



General terms and conditions of delivery and payment

of the Wilhelm Schimmel Pianofortefabrik GmbH, Braunschweig, Germany

§ 1 Sphere of application

- (1) All delivery transactions, agreements and offers within commercial business transactions 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 customer declares his consent to the validity of these terms and conditions with the acceptance of the order and / or service.
- (2) These terms and conditions are also specifically valid in the case that the customer 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.
- (3) All alterations or supplements to these terms and conditions must be submitted in written form.
- (4) Partial deliveries are admissible provided that these are not unreasonable for the customer.
- (5) In the event that the customer culpably refuses to accept the delivery of the goods, he is obligated to pay us compensation for damages amounting to 0.1% of the total net sum of the order per working day. The total for the liability for damages is limited to 10% of the entire net sum of the order. Claims exceeding this limit re-main specifically reserved. The customer is however specifically permitted to provide evidence that a lower level of damages has ensued than that which has been asserted.
- (6) Should the customer refuse to accept delivery, we are entitled to deposit the non-accepted goods. Should it not be possible to deposit the object, we are permitted to auction this object in Braunschweig taking into consideration the justified interests of the customer and deposit the proceeds. Should a reasonable success not be expected for an auction in Braunschweig, the object can be auctioned at an other more suitable location. We will warn the customer prior to the auction in as far as this is not inappropriate (§ 384 Abs. 3 BGB [German Civil Code]). We will reserve the legal assertion of our demands for acceptance and payment in all cases. This is equally valid for any torts and / or rights of withdrawal.

§ 2 Conclusion of contract

- (1) Oral agreements require our written confirmation.
- (2) We retain the property rights and copyright for all data, illustrations, drawings, calculations and other documents made available. Without our specific consent, this data and / or information must not be made available to third parties and / or reproduced.
- (3) Should the order confirmation deviate from the verbal order, the former will be considered to be contractually agreed should this confirmation not be contradicted in written form within 5 working days following dispatch.

§ 3 Prices / payment

- (1) Our invoices are to be paid immediately.
- (2) An annual rate of eight per cent above the basic interest rate is applicable for late payment. The assertion of further claims for damage due to delay are reserved.
- (3) Cheques will only be accepted as a conditional payment; bills of exchange will only be accepted as a conditional payment and only on the basis of an individual agreement.
- (4) The customer can only assert rights of set-off and rights of retention in the case of undisputed, recognised demands or demands which have been established through legal channels.
- (5) Circumstances which occur four months following conclusion of the contract and which significantly affect the basis of calculation and are beyond our scope of influence entitle us to undertake an adjustment of the agreed price within a range corresponding to these circumstances. This is particularly applicable in the case of changes in legislation, official measures etc. The amended price is based on the same basis of calculation as the originally agreed price and does not serve the purpose of increasing profits.

§ 4 Delivery

- (1) An agreed delivery date is deemed to have been adhered to when the goods ordered have left the warehouse or, in the case of dispatch ex works, the works, within the stated date, or readiness of dispatch has been communicated. This is not applicable in the case that we undertake delivery ourselves.
- (2) Should the customer undertake actions or bring about conditions without which our delivery and services could not be carried out, the delivery date will be postponed or extended by the appropriate period of time.
- (3) Should we be hindered in the fulfilment of our commitments in the event of force majeure beyond our control which was not foreseeable at the time of the conclusion of the contract, such as industrial action, strikes, lock-out, unforeseeable operational disruption or unavoidable shortages of raw materials and similar conditions for which we are not responsible, we are relieved of our obligation to render services for the duration of this disruption. Stipulated delivery dates will be extended to cover the duration of this disruption. Claims for damages on the part of the customer are excluded for conditions of the types mentioned above. The contractual obligations on the part of the customer are however also suspended for the duration of the disruption. We will inform the customer immediately of the commencement and conclusion of the disruptions due to force majeure in the sense of this clause and will provide evidence that we were not responsible for the disruption at the latest 6 months following the end of the disruption. The right of cancellation on the part of both parties according to legally valid regulations remains unaffected.
- (4) Paragraph 3 does not apply should it be possible to establish failure to take delivery or accept, or negligence with respect to taking de-liv-ery or accepting on our part.
- (5) Should the delivery be delayed due to circumstances for which the customer is responsible, the customer is obligated to compensate us for all resulting additional expenditure.

§ 5 Delivery

- (1) The customer undertakes the price risk as soon as the goods are delivered to the addressee of the delivery. This does not apply in the case that we have undertaken delivery ourselves.
- (2) On request of the customer, the goods will be insured for theft, breakage, transport, fire and water damage and all other insurable risks. The ensuing costs will be carried by the customer.

§ 6 Reservation of ownership

- (1) We reserve ownership of the delivery object up until the receipt of all payments ensuing from the business relationship with the customer. The reservation of ownership also extends to the recognised balance, insofar as we book the demands made to the customer via a current account (current account reservation).
- (2) We are permitted to claim recovery of possession of the object from the customer should we have declared the cancellation of the contract. The garnishment of the delivery object represents the cancellation of the contract in all cases. In the case of garnishment or other actions on the part of third parties, the customer is obligated to inform us immediately of the circumstances in order that we are able to take legal action according to § 771 ZPO [German Code of Civil Procedure]. Should the third party not be in a position to reimburse us with the legal and non-legal costs of a legal action according to § 771 ZPO, the customer is liable for our ensuing losses.
- (3) The customer is permitted to resell the delivery object according to regular business proceedings; in the case of outstanding payments, he already at this point transfers to us all ensuing demands to his buyer or third party amounting to the final total of the invoice (including VAT) ensuing from this resale, independently of the fact as to whether the delivery object has been resold with or without agreement. The customer is also authorised to collect the outstanding amount following its transfer. We are entitled to collect the demands ourselves; we however hereby obligate ourselves not to collect the demands as long as the customer fulfils all payment obligations and does not fall behind in payment. Should this occur, we are permitted to demand that the customer should inform us of the transferred claims and the relevant defaulter, provide all necessary information for collection, deliver all relevant documents and inform the defaulter (third party) of the transfer.
- (4) Should the delivered object be inseparably joined or mixed with other objects not in our possession, we acquire the joint ownership of the new object in the proportion of the value of the delivered object to the other joined or mixed objects at the time of the joining or mixing. Should the joining or mixing be carried out in a manner such that the object belonging to the customer is to be viewed as the principle object, it is deemed that an agreement has been reached according to which the customer transfers the relevant proportion of his joint ownership to us. The customer will reserve the sole or joint ownership on our behalf.
- (5) The customer is entitled to demand from us the release of reserved property should the securities exceed 110% of the marketable value. The entitlement of release also exists in the case that the estimated value of the transferred goods amounts to 150% of the demands to be secured.

§ 7 Customer rights in the case of defects

- (1) Should a complaint be lodged immediately in the case of a defect to the delivered object, we are free to choose between the options of substitute delivery or the rectification of the defects. Apparent defects must be demonstrably notified to us immediately, at the latest within three days following delivery. This time limit is applicable to inherent defects from the date of the discovery of such defects. Should the rectification of the defects be unreasonable or is unsuccessful, the customer can demand a reduction or the reversal of the contract. Should a complaint concerning defects not be made within the time limit in the sense as described above, the customer will forfeit his entitlement to supplementary performance.
- (2) The rights concerning entitlement to supplementary performance expire twelve months following delivery. The customer is obligated to adhere to the instructions issued by us concerning the storage of the delivered object in order to retain the object in the best possible condition.
- (3) Should a repair order have been issued by the customer, we are free to choose between the elimination of the defects and the delivery of new goods.
- (4) Should we replace components during the rectification of the defects, these will become our property.
- (5) The customer is obligated within reasonability to provide us with the opportunity to undertake all necessary repair of defects. Should the customer default on the relevant necessary actions, we will not undertake any further liability for incurred damages. Should the defects of the object have occurred due to improper use or the actions of third parties who had not been specifically authorised on our part, the customer will carry the cost of the repair. We will inform the customer of this prior to the carrying out of repairs. Should the customer subsequently reject the repair under these conditions, he will reimburse us for all relevant expenses incurred.



- (6) We are liable for damages resulting from the defectiveness of the object only if these damages be attributable to gross negligent or culpable violation on the part of our firm, our legal representatives or vicarious agents. In addition, we do not undertake the liability for a fault which can be attributed to a specification wished by the customer. The above does not apply to foreseeable damages originating from the violation of essential contractual duties. In this case, we are only liable should the damages have been foreseeable at the date of contractual conclusion. We undertake no liability for unforeseeable excess risks.
- (7) The limitation described above is specifically not applicable should the liability for damages to life, body and health be established as originating from our culpable violation of duties or those of our legal representatives or vicarious agents.
- (8) In the case that we have undertaken a guarantee for a specific nature of property or condition of the sold object over a fixed period of time, the paragraphs 2, 3, 6 and 7 are not applicable.
- (9) Claims on the basis of the product liability laws remain unaffected.
- (10) For all disputes arising from or associated with contracts concluded on the basis of this legislation, an arbitration process will be initiated according to the arbitration regulations of the German Institution for Arbitration (Deutsche Institution für Schiedsgerichtsbarkeit e. V. [DIS]) in the valid version at the time of initiation of proceedings.

§ 8 Exclusion / limitation of liability

- (1) All further claims concerning compensation for damage of any nature, in particular those concerning culpability at the time of the conclusion of the contract or due to the violation of contractual or legal secondary obligations, can only be asserted by the customer should these can be attributed to at least gross negligent violation of duties on our part or on the part of our legal representatives or vicarious agents.
- (2) Paragraph 1 is not valid for foreseeable damages due to the violation of essential contractual obligations. In the occurrence of such a case, we however only undertake to the extent that the damages were foreseeable. We undertake no liability for unforeseeable excess risks.
- (3) Paragraph 1 is also specifically not valid should a claim for damages originating from the liability for damages to life, body and health be justified due to a culpable violation of duties on our part or on the part of our legal representatives or vicarious agents.

§ 9 Withdrawal

- (1) We are permitted to withdraw from the contract should essential circumstances beyond the capacity of our influence concerning the implementation of the contract have developed following confirmation of the contract, with the result that the service is rendered impossible or is unreasonably impeded (e.g. non-delivery by the sub-deliverer or delivery only possible under considerably difficult conditions).
- (2) We are also permitted to withdraw from the contract should the customer have significantly violated his contractual obligations, in particular should it be possible to allege that he has infringed his duty of care in connection with the treatment of the goods delivered under reservation of ownership.
- (3) Our right of withdrawal is also upheld in the case that the customer provides false information regarding his creditability. This is also applicable should the customer be objectively not creditworthy and our pecuniary claim appears to be endangered; the same is applicable in the case that the customer has made a statutory declaration.
- (4) For all other eventualities, our right of withdrawal and that of the customer are governed by legal regulations.

§ 10 Repurchase of delivered goods

Goods which we have delivered will in principle only be repurchased following an individual agreement.

§ 11 Choice of jurisdiction/place of jurisdiction

- (1) For the contractual agreements between the parties, German laws are exclusively valid. In particular, the UN Law on Sales is not applicable.
- (2) The place of jurisdiction for all disputes arising from this contractual relationship is Braunschweig.

§ 12 Place of performance

The place of performance for all contractual requirements is Braunschweig.