

# Terms and Conditions of Use

## Terms and Conditions of Use of the Nena-Musikverlag GmbH

### § 1 General

(1) The following General Terms and Conditions of Business shall be valid for the entire business relationship with the purchasing person ("Orderer"). Orderer acknowledges that these said general terms and conditions shall be legally binding for the present agreement. Orderer agrees to receive electronic communication (e.g. in the form of e-mails) from us for contractual purposes, and Orderer also agrees that through this electronic communication, the form for all approvals and all notifications shall be duly observed and kept, unless obligatory legal provisions should prescribe that another form is mandatory.

(2) Orderer voluntarily waives his right to use and/or to make effective its own conditions of purchase; same shall under no circumstance become subject to contract because of our silence and/or through our delivery.

(3) Every correspondence and/ or shipping of goods with us must be made to and/or through the address set out in the Legal Notice (as accessible from our home page).

### § 2 Conclusion of Contract

All presentations on our internet pages are offers to close contracts of sale in connection with our products, which shall then be accepted by the Orderer at the end of the ordering process by clicking the button "Place Your Order", with the consequence that a binding contract(s) of sale shall then be closed with regard to the given product(s) chosen by the Orderer.

The processing, shipping and complaint processing shall be made by:

NENA-Shop  
NENA-Musikverlag GmbH  
Jakobikirchhof 8  
20095 Hamburg  
Germany

Tel.: 040/22739602  
E-Mail: [shop@nena.de](mailto:shop@nena.de)

### § 3 Withdrawal

(1) The Orderer has the right of withdrawal pursuant to paragraph 312g of the German Civil Code (hereinafter "BGB") when the Orderer is a consumer, as a result of the fact that the purchase of products through the internet, as is being done here, is a so-called distance contract ("Fernabsatzvertrag" in German). With regard to the right of withdrawal and its consequences, further, specific withdrawal instructions will be given (in text form) upon the completion of the order.

(2) Insofar as the Orderer shall have made use of its right of withdrawal, the Orderer shall then have to carry (and pay for) the return costs.

### § 4 Delivery / Consignment

(1) Unless otherwise agreed, the item will be delivered to the address which Orderer

provided in its order. Shipping will be made by us after full receipt of payment. The order shall, under normal circumstances, be received by the applicable customer within ten (10) working days (Monday through to Saturday, excluding Sundays and holidays) after the payment transaction shall have been effected by the Orderer provided that such delivery is to be made to a German address. For deliveries outside of Germany, longer delivery times are to be expected.

(2) In case that our supplier does not supply us (despite a contractual obligation to do so) with the ordered item, we shall be entitled to withdraw from contract with Orderer, insofar as we shall not be responsible for failure to deliver. In such event, we will notify Orderer immediately that the ordered item is not available. We will reimburse any purchase price already paid by the consumer (i.e. back to the consumer) without delay.

(3) We shall be entitled to make reasonable partial deliveries of ordered items in particular but not limited to the case where some item can only be delivered by us at a later period of time, unless the customer shall have made use of its right of withdrawal.

(4) Delivery shall be made through the logistics company Post/DHL. Delivery times which diverge from the paragraph 4(1) above shall be indicated and expressly stated on the applicable product pages or in the applicable order confirmation.

#### **§ 5 Prices, Due Date, Payment and Default of Payment**

(1) Our prices are in EURO (€) including added value tax (VAT).

(2) The purchase price is immediately due.

(3) The product value shall be equal to the value of the product ordered and deliverable, less any discounts granted or gift certificates granted.

(4) The purchase is to be made through Paypal or through advanced bank transfer. Purchase on account is not possible. When the purchase is made through Paypal, the applicable amount shall be drawn (and therefore paid to us) before shipping.

(5) If Orderer defaults on payment, we are entitled to then claim interest at a rate of five per cent (5%) over and above the per anno base rate published by the European Central Bank (ECB). In the event that we shall suffer damages caused by delay, we shall also be entitled to claim such damages.

(6) If Orderer defaults on the payment of a given order, we are then entitled to withhold further deliveries, without being in default of delivery (or simply in default) in such event. It is not necessary that we expressly assert our right of retention.

(7) In order to determine whether payment was made in a timely fashion or not, it is the date of the receipt of payment by us or our payment provider which shall be applicable and not the date at which the payment was forwarded.

#### **§ 6 Our Right of Withdrawal**

(1) We shall be entitled to rescind the contract in the event that after the conclusion of the contract, that the prices which were given by us are actually below our own purchase prices and that we are not responsible for this, such as false information given to us from our suppliers, and that such suppliers would not compensate us for the ensuing damages in the event that we should fulfil the applicable contract with you.

(2) We shall be entitled to rescind the contract in the event that after the conclusion of the contract, that the prices which were given by us are actually below our own purchase prices and that we are not responsible for this, such as a software error, and that the applicable software manufacturer or the applicable software supplier would not compensate us for the ensuing damages in the event that we should fulfil the applicable contract with you.

(3) Our right to annul the contract as a result of an error remain unaffected from the rights of rescission set out above.

(4) In the aforementioned instances (§§ 6(1) to (3)), the NENA Musikverlag GmbH shall immediately inform the Orderer, and shall reimburse the purchase price without delay.

## **§ 7 Packaging and Shipment**

(1) We shall package the item in accordance with standard custom and usage.

(2) As a general rule, shipping will be made through the logistics company Deutsche Post/DHL. Packaging and shipment in Germany will be at the cost of the Orderer up to a total order value of € 75,00 (seventy-five Euros). Accordingly, proportional shipping costs will be calculated, such costs being dependant of the applicable delivery address and the country to which such delivery is to be made. Starting at a total product value of 75,00 Euros, no shipping or packaging costs will be charged for shipping to Germany. In connection with special sized products (e.g. oversized or bulky items), the shipping costs will be increased accordingly, and a detailed overview of the shipping and packaging costs can be viewed under the menu item Shipping. By part delivery, shipping and the packaging costs will only be charged once. In connection with deliveries crossing borders and in connection with shipping to countries which are outside the EU, all applicable taxes, customs duties and/or import duties are to be paid by the Orderer.

## **§ 8 Reservation of Title**

(1) The product delivered remains our entire property (reserved product) until full payment of same shall have been made.

(2) Insurance and/or damage claims which the Orderer acquires in connection with loss or damage to the reserved product are hereby assigned to us in full.

(3) In the event that the Orderer is in default of payment, Orderer is obliged, upon our demand, to grant us access to the reserved product still in Orderer's possession, to provide us with a detailed list of the said product(s), as well as to isolate the applicable product(s) and to return/transfer same to us.

## **§ 9 Liability for Defects on the Product Purchased**

(1) In connection with defects affecting the product purchased, Orderer retains all legal claims set out in BGB (see §3(1) above for the applicable definition of this expression). In the event that a purchased product is defective, the Order is first entitled to demand supplementary / complementary performance, which means that the Orderer is first entitled to demand the delivery of the purchased product without defects. The defective purchased product originally delivered is to be shipped back to us, at our costs. In the event, however, that the above referenced supplementary / complementary performance should fail, the Orderer shall have the choice to either to reduce the purchase price in proportion to the defect affecting the applicable product, or to rescind the contract.

(2) When the product delivered shows obvious material defects, the Orderer must, at the latest within fourteen (14) days after receipt of the product, report these defects to us, specifying therein the nature of the said defects, as well as the applicable order number. The effective date for determining whether the deadline just mentioned is met shall not be the date at which we shall have received the product, but rather, the date set out on the postmark or the date at which defective product was sent to us. A defect is obvious when such defect is apparent without having to pay too much attention to the defective product. Delayed notification of such obvious defects leads to the loss of the rights of guarantee for such defects. For defects which are however not obvious, the legal and statutory rights of limitation shall apply.

(3) If the Orderer is a merchant (in German "Kaufmann") in the sense attributed to that expression in the German Commercial Code (hereinafter "HGB"), the requirement to make a complaint in respect of a defect immediately on receipt of the products (in German, "Rügepflicht") pursuant to §§ 377, 378 of the HGB, remains unaffected.

### **§ 10 Right of Retention and Set-off**

(1) Orderer may only enforce a right of retention when this right is based on the same contractual relationship.

(2) Orderer is only entitled to set off a counter claim if we accept such counterclaim or if such counter claim has been legally upheld and determined by a court of competent and final jurisdiction.

### **§ 11 Foreign Transactions**

All agreements with us are subject to German law. This shall however not be the case in the event that a consumer residing outside of Germany should order from us, and through the effect of the first sentence of this paragraph 11 (applicability of German law), the protection granted to such consumer by the applicable provisions of his/her country of residence should be taken away as a result thereof. The provisions of the Treaty of the United Nations with regard to United Nations Convention on Contracts for the International Sale of Goods shall not be applicable.

### **§ 12 Severability Clause**

If one or a number of provisions of this these Terms and Conditions of Use shall be declared invalid or unenforceable by a court of competent jurisdiction, then the balance of Terms and Conditions of Use shall not be affected as a result thereof. In the place (and instead) of such invalid or unenforceable provisions, the applicable legal and statutory provisions shall then be applicable.

### **§ 13 Place of Performance, Venue**

(1) For all rights and duties resulting from this business relationship, the place for performance shall be determined by the applicable legal and statutory provisions.

(2) If the Orderer is a merchant (in German "Kaufmann") in the sense attributed to that expression in the HGB (see paragraph 9(3) above for the definition of this expression), the courts of the place of residence of the NENA-Musikverlag GmbH (see Legal Notice for address and further details) shall have exclusive jurisdiction over any controversies arising of the agreement. Our right to bring our claim(s) against any merchant(s) under any other jurisdiction(s) (i.e. other than the one set out in the first sentence of this article 13(2)) shall remain unaffected.

**§ 14 Privacy Policy Data Protection**

Information regarding the nature, amount, place and purpose of the collection of personal data required to execute the order may be found under the menu item Privacy Policy.