

# On-hold Licence Agreements Terms and Conditions

**Sound Marketing (SW) Ltd**

Strattons House, Strattons Walk, Melksham, Wiltshire, SN12 6JL

## TERMS AND CONDITIONS OF SALE

The following terms and conditions ("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 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.

1.2 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.

1.3 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.

1.4 Upon cancellation the Buyer will have the right to continue to broadcast the production for 30 days from date of cancellation. After this date the audio production must be removed from the telephone system and returned to the Company. Failure to have done this within 45 days of the cancellation date will result in an unauthorised broadcast charge of £250 + VAT per site. Further failure to remove the production beyond 45 days after the cancellation date will result in further charges at a rate of £100 per calendar month or part thereof per site.

### 2. Goods

The description and quantity of the Goods to be sold ("the Goods") shall be as set out in the Licensing Agreement provided by the Company to the Buyer ("the Licensing Agreement").

### 3. Delivery

The Company shall email the Goods to the Buyer's specified email address within the agreed time-frame shown on the Licensing Agreement. Time shall not be of the essence for delivery. The Buyer shall make all necessary arrangements to ensure safe delivery of the Goods such as adding the Company's email addresses to its safe-senders lists and marking as non-junk.

### 4. Acceptance

The Company must be advised in writing 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, ownership of the audio remains at all times with the Company and at no point shall title in the Goods pass to the Buyer. The Buyer must make payment of all sums owing to the Company at all times in accordance with 1, failing which the Company shall have the right to repossess or otherwise recover the Goods or request that the audio ceases to be broadcast.

### 6. Limitation and Liability

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, global pandemic 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. Licensing and Updates**

The monthly or annual licence fee covers the specified number of script updates and the permission to broadcast these productions on the phone systems at only the sites specified on the licensing agreement. Any broadcast of productions at unlicensed sites will result in additional charges. Should the client opt not to take up the agreed maximum number of script updates allowed in the specified period, the full license fee is still applicable and no refunds or credits will be applied.

## **15. Permitted Use**

The audio productions supplied by the Company are permitted for use only as specified within the Licensing Agreement. Any unauthorized broadcast, use or manipulation will result in all broadcast rights being removed from the Buyer, and may result in additional licensing fees being charged.

## **15. 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.

## **PRODUCTION AND WARRANTY AGREEMENT**

1. "Audio Productions" refers to any and all lyrics/scripts and/or musical compositions and/or any other musical, literary or dramatic works contained in the Buyer's Sound Marketing production whether wholly or partly, directly or indirectly owned, controlled, written, composed, orchestrated or arranged by the Buyer or licensed to the Buyer whether alone or in collaboration with others.

2. The audio productions, WAV files or MP3s at all times during the continuance of this contract remain the property of Sound Marketing (SW) Ltd.

3. The Company hereby licences the Buyer to play the audio productions on the licensed sites' phone systems either via equipment, directly from the phone system or via cloud telephony during the continuance of this contract. Should this contract be terminated prior to this term, the audio productions supplied to the Buyer shall be returned to Sound Marketing (SW) Ltd immediately upon termination.

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

5. Where the Buyer requires an artist, composer or composition where third party liabilities are incurred, meaning any or all sums payable to any parties for services or performances contained in the audio production and/or all fees and payments required to be made by or under provisions, agreements or arrangements with the Performing Rights Society, Phonographic Performance Limited, Mechanical Copyright Protection Society, then these fees shall be payable by the Buyer.

6. Any advice, recommendation or representations given by the Company or its employees to the Buyer as to the storage, application or use of the audio productions which is not confirmed in writing by the Company, and is then acted upon or followed by the Buyer, is undertaken entirely at the Buyer's own risk and accordingly the Company shall not be liable for any such advice or recommendations which is not so confirmed.

7. The Client shall be responsible for giving Sound Marketing any necessary information relating to the required file format or size within a sufficient time to enable Sound Marketing to perform the contract in accordance with its terms.

8. The delivery of the audio productions shall be made by the Company to the Buyer at the email address stated on the original Agreement unless otherwise agreed in writing by the Company.

9. Any dates quoted for the delivery of the audio productions are approximate only and Sound Marketing shall not be liable for any delay howsoever caused.

**10.** Upon entering into this contract, the Buyer shall be entitled to the number of audio productions in WAV or mp3 format as described on the original Agreement to be delivered as soon as is practicable to the Buyer after said Buyer has approved the script, music and voice choices in writing to the Company. The Company will not be responsible for any damages as a result of any errors or omissions contained in the audio production which should be checked carefully by the Buyer prior to broadcasting the same.

**11.** 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.

**12.** The Buyer shall not transfer or assign this agreement nor any rights here under without prior permission from the Company.

**13.** Any costs for the repair of equipment purchased by the Buyer for the airing of the audio production which is out of guarantee is payable by the Buyer. If an engineer is required to visit the Client's premises to repair or maintain such equipment these costs are also payable by the Buyer.

**14.** Licensing and Updates - The monthly or annual licence fee covers the specified number of script updates and the permission to broadcast these productions on the phone systems at only the sites specified on the licensing agreement. Any broadcast of productions at unlicensed sites will result in additional charges. Should the client opt not to take up the agreed maximum number of script updates allowed in the specified period, the full license fee is still applicable and no refunds or credits will be applied.

**15.** Permitted Use - The audio productions supplied by the Company are permitted for use only as specified within the Licensing Agreement. Any unauthorized broadcast, use or manipulation will result in all broadcast rights being removed from the Buyer, and may result in additional licensing fees being charged.