

General Terms and Conditions of FORM-TEC GmbH for industrial transactions in Germany



1. **Scope and area of application**
 - 1.1 These General Terms and Conditions ("GTC") apply only to traders within the meaning of Section 14 of the German Civil Code ("BGB"). They apply to the sale of goods and the provision of work and services ("Services") to the respective customer by Form-Tec (each individually and collectively the "Contractual Partner(s)"). Our deliveries and Services are provided exclusively on the basis of the following GTC. Any terms and conditions of the Contractual Partner shall not apply. They shall not become part of the agreement even if we do not expressly object to the use of the Contractual Partner's terms and conditions.
 - 1.2 We are entitled to amend these GTC at any time. We will inform the Contractual Partner of this in writing or by e-mail. The Contractual Partner has the right to object to the amended terms and conditions with regard to ongoing continuing obligations within one (1) month of notification. If the Contractual Partner does not object within this period, the continuing obligations shall continue to exist in accordance with the amended terms and conditions. If the Contractual Partner objects in due time, the continuing obligations shall continue to exist in accordance with the original terms and conditions; however, we shall be entitled to terminate the contractual relationship with due notice.
 - 1.3 An agreement is only concluded with our order confirmation.
 - 1.4 The information and illustrations contained in brochures and catalogues are approximate values customary in the industry, unless they have been expressly designated by us as binding.
2. **Prices**

Our prices are quoted in euros excluding VAT, packaging, freight, postage and insurance.
3. **Long-term and call-off Agreements, price adjustment**
 - 3.1 Open-ended agreements can be cancelled with a notice period of three (3) months to the end of the month.
 - 3.2 In the case of agreements with a term of more than three (3) months and open-ended agreements ("Long-Term Agreements"), the Contractual Partners are entitled to adjust the prices to be paid on the basis of this agreement to the development of costs at their reasonable discretion if this is due to a factor beyond the control of the Contractual Partners (such as currency regulation, exchange rate fluctuations, changes in customs duties, significant increases in material, energy or distribution costs or other manufacturing costs). A price increase shall be considered and a price reduction shall be made if changes in such factors lead to a changed cost situation. The appropriate adjustment of the price shall be made by written notification to the Contractual Partner.
 - 3.3 If a binding order quantity has not been agreed, we shall base our calculation on the non-binding order quantity (target quantity) expected by the Contractual Partner for a specific period.
 - 3.4 A subsequent reduction in the order quantity below the target quantity shall result in an increase in the unit price, taking particular account of the resulting additional costs. The prices of previous or current orders are not binding for repeat orders.
 - 3.5 In the case of call-off delivery agreements, unless otherwise agreed, we must be notified of binding quantities by call-off at least two (2) months before the delivery date. Additional costs caused by a delayed call-off or subsequent changes to the call-off in terms of time or quantity by our Contractual Partner shall be borne by our Contractual Partner; our calculation shall be decisive in this respect.
 - 3.6 Our sales representatives are entitled to conclude agreements with customers up to an order value of EUR 100,000. Agreements exceeding this amount are only valid if they have been confirmed in writing by us or our management.
4. **Delivery period and delay in delivery**
 - 4.1 The delivery period shall be agreed individually or specified by us in the order confirmation.
 - 4.2 If we are unable to meet binding delivery deadlines for reasons for which we are not responsible (non-availability of the Service), we shall inform the Contractual Partner of this immediately and at the same time inform the Contractual Partner of the expected new delivery deadline. If the Service is also not available within the new delivery period, we shall be entitled to withdraw from the agreement in whole or in part; we shall reimburse any consideration already paid by the Contractual Partner.
 - 4.3 We are authorised to make partial deliveries to a reasonable extent.
 - 4.4 Within a customary commercial tolerance range, excess or short deliveries of the total order quantity that are foreseeable for production reasons are permissible and do not constitute a defect for which we are responsible. The total price shall change accordingly.
5. **Transfer of risk**
 - 5.1 Unless otherwise agreed in writing, we deliver "ex works" (*EXW Incoterms 2020*). Goods notified as ready for dispatch must be accepted by the Contractual Partner without delay. Otherwise, we shall be entitled to store them at the Contracting Party's expense and risk or to dispatch them to another destination at the Contracting Party's request and expense. Unless otherwise agreed, we shall be entitled to determine the type of dispatch (in particular transport company, dispatch route, packaging) ourselves.
 - 5.2 The risk of accidental loss and accidental deterioration of the goods shall pass to the Contractual Partner at the latest upon handover. If the Contractual Partner is in default of acceptance, this shall be deemed equivalent to handover or acceptance.
 - 5.3 In the case of sale by dispatch, however, the risk of accidental loss and accidental deterioration of the goods as well as the risk of delay shall pass to the customer upon delivery of the goods to the forwarding agent, carrier or other person or organisation designated to carry out the shipment.
6. **Default**
 - 6.1 All invoices are due for payment within seven (7) calendar days of invoicing, unless otherwise agreed. In the event of late payment, we shall be entitled to charge interest on arrears at the applicable statutory default interest rate. We reserve the right to claim further damages caused by default.
 - 6.2 In the event of default of payment, we shall be entitled to suspend the fulfilment of our obligations until receipt of payment after written notification to the Contractual Partner. The Contractual Partner shall only be entitled to set-off or retention rights to the extent that its claim has been legally established or is undisputed.
7. **Retention of title**
 - 7.1 We reserve title to the delivered goods until all claims arising from the business relationship with the Contractual Partner have been fulfilled.
 - 7.2 The goods subject to retention of title may neither be pledged to third parties nor assigned as security before full payment of the secured claims. The Contractual Partner must inform us immediately in writing if an application is made to open insolvency proceedings or if third parties have access to the goods belonging to us (e.g. seizures).
 - 7.3 If the Contractual Partner acts in breach of agreement, in particular in the event of non-payment of the purchase price due, we shall be entitled to withdraw from the agreement in accordance with the statutory provisions and/or to demand the return of the goods on the basis of the retention of title. The seizure of the goods by us shall always constitute a cancellation of the contract. After taking back the goods, we shall be authorised to sell them; the proceeds of sale shall be offset against the liabilities of the Contractual Partner – less reasonable costs of sale.
 - 7.4 The Contractual Partner is authorised to resell, process or lease the goods to which we hold ownership rights in the ordinary course of business until revoked by us. The following conditions shall apply:
 - a. The Contractual Partner hereby assigns to us as security any claims against third parties arising from the resale or authorised leasing of the goods in total or in the amount of our possible co-ownership share. We accept the assignment.
 - b. Any processing or treatment of the goods subject to retention of title shall always be carried out by the Contractual Partner on our behalf. The retention of title shall extend to the full value of the products resulting from the processing, mixing or combining of our goods, whereby we shall be deemed to be the manufacturer. If, in the event of processing, mixing or combining with goods of third parties, their right of ownership remains, we shall acquire co-ownership in proportion to the invoice values of the processed, mixed or combined goods. In all other respects, the same shall apply to the resulting product as to the goods delivered under retention of title. The Contractual Partner shall keep the property for us. In all other respects, the same shall apply to the item created by processing, combining or mixing as to the goods subject to retention of title.
- 7.5 If the realizable value of the securities exceeds our claims by more than 15%, we shall release securities of our choice at the request of the contractual partner.
8. **Drawings and descriptions**

We reserve ownership rights and copyrights to illustrations, plans, drawings, calculations, execution instructions, product descriptions and other documents. Such documents are to be used exclusively for the contractual performance and are to be returned to us after completion of the agreement.
9. **Samples and production equipment**
 - 9.1 Unless otherwise agreed, the manufacturing costs for samples and production equipment (tools, molds, templates, etc.) shall be invoiced separately from the goods to be delivered. This also applies to production equipment that has to be replaced due to wear and tear.
 - 9.2 The costs for maintenance and proper storage as well as the risk of damage to or destruction of the production equipment that must be replaced due to wear and tear shall be borne by the Contractual Partner.
 - 9.3 If the Contractual Partner suspends or terminates the co-operation during the production period of the samples or production equipment, all production costs incurred up to that point shall be borne by the Contractual Partner.
 - 9.4 The means of production shall remain in our possession at least until the fulfilment of the delivery contract, even if the Contractual Partner has paid for them. Thereafter, the Contractual Partner shall be entitled to demand the return of the means of production if an amicable agreement has been reached on the time of return and the Contractual Partner has fulfilled its contractual obligations in full.
 - 9.5 We shall store the means of production free of charge for a period of three (3) years after the last delivery. Thereafter, we shall request our Contractual Partner in writing to comment on the further use within six (6) weeks. Our duty of safekeeping shall end if no express statement is made within these six (6) weeks or no new order is placed. The costs of the transfer of ownership shall be borne by the Contractual Partner.
 - 9.6 We may only use the means of production of a Contractual Partner for deliveries to third parties with the prior written consent of the contractual partner.
10. **Material defects**
 - 10.1 Our liability for defects shall be based exclusively on the agreement reached on the quality and intended use of the goods (including accessories and instructions). Only the technical delivery specifications shall apply as a quality agreement in this sense. If we have to deliver according to drawings, specifications or samples of our Contractual Partner, the latter shall assume the risk of suitability for the intended use.
 - 10.2 Claims for defects on the part of the Contractual Partner presuppose that he has fulfilled his statutory inspection and notification obligations (§§ 377, 381 HGB).
 - 10.3 We must be given the opportunity to inspect the notified defect. Rejected goods must be returned to us immediately upon request; we shall bear the transport costs if the complaint is justified.
 - 10.4 Claims for material defects shall expire after 12 months. This does not apply if the law prescribes longer periods, in particular for defects in a building and for goods that have been used for a building in accordance with their normal use and have caused its defectiveness.
11. **Other claims, liability**
 - 11.1 Unless otherwise stated below, we shall be liable in the event of a breach of contractual and non-contractual obligations in accordance with the statutory provisions.
 - 11.2 We shall be liable for damages – irrespective of the legal grounds – within the scope of fault-based liability in the event of intent and gross negligence. In the event of simple negligence, we shall only be liable, subject to statutory limitations of liability (e.g. care in our own affairs; insignificant breach of duty), for
 - a. for damages resulting from injury to life, limb or health,
 - b. for damages arising from the breach of an essential contractual obligation (obligation whose fulfilment is essential for the proper execution of the agreement and on whose compliance the Contractual Partner regularly relies and may rely); in this case, however, our liability is limited to compensation for the foreseeable, typically occurring damage.
 - 11.3 The limitations of liability resulting from clause 11.2 shall also apply to third parties and in the event of breaches of duty by persons (including in their favor) whose fault we are responsible for in accordance with statutory provisions. They shall not apply if a defect has been fraudulently concealed or a guarantee for the quality of the goods has been assumed and for claims of the Contractual Partner under the Product Liability Act.
 - 11.4 The statutory regulations on the burden of proof remain unaffected by this.
12. **Force majeure**

Force majeure, labor disputes, official measures, non-delivery by our suppliers and other unforeseeable, unavoidable and serious events shall release the Contractual Partners from their performance obligations for the duration of the disruption and to the extent of its effect. This shall also apply if these events occur at a time when the affected Contractual Partner is in default, unless it has caused the default wilfully or through gross negligence. The Contractual Partners are obliged to provide the necessary information without delay within the scope of what is reasonable and to adapt their obligations to the changed circumstances in good faith.
13. **Confidentiality Agreement**
 - 13.1 Information of the Contractual Partner that is commercially, legally, fiscally or technically sensitive or advantageous, in particular drawings and descriptions (Clause 8), which become known to the other Contractual Partner in the course of the business relationship ("Confidential Information") shall be treated as confidential. This may be information that is in any way recognizable as confidential or legally protected or whose confidential content is obvious. The term includes any visual material such as records, written documents, notes, documents, digital recordings etc. as well as verbal communications.
 - 13.2 The confidentiality agreement extends to the Contractual Partners as well as their affiliated companies, bodies, employees, consultants and any other third parties working for them, insofar as they are subject to a confidentiality obligation corresponding to the requirements of this confidentiality agreement or the main agreement.
 - 13.3 The Contractual Partners undertake to treat the Confidential Information received from the other Contractual Partner as confidential. This means in particular that
 - a. during the term of the agreement and for a period of thirty-six (36) months after the end of the business relationship, the Contractual Partners shall not disclose this information to third parties themselves or through employees or otherwise use it for purposes other than those contractually agreed between the parties. Any other use or disclosure of the information is only permitted if and insofar as the other Contractual Partner has given its prior written consent.
 - b. the Contractual Partners undertake to treat the Confidential Information received from the other Contractual Partner with at least the same care that they apply in their own affairs.
 - c. the Contractual Partners undertake to comply with the statutory and contractual provisions on data protection when processing Confidential Information.
 - 13.4 The Contractual Partners agree that any breach of the confidentiality agreement by a consultant or employee of a Contractual Partner or a company affiliated with a Contractual Partner shall be equivalent to a breach by that Contractual Partner.
 - 13.5 The confidentiality agreement does not apply to Confidential Information that
 - a. were published or otherwise accessible to the public at the time of disclosure to the receiving party; or
 - b. were published after disclosure to the receiving Contractual Partner or have become generally accessible to the public, unless the receiving Contractual Partner has breached a Contractual Partner Agreement or these GTC; or
 - c. were already known to the receiving Contractual Partner at the time of disclosure by the disclosing Contractual Partner and were not otherwise acquired by the receiving Contractual Partner from the disclosing Contractual Partner in the context of a relationship of trust; or
 - d. the receiving party has acquired at any time after the date of entering into a counterparty agreement from a third party who is authorised to disclose it to the receiving party without that third party having breached its obligations to the disclosing party; or
 - e. developed independently of the work performed by the receiving party under the agreement.



- 13.6 The duty of confidentiality also does not apply to courts and authorities if there is a legal obligation to disclose or if the respective information is relevant in civil proceedings between the Contractual Partners or one of the Contractual Partners and a third party. The Contractual Partner must be informed immediately of any disclosure of Confidential Information. The Contractual Partner undertakes to inform the client before disclosing Confidential Information unless such notification is not permitted by law.
- 13.7 Three (3) months after the end of the term of an agreement between the Contractual Partners, the commissioned Contractual Partner may request in writing the immediate destruction or return of all Confidential Information in paper and/or electronic form and all copies thereof, insofar as this is compatible with the legal obligations. The receiving Contractual Partner shall confirm the return or destruction in writing to the commissioned Contractual Partner within fourteen (14) days of receipt of the request.
- 14. Place of fulfilment, place of jurisdiction and applicable law**
- 14.1 Unless otherwise stated in the order confirmation, the place of fulfilment and jurisdiction is 59469 Ense, Germany.
- 14.2 The contractual relationship shall be governed exclusively by the law of the Federal Republic of Germany.
The application of the United Nations Convention on Contracts for the International Sale of Goods of 11 April 1980 (CISG "Vienna Sales Convention") is excluded.