

Terms and Conditions for the Purchase of Devices from Publitec Präsentationssysteme & Eventservice GmbH, Gahlenfeldstr. 7a, 58313 Herdecke

The subject of these terms and conditions is the transfer of the devices defined in the quotation or in the order confirmation. Only these terms and conditions and the general terms and conditions of Publitec GmbH apply to the regulation of the contractual relationship. Any general terms and conditions of the customer are expressly excluded.

1. Subject of the Agreement

The customer purchases the devices specified in the quotation or the order confirmation from Publitec GmbH. The technical characteristics of the purchased items are specified in the technical data sheets and product descriptions. Publitec GmbH is not obliged to provide any characteristics going beyond these.

For equipment and software, Publitec GmbH provides the customer with user documentation, if provided by the manufacturer and in the form provided by the manufacturer.

2. Delivery

(1) Scheduled dates are only binding if they have been expressly confirmed by Publitec GmbH in writing. The deadline is considered to have been met if, by the time of its expiry, the goods have been made available in the Herdecke warehouse for collection by the customer and Publitec GmbH has informed the customer of their availability. Unforeseen circumstances and events such as acts of God, governmental actions, the refusal of approvals by the authorities, labour disputes of any kind, sabotage, lack of raw materials, delayed delivery not due to fault, war, riots, etc., postpone the delivery date accordingly, even if they occur during an already existing delay.

(2) If Publitec GmbH ships the goods at the customer's request, this is done at the expense and risk of the customer. For all deliveries, the risk of loss of the goods is transferred to the customer upon delivery to the shipper, the carrier or person otherwise assigned the task of shipping.

(3) If Publitec GmbH misses a delivery date confirmed as binding and if a further delay is not reasonable for the customer, the latter can exercise further rights after default and after the issuing of a reminder with a reasonable grace period. In this case, a claim for damage compensation on the part of the customer is excluded, unless the delay is due to an intentional or grossly negligent act on the part of Publitec GmbH or one of its legal representatives or agents. If the customer is in default of acceptance, Publitec GmbH is entitled to refuse performance after the expiration of a grace period set by Publitec GmbH and to claim damage compensation. Publitec GmbH may instead make alternative use of the goods and provide delivery to the customer with a new, reasonable delivery time

3. Price, Payment, Offset

(1) The prices stated in the quotation or the order confirmation apply.

(2) Transport and delivery costs are billed separately, unless free delivery has been explicitly agreed.

(3) Special services going beyond those contractually agreed and included in the price, and additionally agreed work, such as additional installation work, are billed additionally at the applicable hourly rates of Publitec GmbH and must be paid at the latest upon acceptance of the purchased item.

(4) The customer is only entitled to offset claims that are legally established or undisputed. This does not apply to consumers.

(5) In the case of SEPA direct debits, the pre-notification is reduced to one day. Costs incurred due to non-payment or reversal of a direct debit are borne by the customer.

4. Warranty

(1) Publitec GmbH provides the following warranty:

(1.1) Publitec GmbH provides a 12-month warranty for newly manufactured goods; a warranty for used goods is not provided to entrepreneurs. The warranty period begins with the transfer of risk to the customer.

(1.2) The customer must inspect the goods supplied immediately for defects and inform Publitec GmbH in writing of obvious defects within a period of two weeks from receipt of the goods; otherwise the assertion of warranty claims is excluded. The timely sending of such notification will be considered to constitute compliance with this deadline. The customer will bear the full burden of proof for all claims, in particular for the defect itself, as well as for the time of discovery of the defect and for the timely issuing of the notification of the defect. Notification of hidden defects that only become apparent over time is to be made immediately by the customer, within the aforementioned periods of time after discovery.

(1.3) Notifications of defects will only be recognised by Publitec GmbH if they have been communicated in writing. Notifications of defects given to field staff, carriers or other third parties do not constitute timely notification in the correct form.

(1.4) Where a return is necessary in the case of defects, the goods must be returned to Publitec GmbH together with a fully completed Publitec GmbH claim form (RMA), which will be sent to the customer immediately by Publitec GmbH upon receipt of notification of a defect. Publitec GmbH is under no obligation to accept returns made without an RMA. In this case, the customer bears the cost of the return.

(1.5) In the event that a replacement delivery is made as a result of a justified defect notification, the provisions relating to the delivery time will apply accordingly. For the rectification of defects by means of repair, Publitec GmbH is to be granted a reasonable period of at least three weeks.

(2) The existence of such an identified defect that has been communicated by means of a proper defect notification entitles the customer to the following rights:

(2.1) In the case of a defect, the customer initially has the right to demand supplementary performance from Publitec GmbH. Such supplementary performance shall be rendered, at the choice of Publitec GmbH, either by new delivery (subsequent delivery) or repair (subsequent improvement).

(2.2) In addition, Publitec GmbH is entitled to make renewed supplementary performance within a reasonable period in the event that an attempt to render supplementary performance fails. The above-mentioned choice of approach applies in this case as well. The customer has the right to withdraw from the contract or to reduce the purchase price only once the renewed subsequent performance has failed.

(2.3) The customer may only demand damages or reimbursement of expenses incurred to no avail in cases of gross negligence or intentional breach of the obligation to deliver goods free from defects on the part of Publitec GmbH. In such cases, the customer must prove the grounds for and the amount of damages that are being claimed. The same applies regarding expenses incurred to no avail.

(2.4) The burden of proving the existence of a defect lies with the customer.

(3) The warranty for defects does not apply to items subject to natural wear and tear, such as light bulbs, air filters, rubber, fuses, batteries, ribbons, etc. It also does not apply to damages incurred after the transfer of risk as a result of incorrect or negligent handling, excessive strain, use of unsuitable equipment, or chemical, electrochemical, electrical and atmospheric influences.

(4) If the customer is given erroneous assembly instructions, Publitec GmbH is only obliged to provide error-free assembly instructions, and this obligation only applies if the error in the assembly instructions prevents proper assembly.

(5) Claims for compensation for damages made by the customer on the grounds of a defect will expire one year after delivery of the goods. This does not apply if Publitec GmbH is culpable of gross negligence, or in the case of attributable injury to limb, health or life of the customer.

(6) The warranty does not apply in respect of such defects that are due to the fact that the customer has allowed additional equipment not approved by Publitec GmbH to be mounted or has allowed work to be undertaken by persons not authorised by Publitec GmbH or the manufacturer of the goods, or if the contractual goods have been changed or enhanced by the customer itself, unless the customer can prove that such changes and enhancements have not caused the defect.

(7) If defects reported by the customer cannot be identified after an inspection, the customer shall bear the costs of the investigation.

(8) In the case of the existence of defects, Publitec GmbH will repair the rejected contractual item at the head office of Publitec GmbH or the customer's head office, at the option of Publitec GmbH. The customer bears the costs of delivery and collection, and the cost of the packaging. The customer must return the defective items to Publitec GmbH at its own cost and in its original packaging if the goods are suitable for this. If there is a defect that can only be repaired on site at the customer, Publitec GmbH bears the resulting costs only to the place to which the item was to be delivered. If nothing has been agreed and it is also not clear from the circumstances, Publitec GmbH is at most obliged to carry out the repair at the customer's head office. Additional costs resulting from the customer having moved the item to a location other than the originally intended location or a location other than its head office shall be borne by the customer.

(9) Handling of third-party warranties: Warranties are promises as to performance made directly to the customer by the manufacturer. Publitec GmbH does not issue warranties itself. Warranty claims will therefore be made by the customer directly to the manufacturer. Publitec GmbH is happy to assist the customer in the assertion of these claims, but reserves the right to demand compensation for any expenses incurred thereby. The currently valid price lists of Publitec GmbH apply in this case.

5. Liability for Other Breaches of Obligation

(1) Without prejudice to the provisions regarding warranties and other special conditions contained in these terms, the following applies in cases in which Publitec GmbH is in breach of an obligation:

Publitec GmbH is liable for unlimited damages for its staff, vicarious agents and assistants in cases of injury to life, limb or the health of persons, including in cases of slight negligence.

Beyond this, Publitec GmbH is only liable to the following extent:

The customer must grant Publitec GmbH a reasonable grace period in which to render supplementary performance, which may not be less than three weeks. The customer can only withdraw from the contract and/or claim damages after this grace period has expired without rectification having taken place.

(2) Damage claims may only be asserted by the customer in cases of gross negligence or an intentional breach of obligations by Publitec GmbH. All damage claims are limited to the amount of the purchase price.

(3) If the customer is solely or primarily responsible for circumstances that would otherwise entitle it to withdraw from the contract, or if the circumstance giving rise to a right to withdraw occurs during default in acceptance on the part of the customer, withdrawal is not permitted.

(4) The customer may only claim damage compensation in cases of gross negligence or an intentional breach of obligations on the part of Publitec GmbH; damage compensation in place of performance (for non-performance, § 280 para. 3 in conjunction with § 281 BGB), as well as delay damages (§ 280 para. 2 in conjunction with § 286 BGB), is limited to the negative interest; damage compensation for non-provided services or services not rendered as agreed (§ 282 BGB) is limited to the amount of the purchase price. Damage compensation in place of performance is excluded if it is impossible to render the obligation of performance (impossibility).

(5) The liability of Publitec GmbH resulting from malice and under the Product Liability Act remains unaffected.

(6) The customer must accept contributory negligence, e.g. the inadequate rendering of obligations to cooperate (e.g. including inadequate defect notifications, organisational errors or inadequate data backup). Publitec GmbH is liable in the event of data loss only for loss that would have occurred if proper and regular daily data backups had been performed. The customer is informed that backup software may sometimes indicate a successful backup, even though the backup has not been (completely) carried out. Conclusive proof of the success of a backup can only be obtained through the complete or partial restoration of the data from the backup to the real system (restoration).

(7) Procurement risk: Publitec GmbH assumes no liability for procurement risk with respect to ordered and not immediately deliverable items; however, it only sells items for which it has signed a procurement contract with suppliers. The assumption of liability for any kind of warranties is excluded, unless an express written agreement has been concluded with the customer to this effect.

(8) The above limitations of liability do not apply to damages that are foreseeable when the contract is signed and that are typical when using the purchased item and that are caused by a breach of material contractual obligations. Publitec GmbH is not liable for unforeseeable extraordinary risks.

6. Purchase Price and Retention of Title

(1) Unless otherwise agreed, the purchase price as stated in the quotation or the order confirmation is payable immediately upon signing the quotation or upon receipt of the order confirmation, and prior to collection or dispatch of the goods by or to the customer.

(2) Retention of title: All goods delivered by Publitec GmbH remain the property of Publitec GmbH until full settlement of all claims resulting from the business relationship (extended retention of title). Any disposition by the customer over the goods subject to retention of title is only permitted within the scope of the ordinary business activities of the customer. In no case may the goods be assigned to a third party by way of security in the course of ordinary business activities. In the event that the goods are sold in the course of ordinary business activities, the purchase price paid takes the place of the goods. The customer hereby assigns any claims resulting from a sale to Publitec GmbH. The customer is entitled to collect these claims itself provided that it fulfils its payment obligations to Publitec GmbH. With regard to the extended retention of title (advance assignment of the respective purchase price), an assignment to third parties, in particular to a credit institution, constitutes a breach of contract and is not permitted. Publitec GmbH is entitled to check the customer's sales documents at any time and to inform its buyers of the assignment. If the customer's claim is in a current account, the customer hereby assigns its claim in the current account against its buyer to Publitec GmbH. The assignment amounts to the sum that Publitec GmbH charged the customer for the resold goods subject to retention of title. In the event of seizure of the goods at the customer's place of business, Publitec GmbH is to be informed immediately by sending a copy of the compulsory execution order and a sworn statement relating to it, stating that the seized goods are goods delivered by Publitec GmbH and subject to retention of title. If the value of the securities pursuant to the preceding paragraphs exceeds the amount of the outstanding claim thereby secured, after the deduction of security costs, by more than 20% for a foreseeable period, the customer is entitled to request the release of the security by Publitec GmbH in the amount that exceeds the claim.

7. Severability Clause

(1) If any provision of this contract is or becomes wholly or partly ineffective, or if there should be any gaps in the contract, this will not affect the validity of the contract as a whole and the other contractual provisions.

(2) In such cases, both parties undertake to agree on a new or replacement provision that is fairest to their mutual interests, taking into account the agreements made in this contract.

8. General

(1) The place of performance and court of jurisdiction for all disputes arising from this contract and regarding its effectiveness are, at the discretion of Publitec GmbH, the location of the customer's head office or the location of the head office of Publitec GmbH.

(2) Only the law of the Federal Republic of Germany applies. The United Nations Convention on Contracts for the International Sale of Goods (CISG) is expressly excluded.

(3) The general terms and conditions of Publitec GmbH also apply. Any general terms and conditions of the customer are expressly excluded.