



### 1. Definitions

"the Company" Pure Music Manufacturing Limited and all divisions thereof.

"the Customer" means any person, firm, Company, organisation or other body contracting for the services and/or goods of the Company.

"the Contract" means any contract for the supply of Goods now or hereafter made between the Company and the Customer.

"Goods" means the physical goods supplied to the Customer by the Company and all services rendered by the Company in connection with the supply of those goods.

"Payment" means the Company's receipt from the Customer of cleared funds.

"the Price" means the price(s) of Goods as set out in the Company's standard rate card from time to time as varied by the Company in writing to the Customer from time to time.

### 2. Contract

(a) These conditions together with the description and quality of Goods set out in the customers written order (as accepted by and/or acted upon by the Company) shall constitute the whole Contract between the Company and the Customer and supersede any prior promises, representation, undertakings or implications (whether oral or in writing).

(b) The Customer acknowledges that it has not entered into the Contract in reliance upon any representation made by or on behalf of the Company in any form or by any person whatsoever.

(c) The Company's standard rate card and quotations issued by the Company are not offers capable of acceptance by the Customer.

(d) Warranties, representations and variations and additions to the Contract may only take effect if expressed in writing and signed by a director of the Company.

(e) Any standard or other terms and conditions proposed by the Customer whether in correspondence or its order form or by custom or otherwise shall not form part of the Contract regardless of when those terms and conditions are brought to the Company's attention and notwithstanding any purported stipulation by the Customer to the contrary and these conditions shall prevail.

(f) No variation to these conditions shall be implied by any indulgence shown to the Customer under this or any other contract between the Company and the Customer nor by any course of dealing between them and no alteration, exclusion or waiver of any of these conditions shall be effective or binding unless made in writing by a director of the Company.

(g) Where there is any inconsistency between these Terms and Conditions and the customers written order, these Terms and Conditions will prevail.

### 3. Price

(a) The Price is exclusive of VAT and delivery charges unless the Company specifically agrees otherwise in writing.

(b) The Price is based on current costs of production and can be amended by the Company on or at any time after acceptance of each Customer order to meet any rise or fall in such costs.

(c) Value Added Tax and any other sales or purchase tax or duties shall be payable by the Customer in addition to the Price and shall be charged at the rate prevailing at the date of delivery.

### 4. Payment

(a) Unless expressly agreed in writing by the Company, full Payment is due from the Customer upon placing the order and the Company will not proceed in any way with the order until such time as that payment is received. No deduction or set off or counterclaim is permitted. Where payment is made by means of a cheque or other negotiable instrument, the Company shall not be deemed to have received payment until the cheque or instrument has been honoured on presentation for payment.

(b) Where a credit account is agreed, the price shall be paid to the Company within thirty days of the date of the invoice.

(c) Interest will be charged on any sums overdue on a day to day basis at the rate of four percent over the base rate of HSBC Bank plc from time to time from the due date until receipt by the Company of the full amount.

(d) Time for Payment is of the essence and failure to make Payment on the due date shall entitle the Company at its option to:-

(i) cancel any orders as yet unperformed for the Customer; and/or

(ii) receive on demand Payment of all sums outstanding (whether or not otherwise due for payment) under any contract between the Company and the Customer; and/or

(iii) treat the contract as terminated due to the Customer's repudiation of it.

(e) The Company may withdraw credit facilities at any time without giving a reason.

(f) The Company may credit any amount(s) received by the Company from the Customer against any amount(s) due to the Customer from the Company under any other contract or arrangement.

### 5. Termination

If the Customer:-

(a) becomes bankrupt, is the subject of winding up petition, goes into liquidation, has a receiver or administrator appointed over all or part of its business or assets otherwise becomes subject to the insolvency laws applicable in the Customer's place of incorporation, or circumstances arise which render any of the foregoing likely to occur in the sole opinion of the Company; and/or

(b) is in material breach of any contract between the Customer and the Company; and/or

(c) is party to any other contract with the Company which is terminated for any reason Then the Company shall be entitled to terminate the Contract with immediate effect by serving written notice thereof on the Customer without compensation to the Customer but without prejudice to any rights of the Company.

## **6. Delivery and Acceptance**

- (a) Delivery shall be deemed to have taken place when the Goods ordered are ready for collection from the Company's premises and the Company has informed the Customer of this.
- (b) The Company will use its reasonable endeavours to Deliver Goods to the Customer by the delivery date quoted by the Company but that date is a business estimate only and shall not be a term of the Contract and the Company shall be under no liability for failure to Deliver the Goods by that date.
- (c) The risk in the Goods shall pass to the Customer upon the dispatch thereof from the Company's premises or three days after notification that the goods are ready for collection, whichever is the earlier.
- (d) the Customer shall notify the Company in writing of any alleged defects in the Goods within five days of Delivery thereof failing which the Customer shall be deemed to have accepted the Goods as fitting their description, being of satisfactory quality and fit for their actual and usual purposes.
- (e) The Company may effect delivery in one or more instalments. Damage to, defects in or loss of one instalment of any order shall not entitle the Customer to cancel or to refuse to accept delivery of the remaining instalments of the order.
- (f) If the Customer wrongfully refuses or fails to take delivery of the Goods, the Company shall be entitled to immediate payment in full for the Goods. All storage and transport costs incurred by the Company as a result of such refusal or failure shall be for the Customers' account.

## **7. Exclusion and Limitation of Company's Liability**

- (a) If Goods supplied by the Company are defective ("Defective Goods") owing or in part due to any defect or error in materials (or the contents thereof) supplied by or on behalf of the Customer to the Company in connection with the Goods then the Company shall not be liable for the Defective Goods.
- (b) The Customer shall be responsible for taking all reasonable steps to limit and/or mitigate any loss or potential loss arising out of the supply or potential supply of Goods hereunder.
- (c) Subject to Clause 7 (a) above, the Company's liability to the Customer for any breach of contract, negligence, loss, damage, costs or expense suffered by the Customer (including without limitation wasted manufacturing costs, advertising, the opportunity cost of lost record sales and the Customer's loss of profit) (but excluding liability for death or personal injury) arising out of the supply of Defective Goods for any reason whatsoever shall be limited to an obligation to promptly replace those Goods.
- (d) If Goods supplied by the Company fail to fit their description, are not of satisfactory quality, are unfit for their usual or actual purpose or are otherwise defective (whether or not caused by the Company's negligence) the Company's liability in respect thereof (excluding liability for death or personal injury) shall be limited to an obligation to promptly replace those Goods.
- (e) The Company shall not be liable to the Customer in contract, tort or otherwise:
  - (i) for any non-delivery or shortage in quantity delivered or collected or damage to or defects in the Goods caused by any act, neglect or default of the Customer;
  - (ii) for shortages in quantity delivered or damage to or defects in the Goods which would be apparent on reasonable inspection unless notice of the same is endorsed on the delivery papers or the Customer gives notice to the Company in writing of any such claim within five days of delivery;
- (f) The Company shall not be liable to the Customer, notwithstanding the notification of a claim, if legal proceedings in respect of that claim has not been commenced and served on the Company within twelve months of the notification of the claim. Any right of action which has become barred by lapse of time may not be exercised by way of counterclaim or set-off.
- (g) The Company's prices are determined on the basis of the limit of liability set out in this Condition.

## **8. Unlawful Material**

- (a) The Customer warrants that all material supplied by the Customer for reproduction on the Goods shall not be unlawful, obscene, defamatory or infringe the rights of any third party.
- (b) The Customer warrants that it has acquired the benefit of all necessary permissions and consents (including without limitation copyright clearances, moral rights waivers and performers' consents) required to enable the Company to lawfully make and supply the Goods under the contract.
- (c) The Company shall be under no obligation to supply Goods hereunder for which the Customer is unable to produce an MCPS license when requested to do so by the Company.
- (d) The Customer shall indemnify the Company in respect of any loss, damage, cost, expense and other liability of the Company arising out of any claim made against the Company which is inconsistent with the warranties, representations and obligations of the Customer under the Contract.

## **9. Passing of Property / Lien**

- (a) Notwithstanding delivery, title to the Goods shall not pass to the Customer until the Company has received payment in full in respect of all Goods delivered to the Customer and any other sum due to the Company from the Customer. Until such payment the Customer shall have possession of the Goods as bailee and fiduciary agent for the Company. Even though title has not passed to the Customer the Company shall be entitled to take action to recover the Price once its payment has become due.
- (b) The Customer hereby agrees forthwith on receipt of written request from the Company to assign to the Company all rights and claims which the Customer may have against third parties arising from such sales until payment is made in full as aforesaid.
- (c) The Company reserves the right to repossess any Goods to which it retains title (and thereafter to resell the same) if payment for the Goods is overdue or if a resolution is passed or an order is made for the winding up of the Customer or a receiver, administrative receiver or administrator is appointed in respect of the Customer or any of its assets or the Customer becomes bankrupt or the Company reasonably apprehends that any of the above is about to occur in relation to the Customer.
- (d) The Customer grants an irrevocable right and license to the Company its employees and agents to enter upon all or any of the Customer's premises with or without vehicles during normal business hours for the purpose of exercising this right. This right shall continue to subsist notwithstanding the termination of the contract for any reason and is without prejudice to the Company's other rights. Any expense incurred by the Company in repossessing and/or reselling the Goods shall be borne by the Customer.

## **10. Customers Property**

- (a) Customer's property and all property supplied to the Company by or on behalf of the Customer will be held and worked on entirely at the Customers risk.
- (b) The Customer warrants that it will keep at least one safety copy of all source tapes and other material supplied to the Company by or on behalf of the Customer in connection with this Contract.