

# **General Terms and Conditions and Customer Information Rock Shop GmbH**

**As of February 2012**

## **1. Scope of Applicability**

1.1.

All business dealings shall be governed exclusively by our following Terms and Conditions; Customer's terms to the contrary to or deviating from our Terms and Conditions shall not be valid unless expressly confirmed by us in writing.

1.2.

The following Terms and Conditions apply to Customers and merchants within the meaning of Sections 13 and 14 of the German Civil Code (BGB). If single Terms and Conditions apply only to merchants, it is pointed expressly out in the Term or Condition.

1.3.

These General Terms and Conditions shall also apply for future business with the Customer.

1.4.

The sales contract shall be concluded in German or in English.

1.5.

We will save the content of the sales contract and will send you an e-mail with your data of order. For safety reasons your data of order cannot be called via internet.

## **2. Conclusion of the Contract**

2.1.

The presentation of our products in the online shop shall not be a binding offer but merely a non-binding online catalogue. The Customer will send a binding order of the content of his goods account by activating the button "send order". We shall confirm the arrival of your offer immediately after the sending of your order. This confirmation shall not mean a binding acceptance of your order. We are entitled to accept your order by sending an order confirmation by e-mail or by delivering the products within five days.

2.2.

Unless otherwise explicitly agreed upon, we reserve all rights to any offer or contractual documents.

### 2.3.

We reserve the following alterations of the products even after conclusion of the contract, provided that Customer can reasonably be expected to accept them:

- modifications of the products in the course of constant product development and improvement of the product;
- minor and insubstantial deviations in colour, form, design, measure, weight and quantity;
- other deviations customary in trade.

## **3. Prices and Terms of Payment; set-off; assignment, costs for sending back**

### 3.1.

Unless otherwise agreed upon, Customer shall pay the price which is valid at the date of the conclusion of the contract.

### 3.2.

Unless otherwise agreed upon, the price includes the VAT, but not the charges for packing and shipping.

### 3.3.

Unless otherwise determined in the invoice, payments shall be made immediately and without any deductions.

### 3.4.

Customer may plead the right of retention to fulfil an obligation under the contract only if this claim against us is resulting from the same legal relationship as his obligation. Customer may set off only such claims as are undisputed, acknowledged or unappealable.

### 3.5.

Customer shall assign claims against us in connection with our performances only with our prior consent.

### 3.6.

In case of valid revocation according to Sec. 8 of the General Terms and Conditions, Customer has to bear the costs for sending the product back if the ordered product was delivered and the price of the product is not more than 40 Euros or in case of a higher price Customer has not paid the delivered product or has made an agreed part payment. In other cases the returning of the product is free.

## **4. Retention of Ownership**

### 4.1.

We retain ownership to all products delivered by us until we receive full payment of all sums owed to us- herein included future payments – originating in the business relation with the Customer. The retained ownership shall be deemed collateral for the

total account payable to us (current account retention) until all current liabilities have been discharged.

4.2.

The Customer shall have the right to resell the reserved products or connect the products with products of third persons in the ordinary course of business. The Customer shall not pledge, transfer the ownership by way of security or make other disposals of the reserved goods, which can affect our ownership of the product.

4.3.

If our reserved products are resold, the Customer shall assign to us as security his claims resulting from the resale of such products. We accept the assignment. If our reserved products are resold in combination or with other products, the assignment refers to our claims against the Customer plus 10 per cent of the agreed price.

4.4.

Customer shall have the revocable direct debit authorization regarding the assigned claims. We shall have the right to revoke the authorization if Customer breaches essential duties e.g. payment. In this case we shall have the right to request the necessary data, in particular name, address, phone number of the Customer's clients and the resold products to give us the opportunity to notify the assignment of the claim and to collect the claim.

4.5.

In case of applies for pledges or other impairments of the reserved products or the assigned claims, Customer shall give immediate notice of the retention of ownership, our ownership and the assignment. Furthermore Customer shall give us notice by telephone and in writing if requested by us. Furthermore Customer shall give us the name of the third party which applies for pledges or other impairments, that we are able to exercise our rights. Customer shall bear the costs for the defence of applies for pledges or other impairments.

## **5. Risk of Loss**

5.1.

If Customer is a merchant in the meaning of Sec. 14 of the German Civil Code (BGB) the risk of an accidental loss or of an accidental deterioration of the products – even in the case of agreed freight-free delivery – shall pass to Customer as soon the product leaves our premises and has been delivered to the person designed to execute the delivery.

5.2.

If Customer is a consumer within the meaning of Sec. 13 of the German Civil Code (BGB) the risk of an accidental loss or of an accidental deterioration of the products shall pass to Customer as soon the product has been delivered to Customer even in case of a sale by delivery to a place. The delivery is equal to a default in taking the delivery.

5.3.

In case of requested delay of the delivery by Customer or by fault of Customer, the risk of an accidental loss or of an accidental deterioration of the products shall pass to Customer as soon we have given notice to Customer that the products can be delivered.

5.4.

If requested by Customer we shall insure the products against breakage, damage in transit or damage caused by fire. Customer shall bear the costs for the insurance. The regulations about risk of loss remain unaffected.

## **6. Warranty / Damages**

6.1.

In case of a defect of the product which has already arisen before the delivery, Customer can choose between the option of remedy of the defect or delivery of a substitute product without defects.

If Customer is a merchant within the meaning of Sec. 14 of the German Civil Code (BGB), we are exclusively entitled to choose between both options.

In case of remedy of the defect by us, we are obliged to bear all necessary expenses. In case of delivery of a substitute product without defects, Customer shall send us the defect product for which we bear the risk of loss and the necessary expenses.

6.2.

In case of failure of two attempts of the remedy of the defect or the delivery of a substitute products without defects in a reasonable period of time, Customer shall have the option to either reduce the purchase price or to rescind from the contract.

6.3.

We are liable for damages within the scope of the legal provisions.

If Customer is a merchant within the meaning of Sec. 14 of the German Civil Code (BGB) our liability is restricted to

- damage to life, body or health of a person resulting from a deliberate, gross negligent conduct or from a faulty breach of a fundamental contractual obligation.
- the foreseeable damage typical for the type of contract in case of the damage to other objects of legal protection. This restriction is also applicable to negligent breach of a non-fundamental contractual obligation.

6.4.

We are not liable for defects,

- resulting from fair wear;
- if Customer repairs, changes or treats the product by himself or other persons without our prior consent. The restriction of liability does not apply if it can be proved that the defect does not result from the repair, change or treatment of the product;

- if the product is not used for the normal purpose or in case of other improper use or treatment of the product. This restriction of liability does not apply if it can be proved that the defect does not result from the improper use or treatment of the product.

#### 6.5.

If Customer is a consumer within the meaning of Sec. 13 of the German Civil Code (BGB), the warranty period shall be 2 years after the delivery of the product. In case of a used product the warranty period shall be reduced to 1 year after the delivery of the product.

If Customer is a merchant within the meaning of Sec. 14 of the German Civil Code (BGB), the warranty period shall be 1 year for new and used products.

### 7. Guarantee

In addition to warranty services provided by law, we also provide a principle three-year guarantee defined by the following regulations:

- a. We provide a guarantee for all damages arising during three years since the passage of risk provided that such damages were caused by a material deficiency or manufacturing error.
- b. If the manufacturer provides a guarantee period of more than three years, we provide the same period like the manufacturer.
- c. Manufacturers of computer hardware provide in addition to warranty services provided by law a guarantee period of just one year. In this case our guaranteed period also reduces to one year.
- d. If our client is a merchant within the meaning of Sec. 14 of the German Civil Code (BGB), we provide always the same guarantee period provided by the manufacturer.
- e. Excluded from the guarantee are:
  - used products (second hand products)
  - product defects arising from normal usage or from other effects of wear caused by the latter, like strings, drumsticks, batteries.
  - All sort of software, books, DVD, SD-cards.
- f. Product defects which should receive guarantee protection – as determined by us – are to be corrected in that way that we repair the defect product free of charge as decided by us or that the defective product will be replaced by a fully functional equivalent (in some cases a later version). Products and product parts which have been replaced become the property of our company.
- g. Guarantee claims must be raised within the official guarantee period. For this purpose, the product in question should be returned to us with the original invoice by ordering a “Freeway-Ticket”.
- h. Claims other than those named in these guarantee conditions – concerning the correction or compensation of product defects – are not covered by this guarantee.
- i. The provision of guarantee services neither prolongs nor renews the guarantee period for the product in question.
- j. These guarantee conditions apply for all sale contracts concluded after

January 1<sup>st</sup> 2007. Guarantee claims can solely raised by the client and cannot be assigned.

## **8. Information regarding revocation of distance contracts**

### **8.1. Power of revocation**

If you are a consumer within the meaning of Sec. 13. of the German Civil Code (BGB), you have the right to revoke the sale contract without reason within the period of 14 days in writing (e.g. by letter, fax, e-mail) or by sending back the delivered product if the product has been delivered before the end of the revocation period. The revocation period starts with the receipt of this information at the earliest, however not before the receipt of product (in case of recurring delivery of the same product not before the receipt of the first part-delivery) and not before the performance of our duty for information acc. to Sec. 246 § 2, § 1 para. 1 and 2 EGBGB and § 312g para. 1 S. 1 BGB, Sec. 246 § 3 EGBGB. It is sufficient to send your declaration of revocation or to send the product back within the period stated above. The declaration of revocation shall be sent to:

Rock Shop GmbH  
Am Sandfeld 21  
76149 Karlsruhe  
Germany

Fax: +49-721-97855-199, [rockshop@rockshop.de](mailto:rockshop@rockshop.de)

### **8.2. Consequences of revocation**

In case of a valid revocation both parties to the contract shall return their performances and amenities and advantages of using the performances. If you are not able to send back the whole delivered product and advantages or parts of the product or if you are not able to send back the product in a deteriorated condition, we can claim for compensation. We may not claim for compensation if the deterioration is a result of the use of the product which does not exceed the examination of the product's quality and its function. Examination of the quality and the function is defined as the examination of the product in a store. If the delivered product can be sent by package, you may send it to us on our own risk. If you have ordered the delivered product and the price is not more than 40 Euros, you have to bear the regular costs for sending the product back. You have also to bear the costs if the price is more than 40 Euros and if you have not made the payment or a partial payment if agreed in the moment of the revocation. In other cases the returning of the product is free.

For a free returning of the product within the territory of Germany we offer so called "Freeway Paketmarken" from the Deutsche Post AG. You can order them from us by telephone, letter, fax or e-mail.

If the delivered product cannot be returned by package, we shall pick up the product from your address. Compensation shall be made within 30 days. This period starts

for you with the date of your declaration of revocation or the date of the return of the product, for us with the date of receipt of the product. The use of the “Freeway Paketmarken” is no condition for a valid revocation.

### 8.3. Exclusion of the claim for the power of revocation

The power of revocation is excluded

- for delivered newspapers, magazines and journals, if the contract was not concluded by telephone;
- if the delivered product has been manufactured with your specific specifications;
- for delivered audio or video records or software if you have unsealed the data carrier.

### 8.4. Financed sales

If you have received a loan for this contract, the revocation of the sales contract is also a revocation of the loan contract if both contracts can be qualified as an economic unit. An economic unit is assumed if we are seller and lender or if your lender is assisted by us regarding the loan. In case of revocation of the contract you can request us or the lender for cancellation of the loan, if the lender has already paid us.

### 8.5.

In case of revocation and the return of single components of a bundle, we are entitled to request the regular sales price for the remaining components. This rule also applies in case of Money Back Guarantee (No. 9 of our GTC)

## End of Information

## 9. Money Back Guarantee (extended right of return)

Beyond the right of revocation for 14 days, we offer our Customers a so called money back guarantee for the following 30 days under the following conditions:

- a. The money back guarantee is offered to clients which are consumers acc. to Sec. 13 of the German Civil Code (BGB). The guarantee applies for all products which have been purchased from our company via distance selling acc. to Sec. 312b of the German Civil Code (BGB).
- b. Costs for the return delivery shall be paid by the Customer. The Customer has also bear the risk of damage or loss of the product in case of return.
- c. The money back guarantee does not apply for
  - wearing parts (e.g. strings, tubes, sticks, batteries, illuminants...)
  - products which are produced or configured for the individual Customer.
  - Products which cannot be resold for hygienical reasons.
  - Products which contain registered software.

- d. The products shall be returned in the original and in a safe packing with all delivered accessoires and without signs of use. If the returned product has apparently suffered a loss of value by using it, we are entitled to claim for compensation by reducing the amount of the money which has to be paid back to our Customer.
- e. These regulations do not affect the legal right of revocation for 14 days, stated in No. 8 of our GTC.

## **10. Miscellaneous**

### **10.1.**

To all rights and obligations and all disputes arising out of or in connection with the contractual relationship between us and the Customer, German law, excluding the UN Sales Convention (CISG) shall apply exclusively, without regard to German collision rules.

### **10.2.**

If Customer is a merchant within the meaning of the German Commercial Code (HGB), legal entity under public law or public utility fund, place of jurisdiction for all disputes arising out of or in connection with the contractual relationship, shall either be our principal place of business (Karlsruhe) or, at our sole option, the location of the Customer.

### **10.3.**

All changes of these General Terms and Conditions and additional agreements shall be in writing. The change of this Term shall also be in writing.

### **10.4.**

Should individual provisions of these General Terms and Conditions or individual provisions of other agreements concluded with us be or become invalid, this shall not affect the validity of the other provisions or agreements.

Rock Shop GmbH, Am Sandfeld 21, 76149 Karlsruhe