

# Software General Terms & Conditions

## Contents

1. Preliminary remarks
2. Subject of the contract, performance of Forto
3. Right of use
4. Customer's obligation to cooperate
5. Failure to perform, force majeure and defects
6. Liability
7. Confidentiality, data protection and intellectual property
8. Contract period and termination
9. Right of retention/offsetting/endangerment of performance remuneration
10. Terms of payment
11. Miscellaneous/limitation period

## 1. Preliminary remarks

Forto is a trademark of Forto GmbH. Forto is a digital, freight forwarding company and offers its customers comprehensive forwarding services

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via utilizing its digital infrastructure and the effective application of the latest technologies, which are characterized by smooth processes and a service quality that is unmatched in the industry.

## 1.1. Service description

The FortoX application offered is based on Forto's digital infrastructure and links purchasing and logistics processes. The POM is a separate product in Forto's product landscape and can be utilized via the transport platform [SHIP].

## 1.2. Development phase of the software application

The beta test phase was completed in the course of 2019. The cloud-based FortoX, however, relies on constant further development of the modules and functionalities offered. For this reason, Forto strives towards cooperation in which customers benefit from additional services and the individually agreed "Commercial Proposal" is characterized by a mutual path.

## 1.3. Product adaptation and roadmap

Every company operates in a unique environment with specific processes and requirements. Forto's FortoX solution is therefore modular and allows individual customers to tailor both software and logistics services to their own requirements. Therefore, the exact requirements and service profile are worked out together in detail.

The following terms and conditions form the basis of the contractual cooperation:

## **2. Subject of the contract, performance of Forto**

### **2.1 FortoX software application ("Forto GmbH Software")**

2.1.1. Forto shall provide the FortoX Software Application to the Customer for its own exclusive use, unless otherwise provided for in this Agreement. The Customer shall have the technical opportunity and authorization to access the Forto software using its own hardware and to use its functionalities.

2.1.2. In addition to making it available for use, Forto will set up a support service for the Customer. The Support Service will be offered during

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normal business hours, but not on Saturdays, Sundays, and not on public holidays in Germany (regardless of the federal states of Germany). On 23.12. and between 27.12. and 02.01. of each year, a Support Service can be provided to a limited extent only. The support service includes the availability of Forto employees between 10:00 a.m. and 4:30 p.m. and beyond, if necessary, to answer questions about software use, existing problems or other topics.

2.1.3. The parties assume that there is a need for consulting services for the introduction of the software and after the installation of updated software versions. For this purpose, Forto offers support in accordance with Clause 1.1.2. Should the Support Service have to be used for more than 10 employee hours / per month during these phases without this being due to software errors or other causes for which Forto is responsible (e.g. due to increased personnel changes on the Customer's side and the associated need for training or consulting), the Parties shall agree on an appropriate arrangement regarding a special support fee.

2.1.4. Modification or extension of the software application in order to include new or modified functionalities that exceed the minimum requirements made available to the Customer by commercial proposal and defined therein is not owed. Nevertheless, Forto reserves the right to make adjustments, changes, modifications or extensions at any time in order to improve, extend or update functionalities, without any claim being made or derived therefrom. Forto shall inform the Customer of

such changes with advance notice within a reasonable time before implementation thereof. Forto also reserves the right to limit the scope of functions or to delete functions entirely, unless these are fundamental functions according to the minimum requirements of the Commercial Proposal. If such fundamental functions are affected, the Customer has a two-week special right of termination after Forto has informed the Customer of the discontinuation or restriction of the function.

2.1.5. The Customer may use the software application with the agreed functionalities at any time and for the agreed purposes. However, business interruptions may occur due to, inter alia but not restricted to, the following circumstances:

2.1.5.1. planned maintenance work, which Forto will announce within a reasonable time frame in advance,

2.1.5.2. unscheduled breakdowns necessary to remedy or prevent damages,

2.1.5.3. failures or delays due to the failure or overload of Internet or telecommunications lines; and

2.1.5.4. due to circumstances caused by force majeure events or other unforeseen circumstances beyond the control of Forto.

## Right of use

3.1. The Customer shall be granted the non-exclusive, non-transferable and non-sub-licensable right, limited to the terms of the Agreement, to use the functionalities of the Forto Software in accordance with these Terms and Conditions. The Customer shall not be granted any further rights of any kind, in particular to the software or any operating software available at Forto.

3.2. The Customer is not entitled to use the software beyond the personal use permitted under this Agreement or to make it available to third parties. In particular, the Customer is not permitted to duplicate or sell the software or parts thereof or to make it available to third parties, and in particular not to rent or lend it.

3.3. The Customer shall be permitted, after prior notification to and approval by Forto, to invite its suppliers, auxiliary persons or subcontractors engaged by it to use the Forto software and to allow them to use the software to the same extent as the Customer itself, but limited to the extent necessary for them. The Customer assures that the persons invited by him and authorized to use the software comply with the provisions of this Agreement. It is clarified that this Agreement does not have any protective effect in favour of third parties, in particular the aforementioned users, and that third parties cannot derive any rights against Forto from the use.

3.4. Forto warrants that the software provided is free from third-party rights.

## **Customer's obligation to cooperate**

4.1. The Customer shall fulfil his obligations for the execution of the contract in a timely, proper and complete manner. He shall in particular:

4.1.1. Designate a contact person and ensure through appropriate representation arrangements that an employee can be reached during business hours

4.1.2. Provide his employees with

4.1.2.1. all necessary hardware or equipment to access Forto's Software, such as computer and internet connection

4.1.2.2. the software and/or platform recommended by Forto and necessary to access the Forto Software

4.1.3. The costs for the above-mentioned points shall be solely borne by the Customer. Insofar as the Customer breaches these obligations, Forto shall be released from the provision of services, the performance of which is dependent on the Customer's fulfilment of the obligations specified here.

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4.1.4. provide Forto completely, correctly and in time with the information necessary for the service defined in Clause 2.1. Forto shall attempt, but cannot guarantee, to provide the service in a timely manner, even if the necessary information is provided late.

4.1.5. inform Forto immediately if changes are planned in the transmission interface and in the event of any malfunctions on the customer side.

4.2. The applicable legal regulations of compliance, security and in particular anti-terrorism law, including the applicable sanctions and embargo regimes, must be observed by the contracting parties themselves. This means that each party to the Agreement assumes the relevant obligations separately for its sphere of responsibility. The Customer's sphere of responsibility includes, but is not limited to, its contractual partners, suppliers and all other companies commissioned by it or third parties otherwise associated with them or the Customer. The same applies accordingly to Forto. The Customer is also obliged to notify Forto if it becomes aware of a violation of the regulations mentioned in sentence 1, regardless of whether that violations are Customer's own violations or violations of those mentioned in sentence 3.



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4.3. This shall not affect the observance of the general obligations incumbent on the contracting parties concerning Forto as a company involved in international logistics, or concerning the Customer, as a company in an international supply relationship.

4.4. Except for the obligations under Clause 3.2, neither Party is obliged under this Agreement to clarify, inform or take precautionary measures for the other Party with respect to compliance issues or other general legal requirements of any kind and scope.

## 5. Failure to perform, force majeure and defects

5.1. General disruptions in performance, i.e. improper performance by Forto, within the meaning of the Agreement are such circumstances that result in improper processing of the Purchase Order Management services.

5.2. Any information or documentation not provided, not provided in time or not provided properly by suppliers or other third parties of the Customer shall be deemed a breach of the Customer's obligation to cooperate.

5.3.

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An event of default with regard to the Forto Software occurs if the functionality of the necessary functionalities of the Software as defined in Clause 1 cannot be provided.

5.4. In the event of an impairment of performance or violation of the obligation to cooperate, both parties must immediately notify the other party.

5.5. In the event of a defect for which Forto is responsible, Forto shall be entitled to choose between rectification or subsequent delivery. Prior asserting further claims or rights such as, for example, termination or reduction of the contractually owed remuneration, the assertion of damages or reimbursement of expenses, the Customer shall give Forto the opportunity to provide subsequent performance within a reasonable period of time. Subsequent performance can also consist of Forto enabling the Customer to temporarily or, insofar as this is reasonable for the Customer, permanently implement a workaround to eliminate the default.

5.6. If the subsequent rectification fails twice, the Customer can demand a reduction of the contractual remuneration in accordance with the legal requirements. Clause 5 shall apply to compensation for damages and expenses.

5.7. Forto warrants, but does not guarantee that the Software – with an average availability of 90% – will operate continuously, trouble-free and secure.

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5.8. Forto cannot control the accuracy, timeliness and completeness of the data provided by third parties and has no obligation to do so, unless expressly agreed otherwise in the Commercial Proposal. For this reason, liability for any performance problems resulting therefrom is excluded, even if the data have been processed or edited by Forto. However, Forto shall make reasonable efforts to avoid or, as soon as it becomes aware of such a default, remedy and eliminate or reduce its consequences.

5.9. Forto shall be exempted from its obligation to perform if and to the extent the failure to perform is triggered by a force majeure event or other unforeseen circumstances or events beyond Forto's control, e.g. but not limited to war, strike, lockout, riots, natural disasters, power failures, illegal activities of third parties on the Internet or sabotage by malware, pandemics or similar events or developments.

5.10. The exemption from the obligation to perform shall also apply in the event of delays due to circumstances arising from the Customer's sphere of responsibility and sphere of risk, e.g. in the event of untimely performance of the Customer's obligation to cooperate. Furthermore, Forto shall be released from the obligation to perform in the event of a shortage of availability or non-availability of the systems of third parties involved in the data exchange or faulty processing of the data on the systems of third parties.

5.11. The exemption from the obligation to perform shall apply for the duration of the disruption plus an appropriate start-up and follow-up time as well as special delays resulting from the postponement.

5.12. If the disturbance according to Clause 5.9 or 5.10, in the form of a partial or complete restriction of performance, lasts longer than 3 months or if this is foreseeable with a high degree of probability, both parties in case of Clause 5.9 and in case of clause 5.10 only Forto, shall be entitled to terminate the Agreement after expiry of a reasonable period, whereby 14 days shall be deemed reasonable in case of a complete failure. Claims for damages against Forto shall not exist in such cases.

## Liability

6.1. The liability of Forto shall be governed by the statutory provisions, unless otherwise provided for below.

6.2. Liability for damages caused by negligence is excluded, unless otherwise provided for below. The exclusion of liability for ordinary negligence shall not apply if Forto itself and/or its bodies/managerial staff have caused the damage.

6.3. Liability is not excluded in case of damage or injury to life, limb or health / freedom of a person, as well as in case of mandatory statutory

claims. Otherwise, Forto shall only be liable in the event of intent and gross negligence as well as non-observance or breach of cardinal obligations (i.e. contractual obligations essential to the contract). Essential contractual obligations are in particular the obligations described in Clause 1, insofar as their breach would jeopardise the fulfilment of the purpose of the contract and the fulfilment of which the Customer may legitimately rely, i.e. which are essential for the execution of the contract, such as the provision of the software application, the initial but not the ongoing support. Mere communication errors, such as the delayed transmission of information, do not constitute a breach or non-observance of an essential contractual obligation.

6.4. The following limitations or exclusions of liability shall not apply to damages according to Clause 6.3 and not to damages caused intentionally.

6.5. For damage caused by ordinary negligence, liability is limited to 25,000 euros for each damage occurrence and regardless of how many claims would be raised in connection with a damaging event, liability is limited to 250,000 euros per damaging event, and, in addition, liability is limited to a maximum of 300,000 euros for all damages caused within the course of all damage caused within one annual insurance period.

6.6. Otherwise, liability for damage caused by simple or gross negligence is limited to the typically foreseeable damage.

6.7. Liability for minor damage up to 100 euros is excluded.

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6.8. Liability for contractual penalties, forfeits or other remedies agreed between the Customer and its customers is excluded, as is liability for loss of profit. In this respect, the Customer has to take out appropriate insurance cover.

6.9. In the event of damages for delay of whatsoever kind, liability is also limited to the amount of the costs of an alternative transport (sea freight, rail freight, air freight) which would be necessary to avoid possible delays or to make up for them as best as possible, but in addition to a maximum of 5 times the freight agreed with the carrier for such transport (in the absence of an agreed freight the usual freight).

6.10. For the avoidance of doubt, in the event Forto, in addition to the services defined in Clause 1, also provides forwarding and/or as transport services (as fixed cost freight forwarder), Forto's General Terms and Conditions for Freight Forwarding Services shall apply exclusively to the liability for damages resulting therefrom.

6.11. Third parties, in particular users according to Clause 3.3, may not derive any rights against Forto from this contract and the Customer shall support Forto in the best possible way in the defence of all claims asserted by these third parties, regardless of the type of claim and whether justified or not. Insofar as the Customer has culpably caused such a claim, the Customer shall indemnify Forto from the claim upon first demand. Forto shall be entitled to take all legal measures against

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such claims made by third parties, even if the Customer has not yet fulfilled his obligation under this clause.

## 7. Confidentiality, data protection and intellectual property

7.1. Both parties are obliged to treat any kind of information about the business of the respective other party that become known to them, in particular business and trade secrets, strictly confidential even beyond the duration of this Agreement and not to make it accessible to any third parties, unless

7.1.1. The information concerned is publicly available;

7.1.2. The disclosure of the relevant facts is required by law, by court or administrative order or by regulations of a stock exchange; or

7.1.3. The notice is necessary for the implementation of this contract.

7.2. The parties are, however, entitled to disclose confidential information to employees and consultants, future investors, banks in connection with financing measures as well as to the parties' affiliated companies.

7.3. Furthermore, both parties will observe the applicable data protection regulations.

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7.4. This Agreement does not transfer the ownership of the Forto Software to the Customer, i.e. Forto retains all rights to, rested in or connected with the Software.

7.5. The above shall also apply after expiration or termination of the contractual relationship in the event that one or both contracting parties must keep data or system components available for higher-ranking reasons.

## 8. Contract period and termination

8.1. An ordinary termination during the contract period is excluded. The contract shall be automatically extended by three months after expiration of the original or extended contract period if it is not terminated in writing with a notice period of one month to the end of the respective contract term.

8.2. The right to extraordinary terminate this Agreement remains unaffected and shall apply in particular but not limited to if

8.2.1. the other party persistently breaches its essential contractual obligations (including the obligation to pay contractual fees, whereby one monthly fee not paid or two monthly fees not paid in time (whether consecutively or within one year, are considered material) and fails to



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remedy the breach in time despite a warning with an appropriate deadline,

8.2.2. a significant deterioration of the assets of the other party occurs or his assets are seriously endangered,

8.2.3. the other party becomes illiquid, suspends its payments or has another reason to file for insolvency, or

8.2.4. Insolvency proceedings are initiated, filed for or commenced or are dismissed due to a lack of financial assets.

8.3. If the contractual relationship comes to an end, the Customer has a reasonable time period (usually 4 weeks after the last invoice was issued) for the transfer of its data and the migration thereof to another service provider or to the Customer himself. A corresponding support by Forto takes place and is covered by the agreed and paid fees for the technical decoupling and export of all relevant data. Until full payment of the agreed remuneration under this Agreement, Forto's obligation to hand over the data is suspended. In such a case, the Customer may only demand partial handover for a significant reason, which must be proven to Forto.

## 9. Right of retention/offsetting/endangerment of performance remuneration

9.1. The Customer is only entitled to set-off against Forto's claim or withhold payment insofar as its counter-claim has been legally established or is undisputed.

9.2. In the event of defects of performance, the Customer's counterclaim to withhold an appropriate part of the remuneration shall remain unaffected.

9.3. If it becomes apparent after conclusion of the contract (e.g. through an application to commence insolvency proceedings) that the claim to remuneration is endangered by the Customer's inability to pay, Forto is entitled to refuse performance in accordance with the statutory provisions and – if necessary after setting a deadline – to withdraw from the contract.

## 10. Terms of payment

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10.1. Monthly remuneration for the provision of the software becomes due on the first working day of a month in advance for the current month.

10.2. Remuneration for “Value Added Services” is due 14 days after the invoice has been issued for the services provided in the previous month. Forto is entitled to demand advance payment for such services at any time and to withhold performance in whole or in part.

10.3. Upon expiry of the above payment period or if the due date has been exceeded, the Customer shall be in default without the need of a reminder. During the period of default, interest shall be charged on the remuneration at the statutory default interest rate applicable at the time. Forto reserves the right to assert further damages caused by any such event.

# 11.

## Miscellaneous/limit ation period

11.1. The exclusive, also international, place of jurisdiction for all disputes arising from and in connection with this contract is Berlin. German law exclusively applies independently of German private international law and excluding the United Nations Convention on Contracts for the International Sale of Goods (CISG).

11.2. The place of performance and fulfilment for all services is Berlin, unless expressly agreed otherwise.

12. 3. Changes to the contract must be made in writing in order to be effective (text form is sufficient). This also applies to the change of this clause.

11.4. Should individual provisions of this contract be invalid or unenforceable or become invalid or unenforceable after the conclusion of the contract, the validity of the contract as a whole shall not be affected. The ineffective or unenforceable provision shall be replaced by an effective and enforceable provision whose effects come as close as possible to the economic purpose of the ineffective or unenforceable provision pursued by the parties to the contract.

11.5. These software terms and conditions apply exclusively. Deviating, conflicting or supplementary general terms and conditions of the Customer shall only become part of the contract if and insofar this has been expressly agreed in writing. This requirement shall apply in any

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event, even if Forto provides its services in full knowledge of the Customer's general terms and conditions.

11.6. The statutory limitation period shall apply. Deviating from this, claims due to negligent breaches of duty shall become time-barred after one year from the time of performance of the service or breach of duty.