

TERMS & CONDITIONS

PLEASE READ THIS AGREEMENT CAREFULLY. TO COMPLETE YOUR ORDER FOR THE PRODUCT YOU HAVE REQUESTED, YOU MUST FIRST ACCEPT THE TERMS AND CONDITIONS OF THIS AGREEMENT. ACCEPTANCE OF YOUR PURCHASE ORDER BY **CDS DIGITAL MEDIA SERVICES, INC.** (“COMPANY”) IS EXPRESSLY CONDITIONED UPON YOUR AGREEMENT THAT THOSE ORDERS WILL BE GOVERNED BY THESE TERMS. THESE TERMS TAKE PRECEDENCE OVER ANY TERMS AND CONDITIONS IN YOUR PURCHASE ORDER OR ANY OF YOUR OTHER DOCUMENTS AND SUPERCEDE ALL PRIOR AGREEMENTS, EXPRESS, IMPLIED, WRITTEN OR ORAL.

Section 1. Payment and Credit. Unless otherwise agreed in writing, payment for the Product hereunder, to the extent not paid prior to delivery, shall be made upon delivery. Invoices will be issued on or after the date of shipment. If, in the sole judgment of the Company, the financial condition of the Customer at any time does not justify the commencement or continuance of shipment on the terms specified herein, Company may, at its option and in addition to all other remedies it may have at law or in equity, make a written demand for full or partial payment of the remaining balance in advance, suspend its performance and/or delivery until such time as payment is made, or cancel the Customer’s order. If the Customer fails to pay any charges when due and payable, Customer agrees that Company shall have the right to invoice and Customer will pay all costs, including reasonable attorney fees, expended in collecting due charges and a late payment charge of 1.5% per month but not in excess of the lawful maximum on the unpaid balance.

Section 2. Force Majeure. Neither party shall be liable to the other by reason of any failure in performance of this Agreement in accordance with its terms if such failure arises out of causes beyond the reasonable control and without the fault or negligence of such party. Such causes may include, but are not limited to, unavailability of communications facilities, acts of God or public enemy, acts of terrorism, acts of the other party, acts of civil or military authority, fires, and strikes, unavailability of energy sources, delay in transportation, riots or war.

Section 3. Limitation of Warranty. Customer agrees to thoroughly and carefully inspect all goods and shipping papers promptly upon delivery. Company gives no warranty and assumes no responsibility as to the character or quality of the material and/or services furnished by it. Notwithstanding the foregoing, if any material produced by Company is defective or is erroneously labeled or shipped, Company will, at its own expense, promptly replace or repair such material or correct such error, provided that (a) written notice of such defect is given, and the defective materials are returned, to Company within ten days after the arrival of such materials at the destination to which Company was instructed to ship such materials, or (b) written notice of such error in labeling or shipment is given to Company within ten days after shipment. Company’s liability to the customer or any other person for any defective materials produced by Company or for an error in labeling or shipping shall be limited to the replacement or repair of such defective material or the correction of such error in shipping or labeling. Company shall not be liable to the Customer or to any third party for any consequential damages (including, but not limited to, damages for loss of sales or profits, loss of customer, injury to reputation, or loss of, or damage to audiovisual equipment or other property used in connection with the materials produced by Company) caused by, or resulting directly or indirectly from, a defect in such materials or an error in shipping or labeling, even though resulting from the negligence of Company or its employees.

Section 4. Limitation on Liability. Since the intrinsic value of the optical media, videotape, electronic file or other material delivered to, or deposited with, the company by, or for the account of, the customer (and any original or other materials manufactured by company for the customer) clearly exceeds and bears no relationship to company’s charges for optical media replication or duplication, video tape duplication or other company services, company in accordance with the general practice and custom in the optical media and videotape industries assumes no responsibility for the loss or destruction of, or damage to optical media, videotape, electronic files or other material delivered to, or deposited with, company by, or for the account of, the customer arising from any cause whatsoever, including the negligence of the company or its employees. Notwithstanding the foregoing, in the event of the loss or destruction of, or damage to, such optical media, videotape, electronic files or other material as a result of the negligence of the company or its employees, the company will reimburse the customer for the cost of the raw materials only, and this responsibility shall fix the limit of the company’s liability, there being no other warranty by, or liability of, company with respect thereto. The customer waives any and all claims for damages it may have against the company, which are covered by any insurance carried by the customer.

Section 5. No Other Warranties. TO THE EXTENT PERMITTED BY LAW, COMPANY DISCLAIMS ALL OTHER WARRANTIES ON THE PRODUCT, EITHER EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO THE IMPLIED WARRANTIES OF MERCHANTABILITY, NON-INFRINGEMENT OF THIRD PARTY RIGHTS, AND FITNESS FOR PARTICULAR PURPOSE. THE DURATION OF ANY STATUTORILY-REQUIRED WARRANTY PERIOD SHALL BE LIMITED TO THE TERM OF THE LIMITED WARRANTY. THIS LIMITED WARRANTY GIVES CUSTOMER SPECIFIC LEGAL RIGHTS, DEPENDING UPON

WHERE CUSTOMER LIVES. CUSTOMER MAY HAVE OTHER RIGHTS, WHICH VARY FROM STATE TO STATE AND COUNTRY TO COUNTRY.

Section 6. Disclaimer of Consequential Damages. UNDER NO CIRCUMSTANCES SHALL COMPANY BE LIABLE FOR ANY CONSEQUENTIAL OR INCIDENTAL DAMAGES WHATSOEVER ARISING OUT OF THE USE OF THE PRODUCT OR INABILITY TO USE THE PRODUCT, INCLUDING WITHOUT LIMITATION, LOST PROFITS, EQUIPMENT FAILURE, WORK STOPPAGE OR ANY OTHER DAMAGES, EVEN IF COMPANY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. BECAUSE SOME STATES AND COUNTRIES DO NOT ALLOW THE EXCLUSION OR LIMITATION OF LIABILITY FOR CONSEQUENTIAL OR INCIDENTAL DAMAGES, THE ABOVE LIMITATION MAY NOT APPLY TO YOU.

Section 7. Export Control. The United States controls the export of products and information. Customer agrees to comply with such restrictions and not to export or re-export the Product to countries or persons prohibited under the export control laws. By accepting the Product, customer is agreeing that customer is not in a country where such export is prohibited or is a person or entity to which such export is prohibited. Customer is responsible for compliance with the laws of its local jurisdiction regarding the import, export or re-export of the Product.

Section 8. Taxes. Customer shall be responsible for the payment of all sales, use and similar taxes relating to the Product.

Section 9. Indemnity. Customer agrees to indemnify, defend and hold Company harmless from and against any and all loss, damage, liability, claims, demands and suits asserted by any unrelated third party, including attorney fees prior to, at trial and on appeal arising from or related to: (i) any Product if Customer designed or furnished the specifications for that Product, including any product liability (except those caused solely by defects in the materials we supplied or our sole negligence); (ii) your breach of these Terms; (iii) any improper alteration, installation, repair or maintenance including removal of guards or defeating of interlocks or other safety devices; (iv) any use contrary to the Documentation or applicable law, other than the purpose for which the Product was designed or other misuse; (v) any failure to provide, implement or enforce any product notices, and (vi) any claim of defamation, invasion of privacy, or infringement of any copyright, trademark, patent, or other proprietary right, which may arise either directly or indirectly by reason of the services performed by Company for the Customer.

Section 10. Assignment. Customer may not assign this agreement without Company's prior written consent.

Section 11. Storage. Company will ordinarily store the Customer's materials, without charge to the Customer, at such place as Company deems appropriate during the time Company performs services with respect to said materials and for a reasonable period, not to exceed six months, thereafter, provided however, that Company reserves the right, at any time, to require the Customer to remove said materials from storage. Within thirty days after Company sends written notice requiring such removal to the Customer at the address shown as the Customer's address on Company's records the Customer shall, at its sole expense, remove all material stored by Company. In the event the Customer fails to remove said materials, Company shall have the right to destroy or otherwise dispose of said materials without liability to the Customer or any other person. The Customer shall indemnify and hold Company harmless from all liability, damages and expenses arising out of or connected with the destruction of said materials.

Section 12. General Terms. This agreement is governed by the laws of the State of New Jersey, and all legal actions commenced under this Agreement shall be brought within the State of New Jersey. The terms of the Uniform Commercial Code, Chapter 12A of the Laws of New Jersey, shall apply to this Agreement as if the subject matter of this Agreement was entirely the sale of goods, as defined by that Chapter. Both parties agree to accept service pursuant to New Jersey law and not to contest personal jurisdiction or venue over them of courts located in the State of New Jersey. If any provision of this agreement is found to be invalid by any court having competent jurisdiction, the invalidity of such provision shall not affect the validity of the remaining provisions of this agreement, which shall remain in full force and effect. No waiver of any term of this agreement shall be deemed a further or continuing waiver of such term or any other term. This agreement constitutes the entire agreement between Customer and the Company with respect to this transaction. Any changes to this agreement must be made in writing, signed by an authorized representative of the Company.