

Apex Acoustics Limited

CONDITIONS OF CONTRACT (the Conditions)

1. DEFINITIONS

In these Conditions:-

Client" means the addressee of the Proposal.

Contract means the agreement between Apex Acoustics and the Client subject to these Conditions and the Proposal.

Apex Acoustics means Apex Acoustics Limited or any person sub-contracted by them to carry out work in connection with the Project.

Intellectual Property means any patent, copyright, registered design, unregistered design right, trade mark, know how or other industrial or intellectual property owned or used by each party together with any current applications for any registrable items of the foregoing.

"Project" means the consulting work, the title, nature and scope of which are set out in the Proposal.

Proposal" means the technical proposal as may be annexed to the Contract and any supporting documents referred to therein together with Apex Acoustics price estimate set out therein. Unless otherwise agreed in writing, the Proposal is valid for acceptance by the Client for a period of 30 days from the date of issue by Apex Acoustics and no longer. Apex Acoustics price estimate is subject to change in accordance with Clause 4 below.

Writing includes facsimile transmission, electronic mail and comparable means of communication.

2. BASIS OF THE CONTRACT

(a) The Conditions shall, together with the Proposal, constitute the terms of the Contract. The Contract shall be formed by the Client returning to Apex Acoustics a copy of the Proposal and the Conditions duly signed by or on behalf of the Client.

(b) These Conditions shall govern the Contract and constitute the entire agreement between the Client and Apex Acoustics to the exclusion of any other terms and conditions subject to which the terms set out in the Proposal are accepted or purported to be accepted, or any such order is made or purported to be made, by the Client.

(c) No variation to these Conditions or the Proposal shall be binding unless agreed in Writing between the authorised representatives of the Client and Apex Acoustics.

(d) Apex Acoustics employees or agents are not authorised to make any representations concerning the Proposal unless confirmed by Apex Acoustics in Writing. In entering into the Contract the Client acknowledges that it does not rely on any such representations which are not so confirmed.

(e) Any typographical, clerical or other error or omission in any sales literature, quotation, price list, acceptance of offer, invoice or other document or information issued by Apex Acoustics shall be subject to correction without any liability on the part of Apex Acoustics.

3. Apex Acoustics LIABILITY

Apex Acoustics warrants that it will perform its obligations under the Contract using reasonable skill and care but for the avoidance of doubt Apex Acoustics shall not be liable to the Client:-

(a) for any loss, destruction of, theft of or damage to items or property owned, leased or loaned by the Client and supplied to Apex Acoustics in connection with the Project, except to the extent that the same can be shown to be due directly to negligent acts or omissions of Apex Acoustics or anyone employed by it;

(b) in respect of any defect arising from the Client,s willful damage, negligence, abnormal working or storage conditions, failure to follow Apex Acoustics recommendations or instructions (whether oral or in Writing);

(c) under the above warranty (or any other warranty, condition or guarantee) if the Contract price (or any instalment thereof) has not been paid by the due date for payment;

(d) in respect of any goods not produced by Apex Acoustics in respect of which the Client shall only be entitled to the benefit of such warranty or guarantee (if any) as is given to Apex Acoustics.

4. PRICE

(a) The Contract price shall be exclusive of Value Added Tax (VAT). The Client is responsible for any VAT arising from the Contract price and this will be payable at the date of payment as specified in Clause 5.

(b) Subject to any variation in accordance with sub-clauses (c) and (d) below the Contract price will be as stated in the Proposal.

(c) Before carrying out any alterations or modifications in relation to the Project (in addition to those set out in the Proposal), Apex Acoustics shall advise the Client in Writing of any variation of the estimated Contract price and the anticipated effect on the Project and completion date of the Project and where such alterations or modifications are acceptable to the Client, the Client shall provide its authority in Writing within 14 days of the written notification to Apex Acoustics for any alterations or modifications to the Project.

(d) Apex Acoustics reserves the right to vary the Contract price on the occurrence of any of the following:

(i) Any increase in costs arising after submission of the Proposal and during the period of the Contract due in whole or in part to an increase in costs for the work specified by the Client due to factors outside Apex Acoustics control including (but not restricted to) without prejudice to the generality of the foregoing; any foreign exchange fluctuation, currency regulation, alteration of duties, significant increase in the costs of labour, materials or other costs of manufacture, any

change in scheduled delivery dates, quantities or specifications of equipment relating to the Project which are requested by the Client, any restrictions on access to the Client's premises during normal working hours (8.00am to 5.00pm Monday to Friday excluding public and statutory holidays) changes in taxation affecting the services, purchase of additional equipment, bought out materials and consumables.

(ii) Any variation in, delay, interruption or suspension of work due to instructions from or lack of information or decision on the part of the Client or any additional work caused by alterations made in accordance with the Client's instructions.

The right to vary the Contract price under Clause 4(d) is not dependent on any authority given by the Client.

5. PAYMENT

(a) All payments will be made by the Client in full without any deduction or set-off within 30 days of the date of Apex Acoustics invoice. In the case of any Project which extends beyond a period of 3 months from the date of commencement, progress payments payable at monthly intervals may be required at the sole discretion of Apex Acoustics on giving notice to the Client in Writing. Where major test facilities are required in relation to the Project, a sum equal to 50% of the costs of use of the facility may be required to be paid by the Client in advance of any booking by Apex Acoustics and such sum will be non-returnable in the event of cancellation by the Client for whatever reason howsoever arising.

(b) Where any payment due has not been received by Apex Acoustics 30 days after the date of issue of an invoice, Apex Acoustics shall (without prejudice to its other rights howsoever arising) be entitled to charge interest on the amount outstanding from the date of the invoice at a rate per annum equal to 2% above Barclays Bank Plc base rate for the time being in force.

(c) In the case of any Project which is terminated by either party after full discussion with the other party, the Client is responsible for paying in full within 30 days of the termination all payments due up to and including the date of termination and for any costs incurred by Apex Acoustics after termination but which are incurred as a result of termination.

(d) All payments shall be made by the Client in Pounds Sterling either to Apex Acoustics by cheque drawn on a United Kingdom bank or by electronic transfer.

(e) The time for payment of the Contract price shall be of the essence of the Contract. Receipts for payment will be issued by Apex Acoustics only upon request in Writing.

6. SUSPENSION

Work by Apex Acoustics may be wholly or partly suspended and the time of such suspension may be added to the original period of the Project in the event of matters including (but not restricted to) overdue payments, stoppage, delay or interruption of work during the period of the Project as a result of strikes, the industrial location, other industrial action or disputes, breakdowns, accident, sickness, failure by the Client to give adequate instructions or approvals, or any cause whatsoever beyond the reasonable control of Apex Acoustics(as described in clause 17 below). The Client shall

pay all accounts in full and shall not exercise any rights of set-off or counter-claims against invoices submitted.

7. DURATION AND DELIVERY

(a) Apex Acoustics will use its reasonable endeavours to perform and carry out the Project from the Commencement Date until the completion date specified. The time for performance shall not be of the essence of the Contract.

(b) No extension of the duration of the Project may be made by Apex Acoustics other than arising out of the events specified in sub-clause 5(b) and clause 6 above unless otherwise agreed in Writing by the Client.

(c) Any delay in the performance of Apex Acoustics obligations under the Contract shall not render Apex Acoustics liable under any circumstances for damages, special or consequential loss or loss of profits.

8. TERMINATION

(a) The Client or Apex Acoustics may terminate the Contract by giving three months written notice by recorded or registered post to the other party where it considers termination is justified on the grounds that no further purpose would be served by continuing the Project. Notice of termination served under this clause 8 will only be given by either party after discussion with the other party of the reasons for the proposal to give such notice.

(b) If, and (as relevant) on each or any occasion on which:-

(i) the Client makes any voluntary arrangement with its creditors or (being an individual or firm) becomes bankrupt or (being a company) becomes subject to an administration order or goes into liquidation (otherwise than for the purposes of solvent amalgamation or reconstruction); or

(ii) an encumbrancer takes possession, or a receiver is appointed, of any of the property or assets of the Client; or

(iii) the Client ceases, or threatens to cease, to carry on business; or

(iv) any security created by any mortgage or charge created by the Lessee becomes enforceable whether or not the mortgagee or the chargee takes steps to enforce the same

(v) the Client shall have any distress for rent or other seizure under execution or other legal process made in respect of its or his estate or assets;

(vi) the Client shall fail to make any payments or other sums payable under the Contract in full within 30 days after the same shall have become due;

(vii) the Client shall commit a breach of any of these Conditions or the Contract and (if capable of being remedied) shall fail to remedy such breach within 30 days after notice in writing from the Company requiring the same;

(viii) the Client shall do or cause to be done or permit of suffer any act or thing whereby Apex Acoustics rights are prejudiced or put in jeopardy;

(ix) Apex Acoustics reasonably apprehends that any of the events mentioned above is about to occur in relation to the Client and notifies the Client accordingly.

then, without prejudice to any other right or remedy available to Apex Acoustics, Apex Acoustics shall be entitled to cancel the Contract or suspend the Project under the Contract without any liability to the Client.

(c) If the Client fails to comply with or commits a breach of any provision of these Conditions Apex Acoustics may (without being in any way obliged to do so or responsible for so doing and without prejudice to the ability of Apex Acoustics to treat that non-compliance as an event entitling it to terminate the Contract under clause 8(b) above) effect compliance on behalf of the Client whereupon the Client will become liable to pay immediately any sums expended by Apex Acoustics together with all costs and expenses (including legal costs on a full indemnity basis) arising out of in connection with such compliance.

9. EXCLUSIONS AND INDEMNITY

(a) The liability of Apex Acoustics to the Client for any loss, damage or expense arising from any cause whatsoever and whether in contract or negligence (other than negligence covering death, or personal injury) shall not, in relation to any one Project exceed the Contract price.

(b) Apex Acoustics cannot guarantee that the objectives set out in the Proposal will be attained, but will use all reasonable endeavors to do so.

(c) The Client shall at all times indemnify and keep indemnified Apex Acoustics in respect of all loss or damage or expense suffered by any third party for which Apex Acoustics may become liable in connection with the carrying out of the Project.

(d) The obligations of Apex Acoustics shall cease upon completion of the Project or the earlier termination of the Contract in accordance with clause 8 above. Apex Acoustics shall not be liable, either directly or indirectly in any capacity whatsoever, for the effects of any product or process that may be produced or required by the Client or any other party in relation to the Project, notwithstanding that the formulation of such product or process or commercial transaction may be based on the findings of the Project.

10. TECHNICAL INFORMATION

(a) The Client shall supply free of charge all technical data and information and give such assistance as shall be required by Apex Acoustics for the carrying out of the Project.

(b) Any drawings, models, samples, or other matter submitted by Apex Acoustics to the Client and vice versa with the Proposal and used during the course of the Project are confidential and must not be copied or transmitted to any third party, excepting those advising the Client on matters pertaining directly to the Contract, or used for any other purpose whatsoever. The drawings, models, samples and other matter remain the property of whichever party supplies them unless specifically agreed otherwise in Writing and must be returned on request or in the event of termination of the Contract.

(c) Apex Acoustics shall be entitled to make, use and produce copies of the technical and other information referred to in sub-clauses 10 (a) and 10 (b) above (but specifically excluding technical information acquired from the Client) free of charge for its own purposes.

(d) Apex Acoustics shall be entitled to sub-contract its work to third parties wherever necessary and any sub-contractors appointed by Apex Acoustics shall have access to all information and data provided to Apex Acoustics by the Client in accordance with sub-clause 10(a) and (b) above and shall be subject to obligations of confidentiality in the same terms as those set out in sub-clause 10(b) as if they were repeated mutatis mutandis in this sub-clause 10(d)..

11. CONFIDENTIALITY OF INFORMATION

(a) Any information relating to the business, activities or operations of either party shall be regarded as confidential and each party will not without the prior consent in Writing of the other use (except in connection with the Project), publish or disclose to any third party (excluding, in the case of Apex Acoustics, sub-contractors appointed in accordance with Clause 10 above) such confidential information belonging to the other party.

(b) The Project shall be maintained on a confidential basis between Apex Acoustics and the Client and no information shall be released during the Project to any third party except with the prior mutual consent in Writing of both Apex Acoustics and the Client.

(c) Findings arising out of a Project relating specifically to the Client's product or design will not be published except with the prior mutual consent of both Apex Acoustics and the Client.

(d) The provisions of this Clause [11] do not apply to:

(i) any announcement relating to or connected with or arising out of the Project required to be made by law or any Court of competent jurisdiction; or

(ii) any information which is or becomes generally available to the public other than as a result of disclosure by either party, its representatives or advisers contrary to its obligations under these Conditions; or

(iii) any information which is, was or becomes available to the relevant party otherwise than pursuant to the Contract and free of any restrictions as to its use or disclosure.

12. INTELLECTUAL PROPERTY

(a) Copyright in all original drawings, designs, proposals, reports, and other written matter originating from Apex Acoustics whether made pursuant to the Proposal or otherwise shall remain vested in Apex Acoustics at all times.

(b) All Intellectual Property developed by Apex Acoustics during the Project other than in clause 12 (a) above shall belong to Apex Acoustics. In the case of projects terminated as a result of liquidation, bankruptcy or receivership, all patentable inventions, drawing designs, proposals, reports and other written matter submitted to the Client with the Proposal and used during the course of the Project remain the property Apex Acoustics and shall be returned on request.

(c) All Intellectual Property originating from Apex Acoustics arising wholly and exclusively from the Contract and relating to its objectives shall be the property of Apex Acoustics. Terms for assignment to the Client or joint exploitation of any Intellectual Property shall be the subject of separate negotiation between Apex Acoustics and the Client upon completion of the Project and the payment of a reasonable royalty and other reasonable conditions to be agreed between the parties. On payment in full of all sums due to Apex Acoustics from the Client in respect of the Project otherwise and subject to the parties mutual agreement that all phases of the Project have been completed, Apex Acoustics shall transfer to the Client all rights subsisting in any Intellectual Property arising directly from work on the Project. Prior to such payment, Apex Acoustics does not authorise the Client to deal in, apply or use any such Intellectual Property.

13. ARBITRATION

Any dispute or difference arising out of the Contract shall be referred to the arbitration of a person to be mutually agreed upon or failing agreement to some person nominated by the President for the time being of the Law Society. The decision by the arbitrator shall be final and binding upon and enforceable against the parties.

14. LAW

These Conditions together with the Proposal forming the Contract shall be read, construed and governed by The Laws of England.

15. GENERAL

(a) Termination of the Contract by whatever means shall not affect the provision of Clauses 5, 6, 10, 11, 12, above.

(b) No waiver by Apex Acoustics of any breach of the Contract by the Client shall be considered as a waiver of any subsequent breach of the same or any other provision.

(c) If any provision of the Contract is found by any court, tribunal or administrative body or competent jurisdiction to be wholly or partly illegal, invalid, void, voidable, unenforceable or

unreasonable it shall, to the extent of such illegality, invalidity, voidness, voidability, unenforceability or unreasonableness, be deemed severable and the remaining provisions of the Contract and the remainder of such provision shall continue in full force and effect.

16. COMMUNICATION

Any notice required or permitted to be given by either party to the other under these Conditions shall be in Writing addressed to that other party at its registered office or principal place of business or such other address as may at the relevant time have been notified pursuant to this provision to the party giving the notice.

17. FORCE MAJEURE

Apex Acoustics shall not be liable to the Client or be deemed to be in breach of the Contract by reason of any delay in performing, or any failure to perform, any of its obligations in relation to the Project if the delay or failure was due to any cause beyond Apex Acoustics reasonable control. Without prejudice to the generality of the foregoing, causes beyond Apex Acoustics reasonable control referred to above shall include (but are not restricted to):-

- (a) Act of God, explosion, flood, tempest, fire or accident;
- (b) war or threat of war, terrorism, sabotage, insurrection, civil disturbance or requisition;
- (c) acts, restrictions, regulations, byelaws, prohibitions or measures of any kind on the part of any governmental, parliamentary or local authority;
- (d) import or export regulations or embargoes;
- (e) strikes, lockouts or other industrial actions or trade disputes (whether involving employees of Apex Acoustics or of a third party);
- (f) difficulties in obtaining raw materials, labour, fuel, parts or machinery;
- (g) power failure or breakdown in machinery.

18. DATA PROTECTION

(a) Apex Acoustics will process all personal data provided to it pursuant to the Contract in accordance with the Data Protection Act 1998 and any associated or subsequent legislation, Code of Practice or Statutory Instrument. In particular Apex Acoustics will take reasonable precautions to keep such personal data secure and to prevent unauthorised disclosure. Apex Acoustics accepts no liability for any breach of the Data Protection Act 1998 by any agent employee or sub-contractor to whom it may lawfully pass personal data.

(b) For the purposes of the Data Protection Act 1998, by signing the Proposal, the Client gives consent to the holding, processing and accessing of personal data provided to Apex Acoustics for purposes relating to the performance of the Contract, including (but not limited to) transferring such personal data to an agent for the purposes of debt collection.

19. Third Party Rights

Nothing in these Conditions shall confer on any third party any benefit whatsoever or the right to enforce any term of any contract to which these Conditions relate and the Contracts (Rights of Third Parties) Act 1999 shall not apply.