

**Terms and Conditions of Use for  
Online Access to S. Hirzel Verlag Journals (Single Site)**

**THIS INSTITUTIONAL SINGLE-SITE USER LICENCE AGREEMENT**

**IS AGREED** the \_\_\_\_\_(day) of \_\_\_\_\_ (month) \_\_\_\_\_(year)

**BETWEEN**

1. S. Hirzel Verlag GmbH & Co. of Birkenwaldstrasse 44, 70191 Stuttgart, Germany, hereinafter called "the Publisher", and
2. \_\_\_\_\_ (full contractual name) of  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_ (full address),  
hereinafter called "the Subscriber"

**WHEREAS** the Publisher holds the rights granted under this Licence

**AND WHEREAS** the Subscriber desires to use the rights and the Publisher desires to grant to the Subscriber to use the rights, subject to the terms and conditions of this Licence.

**IT IS AGREED AS FOLLOWS:**

These Terms and conditions govern the rights and limitations of online access to those volumes and issues of the Publisher's Journal(s) for which the Subscriber maintains a current paid subscription to the print version(s) which includes online access.

**1. AGREEMENT**

**1.1 Grant of Licence**

1.1.1 The Publisher agrees to grant to the Subscriber the non-exclusive, non-transferable and non-sub-licensable right to give Authorised Users access to the online-version(s) of the Publisher's journal(s) (**Licensed Material**) at the Subscriber's Authorised Site for the purposes of research, teaching and private study and allows its use as set forth below. Access and use has to be via a standalone network or virtual network within the internet which is accessible only to Authorised Users approved by the Subscriber whose identity is authenticated at the time of log-in and periodically thereafter consistent with current best practice, and whose conduct is subject to regulation by this Licence (**Secure Network**).

1.1.2 This Licence shall commence at the beginning of the Subscription Period, for each of the Licensed Material as set out in Schedule 1 or in new Schedules to this Licence that may be added subsequently; and shall automatically terminate at the end of the Subscription Period. **Subscription Period** means the period nominally covered by the volumes and issues of the Licensed Material regardless of the actual publication.

**1.2. Authorised Site**

For the purpose of this Licence "Authorised Site" is a localized site (one physical location) that is under a single administration as listed under Schedule 2. For an organization with locations in more than one city, each city is considered to be a different site. For an organization that has multiple locations in the same city that are administered independently, each location is considered to be a different site. No consortia or other forms of subscription sharing are allowed under this Licence unless a separate licence is concluded for every localized site.

**1.2 Authorised Users**

For the purpose of this Licence Authorised Users are (i) current members of the Subscriber's faculty, (ii) library and other staff of the Subscriber, (iii) individuals who are currently studying at the Subscriber's institution, and (iv) members of the public (**Walk-in-Users**) visiting the library. Members of the public may only access the Licensed Material from computer terminals within the Subscriber's library premises as the relevant site. All other Authorised Users may access the Licensed Material from computer terminals within the library premises and – if the Subscriber provides this – by means of **remote access** through the Subscriber's Secure Network provided such Authorised Users have been issued by the Subscriber with a password or other authentication.

**2. PERMITTED USES**

**2.1** Authorised Users may, in accordance with the applicable copyright laws and subject to Clause 3 below: (i) access, search, view, retrieve and display the Licensed Material; (ii) electronically save individual articles or items of the Licensed

Material solely for personal use or research; (iii) print off a copy of parts of the Licensed Material.

**2.2** The Subscriber is not allowed to engage in commercial document supply of the Publisher's journal(s), but may fulfil occasional requests from other libraries within the same country of the Subscriber for a single paper copy of an electronic original of an individual document being part of the Licensed Material and solely for Authorised Users of this other library for the purpose of research or private study and not for commercial use (**Interlibrary Loan**). Such requests must not be fulfilled with electronic copies but only printed copies of the part of the Licensed Material.

**2.3** Only Authorised Users may subject to Clause 3 below, use a reasonable portion of the Licensed Material in the preparation of printed **Course Packs** for use of Authorised Users at the Subscriber's institution in the course of instruction but not for commercial use or re-sale. Each such item shall carry appropriate acknowledgement of the source.

**2.4** The Subscriber acknowledges that the Licensed Material including abstracts are copyright protected and that the sole copyright to the Licensed Material remains with the Publisher and/or registered copyright holders. Nothing in this Licence shall in any way exclude, modify or affect any of the Publisher's statutory rights under the copyright laws of the Federal Republic of Germany. All software and web forms used in the provision of the Services are either proprietary or properly licensed and may not be used, altered, or adapted in any way. All Intellectual Property Rights in this software and web forms belong to the service provider.

### 3. PROHIBITED USES

**3.1** The Subscriber may not use or permit Authorised Users to use the Licensed Material or parts thereof for the purpose of monetary reward by means of sale, resale, loan, hire, lease or any other form of exploitation of the Licensed Material (**no Commercial Use**).

**3.2** Neither the Subscriber nor Authorised Users may (i) remove or alter the authors' names or the Publisher's copyright notices or other means of identification or disclaimers as they appear in the Licensed Material; (ii) systematically make print or electronic copies of multiple extracts of the Licensed Material for any purpose; (iii) make available any part of the Licensed Material on any electronic network, including without limitation the Internet and the World Wide Web, other than the Secure Network;

**3.3** The Publisher's explicit written permission must be obtained in order to (i) use all or any part of the Licensed Material for any Commercial Use; (ii) systematically distribute the whole or any part of the Licensed Material to anyone other than Authorised Users; (iii) publish, distribute or make available the Licensed Material, works based on the Licensed Material or works which combine them with any

other material; (iv) alter, abridge, adapt or modify the Licensed Material, except to the extent necessary to make them perceptible on a computer screen to Authorised Users. For the avoidance of doubt, no alteration of the words or their order is permitted.

### 4. SUBSCRIBER'S UNDERTAKINGS

**4.1** The Subscriber shall

4.1.1 use all reasonable endeavours to ensure that only Authorised Users are permitted Access to the Licensed Material;

4.1.2 use all reasonable endeavours to ensure that all Authorised Users are appropriately notified of the importance of respecting the intellectual property rights in the Licensed Material.

4.1.3 use all reasonable endeavours to notify Authorised Users of the terms and conditions of this Licence and take steps to protect the Licensed Material from unauthorised use or other breach of this Licence;

4.1.4 use all reasonable endeavours to monitor compliance and immediately upon becoming aware of any unauthorised use or other breach, inform the Publisher and take all reasonable and appropriate steps, including disciplinary action, both to ensure that such activity ceases and to prevent any recurrence;

4.1.5 issue passwords or other access information only to Authorised Users and use all reasonable endeavours to ensure that Authorised Users do not divulge their passwords or other access information to any third party;

4.1.6 provide the Publisher, within 30 days of the date of this Agreement, with information sufficient to enable the Publisher to provide access to the Licensed Material in accordance with its obligation under Clause 5.2.4. Should the Subscriber make any significant change to such information, it will notify the Publisher not less than ten (10) days before the change takes effect;

4.1.7 keep full and up-to-date records of all Authorised Users and their access details and, if appropriate, provide the Publisher with details of such additions, deletions or other alterations to such records as agreed between the parties from time to time.

**4.2** Nothing in this Licence shall make the Subscriber liable for breach of the terms of the Licence by any Authorised User provided that the Subscriber did not cause, knowingly assist or condone the continuation of such breach to continue after becoming aware of an actual breach having occurred.

**4.3** The Subscriber shall, in consideration for the rights granted under this Licence, pay the Subscription Fee within thirty (30) days of date invoice.

## 5. PUBLISHER'S UNDERTAKINGS

**5.1** The Publisher warrants to the Subscriber that the Licensed Material used as contemplated by this Licence does not infringe the copyright or any other proprietary or intellectual property rights of any person. The Publisher shall indemnify and hold the Subscriber harmless from and against any loss, damage, costs, liability and expenses (including reasonable legal and professional fees) arising out of any legal action taken against the Subscriber claiming actual or alleged infringement of such rights. This indemnity shall survive the termination of this Licence for any reason. This indemnity shall not apply if the Subscriber has amended the Licensed Material in any way not permitted by this Licence.

**5.2** The Publisher shall

**5.2.1** make the Licensed Material available to the Subscriber via the Publisher's server or the server of a third party during the period for which the print subscription of the Licensed Material is purchased by the Subscriber as specified in Schedule 1.

**5.2.2** use reasonable endeavours to ensure that the Server has adequate capacity and bandwidth to support the usage of the Subscriber at a level commensurate with the standards of availability for information services of similar scope operating via the World Wide Web, as such standards evolve from time to time over the term of this Licence.

**5.2.3** use reasonable endeavours to make the Licensed Material available to the Subscriber and to Authorised Users at all times and on a twenty-four hour basis, save for routine maintenance and to restore access to the Licensed Material as soon as possible in the event of an interruption or suspension of the service.

**5.2.4** provide the Subscriber within 30 days of the conclusion of this Licence, with information sufficient to enable the Subscriber to access the Licensed Material.

**5.3** The Publisher reserves the right at any time to withdraw from the Licensed Material any item or part of an item for which it no longer retains the right to publish or make it available to third parties, or which it has reasonable grounds to believe infringes copyright or is defamatory, obscene, unlawful or otherwise objectionable.

**5.4** Under present policy, the Subscriber is also given access to issues published prior to the subscription period. Such access is given on an *ex gratia* basis and no right is hereby created for the Subscriber to use or access any material other than that for which an institutional print subscription has been purchased.

**5.5** The online access service offered by the Publisher is based on the currently valid technical, legal and economic outline conditions for the data networks used. The place of data transfer is the interface between the Publisher's or third party's server and the Internet or other data networks. The Publisher's responsibility for data transfer ends at

that point. The use of the Licensed Material is at the User's own risk. Access to the online version(s) of the Licensed Material might be interrupted and may not be error free. The Publisher does not take any guarantee for the completeness and correctness of the electronic data. In the event of any inaccuracy or any discrepancy between the print and online versions, the print version will be the official version of record. The Publisher does not assume any responsibility or liability for links to websites of third parties which may be included in the licensed Material, neither for their technical accessibility and everytime availability nor for their technical quality and quality of contents. The sole responsibility for such websites lies solely in the responsibility of the third party. The Publisher retains the right to inactivate or delete such links.

**5.7** Except as expressly provided in this Licence, the Publisher makes no representations or warranties of any kind, express or implied, including, but not limited to, warranties of design, accuracy of the information contained in the Licensed Material, merchantability or fitness of use for a particular purpose or compliance with any computational process. The Licensed Material is supplied 'as is'.

**5.8** Except as provided in Clause 5.1, under no circumstances shall the Publisher be liable to the Subscriber or any other person, including but not limited to Authorised Users, for any special, exemplary, incidental or consequential damages of any character arising out of the inability to use, or the use of, the Licensed Material. The Publisher shall be liable for damages only when caused intentionally, by gross negligence, or by false representations of the use of the Licensed Material. Irrespective of the cause or form of action, the Publisher's aggregate liability for any claims, losses, or damages arising out of any breach of this Licence shall in no circumstances exceed the Fee paid by Subscriber to the Publisher under this Licence in respect of the Subscription Period during which such claim, loss or damage occurred. The foregoing limitation of liability and exclusion of certain damages shall apply regardless of the success or effectiveness of other remedies. Regardless of the cause or form of action, the Subscriber may bring no action arising from this Licence more than six (6) months after the cause of action arises.

## 6. TERM AND TERMINATION

**6.1** In addition to automatic termination if the paid print subscription period lapses this Licence shall be terminated:

**6.1.1** if the Subscriber defaults in making payment of the Subscription Fee and fails to remedy such default within thirty (30) days of notification in writing by the Publisher;

**6.1.2** if the Publisher commits a material or persistent breach of any term of this Licence and fails to remedy the breach (if capable of remedy) within sixty (60) days of notification in writing by the Subscriber;

6.1.3 if the Subscriber commits a wilful material and persistent breach of the Publisher's copyright or other intellectual property rights or of the provisions of Clause 2 in respect of permitted uses or of Clause 3 in respect of prohibited uses;

6.1.4 if either party becomes insolvent or becomes subject to receivership, liquidation or similar external administration.

6.2 On termination all rights and obligations of the parties automatically terminate.

6.3 On termination of this Licence for cause, as specified in Clauses 6.1.1 and 6.1.3, the Subscriber shall immediately cease to distribute or make available the Licensed Material to Authorised Users (except as provided in Clause 5.4.)

6.4 The Publisher reserves the right to suspend access to the server immediately upon detecting a breach of this Licence.

6.5 This Licence will terminate following thirty (30) day's prior written notice by mail, e-mail, or fax by the Publisher of any change in the terms of this Licence, receipt by the Publisher of written notice from the Subscriber by mail, e-mail or by fax that the Subscriber does not accept such change or changes. In the absence of any such objection by Subscriber, the Publisher's new terms shall apply.

**7. GENERAL**

7.1 **Entire Agreement.** This Licence constitutes the entire agreement of the parties and supersedes all prior communications, understandings and agreements relating to the subject matter of this Licence, whether oral or written.

7.2 **Assignability.** This Licence may not be assigned by either party to any other person or organisation, nor may either party sub-contract any of its obligations, except as provided in this Licence in respect of the management and operation of the Server without the prior written consent of the other party, which consent shall not unreasonably be withheld. Notwithstanding the aforementioned, this Licence may be assigned to a third party without consent of the Subscriber if rights in all or any part of the Licensed Material are assigned to another publisher or other third party. This Licence shall remain valid on the sale or merger of the Publisher.

7.3 **Force majeure.** Neither party's delay or failure to perform any provision of this Licence, as result of circumstances beyond its control (including, without limitation but not limited to, warlike disputes, strikes, floods, governmental restrictions, power, telecommunications or Internet failures, or damage to or destruction of any network facilities) shall be deemed to be, or to give rise to, a breach of this Licence.

7.4 **Severability.** If any provision in this Agreement is held to be invalid or unenforceable, that provision shall be construed, limited, modified or, if necessary, severed, to the extent necessary to eliminate its invalidity or unenforceability, and the other provisions of this Agreement shall remain unaffected.

7.5 **No waiver.** Either party's waiver, or failure to require performance by the other, of any provision of this Licence will not affect its full right to require such performance at any subsequent time, or be taken or held to be a waiver of the provision itself.

7.6 **Governing Law.** This Licence shall be governed by and construed in accordance with German law. As far as permissible, the court of jurisdiction is Stuttgart.

**IN WITNESS WHEREOF** the parties execute this Licence Agreement on the date set out on its first page

**FOR THE PUBLISHER: [FULL NAME]**

**FOR THE SUBSCRIBER: [FULL NAME]**

Signature

Signature

Name (in block capitals): \_\_\_\_\_

Name (in block capitals): \_\_\_\_\_

Position / Title: \_\_\_\_\_

Position / Title: \_\_\_\_\_

## SCHEDULE 1

### LICENSED MATERIAL, SUBSCRIPTION PERIOD, ACCESS METHOD

<b><u>The Licensed Material:</u></b>	Acta Acustica united with Acustica,  No online availability for supplement issues (congress abstract issues) which are published in irregular intervals
<b><u>Initial Subscription Period:</u></b>	Volume 96 (2010), No. 1 - 6  back issues on an <i>ex gratia</i> basis: Vol. 82 (1996) to Vol. 95 (2009); in accordance with Clause 5.4 of this licence
<b><u>Access via:</u></b>	<a href="http://www.ingentaconnect.com">www.ingentaconnect.com</a>
Access Method:	Authentication via IP range/IP Address and User ID/password

### **Institutional Subscription Rate 2010 (print including online access):**

Institutional Subscription Rate	2010	s&h	in total
Europe	EUR 930.00	EUR 27.00	EUR 957.00
Rest of the World	EUR 930.00	EUR 48.00	EUR 978.00

Every print issue includes a CD-ROM with the contents of the current issue (PDF-files). This CD is not sold separately.

Subscriptions are made on a continuation basis unless ordered for a limited period. Cancellations may only be made for a complete annual volume, they must be received by the publisher by 15 November of the preceding year at the latest. Subject to price changes for subsequent volumes.

### **Publisher's contact:**

Name: Fritz Wagner, Subscription Services  
Telephone: +49 (0)711 25 82-387  
Fax: +49 (0)711 25 82-390  
E-mail address: [fwagner@hirzel.de](mailto:fwagner@hirzel.de)  
[ActaAcustica@hirzel.de](mailto:ActaAcustica@hirzel.de)

**SCHEDULE 2**

**LIBRARY PREMISES (AUTHORISED SITE), IP ADDRESSES**

**Postal Addresses of the Subscriber's Library Premises (Authorised Site), IP addresses**  
in one city, under one administration

*Library name & address*

*IP range/IP Address*

**Subscriber's Network Contact:**

Name:

Telephone:

Fax:

E-mail address: