

GENERAL TERMS AND CONDITIONS OF SALE

Definitions

You, the Customer: the natural person or legal entity who is buying products and/or services from us.
Consumer: the natural person who is acting in a private capacity. TONES: (our) salesperson of the products and services as indicated on your invoice.

Website: the website with url www.tones.be and the other websites of TONES to which the Customer has access.

Order confirmation: the formal acknowledgement sent by TONES via email, fax or any other means of communication, of the product(s) and service(s) that you ordered.

Price: the price indicated in the Order Confirmation. Software: operating systems, middleware or applications.

Knowledge of the General Terms and Conditions

You acknowledge having received all the necessary information to place your order. You acknowledge having read these General Terms and Conditions prior to placing your order. You acknowledge having had the opportunity to check and, if necessary, amend your order prior to giving your final approval. The buyer also acknowledges being fully capable of performing legal acts.

Applicability and Proof

These General Terms and Conditions apply to all our sales, deliveries and services and all statements made by us in brochures, price lists, adverts, quotations, on the internet or verbally. Amendments to these General Terms and Conditions shall be valid only if confirmed in writing by TONES. General terms and conditions other than those of TONES are not applicable. Negotiating, placing an order and/or entering into an agreement with TONES implies acceptance of these General Terms and Conditions. You hereby expressly agree that your order placed through the internet or by email has the same value as a private document. Your full or partial payment shall in any case serve as proof of your order and the agreement.

Quotations / Orders

Our quotations are only valid if made in writing, for the period stated in the quotation and subject to the conditions set out on the quotation. If no period is specified in the offer, the following shall apply:

- Offers made on our website shall be valid until they are removed from the website;
- For other offers: 8 calendar days after date of publication.

Orders may be placed in writing, through the internet, by telephone or fax, but shall be binding only if accepted by TONES by means of an Order Confirmation. Please make sure to check the Order Confirmation and immediately notify TONES by registered letter of any discrepancies. If you fail to do so within 3 calendar days of the date of the Order Confirmation, the Order Confirmation shall irrefutably be deemed to be identical to your order.

Price & Payment Terms

Prices, taxes, shipping costs, insurance and installation of TONES products and services are indicated on the invoice. Payment shall be made no later than at the time of delivery of the products or provision of the service or, if agreed, within 14 calendar days of invoice date. TONES may suspend the delivery of products or services until payment in full is received. If you fail to pay your invoice within the specified payment term, the invoice amount due shall, by law and without notice of default being required, be subject to a conventional late payment interest of 12% per annum, payable to TONES. Moreover, all amounts due shall be increased by a compensation of 10% on the invoice amounts with a minimum of EUR 50 per invoice, as compensation for extrajudicial recovery and administration costs. All this over and above all costs related to any legal proceedings and their implementation, and all costs and lawyer's fees incurred by us in both extrajudicial and judicial steps towards recovery. In the event of non-payment of an invoice within the specified payment term, the balance due under all other invoices, regardless of their maturity and even if they are not yet due, shall be fully payable by law, and their amounts shall be increased by the aforementioned fees.

Delivery/Risk/Title

Delivery may be made by instalments. The place of delivery is stated in the Order Confirmation. All our sales and deliveries are subject to the condition precedent of full payment of the purchase price. Title to the products delivered shall not pass until full payment is received. Until such time you must store our products separately and insure them and you are not allowed to modify, pledge or sell our products. Until such time you shall also bear any risk of loss of or damage to the goods. In case of late payment, we have the right to recover the delivered products from you, at your risk and expense, even if they are already installed or have become immovable, without any legal intervention, because we are authorised to do so under the terms of your order, and without prejudice to our other conditions. Should you sell the products before title passes, you will become TONES' authorised agent and the proceeds of such sale shall be held on our behalf, separately from your general funds. TONES may sue for the price of the products before title passes.

Complaints

You are required to inspect our products for apparent damage or defects within 2 calendar days of their receipt. Complaints in this respect will be considered only if they are made in writing by registered letter sent to TONES within 2 calendar days following the day of delivery or performance. Complaints relating to our invoices will be considered only if they are made in writing by registered letter sent to TONES within 2 calendar days of the invoice date. Moreover, any complaints regarding the nature, quantities and appearance of the goods must be sent to us at the time of delivery and must also be explicitly stated on the original of the transport document and the delivery note held by us or our carrier. Unless agreed in writing by us, no return shipment shall have any legal consequences; the mere acceptance of returned goods is subject to all reservation and shall never imply our consent to the return shipment. The existence of complaints does not release you from your obligation to pay our invoices on their due date.

Termination

When a party defaults on one or more of its obligations, the most diligent party shall be entitled either to demand enforced performance with application of these General Terms and Conditions, or to terminate the agreement by law and without notice of default by means of a registered letter. Either party has the right to terminate the agreement in the following circumstances:

- Your failure to pay on time;
- Either party commits a material or persistent breach of these General Terms and Conditions and fails to remedy the breach within thirty calendar days of notification by registered letter;
- Either party becomes insolvent or is unable to pay debts that fall due; and
- Breach of export control laws.

In case of termination by TONES, you will be required to pay for what has already been delivered and performed, as well as to compensate us for all the damage incurred, with an absolute lump sum minimum of 30% of the agreed price inclusive of VAT.

Advances and Creditworthiness

TONES has the right to demand advances prior to the delivery of a product or the performance of a service. Without prejudice to its right to demand advances, TONES may also demand full guarantees or even full payment if it loses trust in your creditworthiness, for example as a result of late payment of an invoice, your refusal to accept a bill of exchange or your protest to a bill of exchange, request for terms, request for a judicial composition, or as a result of judicial actions brought against you and/or any other demonstrable events. In all cases TONES shall also have a right of retention to all goods owned by you, until full payment has been made.

Warranty - General

The warranty applies only to products supplied by us. This warranty shall in any case be limited to the warranty provided by the manufacturer or supplier, but not be less than the minimum period required by law. Moreover, the warranty shall be limited to defects that are directly attributable to design, manufacturing or component faults. In case of export, the warranty shall always be limited to the shipment, at your risk and expense, of the replacement parts for the defective parts returned to us within the warranty period. All products or parts replaced under warranty shall become our property. Latent defects are covered only if they are notified by registered letter within 24 hours after the defect was discovered or should reasonably have been discovered. Defects that are apparent upon receipt shall only be taken into consideration if they are immediately reported on the delivery note or transport document. Defects that are apparent when opening the packaging or when using the purchased products for the first time, shall only be taken into consideration if they are reported within 2 calendar days in accordance with article 7. For the Consumer the terms specified in article 11 below shall apply. Any warranty claims shall be excluded in the following circumstances:

- improper use, misuse or use of a product in a way that deviates from the product specifications;
- lack of supervision or maintenance, presence of moisture, corrosion, contamination and other external causes such as lightning strikes;
- repairs, alterations, replacement or addition of components, or other interventions such as opening equipment, that were not carried out by our personnel;
- selling or renting our products to third parties;
- failure to comply with your payment obligations to us.

TONES does not provide any software warranty, except for the data carrier where appropriate. You will receive the warranty or licence for these products directly from their manufacturer or licensor. TONES is required neither to compensate any indirect damage nor to compensate loss in operations or loss of profit or damage or loss suffered by third parties.

Warranty - Consumer Goods

The warranty on consumer goods is governed by the law of 1 September 2004 on consumer protection relating to sale of consumer goods. You can, however, only avail yourself of the aforementioned law if you notify TONES of the defect within two months after its discovery. Such notification shall be admissible only if made by registered letter or if you report in person to our repair service. If the defect occurs after 6 months following delivery, the Consumer has to prove that the defect existed already at the time of delivery. To ensure smooth warranty processing, your notification should preferably include a clear description of the defect. For compensation or repair of the product allowance will be made for deterioration of the damage arising from your use of the product after you discovered or should have discovered the defect. Such deterioration shall be fully borne by you.

Warranty - Services

Our warranty for service warranty shall be limited to the replacement or repair of the work performed by TONES. We can never be held liable for any damage to structures, buildings and/or facilities. Any modifications, replacements, repairs, expansions and/or other works not explicitly listed in the agreement are never included in our prices. Any such work entrusted to us shall be charged on a cost plus basis.

Software

Software not owned by TONES is supplied subject to the licence and warranty of the Software licensor. Where necessary, TONES will supply the software licence together with the product. You must comply with that licence. If you do not accept the licence for the operating system at start-up, TONES shall only consider the return and repayment of the complete product.

Export Control

You acknowledge that our products may contain technology and software that falls under US/EU export control laws and laws of the country where they are delivered/used. You must comply with the aforesaid legislation. Products may not be sold, leased or transferred to end users/countries subject to restrictions under the aforesaid legislation or to a user involved in weapons for mass destruction or genocide without the prior consent of the US or competent EU government. You acknowledge that US/EU restrictions vary according to product and time and you must therefore comply with the applicable US/EU regulations.

Force Majeure

In the event of force majeure, TONES may, as it seems fit, either cancel an ongoing agreement and invoice the products and services that have already been delivered, or suspend the delivery or execution until the circumstances having caused the force majeure have ceased to exist. Force majeure is considered to be any circumstance beyond our control that prevents the performance of the agreement, including inadequate supply. Events qualifying as force majeure include, but are not limited to, the following: strikes, acts of terrorism, war, problems with suppliers, transportation or production, exchange rate fluctuations, governmental or regulatory actions and natural disasters. In the event that the situation of force majeure has persisted for two months, either party may terminate the agreement. Neither party shall be entitled to any damages.

Data Protection

Your data will be held and/or transferred in strict accordance with the applicable data protection laws and TONES' data protection registration. You may instruct TONES not to use your data for direct marketing purposes.

Distance Selling and Right of Withdrawal

This provision relates specifically and exclusively to sales to you via our website, without there being any contact at any time between you and TONES and any "distance selling" pursuant to article 45 ff. of the law of 6 April 2010 on market practices and consumer protection, and its implementation orders. If this is not the case, you cannot invoke this provision. In certain cases you have a right of withdrawal, which is subject to the following conditions:

- You are a consumer as defined in the law of 6 April 2010 on market practices and consumer protection;
- The purchased product was not custom made, it has no personal character or was not ordered specially for you because it is not kept in stock;
- The product does not contain, in whole or in part, an audio or video recording or a computer program, including devices that are inextricably linked to pre-installed software;
- The seal of the software or any other comparable proof of non-commissioning (including activation and/or registration of the pre-installed software) has not been broken;
- The product can be returned without being easily damaged,

If you wish to invoke your right of withdrawal, you must comply with the following formalities:

- The right of withdrawal must be exercised within 14 working days, within which period
- TONES must be notified of the request for withdrawal and of the request for repayment of any amount already paid and with submission of proof of payment; this amount shall be repaid within 30 days of receipt of the notification of the withdrawal, into an account number to be specified by you;
- If the product is already in your possession, you must appropriately return the product within the same period of 14 working days, entirely at your expense.

For the remainder and insofar as compatible with the law of 6 April 2010 on market practices and consumer protection, the General Terms and Conditions shall remain in full force and effect.

Applicable law and competent courts

These General Terms and Conditions are governed by Belgian law and any disputes are the exclusive jurisdiction of the Court of Commerce in Antwerp, section Mechelen.

Miscellaneous

If any part of these General Terms and Conditions is found to be invalid or unenforceable by a court, the remainder of these General Terms and Conditions shall remain in full force and effect. TONES may subcontract its obligations to a competent third party. Otherwise, neither party may assign or transfer any obligations or rights.