

General Terms and Conditions of Purchase of Peak Technology GmbH and its subsidiaries

Hereinafter referred to as “Peak Technology”

1. General

1.1 The following Terms and Conditions of Purchase shall be applicable for any and all purchase orders made by Peak Technology and its subsidiaries, in particular purchase contracts, contracts for work and services (hereinafter referred to as “Orders”), irrespective of how they may be referred to in any individual case, as well as for subsequent orders (hereinafter referred to as “General Terms and Conditions of Purchase”), unless Peak Technology, in individual cases, confirms any other deviating conditions in writing.

1.2 These General Terms and Conditions of Purchase shall be deemed mandatory for the entire present and future business relations with contract partners, even if no express reference is made to them.

1.3 The contractor commissioned by Peak Technology with deliveries, works or services shall hereinafter be referred to as “Supplier”. Supplier expressly takes note of the fact that Peak Technology will object to any terms and conditions included in its order confirmation that do not correspond to Peak Technology’s Terms and Conditions of Purchase and that the actual acceptance of any delivery shall not be deemed as acceptance of the provisions in the order confirmation. Supplier shall take note of the fact that Peak Technology will consider delivery by Supplier as acceptance of the present Terms and Conditions of Purchase.

1.4 Any business relations based on these Terms and Conditions of Purchase shall be exclusively conducted with companies as defined in the Austrian Commercial Code (UGB - Unternehmensgesetzbuch). It is expressly pointed out that these General Terms and Conditions of Purchase are not applicable to contracts with consumers as defined in the Austrian Consumer Protection Act (“Konsumentenschutzgesetz”).

1.5 The General Terms and Conditions of Purchase valid at the date of contract conclusion with Supplier shall be applicable. These General Terms and Conditions of Purchase are available for download at <http://www.peaktechnology.at/de/unternehmen/#downloads>.

2. Conclusion of Contract, Orders, Invoices

2.1 Legal relations between Supplier and Peak Technology shall be based exclusively on these General Terms and Conditions of Purchase, unless, in individual cases, deviating provisions have been agreed upon in writing.

2.2 Peak Technology’s orders are legally binding for both contracting parties if they were made in writing by authorized representatives of Peak Technology, whereby orders made by e-mail or fax shall be considered written orders, unless Supplier objects to this in writing within a period of 48 hours calculated from receipt of the order or unless Supplier accepts it in writing with defined amendments regarding its contents. Any orders placed orally or by phone will be ineffective unless followed up by a written order confirmation. Unless Supplier confirms acceptance of orders to Peak Technology within 5 business days in writing, Peak Technology shall be authorized to cancel its orders without any costs arising for Peak Technology due to this cancellation.

2.3 If Peak Technology’s order can only be accepted by Supplier with amendments as regards its contents, Peak Technology will consider this a new offer from Supplier, which shall be subject to examination by Peak Technology and written acceptance by authorized representatives of Peak Technology.

2.4 Supplier undertakes to indicate the purchase order number of Peak Technology on any invoices issued by him or on any other written communication addressed to Peak Technology, in default of which Peak Technology shall consider these communications as not delivered.

3. Delivery, Date of Delivery, Force Majeure

3.1 INCOTERMS 2010 shall be applicable to all deliveries and – provided that no other INCOTERM clause has been agreed upon in individual cases – the Incoterm 2010 clause “DDP Linz” shall be applied. Goods have to be insured by Supplier to destination.

3.2 Any goods shall be safely packaged for transport and delivered carriage paid to the place of delivery agreed upon. Supplier undertakes to meet the costs of shipping, packaging and transport insurance. All deliveries shall be accompanied by the

respective shipping documents/delivery notes, in particular precise descriptions of the contents with the designation of goods, number of items, weight, etc., in accordance with the order documents, otherwise Peak Technology shall be authorised to reject deliveries.

3.3 Fixed delivery dates, which shall always be considered fixed dates pursuant to sec. 919 Austrian Civil Code (ABGB), shall be observed by Supplier in all cases. If Supplier is not in a position to observe a delivery date agreed upon, he is obligated to notify Peak Technology thereof in due time.

3.4 Notwithstanding this notification, Peak Technology shall be entitled to withdraw from the order or claim damages for non-performance without granting a period of grace, without prejudice to other additional claims upon its discretion. In addition, Peak Technology shall be entitled to procure replacement deliveries from third parties and invoice Supplier for the difference in price without Supplier having the right to object to the purchase price of the replacement delivery.

3.5 If shipments have to be delivered by express transport due to circumstances that are attributable to Supplier, the associated excess costs shall be borne by him. If Peak Technology accepts delayed delivery, this shall not mean that Peak Technology waives any claims to compensation based on this delayed delivery.

3.6 The relevant factor is the arrival of the products at the delivery address or its full acceptance. We are not obligated to accept part or excess deliveries which have not been agreed upon and deliveries executed before the date agreed upon.

3.7 Even if Peak Technology insists on fulfilment of the contract, it is authorized to claim damages derived from any damage, including indirect financial loss and loss of profit.

3.8 Inspection of goods pursuant to section 377 UGB (Austrian Commercial Code) shall be conducted at the respective place of delivery. A notice of defects regarding the goods, even if the invoice submitted already has been paid, shall be possible within a warranty period of 24 months. If no other mandatory provisions have been made by law, it shall not be necessary to observe a period within which the complaint has to be made to maintain any warranty claims or claims for damages.

3.9 In case of default of delivery, Supplier shall have to pay a contractual penalty of 2% of the total order amount, however limited to 10% max. of the total order amount, but at least EUR 500 per week, for each commenced week of delay in delivery until complete delivery/service supply.

3.10 Peak Technology shall reserve the right to claim damages exceeding those mentioned above. The contractual penalty pursuant to 3.6 is not subject to mitigation by court decision. Peak Technology is entitled to set off outstanding invoices of Supplier against potential contractual penalties.

3.11 In case of force majeure (for example, but without any limitation hereto, strike, war, damage by fire, flood) we shall be relieved from the acceptance obligation for its duration and we shall also be entitled to withdraw from the contract without this fact giving rise to claims by Supplier to Peak Technology.

3.12 Supplier shall not be entitled to transfer contractual rights and obligations, whether in whole or in part, to third parties. Any such transfer shall require the express prior consent of Peak Technology, both with regard to singular or universal successors. However, Peak Technology shall be entitled to transfer contractual rights and obligations to third parties with debt-discharging effect by way of singular succession.

4. Shipping instructions, Place of Performance

4.1 If Supplier fails to observe the specified and/or agreed upon shipping instructions and conditions and any damage or expenses should arise from this fact (e.g. additional trip, extra freight, idle times,) all these expenses shall be borne by Supplier. Deliverables and/or packaging of deliverables have to be labelled in accordance with the specifications of Peak Technology and/or pursuant to applicable documentation obligations to make sure that their origin and manufacturing date can be determined without any doubt (e.g. by parts number, draft number, order number, parts designation).

- 4.3 Unless other regulations apply, the place of performance for delivery and payment shall be the current company address of Peak Technology.
- 5. Prices**
- 5.1 The prices agreed upon are fixed prices, with delivery being made to the place of destination according to INCOTERMS; all costs incurred to Supplier, e.g. for packaging, quality assurance, function and quality checks, documentation required and any potentially required permits and insurances are included as well.
- 5.2 Offers and related documents made available by Supplier are free of charge for Peak Technology, irrespective of the scope of preliminary work required for such documents.
- 5.3 In cases of serial and subsequent deliveries, Supplier shall deliver goods as well as services which are competitive in terms of price, quality and delivery times during the validity of the delivery/service contract. Should we find out that Supplier fails to perform delivery at competitive conditions insofar as another potential supplier offers manufacture and supply of the products/services under this contract at more favourable conditions and Supplier fails to offer these conditions as well, Peak Technology will discuss the options for achieving these conditions with Supplier. If it is not possible to come to an agreement with Supplier within 30 days, Peak Technology shall have the right to terminate this contract either in its entirety or partly, observing a period of notice of 30 days. Irrespective of the termination of the contract, Supplier undertakes to fulfil the orders/call-offs sent before contract termination.
- 6. Invoicing, Payment**
- 6.1 Unless otherwise agreed upon, invoices have to be sent to Peak Technology after delivery and performance of service. In addition to the purchase order number, all order data, the type of shipment and delivery notes shall be indicated on the invoices. Invoices must include all data specified by law to ensure correct fiscal processing and must be in accordance with customs law regulations.
- 6.2 The period of payment shall commence only at the date of complete performance of services and receipt of an invoice pursuant to 5.3 and 1.3 by Peak Technology. If delivery is performed before the date agreed upon, this period shall commence at the earliest at the date originally agreed upon.
- 6.3 Unless otherwise agreed upon, we shall pay for the deliveries and services within 14 days minus 3 % discount or within 30 days net.
- 6.4 Payment of a supplier's invoice by Peak Technology shall not mean acceptance of the flawlessness of the delivery and/or the service of Supplier and shall not involve any waiver of claims under warranty and/or damages.
- 6.5 Supplier may set off its claims with claims of Peak Technology and transfer its claims against Peak Technology to third parties only upon Peak Technology's prior consent.
- 6.6 However, Peak Technology shall be entitled to set off Supplier's claims with counterclaims, even with those by associated companies. Supplier shall have no right of retention.
- 7. Quality of Delivery and/or Service**
- 7.1 Supplier guarantees that its deliveries and services are in accordance with the agreed upon technical data, warranted characteristics, state of the art, the safety and quality regulations as well as legal and other provisions.
- 7.2 To ascertain the quality level expected by Peak Technology, Supplier shall install, maintain and regularly demonstrate a suitable quality management system for all deliveries and services. Peak Technology is entitled to check the effectiveness of Supplier's quality management system also on site by way of visits and audits, e.g. in accordance with VDA publication 6.1b "QM System Audit".
- 7.3 Supplier undertakes to continuously check deliverables during production and delivery. In accordance with VDA publications Supplier, in case of serial deliveries, shall commence serial production only after Peak Technology has given its written consent to the initial sample. For checks of initial samples and formal documentation requirements we should like to refer you to VDA publication 2 "Sicherung der Qualität von Lieferungen-, Lieferantenauswahl, Bemusterung, Qualitätsleistung in der Serie" (Safeguarding of quality prior to deliveries, selection of suppliers, sampling, quality level for serial deliveries) unless another way of safeguarding serial delivery has been agreed upon with Peak Technology.
- 7.4 Should contractual, legal or common documentation obligations (e.g. for safety components etc.) exist for deliverables and/or services, Supplier undertakes to conduct an end-to-end quality documentation and store test documents/data/samples/documentation for 15 years after final delivery and submit it to Peak Technology on request. Supplier shall commit any subcontractors to this obligation.
- 7.5 Regarding minimum requirements of Peak Technology in connection with the quality of Supplier's products, Peak Technology's quality assurance agreement "QSV" shall serve as a benchmark.
- 7.6 If the contract concluded by Peak Technology and Supplier is terminated or if bankruptcy proceedings are filed against Supplier, any records or sample components/test units must be returned to Peak Technology immediately.
- 7.7 Unless otherwise agreed upon, Supplier undertakes to store any production documents which enable the production process of a product and/or its compliance with the defined specifications for at least 30 years and safeguard legibility as well as protection from destruction and theft of these documents. Upon expiry of these 30 years, Supplier, before destroying the documents, shall offer to hand them over to Peak Technology free of charge.
- 7.8 Supplier shall, on his own initiative and in advance, hand over to Peak Technology any safety datasheets and accident bulletins for materials and items to be delivered, which, on account of their nature, their properties or their condition may endanger the life and health of people and/or the environment, as well as for items which, due to regulations, require a special procedure in terms of handling, packaging, transport, storage and waste disposal.
- 8. Warranty**
- 8.1 If no other provisions have been made in individual contracts with Supplier, Supplier shall grant a warranty period of 24 months for moveable objects, 60 months for immovable objects or objects that are designed for installation or for use in immovable objects for delivery and/or performance of the service as specified in the order, for observance of all relevant regulations stipulated by law or the authorities, for state-of-the-art construction, for the quality of the production, for all the properties agreed upon and for the use of flawless materials.
- 8.2 Warranty shall commence on the date of acceptance of the deliverables by Peak Technology's end customer or, if used by Peak Technology, on the date of full acceptance of deliverables/services by Peak Technology.
- 8.3 Receiving inspection is limited to obvious faults, such as faulty packaging, transport damage, wrong deliveries, excess or short delivery. We shall notify Supplier of such faults within 14 days from the date of delivery.
- 8.4 It is expressly noted that Peak Technology shall have no further obligation of conducting an immediate inspection of deliverables/services upon handover and of issuing a commercial notice of defects regarding potential faults. Peak Technology shall be entitled to claim faults and defects occurring within the warranty period any time.
- 8.5 Peak Technology shall be entitled to request free-of-charge rectification or replacement of defective deliveries, rectification of faults by a third party at the expense of Supplier, amend the contract or request an appropriate reduction in price.
- 8.6 In case of faults detected in deliveries, Peak Technology is entitled to charge Supplier a lump sum of EUR 50 for each complaint as a compensation for the expenses incurred. Any other claims of Peak Technology in excess thereof shall remain unaffected by this provision.
- 8.7 After repair of the fault by Supplier and after acceptance of the rectification by Peak Technology, warranty obligation shall commence anew for the entire faulty delivery/service.
- 8.8 Any potential claims to damage on the part of Peak Technology shall remain unaffected by the aforementioned warranty provisions.
- 9. Damages**
- 9.1 Supplier shall be liable for any and all damage caused to Peak Technology due to a delayed or defective delivery and/or service on account of its own fault or a fault of its subcontractors or agents.
- 9.2 In case of actual or alleged defects of the deliverable which cannot be rejected without a detailed inspection of the deliverable and which are caused by a violation of the supply/service contract or another unlawful act of Supplier, Supplier shall relieve Peak Technology and its agents, assistants, executive bodies and other companies which sell or process goods or products in which deliverables are incorporated as well as its customers from all claims, costs, damage and expenses, including legal costs.
- 9.3 If, under the Product Liability Act, a claim for damages is raised against Peak Technology by third parties, Supplier undertakes to prove that the product he has delivered is not defective pursuant to product liability provisions. Furthermore, Supplier undertakes to fully inform Peak Technology on this matter and support it in case of a legal dispute with third parties as well as indemnify and hold it harmless against any claims of third parties. This applies also if the deliverable is only a part of the service performed by Peak Technology for third parties.
- 9.4 Supplier shall relieve Peak Technology and its agents, assistants, executive bodies and other companies which sell or process goods or products in which deliverables are incorporated as well as its customers from all claims, costs, damages and expenses, including costs of legal services, which may arise from or are due to a recall to the extent to which this has been necessary on account of Supplier's deliverables or service provided.
- 9.5 Should Supplier or persons connected to him cause damage to components which Peak Technology has provided to Supplier for further processing, Supplier undertakes to pay damages, irrespective of who has caused the damage.
- 9.6 For coverage of Supplier's liability to Peak Technology and third parties Supplier shall take out a product liability insurance or, if already existing, maintain such insurance, with an insured sum of EUR 7 million at his own cost. Supplier shall submit this policy to Peak Technology on request. In case of recall of a product and activities connected thereto, Supplier shall compensate Peak Technology for any damage and/or expenses caused by this activity.
- 9.7 By accepting the order, Supplier expressly declares that the deliverable is free from rights, in particular property rights, of third parties. If rights of third parties are claimed nonetheless, he shall indemnify Peak Technology and hold it harmless.

- 10. Means of Production, Property, Secrecy**
- 10.1 "Means of production" shall in particular mean resources, manufacturing plants, matrices, tools, dies, test and measuring tools, gages, samples, components, specimens, models, drawings, stereotype plates or other tools that may be required for manufacture, measurement and tests of deliverables.
- 10.2 Should Peak Technology provide Supplier with means of production for meeting its contractual obligations, these means of production shall remain the unrestricted material and intellectual property of Peak Technology.
- 10.3 The same applies for means of production that have been manufactured by order of Peak Technology and which have been paid for by Peak Technology. Supplier shall mark these means of production clearly and permanently as property of Peak Technology. They may only be employed for fulfilling the orders of Peak Technology. They may neither be accessible nor handed over to third parties. After execution of Peak Technology's order and/or after termination of the respective contract they have to be returned to Peak Technology at Supplier's expense unless another agreement is made.
- 10.4 Supplier undertakes to safeguard suitable storage, maintenance and repair of Peak Technology's means of production, so that damage, loss or destruction, even if caused by force majeure, can be excluded.
- 10.5 Supplier undertakes to keep any commercial and technical facts that become known to him in the course of the business relationship confidential as far as they are not public domain. The objects, data and documents submitted to Supplier remain Peak Technology's property and must be kept secret from third parties and may not be duplicated, made available to third parties or made accessible in any other way without Peak Technology's consent. Supplier's subcontractors, upstream suppliers and employees have to be obligated accordingly.
- 10.6 The obligation to keep the business and company secrets of Peak Technology shall be unlimited also after termination of the business relationship. Peak Technology is entitled to claim a penalty from Supplier at its reasonable discretion for any violation of the obligation to secrecy. Any rights of Peak Technology in excess thereof shall remain unaffected by this provision.
- 10.7 Supplier may advertise the business relationship with Peak Technology in its promotion activities only after written consent by Peak Technology.
- 11. Termination of Contract**
- 11.1 Should Supplier fail to meet its obligations under this contract, Peak Technology shall be entitled to terminate the contract. If the termination is attributable to the conduct of Supplier, Supplier shall refund to Peak Technology all costs already incurred as well as compensate it for any other damage.
- 11.2 Peak Technology shall also be entitled to preliminarily terminate the contract for important reasons and without keeping a period of notice, in particular if (1) the entire company of Supplier is subject to insolvency proceedings, (2) execution proceedings are opened against him, (3) Supplier has been in default of meeting obligations under the contract for already 6 weeks, despite having been granted a reasonable period of grace including notification of contract termination, (4) Supplier provided incorrect or incomplete information in the course of entering into the business relationship or concealed important facts.
- 12. Place of Jurisdiction, Applicable Law, Miscellaneous**
- 12.1 The laws of Austria shall apply for the interpretation of the provisions of these Terms and Conditions of Purchase and/or the contract concluded by Supplier and Peak Technology. The application of the UN Convention on Contracts for the International Sale of Goods shall be excluded. All disputes arising directly or indirectly from the Contract concluded by Supplier and Peak Technology shall be subject to the exclusive jurisdiction of the court in Linz that is competent in terms of subject matter. However, Peak Technology is entitled to file proceedings against Supplier at its own discretion before any other court that may be competent under applicable law.
- 12.2 If any of the provisions of the contracts is or becomes invalid, this shall not serve to invalidate the remaining provisions and the contract as a whole.
- 12.3 The headings used for the individual sections of these Terms and Conditions of Purchase shall serve only for orientation and shall not be used for the interpretation of conditions.
- 12.4 Alterations of and amendments to these Terms and Conditions of Purchase shall have to be made in writing in order to be effective.