



AUDIO DESIGN SERVICES LIMITED (ADSworldwide)

TERMS AND CONDITIONS OF SALE

1 Interpretation

1.1 In these Conditions:

“The Customer” means the person who accepts a quotation for the sale of the Goods or whose order for the Goods is accepted by the Company.

“Goods” means the goods (including any instalments of the goods or any parts for them) which the Company is to supply in accordance with these Conditions.

“Company” means Audio Design Services Limited (registered in England under number 2469617).

“Conditions” means the standard terms and conditions of sale set out in this document and (unless the context otherwise requires) includes any special terms and conditions agreed in writing between the Customer and the Company.

“Contract” means the contract for the purchase and sale of the Goods.

“Writing” includes telex, cable, facsimile transmission and comparable means of communication.

1.2 Any reference in these Conditions to any provision of a statute shall be construed as a reference to that provision as amended, re-enacted or extended at the relevant time.

1.3 The headings in these Conditions are for convenience only and shall not affect their interpretation.

2 Basis of Sale

2.1 The Company shall sell and the customer shall purchase the Goods in accordance with any written quotation of the company which is accepted by the Customer, or any written order of the Customer which is accepted by the Company, subject in either case to these Conditions, which shall govern the Contract to the exclusion of any other terms accepted, or any such order is made or purported to be made, by the Customer.

2.2 No variation to these Conditions shall be binding unless agreed in Writing between the authorised representative of the Customer and the Company.

3 Orders and Specifications

3.1 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.

3.2 The quantity, quality and description of and any specifications for the Goods shall be those set out in the Company’s quotation (if accepted by the Customer) or the Customer’s order (if accepted by the Company).

3.3 The Company reserves the right to make any changes in the specification of the Goods which are required to conform with any applicable statutory or EC requirements or, where the Goods are to be supplied to the Customer’s specification, which do not materially affect their quality or performance.

4 Prices

Unless otherwise stated in Writing all prices of Goods offered for sale howsoever such price may be stated may be subject to alteration to reflect changed costs of the Company in production or supply of the Goods without notice at any time prior to the physical possession of the Goods passing to the Customer. All prices are ex-works and subject to VAT chargeable at the rate applicable where the Company is required to charge it.

5 Passing the Risk

The Goods shall be at the risk of the Customer:

if they are delivered by the Company’s own transport from the time at which they are unloaded from the vehicle delivering them; or

(a) if they are collected by the Customer, or a third party from the time at which loading them onto the collecting vehicle has been completed; or

(b) if they are sold FOB English port or airport from the time they pass over ships rail at the port of shipment or enter at their port.

6 Inspection

The Customer shall inspect the Goods immediately upon their arrival at the destination to which they are to be delivered pursuant to the Contract for the purpose of ascertaining:

- (a) that the number of items and packages and the quantities are as specified and the Goods are as described on the Company's delivery note.
- (b) Whether the Goods have been damaged in transit.
- (c) That the Goods are those specified in the Customer's order stated on the Company's Delivery Note.

Any discrepancy between the Goods delivered and those described in the Company's Delivery note or specified in the Customer's order and any damage to the goods prior to their delivery must be notified to the Company in Writing within seven days of the Customer's receipt of the Goods. In the case of non-delivery of the Goods the Customer must notify the Company in Writing within ten days of the receipt by the Customer of the Company's invoice. Where Goods are damaged or destroyed prior to their delivery the Company shall deliver replacement Goods and any contractual time for delivery shall be extended by a reasonable time and the Company shall be under no liability whatsoever to the Customer for any loss or damage, whether direct, indirect, economic or consequential arising out of or relating to the aforesaid events.

7 Cancellation of Orders

The Customer shall not be entitled to cancel an order which has been accepted by the Company except upon terms which reimburse the Company for its loss of profit and all cost charges and expenses (including without prejudice to the generality thereof costs of tooling and costs of purchases of raw materials and components and liabilities incurred by the company in connection herewith) incurred by the Company in respect of the order up to date of receipt by the Company of written notification of cancellation from the Customer.

8 Payment

Cash with order, unless credit facilities have been agreed in writing when payment should be made within 30 days of invoice date. No discount is allowable unless previously agreed in Writing by the Company. Where payment is not received by the due date interest shall accrue on the sum outstanding at the rate of 2% per month calculated on a day to day basis but without prejudice to the Company's right to receive payment on the due dates. If the customer fails to comply with its payment obligations:

- (a) The Company may suspend performance of the remainder of the Contract or any other Contracts with the Customer, and
- (b) The company may, by notice in Writing to the Customer, declare all other sums owing by the Customer to the Company (whether under the Contract or any other Contracts or on any other account) which at the date of the notice are not immediately due and payable to be immediately due and payable and the Customer shall pay the same to the Company accordingly.

9 Title to the Goods

- (a) Title to and property in the Goods shall remain vested in the Company (notwithstanding their delivery and the passing of the risk therein to the Customer) until
 - (1) the price of the Goods; and
 - (2) all other money due from the Customer to the Company on any other account or pursuant to any other Contract has been paid discharged or satisfied in full.
- (b) Until such time as the property in the Goods passes to the Customer, the Customer shall hold the Goods as the Company's fiduciary agent and bailee and shall keep the Goods separate from those of the Customer and third parties and be properly stored, protected and insured and identified as the Company's property. Until that time the Customer shall be entitled to resell or use the goods in the ordinary course of its business, but shall account to the Company for the proceeds of sale or otherwise of the Goods, whether tangible or intangible, including insurance proceeds, and shall keep all such proceeds separate from any moneys or property of the Customer and third parties and in the case of tangible proceeds, properly stored, protected and insured.

10 Performance of the Contract

- (a) Dates or period for delivery are approximate and non binding. If having used its reasonable endeavours to comply with any date or dates specified in the Contract for the despatch or the delivery of the Goods to the Customer the Company is unable so to do, such failure shall not constitute a breach of Contract by the Company entitling the customer to terminate the Contract in whole or in part and/or claim damages against the Company.

- (b) If due to force majeure which shall mean any event outside the immediate control of the Company affecting its ability to perform the Contract the Company is obliged to suspend the Contract and such suspension continues for more than 8 weeks then either the Company or the Customer may by notice in Writing to the other terminate the Contract for any part of the Goods which may have been despatched to the Customer prior to the suspension of performance by the Company and to be reimbursed all other costs, charges and expenses incurred by the Company pursuant to the Contract up to the date of such notice of termination where it is given by the Company and up to the date of receipt thereof by the Company. The Company shall not have any liability to the customer for any direct or consequential loss or damage suffered by the Customer as a result of the Company's inability to perform its obligations under the Contract by reason of any such circumstances, (if such termination is by reason of the Customer's failure to give adequate or any instructions when so instructed by the Company such reimbursement shall include the Company's loss of profit).

11 Acceptance of the Goods by the Customer

The Customer shall be deemed to have accepted the Goods and it shall be conclusively agreed that they are free of any patent defect unless within 7 days of receipt of the Goods the Customer notifies the Company in Writing of any patent defect therein. For this purpose patent defect shall mean any defect in materials or workmanship or failure to comply with designs drawings specifications or other data supplied by the Customer or any other failure of the Goods to conform with the Contract which would be apparent upon inspection.

12 Description and Data

- (a) The Company endeavours to ensure the accuracy of all its sales and technical literature and data but such literature and data is intended only as a general indication of the nature of the Goods and the Company does not guarantee its accuracy. No such literature or data or any statement or opinion expressed therein shall be or become a term of the Contract and the Company shall not be liable to the Customer in contract or tort or for breach of statutory duty in relation to anything contained therein or omitted therefrom.
- (b) The Company reserves the right where it is the manufacturer of the Goods and they are not being manufactured to the Customer's designs drawings specifications or other data to make design changes.

13 Guarantee and Limitation of Liability

- (a) Where the Goods are to be manufactured and supplied in accordance with designs drawings specifications and other data supplied by the Customer and the Goods are so manufactured and supplied the Company shall not be liable to the Customer for any loss or damage the Customer may suffer because the Goods subsequently prove to be unsuitable for the purpose or purposes for which the Customer required them or prove not to be of merchantable quality within the meaning of the Sale of Goods Act 1979 whether the Customer's claim is made in Contract or in tort or for breach of statutory duty.
- (b) Subject to the provisions of Condition 11 and paragraph (a) of this Condition if within the 6 months following receipt by
- (c) the Customer of the Goods the Customer notifies the Company in Writing of an alleged defect therein whether of design materials or workmanship and establishes to the reasonable satisfaction of the Company the existence of such defect in the Goods the Company will at its own expense and at its option either:
- (1) repair such defect; or
 - (2) replace the Goods; or
 - (3) issue a credit for the invoiced value of the Goods subject in every case to the remaining provisions of this condition.
- (d) Paragraph (b) of this Condition ("The Guarantee") shall not apply:
- (1) if the alleged defect has been caused by misuse by the Customer or due to fair wear and tear,
 - (2) if the Customer fails to inform the Company in Writing of the alleged defect immediately upon its becoming apparent in the Goods;
 - (3) if the customer does not as soon as reasonably practicable after the first appearance of the alleged defect in the Goods return the Goods to the Company carriage paid, for examination and inspection.
 - (4) If the Customer attempts to repair Goods without the prior consent of the Company.
- (e) If the Company elects to replace the Goods it shall at its own expense deliver the replacement Goods to the Customer at the address at which the defective Goods were originally delivered and the title to the defective Goods shall (if it has vested in the Contract) re-vest in the Company and the Customer shall make any such arrangements as may be necessary for the purpose of delivering up the defective Goods to the Company.
- (f) The Guarantee is in substitution for any other legal remedy of the Customer in respect of any defect in the design materials workmanship of the Goods and the liability of the Company shall in all such cases and for all such purposes be limited to the undertaking on the part of the Company as to the quality of the Goods

or their fitness or suitability for any purpose however and whenever expressed or which may be implied by statute custom of the trade or otherwise is hereby excluded and the provisions of Sections 13 to 15 of the Sale of Goods Act 1979 shall not apply to the Contract except where the Customer deals as consumer within Section 12 of the Unfair Contract Terms 1977. Except as and to the extent provided by the Guarantee the Company shall not be liable to the Customer in contract or tort which shall include negligence or for breach of statutory duty for any loss or damage direct or consequential (including economic loss of any kind) which the Company may suffer by reason of any act, commission, neglect or default (including negligence) in the performance of the Contract by the Company its employees or agents.

- (g) Nothing contained in this Condition shall operate so as to impose on the Company any liability in respect of any representation made by the Company its employees or agents in the course of any negotiations between the Company and the Customer leading to the making of the Contract unless the Company has expressly agreed in Writing that such representation shall be a term of the Contract.
- (h) If at the request of the Customer a Certificate of Conformity is provided the issue thereof shall not operate to confer upon the Customer any rights or remedies against the Company in respect of the Goods which the Customer would not have had in the absence of any such certificate.
- (i) If the Customer wishes to return any Goods under this clause, or for any reason the customer must notify the Company in Writing before doing so. Goods returned without prior Written notice will be returned to the Customer.

14 Tooling and Free Issue Materials

- (a) All tooling will remain the property of the Company to the entire exclusion of any interest therein of the Customer notwithstanding that the Company charges the Customer the whole or a proportion of the costs thereof.
- (b) If the Customer supplies the Company with free issue materials, such materials shall be of the best quality and fit in every way for their purpose and shall at all times be and remain at the risk of the Customer whilst they are in the possession or under the control of the Company. Without prejudice to any other rights or remedies of the Company, the Company shall have a general lien in respect of all debts of the Customer to the Company over all such free issue materials whilst they are in the Company's possession or under its control (whether worked on or not) and shall be entitled upon the expiration of 14 days written notice to the Customer to sell or otherwise dispose of such free issue materials in such manner as it thinks fit.

15 Sub-Contracting

The Company shall be entitled to sub-contract the manufacture of the Goods in whole or in part.

16 Testing Inspection Prior and Post Delivery

- (a) Prior to Delivery
If the Contract provides for testing or inspection of the Goods by or on behalf of the Customer prior to delivery whether at the Company's premises or elsewhere, then upon the Company giving notice of the availability of the Goods for testing and/or inspection the customer shall inspect and/or test the Goods within 7 days of such notice. If the Customer fails to do so or if within 14 days the Customer having done so the Customer does not notify the Company that the Goods are not in accordance with the Contract specifying the matters complained of, then the Customer shall be conclusively deemed to have accepted that the Goods are in accordance with the Contract on the grounds of anything which such testing and/or inspection revealed or would have revealed if it had been carried out.
- (b) Post Delivery
Where Goods are stored on site prior to being commissioned by the Company's engineers, it is the customer's responsibility to ensure the good condition of the Goods. Site visits made by engineers upon a request to investigate the operation of the Goods after installation will be chargeable unless they are found to be necessary because of faults in the design or manufacture of the Goods.

17 Commissioning

In the case of Contract involving commissioning, it is understood that the Goods will be located and stored by the Customer at the Customer's risk. Unless otherwise stated in the quotation, it is assumed that:

- (a) The site is accessible, clear, before the arrival of the Company's commissioning engineers, level and dry and where the floor and/or wall fixing is necessary, that there are no circumstances to prevent this.
- (b) Electricity supply is available for light and power tools.
- (c) That sufficient working space is allocated to ensure commissioning can be undertaken.

(d) That the Company's engineers are given every facility to complete their work without undue hindrance.

The Company reserves the right to render additional charges should the Conditions not be adhered to. Where other contractors are also involved, it is assumed that their programme will be such as to permit the Company's work to be carried out with continuity and with the specified number of visits to site. Should the Company be subject to delays or require to make a return visit to site, this will involve additional charges.

18 Customer's Designs, Drawing Specifications and any other Data

- (a) The Customer shall be solely responsible for the accuracy of its designs drawings specifications and other data supplied to the Company by the Customer, its employees or agents and in conformity with which the Company is to manufacture and to supply the Goods notwithstanding that the Company may have examined inspected studied or commented to the Customer upon any such designs drawings specifications or other data.
- (b) The Customer shall indemnify the Company against all actions proceedings claims costs expenses loss or damage whether direct or indirect economic or consequential, which may be brought against or incurred by the Company by reason of its manufacturing and supplying the Goods in accordance with such designs drawings specifications or other data.
- (c) If the Company is required in connection with the manufacture of the Goods to carry out research or development work, all intellectual property rights therein shall be the absolute property of the Company and the Customer shall keep confidential all information disclosed by the Company to it, concerning such research and development work and shall not exploit such information for its own purposes without the prior consent in Writing of the Company provided that the foregoing provision shall not prevent the Customer from using the Goods for the purpose for which it required them.

19 Phased or Scheduled Delivery

If the Contract provides for phased or scheduled delivery or for delivery by reference to call off by the Customer the following provisions shall apply:

- (a) the price is calculated inter alia on the basis that the delivery dates are fixed for the total quantity of the Goods ordered at the time the Contract is entered into and may be increased if the Customer does not adhere to them.
- (b) If delivery dates for the total quantity of the Goods ordered are not fixed at the time the Contract is entered into and the Customer fails to take delivery of any of the Goods for a period exceeding three months or if the Customer postpones any delivery date the Company may by notice in Writing to the Customer, treat the Contract as cancelled by the Customer as regards any balance of the Goods remaining to be delivered and the provisions of Condition 7 shall apply as if the Customer had cancelled the Contract.

20 Licences

Any broadcasting licences, which may be required for the operation of the Goods, either alone or with ancillary equipment, is the responsibility of the Customer.

21 Breach of Contract by or insolvency of the Customer

If any or more of the following events occurs or in the opinion of the Company is reasonably likely to occur:

- (a) the Customer commits any breach of the Contract, or
- (b) any distress or execution is levied upon any of the Goods or property of the Customer and is not paid out within 7 days: or
- (c) the Customer (or where the Customer is a partnership, any partner thereof) is unable to pay its debts within the Insolvency Act 1986 or offers to make any arrangements with or for the benefit of its or his creditors generally or a petition is presented to make the Customers or any such partner bankrupt: or
- (d) the Customer (being a limited Company) has an Administrator or a Receiver and Manager or Receiver appointed of the whole or any part of its undertaking property or assets or is unable to pay its debts within the meaning of the Insolvency Act 1986 or a petition is presented or an order is made or a resolution is passed for the winding up of the customer or for the appointment of an Administrator thereof. The Company may without prejudice to any other rights or remedies it may have against the Company forthwith suspend further performance of the Contract or by notice in Writing to the Customer terminate the Contract as it thinks fit.

Notwithstanding any such suspension or termination the customer shall pay the Company in accordance with the Contract for all Goods despatched by the Company prior thereto and shall indemnify the Company in connection with the Contract including (without prejudice to the generality of the foregoing) loss of profit,

liabilities and expenses in connection with raw materials components and tooling obtained or produced for the purpose of the Contract and the cost of labour and overhead expenses reasonably attributable to the Contract.

22 Severance

If any provision of these conditions shall be or become void or unenforceable for any reason whatsoever, then the same shall be deemed to be omitted herefrom and the remainder of these conditions shall remain valid and enforceable.

23 Waiver and Assignment

The rights and remedies of the Company in respect of the Contract or in respect of any failure by the Customer to observe or comply with the terms thereof shall not be diminished waived or extinguished by the granting of any indulgence, forbearance or extension of time by the Company nor by any failure of or delay by the Company in asserting or exercising any such rights or remedies. The Customer shall not be entitled to assign the benefit of the Contract without the prior written consent of the Company.

24 Notices

Notices under this Contract shall be in Writing and shall be served in the case of the Customer at the address stated on the order and in the case of the Company at the address shown on its order acknowledgement.

25 Law

This Contract is Governed by English Law and the parties irrevocably submit to the exclusive jurisdiction of the English Courts.

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SK1 3HW**

**Tel +44 (0)161 666 6363
Fax +44 (0)161 666 6366**

Having read the Audio Design Services Ltd. Terms and Conditions of Sale, we agree to comply with all items contained therein.

Signature: _____

Print Name: _____

Position/Title: _____

**Signed on behalf of:
(Company Name)** _____

Date: _____