

# Conditions of Purchase

of the Wilhelm Schimmel Pianofortefabrik GmbH, Braunschweig, Germany

## § 1 Sphere of application

- (1) All orders and purchase orders are based exclusively on the following terms and conditions, also in the case that we do not specifically refer to these terms and conditions in the future. The Seller declares his consent to the validity of these terms and conditions with the confirmation of the order and/or the uncontradicted acceptance of a previous order.
- (2) All alterations or supplements to these terms and conditions must be submitted in written form.
- (3) These terms and conditions are also specifically valid in the case that the Seller informs us of his own deviating terms and conditions or submits these in written form. These deviating terms and conditions will not become subject of the contract without our specific agreement or that of agents acting on our behalf.

## § 2 Conclusion of contract

- (1) Oral orders will be confirmed in written form by us in all cases and only become binding following this confirmation. The same applies to oral agreements which concern the subsequent alteration or augmentation of an already issued and confirmed order.
- (2) An order confirmation which deviates from the order submitted requires specific written confirmation on our part.
- (3) We are bound to an order for two weeks following receipt by the Seller. An order confirmation received after this time limit will be considered as a new offer on the part of the Seller and requires our specific written acceptance.
- (4) Should the Seller have obligated himself to delivery on call, our delivery schedule will become binding should the Seller not have submitted an objection within three days following receipt of the schedule.
- (5) We retain the property rights and copyright for all models, tools, illustrations, drawings, calculations and other documents made available by us. Without our specific consent, the corresponding documents must not be made available to third parties and / or reproduced. Should we express our consent, the Seller must obligate his contractual partner according to Clause 1. The Seller must provide us with evidence that he has informed his contractual partner of the rights to which we are entitled. The parties will agree on a contractual fine for the case of breach of duty concerning the aforementioned obligation. We reserve the right to the assertion of additional damages.
- (6) The contractual partner commits himself to adhere to all relevant safety and environmental regulations, especially the German „Gefahrstoffverordnung“ and to all regulations mentioned therein. The contractual partner commits himself to only delivering goods and services free of halogens (or compounds of it). If the contractual partner is not able to do so, he is to inform Wilhelm Schimmel Pianofortefabrik GmbH immediately. If the contractual partner is to deliver chemicals or hazardous substances (as described in the „Gefahrstoffverordnung“), he is obliged to provide a current EU-security data sheet (according to REACH) without request.

## § 3 Prices / Payment

- (1) All orders for deliveries and services submitted by us are quoted free of freight charges to the place of destination stipulated by us including packaging.
- (2) We will make payment at our own option by cash, cheque or bank transfer within 90 days following receipt of the invoice. In the case of payments made within 14 days following receipt of invoice, we are entitled to deduct a trade discount of 3%.
- (3) Demands to our company on the part of the Seller cannot be transferred to third parties without our written consent.

## § 4 Delivery dates

- (1) Should we have agreed on a fixed delivery date or dates, these dates must be adhered to without fail. The Seller is obligated in all cases to inform us immediately in written form of potential delays as soon as the cause for delay has become known.
- (2) Should we have reached mutual agreement with the Seller regarding a fixed delivery date and / or delivery period, the Seller is obligated according to § 280 I, II BGB [German Civil Code] in conjunction with § 286 II No. 2 BGB to pay us damages without the necessity of a reminder or imposition of a time limit. The assertion of further damages will remain unaffected.
- (3) The Seller is obligated to pay a contractual fine amounting to 0.1% of the net order total per working day should he be responsible for the delay. The maximum level of the contractual fine is limited to an amount corresponding to 10 % of the net order total. The assertion of further damages remains reserved.

## § 5 Delivery

- (1) The delivered goods are transferred without reservation to our ownership at the point in time of delivery.

## § 6 Withdrawal

- (1) Should we have been unsuccessful following the appointing of a reasonable time limit for the service or supplementary performance, we are permitted to withdraw from the contract.
- (2) The appointing of a time limit according to Clause 1 is not essential should:
  - the Seller refuse seriously and irrevocably to perform the service,
  - the Seller not deliver the goods within the date stipulated in the contract or within a specific time limit (§ 4 Par. 1),
  - exceptional circumstances exist which justify immediate withdrawal in consideration of both parties' interests.
- (3) We are entitled to withdraw prior to the due date should it be apparent that the preconditions for withdrawal will be fulfilled.

- (4) We are also entitled to withdraw should we have no interest in a partial delivery performed by the Seller.
- (5) We are further entitled to withdraw should the Seller significantly violate his contractual obligations.
- (6) Our right of withdrawal is also upheld should the Seller be objectively unworthy of credit and our entitlement to performance thereby appear to be endangered. The same is applicable should the Seller have made a statutory declaration and / or insolvency proceedings have been instigated concerning his assets.
- (7) Our right of withdrawal is excluded should the reason for withdrawal be at least for the most part due to negligence on our part and/or we are in default of acceptance.
- (8) We specifically reserve the right of assertion of claims for damages in addition to the exertion of the right of withdrawal.
- (9) The Seller is entitled to exert his legal rights of withdrawal in their entirety.

## § 7 Dispatch/Packaging

- (1) Should we have issued particular instructions to the Seller concerning the method of dispatch and the Seller deviates from these instructions without any compelling reason, he undertakes liability for the resulting damage. Should no specific instructions have been issued on our part, the Seller must perform or authorise the dispatch of goods with due diligence.
- (2) The Seller must send us notification of dispatch via fax or e-mail, at the latest on the day of dispatch, quoting exact details of the delivery item or quantities thereof or other relevant calculation dimensions and the date and number of our order.

## § 8 Rights of third parties

- (1) The Seller is responsible for ensuring that the goods delivered to us do not violate any industrial property rights or other rights of third parties.
- (2) Should third parties assert claims against us due to circumstances covered by Par. 1, the Seller is obligated to release us from all liability.
- (3) Should damages have already occurred, the Seller must pay compensation following our initial request.

## § 9 Purchaser's rights concerning damages

- (1) In the case of the defectiveness of an object, we are permitted to demand the elimination of the defect or the delivery of an object free of defects.
- (2) The Seller will undertake any expenses incurred through the supplementary performance, in particular transport, transport distances and work and material costs.
- (3) The Seller is only permitted to decline to accept our selected mode of supplementary performance should this performance only be possible through the incurrance of disproportionately high costs. In this case, our rights are limited to the other method of supplementary performance. The right of the Seller regarding the supplementary performance and associated disproportionately high costs also remains unaffected in this case.
- (4) Should we have decided on the elimination of the defect according to Par. 1 and this elimination has not been achieved following two unsuccessful attempts to rectify the defect, no time limit must be set for any demands for compensation and/or withdrawal on our part. This is only not applicable in the case that the circumstances prove otherwise, in particular due to the nature of the object and/or defect or other conditions.
- (5) Should our request for withdrawal be excluded according to Par. 4, Clause 2, we are in all cases entitled to reduce the purchase price according to the proportion which would have been calculated between the value of the object without defects at the time of contractual conclusion and the actual value of the object. We reserve the right to opt directly for the reduction of the purchase price in place of non-fulfilment.
- (6) We obligate ourselves to give notice of obvious defects to the delivered object within five working days following delivery to the agreed place of destination. Hidden defects will be communicated by us in a notice of defects within five working days following the discovery of these defects.
- (7) Should we be justified in requesting the elimination of a defect and / or compensation delivery, we are permitted to withhold an appropriate proportion of the purchase price amounting to a minimum of threefold the necessary costs for the elimination of the defect.
- (8) Our rights concerning defects become statute-barred 36 months following delivery of the object.

## § 10 Liability

- (1) We will only undertake liability for violations of duty which have been brought about by at least gross negligence on the part of our company, our legal representatives or vicarious agents.
- (2) We will also undertake liability for violations of duty which have been brought about by slight negligence on the part of our company, our legal representatives or vicarious agents. In this case, our liability is however limited to typical foreseeable damages at the time of contractual conclusion.

## § 11 Applicable law/place of jurisdiction

- (1) The contractual relations between the Seller and us are exclusively subject to German laws to the exclusion of UN Purchase Law.
- (2) The place of jurisdiction for all disputes arising from this contractual relationship is Braunschweig.

## § 12 Place of fulfilment

- (1) The place of fulfilment for all contractual demands is Braunschweig.