

General terms and conditions of Sales and Delivery of PoolOne Giant Media GmbH (PoolOne)

§ 1 General Provisions

1. Provision of goods and services by PoolOne takes place exclusively on the following terms and conditions. In case of individual lines of business they will be supplemented by special contractual conditions. Offers submitted by PoolOne are not binding, and no contract has been entered into until written order confirmation by PoolOne.
The same applies to any changes or additions to contracts.
2. PoolOne acts exclusively on the basis of these general terms and conditions. Any contrary or divergent terms and conditions will not be recognized unless they have been expressly acknowledged as binding in writing. The provision of goods or services by PoolOne shall be deemed to constitute order confirmation.

§ 2 Supply of Goods

1. The place of delivery will be stated in the contract. If no such arrangement is made PoolOne place of dispatch shall be deemed the place of delivery and performance. The delivery date shall be the date on which the goods to be supplied by PoolOne are ready for collection or despatch. Delivery dates or other deadlines cited by PoolOne are only binding if they have been expressly designated in writing as such by PoolOne.
2. In the event of delays in performance on grounds for which PoolOne is not responsible, as well as instances of force majeure, the agreed delivery dates shall be duly extended by the duration of the obstacle to performance.
3. Shipment of the ordered goods to the place designated by the Customer, whether from PoolOne warehouses or direct from the manufacturer, takes place at the Customer's own risk and cost. The customer agrees that PoolOne may, at its reasonable discretion, engage a carrier on behalf of and for the account of the customer to transport the goods ordered by the customer. The forwarder in question is acting for the Customer rather than being an agent or representative of PoolOne. PoolOne may also make deliveries in instalments.
4. The Customer undertakes to pay a storage fee of 1% off the invoice amount for each day of delay in taking receipt of the goods. The Customer reserves the right to prove that lower costs were incurred.

§ 3 Prices/ Terms of Payment

1. PoolOne Prices are ex works plus transportation and consignment costs. The binding prices are those stated in the order confirmation plus the statutory rate of VAT. If no special price arrangements are agreed in relation to an order then the list prices are deemed to have been agreed. However, if there is a period of more than five months between closing the contract and the delivery date PoolOne shall be entitled to raise the prices by the amount of any cost increases which have arisen in the interim (particularly increased material and wage costs).
2. Payment is due within 14 days of invoicing. In the event of payment arrears penal interest as provided in Article §288 BGB of the German Civil Code shall be payable. The Customer is only entitled to offset sums or exercise a right of retention if he has counterclaims which have either been established in law or recognized by PoolOne.
3. PoolOne is entitled to demand advanced payments
4. The production prices for media inserts generally include disposal. The media price includes shipping from the last location of use to the Customer or another address in Germany (excluding islands).
5. PoolOne may withdraw from the contract at any time if circumstances within the Customer's sphere of influence justify the assumption that the Customer will not be able to fulfill its payment obligation under the contract – this applies in particular in the event of compulsory execution, composition or insolvency proceedings against the customer as well as in the event of check or bill protests against the customer - and the customer is not prepared to perform concurrently or provide security despite a request to do so. PoolOne's right of withdrawal shall also exist if these circumstances already existed at the time of signing the contract but only became known later.

§ 4 The Customer's Duty of Cooperation

1. The contract concluded by the Parties states a deadline by which the Customer must furnish PoolOne with the visuals it requires in reproducible form. In the event of late delivery of documents by the Customer the delivery date is delayed correspondingly. If the Customer fails to meet the document submission deadline PoolOne may set an extension period, and after the expiry of said extension period PoolOne will be entitled to cancel the contract. In this event the Customer is obliged to pay damages totalling the entire order amount less any costs saved by PoolOne as a result of cancellation.
The customer reserves the right to prove a lesser damage.
2. The Customer is not entitled to sublet a space he has booked or otherwise transfer on to third parties or allow the posting of third-party posters without the prior written consent of PoolOne. In the event of prohibited subletting, transfer or posting of third-party posters, PoolOne is entitled to cancel the contract without notice, and the above mentioned obligations to pay damages would also apply in this case.

§ 5 Reservation of Title

1. All goods supplied remain the property of PoolOne until payment in full of the purchase price plus all ancillary claims.
2. In the event of the onward sale of the above arrangements, the Customer does not receive payments from the second buyer; the Customer undertakes to pass any sums on to PoolOne without delay.
3. The Customer undertakes to notify PoolOne immediately in writing in the event of the pledging of the purchased items or their confiscation by third parties and to inform said third party of PoolOne's reservation of title. Failure to do so renders the Customer liable for damages. The Customer shall also be liable for all associated legal costs including any costs incurred in recovering items.

§ 6 Warranty

1. In accordance with Articles 377 & 378 HGB, any complaints due to obvious defects must be made in writing to PoolOne immediately on receipt of the goods. If so requested by PoolOne the Customer must return the defective goods in unaltered conditions. In the event of warranty claims PoolOne shall be entitled to freely choose whether to repair the goods free of charge or to replace them either wholly or in part, to the exclusion of any other claim on the Customer's part. Should the attempted repair or replacement delivery fail the Customer may demand either a reduction in price or the rescinding of the contract.
2. Damage and defects caused by incorrect handling or use of the goods are not covered by PoolOne warranty.
3. Warranty claims are excluded if the purchased goods were changed and the defect is due to this change.
4. The colouring of reprints and subsequent posters may differ and this does not represent a defect. Products are subject to minor variations in size, and these too do not represent defects provided they are insignificant for the future use of the products.
5. If, due to the withdrawal of authorisation or architectural/ structural problems, the agreed location cannot be used or can only be partially used for the term of the contract PoolOne is entitled to offer a minimum of two alternative locations of equal quality. After being notified accordingly the Customer undertakes to state without a delay which of the alternative locations he prefers. If he fails to state a preference promptly PoolOne may decide which suitable location to use.
6. PoolOne guarantees the proper installation of the advertising banners produced or delivered by the contractor according to the state of the art. Minor deviations in size shall not be reasons for complaint. Agreements on monthly switching times include a posting time of 28 days. For bookings with lighting PoolOne guarantees lighting at least until 22.00 hrs and from 06.00 hrs.
7. In the event of a defect (except point 5), the Customer's claims are limited to a right to rectify the defect. If PoolOne is not able to remove the notified defect, the customer is entitled to reduce or withdraw from the contract from the occurrence of the defect (e.g. during the posting occurring visibility obstructions > 5days). Any payment already made will be refunded to the customer on a pro rata basis. The customer is not entitled to any further claims for compensation.
8. In the case of advertising spaces that are not included in PoolOne's range of spaces, PoolOne shall guarantee the proper installation of the advertising banner for a posting period of 3 months from installation. If the advertising banner remains in the installed location for longer than three months, an inspection of the installation is necessary. This inspection can be carried out by PoolOne for a fee. If this inspection is carried out by PoolOne, PoolOne shall provide a renewed warranty for a period of 3 months from the inspection.
9. No further warranties will be granted than those stated above.

§ 7 Liability

1. PoolOne's liability for loss or injury resulting from defects of title or absence of a warranted quality is unlimited. Liability for initial inability is limited to twice the contractual value and also to the extent of loss or injury typically to be expected in the course of executing the contract.
2. Similarly, PoolOne shall be liable for any intentional or negligent breach of material contractual obligations (cardinal obligations).
3. In all other respects PoolOne shall only be liable for grossly negligent or intentional conduct of its own or that of its vicarious agents. Liability is limited to the typically expected contractual risks.

§ 8 Force Majeure

1. Force Majeure (storms of Force 8 or greater, public unrest, etc.) breakdowns beyond our control and other circumstances for which PoolOne is not responsible, breakdowns/ stoppages at the suppliers of PoolOne, disruptions of transport systems, etc., as well as all unavoidable events affecting PoolOne or one of the suppliers of PoolOne, will entitle PoolOne to discontinue or suspend the performance of PoolOne either wholly or in part to the extent and for the duration of the disruption. In the event of an impending storm Force 8 or greater we shall be entitled to take down advertising posters in advance. In the above mentioned cases we shall not be liable to pay damages.
2. Any necessary installation or dismantling of the advertising networks will be done at the Customer's costs.
3. If a disruption for the reason referred to in §8, paragraph 1 leads to a suspension or discontinuation of our performance this shall not discharge the Customer from its obligation to make payment. If any such disruption lasts longer than 10 days the Customer may cancel the contract with future effect.

§ 9 Damages and Loss

1. PoolOne cannot accept any liability for damage to or loss of advertising posters if either caused by third parties or resulting from force majeure as referred to in §8.
2. PoolOne will only replace or repair posters if we are contracted in writing by the Customer to do so at the Customer's own cost. Any necessary work putting up or taking down posters will be at the Customer's cost.
3. Days lost during a booked display period due to damage or loss of the advertising network do not give rise to a right to reduction in payments,
4. The advertising posters will be stored free of charge by PoolOne for up to 4 weeks after posting. After this period PoolOne has the right to dispose of the posters free of charge without further consultation with the Customer. For storage of advertising posters beyond 4 weeks, storage costs will be incurred, unless otherwise agreed.

§ 10 Withdrawal

1. If required official permits are not granted, revoked or prohibited for urban development reasons for which PoolOne is not responsible, PoolOne is entitled to terminate the contract without notice. The customer shall be reimbursed for the remuneration already paid. Further claims do not exist.
2. PoolOne may withdraw from the contract at any time if circumstances within the Customer's sphere of influence lead him to the reasonable belief that the Customer may be unable to fulfill payment under the contract, and specifically in the event of enforcement, composition or insolvency proceedings being instituted against the Customer or in case of protest of a cheque or bill of exchange against the Customer and where circumstances already prevailed when the contract was signed but were not disclosed until later.
3. Orders may be cancelled by the Customer free of charge up until 90 days before the planned delivery or installation of the first materials. However, if the Customer wishes to withdraw 89 days or fewer before planned delivery or installation, PoolOne will charge a cancellation fee. In the case of withdrawal from an order 35 days or more before the planned installation date this will amount to 50% of the remuneration owed and 100% of the remuneration if withdrawing 34 days or less, any own costs saved. However, the Customer reserves the right to demonstrate a lesser cost. Notice of cancellation must be given in writing. Fulfilment of the above mentioned periods is determined by the date of receipt of the notice of cancellation by PoolOne.
4. In the event of full or partial withdrawal by the customer, any volume discounts granted shall be forfeited in full and shall not be taken into account when calculating the compensation.
5. Exclusion of competing companies of the customer in the immediate vicinity of the advertising display cannot be guaranteed and does not entitle the customer to withdraw from the contract.

§ 11 Proprietary Rights

1. The Customer hereby affirms, with respect to all submissions to PoolOne, that he possesses the rights of duplication and distribution as well as, in case of images of individuals, the consent to publication, duplication and distribution of the persons depicted. The Customer is liable for any damages due to third parties in the event of any violation of this obligation.
2. The Customer shall indemnify PoolOne against any claims for damages or legal costs in this respect. In particular, PoolOne is entitled to reject or dismantle motifs of the customer that are prohibited by authorities prior to installation. In the event of confiscation or if dismantling is necessary for legal reasons (copyright or competition law, etc.) for which the Customer is responsible, the Customer shall pay the full price for the term plus any additional costs incurred.
3. PoolOne is entitled to use photos, clippings and artistically altered motifs of the printed networks or plans for its own advertising purposes.

§ 12 Place of Fulfilment, Place of Jurisdiction and Applicable Law

1. Provided both parties are businesspersons the place of fulfilment and jurisdiction for all claims is the city of Hamburg, Germany.
2. Should any individual provisions of this Contract be or become invalid this shall be without prejudice to the validity of the other provisions.
3. All contractual relationships based on these general terms and conditions of sale and delivery are subject to German law.

Data Protection

Personal data obtained during the course of our business dealing with the Customer may be stored for contractual execution purposes. PoolOne undertakes to treat as confidential all information of which it becomes aware during the course of said business dealings.

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