

General Terms and Conditions of Business (T&Cs), issued 01/06/2021

These T&Cs govern the legal relationships between Tobler AG (hereinafter referred to as TOBLER) and its contractual partners (hereinafter referred to as the Customer) arising from the sale, renting out and assembly of scaffolding, formwork and corresponding accessories (including hire-purchase agreements). They represent a framework contract for all conclusions of contracts and are binding until their revocation.

1. Quotation and conclusion of contract

1.1. TOBLER's quotations, deliveries and services take place exclusively on the basis of these T&Cs. These are deemed to be accepted on placement of an order for goods or services. These T&Cs also apply in particular to all future orders placed by the Customer, regardless of whether they were agreed upon in future orders.

1.2. A contract is concluded when TOBLER accepts an order placed in writing, by telephone or in person without reservation.

1.3. Verbal assurances given by TOBLER are valid only if confirmed in writing and signed.

1.4. TOBLER shall be bound by the Customer's T&Cs only to the extent that they correspond to its own, or if it has consented thereto in writing. Any deviating terms and conditions of the Customer that TOBLER has not recognised expressly and in writing are non-binding for TOBLER.

2. Technical documents

2.1. Brochures, catalogues, etc. are non-binding unless agreed otherwise. Specifications in technical documents are binding only if they are expressly assured in writing.

2.2. We reserve the right to make technical amendments. Deviations in the implementation, dimensions and weights of the goods from the specifications given in brochures or other sales documents or in comparison with earlier deliveries are not relevant if the purpose of use of the goods is not significantly restricted.

2.3. In particular in the case of new designs or special versions, we expressly reserve the right to determine the final implementation.

2.4. TOBLER has the right to deliver equivalent delivery parts from subcontractors with neutral labelling.

3. Terms of payment

3.1. Payments are to be made net and directly to TOBLER within the deadline stated on the invoice or at the latest on the calendar day stated on the invoice. Deductions are permissible only if expressly agreed in writing. Unjustified deductions shall be debited afterwards.

3.2. In case of a hire-purchase agreement, the down-payment is to be made immediately upon delivery of the purchased item without any deduction. The individual instalments are due for payment on the dates specified in the hire-purchase agreement without any deduction.

3.3. All payment dates are considered expiry dates. In case of default the Customer – without a reminder from TOBLER – shall be liable to pay interest for default at a rate of 9% per annum. A reminder fee of CHF 20.00 each is charged for the second reminder and for each subsequent reminder. Collection is handled by Crediteform Egeli St. Gallen AG. The expenses incurred in this respect are recoverable and depend on the amount of the receivable. After an unsuccessful second reminder, the fees increase to CHF 60.00 up to a receivable amount (RA) of CHF 50.00, CHF 100.00 up to an RA of CHF 150.00, CHF 125.00 up to an RA of 300.00, CHF 190.00 to an RA of CHF 500.00, CHF 260.00 up to an RA of CHF 1,000.00, CHF 350.00 up to an RA of CHF 2,000.00, CHF 530.00 up to an RA of CHF 4,000.00, CHF 900.00 up to an RA of CHF 8,000.00, CHF 1,330.00 up to an RA of CHF 16,000.00, CHF 2,000.00 up to an RA of CHF 32,000.00, CHF 2,600.00 up to an RA of CHF 50,000.00; from an RA of CHF 50,000.00 they amount to 5.5% of the receivable. In the event of outstanding payments, TOBLER also reserves the right to refuse to carry out further partial deliveries of the same order or future orders.

3.4. The absence of minor parts from the order or the assertion of warranty claims against TOBLER shall not entitle the Customer to postpone making due payments.

3.5. If the Customer fails to accept delivery, the entire purchase price or the residual purchase price (in the case of a hire-purchase agreement, the down payment plus all outstanding purchase price instalments) shall be due for payment immediately. Any standstill time of the transport company shall be at the Customer's expense.

3.6. If the down-payment or the securities to be provided on conclusion of the contract are not paid in accordance with the contract, TOBLER shall be entitled to abide by the contract or to withdraw from same and in both cases to demand compensation for damages.

3.7. Early settlement of remainders of a purchase price or of purchase price instalments does not entitle the Customer to a discount.

3.8. If the Customer is in arrears with a payment (purchase price, contractually agreed payment, purchase price instalment) and does not settle the outstanding balance within 10 days of being reminded again to do so, TOBLER, without being bound by a deadline with regard to exercising this right, shall be free and entitled to choose to: either demand immediate payment of the remainder of the purchase price or any outstanding down-payment and all outstanding instalments plus default interest without deduction of a discount, or withdraw from the contract and claim restitution of the goods in accordance with the agreed retention of title. In this case, the Customer must return the purchased item immediately and at its own expense. TOBLER is still entitled to this right if the Customer does not pay the remainder of the purchase price requested by TOBLER or the outstanding down-payment and instalments within the grace period of a further ten (10) days.

4. Terms of delivery

4.1. Unless agreed otherwise, the place of fulfilment is TOBLER's place of business in Rheineck.

4.2. Dispatch and transport take place at the Customer's expense and risk. It is the Customer's duty to arrange insurance against damage of any kind. Any customs duties payable shall

be borne by the Customer. If delivery is made in accordance with the order to an unmanned building site, TOBLER shall give no guarantee of the intactness and completeness of the delivery.

4.3. Pallets and transport crates are provided only on a loan basis. The Customer must return them at its own expense. TOBLER shall issue an invoice for them if they are not returned.

4.4. Delivery shall be made as far as possible on the date desired by the Customer. The notified or agreed delivery deadlines and dates shall be adhered to as far as possible, but are non-binding. If the delivery is delayed for reasons for which TOBLER is not responsible (force majeure, import or transport difficulties, delays by third-party suppliers, amendments subsequently demanded by the Customer, etc.), the delivery date shall be extended appropriately. Delivery notes signed by the Customer's employees or a third party commissioned by the Customer are considered a confirmation of the delivery and are binding on the Customer.

4.5. The exceeding of a delivery deadline entitles the Customer neither to withdraw from the contract nor to delay acceptance nor to demand compensation for default.

4.6. If deliveries and services are impossible to render for a foreseeable time as a result of events outside TOBLER's sphere of influence, TOBLER shall have the right to withdraw from the contract on notifying the Customer without having to pay compensation for damages.

4.7. If the Customer has been notified that the ordered goods are ready for dispatch or collection, then the Customer is obligated to collect the goods or have them delivered within 5 working days of being notified. On expiry of this deadline the Customer is in default of acceptance. In default of acceptance, the Customer shall be obligated to reimburse TOBLER for the damages incurred. In this case TOBLER shall have the right to postpone the delivery at the Customer's expense and risk, to store the goods at its premises and charge an appropriate warehousing fee, or to withdraw from the contract with reimbursement by the Customer of the damages incurred by TOBLER. The Customer is in particular in default of acceptance if it unjustifiably refuses to accept the delivery due to delivery delays. Even if TOBLER consigns or stores the goods at its premises, TOBLER shall have the right at any time, without further reminder or the setting of a grace period, to withdraw from the contract and to demand compensation of the damages it has incurred. Should TOBLER make use of its right of withdrawal, the Customer shall recognise that it owes TOBLER a contractual penalty of 20% of the order value or, in the case of rental contracts, 20% of the total rental fee for the minimum contractual rental period. A withdrawal shall also be deemed to have been declared by TOBLER, even without explicit notification to the Customer, when TOBLER submits a request or claim for payment of the contractual penalty. TOBLER reserves the right to claim further damages.

5. Transfer of risk

5.1. The risk in relation to the delivery object is transferred to the Customer when the shipment leaves TOBLER's premises.

6. Notification of defects

6.1. The Customer is obligated to inspect goods and assembly work immediately upon receipt and execution.

6.2. The Customer must notify TOBLER of any defects within three days in writing. Otherwise the deliveries and services shall be deemed to have been accepted.

7. Material warranty from purchase contract

7.1. Provided the Customer has complied with its duty to inspect and notify in accordance with Clause No. 6, TOBLER shall grant the Customer a material warranty of six (6) months from the dispatch date from TOBLER on new products (excluding formwork timber and plastics or parts thereof, wearing parts, tarpaulins, nets, all plastic parts, small parts such as screws, nuts and bolts, etc. and fastening parts such as cables, tarpaulin binders, etc.). TOBLER shall only be liable for special properties of products if it had assured them in writing. Production or material-related deviations are not reasons for material warranty claims. In all other cases the warranty shall be voided immediately if, without TOBLER's written consent, the Customer or a person authorised by the Customer carries out modifications or repairs of the goods.

7.2. All warranty claims are void if third-party parts have been incorporated. TOBLER shall not be held liable for third-party parts incorporated or if such third-party parts cause a defect or damage or negatively affect the functionality.

7.3. No material warranty is given for used items (second-hand items).

7.4. The material warranty is limited to subsequent improvement or replacement of the defective material parts, whichever TOBLER chooses. Further warranty claims on the part of the Customer, in particular for cancellation of the contract, reduction of the purchase price or compensation of damages, are excluded.

7.5. Replaced material parts become the property of TOBLER, to whom they are to be returned.

7.6. The time limit according to no. 7.1 shall not be extended or renewed due to subsequent improvement work or the delivery of a replacement. The warranty period for the original delivery applies to the subsequently improved or replaced parts.

7.7. TOBLER shall have the right to refuse to rectify defects as long as the Customer has not fully complied with its obligations towards TOBLER.

7.8. TOBLER rejects all material warranty for damage that is due to normal wear and tear, improper or violent treatment, overloading, unsuitable operation and maintenance of the items, use of unsuitable materials, accidents or force majeure.

7.9. Repairs to scaffolding components may only be made by TOBLER, otherwise all warranty claims shall be voided.

8. Retention of title in case of purchase contract

8.1. Ownership of the purchase item shall be retained by TOBLER until full payment has been made of the purchase price, including interest and any other costs. Before storing the purchase item at the premises of any renter, the Customer is obligated to inform the renter in writing of the retention of title.

8.2. The Customer authorises TOBLER to have the retention of title entered at the responsible registry office without requiring the Customer's involvement.

8.3. The Customer may not sell, pawn, lend or hire out the purchase item until it has paid the full purchase price, including all interest and costs. Furthermore, the Customer undertakes not to remove the purchase item from Swiss territory without the express written consent of TOBLER. In the case of any seizure, retention or arrest, the Customer shall draw attention to the retention of title; moreover it shall inform TOBLER in writing immediately and whenever possible before the corresponding measure.

8.4. The Customer is obligated to collaborate at its own expense in measures necessary to protect TOBLER's property.

8.5. The Customer is obligated to insure the purchase item at its own expense and in favour of TOBLER for the duration of the retention of title against all risks that come into question. The Customer shall provide proof of the existence of such insurance on demand. If the Customer does not comply with this demand, then TOBLER shall have the right to take out insurance in its own favour and at the Customer's expense.

8.6. If TOBLER withdraws from the contract in the event of default of payment and invokes the retention of title, TOBLER is obligated to reimburse the purchaser the purchase price instalments and the down-payment. In return, the Customer has to pay TOBLER, for every commenced month since the delivery of the purchased item until its return, compensation for the use of the purchased item and its wear and tear amounting to 5% of the purchase price (net without VAT; in the case of hire-purchase agreements including partial payment surcharge) plus VAT, but no more than the agreed total purchase price. In addition, the Customer has to pay for the costs of the return transport. Furthermore, the Customer has to pay for any damage caused by improper maintenance or use of the purchased item or extraordinary wear and tear (excessive depreciation) and to reimburse TOBLER all costs incurred in the process of asserting its claims (in particular collection, lawyer, debt collection and court costs as well as any costs financed by TOBLER for the return of the purchased item). Finally, the Customer has to pay compensation (based on the contractual purchase price) for those parts of the purchased item that are not returned to TOBLER.

9. Special conditions for renting

9.1. TOBLER delivers to the Customer the rental item selected by the latter and described in the order confirmation and leases it to the Customer to be used for the agreed period in exchange for a fee.

9.2. The rental item remains the property of TOBLER, which is solely entitled to dispose of it. TOBLER is entitled to notify third parties of its property right at its own discretion at any time and/or to mark the rental item as its property.

9.3. The rental item is left to the Customer for use during the agreed rental period. Calendar days, calendar weeks (7 days) and calendar months (30 days) are calculated as rental period units. The day of acceptance and the day of return of the rental item are always considered to be a full rental day. Any started rental week(s) or started rental month(s) exceeding the set rental period agreed in the rental contract will be billed pro rata for each calendar day (1/30 month) on return. If the rental item is returned before the agreed rental period has expired, the Customer is not entitled to a rental rate reduction unless this has been expressly agreed in writing. If no fixed rental contract period is foreseen or if the rental items are used by the Customer beyond the originally foreseen fixed contract period, then both Parties shall have the right to terminate the rental contract at any desired time by giving 3 days' notice. If no set rental period has been agreed, the minimum rental period is one month.

9.4. Rental rates or rental fees are always understood to exclude expenses for the provision of the rental item and transport to and from the place of use. The costs for the provision of the item and the transport costs will be charged separately, provided that the transport is carried out by or on behalf of TOBLER.

9.5. Unless otherwise stated, the rental rates stipulated in the contract do not include the statutory VAT. VAT is to be paid additionally. Should the legislation change, the Customer shall have to pay any taxes that have not yet been taken into account or indemnify TOBLER for this. In this case, TOBLER is entitled to pass on the relevant taxes and duties to the Customer. This applies in particular in the event of an increase in the statutory VAT rate.

9.6. In the case of rental contracts lasting several months, the Customer must pay the first monthly instalment immediately upon acceptance of the rental item. The other monthly instalments are to be paid monthly in advance (the due date) by the Customer. The Customer has to pay daily and weekly rents in advance before accepting the rental item.

9.7. The risk in relation to the rental item is transferred to the Customer when the shipment leaves TOBLER's premises. The benefit of the rental item is transferred to the Customer at the latest at the point in time at which the Customer can dispose of the rental item, i.e. either upon handover of the rental item to the Customer or to a third party determined by the Customer in TOBLER's warehouse or, if TOBLER carries out the transport on behalf of the Customer, upon unloading the rental item at the building site. If delivery is made in accordance with the order to an unmanned building site, TOBLER shall give no guarantee of the intactness and completeness of the delivery. By accepting the rental item, the Customer expressly confirms that it has sufficient specialist knowledge to use and deploy the rental item correctly and functionally.

9.8. The Customer must check the rental item immediately upon receipt. The Customer must notify TOBLER in writing of any defects and quantity deviations within three (3) working days, otherwise it will be assumed that the rental item has been accepted in perfect condition.

9.9. If, in the process of the inspection according to No. 9.8 or subsequently in the course of the rental relationship, the Customer claims defects in the rental item, it must return the latter to TOBLER at its own expense. TOBLER alone shall decide whether the notification of defects is justified. Where the notification of defects is justified, TOBLER shall decide at its own discretion whether to hand over a replacement rental item to the Customer or to choose to repair the rental item. Any claims for damages by the Customer against TOBLER are expressly excluded. Repairs to the rental item may only be carried out by TOBLER.

9.10. The Customer shall handle the rental item carefully and maintain it appropriately. Damage and excessive wear caused by improper use of the rental item are to be reimbursed by the Customer and will be invoiced to the Customer. Formwork material is to be used as sparingly and carefully as possible and should not be cut. In particular, all formwork is to be treated with release agent before concreting. On no account may formwork beams be cut. The utmost care is to be taken when compacting the concrete in the formwork so as not to damage the formwork. If the Customer handles the rental item carelessly or contrary to instruction, then TOBLER shall have the right to cancel the rental contract immediately and to retrieve the rental item. The costs of removal transport shall be invoiced to the Customer.

9.11. The rental price for formwork does not include consumables (spacer tubes, plugs, cones, release agent, etc.). When handling the elements, care must be taken that the formwork shells of the elements have no holes and get not scratched (for example by the sharp edges and corners of other elements). Particular care must be taken that the elements are not damaged when cleaning them. After use the formwork is to be placed in the pallets and boxes provided; the small parts are to be placed in crates. Any necessary cleaning, sorting and repair work will be invoiced separately. Lost small parts are to be reimbursed.

9.12. If the Customer is in default of payment of the rental fees or handles the rental item carelessly or contrary to instruction, then TOBLER shall have the right to cancel the rental contract immediately and to retrieve the rental item. Furthermore, the Customer is obligated to pay compensation for damages in case of premature cancellation of the rental contract. In particular, TOBLER is to be placed in the position in which it would have been if the rental contract had been in force for the entire foreseen rental period. TOBLER shall not be obligated to provide for further renting out of the rental objects during the foreseen remainder of the contract period.

9.13. When accepting the rental item, the Customer is required to inform TOBLER of the place of use of said item. Should the place of use of the rental item change during the rental period, the Customer must inform TOBLER of the new place of use before the change has happened. If the Customer fails to provide this information, it will be liable to TOBLER for all costs incurred by the latter for any inquiries, searches, transports, etc.

9.14. The rental item must be adequately insured against fire, theft, water, liability, etc. by the Customer at its own expense.

9.15. If the Customer transfers the rental item to third parties, it shall be liable for these third parties as it is for itself. Subleasing the rental item is prohibited.

9.16. The Customer is required to notify TOBLER immediately of any sequestration of the rental item, in particular through seizure, retention or levy of execution, and to inform the responsible debt collection or bankruptcy office or other third party of TOBLER's ownership of the rental item. The Customer shall bear all costs incurred by TOBLER in averting such attacks, unless it can prove that it is not at fault.

9.17. At the end of the rental period all rental items are to be returned in a cleaned condition, otherwise the Customer shall be invoiced for the costs of the subsequent cleaning. The return transport is the responsibility of the Customer and shall take place at the latter's expense. The rental item is to be prepared for unloading in such a way that it can easily be lifted with the crane. Should any additional work be necessary when unloading, such as rearrangement or the like, this will be invoiced for in addition. Subsequent cleaning and repair work will be charged to the Customer at CHF 90.00 per hour. Lost or beyond repair parts will be charged at the prices stated in TOBLER's current price list.

9.18. TOBLER checks the rental item once it has been returned. TOBLER may notify the Customer of any incomplete return or defects in the rental item or excessive wear and tear to the rental item within seven (7) working days and subsequently charge the Customer for the associated expenses and damage.

9.19. Furthermore, the remaining provisions of the present T&Cs shall apply mutatis mutandis to the rental.

10. Static calculations

10.1. Static calculations, planning work, project management, engineering, etc. are not included in the prices. They will be invoiced separately according to the request and any requirements of the Customer. TOBLER may hire third parties to carry out such work, in particular MATO Constructions GmbH.

11. Prohibition of assignment and offset

11.1. The Customer is not entitled to offset TOBLER's claims with claims of its own against TOBLER unless TOBLER has expressly consented in writing to the offset.

11.2. The Customer is forbidden to assign claims arising from this contractual relationship with TOBLER to third parties.

12. Exclusion of further liability

12.1. All claims on the part of the Customer – apart from those expressly named in these terms and conditions – irrespective of the legal grounds on which they are made, in particular any not expressly named claims for compensation of damages, reduction in purchase price or withdrawal from the contract, are excluded. In no case shall the Customer have the right to claim for damages not occurring to the delivery object itself, namely loss of production, loss of use, loss of orders, loss of profit and other direct and indirect damages.

13. Amendments and bindingness

13.1. TOBLER reserves the right to make changes to the T&Cs at any time. They shall be communicated to the Customer by letter, e-mail or fax and deemed to have been approved if no written objection has been lodged within one month.

14. Copyright

14.1. Drafts, drawings, etc. created by TOBLER shall remain its property without restriction. They may neither be copied nor disclosed to third parties without TOBLER's permission.

14.2. The reproduction of a product, even if exclusively for one's own use, will result in prosecution.

15. Applicable law and place of jurisdiction

15.1. All legal relationships between the Customer and TOBLER are subject to the laws of Switzerland to the exclusion of the UN Convention on Contracts for the International Sale of Goods.

15.2. The exclusive place of jurisdiction for all types of proceedings as well as the enforcement location, the latter however applying only to Customers with a foreign place of residence (Art. 50 Section 2 Swiss Debt Enforcement and Bankruptcy Act), is the place of business of TOBLER in Rheineck. TOBLER is, however, entitled to prosecute the Customer at the court of law responsible for the latter's place of business or residence, or at any other responsible court of law.

Our full general terms and conditions can be found on our website:
<https://www.tobler-ag.com/en/service/gtc.html>

All prices are net of VAT ex warehouse Rheineck.
Deliveries: in accordance with the T&Cs of Tobler AG, Rheineck.