

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 "the Customer" shall mean the party to whom the relevant invoice is issued by the Company. "The Goods" shall mean the goods, materials or other items to be supplied pursuant to the Contract and, without limitation, shall mean all, or any part of the constituents of, vinyl records, cassettes/tapes, CDs, CD-Rs, floppy CDs, DVDs, combined CD/DVDs and/or any other related or equivalent product(s) supplied pursuant to the Contract.
- 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 add, apply or exclude by way of (or endorses 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) save as may be expressly and specifically agreed in writing 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 Customer acknowledges that it has not relied on any statement, 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 quotations do not constitute an offer. Each order made, or acceptance of a quotation, for Goods by the Customer shall be deemed to be an offer by the Customer to buy such Goods 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 have been formed between the Company and the Customer) until a written acknowledgement of order has been issued by the Company or (if earlier) the relevant Goods are delivered to the Customer. The Customer is responsible for ensuring that the terms of its order, and any applicable specification, are complete and accurate. The quantity and description of the Goods shall be as set out in the Company's quotation or acknowledgement of order. Any quotation given by the Company shall be valid for a period of 30 days, unless previously withdrawn or extended by the Company. In any event, all orders are subject (i) to the Company receiving any and all necessary licences required to purchase, process and/or use the required materials and/or to manufacture the relevant Goods and (ii) to the Company being reasonably able to obtain the materials required to manufacture the Goods.
- 1.4 All samples, descriptive matter, specifications and or 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 such case) issued or published by the Company for the sole purpose of giving an approximate idea of the Goods described therein and they shall not, or be deemed to, form part of any Contract.

2. Price and Payment

- 2.1 The price for the Goods shall be exclusive of any value added tax and any and all costs and charges relating to packaging, loading, carriage and insurance, all of which amounts the Customer shall pay in addition to the basic price of the Goods and when it is due to pay for the Goods under these Terms and Conditions.
- 2.2 Unless otherwise agreed in writing in advance, payment for all Goods is due to the Company in cleared funds (without set-off or deduction) immediately on receipt of the relevant invoice by the Customer. Time for payment by the Customer shall be of the essence. If the Customer fails to pay the Company in accordance with this clause 2.1, or if any sum is due from and remains unpaid (in whole or in part) by the Customer to the Company pursuant to this Contract, or any other Contract between the Customer and the Company, the Customer shall be liable to pay (and hereby fully indemnifies the Company against) 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, 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 either (i) suspend any and all further deliveries of Goods to the Customer (under this Contract or otherwise) until any such outstanding payment has been made in full or (ii) cancel the order made by the Customer pursuant to this Contract, and/or any other order or orders made by the Customer remaining to be fulfilled (under this Contract or otherwise) insofar as Goods remain to be delivered to the Customer and otherwise terminate this Contract and any other Contract between the Customer and the Company (whereupon, notwithstanding any other provision of these Terms and Conditions, all amounts payable by the Customer under this Contract, and any such other Contract, shall become immediately due and payable to the Company).
- 2.4 All invoice queries must be notified in writing by the Customer to the Company within 14 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.

3. Delivery and Transport

- 3.1 Where the Goods are delivered by the Company's own transport, or by a courier on behalf of the Company, the risk therein shall pass to the Customer immediately upon delivery of the Goods. In any such case, any delivery dates and/or times specified by the Company, although given in good faith, are intended to be an estimate only and, although the Company will use all reasonable endeavours to deliver the Goods in accordance with such delivery dates and/or times, the time for delivery of the Goods 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 Goods shall take place within a reasonable time. In all other cases, the Goods 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 Goods from the Company, immediately upon the Company notifying the Customer that the Goods are available for collection. 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 the Goods (even if caused by the Company's negligence) nor shall any such delay entitle the Customer to terminate or rescind the Contract.
- 3.2 If, for any reason, the Customer fails to collect or accept delivery of all or any of the Goods when they are ready for collection or delivery, or the Company is unable to deliver the Goods on time because the Customer has not provided appropriate instructions, documents or information (i) risk in the relevant Goods shall pass to the Customer (ii) the relevant Goods shall be deemed to have been delivered and (iii) the Company may store the relevant Goods until collection or delivery takes place, whereupon the Customer shall be liable for all storage, insurance and other costs.
- 3.3 If the Customer shall fail 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 Contract, or to make payment in accordance with the Contract, then any agreed time(s)/date(s) for delivery of the Goods by the Company shall be extended by 3 days in addition to the period of the delay in such supply or payment by the Customer.
- 3.4 The quantity of Goods, as recorded by the Company upon despatch thereof to the Customer, shall be conclusive evidence of the quantity of Goods 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 Goods (even if caused by the Company's negligence) unless the Customer gives written notice of the non-delivery to the Company within three (3) days of receipt by the Customer of the invoice in respect of such non-delivery (or purported delivery).
- 3.5 If any Goods 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) 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 Company shall fail to give such notice, the Goods shall be deemed in all respects to be 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 Goods, arrange for and permit an inspection of the Goods in question and provide appropriate inspection facilities. The faulty or damaged Goods 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 do not affect the quality of sound production shall not be a cause of rejection, claim or complaint 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 Goods 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 Goods or if the Customer alters or repairs the relevant Goods (or tries to do so) without the written consent of the Company. If the Company accepts liability in respect of any faulty or damaged Goods, the Customer shall at its own cost return the faulty or damaged Goods to the Company and, if the Company so elects (at its sole discretion), the Customer shall be obliged to accept replacement Goods 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 the foregoing, 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 liability for consequential loss or damage including loss of profit) by reason of shortage of delivery or the quality or condition of the Goods delivered or their loss or damage in transit save insofar as and in the amount 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 Goods and at the Company's discretion, it shall either (i) deliver or replace the relevant Goods within a reasonable time as provided above or (ii) issue a credit note against the invoice raised for the relevant Goods.
- 3.7 If the Company delivers to the Customer a quantity of Goods 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 Goods (or any of them) by reason of the surplus or shortfall, as the case may be, and shall be obliged to pay for such goods 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. Where the Company is holding a balance surplus to the Contract of vinyl records, tapes/cassettes, CDs, CD-Rs, floppy CDs, DVDs, combined CD/DVDs, printed parts or other Goods, the Company will at the Customer's expense carry out the Customer's reasonable written instructions relating to such items. If the Customer's written instructions are not received within one (1) month of the delivery of the final order pursuant to the Contract relating to the Goods in question, the Company will not accept any liability whatsoever to the Customer for any loss, damage or otherwise occurring to such items and reserves the right to deal with them as it sees fit. If any vinyl records, tapes/cassettes, CDs, CD-Rs, floppy CDs, DVDs combined CD/DVDs, printed parts or other Goods are held by the company for over 6 months whether surplus to contract or not, the company is entitled to destroy or reuse the goods in a manner to be determined by the company.
- 3.8 The Company may deliver the Goods by separate instalments, in which case each instalment shall constitute a separate Contract and no cancellation or termination of any one 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 Goods shall be at the risk of the Customer from the time of delivery. However, the Goods shall remain the sole and absolute property of the Company until the Customer has paid (i) the Company for the Goods 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 Goods notwithstanding that the ownership of the Goods has not 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 Goods has passed to the Customer, if the Goods have been delivered to the Customer hereunder, the Customer shall be in possession and control of the Goods as bailee for the Company at law and in equity and shall maintain the Goods in satisfactory condition and keep them insured on the Company's behalf for their full price against all reasonable risks and (i) if the Customer sells and/or delivers the Goods or any part thereof to any third party (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 Goods (or any part thereof) shall be damaged, lost or destroyed then, in either case and in a strict fiduciary capacity, the Customer shall 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 Goods.
- 4.3 The Company hereby reserves the right to immediately re-possess any Goods to which it has retained title as aforesaid and, in connection therewith, 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 Goods are or may be stored) at any time during normal business hours, and without further notice, in order to inspect and/or (where applicable) recover any such Goods. The Company's rights under this clause 4 shall survive any termination of its Contract with the Customer for whatever reason.
- 4.4 The Customer's right to possession of the Goods, prior to payment being made to the Company in full, shall terminate immediately and the Company shall be entitled to terminate the Contract, immediately by notice in writing to the Customer, and to stop any Goods in transit and/or suspend further deliveries of Goods to the Customer, in the event that (i) the Customer shall have committed or permitted any material breach of its obligations hereunder (ii) the Customer 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 and 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 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 the Goods 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 Goods.

5. Masters and Proofs

- 5.1 The Customer should, in all circumstances, retain all audio and/or data masters, original recordings or images and all original designs for printed parts 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 recordings or images and/or designs. The Customer shall supply to the Company complete copies of such audio and/or data masters, original recordings, images and/or designs for printed parts in accordance with the Customer's directions promptly following formation of the Contract. The Company may then supply the Customer with proofs of the printed parts and, if the Customer specifically so requests upon delivery of the copy audio and/or data masters or recordings/images, with test pressings or, as applicable, check discs of the recordings/images as well as proofs of the printed parts. 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) 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 Goods 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, labels or sleeve designs, artwork or computer discs. If no such written instructions are received by the Company within one month of the delivery of the applicable Goods (or, in the case of metalwork, within one year of delivery of the applicable Goods) 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, discs and/or any other materials supplied by the Customer to the Company under the Contract. The Customer hereby undertakes and agrees to fully insure, and keep insured, all such materials and items in respect of such eventualities.

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 all rights relating to, any and all copy audio or data masters, recordings, images and/or designs supplied to the Company by the Customer hereunder by virtue of valid and binding contracts and is not infringing the rights of any third party in relation thereto and that all artist, producer, musician and studio costs and royalties (including VAT and any similar taxes thereon) and any other charges of whatsoever nature payable to any third party in respect of such audio or data masters, recordings, images and/or designs and/or any or all of the Goods 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 in respect thereof;
- 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), 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 Goods;
- 6.3 the reproduction or manufacture of any Goods hereunder will not 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;
- 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 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 Goods (or any of them). The Company hereby reserves the right to ask for, and the Customer shall provide upon the Company's request, documentary evidence of any such right to mechanically reproduce such recordings, images and/or works.
- 6.6 The Customer hereby indemnifies the Company, for itself and on behalf of the relevant manufacturer, 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 other third party 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 Goods (or any of them) or of any product incorporating any of the Goods 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 Contract, shall be limited to the amount of the Contract price, that is, the aggregate amount invoiced to the Customer by the Company under this Contract. The Company shall not be liable to the Buyer 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.
- 7.3 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 Goods 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 Goods or the packaging thereof. However, notwithstanding any inability of the Company to deliver any such Goods as a result of any such seizure, the Customer shall be liable to make payment to the Company for the Goods at the full price set out in the relevant invoice.
- 7.4 The Company reserves the right to defer any date/time for delivery of the Goods, to terminate the Contract and/or to reduce the volume of the Goods 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 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.
- 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 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.