

## Tonone Conditions of Sale

Company name: Tonone B.V.



(General terms and conditions for the sale and supply of products by Tonone to consumers, and to commercial counterparties acting in the course of a profession or trade.)

### 1. Applicability of these conditions

- 1.1. By placing an order, the customer accepts the General terms and conditions of Tonone. Tonone has the right to change the general terms and conditions after expiry of the period stated. Tonone accepts no responsibility for the consequences of errors in the text.
- 1.2. These conditions shall, to the exclusion of any other conditions, apply to all offers, contracts, and supplies relating to products manufactured or offered by Tonone.
- 1.3. In these general conditions the following definitions shall apply:
  - Tonone: the design bureau that sells products
  - Purchaser: the counterparty to the design bureau/Tonone
  - Consumer: a purchaser not acting in the course of a profession or trade
  - Consumer sale: a sale between Tonone and a Consumer
  - Remote sale: a Consumer sale whereby the contract comes into existence via Internet, telephone, fax or mail.

### 2. Offers and contracts

- 2.1. All offers made on the website or in a physical sales outlet of Tonone are made without commitment, until completion of a sales agreement.
- 2.2. The sales agreement between Tonone and the customer comes into existence when the customer places an order via the web shop or at a physical sales outlet, by completing a (digital) order form:
  - In the case of an order placed at a physical sales outlet, the customer may, if the product is in stock, make payment at the location and receive the product immediately. If the product is not in stock, the customer will receive a copy of the order confirmation, including any delivery costs and expected delivery date. At this moment the contract is created and the product is 'reserved' for the customer until payment is received by Tonone.
  - In the case of an order via the web shop. The customer receives the order confirmation by email, including any delivery costs and expected delivery date. If the information on the order confirmation is incorrect or the customer wishes to change the order, he must send an email about this to Tonone within 24 hours. At the end of this period the purchaser will be deemed to have accepted the order confirmation as being correct.
- 2.3. If articles are received which were are not as ordered, the customer must inform Tonone of this within five working days. Any errors in the order confirmation sent by Tonone to the customer must be reported by the customer to Tonone within 24 hours of receipt of the order confirmation.
- 2.4. An offer or quotation is made without commitment, unless it refers to a consumer sale, in which case it applies for the period stated in it, or as long as supplies are available.
- 2.5. Unless Tonone has expressly stipulated another manner of coming into existence, contracts between Tonone and the purchaser shall come into existence by written confirmation by Tonone, including an email confirmation. An automatic electronically generated confirmation of receipt does not count as such a confirmation. Tonone reserves the right to decline an order.
- 2.6. Tonone is empowered in carrying out the agreement to make use of third parties. All rights and claims as set out in these terms and conditions and any subsequent contracts stipulated for the benefit of Tonone, will apply equally to the benefit of intermediaries and third parties acting for Tonone.

### **3. Payment terms, prices, and amendment of price**

- 3.1 The purchaser pays the amount stated on the order confirmation, making reference to the order number and article purchased. Payment must be received by Tonone on its account within 14 days of date of order. After 30 days the prices and supply conditions cease to be valid.
- 3.2. All prices for articles offered on the website or at physical sales outlets include BTW and exclude delivery costs. The delivery costs are stated on the order confirmation. The purchaser is bound to accept delivery of the goods purchased at the moment they are delivered to him, or at the moment they are, under the terms of the contract, placed at his disposal. If the purchaser refuses to accept delivery or fails to give adequate information or instructions necessary for delivery, the goods will be stored at the risk of the purchaser. The purchaser in this case will be responsible for all additional costs, including any case storage costs. If more than one article is ordered, then the delivery costs are combined and stated in the order confirmation.
- 3.3. The prices and terms of supply of an order placed are valid for 30 days. If the customer makes payment after this period of 30 days, the prices and supply terms ruling on the date that Tonone receives payment shall be applicable.
- 3.4. If following the coming into existence of the contract, the prices of raw materials, wages, import duties, taxes or other external costs (whether or not as a result of currency changes) increase, Tonone has the right to adjust the purchase price in accordance with this increase.
- 3.5. Tonone will inform the customer of such a circumstance as quickly as possible, following which the purchaser is entitled to cancel the contract, unless it is stipulated that supply shall take place longer than three months following the sale, or the increase is a result of a price increase imposed by the law.

### **4. Delivery and transportation**

- 4.1. Delivery periods stated by Tonone are only an indication. Failure to meet a delivery period does not entitle the purchaser to payment of damages or to cancel the order or dissolve the contract, unless the delivery period is exceeded in such a way that it can no longer be reasonably expected of the purchaser to continue to be bound by the contract. Purchaser in this case is entitled to cancel the order and dissolve the contract to the extent that this is necessary.
- 4.2. The stated delivery periods commence as soon as Tonone has received payment from the purchaser.
- 4.3. Deliveries other than to consumers take place at the moment that the products have left the storage place of the designer. Delivery to consumers takes place at the address provided by the purchaser during the creation of the contract, or in the case of their absence at the post office or neighbours/third parties indicated. Risk in the products delivered is transferred to the purchaser at the moment of delivery. Tonone retains the risk during transportation in respect of articles ordered by the customer. Risk relating to the products is in all cases transferred to the purchaser at moment of delivery. The purchaser has the risk during transportation of any articles returned.
- 4.4. Tonone shall be entitled to make delivery in instalments of any goods sold.
- 4.5. If the purchaser refuses to accept delivery the designer is entitled to claim any resulting costs from him. Furthermore, in that case, the designer has the right to dissolve the contract, without prejudice to any rights for a claim for total damages.

### **5. Reservation of title**

- 5.1. All products delivered remain the property of the designer until the purchaser has complied with all his obligations in relation to the designer which arise from the contract.
- 5.2. The following applies if the purchaser is acting in the course of his profession or trade (not a consumer):
  - that in respect of products remaining the property of the designer as a result of this provision, the purchaser will only be permitted to sell to third parties within the normal course of business;
  - that if the purchaser fails to comply with his duties arising from a contract with the designer, the designer is entitled to recover products delivered from the purchaser, or from third parties holding the goods for the purchaser. In this case the purchaser shall extend full cooperation.

## **6. Inspection period, cancellation and return**

- 6.1. The customer is entitled to cancel the purchase contract with Tonone within seven working days of delivery of the goods ordered. The customer shall inform Tonone of this in writing (via mail or email) within the period stated above, and will return the goods ordered to Tonone unused, undamaged, and complete. The total amount paid for the articles will be transferred back to the bank account of the customer within 30 days of receipt of goods returned.
- 6.2. Tonone reserves the right to reject articles returned, or to not credit the full amount, if it appears that the article has actually been used, or damaged by the customer.
- 6.3. Return of products delivered can only take place following written consent by Tonone, whereby Tonone has the right to give instructions relating to the way they are sent. The direct costs and the risk of sending returned products under this article are the responsibility of the purchaser, unless otherwise expressly agreed in writing.
- 6.4. Art 6.1 is not applicable to Remote Sales of:
  - goods whose price is tied to changes in the financial market, which Tonone is unable to influence;
  - goods that have been produced in accordance with the purchaser's specifications;
  - services carried out with the consent of the consumer before the seven working days period has expired.

## **7. Payment**

- 7.1. Tonone is at all times entitled to request (partial) payment in advance, or cash on delivery.
- 7.2. If goods are delivered on account, payment of the invoice amount is to be made within 14 days, without the purchaser having any right to discount or recalculation.
- 7.3. If no (full) payment is received by Tonone at the expiry of the payment period, the purchaser is in default and is liable to pay interest at the rate stipulated by the law, as applicable for consumers and business transactions, depending on the nature of the purchaser. All costs incurred by the designer in connection with the late payment, such as legal costs and both out of court and court costs, including therein the costs of legal assistance, bailiffs and debt collection agencies, will be payable by the purchaser. Out of court costs will be set at no less than 10% of the invoice amount, subject to a minimum of € 150,- excluding BTW.

## **8. Authority to postpone and revoke the contract**

- 8.1. In addition to the provisions in the case of force majeure and those stated in article 6, the designer is authorised to (partially) delay performance of its duties arising from all contracts existing between the parties or to revoke these contracts wholly or partially without notice of breach of contract or legal action:
  - if the purchaser is in default or the designer has good reason to fear that the purchaser will not be able to comply with its obligations fully and/or on time;
  - in the event of liquidation, of (requesting) delay of payment, bankruptcy or agreement with creditors or other circumstances, whereby the purchaser is no longer able to freely exercise control over its assets; or
  - if circumstances arise whereby performance of the contract is impossible or continuing with it unchanged cannot reasonably be requested of the designer.
- 8.2. In the circumstances referred to in 8.1, all and any claims against the purchaser become immediately enforceable and Tonone will not be held liable for any damages. This latter is not applicable in the case of revocation arising from circumstances which are not the fault of the Consumer.

## **9. Guarantee**

- 9.1. The goods to be supplied by Tonone comply with the normal requirements and standards that can reasonably be expected of them at the time of delivery, and for the normal use for which they are intended. Where applicable, warranty provisions of suppliers and third parties such as producers and importers apply to the goods supplied by Tonone.

- 9.2. In the case of use outside the Netherlands, the purchaser should verify personally whether the products are suitable for use there, and whether they comply with the conditions and (legal) standards that are expected of them.
- 9.3. The guarantee from Tonone is valid for two years if the product is used following instructions and for the intended purpose. If it is demonstrated that the product does not comply with the contract and a request for compensation is made, then Tonone has the choice to replace the product involved, arrange repair, or effect restitution of the invoice price plus transportation costs.
- 9.4. Compensation requests are only accepted following receipt of the original proof of purchase (invoice or receipt) stating upon it the date of purchase and description of the product.
- 9.5. The guarantee by Tonone will cease to apply if:
- anything is changed, drawn through, erased or made unreadable on the proof of purchase
  - the product does not function because of damage, incorrect connection, or misuse
  - a defect has arisen as a result of extreme circumstances for which the product is not intended, such as lightning, flood, fire, incorrect use or negligence.
  - The product has been dismantled.
- The purchaser is bound to inspect the products supplied immediately following receipt. Any faults that appear must be notified and explained in writing to Tonone within 10 days - and in the case of visible defects - without delay.
- 9.6. All details, examples and illustrations relating to colours, materials, size and finish are to be construed as an indication. Variance from this cannot form a reason for rejection, reduction in price, cancellation of the contract or payment of damages, if the variation is of minimal significance.

## 10. Intellectual property rights

- 10.1. Tonone has and retains all rights of intellectual property which apply to the design, or which could be established.
- 10.2. Use of the rights referred to in 10.1, in the widest meaning of the words, including (but not limited to) the making of reproductions, is not permitted without the agreement of Tonone.
- 10.3. The purchaser recognises expressly that all rights of intellectual and/or industrial property relating to the products placed by the designer at the purchaser's disposal, and materials and information, including (the appearance of) samples, packaging, labels, tickets, design, composition and/or specifications of samples, products and semi-finished products, together with technical and commercial know-how, models, moulds, designs and drawings, are those of the designer, its suppliers, and others having rights.
- 10.4. If and to the extent that Tonone products or packaging are manufactured on the basis of the express instructions of the purchaser, such as specifications delivered by the purchaser, designs, sketches, models or drawings, the purchaser warrants that no rights of third parties have been breached. The purchaser indemnifies Tonone for any claims from third parties in the matter, and will compensate Tonone for any costs incurred by it in connection with such claims.

## 11. Liability for damage

- 11.1. Tonone is not liable for damage caused:
- by improper use of the delivered goods or the use of them for a purpose other than that for which from an objective point of view they are suitable;
  - if Tonone has acted on the basis of incorrect or incomplete information supplied by or on behalf of the purchaser;
  - by third parties engaged in the performance of the contract at the request of or with the permission of the purchaser;
  - to materials or services delivered by third parties, at the request of or with permission of the purchaser; or

- by misunderstandings, distortions, delays, or unsatisfactory communication of orders and information provided, resulting from the use of the Internet or any other (electronic) communication medium.

- 11.2. Only direct damage which is the fault of Tonone will be eligible for compensation. Liability for indirect damage such as in the case of, but not limited to, consequent damage, loss of information or materials, is excluded. In the case of a consumer sale this limitation extends no further than as is permitted under article 7:24 clause 2 BW.
- 11.3. To the extent that Tonone is liable for compensation for damage, this is limited to no more than the invoice amount, relating to the (part) supply, on the understanding that this shall be no higher than € 45,000 and in any case, at all times limited to the amount that the insurer pays out to the developer in respect of the occurrence.
- 11.4. The purchaser indemnifies Tonone for claims by third parties who suffer damage in connection with the performance of the contract, and which is caused by the purchaser.
- 11.5. The limits referred to in articles 11.1 to 11.4 . do not apply if:
  - the damage is caused by intentional or reckless actions by Tonone
  - it is a question of product liability in relation to a consumer within the meaning of Book 6 Title 3, section 3 BW.

## 12. Force majeure

- 12.1. If as a result of force majeure Tonone is not in a position to honour the contract, it is entitled to delay performance of its obligations until the end of the force majeure condition. If this period lasts more than two months, then either party is entitled to revoke the contract in respect of the products which are affected by the force majeure, without giving rise to any claim for compensation for damages by the other party. The purchaser is then bound to pay for goods that have already been delivered.
- 12.2. Force majeure shall, for the purposes of these general terms and conditions, be interpreted to include, amongst other things, and in addition to the definition of the term within the law and jurisprudence, all external causes, foreseeable or unforeseeable, upon which the designer has no influence, and whereby the designer is not in a position to honour its obligations.

## 13. Dutch law and jurisdiction

- 13.1. Dutch law is applicable to this contract, also if all or part of a matter connected to it is given effect in another country, or if the purchaser resides there. The application of the Vienna Convention on sales of goods is excluded.
- 13.2. In the event of a dispute, the court of the district where Tonone is established has jurisdiction, unless otherwise legally stipulated. In any case Tonone is entitled to present the dispute to the court authorised by the law. In the case of a consumer sale the court of the place of residence of the purchaser has jurisdiction.
- 13.3. Parties will only resort to legal action after they have made their best efforts to resolve a dispute mutually.

## 14. Other provisions

- 14.1. The Dutch version of the general terms and conditions is definitive in their interpretation. (In any conflict between the Dutch and English interpretation, the Dutch language version takes precedence.)
- 14.2. Changes to and/or additions to these general terms and conditions are only valid and applicable if recorded in writing. If Tonone makes use of supplementary terms and conditions, or provisions conflicting with any part of these general terms and conditions, then the validity and application of other provisions within these general terms and conditions remains undiminished.