



Project take-over contract.

Contract between Julius Newell Acoustic Engineering Lda and _____

Date ____/____/2019

_____ shall here forwards be referred to as "The customer"

For the duration of the contract for

In situations where the project has been handled by other designers, suppliers, installers or companies there are additional conditions to our arrangements. We are here to deliver a project, professionally and efficiently, not get involved in other people's troubles. The following conditions ensure that our work is as free from trouble, efficient, and as pleasant as possible.

The audio industry has many conflicting viewpoints, theories, requirements, methods and procedures. It is common in audio related projects for different suppliers to have different opinions and views of how a project should be carried out, while we follow one tried and tested way where we have done years of academic research in commercial and university environments, other people have their own ways of getting results that work how they want them to. It can often be complex for customers to find the best provider for their needs, and it is not uncommon for a customer to change the direction, and supply, of a project once it has begun. Therefore in all cases that are not a case of gross negligence or incompetence of previous suppliers we require the following conditions be met to avoid unseemly bickering and complications.

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A) General. - In the absence of gross negligence or incompetence on the part of previous suppliers.

- 1) **Litigation.** We will not embark on any contract where litigation with previous suppliers is in process or commences during the project. Where projects involve litigation, it can often complicate matters or even draw in those continuing the project for the customer, to avoid this we explicitly require that all projects are free from litigation. Commencement of litigation against other parties during this contract will render this contract void by the actions of the customer, and all monies due as a result of this contract will be paid in full to Newell Acoustic Engineering.
- 2) **Defamation.** We will not embark on any contract where the customer is seeking to damage the reputation of previous suppliers, adversely affect the business of previous suppliers, or cause harm to previous suppliers. Operating in circumstances where defamatory comments are circulating can result in our own reputation being attacked and damaged without any justification. The customer behaving in such a manner towards previous suppliers will render this contract void by the actions of the customer, and all monies due as a result of this contract will be paid in full to Newell Acoustic Engineering.
- 3) **On-going communication with previous suppliers.** We will not embark on any project where the customer maintains continuing communication and involvement related to this project with previous designers, constructors, suppliers. Nobody except the parties to this contract may have influence over this project. Involvement of other parties during this contract will render this contract void by the actions of the customer, and all monies due as a result of this contract will be paid in full to Newell Acoustic Engineering.
- 4) **Unreconciled accounts.** We will not embark on any contract where the customer has unreconciled accounts with previous suppliers, or where ownership of any part of the project is in question, or where intellectual property that is not fully owned by the customer *without dispute* is being used as a part of the project. This includes payment of all previous workers. It is a point of principle that we will never knowingly work on a project that owes money to others who terminated a contract because of non-payment. Discovery of unreconciled accounts will render this contract void by the actions of the customer, and all monies due as a result of this contract will be paid in full to Newell Acoustic Engineering.
- 5) **Property.** We will not embark on any project where there may be remaining property of previous suppliers, their workers, or inclusion of the sole intellectual property of others.

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B) In the case of gross negligence or incompetence of previous suppliers.

Sadly, in our industry there are many businesses selling questionable solutions, products they are not knowledgeable about, “snake-oil” solutions, and mythical theories. It is unfortunate, but as audio is a question of human perception of what is heard it can be difficult to extrapolate fact from fantasy. We have come across many systems and installations that are simply not fit for purpose, have fraudulently been sold as a “solution” or are even dangerous to the point of been deadly. We are always happy to help right these wrongs, but of course we must protect ourselves from malicious attacks and interference.

- 1) **Reporting.** Prior to any further involvement we will require that we are contracted to provide a full report of what went wrong and why, or why a particular aspect was never going to work.
- 2) **A Clean start.** Our involvement must be based on a clean start. We will not incorporate any aspect of a design or construction created by persons deemed to be negligent or incompetent.
- 3) **Assistance with recovery.** Where we provide on-going help and assistance to litigation in the form of reporting and professional expertise, we require that this will not be used in such a way as to adversely affect the future relationship of Newell Acoustic Engineering with any future clients or affect our standing in the business. There must be no aggressive pursuit of previous suppliers under the name of Newell Acoustic Engineering Lda or persons involved with Newell Acoustic Engineering. Commencement of aggressive pursuit (outside of legal channels) of previous suppliers during this contract will render this contract void by the actions of the customer, and all monies due as a result of this contract will be paid in full to Newell Acoustic Engineering.
- 4) **Defamation.** Reports, explanations, or conversations (physical and on-line) from Newell Acoustic Engineering generated in assistance to recover coats from negligent or incompetent suppliers may never be used in a defamatory or degrading attack on the previous suppliers. Commencement of defamatory (non-factual, or exaggerated) comment towards previous suppliers’ or litigation during this contract will render this contract void by the actions of the customer, and all monies due as a result of this contract will be paid in full to Newell Acoustic Engineering.

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NEWELL

ACOUSTIC ENGINEERING



STUDIO DESIGN + INSTALLATION + CONSTRUCTION

In all circumstances of project take-over where the previous supplier has been dismissed or has left, we will only take on the project where the previous supplier has been given adequate opportunity to rectify their mistakes, been given adequate signs, or warnings that they need to improve their behaviour and has been given a formal written notification of the termination of their contract. We will not be involved in any hostile take-over of any project.

In cases where the previous suppliers have badly served the customer, we will, where possible, and without compromising the end result, try to rescue as much as possible of the existing work, but only where this will not adversely impact on the quality of the final result, the time taken to complete the project, and the safety of the workers, and the overall end result. We cannot however be held responsible for the work of previous suppliers beyond what we can reasonably be expected to control. It is highly possible that we will need to start again from zero because a project is either fundamentally flawed or is incompatible with our methods.

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All Business and transactions are subject to our company terms and conditions



C) **International rescue. (Thunderbird mode)**

As an expert consultancy a large part of our work over many years has been to rescue a project that is virtually complete yet has failed to deliver the results that it should do. Very few companies will touch this kind of work, and understandably as the outcome is far from guaranteed to be good. We carry out this work based on some very important understandings.

- 1) **No result is guaranteed.** As the project is virtually complete and is not performing as expected it is highly probable that there is a fundamental flaw in the way the project has been designed and built, and that at this late stage it is impossible to rectify the flaws without re-building the whole project. In the vast majority of cases we can improve the situation by a certain degree, but exactly how much we can rescue the project often depends on factors beyond the cost of the available budget.
- 2) **The project is scrap.** Where the flaws are so fundamental to the overall working of the project it may well be impossible to rectify the problem at all. In this case the whole project was for nothing. Sadly, this is a common situation, it is not unusual for us to be facing a problem that is too deep in the installation and everything we experience is based on that flawed design. In this case the only option is to remove everything and start again.
- 3) **That is as good as it can be in the circumstances.** The very fact that we have been brought in to fix a broken project means that something is often fundamentally wrong. There are some occasions where everything was correct, but somebody simply misunderstood how to configure something, but more often than not the mistakes run deep in the construction of the installation, while some very skilled remedial work can improve the end result the system that was built or installed will always be flawed.
- 4) **That is as good as it gets, ever.** It is not unusual that the problem is the customer's expectations of the results in the circumstances. There is sometimes absolutely nothing wrong with the original work, except that the situation that the work was done in would never get an ideal result. It is common for people to have unrealistic expectations, especially when they were sold an item or system based on their experiences in an ideal (sales) environment, or salesperson promising miracles.

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In all of the above circumstances, whatever the result, even if that result is zero, the customer is liable to pay the fully agreed cost of the service provided. Often when the original result is worse, the level of work required to make only that slight improvement is far greater. It is always assumed that there is a risk of no noticeable improvement despite many hours of expert work, or it being impossible to repair the problem within the budgetary constraints.

On accepting this contract for “rescue” of the work of others, the customer agrees that Newell Acoustic Engineering Lda will hold absolutely no responsibility for either the end result, or continued reliability of the systems subsequently. The customer agrees never to criticise, or make defamatory comments about the services supplied, the methods used, persons involved, or results obtained. The customer agrees to indemnify Newell Acoustic Engineering of all responsibility for results, safety, and staff actions, except for direct liability for acts of negligence. The customer agrees at the point of initiation of this contract that Newell Acoustic Engineering will be paid in full irrespective of the outcome of the work carried out, and no attempt will be made to recover costs if the end result is not satisfactory. All agreed payment is simply for our attendance, not for work done during that attendance, or time taken to do that work, unless expressly specified in the contract. By simply attending the site we have met all our contractual obligations.

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Declaration.

I hereby agree to be bound contractually by the indicated sections of this contract.

Section A. General

Signed for J Newell Acoustic Engineering Lda.

Signed for _____ Client Name _____

Section B. **In case of previous gross negligence.**

Signed for J Newell Acoustic Engineering Lda.

Signed for _____ Client Name _____

Section C. **Project rescue.**

Signed for J Newell Acoustic Engineering Lda.

Signed for _____ Client Name _____

Date _____/_____/_____

Location _____

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