



PORSCHE

GENERAL TERMS AND CONDITIONS OF SALE AND DELIVERY OF GOODS SOLD BY PORSCHE DESIGN OF AMERICA, INC. AT THE PORSCHE ONLINE SHOP (AS PART OF THE PORSCHE ONLINE MARKETPLACE FUNCTIONALITIES)

1. SCOPE OF APPLICATION

- 1.1. Porsche Sales & Marketplace, Inc. (formerly Porsche Smart Mobility, Inc.) One Porsche Drive, Atlanta, Georgia, GA 30354 (hereafter referred to as Porsche Sales & Marketplace) operates under www.porsche.com various online marketplace functionalities (hereafter referred to as Marketplace) for the (a) sale of Porsche parts, equipment and other vehicle related and vehicle independent products (hereafter referred to as Goods) and (b) provision of vehicle related and vehicle independent services (hereafter referred to as Services).
1.2. On the Marketplace, Porsche Sales & Marketplace operates the online distribution channel, Porsche Online Shop (hereafter referred to as Porsche Online Shop), under which Porsche Design of America, Inc (hereafter referred to as PDoA or Seller or We) sells and delivers Goods.
1.3. The following General Terms and Conditions of Sale and Delivery for the Porsche Online Shop (hereafter referred to as Terms of Sale) exclusively govern the sales and deliveries of Goods for orders placed by the customer (hereafter referred to as Customer or You) at the Porsche Online Shop.
1.4. "Customer" within the meaning of these Terms of Sale shall mean all persons ordering Goods via the Porsche Online Shop.
1.5. By placing an order, You represent that You are not purchasing the Goods for purposes of commercial resale or redistribution. We reserve the right to reject orders and limit order quantities in our sole discretion.
1.6. By placing an order, You confirm that You have read these Terms of Sale, and You agree to be bound by and accept these Terms of Sale. Any additional, different or supplemental terms and conditions proposed by Customer are hereby rejected and shall not apply, even if Seller does not separately and expressly object to such terms.
1.7. For the use of the Marketplace and the Porsche Online Shop operated by Porsche Sales & Marketplace, the General Terms and Conditions for the use of the My Porsche Portal and the Porsche Online Marketplace Functionalities (including the Porsche Connect Store) as well as the sale of Porsche Connect Services and Porsche Sales & Marketplace Products (hereafter referred to as Terms of Use), downloadable at https://connectstore.porsche.com/us/en/t/termsandconditions, shall apply.
1.8. These Terms of Sale shall also apply to all future transactions with Customer and the Seller. Porsche Sales & Marketplace may offer a selection of different goods and services, and in such cases, additional terms of use may apply. Additional terms of use (if any) are hereby incorporated by reference into these Terms of Sale.

Seller and Porsche Sales & Marketplace reserves the right, at any time and in its sole discretion, to change, modify, revise, add or remove portions of these Terms of Sale, without prior notice to You, by posting a link to

the updated or revised Terms of Sale. If You do not agree to changes to these Terms of Sale, You must not place an order for Goods through the Porsche Online Shop.

You agree You have full legal capacity to accept these Terms of Sale and have reached the age of majority in your jurisdiction to enter into binding contracts.

These Terms of Sale are a legal binding agreement between the Seller and You. By placing an order, You agree to be bound by these Terms of Sale. If You do not agree with any of these terms, You are not permitted to purchase Goods that are subject to these terms.

THESE TERMS OF SALE INCLUDE AN AGREEMENT TO MANDATORY ARBITRATION, WHICH MEANS THAT YOU AGREE TO SUBMIT ANY DISPUTE RELATED TO THE GOODS, THESE TERMS OF SALE OR THE PRIVACY STATEMENT TO BINDING INDIVIDUAL ARBITRATION RATHER THAN PROCEEDING IN COURT.

THE DISPUTE RESOLUTION PROVISION ALSO INCLUDES A CLASS ACTION WAIVER, WHICH MEANS THAT YOU AGREE TO PROCEED WITH ANY DISPUTE INDIVIDUALLY AND NOT AS PART OF A CLASS ACTION.

THESE TERMS OF SALE ALSO INCLUDE A JURY WAIVER.

MORE INFORMATION ABOUT THE ARBITRATION AND CLASS ACTION WAIVER CAN BE FOUND IN SECTION 12 (DISPUTES; BINDING INDIVIDUAL ARBITRATION; CLASS ACTION AND JURY TRIAL WAIVER) BELOW.

2. DELIVERY RESTRICTIONS / DELIVERY AREAS

- 2.1. Pursuant to Section 1.5, We will not deliver Goods to Customers who purchase Goods for purposes of commercial resale or redistribution
2.2. The Marketplace currently ships to the 50 United States but does not currently ship to Puerto Rico, Guam or the US Virgin Islands. To see the Marketplace's shipping and delivery policies in more detail, please visit the Questions & Answers on the Porsche Online Shop site.

3. PLACING AN ORDER AND CONCLUSION OF THE SALES CONTRACT

- 3.1. Porsche Sales & Marketplace functions as facilitator for transactions concluded between the Customer and the Seller by providing the Porsche Online Shop and advertising the offered Goods. Any sales contract is, however, solely concluded between Seller and the Customer.
3.2. The presentation of Goods in the Porsche Online Shop does not constitute binding offers by the Seller to enter into a sales contract. The Customer may choose Goods of Seller from the product range in the Porsche Online Shop and collect them in an online shopping cart via the button "Add to Cart". When entering the quantity of the Goods and the delivery address, the Customer is made aware of any delivery restrictions pursuant to Section 2. Before clicking the button "Confirm purchase now" on

shop.porsche.com, all Goods selected by the Customer, their total price including applicable taxes as well as duties, charges and shipping costs are again displayed in an order overview to the Customer for review. Your order will be submitted after You click the "Confirm purchase now" button.

- 3.3. Seller will confirm receipt of the Customer's order by e-mail. However, pursuant to Sections 1.5 and 3.2, your placement of an order or confirmation by the Seller will not necessarily ensure that We will accept your order. Orders are subject to acceptance by us and We may, at any time and at our sole discretion, refuse to accept your order.
- 3.4. While Seller uses reasonable efforts to maintain accurate pricing, availability, and other information about Goods displayed on the Porsche Online Shop, such information does not warrant or guarantee that the Goods will be available if You wish to place an order to purchase them. Seller has the right, at any time, to make changes to the information about Goods displayed on the Porsche Online Shop, including without limitation information about prices, description or the availability of Goods and may do so without prior notice to You.
- 3.5. If the Goods ordered by the Customer cannot be delivered, e.g. because the corresponding Goods are not in stock, Seller may refrain from accepting the order. In this case, Seller shall inform the Customer. If We do not accept your order, We will contact You at the email address or telephone number provided.

#### 4. RETURNS AND CANCELLATIONS

Unless otherwise set forth in the detailed "Return and Cancellation Policy" located at <https://shop.porsche.com/us/en/help>, You have the right to return any Goods You purchased from Seller within 30 days of delivery of all Goods purchased as a part of the same order. To exercise this right, You must inform us of your desire to return or cancel via phone 1-800-PORSCHE or email [porscheonlineshop@tpservices.com](mailto:porscheonlineshop@tpservices.com) and return the Goods within 30 days of the delivery date. In order to receive a full refund, all returned Goods must be in their original and unused condition. We will refund You all payments received from You, including the costs of delivery (minus costs resulting from your choice of a type of delivery other than the least expensive type of standard delivery offered by us), within 30 days of receiving the returned Goods. We will carry out such refund using the same means of payment as You used for the initial transaction, unless You have expressly agreed otherwise; in any event, subject to Section 6.4, We will not charge any fees as a result of such refund. We will not accept returns/exchanges of Goods purchased from other sales channels.

#### 5. PRICES AND PAYMENT

- 5.1. All prices are in USD, including applicable taxes. The flat shipping rate is added.
- 5.2. The prices, all price components such as applicable taxes, surcharges or charges as well as the flat shipping rate (hereafter collectively referred to as **Purchase Price**) for the respective order are indicated to the Customer in the Porsche Online Shop before the Customer places the respective binding order. The Purchase Price becomes due for payment immediately upon acceptance of the order. The payment methods with respect to the Purchase Price are indicated in the Porsche Online Shop. If a credit card payment, credit transfer or direct debit is unpaid, revoked or returned, the bank charges thereby incurred by Seller shall be reimbursed by the Customer.

#### 6. DELIVERY

- 6.1. Deliveries of Goods shall be made to the delivery address provided by the Customer at the flat shipping rate stated in each case. The delivery restrictions set forth in Section 2 apply.
- 6.2. Deliveries shall only be made upon receipt of full payment of the Purchase Price. Seller will do its best to get orders to You as efficiently as possible. However, delivery dates and delivery periods are not guaranteed.
- 6.3. Seller will not be liable for any loss or damage suffered by You through any delay in delivery, including due to events that are unforeseeable, unavoidable or outside the control of Seller, or for which Seller does not bear responsibility, such as acts of God, war, natural disasters or labor disputes, may delay delivery. Delivery periods or dates, as the case may be, shall be extended or rescheduled, as applicable, by the length of such event, and the Customer shall be informed of the occurrence of such event in a reasonable manner. Customer may choose to cancel the order in accordance with Section 4. For the avoidance of doubt, Seller may also cancel the order in its sole discretion in accordance with Section 4.
- 6.4. Should the Customer refuse to accept delivery of Goods or be in breach of any obligations hereunder, Seller shall be entitled, without prejudice to its other rights, to cancel the order. Seller, at its sole discretion, also reserves the right to charge the Customer a restocking fee of 10% of the sale price of the Goods cancelled.
- 6.5. Seller may make partial deliveries for good reason if and to the extent this is reasonable for the Customer.

#### 7. NO WARRANTY / RIGHTS IN CASE OF DEFECTS

**No Warranties.** TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, SELLER AND PORSCHE SALES & MARKETPLACE MAKE NO REPRESENTATIONS OR WARRANTIES, EXPRESS OR IMPLIED, INCLUDING ANY IMPLIED WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT, QUALITY, ACCURACY, AND AVAILABILITY CONCERNING THE GOODS. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, THE GOODS ARE PROVIDED "AS IS," "WITH ALL FAULTS" AND "AS AVAILABLE".

Some jurisdictions do not allow limitations of implied warranties, so certain limitations stated above may not apply to You, in which case Seller's and Porsche Sales & Marketplace's warranties shall be limited to the extent permitted by applicable law.

#### 8. LIABILITY / LIMITATION OF LIABILITY

- 8.1. **Liability.** THE ENTIRE LIABILITY OF SELLER AND ITS PARENT, AFFILIATES, AND THEIR RESPECTIVE OFFICERS, DIRECTORS, EMPLOYEES, REPRESENTATIVES, LICENSEES, AUTHORIZED DESIGNEES, SUCCESSORS AND ASSIGNS (THE "**SELLER GROUP**"), FOR ALL DAMAGES OF EVERY KIND AND TYPE (WHETHER SUCH DAMAGES ARISE IN CONTRACT, TORT OR OTHERWISE) SHALL BE LIMITED TO THE TOTAL AMOUNT ACTUALLY PAID BY YOU FOR THE GOODS. THE FOREGOING TERMS SET A LIMIT ON THE AMOUNT OF DAMAGES PAYABLE AND ARE NOT INTENDED TO ESTABLISH LIQUIDATED DAMAGES. YOU EXPRESSLY RECOGNIZE AND ACKNOWLEDGE THAT SUCH LIMITATION OF LIABILITY (I) IS AN ESSENTIAL PART OF THESE TERMS OF SALE AND SELLER'S PROVISION OF THE GOODS TO YOU, AND (II) IS AN ESSENTIAL FACTOR IN ESTABLISHING THE PRICE OF THE GOODS.

8.2. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, IN NO EVENT WILL SELLER GROUP BE LIABLE TO YOU FOR ANY INDIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL, EXEMPLARY OR PUNITIVE DAMAGES ARISING OUT OF OR RELATING TO THE GOODS (INCLUDING WITHOUT LIMITATION LOST PROFITS, LOST REVENUE, LOSS OF GOODWILL, LOSS OF DATA OR USER CONTENT, OR BUSINESS INTERRUPTION), EVEN IF SELLER GROUP IS APPRISED OF THE LIKELIHOOD OF SUCH DAMAGES OCCURRING.

TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, IN NO EVENT WILL PORSCHE SALES & MARKETPLACE BE LIABLE TO YOU FOR ANY DIRECT, INDIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL, EXEMPLARY OR PUNITIVE DAMAGES ARISING OUT OF OR RELATING TO THE PORSCHE ONLINE SHOP EVEN IF PORSCHE SALES & MARKETPLACE IS APPRISED OF THE LIKELIHOOD OF SUCH DAMAGES OCCURRING.

8.3. THE LIMITATIONS SET FORTH IN THIS SECTION WILL NOT LIMIT OR EXCLUDE LIABILITY FOR THE GROSS NEGLIGENCE, INTENTIONAL MISCONDUCT OR FRAUD OF SELLER.

8.4. Some states do not allow the exclusion or limitation of incidental or consequential damages, so the above limitation or exclusion set forth in Section 8.2 may not apply to You. In New Jersey, the limitations set forth in Section 8.1 will not limit or exclude liability for the negligence of Seller.

8.5. **Indemnity.** In consideration of Seller's provision of Goods to You and the rights granted to You, to the maximum extent permitted by law and unless prohibited by law, You agree to indemnify Porsche Sales & Marketplace and the Seller Group and hold Porsche Sales & Marketplace and the Seller Group harmless from and against any and all losses, damages, injuries (including death), causes of action, claims, penalties, interest, additional taxes, demands, and expenses, including reasonable legal fees and expenses, of any kind or nature arising out of or on account of, or resulting from, any third party claim or demand made to or against Porsche Sales & Marketplace and/or the Seller Group: (i) arising out of your failure to comply with these Terms of Sale; (ii) arising out of your negligence, willful misconduct, or fraud; or (iii) arising out of the negligence, willful misconduct, or fraud of any other person procuring Goods using your account and password. We reserve the right to assume the exclusive defense and control of any matter otherwise subject to indemnification by You, in which event You will cooperate with us in asserting any available defenses. This provision shall remain in full force and effect notwithstanding any termination of your use of the Goods.

## 9. RETENTION OF TITLE

The Goods shall remain the property of Seller until final payment of the entire Purchase Price has been made. If payment of the Purchase Price is made by means of an instruction or order to a bank or financial services institution, it shall not be deemed final until an unconditional, non-returnable credit has been made into the account of Seller.

## 10. CUSTOMER SERVICE

In case of questions, claims or complaints, please contact our customer service by

(i) e-mail: [porscheonlineshop@tpservices.com](mailto:porscheonlineshop@tpservices.com)

(ii) mail: PORSCHE DESIGN OF AMERICA, Inc.,  
600 ANTON BLVD, Suite 1280, COSTA MESA,  
CA 92626

## 11. APPLICABLE LAW / JURISDICTION

11.1. These Terms of Sale, and any disputes arising out of or relating to these Terms of Sale, shall be governed by the laws of the State of Georgia without giving effect to its conflict of law principles and excluding the United Nations Convention on Contracts for the International Sale of Goods (CISG).

11.2. YOU AGREE THAT SECTIONS 7 (No Warranty / Rights in Case of Defects), 8 (Liability / Limitation of Liability), AND 12 (Disputes, Binding Individual Arbitration, Class Action and Jury Trial Waiver) APPLY TO YOUR USE OR ACCESS OF THE MARKETPLACE.

## 12. DISPUTES, BINDING INDIVIDUAL ARBITRATION, CLASS ACTION AND JURY TRIAL WAIVER

12.1. Seller is available to address any concerns You may have regarding the Porsche Online Shop. You may call us at: 1-800-PORSCHE, email us at [customersupport@porsche.com](mailto:customersupport@porsche.com), or send us regular mail at Porsche Design of America, Attention: One Marketplace, 600 Anton Blvd, Suite 1280, Costa Mesa, CA 92626.

12.2. **Mandatory Binding Arbitration.** The parties to these Terms of Sale agree that final and binding arbitration on an individual basis shall be the sole and exclusive forum and remedy for any and all disputes and claims that cannot be resolved informally and that relate in any way to or arise out of these Terms of Sale, the Goods or your purchase. Notwithstanding the foregoing, any dispute or claim relating to patent, copyright, trademark, trade secret, privacy or publicity rights, shall not be resolved in arbitration and, instead, the parties agree that such dispute shall be resolved exclusively in state or federal court in the State of Georgia, and the parties consent to exclusive jurisdiction and venue in such courts. The parties hereto acknowledge and agree that the Federal Arbitration Act and federal arbitration law apply to arbitrations under these Terms of Sale (despite any other choice of law provision).

Arbitration under these Terms of Sale shall be conducted by the American Arbitration Association (the "AAA"). For claims of less than or equal to \$75,000 (exclusive of attorney's fees, costs, and alleged punitive damages or penalties), the AAA's Consumer Arbitration Rules will apply; for claims over \$75,000, the AAA's Commercial Arbitration Rules. For claims under the Consumer Arbitration Rules, there shall be one arbitrator. For claims under the Commercial Arbitration Rules, there shall be one arbitrator, unless the total amount of the claims and counterclaims (exclusive of attorney's fees, costs, and alleged punitive damages or penalties), shall be \$3 million or more, in which case there will be three arbitrators. The place of arbitration will be Atlanta, Georgia. The AAA rules are available at <https://www.adr.org>. Any Notice of Arbitration should be mailed to us at the following address:

PORSCHE DESIGN OF AMERICA, INC.  
Attn: Legal Department  
600 ANTON BLVD, SUITE 1280  
COSTA MESA, CA 92626

12.3. **Class Action Waiver:** TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ARBITRATION SHALL PROCEED SOLELY ON AN INDIVIDUAL BASIS WITHOUT THE RIGHT FOR ANY DISPUTES TO BE ARBITRATED ON A CLASS ACTION BASIS OR ON BASES INVOLVING CLAIMS BROUGHT IN A

PURPORTED REPRESENTATIVE CAPACITY ON BEHALF OF OTHERS. Disputes may not be joined or consolidated unless agreed to in writing by all parties. No arbitration award or decision will have any preclusive effect as to issues or claims in any dispute with anyone who is not a named party to the arbitration. In the event that this CLASS ACTION WAIVER is deemed unenforceable, then any putative class action may only proceed in a court of competent jurisdiction without a jury and not in arbitration.

- 12.4. **Waiver of Rights, including to Trial by Jury.** By agreeing to arbitration, the parties understand and agree that they are waiving their rights to maintain other available resolution processes, such as a court action or administrative proceeding, to settle their disputes. The rules in arbitration are different. There is no judge or jury, and review of an arbitrator's decision is very limited. WE BOTH FURTHER AGREE THAT, WHETHER A CLAIM WILL BE RESOLVED IN ARBITRATION OR IN COURT, THE PARTIES BOTH WAIVE ANY RIGHT TO A JURY TRIAL INVOLVING ANY CLAIMS OR DISPUTES.
- 12.5. To the extent permitted by applicable law, and unless prohibited by applicable law, Customer agrees that Customer must file any arbitration request, claim or cause of action arising out of or relating to the Goods or otherwise relating to these Terms of Sale within one (1) year after the events giving rise to such request, claim or cause of action, or You shall be forever barred from filing such request, claim or cause of action.

### **13. FINAL PROVISIONS**

- 13.1. Amendments of and supplements to the contract and/or these Terms of Sale must be made in writing. The same shall apply to any amendment of this written form requirement.
- 13.2. If a provision of the contract and/or these Terms of Sale is invalid, in whole or in part, the validity of the remaining provisions shall remain unaffected thereby.

**– End of the Terms of Sale –**

