



## Music and Data Compact Discs Pty Ltd Terms and Conditions of Sale

The term "MAD CDS" refers to Music and Data Compact Discs Pty Ltd. The term "the Buyer" refers to the party to whom the quotation is submitted or with whom MAD CDS enters into a contract. All contracts made with MAD CDS, whether pursuant to quotation or otherwise, shall be subject to the terms and conditions as herein contained and shall exclude any contrary provisions in the Buyer's general terms of purchase (if any).

Firm orders once placed cannot be cancelled, in whole or in part, without MAD CDS' prior approval. If an order is purported to be cancelled or varied after acceptance by MAD CDS, the Buyer must indemnify MAD CDS in full against all costs (labour & material used) and expenses incurred in performing the contract to the time of cancellation or variation.

No agent or representative of MAD CDS has any authority to make any representations, statements, warranties, or agreement not herein expressed and MAD CDS shall not be bound by any such unauthorised statement, which shall not form part of a collateral contract with the Company. This contract cannot be altered except by writing duly signed by the General Manager or Sales Manager of MAD CDS.

A quotation includes only those goods, accessories and work specified therein. All items quoted as "ex stock" are offered subject to being unsold upon receipt of order. All quotations are subject to change or withdrawal at any time by MAD CDS without notice.

### Use and Description of Goods

The products or goods supplied by MAD CDS are only intended for business use and any special requirements for the products or goods, or any unusual use to which they may be put must be expressly stated in writing to MAD CDS.

The goods are sold on description only as incorporated in this contract notwithstanding that samples may have been submitted.

MAD CDS binds itself only to deliver goods in accordance with the general description under which they are sold whether or not any special or particular description shall have been given or shall be implied by law. MAD CDS does not give any warranty as to the quality, state, condition or fitness of the goods for any particular purpose.

MAD CDS shall in no way be liable for any statement or representation whatsoever made by any servant employee or agent of MAD CDS relating to any products workmanship.

### Specifications

All materials (including master disks) supplied by the Buyer to MAD CDS to manufacture must comply with the specifications set out in the Compact Disk Handbook or other product documentation, unless agreed in writing.

### Price

Unless specifically noted in writing all prices are exclusive of any applicable tax (including sales, import, export or goods and services tax), which the buyer is additionally liable to pay MAD CDS.

The prices stipulated by MAD CDS and relating to this contract are based on rates, costs and conditions as at the date of order/ quotation of materials, transport, labour, customs or other duty, sales tax, insurance and other rates and charges. The prices shall be increased or decreased in any such items or other factors affecting the cost of production and/or delivery due to circumstances beyond the reasonable control of MAD CDS between the date of order/quotation and the date of delivery. Prices quoted are based on all materials being available when required and any increases due to necessary substitution may be charged for if extra cost is involved.

All prices are quoted on the condition that the quantity of work quoted for will be carried out: MAD CDS has the right to review such prices if such quantity of work is not executed.

Unless otherwise mentioned the price shall remain valid for 30 days from the date of offer, after which the quotation / order is subject to confirmation.

### Delivery

Unless otherwise stated on the face of the quotation / order delivery shall be FIS, FOB Sydney and shall be completed when the goods concerned are offered to rail or other carrier or earlier leave MAD CD's custody for any such depot.

The Buyer shall accept the goods on or before the date specified for delivery in MAD CD's quotation or acceptance or if MAD CDS is unable to make delivery at this time on such later date as MAD CDS is able to make delivery. If the Buyer fails to accept the goods or requests a delay in delivery the Buyer shall pay reasonable storage charges until such time as delivery is made pursuant to which the buyer accepts the goods. If the Buyer fails or refuses to accept delivery then the goods shall be deemed to be delivered when MAD CDS was willing to deliver them.

MAD CDS shall not be liable for failure to deliver or for delay in delivery occasioned by industrial action, difficulty in procuring suitable materials required in the manufacture of the goods, shortage of stocks, shortage of suitable labour, delays in transit, prohibitions or restrictions, fire, hostilities, commotions, or other causes whatsoever (whether similar in nature or not to the foregoing) beyond MAD CD's control.

MAD CDS reserves the right to deliver the goods by installments and each installment shall be deemed to be a separate contract to the same conditions as the main contract.

Should MAD CDS make defective delivery of or fail to deliver one or more installments this shall not entitle the Buyer to repudiate the main contract.

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Unless otherwise stated delivery of a quantity of goods not exceeding ten percent more or less than any specified quantity shall constitute delivery of such specified quantity. Payment shall be made at the contract rate of the actual quantity delivered.

#### **Risk**

The risk of any loss or damage to or deterioration of the goods due to any cause whatsoever shall be borne by the Buyer from the time when the goods were delivered or deemed to have been delivered. MAD CDS will not be liable for any loss or damage occurring in transit.

#### **Licenses**

The quotation is to be read subject to MAD CDS being able to secure all Government licenses, permits and other authorities (within Australia, New Zealand or overseas) essential to the performance of MAD CDS's obligations under the contract.

#### **Design**

MAD CDS reserves the right to rectify any inaccuracies becoming apparent on the preparation of the drawings and specifications, etc following acceptance of this quotation. MAD CDS reserves the right to make changes in the design of standard products without prior notification.

#### **Payment**

Unless otherwise agreed, terms of payment are 50% deposit on placement of order, 50% on pick up or delivery of goods. PROVIDED HOWEVER that where the Buyer fails or refuses to accept delivery the price shall be payable from the time when delivery is deemed to have been made.

Interest may be charged from the due date for payment at a rate of two percent per month on any portion of the account which becomes overdue. If MAD CDS should at any time deem the credit of the Buyer to be unsatisfactory it may require security for payment and may withhold delivery and/or cease manufacture until provision of sufficient security. If the Buyer should fail to perform any of its obligations hereunder (not being a default in payment of the purchase price) or shall commit an act of bankruptcy or being a company cause any act which would render it liable to be wound up or have a receiver appointed over its property, MAD CDS may at its option suspend or terminate the contract and payment for all materials delivered and work performed up to the date of such suspension or termination and other moneys payable hereunder shall immediately become due and payable. All costs of or incurred by MAD CDS as a result of such suspension and any recommencement shall be payable by the Buyer upon demand.

Any legal or debt recovery costs incurred by MAD CDS in the collection of overdue accounts shall be charged to and paid for by the buyer.

#### **Claims**

The liability of MAD CDS whether in contract or in tort for any loss, damage or injury arising directly or indirectly from any defect or non-compliance of the goods supplied is limited to replacement or repair of such goods or damages not exceeding the invoice value of such defective or non-complying goods at the option of MAD CDS. MAD CDS shall not be liable for any consequential indirect or special damage or loss of any kind whatsoever. The Buyer shall indemnify MAD CDS against any claims by the buyer's servants, agents, customers or other persons whomsoever in respect of any loss, damage or injury arising from any defect or non-compliance of the goods supplied to the Buyer. The right to reject non-conforming goods shall be limited so as to be effective only if rejection is notified in writing to MAD CDS within 14 days of receipt of the goods and the goods are forthwith returned to MAD CDS at the Buyer's expense. No claim for damages or otherwise in respect of defects or non-conformity of the goods or otherwise shall be effective or enforceable unless written notice thereof is given to MAD CDS within 30 days of receipt of the goods. The Buyer shall not be entitled to withhold any payment or make any deduction there from for any reason whatsoever.

All other warranties, representations and conditions as to fitness, suitability, merchantable quality, description or otherwise whether express or implied by law or custom are expressly excluded. MAD CDS shall not be responsible if the Buyer expressly or impliedly places any reliance on any special knowledge, ability, skill or judgment of MAD CDS or any one or more of its agents, representatives or servants.

#### **Reservation of Title**

Notwithstanding any period of credit or the passing of risk in the goods supplied by MAD CDS to the buyer, legal and beneficial ownership of any and all goods shall remain with MAD CDS until payment in full is made for them and for all other goods supplied by MAD CDS to the buyer.

Until payment in full is made by the buyer for the goods, the buyer has a fiduciary duty to the seller to account to it for the goods and any proceeds thereof, holds the goods as agent for the seller and will if required by MAD CDS store the goods in such manner that they are clearly identifiable as the property of MAD CDS.

In the event that the buyer mixes or incorporates goods supplied by MAD CDS with any goods (producing "mixed goods") the buyer acknowledges that MAD CDS is a co-owner of the mixed goods in the proportion that the cost of the goods supplied by MAD CDS bears to the total cost of the mixed goods.

In the event that any goods supplied by MAD CDS or any mixed goods as aforesaid are sold by the buyer prior to payment in full of any amount outstanding to MAD CDS, the proceeds of such sale will be the property of MAD CDS and the buyer as MAD CDS's agent will hold the proceeds of such sale on trust on account of MAD CDS.

Until payment in full for all goods supplied by MAD CDS to the buyer has been made, the buyer hereby irrevocably gives MAD CDS, its agents and servants, leave and license (without the necessity for giving any notice) to enter on and into any premises occupied by the buyer where they are reasonably thought to be stored to search for and to remove any goods supplied or in which MAD CDS has ownership as aforesaid (if necessary after separating or severing the goods from any other goods with

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which the goods have been mixed or incorporated as aforesaid) without in any way being liable to the buyer or any person or company claiming the buyer.

#### **Colour**

Should MAD CDS be required to match any shade or colour a light and dark tolerance shall be allowed to such extent as shall be agreed upon by MAD CDS and the buyer at the time the standard colour is specified and in the absence of any agreement a reasonable tolerance shall be allowed.

#### **Packaging**

MAD CDS may charge a deposit of such amount as it considers reasonable in respect of any pallets, containers or cartons used in the delivery or packaging of the goods and such deposit shall be payable by the buyer when the first payment for the goods fall due. Where a deposit is charged the pallets, containers or cartons to which it relates shall remain the property of MAD CDS and MAD CDS shall be bound to refund such deposit only after the return to it of the items to which the deposit relates in good order or condition within a reasonable time of receipt by the buyer.

#### **Patents and Patent Rights**

The protection of patents is the Buyer's responsibility. Where MAD CDS has followed a design or instructions furnished or given by the Buyer, the Buyer shall indemnify MAD CDS against any liability whatsoever incurred by MAD CDS as a result of any work required to be done in accordance with these instructions involving an infringement of a copyright patent trademark registered design or common law right.

#### **Waiver**

All the original rights, powers, exemptions and remedies of MAD CDS shall remain in full force notwithstanding any neglect forbearance or delay in the enforcement thereof. MAD CDS shall not be deemed to have waived any condition unless such waiver shall be in writing under the signature of the Managing Director or Secretary of MAD CDS and any such waiver unless the contrary shall be expressly stated shall apply to and operate only in the particular transaction dealing or matter.

#### **Governing Law**

This contract shall be governed by the law of New South Wales and all disputes which may arise relating to or arising out of the contract shall be submitted to arbitration in New South Wales. The provisions of the **Arbitration Act 1908** or any statutory re-enactment or amendment thereof for the time being in force shall apply.

*Further to the 'Terms & Conditions of Sale' the following 'General Manufacturing Conditions' apply.*

#### **Manufacturers Indemnity**

As a pre condition for replication of any digital media product, including and not exclusive to, Compact Disc, Magnetic Floppy Diskette, Cassette Tape, DVD, any other recorded mediums for the customer by MAD CDs the following declaration is accepted and signed by the Buyer.

The Buyer agrees and warrants as follows:

- That any digital media submitted for manufacture, duplication or replication will be produced on the assumption that the Buyer has copyright authorisation to the works contained in the digital media ;
- That the Buyer actually has copyright in the works contained in the digital media;
- That all digital media products are manufactured, duplicated or replicated on the basis that if any breach of copyright occurs by virtue of the production process, MAD CDs will not be held responsible for the infringement of copyright and the Customer undertakes and warrants to satisfy all claims made against MAD CDs and to indemnify and keep indemnified MAD CDs in respect of such infringement;
- That the digital media manufactured, duplicated or replicated will not be used for any illegal purpose and / or purposes and will not be used in any manner to infringe another person's copyright in the works contained in the digital media.

#### **Computer Viruses and Corrupt Data Files**

While MAD CDS will endeavor to scan for unknown viruses, detect and attempt notify you of any suspect data, MAD CDS cannot guarantee either detection or removal.

#### **Definition of Working Days**

Working days are Monday to Friday. The production time starts the day after all the master and relative components arrive at MAD CDS offices. If any film/label design or data changes are required, the additional time required to effect these changes will be added to the production turnaround time offered.

#### **Proofing/Alterations/Specs/Colours**

If the Buyers film/label design arrives incomplete or is requiring corrections the Buyer will have the option to resupply the film/label design or MAD CDS may offer to correct the film/label design. This extra work will incur additional charges and the Buyer is required to approve and sign off artwork. If the Buyers digital master arrives and requires corrections or is unusable the Buyer will have the option to resupply the master. If MAD CDS can make corrections the Buyer will be quoted and charged additionally. The Buyer will be required to supply signed approval before we make alterations. If the Buyers master fails our CD pre-master quality assurance test and the Buyer wishes MAD CDS to proceed with manufacture, a written authorisation and indemnity is required from the Buyer.

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