

Pangbourne Musical Distributors Ltd., P.O. Box 19, Stratford upon Avon
(Registered Office: Nelson House, Hamilton Terrace, Leamington Spa)

CONDITIONS OF SALE

1. INCORPORATION OF CONDITIONS OF SALE

These terms and conditions (hereinafter called "the Contract Terms") shall be incorporated into any Order which Pangbourne Musical Distributors Limited (hereinafter called "the Company") accepts or executes and all quotations are given subject to them. Unless other terms and conditions are expressly accepted by the Company by means of a written amendment to the Contract Terms signed by a Director of the Company specifically referring to the term or condition to be amended the Contract between the Customer and the Company shall be on the terms and conditions hereinafter contained to the exclusion of any other terms and conditions whether or not the same are endorsed upon, delivered with, or referred to in any purchase order or other document delivered by the customer or any other person on the Customer's behalf, to the Company to the intent that the Contract terms shall, save as aforesaid, in all circumstances prevail.

2. REPRESENTATIONS

No representation made by the Company or the Company's Agents shall be treated as having induced the customer to enter into the Contract unless the same is on the Company's written quotation or other official Company document.

3. FORMATION OF CONTRACT

Without prejudice to the generality of Clause 1 hereof a quotation issued by the Company is not an offer and a Contract shall exist only upon the Company's written acceptance or commencement of execution of the Customer's Order.

4. DEFINITION OF PRICE

Unless otherwise stated:-

- (a) All prices quoted on any document or correspondence by the Company or quoted verbally do not include Value Added Tax and any reference to 'price' in the Contract Terms shall be construed accordingly.
- (b) All prices and discounts are in accordance with the Company's current price list but are subject to alteration without notice and prices will be those ruling at the date of despatch but this condition will not apply where a fixed written quotation has been given in which event the price shall remain fixed from thirty days (30) from the date of quotation.

5. EXTRAS

The Company may make extra charge for any additions, alterations or tests ordered by the Customer.

6. DELIVERY

- (a) Any delivery date which the Company gives is given in good faith but is deemed not to be an essential term of the Contract. The Company cannot accept any liability for delay in delivery or non-delivery arising from any cause. Delivery may be made to a Carrier or as the customer may direct and the goods thereafter (or at the date of invoice if earlier) will be at the customer's risk. Where the Company makes part delivery of a customer's order it shall be entitled to invoice the Company for such delivery and all the terms and conditions herein contained and in particular Clause 8 shall apply to such delivery.
 - (b) The Company reserves the right to charge extra for carriage packing and insurance on small orders. Details of such charges (if applicable) are set out on the Company's current price list for the goods in question.
 - (c) Unless otherwise agreed in writing delivery shall in all cases be ex-works. If the customer requests delivery to the customer's premises or to any other destination the company shall be at liberty to charge all necessary and proper costs and expenses incurred in carrying out such instructions.
 - (d) The Company reserves the right to make an additional charge for storage and administration costs incurred by it in respect of goods stored or held by the company for a period exceeding one month as result of lack of or inadequate delivery instructions.
 - (e) No claim for damages or shortages will be considered unless the Company and the carrier are advised in writing within three (3) days of delivery in the case of inland orders twenty eight (28) days of delivery in the case of export orders and no claim for non-delivery will be considered unless the company is notified in writing within ten (10) days of reasonable delivery time in the case of inland orders and twenty eight (28) days of reasonable delivery time in the case of export orders, in both cases taking into account date of despatch.
- 7. TITLE AND RISK OF LOSS**
- (a) Notwithstanding delivery, title to the goods shall remain with the company both in law and in equity until the customer shall have paid the company all amounts due by the customer (whether in respect of such goods or otherwise).
 - (b) The customer acknowledges that it is in possession of all goods supplied under these terms and conditions solely as a bailee for the company until such time as the customer shall have paid the company in full.
 - (c) Until such time as in accordance with the above

provisions the customer becomes the owner of the goods it will store them on its premises separately from its own goods or those of any other person and in a manner which makes them readily identifiable as the goods of the company.

- (d) The Customer's right to possession of the goods shall cease if it fails to make any payment to the Company under this or any other Contract when due or if it does anything or fails to do anything which would entitle a Receiver to take possession of any asset or which would entitle any person to present a petition for winding up or commits an act of bankruptcy or if at any time in the opinion of the Company the goods are at risk of seizure or sequestration be reason of the aforementioned or any other reason and the Company may thereupon and is hereby irrevocably licensed to enter upon any premises where the goods are stored or where they are reasonably thought to be stored for the purpose of re-possessing them.
- (e) Risk of loss and damage shall pass from the company to the customer upon delivery of the goods either to the customer or to a common carrier at the specified delivery point. The customer shall properly insure the goods for the benefit of the company between the time risk of loss and damage pass and the title passes.
- (f) Until such time as in accordance with the above provisions the customer has obtained title to the goods the customer is licensed by the company to sell the goods on behalf of the company as agents save that the customer shall not hold itself out as such but shall sell on its own account and shall hold the entire proceeds of sale as trustees for the company.
- (g) The terms of the above sub-conditions shall apply notwithstanding that the goods sold to the customer consist of blank magnetic media (as defined in Condition 13 (b) and have been used for sound visual or data recording.

8. TERMS OF PAYMENT

- (a) Payment of price in full for goods supplied shall be made thirty (30) days after the date of the invoice ("the due date").
- (b) All payments are to be made on or before the due date as condition precedent to future deliveries under this or any other contract and time for payment shall be of the essence of the contract.
- (c) Without prejudice to the Company's right to cease deliveries and to sue for payment if payment is not made by the due date, the Company may charge interest on payments not made by the due date at a rate of 2.5% per calendar month or part thereof on all payments overdue (whether before or after any Court Judgement) until the date of actual payment.
- (d) Where a customer's cheque is not honoured on first presentation by the Company for payment the Company shall be entitled to make a charge of Ten Pounds (£10.00) notwithstanding that the cheque may be subsequently honoured.
- (e) A settlement discount of 2.5% of the price will be given by the company on approved credit accounts only for payments made in full within seven days of the invoice date.

9. CANCELLATION OF ORDER BY CUSTOMER

Any order which the Company has accepted may not be cancelled and the customer shall not return to the Company by way of cancellation goods supplied to him in accordance with an order unless the Company consents in writing and the Company may as a condition of giving such consent, require payment of such sum as will indemnify the Company against all loss (including loss of profits) which the Company may have suffered as a result of cancellation.

10. CANCELLATION OF CONTRACT BY THE COMPANY

Without prejudice to any claim which the Company may have against the customer the Company will be entitled to cancel the Contract if the customer shall be in arrear with payment for this or any other contract with the Company or shall become insolvent or go into liquidation (otherwise than for the purpose of reconstruction or amalgamation) or have a Receiver appointed or suffer any execution or distress to be levied on its goods.

11. MODIFICATIONS

The Company reserves the right to modify or improve any of its goods and may substitute any such improved or modified goods in lieu of those actually ordered by the customer provided that this condition shall not oblige the customer to accept goods substantially different from those ordered.

12. GUARANTEE

In lieu of any express or implied statutory or other warranties, guarantees conditions or liabilities (whether as to description, fitness, quality standard of workmanship or otherwise) which are hereby excluded, the following provisions shall apply:-

- (a) The customer shall not be entitled to rescind this contract or to claim damages on the ground of any statement whatsoever as to suitability of the goods for any particular purpose and the customer assumes responsibility for the capacity and performance of the goods being suitable for his purpose.

- (b) Items returned to the Company within 12 months from the date of delivery and which subject to proper use and maintenance shall upon examination be proved to the Company's satisfaction to have been defective will be replaced free of charge at the original point of delivery but the Company cannot accept any liability for any costs or expenses or direct or consequential loss or liabilities incurred by the Customer (including the costs of carriage, packing and insurance) nor for any labour charges incurred either directly or indirectly by the Customer or by any third party.

- (c) The Company's liability in respect of any defect whether of quality, suitability of purpose or otherwise in any goods supplied or for any loss, injury or consequential damage attributable thereto is limited to the terms of this guarantee and the customer hereby acknowledges:

- (i) that if purchased the goods in a competitive market and that the bargaining strength of the Company was in no way a relevant factor in the purchase of the goods of the Company
- (ii) that the customer knows the extent of the meaning of this Condition and the limitations thereby imposed by it upon Sections 13, 14 and 15 of the Sale of Goods Act 1979

13. USE OF MAGNETIC MEDIA SOLD BY COMPANY

- (a) Where the goods sold by the company consist of blank magnetic media as defined in sub-condition (b) hereof the Company will not accept any responsibility for any sound visual or data recording made thereon by the customer or by any third party and the customer hereby agrees to indemnify and keep indemnified the Company against any claim or demand for damages costs or other liability which may be made against the Company in respect of such recording.

- (b) In this condition "blank magnetic media" means blank recording tape in all its forms including audio cassettes, video cassettes, disks, diskettes and reel-to-reel recording tape and any other medium designed or adapted for recording sound and/or visual images or data.

14. FAILURE BY COMPANY TO ENFORCE CONTRACT TERMS

Failure by the Company to enforce any of the Contract Terms shall not be construed as a waiver of the Company's rights thereunder.

15. MISREPRESENTATION

- (a) Nothing in the Contract terms other than the following sub-clause shall exclude or restrict any liability to which the Company may be subject by reason of any misrepresentation made by it before this Contract was made or any remedy available to the customer by reason of such misrepresentation.
- (b) The Company shall not incur any liability nor shall any right accrue to the customer by reason of any misrepresentation arising from:-
 - (i) printing and clerical errors
 - (ii) statements in oral, written or any other form by third parties accepted by the Company in good faith and repeated by it
 - (iii) oral statements not confirmed by the Company in writing

16. ASSIGNMENT OF CONTRACT BY COMPANY

The Company shall be entitled to assign sub-contract or sub-let this Contract or any part thereof.

17. PATENTS/COPYRIGHTS

No right or licence is granted to the customer under the patent, copyrights, registered design or other industrial property right except the right to use or re-sell the goods.

18. SPECIAL GOODS

If the goods are manufactured to the design or specification of the customer the customer agrees to indemnify and hold harmless the Company against all losses, costs, charges, expenses and damages which the Company might suffer as a result of any claim or allegation:-

- (a) that the goods infringe the patents, copyright, registered design or other like protection of any other person or
- (b) that the goods do not comply with a statute, statutory instrument or regulation for the time being in force.

19. LAW AND JURISDICTION

This contract shall be construed and operate in accordance with English Law and the customer hereby submits himself to the jurisdiction of the English Courts.

20. VALIDITY OF CONDITIONS OF SALE

If any clause, sentence or paragraph or part of the Contract terms or the application thereof to any person shall for any reason be adjudged by a Court of competent jurisdiction to be invalid such judgement shall not affect the remainder of these terms and conditions which shall continue in full force and effect but such judgement shall be limited and confined in its operation to the clause, sentence or paragraph or part thereof directly involved in the controversy in which such judgement shall have been rendered and to the person involved.