

music distribution services GmbH

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Hours of business: Monday to Friday 8am to 5pm
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Company Reg. No: HRB 5115 at the district court of Mainz
Sales tax ID: DE811462794

General terms and conditions of business (as from 1 July 2004) for music distribution services GmbH, Mainz under HR B 5115, trading since 18 May 2004

§ 1 Scope of terms

(1) These general terms of business are intended to govern the contractual relationship between buyers or purchasers (referred to hereafter as customers) and music distribution services GmbH (referred to hereafter as mds). These general terms of business apply to all business conducted between mds and their customers.

(2) All goods and services supplied by mds are subject to the conditions printed below, except where some other general or specific agreement has been made in writing by mds or the publishing partners. Different terms of business imposed by the customer will only be recognised where there is written agreement from mds.

§ 2 Contractual arrangements

(1) All prices quoted by mds are subject to alteration. Orders placed by a customer represent a binding acceptance of the price quoted, whether this agreement was made orally, in writing, by electronic communication or in some other way.

(2) Within 4 weeks mds can choose to accept this order, either by sending a confirmation of order or by sending the goods ordered to the customer within this period.

§ 3 Prices

(1) Goods will be supplied and invoiced at current prices as detailed in catalogues, price lists and brochures (using the most recent, valid edition) and published in the electronic information media.

(2) The prices published by mds are final prices in EUROS including VAT (hereafter referred to as shop prices). Prices are fixed within the Federal Republic of Germany, unless otherwise indicated. Shop prices and delivery options are subject to alteration; errors are excepted.

§ 4 Delivery and packaging charges for the music and book trade

In principle, delivery charges and packaging costs will be included in the prime cost or added to the invoice at a flat rate.

§ 5 Orders and delivery problems

(1) In general, orders will be handled and invoiced at the currently relevant shop prices, without any additional confirmation of the order. The delivery period is reckoned from the receipt of an order. If an agreed delivery date is exceeded by more than 4 weeks, the customer is entitled to set an extended deadline of 6 weeks and to withdraw from the contract if this period elapses without satisfactory result. The order must be cancelled in writing. There is no further entitlement. Partial deliveries may be made; in this instance there is no option to cancel the agreement if the delivery has been made on time.

(2) In cases where delivery is obstructed we reserve the right to cancel the order. In this instance the customer has no right to claim damages. Cancellations and changes to orders can only be accepted if this information reaches us before the original order has been processed.

(3) In case the customer does not accept the goods, we are entitled to cancel the contract or to claim payment of damages for default. In the latter instance we are entitled to demand 10% of the value of the order without providing any evidence of damage, or else the cost of any actual damage to goods.

§ 6 Despatch and Delivery

All consignments are sent at the customer's own expense and risk from the moment of despatch, even where destruction or deterioration can be attributed to chance or to forces beyond control. We will not pay for the replacement of goods that are lost or damaged in transit. If delivery is delayed at the customer's request, then liability transfers to the customer as soon as the goods are ready for delivery. All consignments will be sent in what we judge to be the most practical way. Any special requirements regarding despatch must be made entirely clear for each separate order. Additional costs arising from such special requirements may be added to the invoice at a flat rate. Consignments will only be forwarded from the original despatch address under exceptional circumstances. We reserve the right to pass on any extra costs incurred to the customer. A completed address label is to be provided in every case.

§ 7 Liability

I. Quality guarantee

(1) The customer should examine the goods for any defects within a reasonable period of time. Any complaints should normally be sent to mds within ten working days from the receipt of goods; the date on the postmark will be taken as proof of this having been done. Defects only discovered upon closer inspection should be reported as soon as they are discovered. Defects reported late are not covered under the terms of our guarantee. Complaints should always be made in writing. In cases where a legitimate complaint is followed by remedial action or the delivery of a replacement, the regulations governing delivery times are to be applied appropriately.

(2) Where any such defect has been noted and properly reported, the following rights are conferred on the customer:

(a) Where defects are discovered, the customer has the right to require mds to offer restitution. It is for mds to decide whether it is appropriate to make a new delivery or whether the defects can be corrected.

(b) In addition, mds has the right to make a renewed attempt to meet their obligations as they see fit, in case the first attempt should fail. Only if these repeated attempts fail to provide satisfaction does the customer acquire the right to cancel the contract or ask for a reduction in price.

(3) No further claims by the customer will be admitted, particularly claims for damages, including loss of profit or other financial loss to the customer, except where these are based on intentional damage, negligence, the assumption of a constitutional guarantee or injury to the life, body or health of the customer. This exemption from liability also applies to the personal liability of our employees, agents and assistants.

(4) The period of limitation and guarantee where businesses are concerned is 12 months (i.S.d. § 14 BGB).

II. Damages and compensation

Without interfering with the legal conditions governing guarantees and any other special regulations applied in these conditions, in the case of any breach of duty by mds the following shall apply:

(1) The customer shall allow mds an appropriate period of time to make good any breach of duty which may have been noted, allowing not less than three weeks. Only after such a period has elapsed without satisfactory result may the customer annul the contract or demand reparation.

(2) No further claims by the customer will be admitted, particularly claims for damages including loss of profit or other financial loss to the customer, except where these are based on intentional damage, negligence, the assumption of a constitutional guarantee or injury to the life, body or health of the customer. This exemption from liability also applies to the personal liability of our employees, agents and assistants.

(3) The payment of compensation instead of completion (in the case of non-fulfilment § 280 BGB III i.V. m § 281 BGM) and payment of compensation for delays (§ 280 II i.V. m § 286 BGB) is confined to amount already paid for the goods. The payment of compensation for services not provided or not properly provided (§ 282 BGB) is limited to the amount of the purchase price. No compensation will be paid where it has become impossible to provide the service and where the contractual obligation has been rendered void.

(4) If the customer is solely or principally responsible for circumstances that might normally entitle them to withdraw from the contract, or if the circumstances giving entitlement to cancellation arose while receipt of goods was delayed at the customer's behest, then no cancellation rights apply. mds will not be liable for damage caused by mds, its official agents or assistants through simple negligence. This shall be the case notwithstanding the legal status of any claim made, particularly one arising from delay, any other breach of duty or unauthorised handling. This limit on liability does not apply to damages arising from injury to life, body or health or to breach of essential contractual responsibilities.

§ 8 Consignments with Right of Return (RR)

Consignments with RR require a special agreement and are only permissible within certain limits. The recipient can send the goods back to us at their own expense by the stipulated date for return; otherwise the amount on the invoice is due. Recordings and software cannot be sent out for inspection purposes.

§ 9 Returns

In general, the return of material delivered on order without right of return requires our previous consent and our return form. The relevant data must be given and a copy of the invoice or delivery note enclosed. An exception is made for material with technical defects (misprints etc.). If the relevant data is not supplied for returns, then a credit note will be issued at a discount rate of 70%, allowing for possible price variations, partial deliveries and special offers. We will only accept and issue credit notes for goods that can be resold. Unresaleable goods include material that is out of print and copies that are dirty or damaged, as well as copies adorned with stickers or special offer labels and old editions no longer supplied by us.

No credit notes will be issued for unresaleable goods. There is no right of return.

In cases where we are responsible for delivering the wrong goods, we will provide a substitute or credit note to the full value of the order, including any costs incurred by the customer.

§ 10 Currency

All deliveries will be invoiced in EUROS and must be paid for in the same currency.

§ 11 Reservation of proprietary rights

All goods supplied remain our property until payment has been made in full (where payment is made by cheque or transfer, until the money reaches our account) to meet all obligations which have arisen or which may arise out of the business contract between the customer and us. The customer is entitled to dispose further of the goods supplied at any time until such entitlement is revoked, in the course of the proper conduct of their business. The customer immediately takes over from us all liability resulting from the further disposal of these goods and business dealings with their clients in relation to such further disposal. This transfer of liability serves to safeguard any claims made with reference to the first sentence of this paragraph. The customer is entitled and obliged to deal with these claims, as long as we have not revoked this authorization. Such authorization will lapse automatically, without notice, if the customer stops a payment or if an application is made to open insolvency proceedings against the customer.

The customer is not authorized to dispose in other ways - through a transfer of securities or mortgage arrangement, for example - of the reserved goods or of creditors' claims assigned. They should do everything in their power to prevent any interference with our rights over goods that are our property and/or claims assigned to us, and should keep us fully informed. Costs arising from any intervention are to be borne by the customer.

In case the actual value of the creditors' claims assigned should exceed the value of claims covered by mds by more than 20% (cover limit) for more than a short time, then mds shall be obliged to release these claims for an appropriate sum at the customer's request.

If the goods supplied have been indissolubly linked or mixed with other goods not belonging to mds, then mds acquires a joint interest in the new product proportional to the value of their goods in relation to the other elements at the time when they were combined. If their combination occurred in such a way that the customer's property is considered to be the major part of the property, then it is assumed that the customer confers proportional joint ownership upon mds. The customer shall maintain the right of mds to sole or joint ownership and insure goods against damage at their own expense.

§ 12 Conditions of payment

Outstanding invoices for goods already supplied are payable within 30 days from the date of the invoice, without any discounts, where no other date for payment is stipulated on the invoice. We only supply goods ahead of payment to firms that have done an appropriate amount of business with us in the preceding year and have been prompt with any payments due. If payment is late, we will charge interest without warning at 5% p.a. above the base lending rate, in accordance with § 1 of the minimum lending rate index ruling of 9 June 1998 (BGBl. 1 S. 1242). We reserve the right to require payment on delivery or payment in advance processing orders from firms that have been late with payments. In accounting for delays in payment, receipt of the goods in question is not an acceptable substitute for late payment of an invoice or arranging some other form of payment.

§ 13 Data protection

All customer data is treated in confidence. Ascertaining, processing and using personal data relating to our customers is done for the sole purpose of fulfilling all our contractual duties. Such data will only be passed on to delivery personnel, to other members of the business group Schott Music GmbH & Co. KG and to the credit reference agents used by us, and for the sole purpose of completing the order and for checking credit ratings. The customer is taken to have given consent to this procedure unless they provide explicit instructions to the contrary concerning such use of personal data.

§ 14 Fulfillment of contracts and court of jurisdiction

The laws applicable in every instance are those of the Federal Republic of Germany. The court of jurisdiction, where the law allows a ruling over jurisdiction, is Mainz.

§ 15 Obligations under contract

In the case of one or more of the stipulations not being operative, the validity of the rest of the contract is not affected. In this instance the inoperative stipulation is to be interpreted or adapted in such a way that the original intention and financial goal is realized.