

BEHRINGER LTD
Terms and Conditions of Sale

1. Application of Terms

- 1.1 These are the Terms and Conditions of Sale (Conditions) of Behringer Ltd registered in England under Company number 8544016 whose registered office is at Unit 1 Quarry Court, Pitstone Green Business Park, Quarry Road, Pitstone, Leighton Buzzard, LU7 9GW.
- 1.2 These Conditions shall govern and be incorporated into every contract for the sale and supply of Goods made by Behringer Ltd (the Seller) with any Buyer to the exclusion of all other terms that the Buyer seeks to impose and represent the only terms upon which the Seller trades.
- 1.3 Acceptance by a Buyer of delivery of Goods shall constitute unqualified acceptance of these Conditions and subsequent sales of Goods shall be deemed to be subject to these Conditions.
- 1.4 These Conditions constitute the entire agreement between the parties. The Buyer acknowledges that it has not relied upon any statement or statement representation or warranty made or given on behalf of the Seller which is not set out in these Conditions.
- 1.5 Any waiver or variation of these Conditions may only be made in writing signed by a director of the Seller.

2. Basis of the Sale

- 2.1 Any estimate, quotation or Seller price lists shall constitute an invitation to treat. Any order placed by a Buyer shall constitute an offer, which the Seller may accept or decline.
- 2.2 The Seller reserves the right to withdraw or amend a quotation at any time before receipt of an unqualified order from the Buyer and each quotation shall be deemed withdrawn unless accepted within the period for acceptance stated on the quotation, or if no such period is stated, 30 days from the date of the quotation.
- 2.3 The Seller's employees or agents are not authorised to make any representation or recommendation concerning the Goods unless confirmed by the Seller in writing. In entering into the contract the Buyer acknowledges that it does not rely on such representations or recommendations.
- 2.4 Any error or omission in sales literature, quotation or other document issued by the Seller shall be subject to correction without liability on the part of the Seller.

3. Order and Specifications

- 3.1 The Buyer's order will only be accepted when it has been acknowledged in writing by the Seller.
- 3.2 Goods supplied shall be entirely as described in the Seller's quotation or in accordance with approved sample. Any amendments by the Buyer must be specified in writing and accepted in writing by the Seller.
- 3.3 Goods will be painted in the standard colour used by the manufacturer. The Seller will make a charge for any change of colour where requested and this will be specified in the quotation.
- 3.4 Information on performance and production data including accuracy, capacity and capability of Goods supplied by the Seller are estimates only and are not warranted as they depend upon varying future production factors and conditions beyond the Seller's control. Motors, electrical equipment and wiring in relation to the Goods will be supplied in accordance with the manufacturer's normal specifications. Unless specifically provided by any quotation, they are not guaranteed to meet local regulations and it is the Buyer's responsibility to ensure that they do so.
- 3.5 The Seller reserves the right to make any changes in the specification of Goods which are required to ensure conformity with any legal requirement and which do not materially affect their quality or performance.
- 3.6 No order which has been accepted by the Seller may be cancelled by the Buyer except with the written agreement of the Seller upon terms that the Buyer shall indemnify the Seller against all losses incurred by the Seller as a result of such cancellation.

4. Prices

- 4.1 Save for valid quotations supplied under clause 2, all prices will be those ruling at the date of delivery and will be quoted ex the Sellers's factory.

- 4.2 All prices are exclusive of value added tax and any other similar taxes and duties which shall be paid by the Buyer in addition.
- 4.3 The Seller reserves the right by giving written notice to the Buyer that any time before delivery to increase the price of the Goods to reflect any increase in the cost to the Seller or to reflect any change in delivery dates, quantities or specifications for the Goods requested by the Buyer or by the failure of the Buyer to give the Seller adequate information.
- 4.4 Unless otherwise agreed in writing, the Seller shall not accept any order on credit terms unless the price (and invoice value) is at least £300.

5. Payment

- 5.1 The Seller will request prepayment by BACS with order unless credit facilities are granted.
- 5.2 If credit facilities are granted, this is strictly on the basis that payment is received by the Seller at its Accounts Department address quoted on the invoice within 30 days of the date of the invoice. Credit facilities may be withdrawn if this condition is not observed.
- 5.3 Time of payment is of the essence and the Seller reserves the right to claim statutory interest from the date any invoice becomes overdue at the rate currently applicable under the Late Payment of Commercial Debts (Interest) Act 1998.
- 5.4 Non-payment by the due date will entitle the Seller to suspend further deliveries without notice.
- 5.5 The Seller will invoice the Buyer upon delivery of the Goods. If the Goods are to be collected by the Buyer or the Buyer fails to take delivery, the Seller shall be entitled to invoice the Buyer at any time after the Seller has notified the Buyer that the Goods are ready for collection or delivery.

6. Delivery and Risk

- 6.1 Times quoted for delivery are treated as estimates only. The Seller will make all reasonable endeavours to deliver on time but will not be responsible for any loss or damage caused to the Buyer by late delivery.
- 6.2 Goods will be delivered to the Buyer at the Seller's address. The risk in the Goods shall pass to the Buyer upon such delivery taking place.
- 6.3 Where Goods are delivered by instalments, each delivery shall constitute a separate contract. Failure by the Seller to deliver one or more instalments shall not entitle the Buyer to treat the contract for other instalments as repudiated.
- 6.4 The Buyer must notify any claim based on any defect in the condition of the Goods on delivery within 48 hours from the date of delivery. If the Buyer does not notify the Seller the Buyer shall not be entitled to reject the Goods.
- 6.5 If the Buyer fails to take delivery of the Goods for any reason then the Seller may:
 - 6.5.1 Store the Goods until actual delivery and charge the Buyer for the reasonable costs of storage including insurance; or
 - 6.5.2 Sell the Goods at the best price readily obtainable and charge the Buyer for any shortfall below the price under the Contract with the Buyer.

7. Property and Title

- 7.1 Until full payment has been received by the Seller for Goods supplied to the Buyer, the Goods shall remain the property of the Seller.
- 7.2 Where property in the Goods remains that of the Seller, the Buyer may deal with the Goods in the ordinary course of business provided that:
 - 7.2.1 The Buyer stores the Goods carefully and ensures that they are clearly identified as belonging to the Seller.
 - 7.2.2 The Seller may at any time revoke the Buyer's power of sale by notice to the Buyer if the Buyer is in default for longer than 14 days in payment of any sum due to the Seller.
 - 7.2.3 The Seller and its agents or representatives shall be entitled at any time and without notice to enter upon any premises of the Buyer in which the Goods are stored or kept or reasonably believed so to be.
 - 7.2.4 The Buyer will insure the Goods for their replacement value naming the Seller as the loss payee.

- 7.2.5 The Buyer's power of sale shall automatically determine if a receiver, administrator or liquidator is appointed or a winding up order is made against the Buyer or the Buyer commits any act of bankruptcy.
- 7.3 The Buyer shall not be entitled to charge any Goods which remain the property of the Seller by way of security for any indebtedness of the Buyer, but if the Buyer does so all money owing by the Buyer to the Seller shall forthwith become due and payable.

8. Installation

- 8.1 The Buyer will provide electrical connection for the Goods at its own expense in accordance with the Seller's layout drawing. The Seller reserves the right to charge for Installation costs if not specified in the price quotation (except for power hacksaws).
- 8.2 If the Seller supplies a standard foundation drawing for installation of the Goods it may include a plan and elevation views. However, due to variations in soil type, adjacent equipment, workmanship and other factors, foundation depth is a suggestion by the Seller only. The Seller does not warrant the foundation suggested is adequate and does not accept responsibility for the consequences of installation upon inadequate or insufficient foundations.

9. Warranty

- 9.1 The Seller warrants that the Goods will correspond with their specification at the time of delivery and will be free from defects in materials and workmanship for a period of 12 months from delivery.
- 9.2 The warranty in 9.1 is subject to the following conditions:
- 9.2.1 The Seller shall not be liable for any defect arising from failure to follow the Seller's instructions, or misuse of the Goods;
- 9.2.2 The Seller shall not be under warranty liability if the total price for the Goods has not been paid by the due date for payment.
- 9.2.3 Otherwise (except where the Goods are sold to a consumer, as defined in Section 12 of the Unfair Contract Terms Act 1977), all warranties, conditions and other terms implied by statute or law or excluded.
- 9.3 The Seller does not warrant the performance of any works carried out by any sub-contractor, where the use of such sub-contractor has been required by the Buyer or where the specification to be followed by such sub-contractor has been solely determined by the Buyer.
- 9.4 The Buyer must notify to the Seller any warranty claim within 14 days from the date of delivery or (where the defect or failure was not apparent on reasonable inspection) within a reasonable time after discovery of the defect or failure. If the Buyer does not notify the Seller the Buyer shall not be entitled to reject the Goods, the Seller shall have no warranty liability and the Buyer shall be bound to pay the price.
- 9.5 Any product recommendations made by the Seller to the Buyer are made in good faith to the best of the Seller's knowledge and experience based upon information given by the Buyer. The Buyer however is solely responsible for deciding the suitability of the specific item of Goods supplied is appropriate for the Buyer's intended use.

10. Liability

- 10.1 In respect of any valid claim, the Seller shall be entitled to replace the Goods free of charge or at the Seller's discretion refund to the Buyer the price of the Goods but the Seller shall have no further liability to the Buyer.
- 10.2 Notwithstanding clause 10.1 above if the Seller is liable to the Buyer arising out of this Agreement such liability shall be limited to direct loss and damage only and shall not exceed 150% of the price of the Goods in question.
- 10.3 The Seller shall not be liable to the Buyer for any indirect special or consequential loss or damage, including loss of profit, loss of use or anticipated savings.
- 10.4 The Seller does not limit its liability in respect of personal injury or caused by the negligence of the Seller or its employees.

11. Intellectual Property Rights and Confidential Information

- 11.1 The Seller owns all intellectual property rights in the Goods and sale of the Goods to the Buyer does not act as any transfer of know-how or other intellectual property rights to the Buyer.

- 11.2 The intellectual property rights in any developments or improvements made to the Goods whether at the request of the Buyer or otherwise will in all circumstances belong to the Seller and the Buyer if requested by the Seller and at the Seller's cost execute any legal documents required to vest such rights in the Seller.
- 11.3 The Seller's quotation and all drawings, specifications, materials and manufacturing aids supplied to the Buyer are the confidential information of the Seller. Such confidential information will be treated in confidence by the Buyer and not disclosed to any third parties without expressed written permission of the Seller. Further, confidential information and copies of it must be returned to Behringer forthwith upon request.
- 12. Force Majeure**
- 12.1 The Seller shall not be liable to the Buyer or be deemed to be in breach of the contract by reason of any delay in performing any of the Seller's obligations in relation to the Goods if the delay is due to any cause beyond the Seller's reasonable control.
- 12.2 Events of force majeure include but are not limited to:
- 12.2.1 Act of God, explosion, flood, tempest fire or accident;
- 12.2.2 War or threat of war, sabotage, insurrection, civil disturbance or requisition;
- 12.2.3 Acts or regulations of any kind on the part of any governmental parliamentary or local authority;
- 12.2.4 Import or export regulations or embargoes;
- 12.2.5 Strikes, lock-outs or other industrial actions or trade disputes (whether involving employees of the Seller or of a third party);
- 12.2.6 Difficulties in obtaining raw materials, labour, fuel, parts or machinery;
- 12.2.7 Power failure or breakdown in machinery.
- 13. Insolvency**
- 13.1 This clause applies if:
- 13.1.1 The Buyer makes any voluntary arrangement with its creditors or (being an individual or firm) becomes bankrupt or (being a company) becomes subject to an administration order or goes into liquidation (otherwise than for the purposes of amalgamation or reconstruction); or
- 13.1.2 An encumbrancer takes possession or a receiver is appointed of any of the property or assets of the Buyer; or
- 13.1.3 The Buyer ceases or threatens to cease to carry on business; or
- 13.1.4 The Seller reasonably apprehends that any of the events mentioned above is about to occur in relation to the Buyer and notifies the Buyer accordingly.
- 13.2 If this clause applies then the Seller shall be entitled to cancel the Contract or suspend any further deliveries under the Contract without any liability to the Buyer. If any Goods have been delivered but not paid for the price shall become immediately due and payable.
- 14. General**
- 14.2 Any notice required or permitted to be given by either party to the other under these conditions shall be in writing addressed to that other party at its registered office or its trading address.
- 14.3 No waiver by the Seller of any breach of the Contract by the Buyer shall be considered as a waiver of any subsequent breach of the same or any other provision.
- 14.4 If any provision of these Conditions is held by any competent authority to be invalid or unenforceable in whole or in part, that provision shall be severed from the contract and the validity of the other provisions of these Conditions shall not be affected.
- 14.5 The Contract shall be governed by the laws of England and the Buyer agrees to submit to the exclusive jurisdiction of the English Courts.