

MEDIA REPLICATION SERVICES - TERMS AND CONDITIONS

1. **AGREEMENT.** All sales by Media Replication Services or any subsidiary thereof ("Seller") to the (Customer") listed in this Agreement ("Agreement") shall adhere to the provisions contained in this Agreement. Special conditions contained on Customer's order forms which vary with or are incremental to the terms and conditions contained herein are not binding on Seller unless specifically accepted by the Seller in writing. The signature of Customer or Customer's authorized representative on this Agreement constitutes Customer's acknowledgement and acceptance of the terms and conditions of this Agreement.
2. **TERMS OF PAYMENT.** Customer shall pay to Seller the amount stated on the front of the invoice in the box marked "Total". In addition, Customer is responsible for the ultimate payment of all taxes including without limitation sales and use taxes, stamp charges, licenses, duties and government exactions by whatever name which may be assessed or levied on account of the goods purchased by Customer ("Goods"). Any amount unpaid after 30 days from the date of the invoice shall accrue interest at a rate of eighteen percent (18%) per annum. In the event of default, Customer promises to pay legal interest on the indebtedness, together with such collection costs and reasonable attorney's fees as may be required to effect collection of this note.
3. **WARRANTIES AND DISCLAIMER OF WARRANTIES.** Seller disclaims any and all express and implied warranties in any way relating to the goods purchased by customer, whether based on breach of contract, negligence, strict liability or otherwise including without limitation any implied warranties of merchantability or fitness for a particular purpose except that the goods shall meet sellers quality standards. Customer assumes all risk and liability resulting from the use of such goods, whether used singly or in combination with other goods.
4. **CLAIMS.** Customer may reject all or part of the Goods, revoke its acceptance of all or part of the Goods or assert a claim or defence based on the quality of all or part of the Goods only if, within five (5) days after receipt of the Goods, Customer sends to the seller at manufacturing location by prepaid parcel post or express delivery, (i) a letter specifying the nature of the complaint and (ii) a sample of the Goods alleged to be defective or inferior. No charges or expenses incident to any claims will be allowed unless approved in advance and in writing by an authorized representative of Seller. Other than this small sample, Goods shall not be returned to Seller without Sellers prior permission. Compliance by the Customer with these conditions precedent shall not constitute an admission by the Seller of the merits, or amounts of the Customer's claim or defence.
5. **SELLER'S LIABILITY.** No claim of any kind, whether as to Goods delivered or for non-delivery of Goods shall exceed the purchase price of the Goods for which such damages are claimed. It is the Customer's responsibility to determine the suitability of Goods purchased for any and all uses (for example, the replication of optical discs). It is the Customer's responsibility to determine the quality of any products produced using Goods purchased from Seller, through any and all means necessary, including physical inspection, signal analysis, and testing in the intended application. In no event shall Seller be liable for any of Customer's lost profits or any other special or consequential damages, including, but not limited to the cost of replicating discs, printing and packaging costs, shipment costs, or any costs associated with lost business, or claims of damages by any third parties. Seller neither assumes nor authorizes any person to assume for Seller any other liability in connection with the sale or use of the Goods.
6. **OWNERSHIP AND SALE OF PROPERTY.** Materials provided by the Customer to Seller in connection with the Goods shall be lawfully in Sellers possession, but shall remain Customer's property. Customer shall furnish to Seller at Seller's request, written evidence of Customer's right to permit Seller to reproduce or duplicate the materials submitted to Seller. Seller shall not be liable for loss or damage to Customers property. Customer is responsible for insuring its property. Seller reserves the right to withhold Customer's property until full amount is paid to Seller or the Goods including any outstanding account balance. If customer fails to pay any invoice or account balance or fails to claim its property within six months after Customer's account has been paid in full. Seller may dispose of Customers property in any manner Seller deems appropriate.
7. **NONWAIVER.** The Sellers failure to exercise any right or take any action permitted hereunder, or to insist upon strict performance of any provision hereof, shall not be deemed a waiver thereof or as a waiver of other rights, remedies breaches or subsequent defaults by Customer in the performance of or compliance with any of the terms of this Agreement.
8. **DELAY IN PERFORMANCE.** Seller shall not be liable for delay in Sellers performance caused by circumstances beyond Seller's control, including without limitation storm, flood, act of God, fire war, riot, government action labour strike or lockout or other labour trouble or shortage, or inability to obtain material, equipment or transportation.
9. **CUSTOMER REPRESENTATIONS AND WARRANTIES.** Customer represents and warrants that (i) Customer has the right and legal authority to execute and deliver this document to Seller and perform Customers obligations hereunder and that all necessary action has been taken by or on behalf of Customer to authorize and approve this Agreement (ii) Customer is the sole owner of all materials delivered to Seller for duplication and reproduction, or has obtained explicit written permission to duplicate any copyrighted materials from the copyright owner (iii) it has the right and authority to possess, use duplicate and reproduce any and all materials delivered to Seller for duplication or reproduction (iv) neither such material, nor that duplication reproduction or use of the same in any way is defamatory or violates or infringes any copyright trademark, patent other intellectual property right or any other right of any person or entity, wherever located and (v) such materials are not obscene, offensive, or pornographic and do not otherwise violate any local, state or federal law or regulation. Seller reserves the right to reject any order that does not satisfy the above criteria.
10. **COPYRIGHT COMPLIANCE.** Seller maintains an Anti-Privacy program, which endeavours to insure that all titles mastered are done so in compliance with International Recording Media Association (IRMA) and Recording Industry Association of America (RIAA) and International Optical Disc Replicators Association (IODRA) anti-piracy guidelines. Customer is responsible for all liability relative to the replication of their customers' copyrighted content. Seller reserves the right to request copyright documentation for any orders placed by Customer. Seller recommends that complete copyright documentation be submitted with all orders to minimize the potential delay due to copyright due diligence. Seller reserves the right to reject any order for lack of sufficient copyright documentation.
11. **CUSTOMER'S INDEMNIFICATION.** Customer agrees to indemnify defend and hold Seller and its directors, officers, agents, and employees harmless from and against any loss, liability, cost expense including reasonable attorney fees, causes of actions, claims or demands arising out of or in connection with (i) any breach or default by Customer under this agreement or (ii) the duplication distribution publishing, processing use, contents or exhibition of the materials supplied by Customer, or Goods purchased by Customer from Seller, including without limitation any claim asserted by any third party against Seller based on Seller's actual or alleged violation of applicable law or infringement of rights of a third party resulting from Seller's reproduction or duplication of materials submitted by Customer to Seller. Seller agrees (at Seller's option) to either (i) permit Customer to defend a third party claim asserted against Seller with counsel of Customer's choice, in which case Seller shall provide all assistance reasonably requested in prosecuting the defense, or (ii) to defend such claims with counsel of Seller's

choice, in which case Customer shall provide all assistance reasonably requested in connection with such defense. Customer's indemnity hereunder shall extend to all reproductions or duplications in all formats manufactured by or for Seller on Customers behalf.

12. **CLAIMS BY CUSTOMER.** In addition to Seller's right to attorney fees and costs under paragraph 1D above, if (i) Customer asserts any claim against Seller in connection with this Agreement or otherwise relating to the sale or purchase of Goods, and (ii) Seller succeeds in denying substantially all or Customer's claim, Seller shall be entitled to recover from Customer the attorney fees and costs incurred by Seller in defending against such claim regardless of whether litigation is instituted or prosecuted to Judgment.
13. **ENTIRE CONTRACT.** This instrument contains the entire Agreement of the Parties hereto with respect to the sale and purchase of Goods and no modification or waiver of these terms and conditions contained herein shall be of any force unless such modification or waiver shall be in writing and signed by the Seller's authorized representative. Customer agrees that all terms and conditions of each sale and purchase of Goods shall be the terms and conditions contained in this Agreement, and that any different, additional or conflicting terms and conditions contained in Customer's purchase orders are inapplicable and without effect.
14. **SEVERABILITY.** If any term or provision of this Agreement shall be deemed to be invalid or unenforceable, such a determination shall not affect any of the remaining terms and provisions, and all such remaining terms and provisions shall remain in full force and effect.
15. **GOVERNING LAW CONSENT TO JURISDICTION; WAIVER OF JURY TRIAL.** This agreement shall be governed by and construed in accordance with the laws of the province of Ontario without regard to conflict of laws principles the parties agree that neither shall commence any litigation or any other type of proceedings against the other party over a dispute arising out of this agreement or either party's rights and obligations hereunder except in a court located in Toronto, Ontario. Each party consents to and subjects itself to the exclusive jurisdiction of such courts of or any dispute arising out of this agreement or in any manner related to the purchase and sale of the goods and each party agrees that such jurisdiction and venue are reasonable and just under the circumstances each party expressly waives the right to a jury trial as to any issues arising out of any such dispute.
16. **SHIPMENT.** Customer is responsible for paying all freight charges, unless Seller authorizes otherwise explicitly in writing.
17. **COMPUTER VIRUSES.** Customer represents and warrants that Customer has submitted input media that is free of computer software/hardware viruses. Customer is responsible for all liability relative to software/hardware viruses.
18. **ROYALTIES.** Customer must pay any and all royalties required, pursuant to (i) any contractual agreements governing such copyrighted materials and (ii) the Copyright Law of the United States of America, or any other applicable statutes of comparable law of any other jurisdiction regulating the rights and use of recorded and printed materials.
19. **CONFIDENTIALITY.** In performing their obligations under this Agreement, Seller and Customer may each disclose to the other confidential and proprietary information relating to their respective obligations. This Agreement and all such information are hereby designated as confidential ("Confidential Information"). Confidential Information shall mean: (a) tangible information, including reproductions thereof which has been disclosed by the disclosing party to the receiving party and marked as "Confidential", "Restricted", "Secret", "Controlled", or some similar term; (b) information which is disclosed orally by the disclosing party and confirmed in writing as confidential within thirty (30) days of disclosure; and (c) information which is obtained by the receiving party during a visit to the disclosing party's facility and which is identified or designated as being confidential.
 - a. Both parties acknowledge that Confidential Information shall not include any information which (i) is or becomes publicly known through no wrongful or erroneous act by the receiving party; (ii) is already known to the receiving party at the time of disclosure; (iii) is rightfully received by the receiving party from a third party without breach of the Agreement; (iv) is required to be disclosed by court order, law or regulation, provided that the receiving party timely notifies the disclosing party of the required disclosure; or (v) is expressly approved in writing by the disclosing party to be disclosed by the receiving party.
 - b. Confidential Information may not be disclosed orally or in writing to anyone except as required to carry out this Agreement. Both parties agree not to use (during or after the Term of this Agreement) the Confidential Information for any purpose other than the fulfillment of their obligations under this Agreement. Each party shall take all reasonable steps to ensure that their employees comply with this Confidential Information.
 - c. Both parties agree that each has and shall retain ownership rights to its own Confidential Information and that upon completion or termination of this Agreement and request from the other party, each party will return the other's Confidential Information regardless of the media in which it is stored. Both parties agree to return all Confidential Information including, but not limited to, records released to either party for marketing and distribution services to either party immediately upon either party's written request, and upon termination or expiration of this Agreement .
 - d. Both parties acknowledge that unauthorized disclosure or use of Confidential Information could cause irreparable harm and significant injury, which may be difficult to ascertain. Accordingly, both parties agree that the aggrieved party will have the right to seek and obtain injunctive relief from breaches of this Agreement, in addition to any other rights and remedies it may have.

Name

Date

Title

Company

By signing this Agreement, Customer represents and warrants that (i) Customer is authorized to enter into and execute this Agreement; (ii) the information furnished in this Agreement by the Customer is true and accurate; (iii) Customer has read this entire Agreement; and (iv) Customer agrees to be bound by the Terms and Conditions stated herein.