

## GENERAL CONDITIONS

### 1. DEFINITIONS

- 1.1 Unless the context indicates otherwise, the following terms or expressions shall have the meaning set out hereunder:-  
THE PURCHASER: The PURCHASER as referred to herein.  
THE SELLER: Compact Disc Technologies (Proprietary) Limited.  
GOODS: All compact discs, pre-recorded video tapes, digital versatile disc and any other video or audio products manufactured and/or sold by the SELLER.  
SERVICES: All replicating, duplicating, graphics, artwork, packaging and finishing and such other services as may be rendered by the SELLER
- 1.2 The headnotes and preamble in these conditions are for reference purposes only and shall not in any way affect the construction or interpretation of anything herein contained.
- 1.3 Words signifying the singular number shall include the plural and vice versa and words importing the masculine gender shall include the feminine and neuter.

### 2. GRANT OF CREDIT

The granting, refusal or withdrawal of credit facilities, including the extent and nature of such facilities and the payment in terms thereof shall at all times be at the sole discretion of the SELLER who may withdraw same at any time without any prior notice to the PURCHASER.

### 3. PAYMENT TERMS

- 3.1 The PURCHASER agrees that the amount contained in the Tax Invoice issued by the SELLER shall be due unconditionally;
- 3.1.1 cash on order. 50% on acceptance of quotation and the balance of presentation of tax invoice prior to collection; .
- 3.1.2 within 30 (thirty) days from the end of the month in which a Tax Invoice has been issued by the SELLER.

### 4. PRICE

The purchase price of the GOODS as detailed in any invoice is strictly nett.

### 5. PRICE LIST

- 5.1 All GOODS manufactured and sold and SERVICES rendered shall at all times be subject to the SELLERS prevailing price list.
- 5.2 In the event of the SELLER publishing a new price list, the manufacture, sale and SERVICES rendered shall be governed by the new price list as published by the SELLER

### 6. ORDERING AND ACCEPTANCE OF QUOTATIONS

- 6.1 The customer shall provide the SELLER with a written order for the manufacture and supply of GOODS.
- 6.2 The SELLER shall against receipt of a written order, submit to the customer a written quotation for the GOODS to be manufactured or the additional SERVICES to be rendered.
- 6.3 All quotations will remain valid for a period of 30 (thirty) days from the date of the quote or until the date of issue of a new price list, whichever occurs first.
- 6.4 All quotes are subject to the availability of the GOODS or SERVICES and subject to the correction of bona fide errors by the SELLER. The process quotes are subject to any increase in the cost price including currency fluctuations.
- 6.5 The amount of any increase shall be certified by an independent auditor acting as an expert and such certificate by an auditor shall be final and binding on the PURCHASER.
- 6.6 All specifications, price lists, performance figures, advertisements, brochures and other technical data furnished by the SELLER in respect of the GOODS or SERVICES will not form part of this agreement unless agreed to in writing by the SELLER.
- 6.7 The PURCHASER agrees that neither the SELLER nor any of its employees will be liable for any negligent or incorrect misrepresentations made to the PURCHASER.
- 6.8 It is the sole responsibility of the PURCHASER to satisfy itself that the GOODS or SERVICES ordered and subsequently referred to in the SELLERS quotation are suitable for the intended use.
- 6.9 The PURCHASER agrees to pay all costs resulting from any act or omission of the PURCHASER including suspension of work, modification of requirements, failure to provide particular requisite to enable work to proceed on schedule or requirements that work be completed earlier than agreed.
- 6.10 The SELLER shall only commence with the manufacture of GOODS or undertake the SERVICES against receipt of a signed acceptance by the PURCHASER of the SELLERS quotation and any copyright clearance requirements.

### 7. DELIVERY

- 7.1 Save where the contrary has been agreed to in writing:-
- 7.1.1 Time for delivery shall not be of the essence of any agreement between the PURCHASER and the SELLER;
- 7.1.2 Any date for delivery furnished by the SELLER is estimated and the SELLER shall not be liable for any delay in delivery (whatever the cause of such delay) nor for any loss or damage caused thereby or for any consequential loss or damage arising therefrom;
- 7.1.3 The SELLER shall be entitled to invoice each delivery / services rendered separately.
- 7.2 Delivery of GOODS shall be made under cover of a document detailing the GOODS delivered (delivery note or waybill). Receipt by the PURCHASER of GOODS detailed in the delivery document shall be acknowledged by the PURCHASER or by the third party engaged by the PURCHASER to transport the goods on its behalf. The person acknowledging receipt on behalf of the PURCHASER shall sign a duplicate copy of the delivery document and shall note the date of delivery of the articles thereon. A duplicate copy of the delivery document shall be handed to the SELLER representative at the time of delivery. A copy of a delivery document signed by a person acting on behalf of the PURCHASER or purporting to do so, or by the person apparently in charge of the premises of the PURCHASER shall be deemed to be proof that the specified quantities of GOODS listed in the delivery document have been received by the PURCHASER unless the contrary is proved.
- 7.3 If the SELLER engages a third party to transport the GOODS, the PURCHASER authorises the SELLER to do so and on terms deemed fit by the SELLER.
- 7.4 The PURCHASER indemnifies and holds the SELLER harmless against any claims arising from such delivery contemplated in 7.3.
- 7.5 The risk of damage to, destruction or theft of GOODS shall pass to the PURCHASER on conclusion of delivery and the PURCHASER agrees and undertakes to comprehensively insure the GOODS for replacement value until paid for.

### 8. PAYMENT

- 8.1 Payment shall not be set-off against or withheld on account of any counterclaims of the PURCHASER unless same is acknowledged by the SELLER in writing.
- 8.2 Should the PURCHASER fail to make payment in full on due date, it shall be obliged to pay interest on overdue amounts at the maximum rate allowable by law from the date that such amounts became payable to the date that such amounts are actually paid.
- 8.3 In the event of the PURCHASER tendering a cheque or any other negotiable instrument then payment will only be deemed to have been made once the said cheque or negotiable instrument has been met by the relevant bank or paying authority.
- 8.4 All payments made to the SELLER shall be made at the address of the SELLER set out on the face hereof or at such other address as the SELLER may from time to time designate in writing

### 9. RESERVATION OF OWNERSHIP

- 9.1 Notwithstanding delivery, all GOODS sold by the SELLER shall remain the sole property of the SELLER until full payment has been received by the SELLER of all amounts due by the PURCHASER to the SELLER.
- 9.2 Until full payment has been received by the SELLER of all amounts owing by the PURCHASER, the PURCHASER shall not cede, assign, transfer, mortgage or pledge the GOODS or allow them to become subject to any lien of whatsoever nature or to use the GOODS as security.

### 10. GUARANTEE

- 10.1 The SELLER guarantees that all GOODS sold by it shall be free from defects.
- 10.2 The obligations of the SELLER in terms of the guarantee in Clause 10.1 are limited to replacing at its option any GOODS which should have been returned by the PURCHASER to the SELLER within 30 (thirty) days after the date of sale thereof by the PURCHASER to a customer, for examination by the SELLER which examination shall have disclosed to the SELLERS satisfaction any such goods to be defective. The replacement of any GOODS found to be defective shall be undertaken by the SELLER, free of charge to the PURCHASER within a reasonable period. Any defective GOODS replaced by the SELLER shall become the property of the SELLER. The PURCHASER shall furnish the SELLER with written proof that the GOODS were purchased from the SELLER and also of the date of sale thereof to the customer.
- 10.3 The provisions of the aforementioned guarantee shall not be applicable on the happening of any one or more of the following events:-
- 10.3.1 The PURCHASER fails to return an allegedly defective item of GOODS to the SELLER within the time period referred to.
- 10.3.2 The PURCHASER has failed to fulfil any of its obligations to the SELLER,
- 10.3.3 There are monies owing by the PURCHASER to the SELLER,
- 10.3.4 The defect is due to misuse, negligence or any cause beyond the SELLERS control.
- 10.3.5 The defect is due to any interference by the PURCHASER or any third party.
- 10.4 The onus of proving that the SELLER is liable in terms of the guarantee shall rest on the PURCHASER.
- 10.5 Save as set out above the PURCHASER waives any claim of whatsoever nature it has or may acquire against the SELLER, whether flowing directly or indirectly from this or any agreements between the parties. Neither the SELLER nor any of its employees, agents or servants shall be liable for any loss or damage, whether general, special, consequential or otherwise suffered by the PURCHASER.
- 10.6 No guarantees, representations or warranties of any nature whatsoever have been given by the SELLER or any other person acting on behalf of or purporting to act on behalf of the SELLER save as is otherwise contained in these General Conditions.

### 11. INCORRECT DELIVERIES

Unless the SELLER duly authorised representatives received notice within 48 (FORTY EIGHT) hours of the date of receipt by the PURCHASER of a consignment of GOODS that there was any shortfall or error in the consigned GOODS and have furthermore lodged and obtained from the SELLER representatives a reference number, then it shall be deemed that the GOODS delivered were correct in all respects and that the delivery invoice correctly reflects the delivery and receipt thereof.

### 12. BREACH

- 12.1 Notwithstanding any other provision of these conditions the PURCHASER shall have committed a breach if:-
- 12.1.1 It fails to pay on time any amount payable in terms hereof;

- 12.1.2 It commits an act of insolvency;
- 12.1.3 It enters into a compromise with its creditors;
- 12.1.4 It allows a judgment to be entered against it and such judgment remains unsatisfied;
- 12.1.5 It fails to provide a surety and/or any other securities as required by the SELLER as requested in Clause 13.
- 12.1.6 It commits a breach of any of the other provisions of these conditions, all of which are material.
- In the event of the PURCHASER committing a breach of these General Conditions or any agreement between the parties then the SELLER shall be entitled, at its sole option, in addition to and without prejudice to any other rights or remedies it might have against the PURCHASER to either :-
- 12.1.7 Terminate this agreement and claim immediate payment of all amounts owing by the PURCHASER to the SELLER, irrespective of whether or not such amount are then due; or
- 12.1.8 In the event of the SELLER instituting legal proceedings against the PURCHASERS, a certificate signed by a director for the time being of the SELLER or in event of the SELLER ceding its claim against the PURCHASER, then a certificate signed by a director for the time being of the cessionary shall be sufficient and satisfactory proof of the amount owing by the PURCHASER to the SELLER and/or such cessionary for the purpose of an application for provisional sentence or summary judgment or for any legal proceedings or for any claim whatsoever and the PURCHASER hereby acknowledges itself to be truly and lawfully indebted to the SELLER in the said sum.
- 13. SECURITY BY PURCHASER**
- 13.1 If required by the SELLER the PURCHASER shall provide a Surety or Sureties and/or any other securities as requested by the SELLER, which shall be subject to the approval of the SELLER and shall execute (if two or more, jointly and severally) a guarantee on such terms and conditions as the SELLER shall determine for the performance of all the PURCHASER's obligations and such guarantee shall be binding, notwithstanding any variation, alterations or extensions of time as may be made, given, conceded or agreed in terms of these General conditions or any agreement. The expense of procuring, preparing, completing and stamping such instrument shall be paid for by the PURCHASER.
- 13.2 If the Surety/ies and/or securities requested referred to in Clause 13.1 above shall not be duly furnished by the PURCHASER to the SELLER within 7 (SEVEN) days after being requested so to do, the SELLER may, at its sole option and without prejudice to any rights, by notice in writing to the PURCHASER, terminate this and all agreements existing between the PURCHASER and the SELLER.
- 14. CREDIT ASSESSMENT**
- 14.1 It is a requirement of the SELLER that the PURCHASER provides all information requested of it.
- 14.2 The purpose of such request is to enable the SELLER to satisfy itself that the PURCHASER has the ability to meet its financial commitments to the SELLER.
- 14.3 The discloser herein is material and the SELLER relies on such representation in extending credit to the PURCHASER.
- 14.4 The extent of the information requested to enable the SELLER to assess the creditworthiness of the PURCHASER is contained in the application for credit. In addition, the SELLER may request additional documentation from the PURCHASER from time to time.
- 14.5 In the event of the PURCHASER failing to provide the information requested or provides inadequate or false information, such action on the part of the PURCHASER will constitute a material breach of this agreement which will entitle the SELLER to summarily terminate this agreement.
- 15. INFRINGEMENT OF COPYRIGHT**
- 15.1 The PURCHASER acknowledges all copyrights and shall not duplicate copyrighted material and that each attempt shall immediately render the full prevailing price payable to the SELLER.
- 15.2 The PURCHASER indemnifies and holds the SELLER harmless against any claims, costs (including legal costs) and expenses arising out of the infringement of copyright, patent, trademark or design.
- 16. COMPLIANCE WITH LAW**
- 16.1 The SELLER shall not be liable to the PURCHASER for any loss of any nature whatsoever relating to or arising from any infringement or contravention of any statutory provision or contractual right in respect of any of the GOODS or SERVICES.
- 17. CONSENT TO MAGISTRATE'S COURT JURISDICTION**
- The PURCHASER consents that the SELLER may at their sole discretion institute any proceedings which may arise out of or in connection with this agreement in the Magistrate's Court having jurisdiction in terms of Section 28 of the Magistrate's Court Act 1944 (as amended) notwithstanding the fact that the amount of the claim or the value of the dispute may exceed in the jurisdiction of that Court or that such Court might not otherwise have jurisdiction to deal with the matter. The PURCHASER hereby submits itself to the jurisdiction of the aforementioned Court and this paragraph constitutes the consent required in writing, in terms of Section 45(1) of the said Act. Notwithstanding the aforesaid the SELLER may at their sole discretion proceed in any High Court of South Africa having jurisdiction.
- 18. COSTS AND INTEREST**
- Should the SELLER institute any application or action against the PURCHASER in respect of any monies owing by the PURCHASER to the SELLER then the PURCHASER shall pay to the SELLER all the costs incurred thereby including attorneys fees on the basis of "attorney and own client" and furthermore all collection commission. The PURCHASER shall be liable for interest on all overdue amounts at the prescribed legal rate.
- 19. GENERAL**
- 19.1 These conditions constitute the whole and entire agreement between the parties. Any previous conditions or agreements in conflict with the provisions herein contained are hereby cancelled and there are no agreements, representation or warranties between them other than those specifically set forth herein.
- 19.2 No indulgence on the part of any party in exercising any rights conferred upon such party in terms of these conditions shall constitute a waiver of such rights, nor shall any single or partial exercise of any rights preclude any other or future exercise thereof or the exercise of any other right under these conditions.
- 19.3 No variation or modification of these conditions shall be of any force or effect unless the same shall be confirmed, in writing, and signed by both parties, and then such variation or modification shall be effective only in the specific instance, and for the purpose and to the extent for which it was made or given.
- 20. CESSION**
- The SELLER shall be entitled to freely cede all or any claims it has or may have against it arising out of the sale of any GOODS by the SELLER to the PURCHASER or arising in any other way whatsoever.
- 21. RESERVATIONS OF RIGHTS**
- All rights not explicitly granted to the PURCHASER are reserved by the SELLER or their licensors.
- 22. DOMICILIA**
- The parties choose as their respective domicilia citandi et executandi for all purposes in terms of the Agreement the premises of the PURCHASER and the address of the SELLER, both as printed or written on the reverse side hereof.