

### 1. Scope of application

- a. The following terms and conditions of business shall apply to all orders transmitted electronically by Customers to **BEYERDYNAMIC GmbH & Co. KG** and shall be acknowledged by Customer with each order. Deviating or supplementary terms shall only become an integral part of the agreement if their validity has been expressly agreed in writing. The reference to Customer's terms on its forms is hereby contradicted.
- b. Customers within the meaning of the present terms shall be both consumers and also businessmen. Consumers within the meaning of the present terms shall be natural entities with whom business relationships are started without a commercial, independent or freelance activity being able to be ascribed to them. Businessmen within the meaning of the present terms shall be natural or legal entities or partnerships of legal capacity with whom business relationships are started and who act in the exercising of a commercial, independent or freelance activity.

### 2. Quotation/conclusion of contract

- a. The portrayal of our range in the Internet does not represent a quotation within the meaning of §§ 145 et seq. German Civil Code. Customer shall make a binding purchase offer to us by a corresponding online order.
- b. Responsibility for the selection of the ordered commodities and the results intended therewith shall be with Customer insofar as the order is not to be put down to consultancy performance with separate remuneration and corresponding written purchase recommendation of BEYERDYNAMIC GmbH & Co. KG.
- c. We shall be entitled to accept the order by delivery of the commodities or by a confirmation mail within 14 days of receipt of the order by us. If the commodities are not available, we shall inform Customer without delay and reimburse any consideration which may have been received from Customer without delay.
- d. A mail confirming receipt, which is automatically generated and dispatched by the system immediately after receipt of Customer's order, shall not represent a binding acceptance of the offer by us.
- e. Within the framework of the order process, the risks of an inexplicable, faulty transmission shall be with Customer. Sale of the commodities offered by us shall only be in quantities customary for the trade.

### 3. Prices

- a. The prices stated in the Internet at the time of the order shall apply. The prices stated shall be final prices, i.e. they contain the statutory Value Added Tax applicable at the time and other integral parts of prices plus dispatch costs, as can be seen from the order process.
- b. The right to technical amendments of the commodities as well as changes of the shape, colour and/or weight shall be reserved.
- c. For orders outside the European Union, statutory Value Added Tax shall not be applicable. In such a case, the commodities shall be delivered as "EXW" according to INCOTERMS 2000. Proper registration of the commodities in the receiving country shall be a matter for Customer.

### 4. Delivery/delivery periods/transport

- a. To the extent not agreed to the contrary in the present terms or in writing with Customer, all deliveries shall be ex works.
- b. Delivery periods stated shall be non-committal and only approximate.
- c. Unforeseen obstacles in delivery, such as cases of force majeure, lack of raw materials, strike, operational disturbances in our company or that of downstream suppliers, shall entitle us to postpone delivery for the duration of the prevention. In the event of the aforementioned obstacles in delivery, we can also withdraw from the contract to the extent that it has not been performed. Customer cannot derive any claims to damages herefrom.
- d. Customer shall pay a lump-sum for dispatch costs calculated according to weight and destination and notified to Customer during the order processes and dispatched by e-mail as an order confirmation. For inland transactions (inside Germany) with a net order value of € 395.00 or more, we supply franco domicile.

### 5. Right of revocation *for consumers:* (§§ 312 d, 355 German Civil Code)

- a. Customer can revoke the contract by returning the commodities to us within 14 days of receipt without stating reasons. The period shall commence no earlier than receipt of the commodities and these instructions (confirmed by mouse click in the online order). Punctual dispatch of the commodities shall be sufficient in order to revoke the contract concluded with us. Returns shall be made to the following address:

beyerdynamic GmbH & Co. KG  
Theresienstraße 8  
74072 Heilbronn.  
Tel. +49 7131 617 0  
Fax +49 7131 617 224  
E-Mail: consumerproducts@beyerdynamic.de

- b. Consequences of revocation: In the event of an effective revocation, the consideration received by both parties shall be restituted and any benefits received (e.g. interest) shall be returned. If Customer cannot reconstitute the performance received, either totally or partly or only in a deteriorated condition, it shall, if applicable, be obliged to compensation to us. In provision of objects, this shall not apply if the deterioration of the object is exclusively to be put down to an examination by Customer such as would have been possible, for example in a shop. Apart from this, Customer can avoid the obligation to compensation by not putting the object into use like an owner and omitting everything impairing its value.
- c. Objects capable of dispatch by parcel shall be returned at our expense and risk. Objects not capable of dispatch by parcel shall be collected from Customer.
- d. Costs of return: Customer shall bear the costs of return if the commodities supplied correspond to what has been ordered and the price of the commodities to be returned does not exceed an amount of 40.00 Euro or if Customer has not yet paid the consideration or a contractually agreed part payment at the time of the revocation in the event of a higher price of the commodities. Apart from this, returns shall be free of charge for Customer.
- e. Pursuant to § 312 d, sub-section 4, German Civil Code, the following are excluded from revocation:
- delivery of commodities produced according to Customer's specification or unambiguously tailor-made to match its personal requirements or not suited for returning on the basis of their properties or which spoil quickly or the sell-by date of which has been exceeded.
  - delivery of audio or video recordings or of software insofar as the data media supplied have been unsealed by the consumer.
- f. The right of revocation shall further not accrue in distance selling contracts, in which a right to revocation or return according to §§ 355 or 356, German Civil Code, accrues to Consumer on the basis of §§ 495, 499 to 507 German Civil Code. --- End of the instructions on revocation ---

### 6. Payment

- a. The commodities shall be paid for in advance. Payments by credit card shall be possible at the terms stated during the ordering process. Payment by sending cash or cheques shall not be possible. Liability in the event of loss shall be ruled out.
- b. Payment shall only have taken place when the corresponding amount is credited to us. In arrears in payment, we shall, subject to a claim to further damage, charge default interest of 5 percentage points above the basis rate of interest (§ 288 sub-section 1 German Civil Code) unless we have suffered greater damage from interest. The right to claim further damages shall be reserved.
- c. To the extent legally admissible, setoff rights shall only accrue to Customer if its counterclaims are legally effective, undisputed or have been acknowledged by us. Customer shall only be authorised to exercise a right of retention to the extent that its counterclaim is based on the same contractual relationship.
- d. In the event of arrears in payment, our entire claims existing at the time in question shall become due for payment immediately.

### 7. Retention of title

- a. We reserve title to the object of purchase until complete payment of the purchase price. Commodities to which (co-)ownership accrues to us shall be called Conditional Commodities hereinafter. In conduct in breach of conduct by Customer, in particular in arrears in payment, we shall be entitled to demand return of Conditional Commodities. Demand of return by us shall only represent withdrawal from the contract if we expressly declare the same in writing. Seizure of

Conditional Commodities shall always mean withdrawal from the contract by us. Following return of Conditional Commodities, we shall be entitled to exploit the same, the yield from the exploitation being offset against Customer's liabilities - less suitable costs of the exploitation.

b. Customer shall be obliged to treat Conditional Commodities carefully; in particular, it shall be obliged to insure them adequately at the new value against fire, water and theft damage at its own account. Insofar as maintenance and inspection work is necessary, Customer shall carry it out regularly at its own expense. Customer shall notify us of damage to or destruction of the commodities without delay.

c. In the event of seizures or other interventions of third parties against the commodities, Customer shall notify us in writing with delay, so that we can initiate proceedings pursuant to § 771 Code of Civil Proceedings. Insofar as the third party is not in a position to reimburse us for the judicial and extra-judicial costs of proceedings pursuant to § 771 Code of Civil Proceedings, Customer shall be liable for the losses incurred by it.

d. Processing or reformation of the object of purchase by Customer shall be done on our behalf in every case. Insofar as the object of purchase is processed with other objects not belonging to us, we shall acquire co-ownership of the new object in the ratio of the value at the time of the processing of the object of purchase (final invoice amount including Value Added Tax) to the value of the other objects processed. The same shall apply in the event of blending of the object of purchase with objects not in our possession.

e. If retentions of title are not applicable in a foreign state, if the latter's law becomes applicable, or if they need not only contractual agreement, but, for example, also registration, Customer shall be obliged at its own expense to become involved in all measures, in particular to make all the declarations necessary on its part in order to make the retention of title effective or to procure securities equivalent to a retention of title for us.

## 8. Warranty

a. Customer's warranty claims shall be limited to start with to the right to after-working or replacement delivery, although Consumer's choice can be rejected by us if it is only possible with disproportionate costs. This right of selection shall not accrue to a businessman. If after-working or replacement delivery fails, Customer shall be entitled to reduce the remuneration or to withdraw from the contract to the extent that the defect is not inconsiderable. Claims to damages shall remain unaffected. Damage through errors in operation, improper use, excess loads, inadequate storage or by interventions of third parties shall not be a matter for warranty.

b. *For businessmen:* Businessman's warranty claim shall presuppose that the latter has properly complied with the obligations to examination and notification of defects owed pursuant to § 377 German Commercial Code. For final customers, the period of barring by limitation for new commodities shall be 1 year. Claims from defects for second-hand commodities ("B" class) shall not exist.

c. *For consumers:* Obvious defects to the commodities supplied shall be notified to us within four weeks of hand-over of the commodities in writing. If a defect is only seen later than 6 months after hand-over, Customer shall render proof that the object was defective upon passage of risk. Otherwise, we shall be free to render the proof that the object did not manifest any defects in quality upon hand-over. The warranty period for second-hand commodities ("B" class) shall be 1 year.

## 9. Industrial protection rights, moulds, tools, confidentiality

a. Insofar as we provide technical documents, illustrations, moulds, tools, samples or also quotation documents, we reserve right to ownership and all industrial copyrights and protective rights, even if Customer has partly or totally assumed the costs therefor. They may not be made accessible to third parties and shall be returned without delay if the order is not placed. Customer shall not be allowed to produce the object of purchase itself or have it produced by third parties making use of the technical documents, illustrations, moulds, tools, samples and/or quotation documents.

b. If the object of purchase is produced according to documents handed to Customer, the latter shall be liable for the fact that the manufacture and/or the delivery does not breach the industrial protective rights or other rights of third parties.

## 10. Limitation of liability

a. We shall be liable according to the statutory directives in the event of malice aforethought or gross negligence, for damage from culpable injury or life, limb or health of Customer and also within the framework of a property or service life guarantee.

b. In the event of a culpable breach of a cardinal contractual duty, we shall be liable for an amount limited to the foreseeable damage typically occurring if none of the cases stated in sub-section a occurs.

c. If none of the cases stated in sub-sections a and b above occur, our liability shall be limited to the remuneration owed contractually, up to a maximum amount of EURO 50,000.00.

d. Liability on the basis of the Product Liability Act shall exist without limitations.

## 11. Data protection

a. We reserve the right to examine Customer's creditworthiness, identity and/or authorisation to use a credit card stated or to have them examined by third parties in individual cases. In this context, forwarding of a copy of the personal identity card and/or the credit card of Customer stated can be necessary.

b. The data necessary for handling the transaction shall be stored electronically and forwarded to affiliated companies in the course of the handling of the transaction if need be. This information is given according to the directives of § 33 sub-section 1 Federal Data Protection Act (BDSG). All personal data shall naturally be treated confidentially.

c. By ordering, Customer declares its agreement with electronic storage of its data on our online server. It shall be entitled at any time to insight into its data and to having information amended or deleted and to amend or delete them itself to the extent technically provided for in the system.

## 12. Applicable law / place of jurisdiction

a. The present agreement shall exclusively be governed by the law of the Federal Republic of Germany. The United Nations Convention of April 11, 1980, concerning contracts for the international sale of commodities shall not be applicable.

b. *For businessmen:* To the extent not agreed to the contrary in writing, place of performance for all contractual obligations shall be Heilbronn. For all present and future claims from the business relationship with the customer, the exclusive place of jurisdiction shall be Heilbronn. However, we shall be entitled to sue Customer at the court responsible for its place of residence.

c. The same place of jurisdiction shall apply if Customer has no general place of jurisdiction in Germany, moves its place of residence or customary abode out of Germany after concluding the agreement or its place of residence or customary abode is unknown at the time of initiation of proceedings.

### Identification of the provider:

beyerdynamic GmbH & Co. KG  
Theresienstraße 8  
74072 Heilbronn.  
Tel. +49 7131 617 0  
Fax +49 7131 617 224  
E-Mail: please exclusively use the form provided under -> Contact  
Internet: <http://www.beyerdynamic.de>  
VAT ID: DE 145 795 453

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