

# PEAK-System Technik GmbH – General Terms of Business

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## 1. General

**1.1** These general terms of business, delivery, quotation and payment are valid for all sales contracts, purchase orders and business agreements between PEAK-System and the buying party ("Buyer"), collectively referred to as "Parties". If any of the provisions of Buyer's Purchase Order or other documents are in addition to or in conflict with the terms and conditions herein, or are ambiguous, those additional, conflicting or ambiguous terms and conditions are expressly rejected and these terms and conditions shall govern. In the event of a conflict among the terms and conditions herein and any other writings from PEAK-System, the following documents shall govern in descending order: a) Contract between PEAK-System and Buyer, b) PEAK-System Quote, c) PEAK-System General Terms of Business, d) other documents issued by PEAK-System.

**1.2** The Buyer acknowledges PEAK-System's general terms of business, at the very latest, upon acceptance of merchandise from PEAK-System.

## 2. Quotations and Contracts

**2.1** These terms and conditions are valid for all quotes issued by PEAK-System.

**2.2** Any and all changes to written agreements between the Parties, including verbal agreements, require written consent from both Parties.

**2.3** Purchase Orders issued by the Buyer to PEAK-System are legally binding only upon PEAK-System's written confirmation of said orders.

**2.4** Quotes issued by PEAK-System are subject to change if confirmation is not in written form.

**2.5** A product quality guarantee is only part of the contract with explicit written confirmation of said product guarantee.

## 3. Prices

**3.1** Prices are denominated in EUR for all transactions made in Germany. Prices are exclusive Shipping and VAT tax on the day of accounting.

**3.2** Prevailing prices for standard products are taken from current PEAK-System catalogs and price lists.

## 4. Shipping and Transport Insurance

**4.1** Shipping of products is at the expense of the Buyer. Title in and the right of possession to such goods passes to Buyer upon delivery of goods by PEAK-System to a carrier at point of shipment. Arrangements for insurance of goods are the responsibility of the Buyer.

**4.2** Partial deliveries of orders by PEAK-System are permissible.

## 5. Terms of Payment

**5.1** All payments are denominated in EUR and are to be made by the Buyer within twenty (20) days of invoicing and delivery without any allowances. After which, beginning with the first reminder, standard bank interest will be charged, at a rate at least 1.5% per month or part thereof.

**5.2** Payments will be applied to the balancing of the earliest payable debt, including the interest payable on arrears resulting from it, any legal costs and, lastly, to the sales price.

**5.3** Promissory notes or predated checks will only be accepted after a written promissory agreement made prior to sale, and only for payment purposes. All taxes, bank, discount, or withdrawal charges are at the expense of the Buyer.

**5.4** When a number of promissory notes are given as payment, then all promissory notes are payable, if the next payable promissory note is not paid according to the time allotted in the promissory note agreement.

**5.5** If the Buyer is derelict in making payments or fails to otherwise to meet the terms from these General Terms of Business, ceases payment, or if the Buyer's legal representative files for bankruptcy, then all legal fees become payable toward the sum of the total accounts payable to PEAK-System. In this case PEAK-System has the right to renege on all contracts and to take all previously delivered merchandise back into their possession, as well as to demand restitution for all costs occurred in connection with the repossession of said merchandise. This includes transportation costs, devaluation of merchandise, etc. Merchandise shall be valued at the prevailing price list or purchase contract at the time of purchase.

## 6. Ownership Proviso, Private Resale, Transfer of Goods

**6.1** PEAK-System maintains claims on ownership of delivered merchandise until full payment of the purchase price, including any interest resulting from default as well as legal costs, has been made.

**6.2** Until transfer of ownership of the merchandise from PEAK-System to the Buyer has been made, the Buyer may neither sell, nor transfer ownership of said merchandise to a Third Party. In the event that the merchandise in question is either forfeited or taken into possession by another Party, the Buyer is responsible for notifying PEAK-System. In addition, all costs resulting from the release of said merchandise are the financial responsibility of the Buyer. The Buyer may, in the course of normal business, sell the merchandise to a Third Party, as long as the Buyer is not in default on payments to PEAK-System. The Buyer is also responsible for any wear, damage or incidental product failure during the period of the ownership proviso. If the Buyer chooses to use other products in combination with PEAK-System products during this time, PEAK-System obtains co-ownership of the additional products in relation to their value when combined with PEAK-System merchandise. The Buyer hereby forfeits his or her rights to transfer ownership of the provisioned good, at currently calculated net value, to PEAK-System; PEAK-System hereby accepts this forfeiture. The Buyer's right to resell PEAK-System merchandise ends

when the Buyer is overdue in his payments to PEAK-System, or becomes insolvent. In this case, the Buyer maintains possession of the provisioned merchandise only with PEAK-System's written permission.

## 7. Terms of Delivery

**7.1** As PEAK-System is not personally the manufacturer of the majority of components used on its products, terms of delivery are only valid for the merchandise that is currently held in storage at PEAK-System. Furthermore, PEAK-System can only reference "estimated delivery dates" and cannot be bound by the terms of a fixed delivery schedule. PEAK-System is obligated to inform the Buyer in writing of any foreseeable delay in any stated, estimated delivery date.

**7.2** If an estimated delivery date is unexpectedly delayed, then the Buyer has the right to extend to PEAK-System a four (4) week grace period on delivery. If delivery has not been made upon lapse of this period, the Buyer has the right to partially or completely withdraw from the contracted purchase agreement. Unless the Buyer can demonstrate that a legal representative or employee of PEAK-System is guilty of malice or gross negligence, further claims or demands are excluded, including claims for loss compensation as a result of failure to comply with the terms of the contract.

**7.3** Estimated delivery dates, as originally printed in quotes, sales contracts or Purchase Order confirmations, are subject to change due to such issues as failure to receive parts from distributors and other sources, production errors, strikes, Acts of God, as well as other circumstances that are beyond PEAK-System's control.

## 8. Cancellation of Delivery

**8.1** If the Buyer cancels an order in part or completely, and fails to fulfill its obligation to accept delivery, PEAK-System is then justified in making claims for comprehensive loss compensation.

**8.2** All products intended for delivery that have already been produced at the point of the Buyer's cancellation of an order or contracted agreement are to be paid for at the full sales price by the Buyer.

**8.3** For any products that have not yet been produced, a flat-rate compensation of 50% of the order value is to be paid if cancellation by the Buyer is not made at least twenty (20) days before the estimated delivery date.

**8.4** In all other cases of non-delivery at the Buyer's behest, a flat-rate compensation of 30% of order value will be assessed.

**8.5** If the Buyer can document proof that the amount of actual loss is smaller than that claimed by PEAK-System, then PEAK-System shall only be entitled to compensation equal to this determined amount of loss. Likewise, PEAK-System is also free to calculate the exact sustained loss in the case of a breach of contract and demand this sum as compensation from the Buyer.

**8.6** PEAK-System maintains the right to demand default compensation after discontinuing delivery if the Buyer fails to pay for partially delivered products according to the terms of contract.

**8.7** In case of products designated and acknowledged as NCNR (Non-Cancelable, Non-Returnable), Buyer is obligated to receive and pay in full for all merchandise and parts upon submittal of a Purchase Order for said products.

## 9. Merchandise (Hardware) Warranty

**9.1** PEAK-System guarantees that the delivered merchandise has no material or manufacturing flaws that will affect its value or function, as specified in the Parameters of Use section of these Terms of Business.

**9.2** The warranty also covers any failure to perform functions that are explicitly guaranteed by PEAK-System to the Buyer.

**9.3** The merchandise warranty is valid up to 24 months after the Buyer has received merchandise.

**9.4** Missing items and/or damage ("defects") sustained to merchandise during shipping is to be reported to PEAK-System by the Buyer in writing within eight (8) days of receiving merchandise. The Buyer is obligated to inspect the merchandise immediately after delivery and, in the case of defects, to inform PEAK-System of said defects in writing. The Buyer is also responsible for returning the defective articles to PEAK-System along with providing a detailed description of alleged defects. If the Buyer fails to notify PEAK-System, then it is assumed that the merchandise was received and considered acceptable. That is, unless even by close inspection of the merchandise no visible defects could be found. In this case, the Buyer must immediately inform PEAK-System of such defects for verification by PEAK-System. Otherwise the merchandise will be considered accepted regardless of any defects.

**9.5** In the instance of a substantiated Buyer complaint, PEAK-System makes good its warranty by repairing or replacing any material or manufacturing defects in the effected merchandise.

**9.6** If the Buyer is not in agreement with these terms of the warranty, then it is left with no claims for compensation, including compensation for assembly or installation costs of the merchandise.

**9.7** PEAK-System warranties no product defects that result from improper use, negligence, modification, improper installation, improper product testing methods, repairs made by the Buyer, or other coincidental factors.

**9.8** Removal of the original "CE" technical quality assurance emblem or the Serial label will void this guarantee.

**9.9** Upon PEAK-System's failure to repair or to replace any defective merchandise, the Buyer has the right to demand a discount on the sales price or annulment (or a rewriting) of the sales contract.

**9.10** PEAK-System can exclude its warranty on the sale of used hardware.

**9.11** PEAK-System employees cannot be held personally liable for any product defects.

## **10. Merchandise (Software) Warranty**

**10.1** If software developed and sold by PEAK-System does not function according to the parameters described in the contract or product description, and a complaint is made to PEAK-System in writing, PEAK-System is obligated to make all necessary repairs, gratis, within twelve (12) months.

**10.2** For software resold but not produced by PEAK-System, PEAK-System shall recognize no warranties given PEAK-System's rights as stated in the current licensing terms with the original software manufacturer.

**10.3** Software discrepancies and limitations caused by innovations in the market (such as changes to operating systems) are not considered defects. The Buyer only has claims to continued software maintenance and adaptation if a consultation service is a component of a sales agreement.

**10.4** Compensation liability for immediate or subsequently incurred damages is excluded, unless it can be demonstrated that a legal representative or employee of PEAK-System is guilty of malice or gross negligence.

## **11. Manufacturer's Liability**

**11.1** PEAK-System is exempt from liability if product defects were caused by Buyer usage of a PEAK-System product for purposes other than which it was intended.

**11.2** PEAK-System is exempt from liability if defects result from improper use, negligence, modification, improper installation, improper product testing methods, repairs made by the Buyer, or other coincidental factors.

**11.3** PEAK-System is exempt from liability if the original "CE" or other quality assurance emblems are removed from PEAK-System merchandise.

**11.4** The exemption from liability also ends if PEAK-System manufactures a product on the order of a Buyer without knowledge of the end product usage or without PEAK-System's ability to control or monitor the products end application.

**11.5** The Buyer receives no exemption from liability if PEAK-System can make valid claims for liability exemption according applicable liability laws in Germany.

## **12. Export and Re-export**

**12.1** All of PEAK-System's deliveries are made according to Germany commercial export law. It is the obligation of the Buyer to be aware of these laws.

**12.2** Technical proprietary knowledge, licenses, copyrights and trademarks associated with all PEAK-System products remain under the ownership of PEAK-System. The resale or reexport of single or system-integrated PEAK-System products requires PEAK-System's permission. Any such permission granted to Buyers from PEAK-System does not include transfer to Third Parties of any technical proprietary knowledge, licenses, copyrights and trademarks associated with all PEAK-System products.

## **13. Jurisdiction**

**13.1** The venue for any legal actions for any and all disputes about or resulting from these General Terms of Business or any separate contractual relations with PEAK-System shall be Darmstadt, Germany unless otherwise agreed to in writing between PEAK-System and the Buyer.

**13.2** All legal proceedings between PEAK-System and Buyers fall exclusively under the legal jurisdiction of Germany.

## **14. Parameters of Use**

**14.1** Copyrights, as well as application and exploitation rights to a final product in which a PEAK-System merchandise has been incorporated, remain dependent on the delivery of PEAK-System products to the Buyer as stipulated by contract. Deconstruction or reverse engineering of single parts or PEAK-System systems is only allowed with the expressed written consent of PEAK-System.

**14.2** Reproduction of PEAK-System software without the expressed written consent of PEAK-System is only allowed for Buyer's internal usage or for backup.

**14.3** PEAK-System products may not be installed in life-sustaining medical or military systems without the express written consent of PEAK-System.

## **15. Return Merchandise Authorization**

**15.1** If PEAK-System is in error regarding in fulfillment of Buyer's order, correction will be made promptly and without charge.

**15.2** Any elective returns for merchandise that is not damaged or defective may require a 15% restocking charge.

**15.3** Returns must be made within 20 days of receipt of original merchandise.

**15.4** Shipping charges are non-refundable.

**15.5** Buyer is responsible for all return shipping costs.

**15.6** PEAK-System reserves the right to refuse any returns, with incomplete merchandise contents and documentation, or with merchandise that has been altered by the Buyer.

**15.7** PEAK-System shall issue any credit is due no later than 20-days following receipt of RMA merchandise.

**15.8** Software and licenses may not be returned following initial purchase.

## **16. Miscellaneous**

**16.1** If the Buyer should happen to fail to meet the terms from a sales contract, PEAK-System can refuse further delivery without danger of invalidating its legal rights and contractual obligations.

**16.2** If the decree of these General Terms of Business is declared legally ineffective, then it is considered to have been substituted for by a provision that approaches the intended function of the now ineffective decree and takes the interests of both parties involved into consideration.

**16.3** The Buyer cannot transfer or forfeit its rights to a Third Party without the written consent of PEAK-System.

**16.4** If the Buyer claims protection under of the data security and proprietary property copyright and patent laws, the Buyer must declare itself in agreement with PEAK-System's right to a thorough analysis of said data or proprietary property, to the extent that such an analysis is deemed necessary.

The current copyright provisions are also valid for products sold but not produced by PEAK-System.

