

# Terms

## 1. GENERAL

In these conditions:

(a) "The Buyer" means the person, firm or company who purchases product from one of our web sites or accepts a quotation of the Seller for sale of the goods or whose order for the goods is accepted by the seller.

(b) "The Seller" means Direct CDs Ltd Unit 2 Gentlemans Field Westmill Road Ware, Herts SG12 0EF and any wholly owned subsidiary company. (e.g. Direct CD's)

(c) "The Goods" means the goods and or materials, which the Seller is to supply and which are the subject of the contract between the Seller and the Buyer.

(b) The contract between the Seller and the Buyer shall be subject to these conditions which shall govern the said contract to the exclusion of any other terms and conditions subject to which any quotation is accepted or purported to be accepted or any order is made or purported to be made by the Buyer.

(c) The contract between the Seller and the Buyer does not affect the Buyers statutory rights

(d) No variations of these Conditions shall be binding unless agreed in writing by a Director of the Seller.

(e) Any typographical, clerical or other error or omission in any sales literature, quotation, list price, acceptance of offer, invoice or other document or information issued by the Seller shall be subject to correction without any liability on the part of the Seller.

(f) The headings in these conditions are for convenience only and shall not effect their interpretation.

(g) If any provision of these conditions is held by a competent authority to be invalid or unenforceable in whole or in part the validity of the other provisions of these conditions and the remainder of the provision in question shall not be affected thereby.

## 2. QUOTATIONS AND PRICE

(a) Unless previously withdrawn by the Seller, quotations and tenders are open for acceptance for the period stated therein or if no period shall be stated therein within one month from the date thereof.

(b) All prices specified in quotations and tenders are subject to variation by the Seller without prior notice after the date specified in the document to the Buyer.

(c) Quotations and tenders are subject to confirmation by the Seller upon receipt of orders from the Buyer.

(d) All prices quoted or accepted are exclusive of VAT and in the

contract price shall be such quoted or accepted price plus VAT at the appropriate rate.

(e) All prices unless otherwise stated are exclusive of all transport, storage, packing, insurance, forwarding and other costs, which shall be added to the Buyer's account.

(f) Subsequent to the date of any quotation or tender any increase in the cost of fulfilling the contract to the Seller for any reason whatsoever prior to the date of delivery shall be charged to the Buyers.

(g) Notwithstanding that the price paid by the Buyer to the Seller includes the cost of labels and/or sleeves to be used in the production and packaging of the goods to be supplied by the Seller, upon termination for whatever reason, of the contract, the property in all the labels and/or sleeves not delivered to the Buyer and retained by the Seller shall vest in the Seller and the Buyer shall not be entitled to the labels and/or sleeves nor the return of the price of the said labels and/or sleeves nor any part thereof.

### **3. TERMS OF PAYMENT**

(a) Cheque or Bank transfer – 100% payment of 1st order with purchase order and 30 days with a credit account by pre-arrangement.

(b) Credit Accounts: Payment shall be made net 30 days following the date of invoice

(c) In the case of contracts involving more than one delivery, default in payment by the due date shall entitle the Seller at its option to treat the contract and any other contract between the Buyer and Seller as repudiated by the Buyer and to claim damages accordingly.

(d) Interest at the rate 4% per annum over the base rate for the time being of Barclays Plc shall be charged on overdue payments and payment of interest shall not prejudice the Seller's rights under any contract.

(e) We reserve the right to pass on all costs incurred if we use a third party debt collection agency to collect any monies owing . We also will pass on any legal fees incurred in this process too.

### **4. DELIVERY**

(a) Time shall not be of the essence for the purpose of delivery of Goods by the Seller unless stated as part of a contractual agreement between both parties. Delivery terms are quoted without guarantee or penalty and the time for delivery shall run from the date the order is received or the tender or quotation accepted or the date on which sufficient information is received from the Buyer to enable the Seller to proceed with the execution thereof whichever is the later.

(b) Subject to the provisions of paragraph (a) above I. Where contracts provide for a single delivery without specifying date goods shall be delivered and accepted

as soon as available for delivery.

II. Where contracts provide for deferred delivery without specifying a date or dates for such deferred deliveries, delivery shall be made and accepted within six months of the specified first delivery date.

III. In the event of failure by the Buyer to accept any deliver, that delivery shall be deemed to have occurred and any storage or other costs incurred by the Seller as a result of the Buyer's failure shall be added to the Buyer's account with interest as aforesaid.

IV. Where any subsequent deviation is made from these terms at the request of the Buyer any additional costs incurred by the Seller as a result thereof shall be added to the Buyer's account.

V. Every effort shall be made by the Seller to effect delivery in accordance with these terms and conditions but the Seller will not be liable for any loss or damage arising due to delay on delivery however caused.

VI. Each delivery shall constitute a separate contract, which shall be subject to these terms, and conditions and any failure or defect in any one delivery shall not entitle the Buyer to repudiate the contract as to the remaining deliveries.

#### **4.1 QUANTITY DEVIATION (CD & DVD Replication only)**

The Seller reserves the right to supply up to 5% +/- on any one title. Maximum deviation 1000 units. All overs will be charged at the agreed "Buyers" purchase price

#### **5. CLAIMS**

The Buyer shall inspect the goods forthwith upon delivery or deemed delivery as specified in clause 4(b) (iii) and shall within three days of such delivery (and time shall be of the essence) notify the Seller in writing of any matter or thing by reason whereof the Buyer alleges that the goods are not in accordance with the contract. The return of any goods will not be accepted unless the Seller or its authorised representative shall first have had the opportunity of considering the Buyer's reasons for returning the goods and to accept the return thereof. If the Buyer shall fail to give notice as aforesaid the goods shall be deemed to be in all respects in accordance with the contract and the Buyer shall be deemed to have accepted the goods.

#### **5.1 RETURNS POLICY & PROCEDURE**

(a) Upon receipt of the goods, any damages or shortfall noticed must be reported immediately by telephone (01920 465023)

(b) Damaged goods claims will be processed within 5 working days of notification, as will shortfalls in the order.

(c) All goods that are being returned must be re-packed to the same standard of protection as when the Buyer received them. Returned

goods that are damaged in transit due to poor packaging will NOT be refunded, and will be returned to the Buyer.

(d) All returns must be sent back to the Seller by registered post or by other means that require a signature of receipt of the goods at the Sellers warehouse or reception.

(e) This does not affect the Buyers statutory rights.

## **6. LIMITATION OF SELLER'S LIABILITY**

Any express or implied statement, condition or warranty, statutory or otherwise, not stated herein is hereby excluded and deemed to be inconsistent herewith, and no responsibility is accepted by the Seller for any damage or loss arising directly or indirectly out of goods, supplied or for any damage or loss arising by reason of any failure of goods to comply with the specification or with statutory requirements whether attributable to Seller's negligence or otherwise save to the extent that exclusion of liability is prohibited by law.

(a) Subject to paragraph 5 and 6(a) the Seller's liability for any loss and or damage whether direct or indirect consequential or howsoever caused shall be limited, at the Seller's discretion, to:

- I. Replacement or repair of the goods supplied or
- II. Return of the purchase price and or the price paid for services less a one twelfth part of such price for each month that has elapsed since delivery
- III. The re-supply of the services.

## **7. BUYERS PROPERTY**

Any property of the Buyer supplied to the Seller for the purposes of the Contract will be held at the Buyer's risk. Every care will be taken to secure the best results where materials are supplied by the Buyer but no responsibility will be accepted for imperfect work caused by any defects or the unsuitability of materials so supplied.

## **8. FORCE MAJEURE**

The Seller shall not be liable to the Buyer or deemed to be in breach of contract by reason of any delay in performing or failing to perform any of the Seller's obligations in relation to the goods if the delay or failure was due to any cause beyond the Seller's control. Without prejudice to the generality of the foregoing any act of God, war, strikes, flood, lockouts, fire, tempest and inability of the Seller to procure materials or articles required for the performance of the contract which may prevent the fulfilment thereof shall be regarded as causes beyond the Seller's reasonable control. In the event of any failure or delay to perform any contract as a result of the said causes such contracts, at the Seller discretion, may be varied or cancelled by the Seller or delivery may be wholly or partly suspended and time for delivery may be extended by the

Seller without the Seller being liable to the Buyer or being deemed to be in breach of contract.

## **9. PROPERTY IN GOODS**

(a) Risk of damage to or loss of the Goods shall pass to the Buyer:

(I) In the case of Goods to be delivered at the Seller's premises at the time when the Seller notifies the Buyer that the goods are available for collection; or

(II) In the case of Goods to be delivered otherwise than at the Seller's premises, at the time of delivery or, if the Buyer wrongfully fails to take delivery of the Goods, the time when the Seller has tendered the delivery of the Goods.

(b) Notwithstanding delivery and the passing of risk in the Goods, or any other provisions of these Conditions, the property in the Goods or any part of them shall not pass to the Buyer until the Seller has received in cash or cleared funds payment the full price of the Goods and all other goods agreed to be sold by the Seller to the Buyer for which payment is then due.

(c) Until such time as the property in the Goods passes to the Buyer, the Buyer shall hold the Goods as the Seller's fiduciary agent and bailee, and shall keep the Goods separate from those of the Buyer and third parties and properly stored, protected and insured and identified as the Seller's property. Until that time the Buyer shall be entitled to resell or use the Goods in the ordinary course of its business, but shall account to the Seller for the proceeds of sale or otherwise of the Goods, whether tangible or intangible, including insurance proceeds, and shall keep all such proceeds separate from any moneys or property of the Buyer and third parties and, in the case of tangible proceeds properly stored, protected and insured.

(d) Until such time as the property in the goods passes to the Buyer (and provided the Goods are still in existence and have not been resold), the Seller shall be entitled at any time to require the Buyer to deliver up the Goods to the Seller and, if the Buyer fails to do so forthwith, to enter upon any premises of the Buyer or any third party where the Goods are stored and repossess the Goods.

(e) The Buyer shall not be entitled to pledge or in any way charge by way of security for any indebtedness any of the Goods which remain the property of the Seller, but if the Buyer does so all moneys owing by the Buyer to the Seller shall (without prejudice to any other right or remedy of the Seller) forthwith become due and payable. The seller also reserve the right to reproduce and material and sell them to pay for any outstanding debts the buyer has not fulfilled under this terms. The buyer relinquishes the seller against any copyrite and any legal action in carrying out the debt recovery..

## **10. LIMITS OF CONTRACT**

Quotations or tenders include only such goods and work as are specified therein. Each order shall be deemed to be a separate contract to which these terms and conditions shall apply (and no liability can be accepted by the Seller for the working in combination of goods, which have been ordered in separate parts and/or at different times).

## **11. DESIGN**

a) The buyer will indemnify the Seller against all damages, penalties, costs and expenses to which the Seller may become liable as a result of work done in accordance with the Buyers specification which involves the infringement of any letters patents or registered design.

(b) The Seller gives no warranty or representation that the Goods do not infringe any letters patents trademarks, registered designs or other industrial rights.

(c) Artwork Design – All jobs must conform to graphics specification and template layout. Any correction work that is authorised by the Buyer will be charged accordingly. Direct CD's provide a full design & creative service.

## **12. COPYRIGHT**

a) The buyer will indemnify the Seller against all damages, penalties, costs and expenses to which the Seller may become liable as a result of work done in accordance with the Buyers specification which involves the infringement of any letters patents or registered design on the data disc

b) Before any replication or duplication can commence the Buyer must complete the Direct CD's " Customer Copyright Certification & / or Licensing Rights & Indemnification" form. This form does not need to be completed if a MCPS document granting the rights to manufacture is supplied to Direct CD's.

c) The default text for the specification ring on a replicated CD or DVD will read "Direct CD's" This text will be printed on all CD & DVD product unless otherwise instructed by the Buyer.

## **13. WAIVER**

No concession or indulgences granted to the Buyer shall prejudice future exercise of the Seller's full right hereunder.

## **14. ALTERATIONS**

Alterations to any orders accepted by the Seller cannot be accepted without the Seller's consent in writing and any additional costs involved will be chargeable to the Buyer.

## **15. CANCELLATIONS**

No order accepted by the Seller can be cancelled without the Seller's

consent in writing (or by e-mail correspondence) and under no circumstances can the Seller allow cancellation of orders for goods made or specially adapted to the Customer's requirements.

## **15. ASSIGNMENTS**

The contract of which the Conditions form part is personal to the Buyer who shall not assign the benefit thereof without the Seller's written consent.

## **16. LEGAL CONSTRUCTION**

Any contract entered into between the Seller and the Buyer shall in all respects be construed and operate as an English Contract subject to the Laws of England.

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