

# Sales Terms and Conditions by Tonos Music Publishing oHG

## Art. 1 Scope of these general terms and conditions

The following General Terms and Conditions apply exclusively to the business relationship between Tonos Music Publishing oHG (hereafter referred to as "Tonos") and its customers according to the latest amended version valid at the period of time of the business relationship in question. Contradictory or differing conditions of the customer (hereafter also referred to as the "Contractual Partner"), will not be recognised, particularly if he is not to be regarded as a consumer in the sense of Art. 13 of the BGB (Bürgerliches Gesetzbuch - German Civil Code), except in exceptional cases in which Tonos agrees to their validity explicitly and in written form. Tonos' General Terms and Conditions also apply even if Tonos is aware of the customer's contradictory or differing conditions and carries out the delivery to the business partner without reservation.

## Art. 2 Offers subject to change / Online offers / Conclusion of a contract

All offers are non-binding.

Goods/products available on the homepage via internet also do not represent offers in the sense of Art. 145 et seqq. of the BGB. Online offers are likewise non-binding and subject to change.

By placing an order with Tonos via E-mail or another means of communication, the customer concedes to an offer in the sense of Art. 145 et seqq. of the BGB to conclude a purchase contract with Tonos. The customer will receive a confirmation of the receipt of the order via email (order confirmation) and/or via fax. An order confirmation does not represent an acceptance of the offer but serves as customer information, to let the customer know that Tonos has received the order. In the event of incorrect information regarding the product range on the website, Tonos will, if necessary, advise the purchaser/customer/customer of this individually and make him an appropriate alternative offer.

The contract with Tonos enters into effect when Tonos dispatches the goods ordered and a dispatch confirmation is sent (via E-mail, for instance). There will be no purchase contract to cover products on same order which are not listed in the dispatch confirmation. Acceptance takes place on the condition that the products or services ordered are legally admissible and are actually available. If it is not possible for Tonos to accept the customer's offer, the customer will be informed that the order is not available rather than receiving a confirmation of the order. Any payments already made by the customer will be returned without delay.

The purchase of goods is only carried out only in appropriate amounts. The purchase price does not include or contain any performance rights.

## Art. 3 Delivery

Delivery will be carried out immediately from the warehouse to the delivery address supplied by the customer.

Tonos is entitled to partial delivery and partial service if this is acceptable to the Contractual Partner. In the event of partial deliveries carried out by Tonos, Tonos will not charge any additional shipping charges and any additional costs will be covered by Tonos. Details concerning expected delivery deadlines are non-binding unless Tonos specifically provides the Contractual Party in written form with an express and binding agreement.

## Art. 4 The Consumer's right of withdrawal

If the customer can be regarded as a consumer in the sense of the Civil Code (BGB) (see Art. 13 BGB-Consumer, Art. 14 BGB-Business), then he is entitled to withdraw his declaration of intent from the purchase contract without sighting any reasons within 14 days after receipt of the goods/order in written form (for example via E-mail, letter, fax) and/or by returning the products or order to Tonos. The period begins upon receipt of this information at the earliest, but not before the receipt of the goods. Notification of withdrawal or prompt return of the goods is sufficient to safeguard the period of withdrawal.

The written form of the withdrawal is to be sent to the following addresses:

- Mail: Tonos Music Publishing oHG, Lange Straße 89a, 76530 Baden-Baden, Germany
- E-mail: tmpcontact@tonosmusic.com
- Fax: +49 7221 18957-25

The return address for goods is the same as the above address/postal address. The customer bears the burden of proof for the dispatch of the goods which are to be returned.

In the event of an effective withdrawal in which the goods which the customer received have become totally or partially damaged or cannot be returned in whole, or in which the goods can only be returned in worse condition than when they were received, the customer is obliged to compensate Tonos for the damage. This does not apply to the relinquishment of articles if the degradation of the article is exclusively due to its guaranteed and/or utilised usage, or if it is to be ascribed to the examination – which would have been possible for the customer in a shop. However, the customer can avoid the obligation to compensate for lost value by not using the article as an owner would and avoiding doing anything to the product which could lead to a loss in its value. The cost incurred by returning an article is to be born by the customer if the delivered goods are those that were ordered and if the order value does not exceed € 40.00, or if the price is higher, if the customer has failed to present payment in part or full at the time of the recall. Otherwise Tonos will reimburse the contractual partner the cost of returning the return shipping. For payment abroad, the costs of transferring money may be deducted from the purchase price, which is to be compensated. Tonos will make full use of its rights of retention up until the complete return of the goods.

The right of withdrawal is not applicable in the following cases:

- in the event of contracts for goods which have been produced according to customer specifications or which have been clearly tailored for personal use (particularly editions of sheet music created at the behest of the customer, or sheet music for specific ensembles at the behest of a customer) or which, due to their composition, are not suitable for return – compare BGB Art. 312 b Para. 4, Number 1;
- in the case of contracts for the delivery of audio and video recordings or software if the data storage medium has been unsealed by the customer.

## Art. 5 Minimum order amounts / Delivery with an anti-reproduction mark / Author and publisher's copyrights

Editions of choir music will only be delivered from a minimum order amount which reflects number of singers in a choir. Choral music compilations (such as choir books, choir booklets or song books) are not exempt from the above minimum order clause. In individual cases, it is possible to deviate from this rule should plausible reasons exist. As long as the customer is the consumer, the delivery of individual music scores will occur in normal household amounts. Tonos reserves the right to place a limit on the amounts ordered.

In order to prevent illegal duplication, Tonos is entitled to provide individual copies of choral music editions/choral music compilations with a transparent anti-reproduction mark. This may slightly impair the readability of some sheet music. These editions may be exchanged free of charge in the event of a subsequent order for the choir.

The specified musical components of the contract (sheet music/documents/ materials) are copy-

righted by the author and the publishing firm. The sheet music itself is protected and is further individually protected according to publishing law. Customers are not allowed to use the material completely or partially in extracts and/or in adaptations, nor to copy, transcribe, digitalise and/or in any other way reproduce the whole or part of the document using any kind of technical process whatsoever. The use of the musical components in any kind of audio/audiovizual production, digital recording (online/offline), transferral, or making available in any way which exceeds the author's copy write for private use is expressly forbidden without written agreement from Tonos. Performances as such, performances with a drama/musical character, such as choreographies, miming or gesture-related presentations – with or without costumes, with or without backdrops – as well as combinations of works of any kind are not the subject of the purchase contract and require a specific written agreement with Tonos. A contract on this matter is to be concluded promptly with Tonos before the presentation/use in question.

## Art. 6 Reservation of proprietary rights

Until the complete settlement of all claims against the purchaser/customer/contractor, the delivered goods shall remain the property of Tonos.

The customer is obligated to inform Tonos immediately in written form in the event of any access of a third party to its property, in particular in the case of the enforced sale of collateral as well as any damage directed towards their property. Any damages and costs resulting as a consequence of neglecting to fulfil this obligation or which result from necessary measures of intervention against a third party are to be compensated by the customer/contractor. If the customer/contractor behaves in a manner contradictory to the fulfilment of the contract, particularly if the customer fails to fulfil their payment obligations to Tonos despite a reminder, is Tonos entitled to withdraw from the contract and demand that any products still in the possession of the customer be returned, after previously setting an appropriate deadline. The revocation or seizure of goods by Tonos represents a withdrawal from the contract. Any postage costs thereby incurred are to be born by the customer/contractor. Tonos is entitled to the use of the products once they have been returned. The proceeds of sale can be deducted from any remaining obligations owed by the customer/contractor, minus appropriate sales costs.

## Art. 7 Due date / default payments / Compensation

The purchase price is due immediately upon the placement of an order.

Deliveries within Germany can be paid via credit card (Visa or Mastercard) or after the receipt of a bill by bank transfer to one of Tonos' accounts. Orders from abroad will only be accepted with advance payment via credit card (Visa or Mastercard) or by bank transfer to one of Tonos' accounts. Should the customer/purchaser/contractor fall into arrears with the Payment, Tonos is entitled to charge default interest to the amount of 5 % above the basic level of interest (BGB Art. 288). If the contractual party is not the consumer, the default interest rates will rise to 8 % above the actual basic rate of interest from the point of the default.

The contractual partner is entitled to compensation in as much as and in so far as any counter claim is legally acknowledged, established or undisputed by Tonos. A right of repayment can only then be made valid by the contractual partner when the counter claim is based on the same purchase contract/contractual relationship.

## Art. 8 Guaranty

According to the following rules, Tonos shall assume responsibility for any defect which is present upon transfer of the goods during the guaranty period of two (2) years or respectively of one (1) year in the case of used goods.

The customer will, in the case of any deficits, inform Tonos in writing immediately within the two year deadline. Should a deficit be present for which Tonos is accountable, Tonos will either remove the problem by removal or by providing a replacement according to the wishes of the customer. Should the provision of a replacement or the rectification of the problem prove unsuccessful, or Tonos is unwilling or unable to do so or delays doing so for an unacceptable amount of time for reasons which Tonos is to specify, the customer will be entitled to terminate the contract or to demand a decrease in the purchase price.

## Art. 9 Data protection

Customer data will be saved and edited in accordance with the regulations of the German Data Protection Act, the Telecommunications Act as well as the Tele Services Data Protection Act. The customer has the right to information as well as a right to correct, block and delete of their any saved data. In such cases, the customer should write via E-mail to the address tmpcontact@tonosmusic.com or inform Tonos of their wishes via post.

Tonos undertakes to protect the private sphere of all individuals who shop within their store and to maintain the confidentiality of their personal. Tonos uses customer data exclusively to enable Tonos to fulfil the contracts with the customers in question.

Tonos does transfer any customer data onto third parties. Tonos only sends E-mails to its customers if the latter have declared their consent for Tonos to do so.

Tonos uses encryption technology when receiving or sending personal information/data in order to achieve maximum data confidentiality.

Personal data is protected with a password.

## Art. 10 Liability

Tonos assumes absolute liability for damages resulting from the absence of characteristics which Tonos has warranted as well as for damages which have been caused by the intent or gross negligence of one of their legal representatives or executives.

Liability for miscellaneous damages incurred to the customer accrues due to a delay by Tonos, through an impotency for which Tonos is responsible or through the breach of an obligation, the fulfilment of which being essential in achieving a contractual goal (contractual obligation), is limited to damages which are typical and predictable based on the contractual use of the good. In such a case the liability is limited to an amount double the paid purchase price of the applicable order.

Further liability, particularly for damages which are not specifically related to the goods themselves, for lost profit or other damages to the customer's property is excluded.

## Art. 11 Final Provisions

Any disputes arising from this legal relationship are subject to German law.

The UN Convention on Contracts for the International Sale of Goods (CISG) does not apply. If the contracting parties are business people, then the court at Tonos' place of business will be competent insofar as the causes of the dispute do not require a specific court of jurisdiction. The same jurisdiction applies if the purchaser does not have general jurisdiction in their country. Tonos is entitled to amend these general business terms and conditions at any time.

In the event that individual clauses of the contract are ineffectual, the legal effect of the remaining clauses of the contract concerning the business relationship shall not be affected.

# Rental Terms and Conditions by Tonos Music Publishing oHG

A contract on renting publisher's material is herewith made between Tonos Music Publishing oHG (herein-after called the publisher) and the client/enquirer (hereinafter called the client) on renting material from the publisher on the basis of supply and demand.

## § 1 Subject Matter of the Contract

The client rents material from the publisher under the provisions of the rental agreement.

## § 2 Material Delivery

Material delivery will be at the client's risk and expense but will not occur before the rental material contract has been made and the agreed fee paid. The publisher cannot accept any liability whatsoever for delayed delivery.

The condition, content and completeness of the performance material supplied by the publisher must be checked immediately on receipt. Any and all complaints must be advised the publisher promptly within three days at the most. Thereafter no such complaints will be accepted.

## § 3 Material Rental

The material rental fee plus processing and shipping costs and VAT for the contractually agreed performance/s is due and payable as provided for in the rental agreement prior to delivery of the material. Tax-free export to third countries within the meaning of § 4 no. 1.a together with § 6 UStG (German VAT Act) is not affected by this provision.

Should any amendment, supplement or rewrite of the material rental agreement and associated documents for which the client is liable be or become necessary then costs reimbursement of 60 (sixty) Euros plus VAT for each and every transaction shall be due and payable the publisher. Taxfree export to third countries within the meaning of § 4 no. 1.a together with § 6 UStG (German VAT Act) is not affected by this provision.

## § 4 Returning the Material

The performance material must be returned at the client's risk and expense promptly a fortnight after the last performance at the latest or when the agreed rental period expires according to the delivery note. The material must be properly packaged when shipped back to the publisher and accompanied by a return mail note. If it is not returned promptly as above then half the agreed rental fee shall be due and payable for each month or part thereof of delay.

## § 5 Custody of the Material

The risk of loss, damage, destruction or uselessness passes to the client when the performance material is shipped. The client is liable up to the new value of said material if the material is damaged, lost, destroyed or becomes useless. The damages compensation to be rendered by the client in such case is equal to the cost of purchasing, manufacturing and shipping costs but at least the agreed rental fee.

## § 6 Contract Term

This contract's term commences when the material in question is ordered and expires when said material is returned to the publisher in accordance with the rental agreement. The return date will be documented in accordance with said agreement.

## § 7 Performance Cancellation or Delay

Should the performance/s in question be cancelled or delayed the publisher must be advised of same without delay and the material concerned returned to them promptly but within a week at the latest. Half the agreed rental fee is due and payable in such case. If the publisher isn't so advised then the entire rental fee agreed becomes due and payable.

The publisher must be promptly advised of any performance being delayed. If said performance/s is/are not given within two months of its/their original date then the publisher will charge the client half the rental fee invoiced as cancellation fee.

The material is always to be returned promptly and completely to the publisher in the event of performance cancellation and/or delay of two months or more.

## § 8 Scope of Rights Assignment / Utilisation Rights

The client may only use the material for the performance/s agreed. The client may not make extract/s from, create their own version/s of, make copy/copies of, digitalise or plagiarise same either in whole or in part by any means whatsoever.

Utilisation of the rental material for any form of audio/audio-visual music production (e.g. CDs etc.), digital storage and/or dissemination of same (online/offline/streaming, downloads, etc.), transmission, onforwarding or otherwise making it accessible/useable by/to any third party either in whole or in part is expressly forbidden without explicit written permission from the publisher and separate legal contract. The same applies mutatis mutandis to dramatic-musical performance/s (e.g. operas), performance/ss using mime or gesture with or without costume/s, scenery and/or works related to it.

The client may not make the rental material accessible to any third party and/or loan it to them and/or assign it to them and/or rent it to them either in whole or in part. The client will be liable to the publisher for all and any damages incurred due to any breach of this provision.

## § 9 Right of Performance

The right to publicly perform the material is not any part of the subject matter of this contract but must be acquired from the owner/s - such as the GEMA - by contacting their relevant department/s, e.g. VG Musikedition Kassel (responsible for editions).

Agreed performance must be registered and such registration include details of all persons with rights in same (composer, reviser, text writer, translator, publisher, etc.). If such registration is not performed as legally required then the client shall be liable to the publisher for the lost performance payment/s unless the right/s and/or title/s owner/s involved decide/s otherwise.

## § 10 Use without approval, increased costs, contractual penalties

If the client breaches any foregoing provision, such as by exceeding the agreed utilisation scope or use for other than the agreed purpose/s, then they undertake to pay the publisher triple the fee due and payable for approved use of the affected part/s of the rental material/s in question. No subsequent approval of any such use is associated therewith.

If the client copies or loans out or loans out for gain in breach hereof then they must pay a lump sum contract penalty of €2,000.00 to the publisher in each and every case. No subsequent approval of any such use is associated therewith.

The publisher reserves the right to assert claim/s for damages in law.

## § 11 Management

If client, organiser and performer are not identical then the client acts both for themselves and for the parties they represent and their legal heirs and successors. The client must safeguard contract performance in such case.

## § 12 Mediation of performance materials

In the event of the material/s in question being supplied by an agent, the agent must advise the user/s of said material/s of this material/s rental agreement. Should the agent fail to fulfil this requirement he shall be held fully liable under the provisions herein.

## § 13 Final provisions

Any and all amendments and/or supplements hereto must be in writing to be effective.

Should any provision herein be or become null and void for any reason whatsoever this will not affect the remainder. Any such provision will be replaced by mutual agreement with a legally effective one coming as close as legally possible to the original intent of the parties hereto. If no such provision can be agreed on then the usual German legal provisions for such cases apply. The same applies mutatis mutandis should the contract prove to have any loophole.

This contract is made in German law. The UN Convention on the International Sale of Goods does not apply. Place of jurisdiction is the publisher's registered head office location insofar as legally feasible.

## Special Provision on Utilisation Rights in Choral Editions

Photocopying scores is forbidden per § 53 paragraph 4 Urheberrechtsgesetz (UrhG) [German Copyright Act]. The right of original use of choral editions (works carriers) must be acquired as dictated by the choir strength (number ordered). Use of single editions other than for strictly pri-

vate purposes is subject to agreement by Tonos. The score itself may not be reproduced and/or electronically stored and/or transmitted in any way whatsoever without Tonos approval. This includes in purely mechanical form, including photocopying.

## Important legal considerations

The representational work of musical art including all of its (individual) parts is protected by copyright. The printing of sheet music is also protected by copyright and is individually protected by publishing rights. Any use of the music or use of the medium of data beyond private use is subject to an agreement with Tonos. No part of the composition (work) contained therein is to be edited in any form without the allowance of Tonos. The printed sheet music itself must not be reproduced or stored and/or transferred electronically or mechanically in any form whatsoever without the agreement of Tonos. This includes photocopies. The rights to the original use of the medium of data/the printed sheet music (for instance for the purpose of a public exhibition or

performance, teaser/production and or editing or changing) must be applied for in the form of rental publisher's material from Tonos.

We recommend that the general business terms and conditions as well as the transaction data should be printed out and be kept in an easily accessible place.

BGB [Bürgerliches Gesetzbuch – German Civil Code]:

<http://www.gesetze-im-internet.de/bgb/index.html>

The Federal Commissioner for Data Protection and Freedom of Information:

<http://www.bfd.bund.de/>