

# 45 A-Side Recordings Terms & Conditions

## Definitions

**“Agreement”** means the agreement comprised in the Booking Form and these Conditions;

**”Booking”** means the hire of the Studio for the Period of Booking;

**“Booking Fee”** means the fee payable by the Client to the Company for the Booking as specified in the Booking Form or if not specified then calculated in accordance with the Company’s published or usual scale of charges;

**“Booking Form”** means any written quotation given by the Company and accepted and agreed to and signed by the Client (to be deemed accepted when work begins if no prior acceptance is received by the Company) or the description of supply (but not any “terms and conditions”) contained in any written order of the Client accepted by the Company (to be deemed accepted when work begins if no prior acceptance is received by the Client);

**“Client”** means the person or company referred to in the Booking Form;

**“Client’s Equipment”** means equipment brought onto the Company’s premises by the Client, or the Client’s Personnel or any servant agent or contractor for and on behalf of the Client;

**“Client’s Own Part Recorded Media”** means the Client’s own recording media incorporating pre-recorded material including without limitation multi-track recording tape and computer software;

**”Client’s Personnel”** means persons invited by the Client to enter the Studio during the Booking;

**“Client’s Recording”** means a recording made before the Period of Booking which is delivered to the Company by the Client in connection with this Agreement;

**“Company”** means 45 A-Side Recordings Limited;

**“Conditions”** means these conditions;

**“Fee”** means the Booking Fee;

**“Master Recording”** means the original recording produced for the Client in the course of the Booking on the media and in the format described in the Booking Form;

**“Maximum Liability”** means the maximum liability on the part of the Company to the Client arising under or in connection with this Agreement (in the aggregate for all potential claims by the Client) being the lesser of (i) £100; and (ii) the total amounts paid to the Company by the Client under this Agreement in the six months immediately preceding the initial notice of any claim;

**“Operators”** means the staff of the Company named as such in the Booking Form;

**“Period of Booking”** means the period described as such in the Booking Form;

**“Pre Production Master”** means a Recording in form intended for mass production without further material change;

**“Recording”** means any single or multi-track audio and/or visual recording or data programming or derivative thereof or any one or more pieces of recorded sound or visual image recorded or used during the Booking including a Master Recording and a Pre Production Master or any Client’s Recording;

**“Representatives”** means the persons named in the Booking Form being authorised by the Client to instruct the Company on behalf of the Client;

**“Session Footage”** means all audio and or audio visual material documenting the progress and making of the Recording in the Studio during the Period of Booking;

**“Studio”** means the recording studio and the equipment specified in the Booking Form;

**“Studio Building”** means all parts of the building and premises in which the Studio is contained;

**“Studio Breakdown”** means a failure or breakdown or unavailability for any reason of the Studio which prevents the Client’s use thereof in accordance with the terms hereof;

**“Trade Marks”** means all Company owned and or controlled trade marks, logos and associated rights.

## 1. AGREEMENT

These Conditions alone are to apply to all facilities hired and work done by the Company for the Client and shall prevail over any terms and conditions put forward by the Client.

## 2. STUDIO FACILITIES

2.1 The Company shall make the Studio and the Operators available to the Client for the Period of Booking and shall produce the Master Recording at the direction and subject to the monitoring and approval of the Client or the Representatives. The Client shall only permit people directly involved in the Recordings to enter the Studio Building and only during the Period of Booking. The Company reserves the right to require any person not so involved to leave the Studio building.

2.2 The Client hereby acknowledges that it shall be responsible for:

- (a) ensuring the suitability of the Studio for the Client’s purpose;
- (b) ensuring that the Client’s Equipment shall be compatible with the Studio;
- (c) the technical quality of any recording engineered by personnel provided by the Client;
- (d) any problem or damage caused by use of Clients Own Part Recorded Media (including any virus damage), and that accordingly the Company gives no warranty as to the foregoing.

## 3. THE BOOKING FEE

3.1 For Clients with accounts with the Company, payment of the whole of the Booking Fee and any other sums payable by the terms of this Agreement shall be due on the first day of the Period of Booking.

3.2 For all other Clients, and unless agreed otherwise with a Client and set out in the Booking Form the Booking Fee shall be payable in full upon receipt of the Company's invoice for the agreed Booking Fee.

3.3 The Company may make additional charges for specific items (including but not limited to overtime (charged at the our usual hourly rates from time to time in force unless agreed otherwise by us in writing), taxi fares, materials and/or food), which amounts will be payable in full by the Client on receipt of an invoice in respect of such charges.

3.4 Unless payment is made by cash or has otherwise been agreed in writing by the parties, all payments under this Agreement must be made by BACS transfer.

3.5 The Client shall be liable to pay interest on any sums overdue and payable to the Company from time to time at the rate of four per cent (4%) per annum above Barclays Bank base rate.

3.6 Subject to the Company exercising its discretion in accordance with Clause 3.8 hereof, the Fee shall not be reduced on account of:

- (a) the Client's failure to use the Studio for any or all of the Period of Booking;
- (b) the Client's cancellation of the Booking or any part thereof.

3.9 In the event of the Client's failure to use the Studio for any or all of the Period of Booking or the Client's cancellation of the Booking, the Company may, at its sole discretion and without any obligation whatsoever, endeavour to make the Studio and Operators available for an alternative booking. The Company shall deduct any monies received from such alternative

bookings (which, at the sole discretion of the Company, may be less than the Booking Fee) against the Fee payable by the Client. The balance of the Fee shall be payable in accordance with this Agreement.

#### 4. THE CLIENT'S OWN MEDIA, PERSONNEL AND EQUIPMENT

4.1 The Client will be responsible for the integrity of the Client's own media, including (without limitation) hard drives and/or the Client's Own Part Recorded Media (the "Media Materials") and

the Company shall not be liable for any deficiency in or caused by such Media Materials. The Client shall be responsible for backing up or creating safety duplicates of any Media Materials.

4.2 The Client hereby warrants undertakes and agrees that it shall procure that each of the Client's Personnel shall abide by the Studio's rules, regulations and health and safety policy and that it shall be responsible:

(a) for the actions of the Client's Personnel upon the Company's premises;

(b) for any and all injury, loss or damage to any person's equipment or premises (including, without limitation, the Studio's equipment or premises) caused by any act or omission of the Client's Personnel, or as a result of any defect in or inappropriate specification of the Client's Equipment or the Media Materials generally;

(c) for the cost of the hire of any Client's Equipment;

(d) for any costs and expenses incurred by the Company on behalf of the Client at the Client's request;

(e) for any and all loss or damage to the Client's Equipment which shall be at the sole risk of the Client.

4.3 The Client hereby warrants, undertakes and agrees that it shall maintain adequate insurance cover with reputable insurers for the duration of the Period of Booking in respect of its obligations under Clause 4.2 of these Conditions.

4.4 The Client shall vacate the Studio and remove all Client's Equipment forthwith at the end of the Period of Booking. The Company shall be entitled by 3 (three) months' notice to the Client to require the Client to collect the Client's Equipment and in default of collection of the Client's Equipment on or before the expiration of the said period of notice, the Company shall be entitled to destroy or otherwise dispose of the Client's Equipment.

## 5. SOUND LEVELS

The Client hereby acknowledges that the Noise at Work Regulations 1989 have established that prolonged exposure to high noise levels above 85 dB(A) may cause damage to hearing and that both studios and studio users are required by law to keep exposures as low as reasonably practicable and that accordingly:

5.1 the Client shall be responsible for noise levels within the Studio;

5.2 high noise levels shall not be sustained for long periods;

5.3 the Company hereby reserves the right to take such action as it may deem appropriate to maintain tolerable noise levels and that no claim shall lie against the Company in respect of inconvenience or time lost in the event of such action;

5.4 the Client shall follow the recommendations contained in the APRS leaflet "KEEP SOUND LEVELS DOWN" (receipt of a copy of which the Client hereby acknowledges) and instruct the Client's Personnel to do the same.

## 6. RECORDINGS AND MATERIALS

6.1 The Client shall procure the collection of the Recordings and ancillary materials (if any) (the "Materials") immediately upon payment in full of the Company's invoice applicable thereto (the "Collection Date")

6.2 After the Collection Date:

(a) notwithstanding any other provision contained within the Conditions the Materials shall be held by the Company solely at the risk of the Client;

(b) the Client shall be liable to the Company for such reasonable charges as the Company may raise against the Client for the continued storage of the Materials;

(c) the Company shall be entitled to serve notice on the Client requiring the Client to collect the Materials within 3 (three) months of the date of such notice failing which the Company shall be entitled to destroy or otherwise dispose of the Materials.

6.3 Notwithstanding any other provision contained within the Conditions until such time as the Company shall be in receipt of cleared payment of the entire Fee the Company shall retain legal title to the Materials which shall remain the property of the Company and the Company shall be entitled to retain possession of all of the Materials.

6.4 Notwithstanding any other provision contained within the Conditions the Client hereby acknowledges and agrees that all risk in the Materials when in transit or otherwise off the Company's premises shall vest in the Client.

6.5 The Company retains a general lien on any property of the Client Master Recordings and or Materials in its possession for any unpaid balance the Client may owe to the Company.

## 7. INDEMNITY

The Client hereby covenants and undertakes to the Company that it shall indemnify the Company against any injury, loss, damage, costs and/or expenses suffered by the Company arising from:

7.1 the Client's cancellation of the Booking including without limitation any reasonable costs or expenses incurred by the Company in connection with the Booking;

7.2 the Client's making, use or exploitation of the Recordings;

7.3 the Client's breach of any of the warranties, undertakings or agreements on its part to be observed or performed by the terms of this Agreement;

7.4 any loss or damage caused to the Company by the Client's Own Part Recorded Media or the Media Materials generally.

## 8. CONTENT OF RECORDING

8.1 The Client warrants that nothing whatsoever shall be included in the Recording (or any software introduced by the Client) which constitutes a breach or infringement of any copyright or which shall be in any way illegal, scandalous, obscene or libellous and the Client will indemnify the Company against any liability in respect thereof and shall pay all costs and expenses which may be incurred by the Company in reference to any such claim. The indemnity shall extend to any amount paid on a lawyer's advice in respect of any such claim.

8.2 The Company shall not be required to reproduce any matter which in its opinion is or may be of an illegal, scandalous, obscene or libellous nature.

## 9. STUDIO BREAKDOWN WARRANTY

9.1 Subject to Clause 9.2 of these Conditions, in the event of Studio Breakdown the Company shall at its option either replace (as soon as can reasonably be arranged) the Studio facilities to which the Client was entitled by the terms hereof and which have been lost as a result of such Studio Breakdown or credit or refund to the Client the Booking Fee in respect of the Booking and shall have no liability or obligation to the Client beyond these remedies.

9.2 In the event of a minor Studio Breakdown (being a Studio Breakdown lasting no longer than 2 hours) the Company may at its option and without any obligation whatsoever extend the affected day by a corresponding time at no additional charge to the Client.

## 10. MASTER RECORDING WARRANTY

10.1 The Client shall promptly notify the Company in writing of any defect in or loss of or damage to the Master Recording of which it is made aware whether as a result of any test carried out by the Client pursuant to clause 3 or otherwise.

10.2 The Company shall use its reasonable endeavours to correct any such defect and to effect replacement of such lost or damaged materials so notified to it or of which it is aware and which are attributable to faulty materials or workmanship or the negligence of the Company.

10.3 In the event that the Company is unable reasonably to effect such rectification or replacement its liability in respect of any Master Recording shall be limited to the Maximum Liability.

## 11. CLIENT'S RECORDINGS



It is a condition of this Agreement that all Client's Recordings shall have been copied by the Client before delivery to the Company, and that the Company's liability for loss of or damage to a Client's Recording shall be limited to the value of the media on which it is recorded.

## 12. TRADE MARKS

The Trade Marks are the property of Milo Music Limited and the Client shall not use the Trade Marks unless expressly authorized in writing by Company to do so.

## 13. FILMING AND PHOTOGRAPHY RESTRICTIONS

13.1 The Client shall not and it shall procure that Client's Representatives shall not photograph or film any part of the Studio Buildings save as expressly provided in this Agreement.

13.2 The Client shall be permitted to photograph and/or record Session Footage within the Studio solely for non-commercial, personal purposes PROVIDED THAT:

- (a) the copyright and all related rights in and to the Session Footage shall vest in Company and to the extent any such rights vest in Client, Client assigns all rights in the Session Footage to the Company, whether vested, contingent or future; and
- (b) Client hereby waives, and shall procure the waiver from Client's Representative any and all moral and or so-called "Performer's" rights in the Session Footage; and
- (c) the Client shall provide the Company with a copy of the Session Footage.
- (d) In the event that Client or Client's Representative either:
  - (e) wish to use the Session Footage for purposes not expressly permitted hereunder; and/or
  - (f) wish to photograph and or film the whole or part of the Studio Building; and
  - (g) the Client puts any request to photograph, film and/or record Session Footage in writing to Company.

## 14. COMPANY'S OVERALL LIABILITY

14.1 The Client acknowledges that its use of the Studio is entirely at its your sole risk. Under no circumstances will the Company, its parents, subsidiaries, and affiliates, and their respective owners, officers, managers, agents, and employees, be liable to a Client for any direct, indirect,

incidental, consequential, special, exemplary, or punitive damages or losses (including without limitation loss of profits, goodwill, use, data, or other intangible losses), whether based in contract, tort, strict liability, or otherwise, arising out of or in connection with use of the Studio, whether or not the Company has been advised of the possibility of such damages or loss. Such limitation of liability shall apply:

(a) whether the damages arise from use or misuse of the Studio (including such damages incurred by third parties); and

(b) notwithstanding any failure of essential purpose of any limited remedy and to the fullest extent permitted by law.

14.2 In the event that the Client shall actually suffer any loss or damage arising directly from the negligence or breach of contract or of statutory duty of the Company then other than in cases of death or personal injury the Company's liability therefor shall be limited in any event to the Maximum Liability in respect of the aggregate of all instances of such negligence and/or breach arising out of the Company's performance of its obligations under this Agreement.

14.3 Notwithstanding any other provision contained within this Agreement the Company shall not be liable to the Client or the Client's Personnel for any:

(a) indirect or consequential loss or damage;

(b) economic loss including without limitation any loss of profits or goodwill or anticipated savings; arising from any fault in the Studio or any act or omission of the Company its servants or agents in respect of this Agreement.

14.4 The Company's liability under this Agreement shall be to the exclusion of all other liability to the Client whether contractual, tortious or otherwise. All other conditions, warranties, stipulations or other statements whatsoever concerning the Agreement, whether express or implied, by statute, at common law or otherwise howsoever, are hereby excluded.

14.5 The Client accepts as reasonable that the Company's total liability in respect of the Booking shall be as set out in this Agreement: in fixing those limits the Client and the Company have had regard to the price and nature of the Booking and the terms hereof, and the level of expenses expected to be incurred by the Client in respect thereof and the resources available to each party including insurance cover, to meet any liability.

14.6 WHERE THE BOOKING IS MADE BY A CONSUMER AS DEFINED IN THE SALE OF GOODS ACT 1979, THE SUPPLY OF GOODS AND SERVICES ACT 1982, THE SALE AND SUPPLY OF GOODS ACT 1994 OR THE FAIR TRADING ACT 1973 THE STATUTORY RIGHTS OF THE CLIENT ARE NOT AFFECTED BY THESE CONDITIONS.

## 15. FORCE MAJEURE

Notwithstanding any other term of this Agreement the Company shall not be under any liability for any failure to perform any of its obligations under this Agreement due to Force Majeure. Following notification by the Company to the Client of such cause, the Company shall be allowed a reasonable extension of time for the performance of its obligations. For the purpose of this Condition, 'Force Majeure' means 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 governmental, parliamentary or local authority; import or export regulations or embargoes; strikes, lock-outs or other industrial actions or trade disputes (whether involving employees of the Company or of a third party); difficulties in obtaining raw materials, labour, fuel, parts or machinery; power failure or breakdown in machinery.

## 16. MISCELLANEOUS

16.1 If there is an inconsistency between any of the provisions of these Conditions and the provisions of the terms and conditions of the Company, the provisions of these Conditions shall prevail to the extent of such inconsistency.

16.2 If any provision(s) of this Agreement is/are held to be invalid or unenforceable, it/they will be struck out and the other terms shall remain.

16.3 The Client shall procure that neither the Client nor any of the Client's Personnel shall be held out as an agent of or pledge the credit of the Company.

16.4 This Agreement constitutes the entire agreement between the parties and neither party shall be bound by any other statement or representation made to the other.

16.5 No variation or amendment to this Agreement shall be effective unless made in writing and signed by the parties hereto.

16.6 In the event that any part of this Agreement shall be held to be void, voidable or otherwise unenforceable by a court of competent jurisdiction then the balance thereof shall remain in full force and effect.

16.7 For the purpose of the Contracts (Rights of Third Parties) Act 1999, this Agreement does not and is not intended to give any rights, or any right to enforce any of its provisions, to any person who is not a party to it.

16.8 All notices required to be given hereunder shall be in writing and deemed properly served if delivered by hand to Unit 306, 279 Abercromby St. G40 2DD on the date of delivery or if sent by recorded delivery post to such address within two (2) working days of posting.

16.9 This Agreement shall be construed in accordance with the laws of Scotland and subject to the exclusive jurisdiction of the Scottish Courts.