

## Terms and Conditions of Key Production (London) Ltd

**THE CUSTOMER'S ATTENTION IS, IN PARTICULAR, DRAWN TO THE PROVISIONS OF CLAUSE 7.2 BELOW.**

### 1. General

- 1.1 For the purposes hereof "the Company" shall mean Key Production (London) Ltd (a company registered in England and Wales with number 2794065) and all divisions thereof from time to time, and "the Customer" shall mean the party (whether a person, firm, company, organisation or other entity or body) to whom the relevant invoice is issued by the Company or who otherwise contracts to acquire the relevant Products and/or Services from the Company. The "Products" shall mean any and all physical or digital products, data, files, goods, materials or other items supplied by the Company to the Customer pursuant to any Contract and the "Services" shall mean any and all services provided by the Company to the Customer pursuant to any Contract. These Terms and Conditions shall apply to the supply by the Company of both Products and Services except where the application to one or the other is specified (or where the context otherwise requires).
- 1.2 Every contract concluded between the Company and the Customer shall comprise solely of the relevant invoice and these standard Terms and Conditions which shall be attached thereto and/or made available to the Customer beforehand ("the Contract"). All other terms, conditions or representations are hereby specifically excluded including, without limitation, any terms or conditions that the Customer purports or attempts to (i) add, impose, apply, incorporate by way of (or otherwise endorse on) any purchase order, order confirmation or similar document, or in any other manner, and whether or not any such document is referred to in the Contract or (ii) imply by trade, custom, practice or course of dealing, save (in each and any such case) for any additional terms and conditions that are expressly and specifically agreed in writing and in advance between a director of the Company and the Customer. In the event of any conflict arising between these Terms and Conditions and any terms or conditions so added, the former shall prevail. These Terms and Conditions override and replace any other standard or published terms and conditions of the Company from time to time. The Contract constitutes the entire agreement between the parties. The Customer acknowledges that it has not relied on any statement, undertaking, warranty, promise or representation made or given by (or on behalf of) the Company which is not set out in the Contract.
- 1.3 The Company's proposals, tenders, rate cards, quotations or estimates do not (in any event) constitute an offer. Each order made, or acceptance of a proposal, quotation, rate card, tender or estimate, for Products and/or Services by the Customer shall be deemed to be an offer by the Customer to buy such Products and/or Services from the Company subject to these Terms and Conditions. No order placed by the Customer shall be deemed to have been accepted by the Company (and no contract shall arise, or be deemed to have been formed, between the Company and the Customer) unless and until a written acknowledgement of order has been issued by the Company or (if earlier) the relevant Products and/or Services are delivered to the Customer. The Customer is responsible for ensuring that the terms of its order, and any applicable specification(s), are complete and accurate. The nature, quantity and description of the relevant Products and/or Services shall be as set out in the Company's proposal, quotation, rate card, tender, estimate or acknowledgement of order. Any proposal, quotation, rate card, tender or estimate given by the Company shall be valid for a period of thirty (30) days, unless previously withdrawn or extended by the Company. In any event, all orders are subject to (i) the Company receiving any and all necessary licences required to purchase, process and/or use the required materials and/or to manufacture the relevant Products and/or (as applicable) to deliver the relevant Services and (ii) the Company being able to obtain the information and materials required to manufacture the relevant Products and/or (as applicable) to deliver the relevant Services.
- 1.4 Any and all samples, drawings, descriptive matter, specifications and advertising/promotional material issued or published by the Company, and any descriptions or illustrations contained in the Company's catalogues or brochures or on the Company's website, are (in each and any such case) issued or published by the Company for the sole purpose of giving an approximate idea of the Products and/or Services described therein and they shall not, nor shall they be deemed to, form part of any Contract (or otherwise have any contractual force).
- 1.5 The Customer will (i) ensure that the terms of each specification and order for Products and/or Services (as applicable) is complete and accurate (ii) co-operate with the Company in all matters relating to the supply of the Products and/or Services and (iii) provide the Company with such information and materials as it reasonably requires in order to supply the relevant Products and/or Services, and ensure that such information is accurate in all material respects. If the Company's performance of any of its obligations under any Contract is prevented or delayed by any act or omission of the Customer or failure of the Customer to perform any relevant obligation (a "Customer Default") (a) the Company shall, without limiting its other rights or remedies, have the right to suspend performance of the relevant Contract until the Customer remedies the Customer Default, and to rely on the Customer Default to relieve it from the performance of any of its obligations to the extent the Customer Default prevents or delays the Company's performance of any of its obligations (b) the Company shall not be liable for any costs or losses sustained or incurred by the Customer arising directly or indirectly from the Company's failure to perform (or delay in performing) any of its obligations as set out in this clause 1.5 and (c) the Customer shall reimburse the Company on written demand for any costs or losses sustained or incurred by the Company arising directly or indirectly from (or in connection with) the Customer Default.

## **2. Price and Payment**

- 2.1 The agreed price for the Products and/or Services shall be exclusive of any value added tax ("VAT") and any and all costs and charges relating to packaging, loading, carriage/transport and insurance, all of which amounts the Customer shall pay in addition to the basic price of the relevant Products and/or Services and when it is due to pay for the relevant Products and/or Services under these Terms and Conditions. Where any taxable supply for VAT purposes is made under any Contract by the Company to the Customer, the Customer shall, on receipt of a valid VAT invoice from the Company, pay to the Company such additional amounts in respect of VAT as are chargeable on the supply of the relevant Products and/or Services at the same time as payment is due for the supply of those Products and/or Services.
- 2.2 Unless otherwise agreed in writing in advance, payment for all Products and Services is due to the Company in cleared funds (without set-off or deduction), immediately on receipt of the relevant invoice by the Customer, into the bank account nominated by the Company in writing from time to time. Time for payment by the Customer shall be of the essence of the relevant Contract. 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 other instrument) has been honoured on presentation for payment. If the Customer fails to pay the Company in accordance with this clause 2.2, or if any sum is due from, and remains unpaid (in whole or in part) by, the Customer to the Company pursuant to the Contract, or any other contract entered into between the Customer and the Company, the Customer shall be liable to pay (and hereby fully indemnifies the Company on demand from and against) any and all legal and other costs or expenses which the Company may suffer or incur in connection with such failure by the Customer to make due payment. In addition, and without prejudice to the Company's other rights and remedies, interest will be payable by the Customer to the Company during the period from the due date for payment until the date of actual payment ("the outstanding period") on any and all such outstanding sums at a rate of three per cent (3%) per annum above the base lending rate of the National Westminster Bank PLC in force from time to time during the outstanding period (after as well as before judgement) accruing on a daily basis and compounded quarterly. The Company also reserves the right to claim interest under the Late Payment of Commercial Debts (Interest) Act 1998.
- 2.3 Without prejudice to the Company's rights and remedies set out herein (and its other rights and remedies under the general law), in the event of non-payment by the Customer, the Company shall also be entitled to (i) suspend any and all further deliveries of Products and/or Services to the Customer (under the relevant Contract or otherwise) until any such outstanding payment has been made in full (ii) cancel the order made by the Customer pursuant to the relevant Contract, and/or any other order or orders made by the Customer remaining to be fulfilled (under the relevant Contract or otherwise) insofar as any Products and/or Services remain to be delivered to the Customer or (iii) otherwise terminate the relevant Contract and/or any other contract entered into between the Customer and the Company (whereupon, notwithstanding any other provision of these Terms and Conditions, all amounts payable by the Customer under the relevant Contract, and/or any such other contract, shall become immediately due and payable to the Company).
- 2.4 The Company hereby reserves the right to increase the price of any Products and/or Services, by giving written notice to the Customer at any time before delivery, to reflect any increase in the cost to the Company of providing the Products and/or Services to the Company that is due to (i) any factor beyond the control of the Company (including, without limitation, foreign exchange fluctuations, increases in taxes and duties, and/or increases in labour, materials and other manufacturing costs) (ii) any request by the Customer to change the delivery date(s), specification(s), quantities or types of Products and/or Services ordered or (iii) any delay caused by any instructions of the Customer in respect of the relevant Products and/or Services or any failure of the Customer to give the Company adequate or accurate information or instructions in respect of the relevant Products and/or Services.
- 2.5 All invoice queries must be notified in writing by the Customer to the Company within seven (7) days of the date of the relevant invoice, otherwise the invoice shall be deemed to be correct and the Customer shall be bound to pay such invoice in full in accordance with these Terms and Conditions. The Customer shall pay all amounts due under each Contract in full without any deduction or withholding except as may be required by law and the Customer shall not be entitled to assert any credit, set-off or counterclaim against the Company in order to justify withholding payment of any such amount in whole or in part. The Company may, without limiting its other rights or remedies, set off any amount owed to it by the Customer against any amount payable by the Company to the Customer. The Company may withdraw any credit facilities at any time, by giving notice to the Customer, and without giving any reason.

## **3. Delivery and Transport**

- 3.1 Where the Products are delivered by the Company's own transport or carrier, or by a courier on behalf of the Company, the risk therein shall pass to the Customer immediately upon delivery of those Products. In the case of any Products and/or Services, any delivery dates and/or times specified by the Company, although given in good faith, are intended to be an estimates only and, although the Company will use reasonable endeavours to deliver the relevant Products and/or Services in accordance with such delivery dates and/or times, the dates and/or times for delivery of those Products and/or Services shall not be (or be deemed to be or be made by notice) of the essence or binding on the Company. If no delivery dates and/or times are specified by the Company, delivery of the relevant Products and/or Services shall take place within a reasonable time. In all other cases, the relevant Products shall be deemed to have been delivered, and the risk therein to have passed to the Customer, immediately upon their transfer to the courier nominated by the Customer or, if the

Customer is to collect the Products from the Company, immediately upon the Company notifying the Customer that the Products are available for collection. In the case of Services, they shall be deemed to have been delivered to the Customer when they have been performed in accordance with the relevant Contract. The Company shall not be liable to the Customer for any direct, indirect or consequential losses, costs, damages, charges or expenses caused directly or indirectly by any delay in the delivery of any Products and/or Services (even if caused by the Company's negligence) nor shall any such delay entitle the Customer to terminate or rescind the relevant Contract.

- 3.2 If, for any reason, the Customer fails to collect or accept delivery of all or any Products and/or Services when they are ready for collection or delivery (or, in the case of Services, when they have been performed), or the Company is unable to deliver the relevant Products and/or Services on time because the Customer has not provided appropriate instructions, documents or information then, as applicable (i) risk in the relevant Products shall pass to the Customer (ii) the relevant Products and/or Services shall be deemed to have been delivered and (iii) the Company may store the relevant Products until collection or delivery takes place, whereupon the Customer shall be liable for all storage, insurance and other costs. If, five (5) working days after the Company has notified the Customer that the relevant Products are ready for delivery, the Customer has not accepted or taken delivery of them, the Company can re-sell or otherwise dispose of part or all of the relevant Products and, after deducting its reasonable costs, account to the Customer for any excess over the price of the Products or (as applicable) charge the Customer for any shortfall below the price of the Products.
- 3.3 If the Customer fails to supply the relevant copy master tapes, audio or data masters, recordings, images, artwork, designs and/or other materials required to be supplied by the Customer to the Company under the relevant Contract, or otherwise fails to provide the Customer with adequate delivery instructions and/or fails to make payment in accordance with that Contract, then any proposed or agreed time(s) and/or date(s) for delivery of the relevant Products and/or Services by the Company shall be extended by a minimum of three (3) working days in addition to the period of the delay in such supply or payment by the Customer.
- 3.4 The quantity of Products, as recorded by the Company upon despatch thereof to the Customer, shall be conclusive evidence of the quantity of Products received by the Customer on delivery unless the Customer can provide conclusive evidence to the contrary. In any event, the Company shall not be liable to the Customer for any non-delivery of any Products and/or Services (even if caused by the Company's negligence) unless the Customer gives written notice of the non-delivery to the Company within three (3) working days of receipt by the Customer of the invoice in respect of the relevant Products and/or Services.
- 3.5 If any Products are faulty or damaged or, where carried by the Company or on behalf of the Customer, are lost or damaged in transit, the Customer shall submit a detailed claim in writing to the Company with three (3) working days of delivery describing the nature and extent of any such loss or damage to enable the Company to make any necessary claim against the manufacturer or carrier within the relevant time limit. If the Customer fails to give such written notice to the Company, the Products shall be deemed in all respects to be (and to have been delivered) in accordance with the Contract and the Customer shall be bound to accept and pay for the same accordingly. The Customer will, if necessary in the case of faulty or damaged Products, arrange for and permit an inspection of the Products in question and provide appropriate inspection facilities. The faulty or damaged Products must not be removed from the original packaging by the Customer nor dealt with nor disposed of in any way by the Customer and they must be stored in a separate area of the Customer's premises. Minor faults which are part of the applicable production process and/or do not affect the overall quality, functionality and (as applicable) saleability of the relevant Products or Services shall not be a cause of rejection, claim or complaint by the Customer hereunder (and, in respect of records in particular (but without limitation), a tolerance of 2mm warping or dishing is and shall be deemed to be acceptable). The Company will not be liable in respect of any faulty or damaged Products if the Customer makes use of them or if the defect or damage has occurred due to a failure by the Customer to follow any of the Company's instructions in relation to the Products or if the Customer alters or repairs the relevant Products (or tries to do so) without the prior written consent of the Company. If the Company accepts liability in respect of any faulty or damaged Products, the Customer shall, at its own cost, return the faulty or damaged Products to the Company and, if the Company so elects (at its sole discretion), the Customer shall be obliged to accept replacement Products provided they are of an acceptable quality, manufactured within a reasonable period after such return and despatched to the Customer promptly following completion of manufacture.
- 3.6 Notwithstanding any of the foregoing provisions, the Company hereby expressly excludes any liability to the Customer which it might otherwise have for loss or damage suffered or incurred by the Customer (including, without limitation, liability for any consequential loss or damage including, without limitation, loss of profit) by reason of shortage of delivery or the quality or condition of the Products delivered or their loss or damage in transit save insofar as any amount is recovered by the Company in respect thereof from the relevant manufacturer and/or carrier. In such circumstances, the aggregate liability of the Company to the Customer (for negligence, breach of contract, misrepresentation or otherwise) shall in no event exceed the net price invoiced by the Company to the Customer in respect of the defective, damaged or undelivered Products and at the Company's discretion, it shall either (i) deliver or replace the relevant Products within a reasonable time as provided above or (ii) issue a credit note against the invoice raised for the relevant Products.
- 3.7 If the Company delivers to the Customer a quantity of Products of up to ten per cent. (10%) more or less than the quantity originally ordered by the Customer, the Customer shall not be entitled to object or to reject the Products (or any of them) by reason of the surplus or shortfall, as the case may be, and the Customer shall be obliged to pay for such

Products at the *pro rata* Contract rate. The Company also reserves the right to deliver up to the Customer ten per cent (10%) more printed parts over the amount specified in the Contract so as to allow for wastage. Again, the Customer shall not be entitled to reject such excess printed parts and shall be obliged to pay the Company for the same at the *pro rata* Contract rate. Where the Company is holding a balance surplus to the Contract of any Products, the Company will at the Customer's expense carry out the Customer's reasonable written instructions relating to such surplus Products. If the Customer's written instructions are not received with one (1) month of the delivery of the final order under the Contract relating to the Products in question, the Company (i) will not accept any liability whatsoever to the Customer for any loss, damage or otherwise occurring to such surplus Products and (ii) reserves the right to deal with such surplus Products as it sees fit (and at its sole discretion).

- 3.8 The Company may deliver any Products and/or Services by separate instalments, in which case each instalment shall constitute a separate Contract and no cancellation or termination of any single Contract or instalment shall entitle the Customer to repudiate or cancel any other Contract or instalment. Each separate instalment shall be invoiced by the Company, and paid for by the Customer, in accordance with the provisions of the relevant Contract.

#### **4. Risk and Retention of Title**

- 4.1 The Products shall be at the risk of the Customer on, and from the time of, delivery. However, the Products shall remain the sole and absolute property of the Company until the Customer has paid (i) the Company for the relevant Products in full and in cleared funds and (ii) any other debts or moneys (or the balances thereof) owed to the Company by the Customer in full and in cleared funds. The Company may recover payment for the relevant Products notwithstanding that the ownership of those Products has not yet passed to the Customer.

- 4.2 Until payment has been made to the Company in accordance with these Terms and Conditions and title in the Products has passed to the Customer, if the Products have been delivered to the Customer hereunder, the Customer shall be in possession and control of the Products on a fiduciary basis as bailee for the Company at law and in equity and shall maintain the Products in satisfactory condition (and stored separately from all other products held by the Customer such that the Products readily identifiable as the Company's property) and keep them insured on the Company's behalf (with a reputable insurer) for their full price against all reasonable risks/losses from the date of delivery and refrain from removing, defacing or obscuring any identifying mark or packaging on or relating to the Products and otherwise give the Company any and all such information relating to the Products as the Company may reasonably require from time to time and (i) if the Customer sells and/or delivers the relevant Products or any part thereof to any third party in the ordinary course of its business (in which case such sale shall be a sale of the Company's property on the Customer's behalf and the Customer shall deal as principal in relation to such sale) or (ii) if the relevant Products (or any part thereof) are damaged, lost or destroyed then, in either case and in a strict fiduciary capacity, the Customer shall (in each and any such case) hold on trust for the Company, and not mix with any other monies (whether in a bank account or otherwise), that proportion of, as the case may be, the proceeds of sale or the proceeds of insurance against damage, loss or destruction (and any interest thereon) as is referable to the outstanding payment due from the Customer to the Company in respect of the relevant Products.

- 4.3 The Company hereby reserves the right, at any time and from time to time, to immediately re-possess any Products to which it has retained title under this clause 4 and which have not been sold by the Customer and, in connection therewith but without limiting any other right or remedy the Company may have, the Company may (at any time) require the Customer to deliver up the relevant Products and, if the Customer fails to do so promptly, the Customer hereby irrevocably authorises the Company, its employees and/or any of its agents to enter the Customer's premises (or any other premises where the Products are or may be stored from time to time) at any time during normal business hours, and without further notice, in order to inspect and/or (where applicable) recover any such Products. The Company's rights under this clause 4 shall survive any termination of the relevant Contract with the Customer for whatever reason.

- 4.4 The Customer's right to possession of the Products, prior to payment being made to the Company in full, shall terminate immediately and the Company shall be entitled to terminate the relevant Contract, immediately by notice in writing to the Customer, and to stop any Products in transit and/or suspend any further deliveries of Products and/or Services to the Customer, in the event that (i) the Customer has committed or permitted any material breach of its obligations hereunder (ii) the Customer (being an individual) has a bankruptcy order made against him or makes an arrangement or composition with his creditors or otherwise takes the benefit of any statutory provision for the time being in force for the relief of insolvent debtors or (being a body corporate) convenes any meeting of its creditors or enters into voluntary or compulsory liquidation or has a receiver, manager, administrator or administrative receiver appointed in respect of its assets or undertaking or any part thereof or any documents are filed with the court for the appointment of an administrator in respect of the Customer or notice of intention to appoint an administrator is given by the Customer or any of its directors or by a qualifying floating charge-holder (as defined in paragraph 14 of Schedule B1 of the Insolvency Act 1986) or a resolution is passed, or petition presented, to any court for the winding-up of the Customer or for the granting of an administration order in respect of the Customer or any proceedings are otherwise commenced relating to the insolvency or possible insolvency of the Customer (iii) the Customer suffers or allows any legal or equitable distress or execution to be levied on or against any of the Products and/or his/its property or to be obtained against him/it, or he/it fails to observe or perform any of his/its obligations under the Contract or any other contract between the Company and the Customer or is unable to pay his/its debts as they fall due (within the meaning of section

123 of the Insolvency Act 1986) or the Customer ceases to trade or threatens to do so or (iv) the Customer encumbers, or in any way charges, any or all of the Products. The Customer shall notify the Company in writing immediately that he or it is subject to any of the events described in this clause 4.4.

## **5. Masters and Proofs**

- 5.1 The Customer should, in all circumstances, retain all audio and/or data masters, original data files, recordings or images and all original designs (and, preferably, additional back-up copies thereof) and in no event should the Company be supplied with any audio and/or data masters, original recordings or images and/or designs for printed parts or with the sole copy/copies that the Customer has of such audio and/or data masters, original data files, recordings or images and/or designs. The Customer shall (at its own risk) supply to the Company complete copies of such audio and/or data masters, original data files, recordings, images and/or designs in accordance with the Customer's directions promptly following formation of the Contract. The Company may then supply the Customer with proofs and, if the Customer specifically so requests upon delivery of the copy audio and/or data masters or files/recordings/images/designs, with test pressings or, as applicable, check discs of the recordings/images as well as (if applicable) the relevant proofs. Subject to the following provisions, if the Customer notifies the Company in writing that a test pressing, check disc or proof is not satisfactory, the Company will obtain a new test pressing, check disc and/or proof at the cost of the Customer. However, if the Customer fails to notify the Company of any defects or complaints in writing within five (5) working days of delivery of any proofs, samples, lacquers, test pressings and/or check discs, the Customer's approval of such items shall be deemed to have been given, the Company shall be entitled to assume that the Customer is entirely satisfied with such proofs, samples, lacquers, test pressings and/or check discs and the Customer shall have no claim against the Company in respect of any Products which conform in quality to the proofs, samples, test pressings, check discs or lacquers so provided. If the Customer has not requested or required any test pressings, check discs or proofs to be provided, it shall have no claim against the Company for any fault which would have been revealed had the Customer made an examination of the relevant test pressing, check discs and/or proofs (as the case may be).
- 5.2 The Company will, at the Customer's cost, carry out the written instructions of the Customer relating to the return or destruction of the Customer's copy audio and/or data masters, recordings, images, tapes, metalwork, designs, artwork or computer discs or files. If no such written instructions are received by the Company within one (1) month of the delivery of the applicable Products (or, in the case of metalwork, within one (1) year of delivery of the applicable Products) the Company reserves the right to deal with such items as it thinks fit and it shall have no liability whatsoever to the Customer in relation thereto. The Company hereby specifically excludes all liability and responsibility for any loss, damage or destruction of any copy audio and/or data masters, recordings, images, tapes, metalwork, artwork, designs, computer discs or files and/or any other materials or items (of whatever nature) supplied by the Customer to the Company under (or in connection with) the Contract. The Customer hereby undertakes and agrees to fully insure, and keep insured, all such materials and items in respect of such eventualities (and with a reputable insurer).

## **6. Intellectual Property Rights**

The Customer hereby irrevocably warrants and represents to the Company that:

- 6.1 it owns the copyright in, or is the owner or licensee of any and all intellectual property (and other proprietary) rights relating to any and all copy audio or data masters, recordings, images, designs, digital files and other items or materials supplied to the Company by the Customer under any Contract by virtue of valid and binding contracts and is not infringing the intellectual property (or any other proprietary) rights of any third party in relation thereto and that all artist, producer, musician and studio costs, fees and royalties (including VAT and any similar taxes thereon) and any other charges or expenses of whatsoever nature payable to any third party in respect of such audio or data masters, recordings, images, designs, digital files and other items or materials, and any or all of the Products and/or Services (as applicable), shall be the sole responsibility of the Customer (which responsibility the Customer shall fully and promptly discharge when due) and that the Company shall have no liability whatsoever in respect thereof (and, without limiting the generality of this clause 6.1, the Company shall be under no obligation to supply any Products under any Contract in respect of which the Customer is unable to produce an MCPS license if and when requested to do so by the Company);
- 6.2 it has, and will have for the duration of the Contract, the right to use all audio or visual data, names, images (moving or otherwise), digital files, likenesses and/or photographs of any artists and any other parties and all other names, images, audio or visual data, trademarks or logos included in or on any artwork or related materials supplied to the Company by the Customer or otherwise to be used by the Company hereunder in relation to the relevant Products and/or Services;
- 6.3 neither the reproduction or manufacture of any Products, nor the performance or delivery of any Services, under any Contract will contravene any statute, statutory instrument or other instrument, regulation or by-law and that, in the case of any such contravention, the Company shall have no liability in respect thereof (and the Company shall have the right to make any changes to the relevant Products and/or Services if and to the extent that such changes are necessary to comply with any such statute, statutory instrument or other instrument, regulation or by-law or any applicable legal or safety requirement);
- 6.4 it is under no disability, restriction or prohibition in respect of its right to enter into this Contract and to perform its obligations hereunder; and

- 6.5 it has the right to mechanically or (as the case may be) digitally reproduce the recordings and other musical works and/or images embodied in any and all copy audio or data masters supplied to the Company hereunder and that it shall assume all liability for any violation or contravention of copyright in relation to or in connection with the Products and/or Services (or any of them). The Company hereby reserves the right to ask for, and the Customer shall promptly provide upon the Company's request, documentary evidence of any such right to mechanically or (as the case may be) digitally reproduce such recordings, images and/or works.
- 6.6 The Customer hereby indemnifies the Company, for itself and on behalf of the relevant manufacturer, on demand against any losses, damages, costs, claims and/or expenses that either of them may suffer or incur as a result of any proceedings brought against them, or either of them, based on infringement of copyright or any other third party intellectual property rights as a result of the performance of their obligations under the Contract. The Customer shall also fully indemnify the Company, and keep it indemnified, against all actions, claims, demand, liabilities, costs, charges and expenses whatsoever (including reasonable legal fees and expenses) which may be brought against the Company or which the Company may suffer or incur directly or indirectly as a result of any breach or alleged breach or non-observance by the Customer of any provisions of this Contract or against any guarantee, agreement, warranty, representation or undertaking given by the Customer hereunder being untrue, inaccurate or unfulfilled (as the case may be).

## **7. Liability**

- 7.1 Notwithstanding any other provision of the Contract, this clause 7 sets out the entire financial liability of the Company (including any liability for the acts or omissions of its agents, employees and/or sub-contractors) to the Customer in respect of (i) any breach of the terms of the Contract (ii) any use made or resale of the Products (or any of them) or of any product incorporating any of the Products and (iii) any representation, warranty, statement and any tortious act or omission (including negligence) arising under or in connection with the Contract. All warranties, conditions and other terms implied by statute or common law are, to the fullest extent permitted by law, excluded from the Contract.
- 7.2 The Company's total liability in contract, tort (including negligence or breach of statutory duty), misrepresentation, restitution or otherwise, arising in connection with the performance or contemplated performance of the relevant Contract, shall be limited to the amount of the Contract price, that is, the aggregate amount invoiced to the Customer by the Company under the relevant Contract.
- 7.3 The Company shall not be liable to the Customer (i) for any pure economic loss, loss of profit, loss of business, depletion of goodwill or otherwise (whether, in each case, direct, indirect or consequential) or any other claims for consequential compensation, howsoever caused, which arise out of or in connection with the Contract or (ii) if and to the extent that any failure of the Company to deliver any Products and/or Services is caused by a Force Majeure Event (as defined in clause 7.5 below) or by the Customer's failure to provide the Company with adequate delivery instructions for (or any other material instruction related to the supply of) the relevant Products and/or Services. The Customer acknowledges that the Company's pricing is determined on the basis of the limitations of liability set out in this clause 7.
- 7.4 Without limiting the generality of the foregoing provisions, the Company shall not bear any financial or other liability to the Customer, or any third party, in the event that any of the Products or items or materials supplied by the Customer pursuant to the Contract are seized, on or off the Company's premises, as a result of obscene, blasphemous, libelous, defamatory or other offensive or illegal material being contained in or on such items, materials or Products or the packaging thereof. However, notwithstanding any inability of the Company to deliver any such Products as a result of any such seizure, the Customer shall be liable to make payment to the Company for the Products at the full price set out in the relevant invoice.
- 7.5 The Company reserves the right to defer any date/time for delivery of the Products, to terminate the Contract and/or to reduce the volume of the Products ordered by the Customer, in each case without incurring any liability to the Customer, if it is prevented from or delayed in the carrying on of its business due to circumstances beyond its reasonable control including, without limitation, acts of God, governmental actions, war or national emergency, acts of terrorism, protests, riots, civil commotion, fire explosion, flood, epidemic, lock-outs, strikes or other labour disputes or restraints or delays affecting carriers or any inability to obtain, or any delay in obtaining, supplies of adequate or suitable materials (each, a "Force Majeure Event") provided always that, if the event in question lasts for a continuous period of ninety (90) days, the Customer shall be entitled to terminate the Contract by notice in writing to the Company. Otherwise, the Customer shall not be entitled to terminate or cancel the Contract without the prior written consent of the Company and it shall be an implied condition of any such consent that the Customer shall indemnify the Company against all expenses and losses (including loss of profit) suffered or incurred by the Company as a result of any such termination or cancellation.

## **8. Miscellaneous**

- 8.1 The Company may assign this Contract, or any part of it, to any person, firm or company. The Customer may not assign the Contract, or any part of it, without the prior written consent of the Company. Nothing in any Contract is intended to, or shall be deemed to, constitute a partnership or joint venture of any kind between the parties, nor constitute any party as the agent of the other party for any purpose. No party shall have any authority to act as agent for, or to bind, the other

party in any way.

- 8.2 Each right or remedy of the Company arising under the Contract is without prejudice to any other right or remedy of the Company which it may have at law or in equity. Any failure or delay by the Company to enforce (or partially enforce) any such right or remedy or any other provision of the Contract shall not be construed as a waiver of any of its rights under the Contract. Any waiver by the Company of any breach of, or any default under, any provision of this Contract by the Customer shall not be deemed a waiver of any subsequent breach or default and shall in no way affect any of the other terms of the Contract.
- 8.3 If any provision of the Contract is adjudged by any court or other body of competent jurisdiction to be wholly or partly illegal, invalid, unenforceable or unreasonable, it shall, to the extent of such illegality, invalidity, unenforceability or unreasonableness, be deemed severable from the Contract and the remaining provisions of the Contract, and the remainder of such provision, shall continue in full force and effect.
- 8.4 Any notice or other communication required to be given to a party under or in connection with any Contract shall be in writing and shall be delivered to the other party personally, or sent by recorded delivery or by commercial courier (i) in the case of the Company, to its principal place of business at 7-8 Jeffreys Place, London, NW1 9PP and (ii) in the case of the Customer, to its registered office address (or, failing that, to the address of its principal place of business). Any notice or other communication shall be deemed to have been duly received if delivered personally, when left at such address or, if sent by recorded delivery, at 9.00 am on the second (2<sup>nd</sup>) working day after posting or, if delivered by commercial courier, on the date and at the time that the courier's delivery receipt is signed. This clause 8.4 shall not apply to the service of any proceedings or other documents in any legal action. For the purposes of this clause 8.4, "*writing*" does not include e-mails and, for the avoidance of doubt, notice under any Contract shall not be validly served if sent by e-mail.
- 8.5 Save where expressly provided, the parties do not intend that any term of the Contract should be enforceable by virtue of the Contracts (Rights of Third Parties) Act 1999 by any person that is not a party to it. No amendment to the Contract shall be effective unless made in writing and signed by a director of the Company and the Customer. The Contract shall be governed by, and construed in accordance with, English Law and the parties hereto shall submit to the exclusive jurisdiction of the English Courts in connection with any dispute arising in connection with the Contract.