

Terms of Sale and Delivery

Valid from 1st January 2011

1. Scope of Application

(1) These Terms of Sale and Delivery (hereinafter referred to as the "Terms") shall be exclusively applicable to all sales and deliveries of goods, accessories and replacement parts (hereinafter referred to as "goods") by Pelikan Vertriebsgesellschaft mbH & Co KG (hereinafter referred to as "Pelikan"). Conflicting and/or supplementary General Terms of Business of the purchaser shall not be applicable. This shall also apply if Pelikan does not raise objection to these terms or if it complies with its contractual obligations without reservation.

(2) All contractual provisions are contained in the document, a component of which are these Terms. No subsidiary agreements have been made.

(3) These Terms shall also apply to all future business transactions with the purchaser.

2. Offer

(1) The price-list is not a binding offer.

(2) Public statements of Pelikan, the manufacturer of the supplied goods or its agents, especially in advertising or in the denotation of the goods, do not constitute descriptions of the characteristics of the goods or a guarantee of them.

(3) Pelikan reserves the right to make improvements or modifications, provided this is reasonable for the purchaser. All weights and measures are subject to the usual tolerances.

3. Prices

All prices are exclusive of value added tax.

4. Minimum Order Value

The minimum order value is € 2500 net or the corresponding value in USD. Only the minimum volumes stated in the price list under delivery units or a multiple of such volumes may be ordered.

5. Payment

(1) Payment shall be made in Euro (EUR) or according to previous agreement in USD by confirmed irrevocable Letter of Credit in Pelikan's favour unless other methods of payment have been agreed upon.

(2) If the purchaser does not comply with its payment obligations, then Pelikan shall be entitled to refuse performance in whole or in part until payment of the due sums or the provision of security unless otherwise agreed.

6. Delivery and Default in Delivery

(1) All goods are delivered FOB German border, FOB German airport or FOB German seaport according to INCOTERMS 2000. Standard export packing is included. Postage or charges for express deliveries are at customer's expense.

(2) Time stipulations, especially delivery periods stated by Pelikan, shall only be binding if they are expressly confirmed as binding by Pelikan. Pelikan is under no circumstances obliged to comply with confirmed delivery periods if final product requirements on the part of the purchaser and/or customer information which is required for the dispatch or delivery of the goods are only received after the dispatch of the confirmation of order.

(3) Pelikan is entitled to make part deliveries unless otherwise agreed.

(4) Goods will only be insured on customer's request and at his expense.

7. Extreme Weather Conditions; Inflammable Goods

(1) In case of extreme weather conditions (e.g. heat or frost) which may cause danger of damage and/or impairment of goods – especially liquids – Pelikan is entitled to postpone delivery.

(2) Inflammable goods are not allowed to be sent by parcel post or air-mail. Limited quantities may be dispatched by air freight. For seafreight consignments inflammable goods must be stored on the deck of the carrying vessel.

8. Warranty

If the supplied goods are materially defective, then Pelikan at Pelikan's option shall rectify the defect or supply perfect goods (subsequent performance). If the subsequent performance is unsuccessful or if it is unreasonable for the purchaser, then the purchaser can reduce the purchase price or withdraw from the contract. More extensive claims of the purchaser, with the exception of the claims in Section 9 (liability), shall not exist.

9. Liability

(1) Pelikan shall only be liable for damages if

a) liability is obligatory under the applicable law, such as according to the German Product Liability Act or in cases of death, physical injury or damage to health,

b) Pelikan culpably infringes a fundamental contractual obligation (cardinal obligation) or a guarantee, or if

c) the loss is due to gross negligence or intent on the part of Pelikan.

(2) In all other cases, Pelikan's liability for losses, irrespective of the cause in law, is excluded. Pelikan shall especially not be liable for indirect losses, lost profit as well as other financial losses of the purchaser.

(3) Liability shall in all cases be limited to the loss which Pelikan reasonably could foresee or would have been able to foresee upon the conclusion of the contract on account of the circumstances and facts available to it. This limitation of liability does not apply to the cases of Paragraph (1), Sub-paragraph a) of this Section 9 (liability).

(4) The exclusion of liability and the limitation of liability according to the above paragraphs shall also apply to the personal liability of Pelikan's employees and auxiliary persons.

10. Force Majeure

Notwithstanding the provisions of Section 9 (liability), Pelikan shall not be responsible or liable for any impediment or delay to the performance of any part of this contract which is due to circumstances for which Pelikan is not responsible, including strikes or industrial disputes. If these events should last longer than 30 days, then Pelikan and the purchaser shall have the right to withdraw from the contract with immediate effect by stating the withdrawal to the respective other party, without claims for the reparation of any losses or damage thus arising.

11. Liability of the Purchaser

If the goods have been manufactured according to drawings, designs, labels, brands or other specifications of the purchaser, then the purchaser undertakes to indemnify Pelikan against all liability due to the infringement of industrial property rights, such as patents, registered designs or copyrights, to which Pelikan is subject because the goods meet these specifications.

12. Presentation and Product Alterations

The purchaser is not entitled to alter or to embellish the presentation of Pelikan goods (especially the blister pack) or the products themselves (especially writing instruments).

13. Reservation of Title

(1) Pelikan reserves title to the supplied goods (hereinafter referred to as "goods subject to reservation of title") until all – current and future – claims resulting from the business relationship with the purchaser have been satisfied.

(2) The purchaser is obliged to store the goods subject to reservation of title with care and to adequately insure the goods at its expense against fire, water, theft and other risks. Pelikan is entitled at any time to demand proof from the purchaser of the conclusion of the policy or of the payments of the insurance premiums. With the conclusion of the contract, the purchaser shall assign its corresponding claims arising from the insurance policy against the insurer to Pelikan.

(3) The purchaser must inform Pelikan without delay in writing of third-party interventions or an attachment by third parties concerning the goods subject to reservation of title. The costs which are necessary to protect Pelikan's rights must be borne by the purchaser, unless such costs can be demanded back from the third party.

(4) The purchaser is entitled to sell the goods subject to reservation of title in the ordinary course of business. The purchaser assigns to Pelikan all current and future claims in the amount of the invoice sum (including value added tax) which it acquires from the resale of these goods. Pelikan hereby accepts this assignment. The purchaser also remains entitled to collect this claim after the assignment. Pelikan's authorisation to collect the claim itself remains unaffected. Pelikan is obliged not to collect the claim as long as the purchaser complies with its payment obligations from the collected proceeds, is not in default in payment and especially no application for the institution of insolvency proceedings has been made or a cessation of payments is applicable.

(5) The purchaser is prohibited from undertaking any other exploitation of the goods subject to reservation of title. It is especially not entitled to transfer the goods subject to reservation of title by way of security or to pledge the said goods.

(6) If the purchaser infringes a fundamental contractual obligation, especially if it is in default in payment, then Pelikan shall be entitled to take back the goods subject to reservation of title at the purchaser's expense or to demand the assignment of any rights concerning the purchaser's right of ownership against third parties. Pelikan is furthermore entitled to revoke the right of the purchaser to resell the goods, to collect the claims and to use, exploit or resell the goods subject to reservation of title. Pelikan can set off the exploitation proceeds of the goods subject to reservation of title against the outstanding claims. The purchaser shall be liable for the loss if the exploitation proceeds are below the purchase price.

14. Return of Goods

(1) If Pelikan after agreement with the purchaser accepts a return of goods on a goodwill basis, then this shipment must be sent back to Pelikan in adequate transport packaging.

(2) Excluded from exchange or a credit note are special articles manufactured by us as well as products which are not included in a valid price list. This also applies to articles which have been priced, damaged or overstocked.

15. Applicable Law; Place of Jurisdiction

(1) The contractual relationships shall be governed exclusively by German law with the exception of German International Private Law and the United Nations Convention on Contracts for the International Sale of Goods (CISG).

(2) The exclusive place of jurisdiction for all disputes arising from or in connection with this contract is Hanover. Notwithstanding the above agreement on the place of jurisdiction, Pelikan may also bring an action against the purchaser at the latter's place of business.