

# General sales conditions (GSC) Kreuzmayr Maschinenbau GmbH

FN 273526 w

## 1. Scope of application

1.1. These business conditions apply between Kreuzmayr Maschinenbau GmbH and natural persons and legal entities (in the following: customer) to the subject legal transaction as well as to all future business, even if in the very case, **mainly in future supplemental or consequential orders**, they are not expressly referred to.

1.2. Upon agreement on a contract the most recent version of our general conditions is to be applied, to be found on our **homepage** (<http://www.kreuzmayr.com/impressum>).

1.3. We **exclusively** conclude agreements on the basis of these business conditions.

1.4. **Business conditions of customer** or modifications or amendments of resp. to our general conditions require our express written consent in order to be applied.

1.5. Business conditions of customer are not accepted even if we do not expressly **reject** them after having been received by us.

## 2. Offers, conclusion of agreement

2.1. Our offers are **not binding**.

2.2. **Representations**, promises and guarantees on our behalf or agreements different from these general conditions in connection with the conclusion of the agreement will only be binding upon our written confirmation.

2.3. **Informations** about our products and services not to be allocated to us, in catalogues, price lists, folders, advertisements on fair booths, circular letters, advertising mailings and other media (information material) are to be notified to us by customer to the extent customer bases his decision to order on them. In such case we can comment on the correctness. In case customer does not meet this incumbency such information is not binding to the extent not having been expressly declared in writing to be part of the agreement.

2.4. **Offers** are free of cost to us and legal for maximum 3 month past offering date.

## 3. Prices

3.1. Prices indicated, as a rule, are **not** to be understood as **lump sum price**.

3.2. Services ordered by customer, **not being covered by the original order**, are to be compensated adequately, lacking an agreement on wage pay.

3.3. Price information is to be understood plus the applicable legal **value added tax** ex works. Costs for emballage, transportation, handling and dispatching plus customs and insurance are to be born by customer. Only upon express agreement we are obliged to take emballage back.

3.4. Customer has to care for the proper and ecological disposal of **materials used**. In case we are ordered to do so customer is to pay adequate compensation to the extent agreed, lacking an agreement on wage pay.

3.5. Upon our discretion as well as upon request by customer we are entitled to **adapt** the contractually agreed consideration in case modifications to the extent of at least 5% concerning

a) costs for salaries by law, regulation, collective labour agreement, shop agreements or

b) other price-factors necessary to render services like cost of acquisition for materials being used, based on recommendations of the equal representation committees or modifications in national respectively world market prices for commodities, foreign exchange rates etc. have occurred since the conclusion of the agreement. The adaptation will be made to the extent that the effective manufacturing costs at the time of the conclusion of the agreement have changed, compared to those at the time of the rendering of the service, unless we are in delay.

3.6. The compensation in case of permanent contractual relationships is agreed as **value guaranteed** according to the consumer price index 2005 allowing the adaption of the compensation. The basis is the month in which the agreement was concluded.

3.7. Costs for **travelling expenses, daily allowances and night tariffs** are charged separately. Travel time is deemed to be work time.

## 4. Contributed items

4.1. In case customer contributes appliances or other materials we are entitled to invoice 5% of the value of the appliances resp. materials contributed as **handling fee**.

4.2. Such appliances or other materials contributed by customer are not subject to **warranty**.

## 5. Payment

5.1. Thirty percentage of the compensation is **due** upon conclusion of the agreement, thirty percentage at the beginning of the rendering of the service and forty percentage before delivery.

5.2. The entitlement to **deduct a discount** requires an express written agreement.

5.3. **Dedications** of payments made by customer are not binding for us.

5.4. In case customer is in delay of payment in the frame of other existing contractual relations with us we are entitled to **suspend** fulfilment of our obligation out of this agreement till customer has performed.

5.5. In such case we are also entitled to **accelerate maturity** of all claims for services already rendered within the current business connection with customer.

5.6. **In case of exceeding the payment deadline**, if only concerning a single partial service, price reductions granted (discounts, allowances, etc.) cease to exist and will be invoiced.

5.7. In case of delay of payment customer undertakes to reimburse us for necessary and appropriate costs (costs for reminders, collection fees, costs for attorneys, etc.) for the **collection**.

5.8. Customer is only **entitled to offset** to the extent claims for compensation have been determined by a court of law or are recognized by us.

## 6. Credit rating

6.1. Customer expressly declares to agree that his data, solely for the purpose of protection of creditors, may be communicated to the officially privileged **creditor protection associations AKV EUROPA Alpenländischer Kreditorenverband für Kreditschutz und Betriebswirtschaft, Creditreform Wirtschaftsankunft Kubicke KG und Kreditschutzverband von 1870 (KSV)**.

## 7. Contribution by customer

7.1. Our duty to **render services start** the earliest after

a) all technical details have been cleared,

b) customer has prepared the technical and legal conditions (which we are ready to communicate upon request),

c) we shall have received down payments or securities agreed, and

d) customer has met his contractual obligations for advance performance and performance contribution primarily those named in the items below.

7.2. In case of assembly works to be carried out by us customer has to take care that immediately after **arrival of our assembly team** works can be started.

7.3. Customer has to bring about the necessary **permits** of third parties and reports to and approvals by authorities at own costs.

7.4. **Energy** and water quantity necessary to render the service and for the test run are to be contributed by customer at his costs.

7.5. During the time of rendering the service customer has to make available to us **rooms** which can be **locked**, free of costs, not accessible to third parties, for the abode of the workmen and the storage of tools and materials.

7.6. Customer is liable that the necessary **constructional, technical and legal preconditions** for the work to be performed or the item of purchase are met, which are described in the agreement or in the information given to customer prior to the conclusion of the agreement or which customer should have constructive knowledge of, based on his professional knowledge or experience.

7.7. Customer is also liable that the technical installations like feeders, cabling, network structures, etc. are in a technically perfect and operable condition and compatible with the works or purchase items to be implemented by us.

7.8. We are entitled but not obliged to **check** such **installations** for separate consideration.

7.9. Before the beginning of the assembly works

customer, most of all, has to give the necessary information on the situation of **concealed electricity-, gas- and water conduits** or similar installations, escape ways, other obstacles of constructional type, possible sources of danger and the required static information without having been requested to do so.

7.10. Details of the necessary information referring to the order can be obtained from us.

7.11. The customer is solely liable for the construction and functionality of **contributed parts**. There is no obligation to examine **documents eventually submitted by customer**, information or instructions given - except the keeping of technical construction records and the certification of conformity with the machine directive and eventually with other applicable directives - with regard to the item to be supplied, so that the respective liability from our side is excluded. The obligation to issue the certification may be transferred by agreement to the customer marketing the item to be supplied.

7.12. Customer is not entitled to **assign** claims and rights out of this contractual obligation without our written consent.

## 8. Implementation of works

8.1. **Minor substantial justified modifications** of our implementation of works are deemed to be permitted in advance, if reasonable for customer.

8.2. Should, after the placement of the order, for what reason ever, **modifications** or amendments of the order occur, the supply-/ work period is extended for an adequate period of time.

8.3. If customer desires after conclusion of the agreement that the implementation of works shall be carried out within a **shorter period of time**, this constitutes a modification of the agreement. It may cause over time hours and/or additional costs caused by the acceleration to acquire materials and increases the compensation in the ratio to the necessary additional efforts adequately.

8.4. Substantially justified **partial supply and - service** (e.g. size of installation, work progress, etc.) is admissible and maybe invoiced separately.

8.5. In case delivery **as required** is agreed the service-/purchase item is deemed to be required the latest six months after the order.

## 9. Terms for supply and performance

9.1. Terms and dates for supply and performance are only **binding** for us if having been determined in writing. Waiving this stipulation of form also requires the written form.

9.2. Terms and dates are **postponed** in case of force majeure, strike, unforeseeable delay not having been caused by us through our sub-suppliers or other similar events beyond our sphere of control, for the period of duration of the respective event. This does not affect the right of customer to withdraw from the contract in case of delays making the contractual commitment unreasonable.

9.3. In case the start of the performance of works or the implementation is **delayed** or interrupted by circumstances to be allocated to **customer**, primarily for violation of the obligation according to item 7 to cooperate, the respective periods for performance are extended and the completion dates correspondingly postponed.

9.4. For the **storage** of materials and appliances and alike at our premises caused this way we are entitled to invoice 3% of the invoice amount per month of delay of performance started, not affecting the incumbency of customer for payment and acceptance.

9.5. In case of withdrawal from the agreement for delay customer has to grant a **grace period** by registered mail, simultaneously announcing the withdrawal.

## 10. Risks and dispatch

10.1. The risk passes to customer as soon as we keep the purchase item/the works **ready for collection at premises or storage** respectively hand over material and appliances to a carrier or mover. Dispatch, loading and unloading and transportation always is at the risk of customer.

10.2. Customer approves any adequate **way of dispatch**. Upon written request of customer we undertake to take out a transport insurance at the costs of customer.

10.3. We are entitled in case of dispatch to collect the costs of emballage and dispatching as well as the consideration **on delivery** from customer in case customer is in delay with a payment in the frame of the existing business relation with us or a credit limit has been exceeded.

10.4. Customer is responsible for the safety of the materials and appliances supplied by us and stored or assembled at the place of performance. **Losses and damages** are to be born by customer.

#### 11. Delay in acceptance

11.1. In case customer is in delay with acceptance (refusal of acceptance, delay in advance payment or other, no call for delivery within adequate time in case of delivery as required) for more than weeks and customer, not -withstanding granting of an adequate **grace period** has not remedied the situation to be allocated to him, which delays or impedes the performance of the works, we are entitled in case of a valid agreement to **dispose** of the appliances and materials specified for the implementation of the works **otherwise**, to the extent we procure supplement in case of continuation of the implementation of the works within a period adequate to the respective situation.

11.2. In case of delay in acceptance by customer we are also entitled, in case we insist that the agreement be fulfilled, to store the items with us and to collect a **storage fee** according to item 9.4.

11.3. In case of justified withdrawal from the agreement we may demand from customer **liquidated damages** in the amount of 20% the gross amount of the order without evidence of effective damages.

11.4. It is possible to claim higher damages.

#### 12. Retention of title

12.1. The items supplied, assembled or handed over in another way remain our property till being fully paid.

12.2. **Reselling** is only permitted if we have been informed in advance on name and exact address of purchaser and have given our consent. In case of consent the claim for the purchase price is deemed to have been assigned to us already.

12.3. Till full payment has been made of the consideration or the purchase price customer has to annotate the **resale** in his books and invoices and to **inform** his debtors correspondingly. Upon request customer has to submit all documents and information necessary to claim the assigned claim and claims and titles to us.

12.4. Customer expressly agrees that we may set foot into the **location** of the reserved items in order to assert our title retention.

12.5. Necessary and costs adequate for the appropriate collection **cost** are born by customer.

12.6. The enforcement of the title reservation only constitutes a **withdrawal from the agreement** if expressly having been declared.

12.7. The property under reservation taken back can be **sold** by us privately to the possible best.

12.8. Till all our claims are completely paid the item of service/purchase may neither be pledged, conveyed as security or encumbered with **rights of third parties**. In case of seizure or other garnishment customer is obliged to give information on our retention of title and to inform us immediately.

#### 13. Industrial property rights of third parties

13.1. For items supplied which we produce according to **customer's documents** (information on design, drawings, mock-ups or other specifications, etc.) exclusively customer guarantees that the manufacturing of these items to be supplied does not infringe industrial property rights of third parties.

13.2. If however industrial property rights of third parties are claimed we are entitled to **suspend production** of the items to be supplied at risk of customer till the rights of third parties are clarified except the claim is obviously not justified.

13.3. The same way we may claim compensation from customer for necessary and useful **costs** paid by us.

13.4. In case of litigation we are entitled to demand adequate **advance down payments**.

#### 14. Our intellectual property

14.1. Items supplied and the pertinent documents for performance, **plans**, sketches, cost estimates and other documents as well as software supplied by us or having been created through our contribution remain our intellectual property.

14.2. Its use, most of all, distribution, copying, publishing or making available, including only partial copying, as well as imitation, processing or exploitation requires our express **approval**.

14.3. Furthermore, customer undertakes to keep

knowledge having been obtained through the business relationship **confidential** with regard to third parties.

#### 15. Warranty

15.1. The **warranty period** for our services is one year after delivery.

15.2. Lacking an agreement to the contrary (e.g. formal acceptance) the date of **delivery** is the time of completion, the latest when customer has taken over the works in his control or has refused acceptance without reasons. The day on which customer is informed about completion the works are deemed to be taken over into the control of customer in the absence of justified refusal of acceptance.

15.3. **Remedying** faults alleged by customer does not constitute recognition of a fault.

15.4. Under all circumstances it is the customer who has to **prove** that a fault existed already at the time of delivery.

15.5. **Complaints about defects** or objections of any kind are to be notified to us at our premises immediately (the latest after 10 workdays) indicating the **description of the fault** as precise as possible and indicating the possible cause **in writing**, as otherwise the claim for warranty is forfeited. The items or works objected are, to the extent being reasonable to be delivered by customer.

15.6. In case **faults alleged** by customer are **not justified** customer is obliged to reimburse us for expenses incurred in order to ascertain the flawlessness or to remedy the defect.

15.7. We are entitled to make any **examination** considered to be necessary by us or to have it made, even if it leads to the result that the items or work pieces are destroyed. In case the examination leads to the result that we are not liable for a defect customer is to bear the adequate costs for such examination.

15.8. Transportation and travelling expenses incurred in connection with the remedying of the defect are to be born by customer. Upon our request customer has to make available required manpower, energy supply and space free of costs and to cooperate according to item 7.

15.9. Customer has to allow us at least **two attempts to remedy** a defect.

15.10. We may elect to ward off a claim for redhibition by remedying or adequate price reduction, to the extent the defect is not essential or cannot be remedied.

15.11. In case items are manufactured upon **information**, drawings, plans, mock-ups or other specifications by **customer** we only warrant performance as agreed.

15.12. The fact that works are not fully qualified for use as agreed does not constitute a defect if it is caused exclusively by the fact that the effective situation is **deviating** from the **informations** we had at the time of performance, because customer has not fulfilled his cooperation obligation according to item 7.

15.13. Also, **technical installations** of customer like conduits, cabling, networks, etc. not being in technically perfect or operable condition or not being compatible with the items supplied do not constitute a defect.

15.14. Warranty **excluded** are wear parts and defect or damage caused by operational abrasion and normal wear, improper use, operating error or mistaken behavior also fire, lightning, explosion or external overvoltage, all kind of moisture and incorrect external - software and/or processing data.

#### 16. Liability

16.1. We are liable in case of **property damages** for violation of contractual or pre- contractual obligations, primarily for impossibility of performance, delay, etc only in case of premeditation or gross negligence.

16.2. In case liability insurance has been taken out by us liability is **limited** to the maximum amount thereof.

16.3. This limitation also applies to damages to items we have **accepted for treatment**.

16.4. Claims for compensation for damages are to be raised within six months at a court of law or **otherwise forfeited**.

16.5. The limitations resp. exclusions for liability also contain claims against our **staff**, representatives and agents for damages having been caused to customer without connection to an agreement.

16.6. Our liability is excluded for damages having been caused by **inadequate handling** or storage, overstress, disregard of user- and installation manuals, defective assembly, operation, service, maintenance by customer or third parties not having been authorized by us or natural wear and tear, to the extent such cause caused

the damage. Liability is also excluded for failure of service.

16.7. If and to the extent customer may claim **payment by an insurance** for damages, for which we are liable, out of an insurance for damages having been taken out by him or in his favour (e.g. liability insurance, full coverage, transportation, fire, interruption of operation and other), customer undertakes to make use of such insurance payment; our liability towards customer is limited to the disadvantages customer suffers by making use of this insurance (e.g. increased insurance premiums).

16.8. With regard to licensing regulations, user manuals and other product-related guidelines and information (primarily also control and service), such product qualities are to be supplied which maybe expected by customer from us, third party manufacturers or importers, with respect to his knowledge and experience. As reseller customer has to take out a sufficient insurance for **product liability claims** and to keep us free of harm and claim with regard to claims for recourse.

#### 17. Severability

17.1. In case parts of these general conditions should be invalid, this does not affect the validity of the other parts.

17.2. The parties here- with undertake - based on the good faith of contracting parties - to agree on a **substitute stipulation**, coming closest to the commercial result of the invalid stipulation, with regard to the commercial practice in the business.

#### 18. General

18.1. **Austrian law** is to be applied.

18.2. The UN- Convention on the International Sale of Goods is excluded.

18.3. **Place of performance** is the domicile of the Company:  
Schallerbacher Straße 77  
A-4702 Wallern / Trattnach

18.4. The forum for all disputes arising out of this contractual agreement or future contracts between us and customer is the court having jurisdiction at A-4702 Wallern/Trattnach.

18.5. Customer is obliged to immediately communicate to us in writing **changes** of his name, the company, his address, the legal form or other **relevant information**.

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