

GENERAL TERMS & CONDITIONS

Sony DADC Austria AG, A-5081 Anif, Sonystrasse 20

- (1) Preamble
 Unless otherwise agreed in writing, the General Terms and Conditions of Sony DADC Austria AG (hereinafter referred to as "Sony DADC") shall form an integral part of all quotations and purchase contracts. Customer's purchasing conditions differing from these General Terms & Conditions shall be of no effect.
- (2) Terms of Sale
- (2.1.) Quotation and Price
 Unless otherwise agreed, the prices are understood net ex Supplier's domicile in A-5081 Anif, Sonystrasse 20, exclusive of freight and without any discount. The prices of the last quotation made by Sony DADC shall apply.
- (2.2.) Order and Order Acknowledgement
- (2.2.1.) For each product-type minimum order quantities exist which are part of Sony DADC's Customer Manual for the specific product.
- (2.2.2.) All orders from Customer to Sony DADC must be in writing, and shall be considered accepted if confirmed in writing by Sony DADC. Agreements, if any, with agents and/or representatives and other agreements with Customers including legally binding promises or deviations from the general terms and conditions will not be valid unless also accepted in writing by Sony DADC.
- (2.3.) Quantity to be delivered
 The quantity to be delivered shall be determined by Sony DADC's order acknowledgement in writing. Unless otherwise agreed the Customer agrees to accept production-related variations in the quantity to be delivered of more or less than 5% per title ordered. For orders of 1,000 units or less per title, the Customer shall accept production-related deviations of up to 100 units, which will be charged in the invoice.
- (3) Delivery Time
- (3.1.) The delivery period agreed shall commence as soon as Sony DADC has received from the Customer all components required according to Sony DADC's specification. Delivery shall be considered to have been made in time if the goods ordered have left the factory in A-5081 Anif or A-5303 Thalgau prior to expiration of the period of delivery.
- (3.2.) Delivery periods and delivery dates shall be understood to be without engagement.
- (3.3.) Sony DADC shall have the right to make part deliveries and advance deliveries. A cancellation of orders by the Customer, although it might be legitimate and following an extension of the delivery period, shall not apply to part deliveries or advance deliveries made before.
- (4) Place of Fulfilment and Passage of Risk
- (4.1.) The place of fulfilment and passage of risk for all deliveries shall be the factory of Sony DADC in A-5081 Anif or A-5303 Thalgau, or a distribution warehouse separately specified by Sony DADC.
- (4.2.) The risk in respect to the goods delivered shall pass to Customer at the time they are delivered to the carrier. This also applies to part deliveries.
- (4.3.) Except as otherwise provided herein, shipment and method of shipment shall be exclusively determined by Sony DADC. Sony DADC shall arrange for the transport and shall pay the cost of transport packing as well as the cost of usual transport insurance for an insurance value up to the amount of the relevant Sony DADC invoice. Other expenses, e.g. expenses for specific packing, extra cost for individual consignments, freight charges, etc. shall be for exclusive account of Customer. The Customer shall have to pay all customs duties, sales taxes, border expenses etc. even if the order for transport has been given by Sony DADC.
- (4.4.) In the event of delay of shipment caused by circumstances within the responsibility of Customer, all risks including the risk of accidental loss shall pass to the Customer at the time Sony DADC gives notice that the goods are ready for collection, i.e. at the time such notice is sent by Sony DADC. In the event of delay caused by circumstances within the responsibility of Customer, the Customer will be charged storage cost of at least 5% per month of the gross invoice value, beginning at the time Sony DADC has given notice that the goods are ready for shipment.
- (5) Invoices and Terms of Payment
- (5.1.) The prices agreed are understood ex Sony DADC factory in A-5081 Anif/Austria, exclusive of sales tax (VAT). All payments shall have to be made in cash, free of charges and without deductions. Enforcement of counterclaims by setoff or by exercise of retention rights by the Customer shall be excluded, provided such exclusion is permitted by the laws in vigor.
- (5.2.) Payments shall not be considered to discharge the debtor unless made into Sony DADC's banking account, except as otherwise agreed (e.g. payment by cheque).
- (5.3.) All payments shall be first counted against the expenses (dunning expenses, legal expense), then against interest accrued, and finally against the capital, i.e. against the oldest outstanding debt. Cheques and bills of exchange shall be accepted upon special agreement only, and merely on account of payment, not in lieu of payment. Cheques and bills of exchange shall be considered payment upon encashment, at the value date on which they have been credited to Sony DADC by the bank. Sony DADC shall have the right to refuse, without showing cause, any payment offered by cheques or bills of exchange.
- (5.4.) Unless otherwise agreed, all invoices issued by Sony DADC shall become due for payment within 30 days from invoice date, without any deduction.
- (5.5.) The place of performance of all payments shall be A-5081 Anif.
- (6) Consequences of Delayed or Refused Performance
- (6.1.) Even after having accepted an order, Sony DADC shall also have the right to refuse performance and/or delivery if, as a result of a circumstance become known or arising also after the contract has been concluded, there is fear that the Customer will be unable to fulfil his duties completely or in time or if the contents of the film, sound, data or other software recordings given to Sony DADC for duplication violate laws or moral principles. Similarly, Sony DADC shall be entitled to refuse the acceptance of the order and/or the delivery unless it is clear without doubt that the Customer disposes of all rights for duplication of the recordings concerned. In this cases Sony DADC shall have the right to retain entry components for documentary purpose and to inform the following institutions about the issue: CDSA - Content Delivery & Storage Association, BIEM - Bureau International des Sociétés Gérant des Droits d'Enregistrement et de Reproduction Mécanique, IFPI - International Federation of the Phonographic Industry, BSA - Business Software Alliance, collecting societies.
- (6.2.) Where the period allowed for payment has been exceeded, Customer shall be considered to be in default, without that any special notice has to be given by Sony DADC. In such case Sony DADC shall have the right to cancel all periods allowed for payment – including these for accepted bills – and to demand payment immediately. In all cases of agreements on payment in instalments, non-payment of any one instalment shall constitute default on the part of Customer, to the extent permitted by law.
- (6.3.) In the event of default of payment, the Customer shall have to pay interest on the sums due and unpaid, in the rate of the refinancing cost prevailing, but not less than 12% per annum. All extrajudicial dunning and collection expenses, including the cost of legal advisers and debt collectors, shall have to be paid by Customer.
- (7) Delivery to Third Parties
 Where a Customer specifies that an order given by him, or any part thereof, be shipped and invoiced to a third party (i.e. to an affiliate company of Customer or one of his distribution partners etc.), Customer shall continue to be liable towards Sony DADC. Sony DADC shall have the right to charge extra cost incurred for packing and transportation. If the delivery is to be carried out on behalf of a Customer by Sony DADC directly to a third party in a non EU country, the Customer shall make available to Sony DADC either the commercial invoice or the merchandise value which has to be paid by the third party for the assessment of the import taxes.
 If such delivery is carried out to a third party in an EU country, the Customer shall make available to Sony DADC the VAT identification number of the third party prior to the delivery. If such information is not provided by the Customer or is incomplete or incorrect, he shall indemnify and hold harmless Sony DADC in this respect, particularly with a view to any customs penalties and duties.
- (8) Defects Liability Guarantee
- (8.1.) In case of a complaint, the Customer shall have to provide for proper storage of the rejected goods, and to hold them at Sony DADC's disposal until the complaint has been settled.
- (8.2.) Sony DADC shall have the right to release itself from any claims for reasonable reduction of price by correcting defective goods and/or by supplying missing goods in a manner acceptable to Customer. Defects of a part of a shipment (order) do not give right to reject the complete shipment.
- (9) Retention of Ownership
 The ownership of the Goods shall not pass to Customer and full legal and beneficial ownership of the Goods shall remain with Sony DADC unless and until Sony DADC has received payment in full for the Goods, including all secondary costs such as interest charges, charges and expenses etcetera. In case of resale of such Goods, Sony DADC is entitled to relinquish the realized purchase price in order to cover any outstanding claims. In case of processing and mixing of such Goods retention of title and ownership extend proportionately to the new product and shall be relinquished accordingly
- (10) Claims for Damages
 Claims for damages raised by Customer for breach of contract by Sony DADC e.g. for non-fulfilment or for default, shall be excluded unless Customer furnishes proof that the damage has been caused by gross negligence on the part of Sony DADC.
- (11) Rights of Mechanical Duplication, Copyrights, Author Rights, Other Rights
 Customer declares to possess all rights for the purpose of duplication, including the right of mechanical duplication, the right to use certain film-, sound-, data- or other software recordings etc. and he guarantees that all copyright fees and other payable fees be paid to the owner of the rights or to the competent organizations representing the owners, and that no claims in this respect will be raised against Sony DADC. Customer shall indemnify Sony DADC in all respects, in particular for claims raised by third parties, including claims for copyright organizations or other organizations, and for expenses arising from legal or court action for asserted or factual violation of such rights. Such indemnifications shall include production cost, if any, incurred by Sony DADC. The Customer agrees that Sony DADC will disclose that information on individual orders to copyright utilization companies and other organizations dealing with the protection of copyrights of any kind, which is required by these companies for ensuring a proper licence settlement and/or for the control of safeguarding any copyrights.
- (12) Miscellaneous
 Sony DADC and the customer agree that should raw material prices (polystyrene, polypropylene, polycarbonate) increase above 10% of the published index levels as of March 2009, a surcharge maybe introduced accordingly.
- (12.1.) Customer shall furnish to Sony DADC his specific production material, including master, label films, print films etc. corresponding to Sony DADC's specifications. Where Customer furnishes production material which is not in line with applicable Sony DADC specifications, Sony DADC can complete, improve or return such production material at the expense of Customer.
- (12.2.) Print material delivered by the Customer can be used only if complying with Sony DADC specifications. Except as otherwise agreed, Sony DADC shall not be obliged to store print materials in excess of the disc-quantity ordered. Customer agrees that Sony DADC shall not be liable for losses up to a maximum of 5% occurring during packaging, machine adjustment, disruptions etc.
- (12.3.) All material to be delivered to Sony DADC by Customer or on Customer's behalf, shall be "delivered Anif duty paid" in accordance with INCOTERMS.
- (12.4.) Component handling: Please note that mastertapes (CD-R, Exabytes etc...) will be scrapped after 3 months (From the date the order is placed). For further information, please view the Mastertape agreement provided by Customer Service. Artwork- and labelfilms without a re-order in the past 2 years will either be scrapped or returned (At customer request and expense). The cost paid for by Customer for master and stamper production merely include the services rendered by Sony DADC in connection therewith, while masters and stampers shall remain the property of Sony DADC. If so requested by Customer, they will be destroyed upon completion of production. In case of a destruction, any repeat order shall be considered a new order, with all costs connected therewith.
- (12.5.) Customer guarantees that Sony DADC will only receive duplicates of masters, label films and films for preparation of print materials. Should DADC be liable for loss or damage to such materials, such liability shall be limited to the value of material, but not exceeding a maximum value of e 1,000.
- (12.6.) In case the goods supplied by Sony DADC are passed or sold to third parties, Customer shall have to inform such third party in regard to proper use and handling of the goods.
- (12.7.) Customer shall not have the right to use the company name of Sony DADC or a component thereof, nor any reference to the company name of Sony DADC on its products, notices, business or advertising materials, unless expressly agreed by Sony DADC in writing.
- (12.8.) Austrian law shall exclusively apply to all quotations and purchase contracts, as well as to these General Terms and Conditions. Sony DADC and Customer agree that all disputes arising out of these Terms and Conditions be referred to the courts having jurisdiction in the province capital of Salzburg, waiving any other venue of jurisdiction.
- (12.9.) Additional agreements, information and complaints shall have to be made in writing, and can be accepted only if sent to Sony DADC Austria AG, Sonystrasse 20, A-5081 Anif, for the attention of "Customer Service". Notices given to Sony DADC shall not be legally effective unless sent to such address.