

CONDITIONS OF CONTRACT

1. DEFINITIONS

In these conditions:-

- (a) "The Client" means the addressee of the Proposal
- (b) "The Consultant" means KP Acoustics Ltd or any person sub-contracted by them to carry out work in connection with the project
- (c) "The Project" means the consulting work, the title, nature and scope of which are set out in the proposal.
- (d) "The Proposal" shall mean the technical proposal as annexed to the Agreement and any supporting documents referred to thereon together with The Consultant's price estimate set out therein. Unless otherwise agreed in writing, "The Proposal" is valid for acceptance by the Client for a period 30 days from the date hereof and no longer. The Consultant's price is chargeable in accordance with Clause 4 below.
- (e) "The Contract" means the Agreement formed between The Consultant and the Client.

2. GENERAL

- (a) The conditions set out below shall, with the proposal, constitute the terms of the Contract. The Contract shall be formed by The Client returning to The Consultant a copy of the Proposal duly signed by or on behalf of The Client.
- (b) No other conditions or terms shall be incorporated in The Contract. An acceptance by The Consultant of an order of The Client shall be exclusively upon these terms.

3. CLIENT'S PROPERTY

The Consultant shall not be liable for any loss, destruction of, theft of or damage to items or property owned, leased or loaned by The Client and supplied to The Consultant in connection with The Project, except to the extent that the same can be shown to be due to negligent acts or omissions of The Consultant or anyone employed by them.

4. PRICE

- (a) The price shall be exclusive of Value Added Tax. 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 (c) and (d) below the price will be as stated in the attached Proposal.
- (c) Before carrying out any alterations or additions to The Contract, The Consultant shall advise The Client in writing of the estimated price and effect on the programme and completion date. The Client shall then have an opportunity to consider the said estimated price and effect and if acceptable will provide written authority within 14 days of the written notification to The Consultant for any alterations or additions to The Contract.
- (d) The Consultant reserves the right to vary The Price on the happening of any of the following:
 - i. Any increase in costs arising after submission of The Proposal and during the period of The Contract due to an increase in costs for the work specified due to factors outside The Consultant's control including without prejudice to the generality of the foregoing; 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 in The Client's instructions. The right to vary The Price under Clause 4(d) is not dependant on any authority given by The Client.

5. PAYMENT

- (a) All payments will be made by The Client within 30 days of the date of The Consultant's invoice. In the case of projects which extend beyond 3 months from the date of commencement, progress payments at monthly intervals may be required at the discretion of The Consultant.
- (b) Where any payment due has not been received by The Consultant 30 days after the date of an invoice, The Consultant 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 8.5% as per the Late Payment of Commercial Debts (Interest) Act 1998
- (c) In the case of projects 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 the date of termination and for any costs incurred after termination but which are incurred as a result of termination.
- (d) All payments shall be made by The Client in Sterling either to The Consultant by cheque drawn on a United Kingdom bank or by mail transfer for the credit of Account No 82 06 02 72 at HSBC Bank, Sort Code 40-03-21.

6. SUSPENSION

Work by The Consultant 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 overdue payments, stoppage, delay or interruption of work during the period of The Project as a result of strikes, of the industrial location, other industrial disputes, breakdowns, accident, sickness, failure by The Client to give adequate instructions or approvals, or any cause whatsoever beyond the control of The Consultant.

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) The Consultant will make every reasonable effort to perform and carry out The Project from the Commencement Date until the Completion Date specified.
- (b) No extension of the duration of The Project may be made by The Consultant other than arising out of the events specified in clause 5(b) and clause 6 above unless agreed in writing by The Client.
- (c) Delays in delivery shall not render The Consultant liable under any circumstances for damages, consequential loss or loss of profits.

8. TERMINATION

The Client or The Consultant may terminate The Agreement by giving three months' written notice by recorded or registered post to the other party where it considers termination justified on the grounds that no further purpose would be served by continuing The Project. Notice of termination will only be given by either party after full discussion with the other party of the reasons for the proposal to give such notice.

9. EXCLUSIONS AND INDEMNITY

- (a) The liability of The Consultant 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 any one contract exceed
- (b) The Consultant cannot guarantee that the objectives set out in The Proposal will be attained, but will use every reasonable effort to do so.

- (c) The Client shall at all times indemnify and keep indemnified The Consultant in respect of all loss or damage or expense suffered by any third party for which The Consultant may become liable in connection with the carrying out of The Project.
- (d) The obligations of The Consultant shall cease upon delivery of any reports information or device. No liability whatsoever either direct or indirect shall rest upon The Consultant for the effects of any product or process that may be produced by The Client or any other party, 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 pertinent data and information and give such assistance as shall be required by the Consultant for the carrying out of The Project.
- (b) Any drawings, models, samples, or other matter submitted by The Consultant 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.
- (c) The Consultant shall be entitled to make, use and return copies of the technical information referred to above (but specifically excluding technical information acquired from The Client) free of charge for its own purposes.
- (d) The Consultant shall be entitled to sub-contract his work out wherever necessary and it shall be permitted for the sub-contractors to have access to all information and data and be subjected to confidentiality of information supplied independent of any warranties given by the Consultant relating to the confidentiality of the information.

11. CONFIDENTIALITY OF INFORMATION

- (a) Any information relating to The Client's operations shall be regarded as confidential and will not without the prior written consent of The Client be used (except in connection with The Project), published or disclosed by The Consultant. This restriction does not apply to information which is, or at the time of publication or disclosure, has become public knowledge through no act or default of The Consultant.
- (b) The project shall be maintained on a confidential basis between The Consultant and The Client and no information shall be released during The Project to any third party except by mutual consent of both The Consultant and The Client.
- (c) Findings arising out of a project relating specifically to The Client's product or design will not be published except by mutual consent of both The Consultant and The Client.

12. INTELLECTUAL PROPERTY

- (a) Copyright in all original drawings, designs, proposals, reports, and other written matter originating from The Consultant whether made pursuant to The Proposal or otherwise shall remain vested in The Consultant at all times.
- (b) All Intellectual Property developed by The Consultant during The Project other than in clause (a) above shall belong to The Consultant. 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 The Consultant and must be returned on request.
- (c) All patentable inventions, non-patentable processes, designs, copyrights, improvements or know-how originating from The Consultant arising wholly and exclusively from this Agreement and relating to its objectives shall be the property of The Consultant. Terms for

assignment to The Client or joint exploitation shall be the subject of negotiation between The Consultant and The Client upon completion of the Services and payment of a reasonable royalty and other reasonable conditions to be agreed between the parties. On payment of all sums to The Consultant from The Client in respect of the assignment or otherwise and upon mutual agreement that all phases of the assignment have been completed, The Consultant shall transfer to The Client all patents and other intellectual property rights arising directly from work on the assignment. Prior to such payment, The Consultant does not authorise The Client to deal in, apply or use any such goods, information, designs and know-how.

13. ARBITRATION

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

14. LAW

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

15. EXISTENCE OF CONTRACT

Terminations by notice of this agreement by whatever means shall not affect the provision of Clauses 5, 6, 10, 11, 12, hereof.

16. COMMUNICATION

All communications to The Client shall be sent to the address appearing in The Proposal unless some other address has been notified in writing to the Consultant. All communications to The Consultant shall be sent to the address of The Consultant set out in the Proposal or such other as may be properly notified.

17. FORCE MAJEURE

In the event that either party is delayed or impeded in the performance of its obligations hereunder by any cause beyond its reasonable control it shall be entitled to such extension or time for such performance as may be fair and reasonable in all the circumstances.

18. DATA PROTECTION ACT 1998

- (a) To enable us to discharge the services agreed under our engagement, and for other related purposes including updating and enhancing client records, analysis for management purposes and statutory returns, crime prevention and legal and regulatory compliance, we may obtain, use, process and disclose personal data about you / your business / company / partnership / its officers and employees. We confirm when processing data on your behalf that we will comply with the relevant provisions of the Data Protection Act 1998.
- (b) Sections 11 and 12 of the *Data Protection Act 1998* place express obligations on you as a data controller where we as a data processor undertake the processing of personal data on your behalf. We therefore confirm that we will at all times comply with the requirements of the *Data Protection Act 1998* when processing data on your behalf. In particular we confirm that we have adequate security measures in place and that we will comply with any obligations equivalent to those placed on you as a data controller.