

**1. Scope of application (Birr Machines AG hereinafter referred to as 'Birr')**  
These terms and conditions apply to the delivery of machinery and equipment ("Deliveries") by Birr.**2. General**

2.1 The contract is concluded upon receipt of Birr's written confirmation that Birr accepts the order ("order confirmation"), provided in particular that the necessary official approvals and the agreed payment security are available. Offers that do not contain an acceptance period are binding with Birr for a period of 30 days from dispatch.

2.2 General terms and conditions of the customer are only valid if they have been accepted by Birr in writing.

2.3 All agreements and legally relevant declarations of the parties must be made in writing in order to be valid.

**3. Scope of deliveries**

Birr's deliveries are conclusively listed in the order confirmation, including any supplements.

**4. Plans, technical documents and software**

4.1 Unless otherwise agreed, brochures and catalogues are not binding. Information in plans, drawings and technical documents as well as data in software are only binding if they form an integral part of the contract.

4.2 Birr reserves all rights to plans, drawings, technical documents and software. The customer acknowledges these rights and will not make the plans, drawings, documents and software accessible to third parties in whole or in part without the prior written authorization of Birr or use them for any purpose other than the agreed purpose.

4.3 If the deliveries also include software, the contract grants the customer the non-exclusive and non-transferable right to use the software for the agreed purpose.

The customer is not entitled to make copies (except for archiving purposes, to troubleshoot or to replace faulty data carriers) or to update, upgrade or otherwise expand the software. The customer may not disassemble, decompile, decrypt or reverse engineer the software without Birr's prior written consent. If the customer violates any of these provisions, Birr is entitled to revoke the right to use the software without notice.

**5. Regulations and standards**

5.1 At the latest with the order, the customer shall inform Birr in writing of the regulations and standards relating to the execution of the deliveries, the operation of the deliveries or to the prevention of illness and accidents.

5.2 Unless otherwise agreed, the deliveries shall comply with the regulations and standards at the place of destination of the deliveries to which the customer has pointed out to Birr in accordance with Section 5.1.

**6. Warning**

Express reservations of Birr's personnel regarding orders, instructions or measures of the customer or with regard to actual circumstances may be made in writing or verbally and shall be deemed to be a warning by Birr, which releases Birr from any liability.

**7. Prices**

7.1 All prices are net, ex works, without packaging, in freely available Swiss francs, without any deductions. All ancillary costs, e.B. for freight, insurance, export, transit, import and other permits as well as notarizations, shall be borne by the customer.

7.2 Taxes, including value added tax (VAT), duties, fees, social security contributions and the like, which Birr or its personnel have to pay in connection with the contract or its performance, in particular with deliveries and services outside Switzerland, as well as the associated administrative costs shall be borne by the customer. Insofar as Taxes, including VAT, duties, fees, social security contributions or the like are levied or administrative costs are incurred at Birr, these must be reimbursed by the customer within 30 days of submission of a copy of the corresponding documents.

7.3 Birr reserves the right to adjust the price if

- the delivery period is extended for one of the reasons mentioned in section 10.4; or
- the nature or scope of the deliveries are changed; or
- the documents supplied by the customer do not correspond to the actual circumstances or are incomplete; or
- the price has been agreed in a currency other than Swiss francs (CHF) and the CHF/foreign currency exchange rate at the time of the order differs by more than +/- 1% from the exchange rate published by Reuters on the day of the submission of the offer at 12:00 p.m. Swiss time; or
- Laws, regulations or generally accepted principles of interpretation are amended after the submission of the tender.

**8. Terms of payment**

8.1 Payments are to be made by the customer at Birr's domicile net, without deduction of discounts, expenses, taxes, duties, fees, customs duties and the like. Unless otherwise agreed, the prices shall be paid in the following instalments:

- 20% as a down payment within 30 days after receipt of the order confirmation by the customer;
- 80% within 30 days after notification of readiness for dispatch by Birr.

All amounts owed to Birr are due for payment within 30 days of the invoice date. The payment obligation is fulfilled if Birr is freely available to Swiss francs or the agreed foreign currency at its domicile. If payment by means of a letter of credit has been agreed, the customer shall bear the costs for the opening, notification and confirmation.

8.2 The customer may neither withhold nor reduce payments due to complaints, claims or counterclaims not recognized by Birr in writing.

8.3 The payment dates must also be adhered to if the dispatch, transport, possible assembly or commissioning or acceptance of the deliveries is delayed or made impossible for reasons for which Birr is not responsible, or if insignificant parts of the deliveries are still missing or if rework proves necessary that does not make the use of the deliveries impossible.

8.4 If the down payment or the securities to be provided are not made in accordance with the contract, Birr is entitled to adhere to the contract or to withdraw from the contract and in each of these cases to demand damages, including compensation for lost profits. If the customer is in arrears with a further payment for any reason or if Birr has to seriously fear that he will not receive the customer's payments in full or not on time due to a circumstance that has occurred after conclusion of the contract, Birr shall be entitled, without prejudice to its other claims, to suspend further performance of the contract and to withhold deliveries ready for dispatch until new terms of payment and delivery have been agreed and Birr has sufficient collateral.

If such an agreement cannot be made within a reasonable period of time or if Birr does not receive sufficient securities, Birr is entitled to withdraw from the contract and to demand damages, including compensation for lost profits.

8.5 If the agreed payment deadlines are exceeded, default interest is due without special reminder, subject to the assertion of further claims, whereby the interest rate is based on the usual interest rates at Birr's domicile, but at least 5% per year. The obligation to pay in accordance with the contract remains in force.

**9. Retention of title**

Birr remains the owner of the deliveries until it has received the payments in full in accordance with the contract. The customer shall take the necessary measures to protect Birr's property and ensure that Birr's claim to ownership is not impaired. In particular, the customer undertakes to have an entry in a public register in his country of domicile required for the valid establishment of Birr's retention of title made at his own expense. In the event of omission, the customer shall become fully liable to Birr.

**10. Delivery period**

10.1 The delivery period begins as soon as the contract has entered into force and the advance payments to be made at the time of ordering have been made.

10.2 The delivery period shall be deemed to have been met if the notification of readiness for dispatch was sent to the customer at the time of its expiry.

10.3 Compliance with the delivery period presupposes the fulfilment of all contractual and, apart from contractual obligations of the customer towards Birr.

10.4 The delivery period shall be extended appropriately:

- a) if Birr does not have the information required for the fulfilment of the contract in time or not completely available or if the customer subsequently changes such information; or
- b) if the customer or third parties are in arrears with the work to be carried out by them or the customer is in arrears with the fulfilment of his obligations; or
- c) if obstacles, occur that Birr cannot avert despite the application of due care, regardless of whether they arise at Birr, at the customer or at a third party. Such obstacles are, in particular, significant operational disruptions, accidents, labour disputes, delayed or faulty supply of raw materials, semi-finished or finished products, rejecting of important workpieces, official measures or omissions; or
- d) if any other circumstances occur, such as Force Majeur, for which Birr is not responsible.

10.5 If the delivery period is not met, the customer may claim compensation for delay if Birr can demonstrably be responsible for the delay. The compensation for delay for each full week of delay is a maximum of 1/2%, but not more than 5% in total, calculated on the contract price of the delayed part of the deliveries. After reaching the maximum compensation for delay, the customer must set Birr a reasonable grace period in writing. If this grace period is not complied with for reasons for which Birr is at fault, the customer is entitled to accept the goods

to refuse delayed part of the deliveries. If a partial acceptance is not economically reasonable for him, he is entitled to withdraw from the contract. In such a case, Birr is only obliged to refund the price paid to it for the parts of the deliveries affected by the withdrawal.

10.6 If a specific date has been agreed instead of a delivery period, this shall be equivalent to the last day of a delivery period; Clauses 10.1 to 10.5 are applicable by analogy.

10.7 The claims of the customer arising from or in connection with delays in the performance of the contract are expressly and conclusively regulated in this section 10. Other and further claims of the customer are excluded. This limitation of liability does not apply in the event of gross negligence or unlawful intent on the part of Birr.

**11. Packaging**

The packaging will be invoiced additionally by Birr and will not be taken back. However, if the packaging has been designated as the property of Birr, it must be returned by the customer to the place of departure carriage paid.

**12. Transfer of risk**

12.1 Unless otherwise agreed, the transfer of risk shall take place upon delivery EXW (INCOTERMS 2000).

12.2 If the dispatch of the deliveries is delayed at the request of the customer or for other reasons for which Birr is not responsible, in this case the risk shall pass to the customer at the time originally planned for delivery ex works. From this point on, the deliveries will be stored and insured at the expense and risk of the customer.

**13. Inspection and acceptance of deliveries**

13.1 Birr will check the deliveries as far as usual before dispatch. If the customer requests further inspections, e.B. an acceptance test, these must be agreed in writing and remunerated by the customer.

13.2 The customer shall inspect the deliveries within 30 days and notify Birr immediately in writing of any defects. If he fails to do so, the deliveries shall be deemed to have been approved.

13.3 Insofar as Birr is responsible for the reported defects, Birr shall remedy the defects as quickly as possible; the customer must give Birr sufficient opportunity to do so. After remedying the defect, an acceptance test shall be carried out at the request of the customer or Birr, provided that such a test has been agreed in accordance with Section 13.1.

13.4 If an acceptance test has been agreed, the following shall apply in the absence of a deviating agreement:

- Birr shall inform the customer of the execution of the acceptance test in good time so that he or his representative can participate in it.
- An acceptance protocol is drawn up for the acceptance, which must be signed by the customer and Birr or by their representatives. It states that the acceptance has taken place or that it was only carried out under reservation or that the customer refuses acceptance. In the latter two cases, the identified defects shall be recorded individually in the acceptance protocol.
- Due to minor defects, in particular those that do not significantly impair the functionality of the deliveries, the customer may not refuse to accept and sign the acceptance protocol. Birr will remedy such defects immediately.
- In the event of serious defects, the customer will give Birr the opportunity to remedy them within a reasonable grace period. Then a new acceptance test takes place.
- If this in turn reveals serious defects, the customer is entitled to the compensation agreed for this case or, if such an agreement

has not been made, to a reasonable reduction of the price. If, however, the defects encountered during this inspection are so serious that they cannot be remedied within a reasonable period of time and the deliveries are not usable for the agreed purpose or are only usable to a significantly reduced extent, the customer is entitled to refuse acceptance of the defective part of the deliveries or, if partial acceptance is not economically reasonable for him, to withdraw from the contract. In such a case, Birr is only obliged to refund the price paid to it for the parts of the deliveries affected by the withdrawal.

13.5 Acceptance shall also be deemed to have taken place,

- if the customer or his representative does not participate in the possible acceptance test; or
- Unless otherwise agreed, the price is to be paid in the following instalments:
  - if the possible acceptance test is not carried out on the scheduled date for reasons for which Birr is not responsible; or
  - if the customer refuses to sign an acceptance protocol; or
  - as soon as the customer puts the deliveries into operation or tacitly approves them in any other way; or
  - if the customer refuses acceptance without being entitled to do so.

13.6 The claims of the customer arising from or in connection with defects in the deliveries are expressly and conclusively regulated in this section 13. Other and beyond claims are excluded. This limitation of liability does not apply in the event of gross negligence or unlawful intent on the part of Birr.

**14. Warranty**

14.1 Warranty period

The warranty period is 12 months, for day and night operation 6 months. It begins with the dispatch of the deliveries ex works or with the acceptance of the deliveries or, if Birr has also taken over the assembly, with their termination. If dispatch, transport, possible assembly or commissioning or acceptance is delayed for reasons for which Birr is not responsible, the warranty period shall end no later than 18 months after notification of readiness for dispatch. For repaired parts of the deliveries, the warranty period begins anew and lasts 6 months from the remedy of the defect or acceptance, but at most until the expiry of a period that is twice the warranty period in accordance with the previous paragraph. The warranty expires prematurely if the customer or third parties make improper changes or repairs to the deliveries or if the customer, if a defect has occurred, does not immediately take all appropriate measures to reduce the damage or does not give Birr the opportunity to remedy the defect.

14.2 Liability for defects in material, construction and work: If parts of the deliveries prove to be defective or unusable before expiry of the warranty period as a result of poor material, faulty construction or defective work execution, Birr shall repair these parts within a reasonable period of time at the written request of the customer, provided that the customer Birr has repaired the defects during the warranty period immediately after they have been discovered. That is what we are having to do in writing. The customer must give Birr sufficient opportunity to do so. Replaced parts become the property of Birr. Birr shall bear the costs of rectification incurred in its factory. If the rectification is carried out at the request of the customer outside the plant, the costs caused by this, such as e.B. transport costs, travel and subsistence costs as well as taxes, duties and fees incurred outside Switzerland, shall be borne by the customer.

14.3 Warranted characteristics: Warranted properties of the deliveries are only those properties that are expressly designated as such in the order confirmation. The warranty is valid until the expiry of the warranty period. Proof of the guaranteed properties takes place during the possible acceptance test. If the warranted properties are not or only partially fulfilled, the customer is initially only entitled to rectification by Birr. The customer must give Birr sufficient opportunity to do so. If the rectification does not succeed or only partially succeeds, the customer is entitled to the compensation agreed for this case or, if such an agreement has not been made, to a reasonable reduction of the price. If the defect is so serious that it cannot be remedied within a reasonable grace period, and if the deliveries are not usable for the agreed purpose or are only usable to a significantly reduced extent, the customer is entitled to refuse acceptance of the defective part of the deliveries or, if partial acceptance is not economically reasonable for him, to withdraw from the contract. In such a case, Birr is only obliged to refund the price paid to it for the parts of the deliveries affected by the withdrawal.

14.4 Exclusions from liability for Mängel: Birr is not liable for the non-contractual condition of the deliveries, which the customer himself is responsible for. Self-inflicted is a condition contrary to the contract, which occurs in particular as a result of inadequate maintenance, disregard of operating regulations, excessive stress, unsuitable operating resources, chemical or electrolytic influences or work that has not been carried out by Birr. Furthermore, Birr is not liable for the non-contractual condition of the deliveries, which occurs as a result of normal wear and tear, improper use by third parties, the use of spare parts or material of the customer or third parties, maintenance by third parties, natural disasters or accidents.

14.5 Subcontractors: For deliveries and services of subcontractors prescribed by the customer, Birr assumes the warranty exclusively within the scope of the warranty obligations of the subcontractor concerned.

14.6 Exclusion of warranty claims: The warranty claims of the customer are expressly and conclusively regulated in this section 14. Other and beyond claims are excluded. This limitation of liability does not apply in the event of gross negligence or unlawful intent on the part of Birr.

14.7 Liability for ancillary obligations: In the event of inadequate advice and the like or breach of any ancillary obligations, Birr shall only be liable to the customer in the event of gross negligence or unlawful intent.

**15. Incorrect performance of the contract**

15.1 In all cases of non-performance of the contract not expressly regulated in these terms and conditions, the customer must set Birr a reasonable grace period. If this grace period expires unused and Birr is at fault for this, the customer is entitled to withdraw from the contract with regard to the parts of the deliveries that have been carried out in breach of contract or whose execution contrary to the contract is to be predicted with certainty. In such a case, Birr is only obliged to refund the price paid to it for the parts of the deliveries affected by the withdrawal.

15.2 In the event of withdrawal by the customer in accordance with Section 15.1, the provisions of Section 19 shall apply mutatis mutandis with regard to Birr's liability.

**16. Termination of contract by Birr**

If unforeseen events occur that significantly change the economic significance or the content of the deliveries or have a significant effect on Birr's performance of the contract, or if the execution of the deliveries subsequently proves impossible in whole or in part, the contract will be adapted appropriately. Insofar as this is not economically justifiable, Birr is entitled to terminate the contract or the affected parts of the contract. If Birr intends to terminate the contract, it must inform the customer immediately after becoming aware of the significance of the event, even if an extension of the delivery period has initially been agreed. In the event of termination of the contract, Birr is entitled to remuneration for the deliveries made. Claims for damages of the customer are not conditioned.

**17. Export Control**

The customer acknowledges that the deliveries may be subject to Swiss and/or foreign legal provisions and regulations on export control and may not be sold, rented or transferred in any other way or used for any purpose other than the agreed purpose without an export or re-export permit from the competent authority. The customer undertakes to comply with such provisions and regulations. He acknowledges that these may change and are applicable to the contract in the currently valid wording. The supplies may not be used, directly or indirectly, in any way in connection with the design, manufacture, use or storage of chemical, biological or nuclear weapons or delivery systems.

**18. Data protection**

Birr is entitled to process personal data of the customer within the scope of the execution of the contract. In particular, the customer agrees that Birr will also disclose such data to third parties in Switzerland and abroad in order to process and maintain business relationships.

**19. Limitation of Liability**

19.1 All claims of the customer for compensation for damages that have not arisen to the deliveries themselves, such as B. compensation for loss of production, loss of use, loss of orders, loss of profit, claims of third parties or for compensation for indirect and consequential damages, regardless of the legal grounds for such damages, are excluded. Birr's liability aside or in connection with the contract or its incorrect performance is limited to the price paid by the customer for the deliveries made.

19.2 The claims of the customer arising from or in connection with the contract or its incorrect fulfillment are expressly and conclusively regulated in these conditions. Other and beyond claims are excluded.

19.3 This limitation of liability does not apply in the event of gross negligence or unlawful intent on the part of Birr.

**20. Birr's right of recourse**

If, as a result of acts or omissions of the customer or his auxiliary persons, personal infinities are injured or objects of third parties are damaged and Birr is claimed for this, Birr shall be entitled to a right of recourse to the customer.

**21. Birr Machines Employees**

The employment relationship of Birr employees remains unaffected by their commitment to the customer. The customer undertakes not to employ the employees commissioned by Birr for this purpose during the term of an order or in the following year without Birr's written consent or to enter into a similar legal relationship with them. For each breach of this obligation, the customer owes Birr a contractual penalty in the amount of a gross annual salary of the employee concerned. The payment of a contractual penalty does not release the customer from the above-mentioned obligation.

**22. Assembly**

If Birr also takes over the assembly or the assembly supervision, the General Assembly Conditions of Birr are applicable to the provision of the corresponding services.

**23. Final provisions**

23.1 Changes to the contract must be made in writing in order to be effective.

23.2 Should any provision of these Terms and Conditions prove to be invalid in whole or in part, the parties shall replace this provision with a new agreement that is as close as possible to their legal and economic success.

**24. Place of jurisdiction and applicable law**

24.1 The place of jurisdiction is Aarau/Switzerland. However, Birr is also entitled to prosecute the customer at its registered office.

24.2 The contract is subject to substantive Swiss law. The application of the United Nations Convention of 11 April 1980 on Contracts for the International Sale of Goods is excluded.