

# TAG SUPPLY AGREEMENT TERMS AND CONDITIONS

Customer: Technical Audio Group Pty Limited ACN 051 557 905

Address: 19, 43-53 Bridge Rd Stanmore NSW 2048 Ph: 02 9519 0900 Fax: 02 9519 0600

## 1. Definitions

1.1 Words used in this Agreement have the following meanings:

“**Agreement**” means this Supply Agreement, including the Details.

“**Confidential Information**” means any information communicated by one party to the other whether in writing, orally or in any other form or medium in relation to this Agreement and includes, but is not limited to; a party’s operations, business or customers; marketing and financial data; commercialisation; methodology; concepts; product plans, drawings and Product Specifications; manufacturing processes; future market and product plans; trade secrets; know-how; technical; economic or other information not already in the public domain.

“**Details**” means the page entitled “Details” to which these terms form part.

“**IP Rights**” means all industrial and intellectual property rights throughout the world and includes rights in respect of copyright, patent, trade marks, designs, trade secrets, know-how, Confidential Information and circuit layouts.

**PO** means the purchase order issued by the Customer and accepted by the Supplier.

1.2 Expressions used in the Details bear a corresponding meaning in these terms and conditions unless the context requires otherwise.

## 2. Appointment to Supply

2.1 The Customer appoints the Supplier to supply the Products identified in the PO in the quantities and on the dates specified therein.

## 3. Orders

3.1 The Customer will provide the Supplier with a Purchase Order setting out the Customer’s product and volume requirements.

3.2 The Supplier:

- (a) must upon receipt of a purchase order, acknowledge the receipt and acceptance of the purchase order by issuing a sales confirmation to the Customer confirming Product availability, pricing and dispatch date;
- (b) must ensure that Product meets the Product Specifications;
- (c) must not change a Purchase Order or the Product Specifications without the written agreement of the Customer;
- (d) will supply to the lead times as required by the Customer; and agrees to supply orders in full and on time.

## 4. Freight

4.1 Unless otherwise directed by the Customer, Products will be transported by the Supplier to the Customer’s nominated address as set out in the Details.

4.2 Products must be accompanied by a delivery docket or packing slip permitting the Customer to identify the Products received in each delivery.

4.3 The Supplier must pack and transport the Products safely and appropriately to protect them from damage and in accordance with any specific directions from the Customer.

## 5. Rejection of Products

5.1 All Products will be received by the Customer subject to inspection before acceptance.

5.2 If any Product is rejected due to non-compliance with the Product Specifications, defect or damage, the Customer will inform the Supplier as soon as practical and provide sufficient written detail identifying non-compliance.

5.3 Within 14 days of such notification and prior to any corrective action that incurs costs, both parties will agree to one of the following solutions:

- (a) the rejected Product will be returned to the Supplier for credit or replacement at the Supplier’s cost; or
- (b) the Supplier will undertake a repair acceptable to the Customer at Supplier’s cost; or
- (c) the Customer will arrange for repair of the Product at the Supplier’s cost,

but failing agreement the Customer will select the solution it considers appropriate in the circumstances.

5.4 If a credit note is raised for Product returned to the Supplier that the Customer has paid for, all credits and reimbursements due in relation to short supply or faulty product will be deducted from the next payment due to the Supplier. If no further payments are due, then the Supplier shall forward payment to the Customer within 7 days of receipt of claim details.

## 6. Pricing and Payment

6.1 The Price specified in the Customer Invoice is inclusive of GST, and all other rates, charges, costs and expenses (unless specifically stated to the contrary). The Supplier may not increase the price after acceptance of an order by the Supplier.

6.2 The prices for the Products sold by the Supplier to the Customer are listed in Schedule 1 or as agreed between the parties from time to time. Any changes to the prices must be negotiated by the parties prior to a PO being placed by the Customer.

6.3 Agreed price increases will not affect any PO’s placed by the Customer with the Supplier prior to the parties reaching agreement under clause 6.2

6.4 All commercial documents including the Customer Invoice will be dispatched electronically by the Supplier to the Customer’s address via e-mail or facsimile address within 3 working days of the date of delivery.

- 6.5** All Customer Invoices must be a validly rendered tax invoice which complies with Australian laws and state:
- (a) the nature and quantity of Products provided;
  - (b) the Customer's PO reference;
  - (c) the total amount payable (in AUD);
  - (d) the total GST payable;
  - (e) the Supplier's bank details; and
  - (f) include any other details reasonable required by the Customer.

## **7. Quality Standards**

The Supplier agrees:

- (a) to maintain the quality of the Products to the Quality Standards and Specifications specified in the Details; and
- (b) that Products will meet all Australian quality and statutory requirements, codes and standards.

## **8. Temporary Inability to Supply**

- 8.1** The Supplier will notify the Customer in a timely manner if the Supplier is unable, whether temporarily or otherwise, to supply any of the Products in the volume required and/or within the required delivery time and the reasons for that inability.
- 8.2** If the Supplier advises of a temporary inability to supply any Product or is affected by unexpected circumstances then the Customer may cancel the PO (in whole or in part) and transfer orders of the Product from the Supplier to another supplier. If an order is wholly or partly cancelled, the Supplier must repay any prepayments made by the Customer within 7 days of notification of the cancelled order.

## **9. Intellectual Property Rights**

- 9.1** This Agreement is not a licence of, and the Supplier shall not acquire an interest of any nature in any of, the Customer's IP Rights.
- 9.2** Without limiting Clauses 9.1, all Product Specifications, drawings, models, files and other materials in the possession or control of the Supplier provided by the Customer to the Supplier from time to time are, and remain at all times, the property of the Customer and are to be returned to the Customer:
- (a) on termination of this Agreement; or
  - (b) if any of those materials are needed to be used by the Supplier after the termination of this Agreement to fulfil firm orders for Product placed before the termination of this Agreement, immediately after the orders are fulfilled.

- 9.3** The parties agree that all rights, including IP Rights, in all developments, modifications, enhancements, adaptations and improvements of the Customer's IP Rights ("**Improvements**") will vest solely in the Customer and the Supplier hereby assigns all its rights, title and interest in all Improvements to the Customer with effect from their creation. The Supplier must promptly disclose to the Customer all information relating to or subsisting in such

Improvements and execute all documents and do all acts necessary or desirable to vest, confirm or perfect the Customer's ownership interest under this clause 9.3.

- 9.4** The Supplier must not directly or indirectly take any action that may challenge the validity or ownership of IP Rights, including any IP Rights in any improvements.

## **10. Warranties**

**10.1** The Supplier warrants that:

- (a) Products supplied will comply with the Specifications and the Quality Standards;
- (b) Products will be free from defects including faulty materials and workmanship and be of good and merchantable quality and fit for purpose;
- (c) the Products do not infringe the IP Rights of any third party;
- (d) the Products comply with all relevant Australian legal, regulatory, codes and standards.
- (e) it will not be in breach of any obligation owed to any person or infringe any intellectual property rights or moral rights of any person in supplying the Products;
- (f) it holds all licences required or necessary to lawfully provide the Products and does not face any impediment to supply the Products; and
- (g) it will comply with all statutory and regulatory obligations and relevant requirements of authorities and any applicable laws and standards

- 10.2** Without limiting clause 11, if the Supplier is in breach of the warranty in either clause 10.1(a), 10.1(b) and 10.1(d), it must replace or repair the relevant Products at its sole expense.

## **11. Indemnity**

The Supplier indemnifies and must keep the Customer indemnified from and against any demand, liability, loss, expense or suit, including liability for any indirect or consequential damage, suffered or incurred by the Customer due to or arising out of any breach of or non-compliance with this Agreement by the Supplier (including liability for defective Products).

## **12. Guarantee**

If this Agreement is signed by a person on behalf of, or as an authorised representative of the Supplier, then that person ("Guarantor"), in consideration of the Customer entering into this Agreement and providing PO's to the Supplier, agrees to guarantee the Supplier's obligations under this Agreement including but not limited to the due and punctual payment by the entity of all money which is or becomes payable by the entity to the Customer under this Agreement or on any other account (which includes but is not limited to any damages arising under this Agreement, repayment of any prepayments made by the Customer for PO'S which for any reason are not fulfilled by the Supplier or any credits for damaged or non complying Products the

Customer becomes entitled to) ("Secured Money"). The Guarantor also agrees to pay the Customer on demand the Secured Money without the necessity for the Customer to have made prior demand on the entity or any other steps being taken against the entity to recover the Secured Money.

### **13. Termination**

- 13.1** Either party may terminate this Agreement at any time by giving written notice to the other party.
- 13.2** In addition to those rights under clause 13.1, a party may terminate this Agreement, by giving written notice to the other party ("**defaulting party**") if any of the following circumstances occurs:
- (a) if the defaulting party is in breach of this Agreement and fails to remedy the breach within 14 days of receiving a written notice of the breach from the non-defaulting party requiring the breach to be remedied; or
  - (b) if the defaulting party is in breach of any provision of this Agreement which is not capable of remedy; or
  - (c) if an application is presented, an order made, an effective resolution passed, or a meeting summoned or convened for the purposes of considering a resolution for the winding up of the defaulting party; or
  - (d) the defaulting party enters into any form of external administration.

### **14. Rights and Obligations on Termination**

- 14.1** Termination of this Agreement will not release or discharge either party from any debt, obligation or liability which has accrued and remains to be performed by each party as at the date of such termination or which is intended by this Agreement to survive termination.
- 14.2** Without limiting clause 14.1, on termination of the Agreement the Supplier must deliver to the Customer those Products ordered and paid for by the Customer prior to termination, or if those Products cannot be delivered, repay any prepayments for PO's which will not be fulfilled within 7 days.
- 14.3** If the Customer is owed any monies or is in credit with the Supplier on termination of this Agreement then the Supplier must forward payment to the Customer within 7 days of termination of this Agreement.

### **15. Title and Risk**

- 15.1** Title to the Products shall pass to the Customer upon the earlier of payment by the Customer for the Products or delivery of the Products to the Customer.
- 15.2** Risk in the Products shall pass to the Customer upon delivery and acceptance of the Products in accordance with clause 5 of this Agreement.

### **16. Confidentiality**

- 16.1** The Supplier must keep these terms and all matters relating to them, including any Products and services rendered, and all commercially sensitive information belonging to the Customer, confidential, and must not disclose any Confidential Information

without the Customer's express consent. The Customer will keep confidential any commercially sensitive information of the Supplier, unless required or permitted by law to disclose such information

## **17. General**

### **17.1 No Sub-Contracting**

- (a) No party may assign its interest in this Agreement without the consent of the other party, except that the Customer may assign or novate its interest in this Agreement to any company within the TAG Group of Companies.
- (b) The Supplier must ensure that any sub-contractor approved by the Customer observes all the provisions of this Agreement as if the sub-contractor were a party to this Agreement. The Supplier indemnifies the Customer for the acts, defaults and omissions of its subcontractors as if they were those of the Supplier. Approval to subcontract shall not relieve the Supplier from any liability or obligation under this Agreement.

### **17.2 Entire Agreement**

This Agreement constitutes the full and complete understanding between the parties with respect to its subject matter.

### **17.3 Further Assurances**

Each party must promptly sign all documents and do all things that another party from time to time reasonably requests to effect, perfect or complete this Agreement and all transactions incidental to it.

### **17.4 Costs**

Each party will pay its own costs, including legal costs, of and incidental to the preparation and negotiation of this Agreement.

### **17.5 GST**

- (a) Unless otherwise stated, all prices or other sums payable or consideration to be provided under this Agreement are exclusive of GST.
- (b) The Customer will have no liability to pay the Supplier any GST associated with the supply of the Products under this Agreement unless it is provided with a tax invoice that complies with GST Law.

### **17.6 Waiver**

A right created under this Agreement may not be waived except in writing, signed by the party granting the waiver.

### **17.7 Notices**

All notices and other communications provided for or permitted under this Agreement or otherwise shall be sent by certified or registered mail with postage prepaid, by hand delivery or by facsimile or email transmission to the parties' respective contact details as set out in the Details.

### **17.8 Governing Law**

This Agreement is governed by and construed in accordance with the laws of New South Wales.