

Terms & Conditions
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These Terms & Conditions are proposed by any business entity or natural person (“**Buyer**”) who seeks a business relationship with Beyer Dynamic, Inc. (“**Company**”), a Florida corporation doing business as “beyerdynamic” and authorized to transact business in New York, by either: (1) submitting to the Company (a) a document captioned “Open Account & Credit Application” or similar document that may be requested by the Company at the time of Buyer’s submission or (ii) a purchase order (at any time or from time-to-time) for any products of the Company (“**Products**”) that are described in a document captioned “Confidential US Dealer Price List – Consumer Audio Products” or in a document captioned “US Dealer Price List – Conference and Presentation Products (each such document, as the case may be, “**Price List**”), which document is only referenced in (not incorporated into) these Terms & Conditions; or (2) accepting or otherwise paying for any Products delivered by or on behalf of the Company (at any time or from time to time). These Terms & Conditions will be deemed a binding contract between Buyer and the Company (“**Contract**”) if the Company affirmatively acknowledges its acceptance of any purchase order by Buyer (or the Company delivers to Buyer any Product that is the subject of a Buyer’s purchase order to the Company).

1. Scope and Acceptance. Any offer for Products (or any acceptance of this Contract) is limited to acceptance of the express terms of this Contract. No form of assent shall add to, delete from, or change any terms and conditions of this Contract, and the Company objects to and rejects all such additions, deletions, or changes in advance pursuant to this Contract (and all such additions, deletions, or changes shall not be binding nor effective unless assented to in writing by an authorized representative of the Company). If the Company’s fulfillment of any Order (as defined below) is considered an acceptance of Buyer’s offer, such acceptance is expressly conditioned on the Company’s assent to any additional or different terms contained in this Contract. If this Contract is considered a confirmation of an existing contract, the parties agree that this Contract constitutes the final, complete and exclusive terms and conditions of the contract between the parties. **Nothing in this Contract shall be deemed to require or in any way imply any obligation of the Company to accept any Order (as defined below), even if the Company has customarily or previously from time-to-time (and regardless of its previous “course of dealing,” as defined in the Uniform Commercial Code) accepted any previous or contemporaneous Order from Buyer.** Nothing in this Contract shall be deemed to impose any fiduciary duty on the Company or any other obligation to commence or continue any business relationship with Buyer or anyone else.

2. Orders; Prices; Payments; Minimum Order. Each offer or purchase order for Products submitted by Buyer to the Company (“**Order**”) shall identify the Products and specify the quantity of the Products to which an Order applies. An Order may request a delivery date or dates, a method of delivery for the Products and a “ship to” location. Unless otherwise stated on the Price List, the prices for any Products do not include any freight, insurance, taxes, custom duties, or other governmental charges or assessments. The Company (in its sole discretion) may charge Buyer for all freight costs and expenses, including a drop ship fee of \$15.00 and a minimum freight charge of \$15.00 per shipment (which amounts are subject to change by the Company from time to time). The Company reserves the right at any time to require cash payment before shipment. Otherwise, if Company (in its sole discretion) sells the Products to Buyer on credit, payment for such Products is due within 30 calendar days after the date set forth on the Company’s invoice to Buyer

for the Products. The Company reserves the right to alter the terms of or fix a limit of credit. All prompt pay discounts must be taken within the time period specified on the invoice. All unearned discounts, if any, will be re-billed. All payments still owing thereafter shall accrue interest at a rate which is the lesser of 2.0% per month or the maximum amount permitted by law. Buyer shall pay all collection costs and expenses, including reasonable attorney’s fees, incurred by the Company in connection with collecting or attempting to collect any unpaid amounts. The cumulative prices for the Products referenced in such Order must be at least \$100.00 USD. A Buyer who is a merchant (as defined in Article 2 of the UCC) must purchase from and pay to the Company a cumulative minimum of \$5,000 (Five Thousand dollars) of Products (excluding any applicable taxes, discounts, freight charges, and other ancillary charges) in each calendar year as a condition to such merchant Buyer having an active account status with the Company.

3. Shipment and Delivery. (a) Unless otherwise stated on the document evidencing the Company’s acceptance of the Order, terms are F.O.B. Farmingdale, NY. The Company may ship and Buyer shall accept, the Products ordered in one or more lots, notwithstanding the delivery dates provided in an Order. The Company may use any commercially reasonable means of carriage but in good faith will attempt to comply with Buyer’s request as to method of shipment, at Buyer’s cost.

(b) The Company does not guarantee any date of delivery or shipment. However, the Company shall in good faith attempt to effect delivery by the date specified in the Order, except that the Company shall not be responsible or liable for any damages, including incidental, special, or consequential damages, arising from the Company’s failure to deliver, delay in delivery, or any other default in delivery due to acts of Buyer, acts of God, fires, labor disputes, strikes or lockouts, war, acts of terrorism or similar hostilities, civil commotion, delays in transportation, shortage of transportation facilities, fuel, labor or raw material or other supply, or governmental acts, laws, demands, regulations or requirements, in any way affecting the Company or its sources of supply, nor for any other cause beyond its reasonable control. No such failure or delay shall be considered a breach of this Contract by the Company. (c) When applicable, the Company’s tender to Buyer or its authorized agent or bank of the appropriate shipping

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documents shall constitute the Company's full and final delivery of Products.

4. Title; Security Interest; No Trans-Shipping. Title and risk of loss with respect to the Products will pass to Buyer upon their delivery to the common carrier in connection with any Order. Until the Company receives indefeasible payment of all amounts due in connection with any Order, Buyer grants to the Company a security interest in the Products and the proceeds from each Order to secure payment of all such amounts to the Company. In connection with such security interest, Buyer appoints the Company as attorney-in-fact to execute and/or file any financing statements and instruments required or advisable pursuant to the Uniform Commercial Code (UCC). In no event is a Buyer who is a merchant (as defined in Article 2 of the UCC) authorized to ship or deliver any Products to another Person for such Products' re-sale by such Person unless such Buyer obtains the advance written consent of the Company (and title to such Products shall not be free and clear of encumbrances from the Company without such advance written consent).

5. Warranties; Disclaimer of Warranties. (a) The Company warrants that each Product shall perform in accordance with specifications in that certain document captioned "Guarantee Terms," which is enclosed with such Product (and which specifications are hereby incorporated by reference into this Contract). Buyer is responsible for all freight and shipping costs incurred for shipping any Product that is subject to a valid warranty for such Product to the location designated by the Company or its authorized designees.

(b) The foregoing warranty extends to all purchasers or owners of the Product during the warranty period. Buyer assumes the responsibility for selecting the Product as being adequate for and appropriate for the purpose intended by Buyer.

(c) IN ADDITION TO ANY OTHER LIMITATIONS ON RIGHTS OF OR REMEDIES TO BUYER, NO OTHER REPRESENTATION OR WARRANTY, EXPRESS OR IMPLIED, IS MADE WITH RESPECT TO THE PRODUCTS, AND THE COMPANY HEREBY EXPRESSLY DISCLAIMS ANY AND ALL SUCH OTHER REPRESENTATIONS OR WARRANTIES, EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION ANY REPRESENTATION OR WARRANTY AS TO MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

(c) If any model or sample was shown to Buyer, such model or sample was used merely to illustrate the type and quality of the Products and not as a promise or affirmation that the Products would necessarily continue to exist (or be available for delivery) or to conform to the model or sample that was shown to Buyer.

6. Limitations of Liability. (a) The Company's total cumulative liability in any way arising from or pertaining to the Products or an Order shall not in any case exceed the aggregate purchase price for such Products. The Company shall incur no liability for damages, shortages, or other causes that occur after the Company delivers the Products to the common carrier.

(b) BUYER'S SOLE AND EXCLUSIVE REMEDIES IN CONNECTION WITH ANY DAMAGES ARISING FROM ANY PRODUCT ARE SET FORTH IN SECTIONS 5, 6, AND 11 OF THIS CONTRACT. THE COMPANY SHALL HAVE NO LEGAL RESPONSIBILITY OR LIABILITY TO (AND IS NOT IN PRIVITY WITH) ANY ENTITY OR NATURAL PERSON THAT IS NOT A DIRECT PARTY TO THIS CONTRACT. IN NO EVENT SHALL THE COMPANY HAVE ANY LIABILITY FOR INCIDENTAL OR CONSEQUENTIAL DAMAGES OF ANY KIND, WHETHER BUYER'S CLAIM IS BASED ON TORT, WARRANTY, STRICT LIABILITY, OR OTHERWISE—EVEN IF THE COMPANY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

7. Indemnification. Buyer agrees to defend, indemnify and hold harmless the Company, its officers, directors, employees, agents, contractors and suppliers, from and against any and all claims, demands, liabilities, losses, lawsuits, expenses and costs, of any kind or nature (including reasonable attorney fees) arising out of (i) bodily injury, death or property damage to any person (including employees of Buyer or any subsequent owner or user of the Products) related to or arising out of the handling, transportation, possession, further manufacture, assembly, use or resale of the Products or (ii) any act or omission of the Buyer, its agents, employees, or subcontractors, except for injury or damage proximately caused solely by the Company's negligence with respect to an Order or a Product.

8. Solvency. As of the date of each Order, Buyer represents and warrants to the Company that Buyer is not insolvent within any of the meanings of that term in Section 1-201(23) of the Uniform Commercial Code. Buyer acknowledges that this representation is intended to satisfy the requirements of Section 2-702(2) of the Uniform Commercial Code, and is addressed specifically to the Company.

9. Buyer's Notification of Product Sales Locations. All Buyers are required to notify and register with an authorized representative of the Company (i) the name of any alias and or market place stores or point of sale for any Products, (ii) secondary distribution resellers for any Products, including resellers using a different business name, auction type web sites, or any online internet sale offerings that are selling Products under a business name (other than the business name that Buyer has previously notified the Company in writing would be used for sale of the Products). Before Buyer sells any Products, Buyer shall provide to the Company the names of any stores (whether such store is online or has a physical location), web site address, and price for which each Product is listed (or solicited for offer).

10. Shipping Instructions for Product Repairs. (a) All Products for which repairs are requested (whether or not under warranty) must be delivered (at Buyer's sole cost and expense) to the Company's designated service center and clearly marked "*Attention: Repair Service.*"

(b) All repairs for Products that are under warranty are covered by the terms and conditions of the "Guarantee Terms" referenced in Section 5. In addition, with respect to Products that are under warranty, the Company is

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responsible for paying all freight and shipping costs to deliver the repaired Product to Buyer.

(c) With respect to repairs for Product that are *not* under warranty are subject to the terms and conditions set by the service center designated by the Company. The Company does not have any responsibility or obligations with respect to any repairs for Products that are not under warranty.

(d) In any case, any Product delivered to the Company (or its service center) for repair must include with such Product a written description of the nature of the problem or repair requested along with the contact information of the sender or the person requesting the repair. If the Product is under warranty, include a copy of the receipt or invoice indicating date of purchase.

11. Product Returns. Products for which Buyer does not request any repair (whether or not such Product is under warranty) may be returned to the Company, subject to the provisions in this Section 11 and the provisions in the "Guarantee Terms" referenced in Section 5. Any such Product return will be for credit or inventory adjustment only. A restocking fee of 20% will be imposed on all returns for credit unless accompanied by a stock balancing order at least two times the Company's sale price of the returned Product. In addition, the returned Product must be in new, saleable condition, current model range only and must have been invoiced and shipped within 90 calendar days after the date that such Product was purchased. A returned Product may be delivered to the Company's designated service center only if the Company issues to Buyer a return authorization number (a "***Return Authorization Number***"). The Return Authorization Number must appear on all packages and paperwork in connection with such Product return.. Nevertheless, the Company's issuance of a Return Authorization Number does not bind the Company to accept such Product return. The Company will make its final decision as to whether to accept the returned Product after the Company (or its designated service center) has inspected the returned Product.

(b) Notwithstanding the immediately preceding paragraph, ALL PRODUCTS LISTED IN THE DEALER PRICE LIST THAT ARE LABELED OR IDENTIFIED AS MCS, MCS-D, MCW-D, QUINTA, ORBIS, SIMULTANEOUS INTERPRETATION SYSTEM, CONFERENCE SYSTEMS AND RELATED COMPONENTS, ACCESSORIES, AND SOFTWARE (INCLUDING ANY "SPECIAL ORDER PRODUCTS" OR OTHER PRODUCTS NOTED BY "*"*) ARE NOT REGULAR INVENTORY ITEMS AND ARE MANUFACTURED FOR EACH SPECIFIC ORDER. UNDER NO CIRCUMSTANCE WILL THESE PRODUCTS BE ACCEPTED FOR RETURN, CREDIT, OR EXCHANGE.

12. Intellectual Property. The Company acknowledges that it does not have or acquire any rights or interests in any intellectual property that is owned or licensed by Buyer. Conversely, Buyer acknowledges that Buyer does not have or acquire rights or interests have or acquire any ownership interest in any intellectual property that is owned or licensed by the Company and shall be used by Buyer solely for the purposes of selling the Products. With respect to any

intellectual property that is owned or licensed by the Company, Buyer shall not do any of the following: (a) take any action that interferes with or is adverse to any of the Company's rights thereto, including the Company's ownership or exercise of such rights; (b) challenge any of the Company's rights, title, or interest thereto, (c) register or apply for registrations, anywhere in the world, for the Company trademarks or any other trademark that is similar to the Company's trademarks or that incorporates the Company's trademarks in whole or in confusingly similar part; (d) use any mark, anywhere, that is confusingly similar thereto; (e) engage in any action that tends to disparage, dilute the value of, or reflect negatively such intellectual property or on any Products; (f) use it as a domain name without prior written consent from the Company; (g) sell the Products under any other mark; and (h) deface, alter, obscure, change, revise, remove, cover up, or otherwise interfere with any trademarks or other intellectual property of the Company that is attached, affixed, or appurtenant to the Products (or otherwise enclosed with the Products) or any marketing or other materials provided to Buyer in connection with the Products.

13. Mandatory Insurance Coverage by Buyer. Each time that any Buyer who is a merchant (as defined in Article 2 of the UCC) submits an Order (and through the date on which it indefeasibly pays to the Company the full amount of such Order), Buyer will be insured for such transaction by insurance companies that are rated B+ or better by AM Best, Standard & Poor's, or similar rating agency commercially reasonable coverage limits for Commercial General Liability per occurrence and in the aggregate (including premises and operations, personal and advertising injury and products and completed operations liability coverage); and (b) such other form and dollar coverage of insurance as the Company reasonably requests of Buyer in connection with any Order or purchase of any Product.

14. Miscellaneous. Buyer shall not assign (whether by operation of law or change of control) their rights or delegate any of their obligations under this Contract, and any attempted assignment or delegation by Buyer will be invalid and ineffective against the Company. This Contract is binding on and inures to the benefit of each party and each of their heirs and valid assignees and/or successors-in-interest. This Contract may be executed and delivered by facsimile and/or Internet e-mail and in counterparts, each of which shall be deemed an original and collectively the same agreement. A waiver, discharge, amendment or modification of this Contract will be valid and effective only if evidenced by a writing that is signed by or on behalf of the party against whom enforcement is sought. *The Company has the right to amend or modify this Contract as a condition to accepting or fulfilling any Order submitted after the effective date of this Contract.* No delay or course of dealing by a party to this Contract in exercising any right, power or remedy under this Contract will operate as a waiver of any right, power or remedy of that party, except to the extent expressly manifested in writing by that party. The failure at any time of any party to require performance by another party of any provision in this Contract will in no way affect

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that party's right thereafter to enforce that provision or this Contract. In addition, the waiver by a party of a breach of any provision of this Contract will not constitute a waiver of any succeeding breach of that provision or a waiver of the provision itself. Whenever possible, each provision of this Contract should be construed and interpreted so that it is valid and enforceable under applicable law. This Contract (and any other document explicitly incorporated by reference, including each invoice by the Company to Buyer with respect to any Order) records the entire understanding between them with respect to (and supersedes any previous or contemporaneous agreement, representation or understanding, oral or written, by any party in connection with) the parties' obligations with respect to the transactions contemplated by this Contract. In any arbitration or legal proceeding between and/or among the parties arising in connection with this Contract, the losing party shall reimburse the prevailing party, on demand, for all reasonable costs incurred by the prevailing party in enforcing, defending, or prosecuting this Contract. The validity, enforcement, construction and interpretation of this Contract are governed by the laws of the State of New York and the federal laws of the United States of America, excluding the laws of those jurisdictions pertaining to resolution of conflicts with laws of other jurisdictions. Each signatory to this Contract (a) consents to the personal jurisdiction of the state and federal courts having jurisdiction in the State of New York, (b) stipulates that a proper and convenient venue for any-legal proceeding arising out of this Contract is the applicable court of the State of New York located in Suffolk County, for a state trial court proceeding, and the United States District Court for the Eastern District of New York—Suffolk Division, for a federal trial court proceeding, and (c) waives any defense, whether asserted by motion or pleading, that those venues are improper or inconvenient. EACH SIGNATORY TO THIS AGREEMENT KNOWINGLY, VOLUNTARILY, AND INTENTIONALLY WAIVES THE RIGHT TO A JURY TRIAL IN ANY LAWSUIT IN CONNECTION WITH THIS AGREEMENT, WHETHER AT LAW OR IN EQUITY, WHETHER BASED ON A CLAIM, CROSS-CLAIM, OR COUNTERCLAIM ARISING BEFORE OR AFTER THE EFFECTIVE DATE OF THIS AGREEMENT, REGARDLESS OF THE NATURE OF THE CLAIM OR COUNTERCLAIM, AND INCLUDING CLAIMS UNDER TORT, CONTRACT, CORPORATE, EMPLOYMENT, AND INTELLECTUAL PROPERTY LAWS. The language used in this Contract will be deemed to be the language chosen by the parties hereto to express their mutual intent, and no rule of strict construction will be applied against any party hereto. In no event shall either party and/or their respective representatives (including, without limitation each party's (and such party's respective representatives') successors-in-interest) be liable to the other for any consequential, special, punitive, and/or incidental damages for any person's breach of this Contract. The affiliates of the Company (as they exist from time to time while this contract is in effect) are third-party beneficiaries of the Company's rights in connection with this Agreement. This Contract will become effective when all parties sign it

and upon the Company's initial delivery of any Products pursuant to any Order (and shall remain in effect until superseded by a subsequent written agreement between Buyer and the Company). In the event of any conflict, contradiction, or difference between (i) any clause in any Order or any similar communication of Buyer to the Company and (ii) any clause in this Contract or the applicable invoice from the Company to Buyer—in connection with any Order, the clause in this Contract or such invoice will supersede and prevail. In the event of any conflict, contradiction, or difference between (i) any clause in this Contract and (ii) any clause in an invoice from the Company to Buyer—in connection with any Order, the clause in such invoice will supersede and prevail.