

## AUDIO LOGIC - TERMS AND CONDITIONS

THE CUSTOMER'S ATTENTION IS PARTICULARLY DRAWN TO THE PROVISIONS OF CONDITIONS 10 (LIMITATION OF LIABILITY).

### 1. INTERPRETATION

- 1.1. The following terms as used in these terms and conditions shall have the meanings stated:
- 1.1.1. **"Audio Logic"** means Audio Logic Limited (company registration number 5208631 registered in England) whose registered office is at Causeway House, 1 Dane Street, Bishops Stortford, Hertfordshire, United Kingdom, CM23 3BT.
  - 1.1.2. **"Authorised Employee"** means any director of Audio Logic from time to time.
  - 1.1.3. **"Business Day"** means a day other than a Saturday, Sunday or public holiday in England, when banks in London are open for business.
  - 1.1.4. **"Conditions"** means the terms and conditions set out in this document as amended from time to time.
  - 1.1.5. **"Confidential Information"** any information of a confidential nature concerning the business, affairs, customers, clients or suppliers of the other party, including but not limited to information relating to a party's operations, processes, plans, product information, know-how, designs, trade secrets, software, market opportunities, customers and Designs.
  - 1.1.6. **"Charges"** means the charges payable by the Customer for Services provided by Audio Logic.
  - 1.1.7. **"Commissioning Service"** means the commissioning services to be provided by Audio Logic to the Customer as set out in an Order Acceptance.
  - 1.1.8. **"Contract"** a contract between Audio Logic and the Customer for the supply of the Goods and/or the Services, formed in accordance with Condition 2.
  - 1.1.9. **"Customer"** means the person who places a Purchase Order with Audio Logic that is accepted for the sale of Goods or whose order for Goods is accepted by Audio Logic.
  - 1.1.10. **"Design Service"** means the design services to be provided by Audio Logic to the Customer as set out in an Order Acceptance.
  - 1.1.11. **"Designs"** means any and all designs, drawings and specifications produced by Audio Logic or a representative of Audio Logic in connection with Goods or Services, including but not limited to designs, drawings and specifications provided as part of the Design Service;

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- 1.1.12. **“Event of Force Majeure”** means any circumstance not in Audio Logic reasonable control including, without limitation: (a) acts of God, flood, drought, earthquake or other natural disaster; (b) epidemic or pandemic; (c) terrorist attack, civil war, civil commotion or riots, war, threat of or preparation for war, armed conflict, imposition of sanctions, embargo, or breaking off of diplomatic relations; (d) nuclear, chemical or biological contamination, or sonic boom; (e) any law or any action taken by a government or public authority, including without limitation imposing an export or import restriction, quota or prohibition, or failing to grant a necessary licence or consent; (f) collapse of buildings, fire, explosion or accident; (g) any labour or trade dispute, strikes, industrial action or lockouts; (h) non-performance by suppliers or subcontractors; and (i) interruption or failure of utility service.
  - 1.1.13. **“Goods”** means the goods ordered by and supplied to the Customer under an Order Acceptance.
  - 1.1.14. **“Goods Prices”** means the prices of the Goods, provided in accordance with Condition 4.
  - 1.1.15. **“Intellectual Property Rights”** means rights to inventions, copyright and related rights, trade marks, business names and domain names, goodwill and the right to sue for passing off, rights in designs, rights in computer software, database rights, rights to use, and protect the confidentiality of, Confidential Information (including know-how and trade secrets), and all other intellectual property rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world.
  - 1.1.16. **“Order Acceptance”** is defined at
  - 1.1.17. **“Principal Premises”** means Unit 9, Coldharbour Pinnacles Estate, Lovet Road, Harlow, Essex CM19 5JL.
  - 1.1.18. **“Purchase Order”** is as defined at Condition 2.4.
  - 1.1.19. **“Quotation Form”** means the standard form quotation document issued by Audio Logic setting out the information contained in Condition 2.3.
  - 1.1.20. **“Returns Policy”** means Audio Logic’s policy for return of Goods set out at: [https://www.audiologic.co.uk/index.php?main\\_page=page&id=5](https://www.audiologic.co.uk/index.php?main_page=page&id=5) and updated from time to time.
  - 1.1.21. **“Service Charges”** means the charges payable by the Customer for Services performed by Audio Logic under an Order Acceptance.
  - 1.1.22. **“Services”** means (as applicable) the Design Service and/or Commissioning Service.
  - 1.1.23. **“Special Order”** means an order for Goods which Audio Logic has confirmed to the Customer are non-returnable and has been specified as such in the Order Acceptance.
  - 1.1.24. **“VAT”** means value added tax or any equivalent tax chargeable in the UK or elsewhere.
  - 1.1.25. **“Warranty Period”** means the period specified by the manufacturer of the Goods and stated in the Order Acceptance or documents accompanying the Goods.
- 1.2. Any reference in these Conditions to any provision of any statute shall be construed as a reference to that provision as amended re-enacted or extended from time to time.
  - 1.3. The headings in these Conditions are for convenience only and shall not affect their meaning or interpretation.
  - 1.4. A **“person”** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).

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- 1.5. Unless the context otherwise requires, words in the singular shall include the plural and vice versa.
- 1.6. Unless the context otherwise requires, a reference to one gender shall include a reference to the other genders.
- 1.7. A reference to “**writing**” or “**written**” includes email.
- 1.8. Any obligation on a person not to do something includes an obligation not to agree or allow that thing to be done.
- 1.9. Any words following the terms “**including**”, “**include**”, “**in particular**”, “**for example**” or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms.
- 1.10. If a Customer comprises more than one person the liability of such persons shall be joint and several.
- 1.11. In the event of any discrepancy, inconsistency or divergence arising between the Order Acceptance and the conditions in these Conditions, the following shall be the order of precedence:
  - 1.11.1. the Order Acceptance
  - 1.11.2. these Conditions.

## 2. FORMATION OF A CONTRACT

- 2.1. All orders for the purchase of Goods and/or Services shall be placed using the method in this Condition 2.
- 2.2. Save where Audio Logic provides the Design Service, the Customer shall communicate to Audio Logic information about its desired requirements for the intended supply of Goods.
- 2.3. Quotation Form: Following receipt by Audio Logic of (i) the information from the Customer under Condition 2.2, or (ii) the Design, Audio Logic shall issue a Quotation Form to the Customer, setting out:
  - 2.3.1. the estimated Price of the Goods;
  - 2.3.2. the Charges for any Services;
  - 2.3.3. (subject to Condition 5) the terms of payment for the Goods and/or Services; and
  - 2.3.4. the location for the purpose of ex works (EXW) delivery;
  - 2.3.5. any other relevant information,

in each case, based upon the Customer’s requirements as communicated under Condition 2.2 or the Design. **A Quotation Form does not constitute an offer but an invitation to treat.** Where the Customer does not place an order under Condition 2.4 within 30 days of the date of issue of the Quotation Form, the Quotation Form shall be deemed to have lapsed.
- 2.4. Purchase Order: The Customer may place an order (“**Purchase Order**”) with Audio Logic for Goods and/or Services in response to and reflecting the terms of the Quotation Form. A Purchase Order constitutes an offer from the Customer to Audio Logic and shall not be binding upon Audio Logic until accepted by Audio Logic in accordance with Condition 2.5.
- 2.5. Acceptance of Purchase Order: Audio Logic shall either accept or reject the Purchase Order at its sole discretion, and communicate its decision to the Customer. An acceptance by Audio Logic of a Purchase Order under this Condition 2.5 shall be by way of Audio Logic issuing a written acceptance of the Purchase Order (“**Order Acceptance**”), at which point a Contract shall come into existence.

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- 2.6. Each Contract is a separate contract between Audio Logic and the Customer commencing on the date of the Order Acceptance.
- 2.7. These Conditions and the Order Acceptance apply to the Contract to the exclusion of any other terms that the Customer seeks to impose or incorporate, or which are implied by law, trade custom, practice or course of dealing
- 2.8. Where a Purchase Order contains additional or different terms from those contained in the Order Acceptance or these Conditions, such terms shall not be binding upon the parties.
- 2.9. If the identity of the Customer is wrongly specified or misrepresented to Audio Logic on any Purchase Order that is subsequently confirmed in an Order Acceptance, then the individual who provided such Purchase Order to Audio Logic shall be deemed to be the Customer for the purpose of the Contract and shall be personally liable to Audio Logic for performance of the Customer's obligations under these Conditions.

### 3. SERVICES

- 3.1. Audio Logic shall not install any Goods nor be liable for the cost of any installation of Goods, which shall be entirely at the Customer's cost and risk.
- 3.2. The Order Acceptance shall state when the Services provided under the Contract shall commence and the duration of any such Services.
- 3.3. If Audio Logic's performance of the Services (or any part thereof) is prevented or delayed by any act or omission by the Customer or failure by the Customer to perform any obligation under the Contract ("**Customer Default**"):
  - 3.3.1. without limiting or affecting any other right or remedy available to it, Audio Logic shall have the right to suspend performance of the Service until the Customer remedies the Customer Default, and to rely on the Customer Default to relieve it from the performance of any of its obligations under the Contract in each case to the extent the Customer Default prevents or delays Audio Logic's performance of any of its obligations;
  - 3.3.2. Audio Logic shall not be liable for any costs or losses sustained or incurred by the Customer arising directly or indirectly from Audio Logic's failure or delay to perform the Services; and
  - 3.3.3. the Customer shall reimburse Audio Logic on written demand for any costs or losses sustained or incurred by Audio Logic arising directly or indirectly from the Customer Default.
- 3.4. The Customer shall be entitled to request that the commencement of Services be rescheduled or postponed, by giving notice in writing to Audio Logic. Where Audio Logic receives such notice:
  - 3.4.1. prior to 48 hours before the Services are due to commence, then the Customer shall have no additional liability to pay any amount to Audio Logic; or
  - 3.4.2. within 48 hours from when the Services are due to commence, then the Customer shall be liable to pay Audio Logic:
    - a) the Charges payable in respect of the first day of the Services (calculated in accordance with Condition 4.6); and
    - b) any unrecoverable costs and expenses already incurred by Audio Logic in respect of the Services under the Contract.

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- 3.5. Audio Logic shall not be liable for any costs or losses sustained or incurred by the Customer arising directly or indirectly from the rescheduling or postponement of the Services.
- 3.6. Audio Logic shall notify the Customer of a revised date for commencement of the Services.
- 3.7. The parties may agree that Audio Logic shall provide training to the Customer. Audio Logic shall provide such training under the terms of a separate statement of works entered into between Audio Logic and the Customer (including the costs and charges as set out therein).

### 4. GOODS PRICES AND SERVICE CHARGES

#### Goods Prices

- 4.1. Goods Prices and Service Charges shall be as set out in the Order Acceptance.
- 4.2. Save where specifically stated otherwise in the Order Acceptance, all Goods Prices and Service Charges are exclusive of amounts in respect of VAT. The Customer shall, on receipt of a valid VAT invoice from Audio Logic, pay to Audio Logic any additional amounts in respect of VAT as are chargeable on the supply of the Services or Goods at the same time as payment is due for the supply of the Services or Goods.
- 4.3. The Goods Prices are exclusive of the costs of packaging, insurance and carriage of the Goods, which shall be paid by the Customer.
- 4.4. Where a Goods Price is quoted in a currency other than in British pounds sterling then, unless otherwise agreed by an Authorised Employee in writing, the exchange rate for the Goods Price will be HSBC's spot rate for the purchase of the given currency with sterling at the date of the Invoice.

#### Service Charges

- 4.5. The Design Service shall be provided free of charge.
- 4.6. The Commissioning Service shall be calculated on a time and materials basis:
  - 4.6.1. in accordance with Audio Logic's daily fee rates, as set out in the Order Acceptance;
  - 4.6.2. Audio Logic's daily fee rates for each individual are calculated on the basis of an eight-hour day from 9.00 am to 5.00 pm worked on Business Days; and
  - 4.6.3. Audio Logic shall be entitled to charge the Customer for any expenses reasonably incurred by the individuals whom Audio Logic engages in connection with the Commissioning Services including travelling expenses, hotel costs, subsistence and any associated expenses, and for the cost of services provided by third parties and required by Audio Logic for the performance of the Commissioning Services, and for the cost of any materials.

### 5. PAYMENT

- 5.1. Audio Logic may invoice the Customer for the Goods and Services on or at any time after the issue of the relevant Order Acceptance.
- 5.2. The Customer shall pay each invoice in full and in cleared funds within 30 days of the end of the month in which the invoice is received save where agreed otherwise in writing by an Authorised Employee. Payment shall be made to the bank account nominated in writing by Audio Logic.
- 5.3. The Customer shall not be entitled to withhold payment in whole or in part in respect of any claim it may have against Audio Logic under or arising from any of the Contract or any other agreement between the parties.

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- 5.4. If the Customer fails to make any payment due under the Contract by the due date, then, without limiting Audio Logic's other remedies, the Customer shall pay interest on the overdue amount at the rate of 4% a year above HSBC's base rate from time to time. This interest shall accrue daily from the due date until actual payment of the overdue amount, whether before or after judgment. The Customer shall pay the interest together with the overdue amount.
- 5.5. Time for payment shall be of the essence of the Contract.
- 5.6. All amounts due under the Contract shall be paid in full without any set-off, counterclaim, deduction or withholding (other than any deduction or withholding of tax as required by law).
- 5.7. If the Customer fails to make any payment due under the Contract by the due date or becomes subject to any of the events listed in Conditions 12.2, then Audio Logic may at its discretion without prejudice to any other right or remedy available to it:
  - 5.7.1. suspend or cancel any further deliveries of Goods to the Customer, including any Goods in transit, under the Contract or any other Contract or agreement between the Parties. A suspension under this Condition 5.7.1 shall continue until all outstanding amounts have been paid by the Customer to Audio Logic; and/or
  - 5.7.2. terminate the Contract and resell the Goods that are the subject of the Contract at such price as Audio Logic shall consider reasonable.
- 5.8. Where Audio Logic resells any Goods in accordance with Condition 5.7.2, the Customer shall indemnify Audio Logic against any loss incurred by Audio Logic the difference between the invoice price to the Customer and the resale price together with all costs (including without limitation any professional costs) expenses and storage charges incurred pending or upon such resale. Method of payment shall be at the discretion of Audio Logic.

## 6. DELIVERY AND PACKING

- 6.1. Subject to Condition 6.2:
  - 6.1.1. delivery of Goods shall be ex Audio Logic's Principal Premises, or such other premises within the United Kingdom as stated in an Order Acceptance or otherwise agreed in writing by the Parties (the "**Delivery Location**").
  - 6.1.2. The Customer shall collect the Goods from the Delivery Location within 3 Business Days of Audio Logic notifying the Customer in writing that the Goods are ready for collection.
  - 6.1.3. Delivery is completed when Audio Logic places the Goods at the Customer's disposal at the Delivery Location.
  - 6.1.4. Delays in the delivery of Goods shall not entitle the Customer to:
    - a) refuse to take delivery of the Goods; or
    - b) claim damages; or
    - c) terminate the Contract.
  - 6.1.5. Audio Logic shall not deliver Goods at a specified time and shall not be liable if Goods are not delivered at any specified time represented to the Customer.
  - 6.1.6. Audio Logic shall have no liability for any failure or delay in delivering any Goods to the extent that any failure or delay is caused by the Customer's failure to comply with its obligations under the Contract.

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- 6.1.7. If the Customer fails to take delivery of the Goods within 3 Business Days of Audio Logic notifying the Customer that the Goods are ready for collection, then, except where that failure or delay is caused by Audio Logic's failure to comply with its obligations under the Contract:
- a) delivery of the Goods shall be deemed to have been completed at 9.00 am on the third Business Day following the day on which Audio Logic notified the Customer that the Order was ready for collection;
  - b) Audio Logic shall store the Goods until delivery takes place, and charge the Customer for all related costs and expenses (including insurance); and
  - c) Audio Logic shall be entitled to invoice for the Goods in accordance with Condition 6.1.
- 6.2. An Authorised Employee may agree with the Customer in writing that Audio Logic, acting as agent of the Customer, shall ship the Goods to a different destination at the Customer's cost, risk and expense. If Audio Logic agrees to arrange transport, importation and/or insurance of the Goods on behalf of the Customer under this Condition 6.2, it does so as the Customer's agent and the Customer shall reimburse Audio Logic with the full costs thereof.
- 6.3. Audio Logic reserves the right to deliver Goods in more than one consignment without prior notice.
- 6.4. Audio Logic shall not be obliged to comply with any of the Customers packing instructions or requests. The specification for packing shall be in Audio Logic's entire discretion in such materials and in such quantities as Audio Logic shall think fit.

## 7. TITLE AND RISK IN GOODS

- 7.1. From the time of collection from the Delivery Location, the Goods shall be at the entire risk and expense of the Customer.
- 7.2. Title to the Goods shall not pass to the Customer until the earlier of:
- 7.2.1. Audio Logic receiving payment in full of all sums which may then be due or owing by the Customer to Audio Logic whether under the particular Contract relating to Goods or any other agreement between the parties.
  - 7.2.2. the Customer resells those Goods, in which case title to those Goods shall pass to the Customer at the time specified in Condition 7.5.
- 7.3. For the purposes of Condition 7.2, payment is made to Audio Logic in the case of cash when released to Audio Logic's control to the exclusion of the Customer and in the case of payment by any other method when money is irrevocably credited to Audio Logic's bank account and all claims in respect of such money by or through the Customer are excluded.
- 7.4. Until the title to the Goods passes to the Customer the Customer shall:
- 7.4.1. store those Goods separately from all other goods held by the Customer so that they remain readily identifiable as Audio Logic's property;
  - 7.4.2. not remove, deface or obscure any identifying mark or packaging on or relating to those Goods; and

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- 7.4.3. maintain those Goods in satisfactory condition and keep them insured on Audio Logic's behalf for their full price against all risks with an insurer that is reasonably acceptable to Audio Logic. The Customer shall obtain an endorsement of Audio Logic's interest in the Goods on its insurance policy, subject to the insurer being willing to make the endorsement. On request the Customer shall allow Audio Logic to inspect those Goods and the insurance policy.
- 7.5. Subject to Condition 7.6, the Customer may resell or use the Goods in the ordinary course of its business (but not otherwise) before Audio Logic receives payment for the Goods. However, if the Customer resells the Goods before that time:
- 7.5.1. it does so as principal and not as Audio Logic's agent; and
- 7.5.2. title to those Goods shall pass from Audio Logic to the Customer immediately before the time at which resale by the Customer occurs.
- 7.6. If before title to Goods passes to the Customer the Customer becomes subject to any of the events listed in Condition 12.2 inclusive, then, without limiting any other right or remedy Audio Logic may have:
- 7.6.1. the Customer's right to resell the Goods or use them in the ordinary course of its business ceases immediately; and
- 7.6.2. Audio Logic may at any time:
- a) require the Customer to deliver up all Goods in its possession that have not been resold, or irrevocably incorporated into another product; and
  - b) if the Customer fails to do so promptly, enter any premises of the Customer or of any third party where the relevant Goods are stored to recover them.

### 8. WARRANTY

- 8.1. Subject to Condition 10, Audio Logic warrants that the Goods will:
- 8.1.1. correspond with their specification upon delivery;
- 8.1.2. be of satisfactory quality (within the meaning of the Sale of Goods Act 1979, as amended); and
- 8.1.3. be free from defects in material and workmanship during the Warranty Period.

### 9. ACCEPTANCE AND DEFECTIVE GOODS

- 9.1. The Customer may reject any Goods delivered to it that do not comply with Condition 8, provided that:
- 9.1.1. notice of rejection is given to Audio Logic in accordance with the Returns Policy:
- a) in the case of a defect that is apparent on normal visual inspection, within a reasonable time of delivery of the Goods in accordance with Condition 6.1.3. or 6.1.6(a);
  - b) in the case of a latent defect, within a reasonable time of the latent defect having become apparent to the Customer;
- 9.1.2. the Customer complies with the requirements of the Returns Policy; and
- 9.1.3. none of the events listed in Condition 9.3 apply.
- 9.2. If the Customer fails to give notice of rejection in accordance with Condition 9.1, it shall be deemed to have accepted these Goods and shall be bound to pay for the same in full.



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- 9.3. Audio Logic shall not be liable for a Goods' failure to comply with the warranty set out in Condition 8 in any of the following events:
- 9.3.1. after the end of the Warranty Period;
  - 9.3.2. the Customer makes any further use of those Goods after giving notice in accordance with Condition 9.1;
  - 9.3.3. the defect arises because the Customer failed to follow the manufacturer's instructions for the storage, commissioning, installation, use and maintenance of the Goods or (if there are none) good trade practice regarding the same;
  - 9.3.4. [the defect arises as a result of Audio Logic following any drawing, design or Specification supplied by the Customer];
  - 9.3.5. the Customer alters or repairs those Goods without the written consent of an Authorised Employee;
  - 9.3.6. the defect arises as a result of fair wear and tear, wilful damage, misuse, excessive use, negligence, or abnormal storage or working conditions; or
  - 9.3.7. the Goods differ from their specification as a result of changes made to ensure they comply with applicable statutory or regulatory requirements.
- 9.4. If the Customer rejects Goods under and in accordance with Condition 9.1 then Audio Logic shall at its option:
- 9.4.1. repair the rejected Goods;
  - 9.4.2. replace the rejected Goods; or
  - 9.4.3. repay the Goods Price paid under the Contract for the rejected Goods in full.
- 9.5. Once Audio Logic has complied Condition 9.4, it shall have no further liability to the Customer for the rejected Goods' failure to comply with Condition 8.
- 9.6. These Conditions shall apply to any repaired or replacement Goods supplied by Audio Logic.

### 10. LIMITATION OF LIABILITY

- 10.1. This Condition sets out Audio Logic's entire financial liability (including any liability for the acts or omissions of Audio Logic's employees, agents and sub-contractors) to the Customer in respect of any breach of the Contract and any representation, statement or tortious act or omission including negligence arising under or in connection with the Contract.
- 10.2. Subject as expressly provided by this Condition 10, all warranties, conditions and other terms implied by statute or common law (save for the conditions implied by section 12 of the Sale of Goods Act 1979) are excluded to the fullest extent permitted by law. The statutory rights of consumers (within the meaning of the Unfair Contracts Terms Act 1977) are not affected by these Conditions.
- 10.3. Nothing in this contract limits Audio Logic's liability under the Contract for:
- 10.3.1. death or personal injury caused by Audio Logic's negligence;
  - 10.3.2. fraud or fraudulent misrepresentation; or
  - 10.3.3. any other liability which cannot be limited by law.
- 10.4. Subject to Condition 10.3, Audio Logic's liability under the Contract for:
- 10.4.1. Goods that fail to comply with Condition 8 during the Warranty Period shall be as set out in Condition 9;

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- 10.4.2. the supply of Commissioning Services shall be limited to the Service Charges paid or payable for the Commissioning Services;
- 10.5. Subject to the exceptions in Condition 10.3, Audio Logic shall have no liability in respect of the Design Services.
- 10.6. Subject to the exceptions in Condition 10.3, Audio Logic will not be liable for any:
  - 10.6.1. indirect, consequential, punitive or special loss or damage;
  - 10.6.2. loss of profit;
  - 10.6.3. loss of sales or business;
  - 10.6.4. loss of revenue;
  - 10.6.5. loss of anticipated savings;
  - 10.6.6. loss of agreements or contacts; or
  - 10.6.7. depletion of goodwill.

### 11. FORCE MAJEURE

- 11.1. Audio Logic shall have no liability to the Customer or be in breach of contract by reason of any delay in performing or failing to perform its obligations to the Customer hereunder if the delay was caused by an Event of Force Majeure.
- 11.2. In the event of any such delay or failure Audio Logic may at its discretion cancel the Contract without liability by written notice to the Customer.

### 12. TERMINATION OF A CONTRACT

- 12.1. Audio Logic may terminate a Contract where the Customer:
  - 12.1.1. commits any material breach of the Contract which (in the case of a breach capable of being remedied) has not been remedied within 30 days of a written request to remedy the same;
  - 12.1.2. (being an individual) commits any act of bankruptcy or has a petition or receiving order in bankruptcy presented or made against him or her; or
  - 12.1.3. (being a company) has an order made or a resolution passed for the winding-up of it or an order is made for the appointment of an administrator to manage the affairs, business and property of the Customer or such an administrator is appointed or documents are filed with the court for the appointment of an administrator or notice of intention to appoint an administrator is given by the Customer or its directors or by a qualifying floating charge holder (as defined in paragraph 14 of Schedule B1 to the Insolvency Act 1986), or a receiver and/or manager or administrative receiver is appointed in respect of all or any of the Customer's assets or undertaking or circumstances arise which entitle the Court or a creditor to appoint a receiver and/or manager or administrative receiver or which entitle the Court to make a winding-up or bankruptcy order or the Customer takes or suffers any similar or analogous action in any jurisdiction.
- 12.2. Subject to Condition 12.3, in the event of any Contract being terminated by the Customer prior to delivery of Goods under Condition 6 in whole or in part, the Customer shall be liable to:
  - 12.2.1. pay all amounts owing by the Customer under the Contract up to termination;

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- 12.2.2. pay a handling charge equal to 15% (fifteen per cent) of the total Goods Price of Goods not delivered; and
- 12.2.3. reimburse Audio Logic for any losses incurred by Audio Logic and notified to the Customer within 5 Business Days of termination, including (without prejudice to the generality of the foregoing) loss of profit.
- 12.3. In the event of any Contract comprising a Special Order being terminated by the Customer prior to delivery of Goods under Condition 6 in whole or in part, the Customer shall be liable to pay the entire amount payable under the Contract including the Good Prices.
- 12.4. Any termination shall be without prejudice to any other rights or remedies a party may be entitled to hereunder or at law and shall not affect any accrued rights or liabilities of either party nor the coming into or continuance in force of any provision hereof which is expressly or by implication intended to come into or continue in force on or after such termination.
- 12.5. The provisions of Conditions 13, 14 and 16 to 20 (inclusive) shall survive expiry or termination.

### 13. INTELLECTUAL PROPERTY RIGHTS

- 13.1. All Intellectual Property Rights in or arising out of or in connection with the Contract (including the Designs) (other than Intellectual Property Rights in any materials provided by the Customer) shall be owned by Audio Logic.
- 13.2. Audio Logic grants to the Customer, or shall procure the direct grant to the Customer of, a fully paid-up, worldwide, non-exclusive, royalty-free licence during the term of the Contract to copy the Designs solely for the purpose of receiving and using the Services and the Goods from Audio Logic.
- 13.3. The Customer shall not sub-license, assign or otherwise transfer the rights granted in Condition 13.2.
- 13.4. The Customer grants Audio Logic a fully paid-up, non-exclusive, royalty-free, non-transferable licence to copy and modify any materials provided by the Customer to Audio Logic for the term of the Contract for the purpose of providing the Services and/or Goods to the Customer.

### 14. CONFIDENTIALITY

- 14.1. Each party undertakes that it shall not at any time during the Contract and for a period of two years after termination disclose to any person any Confidential Information, except as permitted by Condition 14.2.
- 14.2. Each party may disclose the other party's Confidential Information:
  - 14.2.1. to its employees, officers, agents, consultants or subcontractors (Representatives) who need to know this information for the purposes of exercising the party's rights or carrying out its obligations under or in connection with the Contract, provided that the disclosing party takes all reasonable steps to ensure that its Representatives comply with the confidentiality obligations contained in this Condition 14 as though they were a party to the Contract. The disclosing party shall be responsible for its Representatives' compliance with the obligations set out in this Condition 14; and
  - 14.2.2. as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.

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- 14.3. The Customer shall not disclose to any third party, copy or reproduce any Designs or other written material supplied by Audio Logic in connection with Goods or Services.
- 14.4. Each party reserves all rights in its Confidential Information. No rights or obligations in respect of a party's Confidential Information (including but not limited to the Designs) other than those expressly stated in these Conditions are granted to the other party or to be implied from the Contract. In particular, no licence is hereby granted directly or indirectly under any patent, invention, discovery, copyright or other intellectual property right held, made, obtained or licensable by either party now or in the future.

### 15. EXPORT SALES

- 15.1. The Customer warrants to Audio Logic that it is entitled to import the Goods to the country or territory of its direction without licence or other authority and without imposing any obligation or liability upon Audio Logic.
- 15.2. The Customer shall be solely responsible for complying with any legislation or regulations governing the importation of Goods to the country or territory of its direction and the transit thereto and for payment of any duties taxes or other impositions thereon.
- 15.3. If export licences from England are required or import licences to the country or territory of the Customer's direction or the transit thereto are required the Customer shall be responsible for obtaining the same with such assistance from Audio Logic as it may reasonably require subject to paying such reasonable charges as Audio Logic may require for time expended and any other costs and disbursements incurred.

### 16. MISCELLANEOUS

- 16.1. Assignment: Subject to Condition 16.2, neither party shall assign, transfer, mortgage, charge, subcontract, declare a trust over or deal in any other manner with any or all of its rights and obligations under the Contract without the prior written consent of the other party (such consent not to be unreasonably withheld or delayed).
- 16.2. Audio Logic shall be entitled to assign the benefit of a Contract with written notice to the Customer (without obtaining Customer's prior written consent).
- 16.3. Waiver: No failure or delay by either party in exercising any remedy right power or privilege under or in relation to a Contract shall operate as a waiver of the same nor shall any single or partial exercise of any remedy right power or privilege preclude any further exercise of the same or the exercise of any other right power or privilege.
- 16.4. Variation: No variation to these Conditions shall be effective unless agreed in writing by both parties (including Audio Logic acting by an Authorised Employee).
- 16.5. Severability: If any provision of these Conditions is held by any competent authority to be invalid or unenforceable in whole or in part the validity and enforceability of the remaining provisions of these Conditions shall not thereby be prejudiced.

### 17. ENTIRE AGREEMENT

- 17.1. The Contract constitutes the entire agreement between the parties, and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to the Contract.
- 17.2. Each party acknowledges that in entering into the Contract it does not rely on, and shall have no remedies for, any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in the Contract.

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17.3. Each party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in the Contract.

### **18. THIRD PARTY RIGHTS**

18.1. Unless it expressly states otherwise, the Contract does not give rise to any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of the Contract.

### **19. NOTICES**

19.1. Any notice given to a party under or in connection with the Contract shall be in writing and shall be:

19.1.1. delivered by hand or by pre-paid first-class post or other next working day delivery service at its registered office (if a company) or its principal place of business (in any other case); or

19.1.2. sent by email to the address specified in the Order Acceptance.

19.2. Any notice shall be deemed to have been received:

19.2.1. if delivered by hand, on signature of a delivery receipt;

19.2.2. if sent by pre-paid first-class post or other next working day delivery service, at 9.00 am on the second Business Day after posting; or

19.2.3. if sent by email, at 9.00 am on the next Business Day after transmission.

19.3. This Condition does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution.

### **20. JURISDICTION**

20.1. These conditions shall be governed by and construed in accordance with the law of England.

20.2. The parties irrevocably submit for the benefit of Audio Logic to the exclusive jurisdiction of the Courts of England and Wales and in respect of any claim dispute or difference arising out of or in connection with these conditions or any Contract.