



## ELECTROSONIC LIMITED INFRINGEMENT INDEMNITY

### **Infringement Indemnity**

Electrosonic Limited ("Electrosonic") will defend, indemnify, and hold harmless Customer and Customer's owners, officers, directors, and employees (individually and collectively, an "Indemnified Party"), at Electrosonic's expense, from any third party claim, action, suit, or proceeding against an Indemnified Party (a "Claim") to the extent that such Claim is based upon an allegation (with evidence) that a Product infringes any right protected by any patent, copyright, trademark or trade secret of any third party that is enforceable in the United States. Electrosonic will indemnify an Indemnified Party for any judgments, settlements, reasonable costs, and reasonable attorneys' fees resulting from a Claim. Electrosonic's obligations under this Section are conditioned upon the following: (i) upon becoming aware of the Claim, an Indemnified Party provides to Electrosonic prompt written notice of the Claim; (ii) an Indemnified Party gives to Electrosonic sole authority and control of the defense and/or settlement of the Claim; and (iii) an Indemnified Party provides all reasonable information and assistance requested by Electrosonic to handle the defense and/or settlement of the Claim. An Indemnified Party, at its expense, may hire legal counsel of its choice to participate in an advisory capacity related to discussions, negotiations, or proceedings of the Claim, but such legal counsel shall not, without the prior written consent of Electrosonic, participate in any other capacity with respect to the Claim.

### **Remedial Measures**

If a Product becomes the subject of a Claim, or if Electrosonic reasonably believes that use of such Product may become the subject of a Claim, then Electrosonic may do, at its own expense and option, at least one of the following: (i) procure for Customer the right to continue use of the Product at no additional cost to Customer for such right; (ii) replace the Product with a non-infringing product while maintaining the Product's essential specifications; (iii) modify the Product so that it becomes non-infringing while maintaining the Product's essential specifications; or (iv) refund to Customer a pro-rated portion of the Price paid to Electrosonic for the Product, based upon a linear monthly depreciation over a five (5) year useful life, in which case Customer will both cease all use of the Product and return the Product to Electrosonic.

### **Exceptions and Limitations**

Electrosonic will have no defense or indemnity obligation for any Claim based upon: (i) a Product that has been modified by someone other than Electrosonic, if such modification results in the allegation of the infringement; (ii) a Product that has been modified in accordance with either Customer-provided or End User-provided specifications or instructions, if such modification results in the allegation of the infringement; (iii) use or combination of a Product with Third Party Products, if such use or combination results in the infringement; or (iv) End User products or Third Party Products. The term "Third Party

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Products” means any products manufactured by or supplied by a party other than Electrosonic, and may include, without limitation, products ordered by Customer from third parties.

## **No Other Remedies Regarding Infringements**

THE FOREGOING STATES ELECTROSONIC’S ENTIRE LIABILITY AND AN INDEMNIFIED PARTY’S SOLE AND EXCLUSIVE REMEDIES WITH RESPECT TO ANY INFRINGEMENT OR MISAPPROPRIATION OF ANY INTELLECTUAL PROPERTY RIGHTS OF ANY THIRD PARTY.

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