

## General Terms of Trade of USound GmbH

### 1. General

The terms contained herein apply to all deliveries made and services rendered by Usound GmbH (afterwards "Usound") and shall be deemed to incorporate these Conditions. Any changes in or amendments to these terms shall only become effective after having been officially agreed to in writing by Usound.

### 2. DEFINITIONS.

The following expressions shall have the meanings in these conditions as set afterwards.

**1.1. Buyer:** means the individual or entity named in the Sales Order Acknowledgement.

**1.2. Conditions:** means these terms and conditions of sale.

**1.3. Contract:** means the Sales Order Acknowledgement accepting the order for the supply of the Products as detailed in the Sales Order Acknowledgement, which constitutes the entire contract for the supply of the Products.

**1.4. Contract Price:** the price (amount) for the Products as stated in the Sales Order Acknowledgement.

**1.5. Seller:** USound GmbH.

**1.6. Sales Order Acknowledgement:** document of Seller to acknowledge or accept Buyer's order for the Products. The Products will be supplied upon these Conditions only.

**1.7. Products:** means the products, goods, or materials detailed in the Sales Order Acknowledgement to be supplied by Seller.

### 3. FORMATION OF CONTRACT.

3.1. Seller hereby specifically objects to and rejects any different or additional terms and conditions in any of buyer's documents regarding the Purchase. Terms and conditions of the Buyer shall not be binding on Seller unless seller shall otherwise agree in writing.

3.2 A failure of objection of the Seller to provisions contained in any document of the Buyer regarding this purchase shall not constitute acceptance of such provisions or a waiver of any provisions of any of these Conditions. No site usage agreement or click through agreement on a website will have any applicability or binding effect whether Seller clicks on an "ok," "I accept," or similar acknowledgement or not. A payment for or acceptance of receipt of Products called for in an Order Acknowledgment by the Buyer shall constitute acceptance of the Contract.

### 4. QUOTES AND ACCEPTANCE.

4.1 Seller shall have no obligation to sell or deliver Products covered by Seller's quotation unless and until a Sales Order Acknowledgement is issued or upon the shipment of Products by Seller. All Products quoted "in-stock" are subject to prior sale.

4.2 All orders are subject to acceptance by Seller through issuance of a Sales Order Acknowledgement. Seller reserves the right to decline any order for any reason. Any telephone orders are accepted at the risk of Buyer as Seller may make shipments before Buyer receives written confirmation of the order.

### 5. PRICE AND DELIVERY.

5.1. Buyer is obliged to pay the Contract Price according to the Seller's invoices.

5.2. Unless otherwise agreed in writing by the parties, the Contract Price does not contemplate shipment of Seller inventory. Shipment of Seller inventory may be separately negotiated by Seller and Buyer.

5.3. Unless otherwise agreed in writing by the parties, the Products shall be delivered Ex-Works (EXW, Incoterms 2010) at Seller's premises specified in the Sales Order Acknowledgement or, if no premises are so specified, at the premises notified by Seller to Buyer for such purpose. Seller shall notify Buyer when delivery has taken place. Claims for shortages and other errors in delivery must be made in writing to Seller within ten (10) days after receipt of Products. Failure to give such notice shall constitute unqualified acceptance and a waiver of all such claims by Buyer.

5.4. Any date quoted as delivery date is an estimate only, unless otherwise agreed to in writing by Seller. Seller may deliver the Products in instalments. Buyer is obliged to pay the Contract Price according to the Seller's invoices, as mentioned in 5.1. A delay in delivery of any instalment shall not grant the Buyer a right to reject remaining deliveries.

5.5. If Buyer fails to arrange for collection of the Products within fifteen (15) days after Seller has notified Buyer that the Products are available for collection in accordance with the applicable provisions of the Contract, Seller may store the Products at Buyer's risk pending collection or delivery (as applicable). Buyer shall reimburse Seller for all handling, transportation and storage costs incurred by Seller in relation to such storage, in accordance with Seller's invoices therefor.

### 6. WARRANTY.

**6.1.** Seller warrants that the products delivered will be free from defects under normal use in conformity with the terms of the contract. Products alleged to not meet the specified requirements shall be called to Seller's attention by Buyer within thirty (30) days after delivery to buyer.

**6.2.** The warranty set out in Section 6.1 shall not apply to:

- (i) Products not manufactured by Seller;
- (ii) Products that have been maintained, repaired or modified by persons other than Seller or persons authorized by Seller;
- (iii) Products that have been improperly or inadequately installed and/or defects caused by improper site preparation by Buyer;
- (iv) Defects caused by abuse, negligence or accident, or loss of or damage to the Products whilst in transit.

**6.3.** Seller excludes all other warranties not expressly set forth in Section 6.1, and, to the extent permitted by applicable law, all implied warranties, whether by statute, common law, custom, usage or otherwise as to any matter.

## **7. CANCELLATION, RETURNS AND DELAYS BY BUYER.**

Buyer may not cancel an order or any portion thereof unless Seller provides prior written consent, in its sole discretion.

## **8. PAYMENT TERMS AND CREDIT APPROVAL.**

**8.1.** Unless otherwise agreed with Buyer, the net amount of an invoice shall be due as per the agreed payment terms. Invoices may be issued in instalments corresponding to the delivery or performance schedule, as applicable. All payments shall be made in Austrian currency, unless otherwise agreed. Under no circumstance will Buyer have a right of set-off. Seller shall have the right to offset its payables against its receivables related to goods or services purchased from Buyer. If Buyer shall default in any payment when due, Seller, at its option without prejudice to other lawful remedies, may

- (i) declare the entire Contract Price immediately due and payable,
- (ii) defer delivery of Products,
- (iii) demand the return of previously shipped Products;
- (iv) cancel the Contract.

Buyer shall indemnify Seller for all costs incurred in the collection of past due amounts or otherwise resulting or arising from any breach by Buyer of the Contract.

**8.2.** All shipments to be made must be approved by Seller's credit department. If the financial condition of Buyer, in Seller's sole judgment, becomes unsatisfactory, Seller may

- (i) defer or decline to make any shipments hereunder except upon receipt of satisfactory security or cash payments in advance, and / or
- (ii) terminate the Contract.

## **10. TAXES AND ASSESSMENTS.**

The Contract Price is exclusive of all taxes or tariffs. Buyer is solely responsible for payment of, and shall indemnify and hold Seller harmless from and against, all taxes, duties and levies imposed by all foreign, federal, state, local and other taxing authorities (including export, sales, use, excise and valued-added taxes), other than taxes imposed on Seller's net income.

## **11. CONFIDENTIALITY.**

A party (the "Receiving Party") shall keep in strict confidence all information which is of a confidential, proprietary or non-public nature (including any technical or commercial know-how, specifications, inventions, pricing, processes or initiatives) and which has been disclosed to the Receiving Party by the other party (the "Disclosing Party"), its employees, agents or subcontractors, and any other confidential, proprietary or non-public information concerning the Disclosing Party's business or its products or its services which the Receiving Party may obtain. The Receiving Party shall restrict disclosure of such confidential, proprietary or non-public information to such of its employees, agents and subcontractors as need to know it for the purpose of discharging the Receiving Party's obligations under the Contract, and shall ensure that such employees, agents and subcontractors are subject to obligations of confidentiality and non-use corresponding to those which bind the Receiving Party. The Receiving Party shall only use or make copies of confidential information (including any reproductions, extracts or analyses of that confidential information) in connection with and to the extent necessary for the purposes of the Contract. The obligations of confidentiality and non-use in this Section 11 are in addition to any obligations set forth in a separate written agreement between the parties. In the event of a conflict between this Section 11 and the obligations of confidentiality and non-use set forth in any such separate written agreement, the terms of such separate written agreement shall prevail; *provided* such obligations of confidentiality and non-use in such separate agreement are no less restrictive than the obligations herein.

## **12. INTELLECTUAL PROPERTY**

**12.1.** Except as otherwise provided in the Sales Order Acknowledgement, all intellectual property rights in, or relating to, the Products, including any modifications or enhancements made by Seller to Buyer's specifications or other intellectual property, are owned by Seller and nothing in the Contract shall have the effect of transferring the ownership of such intellectual property rights to Buyer.

**12.2.** In the event of any third party demand, claim or action ("Claim") alleging that the proper use of the Products by Buyer in accordance with any instructions and directions issued with or in relation to such Products by Seller infringes any patent or other intellectual property right belonging to a third party, Buyer shall:

- (i) promptly notify Seller in writing of such Claim;

- (ii) not make any admission in relation to or attempt to settle or compromise the Claim;
- (iii) give Seller express authority, at Seller's option, to conduct all defense, negotiations and proceedings, and to settle all proceedings arising from such Claim; and
- (iv) provide Seller with all available information, documents and assistance as Seller may reasonably require.

Seller shall have no obligations under this Section 12.2 for any Claim where the infringement arises from a modification of Product by Buyer of which Seller could not have been reasonably aware, or from a combination of Product with materials not supplied by Seller, and such infringement would not have arisen but for such modification or combination.

This Section 12.2 states the entire liability of Seller and the exclusive rights of Buyer for any infringement, misappropriation or violation of third party intellectual property rights.

**12.3.** Buyer shall hold USound harmless against any expense or loss resulting from the infringement of patent rights or copyrights and arising from compliance with Buyer's designs, specifications, or instructions.

### **13. LIABILITY**

**13.1.** Seller will not be liable to Buyer or any party for any loss or damage to revenues, profits, other economic loss or goodwill or other damages of any kind, arising out of, relating to or in connection with the Contract, even if Seller has been advised, knows or should have known of the possibility of such damages, and even if any of the limited remedies of the Contract fail to fulfill their essential purpose.

**13.2.** Subject to Section 13.1 and Section 6.1, in no event shall Seller's cumulative, aggregate liability arising under, with respect to or in connection with the Contract exceed 50% of the lowest amount on any single Sales Order Acknowledgement or related invoice for the Products.

### **14. DISPUTE RESOLUTION.**

In the event of any unresolved dispute between the parties with respect to the Contract, the matter shall be expeditiously submitted to an executive of each party who is authorized to represent and bind their respective party for further consideration and discussion to attempt to resolve the dispute. Time is of the essence. The parties shall mutually pursue, as promptly as possible and practical, an amicable settlement of the dispute in a reasonable, timely manner. If Buyer's designated representative and Seller's designated representative are unable to resolve a dispute within a reasonable time of not less than ninety (90) days, either party may pursue its rights and remedies consistent with the Contract and available at law or in equity. If either party incurs any legal fees, whether or not an action is instituted, in an effort to enforce the Contract or to recover damages or injunctive relief for breach of the Contract, the successful or prevailing party or parties shall be entitled to reasonable attorneys' fees and other costs

in addition to any other relief to which such party may be entitled.

### **15 INDEMNITY.**

Buyer shall indemnify and hold harmless Seller against any and all losses, damages and expenses (including attorney's fees and other costs of defending any action) that it may sustain or incur as a result of a transaction between Seller and Buyer regarding a sales contract.

### **16. GOVERNING LAW AND VENUE.**

All delivery contracts shall exclusively be governed by the laws of Austria, place of performance and therefore place of jurisdiction for all claims under a delivery contract shall be Graz. Any conflict of laws principles and the provisions of the United Nation Convention on the International Sale of Goods shall be excluded and are not applicable.

### **17. LANGUAGES.**

English shall be the governing language of the Contract. If the Contract or these Conditions are translated into another language from the English version and there is any conflict between the non-English version and the English version, the English version shall govern.

### **18. ASSIGNMENT.**

Buyer's rights, interests and obligations hereunder may not be assigned, transferred or delegated by Buyer without the specific prior written authorization of Seller. Any attempted assignment, transfer or delegation by Buyer will be wholly void and totally ineffective for all purposes.

### **19. SEVERABILITY.**

If any provision of the Contract is for any reason held to be invalid, illegal or unenforceable by a court of competent jurisdiction, the remaining provisions of the Contract shall be unimpaired and shall remain in full force and effect, and the invalid, illegal or unenforceable provision shall be replaced by a valid, legal and enforceable provision that comes closest to the intent of the parties underlying the invalid, illegal or unenforceable provision.

### **20. ENTIRE AGREEMENT.**

The Contract constitutes the terms and conditions to the contract of sale and purchase between Seller and Buyer and supersedes any prior and contemporaneous written and oral agreements with the exception of any written agreements between Seller and Buyer which specifically identify themselves as governing in the event of a conflict. No modification hereof shall be of any force or effect unless in writing and signed by the party claiming to be bound thereby. Any provision of the Contract which, by its nature, would survive termination or expiration of the Contract shall survive any such termination or expiration.

### **21. FORCE MAJEURE.**

Neither party shall be liable for damages under the Contract for a delay or failure in its performance of any obligation (except the obligation to make payments when due) under the Contract (including for the avoidance of doubt obligations arising under these Conditions and the documents referred to in

these Conditions) as a result of causes beyond its reasonable control, including war, strikes, lockouts, embargoes, terrorism, insurrection, riots, inability to obtain materials or labor due to governmental acts, rules, regulations or directives, breakdown of machinery, accidents, fires, floods or other natural disasters. Upon the giving of prompt written notice to the other party of any such causes of a delay or failure in its performance of any obligation under the Contract, the time of performance by the party so affected shall be extended to the extent and for the period that its performance of such obligations is prevented by such cause. Seller may, during any period of shortage due to any of the above force majeure circumstances, allocate its available supply of Products among itself and its other buyers in such manner as Seller, in its sole judgment, deems fair and equitable.

**22. WAIVER.**

No failure of Seller to insist upon strict compliance by Buyer with the Contract or to exercise any right accruing from any default of Buyer shall impair Seller's rights in case Buyer's default continues or in case of any subsequent default by Buyer. Waiver by Seller of any breach by Buyer of the Contract shall not be construed as a waiver of any other existing or future breach.