



# General terms and conditions of business for DOGAWIST Investment GmbH

Trademark: PEAKnx (Valid as: 06/12/2018)

## 1. General Provisions – Scope of Application

- 1.1 Our terms of sale shall apply exclusively; we do not consider any terms of the customer that are contrary to or differing from our sales conditions to be valid unless we have expressly agreed to their validity in writing. This also applies if the terms and conditions of the customer provide that the acceptance of the order should be regarded as the unconditional acknowledgement of the conditions of purchase. Our terms of sale also apply even if we carry out the delivery to the customer unreservedly in the knowledge of terms of the customer that are contrary or deviating.
- 1.2 All agreements made between us and the customer for the purpose of the execution of this agreement are laid down in this agreement in writing.
- 1.3 Our terms of sale apply to the whole business relationship with the customer as well as future business relationships with him.

## 2. Offer – Conclusion of Contract – Offer Documents

- 2.1 Our offers are non-binding as far as they are not expressly indicated to be binding or expressly include binding commitments or their bindingness has otherwise been expressly agreed upon.
- 2.2 The present offer and delivery conditions are a part of all of our offers. The offers are invitations to place purchase orders. The customer is bound to his order in the form of a contract request for 14 calendar days - in the case of an electronic order for five working days (in each case at our headquarters) - after we have received the order, provided the customer need not also regularly expect a later acceptance by us (section 147 BGB (Bürgerliches Gesetzbuch = German Civil Code)). This also applies to reorders of the customer.
- 2.3 A contract is - also in the day-to-day business - only concluded, when we confirm the order of the customer in writing (i.e. also by fax or e-mail) with an order confirmation. In the case of a delivery or performance within the customer's 14 day binding period regarding the offer (para. 2), our order confirmation may be replaced by our delivery, whereby the dispatch of the delivery will be decisive.
- 2.4 We reserve the right to the ownership of and the copyright to figures, drawings, calculations and other documents. This also applies to such written documents designated as "confidential". Any transfer to third parties requires our prior explicit consent in writing.

## 3. Prices / Payment Terms

- 3.1 The prices apply according to the PEAKnx online shop (<https://www.peaknx.com/>) on the day of the respective order. Unless the order confirmation provides otherwise, our prices are ex works, including packaging. VAT is not included in our prices; it shall be shown separately on the invoice at the statutory rate on the day of billing.
- 3.2 Deduction of a cash discount requires a specific written agreement.
- 3.3 Unless the order confirmation states otherwise, the net purchase price is payable (without deduction) within 14 days of the invoice date. The statutory provisions governing the consequences of late payment shall apply. PEAK levies a fee of 3.00 € with the second payment reminder and of 6.00 € from the third payment reminder onwards.
- 3.4 The customer is only entitled to set-offs if his counterclaims are acknowledged as legally effective, uncontested or recognised by us. In addition, he is only entitled to exercising retention rights if his counterclaim arises from the same contractual relationship.

## Delivery Time

4. Since PEAK is dependent on the supply by third parties in the manufacture of its products, delivery times communicated by PEAK may only be of non-binding character. PEAK will, however, despite the non-binding nature of a delivery date that may have been communicated in writing, advise the buyer of any expected changes to delivery times as soon as possible after gaining knowledge thereof. Delivery dates and deadlines shall only be regarded as binding if they have expressly and in writing been marked as "binding". Delivery dates and performance deadlines commence with receipt of our order confirmation by the customer, but not before all the details of the execution of the order have been clarified and the customer has fulfilled all obligations that may potentially pertain him. In particular, payments that have been agreed on/ advance payments or collaterals or required cooperation services must have been carried out in full. If the customer requests modifications after making the order, a new reasonable delivery and / or performance period will begin after we have confirmed the change.
- 4.2 If we are in default in delivery, the customer must first set us a reasonable grace

- 4.3 period for our performance. If that period elapses without effect, there will only exist claims for damages for breach of duty, for whatever reason, in accordance with the provisions of § 6. The right to object to the unfulfilled contract remains reserved. We are entitled to partial services and deliveries.
- 4.4 If the customer is in default of acceptance or is otherwise in culpably breach of his obligation to cooperate, we are entitled to claim damages for any loss that might thus have been incurred, including additional expenditures. These additional expenses shall in general and without proof amount to a lump sum of 0.5% of the net contract price of the service concerned per month, limited to a maximum of 5%. The parties are, however, entitled to prove higher or lower damages. The right to make further claims is reserved.
- 4.5 If the requirements of para. (4) apply, the risk of accidental loss or accidental deterioration of the goods passes to the customer at such time when he is in default of acceptance or payment. We shall be liable in accordance with the statutory provisions insofar as the underlying purchase contract is a fixed date transaction within the meaning of section 286 para. 2 No. 4 of the German Civil Code (BGB = Bürgerliches Gesetzbuch) or of section 376 of the German Commercial Code (HGB = Handelsgesetzbuch). We are also liable in accordance with legal regulations if due to a default in delivery for which we are responsible the customer is entitled to assert that his interest in any fulfilment of the contract has ceased to exist. In this case, our liability for damages is limited to foreseeable, typically occurring damage.
- 4.6 We are also liable in accordance with legal regulations if the default in delivery has been caused by a wilful or grossly negligent breach of contract for which we are responsible. Our representatives' or vicarious agents' culpability (through wilful intent or gross negligence) shall be attributed to us. Should the delay in delivery be caused by a grossly negligent contractual violation on our part or by one of our representatives or vicarious agents, our liability for compensation is limited to the foreseeable damage that typically occurs.
- 4.7 We are also liable in accordance with legal regulations as far as the default in delivery for which we are responsible arises from a culpable breach of an essential contractual duty (section 6, para. 5, sentence 2); in this case our liability shall, however, be limited to the foreseeable damage that typically occurs.
- 4.8 Further legal claims and rights of the customer remain reserved.
- 4.9

## Shipping - Transfer of Risk

5. Unless otherwise stated in the order confirmation, delivery is ex works. Delivery is at the expense and risk of the customer.
- 5.1 The risk of accidental loss or accidental deterioration is, if not agreed otherwise expressly and in writing, transferred to the customer upon delivery of the products to the forwarding agent, the carrier or the company otherwise responsible for the dispatch, in any case no later than when leaving our plant or warehouse or our branch or the plant of the manufacturer.
- 5.2 Unless otherwise agreed, in case of a dispatch that has been agreed on, we reserve the right to choose the transport route and means of transport. However, we will make every effort to take the customer's wishes into account with regard to the type of shipment and the route of shipment. However, the customer has no right to claim this. The additional costs this may entail, such as transport and insurance costs - even in the case of an agreed freight-free delivery - shall be borne by the customer. If the shipment is delayed with respect to the stipulated point in time at the customer's request or due to his fault, we will store the goods at the expense and risk of the customer.
- 5.3 If the dispatch is delayed by the fact that we make use of our right of retention as a result of total or partial payment default by the customer or for any other reason for which the customer is responsible, the risk will be transferred to the customer at the latest on the date of the customer's receipt of the notification of the readiness to deliver and/or perform.
- 5.4

## Liability for Defects

6. The customer's warranty claims require that he has properly fulfilled his inspection and complaint obligations pursuant to section 377 of the German Commercial Code (HGB = Handelsgesetzbuch).
- 6.1 In so far as warranty claims exist, we provide warranty in such a way that we repair material and processing defects in our repair centre or replace the affected parts.
- 6.2 If the supplementary performance should fail, the customer is entitled, at his discretion, to demand either withdrawal from the contract or a reduction in price.
- 6.3



- 6.4 We are liable in accordance with legal regulations provided that the customer claims for damages arising from intention or gross negligence, including those that arise from intention or gross negligence of our representatives or vicarious agents. Insofar as the customer does not assert any wilful breach of contract on our part, our liability is limited to the sort of damage that typically and foreseeably occurs.
- 6.5 We are liable in accordance with legal regulations if we culpably infringe any essential contractual obligation; but in this case, the liability for damages is also limited to foreseeable, typically occurring damage. An essential contractual obligation is an obligation whose fulfilment is essential to the due and proper execution of the contract and on the fulfilment of which the customer regularly relies and may rely.
- 6.6 If, in addition, due to a negligent breach of duty, the customer has a claim for damages instead of performance, our liability is limited to the compensation of the foreseeable, typically occurring damage.
- 6.7 Liability for culpable injury to life, body or health remains unaffected; this also applies for liability according to the German Product Liability Act (Produkthaftungsgesetz).
- 6.8 Unless stipulated otherwise above, liability is excluded.
- 6.9 The limitation period for warranty claims is 24 months calculated from the transfer of risk. This does not apply if the law, in pursuance of section 438 para. 1 No. 2 BGB (German Civil Code) (buildings and components for buildings), section 479, para. 1 BGB (right of recourse) and section 634a BGB (construction defects) allows for longer limitation periods.
- 6.10 In the event of removed or damaged original technical marking of the delivered goods, the customer's claims for defects shall lapse.
- 6.11 Unless expressly agreed otherwise in writing, the warranty for used goods is limited to 1 year from the transfer of risk.
- 6.12 The following additional provisions shall apply to deficiency claims for the delivery of software:
1. In so far as the software developed by PEAK does not correspond to the contractually stipulated use and deviations are objected to in writing, PEAK shall be obliged to remedy the defect free of charge within a period of limitation of 24 months from the passing of risk.
  2. Software not produced by PEAK is subject to the rights set forth in the applicable license terms and conditions.
  3. Product deviations in the sense of market innovations are not considered to be defects. The customer shall only be entitled to software maintenance and software adaptation if a more extensive program maintenance contract is concluded.
  4. The duplication of PEAK software is allowed only for the creation of a backup copy.

## 7. Joint and Several Liability

- 7.1 Any further liability for damages as provided in section 6, is excluded, regardless of the legal nature of the asserted claim. This is in particular valid for indemnity claims resulting from culpa in contrahendo (fault in conclusion of a contract) due to other violations of duty, or due to tortious claims for replacement of damage in accordance with section 823 of the German Civil Code.
- 7.2 The limitation in accordance with para. (1) does also apply if, in lieu of a claim for damages, the customer demands a reimbursement for useless expenditures.
- 7.3 In so far as our liability for damages is excluded or limited, this shall also apply to the personal liability for damages of our employees, jobholders, staff, representatives and vicarious agents.

## 8. Retention of Title

- 8.1 We reserve title to the goods until receipt of all payments under the delivery contract. If the customer is in breach of contract, especially if he is in default of payment, we are entitled to take back the object of sale, which shall constitute a withdrawal from the contract. After having taken back the object of sale, we are entitled to utilize it as we see fit. Such proceeds have to be set off against the customer's payables – minus appropriate utilization costs.
- 8.2 In case of seizures or other third-party interventions, the customer shall immediately notify us in writing so that we can bring an action pursuant to section 771 of the German civil procedure code (ZPO = Zivilprozessordnung). If third parties are unable to reimburse us the court expenses and extrajudicial costs pursuant to section 771 ZPO (the German civil procedure code), the customer will be liable for the loss we have incurred.
- 8.3 The customer is entitled to resell the purchased goods in the ordinary course of business; however, already now he transfers all claims to the amount of the invoice final amount (including VAT) of our claim to us, that arise from reselling the goods to his customers or third parties, regardless of whether or not the goods

have been resold after or without further processing. The customer may still collect such receivables, even after such a cession. This is without prejudice to our right to collect such receivables ourselves. However, we are hereby contractually bound not to collect such receivables as long as the customer complies with his payment obligations arising from the proceeds collected, is not in default of payment and, notably, has not filed for insolvency and there is no cession of payment. If this is the case, however, we are entitled to demand that the customer notifies us of the assigned receivables and their debtors, gives us all data necessary for a collection of such receivables, hands over the attendant documents, and notifies the debtors (third parties) of such an assignment.

- 8.4 The processing or transformation of the object of sale by the customer shall always be made for us. If the object of sale is processed with other objects that do not belong to us, we will become co-owners of the new object in proportion to the item's sale value (final invoiced amount, including VAT) to the other processed items at the time of processing. Besides, for the object resulting from processing the same applies as for the purchased object that was delivered under reservation.
- 8.5 If the object of sale is inseparably mixed with other objects that do not belong to us, we become co-owners of the new object at the ratio of the object's sales value at the time of mixing (final invoiced amount, including VAT) to the other mixed objects. If the mixing is done in a way that makes the customer's object the main part of the new object, it is hereby agreed that the customer makes us co-owner on a pro-rata basis. The customer is in possession of the thus evolved sole or co-ownership on our behalf.
- 8.6 The customer shall also assign to us his receivables from third parties that might arise when the object of sale is combined with a piece of real estate to cover his payables to us.
- 8.7 We are hereby contractually bound to release the securities we are entitled to in so far as that the realizable value of our securities exceeds the value of the secured receivables by more than 10 percent. The selection of the securities to be released is at our discretion.

## 9. Jurisdiction – Place of Performance

- 9.1 In so far as the customer is a merchant, our registered office is place of jurisdiction; we are, however, entitled to sue the customer at his place of jurisdiction.
- 9.2 The law of the Federal Republic of Germany shall apply.
- 9.3 Unless otherwise stated in the order confirmation, the place of fulfilment is our registered office.

## 10. Miscellaneous

- 10.1 Should a provision of this contract be or become invalid or unenforceable in whole or in part due to the law of the general terms and conditions according to para. 305-310 of the German Civil Code, the statutory provisions shall apply.
- 10.2 If any current or future provision of the contract is or will be for reasons other than because of the laws concerning the general terms and conditions according to the sections 305-310 of the German civil code entirely or partially invalid/void or unenforceable, the validity of the remaining provisions of this agreement shall not be affected, as far as the execution of the contract – also taking into account the following regulations - would not constitute an unreasonable hardship for one of the parties. The same applies if a loophole, which arises after the agreement has been concluded, needs to be filled. The validity of the remaining contractual provisions shall be maintained under all circumstances and section 139 of the German Civil Code shall be waived.
- 10.3 The parties will replace a provision that for reasons other than because of the laws concerning the general terms and conditions according to the sections 305-310 of the German civil code is invalid/void/unenforceable or a gap that needs to be filled with an effective provision which regarding its legal and economic content corresponds with the invalid/void/unenforceable provision and the overall purpose of the contract. Section 139 of the German Civil Code (partial invalidity) is expressly excluded. Should the invalidity of a provision be based on a fixed criteria of performance or time (deadline or date), the determination is to be agreed with the original measure and the next legally permissible level.