

**SOUND PERFORMANCE (USA), LTD.**

**(TEXT OF ORDER CONFIRMATION)**

**THIS ORDER IS ACCEPTED ON AND SUBJECT TO THE TERMS AND CONDITIONS APPEARING HEREON AND ON THE REVERSE SIDE HEREOF. NO CHANGES OR ADDITIONS WILL BE BINDING ON SELLER UNLESS EXPRESSLY AGREED TO IN WRITING. PLEASE SIGN AND PROMPTLY RETURN THE DUPLICATE COPY.**

**AGREED TO AND ACCEPTED:**

\_\_\_\_\_  
Customer's signature

## **TERMS AND CONDITIONS OF SALE**

### **1. General Terms of Agreement.**

- 1.01 This sale is subject to the following terms and conditions, and may not be modified orally, but only by a writing signed by Seller's duly authorized representative. No oral agreement shall be considered binding upon Seller until it has been reduced in writing and expressly stated by Seller to be binding.
- 1.02 Seller's agreement to the terms and conditions of this Sales Agreement is expressly limited to the exact terms contained herein.
- 1.03 Definitions:
- a) "the Seller" means Sound Performance (USA), Ltd.
  - b) "the Customer" means any person, firm, Seller, organization or other body contracting for the services and/or goods of the Seller.
  - c) "the Agreement" means any contract for the supply of Goods now or hereafter made between the Seller and the Customer.
  - d) "Goods" means the physical goods supplied to the Customer by the Seller and all services rendered by the Seller in connection with the supply of those goods.
  - e) "Payment" means the Seller's receipt from the Customer of cleared funds.
  - f) "the Price" means the price(s) of Goods as set forth in the Seller's standard rate card from time to time.
- 1.04 These conditions together with the description and quality of Goods set out in the customer's written order (as accepted by and/or acted upon by the Seller) shall constitute the whole Agreement between the Seller and the Customer and supersede any prior promises, representation, undertakings or implications (whether oral or in writing).
- 1.05 The Customer acknowledges that it has not entered into the Agreement in reliance upon any representation made by or on behalf of the Seller in any form or by any person whatsoever.
- 1.06 The Seller's standard rate card and quotations issued by the Seller are for information purposes only and do not constitute a formal offer binding upon the Seller.
- 1.07 Warranties, representations and variations and additions to the Agreement may only take effect if expressed in writing and signed by an authorized representative of the Seller.
- 1.08 Any standard or other terms and conditions proposed by the Customer whether in correspondence or its order form or by custom or otherwise shall not form part of the Agreement.
- 1.09 Where there is any inconsistency between these Terms and Conditions and the customer's written order, these Terms and Conditions will prevail.

### **2. Price and Payment.**

- 2.01 All Prices are exclusive of storage charges, sales taxes and other excise duties. Seller reserves its exclusive right to change its price list at any time with no notice to Customer. The Price is based on current costs of production and can be amended by the Seller on or at any time after acceptance of each Customer order to meet any rise or fall in such costs. An order once placed

with and accepted by Seller can be cancelled or changed only if the cancellation or change is made within ten (10) days of its placement and will be subject to a \_\_\_\_% cancellation/change fee.

- 2.02 Unless otherwise expressly agreed to in writing by the Seller, full Payment is due from the Customer upon placing the order and the Seller will not proceed in any way with the order until such time as that payment is received.
- 2.03 When credit is granted to Customer, Payment shall be made to Seller within thirty days of the date of the invoice. Interest will be charged on all past-due accounts at Seller's prevailing rates, not in excess of rates permitted by law, and all payments will first be used to settle the oldest invoices and parts thereof, which are due for payment and any interest, which has accrued thereon, with no deduction, set-off or counterclaim. Seller may in its sole discretion withdraw its credit facility at any time, with or without cause.
- 2.04 Payments are to be made through check, money order, wire transfer or any other means of transferring funds, but shall be deemed completed only when the purchase funds have been irreversibly credited to Seller's account.
- 2.05 Title to the Goods shall be retained by the Seller until payment has been made of all amounts due.
- 2.06 If the Goods are situated in the United States before the purchase price has been fully paid, Seller shall retain a purchase money security interest (as defined in the applicable State version of Section 9-107 of the Uniform Commercial Code) in the Goods until such time as the purchase price, inclusive of interest, costs, etc., shall have been fully paid.
- 2.07 The Customer, as debtor, shall, if requested by Seller, execute appropriate security agreements, Financing Statements, as well as other documents presented by Seller to perfect its security interests in the Goods, and pay the cost of their drafting and filing. Upon any default by Customer as debtor, all of the Customer's obligations under the relevant security agreement shall become immediately due and payable in full without notice or demand, and Seller, as the secured party, shall in addition to the rights granted under the security agreement, have all the rights, remedies and privileges accorded a secured party under the applicable State version of the Uniform Commercial Code.

### **3. Delivery and Acceptance.**

- 3.01 Unless otherwise agreed to by Seller in writing, delivery of the Goods shall be Ex Works at Seller's premises in New York and Seller has informed the Customer of this. All subsequent risk of loss or damage shall be borne by Customer.
- 3.02 Seller reserves the right to make delivery in installments. All such installments shall be separately invoiced and paid for when due, without regard to subsequent deliveries. Delay in delivery of, damage to, defects in or loss of one installment of any order shall not relieve the Customer of its obligation to accept remaining deliveries.
- 3.03 Delivery dates are indicative dates only, unless otherwise specified. Seller shall not be liable for any delays in delivery or any failure to deliver due to causes beyond Seller's control. In no event shall Seller, as a consequence of any default in delivery, be responsible for the cost of replacement, lost profits, injury to good will or any other special or consequential damages.

- 3.04 All claims shall be deemed waived unless made in writing delivered to Seller within five (5) days after delivery of Goods to Customer, and Seller shall thereupon be afforded a reasonable opportunity to inspect the Goods. No Goods shall be returned to Seller without Seller's express written consent. Such Goods must be returned in accordance with Seller's shipping instructions in original condition and packing.
- 3.05 If the Customer wrongfully refuses or fails to take delivery of the Goods, the Seller shall be entitled to immediate payment in full for the Goods. All storage and transport costs incurred by the Seller as a result of such refusal or failure shall be for the Customers' account.

#### 4. Customer's Property.

- 4.01 Customer's property and all property supplied to the Seller by or on behalf of the Customer will be held and worked on entirely at the Customers risk. The Customer warrants that it will keep at least one safety copy of all source tapes and other material supplied to the Seller by or on behalf of the Customer in connection with this Agreement.
- 4.02 Customer warrants and represents that all material supplied by the Customer for reproduction on the Goods shall not be unlawful, obscene, defamatory or infringe the rights of any third party, and further warrants and represents that it has acquired the benefit of all necessary permissions and consents (including without limitation copyright clearances, moral rights waivers and performers' consents) required to enable the Seller to lawfully make and supply the Goods pursuant to this Sales Agreement. The Seller shall be under no obligation to supply the Goods under this Sales Agreement, in the event that the Customer is unable to produce proper documentation of its legal right to reproduce the material, when requested to do so by the Seller.
- 4.03 Customer shall indemnify the Seller in respect of any loss, damage, cost, expense and other liability of the Seller arising out of any claim made against the Seller which is inconsistent with the warranties, representations and obligations of the Customer under this Agreement.

#### 5. Seller's Warranty.

- 5.01 **SELLER MAKES NO WARRANTIES, EXPRESS OR IMPLIED, INCLUDING WARRANTIES AS TO MERCHANTABILITY OR AS TO THE FITNESS OF THE GOODS FOR A PARTICULAR USE OR PURPOSE, AND THE SOLE LIABILITY OF SELLER SHALL BE IN ITS SOLE DISCRETION, AND WITHIN A REASONABLE PERIOD OF TIME, TO REMEDY ANY SUCH DEFECT OR TO REPLACE ANY NON-CONFORMING GOODS.**

#### 6. Termination.

- 6.01 In the event that Customer is in material breach of this or any other contract between Customer and Seller, then Seller shall be entitled to terminate the Agreement with immediate effect by serving written notice thereof on the Customer without compensation to the Customer but without prejudice to any rights of the Seller.
- 6.02 Customer shall, without limitation, be in default of the terms and conditions of this Agreement, if it becomes insolvent, fails to make any payment to Seller when due under this or any other agreement between Customer and Seller, or, if, at any time, the property of Customer is seized or otherwise comes into the possession of a receiver or trustee. In the event such default by Customer, Seller, may, in its sole discretion, and without any limitation, (a) cancel any orders from the Customer as yet unperformed by the Seller; (b) demand payment of all other

outstanding debts of Customer, whether or not due; and (c) treat this Sales Agreement as terminated due to Customer's repudiation.

#### **7. Force Majeure.**

- 7.01 The Agreement is subject to cancellation by the Seller or to such variation as may be necessary including an extension of time for delivery in the Seller's reasonable opinion as a direct or indirect result of inability to secure labor, materials or supplies or a subcontractor, or as a result of any act of God, war, sabotage, strike, lockouts, or other labor dispute, fire, legislation, or other cause (whether of the foregoing class or not) beyond the Seller's control.

#### **8. Limitation of Liability.**

- 8.01 **UNDER NO CIRCUMSTANCES SHALL SELLER BE LIABLE FOR ANY LOSS OR DAMAGE, DIRECTLY OR INDIRECTLY, ARISING FROM THE USE OF THE MERCHANDISE OR FOR THE COST OF REPLACEMENT, LOST PROFITS, INJURY TO GOOD WILL OR ANY OTHER SPECIAL OR CONSEQUENTIAL DAMAGES, REGARDLESS OF WHETHER SELLER HAD BEEN ADVISED OF THE POSSIBILITY OF SUCH LOSSES OR DAMAGES OR SHOULD REASONABLY HAVE FORESEEN THEM.**

#### **9. Indemnities.**

- 9.01 The Customer shall indemnify the Seller and keep it indemnified in respect of all claims arising directly or indirectly out of the Customer's use or possession of the Goods except to the extent to which any claim arises directly as a result of a breach of the contract by the Seller.
- 9.02 The Customer shall indemnify the Seller and keep it indemnified in respect of all loss, damage or extra cost incurred by the Seller by virtue of any request, instruction, omission to instruct, cancellation or any other action on the part of the Customer, its officers, employees, agents or contractors which is not in accordance with this Agreement.

#### **10. Miscellaneous Provisions.**

- 10.01 Notices under the Agreement shall be served in writing by first class prepaid post or facsimile transmission at the address shown on this Agreement or such other address as the party to be served shall have served notice of on the other in accordance with the terms hereof.
- 10.02 Notices served by post shall be deemed to have been served three working days after posting. Notices served by facsimile transmission shall be deemed to be served immediately following transmission provided that the sender shall have a valid transmission report for the whole notice.
- 10.03 This Sales Agreement shall be governed by and construed according to the laws of the State of New York. All controversies and claims arising out of or relating to this contract, or the breach thereof, shall be settled exclusively by the Federal and State Courts of the Courts of New York State. Notwithstanding the foregoing, Seller may, at its option, enforce its rights as a secured party pursuant to the applicable provisions of the Uniform Commercial Code in any court in the United States that Seller may deem appropriate.
- 10.04 This Sales Agreement and all of the terms and conditions hereof will be binding upon and inure to the benefit of the parties hereto and their respective successors and permitted assigns, but neither this Sales Agreement nor any of the rights, interests or obligations hereunder may

be assigned by the Customer without the prior express written consent of the Seller.

- 10.05 No waiver of breach of any of the terms and conditions of this Sales Agreement shall be construed to be a waiver of any succeeding breach of the same or of any other provision herein.
- 10.06 The provisions hereof are severable. The invalidity or illegality of any one or more provisions herein shall not render this Sales Agreement invalid or void and all other provisions herein shall be fully effective and binding.
- 10.07 The headings used in these terms and conditions are for ease of reference only and shall not in any way affect the construction thereof.