

# TERMS AND CONDITIONS

## CALREC AUDIO LIMITED

### TERMS AND CONDITIONS FOR THE SUPPLY OF GOODS AND/OR SERVICES

#### 1. DEFINITIONS

In these terms and conditions ("Conditions") the following words and expressions shall have the following meanings:-

- (a) "Calrec Commissioning" the commissioning of the Goods at the Customer's premises in accordance with Condition 14;
- (b) "Company" Calrec Audio Limited;
- (c) "Contract" the contract or agreement between the Company and the Customer under which the Goods and/or Services are to be supplied by the Company to the Customer including the Conditions and the Order Confirmation;
- (d) "Contract Date" the date appearing on the face of the Order Confirmation;
- (e) "the Customer" the person firm or company with whom the Contract is made by the Company whether directly or indirectly through an agent or factor who is acting for or instructed by or whose actions are ratified by such person firm or company;
- (f) "Delivery Date" the date nominated by the Company after the Contract Date as the estimated date of delivery;
- (g) "Factory Acceptance" the testing of the Goods at the Company's premises in accordance with Condition 13;
- (h) "First Contract Period" the period commencing on the 31st day following the Contract Date and ending halfway between that day and the Delivery Date;
- (i) "Goods" the articles, products, goods or things to be supplied by the Company to the Customer under the terms of the Contract;
- (j) "Order" the order placed by the Customer with the Company for the Goods and/or Services;
- (k) "Order Confirmation" the acknowledgement and confirmation sent by the Company in relation to the order from the Customer to the Company for the supply of the Goods and/or Services;
- (l) "Second Contract Period" the period commencing on the day following the expiry of the First Contract Period and ending on the Delivery Date;
- (m) "Services" the services to be provided by the Company to the Customer under the terms of the Contract and "Service" shall be construed accordingly.
- (n) "Factory Completion Date" the proposed date when the Goods will have completed manufacture and are available for either Factory Acceptance or for delivery pursuant to the Order Confirmation (as the case may require).

#### 2. GENERAL

- 2.1 Subject to any express written variation signed by the Company and any variation in the provisions of the Order Confirmation any contract for the supply of Goods and/or Services shall be based on these Conditions to the exclusion of all other terms and conditions (including any which the Customer purports to apply). The Customer confirms that it has not relied upon any statement, promise or representation made or given by the Company that is not set out in the Contract.
- 2.2 Any concession made or latitude allowed by the Company to the Customer shall not affect the rights of the Company under the Contract.
- 2.3 If in any particular case any of these Conditions shall be held to be invalid or shall not apply to the Contract the other Conditions shall continue in full force and effect.

- 2.4 The Customer acknowledges that the integral software is licensed on the terms of the End User Licence, a copy of which can be found at <http://calrec.com/enduserlicense> and that its use of the goods is subject to the customer accepting and agreeing to the terms of the End User Licence, and such acceptance and agreement shall be indicated by the Customer's use of the goods. The Customer undertakes not to use the goods where it does not accept the terms of the End User Licence.
- 2.5 The Customer shall:
  - 2.5.1 comply with all applicable laws, statutes and regulations relating to anti-bribery and anti-corruption including but not limited to the Bribery Act 2010 ("Relevant Requirements");
  - 2.5.2 comply with the Seller's Anti-bribery Policy (<http://calrec.com/antibriberypolicy.pdf>) and which may be updated from time to time ("Relevant Policy");
  - 2.5.3 maintain in place throughout the term of this Contract its own policies and procedures, including but not limited to adequate procedures (as determined in the Bribery Act 2010), to ensure compliance with the Relevant Requirements and the Relevant Policy and will enforce them where appropriate;
  - 2.5.4 promptly report to Seller any request or demand for any undue financial or other advantage of any kind received by it in connection with the performance of this Contract; and
  - 2.5.5 ensure that any person associated with it (as determined in the Bribery Act 2010) who is performing services or providing goods in connection with this Contract does so only on the basis of a written contract which imposes on and secures from such person terms equivalent to this Condition 12.9.

#### 3. OBLIGATION TO PROVIDE SERVICES AND/OR GOODS

Notwithstanding that the Company may have given a detailed quotation no request for the provision of Services and no order for the supply of Goods shall be binding on the Company unless it has been accepted in writing by the Company.

#### 4. PRICE

- 4.1 The price payable for the Goods and/or Services shall be the price specified in the Order Confirmation and/or the Company's invoice ("the Price").
- 4.2 The Price shall be ex-works the premises advised by the Company exclusive of VAT, import duty, or other local taxes, carriage and insurance, unless otherwise specifically stated in the Order Confirmation.
- 4.3 Unless otherwise specifically stated in the Order Confirmation the Price shall be exclusive of the costs of delivery, commissioning, installation and installation material but shall include one set of standard documentation in relation to the Goods written in English.

#### 5. ADDITIONAL COSTS

- 5.1 The Customer agrees to indemnify the Company on demand against any loss or extra cost incurred by the Company through the Customer's instructions or lack of instructions or through any act or default on the part of the Customer its servants or employees.
- 5.2 If the Customer shall require any changes to be made to the Goods after the Contract Date and the Company agrees to make such changes:-

- 5.2.1 The Customer shall be obliged to pay to the Company all sums due to the Company on such date as if payment was due under Condition 7.2 notwithstanding that the Delivery Date or the Factory Completion Date (as the case may be) of the Goods may be delayed as a result of such changes; and
- 5.2.2 The Customer shall be obliged to pay to the Company no later than the day on which the Goods (as changed) are delivered a sum equal to the costs incurred by the Company in respect of making such changes.

#### 6. INTELLECTUAL PROPERTY

- 6.1 The Customer shall indemnify the Company against all costs claims liabilities and damages incurred or threatened arising out of any alleged infringements of trademarks, registered designs, design right, copyright or other intellectual property rights occasioned and/or any criminal proceedings arising out of the Services where such Services are provided to the specification or special requirements of the Customer and/or by the manufacture or sale of Goods made to the specification or special requirements of the Customer.
- 6.2 All written information, drawings and diagrams (excluding the Goods themselves) prepared by the Company in relation to the supply of Goods and the copyright therein and all other items and materials in any media whatsoever owned by the Company and used in the production of the Goods shall remain the property of the Company and shall be returned by the Customer on demand. All such information shall be treated as confidential and shall not be copied or reproduced or disclosed to any third party without the prior written consent of the Company.
- 6.3 The Customer shall ensure that its employees and all those under the Customer's control and supervision shall comply with the obligations of confidentiality contained at Condition 6.2.
- 6.4 Subject always to Condition 6.1 if any claim of direct infringement of industrial and intellectual property rights (including copyrights) is made in respect of the Goods anywhere in the world against the Customer by any third party the Customer shall promptly inform the Company in writing of such a claim.
- 6.5 In the event of a substantiated claim pursuant to Condition 6.4, the Company shall have the option at its sole discretion to provide the Customer with:
  - 6.5.1 the right to continue using the Goods; or
  - 6.5.2 a non-infringing replacement or modifications of the same; or
  - 6.5.3 a refund of the price paid by the Customer for the Goods in question less an amount based on the age of the Goods at the date of their return to the Company.
- 6.6 Condition 6.5 sets out the entire liability of the Company in connection with claims based on, or resulting from the infringement of industrial and intellectual property rights.

#### 7. PAYMENT

- 7.1 The Company shall on or at any time after the Order Confirmation (or at such other time as the Order Confirmation may specify) send an invoice to the Customer.
- 7.2 Unless otherwise stated in the Order Confirmation or agreed by the Company in writing the Customer shall pay the Price on the earlier of the expiry of the period of 14 days

from the date of the invoice and the day before the date of the delivery by the Company to the Customer of the Goods and/or the Services, provided always that payment shall become due and payable forthwith on demand upon the occurrence of any of the events referred to in Condition 16.

- 7.3 If the Company agrees the Price is payable by installments a default by the Customer on the payment of any due installment shall cause the whole of the outstanding balance to become due and payable forthwith.
- 7.4 The sums due to the Company under the Contract shall be due in full to the Company in accordance with the terms of the Contract and the Customer shall not be entitled to exercise any set-off lien or any similar right or claim.
- 7.5 The time of payment shall be the essence of the Contract.
- 7.6 Without prejudice to any other rights it may have the Company is entitled to charge interest on overdue payments at the annual rate of 2.5% above the base rate from time to time of Barclays Bank plc. Such interest to run from the due date for payment until payment in full is received whether before or after any judgment.

#### 8. DELIVERY OF GOODS/SERVICES

- 8.1 Unless otherwise agreed by the Company in the Order Confirmation, the Company shall provide or shall procure delivery of the Goods ex-works the premises advised by the Company and/or the provision of the Services, to the place or places specified in the Order Confirmation.
- 8.2 All times and dates given for delivery of the Goods are given in good faith but without any responsibility on the part of the Company. Time of delivery shall not be the essence of the Contract nor shall the Company be under any liability for any delay beyond the Company's control.
- 8.3 Where the Goods are handed to a carrier for carriage to the Customer any such carrier shall be deemed to be an agent of the Company and not the Customer for the purposes of Sections 44, 45 and 46 of the Sale of Goods Act 1979.
- 8.4 Section 32(3) of the Sale of Goods Act 1979 shall not apply to any Goods that the Company may agree to send pursuant to any agreement set out in the Order Confirmation.
- 8.5 No liability for any claim that the Goods are not in accordance with the Contract will attach to the Company unless claims to that effect are notified in writing by the Customer to the Company (and in the case of claims for loss or damage with a copy to the carrier of the Goods) within 7 days of delivery.
- 8.6 In the event of a valid claim for loss damage or non-compliance with the Contract the Company undertakes at its option either:-
- 8.6.1 to re-supply or replace the Goods at its expense or;
- 8.6.2 to rectify the problem in question; but shall not be under any further or other liability to any person in connection with such loss damage or non-compliance.
- 8.7 If the Customer shall fail to give notice in accordance with Condition 8.5 the Goods shall be deemed to be in all respects in accordance with the Contract and without prejudice to earlier acceptance by the Customer it shall be bound to accept and pay for the same accordingly.

- 8.8 If for any reason the Customer is unable to accept delivery of the Goods at the time when the Goods are due and ready for delivery the Company may at its sole discretion without prejudice to its further rights store the Goods at the risk of the Customer and take all reasonable steps to safeguard and insure them at the cost of the Customer provided that the Customer shall be immediately informed thereof.

#### 9. RETURNS OF GOODS

Goods supplied in accordance with the Contract cannot be returned without the Company's prior written authorisation. Duly authorised returns shall only be sent to such addresses as the Company shall notify to the Customer at the Customer's expense.

#### 10. PASSING OF TITLE AND RISK IN GOODS

- 10.1 From the time of the Delivery Date the Goods shall be at the risk of the Customer who shall be solely responsible for their custody and maintenance but unless otherwise expressly agreed in writing, the Goods shall remain the property of the Company until all payments under the Contract have been made unconditionally in full in cash or cleared funds.
- 10.2 Until title to the Goods has passed to the Customer under Condition 10.1 the following shall apply:-
- 10.2.1 the Customer shall hold the Goods as the Company's fiduciary bailee and keep the Goods separate and identifiable from all other goods in its possession and shall ensure that such Goods are stored in suitable environmental conditions, and no identifying marks on or relating to the Goods or their packaging are defaced or obscured;
- 10.2.2 any resale of the Goods by the Customer before ownership has passed under these Conditions shall be solely on the following conditions: at market prices in the ordinary course of business; and any resale shall be deemed to have been effected by the Customer as agent for the Company and the Company shall (without prejudice to the rules of equity relating to tracing) be beneficially entitled to the proceeds of sale or other disposition thereof so that such proceeds or any claim thereof shall be assigned to the Company and shall be held on trust in a separate identifiable account for the Company by the Customer;
- 10.2.3 the Customer's right to possession of the Goods shall terminate immediately in the event that:
- (a) the Customer suffers or allows any execution (legal or equitable) to be levied on his property or obtained against him, or fails to observe or perform any of his obligations under the Contract or any other contract between the parties, or the Customer is unable to pay his debts within the meaning of section 123 Insolvency Act 1986 or he ceases to trade; or
- (b) the Customer encumbers or in any way charges any of the Goods; or
- (c) the Customer, as an individual, has a bankruptcy order made against him or makes an arrangement or composition with his creditors, or otherwise takes the benefit of any statutory relief for insolvent debtors that may be in force from time to time; or

- (d) the Customer, being a body corporate, convenes a meeting of creditors (whether formal or informal), or enters into liquidation (whether compulsory or voluntary – except a solvent voluntary liquidation for a reconstruction), or has a receiver, manager, administrator or administrative receiver appointed in respect of its undertaking or any part of it, or documents are filed with the court or notice given to appoint an administrator of the Customer, or a resolution is passed or petition presented to any court for the winding-up of the Customer or for an administration order, or any proceedings are commenced relating to the Customer's possible insolvency.

- 10.2.4 where the Company is unable to determine whether any Goods are those to which the Customer's right to possession has terminated, the Customer shall be deemed to have sold all Goods in the order in which they were invoiced by the Company.
- 10.2.5 the Customer grants the Company, its employees and agents an irrevocable licence at any time to enter any premises where Goods are stored to inspect them, or, where the Customer's right to possession has terminated, the Company shall have the power to recover and to re-sell the Goods. Such powers being additional to (and not in substitution for) any other power of sale arising by operation of law or implication or otherwise; On termination of the Contract, howsoever caused, the Company's rights contained in this clause shall remain in force.
- 10.2.6 the Customer shall at all times keep the Goods comprehensively insured against loss or damage by accident, fire, theft and other risks usually covered by insurance in the type of business for which the Goods have been supplied in an amount at least equal to the balance of the price for the same from time to time remaining outstanding. The policy shall bear an endorsement recording the Company's interest and on the Company's request the Customer shall provide the Company with a copy of the policy of insurance.

#### 11. CONDITIONS AND WARRANTIES RELATING TO SERVICES

Any conditions or warranties (whether express or implied by statute common law or arising from conduct or previous course of dealing or trade custom or usage) as to the quality of the Services are hereby expressly excluded from this Contract to the fullest extent permitted by law.

#### 12. CONDITIONS AND WARRANTIES RELATING TO GOODS

- 12.1 The Contract shall not constitute a sale by description or sample and although the Company shall use its reasonable endeavours to ensure that the Goods comply with the relevant brochure relating to the Goods, the Company reserves the right to make whatever changes to the Goods it shall consider reasonable.
- 12.2 Subject to Conditions 12.5 and 12.6, the Company warrants to the Customer that:

- 12.2.1 the hardware supplied under the Contract will be free from material defects in design, material and/or workmanship for a period of one year from the date of delivery; and
- 12.2.2 the software and/or firmware (including any updates) which is supplied under the Contract and designated by the Company for use with the hardware supplied under the Contract will execute its programming instructions when properly installed on the hardware supplied for a period of one year from the date of delivery of the hardware (provided always that this Condition 12.2.2 shall not be a warranty that the use of such software and/or firmware will be uninterrupted and error free).
- 12.3 For the avoidance of doubt, the warranty periods set out in Condition 12.2 shall not be extended due to any delay in the installation of any of the Goods beyond the date of delivery.
- 12.4 The Company will rectify any material defects in the Goods arising in the warranty periods set out in Condition 12.2 by, at the Company's option, rectifying or correcting such Goods or replacing the original Goods with compatible Goods.
- 12.5 The Company shall have no liability to the Customer under Conditions 12.2 to 12.4 (inclusive) in respect of defects arising from:-
- 12.5.1 improper or inadequate maintenance of the Goods by the Customer;
- 12.5.2 interfacing between the Customer's software and the Goods;
- 12.5.3 any modification of or misuse of the Goods;
- 12.5.4 operation of the Goods outside reasonable environmental conditions;
- 12.5.5 improper preparation or maintenance by the Customer of the location of the Goods; or
- 12.5.6 any omissions neglect or default by the Customer its employees or agents.
- 12.6 Except as provided for in this Condition 12, any conditions or warranties (whether express or implied by statute or common law, or arising from conduct or a previous course of dealing or trade custom or usage):
- 12.6.1 as to the quality of the Goods or their fitness for any particular purpose (even if that purpose is made known expressly or by implication to the Company);
- 12.6.2 as to the correspondence of the Goods with any description or sample; or
- 12.6.3 otherwise than as expressly given in these Conditions and/or any Contract; are hereby expressly excluded from any Contract to the fullest extent permitted by law.
- 12.7 Where the Goods are for delivery by installments any defect in any installment shall not be a ground for cancellation of the remainder of the installments and the Customer shall remain bound to accept delivery thereof.
- 12.8 Nothing herein shall have the effect of excluding or restricting the liability of the Company for death or personal injury resulting from its negligence in so far as the same is prohibited by United Kingdom statute.
- 12.9 No guarantee whatsoever is given in respect of items supplied by the Customer or a contractor to the Customer and which are incorporated in Goods at the direction of the Customer.

### 13. FACTORY ACCEPTANCE

- 13.1 This condition will apply only where the Order Confirmation refers to the provision by the Company of Factory Acceptance which will be provided to allow the Customer to carry out acceptance tests of the Goods at the Company's premises before carriage of the Goods to the Customer's premises.
- 13.2 Factory Acceptance will be carried out without any further cost to the Customer (subject to the remaining provisions of this Condition 13) for the purposes of checking that the Goods meet the agreed specification.
- 13.3 The Goods shall be available for Factory Acceptance by the Customer following the Factory Completion Date ..
- 13.4 Whether or not the Customer requires Factory Acceptance, the Company shall not be obliged to attend the Customer's premises in order for installation or other tests of the Goods unless otherwise stated or referred to in the Order Confirmation.
- 13.5 Where Factory Acceptance is to be carried out:-
- 13.5.1 the Company will provide reasonable technical support during the acceptance tests and will answer any reasonable questions raised by the Customer relating to the Goods provided always that this shall not extend to the provision of any operational or maintenance training.
- 13.5.2 all test equipment and test leads required for the Factory Acceptance must be provided by the Customer.
- 13.5.3 the Customer shall discharge all expenses incurred by it during the carrying out of Factory Acceptance including for the avoidance of doubt all travelling and subsistence expenses.
- 13.5.4 the Customer will have reasonable access to the Company's premises during normal business hours for the purpose of the Factory Acceptance.
- 13.6 If during the carrying out of the Factory Acceptance the Customer requires changes to be made to the Goods then the Company shall be under no obligation to carry out such changes unless it agrees to do so in writing and for the avoidance of doubt the terms of Condition 5.2 shall apply.
- 13.7 At the completion of the Factory Acceptance the Customer shall sign a certificate confirming the completion of the Factory Acceptance.

### 14. CALREC COMMISSIONING

- 14.1 This condition will apply only where the Order Confirmation refers to the provision by the Company of Calrec Commissioning which shall be carried out after delivery of the Goods and after installation of the Goods by the Customer has taken place to check the correct functioning of the Goods.
- 14.2 Where Calrec Commissioning is to be provided, the Order Confirmation shall specify the total number of days (or half days) which the Company's commissioning engineer will be available at the Customer's premises and will exclude any travel time.
- 14.3 If the Calrec Commissioning cannot start on the agreed date due to any act or omission on the part of the Customer the Customer will pay to the Company all costs incurred by the company in respect of such delay.

- 14.4 During Calrec Commissioning the Customer shall ensure:-
- 14.4.1 reasonable access to the Customer's premises and the Goods being commissioned;
- 14.4.2 that only the Company's commissioning engineer arranges for electrical power to be administered to the Goods provided always that the Company shall have no liability in respect of damage caused by the proper carrying out of the Calrec Commissioning.
- 14.5 The commissioning engineer will make whatever tests he deems necessary to check the correct functioning of the Goods.
- 14.6 If the Customer shall request any modification or change to the Goods during the Calrec Commissioning then the Company shall have no obligation to carry out such changes unless it agrees to do so in writing and for the avoidance of doubt the terms of Condition 5.2 shall apply.
- 14.7 At the end of the Calrec Commissioning the Customer shall provide written certification to the Company confirming that the Calrec Commissioning has been completed.

### 15. CONSEQUENTIAL LOSS

The Company shall not be liable for any costs or damages or expenses arising out of any tortious act or omission or any breach of contract or statutory duty calculated by reference to profits income production or accruals or loss of such profits income production or accruals or by reference to accrual of such costs claims damages or expenses on a time basis.

### 16. DEFAULT OR INSOLVENCY OF CUSTOMER

If the Customer shall be in breach of any of its obligations under the Contract or if any of the events set out in Condition 10.2.3 a) – d) inclusive shall occur or arise the Company in its sole discretion and without prejudice to any other right or claim it may have, may by notice in writing terminate wholly or in part any and every contract (including the Contract) between the Company and the Customer or may (without prejudice to the Company's right subsequently to determine the Contract for the same cause should it be decided) by notice in writing suspend the delivery of the Goods or the supply of the Services until any defaults by the Customer (if remediable) be remedied.

### 17. LIMITATION OF LIABILITY

- 17.1 Where the Contract relates to the provision of Services the liability of the Company to the Customer for any loss or damage of whatsoever nature and howsoever caused shall be limited to and in no circumstances shall exceed the price payable for the Services.
- 17.2 Where the Contract relates to the supply of Goods the liability of the Company to the Customer for any loss or damage of whatsoever nature and howsoever caused shall be limited to and in no circumstances shall exceed the price payable for the Goods.
- 17.3 The Company shall not be liable for any defects or imperfect work in the Goods or in respect of the Services caused by any inaccuracies on any drawing, bills of quantities or specifications supplied by the Customer.
- 17.4 To the fullest extent permitted by law the Customer shall be liable for:
- 17.4.1 the disposal of all packaging and transportation materials in respect of the Goods; and

17.4.2 the proper and lawful treatment, recovery and environmentally sound disposal of the Goods and any of its waste electrical and electronic equipment that may be replaced by the Goods, (including, without limitation, in accordance with the requirements of Directive 2012/19/EU on waste electrical and electronic equipment, and any delegated or subordinate legislation related thereto).

17.5 The Customer hereby acknowledges its contractual obligations in respect of Condition 17.4.2, and shall indemnify and keep indemnified the Company in respect of any costs, loss or expenses incurred by the Company arising from any breach of the Customer's obligations under Condition 17.4.2.

## 18. REPRESENTATIONS

No statement description information warranty condition or recommendation contained in any catalogue price list advertisement or communication or made verbally by the Company or any of the agents or employees of the Company shall be construed to enlarge vary or override in any way any of these Conditions of the Contract.

## 19. FORCE MAJEURE

The Company reserves the right to delay delivery or to cancel the Contract if it is prevented from or delayed in the carrying on of its business due to any circumstances beyond its control, including without limitation, acts of God, governmental actions, war or national emergency, acts of terrorism, protests, riot, civil commotion, fire, explosion, flood, severe weather, epidemic, lock-outs, strikes or other labour disputes, or restraints or delays affecting carriers or inability or delay in obtaining supplies of adequate or suitable materials.

## 20. CANCELLATION

In the event of the cancellation of the Contract in respect of either the Goods and/or the Services by the Customer the following sums determined as part of the Price shall be payable by the Customer to the Company on demand by way of liquidated damages in respect of losses suffered by the Company as a consequence of such cancellation:-

20.1	% of Price	Time of cancellation
	25%	Within 30 days following the Contract Date
	75%	Any time during the First Contract Period
	100%	Any period during the Second Contract Period

20.2 all expenses incurred and losses suffered by the Company in relation to the provision of the Services and/or as the case may be the supply of Goods.

## 21. SUB-CONTRACTING

The Company may assign or sub-contract the whole or any part of the Contract to any person firm or company at any time.

## 22. HEADINGS

The headings in these Conditions are intended for reference only and shall not affect their construction.

## 23. GOVERNING LAW AND JURISDICTION

The Contract shall in all respects be governed by, and construed in accordance with, English Law and shall be deemed to have been made in England and the Customer and the Company agree to submit to the exclusive jurisdiction of the English Courts.

**Calrec Audio Ltd**

Nutclough Mill  
Hebden Bridge  
West Yorkshire  
England UK  
HX7 8EZ

Tel +44 (0)1422 842159  
Fax +44 (0)1422 845244  
Email [Enquiries@calrec.com](mailto:Enquiries@calrec.com)

[calrec.com](http://calrec.com)

(926-037 Iss.8)