

Terms and Conditions

applicable to all national and international Sales and Deliveries
of the companies Alois Pöttinger Maschinenfabrik Ges.m.b.H., A-4710 Grieskirchen,
Austria

Gebr. Pöttinger GmbH., D-86899 Landsberg, Germany and Pöttinger Sätechnik
GmbH., D-06406 Bernburg, Germany

I. General

1. The following conditions shall apply exclusively, even if they are not expressly specified in negotiations conducted verbally or by telephone, to all sales and deliveries made by the companies Alois Pöttinger Maschinenfabrik Ges.m.b.H., A-4710 Grieskirchen, Austria, Gebr. Pöttinger GmbH, D-86899 Landsberg, Germany, and Pöttinger Sätechnik GmbH, D-06406 Bernburg, Germany, hereinafter "Pöttinger". Departures from these conditions shall only apply if confirmed expressly in writing.
2. Any other conditions of purchase which may apply to the purchaser / client (hereinafter "business partner") shall be hereby excluded. Pöttinger shall not be subject to such conditions even if they are not specifically excluded at the time of the conclusion of the contract. Pöttinger's Standard Terms and Conditions of Sale and Deliveries shall be deemed to be accepted no later than on receipt of our goods.

II. Conclusion of contract

1. An order shall only be deemed to be finally accepted and irrevocable when the business partner has received written confirmation of the order or the invoice for the delivery made in fulfilment of the order, or the order has been delivered. Any changes or additions to the contract shall be invalid unless confirmed in writing, by e-mail or by fax.
2. Orders made on the Internet shall only be deemed to be finally accepted and irrevocable when the business partner can retrieve the electronic order confirmation through his mail server, or he has received the invoice for the delivery made in fulfilment of the order, or the order has been delivered. Pöttinger shall be expressly not obliged to confirm electronically that it has received the order.

3. Measurements, weights, services, prices etc published in price lists, catalogues, brochures and other publications (e.g. on the Internet) shall be subject to confirmation.
4. Pöttinger's offers shall be without obligation. Pöttinger reserves the right to prior sale.
5. Pöttinger reserves the right to make design changes at any time, but shall not be obliged to incorporate such changes in products which were finished before the design changes were made. Only those features of the delivery item which are expressly specified in the order confirmation as being contractually guaranteed, shall be contractually guaranteed.
6. Pöttinger's order confirmation shall be binding on the business partner. Should there be reasonable doubt of the business partner's solvency, Pöttinger shall be entitled to either withhold delivery until full payment of the purchase price has been made, or to rescind the contract.
7. If Pöttinger's order confirmation should differ from the order made in writing or verbally, by telephone, telegraph or electronically, the business partner shall be deemed to have approved the differences, unless Pöttinger receives a response to the contrary from the business partner within 10 days of dispatching the order confirmation.

III. Sale on approval

1. If the sale has not been finalized, but is a sale on approval, the following shall apply: sale on approval shall allow the appliance for sale to be tried out on the business partner's own business premises, or those of the business partner's contractual partner. The place and time of the trial shall be determined by the sales representative responsible and shall take place in the presence of a Pöttinger representative or delegate. In cases of purchase on approval, once the product has been on trial, rescission of contract shall only be possible if the appliance has failed to achieve at least 90% of its contractually agreed performance or its agreed use.
2. Approval trials shall always be free of charge; however, should the business partner rescind the contract following a successful trial, he shall be invoiced for the actual cumulative costs as calculated by Pöttinger.

The business partner shall be obliged to pay this sum to Pöttinger within 14 days, unless given a written guarantee that the trial would be free of charge even if he subsequently rescinded the contract (a sales representative's verbal assurance shall not be sufficient).

3. The approval trial may only be carried out in the yard of the business partner's business premises or inside such premises, or on those of the business partner's contractual partner. Verbal assurances made by sales representatives on the occasion of the contract or in the course of carrying out an approval trial shall be invalid and shall only apply if they are expressly confirmed in writing by Pöttinger.

IV. Prices

1. Unless otherwise expressly specified or contractually agreed, all prices shall be net and subject to change, in the currency designated in the order confirmation, and shall be deemed to be ex-works from the respective Pöttinger supplying plant, excluding packing, loading for shipment and transport insurance and taxes or other duties, which shall be charged in addition. Transport insurance shall only be arranged on the purchaser's express wish and at his expense.
2. The final amount charged shall be at the prices which apply on the day of delivery. The purchaser shall bear any possible currency risk.

V. Shipment and passage of risk

1. Unless otherwise agreed in individual cases, all goods shall be deemed as sold "ex-works".
2. The delivery shall be deemed to be discharged when the subject matter of delivery has been handed to the carrier or forwarding agent. The business partner shall bear the risk for all deliveries, including any which are carriage free.
3. The INCOTERMS applicable on the date of the conclusion of contract shall apply additionally.

VI. Delivery

1. Any specification of delivery times and delivery periods shall be non-binding. The delivery period shall commence on the date of the order confirmation; however this shall only apply if Pöttinger has received all the documentation and information the business partner is required to send.

2. Pöttinger shall be entitled to carry out partial or advance deliveries and shall additionally be entitled to make changes to the fulfilment of deliveries during the delivery period itself.
3. In the event of *force majeure*, which shall include shortages of raw materials and labour disputes, Pöttinger shall be entitled to defer manufacture and delivery for the duration of the hindrance plus a reasonable additional start-up period, or to rescind the contract with respect to the part of the order not yet discharged, without the business partner being entitled to a claim for compensation of whatever kind.
4. In the event of the business partner rescinding the legally binding and concluded purchase contract for whatever reason, Pöttinger shall be entitled to charge a cancellation fee of 10 % of the gross sale price of series-produced goods, and in the case of items manufactured to order it shall be entitled additionally to indemnity for the cumulative manufacturing costs. In the latter case, parts which have already been produced shall be made available to the purchaser.
5. Should Pöttinger be liable for an undue delay in delivery, the business partner shall be entitled to demand that the delivery be discharged, or to give notice of rescission if the contract is not discharged within a reasonable extension of the original period, which shall be no less than four weeks. In all cases, notice of rescission must be submitted in a registered letter; in such an event, the business partner shall be entitled to claim a refund of his total deposit but not to any interest it has accrued. Any additional claims for compensation shall only be admissible in the event that the business partner can prove blatant gross negligence or (wrongful) intent on the part of Pöttinger.

VII. Payment

1. All payments shall be made to Pöttinger exclusively according to the agreed payment conditions. If no payment agreement has been concluded, the purchase price and any other debts receivable by Pöttinger shall be due for payment without delay as soon as the invoice has been issued.
2. The business partner shall not be entitled to withhold payment on the grounds of warranty claims or other counterclaims not acknowledged by Pöttinger.

3. In the event of the business partner falling into arrears with the agreed payments, Pöttinger shall be entitled to choose whether to
 - a) defer discharging its own contractual obligations,
 - b) extend the delivery period,
 - c) call-in the payment of the outstanding balance on the purchase price immediately, whereby payment may be demanded either in the agreed foreign currency or in Euros and
 - d) charge interest for late payment from the due date at a rate of 8 percentage points above the base interest rate at that time, or grant a reasonable extension of the period, which shall be no less than two weeks and rescind the contract if payment is not made within that time.
4. Furthermore, in the event of default in payment, all reminder and collection charges shall be borne by the business partner.

VIII. Reservation of title

1. Pöttinger reserves the right of title to all the goods delivered by it until such times as all the debts receivable by it under the business relations entered into with the business partner have been paid, regardless of their legal basis and date of origin; in particular this shall also apply until such times as any balance on a current account has been settled, or, in the case of bills of exchange or cheques received, until these have been honoured finally with no basis for recourse.
2. The business partner may process the goods delivered to him by Pöttinger in the proper course of his business and/or resell them. As long as Pöttinger reserves the right of title, any work or processing on such goods subject to reservation of title shall be deemed to be for Pöttinger. In the event of goods subject to reservation of title being combined or confused with other objects, Pöttinger shall be entitled to co-ownership of the new product, in the proportion of the value of the conditional goods to the value of the other object at the time they are combined or confused. The new product created by processing or combining and/or confusion shall be deemed a product subject to reservation of title according to these conditions. Should the object of purchase be linked to a piece of real estate, the business partner shall be obliged to ensure that the title reserved in Pöttinger's favour is noted in the Land Register. In the event of goods

being resold, the business partner shall, at the time of the sale, transfer to Pöttinger any debts receivable by him as a result of reselling the subject matter of delivery to a third party. The business partner shall only be authorized to resell goods with a reserved title and be allowed additional time for payment of the purchase provided that at the time of resale he shall notify the second purchaser of the assignment for security and shall enter the assignment in both his business accounts and his lists of "Open Items". In all instances such a book entry must cite the vendor as the assignee and the purchase contract with its date as its legal basis.

3. The business partner shall not be entitled to pledge goods subject to reservation of title, nor to pledge such as collateral security, and shall be obliged to notify Pöttinger without delay of any distraint which has occurred at the instigation of third parties.
4. In the event of a sustained breach of contract following a reminder or in the event of the business partner's insolvency, Pöttinger shall be entitled to demand the surrender of the subject matter of delivery owned by Pöttinger and to collect it; this shall not be deemed to be a termination of the purchase contract.
5. At the business partner's request, Pöttinger shall be obliged to release securities which the former has granted, should they no longer be required as security against his debts, in particular if they exceed the value of the outstanding debts to be secured by more than 20 %.

IX. Warranty, compensation

1. In departure from Sec. 377 of the Businesses Act, the delivery must be inspected immediately upon its being handed over to the business partner, its courier or its carrier with the degree of care required pursuant to Secs. 377, 378 and 347 of the Businesses Act, and any defects discerned shall be set out in detail on the acknowledgement of receipt, delivery or consignment note, failing which any claims shall be excluded.

If an immediate inspection is not possible at the time when the goods are handed over, this fact shall be stated on the acknowledgement of receipt, delivery or consignment note, failing which any claims shall be excluded, and any defects discerned in a subsequent inspection shall be objected to in detail in writing

within a period of 3 days of delivery, which shall be acknowledged by the business partner to be a reasonable period.

The business partner's rights within the meaning of Para. (2) shall only be maintained if such notice of defect is received by Pöttinger before the said deadline.

2. If the business partner proves that the delivery contained defects, he shall only be entitled to claim rectification or have spare parts delivered free of charge within a reasonable period of time.

The business partner shall not be entitled to any other or further claims, in particular in respect of a reduction in the purchase price, on whatever legal basis, unless this has been agreed separately in writing.

3. The business partner shall be obliged to observe all the application notes handed over to him and in cases of doubt he should seek advice from Pöttinger. Pöttinger shall not be liable for any defects or damage arising from the non-compliance with application notes or failure to seek Pöttinger's advice.
4. The business partner shall waive any claim for damages unless he can prove Pöttinger is to blame for blatant gross negligence or (wrongful) intent. Compensation for consequential damages and economic loss, savings not achieved, lost interest, and for damages claimed by third parties shall be excluded.
5. The amount of compensation shall in every instance not exceed the sum for which Pöttinger can obtain insurance cover.
6. The right to claim warranty on Pöttinger products must be asserted before the courts within six months of their being handed over; any default in this regard shall result in all claims being excluded.

The period in which claims may be asserted shall be automatically extended by a further six months if the business partner submits to Pöttinger the record of delivery and the confirmation of delivery in respect of the operating instructions, duly filled in and signed, within one month of the handing over of the goods. The burden of proof that the defects were present at the time of delivery shall always rest with the business partner, notwithstanding Section 924 of the Austrian General Civil Code (ABGB).

7. As a matter of principle, Pöttinger shall assume no warranty or liability for serviceability, durability, nor any possible damages resulting therefrom for products it has delivered but which have been modified, added to, or reconstructed. The sole exception to this shall be products which have been repaired or reconstructed in an authorized workshop using assembly instructions provided by Pöttinger and original Pöttinger parts (original spare parts). The respective owner of the goods must ensure that any such professional and proper reconstruction or repair is confirmed in writing by the authorized workshop and must produce this in the event of asserting a claim. Unless otherwise provided for in the order confirmation, warranties and compensation claims shall be excluded as a matter of principle if the legal transaction is based on goods which do not correspond with their original condition, are partly incomplete or are already used.
8. The purchaser's right of recourse according to Section 933 b of the Austrian General Civil Code shall be excluded.
9. The version of the Pöttinger Agriculture Technology (Pöttinger–Landtechnik) service guidelines in force at the time shall in addition apply between Pöttinger and the business partner. These may be accessed on the Internet on Pöttinger's homepage, www.poettinger.at ,or will be forwarded on request.

X. Product liability

The business partner shall undertake to comply as exactly as possible with the operating instructions and safety conditions sent to him. The business partner shall acknowledge that Pöttinger shall not assume liability pursuant to product liability law in the event of non-observance or contravention of the operating instructions and safety guidelines. Should the business partner suffer damages as a contractor using the product delivered by Pöttinger, any claims in this connection made against Pöttinger pursuant to the provisions of product liability law shall be deemed excluded, insofar as this is legally admissible. The business partner shall be obliged to refrain from selling, entrusting or otherwise passing on goods under any circumstances or for any legal reason whatsoever to consumers or to persons who are not businesses (contractors) if the goods were manufactured exclusively for business use. Protection provided by this contract

for the benefit of third parties shall be excluded. In the event of resale the business partner shall be obliged to conclude an agreement with each additional assignee of the goods specifying exactly the same conditions and exclusions of liability, and in the event of a breach of this obligation he shall undertake to compensate Pöttinger in full for any disadvantages resulting from and connected therewith.

XI. Choice of law

1. The provisions of Austrian law shall apply exclusively for all contractual relationships of the company Alois Pöttinger Maschinenfabrik Ges.m.b.H. A-4710 Grieskirchen. This shall also apply to export business, notwithstanding the provisions of the country, purchaser or commission agent.
 - 1.1 In the event that, contrary to the choice of the place of jurisdiction agreed below, legal proceedings are instituted between the contractual parties in the purchaser's country and individual provisions of this contract cannot be applied for reasons of *ordre publique*, this shall not invalidate the remaining provisions of this contract.
2. The provisions of German law shall apply exclusively for all contractual relationships with the companies Gebr. Pöttinger GmbH, D-86899 Landsberg and Pöttinger Sätechnik GmbH, D-06406 Bernburg.
3. The provisions of the United Nations Law on Sales shall not apply.

XII. Place of jurisdiction

1. Unless the contracting parties have concluded a legally valid arbitration agreement, the exclusive place of jurisdiction shall be
 - a) the competent court as regards the subject matter in Wels/Upper Austria, for both contractual parties in respect of contracts with the company Alois Pöttinger Maschinenfabrik Ges.m.b.H. A-4710 Grieskirchen,
 - b) the Landsberg magistrate's court (Amtsgericht Landsberg) for contracts with the company Gebr. Pöttinger GmbH, D-86899 Landsberg,
 - c) the Dessau magistrate's court (Amtsgericht Dessau) for contracts with the company Pöttinger Sätechnik GmbH, D-06406 Bernburg .

XIII. Consumer protection

1. The contractual provisions set out here shall apply without restriction to contractors within the meaning of Sec. 343 of the Businesses Act.
2. Should these conditions of sales and deliveries in an individual case relate to a transaction with a consumer within the meaning of the various consumer protection laws, namely the Austrian General Civil Code (ABGB), the Consumer Protection Act (KSchG), the Businesses Act (UGB), the Civil Code (BGB), the Standard Terms and Conditions of Business Law (AGBG), the Consumer Credit Act (VerbrKrG), the Act on the Right to Cancel Front Door Transactions (HausTWG), the conditions of sales and deliveries set out above shall only apply subject to their admissibility pursuant to the provisions of these laws.

XIV. Data processing

Computer-assisted processing of any data arising in the ordinary course of our business shall be in accordance with the provisions of the Austrian Data Protection Act 2000, Federal Gazette I No. 165/1999 as amended from time to time, full account being taken of the interests of the party concerned that merit protection. Appropriate data security measures have been put in place to ensure data protection secrets are safeguarded.