

# TESTVID STANDARD TERMS & CONDITIONS OF SALE

## 1. DEFINITIONS

In these Terms & Conditions the following words shall (unless the context requires otherwise) have the following meanings:-

- "Buyer" means any company, firm, organisation or individual from whom TestVid receives an Order which TestVid has accepted in Writing;
- "TestVid" means TestVid Ltd, a company incorporated in England & Wales under the UK Companies Acts (registration no. 06802885) and having its registered office at 4 Cheyne Road, Bristol BS9 2DH, UK;
- "Contract" means the contract (subject to and incorporating the Terms & Conditions) between TestVid and the Buyer in respect of the sale of the Goods, established by acceptance in Writing by TestVid of the Order;
- "Goods" means the products, video/audio content, software, materials, equipment, services or other to be supplied by TestVid under the terms of the Contract;
- "Order" means the order placed by the Buyer for the Goods;
- "Price" means the price payable by the Buyer in respect of the Goods;
- "Specification" means the technical description (if any) of the Goods contained or referred to in the Order;
- "Terms & Conditions" means these Terms & Conditions;
- "in Writing" means the manner/method of sending any formal communications between TestVid and the Buyer in accordance with Clause 18

## 2. GENERAL

TestVid shall accept orders for the supply of Goods subject to these Terms & Conditions. No variation of these Terms & Conditions shall be valid or binding unless specifically agreed to the contrary in Writing by TestVid. Acceptance of the Order from the Buyer is expressly limited to these terms. TestVid hereby objects to and rejects any additional or different terms proposed by Buyer, including those contained in Buyer's purchase order, unless TestVid expressly agrees to such terms in writing. In the event that a TestVid license agreement applies to the Goods supplied, the relevant license agreement is hereby incorporated as a term of the Contract.

## 3. PRICES

The Price is based on the cost of the Goods prevailing at the date the Order is accepted by TestVid and the Contract is established. Where TestVid's costs have increased outside of its control, TestVid reserves the right to adjust the Price by such an amount as may be necessary to cover any increase affecting TestVid, after the date of the Contract (such causes of Price increase shall include but shall not be limited to any direct or indirect increase in any foreign exchange rates relating to the Goods or in the cost of transport or such other costs as may be incurred by TestVid in complying with obligations imposed by law.). TestVid shall give the Buyer 5 working days prior notice in Writing of any such increase, which increased price shall apply in addition to or in lieu of (as the case may be) the Price and shall be deemed to have been accepted unless the Buyer notifies TestVid to the contrary within 5 working days.

Unless otherwise stated all prices quoted exclude delivery & packaging charges, insurance charges, VAT or other sales taxes, customs clearance charges, import duties/taxes or the like and any other tax, which will be payable by the Buyer. For all Orders for delivery outside of the EU all sales taxes, customs clearance charges, import duties/taxes or the like are to be paid by the Buyer to the relevant authorities. For Orders within the EU but outside of the UK, standard UK VAT will be charged and payable by the Buyer unless (a) the Buyer is registered for VAT in the delivery country (i.e. the shipping address given on the Order) and (b) the Buyer provides the VAT registration number with the Order including two-letter country code, together with appropriate certification if required. All UK Orders will be subject to VAT at the standard rate.

In the event that the Buyer is required to deduct a withholding tax or similar the Buyer must notify TestVid at the time of Order, and the Price will be appropriately increased so that the amount to be received by TestVid from the Buyer will be as if no withholding tax were due. In the event that the Buyer does not notify the requirement to deduct withholding tax at the time of Order then full payment is deemed not to have been made by the Buyer until the amount received by TestVid is as if no withholding tax were deducted.

Any clerical or arithmetic errors are subject to correction by TestVid.

## 4. TERMS OF PAYMENT

Unless a credit account has been agreed in Writing, prepayment is required on all Orders prior to shipping. A quotation and/or pro-forma invoice will be issued for prepayment, which must be paid in full prior to shipping.

If a credit account is granted to the Buyer, all invoices shall be payable within 30 days of the invoice date, failing which, interest shall accrue (on a daily basis) on the full amount due at the annual rate of 4% above the National Westminster Bank base rate until payment is made in full (including of accrued interest). If TestVid delivers the Goods in instalments the invoice for each instalment is subject to payment in accordance these terms. Any legal expenses incurred in the collection of any outstanding amount will also be charged to and payable by the Buyer. TestVid reserves the right to remove credit facilities at any time at TestVid's sole discretion.

## 5. DELIVERY TERMS

All times given for delivery are estimates only and are not conditions of sale unless otherwise expressly agreed in terms of the specific Contract. Should the Buyer not receive the Goods within 7 working days of receipt of TestVid's invoice it is the responsibility of the Buyer to notify TestVid. Delivery shall be deemed to be effective at the time when the Goods are unloaded at the delivery address nominated by the Buyer, save where the Buyer or his agent collects the Goods from TestVid's office, delivery being at the time of collection. TestVid reserves the right to deliver the Goods by instalments and where payment of the Price or any part thereof is not made on the due date then TestVid, at its sole discretion and without prejudice to any other rights or remedies available to it, shall be entitled to withhold deliveries of further instalments until the Goods delivered in earlier instalments have been paid for in full.

## 6. TRANSFER OF TITLE

Notwithstanding delivery and passing of risk, the absolute and legal beneficial ownership in all Goods shall remain vested in TestVid and shall not pass to the Buyer until the Price is paid in full. In the event that the Buyer breaches any of its obligations under these Terms & Conditions, or under any other agreement between the parties, TestVid reserves the right to immediately repossess all or any of the Goods to which title remains with TestVid and has not passed to the Buyer Without prejudice to the other legal remedies available to TestVid, TestVid shall be entitled to seek an interdict or equivalent judicial order to prevent the Buyer from selling, transferring or otherwise disposing of the Goods.

## 7. PASSING OF RISK

7.1 If the Buyer is arranging collection/delivery of the Goods, the risk in the Goods shall pass to the Buyer upon collection by the Buyer's carrier or agent and it is the responsibility of the Buyer to insure the Goods;

7.2 If TestVid is arranging delivery, the risk in the Goods will pass upon delivery of the Goods by TestVid or TestVid's carrier to the delivery address given on the Order and TestVid shall not be liable for any loss or damage to the Goods from the time that the Goods are so delivered. The Buyer shall insure the Goods from the date of delivery and if the same are lost or destroyed then such insurance monies as are payable shall be immediately paid by the Buyer to TestVid to the extent of the indebtedness of the Buyer to TestVid, and that without prejudice to TestVid's right to recover from the Buyer any balance of the Price remaining due under the Contract.

## 8. TERMINATION

8.1 TestVid may in Writing terminate the Contract without any liability if:

- 8.1.1 the Buyer fails to pay any sum due under this or any other Contract between the Buyer and TestVid within thirty (30) days of any due date;
- 8.1.2 the Buyer breaches any terms of these Terms & Conditions and fails to cure such breach within fourteen (14) days of written notice from TestVid requiring that such breach be remedied;
- 8.1.3 the Buyer suspends or threatens to suspend payment of its debts or becomes unable to pay its debts as they fall due (as defined in section 123 of the UK Insolvency Act 1986) or similar legislation applicable in the jurisdiction of the Buyer; the Buyer ceases or threatens to cease to carry on its business or a significant part of it; or the Buyer makes a proposal for a compromise in satisfaction of its debts or for a scheme of arrangement of its affairs or other arrangements or any proceedings for the benefit of creditors are commenced under any laws, regulations or procedures relating to the reconstruction or readjustment of debt; or a petition is made for an administration order under the UK Insolvency Act 1986 or Chapter 11 protection in the US or similar legislation in the Buyer's country or the Buyer or any other person takes any steps to wind up or dissolve the Buyer or to appoint a liquidator, trustee, receiver, administrative receiver or similar officer to the Buyer or any part of its undertaking or assets.

8.2 Termination, howsoever or whenever occasioned shall not:-

- 8.2.1 prejudice any rights and remedies TestVid may have under these Terms & Conditions under the applicable law in respect of any breach of these Terms & Conditions to the extent such rights or remedies have accrued or become available prior to such termination; or
- 8.2.2 relieve the Buyer of any payment obligation that arose prior to termination.

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### 9. LIMITATION OF LIABILITY

IN NO EVENT SHALL TESTVID BE LIABLE FOR ANY SPECIAL, COLLATERAL, INDIRECT, PUNITIVE, INCIDENTAL, CONSEQUENTIAL, OR EXEMPLARY DAMAGES IN CONNECTION WITH OR ARISING OUT OF THIS CONTRACT OR THE USE OF THE GOODS PROVIDED HEREUNDER, REGARDLESS OF WHETHER TESTVID HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. Excluded damages include, but are not limited to, cost of removal or reinstallation, the costs of procurement of substitute goods or services, retesting, outside computer time, labour costs, loss of goodwill, loss of profits, loss of savings, loss of use, loss of data, or business interruption. No claim, suit or action shall be brought against TestVid more than one year after the related cause of action has occurred.

IN NO EVENT SHALL TESTVID'S AGGREGATE LIABILITY FROM ANY WARRANTY, INDEMNITY, OR OTHER OBLIGATION ARISING OUT OF OR IN CONNECTION WITH THIS CONTRACT, OR ANY USE OF ANY TESTVID GOODS PROVIDED HEREUNDER, EXCEED THE TOTAL AMOUNT PAID TO TESTVID FOR THE PARTICULAR GOODS SOLD UNDER THIS CONTRACT WITH RESPECT TO WHICH LOSSES OR DAMAGES ARE CLAIMED. The existence of more than one claim against the particular goods sold to buyer under this contract shall not enlarge or extend this limit.

THE BUYER UNDERSTANDS AND AGREES THAT THE FOREGOING LIABILITY LIMITATIONS ARE ESSENTIAL ELEMENTS OF THIS CONTRACT AND THAT IN THE ABSENCE OF SUCH LIMITATIONS THE MATERIAL AND ECONOMIC TERMS OF THIS CONTRACT WOULD BE SUBSTANTIALLY DIFFERENT.

### 10. FORCE MAJEURE

TestVid shall be under no liability to the Buyer in respect of anything which, apart from this provision, may constitute breach of these Terms & Conditions arising by reason of force majeure, namely circumstances beyond the reasonable control of TestVid, which shall include (but shall not be limited to) acts of God, perils of the sea or air, fire, flood, drought, explosion, storm, sabotage, accident, terrorism, embargo, riot, civil commotion, including acts of local government and parliamentary authority, shortage of supplies, equipment, materials, breakdown or shortage of equipment, statute, outbreak of hostilities and labour disputes of whatever nature and for whatever cause arising, including but without prejudice to the generality of the foregoing, work to rule, overtime bans, strikes and lockouts.

### 11. WARRANTY

Notwithstanding anything to the contrary, all SOFTWARE PRODUCTS, VIDEO & AUDIO CONTENT AND ANY OTHER PRODUCTS SO DESIGNATED ARE PROVIDED "AS IS" AND "WITH ALL FAULTS". TESTVID DISCLAIMS ALL WARRANTIES, EXPRESS OR IMPLIED, REGARDING SUCH SOFTWARE PRODUCTS, VIDEO & AUDIO CONTENT AND ANY OTHER PRODUCTS SO DESIGNATED, INCLUDING BUT NOT LIMITED TO, ANY IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE OR SUITABILITY FOR THE BUYER'S INTENDED USE.

Where hardware equipment and/or media is provided TestVid guarantees these free from defects for a period of 180 days from the date of delivery of the Goods to the Buyer ("the Warranty Period"), and in the event of a defect being reported to TestVid in Writing within this period, TestVid will repair or replace the defective item within 30 days of receipt. This Warranty shall only apply to Goods which have been fully paid for, provided defects have been reported in writing to TestVid during the Warranty Period, resulting in a RA (Return Authorisation) number being issued to the Buyer by TestVid, and that the Goods have been returned to TestVid at the Buyer's expense (freight, effective packaging and transit insurance). The warranty shall cover the cost of labour and materials to repair/replace the Goods and the return costs incurred by the Buyer. The Buyer is responsible for paying for/recovering all duties due for shipment to/from TestVid.

The Buyer shall undertake to carefully examine and list all parts of the Goods supplied by TestVid and notify TestVid in Writing of any shortage, defect or failure to comply with the Contract which is or ought to be apparent upon such examination and to test the Goods within 5 working days of the Goods being delivered.

The Buyer shall undertake to only operate the Goods in strict accordance with the instructions and advice detailed in the appropriate operating instructions manual, and to install and operate the Goods within the relevant safety requirements that are applicable to the Goods. TestVid shall not be liable at any time for any defect arising from improper use, abuse, mismanagement or the Buyer's failure to comply with such instructions/requirements or from damage arising from negligence or exposure to adverse environmental conditions.

Except as otherwise provided in this clause 11, TestVid makes no other representations or warranties and expressly to the fullest extent permitted by law hereby excludes the same whether implied, statutory or otherwise especially as to the quality or fitness of the Goods for any particular purpose.

### 12. CONFIDENTIALITY

The Buyer may publicise TestVid's name as a supplier to the Buyer and TestVid may publicise the Buyer's name as a customer of TestVid, in neither case stating or implying any form of endorsement. In no circumstances may details of the Contract in particular the Price be made public or divulged to third parties.

### 13. LIMITATIONS ON USE

The Goods are not warranted and are not suitable for use in military, medical, aviation or any other safety critical applications. Such use by the Buyer is at Buyer's sole risk and TestVid accepts no liability of any sort for such use.

### 14. EXPORT CONTROLS

In the event that the Goods are subject to US or European export controls with respect to a particular country, it is the sole responsibility, sole liability and at the sole risk of the Buyer to obtain appropriate licenses, certification and permissions. In the event that such licenses, certification or permissions are not obtained the Buyer is nevertheless obligated to make payment(s) to TestVid as per the Contract.

### 15. INTELLECTUAL PROPERTY

15.1 Subject to clauses 9, 15.2, and 15.3, TestVid will pay any damages, liabilities or costs (excluding consequential and exemplary damages) finally awarded against the Buyer, or agreed to by TestVid as settlement or compromise, and will defend Buyer against any claim, suit or proceeding brought against Buyer, insofar as such claim, suit or proceeding is based on an allegation that the Goods directly infringe any United States, Canadian, Japanese or European Union member country patent, copyright, or trade secret; provided TestVid is (i) promptly informed and furnished a copy of such claim, suit, or proceeding, (ii) given all evidence in Buyer's possession, custody or control, (iii) given reasonable assistance in and sole control of the defence thereof and all negotiations for its settlement or compromise. Buyer hereby agrees to make available to TestVid the benefit of any defence available to Buyer to any infringement allegation hereunder, including, but not limited to, any license or option to license or sub-license any intellectual property right that is the subject of such infringement allegation.

15.2 In the event of an allegation for which TestVid is obligated to defend Buyer pursuant to clause 15.1, TestVid may, but shall not be obligated to: (i) obtain a license that allows Buyer to continue the use of the Goods, (ii) replace or modify the Goods so as to be non-infringing, but in a manner that does not materially affect the functionality of the Goods, or (iii) if neither (i) nor (ii) is available to TestVid at a commercially reasonable expense, then TestVid may refund to Buyer the Price and the transportation costs of the Goods and prospectively cease to indemnify Buyer with regard to the Goods without being in breach of this contract. If TestVid elects to provide either of the options set forth in clauses (i) and (ii) above, TestVid's indemnity obligation pursuant to clause 15.1 shall be entirely fulfilled as to that individual claim, except for any damages, liabilities, or costs (excluding consequential and exemplary damages) incurred by Buyer prior to TestVid taking such action. If TestVid elects the option set forth in clause (iii) above, TestVid's indemnity obligation under this contract shall be entirely fulfilled, regardless of any additional claims. Also, if TestVid elects the option set forth in clause (iii) above, Buyer shall return to TestVid any and all of the Goods remaining in Buyer's possession, custody or control (and confirm deletion of copies of software and video/audio content, if applicable).

15.3 TestVid shall have no liability for any costs, losses or damages resulting from Buyer's wilful acts, or any settlement or compromise incurred or made by Buyer without TestVid's prior consent in Writing. TestVid shall have no obligation to defend and no liability for any costs, losses or damages, to the extent that an infringement allegation is based upon: (i) Buyer's use of the products in combination with any other product, software or equipment; (ii) Buyer's use of the products in a manner or for an application other than for which they were designed or intended, regardless of whether TestVid was aware of or had been notified of such use; (iii) Buyer's use of the products in a manufacturing or other process; (iv) Buyer's modifications to the products; (v) TestVid's compliance with Buyer's particular design, instructions or specifications; or (vi) TestVid's compliance with any industry or proprietary standard or Buyer's use of the products to enable implementation of any industry or proprietary standard (such claims - i.e. those set forth in (i) through (vi) above - are individually and collectively referred to herein as "Other Claims"). Buyer shall indemnify and hold TestVid harmless against any damages, liabilities or costs finally awarded against TestVid or agreed to by Buyer as settlement or compromise, and will defend any claim, suit or proceeding brought against TestVid insofar as such claim, suit or proceeding is based on an allegation arising from Other Claims.

15.4 THE FOREGOING STATES THE SOLE LIABILITY OF THE PARTIES FOR INTELLECTUAL PROPERTY RIGHTS INFRINGEMENT and is in lieu of all warranties, express, implied or statutory, in regard thereto. BUYER UNDERSTANDS AND AGREES THAT THE FOREGOING INTELLECTUAL PROPERTY INDEMNIFICATION TERMS ARE ESSENTIAL ELEMENTS OF THIS CONTRACT, AND THAT IN THE ABSENCE OF SUCH TERMS, THE MATERIAL AND ECONOMIC TERMS OF THIS CONTRACT WOULD BE SUBSTANTIALLY DIFFERENT.

### 16. ASSIGNMENT

The Buyer shall not assign or otherwise transfer all or any part of its rights or obligations under the Contract without the prior written consent of TestVid.

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### 17. WAIVER

Failure or neglect by either party to enforce at any time any of the provisions hereof shall not be construed nor shall be deemed to be a waiver of that party's rights hereunder nor in any way affect the validity of the whole or any part of the Contract nor prejudice that party's right to take subsequent action.

### 18. NOTICES

Any formal communications between TestVid and the Buyer shall be sent in Writing, and signed by a director or other officer or authorised signatory on behalf of TestVid or personally or by a director or other officer or authorised signatory on behalf of the Buyer, or by electronic communication (as defined in [UK] The Companies Act 1985 (Electronic Communications Order 2000 (S.I.2000/3373)) and shall either be delivered personally or sent by first class post or facsimile transmission or electronic communication to their respective addresses. Communications delivered by hand, will be taken as being received immediately upon delivery, communications by post will be deemed to have been received on the second business day after posting (or in the case of international post on the seventh business day after posting) and communications by telefax or electronic communication three business hours after transmission (if sent before 2.00pm on a business day) or 10am on the following business day in any other case.

### 19. SEVERABILITY

In the event that any part of these Terms & Conditions shall be determined by any competent authority to be invalid, unlawful or unenforceable to any extent, such part shall to that extent be severed from the remaining Terms & Conditions which shall continue to have full force and effect.

### 20. LEGAL JURISDICTION

These Terms & Conditions shall be governed by and construed in accordance with the laws of England & Wales and the parties hereby submit to the non-exclusive jurisdiction of the English Courts.