Derogating or supplementary conditions require written form.

## **2. Offers**

2.1. Offers, negotiating documents and preliminary cost estimates are always non-binding and free of charge for us. Orders only take effect if they are in written form or confirmed in writing by us. Written form is also satisfied by facsimile or email.

2.2. Title and copyright to documents provided to the supplier by us to prepare submission and performance of his offer, in particular plans and other documents, remain with us and may only be made accessible to third parties with our express written consent.

## **3. Scope of the delivery**

3.1. The buyer's written order or order confirmation is definitive for the scale of the delivery and the additional services, which are not to be invoiced separately. The supplier is bound for 12 weeks by written offers, providing no other time limit has been agreed.

3.2. The order is to be confirmed immediately. To that end, a copy of the order is to be signed by the company and returned. Orders awarded are deemed accepted if the Seller does not contradict this by means of a divergent order confirmation within 7 working days of receiving the order. If the order confirmation diverges from the order, clear reference to the divergence must be made (e.g. special labelling) and the principal must be contacted immediately by telephone. An order confirmation coming from the supplier, which diverges from or supplements our order, is invalid unless it was accepted in writing by the buyer.

3.3. Should the supplier be unable to carry out the order properly and completely, the buyer is to be informed immediately. In this case the buyer is entitled to withdraw immediately and to enforce damages arising from a hedging transaction.



**KOSTWEIN Maschinenbau GmbH**  
**Berthold Schwarz Straße 51**  
**9020 Klagenfurt / Tessendorf**  
**Austria**



#### **4. Price, Payment**

4.1. All prices are fixed unless otherwise agreed.

4.2. The buyer is only obliged to make a prepayment if this was agreed by contract and the supplier provides a bank guarantee from a bank present in the EU or area covered by the ECR for the full amount of the prepayment.

4.3. The delivery term DDU incl. packaging and other additional costs applies to deliveries within Europe; the delivery condition FOB ship or departure airport, in any case pursuant to Incoterms 2000, applies to deliveries from overseas. Instructions as regards type of transportation, forwarder and shipping regulations must be followed. The supplier will have to pay additional costs incurred for an accelerated form of transport possibly required to meet the delivery date. In the case of deliveries including erection or assembly and in the case of services, risk transfers with acceptance, in the event of deliveries excluding erection or assembly, on receipt at the reception point nominated by us.

4.4. Irrespective of his liability, the supplier vouches for compliance with the binding delivery date. If the supplier cannot meet the contractually agreed delivery date as a result of force majeure (labour disputes, natural catastrophes or similar), he must inform the buyer of this as soon as he becomes aware of the reason for the hindrance. In that case the buyer is entitled either to extend the period for acceptance or, following an appropriate additional period, to withdraw from the contract wholly or in part. An additional period is appropriate if it amounts to two weeks. Even in cases of force majeure the supplier is not entitled to withdraw from the contract or increase prices at his own discretion.

4.5. In the event of default on delivery, we are entitled to charge a penalty of 1% of the full value of the order for every commenced week of the delay, but a maximum of 10% of the complete value of the order without evidence of the damage incurred. The enforcement of damages beyond this sum is reserved for the buyer. The invoice must comply with Austrian legal regulations, in particular the law governing value-added tax. We reserve the right to return invoices not complying with these requirements unprocessed, whereby the invoice is deemed not submitted in that case. Reservation of title by the supplier must be confirmed in writing by the buyer.

4.6. Unless otherwise agreed, payments are made at the buyer's discretion within 14 days less a 3% discount or within 30 days net following receipt of the goods and the invoice. The buyer is entitled to withhold payment until faults are repaired. Payment does not imply acknowledgement of the fitness or completeness of the delivery. Payment is considered to have been made on time with the passing of the order to remit to our bank at latest on the due date. The seller must pay the receiving bank's charges. The seller is not entitled to cede his claims to a third party (prohibition on cession)

4.7. The buyer is entitled to deduct a liability reserve of 10% from the gross sum of the invoice. The reserve is to be paid to the supplies, without interest, on fulfilment of all warranties and guarantees or the expiry of non-queried terms. Inasmuch as agreed, the supplier can redeem the liability reserve with a bank guarantee in the same amount drawn on a bank situated in the EU/area covered by the ECR.



**KOSTWEIN Maschinenbau GmbH**  
**Berthold Schwarz Straße 51**  
**9020 Klagenfurt / Tessendorf**  
**Austria**



## **5. Warranty, Guarantee**

5.1. The delivery must satisfy the definitive legal regulations, applicable for the end user, of whom the seller has been notified. If no end user has been nominated, the delivery must satisfy Austrian safety and quality standards in addition to requirements specified by the buyer. In the event of doubt consult with the buyer. For quantities, weight and measures, the values we discover during the receipt inspection are definitive. We will notify the supplier of defects in the delivery in accordance with the practices of proper business as soon as they are discovered or noticed (this may also be only in the course of continued use).

5.2. The seller guarantees the best materials, fit for purpose, correct and proper manufacture taking into account the latest state of the art science and technology. He expressly assures that the goods sold comply fully with the samples, models and descriptions he supplied as well as with the terms of reference given by the seller.

5.3. In the event of defective delivery, the buyer is entitled to demand repair free of charge at the end-user's installation site and/or replacement. Possible additional costs incurred by the buyer will be paid by the seller.

To the extent the seller is unable to propose a satisfactory way forward for the buyer or their client, the buyer is entitled, at the seller's expense in each case, to act on his own account or to entrust repairs to third parties.

In the event of a complaint the seller will be charged the administrative costs due in the amount of EUR 70.00 per product complained of. The buyer is entitled to deduct this from the next invoice.

5.4. The statutory limitation for enforcement of claims is twenty-four months from handover to the end user, thirty months from delivery at latest. In any case, the warranty period is interrupted for two months by a content-specific claim under warranty.

5.5. For parts replaced during the warranty or guarantee period, the warranty period recommences from the beginning after every replacement.

5.6. If a critical defect is notified by the end-user, which is attributable to the supplier, the supplier is obliged to provide best possible assistance as quickly as possible. If it should subsequently prove that the end user is himself liable for the fault, the buyer will assist the supplier as best he can in the enforcement of claims against the end user.

5.7. The seller shall indemnify the buyer against claims, for whatever legal reason, resulting from the seller's culpable infringement of legal or contractual obligations. This applies in particular to claims under product liability, which are attributable to faultiness of the seller's product, irrespective of who is to be considered the manufacturer of the end product under product liability laws. The seller bears the burden of proof for non-liability. The seller must be able to demonstrate to the buyer at any time that he has product liability insurance with cover of at least 3 million euros per insured event. In the contrary case, the buyer must be informed immediately of the lack of cover in writing.



**KOSTWEIN Maschinenbau GmbH**  
**Berthold Schwarz Straße 51**  
**9020 Klagenfurt / Tessendorf**  
**Austria**



## **6. Accessory obligations**

6.1. The seller must provide the buyer with all detailed drawings, plans and instructions for use, the latter in any language specified by the buyer, at no charge. The seller must ensure that the buyer can be supplied with spare parts in sufficient quantity on time.

6.2. The seller must ensure the training of the buyer's or end-user's personnel on the conventional scale.

6.3. The article of sale must carry the nameplate specified by the buyer (including designation of the end-user in the specified language and script). The serial number of the supplied machine must be listed in all delivery documents.

6.4. If a price including assembly has been agreed with the seller, this includes the provision of skilled labour plus travel and subsistence costs up until acceptance by the buyer or end user.

6.5. All products must be fitted with the prescribed safety devices and satisfy the definitive safety regulations at the end user's installation site. Machinery, systems and products are to carry the CE-label in accordance with the EU Guidelines and Austrian laws. Corresponding conformity declarations, with brief descriptions and assembly instructions or fitting rules in appropriate, are to be provided with the delivery. The seller must inform the buyer in good time of changes to materials, manufacturing processes and subcontracted parts as well as conformity declarations.

## **7. Place of Performance, Law and Venue**

7.1. Place of performance for deliveries or services is the destination or place of delivery specified in the order; for payments the place of performance is the buyer's registered offices in A-9020 Klagenfurt. Austrian law is applicable, subject to exclusion of such legal norms referring to the law of other States; likewise application of the rules in UN-CISG is excluded in any case.

7.2. Only the court competent in commercial matters sitting in Klagenfurt is competent to rule on disputes, in particular as to the existence of a contract or claims arising from it.