

General Terms and Conditions of Business (GTCB) with Customer Information

01.07.2022

MOECK

MUSIKINSTRUMENTE + VERLAG GmbH
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General Terms and Conditions of Business with Customer Information

1. Scope of application, contractual partners and definition of terms

- 1.1. The following General Terms and Conditions of Business (hereinafter referred to as "GTCB") apply to all business relations between Moeck Musikinstrumente + Verlag GmbH (hereinafter referred to as "Seller") and our customers (hereinafter referred to as "Purchaser", jointly also as "Parties").
- 1.2. These GTCB apply exclusively when the Purchaser is an entrepreneur. According to sec. 14 of the BGB (German Civil Code) an entrepreneur is a natural or legal person or a partnership with legal personality who or which, when concluding a legal transaction, acts in exercise of his, her or its commercial or independent professional activities. A consumer, on the other hand, is according to sec. 13 of the BGB every natural person who enters into a legal transaction for purposes that are predominantly outside his or her commercial or independent professional activities.
- 1.3. Entrepreneurs within the meaning of these GTCB also include public authorities, corporations, institutions, foundations, legal entities of public law or a special fund under public law which is acting exclusively in a private law capacity upon contractual conclusion.
- 1.4. These GTCB apply to contracts concerning the sale and delivery of movable goods (hereinafter referred to as "goods"), which the Purchaser concludes with the Seller via telecommunication means (e. g. telephone, email, post) exclusively by way of individual communication within the meaning of sec. 312j (5) sentence 1 of the BGB (German Civil Code). This applies regardless of whether the Seller manufactures the goods itself or purchases them from wholesalers (secs. 433, 650 BGB).
- 1.5. These GTCB also apply to all contracts for the sale and delivery of physical data media (audio CDs) which serve exclusively as carriers of digital content, unless otherwise agreed between the Parties or in these GTCB. Digital content within the meaning of these GTCB is data created and provided in digital form.
- 1.6. The GTCB of the Seller apply exclusively. Should the Purchaser use any contradictory or supplementary general terms and conditions of business, their application is hereby rejected; they only become a contractual component if the Seller has expressly agreed to this.
- 1.7. Unless otherwise agreed between the Parties these GTCB apply for the Purchaser in the version valid at the time the Purchaser places the order or in any case in the version last provided to the Purchaser in text form as a framework agreement also for all future contracts of a similar nature, without the requirement for the Seller to point this out again in each individual case.

2. Contractual conclusion and contractual language

- 2.1. The Purchaser may send the Seller a non-binding request for issue of an offer by telephone, fax, email, post or via the online contact form provided on the Seller's website.
- 2.2. The Purchaser receives from the Seller upon request in written or text form (by post or email) a binding offer for the goods previously selected by the Purchaser.

- 2.3. The Purchaser may issue acceptance of this offer to the Seller by a declaration of acceptance sent by email, post or fax, or by payment of the price offered by the Seller within a reasonable acceptance period after receipt of the offer, as defined by the Seller. The day the offer is received is not counted in calculating the acceptance period. The date payment is received in the business account of the Seller is decisive for timely payment. If the last day of the acceptance period falls on a Saturday, Sunday or a generally acknowledged public holiday at the seat of the Purchaser, then the next working day is to be substituted for this day. The Seller is to inform the Purchaser specifically in the offer that the Seller is no longer bound by the offer if the Purchaser does not accept it within the aforementioned period.
- 2.4. The contract is concluded in German and English.

3. Delivery conditions, transport damage and delivery default

- 3.1. The delivery period is agreed individually or is stated by the Seller upon acceptance of the order.
- 3.2. Delivery is made ex works (Incoterms 2020), which is also the place of fulfilment for delivery and any subsequent fulfilment. At the request and expense of the Purchaser the goods are to be sent to another place of destination (sales shipment). Unless otherwise agreed between the Parties, the Seller is entitled to determine the type of storage and to organise transport with a transport company of its choosing. The Seller is also entitled to personally select the shipping method and the type of packaging.
- 3.3. The Seller is entitled to make partial deliveries, provided this is reasonable for the Purchaser. In the case of permissible partial deliveries the Seller is also entitled to present partial invoices.
- 3.4. The risk of accidental destruction and accidental deterioration of the purchased goods passes to the Purchaser upon handover of the goods to the carrier, freight forwarder or other person or organisation appointed to make delivery. This also applies if the Seller bears the costs of transport. Transport insurance is concluded only at the particular wish and at the expense of the Purchaser.
- 3.5. If the Seller is unable to comply with binding delivery periods for reasons for which it is not responsible (non-availability of goods), then the Seller is to inform the Purchaser of this without undue delay and at the same time state the foreseeable new delivery period. If, despite all reasonable efforts by the Seller, the goods are also unavailable within the new delivery period the Seller is entitled to withdraw wholly or partly from the contract; any payment already made by the Purchaser is to be refunded by the Seller without undue delay. Non-availability of goods in this respect applies in particular in the case of late or improper delivery by the Seller's sub-suppliers, if the Seller has concluded a congruent covering transaction and neither the Seller nor his sub-supplier is at fault.

4. Prices, shipping costs and payment conditions

- 4.1. Unless otherwise stated in the article or service description of the Seller, prices are to be understood in EURO ex works and as net prices subject to addition of VAT at the statutory rate applicable on the date of invoicing.

- 4.2. In the case of sales shipments in line with clause 3.2 the Purchaser is to bear the transport costs ex works and the costs of any transport insurance requested by the Purchaser. Any customs duties, fees, taxes and other public authority charges are to be borne by the Purchaser.
- 4.3. If in the case of a sales shipment the transport company returns the dispatched goods to the Seller in line with clause 4.2, since delivery to the Purchaser was not possible, then the Purchaser is to bear the costs of fruitless shipping. This does not apply if the Purchaser is not responsible for the circumstances leading to the impossibility of delivery or if the Purchaser was temporarily prevented from accepting the offered delivery, unless the Seller had given the Purchaser reasonable advance notice of delivery.
- 4.4. If the Purchaser's order is sent as partial deliveries in line with clause 3.3 then the Purchaser shall only incur shipping costs for the first partial delivery. If the partial deliveries are made at the request of the Purchaser, the Seller will charge the shipping costs for each partial delivery.
- 4.5. If deliveries are made to countries outside the European Union, additional costs may be incurred in individual cases. These costs shall be borne by the Purchaser if the Seller is not responsible for them. These costs can include taxes, customs duties and other public authority duties and the fees for monetary transfers by credit institutes (e.g. bank transfer fees, exchange rate fees). Some of the aforementioned individual costs may also be incurred for deliveries to countries within the European Union if the Purchaser initiates payment from a country outside the European Union.
- 4.6. There are various payment options available to the Purchaser, he will be informed of these in the Seller's offer.
 - 4.6.1. If the payment method selected is "cash on delivery" the Purchaser pays the delivery agent directly. The costs incurred are to be stated separately in the Seller's offer.
 - 4.6.2. If the payment method selected is "invoice" the purchase price is due for payment within 14 days without deductions and after receipt of a proper and verifiable invoice, unless otherwise agreed between the Parties. For timely payment, the date payment is received in the business account of the Seller is decisive. The Seller retains the right to only offer the payment method "invoice" up to a certain order volume and to refuse this method if the given order volume is exceeded. In this case the Seller will inform the Purchaser of any such limitation in the payment information.
 - 4.6.3. If the payment method "advance payment by bank transfer" is selected, payment is due immediately after contractual conclusion, unless a later payment date is agreed between the Parties. Delivery of the goods is made after payment is received in the business account of the Seller.
- 4.7. Upon expiry of the above-mentioned payment period the Purchaser is in default. The outstanding payment is subject to interest during the default period at the default interest rate valid at any given time. The Seller retains the right to claim more extensive default damages (e. g. reasonable costs of necessary legal representation, including all court and lawyer costs, costs of reminders or debt collection). In respect of merchants, the Seller's claim to the commercial interest rate for default interest (sec. 353 of the HGB [German Commercial Code]) remains unaffected. In the case of overdue claims, incoming payments from the Purchaser are initially set off against any costs and in-

terest and then against the oldest claim. The Seller is entitled to claim reminder costs at the fixed rate of EUR 5.00. The Purchaser remains entitled to prove no or lower costs.

- 4.8. The Purchaser is only entitled to set-off rights if his counterclaims are legally established or undisputedly mutually linked to the main claim of the Seller or are acknowledged by the Seller.
- 4.9. A right of retention for the Purchaser is excluded unless the Purchaser's counterclaim originates from the same contractual relationship and is undisputed or legally established. Assertion of this right requires that the Seller is notified in writing.
- 4.10. If after conclusion of the contract it becomes clear (e.g. due to an application to open insolvency proceedings), that the Seller's claim to payment is at risk due to the Purchaser's inability to pay then the Seller is entitled under statutory provisions to refuse performance and – if applicable after setting a time limit – to withdraw from the contract (sec. 321 of the BGB [German Civil Code]).

5. **Liability for defects, customer services**

- 5.1. If not expressly otherwise agreed between the parties, the statutory rules on liability for defects apply. In deviation from this, the following applies:
- 5.2. An insignificant defect does not justify defect claims and does not entitle the Purchaser to refuse acceptance of the goods. If part of the goods displays a not insignificant defect, this does not justify a complaint relating to the whole delivery. This does not apply in the case that partial delivery is of no interest for the Purchaser. Furthermore, the Seller is entitled to make the subsequent fulfilment dependent upon the Purchaser paying the purchase price due. The Purchaser is however entitled to retain a reasonable portion of the purchase price proportionate to the defect. If goods are provided free of charge, the Seller is only liable for defects if accused of deliberate acts or gross negligence.
- 5.3. Defect claims also do not arise in the case of natural wear and tear or damage occurring after the transfer of risk due to incorrect or negligent treatment, excessive use, unsuitable operating materials or specific external influences which are not provided for under the contract. If the Purchaser or third parties undertake improper alterations or maintenance work then no defect claims arise for this or the arising consequences, unless the Purchaser can prove that the defect subject to complaint was not caused by these alterations or maintenance work.
- 5.4. In the case of new goods the expiry period for defect claims is one (1) year from the transfer of risk. The statutory expiry periods for recourse claims under sec. 445a of the BGB (German Civil Code) remain unaffected.
- 5.5. The Seller shall grant relief to the Purchaser firstly according to the Seller's preference either by correction of the defect (subsequent improvement) or delivery of a defect-free item (replacement delivery). If replacement delivery is made in the course of defect liability, the expiry period does not recommence.
- 5.6. As regards the quality of the goods, the Seller's own article or service descriptions and the manufacturer's details incorporated into the contract apply exclusively; the Seller assumes no liability for public statements by the manufacturer or other third parties (e. g. advertising statements).

- 5.7. If the Seller delivers a defect-free object in the course of subsequent fulfilment, then the Seller can claim compensation for use from the Purchaser in accordance with sec. 346 (1) of the BGB (German Civil Code). Other statutory claims remain unaffected.
- 5.8. If the Seller's obligation for subsequent fulfilment is fulfilled by way of replacement delivery, the Purchaser is obliged to return to the Seller the goods initially delivered within a period of 30 days. The return shipment must contain the necessary details, such as the reason for the return, the name of the purchaser, the customer reference and the invoice number issued for the defective goods purchased, to enable the Seller to identify the returned goods. If identification of the returned goods is not possible for reasons for which the Purchaser is responsible, then the Seller is under no obligation to accept the returned goods and refund the purchase price. The costs of renewed shipment of the goods in this case are to be borne by the Purchaser.
- 5.9. The above-mentioned restrictions and shortened expiry periods do not apply to claims for damage caused by the Seller, its legal representatives or vicarious agents:
- in the case of damage to life, limb or health
 - in the case of deliberate or grossly negligent violations of duty and malicious concealment of a defect
 - in the case of violation of fundamental contractual duties upon whose fulfilment the proper execution of the contract depends and upon whose fulfilment the Purchaser may generally rely (cardinal duties)
 - within the context of a guarantee agreed separately between the parties
 - to the extent that the German Product Liability Act (ProdHaftG) applies.
- 5.10. Among merchants within the meaning of sec. 1 of the HGB (German Commercial Code) the duty to inspect and notify defects as defined in secs. 377, 381 of the HGB applies. If upon delivery, inspection or at any later point a defect is found, then the Seller is to be sent written notification without undue delay. Obvious defects are to be reported in every case without undue delay after delivery and defects not manifest upon inspection are to be reported in writing within the same time limit after discovery. If the Purchaser fails to undertake the duty to inspect and/or notify defects then the goods are deemed accepted, unless the defect is such that it was not manifest upon inspection. This does not apply however if the Seller maliciously concealed a defect.
- 5.11. In case of questions, refund requests or complaints the Purchaser can contact the Seller's customer services as follows: Mon–Thurs 8am – 4pm and Fri 8am – 12.30pm CET, Tel. +49 (0) 5141 – 8853 0 and email: sales@moeck.com.

6. Liability for damage

- 6.1. With regard to the Seller's performances, the Seller, its legal representatives and its vicarious agents are liable unrestrictedly
- in the case of deliberate acts or gross negligence,
 - in the case of deliberate or negligent damage to life, limb or health,

- in the case of guarantees to the extent agreed between the Parties,
 - to the extent that the German Product Liability Act (ProdHaftG) applies.
- 6.2. In the case of violation of fundamental contractual duties, liability in the case of simple negligence is limited to the foreseeable, contractually typical damages, unless there is unlimited liability in line with clause 6.1. Fundamental contractual duties are those duties which are imposed upon the Seller by the content of the contract for achievement of the contractual purpose, upon whose fulfilment proper execution of the contract depends and upon whose fulfilment the Purchaser may generally rely (cardinal duties).
- 6.3. In all other respects liability on the part of the Seller is excluded.

7. Acts of God

In the case of acts of God which affect contractual fulfilment, the Seller is entitled to extend the delivery periods by the duration of the obstacle and, in the case of longer-term delays, to withdraw wholly or partly from the contract without this enabling assertion of any compensation claims against the Seller. Acts of God are all events which are unforeseeable for the Seller or those which – even if they had been foreseeable – are outside the Seller's sphere of influence and their effects on contractual fulfilment could not have been prevented by the reasonable efforts of the Seller. Any statutory claims of the Purchaser remain unaffected.

8. Expiry of claims

Claims of the Purchaser against the Seller expire – with the exception of claims regulated under clause 5 – one year from the date of awareness of the facts justifying the claim, but at the latest five years after contractual performance provided there is not unlimited liability in line with clause 6.

9. Retention of ownership

- 9.1. The Seller retains ownership of the goods delivered until full payment of all current and future claims of the Seller arising out of the sales contract and a current business relationship (secured claims). The Purchaser is entitled to sell on the goods subject to retained ownership in the ordinary course of business. All claims against third parties arising out of the onward sale – regardless of any combination or mixing of the goods subject to retained ownership with new items – are assigned in advance by the Purchaser to the Seller up to the level of the invoice including VAT at the statutory rate valid on the day of invoicing. The Purchaser remains entitled to collect the claims himself also after assignment. The Seller's authority to collect the claims itself remains unaffected. The Seller will not collect the claims as long as the Purchaser fulfils his payment obligations towards the Seller, is not in default of payment and no application has been made to open insolvency proceedings.
- 9.2. The Purchaser is obliged to treat the goods subject to retained ownership with care until the transfer of ownership. In addition, he is obliged at his own expense to adequately insure at replacement value the goods subject to retained

ownership against theft, fire and water damage, to the extent that this is reasonable or usual within the branch of business. The Purchaser must also undertake in good time and at his own expense any required maintenance and inspection work.

- 9.3. The goods subject to retained ownership may not, before full payment of the secured claims, be pledged to third parties or assigned as security. The Purchaser is to inform the Seller in writing without undue delay if an application is made to open insolvency proceedings or if third parties assert claims (e. g. pledges) against the goods belonging to the Seller.
- 9.4. In the case of non-contractual behaviour by the Purchaser, in particular in the case of non-payment of the due purchase price, the Seller is entitled under the statutory provisions to withdraw from the contract and/or demand return of the goods on the basis of the retained ownership. The right to demand return of the goods does not also include a declaration of contractual withdrawal. The Seller is instead simply entitled to demand the return of the goods and retains the right to withdraw. If the Purchaser does not pay the due purchase price then the Seller may only assert these rights if the Seller has already fruitlessly set the Purchaser a reasonable additional payment period or the grant of such a payment period is not required under the statutory provisions.
- 9.5. Until rescission in line with clause 9.5.3 below, the Purchaser is entitled to sell on and/or process the goods subject to retained ownership in the ordinary course of business. In this case the following provisions apply in addition.
 - 9.5.1. The retention of ownership extends to the full value of products of the Seller created through the processing, mixing or combination of the goods, whereby the Seller is deemed the manufacturer. If in a case of processing, mixing or combination with the goods of third parties these parties retain a right of ownership, then the Seller acquires co-ownership in the ratio of the invoice value of the processed, mixed or combined goods. In all other respects the same applies for the product created as for the goods delivered subject to retention of ownership.
 - 9.5.2. The claims against third parties arising from the onward sale of the goods or products are assigned already now by the Purchaser in full or up to the level of any co-ownership portion in line with the clause above to the Seller as security. The Seller accepts the assignment. The duties of the Purchaser stated in clause 9.4 also apply in respect of the assigned claims.
 - 9.5.3. The Purchaser remains entitled to enforce the claim alongside the Seller. The Seller is obliged not to enforce the claim as long as the Purchaser fulfils his payment obligations towards the Seller, there is no deficiency in his payment ability and the Seller has not asserted its retained ownership claim by exercising a right under clause 9.5. However, if this is the case then the Seller can demand that the Purchaser discloses to the Seller the assigned claims and their debtors, gives all the details necessary for enforcement, hands over the relevant documents and informs the debtors (third parties) of the assignment. In addition in this case the Seller is entitled to withdraw the Purchaser's authorisation to sell on and process the goods subject to retained ownership.
 - 9.5.4. The Seller is obliged to relinquish the securities to which he is entitled at the request of the Purchaser if the level of the securities exceeds the sum of all still unsettled claims of the Seller arising from the business relationship by more than 10% (in the case that there is a utilisation risk by more than 50%). The Seller may freely select the securities relinquished.

10. Repair services

- 10.1. If the repair of an item of the Purchaser is agreed between the parties, the following regulations apply in addition:
- 10.2. The place of performance and fulfilment for the repair services is the registered office of the Seller.
- 10.3. The Seller has the services provided by qualified employees selected by the Seller. The Seller is entitled to appoint a third party (subcontractor) to perform the services. Unless otherwise agreed between the parties, the Purchaser has no right to select a certain person to perform the services.
- 10.4. The Purchaser is to support the Seller in the performance of the contractual services by way of appropriate cooperative acts. He shall in particular provide the Seller with the necessary information on the defect and its causes and a full description of the established defect in full, free of charge and in good time.
- 10.5. If the Purchaser provides the Seller with information on use, he gives an assurance that he is entitled to hand over and use this information. The Seller is not obliged to check the content of information provided by the Purchaser, especially not with regard to whether it is suitable to achieve the goals pursued with the requested services. There is only an obligation to check the information provided if collection of the information was part of the Seller's obligations under the contract concluded between the parties.
- 10.6. The Purchaser is obliged to send the item to be repaired to the registered office of the Seller at his own expense and at his own risk. It is recommended that the Purchaser concludes transport insurance. Furthermore, it is recommended, in order to avoid transport damage, that the item is shipped in transport packaging that is suitable for the transport. Should obvious transport damage occur during transport, the Seller is to inform the Purchaser of this without undue delay so that the Purchaser can enforce any claims against the transport company.
- 10.7. The risk of accidental destruction and accidental deterioration of the item during its return passes to the Purchaser as soon as the Seller hands the item over to the carrier, freight forwarder or other person or organisation appointed to make delivery. The costs for returning the item are to be borne by the Purchaser. If the Purchaser requests transport insurance the Seller will conclude this at the Purchaser's expense.
- 10.8. If the parties have agreed that the item is to be brought to and collected from the registered office of the Seller by the Purchaser or this is implied from the relevant article or service description of the Seller, then the above-mentioned provisions on the allocation of costs and risks apply correspondingly.
- 10.9. The above-mentioned provisions do not restrict the statutory defect rights of the Purchaser with regard to a sales contract concluded between the parties.
- 10.10. The Seller is liable for defective repair services in line with the statutory provisions.

11. Amendment of the GTCB

- 11.1. The Seller retains the right to amend these GTCB at any time without giving reasons, unless this is not reasonable for the Purchaser. The Seller is to inform the Purchaser of any amendments to the GTCB in good time in text form. If the Purchaser does not object to the application of the amended GTCB within a time limit of four (4) weeks after notification, the amended GTCB are deemed accepted by the Purchaser. The Seller is to inform the Purchaser in the notification of his right to object and the implications of the time limit for objection. If the Purchaser objects to the amendments within the above-mentioned time limit, then the contractual relationship continues in accordance with the original GTCB.

- 11.2. The Seller also retains the right to change these GTCB
- if obliged to do so due to a change in the legal situation;
 - in order to comply with a court judgment against him or the decision of a public authority;
 - if the Seller introduces additional completely new services or goods which require description in the GTCB, unless this results in a detrimental change in the contractual relationship in force up to this time;
 - if the change is purely advantageous for the Purchaser; or
 - if the change is for purely technical or procedural reasons, unless it has considerable consequences for the Purchaser.
- 11.3. The termination right of the parties remains unaffected.

12. Final provisions

- 12.1. Assignment of claims arising out of the contract concluded between the parties by the Purchaser, in particular assignment of any defect claims of the Purchaser, is excluded.
- 12.2. These GTCB and the contractual relationship between the parties is subject to the law of the Federal Republic of Germany under exclusion of international uniform regulations, in particular the UN Convention on the International Sale of Goods.
- 12.3. If the Purchaser is a merchant within the meaning of the HGB (German Commercial Code), an entrepreneur within the meaning of sec. 14 of the BGB (German Civil Code), a legal entity of public law or a special fund under public law, then the sole – also international – place of jurisdiction for all disputes arising directly or indirectly out of the contractual relationship is the registered office of the Seller. The Seller is in all cases also entitled to file a complaint at the place of fulfilment of the performance obligation under these GTCB or under an individual agreement that takes precedence or at the general place of jurisdiction of the Purchaser. Statutory provisions that take precedence, particularly on exclusive responsibilities, remain unaffected.

Valid from: 01.07.2022