

# Standard Terms and Conditions Soundtaxi – Status 2nd July, 2008

## § 1 General, Contracting Parties

- 1.1. The Soundtaxi Tim Rheinwald and Heiko Willy GbR (hereafter “Soundtaxi”) offers, within the framework of their online shop on the internet sites [www.soundtaxi.de](http://www.soundtaxi.de) or [www.soundtaxi.net](http://www.soundtaxi.net) (hereafter “Soundtaxi Internet Sites”) musical recordings in the form of music downloads and audio CDs, which the user can use within the framework of the respective agreed copyright licence. All musical works offered by SOUND TAXI are free of claims or rights of local or international collecting societies.
- 1.2. The customer acquires a licence for the use of the musical recording in accordance with the following licence stipulations described in Clause 10. Furthermore, the Standard Terms and Conditions listed below, in its valid version at the time of concluding the contract, apply to all deliveries/supplies and services rendered to customers by Soundtaxi.
- 1.3. The customer acknowledges the validity of these Terms and Conditions with the confirmation of his registration on one of the Soundtaxi Internet Sites. Any possible conflicting or different terms and conditions of the customer are excluded. Any contradictory arrangement is only valid if it has been agreed upon between Soundtaxi and the customer in writing.
- 1.4. Soundtaxi reserves the right to alter these Terms and Conditions at any time and without mentioning of reasons. The customer will be notified of the modification proposal in writing or per e-mail. The changes are accepted as approved if the customer does not lodge a written objection. Soundtaxi has to point this condition out specifically in the written notification.

The customer's objection must be lodged within 6 weeks after receipt of the notification. If the customer exercises his right to object, then the intent of Soundtaxi to make the change has been rejected. The contract then continues without the proposed changes to the standard Terms and Conditions. The right of Soundtaxi to cancel the contract is not affected hereby.

## § 2 Usage Preconditions

- 2.1. The customer needs the applicable online technology and access to the internet to make use of Soundtaxi's offer. For the playback and copying of musical recordings downloaded from Soundtaxi, the customer in addition needs a program to open the (compressed) ZIP-files, for instance Win-Zip and an applicable sound program (for instance Windows Media Player, Winamp Player or Real Player). Audio CDs can be played on the customer's computer or other suitable medium.
- 2.2. Furthermore, the customer must register on one of the Soundtaxi Internet Sites beforehand. Soundtaxi reserves the right to reject the registration of individual persons without mentioning reasons.
- 2.3. Customer registration is free of charge. At registration the customer has to supply his address details (surname, name, address, e-mail address and password). The customer agrees to supply his true and full personal details.

If these details should change, the customer must correct his customer profile without delay on one of the Soundtaxi Internet Sites. Should this not be possible, the customer must notify Soundtaxi in writing or per e-mail to one of the addresses provided on one of the Soundtaxi Internet Sites.

- 2.4. The purpose of the password is for the digital identification of the customer and may not be made available to third persons. The customer is liable for all actions taken in connection with the password. Soundtaxi is not

liable for abuse of passwords and the resulting consequences and damages. Insofar as reason exists to believe that unauthorized persons have acquired knowledge of the customer's password, the customer must change his password immediately.

- 2.5. Only persons of full age can become customers of Soundtaxi. The customer has to make sure that minors make use of the Soundtaxi service only with his explicit permission.
- 2.6. After sending the registration form, the customer receives an e-mail from Soundtaxi which confirms his registration.
- 2.7. With the confirmation of his registration the customer receives a time-unlimited account with Soundtaxi. After this the customer is entitled to make use of the services of Soundtaxi within the framework of the valid licence stipulations in accordance with Clause 10. The customer can cancel his Soundtaxi account at any time with effect in the future, by deleting his account. In case of an account cancellation, the licence provisions of the conditions agreed upon with Soundtaxi in the past continue to apply.

### **§ 3 Offer and Conclusion of Contract, Delivery/Supply**

- 3.1. Soundtaxi makes it possible for the customer to listen to a sample of the musical recording before ordering it. The customer then selects a music title and a copyright licence from the selection and puts it in his shopping basket. Via the "Checkout" button the customer is taken to the data entry template. After entry of the applicable customer details and selection of a preferred payment method, the customer is taken to the order overview, with the possibility to correct his details once more. By clicking on the "Confirm Order" button the ordering process is concluded from the customer's side.
- 3.2. The ordering of music titles by the customer constitutes an offer to Soundtaxi. Soundtaxi accepts this via its confirmation per e-mail. With the confirmation by Soundtaxi a contract about the use of the particular music title comes into effect.
- 3.3. Musical recordings for downloading in digital form are only offered for download purposes. A right to delivery/supply of the download title in another format (e.g. CD-ROM) does not exist. With the download titles the customer is provided with a link, which can start the download by clicking on it. The download title is provided in a compressed format (ZIP-format) and is saved on the customer's computer in the course of the download.
- 3.4. At the ordering of a download the relevant download title is made available to the customer in his customer account on the Soundtaxi Internet Sites for a period of one year from the date of purchase. If the customer deletes his account or it is closed due to cancellation, then the customer cannot download it again. Therefore Soundtaxi recommends that customers make copies of the copyright licences belonging to the respective musical recordings.
- 3.5. If it is impossible for a customer to download the selected musical recordings due to technical reasons, then Soundtaxi should be notified immediately per e-mail. Soundtaxi will then attempt to make the musical recording available to the customers in another manner within a reasonable timeframe.

### **§ 4 Breach/Infringement of Customer Responsibilities and the Rights of Third Persons by the Customer**

- 4.1. In case of gross infringements of the responsibilities incumbent on the customer or of the licence stipulations in accordance with Clause 10, Soundtaxi is entitled to block the customer's account. Soundtaxi notifies the customer of the reason for the blocking. If justified suspicion of a gross infringement of responsibilities exists, then Soundtaxi is entitled to block the customer's account or individual services until the suspicion has been cleared.

- 4.2. Soundtaxi is not liable for damages resulting from the infringement of responsibilities caused by the customer, which could have been prevented if the customer responsibilities have been adhered to. The customer is liable for an infringement of the rights of a third party caused by him against these himself and directly.

#### **§ 5 Guarantee, Liability**

- 5.1. Soundtaxi does not guarantee the usability of the musical recordings on offer for the specific intended use by the customer.
- 5.2. The customer has to inspect the downloaded music files as well as the CD-ROM that he received immediately after receipt, insofar as this is feasible in terms of the proper course of business, and when he discovers a fault to notify Soundtaxi without delay.
- 5.3. The warranty claims of the customer are limited to rectification or replacement by Soundtaxi. If the rectification or replacement is unsuccessful, then the customer has the right to choose between a reduction of the payment or cancellation of the contract.
- 5.4. Insofar as nothing else transpires hereafter, further claims by the customer are – regardless of the legal grounds – excluded. In particular, Soundtaxi is not liable for the loss of income or other financial loss of the customer. Insofar as the contractual liability of Soundtaxi is excluded or limited, this also applies to the personal liability of employees, representatives and assistants.

The preceding limitation of liability does not apply insofar as the damages are the result of premeditation or gross negligence or of breach of fundamental contractual responsibilities, or if there is evidence of personal injury. Furthermore, it does not apply if the customer lodge claims in terms of the law on product liability.

Insofar as Soundtaxi has contravened a responsibility fundamental to the contract, the liability to pay damages for damage to property is limited to the typical damages that might occur.

#### **§ 6 Set-off and Retention/Withholding**

The customer is only entitled to a right of set-off if his counterclaims have been legally established or if they are indisputable. The customer is only entitled to exercise his withholding rights if his counterclaim rests on the same contractual relationship.

#### **§ 7 Duration of Contract, Right of Cancellation/Recall**

- 7.1. Insofar as nothing else has been agreed upon, the customer receives a licence unlimited in time in accordance with the following stipulation listed in Clause 10.
- 7.2. Private customers have the right of cancellation/recall of their declaration of intent directed at the download of a music title, or of return of an acquired CD without giving reasons.
- 7.3. The cancellation/recall period lasts for two weeks. It begins at the earliest with the receipt of the CDs, or with the transfer of the downloads from Soundtaxi, but not before receiving the instruction for the right of cancellation/recall in written form. The cancellation/recall has to take place with the provision of the customer's name, address and, if possible, the supplied e-mail address.
- 7.4. For compliance with the deadline the timely sending of the recall declaration, or the return of the CD, suffices. No reason is needed and Soundtaxi has to be notified in writing. The recall can be done by e-mail to

[info@soundtaxi.de](mailto:info@soundtaxi.de) or in writing to Soundtaxi Tim Rheinwald & Heiko Willy GbR, Nikolausstraße 6 a, D-70190 Stuttgart.

- 7.5. The right of cancellation/recall expires if the customer has already downloaded the music or if the download has already been initiated, because a music download, due to its nature, cannot be returned. Incidentally, the right of cancellation/recall is excluded in the case of CDs custom-made for the customer and in the case of single-title CDs.
- 7.6. In case of a valid recall, services received by both sides have to be refunded and, if necessary, restitution has to be made for capitalized use (e.g. interest). If this is no longer possible fully or partially, then compensation to the appropriate value is to be made. In case of a valid exercising of the right of cancellation/recall, the customer is obliged to return the CDs if the goods can be sent by parcel post. Goods that cannot be sent by parcel post will be collected by Soundtaxi. The return takes place at the risk of Soundtaxi. We stand in for the cost insofar as the order is in excess of 40,- (forty) Euro. Otherwise the customer has to carry the cost of the return.
- 7.7. If the customer cannot guarantee the return of the CD, or only in a deteriorated condition, he has to make restitution of capitalized use. This does not apply if the deterioration can exclusively be proven as in a retail outlet or by the putting into use according to instructions without further use of the goods.
- 7.8. If the goods delivered are faulty or if it does not reflect the ordered goods, then the warranty rights are not prejudiced by the right of cancellation/recall.
- 7.9. Soundtaxi instructs the customer comprehensively about his right of cancellation/recall or return and about the consequences of the cancellation/recall together with the acceptance of the offer of the customer per e-mail.

## **§ 8 Protection of Privacy**

Soundtaxi treats all details collected from the customer with strict confidentiality and only within the framework of valid data protection stipulations. Personal details are only collected, stored and processed for the purpose of the implementation and processing of the contract. For uses over and above a separate agreement will be entered into.

## **§ 9 Payment Conditions and Arrears**

- 9.1. The prices quoted on the Soundtaxi Internet Sites at the time of the order are decisive.
- 9.2. The quoted prices include statutory value-added tax. The value-added tax falls away for customers outside the European union and for customers from EU member states (except Germany) with a valid value-added tax identification number. For these customers the prices are shown without value-added tax after their registration on one of the Soundtaxi Internet Sites.
- 9.3. The customer is obligated to also pay the fees, which are incurred by co-users of the account. This also applies in the case of abuse, insofar as the customer does not prove that he cannot be accused of any infringement of responsibilities.
- 9.4. The invoiced amounts are to be paid within 10 days after receipt of the invoice from Soundtaxi. If the customer is in arrears, Soundtaxi is entitled to levy interest on arrears at the legally permissible level. The right to the claiming of delayed damage in addition is reserved.

## § 10 Copyright Licences

### 10.1. Rights

- 10.1.1. The copyright of all musical recordings (hereafter “musical works”) offered by SOUND TAXI are protected by the copyright law of the Federal Republic of Germany, international agreements as well as other applicable local and international legislation. The customers of SOUND TAXI do not become the owner of the musical works, but obtain a licence for the use of the musical works in accordance with the following licence stipulations.
- 10.1.2. All musical works offered by SOUND TAXI are free of claims or rights of local or international collecting societies. Furthermore, SOUND TAXI declares that no rights of third persons are in contradiction of the exploitation of the musical works within the framework of these license provisions. This concerns in particular but not conclusively the copyright and ancillary copyright (performance rights) of the creator or artist involved in the production and/or adaptation of the musical works.

### 10.2. Acquisition and Scope of Rights of Usage

- 10.2.1. By paying the full licence fees, the SOUND TAXI customer acquires a non-exclusive and non-transferable right of usage for the private or commercial use of a musical work within the framework of a “project”, to be more closely specified by the customer. Insofar as no other agreements are concluded, the customer is granted the unlimited right of usage in terms of time and locality within the framework of the specified project. SOUND TAXI customers are not entitled to grant a sub-licence to a third party for the use of the musical works. Furthermore, it is prohibited to transfer the rights of usage acquired in terms of these licence stipulations to a third party.
- 10.2.2. The musical works may only be used by the customer for a project within the framework of one of the following listed “licence groups”, which the customer selects with the order.

SOUND TAXI offers rights of usage within the framework of the following licence groups:

- a) Licence Group 1
- **Internet Site** (a specific internet site, the licence is not transferable to other internet sites and/or banner ads for the particular internet site) *or*
  - **Private Podcast** (Podcast announcement of a private person) *or*
  - **Music On Hold** (used for a telephone holding loop, telephone advertising, etc. for a household or a business. Branch offices need additional licences) *or*
  - **School/Study Project** (commercial school performances, events, etc. which is not limited to specific target group) *or*
  - **Acoustic Irradiation of an Exhibition Stand or of an Event** *or*
  - **Multimedia Presentation** (used for one presentation. For new presentations additional licences are needed) *or*
  - **Second Life** (acoustic irradiation of a house or a business at Second Life) *or*
  - **YouTube/video sites** (used for (only) one video posted on the internet).
- b) Licence Group 2
- **Exhibition or Image Film** *or*
  - **Commercial Podcast** (Podcast announcement of a business and/or in connection with business traffic) *or*
  - **Online Advertising** (use within the framework of banner ads, etc.) *or*

- **Mechanical or Virtual Reproductions with a circulation/edition up to 1 000 each.**
- c) Licence Group 3
- **Radio/Film Broadcast National** (Radio spot or film in a specific country, excluding TV, cinema or film advertising spots and/or advertising on DVD/Video) *or*
  - **Mechanical or Virtual Reproductions with a circulation/edition up to 10 000 each.**
- d) Licence Group 4
- **Radio/Film Broadcast Worldwide** (Radio spot or film worldwide, excluding TV, cinema or film advertising spots and/or advertising on DVD/Video) *or*
  - **Mechanical or Virtual Reproductions with a circulation/edition up to 50 000 each.**
- e) Licence Group 5
- **Advertising Spot** (Broadcast on TV, in cinema and on DVD/Video worldwide).
- f) Licence Group 6
- **Acoustic Irradiation Licence** (audio CD with several musical works for acoustic irradiation of commercial or public spaces, e.g. business premises, exhibitions, events)

10.2.3. Forms of usage over an above Section 3 – regardless of what nature – need the prior permission of SOUND TAXI in writing.

10.2.4. Incidentally, the concession of rights of usage also comprises the right to convert the musical works technically into the required format according to the particular technical requirement of a project, to store and to compress it, an/or to unpack it. Furthermore, it is allowed – taking into account the personal rights of the artist and creator – to shorten the musical works.

Excluded are remixes, samples, cover versions as well as revised versions as regards contents, modifications and adaptations of the musical works. Incidentally, the copyright and ancillary copyright (performance rights) to the musical works also with permitted adaptations and modifications remain with the relevant copyright holder. Therefore, modified musical works may not be distributed or sold by the customer under his own name.

10.2.5. In addition, the musical works may not be used, circulated or made available within the framework of music archives or music data banks. The use of the musical works for website templates is also prohibited.

The musical works may not be sold as a standalone product or distributed under any other name. A reproduction of musical works or parts thereof for the purpose of stand-alone onward forwarding or of newly licensing it, both in existing and in adapted form (processing, arrangement, cover version, etc.), is prohibited.

In addition, it is also prohibited to offer the musical works to third persons within the framework of exchange markets or electronic peer-to-peer file sharing networks as downloads or to make it available in any other form.

Furthermore, usage that contravenes the laws of the Federal republic of Germany, the European Union, or is harmful to the public order or to public morality is not allowed. This applies especially for uses which are racist, which glamorizes violence or which is in violation of the constitution.

10.2.6. In case of infringements of the above-mentioned licence stipulations SOUND TAXI reserves the right to initiate civil and penal proceedings.

#### **§ 11 Other Stipulations**

11.1. The laws of the Federal Republic of Germany applies, with the exclusion of UN sales law as well as of the conflict of laws standards of international private law.

11.2. The locus executandi is – as far as acceptable – Stuttgart.

11.3. The jurisdiction for all disputes on the grounds of or in connection with these standard Terms and Conditions or of the subsequent licence stipulations of Soundtaxi is – as far as acceptable – Stuttgart. The same applies if the customer has no general jurisdiction locally or, after conclusion of the contract, moves his place of residence or his usual address abroad or if his place of residence or his usual address is unknown at the time of lodging the complaint.

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