

I. BASIC PROVISIONS

1.

These General Terms and Conditions (hereinafter referred to as the “GTC”) regulate the contractual relationships between MAFRA, a. s., seated at Prague 5, Karla Engliš 519/11, postal code 150 00, company ID No.: 45313351, VAT ID: CZ45313351, registered in the Commercial Register maintained by the Municipal Court in Prague, section B, file No. 1328 (hereinafter referred to as the “Operator”) and users of the PassMachine platform that is used for creating, generating, editing and administering digital cards (hereinafter referred to as the “Platform”). Digital card for iOS means the .pkpass format, which is a zipped format of texts and images intended for the mobile application Apple Wallet, alternatively also for the Portmonka application in the Android system. Digital card for Android means an online card saved in the Google Wallet application, which may also be subsequently used across Google services. The Operator does not guarantee 100% functionality of these wallets provided by third parties, although it makes efforts to secure the best possible compatibility.

II. MAKING A CONTRACT

1.

The user usually orders a use of the Platform by means of a written order (by mail or e-mail correspondence).

2.

The order must contain all the essential elements that are necessary for due use of the Platform, particularly: the user’s corporate name, or name and surname, or business name, seat, identification number, VAT ID and, as a rule, the name of the person responsible for the order. The Operator reserves the right to refuse any orders that do not comply with this section.

3.

A contract is made at the moment when the Operator confirms the order placed by the user. The Operator confirms orders orally or in writing (e.g. by mail, fax or e-mail correspondence). If an order is not confirmed by the Operator orally or in writing, the contract is deemed made at the moment when the user receives access to the Platform.

4.

If the Operator is the processor of the graphic design of the digital cards, the user may use such graphic design solely for the digital cards generated within the Platform. The user may only use such graphic design for other purposes on the basis of a license agreement made with the Operator.

5.

The Operator reserves the right to agree with the user on any individual terms and conditions as stipulated in the contract. The user is obliged to keep such individual terms and conditions confidential.

III. PLATFORM USE

1.

The Operator will make it possible for the user to use the Platform 24/7 through remote access to the Operator's server. Service outages and downtimes of the Platform will not exceed 1% of the time per month.

In order to use the Platform, the Operator will provide the user with access data which must be safeguarded by the user against misuse by any third party. The Platform use is provided to the user as a service, so the Operator does not give the user any license for the Platform. The user may only use the Platform for the user's offers. The Platform use for offers of third parties is subject to prior written consent of the Operator.

The user undertakes to use the Platform in accordance with legal regulations and not to use the Platform, directly or indirectly, to violate applicable legal regulations. The user also undertakes not to disseminate, within the Platform, any content that is contrary to legal regulations or good morals, such as unlawful hate speech, terrorist content, unlawful discriminatory content, pornography, sale of non-conforming or counterfeit products or products violating legal regulations on consumer protection, content infringing copyright, etc.

2.

If while using the Platform the user uses any elements processing personal data of the user's clients, the user is fully liable for the compliance of such processing of the gathered data with legal regulations, particularly with Regulation (EU) 2016/679, Directive 2002/58/EC and Act No. 127/2005 of the Collection of Laws of the Czech Republic (Coll.), and is the controller of such data. The Operator does not obtain for the user any consent to the processing of personal data; if any such consent is required under the governing legal regulations, it must be obtained by the user at the user's expense and risk. In the course of the Platform use, the Operator acts as the processor of personal data of clients for the user. The data processing agreement is specified in article V. of these GTC. The Platform may make it possible to send commercial communications to individual clients of the user in the form of push notifications. In such case, the user is fully liable for the compliance of such notifications being sent with the applicable legal regulations, particularly Act No. 480/2004 Coll., and that the user will require sending notifications solely to those user's clients to whom the user is allowed to send notifications under the Act stated above, i.e. those who did not revoke consent to be sent such notifications. The user takes note that a violation of these rules may, in addition to the consequences set out in the legal regulations, result in blocking the account by the operators of the systems in which the application is disseminated.

If, in the course of the Platform use, personal data of the user's clients are transferred to the Operator to the Portmonka application or to other providers of similar applications, then such parties are separate controllers of the concerned personal data processed in those applications.

3.

The Operator guarantees that the Platform will be available for the user for the duration of the contractual relationship between the Operator and user. After the contractual relationship between the user and Operator terminates, the user will not be allowed to use the Platform, i.e. to administer the digital cards created by the user within the Platform.

4.

The user is fully liable for the services provided to the user's clients through the Platform. The user undertakes to state a reference to the Platform on the reverse of the card in a reasonable form set out by the Operator.

5.

To store digital cards in Apple Wallet and to use the features of the Apple Wallet app (updates, notifications, location notifications, etc.), it is necessary to obtain a security/verification Apple certificate with a PASS TYPE ID. User agrees to provide such certificate to the Operator at User's sole cost and risk and to maintain (renew) and provide such certificate to Operator well in advance of the expiration of the original certificate. The User is fully responsible for the functionality and features of such certificate.

In the event that the Operator, by special arrangement with the User, provides support to the User in setting up User's Apple Developer Program account to generate a certificate or provides the User with a custom PASS TYPE ID certificate for this purpose from an Apple Developer Program account provided by the Operator, the User agrees that the Operator is not responsible in any way for the functionality and features of such certificate and may terminate its provision to the User at any time without further notice. The User agrees to use the certificate provided by the Operator only in the performance of the contract with the Provider.

IV. PRICE OF THE WORK, DUE DATE, PAYMENT TERMS, AND INVOICING

1.

The amount of the price for using the Platform is determined in the order.

2.

The due date for the payment of the price is determined in the order. If the due date for the payment of the price is not agreed in the order, the price is due in 14 days after the day when the invoice (tax document) was issued by the Operator. The invoice must be paid by the due date even if the Platform shows defects; however, this is without prejudice to the user's right to a discount. The Operator sends the invoice (tax document) to the user in the .pdf format to the e-mail address stated by the user. The Operator may unilaterally decide to extend the term for payment of any invoice at any time. The Operator notifies the user of any such decision in an appropriate manner within a reasonable time.

3.

Together with the price for the Platform use, the user will also pay VAT at the rate in effect. Unless expressly stipulated otherwise, the prices are stated net of VAT.

4.

If a payment is delayed, the user is obliged to pay default interest in the statutory amount. The user is also obliged to pay the costs associated with the recovery of the invoiced amount or part payments. In the event of a delayed payment, the Operator may refuse to fulfill any further orders or may make their fulfillment conditional on reasonable and timely advance payments.

V. DATA PROTECTION, COMMERCIAL COMMUNICATIONS

1.

The information provided by the user to the Operator in relation to the contract on the Platform use is used by the Operator solely for the fulfillment of this contract and for the fulfillment of the Operator's statutory duties and will be kept confidential by the Operator in other respects. The provider may also use such data for the improvement and further development of its service and for the preparation and publication of aggregated data on the service functioning. The information provided by the Operator to the user in relation to the contract on the Platform use will be used by the user solely for the fulfillment of this contract and will be kept confidential by the user in other respects. If any of the parties uses a subcontractor, it will impose on the subcontractor the same restrictions that are binding on the party itself.

2.

The Operator may use a third party to recover its claims due from the user. The Operator may disclose information about individual business transactions and about the user to third parties in cases stipulated or allowed by legal regulations and in cases specially agreed, when assigning a claim or handling a claim in another manner, namely to the Operator's legal, accounting, tax and similar advisors, entities forming with the Operator a group, and to a party providing the Operator with insurance of a risk of non-payment of claims.

3.

Information about the processing of personal data of the user as a contracting party by the Operator is available at www.mafra.cz/pouceni. Information about the processing of personal data in the MojePortmonka application (if you refer to this application) is available at: <https://mojeportmonka.cz/>.

4.

Data processing agreement (this only applies in cases when digital cards contain personal data): Within the Platform, the Operator will process for the user the personal data of the user's clients for the purpose of functioning of the Platform, i.e. generating digital cards, sending commercial communications to users within the Platform and safeguarding the security of the Platform, incl. reasonable logging of events taking place. The data processing agreement does not apply to the processing carried out by the operators of Apple and Android systems, the liability for which is held by these operators.

Within the Platform, the following personal data are usually processed: card ID, card type used, device ID, user specification, stated data or validity of the card and, where appropriate, name and surname of the holder. Logs of events are also processed to a normal extent.

The PassMachine platform currently (the scope of functions may be changed) makes it possible to contact end holders of digital cards in the form of push notifications even on the basis of location (GPS). At present, all types of digital cards support this function. For each of these three types it is possible to set up to 10 various locations in which a pre-specified message is produced for the end user if the cardholder comes to the set location. In this relation, no data on the location of the end user are stored in the PassMachine system.

The processor processes the data in the EU.

The Operator will process personal data beyond the functionality of the Platform solely on the basis of documented instructions from the user, provided that the obligation to carry out such processing is not already imposed on the Operator by the applicable legal regulations. The Operator will safeguard the protection of the processed personal data to the extent corresponding to the market practice.

The Operator will make sure that the persons authorized to process personal data on the Operator's part are bound to secrecy.

The Operator undertakes, immediately after receiving the user's request, to assist the user by appropriate technical and organizational measures, insofar as this is possible, for the fulfillment of the user's obligation to respond to requests for exercising the data subject's rights laid down in Chapter III of Regulation (EU) 2016/679.

The Operator may engage another processor for processing without being obliged to ask the user for prior consent, but must obligate such another processor to protect personal data to the same extent as agreed in these GTC. If the aforesaid another processor fails to fulfill its obligations in the field of data protection, the liability for the fulfillment of obligations of such another processor is still fully held by the Operator. The Operator uses EPOFIS IT s.r.o., seated at Nové sady 988/2, Staré Brno, 602 00 Brno, company ID No.: 03711455 and, as the case may be, common external coworkers - programmers, as the processors. The Operator will inform the user in an appropriate manner about contemplated changes concerning the engagement of other processors or replacement of processors, and will give the user an opportunity to object to such changes.

The Operator will make it possible for the user to carry out audits and inspections to a reasonable extent but no more than once per year. Such inspections may be carried out either by the user or by a party that is authorized by the user and has expert knowledge in the field of personal data processing but is not a direct competitor of the Operator. The persons carrying out such inspections must be obligated to maintain secrecy, for an unlimited period of time, of any ascertained facts in cases other than absolutely necessary for the fulfilment of the purpose of the inspection. The Operator may demand compensation of expenses reasonably incurred for its assistance during the inspection in the amount of CZK 500 net of VAT/manhour.

The processed data will be deleted as instructed by the user, but no later than 1 month after termination of the business relationship of the parties.

The Operator undertakes to also fulfill other obligations of processors as laid down in Regulation (EU) 2016/679.

The operator does not provide end-users with information on the processing of personal data in view of the limitations of mobile systems. This instruction shall be provided by the user. The operator is entitled to restrict access to the administration interface to IP addresses from certain countries.

VI. MISCELLANEOUS PROVISIONS

1.

If a reasonable doubt arises about the user's solvency or if the user's payment of any payable invoice issued by the Operator (even if issued under a different contract) is delayed, the Operator may, at its discretion:

- a) withdraw from the contract,
- b) suspend performance or
- c) make any further performance (including any performance already ordered) conditional on an advance payment. The Operator is not obliged to notify the user of suspension of performance referred to in paragraph b).

2.

The parties agree that the contracts (for work) made between them and the relationships arising from such contracts will be governed by the Czech law, namely by Act No. 89/2012 Coll., the Civil Code, as amended, namely the provisions regulating contracts for work under Section 2586 et seq. of the Civil Code.

The user undertakes to fulfill obligations relating to the contract being made which are laid down in Act No. 340/2015 Coll. at the user's expense and risk, duly and within the statutory time limits. The parties agree that if the time limit set out for sending such contract to the registrar for publication expires without the contract being sent to the registrar, the Operator has a right to withdraw from the contract. However, the Operator also has a right to arrange publication of the contract on its own if the user fails to publish the contract within 15 days from the day when it was made or if the Operator has a different sound reason for that. The Operator may require compensation for damage or non-material harm caused by a breach of the user's contractual obligation to publish the contract in a due and timely manner. For the avoidance of doubt, the parties agree that this provision is separable from the other content, and should the contract be ineffective or invalid due to the failure to publish it, such fact does not make this provision ineffective or invalid.

If the aforesaid Act makes it possible to exclude certain parts of the contract or information from publishing, the user will exclude such parts of the contract or information from publishing.

The user undertakes to treat the content of this contract as its business secret. Publication of the contract in accordance with Act No. 340/2015 Coll. does not release the parties from the obligation to keep its content confidential. The same applies to other Acts regulating disclosure of information, particularly Act No. 247/1995 Coll. and other Acts regulating elections.

5.

The legal act terminating the contract between the Operator and user must be made in writing.

6.

If there are any grounds on the user's part that could establish statutory suretyship or another liability of the Operator for the user's tax liabilities, the user is obliged to inform the Operator about such facts in writing without delay.

7.

Withdrawal from the contract between the Operator and user always has *ex nunc* effects.

8.

The Operator informs its trading partners in accordance with Section 431 of Act No. 89/2012 Coll. that each of the Operator's employees may only act within the scope of their authorization and only in matters commonly associated with their job. Without prejudice to the preceding sentence, the following contracts may be made and/or legal acts may be carried out on behalf of the Operator solely by the Operator's governing board members (in the manner of external acting as recorded in the Commercial Register) or by the persons expressly authorized for that by the governing board members in a special written power of attorney, which will expressly contain authorization to carry out such act:

- a) agreements to make a future contract,
- b) handling of trademarks, domains, or other industrial property,
- c) making license and sublicense agreements, except for ordinary agreements with authors of media contributions,
- d) acquiring, burdening, or alienating any real property,
- e) any securing or corroborating of debts of the Operator and/or third parties (including e.g. agreements on contractual penalties and debt acknowledgments, suretyship or financial guarantees),
- f) making pledge agreements,
- g) public tenders,
- h) arrangement of earnest money,
- i) any handling of an enterprise or an enterprise part that forms a separate organizational unit,
- j) assigning a claim,
- k) assuming a debt,
- l) cumulative intercession,
- m) taking over property,
- n) assigning a contract,
- o) any dealings concerning securities (including drafts) or participations in other entities,
- p) agreements on compromise and settlement,
- q) waiver of a right and debt (including e.g., acts carried out in the form of returning a promissory note). A contract which was made on behalf of the Operator by a member (members) of the governing board may only be amended by a legal act in which the Operator is represented again by members of the governing board or by persons expressly authorized by an individually written authorization letter to carry out such act.

9.

The parties hereby agree on an extension of the subjective limitation period from 3 to 4 years for any claims arisen between the parties. This does not apply to claims for compensation for damage.

10.

Any advertising offers of the Operator in the form of advertisements and information stated in its price lists or catalogues are not deemed to be an offer to make a contract.

11.

Any offers made by the Operator may also be revoked within the period intended for their acceptance.

12.

Section 1799 and Section 1800 of Act No. 89/2012 Coll. will not apply between the parties.

13.

Section 1805(2), Section 1913, Section 1950, Section 1952(2) and Section 1995(2) of Act No. 89/2012 Coll. will not apply between the parties.

14.

The parties expressly agree that the Operator may also refuse to perform under the contract if the user is in delay with the fulfillment of any other of its obligations (arisen on other legal grounds) to the Operator.

15.

If payment in installments is agreed and the debtor fails to pay any installment, the parties agree that the creditor has a right to demand payment of the claim in full and may exercise this right even after the due date of the immediate next installment.

16.

The user takes note that the contractual relationship with the Operator does not entitle the user to designate the user's products or their parts by the Operator's name, trademark, product name or in any other similar manner.

17.

The Operator may set off any of its payable claims due from the user against user's claims from the Operator, regardless of whether or not such claims are already payable and regardless of the currency or legal relationship from which they arose.

18.

If the contract is made for a definite period of time or for one-time performance, it may not be terminated otherwise than by agreement or for statutory reasons. If the contract is made for an indefinite period of time, any of the parties may terminate it by notice with a 1-month notice period starting on the first day of the month following the notice delivery.

19.

The parties hereby agree, in accordance with Section 89a of the Civil Code or Regulation (EU) No. 1215/2012, on the competence of Czech courts for all disputes arisen between them from this contract, namely the local competence of the District Court for Prague 5 as the first-instance court. If a regional court is the first-instance court, the parties agree on the local competence of the Municipal Court in Prague for all disputes between them.

VII. CHANGES OF THE TERMS AND CONDITIONS

The Operator may change these General Terms and Conditions, including price lists, to a reasonable extent. The Operator will notify the user of a change in a manner at the Operator's discretion, namely either by sending the relevant information and full wording of the change of the Terms and Conditions in an appropriate format (e.g. .pdf or .html) to the contact e-mail address of the user or by written notification. Such change takes effect between the Operator and user upon expiry of the period set out by the Operator, which is usually one month; however, it must not be shorter than 25 days from the day of notification of the change. If the user does not accept the change, they may terminate the contract within the period referred to in the preceding sentence with a 30-day notice. If the user exercises their right to termination, such premature termination of the contract is not deemed to be a breach of the contract by the user. If the user does not exercise their right to termination of the contract, they are deemed to accept the change. However, the Operator reserves the right to adopt such change of the GTC or price lists which will not be connected with the user's right to terminate the contract, provided that the user is only bound by such change if they accept the change. When introducing new products, the Operator reserves the right to set out different general terms and conditions, technical conditions or price lists for them. The same rules apply to any changes of the respective technical conditions.

VIII. EFFECT

These General Terms and Conditions take effect on 1.1.2023.