

# NXD-AUDIO BV GENERAL TERMS & CONDITIONS (products)

## Article 1. Definitions

- 1.1. In the absence of explicit statement to the contrary, the terms used in these general terms and conditions are defined as follows:

User: NXD-Audio BV the user of the general terms and conditions.

Buyer: The User's other party to the Contract, acting in the course of his profession or business, to which the User sells and delivers.

Contract: The Contract between the User and the Buyer.

## Article 2. Scope of Application

- 2.1. These conditions are applicable to all legal relationships between the User and the Buyer, including all offers, quotations and agreements between the User and the Buyer to which the User has declared these terms and conditions applicable, insofar as these conditions have not been expressly departed from in writing by the parties.
- 2.2. These terms and conditions are further applicable to all Contracts with the User that are executed with the assistance of third-parties.
- 2.3. Departures from these general terms and conditions are valid exclusively if expressly agreed in writing.
- 2.4. The applicability of any purchasing or other conditions of the Buyer is expressly rejected.
- 2.5. If one or more of the provisions of these general terms and conditions are invalid or set aside, the remaining provisions of these general terms and conditions shall remain applicable in full. The User and the Buyer will in that case enter into consultation with a view to making agreement on the substitution of the invalid provisions with new ones that approach as closely as possible the purpose and the tenor of the original provisions.

## Article 3. Offers and formation of the Contract

- 3.1. All offers are subject to Contract unless the offer contains an express written statement to the contrary.
- 3.2. In the absence of agreement to the contrary, the prices stated in the aforementioned offers/quotations are exclusive of VAT and other governmental levies as well as the costs incurred in relation to the Contract, including forwarding and administration expenses.
- 3.3. The offer is based exclusively on the information provided for that purpose by the Buyer, and the User can rely on the accuracy and completeness of that information. The Buyer guarantees the accuracy and completeness of that information.
- 3.4. The Contract is formed between the User and the Buyer by one of the following methods and times:
- if no order confirmation is sent, at the time at which the Buyer expressly accepts in good time and verbally or in writing and in unamended form an offer made by the User;
  - if an order confirmation is sent, at the time at which the User takes receipt of the returned order confirmation that was sent to the Buyer, signed for agreement;
  - or at the time to which the User commences execution of the order on the Buyer's request.
- Notwithstanding the above, either party is free to make a case that the Contract has been formed by other means and/or at a different time.
- 3.5. Offers and quotations are not automatically applicable to future orders.
- 3.6. The User cannot be held to his offers or quotations if the Buyer can reasonably understand that the offers or quotations, or a part thereof, contain an obvious mistake or error.
- 3.7. Offers and quotations are without obligation, unless an acceptance period is stated in the offer or quotation. If no acceptance period has been set, no rights whatsoever can be derived from the offer or quotation.

## Article 4. Execution of the Contract

- 4.1. The User will execute the Contract with the due care that can reasonably be expected of a good contractor. The User does not however guarantee that a certain result will be achieved.
- 4.2. All deadlines indicated by the User are indicative and are not to be regarded as firm deadlines. Exceeding these deadlines shall not obligate the User to pay any compensation for damages or give the Buyer the right to dissolve the contract other than in cases of intentional act or omission or causes on par with gross negligence on the part of the User.
- 4.3. In cases of late delivery the User must be held in default by the Buyer before being considered to be in default.
- 4.4. If and in so far as required for the correct execution of the Contract, the User reserves the right to have the work carried out by third-parties.
- 4.5. The Buyer shall ensure that the User is provided in full and in good time with all information, as well as amendments thereto, in the form and manner that the User indicates is necessary for the performance of the Contract, or which the Buyer could reasonably be expected to understand is required, both on commencement and during the execution of the Contract. If the information required for the execution of the Contract is not issued to the User on time or in full, the User reserves the right to suspend execution of the Contract and/or to charge the Buyer with extra costs incurred as a result of the delay at the current market rates.

## Article 5. Delivery

- 5.1. Delivery shall take place ex works/shop/warehouse of the User.
- 5.2. The Buyer is obliged to accept the goods at the time at which the User delivers them or has them delivered to him or when they are made available to him in accordance with the Contract.
- 5.3. If the Buyer refuses to take delivery or fails to provide information or instructions necessary to the delivery, the User shall be entitled to store the goods at the Buyer's expense and risk.
- 5.4. The risk of the goods shall transfer to the Buyer at the time at which they are legally and/or actually delivered to the Buyer and are thus placed at the Buyer's disposal or a third-party nominated by the Buyer for that purpose.

## Article 6. Price and costs

- 6.1. The price is exclusive of VAT and all other costs incurred in the context of the Contract.
- 6.2. The User reserves the right to increase that price, in cases where amendments or additions are made to the Contract, for example.
- 6.3. The User is further authorised to pass on price increases to the Buyer if cost-determining factors such as salaries or other costs are increased between the time of the quotation and delivery.

## Article 7. Payment

- 7.1. Invoices are payable within 30 days of the invoice date in a manner indicated by the User and in the currency stated on the invoice, without deduction, discount or set-off being permitted. Objections to the level of the bills do not suspend the payment obligation.
- 7.2. If the Buyer fails to remit payment within the 30-day period, the Buyer shall be held in default by operation of law. The Buyer shall in that case be liable for the payment of interest equal to the statutory commercial interest rate at that time. The interest over the payable amount shall be calculated from the time at which the Buyer was held in default until the time of full and final settlement, in which context part of a month shall be deemed to be a full month.
- 7.3. In the event of the Buyer being liquidated, declared bankrupt or granted suspension of payment, the claims of the User on the Buyer shall become immediately due and payable.
- 7.4. The User reserves the right to have payments made by the Buyer extend first to payment of costs, then to outstanding interest and finally the principal amount and the current interest. The User can refuse a payment offer, without thus being in default, if the Buyer indicates a different order of allocation. The User can refuse full payment of the principal amount if the due and current interest and costs are not remitted at the same time.
- 7.5. If the Buyer exceeds any payment period the User has the right to discontinue further deliveries to the Buyer until the full outstanding amount under all contracts entered into has been paid. The User is in that case further entitled to send subsequent deliveries exclusively on a cash on delivery basis.

## Article 8. Retention of title

- 8.1. All goods delivered by the User remain the property of the User until the Buyer has met in full all of the obligations under the Contract entered into with the User; this to be decided at the User's discretion.
- 8.2. The Buyer is not authorised to pledge or encumber in any other way the goods covered by retention of title.
- 8.3. In the event of third-parties imposing an attachment on the goods delivered under retention of title or setting out to establish or invoke any rights to them, the Buyer is obliged to notify the User of that as soon as may reasonably be expected.
- 8.4. The Buyer is obliged to insure goods delivered under retention of title and to keep them insured against fire, explosion and water damage and against theft and to issue the insurance policy for inspection on demand.
- 8.5. Goods delivered by the User and which are covered by retention of title as provided for under paragraph 1 of this article may only be sold on in the context of normal business operations and may not under any circumstances be used as a means of payment. If the goods are resold, the Buyer further undertakes to transfer them under retention of title.
- 8.6. In the event of the User wishing to exercise his property rights as provided for in this article, the Buyer hereby gives unconditional and irrevocable permission, now for then, for the User or third-parties engaged by the User to enter the places where the property of the User is located and to repossess that property.

## Article 9. Collection costs

- 9.1. All judicial and extrajudicial (debt collection) costs reasonably incurred by the User in connection with the Buyer's non-compliance or late compliance with his payment obligations shall be for the Buyer's account.
- 9.2. The Buyer is liable for payment of statutory interest over the debt collection costs.

## Article 10. Inspection, complaints

- 10.1. The Buyer must notify the User in writing of complaints within 8 days of establishing the defect. The letter of complaint should contain a description of the failure to perform in as much detail as possible so that the User is able to put forward an adequate response.
- 10.2. If a complaint is well-founded, the User is authorised to decide at his own discretion whether to amend the invoice, redeliver the relevant product or reimburse a proportion of the price already paid without continuing to implement the Contract.
- 10.3. If the Buyer fails to lodge a claim within the period provided for in article 10.1, all of his rights and claims of any nature regarding the subject of the complaint made or which could have been made during that period shall be null and void.

## Article 11. Expiry period

- 11.1. Notwithstanding the provisions of article 10, the Buyer is obliged if he is or remains of the opinion that the User has failed to implement the Contract on time, completely or correctly - unless this is done subject to the provisions of article 10.1 - to notify the User as such in writing and without delay and to exercise his rights to institute claims on that basis within one year of the date of that notification, or within one year of the time at which notification should have taken place, in the absence of which all of his rights and claims in that regard shall lapse upon expiry of the period set forth above.

## Article 12. Suspension and dissolution

- 12.1. If the Buyer fails to meet any obligation to the User or to meet it in full or on time, if the Buyer is declared bankrupt or a request for his bankruptcy is filed at the court, if the Buyer has applied for or been granted suspension of payment, if the Buyer's company is discontinued or liquidated, if goods of the Buyer are subjected to an attachment, or if the Buyer is placed under administration or guardianship, the User has the right to suspend compliance with his obligations to the Buyer or to dissolve the Contract with the Buyer in full or in part, without any notice of default or legal intervention being required and without being obliged to pay any compensation for damages, without prejudice to the remaining rights of the User, including the right to claim compensation for damages.

## Article 13. Liability

- 13.1. In the event of the User being held liable, that liability shall be limited to the provisions of this clause.
- 13.2. The User's liability for losses suffered by the Buyer caused by the late, incomplete or incorrect implementation of the Contract shall be limited to a maximum of the invoice amount charged by the User to the Buyer for the delivered goods in which the cause of the loss has occurred. The compensation payable by the User to the Buyer cannot however under any circumstances exceed the amount for which the User's liability is insured, or a maximum amount of 5000 euros if no cover is provided by that insurance, insofar as that insurance does not provide cover in the case in question. The above is subject to exception in cases of intentional act or omission on par with gross negligence on the part of the User. For the purpose of this and subsequent clauses of this article the User is also defined as the User's employees and third-parties he has engaged for the implementation of the order.
- 13.3. The User cannot be held liable for losses caused by the Buyer's failure to meet his obligation to provide information as provided for in article 3.3 unless those losses have been caused by intentional act or omission or causes on par with gross negligence on the part of the User.
- 13.4. Neither can the User be held liable for losses caused by acts or omissions of third-parties engaged by the Buyer during implementation of the order, unless those losses have been caused by intentional act or omission or causes on par with gross negligence on the part of the User.
- 13.5. The User is further authorised at all times to maximally limit or reverse the Buyer's loss, for which the Buyer is obliged to cooperate in full.
- 13.6. The Buyer is obliged to limit or, where possible, to reverse his or her loss and that of his or her members.
- 13.7. The User cannot under any circumstances be held liable for indirect losses, including consequential losses, loss of income, missed savings or losses caused by business stagnation. The above is subject to exception in cases of intentional act or omission on par with gross negligence on the part of the User.

## Article 14. Product Warranty

- 14.1. The User warrants that its products are free from defects in material and workmanship under normal use for a period of one year (Warranty Period) from the date of purchase by the original Buyer.
- 14.2. During the Warranty Period, if a product is found to be defective, the User will, at its sole discretion, either repair or replace the defective product, subject to the terms and conditions of this warranty.
- 14.3. This warranty does not cover:
- Damage caused by misuse, abuse, neglect, accident, or improper installation;
  - Normal wear and tear;
  - Damage caused by unauthorized modification or repair;
  - Damage caused by environmental factors, including but not limited to, exposure to extreme temperatures, humidity, or acts of nature;
  - Consumable parts, such as batteries, unless the defect occurred due to a manufacturing defect;
  - Products that have been used for purposes other than those for which they were designed.
- 14.4. To make a warranty claim, the Buyer must:
- Contact the User's customer service department or authorized service centre;
  - Provide proof of purchase, including the date and place of purchase;
  - Describe the nature of the defect or issue with the product.
- 14.5. The User may require the Buyer to return the defective product for inspection and, if necessary, repair or replacement.
- 14.6. If a warranty claim is validated, the User will, at its discretion:
- Repair the defective Product;
  - Replace the defective Product with a new or refurbished Product of equal or similar functionality.
- 14.7. To the extent permitted by applicable law, the User's liability under this warranty is limited to the repair or replacement of the defective Product. The User shall not be liable for any indirect, consequential, or incidental damages arising from the use of the product.
- 14.8. For warranty inquiries or claims, please contact:  
NXD-Audio BV, Koxkampseweg 10, 5301 KK Zalbommel, the Netherlands, +31 (0)418 680 607,  
[service@nxd-audio.com](mailto:service@nxd-audio.com).

## Article 15. Indemnification

- 15.1. The User indemnifies the User against claims of third-parties regarding intellectual property rights on materials or information issued to the Buyer and which are used during implementation of the Contract.
- 15.2. The Buyer indemnifies the User against claims of third-parties regarding losses related to or arising from the Contract implemented by the User if and insofar as the User is not liable to the Buyer in that respect by virtue of the provisions of article 13.

## Article 16. Transfer of risk

- 16.1. The risk of the goods forming the subject of the Contract being lost or damaged shall transfer to the Buyer at the time at which they are legally and/or actually delivered to the Buyer and are thus placed at the Buyer's disposal or a third-party nominated by the Buyer for that purpose.

## Article 17. Force majeure

- 17.1. The parties are not required to comply with any obligation if prevented from doing so as a result of a circumstance that is beyond their control and for which they cannot be held accountable by virtue of the law, a justicic act or generally accepted views.
- 17.2. In these general conditions, force majeure is defined - in addition to that which is deemed as such by law and legal precedent - as all circumstances, foreseen or unforeseen, that are beyond the control of the User but which prevent the User from meeting his obligations. That includes strikes at the User's business.
- 17.3. No claims for any compensation can be made by the Buyer in the event of force majeure.
- 17.4. If a case of force majeure leads to an agreed date or term being exceeded, the Buyer has the right to dissolve the relevant Contract by means of written notification to that effect. That dissolution shall not extend to goods that have already been delivered; those goods must be paid for by the Buyer with due observance of article 7 of these general terms & conditions.

## Article 18. Applicable law and disputes

- 18.1. In the absence of mandatory rules of law to the contrary, the court in the User's place of establishment has exclusive competent jurisdiction.
- 18.2. All legal relationships between the User and the Buyer to which these general conditions apply shall be governed by the laws of the Netherlands. The Vienna Sales Convention is expressly excluded.
- 18.3. The parties shall not refer a matter to court until they have done their utmost to resolve the dispute in mutual consultation.

