

# **SOUND CONTROL SERVICES LTD CONDITIONS OF SALE**

1. **GENERAL**
  - (a) These conditions shall form part of every contract of sale entered into by SOUND CONTROL SERVICES LTD ("the Company") which will operate to the entire exclusion of any terms and conditions of any buyer and any representations or warranties made or given on the Company's behalf. Any purported variation or exclusion of these conditions whether contained in any document of the buyer or otherwise shall be of no effect unless accepted in writing by the Company. Where appropriate, these conditions incorporate Incoterms 2000.
  - (b) Any order whether or not based upon a quotation shall not be binding on the Company unless it is made by the buyer in writing via email, fax or letter and accepted by the Company in writing, via email, fax or letter. A contract between the Company and the buyer shall only come into existence once the Company confirms the buyer's order in writing.
  - (c) For the avoidance of doubt, any representations or warranties made or given by anyone on the Company's behalf prior to acceptance of any order and not confirmed in writing by the Company are hereby expressly excluded.
2. **SPECIFICATION**
  - (a) All goods supplied are subject to availability. The Company reserves the right at any time upon reasonable notice to the buyer to change the contents, design and packaging of the goods.
  - (b) The Company cannot guarantee the exact size of the goods supplied.
  - (c) Due to the nature of the goods, a tolerance of +/- 10% shall be allowed for trimming. All goods shall be supplied untrimmed unless the Company agrees otherwise in writing.
3. **PRICES**
  - (a) The price of the goods shall be the Company's quoted price.
  - (b) Unless otherwise stated by the Company in writing all prices quoted by the Company are ex-warehouse. Carriage and insurance charges shall be payable by the buyer.
  - (c) The price shall be exclusive of any applicable Value Added Tax which the buyer shall be additionally liable to pay to the Company.
  - (d) Where an order is placed and accepted for goods differing in size, quality or in any way from the goods specified in the Company's quotation, or where the buyer requests alterations or modifications to the goods during the course of their manufacture or requests changes to the quoted delivery times, then a reasonable additional charge shall be made.
  - (e) If the buyer requests the supply of trimmed goods in accordance with clause 2(c) above, reasonable additional charges shall be payable by the buyer.
  - (f) Reasonable additional charges, including without limitation any reasonable travelling expenses incurred by the Company pursuant to this clause 3(f) whether by its employees or otherwise, shall be payable by the buyer if the buyer requires the Company or the Company's agent to install the goods supplied under these conditions at a site specified by the buyer.
  - (g) Unless the prices quoted by the Company are specifically stated as fixed, prices shall be subject to increase without notice to reflect any increase in the cost of labour and / or materials required in connection with the goods between the date the order is accepted and the date the goods are despatched. For the purpose of this condition the cost of materials shall include any increase in existing duties or taxes or the imposition of any novel duties or taxes payable in respect of the importation, purchase, sale, processing or use of such materials.
4. **PAYMENT**
  - (a) The Company shall issue an invoice in respect of the supply of goods and any additional charges pursuant to clause 3 above within a reasonable period from the date the order is confirmed by the Company and in any case, not later than the date of dispatch of the goods or, if appropriate, the date of the Company's notification that the goods are ready for collection. Ex-Works Incoterms 2000 shall apply if the goods are required to be supplied outside the UK.
  - (b) Payment of the invoice shall be made by the buyer within 30 days of the date of the invoice via bank transfer, cheque, or credit card.
  - (c) The Company shall be entitled to recover the monies due to the Company in the invoice notwithstanding that delivery may not have taken place and that the property in the goods has not passed to the buyer.
  - (d) The time for payment of the invoice shall be of the essence of the contract. Receipts for payments shall be issued only upon request.
  - (e) Without prejudice to any other rights of the Company if payments are not made within the stipulated period then, without prejudice to any other right or remedy available to the Company, the Company shall be entitled to:
    - (i) cancel the contract or suspend any further deliveries to the buyer; or
    - (ii) charge the buyer interest (both before and after any judgement) on the amount unpaid at the rate of 4% above the base lending rate of HSBC Bank plc until payment in full is made (a part of a month being treated as a full month for the purpose of calculating interest).
  - (f) The buyer shall pay the agreed net price of the goods, as stated in the invoice, without any deduction, set-off or abatement on any grounds.
5. **DELIVERY**
  - (a) Delivery of the goods shall be made by the buyer collecting the goods at the Company's premises at any time after the Company has notified the buyer that the goods are ready for collection or, if the goods are for despatch, by the Company making the goods ready for despatch (Ex-Works Incoterms 2000).
  - (b) Delivery dates are estimates only and not guaranteed and the time for delivery shall not be of the essence of the contract. The Company shall make reasonable efforts to meet the buyer's delivery requirements but shall not be liable for any loss or damage whether direct, consequential or otherwise caused by any delay in delivery and the Company's obligations shall end with the delivery of the goods according to this clause 5.
  - (c) Any arrangements for freight, carriage, transit or other means of transportation of the goods shall be made by the Company on behalf of the buyer if requested to do so by the buyer and the buyer shall be liable for the costs incurred by the Company in doing so and the costs of the freight, carriage, transit or other means of transportation of the goods.
  - (d) The Company shall have no liability in respect of goods lost or damaged in transit. It is the responsibility of the buyer to make arrangements to insure the goods from the time of delivery.
  - (e) Upon the Company's notifying the buyer that the goods are ready for delivery, the buyer shall agree to accept or make arrangements to accept delivery of the goods. If the buyer shall fail to give proper delivery instructions or to accept delivery, the buyer shall be liable for all costs incurred by the Company as a result of such failure (including without limitation all costs of storage, insurance and demurrage) which costs shall become immediately due and payable by the buyer on demand but such liability shall not affect the buyer's obligation to purchase the goods or the right of the Company to damages for breach of such obligation.
  - (f) All goods supplied must be inspected by the buyer on delivery, before signing the delivery note. The buyer shall endorse the delivery note with details of any damage, upon inspection in accordance with this clause 7(b). If the buyer signs the delivery note without any endorsements, the goods shall be deemed to have been properly delivered in full and the Company shall be deemed to have performed its obligations under the contract in full.
  - (g) If the Company agrees to deliver an order in instalments, each instalment shall be construed as constituting a separate agreement to which all the provisions of these conditions shall (with any necessary alterations) apply. Failure by the Company to deliver any one or more instalments in accordance with these conditions or any claim by the buyer in respect of one or more instalments shall not entitle the buyer to treat the contract as a whole as repudiated.
  - (h) The buyer shall take delivery of the goods tendered notwithstanding that the quantity so delivered shall be either greater or less than the quantity purchased provided that such discrepancy in quantity shall not exceed ten per cent and the price shall be adjusted pro rata to the discrepancy.
  - (i) The goods may be delivered by the Company in advance of the quoted delivery date upon giving reasonable notice to the buyer.
6. **RISK AND TITLE**
  - (a) Risk of damage to or loss of the goods shall pass to the buyer, at the Company's premises, at the time when the Company notifies the buyer that the goods are available for collection or despatch, even if the buyer wrongfully fails to take delivery of the goods. Ex-Works Incoterms 2000 shall apply if appropriate. Notwithstanding delivery and the passing of risk in the goods or any other provision of these conditions, the property in the goods shall not pass to the buyer until the Company has received in cash or cleared funds payment in full of the price of the goods and all other goods agreed to be sold by the Company to the buyer, and any other additional charges, for which payment is then due.
  - (b) Until such time as the property in the goods passes to the buyer, the buyer shall hold the goods as the Company's fiduciary and bailee and shall keep the goods separate from those of the buyer and third parties and properly stored, protected and insured and identified as the Company's property, but shall be entitled to use the goods in the ordinary course of its business but this entitlement shall cease automatically without notice in the event of the buyer committing any act of insolvency including but not limited to being adjudicated bankrupt, being placed in administration, having an administrative receiver appointed of all or part of its undertaking or in the event of notices being served, meetings called for a creditors' meeting of the buyer or proceedings issued which could lead to the winding up of the buyer.
  - (c) Until such time as the property in the goods passes to the buyer, the Company shall be entitled at any time to require the buyer to deliver up the goods to the Company and, if the buyer fails to do so forthwith, to enter any premises of the Company or any third party where the goods are stored and repossess the goods in which event the buyer will be responsible for all associated costs and expenses.
  - (d) The buyer shall not be entitled to pledge or in any way charge, by way of security for any indebtedness, any of the goods which remain the property of the Company but if the buyer does so, all monies owing by the buyer to the Company shall (without prejudice to any other right or remedy of the Company) forthwith become due and payable.
7. **WARRANTY AND LIABILITY**
  - (a) The warranties as to quality and fitness, skill and care implied by the Sale of Goods Act 1979 and / or Supply of Goods and Services Act 1982 apply hereto but the buyer must satisfy itself as to the suitability of the goods to be supplied and / or the services to be performed by the Company for any purpose to which he wishes to put the goods.
  - (b) In the case of goods not manufactured by the Company, the Company's liability shall be limited to such guarantee as it may receive from the manufacturer.
  - (c) Figures for the performance of the goods are based on the Company's experience and the Company makes no representations or warranties in this regard.
  - (d) The Company shall not be liable for loss, damage, delay or expense of any kind whether direct, consequential or otherwise:
    - (i) if any work on, or installation or alteration to, the goods is carried out by the buyer or by the buyer's agent, otherwise than according to the written instructions of the Company; or
    - (ii) if such loss, damage delay or expense is a consequence of wear and tear, carelessness in using or handling the goods, defective foundations or buildings, or faulty erection otherwise than by the Company or an agent of the Company.
  - (e) If any work is carried on, or installation or alteration is made to, the goods, it shall be the buyer's responsibility to ensure that these works, installation or alterations are carried out properly, using all appropriate materials, including where appropriate, mechanical fixings.
8. **CANCELLATION**
  - (a) Subject to clause 8(b), once a contract has come into existence between the Company and the buyer, the buyer shall be bound by the contract. The buyer shall be bound to pay for all the goods supplied under the contract and may not reject all or part of the goods supplied under the contract except:
    - (i) pursuant to clause 7(a) above; and
    - (ii) only if the buyer has not made any use of the goods so supplied.
  - (b) Where Consumer Protection (Distance Selling) Regulations 2000 are applicable, the buyer has a right to cancel this contract within seven working days beginning with the day after the day on which this Agreement is concluded. If the buyer wishes to cancel the Agreement, the buyer must let the Company know in writing by letter, fax or email. The Company shall provide the buyer with a full refund of the price paid within 28 days from the date on which the buyer gives him written notice of cancellation.
9. **SAFETY**
  - (a) The Company may supply goods which require special handling techniques to trade customers who are presumed to know any possible risks involved and to draw the attention of their employees and all others handling the goods to the risks and the need to handle the goods appropriately. The buyer shall indemnify the Company against any liability it might incur to persons (whether the buyer's employees or others) handling the goods or to users of products incorporating the goods under provisions of the Consumer Protection Act 1987.
  - (b) If the buyer shall require the Company to install the goods under clause 3(f), then the buyer shall ensure that all health and safety regulations applicable in respect of the welfare or safety of the Company's employees or agents who perform with for the duration of the installation shall be complied with for the duration of their presence at the site specified for the installation of the goods by the buyer.
9. **INDUSTRIAL PROPERTY**
  - (a) All estimates, designs, drawings, plans or models prepared by the Company in connection with the contract are for the buyer's information only and are not warranties or representations in any respect. They remain the property of the Company and are copyright and shall be returned to the Company on its demand. The buyer expressly agrees to keep such documents confidential and not to copy the same nor to supply the same to any third party for any purpose whatsoever nor to use the same except for the purpose of contract placed by the buyer with the Company from time to time.
  - (b) The buyer shall indemnify the Company against all damages, claims, demands and expenses to which the Company may become liable or may incur as a result of goods supplied or work done in accordance with the specifications or instructions of the buyer which involve the alleged or actual infringement of any copyright, patent, registered design or trademark, or such other intellectual property right or moral right belonging to third parties.
10. **INSOLVENCY OF BUYER**
  - (a) This clause applies if:
    - (i) the buyer makes any voluntary arrangement with its creditors or (being an individual or firm) becomes bankrupt or (being a Company) becomes subject to an administration order or goes into liquidation (otherwise than for the purpose of amalgamation or reconstruction);
    - (ii) an encumbrancer takes possession, or a receiver is appointed, of any of the property or assets of the buyer; or
    - (iii) the buyer ceases, or threatens to cease, to carry on business; or
    - (iv) the Company reasonably apprehends that any of the events mentioned above is about to occur in relation to the buyer and notifies the buyer accordingly.
  - (b) If this clause applies, then without prejudice to any other right or remedy available to the Company, the Company shall be entitled to cancel the contract subject to the payment of any reasonable cancellation fees or suspend any further deliveries under the contract without any liability to the buyer, and if the goods have been delivered but not paid for, the price and any other applicable additional charges under clause 3 above, shall become immediately due and payable.
11. **BUYER'S ASSURANCE**
  - (i) The buyer shall not without the written consent of the Company-
    - (i) make any representation or give any warranty in the name of the Company relating to the Company's goods;
    - (ii) sell the Company's goods in the name of the Company; or
    - (iii) hold itself out as the agent of the Company for any purpose.
12. **SAMPLES**

Where either party sends samples to the other party for any purpose, the receiving party will return the samples at its own cost on request by the other party provided that such request is notified on or before the time of delivery. In the absence of any such request, either party shall have the right to scrap samples after a reasonable period. Notwithstanding the foregoing, the contract shall not be a contract for sale by sample.
13. **FORCE MAJEURE**
  - (a) Neither the Company nor the buyer shall be liable to the other or be deemed to be in breach of the contract by reason of any delay in performing, or any failure to perform, any of its obligations in relation to the goods, if the delay or failure shall be beyond that party's reasonable control (each a "Force Majeure Event"). Without prejudice to the generality of the foregoing, the following shall be regarded as Force Majeure Events, i.e. causes beyond either party's reasonable control: Act of God, explosion, flood, tempest, fire or accident; war or threat of war, sabotage, insurrection, civil disturbance or requisition; acts, restrictions, regulations, bye-laws, prohibitions or measures of any kind on the part of any government, parliamentary or local authority; import or export regulations or embargoes; strikes, lockouts or other industrial actions or trade dispute (whether involving employees of either the buyer or the Company or of a third party); difficulties in obtaining raw material, labour, fuel, parts or machinery; power failure or breakdown in machinery.
  - (b) If the Force Majeure Event prevails for a continuous period of more than six months, any party may terminate this contract by giving 28 days' written notice to the other party. On the expiry of this notice period, this contract shall terminate. Such termination shall be without prejudice to the rights of the parties in respect of any breach of this contract occurring prior to this termination.
14. **GENERAL**
  - (a) Any notice shall be in writing and shall be served by sending the same by email, pre-paid first class post or fax to the Company's office for the time being of a company or to the last known principal place of business of the buyer, or such other address as a party notifies to the other party from time to time in writing. If sent by pre-paid first class post, notice shall be deemed to have been served 48 hours after the time it was posted and in proving such service it shall be sufficient to prove that the notice properly addressed and posted. If sent by fax, notice shall be deemed to have been served when the sender receives confirmation of receipt. Notice sent by email shall be deemed to have been served instantaneously.
  - (b) No waiver by the Company of any breach of the contract by the buyer shall be considered as a waiver of any subsequent breach of the same or any other provision.
  - (c) 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 provision in question shall not be affected.
  - (d) The headings are inserted for convenience only and shall not affect the construction or interpretation of these conditions.
15. **LAW**

The contract shall be governed by and construed in accordance with English law and the parties hereto submit to the exclusive jurisdiction of the English courts. In the event that the Company issues proceedings against the buyer under the contract in any County Court (as defined under the County Court Act 1984), the buyer agrees to submit to the jurisdiction of the particular County Court in which such proceedings are issued.