



## GENERAL TERMS OF SALE AND DELIVERY (GTC)

### I. Scope, general

1. The following General Terms of Sale and Delivery are only meant for application with respect to companies (§ 14 German Civil Code (in following BGB)), legal persons under public law or special funds under public law within the meaning of § 310 Subs. 1 Sentence 1 BGB and shall apply exclusively for all sales and delivery transactions concluded with Pearltec GmbH („**Pearltec**“).
2. When a buyer or client („**Customer**“) places an order, these GTC shall at the same time be deemed acknowledged and an integral part of the contract. Pearltec does not accept Customer's contrary or differing terms and conditions, unless Pearltec expressly agrees to their application.
3. These GTC as amended from time to time shall also apply for all future transactions with Customer without an express reference to these GTC being required in each specific case.  
The respective valid version of the GTC is available at [www.pearltec.de](http://www.pearltec.de).
4. In justified individual cases Pearltec shall be entitled to unilateral changes of the GTC unless hereby the customer is not disadvantaged contrary to good faith or the contractual balance will not be seriously upset. Pearltec will only make changes of the GTC insofar as this should appear necessary for safeguarding legitimate economic interests or because of changes to the law or change in the legal situation or other comparable reasons.  
Changes will be communicated to the customer by e-mail.  
The change shall become part of the contract if the customer will not object the inclusion into the contractual relationship in written form within 6 weeks after receipt of the change notification. Pearltec will inform the customer separately regarding the deadline, the right of objection and the legal consequences of silence.
5. Legally material declarations and notifications to be rendered by Customer to Pearltec after conclusion of the contract (e.g. setting of deadlines, notifications of defects, declarations of rescission or price reduction), must be put down in writing to be effective.

### II. Conclusion of contract

1. Pearltec's offers are without obligation and non-binding.
2. Contracts come about upon an order confirmation at least in electronic format or upon Pearltec's commencing to execute the order.

### III. Prices and payment

1. Unless agreed otherwise in specific cases, the prices agreed as of the date on which the contract is concluded plus statutory sales tax shall apply. The following applies to small orders:  
In principle, the minimum order value is € 40.00 net value. For orders under a net value of € 40.00, we charge a minimum quantity surcharge up to the net value of the minimum order value.
2. Unless agreed otherwise, Pearltec's invoices are due and payable upon Customer's choice either within 10 days with 2% cash discount or after 30 days net.  
Legal default interests in accordance with § 288 Abs. 2 BGB shall apply.
3. Customer shall have set-off or retention rights only in so far as its claim is judicially determined or undisputed. In the case of defects in shipments, this shall be without prejudice to Customer's counter-claims.
4. If it becomes apparent after the contract is concluded that the claim to the purchase price is jeopardised by Customer's inability to render payment (e.g. upon an application to open insolvency proceedings), Pearltec shall be entitled to refuse performance under the statutory provisions and – after setting a deadline if necessary – to rescind the contract (§ 321 BGB).
5. Customer agrees that invoices may be sent electronically (Section 14 Subs. 1 Sentence 7, 8 Value Added Tax Act).

### IV. Delivery, partial deliveries

1. Unless agreed otherwise, delivery shall be effected ex Pearltec works (Incoterms 2010).
2. The weights, units and quantities determined by Pearltec upon shipping of the goods shall be definitive for computation, if Customer does not object in writing without undue delay after receipt.
3. In the case of force majeure or operational disruptions at Pearltec or its suppliers which temporarily prevent Pearltec from supplying the subject matter on the agreed date or within the agreed period without Pearltec being at fault, the shipping dates shall be prolonged by the duration of the hindrance plus a reasonable restart period, but not by more than four months altogether. This shall be without prejudice to rescission rights. The above provisions shall apply mutatis mutandis for late receipt of shipments by Pearltec from its own suppliers, in so far as Pearltec has concluded a congruent covering transaction.
4. Pearltec shall be entitled to carry out up to 10 % production and/or packaging related over- or under-deliveries.
5. Agreed partial or call-down orders are to be called-off by Customer within 3 months, unless Pearltec and Customer have reached a differing arrangement.

### V. Packaging

Reusable drums provided to Customer shall be invoiced at their market price, if they are not returned empty and free receiving point to Pearltec within a 2-month lending period. Disposable packaging will not be taken back by Pearltec.

### VI. Reservation of title

1. Pearltec shall retain title in the delivered products until full payment of all receivables of Pearltec under the business relationship with the customer.
2. The customer may sell the products subject to the retention of title („**Retained Products**“) only during the ordinary course of business. The customer may not pledge the Retained Products, transfer them by way of security or otherwise dispose over them in a manner that puts Pearltec's title at risk. The customer hereby assigns the receivables from any resale to Pearltec; Pearltec hereby accepts such assignment.



3. Should the customer sell the Retained Products following processing or conversion or following combination with other goods or together with other goods, the assignment of receivables shall be deemed agreed only in the amount of the portion equivalent to the price agreed between Pearltec and the customer plus a safety margin of 10 % of such.
4. The customer is revocably (in Pearltec's reasonable discretion) authorised to collect the receivables assigned to Pearltec in its own name in trust for Pearltec.
5. Processing or conversion of the Retained Products by the customer shall always be performed for Pearltec. Should the Retained Products be processed together with other items, Pearltec shall acquire joint title in the new item based on the proportion of the value of the Retained Products to the other processed items at the time of processing. Otherwise the same rules that apply for the products delivered subject to the retention of title shall apply for the new item created from the processing.
6. Should the Retained Products be combined with other items, Pearltec shall acquire joint title in the new item based on the proportion of the value of the Retained Products to other items at the time of the combination. Should the combination take place such that the customer's item must be considered the principal item, it shall be deemed agreed that the customer assigns pro rata joint title to Pearltec. The customer shall hold the joint title thus created in custody for Pearltec.
7. If the realisable value of the security exceeds the total receivables of Pearltec to be secured by more than 10%, then the customer may demand release [of the goods] to this extent.
8. For deliveries to other legal systems in which the foregoing provision on retention of title does not provide security in the same manner as in Germany, the customer shall undertake everything to provide Pearltec without undue delay with corresponding security rights. The customer shall participate in any and all measures such as registration, publication etc. that are necessary and expedient for the validity and enforceability of such security rights.
9. At Pearltec's request, the customer shall reasonably insure the Retained Products and assign the claims under the insurance policy to Pearltec.

#### **VII. Inspection duty and claims, warranty**

1. Customer's claims are subject to its having met its statutory inspection and complaint duties (especially §§ 377, 381 German Commercial Code (HGB)).
2. Defects are to be reported in writing to Pearltec without undue delay stating the invoice and batch numbers. Pearltec's sample is definitive for evaluating the supplied goods. Pearltec can opt to provide subsequent performance by rectifying the defect or new delivery. Pearltec shall bear the necessary expenditures for the purpose of the subsequent performances in accordance with § 439 section 2 BGB. Pearltec shall be entitled to make the owed subsequent performance dependent on Customer having paid the due purchase price. Defects in a part of the consignment shall not entitle rejection of the entire consignment.
3. Recourse claims of the customer against Pearltec in accordance with § 445a BGB regarding reimbursement of expenses are excluded in consideration of the special entrepreneurial business needs of the industry as described in section VIII and the obligations of the customer.

It shall be presumed that at the time of transfer of risk to the customer no defects in the goods existed provided that he has attended to his duties of examination and notice of non-conformity in accordance with section VII.1..

4. Pearltec shall take back properly supplied stock goods against a corresponding credit note (no refund) in exceptional cases and only after prior consent. The costs of the return consignment shall be borne by Customer.
5. Customer shall have claims to damages and/or reimbursement of expenses incurred in vain only pursuant to Point IX. and such claims are otherwise excluded.

#### **VIII. Customer's duties**

Pearltec's standard inks are suitable for most regularly recurring printing work. Pearltec's instructions for use and technical application information are accordingly general guidelines. Owing to the wide range of uses for the individual products and the pertinent specific circumstances it is Customer's duty to conduct its own ink tests. If Customer intends to use the standard inks for special printing works on non-common print substrates or for non-standard strain demands, it is its duty to verify their suitability for the intended purpose through suitable preliminary tests. If Customer wishes a custom-made product, such as for special printing conditions, papers or unusual demands on the printed material to be produced with it, it must contact Pearltec in advance. Pearltec cannot of course guarantee the print results.

#### **IX. Damages**

1. Pearltec shall be liable for damages – regardless of their legal grounds – under intention and gross negligence. In the case of minor negligence Pearltec shall only be liable
  - a) for losses relating to fatalities, injuries and impairment of health;
  - b) for losses from breach of a cardinal duty (duty whose fulfilment renders the proper execution of the contract possible in the first place and on whose compliance the contractual partner relies and generally may rely); in such cases liability shall be limited to typical, foreseeable losses.
2. In all cases, liability is limited to compensation of typical losses foreseeable under such contracts. Under no circumstances can Pearltec accept Customer's claims for damages arising from liquidated damages asserted by Customer's contractual partners as foreseeable or typical losses.
3. In so far as the harm or loss is covered by an insurance policy concluded by Customer for the relevant risk, Pearltec shall only be liable for any loss suffered by the Customer in association therewith, e.g. higher insurance premiums or interest payable until settlement by the insurance company.
4. All Customer' claims for damages arising under any legal ground directly or indirectly in conjunction with the purchased goods and their delivery are otherwise excluded unless agreed differently above. Pearltec shall in particular not be liable for the consequences of any improper modification, use or handling of the purchased goods.
5. The restrictions on liability arising from the above paragraphs shall not apply in so far as Pearltec wilfully concealed the defect or guaranteed the characteristics of the goods. The same shall apply for Customer's claims under the Product Liability Act.



#### **X. Time bar**

1. Contrary to § 438 Subs. 1 No. 3 BGB the time bar for claims under material and legal defects shall be one year from delivery. In so far as acceptance has been agreed, the time bar shall commence upon acceptance.
2. The above time bars under the law of sale shall also apply for Customer's contractual and extra-contractual claims for damages based on a defect in the goods, unless the application of the regular statutory limitation period (§§ 195 and 199 BGB) would result in a shorter limitation period in the individual case. This shall be without prejudice to the time bars under the Product Liability Act. Otherwise, Customer's claims for damages under Point IX. shall be subject exclusively to the statutory time bars.

#### **XI. Legal forum and choice of law**

1. Exclusive – also international – legal forum for all disputes under the contractual relationship shall be – in so far as permitted by law – Augsburg. Pearltec shall be entitled to sue Customer in any other statutory jurisdiction.
2. The exclusive governing law shall be that of the Federal Republic of Germany with exclusion of the United Nations Convention on Contracts for the International Sale of Goods (CISG).

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