



## FRENCH-AMERICAN PIANO SOCIETY

New York, U.S.A

### PURCHASE ORDER TERMS AND CONDITIONS – JUNE 2017

1. **DELIVERABLES.** The term "Deliverables" shall mean the materials, goods, articles, and services that are the subject of this purchase order ("Order"). All quoted prices are for F.O.B. delivery point, unloaded and assembled, and shall be deemed to include the entire compensation to be paid to the vendor or other provider identified in this Order ("Vendor") including, but not limited to, delivery charges, demurrage, insurance, packing, boxing, and container charges.

2. **DELIVERY; OWNERSHIP.** Time is of the essence in Vendor's performance of this Order. If Vendor fails to comply, French American Piano, Inc reserves all rights available under law, and specifically, the right to cancel the Order, in whole or in part, and to purchase the Deliverables from another source, and to charge Vendor with any loss incurred as a result of such action. To the extent not automatically vested in French American Piano, Inc, Vendor hereby assigns to French American Piano, Inc ownership of all Deliverables to be provided hereunder.

3. **ACCEPTANCE; CANCELLATION; CHANGES; FORCE MAJEURE.** All Deliverables shall be subject to the right of inspection and acceptance or rejection by French American Piano, Inc. For its convenience or due to force majeure, French American Piano, Inc may cancel this Order in whole or in part or change the specifications at any time. Upon cancellation, Vendor shall stop all work.

4. **WARRANTIES; NON-WAIVER; SET-OFF.** Vendor expressly warrants that all Deliverables (i) meet in all respects the highest applicable standards of the industry and, in addition, any requirements and specifications set forth or referenced in the Order; (ii) are fit for the purpose for which similar materials and services are ordinarily employed; (iii) are free from defects in materials and workmanship, (iv) are merchantable; (v) do not infringe or misappropriate the rights of any third party or violate any law; and (vi) were not manufactured, priced or sold in violation of any law, including, without limitation, those relating to health and safety. Vendor warrants that it has all power and authority to convey ownership rights and licenses to French American Piano, Inc in accordance with this Order. Vendor further warrants that any services under this Order will be performed in a diligent and highly professional manner, in accordance with applicable law, and through experienced individuals qualified to perform the Services. All warranties shall survive delivery, acceptance of, and payment for the Deliverables. French American Piano, Inc may set-off amounts owing from Vendor to French American Piano, Inc against any amount owing from French American Piano, Inc to Vendor.

5. **APPLICABLE LAW AND PERMISSIONS.** This Order and transaction shall be governed by the laws of the State of New

York applicable to contracts made and to be performed within New York. Vendor's performance under this Order shall comply with all applicable laws, rules and regulations. Without limitation, Vendor will not

(A) offer, promise, or provide (or authorize the offer, promise, or provision of), directly or indirectly, anything of value to any government official, political party official, political candidate, or employee thereof, or to any other third party, for the purpose of influencing any act or decision or obtaining any improper benefit or advantage or

(B) take any other action that would violate the U.S. Foreign Corrupt Practices Act or other applicable anti-corruption laws. Vendor will obtain all required governmental and third-party licenses, approvals, and permits appropriate for the provision of Deliverables.

6. **INDEMNIFICATION.** In addition to any liability or obligation of Vendor to French American Piano, Inc at law, Vendor shall be liable to and defend, hold harmless and indemnify French American Piano, Inc, its trustees, officers, employees, volunteers, members, donors and agents (collectively, "Indemnitees"), from and against any actions, suits, claims, judgments, liabilities, losses, costs and expenses (including actual attorney's fees) arising out of or relating to, directly or indirectly, Vendor's performance of this Order or its provision of the Deliverables, including, without limitation, any breach by Vendor of this Order or allegation that the Deliverables, or French American Piano, Inc's use of the Deliverables, infringe or misappropriate the copyright, patent, or other proprietary or intellectual property right of any third party, or that the work performed by Vendor violates any applicable law or its agreements with any third party.

7. **INSURANCE.** (a) Vendor must maintain, at its own cost and expense, the following types and amounts of insurance with insurers rated "A" "VII" or better by A.M. Best and licensed in the State of New York:

1) Commercial General Liability insurance, written on an occurrence basis including, but not limited to, coverage for contractual liability, products and completed operations, personal injury, bodily injury and broad form property damage liabilities with liability limits not less than \$1,000,000 per occurrence and annual aggregate. Vendor shall maintain products and completed operations insurance for 3 years after termination of the Order.

2) When working on-site at French American Piano, Inc facilities or at French American Piano, Inc sponsored events,

(i) Workers' Compensation and Employers Liability insurance, covering each employee of Vendor engaged in the performance of work under this Agreement, with minimum limits of liability in accordance with applicable state law in the case of Workers' Compensation insurance, and with not less than the following limits of liability in the case of Employers



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Liability insurance: Workers' Compensation - Coverage A – Statutory; Employers Liability -Coverage B- Each Accident - \$1 million; Policy Limit - \$1 million; Each Employee by Disease - \$1 million.

(ii) Automobile Liability insurance covering all owned, non-owned and hired vehicles used in connection with the performance of work under this Agreement, with a combined single limit of liability for bodily injury and property damage of not less than \$2,000,000 per occurrence.

3) Professional Liability insurance with limits not less than \$1,000,000 per occurrence and annual aggregate covering the errors and omissions of Vendor.

4) Each of the policies required by subsections (1) and (2)(ii) above shall provide that the insurance company pay the costs of defense (including attorneys' fees) of any suit or proceeding against French American Piano, Inc or the other Indemnities, alleging any omission or act relating to this Order, and seeking damages on account thereof, even if such suit is groundless, false or fraudulent. These insurances shall be primary. The policies shall be written to cover claims incurred, discovered, manifested or made during or after the expiration of this agreement. Other Vendor insurance shall not reduce or limit Vendor's obligation to indemnify and defend French American Piano, Inc or Vendor's liabilities for claims made or suits arising or resulting from or in connection with the performance of this Agreement. Any insurance French American Piano, Inc French American Piano, Inc may purchase shall be excess and non-contributory.

(b) Prior to commencement of the work, the Vendor will deliver certificates of insurance to the French American Piano, Inc providing evidence of the coverage required above. Each certificate of insurance, with the exception of Workers' Compensation and Employers Liability Insurance, shall name French American Piano, its trustees, officers, agents, employees and Indemnites as additional insured. The Vendor shall provide French American Piano, Inc French American Piano, Inc with 30 days prior written notification if their insurance is cancelled or a material change has been made to their policy. Certificates of insurance and written notice of cancellation by Vendor are to be sent to the French American Piano, Inc French American Piano, Inc by mail at [contact@french-american-piano.org](mailto:contact@french-american-piano.org).

8. TAXES. No federal excise taxes, or state or local taxes shall be included in any invoice. The Deliverables covered by this Order are exempt from such taxes. Upon request, French American Piano, Inc will issue an exemption certificate to Vendor.

9. EXPORT CONTROLS. Vendor confirms that all items (hardware, software or technology) to be provided to French American Piano, Inc under this order or agreement are not export-controlled under the U.S. International Traffic in Arms

Regulations ("ITAR") or listed in an Export Control Classification Number ("ECCN") entry on the U.S. Commerce Control List of the Export Administration Regulations ("EAR"). To the extent that the foregoing statement is not correct, Vendor will provide in writing to French American Piano, Inc the export classification information of such item(s) before this order or agreement is deemed finalized and the item is provided. In such event, Vendor's information will include the proper ECCN if the item is controlled under the EAR or the proper United States Munitions List Category if the item is controlled under the ITAR. Vendor will notify French American Piano, Inc in writing of any future changes to the export classification information of the item(s).

10. PAYMENT. French American Piano, Inc will make reasonable efforts to pay invoices within the net terms indicated on the face of this Purchase Order after proper delivery and acceptance of Deliverables and receipt of invoice. French American Piano, Inc has the right to withhold charges that are under dispute until resolved.

11. CHANGES TO TERMS. Any changes or exceptions to the Purchase Order terms and conditions must be agreed to by French American Piano, Inc in writing. Any variance from or addition to these Purchase Order terms and conditions in any present or future invoice or other document delivered by Vendor will be void and of no effect unless agreed to in writing by an authorized representative of French American Piano, Inc.

12. PRODUCT RECALL NOTIFICATION. If there is a product recall affecting any Deliverables, Vendor shall promptly send a written notification of recall including instructions for disposal and replacement to the President of the French American Piano, sent by e-mail at [contact@french-american-piano.org](mailto:contact@french-american-piano.org).

13. CONFLICT OF INTEREST. Vendor warrants that there exists no actual, potential or appearance of conflict between Vendor's family, businesses, or financial interest and Vendor's provision of the Deliverables. Vendor represents that it has not offered (and will not offer) any compensation, reward, gift, favor, service, outside employment, reimbursement of expenses, loan, ownership interest, or anything else of monetary value, to any officer, employee, student, or faculty member of French American Piano, Inc as an inducement to entering into or continuing under this Purchase Order. Vendor will notify French American Piano, Inc in writing of any change in conditions that might give the appearance of a conflict of interest. Vendor will support and safeguard French American Piano, Inc's legitimate interests in any dealings with third parties.