

**Standard terms and conditions for sale and delivery (terms & conditions) of Jeffrey de Gans, trading under the name Dutch.audio, situated at Reeweg 40, 3342 AB Hendrik-Ido-Ambacht (The Netherlands) and registered with the Chamber of Commerce under company number 72125780.**

## **1. Scope**

1. These terms and conditions and its provisions govern trade agreements where Dutch.audio is the seller, and shall form an integral part of all proposals and quotations issued by Dutch.audio and of any acceptance, confirmation and ratification by Dutch.audio of orders placed by the buyer and of all agreements regarding the sale by Dutch.audio and the purchase of goods and services by the buyer, unless and insofar as this has been expressly agreed otherwise with Dutch.audio in writing.

2. The terms and conditions and stipulations of the buyer noted on documents issued by the buyer, either before or after Dutch.audio issued documents, are rejected explicitly. Such terms and conditions and stipulations do not govern sales by Dutch.audio to the buyer and are not binding to Dutch.audio in any way.

## **2. Proposal**

1. Dutch.audio's proposals are open to clients for acceptance within the period stated by Dutch.audio in the proposal. If the proposal does not specify a period, acceptance is open up to 30 days from the date of the proposal. Before Dutch.audio has been informed of the acceptance of the proposal by the client, Dutch.audio may revoke or withdraw the proposal.

2. The client is free to revoke or withdraw acceptance of the proposal within 5 days. If the client subsequently revokes the acceptance of the proposal, the client shall be liable to pay Dutch.audio 15 percent (15%) of the total amount stated in the proposal.

## **3. Prices**

1. The prices in proposals, confirmations and agreements are in Euros, excluding taxes and levies, based on delivery in accordance with ICC Incoterms 2010 EXW, unless agreed otherwise.

2. Dutch.audio adds taxes and levies to the sale price in the event Dutch.audio has a statutory obligation or authorisation to pay or collect said taxes and levies. The buyer shall pay these taxes and levies together with the price.

3. After the buyer has accepted the proposal, Dutch.audio shall send the buyer an order confirmation and an invoice with the price of the products to be delivered by e-mail, unless explicitly agreed otherwise in writing.

## **4. Payment / delivery**

1. After an interested client has expressed his or her requirements and Dutch.audio is clearly informed of these wishes by the client and Dutch.audio has accepted the order, Dutch.audio sends a first invoice for 50% of the total construction/order amount to the client. Dutch.audio only starts building/producing the desired product or device after payment of this first invoice.

2. After Dutch.audio has completed the production/construction of the order in question, the client shall receive a second invoice from Dutch.audio for the remaining 50% of the total construction/order amount of the device, plus the shipping costs. Dutch.audio shall deliver the product to the client after payment of this second invoice and the shipping costs.
3. Dutch.audio shall send the invoices to the client by e-mail and they shall be paid within 14 days of the invoice date, unless explicitly agreed otherwise in writing.
4. All or part of the order may only be cancelled if Dutch.audio is of the opinion that it does not concern a custom device.
5. All payments shall be made to the address and account number, as noted on the invoice by Dutch.audio.
6. Discounts due to prepayment are not permitted, unless explicitly agreed otherwise in writing.
7. Dutch.audio performs a credit check in respect of all deliveries. Dutch.audio reserves the right to require full, partial or cash payment before or during delivery in the event of doubt concerning the client's compliance with his payment obligations.
8. In the event of late or incomplete payments, the buyer shall be liable for statutory interest on the unpaid part without requiring notification. Unpaid interest that has become due and payable also becomes interest-bearing after one year.
9. Any judicial and extrajudicial costs associated with collection shall be borne by the buyer.
10. In the event of late payment, including failure to meet the claim for advance payment or the claim for payment prior to delivery, Dutch.audio shall be entitled to suspend the performance of the agreement until receipt of full payment and, in the event of incomplete payment following a written reminder, to dissolve the agreement in full or in part. This is without prejudice to Dutch.audio's right to damages.
11. Offsetting with claims on Dutch.audio is not permitted. In the event of bankruptcy, a composition or attachment on the part of the buyer, everything that he is liable to pay to Dutch.audio becomes due and payable in full immediately and Dutch.audio is entitled to settle immediately.

## **5. Terms and conditions of delivery**

1. Unless agreed otherwise in writing, the products of Dutch.audio are delivered in accordance with ICC Incoterms 2010 EXW. Accordingly, the risk of loss of the products shall transfer to the buyer at the time of delivery.
2. Delivery dates, communicated or confirmed by Dutch.audio, are only approximations.
3. Dutch.audio shall use commercially responsible, reasonable efforts to deliver on the notified or confirmed date, provided the buyer provided all the necessary information about the order and the delivery prior to that delivery date.

4. Deliveries made within a reasonable period of time before or after the notified or confirmed delivery date shall be deemed not to be in conflict with Dutch.audio's obligations towards the buyer.

5. In the event Dutch.audio fails to deliver, the buyer shall notify Dutch.audio in writing and shall provide Dutch.audio with the opportunity to deliver within 14 days. If Dutch.audio does not deliver within those 14 days, the buyer is entitled to cancel only those parts of the agreement that relate to the default. The rest of the agreement remains unchanged.

6. In the event Dutch.audio's production stops, reduces, is stopped or is reduced, for whichever reason, Dutch.audio is entitled to use the available production facilities and to distribute products to the clients at its own discretion. Consequently, and at variance with the previously agreed quantity, Dutch.audio is entitled to sell and deliver fewer products to the buyer than previously agreed.

7. Despite Dutch.audio's efforts to achieve a high level of client satisfaction, it may happen that the product is not delivered in full for whichever reason. In such cases, partial delivery is permitted.

## **6. Retention of title**

1. All goods delivered by Dutch.audio shall remain the property of Dutch.audio until such time as the buyer has met all his payment obligations to Dutch.audio resulting from any agreement concluded with Dutch.audio for the delivery of goods, the performance of work and the performance of services in full. This includes claims for failure to comply with such an agreement.

2. The buyer bears the risk for the delivered goods from the time the goods are made available.

3. The buyer is not entitled to encumber the delivered goods to the detriment of Dutch.audio or to transfer ownership of the goods as security.

## **7. Exoneration / exclusion**

1. In situations and circumstances beyond the control of Dutch.audio, foreseeable or not at the time of entering into the agreement, Dutch.audio cannot be held liable for any delay in compliance, nor for any failure to comply with the agreement.

2. Dutch.audio can equally not be held liable for delays in compliance or for failure to comply with the agreement as a result of interruptions in the production process.

3. As long as non-compliance or delay continues, the relevant parts of the agreement will be suspended without Dutch.audio being liable for any resulting damage.

4. If the non-compliance or delay continues for 90 days, or Dutch.audio expects it to continue for 90 days, Dutch.audio is entitled to terminate the relevant part of the agreement or the entire agreement without incurring any liability for any damage on the part of the buyer or third parties.

## **8. Liability for damage**

1. Dutch.audio is liable to the buyer for damage as a result of gross negligence or intent on the part of Dutch.audio.
2. Damage that is established more than 12 months after delivery of the item, does not qualify for compensation.
3. The right to compensation for damage lapses if it is not invoked in writing within 90 days of determining the damage.
4. Dutch.audio cannot be held liable for an amount of damages that exceeds the value of the invoice amounts.
5. Compensation shall never be paid for consequential damage, such as damage due to loss of profit, loss of income, loss of production, standstill or delay of the production or operating process, missed savings, missed agreements, labour costs, increase of operational costs, additional costs of purchasing elsewhere and discounts or fines payable to third parties.
6. If Dutch.audio provides advice without an express agreement to provide advice, such advice is without obligation and Dutch.audio accepts no liability for it.

## **9. Intellectual property and rights relating to software and documentation**

1. Dutch.audio's sale of a product does not imply the sale of the exclusive rights or license rights to that product, but concerns a limited license for use or resale in accordance with the intellectual property rights of Dutch.audio.
2. If software or documentation is supplied as an integral part of a product, the sale of such a product does not constitute the transfer of the ownership rights of said software or documentation to the buyer, but a non-exclusive and non-transferable license for the use of said software or documentation in combination with or integrated into the products as supplied by Dutch.audio in accordance with Dutch.audio's intellectual property rights.
3. With regard to the software supplied by Dutch.audio to the buyer, it is prohibited:
  - a. To amend, modify, or manufacture products derived from this software in conjunction with other products.
  - b. To cede, sub-license, lease, rent, lend, transfer, disclose or make this software available in any other way.
  - c. To merge this software or integrate it into other software.
  - d. To reverse engineer this software, or to decompile, disassemble or attempt to derive the source code in any other way without written permission from Dutch.audio, except when expressly permitted by applicable law.
4. The buyer shall reproduce the certificates of ownership of Dutch.audio or its external suppliers in software or documentation provided by Dutch.audio, without modifying or amending.

## **10. Confidentiality**

1. The buyer acknowledges that all technical, commercial and financial data released by Dutch.audio to the buyer is confidential information of Dutch.audio.
2. The buyer may not disclose this confidential information to third parties and may not use such confidential information for any purpose other than as expressly permitted by Dutch.audio in writing and which purpose is in accordance with the intended purchase.

## **11. Intellectual property rights, indemnity**

1. Dutch.audio indemnifies the buyer against claims from third parties based on the software provided by Dutch.audio infringing their intellectual property rights, on condition that the software in question was developed by Dutch.audio itself, is used by the buyer within the European Union and the alleged infringement is not related to changes made to the software by or on behalf of the buyer.
2. The buyer shall inform Dutch.audio immediately and in writing of the aforementioned claims of third parties and shall leave the manner in which the case is dealt with entirely to Dutch.audio and shall grant Dutch.audio full cooperation with its defence of the claims, including on behalf of the buyer if necessary.
2. If it is established irrevocably in court that the software developed by Dutch.audio infringes the intellectual property rights of any third party, Dutch.audio shall ensure that the software is modified in such a way that it can be used undisturbed or it shall provide other functionally equivalent software. If this is not reasonably possible, Dutch.audio shall reimburse the buyer for the residual book value of the infringing software upon its return. Further liability or indemnification obligations of Dutch.audio due to infringement of intellectual property rights of third parties is excluded.

## **12. Import and export licences**

1. If an import or export license is required for delivery of the agreed products, Dutch.audio may suspend its obligations and the buyer's rights regarding this delivery until such time as the necessary license has been granted.
2. Even if any other restriction or prohibition applies as a result of import or export legislation or regulations, Dutch.audio may suspend its obligations and the buyer's rights regarding this delivery for the duration of such a restriction or prohibition.
3. In the above cases, Dutch.audio is entitled to terminate the agreement without Dutch.audio being liable for damage on the part of the buyer.
4. If an end-user declaration is required, Dutch.audio shall inform the buyer immediately and the buyer shall provide Dutch.audio with the correct document.
5. If an import license is required, the buyer shall inform Dutch.audio immediately. The buyer shall also provide Dutch.audio with the correct documents as soon as possible.
6. By accepting the proposal of Dutch.audio, entering into an agreement with Dutch.audio or accepting products from Dutch.audio, the buyer agrees that he will not use the products or related documentation to act in a manner that is in breach of applicable import or export legislation or regulations.

### **13. Transfer of rights and obligations, offsetting**

1. The buyer shall not transfer any rights or enter into any obligations with regard to this agreement without the prior written consent of Dutch.audio.
2. The buyer is not entitled to withhold or reduce payments or to offset existing and future claims with payments due for the products of this agreement or future agreements with Dutch.audio. Therefore, the buyer is obliged to pay the agreed purchase price and any alleged claims of the buyer may not be offset by the buyer.

### **14. Disputes, applicable law**

1. All proposals, confirmations and agreements of Dutch.audio are governed by Dutch law, excluding the Vienna Sales Convention (CISG). By means of consultation and negotiation, the buyer and Dutch.audio shall endeavour to settle any disputes arising from or associated with these proposals, confirmations and agreements in mutual cooperation and in good faith first.
2. Disputes that cannot be settled shall be submitted exclusively to the Rotterdam District Court in the Netherlands, without prejudice to Dutch.audio's right to file a complaint or initiate proceedings against the buyer before any other competent court.
3. The rules of this Article do not limit the rights of Dutch.audio or those of the buyer to submit a dispute to a court in preliminary relief proceedings or to perform acts to secure means of recourse.

### **15. Infringement of terms and conditions and termination of agreements**

In the event of an infringement of the terms and conditions of the purchase agreement or in the event the buyer is in a position of insolvency, receivership, bankruptcy or ceased or threatens to cease to pay, Dutch.audio is entitled to terminate the purchase agreement immediately by means of written or electronic notice to the buyer and all outstanding debts of the buyer to Dutch.audio become due and payable immediately.

### **16. Supplementary provisions**

1. Any provision in the purchase agreement or these Standard Terms and Conditions of Sale that is void, voidable or inapplicable in any other way, either in full or in part, is without prejudice to the application of any other provisions. Any provision that is void, voidable or inapplicable in any other way shall be replaced by a valid provision that approximates the tenor of the non-applicable provision as closely as possible.
2. Failure to perform or a delay in the performance or exercise of any right or recourse arising from the purchase agreement shall not constitute a waiver of the purchase agreement. Even a single or partial exercise of a right or a means of recourse arising from the purchase agreement or a corresponding document or by law does not constitute a waiver of the purchase agreement.
3. In the event of any differences between the Dutch text and the translation of these Standard Terms and Conditions of Sale, the Dutch text shall prevail.

These Standard Terms and Conditions were most recently amended on 16 May 2019.