



TERMS AND CONDITIONS OF SALE FOR SOUNDNINE INC PRODUCTS

1. **TERMS & CONDITIONS:** these terms and conditions of sale establish the rights, obligations and remedies of SOUNDNINE INC (“Soundnine”) and buyer which apply to any order issued by buyer for the purchase of Soundnine’s products (“products”). Unless otherwise stated in a written purchase agreement signed by authorized representatives of Soundnine and buyer and covering the specific products that are the subject of any buyer’s purchase order, Soundnine’s acceptance thereof is made expressly conditional on assent by buyer to the terms and conditions of sale included herein. No additional or different terms or conditions, whether contained in buyer’s purchase order form or any other document or communication pertaining to buyer’s order, will be binding upon Soundnine unless accepted in writing, and Soundnine hereby expressly objects to any such terms and conditions which shall be deemed ineffective and are rejected.
2. **DELIVERY/SHIPPING TERMS:** Delivery terms are EXWORKS (Incoterms 2010), Soundnine’s facility. Soundnine will schedule delivery in accordance with its standard lead time unless Buyer’s Order requests a later delivery date; or Soundnine agrees in writing to a separate delivery date. If Soundnine prepays transportation charges, Buyer will reimburse Soundnine upon receipt of an invoice for those charges. Title will pass to Buyer when Soundnine places Product at the disposal of Buyer at Soundnine’s facility. Soundnine reserves the right to quote additional charges for any special routing, packing, labeling, handling or insurance requested by Buyer.
3. **ACCEPTANCE - PRODUCT:** Unless other acceptance criteria have been expressly agreed to by the Parties under this Agreement the Buyer will inspect Products within a reasonable period after delivery not to exceed 30 calendar days. Products are presumed accepted unless Soundnine receives written notice of rejection explaining the basis for proper rejection within the same timeframe. Soundnine will have a reasonable opportunity to repair or replace rejected Products, at its option. Soundnine assumes shipping costs in an amount not to exceed normal surface shipping charges to Soundnine's designated facility for the return of properly rejected Products. Following initial delivery, the party initiating shipment will bear the risk of loss or damage to Products in transit. If Soundnine reasonably determines that rejection was improper, Buyer will be responsible for all expenses caused by the improper rejection.
4. **PRICES, TAXES & DUTIES:** All prices are in the applicable currency of the Agreement and are based on delivery EX-WORKS. If, notwithstanding the provisions hereof, Buyer’s terms and conditions of purchase are deemed to apply by a court of competent jurisdiction, then Soundnine reserves the right to either (a) modify the prices (including retroactively) according to the additional level of risk and responsibility that Buyer’s terms and conditions require Soundnine to undertake; or (b) cancel the Agreement any time after such determination without liability for such termination other than for the Products already delivered on the terms set out herein. Prices do not include any charges for services such as packaging; insurance; or brokerage fees. Soundnine’s pricing excludes all taxes (including but not limited to, sales, use, excise, value-added, and other similar taxes), duties and charges. Buyer is responsible for all such taxes, duties and charges resulting from this Agreement or as a result of Soundnine’s performance hereunder, whether now or hereafter imposed, levied, collected, withheld, or assessed. If Soundnine is required to impose, levy, collect, withhold or assess any such taxes, duties or charges on any transaction under this Agreement, then in addition to the purchase price, Soundnine will invoice Buyer for such



taxes, duties, and charges unless at the time of order placement Buyer furnishes Soundnine with an exemption certificate or other documentation sufficient to verify exemption from such taxes, duties or charges.

5. **PAYMENT TERMS:** Payment is due 30 calendar days from the date of invoice. Payments must be made in the currency quoted. If Buyer is delinquent in its payment obligation to Soundnine, Soundnine may upon written notice to Buyer stop work and withhold future shipments until all delinquent amounts and late interest, if any, are paid. Additionally, Soundnine may at its option: 1) repossess Products for which payment has not been made; 2) charge interest on delinquent amounts at the maximum rate permitted by law for each full or partial month; 3) recover all costs of collection, including but not limited to reasonable attorneys' fees; 4) combine any of the above rights and remedies. These remedies are in addition to all other remedies available at law or in equity. Soundnine may re-evaluate Buyer's credit standing at all times. If Soundnine reasonably determines in its sole discretion that Buyer fails to qualify for the above payment terms at any time, then Soundnine may without notice to Buyer modify or withdraw credit terms, including but not limited to requiring advance payment, guarantees, or other security.
6. **SETOFF:** Buyer will not set off or recoup invoiced amounts or any portion thereof against sums that are due or may become due from Soundnine.
7. **CHANGES:** Buyer may issue a written change order to request changes within the scope of the Agreement. Such requests are subject to acceptance by Soundnine. Soundnine will inform Buyer if the change will cause an increase in Soundnine's costs or time required to perform. The change will become effective, and Soundnine will commence performance, only upon execution of an amendment to the Agreement. Unless otherwise agreed in writing, upon performance of the change order Soundnine will be entitled to invoice Buyer and Buyer shall be obligated to pay for the costs of the change, even if Soundnine agreed to proceed with the change prior to execution of an amendment.
8. **BUYER CAUSED DELAY:** Soundnine will not be liable for any delays or increased costs caused by a failure of Buyer, such as delays in providing necessary information or other Buyer deliverables or delays by Buyer designated suppliers in providing goods or services. In the event of a non force majeure Buyer-caused delay, the price and other affected terms will be adjusted accordingly to reflect Soundnine's increased costs and other adverse impacts associated with such delay. In addition, if delivery of goods or services is delayed due to the acts or omissions of Buyer or Buyer-designated suppliers, Soundnine may store the goods at Buyer's risk and expense and, may invoice Buyer just as if there had been no delay in delivery.
9. **LIMITED WARRANTY:** Soundnine disclaims all warranties, whether written, express, implied, statutory or otherwise, including, but not limited to, the implied warranties of merchantability and fitness for particular purpose.
10. **LIMITATION OF LIABILITY:** in no event will Soundnine be liable for any incidental damages, consequential damages, special damages, punitive damages, statutory damages, indirect damages, loss of profits, loss of revenues, or loss of use, even if informed of the possibility of such damages. Soundnine's liability for damages arising out of or related to this agreement shall in no case exceed in the aggregate a sum equal to the amount actually paid to Soundnine for the products or related services from which the claim arose. To the extent permitted by applicable law, these limitations and exclusions will apply regardless of whether liability arises from breach of contract, warranty, tort (including but not limited to



negligence), by operation of law, or otherwise. Nothing herein, however, is intended to disclaim Soundnine's liability for personal injury or death caused by defective products to the extent such liability is mandated by applicable law.

11. **TRADEMARKS AND OTHER LABELS:** Buyer agrees not to remove or alter any indication of manufacturing origin or patent numbers contained on or within the Products, including without limitation the serial numbers, trademarks, warnings or logos on nameplates, printed on components or machined into components.
12. **SOFTWARE LICENSE:** Software or firmware, if included in the Agreement, is hereby licensed and not sold. The license is nonexclusive, and is limited to such equipment and/ or location(s) as are specified in the Agreement. No other use is permitted and Soundnine retains for itself all title and ownership to any software delivered hereunder, all of which contains confidential and proprietary information and which ownership includes without limitation all rights in patents, copyrights, trademarks and trade secrets. Buyer shall not attempt any sale, transfer, sublicense, reverse compilation or disassembly or redistribution of the software. Buyer shall not copy, disclose or display any such software, or otherwise make it available to others unless expressly authorized in writing by Soundnine.
13. **EXPORT AND IMPORT COMPLIANCE:** Buyer is responsible for compliance with all import and export control laws and regulations. Buyer will obtain import, export, and re-export approvals and licenses required for Products, transfers, services and technical data delivered and will retain documentation evidencing compliance with those laws and regulations.
Soundnine will not be liable to Buyer for any failure to provide Products, services, transfers or technical data as a result of government actions that impact Soundnine's ability to perform, including:
 - (1)
The failure to provide or the cancellation of export or re-export licenses;
 - (2)
Any subsequent interpretation of applicable import, transfer, export or re-export law or regulation after the date of any order or commitment that has a material adverse effect on Soundnine 's performance;
or
 - (3)
Delays due to Buyer's failure to follow applicable import, export, transfer, or re-export laws and regulations.If Buyer designates the freight forwarder for export shipments from the United States, then Buyer's freight forwarder will export on Buyer's behalf and Buyer will be responsible for any failure of Buyer's freight forwarder to comply with all applicable export requirements. Soundnine will provide Buyer's designated freight forwarder with required commodity information.
14. **COMPLIANCE WITH LAWS:** Buyer shall comply with all local laws and regulations applicable to the installation, use, or import of all Products delivered hereunder. As a condition of purchase, Buyer shall comply with all applicable export control laws and regulations of the United States, and any other country having proper jurisdiction and shall obtain all necessary export licenses in connection with any subsequent export, re-export, transfer and use of all Products and technology delivered hereunder.



15. **TERMINATION:** A Party may terminate this Agreement and any or all unperformed Orders by giving written notice to the other party upon the occurrence of any of the following events:
 - (a) the other Party materially breaches this Agreement and fails to remedy the breach within 60 calendar days after receipt of written notice that specifies the grounds for the material breach;
 - (b) the other Party fails to make any payment required to be made under this Agreement when due, and fails to remedy the breach within 7 calendar days after receipt of written notice of non-payment; or
 - (c) any insolvency or suspension of the other Party's operations or any petition filed or proceeding made by or against the other Party under any state, federal or other applicable law relating to bankruptcy, arrangement, reorganization, receivership or assignment for the benefit of creditors or other similar proceedings.Termination does not affect any debt, claim or cause of action accruing to any party against the other before the termination. The rights of termination provided in this clause are not exclusive of other remedies that either party may be entitled to under this Agreement or in law or equity.
16. **ASSIGNMENT:** Neither Party will assign any rights or obligations under this Agreement without the advance written consent of the other Party, which consent will not be unreasonably withheld. Either Party may assign this Agreement to any affiliate of such party or in connection with the sale or transfer of all or substantially all of the assets of the product line or business to which it pertains. Any attempt to assign or delegate in violation of this clause will be void.
17. **WAIVER:** The failure of either party to enforce at any time any of the provisions of this Agreement shall not be construed to be a continuing waiver of any provisions hereunder nor shall any such failure prejudice the right of such party to take any action in the future to enforce any provisions hereunder.
18. **HEADINGS AND CAPTIONS:** Headings and captions are for convenience of reference only and do not alter the meaning or interpretation of this agreement.
19. **DISPUTE RESOLUTION – CHOICE OF LAW AND FORUM:** The construction, interpretation and performance hereof and all transactions hereunder shall be governed by the laws of the State of Washington, U.S.A. without regard to or application of its principles or laws regarding conflicts of laws, and including the United Nations Convention on the International Sale of Goods of 1980 (and any amendments or successors thereto). Any dispute not resolved by the parties shall be subject to the exclusive jurisdiction of the courts of King County, Washington, USA.
20. **SEVERABILITY:** If any provision of this Agreement is determined to be illegal, invalid, or unenforceable, the validity and enforceability of the remaining provisions of this Agreement will not be affected and, in lieu of such illegal, invalid, or unenforceable provision, there will be added, as part of this Agreement, one or more provisions as similar in terms as may be legal, valid and enforceable under applicable law.
21. **SURVIVAL:** All provisions of this Agreement which by their nature should apply beyond the term of this Agreement will remain in force after acceptance and complete performance of the Agreement including, but not limited to, the Payment, Limitation of Liability and Dispute Resolution clauses.