

# MANTRA CDS AND RECORDING T/A The Beehouse

## MANTRA CDS AND RECORDING

### AGREEMENT FOR STUDIO HIRE AND/OR POST PRODUCTION WORK

**These are the terms applied universally to any customer using the studio. No customer will be permitted to make use of the studio or its staff and services without agreeing to the following terms:**

#### CONDITIONS OF STUDIO HIRE AND POST PRODUCTION WORK

##### Interpretation

In these Conditions:-

"Agreement"	means the agreement comprised in these Conditions
"Booking"	means the hire of the Studio for the Period of Booking
"Booking Fee"	means the fee payable by the Client to the Business for the Booking as discussed in correspondence between the Client and the Business or as calculated in accordance with the Business's published or usual scale of charges;
"Booking Form"	means any written quotation given by the Business and accepted by the Client or any written order of the Client accepted in writing by the Business
"Client"	means the person making use of the Business' Studio Facilities
"Client's Equipment"	means equipment brought onto the Business's premises by the Client, or the Client's Personnel or any servant agent or contractor for and on behalf of the Client.
"Client's Own Media"	means the Client's own recording media including without limitation multi-track recording tape
"Client's Personnel"	means persons invited by the Client to enter the Studio during the Booking
"Client's Recording"	means a recording made before this Agreement which is delivered to the Business by the Client in connection with this Agreement
"Business"	means Mantra CDs and Recording or the Beehouse
"Conditions"	means these conditions
"Fees"	means the Booking Fee and the Post Production Work Fee
"Master Recording"	means the original recording produced for the Client in the course of the Booking on the media and in the format described in the Booking Form
"Maximum Liability"	means the maximum liability on the part of the Business to the Client arising under or in connection with this Agreement being the sum described as such in the Booking Form
"Operator"	means the staff or contractors providing engineering or production services for the Business named as such in the Booking Form
"Period of Booking"	means the period described as such in the Booking Form or correspondence
"Recording Details"	means the development and processing by the Business of Recordings accordance with the description in the Booking Form
"Post Production Work"	means the further processing by the Business of Recordings accordance with the description in the Booking Form
"Post Production Work Fee"	means the fee payable by the Client to the Business for the Post Production Work as specified in the Booking Form or if not specified then calculated in accordance with the Business's published or usual scale of charges;
"Pre Production Master"	means a Recording in form intended for mass production without further material change
"Recording"	means any single or multi-track audio and/or visual recording or

	data programming or derivative thereof or any one or more pieces of recorded sound or visual image recorded or used during the Booking or which is the subject of Post Production Work including a Master Recording and a Pre Production Master or any Client's Recording.
"Representatives"	means the persons named in the Booking Form being authorised by the Client to instruct the Business on behalf of the Client in respect of the Business's provision of the Post Production Work
"Studio"	means the recording studio and the equipment specified in the Booking Form
"Studio Breakdown"	means a failure or breakdown or unavailability for any reason of the Studio which prevents the Client's use thereof in accordance with the terms hereof

## **1 AGREEMENT**

In any event unless otherwise agreed in writing by the Proprietor of the Business, the Booking Form and these Conditions alone shall apply to all goods supplied, facilities hired and work done by the Business for any Client.

## **2 STUDIO FACILITIES**

- 2.1 The Business shall make the Studio and the Operators available to the Client for the Agreed period of booking and shall produce the Master Recording at the direction and subject to the monitoring and approval of the Client or the Representatives.
- 2.2 The Client shall not be entitled to use its own recording engineer or other such technical personnel to operate the Studio without obtaining the Business's prior consent in writing.
- 2.3 The Client hereby acknowledges that it shall be responsible for:
- 2.3.1 ensuring the suitability of the Studio for the Client's purpose.
  - 2.3.2 ensuring that the Client's Equipment shall be compatible with the Studio.
  - 2.3.3 the technical quality of any recording engineered by personnel provided by the Client and that accordingly the Business gives no warranty as to the foregoing.

## **3 RECORDING AND POST PRODUCTION WORK**

- 3.1 The Business shall carry out the Recording and Post Production Work described in its correspondence with the Business with all due care and diligence using suitable equipment and competent engineers.
- 3.2 The Client and the Representatives shall be entitled at all reasonable times to monitor the Business's performance of the Recording and Post Production Work and the Business shall carry out the Recording and Post Production Work at the direction of and subject to the monitoring and approval of the Client or the Representatives.
- 3.3 The Client, at his/her request, shall be entitled to and shall be given all reasonable opportunity to evaluate by any reasonable means the content and quality of the Recording.
- 3.4 For the avoidance of doubt the Client acknowledges and accepts that it is incumbent upon the Client to ensure that the Pre Production Master meets with its full satisfaction as aforesaid before proceeding to mass production commercial exploitation of the recording thereon.

## **4 THE FEES**

- 4.1 The Client shall pay the whole of the Fees and any other sums payable to the Business on a daily or hourly rate as agreed, and by the end of the session detailed herein. The Recording will not be returned until such payment is made. Further production work will not be released until the Fee arising is paid by the Client.
- 4.2 The Client shall be liable to pay interest on any sums due and payable to the Business from time to time at the rate of four per cent (4%) per annum above Lloyds Bank Plc base rate.
- 4.3 The Fees shall not be reduced on account of:
- 4.3.1 the Client's failure to use the Studio for any or all of the Period of the Booking
  - 4.3.2 the Client's cancellation of the Booking or any part thereof.

## **5 THE CLIENT'S OWN MEDIA, PERSONNEL AND EQUIPMENT**

- 5.1 The Client shall give the Business reasonable notice of its intention to supply the Client's Own Media together with full technical details thereof.
- 5.2 If the Client supplies the Client's Own Media:
- 5.2.1 the Business shall be entitled to charge the Client for the use thereof within the Studio at the rate of twenty per cent (20%) of the retail list value of the Client's Own Media used during the Booking.
  - 5.2.2 the Client shall be responsible for the integrity of the Client's Own Media and the Business shall not be liable for any deficiency in or caused by such media.
- 5.3 The Client hereby warrants undertakes and agrees that it shall procure that each of the Client's Personnel shall abide by the Studio's rules, regulations and health and safety policy and that it shall be responsible:
- 5.3.1 for the actions of the Client's Personnel upon the Business's premises
  - 5.3.2 for any and all injury, loss or damage to any person's equipment or premises caused by any act or omission of the Client's Personnel, or as a result of any defect in or inappropriate specification of the Client's Equipment or the Client's Own Media.
  - 5.3.3 for the cost of the hire of any Client's Equipment.

5.3.4 for any costs and expenses incurred by the Business on behalf of the Client at the Client's request.

5.3.5 for any and all loss or damage to the Client's Equipment which shall be at the sole risk of the Client.

- 5.4 The Client shall remove all Client's Equipment forthwith at the end of the Period of Booking and in default thereof the Client shall be liable to the Business for its reasonable storage charges. The Business shall be entitled by 3 (three) months' notice to the Client to require the Client to collect the Client's Equipment and in default of collection of the Client's Equipment on or before the expiration of the said period of notice, the Business shall be entitled to destroy or otherwise dispose of the Client's Equipment.

## **6 SOUND LEVELS**

- 6.1 The Client hereby acknowledges that the Noise at Work Regulations 1989 have established that prolonged exposure to high noise levels above 85 dB(A) may cause damage to hearing and that both studios and studio users are required by law to keep exposures as low as reasonably practicable) and that accordingly the Client shall be responsible for noise levels within the Studio.

6.2 High noise levels shall not be sustained for long periods

- 6.3 The Business hereby reserves the right to take such action as it may deem appropriate to maintain tolerable noise levels and that no claim shall lie against the Business in respect of inconvenience or time lost in the event of such action.

## **7 RECORDINGS AND MATERIALS**

- 7.1 The Client shall procure the collection of the Recordings and ancillary materials (if any) ("the Materials") immediately upon payment in full of the Business's invoice applicable thereto ("the Collection Date")

7.2 After the Collection Date:

7.2.1 notwithstanding any other provision contained within the Conditions the Materials shall be held by the Business solely at the risk of the Client.

7.2.2 the Client shall be liable to the Business for such reasonable charges as the Business may raise against the Client for the continued storage of the Materials.

7.2.3 the Business shall be entitled to serve notice on the Client requiring the Client to collect the Materials. within 3 (three) months of the date of such notice failing which the Business shall be entitled to destroy or otherwise dispose of the Materials.

- 7.3 Notwithstanding the foregoing until such time as the Business shall be in receipt of cleared payment of all the Fee:

7.3.1 the property in the Materials shall vest in the Business.

7.3.2 the Business shall be entitled to retain possession of the Materials.

- 7.4 Notwithstanding any other provision contained within the Conditions the Client hereby acknowledges and agrees that all risk in the Materials when in transit or otherwise off the Business's premises shall vest in the Client.

- 7.5 The Business retains a general lien on any property of the Client in its possession for any unpaid balance the Client may owe to the Business and the Business shall be entitled to sell the same in the event that payment is not made in full within 28 days of notice given to the Client by the Business of its exercise of the lien. The proceeds of sale may be taken by the Business for reimbursement of the expense of exercise of the lien and the sale, and payment of the said balance, and the Business shall account to the Client for any surplus.

## **8 INDEMNITY**

The Client hereby covenants and undertakes to the Business that it shall indemnify the Business against any injury, loss, damage costs and/or expenses suffered by the Business arising from:

- 8.1 the Client's cancellation of the Booking including without limitation any reasonable costs or expenses incurred by the Business in connection with the Booking.

8.2 the Client's making, use or exploitation of the Recordings.

- 8.3 the Client's breach of any of the warranties, undertakings or agreements on its part to be observed or performed by the terms of this Agreement.

## **9 CONTENT OF RECORDING**

- 9.1 The Client warrants that nothing whatever shall be included in the Recording which constitutes a breach or infringement of any copyright or which shall be in any way illegal, scandalous, obscene or libellous and the Client will indemnify the Business against any liability in respect thereof and shall pay all costs and expenses which may be incurred by the Business in reference to any such claim. The indemnity shall extend to any amount paid on a lawyer's advice in respect of any such claim.

- 9.2 The Business shall not be required to reproduce any matter which in its opinion is or may be of an illegal, in breach of copyright, scandalous, obscene or libellous nature.

## **10 STUDIO BREAKDOWN WARRANTY**

In the event of Studio Breakdown the Business shall at its option either replace (as soon as can reasonably be arranged) the Studio facilities to which the Client was entitled by the terms hereof and which have been lost as a result of such Studio Breakdown or credit or refund to the Client the Booking Fee in respect of the Booking.

- 10.1 In the event of the Business cancelling a booking for reasons beyond its control, the Business and the Client will endeavour to re-schedule the booking within no more than two weeks, or at the convenience of the Client.

## **11 MASTER RECORDING AND POST PRODUCTION WORK WARRANTY**

- 11.1 The Client shall promptly notify the Business in writing of any defect in or loss of or damage to the Master Recording or the Post Production Work of which it is made aware whether as a result of any test carried out by the Client pursuant to clause 3 or otherwise.
- 11.2 The Business shall use its reasonable endeavours to correct any such defect and to effect replacement of such lost or damaged materials so notified to it or of which it is aware and which are attributable to faulty materials or workmanship or the negligence of the Business.
- 11.3 In the event that the Business is unable reasonably to effect such rectification or replacement its liability in respect of any Master Recording or Post Production Work shall be limited to repayment of the booking fee.

## **12 CLIENT'S RECORDINGS**

It is a condition of this Agreement that all Client's Recordings shall have been copied by the Client before delivery to the Business, and that the Business's liability for loss of or damage to a Client's Recording shall be limited to the value of the media on which it is recorded.

## **13 COMPANY'S OVERALL LIABILITY**

- 13.1 In the event that the Client shall actually suffer any loss or damage arising directly from the negligence or breach of contract or of statutory duty of the Business then other than in cases of death or personal injury the Business's liability therefore shall be limited in any event to repayment of the booking fee in respect of the aggregate of all instances of such negligence and/or breach arising out of the Business's performance of its obligations under this Agreement.
- 13.2 Notwithstanding any other provision contained within this Agreement the Business shall not be liable to the Client or the Client's Personnel for any:
- 13.2.1 indirect or consequential loss or damage
  - 13.2.2 economic loss including without limitation any loss of profits or goodwill or anticipated savings arising from any fault in the Studio or any act or omission of the Business its servants or agents in respect of this Agreement
- 13.3 The Business's liability under this Agreement shall be to the exclusion of all other liability to the Client whether contractual, tortious or otherwise. All other conditions, warranties, stipulations or other statements whatsoever concerning the Agreement, whether express or implied, by statute, at common law or otherwise howsoever, are hereby excluded.
- 13.4 The Client accepts as reasonable that the Business's total liability in respect of the Booking and/or the Post Production Work shall be as set out in this Agreement: in fixing those limits the Client and the Business have had regard to the price and nature of the Booking and the Post Production Work and the terms hereof, and the level of expenses expected to be incurred by the Client in respect thereof and the resources available to each party including insurance cover, to meet any liability.
- 13.5 WHERE THE BOOKING IS MADE BY A CONSUMER AS DEFINED IN THE SALE OF GOODS ACT 1979, THE SUPPLY OF GOODS AND SERVICES ACT 1982, THE SALE AND SUPPLY OF GOODS ACT 1994 OR THE FAIR TRADING ACT 1973 THE STATUTORY RIGHTS OF THE CLIENT ARE NOT AFFECTED BY THESE CONDITIONS.

## **14 FORCE MAJEURE**

Notwithstanding any other term of this Agreement the Business shall not be under any liability for any failure to perform any of its obligations under this Agreement due to Force Majeure. Following notification by the Business to the Client of such cause, the Business shall be allowed a reasonable extension of time for the performance of its obligations. For the purpose of this Condition, 'Force Majeure' means:

- Act of God, explosion, flood, tempest, fire or accident;
- war or threat of war, sabotage, insurrection, civil disturbance or requisition;
- acts, restrictions, regulations, bye-laws, prohibitions or measures of any kind on the part of any governmental, parliamentary or local authority;
- import or export regulations or embargoes;
- strikes, lock-outs or other industrial actions or trade disputes (whether involving employees of the Business or of a third party);
- difficulties in obtaining raw materials, labour, fuel, parts or machinery;
- power failure or breakdown in machinery.

## **PARTY TO PARTY CONFIDENTIALITY**

15. The Client hereby declares that he /she will refrain from either directly or indirectly offering work to or requesting the provision of services or products from Operators engaged in supplying engineering or production services to the Business, its subsidiaries or its other trading names or entities, for a period of no less than two years after the completion of the project agreed to herein. Such an act would result in no further contracted projects being offered by the Business to the Operator.
- The Business reserves the right to take action against both the Client and the Operator in respect of a breach of this condition.

However, the Business retains the right to waive this condition for specified projects providing agreement is issued in writing by the Proprietor.

## **MISCELLANEOUS**

- 16.1 The Client shall procure that neither the Client nor any of the Client's Personnel shall be held out as an agent of or pledge the credit of the Business.
- 16.2 This Agreement constitutes the entire agreement between the parties and neither party shall be bound by any other statement or representation made to the other.
- 16.3 No variation or amendment to this Agreement shall be effective unless made in writing and signed by the parties hereto
- 16.4 In the event that any part of this Agreement shall be held to be void, voidable or otherwise unenforceable by a court of competent jurisdiction then the balance thereof shall remain in full force and effect.
- 16.5 All notices required to be given hereunder shall be in writing and deemed properly served if delivered by hand or sent by fax (PROVIDED that proof of transmission can be produced) to the address or fax number respectively of the applicable party specified on the Booking Form on the date of delivery or transmission or if sent by recorded delivery post to such address within two (2) working days of posting.
- 16.6 This agreement shall be construed in accordance with the laws of England and Wales and subject to the exclusive jurisdiction of the English Courts