

GENERAL TERMS AND CONDITIONS

with customer information of BMS Audio GmbH for the sale of goods (B2B)



1. SCOPE OF APPLICABILITY

These General Terms and Conditions (hereinafter referred to as "Ts&Cs") of BMS Audio GmbH, Roßfelder Straße 65/5, 74564 Crailsheim (hereinafter referred to as „Seller“), apply to all agreements for the delivery of goods, which a business person ("hereinafter referred to as "Customer") concludes with the Seller concerning any goods the Seller presents on his website at www.bmsaudio.com. The Seller hereby objects to the incorporation of the Customer's own terms and conditions, unless agreed otherwise.

These Ts&Cs apply exclusively also if the Seller has knowledge of the Customer's conflicting or deviating terms and conditions and delivers the ordered goods to the Customer without expressly objecting to the Customer's conflicting or deviating terms and conditions. Business person in terms of these Ts&Cs is a natural or legal person or a partnership with legal personality that enters into a business transaction in the course of its commercial or self-employed professional activities. Business persons in terms of these Ts&Cs are also public authorities or other institutions under public law, if these entities exclusively act under civil law in the conclusion of the agreement.

2. CONCLUSION OF THE AGREEMENT

In the case goods are ordered directly on the Seller's website using the electronic order form, the following applies to the conclusion of an agreement:

2.1. The product descriptions on the Seller's website do not represent binding offers on the part of the Seller, but provide the Customer with an opportunity to place a binding offer.

2.2. The Customer can place the offer using the online order form, which is integrated on the Seller's website. After the Customer placed the goods in the virtual cart and went through the electronic order process, the Customer places a legally binding offer for the goods in the virtual cart by clicking the order process concluding button. In addition, the Customer may also place an order by telephone, Fax, email or by post.

2.3. The Seller may accept the Customer's offer within five days by sending the Customer a written order confirmation or an order confirmation in text form (Fax or email), where, as regards acceptance, receipt of order confirmation by the Customer is decisive, or by delivering the ordered goods to the Customer, where goods receipt at the Customer is decisive or by requesting payment from Customer after the Customer placed the order.

2.4. In the case several aforementioned alternatives are met, the agreement is concluded at the first point in time one of the aforementioned alternatives is met. The acceptance period begins to run on the day the Customer sends the offer and ends on the lapse of the fifth day after the offer was sent. If the Seller does not accept the Customer's offer within the aforementioned period, this is considered to be a rejection of the offer with the consequence that the Customer is no longer bound to its declaration of intent.

2.5. In the case an offer is placed using the Seller's online order form, the Seller stores the agreement text and sends it to the Customer after the Customer's order has shipped, including these Ts&Cs in text form (e.g. By email, Fax, or letter). After the Customer's order has shipped, the Customer may no longer access the agreement text on the Seller's website.

2.6. Prior to placing the order using the Seller's online order form, the Customer can identify possible entry errors by thoroughly reading the information displayed on the screen. An effective technical tool to better recognise entry errors can be the

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browser's zoom function, with which the screen display is magnified. Within the scope of the electronic order process, the Customer is always provided with the opportunity to correct its entries via the customary key board and mouse functions prior to clicking the concluding order button.

2.7. Exclusively the German language is available for the conclusion of an agreement.

2.8. Order processing and contact is routinely performed per email and automated order processing. The Customer is responsible to ensure that the provided email address for order processing is correct, so that the Customer receives the emails sent by the Seller. In the case the Customer uses spam filters, the Customer is, in particular, responsible to ensure that all emails sent by the Seller or third parties engaged by the Seller for order processing purposes can be serviced.

In the case goods cannot be ordered directly on the Seller's website using the electronic order form, the following applies to the conclusion of an agreement:

The Customer has the option to provide a non-binding enquiry for the submission of an offer to the Seller per telephone, Fax, email, letter or using the online contact form on the Seller's website. In response to the Customer's enquiry, the Seller will provide the Customer per Fax, email or letter a binding offer for the sale of the goods prior selected by the Customer from the Seller's goods assortment. The Customer may accept this offer within seven (7) days from receipt of the offer by providing the Seller with an acceptance statement per Fax, email or letter or by payment of the purchase price offered by the Seller, where the day the offer is received is not counted for the calculation of the acceptance period. The payment receipt date at the Seller is decisive in the case of acceptance by payment. Where the last day of the period is a Saturday, Sunday or public holiday at the Customer's seat, the period ends on the following working day. If the Customer does not accept the Seller's offer within the aforementioned period, the Seller is no longer bound by its offer and may dispose of the goods without any restriction.

In the case the parties agreed to special terms, these terms do generally not apply to current or future contractual relationships between the Seller and the Customer.

In the case the Customer is financially unable to meet its obligations vis-à-vis the Seller, the Seller has the right to terminate existing exchange agreements with the Customer by way of withdrawal with immediate effect. This provision also applies in the case the Customer files an application for insolvency. Section 321 BGB [German Civil Code] and Section 112 InsO [German Insolvency Code] remain unaffected. The Customer will inform the Seller in good time in writing of an imminent insolvency.

3. PRICING AND PAYMENT TERMS

Unless provided otherwise in the Seller's offer, all provided prices are net prices and are valid plus statutory VAT. Packaging and shipping costs, loading, insurance (in particular transport insurance), customs and levies are invoiced separately. In the case of orders with a net goods value of less than € 50.00, the Seller charges a minimum quantity surcharge of net € 7.50 for each order.

Additional costs may apply in the case of deliveries into countries outside of the European Union, for which the Seller is not responsible and which are to be borne by the Customer. This includes, e.g. Expenses for money transfer by credit institutions (e.g. remittance fees, currency translation fees) or statutory levies or taxes for the import of goods (e.g. customs). As regards money transfer, these costs may be incurred also in the case the delivery is not into a country outside of the European Union, but the Customer makes payment from a country outside of the European Union.

If advance payment by bank transfer is agreed, payment is due immediately on the conclusion of the agreement, unless the parties agreed to a later payment date.

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In the case of purchase on account, the purchase price is due after goods delivery and invoicing. In this case, the purchase price is due within 14 (fourteen) days from invoice receipt without any deduction, unless agreed otherwise. The Seller grants a cash discount of 2% on the goods net value, if payment is made within 7 days from invoice receipt, provided earlier invoices for an agreement concluded between the parties are not outstanding. The Seller reserves the right, to perform a creditworthiness check, if payment method purchase on account is selected and to refuse acceptance of this payment method in the case the creditworthiness check result is negative.

Payment is considered to be received as soon as the consideration is credited to one of the Seller's bank accounts. In the case of default in payment, the Seller has a claim to interest in arrears at a rate of 10% percentage points above the respective base interest rate. Other statutory rights available to the Seller in the case of default in payment remain unaffected from the above provision. To the extent receivables are overdue, incoming payments are first credited to any incurred expenses and interest and then to the most aged receivables.

In the event cost increases occur that cannot be foreseen (e.g. currency fluctuations, unexpected price increases by suppliers etc.), the Seller has the right to pass on such price increases to the Customer. The above provision only applies, however, if delivery is to take place more than four months after the conclusion of the agreement. The Seller reserves the right to set a minimum order value for deliveries outside of Germany. If applicable, the Customer will be informed separately of the minimum order amount.

4. DELIVERY AND SHIPMENT TERMS

Goods are delivered by shipment to the delivery address provided by the Customer, unless agreed otherwise.

Provided delivery times / delivery dates are non-binding, unless the Seller expressly confirms the binding nature of the provided time or date.

The Seller may perform partial deliveries, provided partial deliveries are reasonable to the Customer. In the case of permitted partial deliveries, the Seller may also issue invoices for partial delivery.

The Seller reserves the right to withdraw from the agreement in the case of incorrect or improper deliveries from its suppliers. The above provision only applies if the Seller is not responsible for the failure to deliver and the Seller has concluded a specific supply agreement with the relevant supplier covering the respective delivery. The Seller will use all reasonable endeavours to procure the goods. If goods are not available or only available in part, the Seller will promptly inform the Customer and the Customer's payment will be promptly reimbursed.

The risk of accidental loss or accidental deterioration of the goods passes to the customer upon transfer of the goods to a suitable transport person. This provision also applies, if the Seller bears transportation costs. A transportation insurance policy is only taken out at the special request and on account of the Customer. If the Seller is responsible for installation and assembly, the risk passes upon completion of the installation and assembly works and transfer to the Customer.

To the extent delivery is not possible for reasons the Customer is responsible, e.g. because goods cannot be transported through the entrance door, house door or stairways of the Customer or because the Customer is not present at the delivery address provided by the Customer, although delivery time was communicated to the Customer with a reasonable lead time, the Customer bears the costs for unsuccessful delivery and is obliged to pay a flat-rate default compensation. This compensation is 1% of the whole order value for each full week of delay, but at most 8% of the total delivery value or the portion of the total delivery that is not accepted. The parties have the right to furnish proof of a greater or smaller damage.

In the case goods shipment to the Customer is delayed for reasons the Customer is responsible, the risk passes already with the ready for shipment notice to the Customer. The Customer bears any incurred storage costs after the risk has passed.

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If the Customer picks-up the ordered goods, the Seller first informs the Customer by email that the ordered goods are ready for pick-up. After receipt of this email, the Customer may pick-up the goods in coordination with the Seller. In the case of shipment costs are not invoiced.

5. FORCE MAJEURE

In the case of force majeure events that affect the performance of the agreement, the Seller has the right to move the goods delivery date for the duration of the impairment and in the case of delays over a longer period to withdraw from the agreement in whole or in part. Claims of any kind whatsoever against the Seller may not be derived from these acts. Force majeure are all events that the Seller cannot foresee or such events, which – even if those events were foreseeable – are outside of the Seller's sphere of control and whose effects on the agreement's performance cannot be prevented by reasonable efforts on the part of the Seller. Statutory claims of the Customer, if any, remain unaffected.

6. DELAY OF PERFORMANCE

In the case of delay of performance, the Customer may only withdraw from the agreement based on statutory provisions, if the Seller is responsible for the delay of performance.

At the Seller's demand, the customer is obliged to declare within a reasonable period, if, due to the delay, the customer withdraws from the agreement or continues to demand performance of agreement.

If shipment or delivery is delayed by more than one month after the readiness for shipment notice at the request of the Customer, the Seller may invoice a storage fee to the Customer at a rate of 0.5% of the price for the delivery objects, at most however 5% in total for each additional month or part thereof. The parties have the right to furnish proof of a greater or smaller damage.

The aforementioned restrictions of liability do not apply in the case of intent, fraudulent intent, gross negligence and for damages caused by injuries to life, body or health.

7. RESERVATION OF TITLE

The Seller reserves title to the delivered goods until the purchase price owed to the Seller has been paid in full. In addition, the Seller reserves title to the delivered goods until all of the Seller's claims arising from the business relationship with the Customer are satisfied.

If the delivered goods are processed, the Seller is considered to be the manufacturer and acquires ownership to the new created good. If processing is done together with other materials, the Seller acquires ownership at the ratio between the invoice values of the Seller's goods and the other materials. In the case the Seller's goods are combined or mixed with another thing of the Customer, which is considered to be the main thing, co-ownership to the thing is transferred to the Seller at the ratio between the invoice value of the Seller's goods and the invoice value of the main thing, or if an invoice value of the main thing is not available at the main thing's market value. In these cases, the Customer is considered to act as a custodian.

The Customer may not pledge or transfer by way of security any objects that are subject to a reservation of title or reservation of a right. The Customer is only permitted, as a reseller, to resell such goods within the ordinary course of business subject to the condition that the Customer assigned with legal effect to the Seller its claims against its customers in connection with the resale and that the Customer transfers ownership to its customers subject to payment. The Customer, hereby, assigns to the Seller, as a security, by signing this agreement, its claims against its customers in connection with such sales. The Seller hereby accepts this assignment.

The Customer is obliged to promptly notify the Seller in the event of any access to the goods owned or co-owned by the Seller or any assigned claims. The Customer is obliged to promptly transfer to the Seller any assigned amounts collected by the Customer, provided the Seller's claim is due for payment.

To the extent the value of the Seller's security interests exceeds the value of the secured claims by more than ten (10%) percent, the Seller will, at the Customer's request, release the respective portion of such security interests.

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8. LIABILITY FOR DEFECTS (WARRANTY)

If the purchase object is defective, the statutory defect liability provisions apply. In derogation from these provisions, the following applies: A minor defect does not constitute any claims for defects and does not entitle the Customer to refuse goods acceptance. Should a portion of the goods be defective and the defect is not insignificant, this does not entitle the Customer to object to the whole delivery. The above provision does not apply, if partial delivery is of no interest to the Customer. Furthermore, the Customer may only withhold payments in so far as they are in a reasonable relation to the identified defect. Claims for defects do not arise in the case of natural wear and tear or damages that are created after the passing of the risk as a consequence of faulty and negligent treatment, excessive use, improper equipment and supplies or due to specific external impacts, which under the agreement are not included, as well as in the case of malfunctions that cannot be reproduced. If the Customer or third parties make improper changes or perform improper maintenance works, claims for defects do also not exist for such changes or works and any consequences resulting therefrom, unless the Customer can furnish proof that the complaint about malfunction was not caused by such change or the maintenance works. New goods come with a limitation period for claims for defects of one year from the passing of the risk. Rights and claims for defects are excluded for used goods.

The limitations of liability and shortening of limitation periods provided for above do not apply to things that were used for a structure in accordance with their customary use and caused the structure to be defective, to damages caused by injuries to life, body or health that result from an intentional or negligent breach of duty by the Seller or an intentional or negligent breach of duty by a legal representative or vicarious agent of the Seller, to other damages that result from an intentional or grossly negligent breach of duty by the Seller or an intentional or grossly negligent breach of duty by a legal representative or vicarious agent of the Seller, in the event that the Seller fraudulently concealed the defect, as well as to the right of recourse pursuant to Section 478 BGB. In the case of subsequent performance, the Seller has the option to perform rectification of defects or replacement delivery. In the case of replacement delivery within the scope of liability for defects, the limitation period does not begin anew.

If the Seller provided subsequent performance by way of replacement delivery, the Customer is obliged to return the first delivered goods to the Seller within 30 days. The return package must contain the return reason, customer name and the number assigned to the purchase of the defective goods, which renders it feasible for the Seller to assign the returned goods to the purchase. As long as and to the extent the returned goods cannot be assigned to a purchase, the Seller is not obliged to accept the returned goods and repay the purchase price. The Customer bears the costs for the repeated shipment.

If the Seller delivers a defect-free thing for subsequent performance purposes, the Seller may demand compensation for use from the Customer pursuant to Section 346 Para.1 BGB. Other statutory rights remain unaffected. If the Customer acts as a businessman in terms of Section 1 HGB [German Commercial Code], the Customer is obliged to comply with the statutory duty to inspect and to give notice of defects according to Section 377 HGB. If the Customer fails to meet the duties to give notice provided for in Section 377 HGB, the goods are considered to be accepted. In the case of obviously unfounded returns for alleged defects of the purchased thing, the Seller will charge a handling flat-fee in the amount of € 50.00. The Customer has, however, the right to furnish proof that a damage did not occur at all or only to a significantly lesser extent than the flat-fee.

9. GUARANTEE

Independent from statutory rights, the Seller grants to the Customer a guarantee according to the following provisions:

The guarantee applies to the Seller's whole product assortment displayed at www.bmsaudio.com and www.bmsaudio.de, except for the following listed product groups:

- accumulators and batteries
- connectors
- switches and push-buttons
- Groupy products with specific accessories

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The guarantee is valid for a period of 3 years from delivery date. The guarantee covers the territory of the Federal Republic of Germany. If during the guarantee period material or production defects of the purchased products are identified, the Seller grants the Customer the following services at its option within the scope of the guarantee:

- goods repair free of charge or
- goods exchange free of charge against an item of equal value (if applicable, also a successor model, if the original product is no longer available).

Guarantee claims are excluded In the case of

incorrect or improper treatment of the goods;

- Failure to comply with safety instructions when installing the goods; use of force (e.g. punching, pushing, falling);
- unauthorized repair attempts
- normal wear and tear.

Notice of identified material or production defects must be promptly given in text form, at the latest within two weeks from discovery, to:

BMS Audio GmbH
Roßfelder Straße 65/5
D-74564 Crailsheim
Germany
Fax: +49 - 7951 9622-299
E-Mail: welcome@bmsaudio.com

If the Customer fails to meet the aforementioned deadline, the Customer forfeits its claims arising from this guarantee. This does not apply, if the Customer is not responsible for missing the deadline. The Customer must enclose a copy of the original invoice when applying for a service covered by the guarantee. The Customer's statutory rights are not restricted by this guarantee.

10. LIABILITY

Liability in the case of default is conclusively provided for under item "delay of performance". Otherwise the Seller is liable for all contractual, quasi-contractual and statutory, also tortious, claims for the compensation of damages and expenses as follows:

The Seller is liable for any legal reasons without any limitation

- in the case of intent or gross negligence.
- in the case of intentional or negligent injuries to life, body or health,
- based on a guarantee commitment, unless provided otherwise in this regard,
- based on mandatory liability, such as e.g. the German Product Liability Act.

If the Seller negligently violates a material contractual obligation, liability is limited to the foreseeable damage that is typical for such agreements, unless liability is unlimited according to the above item. Material contractual obligations are obligations that the agreement imposes onto the Seller according to its content for the achievement of the agreement's purpose, whose fulfilment is a prerequisite for the proper execution of the agreement and upon whose compliance the customer may routinely rely.

Otherwise, any liability of the Seller is excluded.

The above liability provisions also apply in regard to the Seller's liability for its vicarious agents and legal representatives.

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11. LIMITATION PERIODS

Claims of the Customer against the Seller become time-barred – except for claims provided for under item "Liability for Defects (Warranty)" – after one year from the date knowledge has been obtained of the facts that constitute a claim, at the latest, however, five years after the service has been rendered, unless liability is unlimited according to the above item.

12. RETENTION OF PAYMENTS, ASSIGNMENT

Any rights of the Customer to the retention of payments or refusal of performance are excluded, unless the Seller does not contest the underlying counter-claims or such claims are recognised by declaratory judgement. Assignment by the Customer of claims arising from the concluded agreement with the Customer is excluded, in particular assignment of any claims for defects of the Customer.

13. INDEMNITY IN THE CASE OF A VIOLATION OF THIRD PARTY RIGHTS

If, based on the agreement's content, the Seller is also responsible for the processing of the goods according to certain Customer specifications in addition to goods delivery, the Customer is obliged to ensure that content provided to the Seller by the Customer for processing purposes does not violate third party rights (e.g. copyrights or trademark rights). The Customer indemnifies the Seller from and against any third party claims, which third parties may assert against the Seller in connection with a violation of their rights based on the use of Customer content by the Seller. In this case, the Customer assumes also reasonable expenses for the required legal defence, including all court and legal expenses at the statutory rate. This does not apply, if the Customer is not responsible for the violation of such rights. In the event third parties enforce their claims against the Seller, the Customer is obliged to promptly, truthfully and completely provide the Seller with any and all information necessary for review and assessment of such claims and the defence.

14. GOVERNING LAW, PLACE OF JURISDICTION

All legal relationships between the parties are governed by the laws of the Federal Republic of Germany, under exclusion of the UN Convention on Contracts for the International Sale of Goods (CISG).

If the Customer acts in its capacity as a businessman, legal person under public law or special funds under public law with seat within the territory of the Federal Republic of Germany, the exclusive place of jurisdiction for all disputes arising from this agreement is the Seller's place of business. If the Customer has its seat outside of the territory of the Federal Republic of Germany, the Seller's place of business is the exclusive place of jurisdiction for all disputes arising from this agreement. In the aforementioned cases, the Seller has, however, also the right in any case to bring the case before the court at the Customer's seat.

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