

# STANDARD TERMS AND CONDITIONS OF SALE

## 1. APPLICABILITY

The following terms and conditions of IP-Audio.com govern the sale of all goods and services to each customer of IP-Audio.com ("Customer"). Sales by distributors or other authorized resellers will be subject to such other terms and conditions as may be agreed by each such distributor or reseller.

## 2. ACCEPTANCE

An order by Customer of the goods and services provided by IP-Audio.com constitutes an express acceptance of these Standard Terms and Conditions of Sale and a repudiation of any other inconsistent terms or conditions. Terms or conditions contained in any of Customer's documents, including but not limited to orders and acknowledgments that alter, differ from, or add to the Standard Terms and Conditions of Sale herein are deemed by IP-Audio.com to be a material alteration of the terms and conditions herein and are hereby rejected by IP-Audio.com unless agreed to in a writing signed by an authorized representative of IP-Audio.com.

## 3. ORDERS

Customer shall submit all orders for products and specify the description and quantity of the products ordered, address to which delivery is to be made, manner of delivery and such other information as requested by IP-Audio.com. IP-Audio.com has the absolute right to accept or reject any order, without giving explanation, in whole or in part, and shall be under no obligation to the customer by the mere placing of an order by Customer. An order shall only be deemed accepted and binding on IP-Audio.com if IP-Audio.com expressly confirms its acceptance with an order confirmation or if IP-Audio.com ships the order. Once IP-Audio.com provides an order confirmation to Customer or ships the order, the Order shall be non-cancelable by Customer pursuant to Section 8 below.

## 4. PRICING

Prices and other information listed in any publication by IP-Audio.com (including websites, catalogues, and brochures) are subject to change without notice. Such publications are not offers to sell and are not subject to acceptance by Customer. IP-Audio.com shall provide services in accordance with the terms and conditions, and at the rates in effect at the time the services are provided. IP-Audio.com's service rates are available upon request by Customer. Customer acknowledges that IP-Audio.com has the right to invoice Customer for travel time as well as any waiting time necessary to provide the services properly. Any applicable duties or sales, use, excise, value added or similar taxes shall be added to the price unless an acceptable exemption certificate is furnished.

## 5. PAYMENT AND CREDIT

Unless otherwise stated, all payments shall be in United States dollars and shall be due and payable in full upon placement of the order. Customer shall pay all charges for storage, transport and other related expenses, unless otherwise agreed upon.

## 6. DELIVERY

All goods shall be sold and delivered F.O.B. Origin: IP-Audio.com's facilities in Minnesota unless otherwise expressly agreed with Customer in writing. IP-Audio.com may make partial shipments as determined in its sole discretion. Title to the goods and risk of loss or damage shall pass to Customer at the F.O.B. point on IP-Audio.com's delivery of the goods to the carrier. All claims, loss, damage and delay in transit shall be handled by Customer directly with the carrier. Claims for shortages or incorrect items must be made in writing to IP-Audio.com within thirty (30) days after receipt of shipment. Failure to give such notice shall constitute an unqualified acceptance and waiver by customer of all claims for such shortages or incorrect terms.

## 7. PERFORMANCE; DELAYS; USE OF GOODS AND SERVICES

Timely performance by IP-Audio.com is contingent upon Customer's supplying to IP-Audio.com, when needed, all required technical information and data, including approvals and all required commercial documentation. IP-Audio.com shall not be liable for any damages or penalty for delay in delivery or use of goods or services or for failure to give notice of delay when such delay is due to any cause or condition beyond the reasonable control of IP-Audio.com, including, but not limited to: natural catastrophes, acts or omissions of a government or its agencies or departments, labor strikes, lockouts or other disturbances, war, riot or difficulties in procuring labor, energy shortages, shortage of suitable parts, materials, computer malfunction, transportation problems, Customer's failure to fulfill its obligations, especially the completeness of information provided to IP-Audio.com by Customer, or delay in delivery by IP-Audio.com's vendors. The scheduled delivery or performance date shall be extended by a period of time equal to the time lost because of any such delay. Delay in delivery or installation shall not relieve Customer of its obligation to accept such later delivery or installation.

## 8. NON-CANCELATION

Customer may not cancel, terminate, or suspend an order after payment has been made except with IP-Audio.com's express written consent. In any event, IP-Audio.com shall have the right to reject any requested amendment to an order which IP-Audio.com, in its sole discretion, believes to be unsafe, technically unsound, not subject to good workmanship or established engineering standards or is not in conformity with the goods or services regularly provided by IP-Audio.com.

## 9. RETURN OF GOODS

No goods shall be returned to IP-Audio.com without IP-Audio.com's prior approval. Goods shall only be returned to IP-Audio.com in the case of a warranty claim approved by IP-Audio.com. For any and all warranty claims, the customer shall observe the provisions of paragraph 10 below.

## 10. LIMITED WARRANTY

THE OBLIGATIONS OF IP-Audio.com UNDER THIS LIMITED WARRANTY ARE THE EXCLUSIVE REMEDIES FOR ANY BREACH OF THE WARRANTY OF THE GOODS.

### 10.1 Hardware

Any goods being returned to IP-Audio.com for the purpose of fulfillment of warranty must be returned with all accessories and in the original packaging to IP-Audio.com with freight charges prepaid by Customer. Risk of loss shall not pass to IP-Audio.com until the returned goods are received by IP-Audio.com. IP-Audio.com alone retains the right to determine whether or not the warranty claim shall be accepted. In the event that there is no defect found, or if the warranty has been voided from customer mis-use, or any other situation has occurred in which IP-Audio.com determines that the warranty for the goods does not apply, then IP-Audio.com retains the right to refuse the warranty claim. After IP-Audio.com has evaluated the product, and if needed, completed any warranty service, the transport of goods back to the customer shall be governed by the following terms: FOB Origin (IP-Audio.com). Freight Insurance shall be paid by Customer. Title to goods and risk of loss or damage shall pass to purchaser at the f.o.b. point. IP-Audio.com shall pay standard ground freight costs of sending goods back to Customer after warranty service ONLY IF WARRANTY CLAIMS ARE ACCEPTED. If warranty claims are accepted and Customer wants goods shipped by a method other than standard ground, Customer shall be responsible for all freight costs. In the event that IP-Audio.com refuses the warranty claim, Customer will be responsible for all freight costs of returning the goods from IP-Audio.com to Customer. IP-Audio.com warrants that any goods manufactured by it shall be of merchantable quality, free from defects in materials and workmanship under normal use and conditions for a period of one year from date of shipment by IP-Audio.com (the "Warranty Period"). Goods under warranty which have been repaired or replaced are warranted for a period of thirty (30) days from the date of return shipment to Customer, or the remainder of the original Warranty Period, whichever is longer.

### 10.2 Software

Any computer software products supplied or delivered to Customer by IP-Audio.com shall be governed by a separate license agreement between IP-Audio.com and Customer.

### 10.3 Services

IP-Audio.com shall provide services requested by Customer, including but not limited to programming, maintenance, troubleshooting, repair, etc. only as agreed in advance in a separate written agreement by IP-Audio.com. IP-Audio.com shall perform such services in a professional manner and in accordance with generally accepted industry standards.

### 10.4 Notification of Defects

Any defects in material or workmanship must be reported by Customer to IP-Audio.com within the Warranty Period. In the event that a defect is discovered and reported to IP-Audio.com within the Warranty Period, IP-Audio.com will, solely at its option, adjust or repair the defect, or replace the defective goods. Customer acknowledges that it shall not be permitted to make any claim for defects arising out of misuse, negligence, negligent handling, improper operation, alteration, modification, improper installation, exposure to external influences or the like, to the extent that IP-Audio.com was not responsible thereof. Prior to returning any goods alleged to be defective, Customer shall notify IP-Audio.com in writing of the claimed defect and shall include a description of the good, as well as the serial number(s), date of purchase, and copy of order confirmation therefore. No goods shall be returned without authorization obtained in advance from IP-Audio.com, said authorization not to be unreasonably withheld. Customer acknowledges that if IP-Audio.com elects to replace the goods, that such replacement goods may be new or reconditioned at IP-Audio.com's sole discretion. Customer further acknowledges that any services provided outside of IP-Audio.com's place of business (including but not limited to Customer's place of business), regardless of whether the goods are under warranty, may cause Customer to incur additional costs and expenses for such services, for which Customer shall reimburse IP-Audio.com. The sole purpose of the Remedies shall be to provide Customer with the repair, replacement, re-performance or modification of the goods. These Remedies shall not be deemed to have failed of their essential purpose so long as IP-Audio.com is willing and able to provide one of the Remedies in the manner provided in this Section 10.4.

### 10.5 Disclaimer of Warranties

OTHER THAN AS EXPRESSLY SET FORTH ABOVE, IP-Audio.com MAKES NO WARRANTIES REGARDING THE GOODS OR SERVICES PROVIDED HEREUNDER, INCLUDING, WITHOUT LIMITATION, WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, WHETHER EXPRESS OR IMPLIED. IP-Audio.com SPECIFICALLY MAKES NO WARRANTIES AS TO THE SUITABILITY OF THE GOODS AND SERVICES FOR ANY PARTICULAR PURPOSE OR APPLICATION, REGARDLESS OF WHETHER FOR CUSTOMER OR AFFILIATES OF CUSTOMER AND REGARDLESS OF WHETHER IP-Audio.com KNEW OF OR HAD REASON TO KNOW OF ANY SUCH PARTICULAR PURPOSE OR APPLICATION. IP-Audio.com MAKES NO WARRANTIES SPECIFICALLY REGARDING ANY GOODS OR SERVICES PROVIDED HEREUNDER THAT HAVE BEEN FURNISHED OR SPECIFIED BY CUSTOMER AND INCORPORATED INTO THE GOODS OR OBTAINED FROM OTHER MANUFACTURERS OR VENDORS SPECIFIED BY CUSTOMER.

## 11. LIMITATION OF LIABILITY

### 11.1 Damages

IN NO EVENT SHALL IP-Audio.com BE LIABLE FOR SPECIAL, INCIDENTAL, CONSEQUENTIAL, OR PUNITIVE DAMAGES, OR LOST PROFITS, IN CONNECTION WITH OR ARISING OUT OF ANY ACTION OR INACTION OF IP-Audio.com RELATING IN ANY WAY TO THE GOODS AND/OR SERVICES IT PROVIDES, EVEN IF IP-Audio.com SHALL HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH POTENTIAL LOSS OR DAMAGE.

### 11.2 Notification of Breach

Upon the discovery of facts that reasonably indicate that IP-Audio.com has failed to perform its obligations or has negligently or otherwise breached a legal duty to Customer, Customer shall notify IP-Audio.com of such facts in writing within 10 business days of such discovery. The failure to give the foregoing notice shall constitute an irrevocable waiver of all claims and causes of action which Customer may have against IP-Audio.com, and shall cause Customer to be absolutely barred from the institution of any proceedings or actions based upon such claims or causes of action. In no event shall any action be brought by either party more than one year after the cause of action was discovered or could have been discovered.

## 12. INDEMNIFICATION

Customer assumes and shall indemnify and hold IP-Audio.com harmless from all responsibility to Customer and third parties for personal or property damage, including special, incidental, and consequential damages, relating in any way to the goods and/or services provided to Customer by IP-Audio.com. Customer shall defend, at its sole cost and expense, any action brought against IP-Audio.com as a result of any such personal injury or property damage and further agrees to indemnify IP-Audio.com for all costs (including attorneys' fees and expenses) incurred by IP-Audio.com in defending any such claims or in establishing its right to indemnification herein.

## 13. CONFIDENTIALITY

All information, data and user manuals provided to Customer as well as all drawings, designs, techniques, and improvements (whether patentable or unpatentable) made or conceived by IP-Audio.com or its agents or employees that relate in any way to the goods or services provided by IP-Audio.com (hereafter "Information") are confidential and proprietary to IP-Audio.com and shall not be reproduced, quoted, distributed, or communicated to, or used by, any other person or entity without the express prior written consent of IP-Audio.com. Customer agrees to take reasonable precautions to prevent unauthorized disclosure or use of the Information and shall only disclose the Information to, and permit its use by, Customer's employees and agents necessarily involved in the use and operation of the goods and services provided by IP-Audio.com to Customer. Customer shall inform its employees and agents receiving goods and services provided by IP-Audio.com of the confidential nature thereof and of the obligations of Customer and its employees and agents acting on behalf of Customer. The foregoing confidentiality restrictions shall survive indefinitely.

## 14. COPYRIGHT

Any drawings and documentation provided to Customer hereunder are furnished only for Customer's own internal use. To the extent not inconsistent with Section 13 hereof relating to confidentiality, Customer shall have the right to make copies of such drawings or documentation to satisfy Customer's internal requirements, provided that Customer includes IP-Audio.com's copyright notice on each such copy. No other copies or use of any drawings or documentation or any portion thereof shall be made without the prior written approval of IP-Audio.com.

## 15. INTELLECTUAL PROPERTY RIGHTS

Customer shall indemnify and hold IP-Audio.com harmless from any expense or loss resulting from infringement of patent, trademark or copyright or other intellectual property rights arising from compliance with designs or specifications furnished or specified by Customer and incorporated into the goods or obtained from other manufacturers or vendors specified by Customer.

## 16. SPECIFICATIONS

IP-Audio.com reserves the right to make substitutions and modifications to the specifications of the goods and services it provides to Customer, providing that such substitutions or modifications will not materially affect the performance of said goods and services.

## 17. SECURITY INTEREST

Customer hereby grants to IP-Audio.com a purchase money security interest in all goods sold to Customer by IP-Audio.com as security for the performance by Customer of all its obligations in these Standard Terms and Conditions of Sale. Customer agrees to execute and deliver to IP-Audio.com at IP-Audio.com's request financing statements evidencing such security interest in a form satisfactory for filing with the appropriate places of filing.

## 18. TERMINATION

IP-Audio.com shall have the right to terminate its provision of goods and services to Customer upon the occurrence of any one of the following: (a) Customer assigns any of its rights hereunder without the prior written consent of IP-Audio.com (the word "assigns" to include, without limiting the generality thereof, the transfer of a majority interest in Customer), (b) Customer neglects or fails to perform or observe any of its obligations to IP-Audio.com (c) an assignment is made of Customer's business for bankruptcy, or a trustee, receiver or similar officer is appointed to take charge of all or part of Customer's property, or Customer is adjudicated as bankrupt, or (d) Customer violates any of the provisions hereof.

## 19. GOVERNMENT REGULATIONS

IP-Audio.com and Customer shall comply with all local laws, rules and regulations necessary for the performance of these Standard Terms and Conditions of Sale and any agreement concluded in conjunction herewith. In the event that any goods are to be exported, the exporter shall comply with all such laws that may apply to such export, including without limitation, the U.S. Export Administration Act.

## 20. NOTICES

All notices given by either party to the other under these Standard Terms and Conditions of Sale shall be in writing, sent certified mail, return receipt requested to such address as may be provided in writing by either party to the other in the future.

## 21. ASSIGNMENT

IP-Audio.com may transfer any rights or obligations under the orders or contracts governed by these Standard Terms and Conditions of Sale to any of its affiliates or to another entity in the event of a merger, consolidation, recapitalization or the sale of all or substantially all of its assets without the consent of Customer. Customer may not transfer its rights or obligations pursuant to these Standard Terms and Conditions of Sale without the express written consent of IP-Audio.com.

## 22. DISPUTE RESOLUTION

Any dispute, claim or controversy arising out of or in connection with these Standard Terms and Condition of Sale shall be negotiated in good faith between the parties. If, after negotiating in good faith, either party is of the opinion that such negotiations will remain unsuccessful, the parties shall refer the matter to mediation in accordance with such rules as the parties may agree. If the matter is not resolved by mediation, either party may then bring the action before a competent court as provided in Section 23 below.

## 23. GOVERNING LAW AND CONSENT TO JURISDICTION

### 23.1 Governing Law

The validity, construction, and interpretation of the terms and conditions herein and all rights and duties of IP-Audio.com and Customer shall be governed by the substantive laws of the State of Minnesota (without giving effect to the conflicts of laws principles thereof). The United Nations Convention on Contracts for the International Sale of Goods shall not apply to these Standard Terms and Conditions of Sale or to any agreement that may be executed or performed to implement these Standard Terms and Conditions of Sale.

### 23.2 Consent to Jurisdiction

Customer hereby irrevocably submits to the nonexclusive jurisdiction of any Minnesota state court or any U.S. federal court located in the State of Minnesota in any action or proceeding arising out of or relating to the relationship between IP-Audio.com and Customer, and Customer hereby irrevocably agrees that all claims in respect of such action or proceeding may be heard and determined in such court or courts. Nothing herein shall affect the right of IP-Audio.com to bring any action or proceeding against Customer or its property or assets in the courts of any other jurisdictions. CUSTOMER HEREBY WAIVES TRIAL BY JURY IN ANY JUDICIAL PROCEEDING INVOLVING, DIRECTLY OR INDIRECTLY, ANY MATTER (WHETHER IN TORT, CONTRACT OR OTHERWISE) IN ANY WAY ARISING OUT OF, RELATED TO, OR CONNECTED WITH THESE STANDARD TERMS AND CONDITIONS.

## 24. LANGUAGE

Any dispute arising out of or in connection with these Standard Terms and Conditions of Sale shall be argued and resolved in English, which is also the governing language of these Standard Terms and Conditions of Sale.