

General Terms and Conditions The Music Alliance B.V.

These general terms and conditions are used by The Music Alliance B.V., with its registered office and principal place of business in Zaltbommel, the Netherlands. These general terms and conditions are filed at the Court of East Brabant, location 's-Hertogenbosch, number 2/2019 and can also be found at www.tma-benelux.com.

1. Definitions

In these general terms and conditions the following terms have the following meanings:
TMA: The Music Alliance B.V., one or more successors in title, individuals or legal entities appointed by TMA, or a combination thereof, as well as other legal entities forming part of the company or of any entity or otherwise as defined in article 2:24b of the Dutch Civil Code.
Customer: each individual or legal entity purchasing a product or service from TMA.
Order: a contract entered into with a Customer where a product is offered to TMA for repair or maintenance work against payment.
Contract: the contract of purchase and sale of new products, parts or accessories.

2. Scope

2.1 These general terms and conditions apply to each offer, quotation, order and contract agreed between or entered into by TMA and the Customer.
 2.2 These general terms and conditions are also stipulated for the benefit of each third party whose services are engaged, under an employment contract or otherwise, in the performance of a contract or who is or may be held liable in connection with such performance.
 2.3 The applicability of any general or purchase terms and conditions of the Customer is excluded, unless otherwise agreed.
 2.4 If one or more of these general terms and conditions are void or may be nullified, the other provisions of these general terms and conditions remain in full force. If such an event arises, the parties have the obligation to agree on the replacement of the void or nullified provision in such manner that reflects as much as possible the object of the void or nullified provision.
 2.5 A deviation or a supplement to these general terms and conditions or to a contract or quotation or order to which these general terms and conditions is only permitted if agreed upon in writing.
 2.6 In the event of a conflict between these general terms and conditions and an order or contract signed between TMA and a Customer, the provisions of the offer or contract prevail.

3. Quotation and offer

3.1 Each offer and quotation on the part of TMA are always without obligation, unless a contract signed between TMA and a Customer, the provisions of the offer or contract prevail.
 3.2 If an offer or quotation includes a period for acceptance, and a Customer accepts such offer or quotation, TMA has the right to revoke the offer within a period of three (3) days after it has received the acceptance of such offer or quotation. An offer or quotation on the part of TMA may only be accepted by a Customer without any deviations.
 3.3 An offer or quotation made orally cannot be binding, unless TMA confirms such offer or quotation in writing at a later date, whether or not by starting with the performance or by invoicing.
 3.4 Each quotation provided by TMA as regards types, formats, dimensions, numbers, weights, rates and prices is made with the greatest possible care without TMA being responsible for any discrepancies. In the unlikely event of any discrepancies, TMA is not bound on the matter.
 3.5 An offer or quotation is not automatically apply to any repeat order from a Customer.

4. Contract

4.1 A Contract is formed on the day on which a Customer accepts an offer or quotation in writing and TMA confirms the formation of the contract in writing and on the day on which TMA starts with the performance of a Contract. TMA reserves the right to revoke the offer within a period of three (3) days after having received acceptance of the offer.
 4.2 If an acceptance on the part of a Customer diverges from the offer, it counts as a new offer and as a rejection of the original offer on the part of TMA even if the divergence only relates to minor aspects of the original offer.
 4.3 The Customer refers to all other individuals or legal entities, each such individual or legal entity is jointly and severally liable for the performance of a Contract.
 4.4 TMA is authorized and has the right to have a Contract performed in part or in its entirety by a third party. TMA is authorized to act on behalf of a Customer the terms and conditions governing the relationship between TMA and such third party or stipulated for such a third party.
 4.5 A date of delivery or completion provided by TMA does not count as a deadline. If such a date is exceeded, a Customer is not entitled to claim compensation.
 4.6 A Customer is not permitted to rely on a Contract if it turns out prior to or during the performance of the Contract that the information provided by the Customer, such as regards types, formats, dimensions, numbers, weights or other information is incorrect or incomplete. If such a situation arises, TMA reserves the right not to perform the Contract or to discontinue performance of the Contract. In that case, TMA may never be obliged to pay compensation for any loss or damage incurred on the part of the Customer, notwithstanding the right of TMA and the opportunity it has to claim compensation with respect to the Customer or to resume performance of the Contract against a higher price than originally agreed upon, and which higher price the Customer is obliged to pay.

5. Content, amendment and cancellation of the Contract

5.1 A Customer bears the risk for any misunderstanding as regards the contents and the performance of a Contract if such a misunderstanding is caused by specifications or other information communicated orally or communicated by a person appointed by the Customer for such purposes and which specifications or other information are important for the content and performance of a Contract and which specifications or other information TMA did not receive or only received too late or incorrectly.
 5.2 A Customer may not derive a recommendation or recommendation and information received from TMA if they do not relate directly to a Contract or if they are based on incomplete or incorrect information a Customer has provided. TMA is never responsible for the ultimate fitness for purpose of one or more products as regards each individual application of a product by a Customer, nor for any recommendation as regards the use or applicability of the products.
 5.3 A Customer is only permitted to amend a Contract in part or in its entirety if TMA explicitly agrees to such an amendment. Any amendment must be set out in writing by the parties. TMA has the right to adjust the price and the date of delivery of a product to the adjusted price to the Customer. Furthermore, the Customer is fully liable with respect to a third party for any consequences ensuing from the amended Contract and indemnifies TMA on this matter.

5.4 Except for the explicit written permission from TMA to do so, a Customer does not have the right to cancel a Contract in part or in its entirety.
 5.5 TMA may attach as a condition to the written permission as referred to in article 5.4 that it has the right to charge a Customer compensation for such cancellation. The compensation may include the incurred losses and the loss of profits and the compensation does include in any event the preparatory costs TMA has incurred, including those related to the purchased products, reserved production capacity, purchased materials, services called in and storage. In case of a Customer cancelling a Contract in part or in its entirety, moreover, the Customer is fully liable with respect to a third party for any consequences ensuing from the amended Contract and indemnifies TMA on this matter.

6. Repair and Maintenance work

6.1 Repair and maintenance work is based on a complaint made by the Customer when offering a product for repair or maintenance work. If no description or not a clear description is given of a possible complaint, the defects observed by TMA are repaired.
 6.2 TMA reserves the right to determine at its own discretion whether or not to accept the products offered for repair or maintenance work on such products or to forward them to the relevant manufacturer or to a repair or maintenance company TMA considers sufficiently competent for such repair or maintenance work.
 6.3 The costs for the repair work is determined on the basis of the number of working hours, any transport costs, research costs, costs related to materials and parts used, and any costs incurred by a third party. At the request of a Customer, TMA may provide a cost estimate in advance.
 6.4 If it turns out on inspection that a product or part cannot be repaired, TMA notifies the Customer of this and does not carry out the repair work. If possible, TMA arranges for the replacement of that product or part. This replacement is not covered by the warranty, the replacement costs are charged.
 6.5 If it turns out during the repair work that the costs for the repair work exceeds the original estimate by more than 30%, TMA notifies the Customer of this. In that case, the repair work is to be continued against these increased repair costs only after permission from the Customer.
 6.6 Unless other arrangements are made, repair work is carried out on a product by using new parts or, if this is standard practice with a particular product, using exchange parts.
 6.7 Following the repair or maintenance work, the Client receives a repair report or an invoice describing the work carried out and the parts replaced.
 6.8 The Customer must collect from TMA the products (following the repairs) immediately after having been notified by TMA to collect them, but not later than within a period of seven (7) days following this notification. If the Customer fails to collect these products within the agreed period, TMA charges storage fees to the Customer.

7. Prices and payments

7.1 Each price quoted by TMA is in Euros (€) and does not include VAT and does not include a disposal contribution and other similar charges, unless stated otherwise in writing. Not included in a quoted price are the delivery costs, fitting costs, service charges and shipment and transport costs, unless stated otherwise in writing. These costs are at the expense of the Customer, unless stated otherwise in writing.
 7.2 Each price quoted by TMA is calculated on the basis of the prevailing prices, rates, labour costs, costs as regards materials and parts, and on the basis of the specifications and the performance of the Contract under standard office conditions.
 7.3 TMA has the right to charge on to the Customer additional costs not explicitly included in the Contract if incurring such costs turns out to be necessary for the performance of the Contract as soon as possible. TMA notifies the Customer of such a situation as soon as possible.
 7.4 TMA also has the right to increase the agreed prices and fees if such increase becomes necessary as a result of interim increases and/or surcharges of product prices, costs related to materials, semi-manufactured products or services that are necessary for the performance of the Contract, increases in shipping fees, wages, or social security costs, increases in import duties, customs fees, changes in the exchange rates of foreign currencies and other government measures that have a price-increasing effect as a consequence of which the cost price must be increased. If such a situation arises, TMA notifies the Customer of such a situation as soon as possible.
 7.5 If a price increase is charged within a period of three (3) months after the Contract was entered into but prior to the delivery, the Customer may dissolve the Contract in writing within a period of five (5) days after the Customer is notified of the price increase, unless TMA has agreed on a delivery period of more than three (3) months or the price increase ensues from law.
 7.6 Any costs TMA may incur as a consequence of the Customer continuing to be in default as regards its performance of the Contract or as a consequence of circumstances attributable to the Customer, or a combination thereof, are charged by TMA to the Customer.
 7.7 If within a period of three (3) months after the repaired product has been collected the Customer provides an estimate for the new repair work. If the cause of the complaint is the same as the cause of the previous complaint, TMA charges the Customer for only those parts that have not been replaced at the earlier repair work. If the cause of the complaint is different from the cause of the previous complaint, TMA charges the Customer the costs of the new repair work.

8. Payment

8.1 Payment of the agreed price (including additional costs) must be made prior to or on the day of the delivery of the products, at the latest, or on completion of the contracted work. If parties agree in writing that payment does not have to be made on delivery, a payment period of thirty (30) days applies, starting on the day after the invoice date. Payment must be made in the manner as prescribed by TMA.
 8.2 The Customer is not permitted to claim a reduction, deduction or a setoff. The Customer is not permitted either to suspend its obligations. A complaint about an objection to an invoiced amount does not suspend a payment obligation. Such a complaint or objection must be communicated to TMA within a period of seven (7) days after the day on which the invoice is received. A complaint or objection received after this seven-day period is not accepted for processing.
 8.3 The Customer is always obliged to provide security or to pay an advance on demand of TMA, notwithstanding the agreed payment conditions.
 8.4 A payment serves first to settle the interest due and costs and subsequently to settle the invoice which had been outstanding the longest, regardless of its name.
 8.5 If a Customer fails to pay an invoice, the Customer is automatically in default by operation of law and must subsequently pay an incremental contractual penalty of 1% interest per month on the amount due or the statutory commercial interest, whichever is higher, where a part of the amount counts as a full month, notwithstanding any other rights TMA may exercise with respect to the Customer on account of non-payment or overdue payment.
 8.6 TMA may demand payment in full of all the amounts due to TMA and as soon as the Customer is in default with respect to TMA, if and as soon as the Customer ceases its business operations in part or in its entirety or disposes otherwise of its business operations, is declared bankrupt, applies for a moratorium, is subject to the statutory debt restructuring scheme for natural persons, its assets or part of its assets are attached, as well as if a fiduciary administration is instituted over its assets or if the Customer loses the right to dispose of its assets in full or in part and also if the Customer is liquidated or dissolved or if the Customer is a commercial partnership or a private company.
 8.7 All the judicial and extrajudicial collection and other costs TMA incurs or must incur in connection with the Customer's failure to fulfill its payment and other obligations are at the expense of the Customer. The extrajudicial collection costs are 15% of the principal sum due with a minimum amount of €500 for each collection.
9. Delivery
 9.1 Quoted delivery times are by approximation only and they may never be considered to act as deadlines.
 9.2 Quoted delivery times are based on the circumstances prevailing at the time on which the Contract is entered into and on the timely delivery of the items or parts or components of the products to be delivered.
 9.3 If there are other circumstances than those known to TMA at the time of determining the delivery times, TMA has the right and the authority to extend the delivery time with the period necessary for the performance of the Contract under these circumstances.
 9.4 If TMA has suspended the performance of the Contract, the quoted delivery time is extended with the period of suspension.
 9.5 In the event of an overdue delivery, TMA must first be sent a notice of default by the Customer in which TMA is granted a reasonable time period to perform the Contract, which time period may never be shorter than fourteen (14) days. TMA can never be in default and be held liable for damages or to immediately terminate the Contract if TMA has suspended the performance of the Contract, the quoted delivery time is extended with the period of suspension.
 9.6 Delivery is to take place at the office address of TMA and at a date as specified to the Customer by TMA, unless agreed to otherwise in writing. The Customer is responsible for the costs of taking the delivery at the agreed date, at least within a period of fourteen (14) days after the agreed date. If the Customer fails to take possession of the delivery, any ensuing costs (including insurance costs, freight charges and storage costs) will be incurred in accordance with the relevant standard market rates.
 9.7 If a delivery is not to take place at the office address of TMA, delivery is to take place at the address specified by the Customer. This address must be easily and safely accessible for a means of transport using a road that is suitable for such a means of transport. The Customer is obliged to take possession of the products to be delivered by TMA on each work day from 07:00 until 17:00 hours. TMA can never be held liable to pay compensation to the Customer for any loss incurred. However, the Customer is obliged to pay compensation for any loss or damage incurred as a consequence of the delay caused by the suspension to TMA as well as to the third party and the Customer indemnifies TMA on this matter.

10. Obligation to investigate and complaints

10.1 TMA endeavours to do everything to ensure that the performances it is required to deliver, including the delivery of products and well as the provision of services, meet the requirements set on reasonable grounds for these performances.
 10.2 The Customer is obliged to thoroughly inspect the performances and to detect any errors and defects immediately after the performance of the Contract and on detecting such errors and defects to notify TMA immediately in writing of these errors and defects, but not later than two (2) work days after the performance of the Contract. If the Customer does not do so, an invoice must also be made within a reasonable period, but in any event within seven (7) work days, in writing, providing a specification of the matters subject to the complaint.
 10.3 If the Customer fails to notify TMA of the errors and defects within the two-day period after the performance and delivery, which errors and defects would or could have been detected on close inspection, the Customer is considered to have accepted the condition in which these products and performances have been delivered and the right to complain expires.
 10.4 If according to the standards of reasonableness and fairness this two-work day time period is considered too short, the Customer must give a careful and alert Customer, this time period is extended to such day on which the inspection or the notification to TMA is possible on reasonable grounds. The request for such an extension must be made immediately.
 10.5 The Customer is obliged to enter in the consignment note any detected error or defect and to specify these errors or defects, on production of the relevant evidentiary materials, including in any event the production of photographic material.
 10.6 TMA must be immediately given the opportunity to verify the errors and defects detected by the Customer. If TMA is of the opinion that these errors and defects have not been detected by the Customer, TMA may choose to either replace or repair the detected

11. Reservation of ownership

11.1 TMA continues to be the owner of the products it delivers for as long as the Customer does not perform all that which the Customer is obliged to do under the Contract, more specifically the Customer's payment obligations, including interest and costs.
 11.2 TMA has always the right to repossess or to arrange for the repossession of the products it delivers, if the Customer has not performed all that which the Customer is obliged to do under the Contract. The Customer authorizes TMA or a third party whose services TMA has engaged to enter the business premises and inspect the products delivered by TMA subject to be stored or located to do or omit all that which is or may be conducive for the repossession of the delivered products.
 11.3 The products delivered by TMA may only be sold on as part of the Customer's test business operations.
 11.4 The Customer is not permitted to enforce its rights as regards products subject to a reservation of ownership under this article, such as creating a right of pledge on these products or to encumber them with any other right, unless the Customer is also obliged and bound to notify TMA immediately in writing if a third party wants to enforce its rights on the products subject to a reservation of ownership under this article.
 11.5 The Customer is obliged:
 a. to insure and keep insured the products subject to a reservation of ownership under this article against fire damage, explosion damage and water damage as well as against theft and loss and to make available for inspection by TMA the relevant policy documents of these insurance contracts;
 b. to pledge to TMA in the manner as described in article 3:239 of the Dutch Civil Code any claims the Customer may have against the insurers in connection with the products delivered by TMA subject to a reservation of ownership under this article;
 c. to pledge to TMA in the manner as described in article 3:239 of the Dutch Civil Code any claims the Customer may have against its customers when selling the products delivered by TMA subject to a reservation of ownership under this article;
 d. to label and to designate as such the products delivered by TMA subject to a reservation of ownership under this article;
 e. to cooperate in any other way with the reasonable measures TMA wants to take to protect and safeguard the property rights as regards its products subject to a reservation of ownership. All this subject to an immediate issue a warranty for such products (see article 12.2) without notice of default being required for each day that the Customer continues to be in default.

12. Warranty

12.1 TMA undertakes to perform the Contract to the best of its undertaking and ability and with due care and warrants that the products, services, or a combination thereof, meets the Contract.
 12.2 The Customer receives the manufacturer's warranty on the new products, parts, or a combination thereof. TMA is not responsible for the ultimate suitability of the products for each individual use by the Customer.
 12.3 TMA does not issue a warranty for used products, parts or combination thereof, unless agreed to otherwise in writing.
 12.4 Upon completion of the repairs, TMA issues a warranty of three (3) months. This warranty period starts on the day on which the product is delivered to the Customer. No warranty is given for maintenance services as well as for repairs carried out on a product damaged by lightning, water, sand or humidity, unless explicitly stated otherwise on the repair report or the invoice. If it is agreed with the Customer that used parts or parts supplied by the Customer are to be used, TMA does not issue a warranty for such parts.
 12.5 As regards services provided by a third party, in that event, TMA does not issue a warranty, unless agreed to otherwise in writing.
 12.6 Any work to be carried out under a warranty is done in TMA's workshop. The Customer is obliged to deliver at TMA's workshop the relevant product covered by the warranty. Any expenses related to shipping the product covered by the warranty to TMA's workshop is at the expense of the Customer. The Customer does not have a right to replacement products during the period of repairs.
 12.7 The warranty does not apply:
 a. if the product itself has repaired or modified the delivered products or had a third party repair or modify the delivered products and which third party is not qualified to do so;
 b. if the delivered products were exposed to abnormal conditions or were carelessly used otherwise or were used contrary to the instructions of TMA or the manufacturer;
 c. if the parts subject to wear and tear, namely the parts that must physically be used to produce sound, must be regularly replaced, such as strings and drum heads;
 d. if the products has not been maintained in accordance with the instructions of the manufacturer or if the products has not been offered for maintenance work to TMA, a certified maintenance company recommended by TMA of a qualified technician or mechanic recommended by TMA.
 12.8 If the Customer offers a product with a defect or under a warranty, the Customer must make a claim under the warranty, TMA sees to it that the product is repaired at the expense of TMA (by the manufacturer, TMA or a certified third party), unless in first inspection the product must be replaced, unless it is clear that the defect or imperfection is not covered by the warranty, including for the reasons as listed in article 12.7. In these instances, the Customer must pay compensation to TMA for the costs TMA incurred or is to incur (for instance, costs related to inspection, repairs, transport etc.).

13. Liability

13.1 TMA does not accept any liability for the loss or damage incurred by the Customer, unless the loss or damage is a direct consequence of a failure attributable to TMA.
 13.2 Notwithstanding the other exonerations clauses included in these general terms and conditions, and except for intent or deliberate recklessness on the part of one of TMA's directors, each liability of TMA with respect to the Customer is restricted to the amount TMA's liability insurer is to pay on a specific case plus deductible, regardless of the grounds for such liability.
 13.3 In the event of a loss or damage as part of repair or maintenance work carried out by TMA, TMA's liability is restricted to the current market value of the products concerned.
 13.4 If TMA's liability insurance does not provide cover for whatever reason in a specific case, the loss or damage concerned is not covered by the insurance. TMA's liability is restricted to the invoiced amount of the Contract.
 13.5 TMA is never liable for any direct trading loss, intangible loss, consequential loss or damage or indirect loss or damage.
 13.6 TMA is never liable for any loss or damage caused by improper use by the Customer of the delivered products to be made available by TMA. Improper use means, in any event but not exclusively, the use that is not in accordance with the instructions included in the user manual issued together with the product.
 13.7 Notwithstanding the provisions about complaints included in article 10 of these general terms and conditions, each claim against TMA for compensation is extinguished except for claims acknowledged by TMA and in case of intent or gross negligence by the mere expiry of three (3) months after the Customer detected the loss or damage or should have detected it and in any event on the expiry of twelve (12) months after the products or services are delivered by TMA.
 13.8 The Customer indemnifies TMA against any third-party claim on account of loss or damage incurred by the Customer as part of the performance of the Contract for which TMA is not liable under the provisions of this article 10.
 13.9 Notwithstanding the above provisions, the conditions restricting, excluding or determining liability that can be invoked against TMA by a third party may also be invoked against the Customer by TMA. If and to the extent that TMA avails itself of the services of a third party for the performance of the Contract, the Customer may not enforce more rights against TMA than TMA may enforce against the third party concerned.

14. Force majeure

14.1 An event that occurs beyond the control of TMA and through no fault of TMA, whether or not such event was foreseeable at the time when the Contract was entered into, and which is of such a nature that performance of the Contract can no longer be required from TMA on reasonable grounds is considered to be a force majeure event, irrespective of whether it is permanent or temporary, and it releases TMA from its performance obligations.
 14.2 TMA will always try to keep the force majeure event as brief as possible. The Contract is to be considered as dissolved, however, if performance is permanently impossible. The Contract cannot be performed for a shorter period but for a period longer than six (6) months after the date on which delivery was due, both parties have the right to dissolve the Contract without either party being entitled to compensation.
 14.3 A force majeure event constitutes in any event: wars, riots, natural disasters, storm damage, fire, earthquakes, floods, abnormal weather conditions, snowfalls, frosts, strikes, lack of staff, lack of auxiliary equipment and means of transport, traffic obstructions, theft of property, electrical power supply disruptions, interrupted internet connections and cable, telephone or other communication network interruptions, such as email, breach of contract of a third party whose services TMA has engaged as well as any impediments caused by government measures. A force majeure event on the part of a supplier is also covered by this force majeure provision.

15. Privacy and confidentiality

15.1 In the interest of a proper provision of services, the personal data of the Customer is stored, processed and used by TMA in accordance with the General Data Protection Directive (GDPR).
 15.2 The Customer agrees that the collected personal data is made available for storage, processing and use by TMA or its affiliate companies as part of the product information, marketing activities and other services so that full use can be made of TMA's range of products and services. The Customer has the right to inspect and correct the stored personal data, all this in accordance with the GDPR.
 15.3 TMA will take appropriate measures to safeguard the confidential information and personal data.
 15.4 TMA processes personal data in accordance with the applicable national and international laws and regulations (GDPR). TMA has a privacy policy to that effect. TMA's privacy policy can be accessed on its website or a copy can be requested directly from TMA.
 15.5 Each party imposes its obligations under this article upon a third party whose services each party engages.

16. Applicable law and competent court

16.1 The laws of the Netherlands apply to each offer, order, and Contract to which these terms and conditions apply as well as to any dispute that may arise from them.
 16.2 A dispute that may arise in connection with an offer, order and Contract and these general terms and conditions with a Customer domiciled in a Member State of the European Union, Iceland, Norway, Switzerland and Poland is always submitted before the competent court of the Court East Brabant, location 's-Hertogenbosch.
 16.3 A dispute that may arise in connection with an offer, order and Contract and these general terms and conditions with a Customer not domiciled in the countries referred to in article 16.2 is always adjudicated in accordance with the Arbitration Rules of the Netherlands Arbitration Institute in Rotterdam.
 16.4 The arbitration panel consists of one arbitrator. The arbitration proceedings are conducted in Dutch. The arbitration location is 's-Hertogenbosch.

