

Terms & Conditions

1. Application

1.1. The supply of goods and/or services by Audio Magic Pty Ltd (ACN 602 575 226) ('Audio Magic') to you ('the Customer') will be governed by these Terms and Conditions ('Terms'). These terms shall be applicable to all transactions between Audio Magic Pty Ltd and the Customer.

1.2. Unless otherwise agreed by Audio Magic, these Terms take precedence over all previous understandings, arrangements, and agreements concerning the aforementioned supply of goods and services. If there is any discrepancy between these Terms and any other communications from Audio Magic, these Terms shall prevail.

1.3. The term 'Goods' refers to any electronic equipment, parts, accessories, and other items provided by Audio Magic to the Customer. On the other hand, 'Services' encompass all the services periodically rendered by Audio Magic to the Customer.

2. Orders

2.1. The Customer is required to submit their order to Audio Magic either in writing or verbally to an authorised representative of Audio Magic. Placing an order with Audio Magic implies the Customer's acceptance and adherence to these Terms.

2.2. Audio Magic holds no obligation to accept every order it receives. However, Audio Magic retains the right to accept an order by providing the Customer with the Goods (or confirming the intention to supply them) or if the Customer fulfils the payment of the specified price for the Goods in the order and such payment is accepted by Audio Magic.

2.3. Cancellation of any order is only permissible with the written consent of both Audio Magic and the Customer. Moreover, the Customer acknowledges the responsibility to compensate Audio Magic for any costs, losses, or damages arising from the cancellation of said order.

3. Prices and GST

3.1. The prices of Goods and Services may vary. Audio Magic will make efforts to inform the Customer about any changes in price when placing an order.

3.2. In all other cases, the prices stated in written form by Audio Magic remain valid for the Customer's acceptance for a duration of thirty (30) days starting from the date of issuance. Audio Magic reserves the right to modify a quote if it is not accepted by the Customer within this timeframe, at its sole discretion.

3.3. If not explicitly mentioned, all prices provided by Audio Magic do not include goods and services tax (Goods and Services Tax) Act 1999 as amended from time to time, 'GST'). The Customer acknowledges that the quoted price ('Original Cost') will be adjusted in a manner that ensures Audio Magic receives an amount ('Increased Cost') that, after deducting Audio Magic's GST obligation from the Increased Cost, allows Audio Magic to retain the Original Cost once the GST liability is settled.

4. Terms of Payment

4.1. If Audio Magic has not agreed to provide the Customer with credit terms, the initial trading arrangement will be based on cash payment prior delivery. Credit terms and the establishment of an account with Audio Magic will be required for any changes to the payment arrangement.

4.2. Despite clause 4.1, the Customer is obligated to make payment for any tax invoice issued by Audio Magic within the specified payment deadline mentioned in the tax invoice relating to the Goods or Services provided to the Customer by Audio Magic.

4.3. In the event that the Customer fails to make payment within the specified payment terms mentioned in Clauses 4.1 and 4.2, the following consequences will occur:

(a) The Customer is obligated to reimburse Audio Magic for any costs (including legal costs based on a solicitor/own client basis), charges, expenses, or outgoings incurred in the process of recovering the outstanding amount.

(b) Audio Magic reserves the right, at its sole discretion, to apply interest on any outstanding amount at a rate of three percent (3%) higher than the Penalty Interest Rate stipulated under the Penalty Interest Rates Act 1983 (Vic), as periodically prescribed. This interest will be calculated on a monthly basis until the payment is received.

(c) Audio Magic has the authority to suspend the provision of any Goods or Services without prior notice, at its sole discretion.

4.4. In addition to clause 4.3 mentioned earlier, in the event that the Customer fails to make payment for any account on the scheduled due date, all amounts that would otherwise become owed by the Customer to Audio Magic in the future for the supply of Goods or Services shall become immediately due and payable without any need for prior notice to the Customer.

4.5. In the event that the Customer fails to make payment for any account on the specified due date, Audio Magic reserves the right, at its sole discretion, to take the following actions:

(a) Discontinue the supply of additional Goods and/or Services to the Customer.

(b) Temporarily suspend extending credit to the Customer until all outstanding amounts are paid in full.

5. Customer Credit Facility

5.1. To seek commercial credit from Audio Magic in accordance with the Credit Terms and Conditions, the Customer must complete and submit a Credit Application Account form ('Application for Commercial Credit').

5.2. Audio Active has the authority, solely at its discretion, to:

(a) Grant commercial credit to the Customer.

(b) Suspend or revoke commercial credit from the Customer without prior notice.

6. Delivery

6.1. The delivery of the Goods from Audio Magic to the Customer is considered complete at the moment when Audio Magic loads the Goods onto the designated vehicle of the delivery agent, courier, freight agent, or any other individual responsible for transporting the Goods to the Customer ('Delivery').

6.2. Unless explicitly mentioned in written form by Audio Magic, the Customer will be responsible for bearing the cartage charges for all deliveries of Goods.

6.3. In the event that Goods are scheduled for delivery to a Customer, any timeframe or date for delivery mentioned by Audio Magic is provided as an approximate estimation and does not represent a binding contractual obligation. While Audio Magic will make every effort to fulfil estimated delivery dates, it shall not be held responsible for any losses or damages incurred by the Customer or any other party due to the inability to meet an estimated delivery date.

6.4. The Customer is obliged to promptly accept the Delivery of the Goods and shall bear any demurrage and storage expenses arising from their failure to do so. Additionally, the Customer acknowledges that they will be held responsible for all incurred charges related to attempted Delivery by Audio Magic due to their failure to promptly accept the Goods.

7. Warranty

7.1. Audio Magic will not be held liable for any losses or expenses of an indirect or consequential nature incurred by the Customer, regardless of the cause.

7.2. The contract between Audio Magic and the Customer for the supply of Goods or Services recognises that the Conditions, warranties, and other provisions applicable to the Goods under the Competition and Consumer Act 2010 (Cth) or any other applicable laws of the Commonwealth of Australia, State, or Territory shall remain in effect without any limitations, restrictions, or modifications. These provisions are mandated by the respective legislations, which prohibit their exclusion from the contract.

7.3. This clause specifically eliminates any additional guarantees, warranties, and conditions that would ordinarily be implied into the contract for the supply of Goods or Services by Audio Magic. These exclusions encompass guarantees, warranties, and conditions that could potentially arise from statutes, laws, trade usage, or any other source. Specifically, this exclusion pertains to guarantees, warranties, and conditions regarding the quality or suitability of the Goods or Services for a specific purpose. However, these exclusions remain applicable to the extent permitted by law.

7.4. Upon receiving the Delivery, it is the Customer's responsibility to inspect the Goods and promptly inform Audio Magic in writing, within seven days of receipt, of any discrepancies, defects, damages, disrepair, or any other issues that render the Goods unsuitable for their intended purpose or not in line with the order. Upon receiving such notice, Audio Magic reserves the right to inspect the Goods to validate the Customer's claim. Within limits allowed by law, Audio Magic's liability for Goods that do not conform to the order, are defective, damaged, in disrepair, or unsuitable for their intended purpose will be restricted to options such as replacing the Goods, repairing them, refunding the purchase price, or providing the Customer with credit for future purchases (at the discretion of Audio Magic).

7.5. In circumstances where the Australian Consumer Law is applicable to warranty claims arising from the supply of Goods by Audio Magic to a Consumer, as defined under the Australian Consumer Law, the following provisions shall govern:

(a) In the event of a major failure with a Good, the Customer is entitled to:

- a. Reject the Good and receive a refund.
- b. Reject the Good and obtain an identical replacement, or a replacement of similar value if reasonably available.
- c. Retain the Good and seek compensation from Audio Magic for the decrease in value caused by the major failure.

(b) In the case of a minor failure with the Good, the Customer, at Audio Magic's discretion, is entitled to:

- a. A refund of the Good's cost.
- b. Replacement of the Good.
- c. The repair of the Good within a reasonable timeframe.

(c) To initiate a warranty claim, the Customer must:

- a. Return the Good to the place of purchase.
- b. Present the receipt as proof of purchase.
- c. Identify the defect in the Good.
- d. Provide the Good for inspection upon request.

(d) The contact details for making a warranty claim with Audio Magic are as follows:

Audio Magic Pty Ltd
Suite W05/215 Bell St
PRESTON, VIC 3072
Phone: +61 (0)3 94895122
Email: info@audimagic.com.au

(e) Audio Magic will make reasonable efforts to cover the expenses reasonably incurred by the Customer when making a warranty claim.

8. Passing of title to Goods, Retention of Title, Registration under Personal Property Securities Act 2009 (Cth) ('PPSA')

8.1. The Customer acknowledges and agrees that the Goods will remain the property of Audio Magic until full payment of all amounts owed to Audio Magic in relation to those specific Goods has been received. The Customer will not obtain any property rights or title to the Goods until such payment is made.

8.2. These Terms and Conditions become effective on the date when the Client adopts or accepts them, or places an order. They serve as a security interest and constitute a security agreement as defined by the Act.

8.3. The Customer acknowledges and agrees that these Terms represent a security agreement under the PPSA, and that a security interest exists in all Goods (including their proceeds) supplied by Audio Magic to the Customer, as well as in any future Goods supplied (and their proceeds).

8.4. The Customer acknowledges and agrees that Audio Magic will hold a first-ranking Purchase Money Security Interest (as defined in the PPSA) in all Goods supplied to the Customer under these Terms or any related order or contract. Audio Magic reserves the right to register any security interest related to these Terms and/or any related order or contract on the PPS Register (as defined in the PPSA). The Customer agrees to provide Audio Magic with any necessary information, assistance, and cooperation to facilitate the registration, perfection, and enforcement of such registration. The Customer is prohibited from allowing any security interest to be created or registered over the Goods supplied that takes priority over the security interest held by Audio Magic. Without the prior written consent of Audio Magic, the Customer shall not register or permit the registration of a financing statement or financing change statement in favor of a third party in relation to the Goods supplied.

8.5. The parties acknowledge that in addition to the rights conferred under Chapter 4 of the PPSA, Audio Magic retains any other rights that it may have, and such rights shall remain in effect.

8.6. The Customer agrees to exclude and waive its entitlement to receive notices under the specified provisions of the PPSA, namely sections 95, 120, 121(4), 123, 125, 129, 130, 134, and 135(2).

8.7. The Customer expressly relinquishes and waives its entitlement to receive a statement of account in accordance with section 132.

8.8. The Customer voluntarily relinquishes its rights as a grantor and/or debtor to redeem the Goods as outlined in section 142 of the PPSA, as well as the right to reinstate the collateral as provided by section 143 of the PPSA. Furthermore, the Customer, to the extent allowed by applicable laws, waives its entitlement to receive a notice regarding any verification statement in accordance with section 157 of the PPSA.

8.9. The Client undertakes to compensate the Company for all costs, expenses, and other charges that have been or will be incurred, expended, or payable by the Company in connection with the submission of a financing statement, a financing change statement, or the release of the security interest established by these terms.

8.10. The Client grants the Company and its authorised agents an irrevocable authorisation to enter its premises or any premises occupied by the Client, at a reasonable time, to reclaim any goods that have been sold or supplied under these Terms and Conditions. The Company is further authorised to resell the reclaimed goods and retain the proceeds from the sale, without affecting its right to pursue the remaining outstanding balance under these Terms and Conditions. The Client is responsible for indemnifying the Company for any actions taken during such entry.

8.11. Clause 8 remains in effect even after the termination of these Terms and Conditions.

8.12. In this clause:

- (i) Act refers to the Personal Property Securities Act 2009 (Cth).
- (ii) Account, financing statement, financing change statement, inventory, proceeds, purchase money security interest, register, security interest, security agreement, and verification statement carry the definitions ascribed to them in the Act.

8.13. Notwithstanding clauses 8.1-8.12, the Client is permitted to sell the goods to a third party in the regular course of its business involving the sale of goods of the same kind supplied by the Company, and deliver them to the said third party, subject to the following conditions:

- a) In the event that the Client receives payment from the third party, while the Client remains indebted to Audio Magic for the goods as per these Terms and Conditions, the Client is obligated to hold the entire proceeds of the sale in trust for the Company. The Client must deposit such proceeds into a designated bank account solely dedicated to holding proceeds from the Client's sale of Audio Magic Pty Ltd Goods. No other funds should be deposited into this account, and the account title should include the phrase "Proceeds of sale of Audio Magic Pty Ltd Goods."
- b) If the Client fails to receive payment from the aforementioned third party, and the Company has not been paid by the Client for the said goods, the Client agrees that, at the Company's discretion, the Company may assume responsibility for collecting the outstanding account. The Company shall provide written notice to the Client indicating its intent to do so. Subsequently, the Company is entitled to initiate legal proceedings in the name of the Client against the third party to recover the outstanding account on behalf of the Company.
- c) The Client is required to maintain comprehensive and accurate records of all goods purchased from the Company, including specific details such as the date of purchase, price, and identity of the goods.

9. Risk and Responsibility

9.1. Upon Delivery of the Goods, the risk associated with the Goods, as well as the responsibility for any insurance related to theft, damage, or any other incidents involving the Goods, shall be transferred to the Customer. This transfer of risk and insurance responsibility will remain in effect until Audio Magic has received full payment for the Goods.

9.2. In addition to clause 9.1, upon Delivery of the Goods, the Customer assumes full responsibility for any loss or damage to the Goods, regardless of whether it was caused by the Customer or not. The Customer also agrees to indemnify Audio Magic against any claims, demands, suits, or actions arising from loss or damage to the Goods resulting from handling, transport, storage, display, installation, neglect, or use of the Goods after Delivery. The Customer will bear the risk associated with the Goods unless Audio Magic repossesses the Goods in accordance with these Terms.

10. Cancellation by Customer

10.1. Unless there is a written agreement stating otherwise, the Customer is not permitted to cancel an order that has been accepted by Audio Magic.

10.2. The Customer will assume responsibility for all orders placed by any individual employed by the Customer or acting as an agent on behalf of the Customer.

10.3. In the absence of any alternative agreement between the Customer and Audio Magic, if an order is cancelled, any deposit paid by the Customer will be forfeited to Audio Magic.

11. Insolvency and Default

11.1. Audio Magic reserves the right to terminate any agreement with the Customer, as far as it remains unperformed by Audio Magic, by providing written notice to the Customer, in the following circumstances:

- (a) The Customer breaches any of these Terms or any other agreement with Audio Magic.
- (b) The Customer or any guarantor of the Customer enters into a composition or arrangement with its creditors or negotiates for such.
- (c) In the case of an individual Customer, the Customer passes away, becomes permanently incapacitated, has a trustee appointed, or is subject to a receiving order or commits any act of insolvency.
- (d) A bankruptcy petition or winding-up application is presented to the Court in relation to the Customer.
- (e) In the case of a corporate or legal entity Customer, the Customer or any guarantor of the Customer convenes a meeting of its creditors, or has a liquidator, provisional liquidator, official manager, mortgagee, mortgagee's agent, receiver, or administrator appointed over all or any of its assets, or enters into liquidation (except for reconstruction or amalgamation while solvent) or commits any act of insolvency.
- (f) A judgment in excess of twenty thousand dollars (\$20,000.00) is entered against the Customer, and it remains unsatisfied or is not appealed within twenty-one (21) days.
- (g) The financial position of the Customer or any other fact or circumstance gives reasonable grounds for Audio Magic to believe that the Customer is likely to materially fail in fulfilling its obligations under any agreement with Audio Magic.

11.2. Upon such termination:

(a) The Customer must promptly deliver to Audio Magic, upon demand, any Goods that are in the possession or control of the Customer but still owned by Audio Magic. In the event of failure to do so, Audio Magic reserves the right to repossess the Goods in accordance with these Terms. The Customer shall indemnify Audio Magic against any liability to third parties resulting from such damage and against all actions, proceedings, claims, demands, costs, damages, and expenses arising from the situation.

(b) Audio Magic has the right to declare, by providing written notice to the Customer, that any outstanding amounts owed by the Customer to Audio Magic under these Terms or any other agreement are immediately due and payable. Consequently, such sums become payable without delay.

(c) Audio Magic may seek damages from the Customer for breach of contract and claim legal costs on a solicitor-client basis.

11.3. Any termination will not impose any liability on Audio Magic for any direct or indirect loss or damage caused to the Customer.

12. Sale Restrictions

12.1. The Customer is prohibited from selling any Good or Goods to any individual unless the Good or Goods, including their packaging, are in their original or substantially original condition as initially supplied by Audio Magic. According to this clause, a Good or Goods are considered to be in their original condition if, at the time of the Customer's sale, there have been no changes made to the state or condition of the Good or Goods, no alterations or removal of any trade marks, numbers, codes, or other written indicators on or related to the Good or Goods or their packaging, and if applicable, the Good or Goods remain in their original sealed packaging.

12.2. The Customer agrees that the sale of Goods shall only take place at the Customer's designated retail business premises or at any other location approved by the Company in writing. The Customer is not permitted to sell Goods from any other location without the Company's prior written consent.

12.3. The Customer agrees to limit its internet sales of Goods to a reasonable percentage, as notified by Audio Magic from time to time, of its total sales within a 12-month period. An internet sale, as defined in this clause, refers to a sale that is initiated and completed through communication between the Customer and its customer via email or other internet-based means. When offering Goods for sale on the internet, the following conditions apply:

(a) The Customer must maintain commercial premises that display stock and promotional merchandising endorsed by Audio Magic to support internet-based sales.

(b) Internet sales must be conducted exclusively through the Customer's own website and are not permitted on any third-party platforms, including but not limited to eBay.

(c) Upon request, the Customer must provide Audio Magic with a breakdown of sales made through retail stores and via internet/phone channels, along with supporting documentation.

12.4. The Customer agrees to ensure that each of its affiliates or related parties refrains from engaging in any conduct that would or could violate any of the provisions stated in clause 12.