

## 1 Definitions and interpretation

1.1 In these Conditions the following definitions apply:

<b>Conditions</b>	means the Supplier's terms and conditions of supply set out in this document;
<b>Confidential Information</b>	means any commercial, financial, creative or technical information, information relating to the Services, plans, know-how or trade secrets which is obviously confidential or has been identified as such, or which is developed by a party in performing its obligations under, or otherwise pursuant to the Contract;
<b>Contract</b>	means the agreement between the Supplier and the Customer for the supply and purchase of Services incorporating these Conditions and the Order;
<b>Customer</b>	means the person who purchases the Services from the Supplier and whose details are set out in the Order;
<b>Data Protection Laws</b>	means, as binding on either party or the Services: <ul style="list-style-type: none"><li>(a) the GDPR;</li><li>(b) the Data Protection Act 2018; and</li><li>(c) any laws that enact, replace, extend, re-enact, consolidate or amend any of the foregoing;</li></ul>
<b>Force Majeure</b>	means an event or sequence of events beyond a party's reasonable control (after exercise of reasonable care to put in place robust back-up and disaster recovery arrangements) preventing or delaying it from performing its obligations under the Contract including an act of God, fire, flood, lightning, earthquake or other natural disaster, war, riot or civil unrest, interruption or failure of supplies of power, fuel, water, transport, equipment or telecommunications service, or material required for performance of the Contract, strike, lockout or boycott or other industrial action including strikes or other industrial disputes involving the Supplier's or its suppliers' workforce, but excluding the Customer's inability to pay or circumstances resulting in the Customer's inability to pay;
<b>Intellectual Property Rights</b>	means copyright, patents, know-how, trade secrets, trademarks, trade names, design rights, rights in get-up, rights in goodwill, performers' rights, rights in confidential information, rights to sue for passing off, domain names and all similar rights and, in each case: <ul style="list-style-type: none"><li>(a) whether registered or not;</li><li>(b) including any applications to protect or register such rights;</li><li>(c) including all renewals and extensions of such rights or applications;</li></ul>

- (d) whether vested, contingent or future;
- (e) to which the relevant party is or may be entitled, and
- (f) in whichever part of the world existing;

<b>Master Tapes</b>	original master quality studio-made recordings of such technical and artistic quality as may be satisfactory to the Supplier in its entire discretion and recorded in any medium and by any means, whether now known or invented in the future, made by the Supplier and featuring the performances of the Customer
<b>Order and Order Acknowledgement</b>	the Customer will place the Order as an offer in the formation of a contract and the Supplier will supply an Order Acknowledgement as the acceptance.
<b>Price</b>	has the meaning set out in clause 3.1;
<b>Product</b>	means the Product produced by the Supplier whilst carrying out his Services, including, but not limited to the Master Tapes.
<b>Services</b>	means the Services set out in the Order or understood by the parties to be included in the Services and to be performed by the Supplier for the Customer;
<b>Supplier</b>	means Graeme Lynch trading as Two Zero Nine;

**2 Application of these Conditions**

- 2.1 These Conditions apply to and form part of the Contract between the Supplier and the Customer. They supersede any previously issued terms and conditions of purchase or supply.
- 2.2 No terms or conditions endorsed on or contained in the Customer's purchase order, confirmation of order, specification or other document shall form part of the Contract except to the extent that the Supplier otherwise agrees.
- 2.3 No variation of these Conditions or to an Order or to the Contract shall be binding unless expressly agreed in writing and executed by the Supplier.
- 2.4 Each Order by the Customer to the Supplier shall be an offer to purchase Services subject to these Conditions.
- 2.5 An Order may be withdrawn or amended by the Customer at any time provided that notice in writing of such withdrawal or amendment by the Customer is received by the Supplier before acceptance by the Supplier. If the Supplier is unable to accept an Order, it shall notify the Customer as soon as reasonably practicable.
- 2.6 The Supplier may accept or reject an Order at its discretion. An Order shall not be accepted, and no binding obligation to supply any Services shall arise, until the Supplier provides an Order Acknowledgement.
- 2.7 Rejection by the Supplier of an Order, including any communication that may accompany such rejection, shall not constitute a counter-offer capable of acceptance by the Customer.

2.8 The Supplier may issue quotations to the Customer from time to time. Quotations are invitations to treat only. They are not an offer to supply Services and are incapable of being accepted by the Customer.

2.9 Marketing and other promotional material relating to the Services are illustrative only and do not form part of the Contract.

### **3 Price**

3.1 The Price for the Services shall be as set out in the Schedule 1 or, in default of such provision, shall be calculated in accordance with the Supplier's scale of charges as advised by the Supplier before the date the Order is made.

3.2 The Price includes revisions of the Product which may be requested by the Customer up to a maximum of five times, thereafter the Customer will incur additional costs at the discretion of the Supplier upon each request for revision being made by the Customer.

3.3 The Customer shall pay any applicable VAT to the Supplier on receipt of a valid VAT invoice.

### **4 Payment**

4.1 The Supplier shall provide an invoice to the Customer for the Services at any time before performance of the Services.

4.2 The Customer shall pay all invoices in full without deduction or set-off, in cleared funds within 5 days of the date of each invoice and to the bank account nominated by the Supplier or in cash.

4.3 Time for payment is of the essence. Where sums due under these Conditions are not paid in full by the due date:

4.3.1 the Supplier may charge interest, without limiting its other rights, and

4.3.2 interest shall accrue on a daily basis, and apply from the due date for payment until actual payment in full, whether before or after judgment.

4.3.3 for a debt less than £1,000, the sum of £40; or

4.3.4 for a debt of £1,000 or more, but less than £10,000, the sum of £70; or

4.3.5 for a debt of £10,000 or more, the sum of £100.

### **5 Performance**

5.1 The Services shall be deemed performed on completion of the performance of the Services as specified in the Order.

5.2 The Supplier may perform the Services in instalments. Any delay in performance or defect in an instalment shall not entitle the Customer to cancel any other instalment.

5.3 The Supplier will only release the Master Tapes of the Product when the Supplier has acquired full payment for all Services provided.

5.4 Time of performance of the Services is not of the essence. The Supplier shall use its reasonable endeavours to meet estimated dates for performance, but any such dates are approximate only.

5.5 The Supplier shall not be liable if delayed in or prevented from performing its obligations due to Force Majeure, provided that it promptly notifies the other party of the Force Majeure event and its expected duration; and uses its best endeavours to minimise the effects of that event.

## **6 Intellectual Property Rights**

- 6.1 All specifications provided by the Customer and all Intellectual Property Rights in the Products made or performed in accordance with such specifications shall vest in and remain at all times the property of the Customer and such specifications may only be used by the Supplier as necessary to perform the Contract. The Supplier assigns (or shall procure the assignment) to the Customer absolutely, with full title guarantee, all right, title and interest in any such Intellectual Property Rights, and the Supplier shall do all such things and sign all documents necessary in the Customer's opinion to so vest all such Intellectual Property Rights in the Customer, and to enable the Customer to defend and enforce such Intellectual Property Rights
- 6.2 The Supplier shall indemnify the Customer from and against any losses, damages, liability, costs (including legal fees) and expenses incurred by the Customer as a result of or in connection with any action, demand or claim that use or possession of any of the Intellectual Property Rights, infringes the Intellectual Property Rights of any third party
- 6.3 The Supplier will keep all Products and Services as Confidential Information. Notwithstanding the obligation of confidence, the Supplier will retain a copy of all Products including, but not limited to, songs or pieces of music, for marketing purposes only as agreed with the Customer.

## **7 Limitation of liability**

- 7.1 Subject to clause 7.2, the Supplier shall not be liable for consequential, indirect or special losses or any of the following (whether direct or indirect):
- 7.1.1 loss of profit; loss or corruption of data; loss of use; loss of production; loss of contract; loss of opportunity; loss of savings, discount or rebate (whether actual or anticipated); harm to reputation or loss of goodwill.
- 7.2 Notwithstanding any other provision of the Contract, the liability of the parties shall not be limited in any way in respect of the following:
- 7.2.1 death or personal injury caused by negligence; fraud or fraudulent misrepresentation; any other losses which cannot be excluded or limited by applicable law; any losses caused by wilful misconduct.
- 7.3 All risk and liability associated with the Services will pass to the Customer when the Services are delivered.

## **8 Termination**

The Supplier may terminate the Contract or any other contract which it has with the Customer at any time by giving notice in writing. The Customer may still be liable for any costs incurred by the Supplier.

## **9 Disputes**

- 9.1 The Supplier will try to resolve any disputes with the Customer quickly and efficiently in the event that the Customer is unhappy with the Product, the Services or any other matter
- 9.2 The parties irrevocably agree that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim arising out of, or in connection with, the Contract, its subject matter or formation (including non-contractual disputes or claims).
- 9.3 The Contract and any dispute or claim arising out of, or in connection with, it, its subject matter or formation (including non-contractual disputes or claims) shall be governed by, and construed in accordance with, the laws of England and Wales.

9.4 The Customer recognises that any breach or threatened breach of the Contract may cause the Supplier irreparable harm for which damages may not be an adequate remedy. Accordingly, in addition to any other remedies and damages available to the Supplier, the Customer acknowledges and agrees that the Supplier is entitled to the remedies of specific performance, injunction and other equitable relief without proof of special damages.

## **10 Entire agreement**

10.1 The parties agree that the Contract and any documents entered into pursuant to it constitutes the entire agreement between them and supersedes all previous agreements, understandings and arrangements between them, whether in writing or oral in respect of its subject matter.

10.2 Each party acknowledges that it has not entered into the Contract or any documents entered into pursuant to it in reliance on, and shall have no remedies in respect of, any representation or warranty that is not expressly set out in the Contract or any documents entered into pursuant to it. No party shall have any claim for innocent or negligent misrepresentation on the basis of any statement in the Contract.

## **11 Set off**

The Customer shall pay all sums that it owes to the Supplier under the Contract without any set-off, counterclaim, deduction or withholding of any kind, save as may be required by law.

## **12 No partnership or agency**

The parties are independent persons and are not partners, principal and agent or employer and employee and the Contract does not establish any joint venture, trust, fiduciary or other relationship between them, other than the contractual relationship expressly provided for in it. None of the parties shall have, nor shall represent that they have, any authority to make any commitments on the other party's behalf.

## **13 Severance**

13.1 If any provision of the Contract (or part of any provision) is or becomes illegal, invalid or unenforceable, the legality, validity and enforceability of any other provision of the Contract shall not be affected.

13.2 If any provision of the Contract (or part of any provision) is or becomes illegal, invalid or unenforceable but would be legal, valid and enforceable if some part of it was deleted or modified, the provision or part-provision in question shall apply with such deletions or modifications as may be necessary to make the provision legal, valid and enforceable. In the event of such deletion or modification, the parties shall negotiate in good faith in order to agree the terms of a mutually acceptable alternative provision.