

# TC (General Terms and Conditions)

## 1. Scope of application

### 1.1

These General Terms and Conditions (GTC) shall exclusively apply to any deliveries and services. Contrary or deviating customer's regulations are not accepted by Bavaria Swiss AG unless Bavaria Swiss AG expressly agrees to.

### 1.2

The GTC of Bavaria Swiss AG shall apply for ordering and delivery of construction machines any kind of as well as for other items of trade, whether by using the web platform of Bavaria Swiss AG under [www.bavariaswiss.com](http://www.bavariaswiss.com) or otherwise. The customer agrees to the present GTC with any purchase and sale.

## 2. Order, Scope of delivery, Documentation

### 2.1

Offers of Bavaria Swiss AG shall be without engagement and not binding provided that they have not expressly been specified as binding offer.

### 2.2

To the customer's deviating regulations in the order form or in the order writing shall herewith already be objected by Bavaria Swiss AG. They will not get binding even if Bavaria Swiss AG does not expressly disagree.

### 2.3

The basis for the order shall be Bavaria Swiss AG's written or verbal order confirmation. In case of immediate execution of the order the commercial invoice shall be considered as order confirmation. If the customer has exceptions against the content of the order confirmation, he has to contradict without delay. Otherwise the contract shall accomplish according to the order confirmation.

### 2.4

All texts, images, drawings, etc. and other documentation as well as their appointment by Bavaria Swiss AG shall be subject to the protection of the copy right and other protective laws. Upon request documentation shall be handed back to Bavaria Swiss AG. There is no right of retention. Third parties shall not be informed without Bavaria Swiss AG's previous consent.

### 2.5

Dimensions, weights, illustrations, and drawings as well as other documents belonging to the offers are only approximate unless they have been expressly designated as binding.

## 3. Terms of delivery

### 3.1

Terms of delivery and dates indicated by Bavaria Swiss AG are not binding provided that they do not have been confirmed as binding. Even binding agreed dates shall not be fixed dates, if they do not have expressly been specified as fixed dates.

### 3.2

The term of delivery shall commence due to the order confirmation, however, not before receipt of documentation and information about technical details, approbations, deregulations and agreed advanced payments, which have to be provided by the customer.

### 3.3

The term of delivery shall be preserved if readiness for shipping has been announced until its expire date.

### 3.4

The term of delivery shall be accordingly extended due to precautions in the context of industrial actions as well as of the occurrence of unforeseeable obstacles, for which Bavaria Swiss AG is not responsible provided that such obstacles actually delay inspection of delivery object. The same shall apply if these circumstances occur with the subsupplier. The explained circumstances shall not be under Bavaria Swiss AG's responsibility, even if they occur during a present default. Due to important cases commencement and termination of such obstacles shall immediately be communicated to the customer by Bavaria Swiss AG.

### 3.5

In case any agreed term of delivery has been exceeded for more than 6 weeks for reasons Bavaria Swiss AG is responsible for, the customer shall be entitled to withdraw from the contract if the customer had set an additional respite of 3 weeks before and had explained to Bavaria Swiss AG that he will not accept the service after expiry of the additional respite. This shall not apply if it is not necessary to set a time limit because of impossibility.

### 3.6

In case Bavaria Swiss AG shall be in default of delivery, Bavaria Swiss AG shall be liable for gross negligence relating to the customer's delaying damages, however Bavaria shall not be liable for consequential damages and penal damages or indirect damages. Liability for slight negligence shall be excluded.

### 3.7

If the customer does not immediately call the ready for shipment announced items up, the costs for storage shall be borne by the customer for the time of 2 weeks after the provided announcement of readiness for shipment, in particular storage and capital costs as well as obsolescence on machines according to the turn of the year.

### 3.8

In case the customer shall be in default of acceptance regarding the takeover or the issue of the shipping instruction or the performance of its obligation to pay or to provide service of the agreed security for more than 2 weeks after announcement of readiness, Bavaria Swiss AG shall be entitled at its option and after previous arranged respite of 2 weeks to withdraw from the contract or to assert indemnity due to nonperformance in the amount of at least 15% of the contract price plus VAT unless the customer shall be able to prove evidence that the originated damage to Bavaria Swiss AG turned out lower.

### 3.9

The conditions of delivery of any contract shall be EXW; Incoterms 2000.

## **4. Prices**

### 4.1

The announced prices mean prices EXW in EURO less value added tax (VAT). Prior sale shall be reserved. Not included are delivery and transport costs. Bavaria Swiss AG shall reserve the right to change the prices at any time.

### 4.2

For construction machines and items of trade bought by the customer prices listed in the order confirmation or verbally agreed prices are binding.

### 4.3

Transport shall be carried out at customer's risk and expense.

### 4.4

In case of unforeseeable increase of costs in the time after conclusion till execution of contract, Bavaria Swiss AG shall be entitled to adapt prices within the limits of modified circumstances and without charging additional gain.

## **5. Payment**

### 5.1

Any payment shall be accomplished by advance payment in favour of Bavaria Swiss AG unless deviating regulations.

### 5.2

Bills of exchange and cheques shall only be accepted as payment due to explicit agreement. Discount charges and other bill of exchange costs shall be borne by the customer.

### 5.3

Letter of credit costs as well as losses on foreign exchange shall be borne the by customer.

### 5.4

Any claims of Bavaria Swiss AG shall immediately become due if the customer does not follow the payment conditions. In case several machines or other items of trade have been sold together, any and all objects of purchase must be paid, before any new delivery may be effected.

## **6. Settlement and Retention**

### 6.1

The customer shall only have the right to settle any claim by setting off to a counterclaim accepted by Bavaria Swiss AG in written or by judgement.

### 6.2

The assertion of a right of retention shall be allowed to the customer only under the condition that it is based upon the same contractual relationship and under the condition that Bavaria Swiss AG's further counterclaims have been approved in written or by judgement.

## **7. Passing of risk / Shipping**

### 7.1

Property, possession and risk shall pass to the customer with the payment receipt with Bavaria Swiss AG respectively vice versa in case of purchase.

### 7.2

Deliveries shall be carried out at customer's risk. Bavaria Swiss AG has fulfilled its delivery commitment as soon as the items have been duly handed to the freight carrier or to the shipper for purpose of loading. This shall also apply in individual cases, if freight paid transmission has been agreed.

### 7.3

If the delivery is delayed due to circumstances for which the customer is responsible the risk shall already pass to the customer on the date of readiness for shipment.

### 7.4

If the type of shipment, the way or the responsible person for shipment have been chosen by Bavaria Swiss AG, Bavaria Swiss AG shall only be liable for gross negligence in the choice.

## **8. Data Protection**

### 8.1

Bavaria Swiss AG warrants that in connection with the rising, the converting and the use of personal data the provisions of the Data Protection Act (DSG) and any corresponding legal norm shall be applied. The indicated data by the customer shall all be treated confidential. Any transmission of these data onto third parties shall never take place.

### 8.2

The customer hereby expressly gives his approval due to the use of data.

## **9. Warranty**

### 9.1

Bavaria Swiss AG's website as well as other documentations have been composed due to highest diligence. Even so Bavaria Swiss AG cannot guarantee the correctness and exactness of the containing information. Bavaria Swiss AG herewith excludes any liability for damages which directly or indirectly result from the use of the website.

### 9.2

In case this website refers to other internet pages, which are conducted by third parties, Bavaria Swiss AG does not take over any responsibility for their contents.

### 9.3

In addition the editor shall reserve the right to deal with modifications or supplements due to the provided information.

### 9.4

The customer shall check the operational efficiency and completeness with acceptance or receipt of any delivery. Any objection shall immediately and in writing be transmitted to Bavaria Swiss AG. An admission of facts shall be arranged at the carrier.

9.5

Delivery of any kind of goods shall be „as inspected and agreed“. Liability for defects of any kind and other warranty claims shall be excluded.

9.6

With the purchase by Bavaria Swiss AG items must be kept in unmodified technical and optical status from the time of the purchase agreement up to the delivery, alternatively Bavaria Swiss AG shall have the right to demand removal of defects, redhibitory action or abatement according to law.

9.7

All used machines are sold without any warranty. The customer has the opportunity to inspect the goods before purchase, this is also expressly requested. Subsequent complaints are null and void.

9.8

Operating hours or mileage levels are just read and we assume no liability for its contents.

## **10. Retention of title**

10.1

Bavaria Swiss AG shall expressly reserve the right of property of any and all items delivered by itself up to the complete payment of any claim of previous contracts, including accessory, spare parts or trade off aggregates built in by itself. Cheque and exchange claims as well as claims from running accounts shall also belong to these claims. In case any liability due to bill of exchange is established in connection with the payment, the retention of title shall expire not until the claim due to bill of exchange of Bavaria Swiss AG is excluded.

10.2

In consequence of distraints or other interventions by third parties, the customer shall immediately notify Bavaria Swiss AG. The customer shall bear any costs, which are caused by the suspension of access and by the recovery of delivery item as far as they cannot be confiscated by third parties.

10.3

The customer shall be entitled to dispose of the delivery item within the limits of proper transaction unless the important reason of allowed revocation. In particular chattel mortgage and pledge shall be waived.

10.4

In the case of resale the customer shall already assign to Bavaria Swiss AG any and all claims amounting to the final invoice sum (incl. VAT), in particular payment claims but as well other claims, which are in connection with the resale and independent thereof if the delivery item has been resold without or after repairs.

10.5

The customer shall be entitled to fiducially confiscate the assigned claims till allowed revocation for important reason by Bavaria Swiss AG. The resale of claims within the limits of a real factoring shall require Bavaria Swiss AG's previous consent. Bavaria Swiss AG shall be entitled to advertise the assignment of claims to the garnishees on behalf of the customer for important reason. Through announcement of the assignment to the garnishees the customer's right to confiscate shall expire. In case of revocation of the right to confiscate

Bavaria Swiss AG shall be entitled to demand that the customer has to communicate the assigned claims and their debtors, that any required specifications for purpose of confiscation shall be announced and that appropriate documentation will be handed out and that the assignment will be communicated to the debtors.

#### 10.6

In addition Bavaria Swiss AG is entitled to undertake any necessary legal act for purpose of effectivity of the retention of title due to the law at the purchaser's registered office or habitual residence without the purchaser's previous consent.

### **11. Place of performance, Jurisdiction, Applicable law**

#### 11.1

Place of performance for delivery and payment shall be for both parties at Bavaria Swiss AG's registered office in Baar.

#### 11.2

Place of jurisdiction for all disputes arising out of or in connection with this contract and its efficiency shall be for both parties at Bavaria Swiss AG's registered office in Baar. At its option Bavaria Swiss AG shall also be free to file any claim at the customer's registered office.

#### 11.3

The GTC and the entire contractual relationship between Bavaria Swiss AG and the customer shall be governed by Swiss law, in particular the provisions of the Code of Obligations (OR).

### **12. Modifications**

#### 12.1

Bavaria Swiss AG expressly reserves the right to adapt the present GTC due to the circumstances at any time and to apply them with immediate effect.

#### 12.2

Additional agreements and assurances as well as modifications or supplements of a written contract shall be in writing.

### **13. Liability**

#### 13.1

Claims for damages arising from impossibility of performance, breach of contract, culpa in contrahendo, and tort are excluded, except in cases of wilful misconduct or gross negligence. Liability for indirect damage and consequential damage resulting from delay in delivery, from use, faulty performance, or failure of performance is excluded.