

1. INTRODUCTION

These terms and conditions (and the other documents referred to in here) govern the relationship between you and Disc Manufacturing Services Limited when you order any Goods or services from Disc Manufacturing Services Limited. These terms and conditions set out important information regarding your rights, obligations and the restrictions that may apply when you order Goods from us.

2. INTERPRETATION

2.1. **Definitions.** In these Conditions, the following definitions apply:

Business Day: a day (other than a Saturday, Sunday or public holiday) when banks in London are open for business.

Conditions: the terms and conditions set out in this document as amended from time to time in accordance with clause 12.6.

Contract: the contract between the Supplier and the Customer for the sale and purchase of the Goods in accordance with these Conditions.

Customer: the person or firm who purchases the Goods or services from the Supplier.

Force Majeure Event: an unexpected and disruptive event that may operate to excuse the Supplier from the Contract. Further meaning given in clause 11.

Goods: the goods (or any part of them) set out in the Order.

Services: the services (or any part of them) set out in the Order.

Order: the Customer's order for the Goods or services, [as set out in the Customer's purchase order form, the Customer's written acceptance of the Supplier's quotation.]

Specification: any specification for the Goods or services, as provided for in the Order or as otherwise agreed in writing by the Customer and the Supplier.

Supplier: DISC MANUFACTURING SERVICES LIMITED of Colebrooke, New Road, Cawsand, Torpoint, Cornwall, United Kingdom, PL10 1PA (registered in England and Wales with company number 05127922).

2.2. **Construction.** In these Conditions, the following rules apply:

2.2.1. A **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).

2.2.2. A reference to a party includes its personal representatives, successors or permitted assigns.

2.2.3. A reference to a statute or statutory provision is a reference to such statute or provision as amended or re-enacted. A reference to a statute or statutory provision includes any subordinate legislation made under that statute or statutory provision, as amended or re-enacted.

2.2.4. Any phrase introduced by the terms **including, include, in particular** or any similar expression shall be construed as illustrative and shall not limit the sense of the words preceding those terms.

2.2.5. A reference to **writing** or **written** includes e-mails.

3. BASIS OF CONTRACT

3.1. These Conditions apply to the Contract to the exclusion of any other terms that the Customer seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing.

3.2. The Order constitutes an offer by the Customer to purchase the Goods OR SERVICES in accordance with these

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Conditions. The Customer is responsible for ensuring that the terms of the Order and any applicable Specification are complete and accurate.

- 3.3. The Order shall only be deemed to be accepted when the Supplier issues a written acceptance of the Order ("Order Acceptance"), at which point the Contract shall come into existence.
- 3.4. The Contract constitutes the entire agreement between the parties. The Customer acknowledges that it has not relied on any statement, promise, representation, assurance or warranty made or given by or on behalf of the Supplier which is not set out in the Contract.
- 3.5. Any drawings and particulars of weights, dimensions, appearance and performance of the Goods, descriptive matter, or advertising produced by the Supplier are produced for the sole purpose of giving an approximate idea of the Goods described in them. They shall not form part of the Contract or have any contractual force.
- 3.6. A quotation for the Goods given by the Supplier shall not constitute an offer. A quotation shall only be valid for a period of 30 days from its date of issue, unless previously withdrawn, amended or extended by the Supplier.

4. GOODS & INTELLECTUAL PROPERTY RIGHTS/ INDEMNITY

- 4.1. The Goods are described in the Specification.
- 4.2. To the extent that the Goods are to be manufactured in accordance with a Specification supplied by the Customer, the Customer shall indemnify the Supplier against all liabilities, costs, expenses, damages and losses (including any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal and other reasonable professional costs and expenses) suffered or incurred by the Supplier in connection with any claim made against the Supplier for actual or alleged infringement of a third party's intellectual property rights arising out of or in connection with the Supplier's use of the Specification. This clause 4.2 shall survive termination of the Contract.
- 4.3. The Supplier reserves the right to amend the specification of the Goods or services if required by any applicable statutory or regulatory requirements.
- 4.4. The Customer hereby irrevocably warrants and represents that:
 - 4.4.1. the ordered Products do not infringe upon any copyright or any other intellectual property right of any third party, and
 - 4.4.2. the Customer possesses all relevant rights (e.g. mechanical duplication rights) or licenses, and that all fees and royalties due to beneficiaries of relevant copyrights have been paid or will be paid when due
 - 4.4.3. there are no claims, disputes, suits, arbitral or other proceedings pending or anticipated which may affect the warranties and representations made above by the Customer.
 - 4.4.4. The Customer shall fill in the supplied Copyright declaration for every order and submit it to the Supplier before production commences. The Supplier is also entitled at its absolute discretion to require further reasonable evidence, the reasonableness of which shall be determined exclusively by the Supplier, in order to determine that the Customer possesses all the relevant rights and licenses regarding any copyright or any other intellectual property right of any third party
 - 4.4.5. The Client agrees that despite any non-disclosure agreements that may be in effect to the contrary, the Supplier may consult all applicable governing bodies (i.e. IFPI, BSA, IRMA/CDSA, RIAA, BIEM, OSA, etc.) concerning intellectual property rights ownership. In such consultation the Supplier shall disclose only that information necessary to determine the ownership of the intellectual property at issue.

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- 4.5. For cost estimates, quotations and all other documents prepared or provided by the Supplier, the Supplier reserves all rights, title and interest in all intellectual property rights including but not limited to patents or copyright. The Customer shall keep such documents confidential and shall not without the prior consent in writing of the Supplier disclose to any third party any technical or commercial information which it has acquired from the Supplier as a result of discussions, negotiations and other communications between them relating to the Products and the Order.
- 4.6. 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 Supplier 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.
- 4.7. All supplied masters remain the property of the Customer, however will not be returned. The Supplier may charge the Customer for storage of their masters after a reasonable time of two years has passed. This time period is determined by the Supplier and is subject to change without notice. If the Customer requires their masters to be stored for longer than this reasonable time, this must be indicated, agreed upon and paid for by the Customer at the time of the original Order. The Supplier reserves the right to destroy the masters without written permission.
- 4.8. The Customer shall, at their own risk, supply the Supplier with complete copies of all applicable and necessary audio, data masters, original data files, recordings, images and/or designs following formation of the Contract. The Supplier may then supply the Customer with proofs, pre-production prototypes, test pressings, samples and/or check discs.
- 4.9. Subject to the following provisions, if the Customer notifies the Supplier in writing that a test pressing, test CD, artwork proof, pre-production samples and or mock-ups is not satisfactory, the Supplier will obtain a new test pressing, test CD, artwork proof, pre-production samples and or mock-ups at the cost of the Customer. If the Customer does not approve test pressing, test CD, artwork proof, pre-production samples and or mock-ups, the Customer's order will be on hold. Once approved the Customer shall have no claim against the Supplier in respect of any Products which conform in quality to the test pressing, test CD, artwork proof, pre-production samples and or mock-ups provided.
- 4.10. If the Customer has not requested or required any test pressings, check discs, proofs, pre-production prototypes or samples 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, proofs, pre-production prototypes or samples.
- 4.11. The Supplier is the owner of any tools necessary for the production of the Products, including but not limited to cutting tools, printing blocks, printing dies, printing plates and pressing tools, even if such manufactured tools were paid by the Customer.
- 4.12. Orders will not be put into production by the Supplier until all parts are received. The Supplier is not liable for errors, delays or mistakes arising from or caused by Customer supplied parts. The Supplier will not provide protection from loss or damage of Customer supplied parts without proof of acceptance of delivery of those parts with the Supplier. It will be the responsibility of the Customer to insure all printed parts against loss and damage.

5. DELIVERY

- 5.1. The Supplier shall ensure that:
- 5.1.1. each delivery of the Goods is accompanied by a delivery note, stating all relevant Customer and Supplier reference numbers, the type and quantity of the Goods (including the code number of the Goods, where applicable) and
- 5.1.2. if the Supplier requires the Customer to return any packaging materials to the Supplier, that fact

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is clearly stated on the delivery note. The Customer shall make any such packaging materials available for collection at such times as the Supplier shall reasonably request. Returns of packaging materials shall be at the Supplier's expense.

- 5.2. Unless it has been agreed between the parties that the Purchaser shall collect the Goods from the Supplier's premises, the Supplier shall deliver the Goods to the location set out in the Order or such other location as the parties may agree (Delivery Location) at any time after the Supplier notifies the Customer that the Goods are ready.
- 5.3. Delivery of the Goods shall be completed on the Goods' arrival at the Delivery Location.
- 5.4. Any dates quoted for delivery are approximate only, and the time of delivery is not of the essence unless otherwise agreed between the parties in the Specification. The Supplier shall not be liable for any delay in delivery of the Goods that is caused by a Force Majeure Event or the Customer's failure to provide the Supplier with adequate delivery instructions or any other instructions that are relevant to the supply of the Goods.
- 5.5. If the Supplier fails to deliver the Goods, its liability shall be limited to the costs and expenses incurred by the Customer in obtaining replacement goods of similar description and quality in the cheapest market available, less the price of the Goods. The Supplier shall have no liability for any failure to deliver the Goods to the extent that such failure is caused by a Force Majeure Event or the Customer's failure to provide the Supplier with adequate delivery instructions or any other instructions that are relevant to the supply of the Goods.
- 5.6. If the Customer fails to take delivery of the Goods within three Business Days of the Supplier notifying the Customer that the Goods are ready, then, except where such failure or delay is caused by a Force Majeure Event or the Supplier's failure to comply with its obligations under the Contract:
 - 5.6.1. delivery of the Goods shall be deemed to have been completed at 9.00 am on the third Business Day after the day on which the Supplier notified the Customer that the Goods were ready; and
 - 5.6.2. the Supplier shall store the Goods until delivery takes place, and charge the Customer for all related costs and expenses (including insurance).
- 5.7. If 10 Business Days after the day on which the Supplier notified the Customer that the Goods were ready for delivery the Customer has not taken delivery of them, the Supplier may resell or otherwise dispose of part or all of the Goods and, after deducting reasonable storage and selling costs, account to the Customer for any excess over the price of the Goods or charge the Customer for any shortfall below the price of the Goods.
- 5.8. The Supplier may deliver the Goods by instalments, which shall be invoiced and paid for separately. Each instalment shall constitute a separate Contract. Any delay in delivery or defect in an instalment shall not entitle the Customer to cancel any other instalment.
6. The quantity of products shipped to the customer shall be evidenced as detailed on the accompanying delivery note and shall be conclusively agreed as received by the customer, upon receipt of the delivery by the customer. In any case the quantity delivered to the customer will always fall into the agreed tolerance levels, for the ordered quantity by the customer as set out in the suppliers contract.
7. **QUALITY**
 - 7.1. The Supplier warrants that upon delivery the Goods shall:
 - 7.1.1. conform in all material respects with their description and any applicable Specification;
 - 7.1.2. be free from material defects in design, material and workmanship; and
 - 7.1.3. be fit for any purpose held out by the Supplier.

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- 7.2. Subject to clause 6.3, if:
- 7.2.1. the Customer gives notice in writing to the Supplier within a reasonable time of discovery that some or all of the Goods do not comply with the warranty set out in clause 6.1;
 - 7.2.2. the Supplier is given a reasonable opportunity of examining such Goods; and
 - 7.2.3. the Customer (if asked to do so by the Supplier) returns such Goods to the Supplier's place of business at the Customer's cost,
- the Supplier shall, at its option, repair or replace the defective Goods, or refund the price of the defective Goods in full.
- 7.3. The Supplier shall not be liable for Goods' failure to comply with the warranty set out in clause 6.1 in any of the following events:
- 7.3.1. the Customer makes any further use of such Goods after giving notice in accordance with clause 6.2;
 - 7.3.2. the defect arises because the Customer failed to follow the Supplier's oral or written instructions as to the storage, use or maintenance of the Goods or (if there are none) good trade practice regarding the same;
 - 7.3.3. the defect arises as a result of the Supplier following any drawing, design or Specification supplied by the Customer;
 - 7.3.4. the Customer alters or repairs such Goods without the written consent of the Supplier;
 - 7.3.5. the defect arises as a result of fair wear and tear, willful damage, negligence, or abnormal storage or working conditions; or
 - 7.3.6. the Goods differ from the Specification as a result of changes made to ensure they comply with applicable statutory or regulatory requirements.
- 7.4. Except as provided in this clause 6, the Supplier shall have no liability to the Customer in respect of the Goods' failure to comply with the warranty set out in clause 6.1.
- 7.5. The terms implied by sections 13 to 15 of the Sale of Goods Act 1979 are, to the fullest extent permitted by law, excluded from the Contract.
- 7.6. These Conditions shall apply to any repaired or replacement Goods supplied by the Supplier.

8. TITLE AND RISK

- 8.1. The risk in the Goods shall pass to the Customer on completion of delivery.
- 8.2. Title to the Goods shall not pass to the Customer until the Supplier receives payment in full (in cash or cleared funds) for the Goods.
- 8.3. Until title of the Goods has passed to the Customer, the Customer shall:
 - 8.3.1. store the Goods separately from all other goods held by the Customer so that they remain readily identifiable as the Supplier's property;
 - 8.3.2. not remove, deface or obscure any identifying mark or packaging on or relating to the Goods;

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- 8.3.3. maintain the Goods in satisfactory condition and keep them insured against all risks for their full price from the date of delivery;
- 8.3.4. notify the Supplier immediately if it becomes subject to any of the events listed in clause 9.2; and
- 8.3.5. give the Supplier such information relating to the Goods as the Supplier may require from time to time

9. PRICE AND PAYMENT

- 9.1. The price of the Goods shall be the price set out in the Order.
- 9.2. The Supplier may, by giving notice to the Customer at any time before delivery, increase the price of the Goods to reflect any increase in the cost of the Goods that is due to:
 - 9.2.1. any factor beyond the Supplier's control (including foreign exchange fluctuations, increases in taxes and duties, and increases in labour, materials and other manufacturing costs);
 - 9.2.2. any request by the Customer to change the delivery date(s), quantities or types of Goods ordered, or the Specification; or
 - 9.2.3. any delay caused by any instructions of the Customer or failure of the Customer to give the Supplier adequate or accurate information or instructions.
- 9.3. The price of the Goods is exclusive of the costs and charges of packaging, insurance and transport of the Goods, which shall be invoiced to the Customer.
- 9.4. The price of the Goods is exclusive of amounts in respect of value added tax (**VAT**). The Customer shall, on receipt of a valid VAT invoice from the Supplier, pay to the Supplier such additional amounts in respect of VAT as are chargeable on the supply of the Goods.
- 9.5. The Supplier may invoice the Customer for the Goods on or before the Order Acceptance.
- 9.6. You may wish to pay by card over the telephone, by BACS transfer, by CHAPS transfer, PayPal or by sending a cheque payable to DMS Ltd.
- 9.7. Unless agreed in writing by the Supplier, the Customer shall pay the invoice in full and in cleared funds before the Goods are manufactured or, if already manufactured, before the Goods are dispatched for delivery.

10. TERMINATION AND SUSPENSION

- 10.1. If the Customer becomes subject to any of the events listed in clause 9.2, the Supplier may terminate the Contract with immediate effect by giving written notice to the Customer.
- 10.2. For the purposes of clause 9.1, the relevant events are:
 - 10.2.1. the Customer suspends, or threatens to suspend, payment of its debts, or is unable to pay its debts as they fall due or admits inability to pay its debts, or (being a company or limited liability partnership) is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986, or (being an individual) is deemed either unable to pay its debts or as having no reasonable prospect of so doing, in either case, within the meaning of section 268 of the Insolvency Act 1986, or (being a partnership) has any partner to whom any of the

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foregoing apply;

- 10.2.2. the Customer commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with its creditors;
 - 10.2.3. a creditor or encumbrancer of the Customer attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of its assets and such attachment or process is not discharged within 14 days;
 - 10.2.4. any event occurs, or proceeding is taken, with respect to the Customer in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in clause 9.2.1 to clause 9.2.3 (inclusive);
 - 10.2.5. the Customer suspends, threatens to suspend, ceases or threatens to cease to carry on all or a substantial part of its business;
 - 10.2.6. the Customer's financial position deteriorates to such an extent that in the Supplier's opinion the Customer's capability to adequately fulfil its obligations under the Contract has been placed in jeopardy; and
 - 10.2.7. (being an individual) the Customer dies or, by reason of illness or incapacity (whether mental or physical), is incapable of managing his or her own affairs or becomes a patient under any mental health legislation.
- 10.3. Without limiting its other rights or remedies, the Supplier may suspend provision of the Goods under the Contract or any other contract between the Customer and the Supplier if the Customer becomes subject to any of the events listed in clause 9.2.1 to clause 9.2.7, or the Supplier reasonably believes that the Customer is about to become subject to any of them, or if the Customer fails to pay any amount due under this Contract on the due date for payment.
- 10.4. On termination of the Contract for any reason the Customer shall immediately pay to the Supplier all of the Supplier's outstanding unpaid invoices and interest.
- 10.5. Termination of the Contract, however arising, shall not affect any of the parties' rights, remedies, obligations and liabilities that have accrued as at termination.
- 10.6. Clauses which expressly or by implication survive termination of the Contract shall continue in full force and effect.

11. LIMITATION OF LIABILITY

- 11.1. Nothing in these Conditions shall limit or exclude the Supplier's liability for:
- 11.1.1. death or personal injury caused by its negligence, or the negligence of its employees, agents or subcontractors (as applicable);
 - 11.1.2. fraud or fraudulent misrepresentation;
 - 11.1.3. breach of the terms implied by section 12 of the Sale of Goods Act 1979;
 - 11.1.4. defective products under the Consumer Protection Act 1987; or
 - 11.1.5. any matter in respect of which it would be unlawful for the Supplier to exclude or restrict liability.
- 11.2. Subject to clause 10.1:

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- 11.2.1. the Supplier shall under no circumstances whatever be liable to the Customer, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, for any loss of profit, or any indirect or consequential loss arising under or in connection with the Contract; and
- 11.2.2. the Supplier's total liability to the Customer in respect of all other losses arising under or in connection with the Contract, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, shall in no circumstances exceed the price of the Goods.

12. **FORCE MAJEURE**

Neither party shall be liable for any failure or delay in performing its obligations under the Contract to the extent that such failure or delay is caused by a Force Majeure Event. A **Force Majeure Event** means any event beyond a party's reasonable control, which by its nature could not have been foreseen, or, if it could have been foreseen, was unavoidable, including strikes, lock-outs or other industrial disputes (whether involving its own workforce or a third party's), failure of energy sources or transport network, acts of God, war, terrorism, riot, civil commotion, interference by civil or military authorities, national or international calamity, armed conflict, malicious damage, breakdown of plant or machinery, nuclear, chemical or biological contamination, sonic boom, explosions, collapse of building structures, fires, floods, storms, earthquakes, loss at sea, epidemics or similar events, natural disasters or extreme adverse weather conditions, or default of suppliers or subcontractors.

13. **GENERAL**

13.1. **Assignment and other dealings.**

- 13.1.1. The Supplier may at any time assign, transfer, mortgage, charge, subcontract or deal in any other manner with all or any of its rights or obligations under the Contract.
- 13.1.2. The Customer may not assign, transfer, mortgage, charge, subcontract, declare a trust over or deal in any other manner with any or all of its rights or obligations under the Contract without the prior written consent of the Supplier.

13.2. **Notices.**

- 13.2.1. Any notice or other communication given to a party under or in connection with the Contract shall be in writing, addressed to that party at its registered office (if it is a company) or its principal place of business (in any other case) or such other address as that party may have specified to the other party in writing in accordance with this clause, and shall be delivered personally, sent by pre-paid first class post or other next working day delivery service, commercial courier, or e-mail.
- 13.2.2. A notice or other communication shall be deemed to have been received: if delivered personally, when left at the address referred to in clause 13.2.1; if sent by pre-paid first class post or other next working day delivery service, at [9.00 am] on the [second] Business Day after posting; if delivered by commercial courier, on the date and at the time that the courier's delivery receipt is signed; or, if sent by or e-mail, one Business Day after transmission.
- 13.2.3. The provisions of this clause shall not apply to the service of any proceedings or other documents in any legal action.

13.3. **Severance.**

- 13.3.1. If any provision or part-provision of the Contract is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this clause shall not affect the validity and enforceability of the rest of the Contract.

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- 13.3.2. If [one party gives notice to the other of the possibility that] any provision or part-provision of this Contract is invalid, illegal or unenforceable, the parties shall negotiate in good faith to amend such provision so that, as amended, it is legal, valid and enforceable, and, to the greatest extent possible, achieves the intended commercial result of the original provision.
- 13.4. **Waiver.** A waiver of any right or remedy under the Contract or law is only effective if given in writing and shall not be deemed a waiver of any subsequent breach or default. No failure or delay by a party to exercise any right or remedy provided under the Contract or by law shall constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.
- 13.5. **Third party rights.** A person who is not a party to the Contract shall not have any rights to enforce its terms.
- 13.6. **Variation.** Except as set out in these Conditions, no variation of the Contract, including the introduction of any additional terms and conditions, shall be effective unless it is in writing and signed by the Supplier.
- 13.7. **Governing law.** The Contract, and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims), shall be governed by, and construed in accordance with the law of England and Wales.
- 13.8. **Jurisdiction.** Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim arising out of or in connection with this Contract or its subject matter or formation (including non-contractual disputes or claims).