

## Terms and conditions

### 1 Scope

- 1.1 The following general terms and conditions (T&Cs) shall form part of all contracts with

PORTICA GmbH Marketing Support  
Managing directors: Jan te Neues, Martin Wielens  
Von-Galen-Str. 35, 47906 Kempen, Germany  
Tel.: +49 (0) 2152 915-0,  
Fax: +49 (0) 2152 915-100  
E-Mail: info@portica.de  
Local court of Krefeld HRB 8978  
Turnover tax identification no.: DE 119 99 73 36

- hereinafter referred to as the "contractor" -

- 1.2 Oral subsidiary agreements and deviating agreements must be made in writing.
- 1.3 Terms and conditions of the contractual partner in contrast to or deviating from the following general terms and conditions shall not be applicable. The following terms and conditions shall also exclusively apply if the contractor executes deliveries and renders services without reservation in knowledge of terms or conditions in contrast to or deviating from the following terms and conditions.
- 1.4 The following terms and conditions shall only apply vis-à-vis companies within the meaning of § 310 Para. 1 BGB (Civil Code).

### 2 Conclusion of contract

The contract with the customer shall only come into existence on receipt of an order confirmation or when the order is executed.

### 3 Prices, terms of payment

- 3.1 The specified prices for each current quote shall apply. Shipping and postage expenses shall be charged separately and shall be due immediately and net without deduction by means of advance payment.
- 3.2 If special difficulties arise due to the nature of the material to be processed, which result in an increase in the agreed or standard expenses and which were not foreseeable when the contract was concluded,

and the contractor is not responsible for this, a surcharge for additional expenses may be requested.

- 3.3 If necessary, the accrued postage expenses shall be requested as flat-rate postal charges and must be irrevocably credited to one of our accounts three days prior to the postal delivery date, stating the purpose as the reference.
- 3.4 Unless otherwise stated, the indicated prices and other payments are exclusive of the applicable statutory turnover tax.
- 3.5 Invoices shall be due immediately, provided no other agreements have been made in writing.

### 4 Delivery, delay

- 4.1 Agreements on delivery dates and times must be presented in writing.
- 4.2 Compliance with supply commitments shall require proper fulfilment of the customer's obligation. This includes the clarification of all technical matters. Moreover, the customer shall hand over all documents necessary for the execution of the order as well as material to be provided by the customer to the contractor in good time or on the agreed delivery date. The same applies to timely advance postage payment according to It. 3.3. The objection of non-fulfilment of the contract shall not be affected.
- 4.3 If the customer is in default of acceptance or culpably violates other obligations of participation, the contractor shall be entitled to request indemnification for the loss arising in this respect, including possible additional expenses. Further claims shall not be affected.
- 4.4 Provided the conditions stipulated in It. 4.3 prevail, the risk of accidental loss or accidental deterioration of the purchased item shall be transferred to the customer at the point of time at which he becomes in default of acceptance or payment.
- 4.5 The agreed delivery deadline shall be considered complied with if the period has not expired on the day of handover to the haulage contractor or the forwarding agent.

### 5 Letter shop and dispatch work

- 5.1 In view of the goods received daily, the contractor cannot inspect the quality or check the quantity of the material to be procured and processed by the customer. The contractor shall not have a special duty to examine whether the materials to be delivered by the customer also fulfil his requirements.
- 5.2 In the event of a discrepancy as regards a deviation from the required quality and quantity, claims can

only be filed against the contractor if wilful intent or gross negligence prevails.

- 5.3 Costs arising from incorrect delivery of materials – e.g. due to reprints – must be borne by the customer, insofar as the contractor is not responsible according to the aforementioned regulations in It. 5.1 and 5.2.
- 5.4 Liability shall not be assumed for printed matter or other materials, or addresses and card indexes, given to the contractor for processing, unless the contractor has acted intentionally or in gross negligence. In such cases the liability shall be restricted to indemnification for the loss foreseeable upon conclusion of the contract.

## 6 Services of third parties

The contractor shall be entitled to make use of third parties in compliance with the regulations of the Federal Data Protection Act (Bundesdatenschutzgesetz) in rendering the commissioned services. The above parties shall be disclosed at the customer's request.

## 7 Guarantees, liability

- 7.1 The contractor shall not guarantee any specific properties or other qualities in the services rendered.
- 7.2 Liability for the services rendered shall only be assumed in the case of wilful intent or gross negligence or if key contractual obligations have been violated.
- 7.3 In the case of minor negligence the contractor shall only be liable when injury to life, limb or health has occurred due to conduct for which the contractor is responsible, as well as for claims according to the Product Liability Act (Produkthaftungsgesetz). Unless intentional violation of duty prevails, liability shall be limited to foreseeable contract-typical damage.
- 7.4 On delivery of a good the customer shall explicitly acknowledge the warehouses made available by the contractor as appropriate. In the event of any damage to the stored goods the contractor shall only be liable within the scope of wilful intent or gross negligence. The deposited goods shall only be insured upon special request and under assumption of costs by the customer.

## 8 Warranty

- 8.1 Insofar as legal warranty claims arise in connection with the rendering of services, such claims shall be statute-barred within one year after the risk is transferred. Within the scope of subsequent fulfilment the contractor shall reserve the right to choose

between subsequent improvement and additional delivery. The requirement to make a complaint according to § 377 HGB (Commercial Code) shall also apply for works services. Otherwise, the assertion of claims based on defects shall depend on written notice being submitted within one week after their initial identification.

- 8.2 When a contract is handled through several deliveries each individual delivery must be inspected and, if required, any complaints submitted within the specified time limit.

## 9 Data processing

- 9.1 The current legal version of the Federal Data Protection Act (Bundesdatenschutzgesetz) shall apply as amended for the processing, use and storage of data and the procurement of addresses and their use.
- 9.2 PORTICA recommends encrypted data transfer for sensitive data. PORTICA assumes no responsibility for resulting damages if data is transmitted without proper encryption.

## 10 Reservation of title

- 10.1 Until the purchase price has been fully paid the contractor shall retain title to the supplied goods.
- 10.2 Processing or remodelling of the supplied objects by the customer shall always be carried out for the contractor.
- 10.3 If the supplied objects are processed with other objects not belonging to the contractor or increased in value by a service, the contractor shall acquire co-ownership of the new item in a proportion corresponding to the value of the supplied objects (final amount of invoice incl. VAT) as compared with the other processed objects at the time of processing. In other respects the same shall apply to the item resulting from processing as to the objects supplied under reservation.
- 10.4 If the property of the contractor is inseparably combined with other objects not belonging to him, the contractor shall acquire co-ownership of the new item in a proportion corresponding to the value of the purchased item (final amount of invoice incl. VAT) as compared with the other combined objects at the time of combination. If combination takes place in such a way that the customer's item is regarded as the main item, it is considered agreed that co-ownership shall be transferred proportionally from the customer to the contractor. The customer shall keep the sole ownership or co-ownership in custody for the contractor.
- 10.5 Upon request from the customer the contractor shall be obliged to release the securities due to him insofar as the realisable value of the securities exceeds the claims to be secured by more than 10 %. Selection of the securities to be released shall be incumbent on the contractor.

## **11 Transfer of risk, dispatch**

- 11.1 Unless otherwise stated in the order confirmation, delivery shall be “ex works”.
- 11.2 Dispatch shall always be carried out for the account of and at the risk of the customer. This shall also apply when it takes place with the contractor’s own means of transportation.
- 11.3 If dispatch is delayed for reasons for which the customer is responsible, the risk shall be transferred to the customer upon notification of readiness for dispatch.

## **12 Final provisions**

- 12.1 The place of performance shall be the contractor’s place of business.
- 12.2 The law of the Federal Republic of Germany shall apply exclusively. Application of the UN Convention on Contracts for the International Sale of Goods shall be excluded even as far as it has become domestic law.
- 12.3 Provided the contractual partner is a merchant who has been entered into the commercial register, the contractor’s place of business shall be agreed as the place of jurisdiction.
- 12.4 If individual provisions of the contract, including these regulations, are or become ineffective in full or in part or if the contract is incomplete as regards the regulations, the effectiveness of the remaining provisions shall remain unaffected. Ineffective or missing provisions shall be replaced by adequate legal regulations.

As of 01 April, 2020