

## 1. General

- 1.1. The following General Terms and Conditions (GTC) apply to all sales of products (the Products) by FORM-ON GmbH (FORM-ON) or by other companies affiliated with FORM-ON in Germany and abroad (FORM-ON and/or such affiliated companies are hereinafter referred to as "seller"), including in particular used equipment and used products, especially formwork, scaffolding and system components (used products) as well as sales of new products and new formwork components by FORM-ON GmbH (FORM-ON) on the one hand or by other companies affiliated with FORM-ON in Germany and abroad on the other hand and are an integral part of all contracts concluded in this regard. In the event of discrepancies, the special provisions of purchase or framework agreements shall take precedence over these General Terms and Conditions.
- 1.1 By accepting an offer or submitting an offer to purchase products, the purchaser expressly recognizes the unrestricted validity of these GTC and waives the application of his own general terms and conditions of business or purchase in their entirety. Sales of products can either be processed via the platform [www.form-on.com](http://www.form-on.com) in the form of a sale or an auction or by conventional means without using the platform [www.form-on.com](http://www.form-on.com). Sales of products can be carried out either in one's own name and for one's own account or in one's own name and for the account of a third party (on a commission basis). If sales are made via the [www.form-on.com](http://www.form-on.com) platform, sales can also be processed directly between the BUYER and the respective seller using the platform. In the case of sales via the platform [www.form-on.com](http://www.form-on.com), these GTC apply both in the relationship between the purchaser and FORM-ON as the operator of the platform and in the relationship between the purchaser and the seller. If FORM-ON does not expressly act as the seller of the products, the contract is concluded directly between the purchaser and the seller.
- 1.2 When making purchases on the Internet via the [www.form-on.com](http://www.form-on.com) platform, users incur the usual costs of using the Internet.
- 1.3 For notifications or legally relevant communication, the form of e-mail is sufficient, unless otherwise expressly not expressly stipulated otherwise in individual cases. All amendments, supplements or deviations must be made in writing; this also applies to any waiver of the written form requirement.
- 1.4 Declarations made by employees of FORM-ON or the seller or other persons working for them require the express written confirmation of the seller.
- 1.5 The purchaser hereby expressly consents to the use of his data exclusively by the seller or affiliated companies in the group for the purpose of sending advertising for similar products or services of the seller. This consent may be revoked at any time. The 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 rights. These elements may not be reproduced or otherwise processed or used.

## 3. Data protection

The data protection provisions available at <https://www.formon.com/en/content/10-privacy-policy> apply.

## 4. Identification of the user or purchaser

When registering for the first time, users of the platform must identify themselves by providing their name/company name, company register number or commercial register number, invoice address, delivery address, VAT number, telephone number and e-mail address and notify any changes immediately. After initial registration, each user receives a username and password which they must then use when accessing the platform.

## 5. Offers

### 5.1 Products are offered as follows:

- 5.1.1 Products in stock are offered individually or as a fixed package. Additional provisions (additional costs, etc.) may also be specified. The offer is placed on the platform either with a photo and/or description.
- 5.1.2 For products that are not in stock or for organized products put together at the purchaser's request, a charge will be made via a provided.

5.2 In the event of an enquiry, the purchaser shall submit a customized offer stating the available quantity, specific location and specific delivery dates and delivery costs and other conditions. This offer can be accepted by the purchaser within the period specified in the offer.

5.3 For customized products, the minimum purchase of 1 full truck load and the minimum order quantity per product must be observed. This applies to products labelled with the customer's logo, lengths outside the standard lengths and special packaging outside the standard packaging. Due to natural fluctuations in raw material quality, there may be up to 5% more or less production. In the event of excess quantities, the customer is obliged to accept these and also to bear any additional delivery costs incurred.

5.4 If expressly indicated on the platform, products can also be purchased in the form of auctions. The purchaser is the person who has placed the highest bid within the specified period. Before a first bid is placed, all products can be purchased at the buy-it-now price, if such a price has been specified.

5.5 If the receipt of offers or enquiries from the purchaser is confirmed, this does not constitute acceptance of the offer.



5.6 The seller's offers are subject to change unless they are expressly designated as binding. FORM-ON endeavors to keep the information on the platform as up to date as possible, but quantities and prices may change due to partial sales that have taken place in the meantime.

**6. Accounting**

6.1 After the purchase or acceptance of Products, FORM-ON shall send an invoice in the name of the respective seller, who shall make the Products available for collection upon receipt of the invoiced payment.

6.2 Unless expressly agreed otherwise, the Products shall be made available ex works (in accordance with Incoterms 2020).

**7. Prices**

All prices quoted are net prices excluding VAT or other import duties and are ex works (in accordance with Incoterms 2020).

**8. Payment**

8.1 After purchasing a product, the purchaser must pay the purchase price to the account specified on the invoice within the period specified in the offer.

8.2 All costs of the transfer shall be borne by the purchaser.

**9. Self-collection, delivery, transfer of risk**

9.1 Unless expressly agreed otherwise, the purchaser must collect the products himself. In the case of self-collection, the products must be collected on the agreed delivery date. If there is a delay before the loading date or on the actual loading date, charges will be invoiced per lorry. FORM-ON reserves the right to charge manipulation costs for provision and re-storage. The risk of loss and accidental deterioration of the products is transferred to the purchaser at the latest when the products are made available to the purchaser, or a third party authorized by the purchaser.

9.2 If delivery has been agreed, the following shall apply:

Delivery shall be made within a reasonable period or otherwise agreed delivery periods to the place specified by the purchaser. The delivery costs incurred in each case shall be invoiced separately. Any delivery periods and delivery dates are approximate. If the delivery date is exceeded by more than two weeks, the purchaser is entitled to withdraw from the contract, except in cases of force majeure, after fruitlessly setting a grace period of at least two weeks. Delivery of the purchased products shall be at the purchaser's risk. The risk of loss and accidental deterioration of the products is therefore transferred to the purchaser upon handover to the carrier. If the purchaser refuses to accept the delivered products, he must ensure that the products are properly unloaded, stored, and kept at the disposal of the seller.

9.3 Force majeure or other unforeseen obstacles in the sphere of the seller and its suppliers that prevent timely or punctual delivery shall entitle the seller to a reasonable extension of the delivery period or postponement of the delivery date.

**10. Transfer of ownership, retention of title**

10.1 The transfer of ownership takes place after full payment and acceptance of the purchased products.

10.2 All deliveries by the seller are 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 also extends to products delivered by the seller that have been processed. Re salting objects. If the products are processed, combined, or mixed, the seller shall acquire co-ownership of the resulting objects in the ratio of the value of the delivered products to the newly created object.

10.3 The purchaser may not pledge the delivered products subject to retention of title or use them as collateral against third parties or otherwise dispose of them in favor of third parties. Resale of the products subject to retention of title is only permitted with the express written consent of the seller. The purchaser hereby assigns to the seller, on account of payment, all claims arising from the resale of the products subject to the seller's retention of title, which were made contrary to these provisions or were also made with the seller's consent and shall take all precautions necessary for the effectiveness of these assignments in accordance with the law applicable in the respective legal system. The purchaser is obliged to inform the seller, upon request, of the names and addresses of his buyers as well as the existence and amount of any claims arising from the resale and to inform his buyers of the assignment of these claims. Any proceeds realized by the purchaser from the resale of the products subject to retention of title must be forwarded to the seller immediately.

10.4 If products subject to retention of title are seized, attached or otherwise claimed by third parties, the purchaser is obliged to notify the seller of the ownership and to inform the seller immediately in writing. The purchaser shall reimburse the seller for all costs incurred by the seller in connection with the enforcement of his property. Upon request, the purchaser shall provide the seller with all documents required for the defense and enforcement of its property.



10.5 If the purchaser is in arrears with payments, the products subject to retention of title must be returned to the seller immediately upon the seller's request. Insofar as the purchaser does not immediately comply with this request, the seller is entitled to retrieve the products subject to retention of title. Costs and risk in connection with the transport of the products to the seller shall in any case be borne by the purchaser. In this case, the return or retrieval of the products shall not be deemed as cancellation of the contract. The seller has the right to sell the reclaimed products to other buyers and to offset the proceeds against its claims and expenses vis-à-vis the purchaser.

**11. Documents**

The purchaser is not authorized to use documents provided by the seller for purposes other than those provided for in the contract. The know-how contained in documents is made available to the purchaser only for these purposes.

**12. Default**

12.1 If the purchaser is in default with the acceptance / import of the products or payment of the purchase price, the seller has the right to withdraw from the contract after granting a reasonable grace period of at least two weeks.

12.2 In the event of default, the purchaser shall be obliged to pay default interest in the amount of the base interest rate applicable in Austria plus 8 percentage points per annum. In addition, the purchaser is obliged to reimburse all costs arising from the collection of claims and the taking of legal action. This provision has no effect on other further claims for damages.

12.3 Partial deliveries by the seller are permissible.

**13. Confidentiality**

13.1 PURCHASER hereby agrees to keep confidential all know-how, data and other technical and commercial information (hereinafter collectively referred to as "Confidential Information") received from FORM-ON in connection with this Agreement and the purchase of the PRODUCTS until and to the extent that such information becomes generally known in the industry other than through the fault of PURCHASER. Without the prior written consent of FORM-ON, BUYER shall not disclose or tolerate the disclosure of Confidential Information to anyone other than BUYER's employees to the extent necessary for the proper performance of this Agreement or the proper performance of the tasks assigned to them. The BUYER shall impose this obligation on its employees whom it must involve in the fulfilment of this contract.

**14. Compliance with laws and regulations**

14.1. In the performance of its activities, BUYER shall comply with all applicable laws and regulations, including but not limited to any applicable anti-corruption laws or regulations.

14.2 BUYER hereby declares and confirms that it and all its partners/shareholders, agents, officers and employees

or other personnel, if any, are familiar with and comply with applicable anti-corruption laws or regulations.

14.3 The PURCHASER further declares and confirms in particular that no part of its remuneration or other benefit is or will be granted, paid, promised or promised directly or indirectly to any of the following groups of persons:

- Public officials (including any employee of a public authority, any other person acting in an official capacity, political parties, party officials or candidates for political office).

- any employee or officer of a private sector company (including any person working for a private sector company in any other capacity or holding any other office) for the purpose of influencing or otherwise exerting influence over the actions (whether official or otherwise) of any of the foregoing persons to take or refrain from taking any action in breach of their lawful duties for the purpose of obtaining or securing business or obtaining or retaining any other improper advantage or benefit in the course of business.

14.4 The PURCHASER further declares and confirms that he will not instigate or participate in the commission of such unlawful acts by other persons, nor will he instigate them to participate in such acts.

14.5 BUYER hereby declares and certifies that neither it nor its partners/shareholders, agents, officers, employees or other associates or close relatives of such persons have any relationship of a personal, business or other nature with any public official/officer where the business is transacted, to the extent that such association, relationship or dealings involve a risk that BUYER would or might influence or attempt to influence official decisions in any manner contrary to applicable law.

14.6 In carrying out the BUYER's activities, the BUYER shall also comply with the Code of Conduct of the Umdasch Group, which can be viewed at [www.umdach.com](http://www.umdach.com). The BUYER hereby declares and confirms that the BUYER and any of its partners/shareholders, authorized representatives, executives and employees and other staff are familiar with this Code and comply with it.

14.7 PURCHASER grants FORM-ON the unrestricted right to verify the PURCHASER's compliance with PURCHASER's obligations under this Agreement, in particular with regard to anti-corruption laws and regulations.

14.8 Furthermore, the BUYER confirms and testifies that neither it nor its partners/shareholders, agents, officers and employees and other employees have been involved in legal proceedings for unlawful behavior, in particular in the area of anti-corruption, in the last ten years.

14.9 If the BUYER is directly or indirectly requested to violate any laws or regulations, the BUYER shall notify FORM-ON immediately.

**15. Resignation**

15.1 The contracting parties are entitled to withdraw from the contract by registered letter if there are important reasons (e.g. breach of essential contractual provisions, default in payment despite a grace period of at least 14 days).

15.2 Furthermore, the seller may withdraw from the contract if the fulfilment of the contract is even temporarily unreasonable for him.



**16. Return of Products**

- 16.1 In the event of cancellation of the contract, products already delivered by the seller must be returned to the seller within 14 days. Insofar as the purchaser does not fulfil this obligation, the seller is entitled to collect the products at the purchaser's expense and risk.
- 16.2 If the products to be returned are not clearly distinguishable from other products, the seller is authorised to select one product. In this case, the purchaser shall indemnify and hold the seller harmless against any third-party claims.

**17. Warranty, Disability, Error**

- 17.1 The products (except second-hand products) are sold as new and in the agreed or usual condition.

Second-hand products are sold in used condition in accordance with the description of their condition.

Visual images of the used products in any form whatsoever do not constitute a description of their condition. In some cases, particularly as part of a fixed package, used products are not fit for formwork purposes.

- 17.2 The purchaser is obliged to inspect the products immediately, but at the latest within 8 days of taking delivery, and to notify the seller in writing of any defects in the products within this period of eight days, giving a detailed description of the defects. The warranty period within which defects must be reported is six months. Regarding used products, the warranty for defects is limited to incorrect deliveries in terms of quantity or delivery of a used product other than the one described. Any further warranty, for quality and condition, is excluded. Regarding all other products, defects can be remedied at FORM-ON's discretion by subsequent fulfilment (replacement delivery or supplementation of the missing item).

If all elements of the facts of the case relate to Germany (Art 3 (3) Rome I Regulation), the following applies: The purchaser's claims for damages based on compensation for bodily injury or damage to health due to a defect for which the seller is responsible or based on gross negligence on the part of the seller, its legal representatives or vicarious agents or in the case of slight negligence, provided that a material contractual obligation has been breached on the fulfilment of which the purchaser was entitled to rely; in this case, however, the seller's liability is limited to compensation for foreseeable, typically occurring damage.

In all other cases, the following applies: any liability on the part of FORM-ON or the respective seller in the event of slight negligence is excluded. Furthermore, no liability is accepted for compensation for consequential damage or loss of profit. This exclusion of liability does not extend to personal injury. All claims for damages must be asserted by the purchaser in court within 6 months of becoming aware of the damage and the damaging party, but at the latest within 2 years of delivery by the seller.

Any recourse by the purchaser against the seller based on warranty claims is excluded if the purchaser has resold the products to consumers and the warranty period has already expired. Insofar as this does not conflict with mandatory statutory provisions, the purchaser shall also exclude this right of recourse against its customers.

- 17.3 The notice of defects does not release the purchaser from his payment obligation. The prerequisite for a warranty obligation on the part of the seller is that the purchaser has fulfilled all his obligations, in particular his payment obligations, and that he has submitted the notice of defects in good time and in sufficient detail.

- 17.4 If all elements of the facts of the case relate to Germany (Art 3 (3) Rome I Regulation), the following shall apply: The statutory provisions shall apply to the rights of the purchaser in the event of material defects and defects of title to products in mint condition, unless otherwise specified below. Subsequent fulfilment (replacement delivery or addition of the missing item) shall be at the discretion of the seller. Subsequent fulfilment shall neither include the removal of the defective item nor the reinstallation if the seller was not originally obliged to install it. Notwithstanding the statutory provisions, the general limitation period for claims arising from material defects and defects of title is one year from the transfer of risk.

- 17.5 If the seller negotiates about complaints, this does not mean that the seller waives its right to object to a late or too vague notice of defects.

- 17.6 The purchaser is responsible for providing its customers with sufficient instructions so that the products can be used in accordance with normal good practice in the construction industry and in accordance with the applicable laws. The purchaser shall ensure and be responsible for ensuring that the products are sold together with the necessary documentation. Furthermore, the purchaser shall take all possible precautions to minimize the risk of product liability. Furthermore, the purchaser is obliged to transfer the limitations of liability in these terms and conditions in full - with the obligation to transfer them further - to its customers.



17.7 The seller also provides no guarantee for the completeness and/or correctness of the information on products. It is the responsibility of the purchaser - to information from the respective manufacturer.

17.8 If all elements of the facts relate to Germany (Art 3 (3) Rome I Regulation), the following applies: The liability of FORM-ON or the respective seller is excluded in the event of slight negligence. The above exclusion of liability shall not apply in the event of injury to life, limb and health or material contractual obligations on the fulfillment of which the Purchaser was entitled to rely. FORM-ON and the respective seller shall be liable for damages resulting from an intentional or grossly negligent breach of duty by FORM-ON or the respective seller, their legal representatives or vicarious agents. Insofar as there is no wilful breach of contract, liability for the breach of essential contractual obligations is limited to the foreseeable damage typical of the contract, unless it concerns claims for damages arising from injury to life, limb or health. In all other cases, the following applies: FORM-ON's or the respective seller's liability is excluded in cases of slight negligence. Furthermore, no liability is accepted for compensation for consequential damage or loss of profit. The above exclusions of liability shall not apply in the event of personal injury. Any claims for damages must be asserted by the purchaser in court within 6 months of becoming aware of the damage and the damaging party, but at the latest within 2 years of delivery by the seller.

17.9 FORM-ON does not guarantee continuous availability of the platform [www.form-on.com](http://www.form-on.com).

17.10 Cancellation due to error is also excluded. The purchase has formed an opinion of the products and their value.

17.11 It is generally possible to inspect the products on site after making an appointment.

### **18.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.

### **19.Severability clause**

If a provision of these GTC or of a contract on which they are based is invalid or unenforceable in whole or in part, this shall not affect the remaining provisions. The parties undertake to replace the invalid or unenforceable provision with a valid or enforceable provision that corresponds to the economic purpose of the invalid or unenforceable provision. Provision that comes close to the economic purpose of the invalid or unenforceable provision. The same applies to loopholes.

### **20.Applicable law, place of jurisdiction**

17.12 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.

17.13 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.

