

SIBELIUS SOFTWARE LIMITED

CONDITIONS OF SALE

1. DEFINITIONS

Purchaser: the person or company entering into a contract with Sibelius

Sibelius: Sibelius Software Limited, (Registered in England with Company Number 3338819), of The Old Toy Factory, 20-22 City North, Fonthill Road, London N4 3HN, UK

Product any product available for purchase from Sibelius.

2. GOVERNING CONDITIONS

- 2.1 These Conditions, together with any special conditions agreed by Sibelius in writing, (in accordance with sub-clause 2.2 below), apply to all contracts made by Sibelius for the supply of Product. They are the only conditions on which Sibelius is prepared to contract with the Purchaser. No pre-contract statement, representation or warranty given or made by or on behalf of Sibelius shall form part of these Conditions unless included as a special condition.
- 2.2 No change to the contract or these Conditions shall be binding and no other terms and conditions sought to be imposed by the Purchaser or implied by trade custom in the course of dealing shall be included unless agreed in writing by a duly authorised representative of Sibelius.

3. PLACING ORDERS AND DEMONSTRATION AND SAMPLES OF PRODUCT

- 3.1 No contract for the supply of Product shall become binding until Sibelius accepts the Purchaser's order by either despatching Product or acceptance in writing.
- 3.2 Any Product supplied by Sibelius for the purposes of demonstration or as a sample shall be clearly marked as Not for Resale and may neither be sold nor passed to any third party with or without consideration.

4. PRICE

- 4.1 The price of Product shall be Sibelius' quoted price or, where no price has been quoted (or a quoted price is no longer valid), the price listed in Sibelius' published price lists current at the date of acceptance of the order by Sibelius. Unless a different period has been expressly specified in writing by Sibelius, all quotations given by Sibelius are valid for a period of 30 days only from the date upon which they are given, after which time the quotation shall automatically expire.
- 4.2 Unless otherwise stated the price of Product is exclusive of VAT and all other tax or duty which, if applicable, will be charged in addition at the appropriate rate.
- 4.3 Unless otherwise stated the price of the Product does not include the costs of carriage, special packaging for transit, insurance nor any other cost incidental to the carriage of the Products which costs will be invoiced to the Purchaser and shall be payable at the same time as payment is made for Product.
- 4.4 Sibelius reserves the right by notice in writing served on the Purchaser to increase the price of the Product if after the date of making the contract but before all the Product are delivered to the Purchaser under it, there is an increase in the cost of the Product to Sibelius of more than 5% of the cost at which they were available to Sibelius at the date the contract was made or, if earlier, the date that the quotation in respect of the Products was given to the Purchaser. The Purchaser shall have the right if the contract price of the Product is increased by more than 5% of their original contract price, to terminate the contract as regards any undelivered balance of Product by notice in writing delivered to Sibelius within 7 working days of Sibelius giving notice to the Purchaser of the increase in price.
- 4.5 No educational or other discount or special offer will be available on the published prices of Product unless Purchaser complies with Sibelius' verification of eligibility policy.

4.6 Sibelius reserves the right at any time to withdraw any discount available on the published prices of Product.

5. PAYMENT

5.1 Unless otherwise agreed in writing invoices will be sent or delivered by Sibelius to the Purchaser on or after the date of delivery of Product and shall be payable within 30 days of the date of invoice.

5.2 Time for payment shall be of the essence of the contract. If Purchaser fails to pay any sum due to Sibelius under any contract by the due date for payment:

(1) Sibelius shall be entitled to withhold delivery of Product due to be delivered to the Purchaser until all such outstanding sums have been paid. If more than £1,000 has been due and owing by the Purchaser for more than 8 weeks Sibelius may, on written notice to the Purchaser, cancel all outstanding orders for Product without any further liability;

(2) in addition to any other rights Sibelius may have, interest shall be chargeable on outstanding sums from the date they fall due to the date of payment at the rate of 2.5% per month accruing on a daily basis both before and after judgment.

6. DELIVERY

6.1 Sibelius shall deliver Product to the place designated by the Purchaser when the order for Product has been accepted by Sibelius. Risk of loss or damage to Product shall pass to the Purchaser on delivery.

6.2 Delivery or collection times indicated by Sibelius are estimates only and Sibelius shall not be liable for any loss or damage suffered by Purchaser arising directly or indirectly from any delay in delivery.

6.3 Where Product is to be delivered in instalments, each delivery shall constitute a separate contract. Failure by Sibelius to deliver any one or more of the instalments in accordance with these Conditions or any claim by Purchaser in respect of any one or more instalments shall not entitle Purchaser to treat the contract as a whole as repudiated.

7. WARRANTIES

7.1 Subject to the conditions set out below Sibelius warrants that Product will correspond with their specification at the time of delivery and will be free from defects in material and workmanship for a period of 90 days from delivery. During this period Sibelius will, at its option, repair or replace defective Product provided that they are returned within this period.

7.2 The above warranty is given by Sibelius subject to the following conditions:

(1) Save for liability for death or personal injury due to the negligence of Sibelius and liability under the Consumer Protection Act 1987, Sibelius shall be under no liability in respect of any defect arising from fair wear and tear, wilful damage or negligence of Purchaser or any third party, abnormal working conditions, failure to follow Sibelius' instructions (whether oral or in writing), misuse or alteration or repair of Product without Sibelius' approval.

(2) Sibelius shall be under no liability under the above warranty or any other warranty, condition or guarantee if

(1) the total price for Product is due and has not been paid; and

(2) the defect is not notified to Sibelius within 7 days of the date of delivery or (where the defect was not apparent on reasonable inspection at the date of delivery) within 7 days of the discovery of the defect.

- (3) The above warranty does not extend to parts, materials or equipment not manufactured by Sibelius.

8. LIABILITY

- 8.1 Save for liability for death or personal injury due to the negligence of Sibelius and liability under the Consumer Protection Act 1987, Sibelius' total liability to the Purchaser under these Conditions (whether in contract, tort (including negligence) or otherwise) shall not in any circumstances exceed the price paid by the Purchaser to Sibelius in respect of Product in respect of any one incident or series of incidents attributable to the same cause.
- 8.2 Sibelius shall not be liable for any special, indirect or consequential loss or damage whatsoever (whether caused by the negligence of Sibelius or otherwise) which arises out of or in connection with the supply of Product or their use or resale by the Purchaser.
- 8.3 Sibelius shall not be liable to the Purchaser (including but without limitation in negligence) or be deemed to be in breach of contract by reason of any delay in performing, or any failure to perform, any of Sibelius's obligations in relation to Product, if the delay or failure was due to any cause beyond Sibelius's reasonable control.

9. THIRD PARTY RIGHTS

- 9.1 The Purchaser shall indemnify Sibelius against any and all liabilities, claims and costs incurred by or made against Sibelius as a direct or indirect result of the carrying out of any work required to be done on or to the goods in accordance with the requirements or specifications of the Purchaser which involves any infringement or alleged infringement of any rights of any third party.
- 9.2 Sibelius shall have no liability to the Purchaser in the event of the goods infringing or being alleged to infringe the rights of any third party. In the event that the goods are or may be the subject of patent, copyright, registered design, trademark or other rights of any third party, Sibelius shall be obliged to transfer to the Purchaser only such title as Sibelius may have.

10. THE PURCHASER'S OBLIGATIONS

Where any item, material or information is supplied by the Purchaser in connection with the supply of Product by Sibelius pursuant to these Conditions, Sibelius accepts no responsibility for the accuracy of the same, nor for any defects in Product consequent upon any inaccuracies in such material nor for any consequences of such defects. Purchaser shall keep Sibelius at all times fully indemnified in respect of any claim by any third party that such material infringes their intellectual property rights.

11. RESERVATION OF TITLE

- 11.1 Title to the goods shall not pass to the Purchaser until payment in full of the price therefore (including any interest or other payment due under the contract). Until such payment the Purchaser shall subject to the provisions of clause 11 hereof store the goods in such a way as to enable them to be identified as the property of Sibelius.
- 11.2 If the Purchaser is purchasing the goods for resale the Purchaser may in the ordinary course of its business sell and deliver the goods to a third party on condition that until such payment as aforesaid the Purchaser shall hold all proceeds of such sales in trust for Sibelius and in a separate account. The Purchaser hereby undertakes forthwith upon being so requested by Sibelius to assign to Sibelius all rights and claims which the Purchaser may have against its customers arising from such sales until payment is made in full as aforesaid. The Purchaser shall not, without Sibelius's written consent, assign any such right or claim to any third party.
- 11.3 Sibelius reserves the right to repossess any goods in respect of which payment is overdue and thereafter to resell the same and for this purpose the Purchaser hereby grants an irrevocable right and licence to Sibelius's servants and agents to enter upon all or any of its premises with or without vehicles during normal business

hours. The provisions of this sub-clause shall continue in force notwithstanding termination of the relevant contract howsoever caused.

12. INSOLVENCY OF PURCHASER

In any of the events that:

- 12.1 the Purchaser commits an act of bankruptcy or compounds or enters into a deed of arrangement with his creditors or if a receiving order is made against him or if (being a company) an order is made or a resolution is passed for the winding-up of the Purchaser (otherwise than for the purposes of amalgamation or reconstruction); or
- 12.2 if a receiver or administrator is appointed of any of the Purchaser's assets or undertaking or if circumstances arise which entitle a court or a creditor to appoint a receiver, manager or administrator or which entitle a court to make a winding-up order; or
- 12.3 if the Purchaser takes or suffers any similar or analogous action in consequence of debt; or
- 12.4 if the Purchaser commits any breach of this or any other agreement between Sibelius and the Purchaser:

THEN Sibelius may without prejudice to any of its other rights:

- (a) stop any goods in transit; and/or
- (b) suspend further deliveries; and/or
- (c) terminate the rights of the Purchaser under clause 11; and/or
- (d) by notice in writing to the Purchaser terminate the contract or any other contract between Sibelius and the Purchaser; and/or
- (e) by its employees or agents enter upon or into any land, buildings or vehicles where the goods or part of them are situated or are reasonably thought to be situated to retake possession of the same and the Purchaser shall for such purposes notify Sibelius of the whereabouts of the goods.

13. GENERAL

- 13.1 Any notice required or permitted to be given by either party to the other under these Conditions shall be in writing addressed to that other party at its registered office or principal place of business or such other address as may at the relevant time have been notified pursuant to this provision to the party giving the notice. Notices sent by first class post shall be deemed to have been given forty-eight hours after posting and notices sent by facsimile shall be deemed to have been given on the date of despatch.
- 13.2 Failure by Sibelius to exercise or enforce any rights hereunder shall not be deemed to be a waiver of any such right nor operate so as to bar the exercise or enforcement thereof at any time or times thereafter.
- 13.3 These Conditions shall be governed by and construed in all respects in accordance with English law and the parties agree to submit to the non-exclusive jurisdiction of the English Courts.