

**1. General Provisions**

- 1.1. The following General Terms and Conditions (GTC) shall apply to any and all sales of products (the Products) of FORM-ON GmbH (FORM-ON) or all other companies associated with FORM-ON in Austria and abroad (FORM-ON and/or such associated companies hereinafter referred to as the "seller" ) including also especially of used machinery and used products including but not limited to formwork and system components (Used Products) as well as to package sales of new products and new formwork components by FORM-ON GmbH (FORM-ON) on the one hand or all other companies associated with FORM-ON in Austria and abroad on the other hand. These GTC form an integral part of any and all contracts concluded on such sales. . In case of discrepancies the specific provisions of purchase contracts or framework agreements shall prevail.
- 1.2. By accepting an offer to sell or by submitting an offer to purchase Products, the purchaser expressly agrees to the unrestricted applicability of these GTC and waives the right to apply its own general terms and conditions or general terms and conditions of purchase.
- 1.3. Products can be sold either via the [www.form-on.com](http://www.form-on.com) platform in the form of a sale or an auction or conventionally without using the [www.form-on.com](http://www.form-on.com) platform. Products can either be sold in someone's own name and for someone's own account or in someone's own name and for the account of someone else (agency transaction). If Products are sold via the [www.form-on.com](http://www.form-on.com) platform, they may also be sold directly from the seller to the respective purchaser using the platform. In the case of sales via the [www.form-on.com](http://www.form-on.com) platform, these GTC apply both to the relationship between the purchaser and FORM- ON as platform operator and to the relationship between the purchaser and the seller. Unless FORM-ON expressly acts as the seller of the relevant Products, any sales contract is concluded directly between purchaser and seller.
- 1.4. The costs arising to users that execute internet purchases via the [www.form-on.com](http://www.form-on.com) platform are the usual costs for internet use.
- 1.5. Unless expressly agreed otherwise on a case by case basis, notices and other communication shall be deemed legally valid if sent by e-mail. In order to take effect, any and all changes, amendments or deviations must be made in writing; this shall also apply to agreements on waiving this requirement of written form.

- 1.6. Statements made by employees of FORM-ON or the seller or any other persons acting on the seller's behalf shall require an express written confirmation by the seller.
- 1.7. The Seller hereby expressly consents to its data being used exclusively by FORM-ON and/or affiliated group companies for advertisement of similar products or services of FORM-ON. This consent may be withdrawn at any time. Data will not be passed on to third parties.

**2. Copyright**

The elements contained on the FORM-ON website such as texts, images, photos and graphics are protected by copyright and intellectual property right regulations. These elements may not be reproduced or otherwise edited or utilised.

**3. Data protection**

The Privacy Policy available under [www.form-on.com/en/content/10-privacy-policy](http://www.form-on.com/en/content/10-privacy-policy) shall apply.

**4. Identification of the user or purchaser**

Upon initial registration, each user of the platform has to provide the following information: name/company name, company or commercial register number, billing address, shipping address, VAT ID number, telephone number, e-mail address and shall immediately inform FORM-ON of any changes to such information. After initial registration, each user is assigned a user name and password, which s/he is to use for accessing the platform.

**5. Offers**

- 5.1. Products are offered on the [www.form-on.com](http://www.form-on.com) platform as follows:
- 5.1.1. Products in stock are offered individually or as a preassembled package. Additional information (on additional costs, etc.) is provided if applicable. Offers posted on the platform include (a) photo(s) and/or description.
- 5.1.2. For Products not in stock or Products to be organised and packaged based on a request by the purchaser, individual offers are drawn up upon online request. Such offers state the quantity available, exact location and relevant delivery dates and costs of delivery and other conditions. Such offer can be accepted by the purchaser by the deadline stated in the relevant offer.
- 5.1.3. To the extent expressly advertised on the platform, Products can also be purchased in the form of auctions. The purchaser is the party that placed the highest bid before the stated deadline. If no bid



has been placed yet, all Products may be purchased by paying the buy-it-now price, if such a price has been stated.

- 5.2. A confirmation of the receipt of offers or requests by the purchaser shall not in and by itself be deemed an acceptance of the offer.
- 5.3. Offers made by the seller are not binding unless they are expressly referred to as binding. FORM-ON strives to keep the information on the platform as up-to-date as possible, however, in particular amounts and prices might vary due to partial purchases occurred in the meantime.

## **6. Invoicing**

- 6.1. After Products have been sold and purchased or after a bid for Products has been accepted, FORM-ON shall send a pro forma invoice in the name of the relevant seller, who will prepare the Products for collection after having received the invoiced amount.
- 6.2. Unless expressly agreed otherwise, the Products shall be made available ex works pursuant to Incoterms 2010.

## **7. Prices**

All prices stated are net prices excluding VAT or any other import taxes and are quoted ex works pursuant to Incoterms 2010.

## **8. Cash before delivery and payment**

- 8.1. After having acquired a Product, the purchaser shall transfer the purchase price to the account stated in the invoice within the time period stated in the offer or otherwise not later than within 14 days of the conclusion of contract. A final invoice is issued only after the seller has received the entire amount owed including all taxes, charges and possible costs of delivery and other service charges.
- 8.2. Any and all costs arising from the transfer of the purchase price shall be borne by the purchaser.

## **9. Collection by the purchaser, delivery, passage of risk**

- 9.1. Unless expressly agreed otherwise, the purchaser shall collect the Products from the stated storage location within 14 days. The Products will be handed over to the purchaser only after the purchase price and all related costs have been paid. The risk of loss and accidental damage of the Products shall pass on to the purchaser upon handover to the purchaser or to a third party acting on behalf of the purchaser.
- 9.2. If delivery has been agreed upon, the following shall apply: delivery shall be made within a reasonable period of time or within any other agreed term of delivery to the location indicated by the purchaser.

Any costs arising from the delivery shall be invoiced separately. The first day of the term of delivery shall be the day following the day on which the entire purchase price, including cost of delivery, is credited to the account stated in the pro forma invoice. Any delivery terms and delivery dates shall be approximations. If the delivery date is exceeded by more than two weeks, the purchaser shall be entitled to withdraw from the purchase and sale contract after having granted a grace period of at least two weeks and except for cases of force majeure. The acquired Products shall be delivered at the purchaser's risk. The risk of loss and accidental damage of the Products shall thus pass on to the purchaser upon handover to the shipping agent.

- 9.3. If the purchaser refuses to accept the delivered Products, the purchaser shall ensure that the Products are properly unloaded, stored and held at the seller's disposal.
- 9.4. Force majeure and other unpredicted obstacles attributable to the seller and its suppliers, which prevent delivery to be made in due time, shall entitle the seller to reasonably extend the delivery term or postpone the delivery date.

## **10. Passage of ownership, retention of title**

- 10.1. Ownership shall pass upon completed payment and acceptance of the Products purchased.
- 10.2. Any and all deliveries made by the seller shall be subject to retention of title. The delivered Products shall remain the property of the seller until the purchase price has been paid in full. The retention of title applies also to products created by processing the Products delivered by the seller. If any products are joined, processed or mixed with goods not owned by the seller, the seller shall acquire co-ownership in the newly created products on a pro rata basis based on the value of the delivered Products in relation to the newly created products.
- 10.3. The purchaser is not allowed to pledge the Products delivered subject to retention of title or use them as securities vis-à-vis third parties or dispose of them in any other way to the benefit of third parties. Any resale of the Products subject to retention of title shall only be allowed upon the express written consent of the seller. Already now upon conclusion of the contract, the purchaser assigns, in lieu of payment, any and all claims resulting from any resale of the Products subject to the seller's retention of title which are made in violation of the present provision or also with the seller's consent and shall make all precautionary measures to make such assignments effective under the respective local law. The purchaser shall be obliged to disclose



to the seller, upon the latter's request, the names and addresses of its sub-purchasers as well as the existence and amount of any claims resulting from the resale and to inform its sub-purchasers of the assignment of such claims. Any profit realised by the purchaser by reselling the Products subject to retention of title shall be forwarded to the seller immediately.

- 10.4. If any Products subject to retention of title are attached or otherwise claimed by third parties, the purchaser shall be obliged to assert the seller's ownership title and shall immediately inform the seller thereof in writing. The purchaser shall reimburse the seller for any and all costs incurred by the seller in connection with defending its ownership title. The purchaser shall provide the seller, upon the latter's request, with all documents required for defending and enforcing its ownership title.
- 10.5. If the purchaser defaults on payments, the Products subject to retention of title shall, upon the seller's request, be immediately returned to the seller. To the extent that the purchaser fails to comply with this request without undue delay, the seller is entitled to collect the Products subject to retention of title. The costs and risks connected with transporting the Products to the seller shall in any case be borne by the purchaser. The returning or collection of the Products shall, in this case, not be deemed a withdrawal from the contract. The seller shall be entitled to sell the recovered Products to another purchaser and offset the proceeds with its claims vis-à-vis the purchaser.

#### **11. Documents**

The purchaser is not entitled to use documents provided by the seller for any purposes other than those set forth in the contract. The know-how contained in the documents is made available to the purchaser exclusively for said purposes.

#### **12. Default**

- 12.1. If the purchaser defaults on collecting the Products or paying the price, the seller shall be entitled to withdraw from the respective purchase contract after having granted a reasonable grace period of at least two weeks.
- 12.2. The defaulting purchaser shall be obliged to pay default interest in the amount of the applicable base interest rate in Austria plus 8 percentage points p.a. Moreover, the purchaser shall be obliged to reimburse any and all costs arising from collecting receivables and taking legal steps. This provision shall have no effect on any further claims for damages.

- 12.3. Partial deliveries by the seller are permissible.

#### **13. Withdrawal**

- 13.1. The parties to the contract shall be entitled to withdraw from the contract for good cause (e.g. violation of material contractual provisions, default of payment despite a grace period of at least 14 days) by writing a registered letter to the other party.
- 13.2. In addition, the seller may withdraw from the contract if the performance of such contract is unreasonable to it, even if only temporarily.

#### **14. Return of the Products**

- 14.1. Upon withdrawal from the contract, Products already delivered by the seller shall be returned to the seller within 14 days. To the extent that the purchaser fails to comply with this obligation, the seller shall be entitled to collect the Products at the purchaser's expense and risk.
- 14.2. If it is impossible to clearly distinguish the Products to be returned from other products, the seller shall be entitled to select a product. In such a case, the purchaser shall indemnify the seller and hold the seller harmless with regard to any third-party claims.

#### **15. Warranty, liability, error**

- 15.1. The Products (except Used Products) are sold as new and in line with the agreed or usual state. When sold, the Used Products are used products as described. Images of the Used Products in any form whatsoever shall not be deemed a description of their condition. Sometime, in particular if sold as part of a package, Used Products might not be fit to be used for formwork purposes.
- 15.2. The purchaser shall be obliged to inspect the Products without undue delay, at the latest, however, within 8 days after taking delivery and to inform the seller, within the same period, of any defects of the Products in writing, giving a detailed description of the defects. The warranty period for notified defects shall be six months. Regarding Used Products any warranty for defects shall be limited to cases in which the delivered goods differ in quantity from the goods as described or in which a Used Product other than the one described was delivered. Any further warranty, including, but not limited to, with regard to quality and condition, shall be excluded. Regarding all other Products defects may be cured by subsequent performance (substitute delivery or subsequent delivery of any missing items) at FORM-ON's discretion.

If all the elements of the factual circumstances relate to Germany (Art 3 (3) of Regulation Rome I), the



following shall apply: Claims for damages by the purchaser which refer to damages for bodily injury or damage to health caused by a defect attributable to the seller or which are based on gross negligence on the part of the seller, its legal representatives or vicarious agents, or, in the event of slight negligence, provided that a material contractual obligation – on the fulfilment of which the seller had the right to rely – was breached, shall be admitted. In such cases, however, the seller's liability shall be limited to compensation of the foreseeable, typically occurring loss or damage. In all other cases, the following shall apply: Any liability of FORM-ON or the respective seller shall be excluded for cases of slight negligence. Furthermore, no liability for compensation of consequential damage or lost profits shall be assumed. The above exclusions of liability do not apply to injuries to persons. Any claims for damages shall be asserted in court by the purchaser within 6 months from obtaining knowledge of damage and damager, at the latest, however, within 2 years after delivery was made by the seller. Any recourse for warranty claims by the purchaser to the seller shall be excluded if the purchaser resold the Products to consumers and the warranty period has elapsed. Unless provided otherwise by mandatory statutory provisions, the purchaser will exclude such right of recourse also vis-à-vis its subpurchasers.

- 15.3. The notice of defects does not discharge the purchaser from its payment obligation. The prerequisite for a warranty obligation on the part of the seller is that the purchaser has complied with all its obligations including, without limitation, its payment obligations, and that he gave notice of defects in due time and enough detail.
- 15.4. 15.5 If all the elements of the factual circumstances relate to Germany (Art 3 (3) of Regulation Rome I), the following shall apply: As for the rights of the purchaser in the event of defects as to quality and defects of title in new products, the statutory provisions apply unless the subsequent provisions state otherwise. Subsequent performance (substitute delivery or subsequent delivery of any missing items) shall be at the seller's discretion. Subsequent performance shall include neither the de-installation of the defective item nor its re-installation unless its installation originally constituted an obligation of the seller. In contrast to the statutory provisions, the general period of limitation for claims based on defects as to quality and defects in title shall be one year from the time of passing of risk.
- 15.5. If the seller negotiates on complaints raised, this shall not mean that the seller waives its right to claim that the notice of defects was given too late or was

not detailed enough.

- 15.6. The purchaser shall be liable for providing sufficient instruction to its customers so that the Products are capable of being used in compliance with good construction practice and with applicable laws. purchaser shall ensure and is liable that the Products are sold with the necessary documentation. Furthermore purchaser shall take all measures possible to reduce any risk of product liability. Furthermore, the purchaser shall be obliged to contractually bind its subpurchasers to comply with the liability limitations contained in these GTC to the fullest extent including the obligation to bind any further subpurchasers.
- 15.7. The seller does not assume any warranty for the completeness and/or correctness of the information on the Products. It shall be the responsibility of the purchaser to obtain information from the relevant producer or manufacturer.
- 15.8. If all the elements of the factual circumstances relate to Germany (Art 3 (3) of Regulation Rome I), the following shall apply: Any liability of FORM-ON or the respective seller shall be excluded for cases of slight negligence. This exclusion of liability shall not apply to cases of injury to life, body and health or breaches of material contractual obligations on the fulfilment of which the seller had the right to rely. FORM-ON and the respective seller shall be liable for damage caused by wilful or grossly negligent breach of duty on the part of FORM-ON or the respective seller, their legal representatives or vicarious agents. With the exception of cases of wilful breach of contract, liability for the breach of material contractual obligations shall be limited to foreseeable loss or damage typical of the contract, unless a claim for damages is based on an injury to life, body or health. In all other cases, the following shall apply: Any liability of FORM-ON or the respective seller shall be excluded for cases of slight negligence. Furthermore, no liability for compensation of consequential damage or lost profits shall be assumed. The above exclusions of liability do not apply to injuries to persons. Any claims for damages shall be asserted in court by the purchaser within 6 months from obtaining knowledge of damage and damager, at the latest, however, within 2 years after delivery was made by the seller.
- 15.9. FORM-ON shall not warrant uninterrupted availability of the [www.form-on.com](http://www.form-on.com) platform.
- 15.10. Any rescission on the grounds of error shall be excluded, too. The purchaser has had plenty of opportunity to get an idea of the Products and their value.





- 15.11. In principle, it is possible to inspect the Products on site after fixing a date for such inspection.

**16. No Set-Off**

The purchaser shall not be entitled to offset any claims it might have vis-à-vis the seller with claims of the seller, unless such claims are undisputed or *res judicata*.

**17. Severability clause**

Should any provision of these GTC or any underlying contract be or become invalid or unenforceable in whole or in part, the other provisions shall not be affected thereby. The Parties undertake to replace an invalid or unenforceable provision by a valid or enforceable provision that comes as close as possible to the economic purpose of the invalid or unenforceable provision. The same shall apply to any gap in the provisions herein.

**18. Applicable law, place of jurisdiction**

- 18.1. These GTC and any transactions concluded based thereon shall be subject to Austrian law excluding its conflict of law provisions and the United Nations Convention on Contracts for the International Sale of Goods. If the agreement of Austrian law is invalid for whatever reason, the law applicable in the jurisdiction of the seller's registered office, excluding its conflict of law provisions and the United Nations Convention on Contracts for the International Sale of Goods, shall be applicable.
- 18.2. The court competent for the subject matter with jurisdiction for Amstetten or, upon the seller's discretion, the court competent for the subject matter with jurisdiction for the seller's registered office shall have exclusive jurisdiction for any and all disputes arising from or based on these GTC and any transactions concluded based thereon. The seller shall be entitled to file lawsuits at the general place of jurisdiction of the purchaser.

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