

## TEXTSPEAK SALES ORDER ACKNOWLEDGEMENT AND GENERAL TERMS AND CONDITIONS OF SALE

THIS SALES ORDER ACKNOWLEDGEMENT IS MADE AND GIVEN ON THE EXPRESS UNDERSTANDING THAT THE FOLLOWING TERMS AND CONDITIONS APPLY TO THE SALE OF SELLER'S GOODS. SELLER'S ACCEPTANCE OF ANY ORDER IS EXPRESSLY MADE CONDITIONAL UPON BUYER'S ACCEPTANCE OF ALL TERMS AND CONDITIONS CONTAINED HEREIN AND ON THE FACE OF SELLER'S SALES ORDER ACKNOWLEDGMENT. SELLER OBJECTS TO ANY ADDITIONAL OR DIFFERENT TERMS AND CONDITIONS, WHETHER CONTAINED IN BUYER'S FORMS OR OTHERWISE. SELLER WILL NOT BE DEEMED TO HAVE WAIVED THESE TERMS AND CONDITIONS OF SALE IF IT FAILS TO OBJECT TO ANY PROVISION CONTAINED IN BUYER'S FORMS OR OTHERWISE. BUYER'S SILENCE OR ITS ACCEPTANCE OF SELLER'S GOODS CONSTITUTES ITS ACCEPTANCE OF THESE TERMS AND CONDITIONS. In these Terms and Conditions, the "Seller" means TextSpeak Products Group, or any of its subsidiaries or divisions by which the goods are sold. The term "Buyer" means the individual, corporation or other legal entity that has submitted an order to Seller. The term "Order" means Buyer's expressed request, whether oral or written, to purchase Goods from Seller. The term "Goods" means all of the products, materials and related services that Buyer desires to purchase from Seller.

**1. Entire Agreement.** (a). **This contract is intended by the Seller and Buyer to be a final expression and a full and complete statement of their agreement. No representation or statement made by Seller or any other person whether authorized or not may be relied upon or form a part of the contract for the sale of the goods by Buyer unless said representation or statement is included herein and made a part hereof.** (b). **No subsequent modification of these terms and conditions shall be effective unless confirmed in writing by an authorized officer of the Seller.** (c). **Buyer's Order is subject to acceptance by Seller, which acceptance is made expressly contingent upon Buyer's agreement to Seller's terms and conditions. Acceptance of this Order is subject to all of the terms set forth herein and on the face of Seller's sales order acknowledgment form ("Form"), which terms shall constitute the sole terms and conditions of this Order. Buyer's assent to all such terms and conditions shall be conclusively presumed (i) when Buyer receives this document and the Form, electronically or otherwise, and makes no written objection within ten (10) days of such receipt; or (ii) when Buyer accepts all or any part of the Goods reflected by the Order. Seller objects to any terms or conditions that differ from or are additional to those stated herein or on the Form.**

**2. Buyer Information and Intellectual Property.**

(a). Buyer shall deliver all specifications and other information requested by the Seller in the manner and by a time specified in writing by the Seller. If the requested specifications and other information is not timely delivered in a form reasonably acceptable to the Seller, the Seller may extend the time of delivery of the goods for a reasonable period, terminate any obligation to make such deliveries, or take any other reasonable action in the discretion of Seller. (b). No transfer of Intellectual Property Rights or license is meant to be affected or granted by this Agreement. To the extent that Seller makes software available to an end user, such software shall be subject to the terms and condition as set forth on [www.digitalacoustics.com](http://www.digitalacoustics.com) EULA or such address as Seller may hereafter designate (EULA"). Unless otherwise agreed in writing the EULA shall inter alia grant to an end user a limited, non-exclusive, non-sub-licensable, non-transferable license to use the software solely together with hardware purchased by you from the Company (the "Hardware" and the "License", respectively). (c). Seller and its licensors, shall own and shall retain all right, title and interest in and to: (i) any of its intellectual property rights, including any development thereof (including all copies, modifications, improvements and derivative works thereof, by whomever produced); (ii) all of its service marks, trademarks, trade names or any other designations associated with Seller's technology and products; and (iii) all copyrights, patent rights, trade secret rights, and other proprietary rights relating to Company's technology and products, whether registered or not (collectively "Intellectual Property Rights"). (d). All intellectual property rights in work or resulting from work done by or on behalf of Seller pursuant to this Agreement, if performed, and any subsequent modifications to same shall exclusively vest in Seller. (e). Seller retain all rights embodied in the Goods and/or Intellectual Property Rights not expressly licensed to Buyer. Buyer may not modify, create derivative works of, adapt or translate any expression contained in the Goods or any software. No source code is provided under this Agreement. Buyer may not reverse engineer, disassemble, decompile, rent, or lease the Goods, including, but not limited to, the software, or re-create or discover code version of the Goods. The Goods, including, but not limited to, the software contains proprietary and confidential information of the Seller or its licensors, which Buyer agrees not to discover or reveal to others. Any and all permitted copies of the Software that Buyer makes or distributes, subject to the receipt of the Seller's consent, must be unmodified, must contain all of the original software's proprietary notices, and must include or be accompanied by this Agreement. Buyer may not separate the Software into component parts for sublicense, distribution or transfer to a third party. Buyer may not embed the Software within any other product or device or modify the Software in whole or in part in any manner.

**3. Price.** The price is payable in U.S. currency unless otherwise stated. The price to be paid shall not be subject to any discount or reduction, except as agreed in writing by an authorized officer of the Seller. In the event that credit is extended to the Buyer, payment shall be made within thirty (30) days of the date of Seller's invoice, unless otherwise agreed in writing. If timely payment is not made, the Seller, in addition to its other legal rights, shall be entitled to charge interest on all overdue payments at the rate of 1.5% per month. The interest charge, however, shall not exceed any applicable ceiling on interest which may be legally charged. In the event said interest rate does exceed the maximum rate chargeable by law, then the rate shall be deemed to be the maximum rate legally chargeable.

**4. Taxes.** The prices and charges stated in the sales order confirmation do not include state or federal excise, sales, use, public charge, tariff, duty or other taxes (if any) ("Taxes") now in effect or hereafter levied by reason of this transaction. All such Taxes shall be for the Buyer's account, including without limitation, any new, additional or increased tax, public charge, freight, tariff or duty which may after the date of the quotation or contract be levied on or imposed upon this transaction, on the Goods or upon any sale, delivery, or other action taken hereunder, or upon the export or import of such goods or materials required to produce the Goods.

**5. Delivery.** The Seller will use its best endeavors to deliver all goods at the date and within the time specified in the contract. Unless otherwise specified, the Seller shall have the right to make partial deliveries. Each partial delivery or installment of the goods shall be deemed to be sold under a separate contract containing all of the terms and conditions set forth herein and payment shall be due therefore as delivered in accordance with the terms of payment herein. Seller shall use reasonable efforts to fill this Order in accordance with the estimated shipping date, but shall not be responsible for any delays in filling this Order nor liable for any losses or damages resulting from such delays, and this Order not be subject to cancellation for such delays.

**6. Limited Warranty. See Limited Warranty for terms and limitations of the Limited Warranty provided by Seller.**

**7. Buyer's Indemnification.** Buyer agrees to indemnify and hold Seller harmless from any and all claims, loses, demands, penalties, fines, forfeitures, proceedings, suits, and actions which may be made or brought against Seller by any person including any purchaser of the Goods or any product made therefrom, arising from the use of the Goods or any products in which the Goods are used, including, but not limited to, liability for negligence or strict liability, infringement of any patent, trademark or trade name, copyright and the like, or from any latent or hidden defects in the quality of said goods or resulting products, or from the dangerous condition thereof, and Buyer shall pay any and all costs, fees (including reasonable attorneys' fees) and expenses, judgments, awards and fines for and in behalf of Seller as incurred or as they become due.

**8. Limitations on Buyer's Remedies.** Inasmuch as the value of the Goods sold hereunder may be substantially disproportionate to the value of products to be used in conjunction therewith, and, for the express purpose of limiting the liability of Seller and the remedies available to Buyer to an extent which is reasonably proportionate to the commercial value of this transaction, Buyer and Seller agree:(a). **In keeping with the course of performance and dealing, usage of the trade, and the accepted practice of Seller, Seller's liability to Buyer or to any party claiming**

through or on behalf of Buyer, with respect to any claim or loss arising out of this transaction or alleged to have resulted from an act or omission of Seller's negligence or otherwise, including failure to deliver, delay in delivery, or breach of warranty, shall be limited to an amount equal to the purchase price of the goods paid by the Buyer to the Seller less the fair market value of the Goods in Buyer's possession with respect to which such liability is claimed or, where appropriate and at the option of Seller, to replacement of the Goods or replacement and pickup of the Goods. IN NO EVENT SHALL SELLER BE LIABLE FOR CONSEQUENTIAL OR INCIDENTAL DAMAGES, LOSSES, OR EXPENSES ARISING OUT OF THIS TRANSACTION. NO ACTION REGARDLESS OF FORM, ARISING OUT OF THE TRANSACTIONS UNDER THIS AGREEMENT MAY BE BROUGHT BY BUYER MORE THAN ONE YEAR AFTER THE CAUSE OF ACTION HAS ACCRUED. (b). The Buyer shall not be entitled to withhold payment of any amount payable under the contract to the Seller because of any disputed claim of the Buyer nor shall the Buyer be entitled to set off against any amount payable under the contract to the Seller any monies which are not presently payable by the Seller or for which the Seller disputes liability.

**9. Seller's Remedies.** In the event that the Buyer fails to perform any of its obligations, the Seller shall be entitled to all legal and equitable remedies including those specified herein and under the Uniform Commercial Code. (a). Until such time as Buyer has paid the agreed purchase price, Seller hereby retains and Buyer hereby grants a purchase money security interest in the Goods described on the face hereof. In connection therewith, Buyer agrees to execute all instruments (including title documents and/or financing statements) deemed necessary by Seller under the applicable law to establish, maintain and continue perfected Seller's purchase money security interest in the goods or otherwise to protect its rights in and to said Goods. Buyer hereby authorizes Seller as its attorney-in-fact to execute and file, on Buyer's behalf, any such instruments or documents. (b). In the event the Seller should elect to pursue its remedies under Section 2-708 of the Uniform Commercial Code, damages shall be, at the Seller's option, either equal to the difference between the market price at the time and place for tender and the unpaid contract price or equal to the profit that the Seller would have realized under this contract. In addition, the Seller may recover incidental damages which shall include but not be limited to cancellation fees or penalties imposed by its suppliers or manufacturers. Seller shall be entitled to recover all of its costs, fees (including reasonable attorneys' fees) and expenses in pursuing any and all of its remedies against the Buyer.

**10. Force Majeure.** The Seller shall not be liable for failure in the performance of its obligations hereunder where such performance has been delayed prevented or rendered commercially impractical due to fires, strikes, disputes with workmen, war, civil commotion, epidemics, floods, accidents, delays in transportation, shortage of vehicles, shortage of or inability to obtain power, fuel, or other material, shortage of labor, fire, acts, demands or requirements of the Government of the United States, or of any other State or Government, acts of God, acts or omissions of Buyer, or to any other causes beyond the reasonable control of the Seller, or of the Seller's supplier, notwithstanding that such causes of delay are operative at the time of making the contract, and the existence of such causes of delay shall justify the suspension of manufacture and shall extend the time of performance on the part of the Seller to such extent as may be necessary to enable it to make delivery in the exercise of reasonable diligence after the causes of delay have been removed. If the manufacture or delivery of the goods is still prevented or hindered at the end of a reasonable period, the Seller may terminate any deliveries not made by giving notice to the Buyer and the Seller shall have no liability whatsoever to the Buyer in connection with any such deliveries not made.

**11. Termination.** Seller may terminate this contract at any time: (a) without notice to Buyer, in the event Buyer shall breach any of the terms and conditions of this contract; (b) without notice to Buyer, if Buyer makes any assignment of assets, or if a trustee or receiver is appointed to administer or conduct Buyer's business or affairs, or if a petition is filed regarding Buyer for the approval of a plan of reorganization or voluntary or involuntary bankruptcy, or if Buyer is unable to pay its debts as they become due. Such termination shall be without prejudice to any right vested in Seller at the date of such termination, and Seller's existing rights and obligations under the provisions of this contract shall not be affected by such termination; or (c) at its convenience, either in whole or in part, by written, telegraphic or facsimile notice at any time. If this contract is terminated for convenience, any claim of Buyer shall be settled on the basis of reasonable costs it has incurred in the performance of this contract.

**12. Waiver.** No delay or failure by either party to exercise any right under this contract, and no partial or single exercise of that right, shall constitute a waiver of that or any other right, unless said waiver is supported by additional consideration and authorized in writing by the party so waiving.

**13. Export Licensing.** (a). Buyer and Seller shall comply with all national and international export and control regulations. Equipment, technology and technical data shall not be exported, re-sold, diverted, re-exported or disposed of in other than the country of ultimate destination (currently approved by the United States Government), without the prior approval of the United States Department of State or Commerce or other Agency of the United States Government, whichever is appropriate. (b). Seller shall assume no liability in the event that an export license is not approved or later withdrawn by the United States Government or other applicable Government. (c) Where Buyer requests a routed transaction (meaning it will along with its U.S freight forwarder accept responsibility as U.S Exporter of Record to attain such applicable Government approvals) it shall supply all required documentation to the Seller including the required routed transaction letters from both Buyer and its designated U.S. designated Forwarder/agent.

**14. Assignment - Delegation.** No assignment or delegation of any obligation owed or of the performance of any obligation hereunder by the Seller shall be made without the written permission of the Buyer.

**15. Partial Invalidity.** The invalidity or unenforceability of any particular provision of this contract shall not affect the other provisions hereof, but such term or provision shall be deemed modified to the extent necessary in the court's opinion to render such term or provision enforceable, and the rights and obligations of the parties shall be construed and enforced accordingly, preserving to the fullest permissible extent the intent and agreements of the parties herein set forth..

#### **16. US Government Contracts**

16.1. This Article 16 applies only if the Contract is for the direct or indirect sale to any agency of the U.S. government and/or is funded in whole or in part by any agency of the U.S. government. Buyer agrees that all Products and Services provided by Seller meet the definition of "commercial-off-the-shelf" ("COTS") or "commercial item" as those terms are defined in Federal Acquisition Regulation ("FAR") section 20.101. To the extent the Buy American Act, Trade Agreements Act, or other domestic preference requirements are applicable to this Contract, the country of origin of Products is unknown unless otherwise specifically stated by Seller in this Contract. Buyer agrees any Services offered by Seller are exempt from the Service Contract Act of 1965 (FAR 52.222-41). Buyer represents and agrees that this Contract is not funded in whole or in part by American Recovery Reinvestment Act funds unless otherwise specifically stated in the Contract. The version of any applicable FAR clause listed in this Article 16 shall be the one in effect on the effective date of this Contract. If Buyer is an agency of the U.S. Government, then as permitted by FAR 12.302, Buyer agrees that all paragraphs of FAR 52.212-4 (except those listed in 12.302(b)) are replaced with these Terms and Conditions. Buyer further agrees the subparagraphs of FAR 52.212-5 apply only to the extent applicable for sale of COTS and/or commercial items and as appropriate for the Contract Price. If Buyer is procuring the Products or Services as a contractor, or subcontractor at any tier, on behalf of any agency of the U.S. Government, then Buyer agrees that FAR 52.212-5(e) or 52.244-6 (whichever is applicable) applies only to the extent applicable for sale of COTS and/or commercial items and as appropriate for the Contract Price.

**17. Choice of Law; Jurisdiction.** This contract shall be governed by and interpreted in accordance with the laws of the State of Illinois which are in force on the date of this contract. Whenever a term defined by the Uniform Commercial Code as adopted in the State of Illinois is used in this contract, the definition in said Uniform Commercial Code shall control. All actions or proceedings arising directly or indirectly or otherwise in connection with, out of, related to or from this contract shall be brought only in the Circuit Court of Fairfield County in the State of Connecticut or in the U.S. District Court for the District of Connecticut and Seller and Buyer hereby consent and submit to the jurisdiction of such courts for the purpose of such actions or proceedings.