

NEURON PRO AUDIO TERMS AND CONDITIONS FOR THE SUPPLY OF EQUIPMENT AND SERVICES

Welcome to Neuron Pro Audio

1. INTERPRETATION

1.1 Definitions. In these Conditions, the following definitions apply:

Bespoke Equipment: the Equipment detailed in the Equipment Specification, which is specifically designed for the Customer by Neuron Pro Audio in partnership with industry leading brands or to the specification provided by the Customer.

Business Day: a day other than a Saturday, Sunday or public holiday in England when banks in London are open for business.

Commencement Date: has the meaning set out in clause 2.4

Conditions: these terms and conditions as amended from time to time in accordance with clause 16.7.

Contract: the contract between Neuron Pro Audio and the Customer for the supply of Equipment and/or Services in accordance with these Conditions.

Customer: the person or firm who purchases the Equipment and/or Services from Neuron Pro Audio.

Deliverables: The output of services such as acoustic simulations, risk assessment, noise impact assessment and project plans.

Force Majeure Event: has the meaning given to it in clause 15.1.

Equipment: the sound, stage and/or lighting equipment and related goods including but not limited to cabinets and/or woodwork (e.g. flight cases), Installation casing (e.g. DJ booths) metalwork mounting for securing the equipment (or any part of it) as set out in the Order.

Equipment Specification: any specification for the Equipment, including any relevant plans or drawings that is agreed in writing by the Customer and Neuron Pro Audio.

Intellectual Property Rights: patents, rights to inventions, copyright and related rights, trade marks, business names and domain names, rights in get-up, goodwill and the right to sue for passing off, rights in designs, user interface design, processor design, acoustic simulations, acoustic treatments, amplifier presets, database rights, rights to use, and protect the confidentiality of, confidential information (including know-how), and all other intellectual property rights, in each case whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world.

Neuron Pro Audio: means Neuron Pro Audio Limited incorporated and registered in England and Wales with company number 06822299 whose registered office is at 17 Mary Street, Manchester, England, M3 1NH.

Neuron Pro Audio Materials: has the meaning set out in clause 9.1(h).

Non-bespoke Equipment: the Equipment detailed in the Equipment Specification supplied by Neuron Pro Audio which is not specifically designed for the Customer.

Order: the Customer's order for the supply of Equipment and/or Services, as set out in the Customer's purchase order form, or the Customer's written acceptance of Neuron Pro Audio's Quote as the case may be.

Plan: as defined in clause 4.1.

Quote: as defined at clause 2.1

Services: the services, including the Deliverables supplied by Neuron Pro Audio to the Customer as set out in the Service Specification which may include the delivery and installation services as detailed in the Conditions.

Service Specification: the description or specification for the Services provided in writing by Neuron Pro Audio to the Customer.

Site: the property at which or in relation to which the Equipment will be used and (where relevant) the Services provided, as stated in the Order.

Standard Daily Rates: Neuron Pro Audio's standard daily rates for the provision of the Services which at the Commencement Date are as follows: Installation Engineers - £200, Senior Installation Engineers - £300 and Service Engineers - £200.

1.2 **Construction.** In these Conditions, the following rules apply:

- (a) a person includes a natural person, corporate or unincorporated body (whether or not having separate legal personality);
- (b) a reference to a party includes its successors or permitted assigns;
- (c) a reference to a statute or statutory provision is a reference to such statute or statutory provision as amended or re-enacted. A reference to a statute or statutory provision includes any subordinate legislation made under that statute or statutory provision, as amended or re-enacted;
- (d) any phrase introduced by the terms including, include, in particular or any similar expression shall be construed as illustrative and shall not limit the sense of the words preceding those terms; and
- (e) a reference to **writing** or **written** e-mails.

2. BASIS OF CONTRACT

2.1 Further to discussing the Customer's basic requirements for Equipment and Services, where the Customer is located within the UK, Neuron Pro Audio shall conduct a complementary Site visit to determine the Customer's broad requirements. Thereafter

Neuron Pro Audio shall produce a bespoke, graded quote taking into account the Customer's budget (**Quote**). Where the Customer is located outside of the UK then Neuron Pro Audio will provide the Quote based on the information provided by the Customer. The Quote shall include the Equipment Specification and where Services are to be provided, the Service Specification. The Quote shall not constitute an offer. The Quote shall remain valid for the period stated in the Quote and if Neuron Pro Audio does not receive an Order within this period the Quote shall be deemed to be automatically withdrawn. If an Order is received within this period then this constitutes an offer by the Customer to purchase Equipment and/or Services in accordance with these Conditions.

- 2.2 By placing an Order the Customer confirms that the type, make and colour of the Equipment detailed in the Equipment Specification as contained in the Quote is correct.
- 2.3 The Order provided by the Customer must specify and give full instructions relating to delivery of the Equipment including the full Site address and any other special requirements.
- 2.4 The Order shall only be deemed to be accepted when Neuron Pro Audio issues written acceptance of the Order (including but not limited to by the issue of an Invoice) at which point and on which date the Contract shall come into existence (**Commencement Date**).
- 2.5 The Contract constitutes the entire agreement between the parties. The Customer acknowledges that it has not relied on any statement, promise, representation, assurance or warranty made or given by or on behalf of Neuron Pro Audio which is not set out in the Contract.
- 2.6 These Conditions apply to the Contract to the exclusion of any other terms that the Customer seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing.
- 2.7 All of these Conditions shall apply to the supply of both Equipment and Services except where application to one or the other is specified.

3. EQUIPMENT

- 3.1 To the extent that the Equipment is to be manufactured in accordance with an Equipment Specification supplied by the Customer, the Customer shall indemnify Neuron Pro Audio against all liabilities, costs, expenses, damages and losses (including any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal and other professional costs and expenses) suffered or incurred by Neuron Pro Audio in connection with any claim made against

Neuron Pro Audio for actual or alleged infringement of a third party's Intellectual Property Rights arising out of or in connection with Neuron Pro Audio's use of the Equipment Specification. This clause 3.1 shall survive termination of the Contract.

- 3.2 Any samples, drawings, descriptive matter or advertising issued by Neuron Pro Audio and any descriptions of the Equipment or the Services contained in Neuron Pro Audio's catalogues, brochures or on its website are issued or published for the sole purpose of giving an approximate idea of Equipment and/or Services described in them. They shall not form part of the Contract or have any contractual force.
- 3.3 Neuron Pro Audio reserves the right to amend the specification of the Equipment if required by any applicable statutory or regulatory requirements.

4. SUPPLY OF SERVICES

- 4.1 Neuron Pro Audio shall provide the Services to the Customer in accordance with the Service Specification in all material respects. A designated project manager will be appointed as a single point of contact. Where considered necessary by Neuron Pro Audio, a schedule of work (Plan) will also be provided in advance detailing milestone dates in respect of the delivery and installation services. The Customer acknowledges that where any other works are being carried out at the Site, a Plan can only be provided where the Customer:
- (a) provides a schedule of such other works being carried out at the Site (**Customer Works**) by the Customer including dates of such works and the likely impact on Neuron Pro Audio's ability to provide the Services;
 - (b) provides a schedule of other works being carried out at the Site by any third parties (**Third Party Works**) and co-ordinates (in a timely manner) communication between Neuron Pro Audio and such third parties.
- 4.2 Neuron Pro Audio shall use its reasonable endeavours to meet any performance dates for the Services specified in the Services Specification (or Plan where provided) but any such dates shall be estimates only and time shall not be of the essence for the performance of the Services. Furthermore the Customer acknowledges that the performance of the Services by Neuron Pro Audio in accordance with the Plan will be contingent on the Customer Works and Third Party Works being carried out in accordance with their relevant schedules and that any deviation from these may negatively impact on the delivery of the Equipment and/or Services or charges payable for the Services.
- 4.3 Neuron Pro Audio shall have the right to make any changes to the Services which are necessary to comply with any applicable law or safety requirement, or which do not materially affect the nature or quality of the Services, and Neuron Pro Audio shall notify the Customer in any such event.

- 4.4 Where the Customer requests changes to the scope of the Services as detailed in the Plan or Service Specification then Neuron Pro Audio will review the Plan/Service Specification to assess the impact of the requested changes. Where Neuron Pro Audio is able to amend Plan/Service Specification as requested then it will notify the Customer of the difference in the price payable for the Services (Charges) to reflect the additional work required (the Increase) by giving notice to the Customer at any time before delivery of the Services. The Customer shall respond to the notification of the Increase promptly and approve or reject the Increase. Where the Customer rejects the Increase then Neuron Pro Audio will be under no obligation to alter the Plan/Service Specification. Where the Customer accepts the Increase it will be liable to pay the Charges.
- 4.5 Neuron Pro Audio warrants to the Customer that the Services will be provided using reasonable care and skill.
5. DELIVERY
- 5.1 Neuron Pro Audio shall deliver the Equipment to the Site or where agreed with the Customer, the Customer shall collect the Equipment from Neuron Pro Audio's premises at 17 Mary Street, Manchester, England, M3 1NH (**Neuron Pro Audio's Premises**) within three Business Days of Neuron Pro Audio notifying the Customer that the Equipment is ready.
- 5.2 Delivery of the Equipment shall be completed on the Equipment's arrival at the Site where Neuron Pro Audio is delivering the Equipment or the completion of loading of the Equipment at Neuron Pro Audio's Premises where the Customer is collecting the Equipment.
- 5.3 Neuron Pro Audio shall ensure that delivery of the Equipment is accompanied by a delivery note which shows the date of the Order, all relevant Customer and Neuron Pro Audio reference numbers, the type and quantity of the Equipment (including the code number where applicable), special storage instructions (if any) and, if the Order is being delivered by instalments, the outstanding balance of Equipment remaining to be delivered.
- 5.4 Any dates quoted for delivery of the Equipment are approximate only, and the time of delivery is not of the essence. Neuron Pro Audio shall not be liable for any delay in delivery of the Equipment that is caused by a Force Majeure Event or the Customer's failure to provide Neuron Pro Audio with adequate delivery instructions or any other instructions that are relevant to the supply of the Equipment or due to changes in the schedules of the Customer Works and Third Party Works which impact on Neuron Pro Audio's ability to deliver the Equipment as detailed at clause 4.2.

- 5.5 If Neuron Pro Audio fails to deliver the Equipment, its liability shall be limited to the costs and expenses incurred by the Customer in obtaining replacement Equipment of a similar description and quality in the cheapest market available, less the price of the Equipment. Neuron Pro Audio shall have no liability for any failure to deliver the Equipment to the extent that such failure is caused by a Force Majeure Event, the Customer's failure to provide Neuron Pro Audio with adequate delivery instructions for the Equipment or any relevant instruction related to the supply of the Equipment.
- 5.6 If the Customer fails to accept or take delivery of the Equipment within five Business Days of Neuron Pro Audio notifying the Customer that the Equipment is ready, then except where such failure or delay is caused by a Force Majeure Event or by Neuron Pro Audio's failure to comply with its obligations under the Contract in respect of the Equipment:
- (a) delivery of the Equipment shall be deemed to have been completed at 9.00 am on the fifth Business Day following the day on which Neuron Pro Audio notified the Customer that the Equipment was ready; and
 - (b) Neuron Pro Audio shall store the Equipment until delivery takes place, and charge the Customer for all related costs and expenses (including insurance).
- 5.7 If thirty (30) days after Neuron Pro Audio notified the Customer that the Equipment was ready for delivery the Customer has not taken or accepted delivery of it as agreed, Neuron Pro Audio may resell or otherwise dispose of part or all of the Equipment and, after deducting reasonable storage and selling costs, account to the Customer for any excess over the price of the Equipment paid to Neuron Pro Audio or charge the Customer for any shortfall below the price of the Equipment.
- 5.8 Neuron Pro Audio may deliver the Equipment by instalments, which shall be invoiced and paid for separately. Each instalment shall constitute a separate contract. Any delay in delivery or defect in an instalment shall not entitle the Customer to cancel any other instalment.

6. INSTALLATION SERVICES

- 6.1 Further to the Site visit referred to at clause 2.1 or the information provided by the Customer if outside of the UK, Neuron Pro Audio may make a number of recommendations regarding the preparatory work which the Customer will be required to carry out at the Site (**Recommendations**) in order to provide the installation and fitting of the Equipment. The Customer will carry out the Recommendations prior to the date of installation set out in the Plan or Services Specification where no Plan is provided.
- 6.2 If Neuron Pro Audio is providing the Equipment to measurements or a plan provided by the Customer, the Customer is responsible for ensuring that these measurements

are correct and making it clear on the measurements or any plan provided exactly what is required.

6.3 An experienced team of staff will fit the Equipment, which where stated in the Equipment Specification will include the bespoke metalwork built by Neuron Pro Audio or its partners to which some or all of the Equipment will be mounted.

6.4 Where stated in the Services Specification and/or Plan:

- (a) further to the fitting of a PA system, Neuron Pro Audio technicians will tune the PA using acoustic measurements and adjustments on specialist equipment, to ensure that the Equipment performs to the required standard, as determined by Neuron Pro Audio;
- (b) where lighting or visual effects equipment is purchased, Neuron Pro Audio will build custom programming to ensure that suitable control and impact is available for various types of events which the Customer may wish to host as agreed with Neuron Pro Audio; and
- (c) training on how to operate the Equipment will be provided to the Customer's relevant on-Site staff at the time of installation. Where further training is subsequently required then Neuron Pro Audio will be entitled to charge for such services on a time and materials basis as detailed at clause 10.2.

6.5 All Equipment will be tested and documented by Neuron Pro Audio once installed. Neuron Pro Audio keep an inventory and schematic of the installation on record for a period of 2 years and can provide this to the Customer on request during that time. The Customer will be required to attend the final acceptance testing on installation and sign to indicate that such testing has been successful.

6.6 Maintenance and upkeep of the Equipment, where required by the Customer will be provided pursuant to the separate maintenance and service agreements provided by Neuron Pro Audio.

7. **QUALITY OF GOODS**

7.1 Neuron Pro Audio warrants that on delivery, and for a period of 12 months from the date of delivery (**warranty period**), the Equipment shall:

- (a) conform with its description and the Equipment Specification;
- (b) be free from material defects in design, material and workmanship;
- (c) be of satisfactory quality (within the meaning of the Sale of Goods Act 1979); and
- (d) be fit for any purpose held out by Neuron Pro Audio;

- 7.2 Subject to clause 7.3, if:
- (a) the Customer gives notice in writing during the warranty period within a reasonable time of discovery that some or all of the Equipment does not comply with the warranty set out in clause 7.1; and
 - (b) Neuron Pro Audio is given a reasonable opportunity of examining such Equipment; and
 - (c) the Customer (if asked to do so by Neuron Pro Audio) returns such Equipment to Neuron Pro Audio's Premises at the Customer's cost;

Neuron Pro Audio shall, at its option, repair or replace the defective Equipment pursuant to clause 7.6 or refund the price of the defective Equipment in full.

- 7.3 Neuron Pro Audio shall not be liable for the Equipment's failure to comply with the warranty in clause 7.1 if:
- (a) the Customer makes any further use of such Equipment after giving a notice in accordance with clause 7.2;
 - (b) the defect arises because the Customer failed to follow Neuron Pro Audio's oral or written instructions as to the storage, installation, use or maintenance of the Equipment or (if there are none) good trade practice;
 - (c) the defect arises as a result of Neuron Pro Audio following any drawing, design or Equipment Specification supplied by the Customer;
 - (d) the Customer alters or repairs such Equipment without the written consent of Neuron Pro Audio;
 - (e) the defect arises as a result of fair wear and tear, wilful damage, negligence, or abnormal working conditions;
 - (f) the Equipment differs from its description or the Equipment Specification (as applicable) as a result of changes made to ensure it complies with applicable statutory or regulatory standards.

7.4 Except as provided in this clause 7, Neuron Pro Audio shall have no liability to the Customer in respect of the Equipment's failure to comply with the warranty set out in clause 7.1.

7.5 The terms of these Conditions shall apply to any repaired or replacement Equipment supplied by Neuron Pro Audio under clause 7.2.

7.6 Where Neuron Pro Audio has elected to repair Equipment during the warranty period or where it has agreed on a case by case basis and at its sole discretion to carry out repairs to Equipment after the expiry of the warranty period then:

- (a) Neuron Pro Audio will aim to assess repairs within 5 Business Days of receiving the faulty Equipment and thereafter will advise the Customer if the

Equipment is not economical to repair or alternatively of the anticipated timescale for carrying out the repairs.

- (b) The Customer acknowledges that the timescale referred to at clause 7.6(a) may be contingent on the availability of parts (which may have to be obtained from overseas) or where items are to be sent for repair externally, the availability at a third party repair centre.
- (c) Where there is likely to be a delay in undertaking the repairs then as a gesture of goodwill Neuron Pro Audio shall offer to hire replacement Equipment to the Customer at a discounted rate of 20% off the usual hire price.

7.7 Where the Equipment is not economical to repair and Neuron Pro Audio:

- (a) elects to replace the Equipment it shall notify the Customer of the estimated delivery date after assessing the Equipment pursuant to clause 7.6(a).
- (b) elects to provide a refund of the price of the defective Equipment in full, it shall pay such refund to the Customer within 20 Business Days after assessing the Equipment pursuant to clause 7.6(a).

8. TITLE AND RISK

8.1 The risk in the Equipment shall pass to the Customer on completion of delivery.

8.2 Title to the Equipment shall not pass to the Customer until Neuron Pro Audio receives payment in full (in cash or cleared funds) for the Equipment and Services and any other Equipment and Services that Neuron Pro Audio has supplied to the Customer in respect of which payment has become due, in which case title to the Equipment shall pass at the time of payment of all such sums.

8.3 Until title to the Equipment has passed to the Customer, the Customer shall:

- (a) maintain the Equipment in satisfactory condition and keep it insured against all risks for its full price on Neuron Pro Audio's behalf from the date of delivery;
- (b) notify Neuron Pro Audio immediately if it becomes subject to any of the events listed in clause 14.2(b) to clause 14.2(m); and
- (c) give Neuron Pro Audio such information relating to the Equipment as Neuron Pro Audio may require from time to time.

8.4 Subject to clause 8.5, the Customer may use the Equipment in the ordinary course of its business (but not otherwise).

8.5 If before title to the Equipment passes to the Customer the Customer becomes subject to any of the events listed in clause 14.2(b) to clause 14.2(m), then, without limiting any other right or remedy Neuron Pro Audio may have:

- (a) the Customer's right to use the Equipment in the ordinary course of its business ceases immediately; and
- (b) Neuron Pro Audio may at any time:
 - (i) require the Customer to deliver up all Equipment in its possession; and
 - (ii) if the Customer fails to do so promptly, enter any premises of the Customer or of any third party where the Equipment is stored in order to recover it.

9. CUSTOMER'S OBLIGATIONS

9.1 The Customer shall:

- (a) ensure that the terms of the Order and (if submitted by the Customer) the Equipment Specification are complete and accurate;
- (b) co-operate with Neuron Pro Audio in all matters relating to the Services;
- (c) where requested, provide a key contact who will be the primary point of contact in respect of the Services;
- (d) provide Neuron Pro Audio, its employees, agents, consultants and subcontractors, with access to the Site and other facilities as reasonably required by Neuron Pro Audio to provide the Services;
- (e) provide Neuron Pro Audio with such information and materials as Neuron Pro Audio may reasonably require to supply the Services, and ensure that such information is accurate in all material respects;
- (f) prepare the Site for the supply of the Services including by ensuring that it is a safe environment in which to work whilst delivering the Services;
- (g) obtain and maintain all necessary licences, permissions and consents which may be required for the Services before the date on which the Services are to start;
- (h) keep and maintain all materials, equipment, documents and other property of Neuron Pro Audio (**Neuron Pro Audio Materials**) at the Customer's premises in safe custody at its own risk, maintain Neuron Pro Audio Materials in good condition until returned to Neuron Pro Audio, and not dispose of or use Neuron Pro Audio Materials other than in accordance with Neuron Pro Audio's written instructions or authorisation; and

9.2 If Neuron Pro Audio's performance of any of its obligations in respect of the Services is prevented or delayed by any act or omission by the Customer or failure by the

Customer to perform any relevant obligation including pursuant to clause 6.1 or clause 6.2 above (**Customer Default**):

- (a) Neuron Pro Audio shall without limiting its other rights or remedies have the right to suspend performance of the Services until the Customer remedies the Customer Default, and to rely on the Customer Default to relieve it from the performance of any of its obligations to the extent the Customer Default prevents or delays Neuron Pro Audio's performance of any of its obligations;
- (b) Neuron Pro Audio shall not be liable for any costs or losses sustained or incurred by the Customer arising directly or indirectly from Neuron Pro Audio's failure or delay to perform any of its obligations as set out in this clause 9.2; and
- (c) the Customer shall reimburse Neuron Pro Audio on written demand for any costs or losses sustained or incurred by Neuron Pro Audio arising directly or indirectly from the Customer Default.

10. CHARGES AND PAYMENT

10.1 Subject to clause 10.3(b) below the price for Equipment shall be the price set out in the Quote or, if no price is quoted, the price set out in Neuron Pro Audio's published price list as at the date of delivery. The price of the Equipment is exclusive of all costs and charges of packaging, insurance, transport of the Equipment, which shall be paid by the Customer when it pays for the Equipment.

10.2 The charges for Services shall be on a time and materials basis:

- (a) the charges shall be calculated in accordance with Neuron Pro Audio's Standard Daily Rates,
- (b) Neuron Pro Audio's Standard Daily Rates for each individual person are calculated on the basis of an eight-hour day from 10.00 am to 7.00 pm worked on Business Days;
- (c) Neuron Pro Audio shall be entitled to charge an overtime rate of one hundred and fifty per cent of the Standard Daily Rate on a pro-rata basis for each part day or for any time worked by individuals whom it engages on the Services outside the hours referred to in clause 10.2(b);
- (d) Neuron Pro Audio shall be entitled to charge the Customer for any expenses reasonably incurred by the individuals whom Neuron Pro Audio engages in connection with the Services including, but not limited to, travelling expenses, hotel costs, subsistence and any associated expenses, and for the cost of services provided by third parties and required by Neuron Pro Audio for the performance of the Services, and for the cost of any materials; and
- (e) for the avoidance of doubt Neuron Pro Audio will be entitled to increase the Charges for the Services pursuant to clause 4.4.

10.3 Neuron Pro Audio reserves the right to:

- (a) increase its Standard Daily Rates for the charges for the Services, provided that such charges cannot be increased more than once in any 12 month period. Neuron Pro Audio will give the Customer written notice of any such increase three months before the proposed date of the increase. If such increase is not acceptable to the Customer, it shall notify Neuron Pro Audio in writing within four weeks of the date of Neuron Pro Audio's notice and Neuron Pro Audio shall have the right without limiting its other rights or remedies to terminate the Contract by giving four weeks' written notice to the Customer; and
- (b) increase the price of the Equipment, by giving notice to the Customer at any time before delivery, to reflect any increase in the cost of the Equipment to Neuron Pro Audio that is due to:
 - (i) any factor beyond the control of Neuron Pro Audio (including foreign exchange fluctuations, increases in taxes and duties, and increases in labour, materials and other manufacturing costs);
 - (ii) any request by the Customer to change the delivery date(s), quantities or types of Equipment ordered, or the Equipment Specification; or
 - (iii) any delay caused by any instructions of the Customer in respect of the Equipment or failure of the Customer to give Neuron Pro Audio adequate or accurate information or instructions in respect of the Equipment.

10.4 In respect of Equipment, Neuron Pro Audio shall invoice the Customer as follows:

- (a) Where the Customer is paying cash: 25% of the price on the Commencement Date, a further 50% when the Equipment is ready for delivery and the final 25% on or at any time after completion of delivery.
- (b) Where the Customer is paying via a finance option approved by Neuron Pro Audio, Neuron Pro Audio will seek payment from the Customer's financier.

10.5 In respect of Services, Neuron Pro Audio shall invoice the Customer in advance in accordance with the Charges stated in the Service Specification with any additional Charges which are due being invoiced weekly on completion of any such additional services.

10.6 The Customer shall pay each invoice submitted by Neuron Pro Audio:

- (a) within 5 days of the date of the invoice; and
- (b) in full and in cleared funds to a bank account nominated in writing by Neuron Pro Audio, and time for payment shall be of the essence of the Contract.

- 10.7 The price and Charges are exclusive of VAT and any other applicable taxes and duties or similar charges which shall be payable by the Customer at the rate and in the manner from time to time prescribed by law.
- 10.8 If the Customer fails to make any payment due to Neuron Pro Audio under the Contract by the due date for payment, then the Customer shall pay interest on the overdue amount at the rate of 8% per annum above Barclay's Bank plc base rate from time to time. Such interest shall accrue on a daily basis from the due date until actual payment of the overdue amount, whether before or after judgment. The Customer shall pay the interest together with the overdue amount.
- 10.9 The Customer shall pay all amounts due under the Contract in full without any set-off, counterclaim, deduction or withholding except as required by law. Neuron Pro Audio may, without limiting its other rights or remedies, set off any amount owing to it by the Customer against any amount payable by Neuron Pro Audio to the Customer.

11. INTELLECTUAL PROPERTY RIGHTS

- 11.1 All Intellectual Property Rights in or arising out of or in connection with the Bespoke Equipment and/or Services shall be owned by Neuron Pro Audio or its licensees.
- 11.2 The Customer acknowledges that, in respect of any third party Intellectual Property Rights in the Services, the Customer's use of any such Intellectual Property Rights is conditional on Neuron Pro Audio obtaining a written licence from the relevant licensor on such terms as will entitle Neuron Pro Audio to license such rights to the Customer.
- 11.3 All Neuron Pro Audio Materials are the exclusive property of Neuron Pro Audio.

12. CONFIDENTIALITY

A party (**receiving party**) shall keep in strict confidence all technical or commercial know-how, specifications, inventions, processes or initiatives which are of a confidential nature and have been disclosed to the receiving party by the other party (**disclosing party**), its employees, agents or subcontractors, and any other confidential information concerning the disclosing party's business, its products and services which the receiving party may obtain. The receiving party shall only disclose such confidential information to those of its employees, agents and subcontractors who need to know it for the purpose of discharging the receiving party's obligations under the Contract, and shall ensure that such employees, agents and subcontractors comply with the obligations set out in this clause as though they were a party to the Contract. The receiving party may also disclose such of the disclosing party's confidential information as is required to be disclosed by law, any governmental or regulatory authority or by a court of competent jurisdiction. This clause 12 shall survive termination of the Contract.

13. LIMITATION OF LIABILITY: THE CUSTOMER'S ATTENTION IS PARTICULARLY DRAWN TO THIS CLAUSE

- 13.1 Nothing in these Conditions shall limit or exclude Neuron Pro Audio's liability for:
- (a) death or personal injury caused by its negligence, or the negligence of its employees, agents or subcontractors;
 - (b) fraud or fraudulent misrepresentation;
 - (c) breach of the terms implied by section 2 of the Supply of Goods and Services Act 1982 (title and quiet possession);
 - (d) breach of the terms implied by section 12 of the Sale of Goods Act 1979 (title and quiet possession); or
 - (e) defective products under the Consumer Protection Act 1987.
- 13.2 Subject to clause 13.1:
- (a) Neuron Pro Audio shall under no circumstances whatsoever be liable to the Customer, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, for any loss of profit, or any indirect or consequential loss arising under or in connection with the Contract; and
 - (b) Neuron Pro Audio's total liability to the Customer in respect of all other losses arising under or in connection with the Contract, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, shall in no circumstances exceed an amount equal to the price paid for the Equipment and/or Services.
- 13.3 The terms implied by sections 13 to 15 of the Sale of Goods Act 1979 and the terms implied by sections 3 to 5 of the Supply of Goods and Services Act 1982 are, to the fullest extent permitted by law, excluded from the Contract.
- 13.4 This clause 13 shall survive termination of the Contract.

14. TERMINATION

- 14.1 Without limiting its other rights or remedies either party may terminate the Contract by giving the other party not less than three months' written notice.
- 14.2 Without limiting its other rights or remedies, each party may terminate the Contract with immediate effect by giving written notice to the other party if:
- (a) the other party commits a material breach of its obligations under this Contract and (if such breach is remediable) fails to remedy that breach within thirty days after receipt of notice in writing to do so;

- (b) the other party suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts or (being a company or limited liability partnership) is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 or (being an individual) is deemed either unable to pay its debts or as having no reasonable prospect of so doing, in either case, within the meaning of section 268 of the Insolvency Act 1986 or (being a partnership) has any partner to whom any of the foregoing apply;
- (c) the other party commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with its creditors other than (where a company) for the sole purpose of a scheme for a solvent amalgamation of that other party with one or more other companies or the solvent reconstruction of that other party;
- (d) a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of the other party (being a company) other than for the sole purpose of a scheme for a solvent amalgamation of the other party with one or more other companies or the solvent reconstruction of that other party;
- (e) the other party (being an individual) is the subject of a bankruptcy petition or order;
- (f) a creditor or encumbrancer of the other party attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of its assets and such attachment or process is not discharged within 14 days;
- (g) an application is made to court, or an order is made, for the appointment of an administrator or if a notice of intention to appoint an administrator is given or if an administrator is appointed over the other party (being a company);
- (h) the holder of a qualifying charge over the assets of the other party (being a company) has become entitled to appoint or has appointed an administrative receiver;
- (i) a person becomes entitled to appoint a receiver over the assets of the other party or a receiver is appointed over the assets of the other party;
- (j) any event occurs, or proceeding is taken, with respect to the other party in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in clause 14.2(b) to clause 14.2(i) (inclusive);
- (k) the other party suspends, threatens to suspend, ceases or threatens to cease to carry on, all or substantially the whole of its business;

- (l) the other party's financial position deteriorates to such an extent that in Neuron Pro Audio's opinion the Customer's capability to adequately fulfil its obligations under the Contract has been placed in jeopardy; or
- (m) the other party (being an individual) dies or, by reason of illness or incapacity (whether mental or physical), is incapable of managing his own affairs or becomes a patient under any mental health legislation.

14.3 Without limiting its other rights or remedies, Neuron Pro Audio may terminate the Contract with immediate effect by giving written notice to the Customer if the Customer fails to pay any amount due under this Contract on the due date for payment.

14.4 Without limiting its other rights or remedies, Neuron Pro Audio may suspend the supply of Services or all further deliveries of Equipment under the Contract or any other contract between the Customer and Neuron Pro Audio if the Customer fails to pay any amount due under this Contract on the due date for payment, the Customer becomes subject to any of the events listed in clause 14.2(b) to clause 14.2(m), or Neuron Pro Audio reasonably believes that the Customer is about to become subject to any of them.

14.5 On termination of the Contract for any reason:

- (a) the Customer shall immediately pay to Neuron Pro Audio all of Neuron Pro Audio's outstanding unpaid invoices and interest and, in respect of Services supplied but for which no invoice has yet been submitted, Neuron Pro Audio shall submit an invoice, which shall be payable by the Customer immediately on receipt;
- (b) the Customer shall return all of Neuron Pro Audio Materials and any Deliverables which have not been fully paid for. If the Customer fails to do so, then Neuron Pro Audio may enter the Site and take possession of them. Until they have been returned, the Customer shall be solely responsible for their safe keeping and will not use them for any purpose not connected with this Contract;
- (c) the accrued rights and remedies of the parties as at termination shall not be affected, including the right to claim damages in respect of any breach of the Contract which existed at or before the date of termination or expiry; and
- (d) clauses which expressly or by implication have effect after termination shall continue in full force and effect.

15. FORCE MAJEURE

15.1 For the purposes of this Contract, **Force Majeure Event** means an event beyond the reasonable control of Neuron Pro Audio including but not limited to strikes, lock-outs or other industrial disputes (whether involving the workforce of Neuron Pro Audio or

any other party), failure of a utility service or transport network, act of God, war, riot, civil commotion, malicious damage, compliance with any law or governmental order, rule, regulation or direction, accident, breakdown of plant or machinery, fire, flood, storm or default of Neuron Pro Audio's subcontractors.

15.2 Neuron Pro Audio shall not be liable to the Customer as a result of any delay or failure to perform its obligations under this Contract as a result of a Force Majeure Event.

15.3 If the Force Majeure Event prevents Neuron Pro Audio from providing any of the Services and/or Equipment for more than four (4) weeks, Neuron Pro Audio shall, without limiting its other rights or remedies, have the right to terminate this Contract immediately by giving written notice to the Customer.

16. GENERAL

16.1 Assignment and other dealings.

- (a) Neuron Pro Audio may at any time assign, transfer, mortgage, charge, subcontract or deal in any other manner with all or any of its rights under the Contract and may subcontract or delegate in any manner any or all of its obligations under the Contract to any third party.
- (b) The Customer shall not, without the prior written consent of Neuron Pro Audio, assign, transfer, charge, subcontract, declare a trust over or deal in any other manner with all or any of its rights or obligations under the Contract.

16.2 Notices.

- (a) Any notice or other communication given to a party under or in connection with this Contract shall be in writing, addressed to that party at its registered office (if it is a company) or its principal place of business (in any other case) or such other address as that party may have specified to the other party in writing in accordance with this clause, and shall be delivered personally or sent by prepaid first-class post or other next working day delivery service, or by commercial courier or e-mail.
- (b) A notice or other communication shall be deemed to have been received: if delivered personally, when left at the address referred to in clause 16.2(a); if sent by pre-paid first class post or other next working day delivery service, at 9.00 am on the second Business Day after posting; if delivered by commercial courier, on the date and at the time that the courier's delivery receipt is signed; or, if sent by e-mail, one Business Day after transmission.

16.3 Severance.

- (a) If any provision or part-provision of the Contract is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this clause shall not affect the validity and enforceability of the rest of the Contract.
- (b) If any provision or part-provision of this Contract is invalid, illegal or unenforceable, the parties shall negotiate in good faith to amend such provision so that, as amended, it is legal, valid and enforceable, and, to the greatest extent possible, achieves the intended commercial result of the original provision.

- 16.4 **Waiver.** A waiver of any right under the Contract or law is only effective if it is in writing and shall not be deemed to be a waiver of any subsequent breach or default. No failure or delay by a party in exercising any right or remedy under the Contract or by law shall constitute a waiver of that or any other right or remedy, nor prevent or restrict its further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.
- 16.5 **No partnership or agency.** Nothing in the Contract is intended to, or shall be deemed to, establish any partnership or joint venture between any of the parties, nor constitute either party the agent of another party for any purpose. Neither party shall have authority to act as agent for, or to bind, the other party in any way.
- 16.6 **Third parties.** A person who is not a party to the Contract shall not have any rights to enforce its terms.
- 16.7 **Variation.** Except as set out in these Conditions, no variation of the Contract, including the introduction of any additional terms and conditions shall be effective unless it is agreed in writing and signed by Neuron Pro Audio.
- 16.8 **Governing law.** This agreement and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the law of England and Wales.
- 16.9 **Jurisdiction.** Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim arising out of or in connection with this Contract or its subject matter or formation (including non-contractual disputes or claims).