

TERMS AND CONDITIONS OF SALE – AUDIO PRECISION, INC.

1. Order of Precedence. Terms printed on the face of this quotation or invoice will supersede any conflicting terms contained in these Terms and Conditions of Sale (these “Terms”).

2. Payment. Unless otherwise indicated on the face of this quotation or invoice, Buyer shall pay Audio Precision, Inc. (“Seller”) the amounts shown on Seller’s invoice for all goods sold or software licensed to Buyer prior to shipment or delivery by Seller.

3. Construction. In the interest of brevity in these Terms, the words “purchase,” “sold,” “sale,” and similar words shall mean with respect to Seller’s software products, “license.” In all cases, Buyer’s rights respecting such software shall be that of a licensee and not an owner.

4. Prices, Taxes, Shipping. Trade terms are EXW (Ex Works). Seller’s main office, Beaverton, OR. Shipment, insurance, and all expenses and risks related thereto are the responsibility of Buyer with shipping charges billed freight collect to Buyer. Interest shall accrue on all amounts past due at the annual rate of eighteen percent (18%) or the maximum amount allowed by law, whichever is less. Prices do not include sales, excise, use, or other taxes measured by the sales price of the goods and software sold or arising under such sale, nor do they include customs, duties, tariffs, and taxes. Buyer shall pay any and all such duties, tariffs, and taxes for which either Buyer or Seller may become legally liable as a result of the sale of Seller’s goods and software to Buyer, except for those taxes from which Buyer and Seller are exempt, and for which Buyer provides Seller with an exemption resale certificate in the appropriate form for the jurisdiction of Buyer’s place of business and any jurisdiction to which hardware or software is to be directly shipped hereunder.

5. Software License. Subject to these Terms, Seller grants to Buyer a personal, nonexclusive, nontransferable license to use the software and firmware installed on the hardware products sold to Buyer. Buyer shall use the software only in connection with the operation of the hardware products sold to Buyer. Buyer shall not (a) modify or prepare derivative works from the software, (b) reverse engineer, disassemble, or decompile the software or hardware, (c) remove, obscure, or alter any notice of patent, copyright, trade secret, trademark, or other proprietary right present on the software, and (d) sub-license, sell, lend, rent, lease, or otherwise transfer all or any portion of the software to any third party. Buyer shall promptly notify Seller of any unauthorized use of the software that comes to Buyer’s attention. The software contains valuable copyright, trade secret, trademark, and other proprietary rights of Seller. Except for the limited license granted herein, Seller reserves all rights in and to the software. No title to or ownership of any software or proprietary rights related to the software is transferred to Buyer hereunder.

6. Copyrighted Materials. Seller’s copyrighted materials of all kinds shall not be copied by Buyer without Seller’s written permission.

7. Delivery and Risk of Loss. Seller shall deliver the goods and software by placing them with a carrier for delivery to Buyer. Risk of loss passes to Buyer upon delivery to the carrier. Shipment and delivery dates are estimated only. In no event shall Seller be liable to Buyer or any third parties for any damages of any kind, direct or indirect, in the event of delay of delivery. In the event of any such delay, Seller shall have such additional time within which to perform its obligations hereunder as may reasonably be necessary under the circumstances.

8. Inspection, Acceptance. Buyer shall inspect the goods and software at the place of destination promptly upon arrival. Buyer’s acceptance of the goods and software will be conclusively presumed if Buyer fails to give Seller written notice of defective or non-conforming goods or software within fifteen (15) days after delivery in the case of defects discoverable through inspection or testing, or within fifteen (15) days after discovery in the case of defects not discoverable through inspection or testing. The notice shall describe the rejected goods and software and the defects upon which rejection is based. Seller shall be given a reasonable opportunity to investigate all claims and to inspect allegedly defective goods or software.

9. New Product Limited Warranty. Seller warrants to Warrantee that all Audio Precision’s new hardware products will be free from defects in materials and workmanship for three (3) years from the date Seller first ships the products, except: (a) cables and the Measurement Microphone Kit; which are warranted for one (1) year, and (b) products and parts listed on the Schedule of Warranty Duration Exceptions available at <https://www.ap.com/download/warranty-exceptions/>, which are warranted for the duration set forth on such schedule, in each case from the date of shipment. The Schedule of Warranty Duration Exceptions may be updated from time to time by Seller to add new products and parts; provided however, that any update to such schedule shall only apply to purchases made by Warrantee after such update is posted to Seller’s website.

10. Licensed Software Limited Warranty Seller warrants to Warrantee that Audio Precision’s licensed software and firmware products that are properly installed on hardware products manufactured by Audio Precision will not fail to execute their programming instructions due to defects in materials and workmanship for three (3) years from the date of purchase.

11. Upgrades, Used Products & Service Warranties. Audio Precision offers a limited one year warranty on all product upgrades and used product sales. All Service is warranted for 90 days. Terms and conditions are identical to the New Product Limited Warranty set forth in Section 9 with the exception of the term of the warranty. An upgrade does not invalidate an existing New Product Limited Warranty on the original product.

12. Warranty Exclusions. Seller does not warrant that the operation of its hardware, licensed software, or firmware shall be uninterrupted or error-free. ALL WARRANTIES ARE VOIDED AND INVALIDATED IF ANY UNAUTHORIZED REPAIRS OR MODIFICATIONS TO THE HARDWARE OR SOFTWARE PRODUCTS ARE UNDERTAKEN OR ANY UNAUTHORIZED PARTS ARE USED. Seller’s limited warranties shall not apply to defects resulting from (a) improper or inadequate maintenance or calibration, (b) software or interfacing supplied by someone other than Audio Precision, (c) unauthorized modification, repair, or misuse of Audio Precision’s products, (c) operation outside of the environmental specifications for the product, or (d) improper site preparation, installation or maintenance. Warrantee must promptly notify Seller in writing of any claim under this limited warranty and pack and ship the non-conforming hardware, licensed software, or firmware according to Seller’s instructions. Warrantee will be responsible for payment of all inbound shipping, customs, duties and taxes in connection with any warranty service.

13. DISCLAIMER OF ALL OTHER WARRANTIES. THE LIMITED WARRANTIES SET FORTH ABOVE ARE EXCLUSIVE, AND NO OTHER WARRANTY, WHETHER WRITTEN OR ORAL, IS EXPRESSED OR IMPLIED. SELLER SPECIFICALLY DISCLAIMS THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.

14. Buyer’s Remedies. Seller will, at its option, either repair or replace its non-conforming goods and software. In the alternative, at Seller’s option, Seller may reimburse Buyer that portion of the amount actually paid by Buyer for the non-conforming goods or software, less an allowance for Buyer’s use of the goods and software based on straight-line depreciation over a period of five years.

15. Limitations on Buyer’s Remedies. IN NO EVENT SHALL SELLER BE LIABLE FOR ANY INCIDENTAL OR CONSEQUENTIAL DAMAGES ARISING IN ANY WAY FROM THE SALE OR DELIVERY OF GOODS OR SOFTWARE OR ANY OTHER BREACH OF CONTRACT BY SELLER OR OTHER THEORY OF RECOVERY ASSERTED BY BUYER. The limitation of Seller’s liability is applicable to any and all claims or theories of recovery, including without limitation breach of contract, breach of warranty (expressed or implied), negligence, or strict liability.

16. Limitation on Time to Bring Action. Any action for Seller’s breach of its limited warranty or any other breach of contract must be commenced by Buyer within one year after the cause of action arises.

17. Grant of Security Interest. Buyer hereby grants to Seller a security interest in all goods and software sold by

Seller to Buyer, together with all products and proceeds thereof, to secure full payment of the purchase price for such goods and software and the full performance of all of Buyer’s obligations to Seller whether arising hereunder or under any other agreement between Buyer and Seller. Buyer authorizes Seller to execute financing statements and other documents as Seller deems necessary for the purpose of perfecting its security interest in the goods and software.

18. Delays and Force Majeure. Seller shall not be in default or otherwise responsible or liable for any delay in performance or delivery caused by circumstances beyond its control, including, but not limited to, acts of God, weather conditions, fires, floods, wars, government actions, laws, accidents, terrorist acts, riots, strikes, labor disputes, labor shortages, shortages or unavailability of materials, equipment, or transportation. If such delay continues for ninety consecutive days, Seller may terminate without liability its obligations to Buyer.

19. Seller’s Remedies. In the event of Buyer’s default, Seller shall have all of the remedies afforded Seller under Oregon’s Uniform Commercial Code, at law, or in equity. Without limiting the foregoing, Seller may recover as damages the purchase price of the goods and software together with all incidental damages and reasonable costs, may immediately accelerate all amounts due from Buyer to Seller, and may withhold further deliveries or terminate any order without notice, or stop in transit any shipment to Buyer or Buyer’s designee. Seller’s remedies set forth in this paragraph are cumulative and supplemental to, and not in lieu of, any and all remedies otherwise available to Seller at law, in equity, or hereunder.

20. Severability. If any clause or provision herein shall be adjudged invalid or unenforceable, it shall not affect the validity of any other clauses or provisions, which shall remain in full force and effect.

21. Non-Waiver. Except as otherwise provided herein, these Terms may be amended, altered, or terminated only by written instrument signed by both parties hereto.

22. Clerical Errors. Stenographic, computer, mathematical computation, or other clerical errors made by Seller on a quotation, an acknowledgment, or an invoice issued to Buyer shall be subject to correction by Seller.

23. No Assignment by Buyer. Buyer’s rights to goods or software ordered from Seller are not assignable by Buyer without the prior written consent of Seller.

24. Notices. All notices under these Terms shall be in writing and deemed to have been received upon actual receipt if delivered personally or by fax, e-mail, or an overnight delivery service, or on the fifth business day after deposit in the mail, postage pre-paid, certified, return receipt requested to the party’s last known address.

25. Complete Agreement. These Terms together with the applicable quotation or invoice are the parties’ entire agreement regarding the subject hereof and supersede and replace all prior oral and written representations and agreements, with the exception of any pre-existing master distributor or sales agreement, which shall remain effective until terminated in accordance with its terms. To the extent that any of the terms herein differ from Buyer’s documents, such documents shall not control and varying terms are hereby rejected.

26. Choice of Law; Arbitration; Attorney Fees. These Terms shall be governed by and construed under the laws of the State of Oregon, U.S.A. and not under the United Nations Convention on Contracts for the International Sales of Goods. In the event of any dispute, claim, or controversy between the parties, the parties shall consult with each other and attempt to reach a solution satisfactory to both parties. If the parties cannot resolve the dispute, claim, or controversy within thirty days, it shall be subject to mandatory, binding arbitration in accordance with the International Arbitration Rules of the International Centre for Dispute Resolution. Arbitration shall be conducted in Portland, Oregon in the English language. The prevailing party in arbitration shall be entitled to its reasonable attorney fees and costs from the non-prevailing party.

27. Compliance with Laws. Buyer must obtain all permits, licenses, and approvals necessary for this transaction, including all required export and import licenses. Buyer must comply with all applicable U.S. and foreign laws, rules, and regulations, and may not export or divert the goods or software in violation of thereof.