

**Direct Licenced Showroom Music Agreement Terms and Conditions**

The following terms and conditions and Production and Warranty Agreement (“the Conditions”) are the terms on which Sound Marketing (“the Company”) sells to other businesses and supersedes all other terms and conditions used by the Company.

**1 Orders, price and payment**

1.1 No contract shall come into existence until the Company confirms the order for the Goods in writing.

1.2 The price (exclusive of VAT) for the Goods (“the Price”) shall be the quoted price of the Company and payment of the Price shall be made by the buyer within 30 days of the date (“the Due Date”) of the invoice for the Goods.

1.3 If any undisputed invoice is not paid by the due date the Company will notify the Buyer with a request to remedy. If any such invoice remains unpaid after 60 days of the due date, the company reserves the right to charge interest on the unpaid portion of the price at the rate of five percent above the base rate from time to time of Lloyds Bank plc.

1.4 Any cancellation of any order by the Buyer must be in writing and agreed as cancelled also in writing by the Company. In case of any cancellation, the Buyer may be released from its obligations under the contract after payment of a sum for reasonable damages. Monthly payments will be made quarterly in advance. After the initial contract ends the service will continue on an annual basis if not cancelled 30 days prior to the expiry date.

1.5 Upon cancellation the Buyer will have the right to continue to broadcast the audio for 30 days from date of cancellation. After this date the Connected Active Player will be disconnected and the equipment returned to the Company. Failure to return the equipment to the Company within 30 days will result in the full cost of the equipment being charged to the Client.

**2 Goods**

The description and quantity of the Goods to be sold (“the Goods”) shall be as set out in the quotation provided by the Company to the Buyer (“the Quotation”).

**3 Delivery**

The Company shall deliver the Goods to the Buyer’s address and on the date as both are shown on the Licensing Agreement.

Time shall not be of the essence for delivery. The Buyer shall make all necessary arrangements to take delivery of the Goods on the day notified by the Company for delivery.

**4 Acceptance**

The Company must be advised in writing by recorded delivery of any defects in the Goods as soon as they are discovered by the Buyer who shall be deemed to have accepted the Goods if they have not been rejected on or before the seventh day after delivery. The Buyer shall not be entitled to reject the Goods in whole or in part thereafter.

**5 Title and Risk**

The Goods shall be at the risk of the Buyer following delivery and, notwithstanding delivery, title in the Goods shall not pass to the Buyer until the Buyer has made payment of all sums owing to the Company failing which the Company shall have the right to repossess or otherwise recover the Goods. Until title passes the Buyer shall hold the Goods as bailee for the Company and shall store or mark them so that they can at all times be identified as the Goods of the Company.

**6 Limitation and Liability**

6.1 The Company will not be liable to the Buyer for injury caused by misuse of the goods.

6.2 Without prejudice to Condition 6.1 each party shall not be liable to the other or any third party for any loss of profit, consequential or other economic loss suffered by the Other arising in any way from this Agreement.

**7 Set Off and Counter Claim**

The buyer may not withhold payment of any invoice or other amount due to the Company by reason of any right of set-off or counterclaim which the buyer may have or allege to have or for any reason whatsoever.

**8 Force Majeure**

Each Party shall not be liable for any default due to any circumstance beyond the reasonable control of the Company including, but not limited to, Acts of God, war, civil unrest, riot, strike, lock-out, acts of civil or military authorities, fire, flood, earthquake or shortage of supply.

**9 General**

9.1 If any term or provision of these Conditions is held invalid, illegal or unenforceable for any reason by any Court of competent jurisdiction, such provision shall be severed and the remainder of the provisions hereof shall continue in full force and effect as if these Conditions had been agreed with the invalid, illegal or unenforceable provision eliminated.

9.2 The Company may without the consent of the Buyer sub-licence its rights or obligations or any part of these Conditions.

9.3 The headings in these Conditions are for ease of reference only and shall not affect the interpretation of any of the Conditions.

**10 Contract**

Notwithstanding any other provision of this agreement, nothing herein shall confer or is intended to confer a benefit on any third party for the purpose of the Contract (Rights of Third Parties) Act 1999 or for any other purpose.

**11 Entire Agreement**

Each of the parties agrees that save in respect of statements made fraudulently it shall have no remedy in respect of any untrue statement upon which it relied in entering this Agreement and that its only remedies shall be for breach of contract.

**12 Governing Law and Jurisdiction**

The laws of England and Wales shall govern this Agreement and the parties hereby submit to the exclusive jurisdiction of the courts of England and Wales.

**13 Breach of Contracts**

If either Party is in material breach of this Agreement or any of its contents, the injured Party will provide written notice of the breach and its request to remedy to the Other. If the notified Party fails to rectify the breach within 1 calendar month from receipt of this notice, then the Other may terminate this Agreement forthwith with immediate effect.

**14 GDPR Regulations**

Sound Marketing (SW) Ltd complies fully with the GDPR regulations May 2018. Any data collected will be used solely for the purpose of the continuation of any contract or ongoing business and to advise clients of matters of legitimate interest. We will not pass your data to any 3rd parties. You can request the removal of your data at any time by contacting us directly on 01225 701600. You may also request a full copy of our Data Protection Policy at any time.

## END USER AGREEMENT

<b>“Premises”</b>	a commercial or public space where the Music is to be heard.
<b>“Software”</b>	any software or web application provided or used as part of the Service, including the Player.
<b>“Service”</b>	the Service operated by us where we provide music or recordings by way of streaming, download or other means
<b>“Music”</b>	the sound recordings available through and delivered by means of our Service from time to time and the musical works (including words and lyrics) embodied in the sound recordings available through and delivered by means of the Service from time to time.
<b>“CAP”</b>	connected active player – one player per premises

### Service

The Service includes a non-exclusive licence to play the Music at the Premises. The Premises will have installed one CAP and each Premises with an active CAP will be chargeable. Each Premises will be charged on a separate basis. You acknowledge that the Music and messaging may change from time to time and that specific recordings may not be available throughout the entire Service Period.

### Connectivity

From time to time, our Service may be unavailable. We cannot guarantee continuous access to our Service. However, we will strive to ensure that the periods of planned and unplanned unavailability are kept to a minimum.

You acknowledge that the Service requires a reasonably fast (min 4Mb/s download) connection to the internet from the Premises and that it is your responsibility to provide this. Failure to provide an uninterrupted internet connection may affect the Service, and extended outages may cause the Music to stop playing.

### Software

The Software may not be copied or distributed, or used for any purpose except as provided by this Agreement. You may not reverse engineer, decompile or disassemble any of the Software. Third party software and associated documentation comprised in the Software is subject to the licensing conditions imposed by the proprietors of that software.

We accept no responsibility for any damage from viruses or other external attacks on your hardware, systems or data.

### Restrictions

The licence granted in this Agreement relates solely to the performance of the Music at the Premises. Nothing in this Agreement gives you any rights in the Music or the right to do anything in relation to the Music other than play it at the Premises. You expressly acknowledge that you will not be entitled to make any changes to the Music (or any part or parts of it), or make any reproductions or copies of the Music or any part or parts of it) except that, where the Music is made available to you for download as part of our Service, you may download the music solely for the purpose of enabling the Music to be played at the Premises.

You warrant that you will not use the Music:

- or permit anyone else to use the Music in a way that implies that any artist or composer whose performance or composition is included in the Music endorses your products or the Services or those of any other party.
- or any of it a way which might reasonably be regarded as derogatory to any artist or composer whose performances or composition is included in the Music.

### Data upload

You acknowledge and hereby give your permission for us to monitor the activity of the Player(s) at your Premise(s) by way of automatic uploads of small encrypted data files from your Players to the secure server network that supports the Service. The data we upload contains only details of Music and messages that have been played on which Player(s). We warrant that the data we upload from your Player(s) will only be used by us and our partners to refine and optimise Music content, make declarations to performing rights organisations and artists for accounting or licensing obligations and advertising auditing purposes if appropriate.

### Termination

Upon termination of this agreement the licence will be revoked by the Company and any subsequent use of the audio productions will constitute an infringement of the rights of the Company.

### Equipment

The Client shall be responsible for giving Sound Marketing any necessary information relating to the equipment within a sufficient time to enable Sound Marketing to perform the contract in accordance with its terms. Any damage to the equipment caused by the client will be the client's responsibility and repairs or replacement will be chargeable to the client at the appropriate market rate. In the event of mechanical failure of any media or equipment to perform as warranted or represented during the term of this agreement (other than a mechanical failure caused by the negligence or misuse of the Buyer) the Buyer shall have the right to return the defective media/equipment at their expense to the company and receive a replacement to use for the duration of the term of this agreement.

Equipment to broadcast the audio (PA system) is not provided under this agreement and is the client's responsibility.

Should the equipment (PA System) used to broadcast audio fail, the CAP charges will continue to be charged.