

## General Terms and Conditions of Business of puertaSystems Corporation

### Art. 1 Subject Matter

**1.1** The use of all programs, add-ons and solutions, individually created or generally valid special applications, databases, applications, information, specimen contracts, explanations and other services (hereinafter called "Services") provided by puertaSystems Corporation (hereinafter called "puertaSystems") either in return for payment or free of charge is governed by the provisions set forth below.

**1.2.** puertaSystems does not recognize the general terms and conditions of any other party and hereby rejects all such terms and conditions by way of precaution.

### Art. 2 Formation of Contract

**2.1** A contractual relationship for use of the puertaSystems Services will come into existence through an order of the customer for the conclusion of a contract (offer) and installation of the Services by puertaSystems (acceptance).

**2.2** Contract amendments shall only be valid if agreed in writing.

### Art. 3 Performance of puertaSystems

**3.1** puertaSystems will enable the customer within the scope of Art. 3.3 of these General Terms and Conditions to use the existing puertaSystems Services and the available puertaSystems media functionalities. The scope of the contractual performance will be as indicated in the existing list of specifications and/or the puertaSystems Services Contract and the annexes thereto.

**3.2** Where puertaSystems provides Services and performance free of charge, it may discontinue the same at any time. This shall not give rise to any claim of the customer or a third party to a price reduction, payment refund or compensation payment.

**3.3** On payment of the due amount in full or the monthly flat-rate utilization charge, the customer will acquire the right to make unrestricted use of the ordered software solution from puertaSystems for itself. The source texts for the software will, however, be retained in the possession of puertaSystems. FTP access to the server is not provided.

### Art. 4 Invoicing

**4.1** Invoices will be rendered in electronic form only, namely by email sent to the email address notified to puertaSystems by the customer.

**4.2** Additional issue of invoices in paper form will take place only on the express request of the customer and in return for payment of a charge (EUR 5.00 per invoice).

### Art. 5 Customer's Duties

The customer has a duty in particular

**a)** to pay punctually the agreed invoice amounts together, if necessary, with value added tax at the relevant statutory rate, and including all invoice amounts for services to which puertaSystems arranges access. For each cheque or direct debit which is not honoured, the customer must reimburse puertaSystems for the costs incurred by the latter in a scope equivalent to the responsibility of the customer for the event giving rise to the costs,


**b)** to inform puertaSystems without delay in writing of any change of name, address, account details, addressee of invoices or matters underlying the contract or to have puertaSystems so informed by an authorized third party,

**c)** to ensure compliance with statutory regulations and official requirements in the country of use, insofar as this should be necessary now or in future for the utilization of puertaSystems Services,

**d)** to pay attention to and comply with the recognized principles of data security and data protection and the corresponding statutory regulations in the respective country of use,

**e)** to report any discernible faults or defects without delay and to take all measures to enable the fault or defect and its cause to be identified or to facilitate and expedite elimination of the disturbance,

**f)** in the event of reporting a fault, to reimburse puertaSystems for the costs incurred by it in checking its installations if and insofar as it should emerge after examination of the respective puertaSystems software that the fault lay within the sphere of responsibility of the customer,



g) to keep its access data such as client number, password and user ID secret. The customer is prohibited from making such data accessible or available to any third party. Should the customer breach any of its aforesaid duties, puertaSystems shall have the right, after warning the customer to no avail, to terminate the contractual relationship without observing any period of notice.

#### **Art. 6 Terms of Payment**

**6.1** Where the customer has rented the software from puertaSystems for a fixed term, invoices will be rendered for each calendar quarter in advance, whereby the respective invoice with the new invoice amount will be sent to the customer 10 days before the end of the preceding calendar quarter.

Where recurring rental payments are payable, these will fall due automatically on the 1st day of the relevant calendar quarter without any invoice having to be issued. Where special services are invoiced, the amount stated in the invoice will become due and payable on receipt of the invoice. The invoice will be deemed to have been received when it is available on the customer's email account.

**6.2** The customer will furnish puertaSystems with direct debit authorization. After receipt of the invoice by the customer, puertaSystems will debit the invoice amount by direct debit from the customer's account, provided this is possible and economically reasonable. Optionally, the customer may also pay by paypal or other similar payment system or else by credit card. In this case, the customer shall furnish puertaSystems with the necessary credit card data on conclusion of the contract. Regardless of any of the foregoing, the customer shall take care that any due payment is received by puertaSystems on the due date.

**6.3** Insofar as the performance to be provided by puertaSystems consists of ready-for-operation provision of Services and the ready-for-operation provision does not fall on the beginning of a month, the agreed monthly payment shall nevertheless also be due in full for the month in which the ready-for-operation provision takes place.

**6.4.** In the case of purchase of software from puertaSystems, payment of the agreed purchase/invoice amount must be effected by remittance, without any deduction, to the account designated by puertaSystems before final activation and use of the software or at the latest within 14 days from conclusion of the purchase contract.

#### **Art. 7 Exclusion of Objections**

Should the customer wish to make objections concerning the amount of any invoiced item, it must do so in writing to puertaSystems within eight weeks from receipt of the invoice. Failure to raise timely objections will be deemed tantamount to unqualified approval. puertaSystems will draw specific attention in the invoice to the consequences of failure to raise objections in good time. This shall be without prejudice to the customer's statutory rights in the case of justified objections even after expiry of the time limit.

#### **Art. 8 Delay**

**8.1** In the case of any delay in payment by the customer, puertaSystems has the right to deactivate the provided Services at the customer's expense and/or to remove the respective content from the internet if the claim in respect of which the customer is in delay is equivalent to an amount of at least EUR 100.00. In this case, the customer will still have a duty to continue paying the monthly invoice amounts.


**8.2** Should the customer

a) fall into arrears for two consecutive months with payment of the invoice amounts or a significant portion thereof or,

b) fall into arrears during a period extending over several months with payment of the invoice amounts in an amount equivalent to the monthly basic price or the monthly package price for two months, puertaSystems may terminate the contractual relationship without observing any period of notice.

**8.3** puertaSystems expressly reserves the right to make further claims for delay in payment.

**8.4** Additionally, in the case of rent contracts in which the customer has undertaken to pay a monthly rental/invoice amount, puertaSystems is entitled, in the event of terminating the contract as set forth in Art. 8.2, to claim lump-sum damages from the customer in an amount equivalent to 50% of the monthly rental/invoice amount that would have been payable up to the end of the minimum contract term (Art. 10.2). This shall not apply if the customer is able to furnish proof that no loss or damage has been incurred or that the loss or damage actually incurred is significantly less than the amount of the lump-sum damages.



**8.5** Should puertaSystems fall into arrears with its owed performance, its liability shall be as set forth in Art. 11. The customer is only entitled to repudiate the contract if puertaSystems fails to comply with a deadline set by the customer which allows puertaSystems an additional time of at least two weeks.

### **Art. 9 Changes to the General Terms and Conditions of Business, the Performance Description and Invoice Amounts**

**9.1** Should puertaSystems intend to change the General Terms and Conditions of Business, the performance description or the invoice amounts, it will submit a written offer to the customer for change of contract. Should the customer not reject this offer in the required form and in good time pursuant to Art. 9.2, the offer will be deemed accepted. In this case, the change will come into effect one (1) month after receipt of the offer. Should the customer reject the offer in the required form and in good time, however, the contract will continue in force unchanged.

**9.2** The customer's rejection (Art. 9.1) will only be deemed to be in the required form and to have been made in good time if it is made in writing and is received by puertaSystems within one (1) month from receipt of the offer. puertaSystems will draw express attention in the offer to the requirements to be met by the rejection and to the legal consequences as set forth in Art. 9.1-9.2.

**9.3** Where the customer has rejected the offer in the required form and in good time and if puertaSystems thereupon notifies the customer in writing that continuation of the contract without the changes would be unreasonable for puertaSystems for technical or financial reasons, the customer may give notice of termination of the contract within one (1) month of receipt of puertaSystems' notification. The notice of termination must be given in writing.

#### **If and insofar as the customer**

**a)** does not give notice of termination or does not do so in the required form and in good time, or  
**b)** does not expressly declare in writing within one (1) month from receipt of the notification that it demands fulfilment of the contract in unchanged form,

this shall be deemed permanent waiver by the customer of that part of the performance the provision of which was, according to the notification, unreasonable for puertaSystems. In this case, puertaSystems shall have the right to implement the contract in such manner as if the change to the contract had come into force.

**9.4** If and insofar as the notice of termination by the customer (Art. 9.3) is given in the required form and in good time, this will cause the contract to end at the end of the month in which the notice of termination is received by puertaSystems. puertaSystems will draw express attention in the notification to the requirements to be met by the notice of termination and the declaration under Art. 9.3 b) and to the legal consequences detailed in Art. 9.3-9.4.

**9.5** In the case of any change in the statutory rate of value added tax and/or any change in the cost situation, puertaSystems shall have the right to adjust the invoice amounts accordingly.

**9.6.** If and insofar as puertaSystems should grant temporary discounts on the monthly rental price as a result of introductory offers or special campaigns, it shall have the right at any time after expiration of the agreed period with a lower rental price to increase the rental to the normal price level payable by the customer according to the price list in the version in force from time to time for the Services of which it avails itself, without this giving the customer a right of termination.


### **Art. 10 Termination**

**10.1** Contracts without a fixed term: The contract may be terminated by either party at the end of a month with three months' prior notice. The period of notice will begin on receipt of the written notice by the other contract party.

**10.2** Contracts with a fixed term of 12 months: The earliest date of termination for both parties is the end of the minimum term of the contract. The written notice must be received by the other party at least 3 months before the end of the minimum term of the contract.

If notice of termination is not given by either party, the contract will be automatically renewed for successive periods of 12 months. For termination of the contract at the end of the first renewal period or any subsequent renewal period, notice must likewise be given in writing at least 3 months before the end of the respective period.

**10.3** The foregoing shall be without prejudice to the right of either party to give notice with immediate effect for cause. Such cause shall be deemed to exist if either party commits gross breach of any of its obligations expressly provided for in this contract and also and in particular if insolvency proceedings are opened against the other party or if the other party becomes insolvent or bankrupt. Cause shall also be deemed to exist if, in the case of a rent contract, the customer is in arrears with payment of the due amount or a not insignificant part of the due amount on two



successive payment dates or, in a period extending over more than two payment dates, is in arrears with payment of the due amount in a sum corresponding to the amount due for two months. The same shall also apply analogously if the customer is more than 4 weeks in arrears with payment of the software maintenance fees.

**10.4** All notices of termination pursuant to this contract must be made in writing by the customer to the address of puertaSystems or in writing by puertaSystems to the address of the customer.

### **Art. 11 Limitation of Liability**

**11.1** puertaSystems shall have unlimited liability for wilful intent or gross negligence.

**11.2** Otherwise, puertaSystems may only be held liable for ordinary negligence in the case of breach of a material contractual duty. Liability for indirect loss or damage, in particular consequential harm caused by a defect, as well as unforeseeable or untypical loss or damage or loss of profit is excluded.

**11.3** The foregoing shall be without prejudice to puertaSystems' liability under the provisions of the German Product Liability Law or on grounds of fraud or under warranty.

**11.4** puertaSystems does not assume any warrant for the correctness or completeness of the content of information offered by itself or third parties.

### **Art. 12 Use by Third Parties**

**12.1** Except with puertaSystem's written consent, the customer is not permitted to make the Services available to third parties for their continuous sole use or to third parties for commercial use. If written consent is given to use by third parties, the customer must instruct the third parties in a due and proper manner in use of the puertaSystems Services. The contract concluded with puertaSystems does not entitle the customer to itself act as a supplier using puertaSystems Services and to offer puertaSystems Services to third parties.

**12.2** The customer must also pay the invoice amounts arising from use of the Services by third parties with the customer's permission. This applies in particular to invoice amounts for Services to which puertaSystems arranges access.

**12.3** Invoice amounts arising through unauthorized use of the Services must be paid by the customer if and insofar as the customer is responsible for the unauthorized use. Should the customer's access data such as client number, password and user ID fall into the hands of third parties, the customer need only pay the costs for use of the Services incurred up to the time of receipt of the report by puertaSystems. The same also applies to invoice amounts for Services to which access is provided through puertaSystems.

### **Art. 13 Assignment of Contract**

The customer may assign its rights and duties under this contract for the Services provided by puertaSystems to a third party only with the prior written consent of puertaSystems.

### **Art. 14 Data Protection**

**14.1** The stored customer data may not be utilized further or passed on to third parties by puertaSystems except with the consent of the customer.

**14.2** puertaSystems is authorized to name the customer as a reference and to refer in general to the contract concluded between them in an appropriate manner for marketing and sales purposes.

**14.3** The customer has a duty to keep security-relevant data secret and to ensure the proper use of such data. In the event of acquiring knowledge of unlawful use of passwords by third parties, the customer must inform puertaSystems immediately.

**14.4** Where, within the website, the possibility exists to enter personal or business data (email addresses, names, addresses, bank account details, telephone numbers), the provision of such data by the user is expressly voluntary. The utilization of and payment for all the offered services is, to the extent technically feasible and reasonable, also possible without the provision of such data or with the provision of anonymized data or a pseudonym.

### **Art. 15 Availability of the puertaSystems Services**

#### **15.1 Server**

puertaSystems warrants high availability of its servers on average over the year. Excepted from this are times in which the servers are not accessible as a result of technical or other problems which are beyond the control of puertaSystems (force majeure, culpability of third parties etc.). puertaSystems may restrict access to the Services if such restriction is necessary for the safety and reliability of network operation, for maintenance of the integrity of the network, and in



particular the avoidance of severe disturbances to the network, the software or stored data. Unless agreed otherwise, data transfer is included in the tariff. The data transfer volume used is calculated as the sum of all data transfers (e.g. emails, downloads, uploads, websites) associated with the customer's order. For purposes of calculating the data transfer volume, one gigabyte is equivalent to one thousand megabytes, one megabyte to one thousand kilobytes and one kilobyte to one thousand bytes.

**15.2** puertaSystems will remedy disturbances of its technical installations as quickly as possible within the scope of its existing technical and operating capabilities. Interruptions to operation are possible. The customer has no claim to uninterrupted availability.

**15.3** Necessary interruptions to operation for preventive servicing and maintenance work need not be notified in advance by puertaSystems.

**15.4** Unless agreed otherwise in writing, invoice amounts for software are exclusive of training and support (hotline, updates, remote maintenance, etc.). Services of all kinds are invoiced at the hourly rates of puertaSystems applicable at the time. This also applies during the warranty period. Costs for the hotline can be taken from the price list in the version in force from time to time. Updates and upgrades are subject to charge.

## **Art. 16 Software**

**16.1** Insofar as computer programs form part of the scope of delivery, the customer is granted an ordinary unrestricted right of use thereto. This means that the customer may neither copy the programs nor provide them to others for use free of charge. The customer may use a program only for that number of users it has contractually agreed with puertaSystems. Multiple installation by the customer is prohibited. The program is registered at puertaSystems with the contractually agreed number of users. In the event of any breach of this restriction on use by the customer, the customer will first have a duty to pay to puertaSystems the difference between the purchase price actually paid and the purchase price that should have been paid for the number of workplaces in fact being used; the customer additionally has a duty to pay liquidated damages in an amount equivalent to five times the aforesaid difference.

**16.2** Where the customer has purchased the program or program carrier, the customer may not use the same for resale. The customer is not permitted to reproduce the program either in whole or in part, including also for purposes of data backup. puertaSystems draws the attention of the customer to the fact that the software is protected by copyright and that violation of copyright is a punishable offence. Insofar as the programs provided are not protected by copyright, the software concerned represents confidential puertaSystems know-how. The customer recognizes these latter programs as being subject to the same conditions as those applicable to the programs which are protected by copyright.

**16.3** Multiple right of use is only granted by special written agreement. In the case of any violation of this right of use, the customer will be held liable in full for the resulting loss or damage.

**16.4** puertaSystems' performance duty encompasses supply of the object program and/or utilization of the Services only, but not supply of the sources.

**16.5** The performance descriptions of the software programs are definitions of the subject matter of the contract and are therefore not warranties within the meaning of warranty law.

**16.6** The customer bears sole responsibility for choice of the software program in terms of hardware compatibility and the specifications desired by the customer. The minimum requirements that must be fulfilled by the hardware and the operating system together with the EDP system recommendations must thereby be noted and complied with.

**16.7** Liability on the part of puertaSystems for loss or damage and pecuniary loss arising from use of a program is excluded except where the loss or damage is due to grossly negligent or deliberate breach of contract by puertaSystems. Responsibility for correct use of the programs and for data backup lies exclusively with the customer. Art. 11 shall apply accordingly.

**16.8** Manuals are revised once a year in line with the software; improvements or inconsistencies are therefore possible. The firm's number and licence codes may only be used in a system of the customer. Disclosure of this data to third parties or multiple use of the data in the customer's own systems is illegal and may give rise to technically irreparable damage. This and all consequential loss or damage will have to be borne in full by the customer.

## **Art. 17 Confidentiality**

The parties to this contract undertake to treat all knowledge of operating and business secrets which they – and their vicarious agents – acquire in the stages prior to conclusion of a contract or during performance of the contract as confidential.

**Art. 18 Website Content:**

No information contained in the websites may be deemed as constituting a legal warranty. puertaSystems reserves the right, if need be, to make amendments or additions to the information or data provided. No legal claims may be inferred from the topic areas described here. Offers are wholly without engagement. puertaSystems content is protected by copyright. Except with the prior written consent of the author, the content may not, either in whole or in part, be duplicated, reproduced, published or stored in an information system.

**Art. 19 Written Form**

All agreements containing an amendment or addition to or concretization of these contract terms and conditions as well as any special warranties and understandings must be recorded in writing. If they are made by representatives or assistants of puertaSystems, they shall only be valid if approved by puertaSystems in writing.

**Art. 20 Conflict with other Terms and Conditions**

Pursuant to Art. 1 1.2 hereof, any contract that comes into force shall be governed exclusively by the provisions of puertaSystems. Terms and conditions of business or terms and conditions of purchasing of the customer shall not become part of any contract even if they are not expressly rejected by puertaSystems. Art. 1 1.2 shall apply analogously.

**Art. 21 Domains/Domain Possession in Case of Termination or Payment Arrears:**

The domain will remain registered in the customer's name up to the end of the period paid for by the customer.

After an additional period of time for payment allowed by puertaSystems has elapsed without payment being made, puertaSystems shall in particular have the right, without giving any further notice to this effect, to cease maintaining registration of a domain and to release the domain. However, also in this case, puertaSystems' claim to payment shall remain fully in force.

The exclusive right of possession of its Internet domain shall remain with the customer.

**Art. 22 Severance Clause**

In the event of any of the clauses of the present agreement being wholly or partially invalid, the invalid provisions shall be reinterpreted, amended or replaced in such manner that the financial purpose intended by the invalid provision is achieved. The same shall also apply analogously in the event that any omissions should be found in this agreement.

**Art. 23 Rights/Links:**

All rights reserved. The information presented is the property of puertaSystems. It represents the latest information at the time of publication. Liability or warranty for the up-to-dateness, correctness or completeness of the information or data provided is barred. This also applies to all other websites and also websites of puertaSystems' customers to which reference is made via a so-called hyperlink. Nor does puertaSystems have any responsibility for the content of such websites. All information or data and use thereof as well as all acts, omissions or tolerations in connection with the puertaSystems website shall be governed exclusively by the laws of the State of Florida, USA, whereby application of international law is barred. The place of performance and the exclusive legal venue is Boca Raton, Florida.

Special written agreements for certain sales countries shall, if concluded, apply additionally.



## Your contact partners

In the case of queries, please contact the following addresses:

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