

**GENERAL TERMS AND CONDITIONS for trading in sheet music, musical instruments and related articles** of ... (company name), having its registered office and principal place of business at ... (company address), filed with the registry of ... (name of registry office) on ... (register date) under number ... (register number).

## **Definitions**

In these general terms and conditions, the following terms have the stated meaning, unless expressly indicated otherwise.

- **the seller:** the private limited company, ... (company name) which applies these terms and conditions;
- **the buyer:** the other party who is a natural person and not acting in the course of a business or profession;
- **the agreement:** the agreement between the seller and the buyer;
- **the item:** the article, articles and/or services for which a contract of purchase and sale is concluded;
- **the consumer sale:** the contract for purchase and sale relating to a movable item, which is concluded by a sales representative who is acting in the employment of the user of the general terms and conditions, and the consumer, a natural person who is not acting in the course of a profession or business.

## **Article 1: General**

1. These terms and conditions apply to every offer, proposal and agreement entered into between the seller and buyer, as well as to every delivery of items by the seller to the buyer, including but not limited to sheet music, with or without the accompanying image and/or sound carriers, musical instruments and related articles, to which the seller has declared these terms and conditions applicable, insofar as the parties have not expressly deviated from them in writing.

2. The following terms and conditions also apply to agreements with the seller, as referred to in paragraph 1 of this provision, for the performance of which third parties need to be involved.

3. Any deviations from these general terms and conditions are valid only if these have been expressly agreed in writing.

## **Article 2: Offers and proposals**

1. All offers and proposals are non-binding and provided in any written form, unless the seller waives the need for a written offer on practical, urgent or other grounds. The offer must contain a date or its date must be determinable. This also applies to multi-part works, to which one or more long publication periods apply, as well as to works that must be ordered abroad.

2. The seller is bound by offers and proposals only if the consumer accepts them, in writing, within 30 days. Unless indicated otherwise, the prices specified in offers and proposals are in euros and include the applicable statutory VAT rate, but exclude any compulsory statutory

disposal contribution and any dispatch and delivery charges.

3. The seller cannot be held bound by its offers and proposals if the consumer, according to criteria of reasonableness and fairness and generally accepted standards, ought to have understood that the offer or proposal, or a part thereof, contains an obvious mistake or clerical error.

4. A combined quotation does not oblige the seller to deliver part of the items included in the quotation or offer for a corresponding proportion of the quoted price.

5. Offers or proposals do not automatically apply to subsequent orders.

### **Article 3: Conclusion of an agreement**

The agreement is concluded when the buyer accepts the seller's offer in due time.

### **Article 4: Delivery**

1. Unless agreed otherwise, delivery is ex shop or warehouse of the seller.

2. The buyer is obliged to take delivery of the purchased items when these are made available or handed to him.

3. If the buyer refuses to take delivery or is negligent in providing information or instructions that are necessary for the delivery of the purchased item, the items intended for delivery will be stored at the buyer's risk after the seller has notified him in this regard. The buyer will be liable for all additional costs in that case.

4. If the seller and buyer agree on delivery or dispatch, the purchases will be delivered or dispatched at the buyer's expense, unless the seller and buyer agree otherwise. The seller reserves the right to invoice the delivery costs separately on delivery.

5. If it has been agreed that delivery will be in phases, the seller may suspend the performance of those parts of the delivery that belong to a subsequent phase until the buyer has approved the results of the previous phase.

6. If the seller requires information from the buyer for the performance of the agreement, the delivery period will commence after the buyer has provided this information to the seller.

7. Any period that the seller has specified for delivery is indicative. A specified delivery date is therefore never a strict deadline. However, the actual delivery date may not exceed the specified delivery date by more than two months, except in case of force majeure. If this period is exceeded, the buyer should give the seller a written notice of default and may then cancel the order.

### **Article 5: Transport**

1. Unless agreed otherwise, all goods ordered by the buyer are to be delivered by the seller or sent for delivery to the agreed locations in the manner as specified in the order confirmation, or as subsequently agreed, at the buyer's expense. All facilities for delivery of the goods/services are deemed to have been made available at the buyer's risk.

2. The goods are to be transported in a manner determined by the seller.
3. The seller is insured against damage that arises during or because of transport. Once the buyer takes delivery of and thus accepts the item, any form of liability of the seller for any damage to the item that arises during or because of the transport ceases to apply, even if the seller is still the owner of the item delivered in accordance with Article 12.
4. If the transport of the goods has to be cancelled owing to reasons dependent on the buyer's will, the seller will be entitled to store the goods at the buyer's expense and risk, notwithstanding the user's right to claim payment of the purchase price.

#### **Article 6: Warranty for items other than sheet music**

1. The seller warrants that the item, which forms part of the agreement, has the properties that the buyer is entitled to expect on the basis of the agreement, for which purpose the statements that the seller has made about the item, as well as the nature of the item, are of particular but not exclusive importance.
2. The warranty referred to in paragraph 1 of this article also applies if the item is intended for use abroad, provided that the buyer gave express notice of this use, in writing, when entering into the agreement.
3. Unless expressly stated otherwise, the warranty referred to in paragraph 1 of this article applies for a period of twelve months after delivery.
4. The buyer cannot rely on the fact that an item does not conform to the agreement if this was known, or could reasonably have been known, when entering into the agreement. The buyer also cannot rely on the fact that an item does not conform to the agreement when this is due to defects or the unsuitability of raw materials from the buyer, unless the seller should have warned the buyer of these defects or this unsuitability and failed to do so.

#### **Article 7: Inspection, complaints and liability**

1. The buyer is obliged at the time of delivery or handover, or at least within the shortest possible time afterwards, to carry out – or to arrange for a third party to carry out – an inspection. The buyer ought to inspect whether the quality and quantity of the item(s) delivered conforms to what has been agreed, all with due observance of the provisions of Article 6, paragraph 1 of these terms and conditions.
2. In relation to sheet music, the buyer must report any deficiencies as referred to in paragraph 1 of this article in writing to the seller within three working days of delivery, simultaneously providing proof of purchase, which is also the warranty certificate of the defective item, unless this is impossible or unreasonably burdensome.
- 3.1. In relation to items other than sheet music, the buyer must report any visible deficiencies in writing to the seller within three working days of delivery, simultaneously providing proof of purchase, which is also the warranty certificate of the defective item, unless this is impossible or unreasonably burdensome.
- 3.2. The buyer must also report any hidden deficiencies in items other than sheet music to the seller, within a reasonable period after he has discovered, or reasonably ought to have discovered, that the item delivered does not conform to the agreement, simultaneously

providing proof of purchase, which is also the warranty certificate of the defective item, unless this is impossible or unreasonably burdensome.

3.3. If an item other than sheet music appears to be lacking a property that it possessed according to the seller, or if this difference relates to facts that the seller was or ought to have been aware of but did not disclose, the buyer must notify the seller of this within a reasonable time after its discovery, for which purpose a notice within two months of discovering the defect serves as a notice that is given in due time, i.e. within a reasonable period. The proof of purchase, which is also the warranty certificate of the defective item, must be handed over simultaneously, unless this is impossible or unreasonably burdensome.

3.4. It is expressly noted that the buyer must comply with the provisions of paragraphs 3.2 and 3.3 of this article – if applicable – in order to be able to claim against the warranty scheme included in Article 6 of these terms and conditions.

4. The seller does not accept any liability for any damage or loss caused by delivery periods or orders failing to materialise at and/or from its supplier.

### **Article 8: Samples and models**

If the seller shows or provides a model or sample to the buyer, other than in the case of sheet music, the seller warrants that the item will correspond to it, unless showing or providing such a model or sample served only for indicative purposes.

### **Article 9: Liability for items delivered**

1. If the items delivered by the seller are defective, the seller's liability towards the buyer is limited to what is stipulated in Articles 6 and 7 of these terms and conditions.

2. If the producer of a defective item is liable for consequential damage, the liability of the seller, which can arise only from the provisions of Articles 6 and 7 of these terms and conditions, is limited to the repair or replacement of the item, or to a refund of the purchase price. The seller is expressly not liable for damage/loss suffered or any lost profits due to a defective item.

3. Notwithstanding the above, the seller is not liable if the damage/loss is due to intent and/or gross negligence and/or culpable acts, or to improper and/or inappropriate use by the buyer.

4. The limitations of liability for direct damage/loss in these terms and conditions do not apply if the damage/loss is due to the intent and/or gross negligence of the seller and/or its employees.

### **Article 10: Passing of risk**

The risk of loss or damage to the items that are the object of the agreement passes to the buyer when these items are delivered or handed over to the buyer, or, in case of distance buying, when these items are delivered to the buyer or collected by the buyer from the agreed delivery point and thereby come under the control of the buyer or a third party designated by the buyer.

### **Article 11: Price determination and changes**

1. For the purpose of determining the price of sheet music to be supplied by the seller, reference is made to the Dutch Act of 9 November 2004 containing rules on fixed book prices, namely the Retail Price Maintenance (Books) Act (*Wet op de vaste boekenprijis*), which entered into force on 1 January 2005 and has been further elaborated in some respects by the Retail Price Maintenance (Books) Decree (*Besluit vaste boekenprijis*), which entered into force on 27 July 2005.

2. The Dutch Media Authority (*Commissariaat voor de Media*) is responsible for supervising compliance with the above legislation. Questions, comments, etc. can be directed to it at [www.cvdm.nl](http://www.cvdm.nl).

3. If the agreement concluded between the parties relates to items other than sheet music and the parties agreed on a certain price when entering into the agreement, the seller is nevertheless entitled to increase the price, even if the price was not originally made subject to change.

4. If a price increase, as referred to in paragraph 3, is announced within three months of the conclusion of the agreement, the buyer may terminate the agreement by means of a written notice, regardless of the percentage of the increase.

#### **Article 12: Payment**

1. Unless agreed otherwise, payment must be made net in cash, by debit card or by credit card(s) that are accepted by the seller at the time of delivery.

2. If payment is not made in cash on delivery, it must be made on credit, within 14 days of the invoice date, in the manner indicated by the seller. The seller reserves the right to refuse payments on credit without providing any reason.

3. Objections against the amount of an invoice do not suspend the payment obligation.

4. After the expiry of 14 days after the invoice date, the buyer will be in default by operation of law and then owe interest at 3% a month on the outstanding amount, unless the statutory interest is higher, in which case the statutory interest will apply.

5. If the event of insolvency, a moratorium on the payment of debts or guardianship, the seller's claims and the buyer's obligations towards the seller will become immediately due and payable.

6. In case of postal delivery, payment of the products can be made immediately after the conclusion of the agreement and must be made in any case when the products are delivered, unless expressly agreed otherwise.

7. An advance payment of no more than 50% may be required on conclusion of the agreement. If an advance payment is required, the buyer cannot enforce any rights regarding the execution of the order concerned or the relevant request for services until the stipulated advance payment has been made.

8. If payment is not made as agreed, the total amount due becomes immediately due and payable.

#### **Article 13: Retention of title**

The seller remains the owner of the item until the buyer complies fully with his payment obligation under this agreement, including any amounts that the buyer owes in addition to the principal sum for failing to comply with his obligations.

#### **Article 14: Suspension and termination**

1. The seller is entitled to suspend the performance of its obligations or to terminate the agreement if:

- the buyer fails to comply, or fails to fully comply, with his obligations under the agreement;
- after entering into the agreement, the seller becomes aware of circumstances that give it good reason to fear that the buyer will not comply with his obligations. If there is good reason to fear that the buyer will only partially fulfil his obligations, or will not properly fulfil his obligations, suspension is permitted only insofar as the failure to perform justifies it;
- when entering into the agreement the buyer is requested to provide security for the fulfilment of his obligations and this security is either not furnished or is inadequate.

2. The seller is further entitled to terminate, or to have the agreement terminated if circumstances arise of such a nature that performance of the agreement is impossible or can no longer be required according to criteria of reasonableness and fairness, or if circumstances otherwise arise of such a nature that the unaltered maintenance of the agreement may not reasonably be expected.

3. If the agreement is terminated, the seller's claims against the buyer will become immediately due and payable. If the seller suspends the performance of its obligations, it retains its claims by law and under the agreement.

4. The seller always reserves the right to claim compensation.

#### **Article 15: Collection costs**

1. If the buyer is in breach or default with one or more of his obligations, all reasonable costs for obtaining payment, both **judicially and** extrajudicially, are payable by the buyer. The buyer is at least liable for collection costs in case of a due and payable monetary claim. Collection costs are calculated in accordance with the generally recognised methods in Dutch case law for collection cases, and are subject to a minimum of 15% of the claim.

2. If the seller proves that it has incurred higher costs, which were reasonably necessary, these also qualify for reimbursement.

3. Any court costs and costs of enforcement are also payable by the buyer.

4. The buyer is liable for interest on the collection costs.

#### **Article 16: Indemnities**

1. The buyer indemnifies the seller against third-party claims relating to intellectual property rights on the materials or data that are provided by the buyer and used in the performance of the agreement.

2. If the buyer provides data carriers, electronic files or software, etc. to the seller, he warrants that these data carriers, electronic files or software are free of viruses and defects.

## **Article 17: Intellectual property and copyright**

1. Notwithstanding the other provisions of these general terms and conditions, the seller reserves the rights and powers that it is entitled to under the Dutch Copyright Act (*Auteurswet*).
2. The buyer is not permitted to make alterations to the items, unless this follows from the nature of the item delivered or has been agreed in writing.
3. Unless agreed otherwise, any designs, sketches, drawings, films, software, other materials, electronic or other files that are created by the seller for the purpose of the agreement remain the seller's property, regardless of whether these are made available to the buyer or third parties.
4. All documents provided by the seller, including designs, sketches, drawings, films, electronic or other files, etc., are exclusively intended for use by the buyer and may not be reproduced, published or disclosed by him to third parties without the seller's prior consent, unless the contrary is clear from the nature of the provided documents.
5. The seller reserves the right to use the knowledge acquired through the performance of the work for other purposes, provided that this does not involve the disclosure of confidential information to third parties.

## **Article 18: Unauthorised acts by the buyer in relation to sheet music**

1. If the agreement between the parties relates in whole or in part to sheet music, it must be noted that possession of printed music does not imply that this music may be copied. If the work is copyright-protected, the written consent of the publisher is required for this purpose.
2. If the author of a musical work – which includes the composer, lyricist, arranger and/or editor – or one of the authors, in case of several authors, is alive or died less than 70 years ago, the work is copyright-protected. The author, or his legal successor, such as the music publisher in case of sheet music, retains the rights under all circumstances that are granted to him under the Dutch Copyright Act for the use of sheet music by third parties. These rights include:
  - the exclusive right to publish. Consent for the public performance of copyright-protected works must be obtained from the Bureau of Musical Copyright (*Bureau voor Muziekauteursrecht - BUMA*), Siriusdreef 22-28, P.O. Box 3080, 2130 KB Hoofddorp, tel. 023 7997999;
  - lending and renting out sheet music of all or part of the work. Sheet music may legally be lent out by public libraries that are regulated by the Public Lending Right Office (*Stichting Leenrecht*), Siriusdreef 22-28, 2130 KB Hoofddorp tel. 023 7997999 and by libraries of educational and research institutes, the National Library of the Netherlands (*Koninklijke Bibliotheek*) and libraries for the blind. All other lending and/or renting out of sheet music is prohibited, unless the rightholder gives consent;
  - the exclusive right to reproduce. Copying sheet music, save for a limited number of copies of a small part of the work for a natural person's own use, is not permitted without the consent of the rightholder. Consent for copying must be obtained from the publisher or in some cases from Stichting Musicopy, Siriusdreef 22-28, 2130 KB Hoofddorp, tel. 023 7997999;

- the exclusive right to distribute the sheet music of a work outside the European Economic Area (EEA). The publisher of the sheet music may attach rules, including prohibition, to such exporting. The publisher of the sheet music of a work in the EEA may also attach rules, including prohibition, to importing the sheet music of this work from countries that are not EEA members.

The intentional infringement of someone else's copyright is an offence on the basis of Articles 31, 31a, 31b, 32 and 33 of the Dutch Copyright Act.

3. It is expressly stipulated that the seller does not accept any form of liability if the buyer intentionally infringes someone else's copyright.

### **Article 19: Force Majeure**

1. The parties are not obliged to comply with any obligation if they are prevented from doing so by a circumstance that is not attributable to them and for which they are not accountable by law, a legal act or according to generally accepted standards.

2. The seller may also rely on force majeure if the circumstance that prevents performance, or continued performance, occurs after it should have complied with its obligation.

3. The parties may suspend their obligations under the agreement for the period that the force majeure lasts. If this period lasts for longer than two months, either of the parties is entitled to terminate the agreement without being liable to compensate the other party's damage/loss.

4. Insofar as the seller has partially performed, or will be able to partially perform, its obligations under the agreement when the force majeure commences and an independent value can be attached to the part that has or will be performed, the seller is entitled to separately invoice the part that has or will be performed. The buyer is obliged to pay this invoice as though it were for a separate agreement.

### **Article 20: Disputes**

1. The court in the place where the seller has its registered office has jurisdiction to hear disputes.

2. Notwithstanding the provisions of paragraph 1 of this article, the seller is entitled to submit a dispute to the court with statutory jurisdiction.

3. Notwithstanding the provisions of the previous paragraphs of this article, the buyer is entitled to submit a dispute to the court with statutory jurisdiction. However, the buyer must give notice of this to the seller/user within one month of the seller/user relying on the applicability of these general terms and conditions, more specifically the applicability of the provisions of Article 20, paragraph 1 hereof.

4. The parties must only approach the court after they have done their utmost to settle a dispute by agreement.

### **Article 22: Applicable law**

1. Dutch law applies to every agreement between the seller and buyer.



2. The Dutch text is always decisive for the interpretation of the content and purpose of these general terms and conditions.

### **Article 23: Amendment, interpretation and source of the terms and conditions**

1. These terms and conditions, including the following additional provisions, have been filed at the registry of the Breda District Court.

2. The last filed version or the version that applied when the agreement was concluded is applicable.

3. These terms and conditions are open for inspection at the seller's registered office and will be sent to the buyer, free of charge, on request.

### **ADDITIONAL PROVISIONS FOR DISTANCE BUYING**

#### **Article 24: General**

1. Deliveries of items are only done strictly to order, unless the seller and buyer agree otherwise.

2. The buyer must inform the seller in case of an obvious mistake. If and insofar as the nature thereof allows, the buyer must keep the goods and documents available for the seller. The buyer must do, or refrain from doing, what is required of him according to criteria of reasonableness and fairness.

#### **Article 25: Approval period and exclusions**

1. An approval period of seven working days applies to distance buying, commencing on the date after receipt by or on behalf of the buyer, unless agreed otherwise in accordance with paragraph 3.

2. During the approval period, the consumer has a right of withdrawal, by which he can either return the goods received in their original packaging, unused and complete to the seller, and be reimbursed for the direct costs of returning them, or give notice that he will not make any use of the services offered.

3. Limitations or exclusions of the approval period – on the basis of the specific nature of the goods or services concerned – must be clearly stated in the offer. The following items are excluded from the right of withdrawal in advance: sheet music, with or without the accompanying image and/or sound carriers, which has been ordered at the buyer's express request, other than within the seller's regular procedure from its supplier; sheet music, with or without the accompanying image and/or sound carriers, whose seal is or has been broken, as well as recording and sound equipment whose seal is or has been broken; items that have been manufactured according to the consumer's specifications, including but not limited to customised work, or items of a clearly personal character as well as CDs and/or DVDs, whose seal is or has been broken, and, if services are involved, those whose performance has started, with the buyer's consent, before the end of the period of seven working days.

4. The buyer may only actually rely on the approval period in the manner stipulated by the seller in the offer and/or at the time of delivery.

5. If the approval period is relied on and the purchase price is reclaimed, the costs incurred, such as for dispatch, etc., will be payable by the buyer. The transport of the item from the buyer to the seller is also at the buyer's expense and risk.