



## General Terms and Conditions (GTC) for formexwatch.com

### 1. Validity of the GTC and conclusion of the contract

- 1.1. These general terms and conditions apply to sales contracts with private customers and companies that are concluded via [www.formexwatch.com](http://www.formexwatch.com) and [www.formexwatch.ch](http://www.formexwatch.ch). The products and services are offered by Formex Watch SA («Formex», «us», «we»).
- 1.2. The General Terms and Conditions (GTC) can be changed at any time.
- 1.3. By ordering an article or creating a user account, the user automatically accepts our terms and conditions.

### 2. Prices and Special Offers

- 2.1. Prices are quoted in CHF, Euro, USD or GBP. VAT, processing, import taxes, and shipping are included.
- 2.2. The provider reserves the right to change the prices at any time. The prices advertised on the website on the order date apply to the customers.
- 2.3. The conditions for promotions and discounts are available on the relevant information.

### 3. Delivery terms

- 3.1. Delivery shall be made as soon as possible. The customer can retrieve his delivery status at any time via his user account. If the customer does not receive the goods within 7 days and no information is available, the customer is entitled to waive the delivery.

### 4. Right of revocation and Right of withdrawal<sup>1</sup>

- 4.1. EU distance selling directive is mandatory for private customers<sup>2</sup>  
Customers can revoke the contract of sale within 30 days without giving reasons and without a penalty payment. The time limit for exercising this right shall commence on the date on which the goods arrive at the consumer. The customer can return already delivered goods at the supplier's expense. Payments already made will be refunded free of charge by the provider.

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<sup>1</sup> A right of withdrawal is not provided for in Swiss law. Section 4 is therefore only to be used if it is not certain whether EU law is applicable on the basis of international private law. Cf. para. 8.1. If Swiss law is applied, the section may be omitted.

<sup>2</sup> The EU distance selling directive was revised at the end of 2007. The exact wording to be chosen under the new directives is still highly controversial at the moment (December 2007). The Internet platform eBay recommends, for example, not to concede any guarantee of the wording as it is shown in Appendix 1.



- 4.2. If the purchase contract is revoked without warranty, the item must be in mint condition and have no signs of use.
- 4.3. If a customer withdraws from the purchase due to late delivery or defects in the goods or other reasons for which the provider is responsible, the provider refunds already paid amounts as well as the return shipping costs.

## **5. Liability and Warranty**

- 5.1. The provider guarantees for the duration of 24 months that the goods have the promised properties, do not have their value or suitability for the preconditioned use of defects and corresponds to the prescribed services and specifications.
- 5.2. The buyer must check the delivered goods as soon as possible and report defects immediately. The responsible customer service can be found at [www.formexwatch.com/service](http://www.formexwatch.com/service). Secret defects can still be objected to after commissioning or use of the goods. The performance of payments shall not be regarded as a waiver of notification of defects.
- 5.3. If there is a defect, the buyer has the choice to demand free repair, to withdraw from the contract or to obtain replacement delivery. The right of the buyer to claim compensation is reserved in all cases.

## **6. Payment**

- 6.1. The payment is possible at the customer's request in the following ways:

- Customers in Switzerland can order on account.

With the PowerPay monthly invoice, you can simply pay your online purchase by invoice with an installment option. As an external payment service provider, MF Group/PowerPay offers the payment method «Invoice payment». At the conclusion of the purchase contract, PowerPay takes over the resulting invoice claim and handles the corresponding payment modalities. In addition to our general terms and conditions, if you purchase on an account, you accept the [terms](#) of PowerPay. ([powerpay.ch/en/agb](http://powerpay.ch/en/agb)).

Please note that for partial payment from the second invoice an administration fee and for the part and late payment additional fees according to the [GTC](#) of PowerPay are incurred.

- The customer can pay by Papal. In this case, payment processing is subject to the terms and conditions of PayPal.
- The customer can make a bank transfer. In this case, the goods will be sent after receipt of payment on our account.



- 6.2. In case of late payment, the provider will send a maximum of two reminders. A fee of CHF 20 will be charged for the second reminder. If the customer does not pay, enforcement measures are initiated. In addition, the late payment will be charged a default interest of 1.5 percent. Claims for damages remain reserved.

## **7. Liability for Online Connections**

- 7.1. The provider undertakes to ensure security according to current technical status in systems, programs etc. which belong to him and to which he has influence, and to comply with the rules of data protection.
- 7.2. Customers have to ensure the security of the systems, programs, and data that are in their sphere of influence. Customers should keep secret passwords and usernames in their own interest to third parties.
- 7.3. The provider is not liable for defects and malfunctions which he is not responsible for, especially for safety deficiencies and downtimes of third-party companies with which he collaborates or is dependent on.
- 7.4. Furthermore, the provider is not liable for force, tear and disregard of the risks on the part of the customer or third parties, excessive stress, inappropriate resources of the customer or third parties, extreme environmental influences, intervention of the customer or Interference by third parties (viruses, worms, etc.) that happen despite the necessary current safety precautions.

## **8. Application of law and Court of jurisdiction**

- 8.1. This GTC shall be governed by the law of the State in which the customer has his habitual residence<sup>3</sup>.

*For business customers*

Swiss law applies to this GTC, in particular, the regulations of the OR.

- 8.2. *For Swiss consumers*

directed by Jurisdiction law articles 21 and 22

The Court of the residence or domicile of one of the parties is responsible for actions of a customer. The Court is responsible for actions of the provider in the residence of the defendant party.

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<sup>3</sup> Attention: cf. Footnote 1 and Annex 1.



## **Appendix 1: Sample formulation right of withdrawal for the German market according to eBay<sup>4</sup>**

If you act as a consumer, you can revoke your contractual declaration within one month<sup>5</sup> without giving reasons in text form (e.g. letter, fax, e-mail) or by returning the goods. We will send you this revocation instruction separately in written form. The period begins the day after you have received the goods and the revocation instruction in text form<sup>6</sup>. In order to maintain the withdrawal period, the timely dispatch of the revocation or the goods is sufficient.

The revocation is to be addressed to:

FORMEX Watch SA  
Wasserstrasse 42                      Mail:    service@formexwatch.com  
CH-2502 Biel/Bienne                    Tel.:    +41 (0)32 333 24 55

### **Consequences of revocation**

In the case of an effective revocation, the services received on both sides are returned and, if necessary, used (e.g. interest) to be surrendered. If you cannot return the goods to us in whole or in part or only in a deteriorated condition, you must provide us with value compensation if necessary. This does not apply if the deterioration of the goods is solely due to their inspection<sup>7</sup> as they would have been possible in a retail store or if the intended use of the goods is induced.

The Parcel is to be returned at our risk. Items that cannot be sent by parcel will be picked up by you. You have to bear the costs of the return shipment if the delivered goods correspond to the ordered and if the price of the item to be returned does not exceed an amount of 40 Euro or if you at a higher price of the item at the time of revocation still not the Payment or a contractually agreed partial payment. Otherwise, the return is free of charge.

Obligations to refund payments must be fulfilled within 30 days of the dispatch of your declaration of revocation.

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<sup>4</sup> This instruction is based on the model for a revocation instruction provided by the German legislator in appendix 2 to § 14 BGB-InfoV, which according to § 14 paragraph 1 BGB-InfoV satisfies the requirements for a proper revocation instruction (so-called Acceptance by Default). Whereas it was, therefore, necessary to maintain as far as possible the text of the official model in order to maintain the acceptance by default, also confirmed by some courts;

<sup>5</sup> It is controversial whether the eBay marketplace, which is based on this revocation instruction, can be instructed in text form before the conclusion of the contract, due to the special features of the contract. This was assessed differently by the courts. The grant of a one-month revocation period provides greater legal certainty.

<sup>6</sup> In contrast to the formulation of the official model, the wording is precisely the beginning of the period. It takes into account the provisions of Section 312c paragraph 2 and Section 355 paragraph 2 BGB according to which the period does not begin until the consumer has received a clearly designed instruction in text form and the goods. In addition, the regulation of Section 187 paragraph 1 according to which a time limit triggered by a particular event begins, it only starts on the day following the event triggering the time limit.

<sup>7</sup> The model revocation instruction waives the assertion of a value-based compensation for a deterioration caused by the intended usage of the goods. Whether such a compensation can be demanded is controversial and is judged differently by the courts.