

General Terms and Conditions of Perndorfer Maschinenbau KG (last updated: 07/2020)

1. Scope / commitments / future transactions

These General Terms and Conditions of Sale and Delivery, irrespective of different written agreements in individual cases, are an integral part of all delivery and sales transaction at Perndorfer Maschinenbau KG

A-4720 Kallham, Parzleithen 8, in particular with regard to machinery, machine accessories, and spare parts including repairs. Employees, sales representatives, and commercial agents are not authorised to give commitments of any kind. These General Terms and Conditions of Sale and Delivery also apply, unless different terms are agreed in writing, to future business of the aforementioned kind without their validity requiring agreement in each individual case. Contractual terms contrary to these General Terms and Conditions of Sale and Delivery, in particular in the buyer's or customer's business terms or contract forms, are in every case to be regarded as excluded by agreement unless they were agreed upon in writing.

2. Quotes / rejection / amendments

All quotations are made without obligation. Perndorfer Maschinenbau KG reserves the right within a period of six weeks to refuse acceptance of a contract received on the basis of a quotation. Information and statements concerning the properties of products of any kind in price lists, leaflets, brochures, product descriptions and other printed matter or published material give only an approximate description and represent in every case non-binding information concerning average values. Construction, form, equipment, and colour are subject to alteration in so far as the specified use of the purchase item is not thereby excluded.

3. Order / order confirmation / deviation

The customer's contract/order together with the documentation and information provided by the customer, form the basis on which the goods or services are to be provided by Perndorfer Maschinenbau KG. It is not the responsibility of Perndorfer Maschinenbau KG to verify the documents and information provided by the customer with regard to general ambiguities, incompleteness, nor to verify whether they are suitable for the intended purpose. The customer is committed to their order for a period of six weeks. A contract does not come into force until it is confirmed in writing or a delivery has been made. Silence alone or other action taken by Perndorfer Maschinenbau KG does not imply acceptance of a contract. The customer is obliged to verify the order confirmation immediately. If the order confirmation differs from the order, it is deemed approved by the customer unless they give notice in writing to the contrary within three days.

4. Delivery periods / delivery times

Delivery periods and times are always assumed to be estimated dates, even if this is not expressly stated. Perndorfer Maschinenbau KG will nevertheless endeavour to meet delivery dates. It is a condition of adherence to delivery periods and times that the customer fulfils all the contractual commitments of the ongoing business relationship. Delays by the customer in providing data, information, or documents necessary for fulfilling the contract will entail a corresponding delay to delivery periods and times. Production and delivery problems which are not caused by Perndorfer Maschinenbau KG, such as force majeure, strikes, shutdowns, supply delivery problems, curtailment or loss of working time, transport problems, and measures taken by official authorities will lead to an appropriate extension of the delivery periods and deadlines. In the event of a delay in delivery for which Perndorfer Maschinenbau KG is responsible, the customer may, with regard only to the goods affected by this delay and excluding any further claims, either demand performance or withdraw from the contract having set expressly and in writing a grace period of at least 8 weeks. The withdrawal is only legally valid in the case that Perndorfer Maschinenbau KG culpably fails to comply with the grace period. In the case of contracts for successive deliveries the right of withdrawal exists only with regard to each individual delivery. In the case of bespoke products, the grace period is to appropriately reflect the individual nature of the product. Perndorfer Maschinenbau KG also has the right to make partial deliveries.

Perndorfer Maschinenbau KG reserves the right to determine the mode of transport which does not include unloading. Despatch of any kind will be „EXW according to Incoterms 2000“ from the relevant Perndorfer Maschinenbau KG factory (e.g. EXW Kallham) and in each case the cost and risk are to be borne by the customer; in the case of despatch from the Perndorfer Maschinenbau KG factory the risk is even transferred to the customer if delivery was agreed as „free domicile“ or „carriage paid“. Perndorfer Maschinenbau KG – even without the customer's express order to do so – also has the right but not the obligation to arrange insurance for any damage in transit at the customer's expense.

If insolvency proceedings are commenced against the customer, or if bankruptcy proceedings regarding the assets of the customer are not commenced due to lack of marginal assets, or if execution proceedings are commenced against the customer, or if a deterioration in the financial circumstances of the customer arises, or if there should be doubtful credit information concerning the customer, or if the customer delays payment to Perndorfer Maschinenbau KG, Perndorfer Maschinenbau KG is entitled to demand immediate payment of all amounts including those not yet due for payment. Furthermore, Perndorfer Maschinenbau KG is entitled to make further deliveries contractually confirmed by Perndorfer Maschinenbau KG conditional upon payment in advance or indemnification even if these have not been agreed.

Goods ordered „on request“ or „on collection“ or on a similar basis will be stored from the agreed time of request or collection on the premises of Perndorfer Maschinenbau KG or at Perndorfer Maschinenbau KG's wish, with a third party at the customer's expense and risk. In the case of default in acceptance by the customer even if beyond their control, Perndorfer Maschinenbau KG is entitled, on giving notice, to realise the value of the goods by private contract, in particular by disposal to a third party.

5. Reservation of rights and ownership

1. The goods remain the possession of Perndorfer Maschinenbau KG until payment is made in full. Asserting reservation of ownership involves a withdrawal from the contract only if this is explicitly declared.
2. Resale is only permitted if Perndorfer Maschinenbau KG was notified in advance and informed of the name or the company and the exact corporate address of the purchaser and Perndorfer Maschinenbau KG agrees to the sale. In the event of agreement, the purchase price claim is deemed as being now transferred to Perndorfer Maschinenbau KG and Perndorfer is authorised at any time to inform the buyer of this transfer.

If the item is to be resold with other items without a separate selling price being agreed upon, the buyer/purchaser transfers to Perndorfer Maschinenbau KG – with priority over the remaining claim – that part of the total price which corresponds to the price of the item invoiced by Perndorfer Maschinenbau KG.

Until further notice the buyer/purchaser is authorised to collect the transferred claims from the resale. Where good cause exists, especially in the case of payment default, payment stoppage, initiating an insolvency proceeding, bill protest, or comparable grounds which suggest that the buyer/purchaser may be overextended or at risk of insolvency, Perndorfer Maschinenbau KG is authorised to revoke the buyer's/purchaser's ability to collect.

3. The buyer/purchaser is permitted to combine the item with other products. The processing, mixing, or combining (hereafter referred to as processing) is done for Perndorfer Maschinenbau KG. The buyer/purchaser keeps the new product for Perndorfer Maschinenbau KG with the due care of a prudent businessman. The new (processed, transformed, or combined) item is regarded as reserved property.
 - a. When processing with other items that do not belong to Perndorfer Maschinenbau KG, Perndorfer Maschinenbau KG is entitled to co-ownership in the new product in the amount of the share which results from the proportion of the value of the processed, mixed, or combined (hereafter: processed) reserved property to the value of the other processed goods at the time of the processing. If the buyer/purchaser acquires sole ownership in the new item, Perndorfer Maschinenbau KG and the buyer/purchaser agree that the buyer/purchaser will grant Perndorfer Maschinenbau KG co-ownership in the new product in the ratio of the value of the processed reserved property to the other processed goods at the time of the processing.
 - b. In the event the new product is sold, the buyer/purchaser hereby transfers to Perndorfer Maschinenbau KG its claim from the reselling against the client with all ancillary rights as a precaution, and commits to informing their client about the transfer and/or to make a note of this in the books. The transferring, however, is only in the amount which corresponds to the value of the processed reserved good invoiced by Perndorfer Maschinenbau KG. The share of the claim transferred to the deliverer has to be settled with priority. With regard to the collection authority as well as the preconditions for revocation Punkt 2 applies accordingly.
 - c.) If the purchaser/buyer combines the reserved property with property or moveable property, they also transfer to Perndorfer Maschinenbau KG, without further explanation, their claim, to which they are entitled for the combination, with all ancillary rights as a precaution in the amount of the proportion of the value of the combined reserved property to the other combined goods at the time of the combination. With regard to the collection authority as well as the preconditions for revocation Punkt 2 applies accordingly.
- 4.) In the event of confiscations, seizures, other orders or interventions of third parties, the buyer/purchaser has to inform Perndorfer Maschinenbau KG without delay and hand over to Perndorfer documents necessary to pursue its claims and to take all necessary measures for this.
5. If the buyer/purchaser does not meet their obligations, especially in the case of default payment, Perndorfer Maschinenbau KG is authorised to recover the goods and withdraw from the contract if the purchaser has not responded after the end of a reasonable grace period; legal provisions stipulating that the deadline needs to be fixed remain unaffected. The buyer/purchaser is obligated to hand over the property.

The buyer/purchaser is authorised to assign the claim from the resale in the scope of the non-recourse factoring, provided Perndorfer Maschinenbau KG is advised of this assignment in advance and the proceeds of the factoring at least amount to the product value of their reserved property, which in keeping with Punkt 1 is in their possession or, in keeping with Ziffer 3, is their shared possession, from the sale of which the claim in question arises. The receivables and other claims against the broker from the sale of the receivables transferred as a precaution to Perndorfer Maschinenbau KG are now transferred by the buyer/purchaser to Perndorfer Maschinenbau KG; and the buyer/purchaser commits to inform the broker about the transfer and/or to make a note of this in the books. Perndorfer Maschinenbau KG hereby accepts the above assignments.

6. Prices, payment

Prices apply as ex warehouse of Perndorfer Maschinenbau KG in Kallham or ex works excluding carriage, packaging and insurance and are exclusive of the current rate of VAT. Orders for which no definite prices have been expressly agreed will be charged according to the list price valid on the date of delivery. Invoices for prepayments and partial invoices are payable 14 days after the date on the invoice without deductions. Invoices and final invoices are payable without discount 30 days without deductions after date of invoice provided no other payment term was agreed with the customer. Perndorfer Maschinenbau KG reserves the right – even after having confirmed an order – to increase the prices on Perndorfer Maschinenbau KG's list price as of the delivery date in the case of increases in the costs of significant materials, raw materials, supplier rates, increases in labour costs due to mandatory statutory provisions or collective contractual conditions, changes in exchange rates or conditions, increases in charges or increases in transport and delivery costs. Costs which are due to subsequent changes or adjustments to the order, will be borne exclusively by the customer.

Bills of exchange and cheques will only be accepted if expressly agreed, without obligation for production or protestation and only on account of payment. Acceptance will be at the value applicable on the day on which Perndorfer Maschinenbau KG can have disposal of the equivalent value. Discount charges and all costs associated with the discharge of the cheque or bill of exchange will be borne by the customer. Incoming payments will be credited first to costs and expenses, then interest and finally capital; Perndorfer Maschinenbau KG is authorised to credit incoming payments against the longest-standing unpaid items.

In the case of a default in payment on the part of the customer – even for reasons beyond their control – the customer is obliged to pay interest on arrears at a rate of 8 % above the current base rate of the European Central Bank, at least, however, at a minimum of 1 % per month. All guaranteed discounts, deductions or other concessions will be regarded as not granted in the case of a default in payment or if insolvency proceedings are commenced against the customer. If the customer is in arrears with payment – even for reasons beyond their control – they are obliged to pay the reminder and collection costs (e.g. solicitors' fees, debt collection agency's fees, etc.) incurred in the due extra-judicial collection of the claim.

7. Cancellation

The customer is not entitled to cancel the contract either in part or in whole. If Perndorfer Maschinenbau KG should accept a cancellation in an individual case, the customer is obliged to pay a lump sum of 30% of the contractual amount to Perndorfer Maschinenbau KG. The assertion of a claim for a higher amount of damages is reserved.

8. Bank guarantee, letter of credit

For all prices and payments Perndorfer Maschinenbau KG reserves the right to demand an abstract, divisible bank guarantee from a first-class Austrian bank or the opening of an irrevocable, divisible, and transferable documentary credit confirmed by a first-class Austrian bank.

9. Warranty

Without express written agreement Perndorfer Maschinenbau KG does not provide any guarantee for a specified utility or usability of the goods. Perndorfer Maschinenbau KG will only give a warranty on defective material if a replacement can be demanded from the supplier and, moreover, there is evidence that Perndorfer Maschinenbau KG should have recognised the defect by exercising due care.

In the case of loss of any entitlement due to a defect, the customer is obliged to check all (partial) deliveries from Perndorfer Maschinenbau KG immediately and thoroughly – including their suitability for the intended purpose – and to immediately notify Perndorfer Maschinenbau KG in writing of any defects, describing them in detail. The customer is not entitled to withhold payments because of insignificant defects or to withhold payment for one part of the goods because another part is showing significant defects.

The customer is responsible for proving that a defect existed at the time of the delivery. The customer is obliged to assist Perndorfer Maschinenbau KG in identifying and correcting defects and to allow all required measures (such as access, inspection of documents, etc.). If the customer does not comply with their obligation to cooperate in the rectification of defects despite a written warning by Perndorfer Maschinenbau KG, any claims resulting from a defective service become invalid.

Provided that justified complaints regarding defects have been made within the specified period of time and in a proper manner and excluding further claims, the defects will be remedied either by rectification or replacement as desired by Perndorfer Maschinenbau KG within an appropriate period of at least 8 weeks. In the case of minor defects Perndorfer Maschinenbau KG is entitled but not obliged, instead of correcting or replacing the goods, to grant an appropriate reduction in price, in particular in cases where a rectification or replacement would entail disproportionate costs. In the case of minor and major defects Perndorfer Maschinenbau KG is entitled but not obliged to take back the goods in return for a credit note to the value of the order, excluding further claims. The original warranty period is not interrupted by rectification or replacement.

All claims under a warranty are invalid if the goods have been used, altered, modified, repaired, or in any other way interfered with by the customer or a third party.

If Perndorfer Maschinenbau KG should be responsible for a delay in rectifying or replacing goods, the customer may withdraw from the contract only in respect of the goods affected by this delay excluding any further claims, having expressly set out in writing an appropriate grace period of at least 8 weeks. The withdrawal only becomes legally valid if Perndorfer Maschinenbau KG exceeds the expressly set grace period. In the case of minor defects there is to be no right of withdrawal.

The warranty period expires 24 months after the actual delivery of the goods to the customer. Wear parts are excluded from the warranty.

10. Compensation

Perndorfer Maschinenbau KG's liability is limited by cause to such damages that can be shown to be caused by Perndorfer Maschinenbau KG either intentionally or due to gross negligence. Perndorfer Maschinenbau KG's liability is further limited in all cases to a net amount of EUR 100,000.– or to the value of the order and/or the goods, whichever is higher. Perndorfer Maschinenbau KG is not liable to make good any losses due to delayed delivery or delays in rectification or replacement, consequential losses due to defects, financial loss, loss of profit or losses incurred by third parties

Claims for damages at any rate must be asserted in court within a maximum period of one year from the date of actual delivery to the customer or their representative, with further claims being excluded. No liability will be accepted for claims asserted or damages arising after this period.

The above exclusions and limitations for liability also apply to damages caused by people for whom Perndorfer Maschinenbau KG is responsible.

In the case of fabrications produced by Perndorfer Maschinenbau KG on the basis of drawings, plans, or other information provided by the customer, the customer will indemnify Perndorfer Maschinenbau KG and hold it harmless in any respect, including interest payments and costs, against all infringements of third parties' rights especially industrial property rights.

11. Joint liability, retention, refusal to perform

If there are several customers, they accept joint liability. The customer is jointly responsible for all claims from Perndorfer Maschinenbau KG, even if at

their request the invoice is made out directly to a third customer or delivery is effected and/or services are rendered to a third party. The customer has no rights of retention or to withhold performance in so far as there are no mandatory legal regulations to the contrary.

For as long as the customer does not fulfil all their obligations or commitments to Perndorfer Maschinenbau KG, the latter is entitled to retain all services and deliveries

12. Stipulation requiring the written form

Commitments by Perndorfer Maschinenbau KG or amendments to the contract have to in every case be confirmed in writing by Perndorfer Maschinenbau KG for them to be legally valid. Communication by fax is sufficient to comply with this written form requirement.

13. Deliveries

Perndorfer Maschinenbau KG makes deliveries to the customer at the address given lastly by the customer. The customer is obligated to inform Perndorfer Maschinenbau KG of address changes, otherwise deliveries made to the most recently confirmed address are deemed delivered.

14. Escape clause

Nullity or invalidity of individual provisions in the General Terms and Conditions of Sale and Delivery and the contract do not affect the legal validity of the remaining conditions; in this case, those agreements, which are legally valid and most closely approximate to the original intention of Perndorfer Maschinenbau KG, will apply.

15. Place of performance, legal venue, and applicable law

It is agreed that for all claims arising from the business relationship with Perndorfer Maschinenbau KG, Kallham is to be the place of performance and the appropriate court in Wels is to have sole jurisdiction. Perndorfer Maschinenbau KG nevertheless reserves the right to initiate proceedings against the purchase at the head office of the customer.

It is agreed that relevant Austrian law will apply to the contract and all claims arising from it or associated with it. The applicability of United Nations agreements regarding international trade is expressly excluded.