

NL ACOUSTICS SOFTWARE-AS-A-SERVICE TERMS

1. APPLICATION OF THE TERMS

These general sales terms (“Terms”) apply to, and form part of, Agreement(s) on the provision of services (“Service”) for sound recording, analyzing and processing equipment (“NLA Products”) provided by NL Acoustics Oy (“Supplier”) to its customers (“Customers”). Without limiting the foregoing, any additional or conflicting terms specified in any purchase order or other document issued by Customer are, unless specifically acknowledged and agreed by Supplier in writing, deemed proposals only and are hereby rejected. Supplier and Customer are also hereinafter referred to each as a “Party” and together as the “Parties”.

These Terms will also be applicable in case a reseller of Supplier is selling the Service to the Customer and these Terms have been attached to that contract. In such situations, the reseller is considered to be Supplier under these Terms and the reseller assumes all rights and obligations towards Customer. In such a case NL Acoustics Oy is not a contracting party with Customer and any and all claims should be made to the reseller alone.

2. DEFINITIONS

The following terms shall have the meanings assigned to them herein, unless otherwise agreed in the Agreement:

“**Agreement**” shall mean an agreement, in which the Parties agree in writing on provision of the Service to Customer, such as (i) an agreement signed (manually or electronically) by the Parties, (ii) Supplier’s offer accepted in writing (by manual signature, email confirmation or otherwise electronically) by Customer, or (iii) Customer’s order accepted by Supplier (by manual signature, email confirmation or otherwise electronically).

“**Documentation**” shall mean usage manuals and specifications in written or electronic format that are supplied by Supplier to Customer along with the provision of the Service or that are included in the Service, but excluding marketing materials.

“**Error**” shall mean an error which causes the Service not to function at all or not to function materially as set out in the service description.

“**Intellectual Property Rights**” shall mean any and all intellectual property rights, such as patents, inventions, rights in designs, rights in know-how, trademarks, database rights, trade secrets, domain names, techniques, methods and copyrights (including without limitation right to amend and further develop as well assign one’s rights), in each case whether registered or not, whether registrable or not, and including applications for grant of any of the foregoing and all rights or forms of protection having equivalent or similar effect to any of the foregoing which may now or at any time hereafter exist anywhere in the world.

“**Service**” shall mean access by Customer via web-user interface or client software to Supplier’s system to view information produced by the Products. The Service is defined in Article 3 below and its Documentation that may be modified by Supplier at any time to include modifications, enhancements, corrections, updates and upgrades of the Service.

3. ACCESS TO SERVICES

Service is initially provided free of charge and without commitment. Supplier may make the Service chargeable, terminate the Services or suspend the production of the Service or access to its system e.g. for the purposes of installation, change or maintenance work. Supplier will use reasonable efforts to minimize the down time and will try to inform the Customer in advance of any such down time.

Customer has the right to use the Service solely for its internal business purposes as described in the Agreement, any service description or instructions issued by Supplier. Customer must always take care that the usernames and passwords are saved and handed over so that they do not end up in the possession of an unwanted party.

The usage and functioning of the Service requires equipment and services such as Internet connectivity and electricity. Customer shall at its expense and risk acquire the equipment, connections, software and data security that are required for its use of the Service, and for the data transfer. Supplier may set requirements for such activities.

4. NO WARRANTY

THE SERVICE AND ALL RELATED INFORMATION AND DOCUMENTS ARE PROVIDED “AS IS” AND “AS-AVAILABLE.” SUPPLIER DOES NOT MAKE, AND HEREBY DISCLAIMS, ANY AND ALL OTHER EXPRESS OR IMPLIED WARRANTIES, INCLUDING, BUT NOT LIMITED TO, WARRANTIES OF QUALITY, MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, NON-INFRINGEMENT, AVAILABILITY AND ANY WARRANTIES ARISING FROM A COURSE OF DEALING, USAGE, OR TRADE PRACTICE.

5. INTELLECTUAL PROPERTY RIGHTS AND THE RIGHT TO USE

Title and any and all Intellectual Property Rights in and to the Service, all materials, software and documentation delivered or to be delivered by Supplier, as well as any copies, modifications, translations, amendments and derivatives thereof are property of and shall belong to Supplier and its licensors.

Customer owns all data generated by it and its users other than data that is publicly available. Supplier may freely use the data generated by the Products and Customer’s feedback and improvement ideas to e.g. develop its products and services and to otherwise use such data without disclosing Customer’s name or any Confidential Information.

6. CONFIDENTIALITY

Except where otherwise provided in the Agreement, each Party (i) shall keep in confidence all information of the other Party that is marked as confidential or that the receiving party should reasonably understand is confidential from the circumstances of disclosure or the nature of the information (“Confidential Information”); (ii) may not disclose the other Party’s Confidential Information to any third parties and (iii) may not use or utilize such Confidential Information for any other purposes than for the fulfillment of the purpose of the Agreement. Supplier may disclose Customer’s Confidential Information to its subcontractors for the purpose of the fulfillment of the purpose of the Agreement, provided that it has agreed on a confidentiality provision substantially similar as that herein with the subcontractors.

This confidentiality obligation shall not apply to information: (i) which at the time of disclosure is or later becomes generally available or otherwise public through no breach of the Party receiving the information; (ii) which was in the possession of the receiving Party without a confidentiality or non-use obligation prior to receipt of the same from the other Party; (iii) which the receiving Party receives from a third party who did not breach an obligation of confidentiality when disclosing the information; (iv) which the receiving Party can prove the receiving Party has developed independently without using the Confidential Information of the other Party; or (v) which the receiving Party is obliged to disclose pursuant to an order by an authority or court or otherwise in accordance with law. Without limiting the foregoing, Supplier shall have the right to utilize the general know-how, skills and expertise that its and its subcontractors’ personnel have learned in conjunction with the performance under any Agreement.

Unauthorized disclosures of Confidential Information that are caused by security breaches or other similar causes are not regarded as a breach of the above confidentiality obligation as long as the Party has used reasonable care in protecting the Confidential Information from such causes.

7. LIABILITY

EITHER PARTY SHALL HAVE NO LIABILITY FOR ANY (I) INDIRECT, INCIDENTAL, SPECIAL OR CONSEQUENTIAL DAMAGES INCLUDING BUT NOT LIMITED TO LOSS OF PROFIT, REVENUE OR SAVINGS, OR FOR DAMAGES PAYABLE TO THIRD PARTIES, OR (II) LOSS OR ALTERATION OF DATA OR EXPENSES CAUSED THEREFROM OR COST OF COVER PURCHASE ARISING UNDER OR IN CONNECTION WITH ANY AGREEMENT, EVEN IF IT HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

In no event shall Supplier’s aggregate maximum liability to Customer arising out of or related to any Agreement exceed one thousand (1000) euro.

The limitations of liability shall not apply to damages caused by gross negligence or intentional act or to breach of the Section entitled

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“Confidentiality”.

8. TERM AND TERMINATION

Term

The term of the Agreement is stated in the Agreement.

Either Party may, however, at any time terminate the Agreement with one (1) month's written notice.

Customer may request Supplier to deliver stored customer pictures, video and audio recordings upon termination. Otherwise they will be deleted after the Service ends.

Termination due to Cause

Either Party may terminate the Agreement immediately with a written notice to the other Party in case:

- a) the other Party commits any material breach of the Agreement and fails to remedy the same within seven (7) days after receipt of a written notice by the other Party, or
- b) the other Party is adjudicated bankrupt or placed in liquidation, discontinues the active conduct of its business, fails or is unable to pay its debts as they become due, or is or becomes insolvent.

9. MISCELLANEOUS

Reference Right and Assignment of the Agreement

Supplier may assign Agreement(s) without the consent of Customer to a transferee, in connection with the sale or transfer of its business or part thereof, or to its affiliate, and by merger or demerger. Except as aforesaid, neither Party may assign any Agreement without the prior written consent of the other Party.

Supplier shall have the right to use any subcontractors. Supplier shall be liable for the work of its subcontractors as work of its own.

Supplier may use Customer as a reference in its marketing. Customer can ask Supplier to stop doing that.

Entire Agreement

The Agreement(s) constitutes the complete agreement between the Parties with respect to the subject matter of the Agreement(s) and supersedes all previous proposals and marketing materials and other communications between the Parties with respect to the subject matter of the Agreement(s).

Severability

If any provision of any Agreement is found to be contrary to law, the other provisions of the Agreement will remain in full force and effect and the Agreement shall be interpreted so as to best accomplish the objectives of the original provision to the fullest extent allowed by law.

Waiver and Amendment

No change or amendment of any Agreement shall be valid unless made in writing and signed both Parties. No failure by either Party in exercising any right, power, or remedy under any Agreement shall operate as a waiver of any such right, power or remedy.

Force Majeure

Except with respect to payment obligations, which will not be subject to this Section, a Party shall not be liable for the delays, defects or damages that are caused by factors due to an impediment beyond his control, which he cannot reasonably be deemed to have taken into account at the time of the conclusion of that Agreement, and the consequences of which he could not reasonably have avoided or overcome. Such events of force majeure shall include, without being limited to, natural disasters, breakdown of electricity or networks, failures in Internet and other public networks or data traffic, security attacks, strikes and other labor disputes or acts of government or authorities. A labor dispute shall be considered a force majeure event also when the Party concerned is the target or a party to such an action. The force majeure events suffered by subcontractors shall also be deemed as force majeure events.

Governing Law and Disputes

If not otherwise agreed in other parts of any Agreement, all Agreements shall

be construed in accordance with the laws of Finland excluding its choice of law provisions and the UN Convention on Contracts for the International Sale of Goods and all disputes arising out of all Agreements shall be finally settled by arbitration in accordance with the Arbitration Rules of the Finland Chamber of Commerce by one (1) arbitrator. The arbitration shall take place in Helsinki, Finland, and shall be conducted in English.

Notwithstanding the above, each Party shall be entitled to seek equitable and/or injunctive relief to prevent or stop a violation of the terms and conditions in any Agreement pending arbitration and Supplier may take legal actions concerning overdue payments, in any court of law.