

## General Conditions of Business with Traders

04-2010 – long version

**1. Scope:** 1.1 All deliveries and offers by *Steingraeber & Söhne KG Bayreuth* (hereinafter also called “the Seller”) to traders are exclusively based upon the present **extended General Conditions of Business** which will be part of all future contracts made by the Seller with its contracting parties (hereinafter also called “Purchasers”) concerning deliveries offered by the Seller.

1.2 Purchasers’ or third parties’ terms of business will not be applied, even if the Seller does not particularly contradict their validity in a single case. Even the Seller’s reference to a letter containing - or referring to - the Purchaser’s or a third party’s terms of business will not constitute agreement to the validity of such terms of business.

**2. Conclusion of contract:** 2.1 No offer made by the Seller is binding or compulsory if not explicitly characterized as binding or containing a determined time limit for acceptance. The Seller can accept requests or orders within 14 days from receipt.

2.2 Any contract has to be made in writing. If not closed in one only document, signed by both the Purchaser and the Seller, it comes into effect only by the Seller’s written confirmation. In cases where a written confirmation is impossible, legal validity comes into effect by the shipping ex factory, Bayreuth.

2.3 Subsidiary agreements, modifications, and amendments to agreements closed - including the present General Conditions of Business - will be valid only if made in writing. They can be considered as made in writing also if transferred by telecopy or e-mail.

2.4 Due to the craftsmanship in production with natural materials as well as to the different acoustical preconditions, Seller’s indications as well as Seller’s agreements with the Purchaser concerning the object of delivery or service (e.g. weights, dimensions, load capacity, tolerances, and technical data, here especially color, structure and color of the sound) as well as the Seller’s illustrations thereof (e.g. drawings und photos) are significant only approximately. They are no guaranteed characteristics of constitution but descriptions or distinctive features of delivery or service. Divergences customary in the trade and/or based upon legal prescriptions or technical improvement, as well as the replacement of modules by parts of equal value, are admissible in as far as they will not impair the use contractually targeted.

**3. Time limits of delivery:** 3.1 Time limits and dates envisaged by the Seller always are meant only approximate, as long as no fixed date or time limit is promised or agreed explicitly in writing.

3.2 Irrespective of the Seller’s rights caused by any default on the Purchaser’s part, the Seller can also ask the Purchaser for a postponement of performance dates or - in case of the extension of performance dates - for a postponement for the time during which the Purchaser does not fulfill its contractual duties towards the Seller.

3.3 The Seller is not liable for the performance’s impossibility or delay in as far as these were caused by force majeure or by other circumstances unforeseeable at the time when the contract was closed, and for which the Seller is not responsible (all kinds of operations’ interruption; difficulties in procuring material or energy; transport delays, strikes, legitimate lock-outs; lack of workmen, energy or rough material; difficulties in procuring necessary official permissions or action by authorities; or the lacking or incorrect or untimely supply by subcontractors, etc.). Delays so caused will not create any obligation of damage reimbursement or - particularly - of granting a substitute instrument or of reimbursing the expense for actually having made use of a substitute instrument. Should such events essentially hamper or in fact prevent the Seller from performing its contractual duty, the obstacle being more than a temporary one, then the Seller is entitled to withdraw from the contract. In case of temporary obstacles, performance dates are postponed or periods prolonged by the time the obstacle lasts plus an adequate starting period. The Seller will inform the Purchaser about these reasons and about the duration of the delay, and will agree upon a new date of completion in as far as this is possible and reasonably can be expected. If the delay in delivery/service takes longer than three months, the Purchaser is entitled - after fixing an adequate additional respite of time - to withdraw from the contract by giving the Seller immediate notice in writing.

3.4 If the Seller comes into default concerning any duty, or if its performance, irrespective of reasons, becomes impossible, then the Seller’s liability for compensation of damage is limited as per number 9 of the present Conditions of Business.

**4. Delivery:** 4.1 Delivery is ex factory, unpaid. Upon Purchaser’s demand and at its expense, the goods are sent to another place of destination (“sale by delivery to a place other than that of performance”). If nothing else is agreed, The Seller is entitled to choose the kind of dispatch (in particular: transport company, route, and packing).

4.2 The risk of the goods’ accidental loss or deterioration passes to the Purchaser no later than at the time of consignment. In as far as acceptance after inspection is agreed - which takes place at the Seller’s site if not agreed otherwise -, this is when the said risk passes. An eventual default of acceptance on the part of the Purchaser has the same effect as consignment or acceptance after inspection.

4.3 The goods have to be examined immediately after receipt. In case of loss or damage during transport, definition of the damage has to be brought about immediately.

4.4 In case of default of acceptance, the Seller can invoice the expense of storage in accordance with local custom. In the Seller’s discretion, the object ordered can be stored also otherwise. Expense and risk of the storage are to be borne by the Purchaser.

**5. Prices and conditions of payment:** 5.1 Prices are meant ex factory and without engagement. They do not include the packing. The packing is invoiced at own cost, but within Germany is taken back at no expense. Prices are defined in Euro plus the value added tax from time to time valid in the Federal Republic of Germany; in case of delivery abroad: plus customs, fees, and other public duties.

5.2 If nothing special is agreed, the amount of payment is due within one week from date of invoice, without deductions. If the Seller explicitly agreed to transfer to his bank account, payment is considered to be effected at the date of receipt. Payment by checks and bills of exchange is considered as effected only after cashing.

5.3 Any expense caused by lack or default of payment (e.g. for reminders, help by debt-collecting agencies, etc.) has to be borne by the Purchaser.

5.4 Compensation with counter-claims is excluded, except if non-appealable title is at hand or if the counter-claim is uncontested. The Purchaser can assert a right of retention only in as far as it is based upon a claim granted by the present contract.

5.5 The Seller is entitled to take out or perform deliveries or services still pending, only against advance payment or provision of security, if after closing the contract circumstances come to his knowledge which are apt to substantially reduce the Purchaser’s credit worthiness and by which payment of the Seller’s pending claims by the Purchaser from the relative contractual relationship (including those from other single orders under the same frame contract) is jeopardized.

**6. Reservation of proprietary rights:** 6.1 As long as not all of the Seller's present and future claims from the sales contract and from a current business relationship are completely paid (secured claims), the Seller reserves ownership of the goods sold.

6.2 Prior to complete payment of the secured claims, the goods for which ownership is reserved can neither be pledged nor assigned by way of security to third parties. The Purchaser has to inform the Seller immediately in writing if and in how far third parties take creditors' attachment to goods owned by the Seller.

6.3 In case of breach of contract by the Purchaser, in particular in case of non-payment of a sales price due, the Seller is entitled to withdraw from the contract under legal prescriptions or/and to claim return of the goods to the Seller on grounds of the reservation of ownership. The claim for return will not simultaneously contain a declaration of withdrawal from contract; instead, the Seller is entitled to only claim return of the goods and reserve the right of withdrawal. If the Purchaser does not pay the sales price due, the Seller can assert these rights only if beforehand the Seller had no success in fixing an adequate term for payment to the Purchaser or if under legal prescriptions such a term is not needed to be fixed.

6.4 The Purchaser is entitled to resell in regular business the goods for which ownership is reserved. Then, the following rules will apply additionally.

6.4.1 By way of security, the Purchaser assigns to the Seller the claims against third parties based upon the resale of the goods or product, and this at the very time of resale. The Seller accepts this assignment. The Purchaser's duties under number 6.2 hereof also apply to the claims assigned.

6.4.2 Beside the Seller, the Purchaser remains entitled to collect the claim. The Seller engages to leave the claim un-collected for as long as the Purchaser fulfills its obligations of payment towards the Seller, does not fall under default of payment, and as long as no demand to open insolvency proceedings and no other lack of its financial capacity occurs. However, if any such circumstances arise, the Seller can demand the Purchaser to inform the Seller about the assigned claims and their debtor, indicating all details needed for collection, handing to the Seller the relative documentation and informing the debtors (third parties) about the assignment.

6.4.3 If the realizable value of the securities exceeds the Seller's claims by more than 10%, then upon the Purchaser's demand the Seller shall release securities of the Seller's own choice.

**7. Warranty:** 7.1 Liability for defects will follow the relative legal prescriptions.

7.2 Excluded from the Seller's liability for defects are all damages, operational interruptions or other disturbances in as far as caused by wrong handling or interventions by the Purchaser or third parties, by excessive stress or by normal wear and tear, and by attrition.

7.3 In manufacturing objects individually - e.g. in accordance with wood and/or color samples -, colors, structures, formal requirements, etc. can be realized only approximately since art craftsmanship with natural materials leads to natural divergences. The eventual desire for special patterns of sound can be fulfilled only approximately due to the different acoustic conditions of each instrument. Any such deviation can not be interpreted as a defect.

7.4 If the Purchaser complains about a defect, and it turns out that the Seller is not responsible for the defect or - as the case may be - damage, then the Purchaser has to reimburse the Seller of the expense incurred for checking the complaint, particularly for the cost of traveling and work.

7.5 If defects might possibly be caused by climatic influences, remedy can last through all the climatic changes of an entire year. During the first year after finishing, four tunings at the expense of the ordering party are necessary, plus one final adjustment after one year.

7.6 Warranty lapses if without the Seller's consent the Purchaser makes changes in the object of the order or has changes made by third parties so that the remedy to defects becomes impossible or is unreasonably complicated. In any case the Purchaser has to bear the additional cost incurred for remedying defects caused by any such change.

7.7 If the Seller sells used goods produced by itself or by a third party, Purchaser's warranty claims will become statute-barred within one year after delivery.

**8. Liability for damage:** 8.1 For damage caused intentionally or by gross negligence by the Seller or by a representative or by a person employed in the performance, the Seller will be liable in accordance with legal prescriptions. Otherwise, the Seller will be liable only in accordance with the product liability rules to be applied for injuries to life, body or health, or for culpable breach of essential contractual duties, or in as far as the Seller fraudulently concealed the defect, or if the Seller granted warranty of the qualities of an object or service hereunder. However, the claim for damage will be limited to the damage contractually typical and foreseeable, whereas liability for damage to the Purchaser's property, caused by the object or service hereunder, e.g. damage to other things, is completely excluded. The rules specified by the 3<sup>rd</sup> and 4<sup>th</sup> sentence of this number 8 will not apply in as far as fraudulent intent or gross negligence are at hand or if liability exists for an injury to life, body or health, or in as far as the Seller fraudulently concealed the defect or granted warranty of the qualities of an object or service hereunder.

8.2 The ruling specified above under number 8.1 will apply to damage compensation apart from performance and to damage compensation instead of performance, no matter on which legal basis, particularly for defects, for breach of duties from the contractual obligation, or for tort. It also will apply to the claim for restitution of expense made in vain.

**9. Applicable law, place of fulfillment, miscellaneous:** 9.1 Applicable law is that of the Federal Republic of Germany with the exclusion of all international and supranational (contractual) legal rulings, in particular of the United Nations' Convention on Treaties concerning the International Sale of Goods dated April 11, 1980 (CISG).

9.2 If not specified otherwise by the order, the place of fulfillment is Bayreuth.

9.3 If the Purchaser is a merchant ("*Kaufmann*") in the sense of the German Code of Commerce ("*Handelsgesetzbuch*") or a legal person under public law, Bayreuth is the exclusive - also international - venue for any litigation directly or indirectly arising from the contractual relationship. However, the Seller also is entitled to sue the Purchaser at the latter's common place of jurisdiction.