



General terms and conditions of business for PEAK-14 GmbH

District court: Darmstadt No. HRB 90104, VAT-ID-No: DE DE277470737

(valid as: 01/12/2016)

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 8 % 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 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.).
- 5.6 A right of retention with respect against 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.
- 5.7 If the customer is in arrears with respect to payment of an invoice, PEAK can stop any further service up to the complete compensation.

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.
- 6.3 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 risk of destruction, damage or wear and tear during the period of retention of ownership shall be borne by the purchaser. The copyrights, as well as the usage rights and exploitation rights at the sold product remain independently of the by contract controlled delivery at the customer with PEAK. Reproduction of individual program parts or systems of PEAK is prohibited.

7. Delivery periods

- 7.1 In the case of delivery dates specified in the order confirmations, 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 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. Warranty

- 8.1 The warranty period shall be 24 months from receipt of the goods by the purchaser.
- 8.2 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.
- 8.3 The customer shall not have the right to refuse the delivery for insignificant faults.
- 8.4 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.
- 8.5 PEAK employees acting as vicarious agents for PEAK shall not incur personal liability.
- 8.6 Service Contract Law shall apply to deliveries of software, to the exemption of the Works Contract and Purchasing Law.
- 8.7 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.
- 8.8 No warranty is accepted for software not developed by PEAK. The rights in the relevant license terms shall apply.
- 8.9 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 software update contract is concluded.
- 8.10 In case of error messages, the customer has to describe in detail the symptoms, the program stand, the hardware configuration and the system environment used by him, possibly using the forms provided by PEAK. If necessary, the employees of the customer have to cooperate with PEAK's authorized service staff at the troubleshooting.
- 8.11 The condition for the breach of duty is that the claimed defect is reproducible. If it becomes clear that the services requested by the customer and provided by PEAK were not required as a result of a breach of duty by PEAK, the customer shall pay for these services and reimburse PEAK incurred costs. PEAK will use their hourly rates and travel expense rates for the calculation.
- 8.12 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.
- 8.13 Otherwise liability is excluded.
- 8.14 PEAK shall not be liable for damages if the customer could have prevented their entry by reasonable measures, in particular program and data backup.



9. Maintenance and support services

- 9.1 PEAK performs services exclusively for standard versions of the PEAK products ordered by customers, insofar and provided that the said standard products are used unaltered and in the configuration and system environment recommended by PEAK for their use, at the designated business premises of the customer.
- 9.2 Updates and upgrades relate solely to the standard product. Any adaptations that may be made to the products by the customer are excluded from receiving updates and upgrades. However, updates and upgrades can be ordered separately.
- 9.3 The software update contract consists of the provision of upgrades and updates during the term of the contract, whereby upgrades contain further technical developments and/or expansions of function of the standard products supported within the framework of this agreement. The necessary service for the installation of updates/ upgrades is not an integral part of the software update contract and is calculated separately or remunerated by a corresponding additional contract (support contract) at a flat rate.
- 9.4 PEAK determines the content of upgrades, updates and service packs at its own discretion. In particular, the customer has no claim to additional functionalities and programme enhancements.
- 9.5 Within the framework of the individual and contractually stipulated Hotline Support, during its general business hours, PEAK answers questions relating to a specific application case (the support case), about the supported products, product documentation, and about the programme sequence and application of the products supported within the framework of the configuration and system environment disclosed by PEAK in the documentation. On request, PEAK can advise customers of its current business hours.
- 9.6 The aim of the Hotline Support is to put customers in a position of being able to carry out individual applications properly, as well as to resolve or circumvent problems themselves. However, PEAK is not obligated to provide either a problem solution, nor a general briefing or training in the application of the products. The Hotline Support may therefore only be utilised by appropriately qualified employees of the customer who are experienced in handling the supported products and the relevant system environment.
- 9.7 Services, such as trainings, briefings, software installations, individual adjustments, checking data backups and on-the-spot support, do not form part of the hotline services.
- 9.8 Remote support is not an integral part of the software update contract. Should remote services be nonetheless necessary, a separate fee will be charged for these in accordance with the valid service price list. The customer has no claim to remote support.
- 9.9 The customer shall designate an employee who is trained and qualified in handling the supported products as a contact partner for PEAK. In particular, the customer shall ensure that the contact partner or a third party brought in, if necessary, by the customer, is able to implement the operating instructions, programme changes or solutions communicated or made available by PEAK.
- 9.10 The customer shall procure and maintain the technical operational environment necessary for using the supported products, particularly upgrades, at their own expense.
- 9.11 The customer is responsible for regularly making backups of their individual data. PEAK hereby points out that it is particularly necessary to backup data before every support or maintenance measure (e.g. before changing, adapting or replacing a programme version). The data backup made must be handed over entirely to PEAK within the framework of a support and maintenance request, to allow PEAK to undertake a problem analysis. Should the customer fail to hand over the saved data to PEAK, PEAK is not obligated to help resolve the problem.

10. Term, fees and cancellation of contracts

- 10.1 The software update contract shall enter into force on signing and/or on the agreed performance date, and shall initially be valid for 12 months (minimum term). It shall be extended by a further 12 months each time, unless written notice of cancellation is given by the customer or by PEAK, at least three months before the expiration of a the 12-month period.
- 10.2 The right to give extraordinary notice of cancellation shall remain unaffected.
- 10.3 Notices of cancellation must be in writing in order to be effective.
- 10.4 PEAK is entitled to alter the contractually stipulated fees.
- 10.5 PEAK can adjust the fees contained in the price list to the general price trend, with effect for lease contracts, at the earliest following the expiry of the first contractual year and at most once per calendar year. Should the increase in the fees amount to more than 10% the customer shall be entitled to cancel the agreement as of the date on which the increase in the fees is to enter into force, provided they effect the said cancellation within one month of receiving the

notification of the change of fee.

- 10.6 The customer shall pay an annual fee for the agreed services in accordance with the currently valid general price list of PEAK, plus the statutory VAT.
- 10.7 The fees for the desired accounting period must be paid in advance. Irrespective of any further-reaching rights, PEAK shall not be obligated to perform the services required in accordance with this contract until it has received payment of the fees due for the relevant accounting period.
- 10.8 Should the customer increase the number of clients who are entitled to use the contractually specified software, then the extent of support and software maintenance utilised by the customer will automatically increase to the same degree. PEAK shall therefore be entitled to charge the fee incurred for the corresponding new number of clients, in accordance with the price list, starting from the date when the customer begins using the clients.

11. Export and 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 Products 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 The exclusive place of jurisdiction shall be the registered office of PEAK.

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 PEAK's passwords or access numbers for access to PEAK services shall be treated confidentially and appropriately protected against misuse.
- 13.6 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.
- 13.7 PEAK products or parts thereof may not be used in life-support, medical or military systems without consultation with PEAK-14 GmbH.
- 13.8 Any software which is not produced by PEAK itself shall be subject to the conditions of the respective copyright regulations of the manufacturer.