

General Terms and Conditions of Delivery and Payment for Sales by d&b audiotechnik GmbH & Co. KG (Version August 2019)

General Terms and Conditions of Sale

1. Conclusion of contract

- 1.1. We, d&b audiotechnik GmbH & Co. KG, Eugen-Adolff-Straße 134, 71522 Backnang, Germany (hereinafter referred to as "we" or "d&b") supply products exclusively subject to the general terms and condition of sale set forth below ("GTC"). Any terms and conditions of business of the customer shall only apply if such application has been explicitly agreed. Our GTC shall also apply if we make delivery to the customer without reservations despite being aware of terms and conditions of the customer which conflict with or deviate from our own GTC. These GTC shall also apply to all future transactions between the parties without a new reference to the GTC being required.
- 1.2. These terms and conditions will be deemed to have been accepted at the latest on acceptance of the goods. We hereby object to any acknowledgment given by the customer with reference to its terms and conditions of business or purchase.
- 1.3. Our offers are non-binding.
- 1.4. Orders shall be deemed to have been accepted only if they have been confirmed by us in writing. Our order confirmation is authoritative for the content of the contract and the scope of delivery.
- 1.5. All statements regarding technical specifications, measures and weights are subject to standard tolerances. Changes in construction or other deviations which do not have any significant effect on the usability of the items are reserved.

2. Delivery periods

- 2.1. Delivery periods begin to run on the date of our order confirmation. The delivery period is suspended as long as the customer fails to meet an obligation to cooperate or is in default of any payment.
- 2.2. We are entitled to make delivery by instalments.
- 2.3. If our delivery is delayed, the customer has the following rights:
 - 2.3.1. The entitlement to damages is limited to 1 % of the value of the item(s) to be delivered for each full week of default, and to a total of 10% of the value of the item(s) with respect to which we are in default of delivery.
 - 2.3.2. If the customer grants us a reasonable additional period when we are already in default, the customer will be entitled to rescind the contract when such additional period has expired without success; the customer is entitled to damages for non-performance in the amount of the foreseeable damage only if default was due to intent or gross negligence; without prejudice to the customer's rights under section 9.3., liability for damages based on default is limited to 50% of the foreseeable damage incurred.

- 2.4. We are not responsible for any delays in delivery resulting from force majeure or from events which significantly impede our delivery or render it impossible - including in particular industrial action, government order, etc. even when occurring at our suppliers' - even in case of periods and dates agreed in a binding manner. The customer is entitled to rescind the contract after expiry of a reasonable additional period, excluding any further rights.

3. Prices

- 3.1. Prices are net from our warehouse plus VAT, freight, postage, packaging and insurance.
- 3.2. The prices stated in our order confirmation are valid only for a period of four months from the date of the order confirmation. If the contract, or any part thereof, is performed only after expiry of that period, we will charge the prices applicable on the date of delivery.

4. Payment

- 4.1. Invoices will be issued when the order is ready for shipment. The invoice is due and payable immediately, net without deductions. Bills of exchange and/or cheques will be accepted in payment only upon explicit agreement and without guarantee for timely protest.
- 4.2. In case of default in payment we are entitled to charge interest of 8 percentage points above the base rate, reserving the right to claim higher default damage. The customer can nevertheless show that the damage incurred was lower.

We reserve the right to demand advance payment for the delivery of goods ordered.

5. Shipment

- 5.1. Unless otherwise agreed in the contract, the goods will be delivered Free Carrier (FCA) Backnang in accordance with INCOTERMS® 2010.
- 5.2. If shipment is delayed due to circumstances for which we are not responsible, we will store the goods at the customer's risk and expense, notifying the customer of the goods' readiness for shipment.
- 5.3. We reserve the right to demand advance payment for the delivery of goods ordered.

6. Acceptance

- 6.1. On-call deliveries require explicit agreement and are due for acceptance no later than twelve months from the order confirmation.

6.2. The customer is in default of acceptance if the invoice amount for the goods supplied ready for delivery has not been credited to our account within two weeks of such supply. If we are entitled to damages for non-performance due to such default of the customer, our damage amounts to at least 20% of the remuneration agreed, unless the customer provides proof that the damage sustained by us was significantly lower. We reserve the right to prove higher damage.

7. Reservation of title

- 7.1. We reserve the title to the goods delivered by us until all our claims, including claims resulting from other deliveries and all ancillary claims, have been paid in full, and until cashing of any and all bills of exchange und cheques delivered in payment. This shall also apply in case our goods are processed for us as manufacturer (Sec. 950 German Civil Code (Bürgerliches Gesetzbuch - BGB)). In case of processing, combining or mixing with goods other than goods belonging to the customer, we are entitled to joint ownership in the proportion of the invoice amount of our goods and such other goods as at the time of such processing, combining or mixing.
- 7.2. The customer may only sell our reserved goods in the ordinary course of business and passing on the reservation of title, and only as long as the customer is not in default of payment. The customer hereby assigns to us all its claims for purchase price payment resulting from the resale of the reserved goods in the amount of the pro rata value of our delivery until all our claims have been settled in full. If so requested, the customer shall send us a list of the claims assigned without undue delay. The customer is authorized – subject to revocation – to collect such claims.
- 7.3. We will release security to which we are entitled to the extent such security exceeds 10% of our outstanding claims.
- 7.4. In case of default in payment, imminent cessation of payments or justified doubts regarding the customer's ability to pay, we are entitled to withdraw the reserved goods. The customer is obliged to surrender the reserved goods. Our assertion of the reservation of title and seizure of the items delivered shall not be deemed to be a rescission from the contract. Any and all costs of such withdrawal shall be borne by the customer.
- 7.5. The customer is obliged to treat the conditional goods with care; in particular, the customer is obliged to take out an insurance policy for the goods at its own expense to sufficiently insure them at replacement value against fire, water, and theft damage. In case of seizure or other third party interference, the customer shall advise the third party of our title to the goods and inform us without undue delay.

8. Rights in case of defects

- 8.1. Our performance shall be deemed to have been made in accordance with the contract if it is within the limits of the standard tolerances.

8.2. The customer shall inspect the goods after receipt and in case of patent defects recognizable in a proper inspection – where feasible in the ordinary course of business – notify such defects to us in writing within a cut-off period of 8 days from receipt. Complaints on account of damage to the goods will only be considered if the customer had the delivering carrier establish the state of the goods in writing prior to taking delivery thereof. Any goods complained about may be returned to us only upon our explicit consent.

8.3. If a defect occurs in the items delivered by us within five years of the passing of risk which is due any circumstance prior to the passing of risk, our warranty is as follows, subject to section 8.6. and excluding any further claims.

8.4. Material defects:

8.4.1. At our choice, we will remedy the defect free of charge or deliver a new product. The customer shall notify any such defects in writing without undue delay. Items or parts replaced will be our property.

8.4.2. The right to subsequent performance in accordance with the preceding provision is excluded in case of inadequate or improper use, false or negligent handling or changes made to the item delivered without our prior approval. If a defect is remedied by the customer or by a third party, we are not liable for any consequences resulting from such remedy.

8.4.3. If subsequent performance fails, or if we are in default with regard to the remedy of defects for more than four weeks, the customer shall be entitled to rescind the contract in accordance with the statutory provisions. If there is only an insignificant defect, the customer is only entitled to reduce the price.

8.4.4. The customer is entitled to further rights against us, in particular to damages for any damage not occurred in the item delivered itself, only

- in case of serious fault;
- in case of injury to life, body or health;
- in case of a culpable violation of material contractual duties, where the achievement of the contractual purpose is at risk, with respect to the typical, foreseeable damage;
- in case of liability under the German Product Liability Act for personal injury or material damage to any items used for private purposes due to faults of the item delivered (but in any event only up to a maximum amount of EUR 3,000,000 within the scope of our liability insurance);
- in case certain explicitly guaranteed qualities are missing if the purpose of such guarantee was precisely to safeguard the customer against damage not occurred in the delivered item itself;
- in case of defects which were fraudulently concealed or the absence of which we have guaranteed.

8.4.5. Any liability beyond the above is excluded.

8.5. Defects in title:

- 8.5.1. Save where otherwise agreed we will make delivery in Germany free of any third party IP or copyright. In case there is nevertheless an infringement of IP rights, we will either obtain a corresponding license, or modify the item delivered in such a manner that IP rights are no longer infringed. Where we are unable to do so on reasonable and acceptable terms, both we and the customer are entitled to rescind the contract.
- 8.5.2. In all other respects, in case of defects in title, the provisions of this section 8 shall apply accordingly, with rights of the customer existing only if the customer informs us in writing without undue delay of any claims potentially asserted by third parties and does not acknowledge any alleged infringement, whether directly or indirectly, and provided that all defences remain available to us without any restrictions, and that the infringement is not due to the customer's modification of the item delivered or use of the item delivered in a manner not in conformity with the contract, or the defect in title results from instructions given by the customer.
- 8.6. Rights in case of defects - irrespective of the substantive or legal grounds - will become statute-barred after five years. This does not apply to defects of a building or of things used for a building which caused the material defect. In deviation from sentence 1, the statutory limitation periods apply to claims under the Product Liability Act and in case of intentional or fraudulent actions.

9. Customer's right to rescind and to claim damages

- 9.1. We do not accept any liability for the items delivered being suitable for a specific use intended by the customer but not agreed with us.
- 9.2. An entitlement of the customer to damages or to a reimbursement of expenses - irrespective of the legal ground - in particular arising from a violation of duties under the contract or from tort is excluded. Where delivery is impossible, the customer is entitled to damages, unless we are not responsible for such impossibility. The customer's entitlement to damages shall be limited to 10% of the value of that part of the delivery which cannot be put into operation as a result of the impossibility.
- 9.3. The preceding section 9.2. shall not apply, and further rights of the customer against us, in particular an entitlement to damages for any damage not occurred in the item delivered itself, exist:
- 9.3.1. in case of serious fault;
- 9.3.2. in case of injury to life, body or health;
- 9.3.3. in case of a culpable violation of material contractual duties, where the achievement of the contractual purpose is at risk, with respect to the typical, foreseeable damage;

- 9.3.4. in case of liability under the German Product Liability Act for personal injury or material damage to any items used for private purposes due to faults of the item delivered (but in any event only up to a maximum amount of EUR 3,000,000 within the scope of our liability insurance);
- 9.3.5. in case certain explicitly guaranteed qualities are missing if the purpose of such guarantee was precisely to safeguard the customer against damage not occurred in the delivered item itself;
- 9.3.6. in case of defects which were fraudulently concealed or the absence of which we have guaranteed.
- 9.4. Any liability beyond the above is excluded.

10. IP rights and confidentiality

- 10.1. The customer receives from us drawings and information materials where required for the performance of the contract. We fully reserve any and all rights to use the documents delivered under copyright law.
- 10.2. The customer may exploit the documents and drawings provided by us only within the limits of the purpose of the contract, and in particular the customer may not forward such documents and drawings to any third party. If no contract is concluded, the customer will return to us, without retaining any copies, any and all documents delivered by us.

11. Final Provisions

- 11.1. We are entitled to store and process data relating to payment transactions and goods exchanged with the customer.
- 11.2. The place of performance for all services and payments is our company's registered office.
- 11.3. It is agreed that the Regional Court (Landgericht) of Stuttgart shall have jurisdiction over any and all disputes arising from or relating to this contract.
- 11.4. However, we are entitled to sue at the customer's registered office. All legal relations in connection with this contract shall be governed by German substantive law excluding the United Nations Convention on Contracts for the International Sale of Goods (CISG) and the German conflict of laws provisions referring to the same.
- 11.5. Any changes and/or amendments hereto, including changes and amendments to this clause, must be made in writing and signed (Schriftform). If any provision of the contract existing between us and the customer is or becomes void, the validity of the remaining provisions shall not be affected thereby.