

TERMS AND CONDITIONS OF TRADE

1. DEFINITIONS.

In these terms and conditions ("The Conditions") the following terms shall have the following meanings.

- 1.1. "The Company" - means Music Take Away (Partnership).
- 1.2. "The Customer" - means any person Firm or Company placing an order with the Company.
- 1.3. "The Goods" - means any goods, articles or services supplied by the Company to the Customer or services carried out by the Company for the Customer.
- 1.4. "Master Recording" - means (a) any recording, audio or video in any format on any medium supplied to the Customer by the Company or (b) any original video or audio recording made by the Company for the customer, whether on the Company's premises or elsewhere on the Company's instructions.
- 1.5. "Printwork" - means any art work, printing plates, film, printed material or packaging material supplied to the customer by the Company or by the customer to the Company.

2. ACCEPTANCE OF ORDERS.

- 2.1. The Company contracts for the supply of the goods subject only to the conditions and all terms and conditions in the Customers order or enquiries inconsistent with the conditions shall be of no effect.
- 2.2. The Conditions contained herein shall constitute the entire agreement between the Company and the Customer ("the Contract") and any modification to the conditions will be binding only if it is evidenced in writing signed on behalf of the Company.
- 2.3. Unless the Company agrees in writing, the Customer shall not cancel a contract to which the conditions apply.

3. ESTIMATES AND PRICES.

Unless otherwise stated in writing the prices estimated or quoted by the Company are applicable from the point of collection at the Company's premises but are exclusive of VAT and other applicable taxes, duties or levies of any kind whatsoever, all of which are payable in addition by the Customer.

4. CLAIMS NOTIFICATION.

- 4.1. Any claim that any goods have been delivered damaged; are not of the correct quantity or do not comply with their description shall be notified by the Customer to the Company within seven days of their delivery.
- 4.2. Any alleged defect shall be notified by the Customer to the Company within seven days of the delivery of the Goods or in the case of any defect which is not reasonably apparent on inspection within seven days of the defect coming to the Customer's attention.
- 4.3. Any claim under this condition must be in writing and must contain full details of the claim.
- 4.4. The Company shall be afforded reasonable opportunity and facilities to investigate any claims made under this condition and the Customer shall if so requested in writing by the Company promptly return any Goods the subject of any claim and any packing materials securely packed and carriage paid to the Company for examination.
- 4.5. The Company shall have no liability with regard to any claim in respect of which the Customer has not complied with the claims procedures in these conditions.

5. PAYMENT.

Payment for the Goods shall be made in accordance with the provisions set out below:

- 5.1. The time of payment shall be of the essence of any contract to which the Conditions apply and unless otherwise expressly stated payment shall be due on or before the 30th day of the month following the month of Invoice.
- 5.2. Without prejudice to any other rights, failure to pay the price or part thereof or other monies payable by the Customer shall entitle the Company at the Company's sole discretion either to refuse to make delivery of any further consignment of any goods agreed to be supplied or to cancel any contract to which the Conditions apply, either in whole or part, by notice in writing to the Customer and without incurring any liability to the Customer for any loss caused by such delay or cancellation.
- 5.3. If the payment of the price or any part thereof and of all other sums payable by the Customer is not made on the due date, the Company shall without prejudice to its other rights hereunder be entitled to charge in addition to any monies due hereunder interest on the outstanding amount at the rate per annum of 4 per cent above the base lending rate from time to time of Bank Of Ireland, such interest to accrue daily both before and after any judgment and to be compounded monthly until payment is made.

6. WARRANTY.

- 6.1. The Company hereby warrants its title to the Goods but save as to this warranty as to title no other warranty condition or other terms as to the characteristics of the Goods, their quality or fitness for any purpose is given or accepted and any warranty condition or other such term whether implied by statute at common law or otherwise (other than in respect of death or personal injury resulting from the negligence of the Company or its servants or agents) is hereby excluded from this contract notwithstanding the purpose for which the Goods are to be used is made known to the Company.
- 6.2. The Company does not warrant that instalments of or batches of repeat orders of any Goods shall comply with the specification of any other instalment, batch or order. In the event that there shall be any said variation of specification the liability of the Customer shall be limited to the invoice price of the instalment, batch or order concerned.
- 6.3. It is the Customer's absolute obligation to specify clearly the Goods being ordered and the specification required. The Company accepts no liability for the failure of the Customer to order the correct Goods or specification.
- 6.4. Where a Customer deals as a consumer (as defined in the Sale of Goods and Supply of Services Act 1980 ("The 1980 Act")) the conditions are without prejudice to the rights conferred on consumers by that Act.
- 6.5. Where a Customer does not deal as a consumer, the rights conferred by the 1980 Act are excluded to the extent that such exclusion is fair and reasonable.
- 6.6 The responsibility of the Company shall in all cases be limited to the replacement of the defective product supplied.
- 6.7 The Company shall not be liable for any loss or damage in excess of the Contract Price for the goods or services or part thereof in respect of which a claim is made.
- 6.8. The Company shall not be liable for any consequential or indirect loss suffered by the Customer whether the loss arises from a breach of duty in contract or in any other way (including loss arising from the Company's negligence). Non exhaustive illustrations of consequential or indirect loss would be:-
 - (a) Loss of Profits.
 - (b) Loss of Contract.
 - (c) Damage to property of the Customer or anyone else.
 - (d) Personal injury to the Customer or anyone else (but only in so far as such injury is not caused by the Company's negligence).
 - (e) Damage to the professional reputation of the Customer.

7. FORCE MAJEURE.

If the Company is prevented from fulfilling any order within a reasonable time by reason of any cause beyond its reasonable immediate control the Company shall be under no liability to the Customer and shall be entitled at its option (to be notified in writing to the Customer) either to cancel any contract to which the Conditions apply or to extend the time or times for delivery.

8. DEFAULT AND CUSTOMER'S INSOLVENCY.

If there is any default or breach of any of the Customer's obligations hereunder or in any payments due under any contract of sale to which the Conditions apply or if any distress, execution or other legal process is levied upon the Customer's property or if the Customer shall make or offer to make any arrangement or composition with creditors or commit any act of bankruptcy or if any petition or receiving order is presented or made against the Customer or if a Company, any resolution or petition to wind it up or to appoint a Receiver/Administrator shall be passed or presented or a receiver manager or administrative receiver of all or any of its assets shall be appointed, then (without prejudice to other remedies) in any such case the Company may determine such contract or cancel any outstanding delivery or stop any products in transit and notwithstanding any other provisions, payment in respect of any delivery already made shall be immediately due.

9. ASSIGNMENT.

The Customer may not assign or transfer or purport to assign or transfer any contract to which the Conditions apply or the benefit thereof to any person whatsoever.

10. INTELLECTUAL PROPERTY.

No representation warranty or indemnity is given by the Company that the goods do not infringe any Letters of Patent, Trademark, Registered Design or other Industrial Right.

11. LAW.

Any Contract to which the conditions apply shall be governed by and construed in accordance with the laws of Ireland. The Customer hereby expressly submits to the jurisdiction of the Courts of Ireland.

12. HEADINGS.

The headings shall not affect the meaning or interpretation of these Conditions.

13. LIEN

- 13.1.** In addition to any right of lien to which the Company may by law be entitled the Company shall be entitled to retain possession of all goods in its possession or under its control until payment of the price of any goods sold to the Customer by the Company under this contract or any other contract.
- 13.2** The Company shall be entitled to set off any sums due by the Customer hereunder against any sums due by the Company to the Customer on foot of any other contract.

14. TITLE AND RISK.

- 14.1.** Risk in the Goods shall pass to the Customer when the Goods are delivered to or collected by the Customer or his agent.
- 14.2.** Notwithstanding risk in the Goods passing to the Customer title in the Goods shall not pass to the Customer until whichever shall be the first to occur of the following:
Payment being received by the Company for the Goods and no other amounts then being outstanding from the Customer to the Company in respect of other goods supplied by the Company and, or, the Customer selling the Goods in which case title to the Goods shall be deemed to have passed to the Customer immediately prior to delivery of the goods to the Customer's Customers.
- 14.3.** Before title is passed to the Customer under the terms hereof and without prejudice to any of its other rights the Company shall have the right to recover or resell the Goods or any of them and may enter upon the Customer's premises by its servants or agents for that purpose.
- 14.4.** Until payment due under all contracts between the Customer and the Company has been made in full: The Company shall be entitled to trace all such proceeds of sale or hire charges received by the Customer through any Bank or other account maintained by the Customer.
- 14.5.** In the event of the sale of the Goods by the Customer in the ordinary course of his business the Customer shall assign his rights to recover the selling price from the third parties concerned to the Company if required to do so in writing by the Company.
- 14.6.** As the insurable risk in the Goods shall pass to the Customer as soon as the Goods are delivered to or collected by him or to his order, pending disposal the Customer shall keep the Goods insured in the amount of the price at which the Goods were sold to the Customer against all insurable risks.
- 14.7.** If the Goods are destroyed by an insured risk prior to the same being paid for by the Customer, the Customer shall receive the proceeds of any such insurance as Trustee for the Company.

15. UNCOLLECTED GOODS:

- 15.1.** Unless prior arrangements have been made between the Customer and the Company Goods ordered by the Customer must be collected within ninety days of their being ordered. After ninety days the Company shall have the right to dispose of any such uncollected goods and the Customer shall reimburse the Company for any expenses incurred in such disposal and shall also pay to the Company the costs of producing such Goods.
- 15.2.** The Company shall have no obligation to alert the Customer to such disposal.

16. MASTER RECORDINGS AND PRINTWORK.

- 16.1.** "Master recordings" and/or "Printwork" are accepted from Customers as a convenience and the Company does not assume financial responsibility for them beyond the value of the actual physical materials constituting same.
- 16.2.** "Master recordings" and/or "Printwork" deposited with the Company by the Customer are deposited entirely at the Customers own risk. The Company accepts no responsibility whatsoever for their safe keeping. Should such "Master Recordings" or "Printwork" be lost, damaged, or destroyed the Company shall not be liable for any consequential or indirect loss suffered by the Customer whether the loss arises from a breach of duty in contract or for and in any other way (including loss arising from the Company's negligence). Non exhaustive illustrations of consequential or indirect loss would be:
- (a)** Loss of Profits.
 - (b)** Loss of Contract.
 - (c)** Damage to property of the Customer or anyone else.
 - (d)** Personal injury to the Customer or anyone else (but only in so far as such injury is not caused by the Company's negligence).
 - (e)** Damage to the professional reputation of the Customer.

17. COPYRIGHT AND CUSTOMER'S WARRANTY.

- 17.1.** The Customer warrants that it is the owner of the copyright in the subject matter of the Goods and if this is not the case that it has been granted the necessary licence to procure the manufacture and sale of the copyright in the subject matter of the Goods and that such manufacture and sale by the Company will not infringe the rights of any third parties.
- 17.2.** On request by the Company the Customer will produce proof of ownership of the copyright in the subject matter of the Goods or proof of licence of such copyright and/or the necessary licence granted by the Mechanical Copyright Protection Society (MCPS) or other such relevant body and pending such production the Company reserves the right to cease manufacture of the goods.
- 17.3.** The Customer hereby fully and effectually indemnifies the Company against any and all claims.

18. THE COMPANY'S RESPONSIBILITY.

The Company is not responsible for every possible situation which can occur with respect to Master Recordings submitted for duplication; editing and processing. The Customer shall and hereby covenants agrees and undertakes to retain an original or "dub Master" at its own facility of each Master Recording submitted to the Company.

19. STORAGE OF MASTER RECORDINGS.

The Customer may store its Master Recordings at the Company's facilities with the prior written agreement of the Company but the Company cannot guarantee to replace programme content should anything happen to the Master Recordings while in the Company's care. Master Recordings are accepted from Customers as a convenience and the Company does not assume financial responsibility for Master Recordings beyond the value of the actual physical materials constituting same.

20. WORK ORDERS.

The Company reserves the right to return Master Recordings to the Customer if it does not receive a Work Order from the Customer within a period of three calendar months after the Master Recording has been received at the Company's facility. In this connection it is the responsibility of the Customer to inform the Company of any change of address.

21. AUTHORITY TO BIND THE COMPANY.

No employee of the Company is authorised to modify the conditions other than the Partnership members, Ralph Hermann and Chris Auguscinski, and then only through their specific written communication/authority.

22. CONTRACT MAY BE SUBCONTRACTED

The Company may subcontract at its absolute and sole discretion, without consulting with the Customer, the performance of this Contract in whole or in part. In that event the terms of this Contract as between the Company and the Customer shall continue to apply in all respects as if the performance of the Contract was being carried out by the Company itself. The Company shall not be under any obligation to notify the Customer that the performance of all or part of the Contract has been subcontracted.