



## GENERAL CONDITIONS OF SALE

Valid from July 1<sup>st</sup>, 2014

The Buyer's attention is particularly drawn to the exclusions and limitations of liability at Condition 10.

### 1. DEFINITIONS AND INTERPRETATION

In these Conditions:

1.1 the following words and expressions have the following meanings unless the context otherwise requires:

|                                       |  |
|---------------------------------------|--|
| <b>"Authorised Dealer Agreement"</b>  | an agreement between the Seller and the Buyer appointing the Buyer as an Authorised dealer of the Seller's goods including the Goods   |
| <b>"Buyer"</b>                        | the person who orders the Goods  |
| <b>"Conditions"</b>                   | these standard terms and conditions of supply, as varied from time to time in accordance with <b>Condition 15.4</b>  |
| <b>"Contract"</b>                     | the contract between the Seller and the Buyer for the supply of the Goods formed in accordance with <b>Condition 3.2</b>   |
| <b>"Delivery"</b>                     | delivery of the Goods will be deemed to occur when they have been unloaded at the delivery address   |
| <b>"Description"</b>                  | the description of the Goods set out in the Seller's sales catalogue and/or websites   |
| <b>"Fulfilment"</b>                   | dispatch of the Goods either from (i) the Seller's premises in Milton Keynes or (ii) the premises of a third party carrier in the UK on behalf of the Seller (as applicable), to the delivery address  |
| <b>"Goods"</b>                        | the goods set out in the Order   |
| <b>"Insolvent"</b>                    | a party is Insolvent where it has a receiver, administrator or provisional liquidator appointed; is subject to a notice of intention to appoint an administrator; passes a resolution for its winding-up; has a winding up order made by a court in respect of it; enters into any composition or arrangement with creditors; ceases to carry on business; or has any steps or actions taken in connection with any of these procedures  |
| <b>"Intellectual Property Rights"</b> | all intellectual and industrial property rights of any kind whatsoever including patents, supplementary protection certificates, rights in know-how, registered trade marks, registered designs, models, unregistered design rights, unregistered trade marks, rights to prevent passing off or unfair competition and copyright (whether in drawings, plans, specifications, designs and computer software or otherwise), database rights, topography rights, any rights in any invention, discovery or process, and applications for and rights to apply for any of the foregoing, in each case in the United Kingdom and all other countries in the world and together with all renewals, extensions, continuations, divisions, reissues, re-examinations and substitutions |
| <b>"Liability"</b>                    | liability arising out of or in connection with the Contract, whether in contract, tort, misrepresentation, restitution, under statute or otherwise, including any liability under an indemnity contained in the Contract and/or arising from a breach of, or a failure to perform or defect or delay in performance of, any of a party's obligations under the Contract and/or any defect in any of the Goods, in each case howsoever caused including if caused by negligence or if caused by a deliberate and/or repudiatory breach by that party  |
| <b>"Order"</b>                        | the Buyer's order for the supply of goods by the Seller submitted to the Seller by any means   |
| <b>"Order Acknowledgement"</b>        | the Seller's written acceptance of the Order (if provided by the Seller in its discretion)   |
| <b>"Prices"</b>                       | the prices for the Goods set out in the Seller's price list in force on the date of Delivery   |
| <b>"Seller"</b>                       | Yamaha Music Europe GmbH (UK) (UK branch registered number FC029516) whose address is at Sherbourne Drive, Tilbrook MK7 8BL  |
| <b>"Warranty Period"</b>              | the period starting on Delivery and ending on expiry of a period of 24 months from and including the date of Delivery  |

1.2 references to Conditions are to conditions of these Conditions;

1.3 all headings are for ease of reference only and will not affect the construction or interpretation of these Conditions;

1.4 unless the context otherwise requires:

1.4.1 references to the singular include the plural and vice versa and references to any gender include every gender;

1.4.2 references to a "person" include any individual, body corporate, association, partnership, firm, trust, organisation, joint venture, government, local or municipal authority, governmental or supra-governmental agency or department, state or agency of state or any other entity (in each case whether or not having separate legal personality);

1.5 references to any statute or statutory provision will include any subordinate legislation made under it and will be construed as references to such statute, statutory provision and/or subordinate legislation as modified, amended, extended, consolidated, re-enacted and/or replaced and in force from time to time;

1.6 any words following the words "include", "includes", "including", "in particular" or any similar words or expressions will be construed without limitation and accordingly will not limit the meaning of the words preceding them;

## 2. AUTHORISED DEALERS

Where there is an Authorised Dealer Agreement, to the extent only of any conflict or inconsistency between such Authorised Dealer Agreement and these Conditions the Authorised Dealer Agreement will take precedence.

## 3. CONTRACT FORMATION

3.1 Any quotation given by the Seller will constitute an invitation to treat and not an offer and will therefore not be binding on the Seller.

3.2 The Order constitutes an offer by the Buyer to purchase Goods from the Seller on these Conditions. A contract for the supply of Goods by the Seller to the Buyer on these Conditions will be formed when either:

3.2.1 the Seller accepts the Order by issuing an Order Acknowledgement to the Buyer; or

3.2.2 Fulfilment takes place.

3.3 For the avoidance of doubt, the Seller is under no obligation to accept the Order.

3.4 These Conditions are the only terms and conditions on which the Seller will supply goods to the Buyer and will apply to the exclusion of all other terms and conditions including any terms and conditions which the Buyer purports to apply under any purchase order, confirmation of order or similar document (whether or not such document is referred to in the Contract) and any terms and conditions which may otherwise be implied by trade, custom, practice or course of dealing.

3.5 The Seller reserves the right to amend or replace the terms and conditions of YAMAHA giving a 30 days' prior written notice to the Buyer.

3.6 Delivery will be deemed conclusive evidence of the Buyer's acceptance of these Conditions.

3.7 The Seller will be entitled, at its discretion, to deliver Goods by separate instalments and to invoice the Price for each instalment separately in accordance with **Condition 8.4**.

## 4. THE GOODS

4.1 The Seller will be entitled at any time to:

4.1.1 vary the design, finish or Description of Goods and/or their packaging; and/or

4.1.2 substitute any materials or parts which are used in Goods and which are unavailable for any reason with alternative materials or parts,

to the extent that:

4.1.3 this does not materially affect their quality or performance; or

4.1.4 this is necessary to comply with applicable law.

4.2 All samples, drawings, descriptive and illustrative matter and advertising issued or published by the Seller (or the manufacturer of the Goods) whether in catalogues, brochures, websites, other promotional material or otherwise are for the sole purpose of giving an approximate idea of the relevant Good.

## 5. DELIVERY

5.1 The Seller will Deliver the Goods to the address specified in the Order or Order Acknowledgement (as applicable) or, subject to **Condition 8.2**, such address as otherwise agreed in writing between the parties. The Seller will be responsible for unloading the Goods from the delivery vehicle.

5.2 The Seller will use reasonable endeavours to deliver Goods during the estimated delivery date or period set out in the Order or Order Acknowledgement (as applicable), but time for delivery of the Goods will not be of the essence of the Contract. Any delivery dates given by the Seller are estimates only.

5.3 If Delivery occurs but the Buyer fails to accept delivery of the Goods the Seller will be entitled to:

5.3.1 store or arrange for storage of the Goods until the Buyer accepts delivery of them or they are disposed of under **Condition 5.3.2** (as applicable) and to take such action as it considers necessary to attempt to re-deliver the Goods to the address specified in the Order or Order Acknowledgement as applicable;

5.3.2 treat the Contract as repudiated by the Buyer and dispose of the Goods in any way it sees fit, including by sale to another person; and

5.3.3 charge the Buyer for all costs and expenses which the Seller incurs under **Conditions 5.3.1** and **5.3.2**.

## 6. INSPECTION AND ACCEPTANCE

6.1 The Buyer will conduct a visual inspection of the Goods on Delivery and will within 2 working days from and including the date of Delivery give written notice to the Seller of any breach of any of the warranties in **Condition 9.1** in relation to those Goods.

6.2 **Conditions 9.2.2, 9.2.3, 9.3, 9.4, 9.5 and 9.6** will apply to any breach of warranty notified to the Seller under **Condition 6.1**.

6.3 If the Buyer does not give notice to the Seller under **Condition 6.1** in respect of a Good, the Buyer will be deemed to have accepted that Good on expiry of the 2 working day period from and including the date of Delivery.

## 7. PASSING OF RISK AND RETENTION OF TITLE

7.1 Risk of damage to or loss of the Goods will pass to the Buyer on Fulfilment. Notwithstanding the passing of risk the Seller will insure the Goods from Fulfilment until Delivery.

7.2 Subject to **Conditions 7.3 and 7.4**, legal and beneficial ownership of the Goods will not pass to the Buyer until the Seller has received in full in cleared funds:

7.2.1 all sums due to it in respect of the Goods; and

7.2.2 all other sums which are or which become due to the Seller from the Buyer on any account whatsoever.

7.3 The Buyer may resell the Goods in the ordinary course of its business and, if it does so, legal and beneficial ownership of Goods will pass to the Buyer immediately prior to the Buyer entering into a binding contract for the sale of those Goods.

7.4 Until ownership of the Goods has passed to the Buyer, the Buyer will:

7.4.1 hold the Goods on a fiduciary basis as the Seller's bailee;

7.4.2 store the Goods (at no cost to the Seller) separately from all other goods of the Buyer or any third party in such a way that they remain readily identifiable as the Seller's property;

7.4.3 not destroy, deface or obscure any identifying mark or packaging on or relating to the Goods;

7.4.4 maintain the Goods in satisfactory condition; and

7.4.5 keep the Goods insured for their full price against damage or loss on an "all risks" basis with reputable insurers, whenever requested by the Seller produce a copy of the policy of insurance in respect of the Goods to the Seller, do nothing and not omit to do anything which in consequence permits any insurer to refuse to indemnify the Buyer in full in accordance with the terms of any insurance policy maintained in respect of the Goods in respect of any claim made under any such insurance policy, assign any rights of the Buyer for any claim under such insurance policy in respect of the Goods to the Seller and procure that any insurance proceeds received in respect of lost or damaged Goods are paid to the Seller, to the extent required to satisfy the indebtedness of the Buyer to the Seller.

7.5 The Buyer may use the Goods in the ordinary course of its business before ownership has passed to it, to the extent necessary to demonstrate any of the Goods.

7.6 The Buyer's right to possession, use and resale of the Goods will terminate immediately if, before ownership of the Goods passes to the Buyer in accordance with **Conditions 7.2 or 7.3**,:

7.6.1 the Buyer becomes Insolvent;

7.6.2 the Seller gives the Buyer written notice that it has any concerns regarding the financial standing of the Buyer;

7.6.3 the Buyer fails to pay any sum due to the Seller on or before the due date;

7.6.4 the Buyer encumbers or in any way charges any of the Goods; or

7.6.5 the Contract expires or terminates for any reason.

7.7 The Seller will be entitled to recover payment for the Goods (including by way of an action for the price) notwithstanding that ownership of any of the Goods has not passed from the Seller.

7.8 The Buyer grants, and will procure that the owner of any third party premises grants, the Seller, its agents, employees and sub-contractors an irrevocable licence at any time to enter any premises where the Goods are or may be stored in order to inspect them, or, where the Buyer's right to possession, use and resale has terminated, to recover them.

7.9 If the Buyer's right to possession, use and resale of the Goods terminates in accordance with **Condition 7.6**, the Seller will be entitled to issue the Buyer with a credit note for all or any part of the price of the Goods together with any value added tax thereon (if applicable).

7.10 The Seller's rights contained in this **Condition 7** will survive expiry or termination of the Contract however arising.

## 8. PRICE AND PAYMENT

8.1 The Buyer will pay the Prices to the Seller in accordance with this **Condition 8**.

8.2 The Prices are inclusive of packaging, insurance, carriage and delivery costs to the Buyers named premises in the Order or Order Acknowledgement (as applicable). Delivery to any other location will be subject to an additional charge, which will be payable by the Buyer in addition to the Prices.

- 8.3 Any sum payable under the Contract is exclusive of value added tax (and any other similar or equivalent taxes, duties, fees and levies imposed from time to time by any government or other authority) which will be, where applicable, payable in addition to that sum in the manner and at the rate prescribed by law from time to time.
- 8.4 Following Fulfilment the Seller will be entitled to invoice the Buyer for the Prices for the Goods and any costs payable by the Buyer in addition to the Prices pursuant to **Condition 5.3** and/or in respect of any additional/specialist packaging or insurance requested by the Buyer and provided by the Seller.
- 8.5 Each invoice will be payable by the Buyer within 30 days following the date on which the invoice is issued. All payments will be made in pounds sterling in cleared funds to such bank account as the Seller may nominate from time to time.
- 8.6 A discount of 1% will be applied to the invoice if settled by the Buyer within 14 days of the date the invoice is issued.
- 8.7 Time will be of the essence in respect of the timescales for payment of invoices set out in **Condition 8.4** and any timescales which may be substituted for them in accordance with **Conditions 8.10.2** or **15.4**.
- 8.8 Notwithstanding any purported contrary appropriation by the Buyer, the Seller will be entitled, by giving written notice to the Buyer, to appropriate any payment by the Buyer to any invoice issued by the Seller.
- 8.9 If any sum payable under the Contract is not paid on or before the due date for payment the Seller will be entitled to charge the Buyer interest on that sum at 10.75% per annum from the due date until the date of payment (whether before or after judgment), such interest to accrue on a daily basis.
- 8.10 If the Buyer fails to make any payment due to the Seller under the Contract or any other contract between the Buyer and the Seller on or before the due date the Seller will be entitled:
- 8.10.1 to withhold further deliveries of Goods until payment of all overdue sums has been made; and/or
- 8.10.2 by giving written notice to that effect to the Buyer, to vary the invoicing and/or payment terms set out in the Contract; and
- 8.10.3 all invoices issued will immediately become due and payable.
- 8.11 If the Buyer becomes Insolvent or if the Seller gives written notice to the Buyer that it has any reasonable concerns regarding the Buyer's financial standing all invoices issued will immediately become due and payable.
- 8.12 Save as otherwise expressly provided in these Conditions or required by law, all payments to be made by the Buyer to the Seller under the Contract will be made in full and without any set-off or any deduction or withholding including on account of any counter-claim.
- 8.13 Following expiry or termination of the Contract:
- 8.13.1 the Seller will be entitled to invoice all Prices and any costs incurred which have not yet been invoiced; and
- 8.13.2 all invoices (including any invoices issued under **Condition 8.13.1**) will become immediately due and payable by the Buyer.

## 9. WARRANTY

- 9.1 The Seller warrants to the Buyer that during the Warranty Period the Goods will:
- 9.1.1 subject to **Condition 4.1**, conform to the Description in all material respects; and
- 9.1.2 be free from material defects in design, materials or workmanship.
- 9.2 If, at any time during the Warranty Period, the Buyer becomes aware of a breach of either of the warranties at **Condition 9.1**, the Buyer will:
- 9.2.1 give written notice of the breach to the Seller, such notice to be given as soon as possible and in any event no later than 2 working days after the Buyer becomes aware of the breach and prior to expiry of the Warranty Period;
- 9.2.2 at the Seller's option either return to the Seller (at the Buyer's cost) the relevant Good or permit the Seller or its agent or sub-contractor to inspect it at the Buyer's premises; and
- 9.2.3 provide to the Seller all information and assistance which the Seller may require to investigate the alleged breach.
- 9.3 Subject to **Condition 10.3**, the Seller's only Liability for breach of either of the warranties at **Condition 9.1** will be, at the Seller's option, to repair or replace the relevant Good.
- 9.4 The Buyer's only remedy for breach of the obligation at **Condition 9.3** will be in damages.
- 9.5 Subject to **Condition 10.3**, the Seller will not have any Liability for a breach of a warranty at **Condition 9.1** if:
- 9.5.1 the Buyer does not comply with its obligations at **Condition 9.2** in respect of the breach;
- 9.5.2 notice of the breach should have been but was not given to the Seller under **Condition 6.1**;
- 9.5.3 the relevant defect was caused by damage in transit after Delivery;
- 9.5.4 the relevant defect was caused or exacerbated by improper use, handling, alteration, installation, repair, maintenance, storage or failure to comply with instructions provided by the Seller (or the manufacturer); or

9.5.5 the Buyer makes further use of the relevant Good after discovering the relevant breach.

The warranties under **Condition 9.1** will apply to any Goods which are repaired or replaced under **Condition 9.3** for the remainder of the original Warranty Period.

9.6 Subject to **Condition 10.3**, all warranties, conditions and other terms implied by law (whether by statute, common law or otherwise) are excluded from the Contract.

## 10. EXCLUSIONS AND LIMITATIONS OF LIABILITY

**The Buyer's attention is particularly drawn to this Condition.**

10.1 Subject to **Condition 10.3**, the Seller's maximum aggregate Liability arising out of or in connection with a Contract will be limited to the value of the relevant Goods giving rise to a claim.

10.2 The Seller will have no Liability to the Buyer for any:

10.2.1 loss of profit (whether direct, indirect or consequential);

10.2.2 loss of revenue, loss of production or loss of business (in each case whether direct, indirect or consequential);

10.2.3 loss of goodwill, loss of reputation or loss of opportunity (in each case whether direct, indirect or consequential);

10.2.4 loss of anticipated savings or loss of margin (in each case whether direct, indirect or consequential);

10.2.5 loss of bargain (whether direct, indirect or consequential);

10.2.6 liability of the Buyer to third parties (whether direct, indirect or consequential); or

10.2.7 indirect, consequential or special loss,

subject always to **Condition 10.3**.

10.3 Nothing in the Contract will operate to exclude or restrict one party's Liability (if any) to the other:

10.3.1 for death or personal injury resulting from negligence;

10.3.2 for fraud or fraudulent misrepresentation;

10.3.3 for breach of its obligations arising under section 12 Sale of Goods Act 1979;

10.3.4 arising under Section 2(3) Consumer Protection Act 1987; or

10.3.5 for any matter for which it is not permitted by law to exclude or limit, or to attempt to exclude or limit, its liability.

10.4 Nothing in this **Condition 10** will prevent or restrict the right of a party to seek injunctive relief or specific performance or other discretionary remedies of the court.

## 11. INTELLECTUAL PROPERTY

Nothing in the Contract will operate to transfer to the Buyer or to grant to the Buyer any licence or other right to use any of the Seller's Intellectual Property Rights, save that the Buyer may use the Seller's Intellectual Property Rights in the Goods solely to the extent necessary to use the Goods for the purpose for which they were supplied.

## 12. BUYER OBLIGATIONS

12.1 The Buyer will:

12.1.1 not remove or alter any trade marks, patent numbers, serial numbers or other identifying marks on the Goods or their packaging; and

12.1.2 not alter or modify the Goods in any way.

12.2 The Buyer will comply with the Seller's instructions in connection with any product recall initiated by the Seller involving the Goods (or any of them).

12.3 Notwithstanding any other term of the Contract the Seller will not be in breach of the Contract to the extent its failure to perform or delay or defect in performance of its obligations under the Contract arises as a result of:

12.3.1 any breach by the Buyer of its obligations contained in the Contract;

12.3.2 the Seller relying on any incomplete or inaccurate data provided by a third party; or

12.3.3 the Seller complying with any instruction or request by the Buyer or one of its employees.

12.4 The Buyer must be able to demonstrate to the Seller's reasonable satisfaction that it is sufficiently creditworthy to handle the Goods. The Buyer shall co-operate with reasonable requests from the Seller and/or the Seller's credit insurers for financial information.

13. **TERMINATION**

- 13.1 If the Buyer commits a material breach of the Contract (including failure to make any payment on or before the due date) the Seller may terminate the Contract immediately by giving written notice to that effect to the Buyer.
- 13.2 The Seller may terminate the Contract immediately by giving written notice to that effect to the Buyer if the Buyer becomes Insolvent.
- 13.3 Following expiry or termination of the Contract **Conditions 1, 5.3, 7, 8, 9, 10, 14, 15** and **16** will continue in force, together with any other Conditions which expressly or impliedly continue to have effect after expiry or termination of the Contract.

14. **NOTICE**

Any notice given under or in connection with the Contract will be in writing, in the English language and sent by pre-paid first class post to the relevant party's address or sent by e-mail to the relevant party's e-mail address as notified to the other party from time to time.

15. **GENERAL**

- 15.1 The Contract constitutes the entire agreement between the parties and supersedes any prior agreement or arrangement in respect of its subject matter and:
    - 15.1.1 neither party has entered into the Contract in reliance upon, and it will have no remedy in respect of, any misrepresentation, representation or statement (whether made by the other party or any other person and whether made to the first party or any other person) which is not expressly set out in the Contract; and
    - 15.1.2 nothing in this **Condition 15.1** will be interpreted or construed as limiting or excluding the liability of any person for fraud or fraudulent misrepresentation.
  - 15.2 A delay in exercising or failure to exercise a right or remedy under or in connection with the Contract will not constitute a waiver of, or prevent or restrict future exercise of, that or any other right or remedy, nor will the single or partial exercise of a right or remedy prevent or restrict the further exercise of that or any other right or remedy. A waiver of any right, remedy, breach or default will only be valid if it is in writing and only in the circumstances and for the purpose for which it was given and will not constitute a waiver of any other right, remedy, breach or default.
  - 15.3 If any term of the Contract is found by any court or body or authority of competent jurisdiction to be illegal, unlawful, void or unenforceable, such term will be deemed to be severed from the Contract and this will not affect the remainder of the Contract which will continue in full force and effect.
  - 15.4 No variation to the Contract will be effective unless it is in writing and signed by a duly authorised representative on behalf of each of the parties.
  - 15.5 Nothing in the Contract and no action taken by the parties in connection with it or them will create a partnership or joint venture or relationship of employer and employee between the parties or give either party authority to act as the agent of or in the name of or on behalf of the other party or to bind the other party or to hold itself out as being entitled to do so.
  - 15.6 Each party agrees that it is an independent contractor and is entering into the Contract as principal and not as agent for or for the benefit of any other person.
  - 15.7 The parties do not intend that any term of the Contract will be enforceable under the Contracts (Rights of Third Parties) Act 1999 by any person.
  - 15.8 The Seller's rights and remedies set out in these Conditions are in addition to and not exclusive of any rights and remedies provided by law.
16. **GOVERNING LAW AND JURISDICTION**
- 16.1 The Contract and any non-contractual obligations arising out of or in connection with it will be governed by the law of England.
  - 16.2 Each party agrees that the courts of England have exclusive jurisdiction to determine any dispute arising out of or in connection with the Contract (including in relation to any non-contractual obligations).

Customer ID: \_\_\_\_\_

Date: \_\_\_\_\_

Signature: \_\_\_\_\_