

Terms of Sale



analoge + digitale Tonstudioteknik Karl Juengling, owner Dipl.-Ing Gerd Juengling (hereinafter ‚Seller‘) and the customer (hereinafter ‚Buyer‘), in consideration of the mutual covenants, agreements and provisions set forth herein and hereon, hereby agree that the purchase of Seller’s Products shall be subject to and in accordance with the following terms and conditions:

1. Scope

All products and services offered for sale by Seller or, if applicable, through distributors or sales representatives are sold subject to the terms and conditions stated herein. This offer expressly limits acceptance to the terms hereof and any additional, different or inconsistent terms proposed by Buyer, whether in writing or otherwise, are hereby objected to and rejected and Seller shall not be bound thereby unless expressly agreed in a writing signed by Seller that such terms and conditions shall supersede those contained herein.

2. Acceptance by Buyer

Acceptance by Buyer of these terms may be made either by written acceptance or failure by buyer to object within a reasonable period of time following knowledge of seller’s commencement of performance on account of an order. Buyer’s acceptance includes, without limitation the shipment of conforming or non-conforming goods provided however in the event Seller does not receive an earlier notice of written acceptance by Buyer, Seller may treat any offer made hereunder as having lapsed before acceptance; or by receipt by Buyer of delivery of any product as herein provided.

3. Business-to-Business

Seller is a business-to-business supplier. Seller’s products are intended for use by business customers and not for consumers. All prices do not include packing cost, shipping cost or additional fees. VAT is not included with the prices and must be charged to private consumers, resident in the European Union.

4. Private Customers

If Buyer is a private individual, applicable German or European law, respectively, shall supersede the provisions of the terms and conditions hereunder, and every other provision of this agreement shall not be affected, and they shall remain in full force and effect.

5. Web Store Orders

Buyer’s web store orders are binding offers that can be accepted by Seller under reserve of availability of the offered goods. Buyer’s offer is accepted either by payment of Buyer or by delivery of products by Seller. Buyer expressly confirms that he/she is at least 18 years old, contractually capable without any limitation and all information entered in the order forms are true.

6. Product Descriptions

All descriptions of the products and services contained on Seller’s websites or otherwise communicated to Buyer are approximate only and shall not form any part of the contract between Seller and Buyer. Seller may correct any errors in its websites without liability to the Buyer. The advertising of products and services in the websites merely constitutes an invitation by Seller for Buyer to make an offer to purchase products and services.

7. Copyright

Descriptions, pictures, trade marks or other items published on Seller’s websites and brochures and websites linked to Seller’s online, may be protected by copyright and may not be used without written permission by Seller.

8. Illegal Use

Buyer confirms by acceptance of the terms and conditions hereunder, that he will not use any product purchased under this agreement for any illegal purpose.

9. Terms and Method of Payment

All Prices are subject to adjustment on account of specifications, quantities, shipment arrangements or other terms and conditions, which are not part of the original price quotation. Unless otherwise stated in the order acknowledgement, terms are prepaid with order, except where satisfactory open account credit is established, in which case the terms of payment are specified in a written agreement with the Buyer. If deliveries are made in installments, each installment shall be separately invoiced and paid for when due without regard to other deliveries. If Buyer fails to make payment for goods delivered as herein provided, or if in Seller’s opinion, Buyer’s financial condition in any contract made hereunder, Seller may at any time limit or cancel Buyer’s credit and may demand payment in cash for delivery of any part of the product. The net invoice price shall be payable in U.S. funds. Amounts owed by Buyer with respect to which there is no dispute shall be paid without set off for any amount which buyer may claim are owed by Seller and regardless of any other controversies which may exist.

10. Taxes

All prices quoted or accepted by Seller include applicable import duties and fees, but are exclusive of federal, state, municipal or other government excise, sales, use, occupational or like taxes, VAT, tariffs, customs and all export duties and other export costs. Any and all of the foregoing taxes, duties, fees and costs shall be borne by Buyer. Prices are consequently subject to increase by the amount of any such tax, tariff, duty or fee, which Seller pays or is required to pay or collect upon sales or to the product, will appear as separate additional item on the invoice to Buyer. Any tax exemption certificate of similar document of proceeding required to exempt the sale of products from sales or use or other tax liability shall be obtained by Buyer, at its expense and shall be provided to Seller prior to delivery.

Terms of Sale



11. Delivery Periods

Buyer acknowledges that delivery periods provided by Seller are estimates only and that Seller will not be liable for failure to deliver within such periods. Seller reserves the right to make deliveries in installments. Delay in delivery of one installment will not entitle Buyer to cancel any other installment(s). Delivery of any installment of products within thirty (30) days after the date requested will constitute a timely delivery. Delivery of a quantity which varies from the quantity specified shall not relieve Buyer of the obligation to accept delivery and pay for the products delivered.

Any delivery period shall begin at the time Buyer has fulfilled his obligations, including but not limited to necessary information for the execution of the order and receipt of payment in case of prepaid orders.

12. Delays in Delivery and Force Majeure

Seller will make commercial reasonable efforts to meet any delivery periods quoted in the agreement. However, under no circumstance shall Seller be liable to Buyer for any delay in shipment or failure to meet any quoted delivery periods or for any delay in performance hereunder. Seller shall have the right to indefinitely postpone the time for delivery due to unforeseen circumstances or due to a cause beyond its control. Examples of such causes are acts of God, wars, riots, embargoes, acts of civil or military authorities, fires, floods, accidents, strikes, transportation delays or shortages, inability to obtain material or supplies, excessive demand for products over available supply, interruption for any reason in the manufacture of products by Seller's supplies, or other causes not within Seller's control, whether of the class of causes herein before enumerated or not. Where only part of Seller's capacity to perform is excused under this condition, Seller shall attempt to allocate deliveries among its various customers in a commercially fair and reasonable manner. Where such allocation has been made, reasonable notice of the estimated quota available to Buyer shall be given.

13. Shipments, Passage of Title and Liability for Loss

For all shipments, products shall be shipped ex works Seller's facility unless otherwise expressly confirmed in writing by Seller. Title to the products and risk of loss or damage in transit or thereafter shall pass to Buyer, regardless of whether Seller will install or supervise the installation of the product. Products held or stored by Seller for Buyer shall be at the sole risk of Buyer, and Buyer shall be liable for the expense to Seller of holding or storing products at Buyer's request. In the absence of specific shipping instructions, Seller will ship by the method it deems most advantageous. Transportation charges will be collected, or if prepaid, will be subsequently invoiced to Buyer.

Unless otherwise indicated, Buyer is obligated to obtain insurance against damage to the material being shipped. With web store orders, or if otherwise agreed in writing, Seller takes out insurance for the total of the invoice excluding taxes on behalf of Buyer, unless otherwise specified by Buyer.

Unless otherwise specified, products shall be shipped in standard commercial packaging. When special or export packaging is requested or, in the opinion of Seller, required under the circumstances, the cost of the same, if not set forth in the invoice, will be separately invoiced to Buyer.

Shipping dates are approximate. All products will be scheduled for shipment in accordance with Seller's applicable shipment sequence and Seller will confirm in writing, and amend as appropriate the shipment schedule. Seller reserves the right to make deliveries of product in installments and the contract shall be severable as to each such installment. Under no circumstance shall Seller be liable to Buyer for any delay either in shipment or in delivery. Buyer shall give Seller notice within fourteen (14) days after delivery of any incomplete deliveries. In any case, place of performance is Seller's facility. In case of loss or damage during shipping, Buyer is obliged to inform Seller within two (2) days by phone, email or fax and follow the instructions by Seller to proceed.

14. Cancellations by Buyer

Orders accepted by Seller may be cancelled by Buyer upon written consent of Seller and provided such order is not „Non-Cancelable and Non-Returnable“ („Non-Standard Products“) or governed by a Purchase Agreement Letter. Non-Standard Products are defined as Products which are special orders, custom orders, orders for non-standard products, products not customarily in stock or orders for value-added products. Among others, any mixing consoles offered by Seller belong to the scope of "Non-Cancelable and Non-Returnable" products. Non-standard products are non-cancelable and non-refundable. In the event of cancellation or other withdrawal of an order for any reason and without limiting any other remedy which Seller may have as a result of such cancellation or other withdrawal, reasonable cancellation or restocking charges, which shall include all expenses than incurred and commitments made by Seller, shall be paid by Buyer to Seller. Buyer requests to reschedule are subject to acceptance by Seller in its sole discretion. Orders may not be canceled or rescheduled after the order has been submitted by Seller to the shipment carrier. Seller reserves the right to allocate sales and limit quantities of selected Products among its customers in its sole discretion. Product specifications and availability are subject to change without prior notice.

Buyer shall apply for delivery in writing after a non binding delivery period is overdue for 4 weeks to deliver within an appropriate period of time. Seller falls behind schedule if it does not delivery within this period unless Seller has not seriously and finally refused delivery. In case of unforeseen circumstances or due a cause beyond sellers control, including but not limited to acts of God, wars, riots, embargoes, acts of civil or military authorities, fires, floods, accidents, strikes, transportation delays or shortages, inability to obtain material or supplies, excessive demand for products over available supply, interruption for any reason in the manufacture of products by Seller's supplies shall extend the delivery period accordingly.

If Seller is responsible for a delay of binding periods, Buyer can claim for compensation of possibly damage caused by delay limited to a total of five (5) percent of the total amount of the items, if Buyer is able to verify that such damage arose from the delay. Any further claims are excluded, unless the delay is caused by gross negligence.

Terms of Sale



15. Cancellations by Seller

Upon the occurrence of any of the following events, Seller shall have the sole and absolute right to cancel all of any portion of the products ordered pursuant hereto, without any liability to Buyer thereof

a) Buyer makes a general assignment for the benefit of creditors or admits in writing any inability to pay its debts as they mature or takes advantage of, or files under any federal, state or foreign insolvency statute or law, or any proceeding is filed or commenced against Buyer, under any insolvency statute or law which is not stayed and dismissed promptly or any substantial part of the properties of Buyer are placed in the control of a receiver, trustee or similar official, or Buyer consents to the appointment thereof.

b) if Seller is prohibited by any cease and desist order, injunction or other valid order, decree, process of law or restraint from shipping, selling, exporting, importing or distributing hereof. Seller shall have no liability on account of exercising its right to cancel hereunder.

c) in case of impossibility of performance not on account of Seller, Seller shall cancel the entire order or parts of the order. In this case Buyer has no right to claim for damages.
Seller shall refund any prepaid amounts for such orders or parts of such orders within a period of two weeks.

16. Limited Warranty

Seller warrants that the products sold hereunder conform to sellers written specifications for the product and will be free from defects in material and workmanship, under normal use and service when correctly stored, installed, used and maintained by Buyer for period of two (2) years for new products and 3 months for used products. If Buyer is a private individual, warranty period for used products is determined by applicable German or European law.

The warranty period commences on the date the products shipped by Seller. Seller's liability and responsibility under this warrant is limited solely (at sellers discretion) to replacing, repairing, or issuing credit for defective products which are returned to it by Buyer and which Seller determines does not conform to the warranty.

To assert a claim in the warranty period, Buyer shall:

a) notify Seller during the applicable warranty period in writing of any claims, specifying in reasonable detail the nature of the warranty claim; and

b) provide Seller with an opportunity to inspect and test the product claimed to be defective. Claims made after the applicable warranty period are not covered by this or any other warranty.

Products returned to Seller for warranty service will be shipped to Seller at Buyer's expense and will be returned to Buyer at Buyer's expense. Buyer shall not return material without first obtaining an RMA number as stated herein. Returns made without obtaining prior authorization shall be returned to sender at Buyer's expense. In no event shall Seller be liable for any defective products if Seller determines upon examination that the defective condition of such products was caused by misuse, abuse, improper storage, installation or application, improper maintenance or repair, alteration, accident or negligence in use, storage, transportation, or handling. The term 'specification' as used herein means specifications for Seller's products (subject to stated parameters and testing conditions) identified, specifications for Seller's products contained in a data sheet or other similar document in effect at the time of order acknowledgement by Seller and made available to Buyer at Buyer's request. Such specifications are incorporated herein by this reference. Buyer acknowledges that specifications for Seller's products may change without notice and hereby affirms that it is familiar with the specifications for Seller's products in effect at the time of order acknowledgement. In the event that modifications are made to specifications following order acknowledgement and before the expiration of the applicable warranty period, Buyer may cancel and terminate this agreement without penalty by written notice to Seller, provided that no such cancellation right shall exist for modifications to specifications that do not materially affect the performance of such products. In the event that Buyer does not elect to so cancel and terminate this agreement and Seller informed Buyer of such modifications of Buyer otherwise was aware of such modifications prior to the termination of the warranty period, such modified specifications shall be deemed accepted by Buyer and shall thereby supersede and replace the specifications in effect at the time of order acknowledgement for purposes of this warranty. In no event shall Seller be liable under warranty if

a) Buyer knew of any failure of Seller's product to conform to specifications prior to purchase or

b) Buyer was informed of any change in specifications subsequent to purchase and did not avail itself of the option contained herein to cancel and terminate this agreement and/or to make a claim under this warranty within the warranty period.

No modification to specifications for Seller's product published before or after the warranty period shall have the effect of extending the warranty period regardless of whether Seller notified Buyer of such modification. Buyer assumes all risk for operation of products outside parameters and testing conditions stated in the specifications.

The above warranty is subject to limitations asset forth herein:

The above warranty is exclusive and constitutes seller's sole liability and Buyer's sole remedy with respect to any claimed non conformance of the products sold hereunder and is in lieu of any other warranty, express or implied, including without limitation an implied warranty of merchantability, fitness for particular purpose or implied, all of which seller hereby disclaims.

In no event, Seller shall be liable if Buyer modifies or repairs a product, or breaks a warranty seal without written permission of Seller.

17. Limitation of Liability

Seller's liability under, for breach of, or arising out of this agreement shall be limited in amount to the net purchase price of the product sold to buyer by seller hereunder. In no event shall seller be liable for costs of procurement of substitute goods by Buyer. In no event shall Seller be liable for any special, consequential, incidental, economic, direct, indirect or other damages

Terms of Sale



(including without limitation loss of profit) whether or not Seller has been advised of the possibility of such loss, however caused, whether by breach of repudiation of contract, breach of warranty, negligence, or otherwise, this exclusion also includes any liability which may arise out of any third party claims against Buyer the essential purpose of this provision is to limit the potential liability of Seller arising out of this agreement and/or sale.

18. No other warranties

No employee or agent of Seller is authorized to make warranties about the products described in this agreement. Oral or written statements by Seller's employees or agents, including via email, do not constitute warranties, shall not be relied upon by Buyer and are not part of the agreement of sale. The entire agreement of the parties is embodied in this writing and not other warranties are given beyond those set forth herein. Buyer hereby acknowledges that it has not entered into this agreement in reliance upon warranty or representation by any person or entity except for the warranties or representations specially set forth herein.

19. Sale conveys no License

The products are offered for sale and sold by Seller subject in every case to the condition that such sale does not convey any license, expressly or by implication, estoppel or otherwise, under any intellectual property rights of Seller with respect to any inventions of Seller or others, patented or not patented, embodied in Seller's products, processes, sales literature or manufacturing operations. Seller expressly reserves all its rights under such intellectual property rights. No manufacture to Buyer's specifications entails ownership by or conveyance to Buyer of any property right in any invention.

20. Data and proprietary Rights in Data

Portions of the data supplied are proprietary to Seller. Seller retains for itself all proprietary rights in and to all designs, engineering details, and other data pertaining to any product sold except where rights are assigned under written agreement of Seller.

21. Reverse Engineering

Buyer covenants that it will not attempt to 'reverse engineer' or otherwise discover Seller's intellectual property, patentable, patented or non-patented invention, trade secrets, secret processes, or other confidential information embodied or contained in Seller's products including but not limited to the documentation of products.

22. Confidential Information

No information shall be deemed to be given or received in confidence by either party unless and to the extent it is covered by a separate written agreement. Buyer is responsible for the security of its own confidential information.

23. Security Interest

Seller hereby reserves a purchase money security interest in the product sold and the proceeds thereof, in the amount of its purchase price. In the addition to any other rights and remedies available to Seller, to repossess the products sold hereunder and without liability to Buyer. In such event, Buyer agrees to make the product available to Seller so that Seller can repossess them without a breach of the peace. These security interests will be satisfied by payment in full. A copy of the invoice may be filed with appropriate authorities at any time as a finishing and/or chattel mortgage, in order to perfect Seller's security interest. In the request of Seller, Buyer shall execute financing statements and other instruments Seller shall desire to perfect its security interest.

24. Bankruptcy

If Buyer shall become bankrupt or insolvent or compounds its debts with his creditors or commences winding up or suffers appointment of a receiver, Seller may, by notice to Buyer in writing, cancel this agreement without judicial action, intervention or declaration of default of Buyer, and without prejudice to any right or remedy which shall have accrued or shall accrue thereafter to Seller.

25. Source Inspection

Source inspection by Buyer or Buyer's customer must be stipulated in writing, at the time of ordering, and is subject to reasonable charges and safety and security conditions. Buyer shall have no right of access to Seller's plant except as specifically authorized in advance by Seller. Buyer or Buyer's agent shall indemnify and hold Seller harmless from any and all suits, damages and expenses of Buyer, his agent or his customer resulting from personal injury including death or loss or damage of property occurring during, or in connection with, any visit to Seller's plant.

26. Installation

Seller assumes no obligation to install the products or to place them in operation at Buyer's premises, unless specifically stated in writing and signed by an authorized agent of Seller.

27. Exports

Buyer certifies that it will not export or re-export the products furnished hereunder unless it complies with all liens and regulations of any relevant foreign jurisdiction relating to such export or re-export including any applicable administration rule and regulation. Buyer warrants that the country of destination noted on the purchase order and order acknowledgement and to which the products are to be shipped reflects accurately the real country of destination of the products.

Terms of Sale



28. No Waiver

No failure by Seller to enforce at any time any of the provisions of this agreement, or to exercise any election or option provided herein, shall not be a waiver and shall in no way be construed as a waiver of such provisions or options, nor in any way be construed to affect the validity of this agreement or any part thereof, or the right of Seller thereafter to enforce each and every such provision.

29. Attorneys' Fees

Reasonable attorneys' fees and costs shall be awarded to the prevailing party in the event of litigation involving the enforcement of interpretation of this agreement or any request for shipment release and accepted under the terms and conditions of this agreement.

30. Governing Law

The parties acknowledge and agree that any offer and acceptance by the parties shall be a contract made in Germany. All questions pertaining to validity, construction, execution and performance of this agreement shall be construed and governed in accordance with the laws of Germany without giving effect to principles of comity of nations or conflicts of law. If the products purchased hereunder are purchased by a Buyer residing in a country other than Germany, then the parties agree that the United Nations Convention on Contracts for the International Sale of Goods is hereby excluded in its entirety from this agreement.

31. Jurisdiction and Venue

The contract between Seller and Buyer shall be governed by and interpreted in accordance with German Law and Buyer submits to the exclusive jurisdiction of German courts.

32. Limitations of Action

No action for breach of the contract for sale of products shall be commenced more than one (1) year after the accrual of the cause of action thereto.

33. Assignment

Buyer shall not assign this agreement or any interest herein, or any right hereunder, without prior written consent of Seller. Any such assignment or delegation without Seller's prior written consent shall be null and void, and of no effect.

34. Headings

The headings contained in this agreement are for convenience of reference only and shall in no way define or limit the provisions hereof.

35. Entire Agreement and Modification

This writing constitutes the final expression of the parties agreement, and it is a complete and exclusive statement of the terms of that agreement. This agreement shall not be modified, supplemented, qualified, or interpreted by any trade usage or prior course of dealing not made a part of the agreement by its express terms. Furthermore, it is expressly agreed that a party's acceptance of or an acquiescence in a course of performance hereunder shall not be admissible to modify, waive, supplement or explain the terms hereof, even if that party is aware of the course of performance and has an opportunity to object to it. Any modification of the terms herein shall be effective only when embodied in a written agreement signed by Seller.

36. Severability

If any term and condition of this agreement is held void or unenforceable, it shall be severed, and every other provision shall be enforced as if the void or unenforceable term or condition had never been a part hereof.

37. No Indemnification

Unless otherwise expressly provided in writing signed by both parties, Seller does not indemnify, nor does it hold Buyer harmless, against any liability, losses, damages and expenses (including attorney fees) relating to any claim whatsoever, including without limitation, claims for personal injuries, death or property damage, related to the products sold hereunder.

38. Use in Life Support Applications or Nuclear Facilities

Products sold by Seller are NOT designed for use in life support equipment, nuclear facilities or applications where malfunction of the product can reasonably be expected to result in personal injury or death. Seller does not authorize any product for use in life support equipment or applications or nuclear facilities. Buyer uses or sells such products for use in nuclear facilities, life support equipment or applications at Buyer's own risk and agrees to indemnify, protect and hold harmless Seller and its directors, officers, stockholders and employees (Indemnified Party) from and against any and all damages, claims, liabilities, losses, causes of action, litigation, proceedings, demands, judgments, suits, costs, disbursements and expenses, including without limitation, reasonable attorneys fees, or whatsoever kind and nature, imposed upon, incurred by, asserted, threatened or awarded against any of the Indemnified Party directly or indirectly arising out of, relating to or resulting from such use.

39. Buyers Data

Seller shall store and use all data that concern the business relationship between Buyer and Seller under consideration of the provisions of German and European Data Protection Act.

Terms of Sale



40. Precedence

In the event of any inconsistency among the referenced documents, attachments, drawings, specifications or other provisions hereof, the following order of precedence shall apply:

1. special terms and conditions agreed to in writing by Seller
2. these general terms and conditions
3. all other attachments or documents incorporated herein by reference

41. Buyer's Understanding

Buyer represents and warrants:

- a) that it has read and understood these terms and conditions
- b) that these terms and conditions are fair and reasonable to Buyer

42. Survival

This Section and the provisions of Sections 1, 4, 6, 7, 8, 9, 14, 15, 16, 17, 18, 19, 30, 31, 32, 35, 36, 37 shall survive the cancellation and termination of this agreement and sale of any product by Seller