

**1. Definitions**

- a) "the Company" Sound Performance Limited a company registered in England and Wales, (Company number 02892752) whose registered office is at 3 Greenwich Quay, Clarence Road, London, SE8 3EY and any member of its group.
- b) "the Customer" means any person, firm, Company, organisation or other body contracting for the services and/or goods of the Company.
- c) "the Contract" means any contract for the supply of Goods or Services now or hereafter made between the Company and the Customer.
- d) "Goods" means the physical goods supplied to the Customer by the Company and all services rendered by the Company in connection with the supply of those goods.
- e) "Payment" means the Company's receipt from the Customer of cleared funds.
- f) "the Price" means the price(s) of Goods as set out in the Company's standard rate card from time to time as varied by the Company in writing to the Customer from time to time.
- g) "Services" means the services provided by the Company to the Customer from time to time.

**2. Contract**

- a) These conditions together with the description and quality of Goods set out in the customers written order (as accepted by and/or acted upon by the Company) shall constitute the whole Contract between the Company and the Customer and supersede any prior promises, representation, undertakings or implications (whether oral or in writing).
- b) The Customer acknowledges that it has not entered into the Contract in reliance upon any representation made by or on behalf of the Company in any form or by any person whatsoever, save as set out in condition 2 (d).
- c) The Company's standard rate card and quotations issued by the Company are not offers capable of acceptance by the Customer. No order submitted by the Customer shall be deemed to be accepted by the Company unless and until confirmed in writing by the Company's authorised representative.
- d) The Company reserves the right to make any changes in the specification of the Goods/Services, which do not materially affect their quality or performance.
- e) Warranties, representations and variations and additions to the Contract may only take effect if expressed in writing and signed by a director of the Company.
- f) Any standard or other terms and conditions proposed by the Customer whether in correspondence or its order form or by custom or otherwise shall not form part of the Contract regardless of when those terms and conditions are brought to the Company's attention and notwithstanding any purported stipulation by the Customer to the contrary and these conditions shall prevail.

- g) No variation to these conditions shall be implied by any indulgence shown to the Customer under this or any other contract between the Company and the Customer nor by any course of dealing between them and no alteration, exclusion or waiver of any of these conditions shall be effective or binding unless made in writing by a director of the Company.
- h) Where there is any inconsistency between these Terms and Conditions and the Customer's written order, these Terms and Conditions will prevail.
- i) No order which has been accepted by the Company may be cancelled by the Customer except with the agreement in writing of the Company and on terms that the Customer shall indemnify the Company in full against all loss (including loss of profit), costs (including the cost of all labour and materials used), damages, charges and expenses incurred by the Company as a result of cancellation.

### **3. Price**

- a) The Price is exclusive of VAT and delivery charges unless the Company specifically agrees otherwise in writing.
- b) The Price is based on current costs of production and can be amended by the Company on or at any time after acceptance of each Customer order to meet any rise or fall in such costs.
- c) The Company reserves the right at any time to introduce charges for storage of the Customer's Goods or property. Where no charges are set out in the Company's quotation or confirmation of acceptance of an order, storage charges may be introduced on 30 days' notice.
- d) Value Added Tax and any other sales or purchase tax or duties shall be payable by the Customer in addition to the Price and shall be charged at the rate prevailing at the date of delivery.

### **4. Payment**

- a) Unless expressly agreed in writing by the Company, full Payment is due from the Customer upon placing the order and the Company reserves the right not to proceed in any way with the order until such time as that payment is received.
- b) Where payment is made by means of a cheque or other negotiable instrument, the Company shall not be deemed to have received payment until the cheque or instrument has been honoured on presentation for payment.
- c) Where a credit account is agreed, the price shall be paid to the Company within thirty days of the date of the invoice.
- d) The Company may withdraw credit facilities at any time without giving a reason.
- e) Interest will be charged on any sums overdue on a day to day basis at the rate of four percent over the base rate of Lloyds TSB Bank plc from time to time from the due date until receipt by the Company of the full amount. Interest shall be compounded monthly (a part of a month being treated as a full month for the purpose of calculating interest). The parties agree that this constitutes a substantial remedy in terms of the Late Payment of Commercial Debts (Interest) Act 1998.
- f) Time for Payment is of the essence and failure to make Payment on the due date shall entitle the Company at its option to:-
  - i) cancel any orders as yet unperformed for the Customer; and/or

- ii) receive on demand Payment of all sums outstanding (whether or not otherwise due for payment) under any contract between the Company and the Customer; and/or
  - iii) treat the contract as terminated due to the Customer's repudiation of it; and/or
  - iv) the Company shall be entitled to exercise a lien over the Customer's property and Goods held on behalf of the Customer, (which lien the Customer hereby irrevocably grants) and on not less than 30 days' notice, to sell or otherwise dispose of the Customer property and Goods (on such basis and for such value as the Company shall in its entire discretion decide, with no implied obligation to obtain reasonable value) for any purpose whatsoever and to retain the monies received in respect of such sale or disposal in payment of sums due to or liabilities incurred by the Company.
- g) No deduction or set off by the Customer is permitted.
  - h) The Company may credit any amount(s) received by the Company from the Customer against any other amount(s) due from the Customer to the Company under any other contract or arrangement.

## 5. Termination

If the Customer:-

- a) becomes bankrupt, is the subject of winding up petition, goes into liquidation, has a receiver or administrator appointed over all or part of its business or assets otherwise becomes subject to the insolvency laws applicable in the Customer's place of incorporation, is unable to pay its debts as they fall due, or circumstances arise which render any of the foregoing likely to occur in the sole opinion of the Company; and/or
- b) is in material breach of any contract between the Customer and the Company; and/or
- c) is party to any other contract with the Company which is terminated for any reason

then the Company shall be entitled to terminate the Contract with immediate effect by serving written notice thereof on the Customer without compensation to the Customer but without prejudice to any rights of the Company.

## 6. Delivery and Acceptance

- a) Delivery of the Goods shall be made by the Customer collecting the Goods at the Company's premises at any time after the Company has notified the Customer that the Goods are ready for collection, or, if some other place for delivery is agreed in writing by the Company, by the Company delivering the Goods to that place. Delivery shall be deemed to have taken place when the Goods ordered are made available for collection. For the purposes of this condition, Goods which the Company agrees to store on behalf of the Customer are deemed "available for collection".
- b) The Company will use its reasonable endeavours to Deliver Goods to the Customer by the delivery date quoted by the Company but that date is a business estimate only and shall not be a term of the Contract. The Company shall be under no liability for failure to deliver the Goods by any specified date, notwithstanding any launch date or other deadline that the Customer may specify.
- c) Time for delivery shall not be of the essence of the contract. The Goods may be delivered/Services performed by the Company in advance of the quoted delivery date on giving reasonable notice to the Customer.

- d) The risk in the Goods shall pass to the Customer upon the Goods being Delivered (as defined in condition 6 (a) above).
- e) The Company shall not be liable to the Customer in contract, tort or otherwise:
  - i) for any non-delivery or shortage in quantity delivered or collected or damage to or defects in the Goods caused by any act, neglect or default of the Customer;
  - ii) for shortages in quantity delivered or damage to or defects in the Goods

which in either instance, would be apparent on reasonable inspection unless notice of the same is endorsed on the delivery papers or the Customer gives notice to the Company in writing of any such claim within five days of delivery;

- f) The Company may effect delivery in one or more instalments. Each such instalment shall be treated as a separate Contract and damage to, defects in or loss of one instalment of any order shall not entitle the Customer to cancel or to refuse to accept delivery of the remaining instalments of the order.
- g) If the Customer wrongfully refuses or fails to take delivery of the Goods, the Company shall be entitled to immediate payment in full for the Goods. The Company may notwithstanding any other remedy the Company may have:
  - i) store the Goods until actual delivery and charge the Customer for the costs (including insurance) of storage and re-delivery; or
  - ii) sell the Goods or have the goods destroyed and (after deducting all storage, destruction and selling expenses charge the Customer for any shortfall below the price under the Contract.

## **7. Exclusion and Limitation of Company's Liability**

- a) If Goods supplied by the Company are defective ("Defective Goods") owing or in part due to any defect or error in materials (or the contents thereof) supplied by or on behalf of the Customer to the Company in connection with the Goods then the Company shall not be liable for the Defective Goods.
- b) Where a valid claim in respect of any of the Goods/Services which is based on a defect in the quality or condition of the Goods/Services or their failure to meet specification or for breach of warranty is notified to the Company in accordance with these Terms, the Company may replace the Goods (or the part order in question) free of charge or, at the Company's sole discretion, refund to the Customer the price of the Goods/Services (or a proportionate part of the price) plus ten percent, in which case the Company shall have no further liability to the Customer.
- c) The Customer shall be responsible for taking all reasonable steps to limit and/or mitigate any loss or potential loss arising out of the supply or potential supply of Goods hereunder.
- d) Subject to Clause 7 (a) above, the Company's liability to the Customer for any breach of contract, negligence, loss, damage, costs or expense suffered by the Customer (including without limitation wasted manufacturing costs, advertising, the opportunity cost of lost record sales and the Customer's loss of profit) (but excluding liability for death or personal injury) arising out of the supply of Defective Goods for any reason whatsoever shall be limited to an obligation to promptly replace those Goods, or at the discretion of the Company to refund the Contract price received.
- e) The Company shall not be liable to the Customer or be deemed to be in breach of the Contract by reason of any delay in performing, or any failure to perform any of the Company's obligations in relation to the Goods/Services, if the delay or failure was due to the Customer or any cause beyond the Company's reasonable control.

- f) The Company shall not be liable to the Customer by reason of any representation (unless fraudulent), or any implied warranty, condition or other term, or any duty at common law, or under the express terms of the Contract, for loss of profit or for any indirect, special or consequential loss or damage, costs, expenses or other claims for compensation whatsoever (whether caused by the negligence of the Company, its employees or agents or otherwise) which arise out of or in connection with the supply of the Goods/Services (including any delay in supplying or any failure to supply the Goods/performance of the Services in accordance with the Contract or at all) or their use or resale by the Customer, and the entire liability of the Company under or in connection with the contract shall not exceed the price of the Goods/Services, except as expressly provided in these Terms.
- g) Nothing in these conditions excludes or limits the liability of the Company for death or personal injury caused by the Company's negligence or for fraudulent misrepresentation.
- h) The Company shall not be liable to the Customer, notwithstanding the notification of a claim, if legal proceedings in respect of that claim has not been commenced and served on the Company within twelve months of the notification of the claim. Any right of action which has become barred by lapse of time may not be exercised by way of counterclaim or set-off.
- i) The Company's prices are determined on the basis of the limit of liability set out in this Condition.

## **8. Unlawful Material**

- a) The Customer warrants that all material supplied by the Customer for reproduction on the Goods shall not be unlawful, obscene, defamatory or infringe the rights of any third party.
- b) The Customer warrants that it has acquired the benefit of all necessary permissions and consents (including without limitation copyright clearances, moral rights waivers and performers' consents) required enabling the Company to lawfully make and supply the Goods under the contract.
- c) The Company shall be under no obligation to supply Goods hereunder for which the Customer is unable to produce an MCPS licence when requested to do so by the Company.
- d) The Customer shall indemnify the Company in respect of any loss, damage, cost, expense and other liability of the Company arising out of any claim made against the Company which is inconsistent with the warranties, representations and obligations of the Customer under the Contract.

## **9. Passing of Property / Lien**

- a) Notwithstanding delivery, title to the Goods shall not pass to the Customer until the Company has received payment in full in respect of all Goods delivered to the Customer and any other sum due to the Company from the Customer. Until such payment the Customer shall have possession of the Goods as bailee and fiduciary agent for the Company. Even though title has not passed to the Customer the Company shall be entitled to take action to recover the Price once its payment has become due.
- b) The Customer hereby agrees forthwith on receipt of written request from the Company to assign to the Company all rights and claims which the Customer may have against third parties arising from such sales until payment is made in full as aforesaid.
- c) Where any Goods or Customer property is stored by the Company, the Company shall have an irrevocable contractual lien over all Goods and Customer property. The Company shall be entitled to withhold Goods and Customer Property where the Customer is in breach of the Contract and on not less than 30 days' notice, to sell or otherwise to dispose of all such Goods and Customer property should all payments due not be satisfied.

- d) The Company reserves the right to repossess any Goods to which it retains title (and thereafter to resell the same) if payment for the Goods is overdue or if a resolution is passed or an order is made for the winding up of the Customer or a receiver, administrative receiver or administrator is appointed in respect of the Customer or any of its assets or the Customer becomes bankrupt or the Company reasonably apprehends that any of the above is about to occur in relation to the Customer.
- e) The Customer grants an irrevocable right and licence to the Company its employees and agents to enter upon all or any of the Customer's premises with or without vehicles during normal business hours for the purpose of exercising this right. This right shall continue to subsist notwithstanding the termination of the contract for any reason and is without prejudice to the Company's other rights. Any expense incurred by the Company in repossessing and/or reselling the Goods shall be borne by the Customer.

## **10. Customers Property**

- a) Customer's property and Goods made available for delivery or otherwise stored at the Customer's request shall be the liability of the Customer. The Customer shall take out insurance for the customer's property and Goods so stored, for the full replacement value. The Company shall not be liable to the Customer for any loss or damages suffered or incurred whether arising from the fault or negligence of the Company or otherwise howsoever arising from such loss or damage.
- b) Goods and all property supplied to the Company by or on behalf of the Customer will be held and worked on entirely at the Customers risk.
- c) The Customer warrants that it will keep at least one safety copy of all source tapes and other material supplied to the Company by or on behalf of the Customer in connection with this Contract.
- d) The Company reserves the right on not less than 30 days' notice to withdraw any provision of storage of the Customer's property or Goods. Upon all outstanding payments, being received from the Customer, the Company shall make the Customer property/Goods available for collection by the Customer. Where the Customer fails to collect the Customer property/Goods, the Company shall be entitled charge the Customer for any further storage, to sell or otherwise dispose of the Customer property and Goods (on such basis and for such value as the Company shall in its entire discretion decide, with no implied obligation to obtain reasonable value) for any purpose whatsoever and to retain the monies received in respect of such sale or disposal in payment of sums due to or liabilities incurred by the Company including the costs of sale or disposal.

## **11. Force Majeure**

The Contract is subject to cancellation by the Company or to such variation as may be necessary including an extension of time for delivery in the Company's reasonable opinion as a direct or indirect result of inability to secure labour, materials or supplies or a subcontractor, or as a result of any act of God, war, sabotage, strike, lockouts, or other labour dispute, fire, legislation, or other cause (whether of the foregoing class or not) beyond the Company's control.

## **12. Fairness and Reasonableness**

The Company and the Customer accept these terms and conditions as fair and reasonable for inclusion in a Contract of this nature.

### **13. General**

- a) These terms and conditions and the Contract shall be construed in accordance with the laws of England and any proceedings arising in connection with these terms and conditions and the Contract shall be subject to the exclusive jurisdiction of the courts of England.
- b) In the event of one or more of the provisions hereof being held to be invalid, illegal or unenforceable in any respect then the validity, legality or enforceability of the remaining provisions shall not in any way be affected or impaired thereby.
- c) No waiver of any provision of the Contract by the Company shall be deemed to be a further or continuing waiver of any provision of the Contract.
- d) The Customer shall not assign or transfer the benefit or burden of the Contract or any part thereof without the prior written consent of the Company. The Company may assign, transfer or sub-contract its rights and obligations under the contract wholly or in part without restriction.
- e) If any provision of these conditions is held by any competent authority to be invalid or unenforceable in whole or in part the validity of the other provisions of these conditions and the remainder of the provisions in operation shall not be affected thereby.
- f) Notices:
  - i) Notices under the Contract shall be served in writing by first class prepaid post or facsimile transmission at the address shown on this Contract or such other address as the party to be served shall have served notice of on the other in accordance with the terms hereof.
  - ii) Notices served by post shall be deemed to have been served three working days after posting.
  - iii) Notices served by facsimile transmission shall be deemed to be served immediately following transmission provided that the sender shall have a valid transmission report for the whole notice.
- g) The headings used in these terms and conditions are for ease of reference only and shall not in any way affect the construction thereof.

### **14. Warranties**

- a) The Company warrants that the Goods will meet any specification made known to the Company at the time of delivery but no warranty is given that the Goods are fit for any particular purpose (whether or not such purpose has been made known to the Company).
- b) Subject to the foregoing all conditions, warranties and representations whether express or implied by statute (other than Section 12 of the Sale of Goods Act 1979) common law, usage, trade custom or otherwise in relation to the Goods are hereby excluded. No negotiations or statements made prior to the conclusion of the contract shall form part of the contract unless they are expressly repeated herein or are made in writing by a director of the Company.

### **15. Indemnities**

- a) The Customer shall indemnify the Company and keep it indemnified in respect of all claims arising directly or indirectly out of the Customer's use or possession of the Goods except to the extent to which any claim arises directly as a result of a breach of the contract by the Company.

- b) The Customer shall indemnify the Company and keep it indemnified in respect of all loss, damage or extra cost incurred by the Company by virtue of any request, instruction, omission to instruct, cancellation or any other action on the part of the Customer, its officers, employees, agents or contractors which is not in accordance with the contract.

Dated: March 2017