

# GENERAL TERMS AND CONDITIONS



## 1. DEFINITIONS

1.1. In these general terms and conditions, the following terms shall have the following meanings:

- (a) **Clause:** means a clause of these General Terms and Conditions;
- (b) **Client:** means a person who does not operate in - or pursues professional or commercial activities (*handelend in de uitoefening van beroep of bedrijf*) or is not involved in a similar business as Supplier or acts on behalf of a company and enters a Contract with Supplier;
- (c) **Contract:** means a contract effected between Supplier and the Client, including any amendment or addition to said Contract, as well as all (legal) acts for the preparation or execution of the contract;
- (d) **Cooling-Off Period:** has the meaning ascribed thereto in Clause 6.1;
- (e) **Force Majeure:** has the meaning as ascribed thereto in Clause 13;
- (f) **General Terms and Conditions:** means these general terms and conditions used by Supplier;
- (g) **Long Distance Transaction:** means a transaction that uses a sales system which has been established by Supplier for the purpose of selling long distance and that uses the webstore of Supplier to finalise the sale, a transaction that is being conducted by means of back and forth e-mails using among others the "contact-me" button or transactions that can be made through telephone contact;
- (h) **Product(s):** means all products to be delivered by Supplier to the Client under a Contract;
- (i) **Supplier:** means Forno B.V., a private company with limited liability (*besloten vennootschap met beperkte aansprakelijkheid*) incorporated under the laws of the Netherlands, having its corporate seat in Uden, and maintaining a place of business at (5405 AG) Uden at Liessentstraat 4, the Netherlands, registered in the Dutch Trade Register under number 72366036;
- (j) **Right of Withdrawal:** has the meaning ascribed thereto in Clause 6.1; and

(k) **Website:** means the website <https://www.forno.nl/en/products>, on which the Client can electronically order Products.

## 2. APPLICABILITY

- 2.1. The present General Terms and Conditions are applicable on every offer made by Supplier, any order placed by the Client, to every Contract effected between Supplier and the Client and on all transactions conducted with Supplier.
- 2.2. The General Terms and Conditions will be made available to the Client either by regular mail or by electronic mail in such a way that the Client can easily file it for future reference. If this is not reasonably possible, before the Contract is concluded, it will be indicated where the General Terms and Conditions can be consulted electronically, and they will be sent to the Client free of charge at the Client's request electronically or in any other way.
- 2.3. The applicability of certain delivery or payment conditions or other terms and conditions by the Client to Supplier is explicitly rejected.
- 2.4. The General Terms and Conditions are also applicable on transactions with the Client in case Supplier is using a third party to execute the transaction.
- 2.5. Deviations or additions to the General Terms and Conditions during any individual transaction are only applicable to that specific transaction and do not have any general validity. Such deviations are only valid if there is a written confirmation between Supplier and the Client.
- 2.6. The Client is obligated to accept the General Terms and Conditions before the conclusion of a Contract, in the absence of which the Contract will not be concluded. Placing an order through the web shop and checking the box next to the text: "I have read and agree to the Website "General Terms and Conditions" is considered acceptance of the General Terms and Conditions.
- 2.7. In case one or more provisions of the General Terms and Conditions have been declared partially or completely invalid, the other conditions will continue to be applicable and the provision in question will be replaced without delay, in mutual consultation, by a provision that approximates the scope of the original as much as possible.

# GENERAL TERMS AND CONDITIONS



## 3. OFFERS

- 3.1. Offers by Supplier are non-binding unless a period for acceptance is part of the offer. Supplier is entitled to change, modify, and withdraw its offer. Supplier explicitly reserves the right to change prices if so required.
- 3.2. An offer includes a complete and detailed description of the offered Product. The description is detailed enough to enable the Client to make an educated decision regarding the offer.
- 3.3. Supplier is not obliged to deliver a Product for the price that is quoted in an offer if such price is based on a printed or written error or is based on an obvious mistake. The Client has no right to a lower price if any given Product is offered at such a price by another sales channel of Supplier, or any other company related to Supplier.
- 3.4. Images, drawings, measurements, and other descriptions of the Products are as accurate as possible, though not legally binding. Small deviations are allowed and do not give the Client any legal rights.
- 3.5. The Client can place orders in the ways indicated on the Website.

## 4. CONTRACT

- 4.1. A Contract shall be concluded, without prejudice of what is stated in Clause 4.4, with the acceptance of the offer by the Client and completion of the agreed upon conditions. Orders by phone only lead to an agreement after written confirmation by Supplier.
- 4.2. In case the Client has accepted an offer via electronic methods, Supplier will immediately confirm acceptance via the same method. As long as the receipt of this acceptance has not been confirmed by Supplier, the Client may terminate the Contract.
- 4.3. If and to the extent that the Contract is formed electronically, Supplier will take suitable technical and organisational measures to secure the electronic transfer of data and provide a safe digital environment. If the Client can pay electronically, Supplier in cooperation with its providers shall take appropriate security measures.

4.4. Subject to applicable law, Supplier has the right to investigate and/or ask the Client for information regarding the Client's ability to fulfil its financial obligations, and regarding the facts and circumstances that lead to any conclusion whether Supplier wants to finalise a Contract. If this investigation gives Supplier reasonable grounds not to enter a Contract, Supplier has the right not to accept an order or to add special conditions to a Contract.

4.5. After a Contract is concluded between Supplier and the Client, Supplier will provide the Client with an envisaged delivery date. If and to the extent that due to acts or omissions of the Client, Supplier is unable to deliver the Product(s) on the announced delivery date or within a period of four (4) weeks thereafter, Supplier has the right to increase the purchase price in line with the increase of the Eurozone Producer Price Index.

## 5. DELIVERY

- 5.1. Supplier will deliver the Product(s) by sending it to the Client or its representative.
- 5.2. Place of delivery will be the address given by the Client to Supplier.
- 5.3. If the Client has provided an incorrect address for the delivery, Supplier has the right to charge extra delivery costs to the Client.
- 5.4. Dates of delivery are estimates as quoted by Supplier and are not to be considered as final deadlines (*fatale termijn*). The mere lapse of a delivery time does not entitle the Client to damages, termination for cause (*ontbinding*) of the Contract, or non-performance of any obligation on the part of the Client arising from the Contract or any connected Contract, such with the exception of the provisions in Clause 5.6. Supplier will never be liable for any special, consequential, indirect or incidental loss, including but not limited to losses caused by delays, lost profits, lost savings, increased operational costs, loss of customers, loss of goodwill, etc., howsoever caused, regardless of the basis of liability.
- 5.5. Supplier does its best to keep the Website as up to date as possible. In case delivery of an ordered Product is no longer possible, Supplier will do its utmost to supply a substitute Product. The Client will be informed within thirty (30) days after placing the order if the ordered Product is no longer available and will be presented with the option of a substitute.

# GENERAL TERMS AND CONDITIONS



- 5.6. If a Product cannot be delivered, the Client will be notified within thirty (30) days. In that case, the Client has a right to terminate (*opzeggen*) the Contract without any money being due. The Client has no right to claim damages. In case of termination (*opzegging*) in accordance with this Clause 5.6, Supplier will refund the amount paid by the Client as soon as possible, but at the latest within fourteen (14) days after termination (*opzegging*).
- 5.7. Supplier will remain liable for damage to the Product or loss of the Product until delivery to the Client or to its representative. Supplier will therefore insure the Product up to the moment delivery has taken place. After delivery to the Client the risk of the Product shall transfer to the Client.
- 5.8. The Client is obliged to accept the Products at the agreed place/places at the moment Supplier delivers them or has them delivered or at the moment they are made available to the Client according to the Contract. If the Client fails to do so, the Client shall bear the resulting costs thereof, including the shipping costs.
- 5.9. If the Client refuses or neglects to provide information or instructions that are necessary for delivery, the Products destined for delivery will be stored at the expense and risk of the Client.

## 6. RIGHT OF WITHDRAWAL

- 6.1. When purchasing Products, the Client has the opportunity to terminate (*opzeggen*) the Contract without specifying any reason for a period of fourteen (14) days. This Cooling-Off Period commences on the day after receipt of the Product(s) by the Client or a third party designated by the Client, unless it concerns a personalised Product as described further in Clause 8.1(a). Furthermore, the Right of Withdrawal may be excluded by Supplier in accordance with 8.
- 6.2. During the Cooling-Off Period, the Client shall handle the Product and its packaging with care. The Client shall only unpack or use the Product to the extent necessary to judge whether the Client wishes to keep it. If the Client wishes to exercise its Right of Withdrawal, the Client shall return the Product with all delivered accessories and - if reasonably possible - in its original state and packaging to Supplier, in accordance with the reasonable and clear instructions given by Supplier.

- 6.3. If the Client wishes to exercise its Right of Withdrawal, the Client must make this known by means of the termination form which is available on the Website or by sending an email to Supplier. After the Client has notified Supplier that the Client wishes to exercise its Right of Withdrawal, the Product must be returned within fourteen (14) days. The Client must prove that the delivered Products have been returned in time by means of a certificate of posting.
- 6.4. If, at the end of the periods mentioned in Clauses 6.1 and 6.3, the Client has not exercised its Right of Withdrawal, expressed its will to do so or has not returned the Product(s) to Supplier, the purchase is final.

## 7. COSTS IN CASE OF WITHDRAWAL

- 7.1. If the Client exercises its Right of Withdrawal, the Client will be responsible for the cost of the return shipment.
- 7.2. If the Client has paid an amount, Supplier will refund this amount as soon as possible, at least within fourteen (14) days after exercise of the Client's Right of Withdrawal. This repayment is subject to the condition that the returned Product has been received by Supplier.
- 7.3. Reimbursement will be made through the same payment method used by the Client unless the Client explicitly agrees to another payment method and provided that the Client does not incur any expense as a result of such reimbursement.
- 7.4. By way of derogation of Clause 7.3, Supplier shall not be required to reimburse supplementary expenses, if the Client has expressly opted for a type of delivery other than the least expensive type of standard delivery offered by Supplier.

## 8. EXCLUSION OF THE RIGHT OF WITHDRAWAL

- 8.1. Supplier may exclude the Client's Right of Withdrawal in the following cases:
- (a) the to be delivered Product(s)
- (i) are made to the Client's specifications; or
  - (ii) have not been prefabricated; or
  - (iii) have been made on the basis of an individual choice of - or decision by the Client;
  - (iv) have been clearly personalised;

# GENERAL TERMS AND CONDITIONS



- (b) Products that cannot be returned due to their nature; and
  - (c) Products of which the price is subject to fluctuations over which Supplier has no influence for example but not limited to the price of raw materials.
- 8.2. In the event of a personalised Product, Supplier shall inform the Client in advance thereof.
- 9. PRICE AND PAYMENT**
- 9.1. All prices quoted by Supplier are including VAT.
- 9.2. The Client can pay for the ordered Products by means of the methods of payment listed on the Website. The Client is free to choose between these methods of payment. Payments shall be made to the bank account of Supplier.
- 9.3. In the event the Client does not pay the purchase price of the Products upfront, at least fifty percent (50%) of the invoice by the Client must be paid before delivery, at the moment the Contract is concluded. In case the Client does not comply with the preceding sentence Supplier can charge additional fees and costs.
- 9.4. Unless provided otherwise in writing between the parties, the invoices shall be due for payment after delivery and shall be settled no later than on the thirtieth (30<sup>th</sup>) day counting from the date of delivery, without any cash discount or other deduction allowed. Invoices will be send ultimately two (2) days after the day of delivery.
- 9.5. If payment is delayed and after a notice of default (*ingebrekestelling*) is sent by which the Client has fourteen (14) calendar days to remedy its breach, and the Client is still in default to fulfil its payment obligations, the Client will owe interest on that sum to Supplier with effect from the day following the expiring of the term mentioned in the notice of default (*ingebrekestelling*) up to and including the day on which the Client settles the amount in question. The interest is equal to the statutory interest (*wettelijke rente*).
- 9.6. For overdue payments, the Client owes Supplier all extrajudicial costs with a minimum of EUR 40. These costs are calculated on the basis of the following table, i.e., the principal sum plus interest:
- (a) on the first EUR 2 500 15%
  - (b) on the excess up to EUR 5 000 10%
  - (c) on the excess up to EUR 10 000 5%
  - (d) on the excess up to EUR 200 000 1%
  - (e) on the excess from EUR 200 000 or more 0,5%.
- The extrajudicial costs actually incurred are due if they are higher than the calculation given above.
- 9.7. Receipts for the Products delivered by Supplier will be mailed to the e-mail address given by the Client.
- 9.8. The Client has the obligation to immediately report any inaccuracies in payment data provided or mentioned to Supplier.
- 10. RETENTION OF TITLE**
- 10.1. Supplier supplies the Products to the Client subject to retention of title pursuant to section 3:92 of the Dutch Civil Code until all claims relating to (i) the consideration for the Products delivered or to be delivered by Supplier pursuant to the Contract(s), and (ii) work carried out or to be carried out for the benefit of the Client pursuant to that Contract, (iii) any failure by the Client to comply with the Contract(s), and (iv) claims arising from non-compliance with aforementioned Contracts, such as damage, penalties, interest and costs, have been paid in full.
- 10.2. The Products delivered by Supplier may not be consumed or encumbered. This clause affects property rights (*goederenrechtelijk effect*).
- 10.3. In case of seizure of the Products or similar acts or interventions by third parties which may result in Supplier losing title to the Products, the Client shall inform Supplier immediately thereof in writing.
- 11. CONFORMITY AND WARRANTY**
- 11.1. Supplier guarantees that the Product(s), including accessories and parts of the Product(s), comply with the Contract and the specifications listed in the offer for twenty-four (24) months from delivery.
- 11.2. Supplier can never be held responsible for the suitability of the Products for every individual application by the Client, nor for any advice given regarding the use or the application of the Products.
- 11.3. The warranty does not apply when:

# GENERAL TERMS AND CONDITIONS



- (a) the Client has repaired, modified, or processed the Products itself or had a third-party repair, modify, or process the Products;
  - (b) normal wear and tear or damage;
  - (c) the delivered Products have been exposed to abnormal conditions or were otherwise used carelessly or were used contrary to the instructions provided by Supplier, which includes the product information sheets, and/or stated on the packaging and maintenance instructions;
  - (d) the defect is fully or partially the result of (future) government regulations regarding the nature or the quality of the materials used. This can for example be the case with certification of raw materials.
- 11.4. The warranty does not entitle the Client to a replacement or refund for lost or stolen items.
- 11.5. The warranty period and process and the product instruction are laid down in the product information sheets, which can be obtained by going to the following website and downloading the file(s): <https://www.forno.nl/en/downloads>.
- ## 12. COMPLAINTS
- 12.1. The Client must notify Supplier in writing of incorrectly delivered Products within reasonable time of two (2) weeks after delivery.
- 12.2. A complaint by a Client that the delivered Product is defective needs to be made within the two (2) months after the Client has discovered the defect and within the warranty period in accordance with Clause 11.2. After this period, any complaint is considered past due.
- 12.3. Each complaint must be accompanied by a receipt date and number, a complete and detailed description of the complaint. The complaint should be detailed enough to enable Supplier to make an educated decision regarding the complaint.
- 12.4. The burden of proof that the delivered Products are not in conformity to what was agreed upon lies with the Client.
- 12.5. In case the Client notifies Supplier of a complaint on delivered Products, the Client should make it possible for Supplier to inspect the Products as soon as possible. Supplier will inspect the Products in the most convenient manner which the Client will enable, if necessary, by presenting the Products in person. All reasonable expenses made by Supplier will be the responsibility of the Client in case the complaint is considered ungrounded.
- 12.6. Minor deviations in the delivered goods in terms of size, colour, shape, and packaging, cannot be a reason for the Client to: (i) terminate for cause (*ontbinden*) the Contract, (ii) refuse to accept delivery, (iii) claim damages from or file a complaint. The same goes for small modifications of the Products in case these modifications do not change the Product in a material way.
- 12.7. Complaints submitted to Supplier shall be answered within thirty (30) days from the date of receipt. If a complaint requires a foreseeable longer time to process, Supplier will reply within thirty (30) days with a notice of receipt and an indication of when the Client can expect a more detailed reply.
- 12.8. Products must be returned in their original packaging and in new condition.
- 12.9. In case the Client notifies Supplier of a complaint, the client must give Supplier the option at Supplier's sole discretion to: repair, replace, or redeliver any Products which turn out to be defective within the warranty period. In case defective Products are replaced, title of such defective Products shall pass into Supplier. Supplier shall be given adequate time and opportunity to remedy the defect.
- ## 13. FORCE MAJEURE
- 13.1. Supplier will be excused from any default or delay in the performance of its obligations under a Contract if and to the extent that the default or delay is caused by an event not reasonably foreseeable, or which is due to a cause beyond Supplier's control which renders performance of Supplier's obligations impossible or so difficult and costly as to be commercially unreasonable (**Force Majeure**).

# GENERAL TERMS AND CONDITIONS



- 13.2. Force Majeure in any event includes but is not limited to government orders issued or to be issued which prevent or limit the sale and delivery and/or the use of the Products, a shortage of the Products to be delivered, import or export bans, the failure of the Supplier's suppliers and/or transport companies and/or transport companies to satisfy their obligations or to satisfy these in time, disruptions in the production process for the Products, the inability of Supplier to obtain or retain the necessary permits, strikes or labour unrest, war, disease, epidemics/pandemics, natural and/or nuclear disasters, explosions, acts of terrorism and/or the threat of terrorism and delay in transport of the Products.
- 13.3. In the event of Force Majeure, upon giving written notice thereof to the Client, Supplier shall be released from any liability on its part for the performance of its suspended obligations under the Contract during the Force Majeure.
- 13.4. In case of Force Majeure as well as in case of failure to perform by the Client, Supplier has the right to either postpone delivery until the circumstances have changed or if delivery has not taken place yet to partially or completely terminate (*opzeggen*) the Contract without being held liable for any damages as described in section 78 of Book 6 of the Dutch Civil Code.

## 14. LIABILITY

- 14.1. Supplier is never liable for damages or wear and tear caused by usage of the Products. These risks are for the risk and account of the Client.
- 14.2. The liability of Supplier, based on any Contract or any other legal grounds, will be limited to the lower of (i) one hundred percent (100%) of the amount of the purchase price of the relevant Product as is invoiced under the Contract in question, or (ii) the amount which the insurer of Supplier actually pays out regarding the respective claim.
- 14.3. Regardless of the legal grounds, Supplier is not liable for any special, consequential, indirect or incidental loss, including but not limited to losses caused by delays, lost profits, lost savings, increased operational costs, loss of customers, loss of goodwill, etc., howsoever caused, regardless of the basis of liability.

- 14.4. The Client shall indemnify Supplier for any claim in excess of the limitation of liability if the ultimate owner/end-user of the Products or any other third-party can instigate a claim directly against Supplier.

## 15. INTELLECTUAL PROPERTY RIGHTS

- 15.1. The Client hereby acknowledges that all registered and/or non-registered intellectual property rights Supplier has on the Products supplied belong and will continue to belong to Supplier and that the Client shall respect any and all intellectual property rights Supplier has on the Products supplied to the Client under a Contract. The Client shall not use and/or apply to register any intellectual property rights so nearly resembling the intellectual property rights of Supplier on the Products supplied under a Contract as to be likely to deceive or cause confusion.
- 15.2. The intellectual property rights to the (designs/forms/shapes) of the Products, as well as accompanying texts, images, design, data files, photos and other (still or moving) visual materials, formats, software, brands, domain names and other materials, which arise from the Website, are held by Supplier.
- 15.3. The Client is not entitled to publish or reproduce (parts of) the Website in any way. The Client may only place a hyperlink to the Website when this is purely for information purposes towards other potential Clients. The placement of a hyperlink for any other purpose, including a commercial aim, is strictly prohibited.

## 16. PRIVACY

- 16.1. Regarding the processing of personal data, Supplier is data controller. Supplier determines the purpose and means of the processing. Supplier processes the personal data, and the Client is the data subject. Supplier shall process the personal data in accordance with applicable privacy laws and regulations.
- 16.2. The privacy statement of Supplier [[link to the privacy statement](#)] including potential future amendments is applicable to the use of the Website, any Contract and all services carried out by Supplier. All users of the Website are obliged to comply with all the principles and articles described in the privacy statement.
- 16.3. Additionally, where the Client uses an electronic method of payment, the Client's personal data will be handled in accordance with the privacy policy of the provider of the electronic method of payment.

# GENERAL TERMS AND CONDITIONS



## 17. DISPUTES

- 17.1. Dutch law exclusively governs all Contracts between Supplier and the Client to which these General Terms and Conditions apply. The Vienna Convention on Contracts for the International Sale of Goods is excluded.
- 17.2. Disputes that occur between Supplier and the Client, if needed, will in case the Client is an EU/EEA/CH citizen, be submitted to the competent court of Oost-Brabant, the Netherlands. Notwithstanding the previous sentence, shall Supplier inform the Client, one (1) month before initiating proceedings, that during this period of one (1) month the Client has the possibility to opt that the proceedings have to take place before the competent court in the jurisdiction in which the Client resides.
- 17.3. The Client, who is an EU/EEA/CH citizen is always free to start proceedings against Supplier before the competent court in the area in which the Client resides.
- 17.4. Disputes that occur between Supplier and the Client who is a non-EU/EEA/CH citizen, if needed, will be submitted to the Netherlands Arbitration Institute, and shall take place in accordance with the Dutch Arbitration Institute arbitration rules. The place of arbitration shall be Eindhoven, the Netherlands. Notwithstanding the previous sentence, shall Supplier inform the Client, one (1) month before initiating proceedings for the Netherlands Arbitration Institute that during a one (1) month period the Client has the possibility to opt that the proceedings have to take place before the competent court in the Netherlands.