

Standard Terms and Conditions of Business of Peter Lacke GmbH

2. These Standard Terms and Conditions of Business apply to all current and future business relationships. Terms and conditions of business that differ from, or are contrary or supplementary to these shall not, even when known, form an element of the contract unless consent to their application has been explicitly given.

2. Our quotations are without obligation and are not legally binding. Orders are only legally binding if we have acknowledged them in writing within two weeks. Our written order acknowledged is definitive regarding the content and scope of the contract. Ancillary agreements with sales representatives, commercial agents or employees, and amendments, additions etc. require our written confirmation.

3. For supplies and/or services that are delayed by the occurrence of unforeseen, extraordinary events, and which we have been unable to avoid despite taking the care necessary according to the particular circumstances concerned (including events affecting our suppliers) – such as strike, lock-out, interruption of operations, difficulties in procuring materials that have occurred subsequently, an important work piece being rejected, official ordinance etc. – the time for delivery shall be extended by the duration of the hindrance with, in addition, an appropriate start-up period that shall be in line with our operational requirements. If the supply or service is made impossible by such above-mentioned occurrences through no fault of our own, then we shall be released from the obligation to deliver without the Customer being able to demand compensation in damages.

In the event of the Customer failing to accept goods that have been ordered, we have the right to demand 15% of their value for expenses that have already been incurred, and for lost profit. It is open to the Customer to prove that no damage has arisen or only to a substantially lower extent than the flat rate of 15%. Our deliveries may exceed or fall short of the ordered quantity for manufacturing reasons (special shades) by up to 10% or a maximum of 25 kg, and in the case of over-filling or under-filling of containers by up to 3%.

The despatch of all goods by us is undertaken for the account and at the risk of the Customer, in the case of risk even when carriage-paid delivery has been agreed. Transportation insurance will only be taken out on the explicit instructions of the Customer and at its expense. The risk of accidental loss passes to the Customer when the goods are handed over to the persons entrusted with their transportation, but at the latest when they leave our factory.

4. Valued Added Tax at the statutory rate at the time concerned is not included in our prices, and is invoiced separately in each case.

The Customer is obliged to pay at the latest 30 days following receipt of invoice in the case of deliveries within Germany and to other member states of the EU. Delivery outside the EU area shall be made against payment in advance, or alternatively by letter of credit, in which case each party must bear its respective domestic letter of credit charges. The Customer shall be in arrears if the period allowed for payment elapses without payment being received. We reserve the right to assert further claims for compensation in damages.

A price surcharge shall be levied in accordance with special calculation in cases of manufacture of small quantities to Customer's specifications. Separate small invoice supplements shall be charged in the case of small orders. If the delivery of goods and/or the provision or services is made more than 4 months after the contract has been concluded, and if wages and material costs, or our suppliers' prices, go up in that period, then we are entitled to raise the contract price accordingly.

If carriage-paid delivery is agreed, this shall apply only for deliveries within Germany, to the Benelux countries, and to Alsace-Lorraine of at least 200 kg per consignment, deliveries to the rest of the EU of 2 t per consignment and to countries seeking entry into the EU of 5 t per consignment, deliveries to CIS states of 10 t per consignment, and deliveries outside Europe of 2 t per consignment FOB German seaport or airport. If the Customer is entitled to carriage-paid delivery but the goods are despatched carriage-forward, then in all cases only the mixed cargo rate, without the portage or haulage for receipt of the goods, will be reimbursed to the consignee. Additional costs for express freight or other surcharges will be for the account of the consignee, while deliveries to addresses outside the Federal Republic of Germany are made carriage-paid to the German frontier, duty unpaid and without any incidental costs.

The Customer may offset against our claims or assert a right of retention, if its counterclaims are uncontested or have been established with legal force. This does not apply to the right of retention if the Customer's counterclaims are based on defective performance.

5. The Customer's rights arising from material defects are restricted to subsequent performance. Subsequent performance shall be provided, at our option, by removal of the defect or by delivery of non-defective goods. Should the subsequent performance come to nothing the Customer has the right, after a period of 10 working days has been set as a period of grace and has expired, to withdraw from the contract, to reduce the purchase price or - in the case that we are at fault - to demand compensation in damages. Liability irrespective of fault only comes into question in the case of a guarantee (§ 276 of the German Civil Code (BGB)) or a quality guarantee (§ 443 of the German Civil Code) having been explicitly assumed in writing.

If the Customer asserts against us claims for material defects on the basis of public statements by us or by our agents, particularly in our advertising or in the identification of specified properties, the onus of proof shall be on the Customer to demonstrate that the statement was instrumental in its placing of the order on us. No liability is accepted for statements made in advertising by third parties.

Samples merely identify the quality of the product(s) covered by the contract and do not constitute a guarantee (§ 276 of the German Civil Code) or a quality guarantee (§ 443 of the German Civil Code).

Verbal and written recommendations on technical aspects of application(s) on the basis of existing experience and current knowledge do not mean that a particular quality has been agreed between the contracting parties or made a precondition by them, and do not relieve the Customer from the responsibility for checking on its own account that the products are suitable for the application and for the processing technique that it has planned. Responsibility for material defects is in any case ruled out if thinners, hardeners, additives or other components are added that have not been bought from the supplier or from us, and if that mixture has not been recommended by the supplier or by us.

The Customer will undertake trial application in line with its duty to investigate and give notice of defects under § 377 of the German Commercial Code (BGB).

The Customer's claims for material defects become statute-barred one year after delivery of the product concerned. The limitation period for claims for material defects does not apply to claims for compensation in damages, for which liability is not excluded under § 7 of the Standard Terms and Conditions of Business. It does not apply to the Customer's right to withdraw from the contract, to the extent that we are answerable for the defect.

If a newly manufactured product sold to a consumer or enterprise is defective and consequently has to be taken back by the Customer, or if the Customer's Customer has reduced the purchase price, the Customer's legal rights in the case of defects shall apply

without the limitations of guarantee rights specified in this provision, with the exception of claims for compensation in damages (§ 478 of the German Civil Code).

6. The goods delivered shall remain our property until payment of the purchase price has been made in full, together with all accessory claims and all claims arising from the business relationship that are already in existence and all future claims emerging from it having also been settled.

The Customer must neither pledge our goods nor assign them as security. It may, however, process them or sell them on in the course of normal business dealings, unless it has effectively assigned the claim against its contract partner in advance to a third party or has agreed a prohibition on assignment. Any processing of our goods into movable products is made on our account and for our benefit. In the case of processing them with other goods that do not belong to us, we shall acquire joint ownership in the new products according to the ratio of the value of the goods delivered by us (delivery price including VAT exclusive of cash discount) to the other goods at the time of the processing.

In the event that the Customer acquires sole or joint ownership in the new products as a result of processing, combining, mixing or blending, it agrees here and now to transfer to us, as security for the fulfilment of all our claims, the sole ownership or joint ownership in the ratio of the value of the goods delivered by us to the other goods at the time of processing.

The Customer undertakes here and now to keep the new products for us, without charge and with the due diligence of a prudent businessman. The Customer here and now assigns to us, as security for the fulfilment of our claim, all present and future claims arising from onward sale, with all ancillary rights, to the level of the value of our property or our share of the goods jointly owned, with precedence over the remainder of its claims. In the event of the Customer selling our goods (together with other goods that do not belong to us) or products manufactured using our goods, or combining/mixing/blending our goods with a third-party movable product, and thereby acquiring a claim that also cover its other performances, it assigns here and now to us – on account of the same claims – this claim with all ancillary rights to the level of the value of our property or our share of the goods jointly owned, with precedence over the remainder of its claim. The same applies to the same extent for any possible rights on the basis of the processing of our goods on account of and to the level of our total outstanding claims. We accept herewith the Customer's declarations of assignment. In the event of the Customer defaulting on payment, it must at our request provide individual evidence of these claims and make known to whomsoever subsequently acquires the goods that the assignment has taken place, with the request to pay us up to the level of our total claims. We also have the right at any time to notify whomsoever acquires the goods subsequently of the assignment and to collect the claim from that party. In the event of the Customer collecting parts of the claim that has been assigned to us, it here and now assigns to us its respective residual claim to the level of these part claims. The right to demand handover of the amounts collected remains unaffected; the Customer may neither assign to third parties its claim against whomsoever has subsequently acquired the goods, nor pledge it, nor agree on a prohibition of assignment with that party.

In the case of third parties obtaining access to goods that are subject to the retention of title, and in particular in the case of attachments or other impairments of our rights by third parties, the Customer will draw attention to our ownership and advise us immediately; the Customer must hand over to us all the documentation necessary for any intervention. If the value of the goods that are serving as security for us and/or have been delivered subject to retention of title exceeds our overall claim – other than temporarily – by more than 20%, then we are obliged on request by our contract partner to release security to that extent.

The delivery prices, including VAT but exclusive of cash discount, are definitive for determining the level of security.

Ownership of goods in which title is retained passes over to the Customer on full payment of our total claims arising from the business relationship.

The Customer immediately acquires the claim that it has assigned to us as security for our claims in accordance with the provisions set out above.

7. Claims against us for compensation in damages are excluded, irrespective of the legal grounds (impossibility of performance, delay, deficient performance, breach of secondary legal obligations, other duties arising from the debt obligation, and tortious act).

This does not apply to damage arising from violation of life, of the body or of a person's health, to other damage, if this is based upon an intentional or grossly negligent breach of duty by us or by one of our senior employees, a substantial contractual duty (cardinal duty – especially a major contractual duty to perform) has been breached, duties not falling under b) above have been breached with intent or by gross negligence by simple vicarious agents.

In the cases of b) and c) above, liability is limited in amount to the reimbursement of damage that could typically have been foreseen.

In so far as liability has been excluded or limited in clauses 1. and 2. above, the same also applies to the personal liability of our employees at all levels, our representatives and vicarious agents.

The above exclusion of liability does not apply to claims under the law on product liability.

In so far as the Customer, in lieu of compensation in place of performance, demands from us reimbursement of expenditure that it has incurred, trusting it would receive that performance (§ 284 of the German Civil Code), such expenditure shall be limited in amount to whatever expenditure a reasonably prudent third party would have incurred.

In the event of a breach of duty by us that does not involve defective performance, the Customer only has the right to withdraw from the contract if there is fault on our part.

8. The assignment of Customer's claims against us arising from the business relationship is excluded, with the exception of pecuniary claims as defined under § 354 a of the German Commercial Code.

Herford, in Germany, is the place of fulfilment for all deliveries and payments. Herford is the exclusive place of jurisdiction for all legal disputes resulting directly or indirectly from the contractual relationship, including actions involving bills of exchange and cheques.

German law shall apply exclusively to these terms and conditions of business and to the entirety of the legal relationships between the contracting parties,

to the exclusion of the provisions of the UN Sales Convention.

Should individual provisions of our terms and conditions of business,

or such provisions in the context of other agreements, be or become void or ineffective, then the effectiveness of any other provision or agreement is not affected thereby.