



GOLDSCHMIDT

Smart Rail Solutions



TERMS AND CONDITIONS OF SALE FOR PURCHASES FROM PORTACO, INC.

CONTENTS

1. Object.....	3
2. Delivery	3
3. Payment	3
4. Taxes	4
5. Warranty	4
6. Indemnification	4
7. Modification of Credit.....	4
8. Force Majeure.....	5
9. Modifications.....	5
10. Governing Law.....	5
11. Notices	5
12. Change of Design.....	6
13. Returns / Non-returnable Items and Restocking Fee	6
14. Credit card processing fee.....	7
15. Intellectual Property.....	7
16. Confidential Information and Security	7
17. No Partnership or Agency	8
18. Third Party Rights	8
19. Notification of change	8

1. Object

The following are terms and conditions under which products and services are sold by PortaCo, Inc. (PortaCo). The terms and conditions herein supersede all prior proposals, negotiations and representations.

2. Delivery

Unless otherwise agreed, products shall be delivered to Purchaser FOB PortaCo's factory in Moorhead, MN. Title and risk of loss shall pass to Purchaser upon receipt by the carrier.

Unless otherwise agreed, shipping will be made by best way as determined by PortaCo. Shipping charges are to be added to the sale and paid by the Purchaser unless otherwise arranged. Purchaser shall provide shipping location and instructions at the time of sale. Shipments will not be insured by PortaCo unless requested and paid by the Purchaser.

3. Payment

- A) Unless otherwise agreed in writing all invoiced amounts, including shipping charges, if any, shall be due and payable in U.S. dollars at the prices stipulated in full with Net 30 day terms. All prices are FOB truck at PortaCo's warehouse unless otherwise agreed. **INTEREST MAY BE CHARGED FOR LATE PAYMENTS AT ONE AND HALF PERCENT (1.5%) PER MONTH, THE MINIMUM CHARGE BEING \$5.00 or, IF LESS, THE MAXIMUM ALLOWABLE RATE UNDER APPLICABLE LAW.** In the case of deliveries in instalments or partial shipments, proportionate payments shall become due and payable with respect to each shipment. Payments shall be made to PortaCo's corporate office located at 1805 2nd Avenue North, Moorhead, MN, 56560 in U.S dollars.
- B) If before completion or performance of any delivery by Seller, Purchaser becomes bankrupt, insolvent or makes an assignment for the benefit of creditors, Seller may at its option terminate the delivery by giving to Purchaser a written notice of termination and Seller shall thereupon be relieved of any further obligations to Purchaser. In addition to payment for goods delivered, Purchaser shall reimburse Seller for its termination costs and a reasonable allowance for profit for the work terminated. In the event Seller is required to pursue legal action to collect any outstanding amounts owed, Seller shall be entitled to its full damages including reasonable attorneys' fees, costs of collection and interest, as well as for any bank fees, including for returned checks/insufficient funds, imposed on Seller.

4. Taxes

Prices do not include sales, use or other taxes. To the extent permitted by law, any tax imposed by any federal, state, foreign or local authority which PortaCo may be required to collect or pay in connection with the products or related services (except PortaCo's income or franchise taxes) shall be paid by the Purchaser. If the Purchaser is exempt from paying taxes a certificate stating the status must be provided to PortaCo at the time of or prior to the sale.

5. Warranty

PortaCo makes no warranties, express or implied, concerning the products that it manufactures or sells except for the warranties, if any, stated in the product manual that accompanies the product. A description of the warranty policy and procedure is available on the PortaCo website https://www.portaco.com/fileadmin/user_upload/PDF/FS_08.6-04_Warranty_Policy_and_Procedure_PortaCo.pdf

PortaCo shall not be held liable for any incidental, indirect, special or consequential damages including lost profits, penalties or late fees arising from Purchaser's use or sale of products or services even if PortaCo shall have been advised of the possibility of such damages

6. Indemnification

Other than as expressly provided for herein, purchaser will indemnify PortaCo and hold PortaCo harmless from any liability for losses, damages, costs or expenses (including reasonable attorneys' fees). Other than as expressly provided for herein, with respect to any claim, action or proceeding, by or on behalf of Purchaser or any third party, relating to any products delivered to Purchaser by PortaCo, including use in the manufacture or assembly of, or incorporation into, any other goods, except to the extent that such liability may be demonstrated to result from PortaCo's willful misconduct or gross negligence.

7. Modification of Credit

If Purchaser fails to perform any term or condition hereof or if PortaCo at any time has reasonable doubt of Purchaser's financial responsibility PortaCo may decline to make further shipments except against cash payment in advance or provision of adequate assurances of Purchaser's due performance after a written demand therefore. Failure to pay any invoice when due may result in making all outstanding invoices immediately due and payable and PortaCo may withhold all subsequent deliveries until the account is settled in full.

8. Force Majeure

In cases of force majeure including, but not limited to, acts of god, strikes, lock-outs, riots, pandemics, acts of terrorism, war, action of public authorities and other events or circumstances for which PortaCo is not responsible, PortaCo may be unable to timely deliver the products ordered by Purchaser. In such event, the parties may make alternative arrangements to meet the Purchaser's delivery requirements. If PortaCo and Purchaser are unable to agree upon an alternative delivery date or shipping logistics, either party may elect to rescind or cancel the contract in writing at any time before the product leaves PortaCo's factory in Moorhead. Neither party shall be liable to the other party for any damages arising from a delay in delivery resulting from a force majeure once the product leaves PortaCo's factory in Moorhead, Minnesota.

9. Modifications

No terms or conditions other than those stated herein and no agreement or understanding, oral or written, purporting to modify these terms and conditions shall be binding on the parties unless hereafter made in writing and signed by the authorized representative of each. If this document constitutes an acceptance by PortaCo, this acceptance is EXPRESSLY limited to the terms hereof. If this document constitutes an acceptance by PortaCo, this acceptance is EXPRESSLY conditioned on Purchaser's assent to any additional or different terms not contained in Purchaser's offer. If these terms and conditions are not assented to, Purchaser must notify PortaCo at once. Acceptance of the products sold hereunder shall constitute assent to these conditions. PortaCo and Purchaser hereby object to and reject any and all additional or different terms proposed by the other party, whether contained in such party's purchasing/sales or shipping/receiving releases forms or elsewhere.

10. Governing Law

This agreement shall be exclusively governed by and construed and interpreted in accordance with the laws of the State of Minnesota.

11. Notices

All notices shall be in writing and shall be effective upon delivery.

12. Change of Design

PortaCo reserves the right to make changes and improvements to any product without any obligation to give prior notice or to carry out such changes to products already sold.

13. Returns / Non-returnable Items and Restocking Fee

- Only standard products will be accepted for return by PortaCo.
- Any custom products will not be accepted for return by PortaCo.

Only undamaged and unused products may be returned to PortaCo in accordance with the following terms –

- Purchaser wishing to return products to PortaCo needs to get prior approval from PortaCo.
- PortaCo will accept preapproved returns for a period of 30 days only. The 30 day period starts upon receipt by the Purchaser.
- The Purchaser is responsible for freight for approved return shipments to PortaCo at the following address –

PortaCo, Inc.
1805 2nd Ave North
Moorhead, MN, 56560
USA

- Unapproved returns will not be accepted by PortaCo
- Upon receipt of the products and after inspection by PortaCo Purchaser will be informed within 10 days on the findings by PortaCo. It remains in the sole discretion of PortaCo to determine the marketable value of returned products. Should PortaCo accept a return a restocking fee of twenty five percent (25%) of the sales price will apply and be deducted from any amounts the Purchaser may be refunded.

PortaCo will not accept returns under the following conditions

- Purchaser did not get prior approval to return products
- The items have been in the Purchaser's possession for more than 30 days
- Non-returnable items: "Specialty" equipment manufactured for a purchaser are deemed non-returnable items once purchased.

14. Credit card processing fee

A three percent (3%) credit card processing fee will be charged for all credit card payments.

15. Intellectual Property

All product designs, specifications, trademarks, copyrights and other Intellectual Property produced by PortaCo remains the Intellectual Property of PortaCo and is therefore owned by PortaCo.

The Purchaser specifically acknowledges that gains no rights to any intellectual property held by PortaCo and those rights that may arise as a result of the sale and purchase of the Goods, so far as not already vested in PortaCo, shall become the absolute property of PortaCo. The Purchaser is not authorized, licensed or permitted to alter any trademarks, trade dress or copyright contained on the purchased Goods either by it or through making agreements with third parties. When goods are produced according to the Purchaser's specifications, the Purchaser must ensure that no intellectual property rights or other rights of third parties are infringed. The Purchaser shall indemnify PortaCo and hold it harmless against any third party rights arising out of such infringements to the extent the Purchaser is answerable therefore.

The Purchaser and its agents may not use or reproduce any of PortaCo's Intellectual Property including but not limited to any trademarks or logos registered or unregistered for any reason without written permission from PortaCo. Any breach of this clause by the Purchaser or any other authorized user under the terms of the Agreement or where there is a default in payment, will entitle PortaCo to terminate the Agreement immediately and the Purchaser's rights to use the products produced in accordance with the Agreement will cease.

16. Confidential Information and Security

All information, drawings, specifications, documents, agreements, design materials and all other data which the parties may have imparted to each other and may from time to time impart to each other relating to their business, clients, prices, services, requirements, including any technical specifications, is proprietary and confidential.

The Purchaser hereby agrees that it will use such confidential information and all other data solely for the purposes of this Agreement and that it will not, at any time during or any time after the completion, expiry or termination of this Agreement use or disclose the same whether directly or indirectly, to any third party without PortaCo's prior written consent.

17. No Partnership or Agency

Nothing in the Agreement is intended to or shall operate to create a partnership between the parties, or to authorize either party to act as agent for the other, and neither party shall have authority to act in the name or on behalf of or otherwise to bind the other in any way (including but not limited to the making of any representation or warranty, the assumption of any obligation or liability and the exercise of any right or power).

18. Third Party Rights

The Agreement is made for the benefit of the parties to it and (where applicable) their successors and permitted assigns, and is not intended to benefit, or be enforceable by, anyone else.

19. Notification of change

Revision	Date	Reason	Editor
Rev. 01	Aug 5th, 2020	Issue in new format	Madden
Rev. 02	Feb 4th, 2022	Addition of new clauses, update credit card fee	Madden
Rev. 03	Jan 18th, 2023	14 – Credit card processing fee for all orders	Madden