



## General terms and conditions of business for IT-PEAK-Networks GmbH

(valid as it: 01/03/2017)

### 1. General information

- 1.1 These general terms and conditions of business apply to all purchase contracts and for the entire business relationship between PEAK and the purchaser. Other terms and conditions than these, specifically the purchasing terms and conditions of the purchaser, shall not apply, even if they are not expressly rejected by PEAK.
- 1.2 The purchaser shall acknowledge PEAK's general terms and conditions of business at the latest by accepting the goods.

### 2. Quotations and orders

- 2.1 All contractual negotiations between the parties, telephone agreements or other arrangements, specifically order amendments, must be agreed by both parties in writing and, if they differ from the original purchase contract agreed, a written confirmation of amendment.
- 2.2 Orders issued by the purchaser to PEAK shall only become legally binding when confirmed in writing by PEAK.
- 2.3 The written order confirmation shall be replaced by an invoice if the order is executed immediately.
- 2.4 PEAK shall not be obliged to accept a purchase contract when orders are received based on circulars and price lists.
- 2.5 Quotations from PEAK are non-binding, providing the binding nature of the quotation is not noted in writing.
- 2.6 The quotation and contract terms made available to the customer shall form a constituent part of any quotation from PEAK.
- 2.7 Assurances of product characteristics shall only become part of the contract if they are explicitly confirmed in writing. Information in brochures shall only be considered as explicitly assured characteristics in accordance with purchasing law if they are agreed explicitly in writing in individual cases.

### 3. Prices

- 3.1 Prices shall be quoted in EURO excluding packaging for deliveries from Darmstadt, plus the value added tax applicable on the invoice date, plus any other statutory sales contributions.
- 3.2 The latest version of the PEAK price list shall apply at all times.

### 4. Shipping and transfer of risk

- 4.1 Shipping shall be at the expense of the customer. Transport insurance to the transfer location specified by the customer shall be carried out and charged by PEAK to a level of cover equivalent to the purchase price, unless it is rejected by the customer in writing.
- 4.2 PEAK shall be authorised to provide partial deliveries.

### 5. Payment terms

- 5.1 Unless specifically agreed otherwise, e.g. in an order confirmation, payments shall be made within 14 days of invoice and delivery without deductions.
- 5.2 If the customer is late with a payment, PEAK shall have the right to charge interest on arrears at a rate of 5 % above the base rate of the European Central Bank. This shall not affect PEAK's other rights.
- 5.3 Payments shall be used first to pay the oldest debt payable plus any interest arrears and legal costs arising from it and finally as a payment against the purchase price.
- 5.4 Bills of exchange and post-dated cheques shall only be accepted by special prior written agreement and only for the purpose of payment. Tax on bills of exchange and any bank, discount and collection fees shall be chargeable to the purchaser.
- 5.5 If multiple bills of exchange are given as payment, then all bills of exchange shall be due if the next bill of exchange due is not redeemed in time.
- 5.6 If the purchaser fails to comply with its payment obligations and/or other obligations arising from PEAK's general terms and conditions of business, if it discontinues payment or if an application to instigate insolvency proceedings is submitted with respect to its assets or those of its legal representative, then the entire legal debt shall be payable immediately. In this event, PEAK shall be entitled to declare it is withdrawing from all contracts, to revoke all goods delivered under the retention of property and demand reimbursement of all costs incurred as a result of the withdrawal (e.g. return transport, reduction in value, etc.).
- 5.7 A right of retention with respect to the payment claim as a result of claims not relating to the delivered item itself shall be excluded; only undisputed claims or those which have been legally established can be set off against the claim for the purchase price.

### 6. Retention of ownership, pledging, transfer

- 6.1 PEAK shall retain ownership of the goods delivered until the complete payment of the purchase price, including reminder fees and the costs of legal pursuit.
- 6.2 Until the transfer of ownership of the goods delivered by PEAK to the purchaser, the purchaser shall not be entitled to either pledge the goods or transfer them to third parties as security. If the goods are pledged or confiscated, the purchaser shall be obliged to inform PEAK immediately and shall bear all costs relating to the release of the goods. The purchaser shall be entitled to sell the goods in normal business, providing it is not in arrears with the fulfilment of its responsibilities to PEAK. The risk of destruction, damage or wear and tear during the period of retention of ownership shall be borne by the purchaser. If the purchaser combines the goods with other objects, PEAK shall obtain the joint ownership of the related objects in proportion to the value of the other goods combined with the goods from PEAK. The customer shall hereby transfer its claims arising from the transfer of the retained goods to the relevant net invoice value of the retained goods to PEAK for security. PEAK shall hereby accept this transfer. The right of the purchaser to sell the goods delivered by PEAK shall end at the point at which the purchaser goes into arrears with its payments or becomes insolvent. In this case, the purchaser can only use the retained goods with written consent from PEAK.

### 7. Delivery periods

- 7.1 As PEAK is not itself the manufacturer of the components it processes, delivery periods can only be quoted for items in stock. At the same time, these are merely "provisional delivery dates" with no binding nature in the sense of a fixed deadline. PEAK shall be obliged to inform the purchaser in writing of any anticipated delays to the delivery date.
- 7.2 If a "provisional delivery date" put forward is delayed to an unreasonable extent for the purchaser, then it shall have the right to set PEAK a reasonable, at least 4-week additional period and if this period expires without result, to withdraw partially or wholly from the purchase contract. Further claims shall be excluded, including claims for compensation for non-fulfilment, unless a legal representative or vicarious agent of PEAK can be proven to have acted maliciously or with gross negligence.
- 7.3 The original provisional delivery deadline set out in the written purchase contract shall be extended appropriately in the event of operational disruptions, strike, lockout, non-delivery by suppliers and other circumstances over which PEAK has no control.

### 8. Cancellation of delivery

- 8.1 If the customer partially or wholly cancels orders and fails to meet its obligation of acceptance, PEAK shall be authorised to claim for compensation on a fixed-fee basis.
- 8.2 The delivery items already produced at the time the buyer withdraws from the contract shall be paid for at the full purchase price.
- 8.3 For goods which have not yet been produced, a fixed compensation fee of 60 % shall be payable if the cancellation is not received more than 30 days before the anticipated delivery date.
- 8.4 In all other cases, a fixed compensation fee of 40 % of the net value of the delivery shall be paid.
- 8.5 If the customer can prove lesser damage, then only this damage needs to be compensated for. Conversely, PEAK can charge the fixed-fee compensation for the actual damages incurred in the event of a withdrawal from the contract.
- 8.6 This shall not affect the right to demand compensation for non-fulfilment, providing the customer has not paid for partial deliveries in line with the contract and remaining deliveries from PEAK are therefore refused.

### 9. Warranty

- 9.1 PEAK shall guarantee that the hardware supplied has no material or processing defects which could nullify or reduce the value or usefulness for the normal purpose or that set out in the contract.
- 9.2 The guarantee shall also be valid in the event of specific characteristics which are assured in the order confirmation.
- 9.3 The warranty period shall be 24 months from receipt of the goods by the purchaser.
- 9.4 The customer shall report in writing any transport damage, reduced quantities or faults with product characteristics within 10 days of receipt of the delivery from PEAK. The purchaser shall be obliged to inspect the goods immediately after delivery by PEAK and, if there should be a problem, to inform PEAK immediately in writing, providing exact details of the alleged faults. If the purchaser fails to report problems, the goods shall be deemed approved and accepted.



- 9.5 The customer shall not have the right to refuse the delivery for insignificant faults.
- 9.6 In the event of justified complaints of fault, PEAK shall provide a warranty inasmuch as it shall remedy material and processing errors by repairing them at the repair centre or replacing the parts affected.
- 9.7 If the purchaser does not agree with the fulfilment of any of the warranty claims to which it is entitled by PEAK, it shall waive any claims to conversion, reduction or damages, including compensation for assembly and disassembly and consequential damages.
- 9.8 PEAK shall accept no guarantee for faults in the purchased goods caused by coincidence, improper use, negligence, alteration, incorrect installation, repairs or improper inspection measures by the purchaser or its authorised agents.
- 9.9 If the technical original label is removed or eradicated, the warranty shall be invalidated.
- 9.10 If the repair or replacement is faulty, the purchaser shall have the right to demand reduction (decrease in the purchase price) or conversion (cancellation) of the contract.
- 9.11 PEAK shall have the right to rule out any warranties when selling used hardware.
- 9.12 PEAK employees acting as vicarious agents for PEAK shall not incur personal liability.
- 9.13 Service Contract Law shall apply to deliveries of software, to the exemption of the Works Contract and Purchasing Law.
- 9.14 If software developed by PEAK does not meet the purpose set out in the contract and problems have been reported in writing, PEAK shall be obliged to provide a fix free of charge within the statutory limitation period.
- 9.15 No warranty is accepted for software not developed by PEAK. The rights in the relevant license terms shall apply.
- 9.16 However, a product discrepancy based on market innovations shall not be deemed a fault. The customer shall only have the right to software maintenance and adaptation if a more in-depth consultancy contract is concluded.
- 9.17 Liability to pay compensation for direct and indirect damages shall be excluded unless there is malice or gross negligence by a legal representative or vicarious agent of PEAK.
- 10. Producer liability**
- 10.1 The customer shall be released from liability in accordance with the EU Product Liability Directive providing the damage is caused by the faulty nature of a product produced by PEAK.
- 10.2 The release from liability shall not apply if the faulty nature of the customer's product is caused by the use of a product made by PEAK in a manner inappropriate to the way it should have been used. The exemption from liability shall also not apply in the event that PEAK makes a product on instruction from the customer without knowing the end product or without the option of checking its use.
- 10.3 There shall be no exemption from liability for the customer if PEAK can apply a liability exemption reason as set out in Article 7 of the EU Directive.
- 11. Export und Re-Export**
- 11.1 All PEAK deliveries shall be made subject to export approval in accordance with Federal German Export Law, of which the customer is obliged to obtain knowledge.
- 11.2 Product and technical know-how supplied by PEAK are for sale in the Federal Republic of Germany based on the existing licences and copyright laws. Re-export either individually or integrated into a system shall require the customer to obtain permission.
- 12. Place of Jurisdiction**
- 12.1 The law of the Federal Republic of Germany shall apply, with the exception of UN Law on the Sale of Goods.
- 12.2 If the customer is a sole trader or has its place of business or normal residence abroad, the place of jurisdiction shall be the registered office of PEAK. However, PEAK shall also have the right to bring proceedings against the user in its normal place of jurisdiction.
- 13. Miscellaneous**
- 13.1 If the purchaser fails to comply with its obligations arising from the purchase contract, PEAK can refuse further deliveries, irrespective of the assertion of other rights.
- 13.2 If one of the terms in these general terms and conditions is declared legally invalid, then it shall be deemed to have been replaced by a term which comes as close as possible to the meaning and economic outcome of the term which has become invalid and which takes the interests of the parties involved into consideration.
- 13.3 The purchaser shall not be authorised to transfer its rights to third parties without prior written consent from PEAK.
- 13.4 PEAK shall have the right to utilise the services of third parties in fulfilling its contractual obligations. This shall not affect PEAK's responsibilities in line with this agreement.
- 13.5 If a customer falls within the personal protection of the Data Protection Act, it shall declare its consent to the processing of its data where required for the purpose of the contract.
- 13.6 Irrespective of the contractual delivery to the customer, the copyright and usage and utilisation rights to the product sold shall remain with PEAK. The reproduction of individual components or systems delivered by PEAK shall only be authorised with the written consent of PEAK.
- 13.7 PEAK software can only be copied for inhouse use and for backup purposes.
- 13.8 PEAK products or parts thereof may not be used in life-support, medical or military systems without consultation with PEAK-Networks GmbH. The relevant copyright regulations shall apply to software not developed by PEAK.

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