Ear Productions supply and licence terms

This document sets out the terms and conditions for the supply and licence of products ("the Terms"), which apply to all customers who deal with Ear Productions in the course of their business. These Terms apply to all orders accepted by Ear Productions on or after 1st August 2008.

Definitions

- "Licence" means the rights licensed from us to you for your use of the Products in accordance with Part B of these Terms;
- "you" / "your" means the organisation or individual specified in the relevant Order Confirmation;
- "Order Confirmation" means the order confirmation document issued by us accepting and detailing your order for Products;
- "Product" means a product supplied under these Terms, as set out in an Order Confirmation (including any accompanying or ancillary materials supplied with such product); and
- "we" / "us" / "our" / "Ear Productions" means Ear Productions Limited.

These Terms govern the agreement between us and you for the supply (by sale as specified in the Order Confirmation) of Products to you, for which we grant you a non-exclusive Licence to use such Products in accordance with the terms set out herein.

Part A - Our Supply of Products To You

1. Acceptance of Orders
An agreement is only made for the supply and use of Products when we accept your order and issue an Order Confirmation. Acknowledgement of receipt of orders will be given entirely at our discretion, but will not constitute acceptance.

2. Cancellation of Orders
If you wish to cancel an accepted order you must provide us with notice in writing, to be received no less than 3 working days before the due despatch date. Otherwise you cannot cancel contracts for Products, and Products can only be rejected in the event of a defect as set out in Clause 7.

3. Price
The price payable by you for Products shall be as agreed and set out on the Order Confirmation, failing which it shall be Ear Productions' published prices applicable at the time of despatch of the Product. Prices quoted do not include VAT and delivery costs (unless expressly stated).

4. Payment
We will issue an invoice upon receipt of the order. We will dispatch the Product, once we have received payment.
No payment shall be deemed to have been received until we have received cleared funds.

5. Delivery
Subject as set out in this Clause 5, and subject to your obligations pay for Products as set out in Clause 4, we will use all reasonable endeavours to despatch Products on the agreed despatch date, to the address set out in the Order Confirmation. We may at any time notify you of delays in the despatch or delivery of Products, and may, at our discretion, amend the despatch or delivery dates accordingly. Under no circumstances shall time be considered of the essence in relation to despatch or delivery of Products.

You must notify us of late delivery or non-delivery before close of business on the working day immediately following the scheduled delivery date, failing which the Product will be deemed received at the date and time scheduled.

6. Product Warranties
Unless stated elsewhere in these Terms, Ear Productions makes no warranties or representations, either express or implied, in relation to any Product’s completeness, accuracy, quality (save as set out in Clause 7) or fitness for a particular purpose (whether advised to us or not).

In particular, you are fully responsible for ensuring that the format in which the Product is supplied is compatible with and suitable for use in conjunction with your DVD player, computer or other relevant system and is otherwise fit for the purpose intended by you, and that it is suitably stored and maintained.

We shall not be liable for any losses, costs or expenses incurred by you through damage to your DVD player, computer or any other system used by you (including without limitation any software or data stored on such system) or otherwise resulting from your failure to ensure such compatibility, suitability or fitness.

The Products provide advice and training in a variety of business practice. You acknowledge, however, that the advice is general in nature, and you are solely responsible for your and your employee's operation of your business, and the decision to implement any practices featured in the Products.

7. Defective Products
You must notify us within 20 working days of the delivery date of any manufacturing defects in the media on which the Products are supplied, and promptly return such defective Products to us. We will replace, on a like-for-like basis, any such defective Products. You agree that this is your sole remedy in respect of defects in the Products.

Part Bi - Your Licence to use the Products - Standard Licence

8. Scope of Licence
Your Licence permits you to use or make available the Product for education and training purposes to your officers, employees and those persons whose services are contracted principally to you ("Permitted Users").

You may not use the Products to train any other persons, including external third parties, without an appropriate licence from us. All rights not expressly granted to you in these Terms are reserved.

9. Restrictions on Use
The Products contain the intellectual property of Ear Productions and/or one or more third parties, which is protected by law. You must not:
(i) copy or duplicate a Product in whole or in part (except as strictly required to use the Product, provided that no permanent copies are retained, or as specifically permitted in copies of printed materials supplied or otherwise as permitted by us in writing);
(ii) in the case of a CD-ROM Product, disassemble, decompile or reverse engineer the software (except as strictly required to use the Product, provided that no permanent copies are retained, or as specifically permitted in copies of printed materials supplied or otherwise as permitted by us in writing);
(iii) translate, edit, amend, modify or add to a Product or incorporate it with other material; or
(iv) sell, rent, lend, give or sub-license a Product (whether for reward or otherwise).

10. Other Restrictions
You must not charge an admission fee for viewing a Product or advertise its use outside your organisation.

You may only make an audiovisual Product available at any one time on a single TV, monitor or computer screen and must not exhibit or disseminate a Product by any means of terrestrial, satellite, cable or other broadcast or by any means of network or electronic transmission, without our written agreement.

11. Term
Your Licence to use the Product shall continue: (i) in the case of a sale, perpetually unless terminated earlier.

12. Termination
We shall be entitled at any time (without prejudice to our other rights and remedies) to terminate your Licence if: (i) you commit a material breach of the Licence or these Terms; (ii) you go into liquidation or are the subject of any action or proceeding under bankruptcy or insolvency law (including the appointment of a receiver or administrative receiver); or (iii) your copy of the Product supplied becomes unfit for use whether through normal wear and tear or otherwise.

On termination or expiry of the Licence, howsoever caused, you must return the Products to us at your own cost within 7 days.

Part Bii - Your Licence to use the Products - Consultancy Licence

8. Scope of Licence
Your Licence permits you to use or make available the Product for education and training purposes to all and any of your clients in perpetuity.

You may not use the Products to train any other persons, including external third parties, without an appropriate licence from us. All rights not expressly granted to you in these Terms are reserved.

9. Restrictions on Use
The Products contain the intellectual property of Ear Productions and/or one or more third parties, which is protected by law. You must not:
(i) copy or duplicate a Product in whole or in part (except as strictly required to use the Product, provided that no permanent copies are retained, or as specifically permitted in copies of printed materials supplied or otherwise as permitted by us in writing);
(ii) in the case of a CD-ROM Product, disassemble, decompile or reverse engineer the software (except as strictly required to use the Product, provided that no permanent copies are retained, or as specifically permitted in copies of printed materials supplied or otherwise as permitted by us in writing);
(iii) translate, edit, amend, modify or add to a Product or incorporate it with other material; or
(iv) sell, rent, lend, give or sub-license a Product (whether for reward or otherwise).

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On termination or expiry of the Licence, howsoever caused, you must return the Products to us at your own cost within 7 days.

Part C - General Terms about our Relationship

13. Our Liability to You
Save in respect of (i) death and personal injury arising from the negligence of Ear Productions and/or its employees, (ii) fraudulent misrepresentation, and (iii) any other liabilities whose limitation is excluded or restricted by statute, our aggregate liability to you for all claims under this Agreement shall in no event exceed the total amount of sums paid by you in respect of the Product or Products giving rise to such claims.

We shall not be liable for any special, indirect or consequential loss or damage arising from or in any way connected with the supply, failure to supply, use of or inability to use a Product whether in contract, negligence or under any statutory duty or otherwise including, without limitation, damages for loss of business profits, business interruption, loss of business information or any other pecuniary loss, even where we have been advised of the possibility of such loss or damage.

14. Your Indemnity to Us
You agree to indemnify and hold us harmless against any cost, damage, loss, liability or expense arising out of the breach of the Licence or these Terms by you or any loss, damage, alteration or modification of the Product caused by you.

15. Force Majeure
We will not be liable to you for any delay or non-performance of our obligations under these Terms, the Licence or otherwise arising from any

cause or causes beyond our reasonable control including, without limitation, any of the following: war, riot, civil war, fire, flood, act of God, strikes, labour disputes, weather conditions, transport failure.

16. Restriction on Export
Save as otherwise permitted by law, you may not export the Product or view it outside the country to which it is initially delivered without our prior written consent.

17. No Variation
These Terms apply to the exclusion of any conditions of business used by you or purported to apply under any purchase order or any other document issued by you, and to the exclusion of any written or oral representation made by any person before or at the time the contract is entered into, save as agreed in writing by a duly authorised officer of Ear Productions.

18. Non-Transferability
The Licence is personal to you and your rights under these Terms may not be assigned, sub-licensed, transferred, alienated or shared in any way with any of your parent, subsidiary, holding, associated or related companies or any other third party without our express prior written consent.

19. Third Party Rights
These terms shall not be enforceable under the Contract (Rights of Third Parties) Act 1999 by a third party, other than any owners of the intellectual property comprised in a Product.

20. Governing Law
The construction, validity and performance of an Order Confirmation, a Licence and these Terms shall be governed by the laws of England and Wales and you and we each submit to the non-exclusive jurisdiction of the English courts.

PART D – SPECIAL TERMS WHEN YOU ORDER ONLINE

21. Using www.earproductions.co.uk
When you use the Website to place orders the terms set out in this Part D will apply, in addition to Parts A, B and C of the Terms. Separate Terms of Use apply to your use of the Website, and you agree to be bound by the Terms of Use whenever you use the Website to place orders.

22. Information on the Website
Although we try to make sure that the prices quoted on the Website are accurate, and the Products have been fairly described, mistakes can happen. If after we receive your order we discover an error in pricing or a material error in the description of Products, we will inform you as soon as reasonably possible, and we will give you an option to reconfirm your order or to cancel. If we cannot contact you to advise of the error, or we do not receive a response from you within a reasonable time, we will treat the order as being cancelled. If the order is cancelled we will refund any money taken from you relating to the cancelled order.

23. Products for sale on the Website
We reserve the right to remove any information or withdraw any Products from sale on the Website at any time. All orders are subject to availability, and any statements as to availability or delivery times on the Website are estimates only.

24. Placing an order on the Website
When you use the website to place an order you are making an offer to buy Products from us. We will acknowledge receipt of your order, this will constitute acceptance of your offer.

25. Statutory cancellation rights
Where you buy Products from us as a consumer you are entitled to cancel your order and return an unopened and unused Product to us within 8 working days of receipt. You must not unseal the internal packaging in which the Product is sent, and in particular you must not use the Product or remove the DVD or any documentation from the packaging. The Product must be promptly returned to us at your risk and cost.

If you want to cancel your order you must write to us by email at ideas@earproductions.co.uk, or by post at 15 Main Street, Market Overton, Oakham, Rutland LE15 7PL. Please mark your message for the attention of Sales Manager. Other than as set out in this Clause, your only rights to cancel orders and return Products are as set out in Part A.

26. Consumer rights
Where you buy Products as a consumer then nothing under these Terms shall act so as to prohibit or exclude your statutory consumer rights.

27. Changes to these Terms
We reserve the right to change the terms under which the Website and the Products are offered for sale and use at any time. Any such change in terms and conditions will be effective once included in the text of these Terms as published on the Website. You should check the terms and conditions posted on the Website periodically to ensure that you are aware of and comply with the current version.

August 2008

Copying and lending is illegal!
Please remember that you cannot copy any Ear Productions programmes for any reason, including transferring existing video products to DVD or to computer systems. You cannot transmit the programmes over open or closed circuit television, computer networks, cable or satellite systems without our permission. You must not charge an admission fee to view the programmes or advertise their display outside your organisation. Nor can you lend, rent, sell or give the programmes to anyone outside your organisation without the permission of the copyright holder. Please contact us to discuss special licensing options and trade in of old formats.

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