

Online Terms of Sale

1. WHERE TO FIND INFORMATION ABOUT US AND OUR PRODUCTS

- 1.1 You can find everything you need to know about us, TOTIM and our products on our website before you order. We also confirm the key information to you in writing before you order.

2. WHAT YOU ARE BUYING

- 2.1 Whether you purchase an individual file for download or a subscription to enable you to download multiple files you are not purchasing any file downloaded but a licence to use that file subject to certain conditions set out in section 3 below.
- 2.2 Once you've paid for and downloaded your content, you'll receive all the available edits of it in MP3 format – along with a Cue Sheet (in Word format) containing the details of the music you've bought for any platforms you use.

3. LICENCE

- 3.1 When you purchase a product from us, we grant you a perpetual, non-transferable, non-exclusive licence to use the content of the files you download for the purposes set out in this section.
- 3.2 We expressly reserve all rights in, or in relation to, the downloaded materials and any derivative works we may create that are not expressly granted to you under these terms.
- 3.3 You may use the downloaded materials that you have purchased for any purpose other than:
- (a) Paid for advertising or production - a production that conveys an openly sponsored, non-personal message to promote or sell a product and/or service.
 - (b) Sponsored Events and Rallies – any outdoor public event, sporting event, festival, or rally that has been arranged or sponsored by a brand or company, in order to promote or sell a product.
 - (c) Sponsored content - on any content sharing platform including but not limited to YouTube and Tik Tok.

- (d) Idents – in any film, television show (broadcast or VOD), radio show or video game.
 - (e) Film, TV, Radio and Game trailers – a production that openly promotes the release or sale of a film, television show (broadcast or VOD), radio show or video game.
 - (f) As a backing track for vocals or any re-arrangement.
- 3.4 If you want to use our music for any projects outside those specified in this licence, you must get in touch with us for a price to make that possible.
- 3.5 When you download a watermarked version of digital content made available to you without charge, you may use it only to help you assess whether you wish to purchase it and it must not be used for any other purpose.
- 3.6 If you make the digital content available electronically to any other person for any reason, or allow it to be accessed by any other person whether with or without your permission, you remain responsible for all acts and omissions of such other persons as if they were your own and you will be responsible for any charges made by the Performance Rights Society (PRS) in respect of such availability or access.

4. OUR AGREEMENT

- 4.1 **Cue Sheets.** You will receive a Cue Sheet for each track you purchase. We strongly advise that you complete and return each Cue Sheet. If you do not complete a Cue Sheet when we ask you to do so:
- (a) you will be responsible for accounting to the Performance Rights Society (PRS) for any charges they may wish to make and for reimbursing to us any such charges that we pay; and
 - (b) we may terminate your subscription or seek compensation for your breach of our terms. See clause 8 below.
- 4.2 **We don't give business customers all the same rights as consumers.** For example, business customers can't cancel their orders, they have different rights where there is a problem with a product and we don't compensate them in the same way for losses caused by us or our products. Where a term applies just to businesses or just to consumers, this is clearly stated. You are a **business customer** if you are buying products wholly or mainly for use in connection with your trade, business, craft or profession, even if you are an individual.

4.3 **If you are a business customer this is our entire agreement with you.** If you are a business customer these terms constitute the entire agreement between us in relation to your purchase. You acknowledge that you have not relied on any statement, promise, representation, assurance or warranty made or given by us or on our behalf which is not set out in these terms and that you have no claim for innocent or negligent misrepresentation or negligent misstatement based on any on our website or in these terms.

4.4 **We only accept orders when we've checked them.** We contact you to confirm we've received your order and then we contact you again to confirm we've accepted it and that your files are ready to download.

4.5 **Sometimes we reject orders.** Sometimes we reject orders, for example, because the product was mispriced by us. When this happens, we let you know as soon as possible and refund any sums you have paid.

5. CHANGES TO OUR AGREEMENT

5.1 **We can change products and these terms.** We can always change a product:

- (a) to reflect changes in relevant laws and regulatory requirements;
- (b) to make minor technical adjustments and improvements, for example to address a security threat provided these are changes that don't affect your use of the product; and
- (c) to update digital content, provided that the digital content always matches the description of it that we provided to you before you bought it. We might ask you to install these updates.

5.2 **We can suspend supply of products.** We do this to:

- (a) deal with technical problems or make minor technical changes;
- (b) update the product to reflect changes in relevant laws and regulatory requirements; or
- (c) make changes to the product.

5.3 **We let you know, may adjust the price and may allow you to terminate.** We contact you in advance to tell you we're suspending supply, unless the problem is urgent or an emergency. If we suspend the product we adjust the price so you don't pay for it while its suspended. If we suspend supply, or tell you we're going to suspend supply, for more than forty eight hours you can

contact our Customer Service Team: support@totim.audio to end the contract and we'll refund any sums you've paid in advance for products you won't receive.

5.4 **We can withdraw products.**

- (a) We can stop providing a product, in which case it will no longer appear on our website.
- (b) We can stop a subscription for digital content provide we let you know at least 14 days in advance and we refund any sums you've paid in advance for products which won't be provided.

6. **CHARGES AND PAYMENT**

6.1 **When we charge you.** For single purchases, we will charge you when we make the product available for download. For subscriptions, we take payment at regular intervals, as explained to you during the order process.

6.2 **If you are a business customer you have no set-off rights.** If you are a business customer you must pay all amounts due to us under these terms in full without any set-off, counterclaim, deduction or withholding (other than any deduction or withholding of tax as required by law).

6.3 **We charge interest on late payments.** If we're unable to collect any payment you owe us we charge interest on the overdue amount at the rate of 4% a year above the Bank of England base rate from time to time. This interest accrues on a daily basis from the due date until the date of actual payment of the overdue amount, whether before or after judgment. You pay us the interest together with any overdue amount.

6.4 **We pass on changes in VAT.** If the rate of VAT changes between your order date and the date we supply the product, we adjust the rate of VAT that you pay, unless you have already paid in full before the change in the rate of VAT takes effect.

6.5 **We do not roll over credits if you renew your subscription.** If you have purchased a subscription, we do not roll over unused credits month-to month or year-to year and any unused credits will be lost when your contract expires.

7. **RIGHTS AND REMEDIES**

7.1 **If you are a consumer you do not have a legal right to change your mind.**
If you are a consumer, whether your order is for the one-time purchase of

an individual digital product or for a subscription for digital products, when you click your agreement to these terms, you agree that you will not have a right to change your mind after you have started to download or stream any digital product.

- 7.2 **You have rights if there is something wrong with your product.** If you think there is something wrong with your product, you must contact our Customer Service Team: support@totim.audio
- 7.3 **If defective digital content that we have supplied, damages a device or digital content belonging to you and you are a consumer.** If the damage has been caused by our failure to use reasonable care and skill, we will either repair the damage or pay you compensation.
- 7.4 **Your rights and remedies if you are a consumer.** We honour our legal duty to provide you with products that are as described to you on our website and that meet all the requirements imposed by law. Your legal rights are summarised below. These are subject to certain exceptions. For detailed information please visit the Citizens Advice website: www.citizensadvice.org.uk.

Summary of your key legal rights

The Consumer Rights Act 2015 says digital content must be as described, fit for purpose and of satisfactory quality:

If your digital content is faulty, you're entitled to a repair or a replacement.

If the fault can't be fixed, or if it hasn't been fixed within a reasonable time and without significant inconvenience, you can get some or all of your money back.

If you can show the fault has damaged your device and we haven't used reasonable care and skill, you may be entitled to a repair or compensation

- 7.5 **Your rights if you are a business.** We warrant that on delivery any products which are digital content shall:
- (a) conform in all material respects with their description;
 - (b) be free from material defects in design, material and workmanship;
 - (c) be of satisfactory quality (within the meaning of the Sale of Goods Act 1979); and

(d) be fit for any purpose held out by us

(the **business customer's warranty**).

7.6 **Your remedies if you are a business.** Unless an exception applies, if you give us notice in writing within a reasonable time of discovery that a product does not comply with the description on our website we shall, at our option, replace the defective product, or refund the price of the defective product in full and this will be your only remedy for breach of the business customer's warranty. These terms shall apply to any replacement products supplied by us.

7.7 **Exceptions to business customers' warranty.** We will not be liable for a product's failure to comply with the business customer warranty if:

- (a) you make any further use of such product after telling us it is non-compliant;
- (b) the defect arises because you failed to follow our oral or written instructions as to the storage, installation, commissioning, use or maintenance of the product or (if there are none) good trade practice;
- (c) you alter or repair the product without our written consent; or
- (d) the defect arises because of fair wear and tear, wilful damage, negligence, or abnormal working conditions.

7.8 We're not responsible

8. ENDING OUR AGREEMENT EARLY

8.1 **We can end our contract with you.** We can end our contract with you for a product and claim any compensation due to us if:

- (a) you don't make any payment to us when it's due and you still don't make payment within 7 days of our reminding you that payment is due; or
- (b) you breach the terms of the licence set out in the section entitled Licence or
- (c) you don't complete a Cue Sheet when asked to do so; or
- (d) you don't, within a reasonable time, download the product we make available to you.

9. OUR LIABILITY

9.1 **Our liability to consumers.** We're responsible for losses you suffer caused by us breaking this contract unless the loss is:

- (a) **Unexpected.** It was not obvious that it would happen and nothing you said to us before we accepted your order meant we should have expected it (so, in the law, the loss was unforeseeable).
- (b) **Caused by a delaying event outside our control.** As long as we have taken the steps set out in the section entitled We're not responsible for delays outside our control above.
- (c) **Avoidable.** Something you could have avoided by taking reasonable action. For example, damage to your own digital content or device, which was caused by digital content we supplied and which you could have avoided by following our advice to apply a free update or by correctly following the installation instructions or having the minimum system requirements advised by us.
- (d) **A business loss.** Our liability for any loss you suffer in connection with your trade, business, craft or profession is limited, as described in section 9.2 below.

9.2 **Our liability to businesses.** If you're a business, then, except in respect of the losses described in the section entitled Losses we never limit or exclude:

- (a) we shall not be liable to you, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, for any loss of profit, or any indirect or consequential loss arising under or in connection with any contract between us; and
- (b) our total liability to you for all other losses arising under or in connection with any contract between us, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, shall be limited to the total sums paid by you for products under such contract.

9.3 **Delays outside our control.** If our supply of your product is delayed by an event outside our control, such as general unavailability of the Internet, we contact you as soon as possible to let you know and do what we can to reduce the delay. As long as we do this, we won't compensate you for the delay, but if the delay is likely to be substantial you can contact our Customer Service Team: support@totim.audio to end the contract and receive a refund for any

products you have paid for in advance, but not received, less reasonable costs we have already incurred.

9.4 **Losses we never limit or exclude.** Nothing in these terms shall limit or exclude our liability for:

- (a) death or personal injury caused by our negligence, or the negligence of our employees, agents or subcontractors (as applicable);
- (b) fraud or fraudulent misrepresentation;
- (c) defective products under the Consumer Protection Act 1987; or
- (d) any matter in respect of which it would be unlawful for us to exclude or restrict liability.

10. DATA PROTECTION

10.1 **We use your personal data as set out in our Privacy Notice.** How we use any personal data you give us is set out in our Privacy Notice: [\[LINK TO WEBSITE ADDRESS FOR PRIVACY\]](#).

11. DISPUTE RESOLUTION

11.1 **Complaints.** Our Customer Service Team: support@totim.audio will do their best to resolve any problems you have with us or our products.

11.2 **You can go to court.** These terms are governed by English law. If you are a consumer then, wherever you live, you can bring claims against us in the English courts and if you live in Wales, Scotland or Northern Ireland, you can also bring claims against us in the courts of the country you live in. If you are a consumer we can claim against you in the courts of the country you live in. If you are a business you irrevocably agree to submit all disputes arising out of or in connection with our contract with you to the exclusive jurisdiction of the English courts.

12. OTHER IMPORTANT TERMS APPLY TO OUR CONTRACT

12.1 **We can transfer our contract with you, so that a different organisation is responsible for supplying your product.** We'll tell you in writing if this happens and if you are a consumer we'll ensure that the transfer won't affect your rights under the contract.

- 12.2 **You can only transfer your contract with us to someone else if we agree to this.**
- 12.3 **Nobody else has any rights under this contract.** This contract is between you and us. Nobody else can enforce it and neither of us will need to ask anybody else to sign-off on ending or changing it.
- 12.4 **If a court invalidates some of this contract, the rest of it will still apply.** If a court or other authority decides that some of these terms are unlawful, the rest will continue to apply.
- 12.5 **Even if we delay in enforcing this contract, we can still enforce it later.** We might not immediately chase you for not doing something (like paying) or for doing something you're not allowed to, but that doesn't mean we can't do it later.