

## **Pelikan Technologies Terms Of Use**

PLEASE READ THE FOLLOWING TERMS OF USE CAREFULLY BEFORE USING THIS WEBSITE.

### **1. Effective Date.**

This Agreement was last updated on November 1, 2007.

### **2. Acceptance of Terms.**

The [www.pelikantechnologies.com](http://www.pelikantechnologies.com) and [www.pelikanisland.com](http://www.pelikanisland.com) websites (the "Site") is provided by Pelikan Technologies. By using our Site, you agree to be bound by these Terms of Use (the "Agreement"). We encourage you to periodically review these Terms of Use. If you do not agree to these Terms of Use, please do not use this Site.

### **3. Changes in Terms of Use.**

This Agreement outlines the legally binding terms for your use of the Site. We reserve the right to modify this Agreement from time to time, for any reason, without notice and such modifications will be made available on our Site. Use of our Site constitutes (1) acknowledgement by you of our modifications, and (2) an agreement by you to abide and be bound by this Agreement and its modifications. You may identify whether we have revised this Agreement by the Effective Date listed in Section 1 above.

### **4. Registration.**

In order to purchase products offered on our Site, you must create a customer account using our registration form. In submitting the registration form, you represent and warrant that the information contained therein is truthful and accurate. Your willful provision of inaccurate or unreliable information shall constitute a material breach of this Agreement and be a basis for termination.

During the registration process, you will specify a username (your valid email address), and a password (your "Login Credentials"). You are solely responsible in all respects for all use of and for protecting the confidentiality of your Login Credentials. You agree to notify Pelikan Technologies immediately of any unauthorized use of your Login Credentials and any other suspected breach of security regarding the Site. You are responsible for changing your password if you believe your password has been stolen or might otherwise be misused.

### **5. User Conduct and Responsibilities.**

You are responsible for obtaining access to the Site and that access may involve third party fees (such as Internet service provider or airtime charges). You are responsible for those fees. In addition, you must provide and are responsible for all equipment necessary to access the Site.

Your use of the Site is subject to all applicable local, state, national and international laws and regulations.

## **6. Site Content.**

All content on the Site, including but not limited to data, results, designs, text, graphics, pictures, video, information, software, music, sound and other files, and their selection and arrangement (the "Site Content"), are the proprietary property of Pelikan Technologies or its licensors with all rights reserved. You are granted a limited license to access and use the Site and to download or print a copy of any portion of the Site Content solely for your personal, non-commercial use, provided that you keep all copyright or other proprietary notices intact. Except as permitted herein, no Site Content may be modified, copied, distributed, framed, reproduced, republished, downloaded, displayed, posted, transmitted, or sold in any form or by any means, in whole or in part, without Pelikan Technologies's prior written permission. Nothing in this Agreement shall be construed as conferring any license to intellectual property rights, whether by estoppel, implication or otherwise.

## **7. Submissions.**

You acknowledge and agree that any questions, comments, suggestions, ideas, feedback or other information about the Site ("Submissions"), provided by you to Pelikan Technologies are non-confidential and shall become the sole property of Pelikan Technologies. Pelikan Technologies shall own exclusive rights, including all intellectual property rights, and shall be entitled to the unrestricted use and dissemination of these Submissions for any purpose, commercial or otherwise, without acknowledgment or compensation to you.

## **8. Suspension, Termination.**

If you violate any of the terms in this Agreement, Pelikan Technologies may suspend or terminate your use of the Site.

## **9. Privacy Policy.**

We care about the privacy of our users. Use of the Site is governed by our Privacy Policy, available at [www.pelikantechnologies.com](http://www.pelikantechnologies.com). By using the Site or the Service, you are consenting to have your personal data transferred to and processed in the United States.

## **10. Copyrights and Trademarks.**

All contents on the Site are: Copyright ©; 2007 Pelikan Technologies or its partners. All rights reserved. Pelikan Technologies and the Pelikan Technologies logo are trademarks of Pelikan Technologies. All other trademarks are property of their respective companies. All trademarks and registered trademarks are protected by US and international trademark laws.

## **11. Modifications to or Discontinuation of the Site.**

Pelikan Technologies reserves the right to modify or terminate the Site with or without cause at any time and effective immediately. Pelikan Technologies shall not be liable to you or any third

party for termination. Should you object to any terms and conditions of the Agreement or any subsequent modifications thereto or become dissatisfied with the Site in any way, your only recourse is to immediately discontinue use of the Site. Upon termination of the Site, your right to use the Site immediately ceases. You shall have no right and Pelikan Technologies will have no obligation thereafter.

## **12. Notice.**

All notices to a party shall be in writing and shall be made either via e-mail or conventional mail. Pelikan Technologies may broadcast notices or messages through its website to inform you of changes to this Agreement, the Site, or other matters of importance. Such broadcasts shall constitute notice to you.

## **13. Disclaimers.**

The Site may be temporarily unavailable from time to time for maintenance or other reasons. Pelikan Technologies assumes no responsibility for any error, omission, interruption, deletion, defect, delay in operation or transmission, communications line failure, theft or destruction or unauthorized access to, or alteration of, any information you provide to the Site. Under no circumstances will Pelikan Technologies be responsible for any loss or damage, including any loss or damage to any user data or personal injury or death, resulting from anyone's use of the Site. Pelikan Technologies reserves the right to change any and all content contained in the Site or products offered through the Site at any time without notice.

YOU EXPRESSLY UNDERSTAND AND AGREE THAT:

- THE SITE, AND ALL CONTENT AND SERVICES INCLUDED IN THE SITE ARE PROVIDED "AS IS," WITH NO WARRANTIES WHATSOEVER.
- EXCEPT AS EXPRESSLY SET FORTH ON OUR SITE, PELIKAN TECHNOLOGIES AND ITS LICENSORS DISCLAIM ALL WARRANTIES OF ANY KIND, EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.
- PELIKAN TECHNOLOGIES AND ITS LICENSORS MAKE NO WARRANTY OR REPRESENTATION REGARDING (i) THE RESULTS THAT MAY BE OBTAINED FROM THE USE OF THE SITE OR PRODUCTS OFFERED THROUGH THE SITE, (ii) THE CURRENCY, ACCURACY, QUALITY, CONTENT, COMPLETENESS, LEGALITY, OPERABILITY, AVAILABILITY OR RELIABILITY OF ANY INFORMATION OBTAINED THROUGH THE SITE, (iii) THE DELETION, FAILURE TO STORE, MISDELIVERY, OR UNTIMELY DELIVERY OF ANY INFORMATION OR MATERIAL, OR (iv) THAT THE SITE WILL MEET ANY OF YOUR REQUIREMENTS, BE UNINTERRUPTED, TIMELY, SECURE OR ERROR FREE.
- USE OF THE SITE IS AT YOUR SOLE RISK. ANY MATERIAL AND/OR DATA DOWNLOADED OR OTHERWISE OBTAINED THROUGH THE USE OF THE SITE

IS AT YOUR OWN DISCRETION AND RISK AND YOU WILL BE SOLELY RESPONSIBLE FOR ANY DAMAGE TO YOUR COMPUTER SYSTEM OR LOSS OF DATA THAT RESULTS FROM THE DOWNLOAD OF SUCH MATERIAL AND/OR DATA.

- NO ADVICE OR INFORMATION, WHETHER ORAL OR WRITTEN, OBTAINED BY YOU FROM PELIKAN TECHNOLOGIES OR THROUGH THE SITE SHALL CREATE ANY WARRANTY NOT EXPRESSLY MADE HEREIN.

#### **14. Limitation Of Liability.**

UNDER NO CIRCUMSTANCES SHALL PELIKAN TECHNOLOGIES OR ITS LICENSORS BE LIABLE TO YOU ON ACCOUNT OF YOUR USE OR MISUSE OF OR RELIANCE ON THE SITE. SUCH LIMITATION OF LIABILITY SHALL APPLY TO PREVENT RECOVERY OF DIRECT, INDIRECT, INCIDENTAL, CONSEQUENTIAL, SPECIAL, EXEMPLARY, AND PUNITIVE DAMAGES ARISING FROM ANY CLAIM RELATING TO THIS AGREEMENT OR THE SUBJECT MATTER HEREOF WHETHER SUCH CLAIM IS BASED ON WARRANTY, CONTRACT, TORT (INCLUDING NEGLIGENCE), OR OTHERWISE, (EVEN IF PELIKAN TECHNOLOGIES OR ITS LICENSORS HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES). SUCH LIMITATION OF LIABILITY SHALL APPLY WHETHER THE DAMAGES ARISE FROM ANY SERVICE OFFERED THROUGH THE SITE, USE OR MISUSE OF AND RELIANCE ON THE SITE, FROM INABILITY TO USE THE SITE, OR FROM THE INTERRUPTION, SUSPENSION, OR TERMINATION OF THE SITE (INCLUDING SUCH DAMAGES INCURRED BY THIRD PARTIES). THIS LIMITATION SHALL ALSO APPLY, WITHOUT LIMITATION, TO THE COSTS OF PROCUREMENT OF SUBSTITUTE SERVICES, LOST PROFITS, OR LOST DATA. SUCH LIMITATION SHALL FURTHER APPLY WITH RESPECT TO THE PERFORMANCE OR NON-PERFORMANCE OF THE SITE OR ANY INFORMATION THAT APPEARS ON, OR IS LINKED OR RELATED IN ANY WAY TO, THE SITE. SUCH LIMITATION SHALL APPLY NOTWITHSTANDING ANY FAILURE OF ESSENTIAL PURPOSE OF ANY LIMITED REMEDY AND TO THE FULLEST EXTENT PERMITTED BY LAW.

#### **15. Exclusions And Limitations.**

Some jurisdictions do not allow the limitation or exclusion of liability for incidental or consequential damages so some of the above limitations may not apply to you.

#### **16. Indemnity.**

You agree to indemnify and hold Pelikan Technologies, its subsidiaries and affiliates, and each of their directors, officers, agents, contractors, partners and employees, harmless from and against any loss, liability, claim, demand, damages, costs and expenses, including reasonable attorney's fees, arising out of or in connection with your use of the Site or any violation of this Agreement or of any law or the rights of any third party.

#### **17. Miscellaneous.**

**Entire Agreement.** These Terms of Use constitute the entire agreement between the parties with respect to the subject matter hereof and supersede and replace all prior or contemporaneous understandings or agreements, written or oral, regarding such subject matter.

**Headings, Titles.** The section titles in this Agreement are for convenience only and have no legal or contractual effect.

**Waiver and Severability of Terms.** The failure of Pelikan Technologies to exercise or enforce any right or provision of this Agreement shall not constitute a waiver of such right or provision. Any waiver of any provision of this Agreement will be effective only if in writing and signed by Pelikan Technologies. If any provision of this Agreement is found by a court of competent jurisdiction to be invalid, the parties nevertheless agree that the court should endeavor to give effect to the parties' intentions as reflected in the provision, and the other provisions of this Agreement remain in full force and effect.

**Statute of Limitations.** You and Pelikan Technologies agree that any cause of action arising out of or related to this service must commence within one (1) year after the cause of action arose; otherwise, such cause of action is permanently barred. Some jurisdictions may prohibit the shortening of the time period in which a cause of action must be brought. In all such jurisdictions, the applicable time period shall be the minimum allowed by law.

**Choice of Law and Forum.** This Agreement shall be governed by and construed in accordance with the laws of the State of California, excluding its conflict of law provisions. You and Pelikan Technologies agree to submit to the exclusive jurisdiction of the courts of the State of California.