

## AUDIOKINETIC PURCHASE ORDER TERMS AND CONDITIONS

### 1. General

- (a) Audiokinetic Inc., its subsidiaries, and affiliated companies, shall be collectively hereinafter referred to as “Audiokinetic” and vendor under the Purchase Order shall be referred to as “Provider”.
- (b) The purchase order to which these terms and conditions apply will be hereinafter referred to as “the Purchase Order” and the terms and conditions will be hereinafter referred to as “these Purchase Order Terms and Conditions”.
- (c) If Audiokinetic and Provider are parties to a separately negotiated written agreement applicable to the subject matter of the Purchase Order, then the terms and conditions of such agreement shall control and govern the transactions contemplated hereunder and supersede these Purchase Order Terms and Conditions. Otherwise, the Purchase Order is expressly limited to the terms and conditions stated herein, and any term or condition proposed by Provider (including without limitation, delivery, price, quantity, quality and specifications) which is inconsistent with or is in addition to any of these Purchase Order Terms and Conditions is hereby rejected by Audiokinetic and shall be void and of no effect.
- (d) Audiokinetic reserves the right to reject any invoice received from Provider without a valid Purchase Order.

### 2. Acceptance of Purchase Order

- (a) This Purchase Order constitutes Audiokinetic’s offer to Provider and shall become a binding contract subject to these Purchase Order Terms and Conditions upon acceptance by Provider’s (i) acknowledgment, or (ii) delivery of the goods or performance of the services covered hereby, either in whole or in part.
- (b) Goods or services delivered in excess of the amount or in nonconformity with that called for in the Purchase Order may be refused by Audiokinetic and returned to Provider at Provider’s expense as applicable.
- (c) Any goods manufactured or shipped prior to receipt of the Purchase Order are at Provider’s risk and Audiokinetic will incur no responsibility resulting therefrom.
- (d) Once the Purchase Order is accepted by Provider, Provider may not, for any reason other than Audiokinetic’s cancellation hereof, withhold or delay shipment of any goods or performance of any services covered hereby.

### 3. Cancellation of Purchase Order

- (a) Audiokinetic reserves the right to cancel the Purchase Order, in whole or in part, (i) prior to receipt of Provider’s acknowledgment hereof, or (ii) in advance of a delivery schedule set forth on the reverse side thereof without liability to Provider therefor. Audiokinetic may also cancel the Purchase Order, in whole or in part, upon Provider’s failure to observe and perform any of the terms and conditions hereof (including those that might otherwise be

excused by *force majeure* or commercial impracticality) by giving Provider notice thereof and, in addition to any other remedies Audiokinetic may have at law or in equity therefor, Audiokinetic may purchase the goods or services covered hereby, in whole or in part, from an alternate vendor, and Provider will be liable to Audiokinetic for any loss incurred as a result thereof.

- (b) In the event of any institution of proceedings by or against Provider in bankruptcy or insolvency, or under any provision of the *Bankruptcy and Insolvency Act* (Canada) or if there is an appointment of receiver or trustee or an assignment for the benefit of creditors of Provider, Audiokinetic may cancel the Purchase Order by giving Provider notice thereof without liability to Provider therefor and without waiving any remedies it may have.

#### **4. Shipments**

- (a) Provider may not charge for packing, crating, drayage or storage unless agreed upon by Audiokinetic in writing.
- (b) All shipments must be forwarded to Audiokinetic FOB Audiokinetic's Montreal offices and, in the event of any variance thereto, Provider shall pay all additional expenses to which Audiokinetic may be subject as a result thereof, unless otherwise stated in the applicable Purchase Order or otherwise agreed to in writing by Audiokinetic and Provider.
- (c) All goods shipped by Provider to Audiokinetic from abroad shall be securely packed for export as light as possible and in the smallest cubical bulk consistent with safe carriage by ocean vessel, railroad or aircraft (as the case may be).
- (d) An itemized packing slip bearing Audiokinetic's Purchase Order number as shown hereon must accompany each delivery of goods from Provider to Audiokinetic; and each container must be marked to show such number.
- (e) After delivery of the goods and services covered by the Purchase Order, Provider shall submit a separate invoice to Audiokinetic at the address indicated under the "Bill To" section on the front side hereof.

#### **5. Price; Discount; Taxes**

- (a) The prices payable for the goods and services shall be set out in the Purchase Order. The prices set out in the Purchase Order are the only amounts payable by Audiokinetic in relation to the Purchase Order and are inclusive of packaging, packing, carriage, insurance and delivery costs but unless specified otherwise do not include any sales or similar tax on the supply of the goods and services covered by the Purchase Order. Where a fixed purchase price is specified, Provider shall not vary the price or levy any surcharge.
- (b) Items purchased by Audiokinetic pursuant to the Purchase Order shall be supplied at the lowest price last charged by Provider for the same items in equal quantity, and shall not exceed current prices quoted or charged to any other customer for similar items and quantity. Provider will refund to Audiokinetic any amounts paid by Audiokinetic in excess of such price.
- (c) It is understood that any discount for early payment offered by Provider under the Purchase Order will date from Audiokinetic's receipt of goods or from the date of the

invoice, whichever is later. Payment terms are net 60 days unless otherwise specified herein.

- (d) Provider shall separately state on all invoices and acknowledgments of the Purchase Order the applicable sales taxes imposed by federal, provincial or local governments, unless an exemption is available.
- (e) Provider's records relating to the goods and services covered by the Purchase Order shall be and remain subject to audit by Audiokinetic in the event of termination, equitable adjustment or when the price thereof is based on time and cost of materials.
- (f) Provider will promptly invoice Audiokinetic for all goods and services accepted by Audiokinetic. Audiokinetic will have no obligation to pay any invoice submitted more than ninety (90) days from the time when the subject goods and services were accepted by Audiokinetic.

## **6. Warranties; Compliance with Laws**

- (a) Provider warrants that all goods and services furnished under the Purchase Order will be merchantable, fit, and safe for the purpose for which it is manufactured, free from defects in materials and workmanship, will conform to applicable specifications, drawings, samples and descriptions, and that Provider's design will be free from design defects. Additionally, Provider warrants that it has good title to any goods and deliverables resulting from the services furnished and that they are free and clear from all liens and encumbrances. These warranties will survive acceptance and payment by Audiokinetic. In the event of Provider's non-conformance with these warranties, Audiokinetic may cancel the Purchase Order, in whole or in part, by giving Provider notice thereof and, in addition to any other remedies Audiokinetic may have at law or in equity therefor, Audiokinetic may return the goods or services covered hereby, in whole or in part, at Provider's cost and expense.
- (b) Provider warrants that the goods purchased hereunder have been designed to and will comply fully with all applicable federal, provincial, and local safety standards in effect on the date of shipment, including without limitation, applicable occupational health and safety standards.
- (c) Provider warrants that the goods covered by the Purchase Order will be produced and/or rendered in accordance with all applicable federal, provincial, and local laws, orders and regulations.
- (d) Provider warrants that it is an independent contractor and under no circumstances will represent itself as an agent for Audiokinetic nor make any warranties or representation on behalf of Audiokinetic.
- (e) If the Purchase Order is issued pursuant to a contract with a federal, provincial or local government unit, or any agency thereof, and such fact is communicated by Audiokinetic herein or otherwise by giving Provider notice, then:
  - (i) Provider shall allow access to any representative of such government unit or agency, to Provider's plants, materials, and process, and relevant books and records in connection with the goods and services covered hereby.

- (ii) All goods and services covered hereby are subject to inspection by such government unit or agency, as well as Audiokinetic, has the right to reject any goods or services found to be non-conforming or defective.
- (f) To the extent that Provider is the importer or consignee of products shipped or exported to the applicable country that will be purchased subject to the Purchase Order, Provider warrants (1) that, as of the date of purchase and sale of the products, Provider has implemented and complied with the most current applicable supply chain security guidelines (“**Guidelines**”), as may be amended or supplemented from time to time and by any applicable federal authorities responsible for the promulgation of such Guidelines; and, (2) that, unless otherwise stated herein, Provider is responsible for the payment of all applicable duties, taxes, and fees, and that Provider has complied with all applicable federal, provincial, and local laws governing the importation of articles originating and/or shipped from outside the applicable country.
- (g) Provider shall provide Audiokinetic with the benefit of any manufacturer’s warranties in respect of the goods and services furnished under the Purchase Order.
- (h) Provider represents and warrants that:
  - (i) no software, firmware, hardware, data or product furnished to Audiokinetic hereunder creates, uses, or places on any device, system or computer any hidden or cloaked files or rootkits;
  - (ii) any software installed on a user’s computer as a result of the use of Provider’s product or service shall be visible using ordinary system tools (e.g., Windows Explorer) and shall be readily removable using ordinary system tools (e.g., the Windows “**Add/Remove Programs**” utility);
  - (iii) all goods and services furnished to Audiokinetic pursuant to the Purchase Order shall be free from computer viruses and any undocumented and unauthorized methods for terminating or disrupting the operation of, or gaining access to, the deliverable, computer systems or other computing resources or data, or other code features which result in or cause, in whole or in part, directly or indirectly, damage, loss or disruption to all or any part of the computer systems or other computing resources; and
  - (iv) all goods do not incorporate any termination logic or any means to repossess such goods. “**Termination logic**” shall mean computer code that uses the internal clock of the computer to test for the date and/or time (e.g., Friday the 13th), use count, execution key, or any related techniques, as a trigger to render inoperable or otherwise disable the deliverable or any related computer system.

## 7. Indemnity

- (a) Provider and its successors and assigns shall defend, indemnify, and hold Audiokinetic, its parents, subsidiaries, and affiliates, and the officers, directors, employees, agents, representatives, and subcontractors of each of them, harmless from and against any and all claims, suits, liabilities, costs, expenses, and damages (including attorneys’ and experts’ fees and court costs) arising from or incident to any claim that any goods and/or

services covered by the Purchase Order as and when delivered to Audiokinetic constitutes an infringement or misappropriation of any intellectual property right. Should such goods and/or services be adjudicated to be an infringement or misappropriation, Provider will, at its own cost and expense, either procure for Audiokinetic and all persons who purchase any such goods and/or services from Audiokinetic or thereafter use the Products and/or Services, the right to continue selling and/or using same, or to replace same with non-infringing products and/or services, or to modify same so that such products or services become non-infringing, provided that such modification does not materially alter the products and/or services, characteristics, efficacy, dimensions or increase the cost of its use, operation, or maintenance.

- (b) Provider and its successors and assigns shall defend, indemnify, and hold Audiokinetic, its parents, subsidiaries, and affiliates, and the officers, directors, employees, agents, representatives, and subcontractors of each of them, harmless from and against any and all claims, suits, liabilities, costs, expenses, and damages (including attorneys' and experts' fees and court costs) arising from or related to (i) its breach of any representation or warranty made under the Purchase Order; (ii) the use, operation or possession of any of the goods and/or services covered by the Purchase Order; or (iii) personal or bodily injury or property damage to the extent such injury and/or damage results from the negligence or fault of Provider or its employees, agents or contractors.

## **8. Assignment**

Provider shall not assign the Purchase Order or any part thereof, without the prior written consent of Audiokinetic, which may be delayed or withheld by Audiokinetic for any or no reason and which, if given, shall not release Provider from its obligations and liabilities hereunder. In the event that Audiokinetic allows Provider to assign certain of its obligations to a subcontractor, Provider shall still be responsible for the quality of any work performed on its behalf by subcontractor and will be responsible for payment and all costs charged by such subcontractor.

## **9. Modifications**

No change or other modification to any of the terms, conditions, prices, or deliverables are valid, unless preapproved in writing and signed by Audiokinetic's authorized representative. Any acknowledgment form or other form of Provider containing terms and conditions of sale submitted by Provider shall not have the effect of modifying the terms and conditions hereof. Audiokinetic will consider Provider's request for changes only if such requests are in writing and are directed to specific elements of the Purchase Order or specific clauses of these Purchase Order Terms and Conditions.

## **10. Governing Law and Dispute Resolution**

The interpretation or performance of the Purchase Order shall be construed in accordance with and governed by the laws of the province of Québec and the laws of Canada applicable therein. In the event of any dispute related to these Purchase Order Terms and Conditions, the prevailing party shall be entitled to recover all its expenses related to such dispute including reasonable attorneys' fees and court costs. The parties agree to submit any dispute relating to these Purchase Order Terms and Conditions to the jurisdiction of the competent courts in the province of Québec, judicial district of Montréal.

**11. Proprietary & Confidential Information**

- (a) Provider shall hold in strict confidence all information disclosed to Provider by Audiokinetic and make no use of such information, including the existence and terms and conditions of the Purchase Order, without Audiokinetic's prior written consent which may be delayed or withheld for any or no reason.
- (b) Provider acknowledges that, among other things, any and all employee information or personal data of such employees furnished to Provider by Audiokinetic or learned by Provider as a result of its performance of services pursuant to the Purchase Order, constitutes confidential information of Audiokinetic, and Provider shall not use any such information for any purpose other than such uses as are approved in advance in writing by Audiokinetic or which are necessary to Provider's performance hereof.

**12. Acceptance of Goods and Services**

All goods and services covered by the Purchase Order shall be subject to Audiokinetic's acceptance as to quality and conformance to specifications.

**13. Assignment of Materials**

Provider hereby gives, assigns and conveys, in perpetuity, to Audiokinetic its entire right, title and interest, including patent and copyright, in and to all works covered by the Purchase Order created or acquired by Provider for Audiokinetic in connection herewith, including, but not limited to, all technical notes, schematics, software source and object code, breadboards, processes, photographs, copies, drawings, musical scores, text, diagrams, plans, literature, models and prototypes, and appoints Audiokinetic as Provider's attorney-in-fact with a limited power to execute assignments of such right, title and interest as Audiokinetic may determine. Provider shall provide to Audiokinetic all copies of those works made for hire. Provider warrants and represents to Audiokinetic that it is the creator of such works made for hire, that they are original with Provider, and that neither they nor this assignment infringes or otherwise conflicts or interferes with any rights whatsoever of any third party.

**14. Ethics Guidelines**

Audiokinetic's employees and members of their immediate families may not have any financial interest, direct or indirect, in or solicit or accept anything of value from any business supplying goods or services to it, including any Provider arrangement to receive commissions, royalties, property, loans, profits or shares in such business, and Provider shall communicate this to its own employees.

**15. Insurance**

Throughout the performance of the Purchase Order, Provider shall maintain the following coverages with carriers having a Best's rating of A-VII or above: (i) General Liability coverage, including blanket contractual and, as applicable, products liability, with minimum limits of \$500,000 per occurrence, \$1,000,000 aggregate and (ii) Workers' Compensation, minimum statutory limits, and Employer's Liability with limits of \$500,000/ accident, \$500,000/disease for each employee, \$500,000/disease in the aggregate, or otherwise in

compliance with the laws and other statutory obligations imposed by the jurisdiction in which the services are being provided hereunder.

**16. Limitation of Liability**

EXCEPT FOR LIABILITIES ARISING IN CONNECTION WITH PROVIDER'S INDEMNIFICATION OBLIGATIONS UNDER THESE PURCHASE ORDER TERMS AND CONDITIONS AND PROVIDER'S BREACH OF CONFIDENTIALITY OBLIGATIONS UNDER THESE PURCHASE ORDER TERMS AND CONDITIONS, IN NO EVENT SHALL EITHER PARTY BE LIABLE TO THE OTHER FOR ANY SPECIAL, INCIDENTAL, CONSEQUENTIAL OR PUNITIVE DAMAGES OR LOSSES WHICH MAY BE SUFFERED BY EITHER OF THEM IN CONNECTION WITH THE SUBJECT MATTER HEREOF. SUCH DAMAGES INCLUDE, BUT ARE NOT LIMITED TO, COMPENSATION, REIMBURSEMENT OR DAMAGES ON ACCOUNT OF PRESENT OR PROSPECTIVE PROFITS, EXPENDITURES, INVESTMENTS OR COMMITMENTS, WHETHER MADE IN THE ESTABLISHMENT, DEVELOPMENT OR MAINTENANCE OF BUSINESS REPUTATION OR GOODWILL.

**17. No Publicity.**

Provider shall obtain the prior written consent of Audiokinetic before using Audiokinetic's name or logo or issuing any publicity in relation to a Purchase Order.

**18. Data Protection**

(a) Except as set out in this clause, Provider shall not seek to process any Personal Information through the goods and services covered by the Purchase Order or in the context of delivering or providing the goods and services covered by the Purchase Order. "**Personal Information**" means (a) any information that, alone or in combination, directly or indirectly, describes, relates to, is capable of being associated with, or could reasonably be linked to an identified or identifiable natural person or group of persons, including, for example, direct identifiers, such as name or email address, or indirect identifiers, such as IP address or account ID, or a combination of data that enables identification, and (b) any information as defined by similar terms under applicable laws. If Provider must process Personal Information to deliver or provide the goods and services covered by the Purchase Order, it shall notify Audiokinetic and the parties will implement any agreements and/or take any steps as are reasonably necessary to ensure such Personal Information is processed in accordance with applicable laws. Provider's failure to comply with this clause will be deemed a material breach of these Purchase Order Terms and Conditions and Provider shall fully indemnify Audiokinetic from and against any third-party claims, damages, liabilities, or other costs arising from Provider's processing of Personal Information. This indemnification obligation shall not apply to Personal Information processed as a result of Audiokinetic affirmatively submitting such Personal Information to Provider or into any goods and services covered by the Purchase Order.

(b) Provider may process Account Management Information solely to the extent necessary to administer the business relationship between the parties or deliver the goods and services covered by the Purchase Orders to Audiokinetic. "Account Management Information" means Personal Information related to Audiokinetic's personnel that is necessary to administer the business relationship between the parties or that is otherwise submitted by Audiokinetic to Provider for purposes of purchasing, signing up for, or registering for

access to or use of any goods and services covered by the Purchase Order. To the extent Provider may process Account Management Information, Provider shall be the controller and process such Account Management Information in compliance with Applicable Laws.

**19. Severability**

In the event any of these Purchase Order Terms and Conditions is held to be invalid or otherwise unenforceable by a court of competent jurisdiction, such term or condition shall be enforced to the extent possible consistent with the stated intention of the parties, or, if incapable of such enforcement, will be deemed to be deleted from these Purchase Order Terms and Conditions, while the remaining Purchase Order Terms and Conditions will remain in full force and effect.

**20. Language**

*Le fournisseur confirme avoir pris connaissance de la version française des modalités et conditions du présent bon de commande. Le fournisseur confirme qu'il souhaite adhérer aux modalités et conditions du présent bon de commande uniquement en langue anglaise, et que Audiokinetic rédige et lui transmette en langue anglaise uniquement tout document s'y rattachant, incluant les avis et autres communications.* Provider acknowledges having had reviewed the French version of these Purchase Order Terms and Conditions. Provider confirms that it wishes to enter into these Purchase Order Terms and Conditions in the English language only, and that Audiokinetic will draft and send all documents related thereto, including notices and other communications, in the English language only.