

MMS DIRECT INC. – STANDARD TERMS AND CONDITIONS OF SALE

1. Authorization of work: MMS DIRECT INC. and its subsidiaries (“MMSdirect”, “MUSIC MANUFACTURING SERVICES”, “MMS DISC AND DVD” and “MMS” hereafter referred to as “MMS”) will perform work or provide services with respect to any related master material (“Duplication Material”), related packaging material (“Packaging Material”) and/or films, screens or other related labelling material (“Labelling Material”), only upon receipt at its offices of a purchase order or written authorization relating to such work or services signed by the Owner of such Duplication Material or his duly authorized representatives and a certificate(s) of tax exemption, if applicable. MMS reserves the right to produce and bill for production overruns up to ten percent over the Customer’s order for Product. MMS will consider all The Customer orders complete for shipments of ninety (90) percent or more of total quantity ordered.

2. License of Master Recordings and Materials: The Customer hereby grants to MMS and MMS hereby accepts from The Customer, a non-exclusive license to manufacture the product from the Master Recording(s) identified on this order and to use any related photographs, biographical material, label data, or album cover artwork, or any other materials provided to MMS hereunder by The Customer, for that purpose.

3. Pricing and shipping terms: Prices are FOB our plant unless otherwise noted and are subject to change without notice. Shipment is by regular ground service unless otherwise specified by The Customer. MMS is not responsible for loss or damage once any product has left our premises.

4. Terms of payment: All amounts are due according to the payment terms stated, which may include the provision of a Letter of Credit in form and substance satisfactory to MMS. MMS reserves the right, among other remedies, either to terminate this Agreement or to suspend further deliveries upon failure of The Customer to make any payment as herein provided. Should any amount remain outstanding after its due date, interest shall run on said amount from the initial billing date at the rate of one and one-half percent per month (18% annum) and shall accrue daily. Notwithstanding the foregoing, MMS may, as its sole discretion, require part or full payment in advance for any work or services to be performed, or may require such security or guarantee of payments as it may in its discretion see fit. In addition to the foregoing, The Customer shall pay any or all costs, fees, charges or expenses of every nature (expressly including reasonable legal fees) incurred by MMS in recovering any amounts owed to it by The Customer. In addition to the purchase price, The Customer shall pay MMS the amount of all governmental taxes, excises and/or other charges (except taxes on or measured by net income) that MMS may be required to pay with respect to the production, sale and transportation of any Duplication Material, Packaging Material, Labelling Material or Product delivered hereunder, except where the law otherwise provides.

5. MMS’s warranty of product: The following warranty is the sole warranty given by MMS to The Customer in respect of the work or services to be performed or provided by MMS and excludes the application of any other warranty or guarantee of any nature whatsoever, whether legal, conventional or customary. MMS warrants that material produced and delivered by MMS hereunder meets MMS’s standard specifications for the material or such other specifications as have been expressly made a part of this Agreement and that such material is adequately contained, packaged and labelled. If any compact disc or other material produced by MMS (“Product”) from or through the use of Duplication Material, Packaging Material or Labelling Material is found to be defective in quality, or is shipped or labelled in error, MMS will replace or repair such defective Product and/or correct such error in shipment or labelling at its own expense, on the condition that: a) written notice of such defect or error is received by MMS at its office within ten days after its arrival at destination; and b) the defect or error did not result from a defect or error in the Duplication Material, Packaging Material and/or Labelling Material supplied by or on behalf of The Customer. If said notice is not received by MMS within the delay indicated above, MMS will be deemed to be released from any and all liability.

The Customer shall return any defective Product to MMS should MMS so request. MMS’s liability for breach of warranty hereunder is limited solely to the replacement or the repairs, as the case may be, of defective Product which shall be returned to MMS’s plant or to any licensed dealer of MMS for such purpose as required. THE FOREGOING WARRANTIES ARE EXCLUSIVE AND ARE IN LIEU OF ALL OTHER WARRANTIES (WHETHER WRITTEN, ORAL, OR IMPLIED) INCLUDING WARRANTY OF MERCHANTABILITY IN OTHER RESPECTS THAN EXPRESSLY SET FORTH ABOVE AND WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE.

6. Delivery Times: Unless otherwise stated on this order, and agreed upon in writing, delivery times are estimates.

7. Storage of duplication material, packaging material and labelling material: MMS will store Duplication Material, Packaging Material and Labelling Material without charge to the Customer for a maximum of six (6) months following the last order placed by The Customer. Without prejudice to any other rights which MMS might possess under these terms and conditions, MMS may, at its option, after the expiry of said (6) month period and after having given thirty (30) days’ written notice to The Customer:

i). return the Duplication Material, Packaging Material and/or Labelling Material to The Customer at the address indicated on the last order placed by The Customer at the latter’s expense; ii). store the Duplication Material, Packaging Material and/or Labelling Material at the Customer’s expense, subject to such storage charges as MMS may from time to time determine; iii). destroy the Duplication Material, Packaging Material and/or Labelling Material the whole without any liability on MMS’s part. Customer property stored in our premises is not insured and is stored strictly at the customer’s risk.

8. Termination: Customer orders for products not yet manufactured by MMS may be terminated by either party upon 30 days written notice. The Customer will be responsible for all costs incurred by The Company related to pre-manufacturing or manufacturing of any product, prior to receipt of notice of termination. After such termination, The Customers’ original materials and any completed product may be delivered to The Customer only after all sums owing to MMS have been paid in full by cash or certified cheque.

9. Limitation of liability: Any or all work performed by MMS for the benefit of The Customer is performed at the sole risk of The Customer. Except as expressly set forth above, MMS does not in any way warrant or guarantee and is in no way responsible for the quality of service provided by MMS, the results of any work or services provided by MMS or any delays in providing such services or any damages or loss of any kind (including loss, destruction, or partial or full deterioration of Duplication Material, Packaging Material or Labelling Material) due to any cause whatsoever, including, without limiting the generality of the foregoing, damages due to: the method of work employed by MMS; the quality of services provided by MMS; negligence or error by MMS or by any of its employees; faulty maintenance, defective machinery or faulty equipment, notwithstanding the fact that MMS is or should be aware of any of the foregoing; and fire, theft, vandalism or any fortuitous event or force majeure or other event outside the control of MMS. Moreover, MMS is not responsible for any loss of revenue or profit or other financial damages of any kind whatsoever, whether direct or indirect, suffered by The Customer for any reason referred to above. The Customer shall indemnify and hold MMS harmless from and against any damage, loss, liability or expense claimed by a third party arising from any cause whatsoever, including negligence on the part of MMS. MMS shall not be liable under any circumstance for consequential or incidental damages or lost profits.

10. Intellectual Property Representations & Warranties. Customer represents and warrants that it is the true and rightful owner of, or is licensed or otherwise possesses legally enforceable rights to use, the registered and unregistered rights, titles, and interests in and to any Canadian, United States or foreign trademarks, service marks and trade names, copyrights, or other intellectual property rights relating to the Customer’s property subject to this Agreement, including but not limited to the right to use certain films, music and sound recordings, pictures, software, etc. The Customer is not, or will not be, as a result of the execution and delivery of this Agreement or the performance of the obligations hereunder, in violation of any intellectual property rights of third parties. No claims with respect to the Customer’s intellectual property rights or third party intellectual property rights are currently pending or, to the knowledge of the Customer, are threatened by any person, nor, to The Customer’s knowledge, do any grounds for any claims exist.

11. Indemnification. Customer agrees to indemnify, defend, protect and hold harmless MMS and its subsidiaries and their respective officers, directors, agents, affiliates, distributors, franchisees and employees (collectively, “Indemnified Parties”) against any liabilities, losses, claims, damages, punitive damages causes of action, lawsuits, administrative proceedings (including informal proceedings), investigations, audits, demands, assessments, adjustments, judgements, settlement payments, deficiencies, penalties, fines, interest (including interest from the date of such damages) and costs and expenses (including without limitation reasonable attorneys’ fees and disbursements of every kind, nature and description) (collectively, “Damages”) suffered, sustained, incurred or paid by the Indemnified Parties in connection with, resulting from or arising out of, directly or indirectly (i) any claim, demand, proceeding, or lawsuit by a third party based on any assertion that the services provided to Customer under this Agreement breaches the patent, copyright, trademark, trade secret or other proprietary right of such third party; and (ii) any breach of any representation or warranty of the Customer set forth in this Agreement or the Copyright Declaration, Copyright and Reproduction Rights Declaration, Product Identification Form, Purchase Order Form, Account Opening Form, or in any other form or document in connection herewith.

12. Security: As security for any and all amounts owing by The Customer to MMS, The Customer shall be deemed to have pledged to MMS all Duplication Material, Packaging Material, Labelling Material and Product (“Pledged Property”), whether or not said amounts are related to work or services performed with respect to the Pledged Property. In the event of default of payment in accordance with the terms of paragraph 4, MMS shall be entitled to retain the Pledged Property until paid in full and shall be entitled to exercise its rights in the Pledged Property as a holder of a security interest under the Uniform Commercial Code or any applicable law.

13. Credit approval: Shipments, deliveries and performance of work shall at all times be subject to the approval of MMS’s credit department. The Seller may at any time decline to make any shipment or delivery or perform any work except upon receipt of payment or upon terms and conditions satisfactory to such department.

14. Force majeure: Neither party shall be liable for its failure to perform hereunder due to any contingency beyond its reasonable control, including, without limitation, delays by subcontractors or suppliers. The party whose performance is prevented by such contingency shall have the right to omit during the period of such contingency all or any portion of the quantity deliverable during such period, whereupon the total quantity deliverable under this Agreement shall be reduced by the quantity so omitted. If, due to any such occurrence, MMS is unable to supply the total demands for any Product specified in this Agreement, MMS shall have the right to allocate its available supply among its Customers in a fair and equitable manner. In no event shall MMS be obligated to purchase material from others in order to enable it to deliver Product to the Customer.

15. Miscellaneous: These Standard Terms and Conditions of Sale and Orders may not be modified orally, no waiver, amendment or modification shall be binding or effective unless in writing and signed by the part to be bound.