



PROPHON



# General Conditions

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## **General Terms and Conditions for Authorising the Use of Phonograms and Music Audiovisual Recordings**

### **Chapter One - General Provisions**

#### **Subject and Scope of Regulation**

Art. 1. /1/ This documents governs the terms and conditions for the authorisation of the use of phonograms, music audiovisual recordings and respectively the performances contained therein, with the relevant relations arising in connection with exercising the rights under Art. 76 and Art. 86 of the Copyright and Neighbouring Rights Act (CNRA).

/2/ The General Terms and Conditions shall govern the relations between producers of phonograms and music audiovisual recordings, producer rights holders, and performing artists, on the one hand, and users, on the other hand, in accordance with the Constitution and the effective local and international legislation in the area of copyright and neighbouring rights.

#### **Use of Phonograms and Music Audiovisual Recordings**

Art. 2. /1/ Within the meaning of the present General Terms and Conditions, use of phonograms and music audiovisual recordings shall mean public performance using audio technical equipment or other means, as well as broadcasting of works by wireless means or their transmission by cable or any other technical means and their reproduction as background music and/or in non-interactive programs (incl. music compilations, playlists, etc.) intended for performance in public places.

#### **Producers of Phonograms and Music Audiovisual Recordings, Producer Rights Holders and Performing Artists**

Art. 3. /1/ A phonogram producer shall be the physical person or the legal entity who organises the production of the work and provides its financing.

/2/ A producer of a music audiovisual recording shall be the physical person or the legal entity who organises the creation of the work and provides its financing.

/3/ A producer rights holder shall be the physical person or the legal entity who has obtained producer rights under an agreement with the producer.

/4/ A performing artist shall be the person whose performance /song, instrumental performance, dance, etc./ is the subject of the relevant phonogram or audiovisual recording.

### **Users of Phonograms and Music Audiovisual Recordings**

Art. 4. Users shall be all entities effectuating public performance, broadcasting by wireless means and transmission via cable or any other technical means of phonograms and music audiovisual recordings within an independent business activity as well as entities that within an independent business activity reproduce recordings as background music and/or in non-interactive programs (incl. music compilations, playlists, etc.) intended for performance in public places such as:

1. Local physical persons and legal entities;
2. Local non-profit legal entities engaging in business operations;
3. Local non-personified companies;
4. Foreign physical persons and legal entities when engaging in business operations in this country;
5. Foreign non-personified companies when engaging in business operations in this country;

/2/ Local entities shall be all physical persons and legal entities with permanent residence or domicile in Republic of Bulgaria regardless of their citizenship.

/3/ Foreign entities shall be all physical persons and legal entities with permanent residence or domicile abroad regardless of their citizenship.

## **Chapter Two**

### **Broadcasting via Wireless Means and Transmission via Cable of Phonograms and Music Audiovisual Recordings**

#### **Free Contracting**

Art. 5. Authorisation for broadcasting via wireless means and transmission via cable or other technical means of phonograms and music audiovisual recordings shall be issued subject to a contract with the relevant radio or

television operator signed as a result of free contracting as per the Tariffs for Radio and Television Operations of PROPHON effective as of the moment of signing of the contract, with adequate recognition of the interests of parties to the agreement.

Art. 6. In setting the amount of due remuneration, tariff rates and guaranteed minimums under the Tariffs for Radio and Television Operations of PROPHON shall be reduced on proportional basis relative to the airtime (duration and time of day).

### **Authorised Transmission via Cable**

Art. 7. Authorisation for broadcasting of phonograms and music audiovisual recordings via wireless means includes also authorisation for their transmission via cable or other technical means with payment of no extra remuneration, provided the transmission happens simultaneously with broadcasting, in full and in a non-modified form and confined within the territory for which the broadcasting right granted applies.

### **Authorised Broadcasting via Telecommunication Satellite**

Art. 8. Authorisation for broadcasting of phonograms and music audiovisual recordings via wireless means includes also right to transmission under the control and responsibility of the transmitting authority via signal to a telecommunication satellite allowing reception thereof through an intermediary other than the transmitting authority. This is admissible provided PROPHON has granted the receiving authority the right to broadcast the work wirelessly, to retransmit it via cable or other technical means or to perform it in public in other way. In this case the transmitting authority shall not be liable to pay any remuneration.

### **Discounts vis-à-vis Due Remuneration**

Art. 9. /1/ PROPHON provides up to 15% discount to a contracting media group provided agreements with PROPHON are signed for the neighbouring rights of all the constituent media including the ones that are to start radio/television operations after the agreement becomes effective. Otherwise no discount for media groups shall be provided, and users shall pay the full amount of due remuneration.

/2/ The discount for a media group shall be deducted following deduction of the main discounts from due remuneration in the form of guaranteed

minimums or fixed amounts as per the Tariffs for Radio and Television Operations of PROPHON.

/3/ The main discounts shall be applicable also to balancing payments owed by operators who have agreed due remuneration as percentage rate of gross revenues from radio and television operation but no less than the guaranteed minimum.

Art. 10. For agreements concluded before 1 August 2010, due remuneration as per the effective Tariffs for Radio and Television Operations of PROPHON for the first year counted from the date of signing of the agreement shall be reduced by 5%.

### **Chapter Three**

#### **Public Performance of Phonograms and Music Audiovisual Recordings**

Art. 11. /1/ Authorisation for public performance via audio equipment or other means, including only by means of technical appliances for reception of phonograms and music audiovisual recordings broadcast by wireless means or via cable, shall be issued subject to an agreement with the relevant user, signed as a result of free contracting according to the amounts of remuneration for public performance effective as of the moment of signing of the agreement and the present General Terms and Conditions, with adequate recognition of the interests of parties to the agreement.

/2/ The agreements under the preceding paragraph shall be signed between:

The Chairperson of the Managing Board or the Executive Director of PROPHON or an authorised representative thereof, on the one hand, and

The relevant user operating the establishments where public performance of phonograms and music audiovisual recordings will take place, regardless of the grounds for operation of the establishment /title, usufruct, lease, etc./ or representative of this user authorised in written, on the other hand.

/3/ Upon signing of the agreement under the preceding paragraph the user shall provide:

1. Details of its registration in the Trade Register with the Registry Agency under the auspices of the Ministry of Justice;
2. Copy of the court registration permit of the relevant user, where registration in a court register is required;

3. Copy of identification card from the BULSTAT Register, where such registration is required;
4. Copy of the Certificate of Awarded Category of the relevant tourist establishment;
5. Power of attorney where agreement is proxy-signed.

/4/ For a newly-launched establishment or upon starting a new operation where public performance of music takes place, the relevant user shall be required to notify PROPHON not later than ten days before start of operation.

/5/ The agreements under par.1 of the present article shall be signed in two identical copies – one for the relevant user and for PROPHON. Should the agreement be bilingual and should any conflict arise between the Bulgarian and the foreign language counterpart, the former shall prevail.

Art. 12. /1/ On the basis of an agreement signed with the relevant user under the present General Terms and Conditions and the Tariffs for Public Performance, PROPHON shall provide stickers certifying authorised use vis-à-vis producer and performer rights for public performance of phonograms and music audiovisual recordings.

/2/ The stickers under the preceding paragraph shall be provided by the Executive Director of PROPHON or by an authorised representative thereof.

/3/ The stickers under par. 1 shall be issued according to a sample endorsed by the Managing Board of PROPHON.

### **Provision of Stickers Certifying Authorised Use vis-à-vis Producer and Performer Rights for Public Performance**

Art. 13. /1/ On the basis of the agreements under Art. 11 and pursuant to the present General Terms and Conditions, the Executive Director of PROPHON or an authorised representative thereof shall provide stickers certifying authorised use vis-à-vis producer and performer rights for public performance of phonograms and music audiovisual recordings in the locations specified in the agreement operated by the relevant user.

/2/ The stickers under par. 1 shall be provided with a hand-over protocol to the relevant user, within one month from the date of signing of the agreements under Art.11, but only after effective remittance of due remuneration under the relevant agreements or of the first instalment thereof is effected.

/3/ A copy of each bilaterally signed hand-over protocol under par. 2 shall be registered in a dedicated register of PROPHON; users and competent authorities can freely make references therein.



/4/ The stickers under par. 1 shall be provided with a hand-over protocol, against a signature of the relevant user, by the Executive Director of PROPHON or by an authorised representative thereof. Should the user be unable to have an authorised representative present at the preparation and signing of the hand-over protocol, PROPHON shall send the relevant number of stickers for the locations with registered mail with proof of delivery, to the address specified in the Agreement. A copy of the cover letter with the received proof of delivery shall be kept in the public register of PROPHON.

/5/ The stickers under par. 1 certify that PROPHON has authorised the public performance of phonograms and music audiovisual recordings from its catalogue at the relevant locations, pursuant to the agreement, for the period between January 01 and December 31 of the year for which those refer or for the duration of the public performance agreement within the current calendar year.

/6/ A duplicate of an already issued stickers shall be provided subject to a written application on the part of the user in case of loss or destruction of the originally supplied sticker or in case of relocation to another address. The circumstances warranting reissuance of a sticker certifying authorised use vis-à-vis neighbouring rights shall be declared by the user or authorised representative thereof in written, to the Executive Director of PROPHON.

### **Discounts vis-à-vis Due Annual Remuneration**

Art. 14. /1/ The amount of due annual remuneration for public performance shall be reduced by 10% if the remuneration is paid in one single instalment upfront by:

- February 28 of the current year for locations with year-round operation
- April 30 of the current year of locations operating in the summer
- December 31 of the current year for locations operating in the winter

/2/ The amount of due remuneration for public performance shall be reduced with 10% for newly-opened locations in case the user signs an agreement or annex with PROPHON within 10 days prior to opening of the location. The discount shall be valid for 12 months from the date of opening of the location.

/3/ The amount of due annual remuneration for public performance to PROPHON shall be reduced depending on the cumulative amount of remunerations payable by a single user, regardless of the number of agreements for authorised use, with discount rates as follows:

1. 5% for due annual remuneration between BGN 5,001 and BGN 10,000, net of VAT;
2. 10% for due annual remuneration between BGN 10 001 and BGN 15 000, net of VAT;
3. 15% for due annual remuneration in excess of BGN 15,001, net of VAT.

/4/ Additional discount rate of up to 50% can be applied to the amount of due remuneration for public performance to PROPHON solely and exclusively for use of background music for non-business premises, as follows: places for which no awarding of category is required, car parks, lifts, passages and/or garden areas with audio background, storage and/or service facilities and other similar areas. The discount shall not apply to common areas in shopping centres.

/5/ The discounts depending on types of settlements applicable with respect to the annual remuneration are as follows:

10% for locations in settlements with population between 50 001 and 150 000;

20% for locations in settlements with population up to 50 000.

/6/ The discount under par. 5 shall not apply to locations in resorts, vacation, tourist, balneotherapy, spa and/or ski resorts or in settlements on the Black Sea coast as well as establishments located outside settlements.

/7/ 20% discount for due remuneration can be applied to non-seasonal locations operating up to 3 days a week.

/8/ The above discount rates shall be applied to the amount of due remuneration for public performance in the following order:

1. Discount for type of settlement under par. 5 and par. 6;
2. Discount for operation up to 3 days under par. 7;
3. Discount under industry agreement if applicable;
4. Discount for amount of remuneration under par. 3;
5. Discount for newly-opened location under par. 2;
6. Discount for non-business areas under par. 4;
7. Discounts for upfront payment under par. 1;

/9/ The above discounts do not apply for locations with entrance fee as well as if any of those discounts is applicable on some other grounds.

## Chapter Four



## **Use (Reproduction) of Recordings as Background Music and/or in Non-interactive Programs (incl. Music Compilations, Playlists, etc.) Intended for Performance in Public Places**

Art. 15. Authorisation for use (reproduction) of recordings as background music and/or in non-interactive programs (incl. music compilations, playlists, etc.) intended for performance in public places, shall be issued subject to an agreement with the relevant user, signed as a result of free contracting according to the amounts of remuneration set by PROPHON for use (reproduction) of recordings as background music and/or in non-interactive programs (incl. music compilations, playlists, etc.) intended for performance in public places, with adequate recognition of the interests of parties to the agreement.

Art. 16. PROPHON shall respectively provide the discounts under Art. 14, par. 3 of the present General Terms and Conditions for the use (reproduction) of recordings as background music and/or in non-interactive programs (incl. music compilations, playlists, etc.) intended for performance in public places (except where use (reproduction) of recordings in playlists intended for performance in public places by DJs is concerned).

## **Chapter Five**

### **Liability and Sanctions**

Art. 17. /1/ If a user submits a false document under Art. 11, the relevant user shall be liable under the civil and criminal legislation of Republic of Bulgaria.

/2/ Unauthorised use of phonograms and music audiovisual recordings shall result in criminal liability for the relevant user under Art. 172a of the Criminal Code or in administrative liability under Art. 97 and ff. of the CNRA, as well as in tort liability for any caused damages.

### **Additional Provisions**

§. 1. Within the meaning of these General Terms and Conditions:

a/ "wireless broadcasting of a work" means the broadcasting of a work by radio or television, as well as its transmission by means of a signal to a telecommunication satellite;

b/ "audio recording" means the fixation on a durable material medium of a sequence of sounds in such a way as to permit them to be perceived,

reproduced, rerecorded and broadcast by wireless, cable or other technical means;

c/ "phonogram" means the product of audio recording;

d/ "media services operators" means physical persons and legal entities with licenses under the Radio and Television Act for radio and television activities.

e/ "restauration" shall be the provision of services at mass-catering and entertainment establishments rated under the Tourism Act;

f/ "hoteliery" means the provision of tourist services at all types of accommodation establishments rated under the Tourism Act.

The General Meeting grants the Managing Board the authority to amend the General Terms and Conditions for authorisation of use of phonograms and music audiovisual recordings of the Society, allowing the Managing Board to modify the amount of remuneration payable by users in terms of guaranteed monthly minimum and/or fixed amounts by up to 15% (fifteen per cent) and the amount of remuneration payable by users on the basis of a differentiated percentage rate of gross revenues as per the Tariffs of the Society by up to 1% (1 per cent).