

## 1 DEFINITIONS AND INTERPRETATION

### 1.1 Definitions

In these Terms and Conditions, unless the context clearly indicates otherwise:

**Agreed Order** means an Order to which Sony DADC has issued a Confirmation in accordance with clause 3(b) or an Order in respect of which the Customer has accepted a Confirmation in accordance with clause 3(c) (as the case may be);

**Confirmation** means the written confirmation of Sony DADC to the Customer that it has agreed to fulfil an Order, including any variations to that Order, including by way of issuing a copy of the artwork proof to the Customer;

**Contract** means any written or oral contract, agreement, arrangement, transaction or dealing entered into or made by Sony DADC with any Customer for the provision of Services and/or Final Product, including an Agreed Order;

**Customer** means, in respect of each Contract, the person or persons contracting with Sony DADC and any representatives and successors;

**Customer Materials** means all tapes, films, discs, optical storage media, digital or electronic data, artwork, graphics, photographs, prints and other materials provided by or on behalf of the Customer to Sony DADC for the provision of Services and/or Final Product;

**Event of Force Majeure** means any act beyond the reasonable control of Sony DADC including an act of God; inevitable accident; fire; lock out, strike or other labour dispute; riot or civil commotion; act of public enemy or terrorism; and any enactment, rule, order or act of government;

**Final Product** means any product produced from the Customer Materials by Sony DADC for the Customer under a Contract, including optical storage media (including discs in Blu-ray, CD-Audio, CD-ROM and DVD format), packaging, printed material, audio or audio-visual master material and audio or audio-visual sub-master material, as specified in the Agreed Order;

**GST** means the goods and services tax levied in accordance with the A New Tax System (Goods and Services Tax) Act 1999 (Cth.);

**Indemnified Person** means Sony DADC, its related and associated entities and each of their officers, employees, contractors and agents;

**Insolvency Event** includes the winding up, dissolution or cessation of business, the appointment of an administrator, liquidator, receiver or an official manager, an assignment for the benefit of creditors, scheme of arrangement with creditors, insolvency and bankruptcy of a party or any similar procedure;

**Order** means the Customer's order for Services and/or Final Product received by Sony DADC;

**Services** means any or all of the following services, as specified in a Contract:

- (a) pressing, manufacturing and replicating optical storage media;
- (b) artwork preparation and printing, including for optical storage media labels and packaging and other product labels and packaging;
- (c) authoring optical storage media, multimedia authoring, audio mastering and restoration, digital archiving, converting media, creating disc copy

protection and other digital rights management systems;

- (d) graphic design;
- (e) archiving services, including services in connection with the collection, scanning, cataloguing, digitising, retrieval, refiling, tracking, delivery and storage or destruction of Storage Materials; and
- (f) any other services or facilities provided or to be provided by Sony DADC as offered by it and requested by the Customer from time to time, but excludes all physical distribution services;

**Sony DADC** means Sony DADC Australia Pty Ltd (ABN 64 000 033 581) and all its divisions and any successors and permitted assigns;

**Standard Rate Card** means the standard rate card of Sony DADC from time to time for the provision of Services and, in relation to the provision of any Service by Sony DADC to the Customer, will be that price list which is current at the time of Sony DADC providing that Service to the Customer; and

**Storage Materials** means Final Product and any Customer Materials that are in Sony DADC's possession or control from time to time.

### 1.2 Interpretation

- (a) A reference to a **clause** is a reference to a clause of these Terms and Conditions.
- (b) Clause headings are inserted for convenience only and do not form part of these Terms and Conditions.
- (c) **Including** and **includes** are not words of limitation.
- (d) The singular includes the plural and vice-versa.
- (e) Words importing one gender include all other genders.

## 2 APPLICATION TO THE PROVISION OF SERVICES AND/OR FINAL PRODUCT

- (a) These Terms and Conditions apply to all Contracts other than a Contract in writing executed by or on behalf of Sony DADC which excludes, either expressly or by implication, these Terms and Conditions and these Terms and Conditions may be varied by a written agreement executed by Sony DADC and the Customer.
- (b) Without limiting clause 2(a), any Order placed by a Customer will incorporate these Terms and Conditions, unless varied in accordance with clause 2(a), despite any inconsistency between the Order (including any terms and conditions requested by the Customer to apply to that Order) and these Terms and Conditions.
- (c) If there is more than one person contracting with Sony DADC under a Contract, each person will be bound jointly and severally by that Contract (including these Terms and Conditions).
- (d) The Customer acknowledges that these Terms and Conditions may change from time to time and it must determine the current Terms and Conditions in force at the time of placement of an Order.

## 3 ORDER AND CONFIRMATION

- (a) Subject to clause 5.4(a), the Customer acknowledges that Sony DADC will not commence providing the Services and/or Final Product until an Order is an Agreed Order.

- (b) If a Confirmation does not vary an Order, the Confirmation amounts to Sony DADC's acceptance to provide the Services and/or Final Product the subject of the Order in accordance with these Terms and Conditions.
- (c) If a Confirmation varies an Order, the Confirmation amounts to a counter-offer to provide the Services and/or Final Product the subject of the Confirmation in accordance with these Terms and Conditions, and will be deemed to be accepted by the Customer providing its written acceptance to Sony DADC or returning a signed copy of the artwork proof (if relevant).
- (d) The Customer acknowledges that Sony DADC is not obliged to accept Orders, including, but not only, for less than Sony DADC's minimum quantity of Final Product, currently 500 items, which may change from time to time.
- (e) Sony DADC will not be responsible for any delay or non-performance in connection with the provision of Services and/or Final Product or breach of these Terms and Conditions if an Agreed Order is inaccurate or if the Customer delays in accepting a Confirmation in accordance with clause 3(c).
- (f) The quantity of any Final Product produced by Sony DADC and delivered to the Customer to meet an Agreed Order will be not greater than plus or minus 5% of the quantity stated in the Agreed Order or, if the Agreed Order is less than 1000 units, not greater than plus or minus 50 units.
- (g) If the quantity of any Final Product produced by Sony DADC and delivered to the Customer to meet an Agreed Order varies from that stated in the Agreed Order, Sony DADC will make a pro-rata adjustment to the payments due by the Customer for the Final Product.
- 4 CUSTOMER MATERIALS**
- (a) All Customer Materials must comply with the specifications published by Sony DADC from time to time and in force at the time of placement of an Order.
- (b) Sony DADC will not be responsible for any delay or non-performance in connection with the provision of Services and/or Final Product or breach of these Terms and Conditions if complete and accurate Customer Materials are not delivered to Sony DADC within the time set out in the Agreed Order or, if no time is set out in the Agreed Order, within a reasonable time for Sony DADC to fulfil the Agreed Order within the time required by the Customer.
- (c) The Customer must:
- (i) deliver the Customer Materials to Sony DADC and arrange re-delivery from Sony DADC to the Customer at its own expense, unless agreed otherwise between the parties;
  - (ii) if the Customer Materials are faulty, illegible (either by eye or machine, as relevant) or do not comply with Sony DADC's specifications, re-deliver to Sony DADC a new copy of the Customer Materials (or the relevant part of them) promptly at the Customer's expense; and
- (iii) the Customer acknowledges that delivery of the Customer Materials are at its own risk, including if delivery is effected by digital data transfer to Sony DADC.
- (d) The Customer grants Sony DADC permission to deal with the Customer Materials for the purpose of carrying out the Services and/or producing Final Product.
- 5 PAYMENT AND TERMS OF PAYMENT**
- 5.1 Quotations**
- Sony DADC may give the Customer a quotation for the provision of Services and/or Final Product, however, Sony DADC is not bound by a quotation (whether in writing or otherwise) and it is valid only for the period specified in the quotation.
- 5.2 Price, Standard Rate Card and Overtime**
- (a) The price of the Services and/or Final Product is as set out in the Agreed Order on an "ex-works" basis, exclusive of any transportation or insurance related costs.
- (b) Unless the parties otherwise agree or unless set out in a quotation, the price of the Services and/or Final Product is calculated in accordance with the Standard Rate Card, however, if Services are provided during any period outside normal working hours (as required by the Customer or in order to meet the Customer's delivery time requirements) overtime charges may become payable by the Customer without notice, which charges may include meal penalties, short turnaround and/or longshift penalties and the Customer must pay such charges upon demand by Sony DADC.
- 5.3 GST and other taxes, duties, imposts, levies and charges**
- All charges payable by the Customer to Sony DADC for the provision of Services and/or Final Product are exclusive of GST and any other taxes, duties, imposts, levies and charges that may be payable in respect of the provision of the Services and/or Final Product and these amounts must be borne by the Customer and, in the case of GST that is payable, Sony DADC will issue a tax invoice to the Customer for the amount of that GST at the time of invoicing the Customer for the charges to which that GST relates.
- 5.4 Payment**
- (a) If the Customer does not have a credit account with Sony DADC, the Customer must pay to Sony DADC all charges for the provision of Services and/or Final Product in accordance with an invoice rendered and payable in advance of Sony DADC commencing fulfilment of an Agreed Order for these Services and/or Final Product.
- (b) If the Customer has a credit account with Sony DADC, the Customer must pay to Sony DADC all charges for the provision of Services and/or Final Product in accordance with an invoice rendered on fulfilment of the Agreed Order for those Services and/or Final Product and payable within thirty (30) days from the end of the month of the date of issue of that invoice.

- (c) If the relevant payment is not received from the Customer by the date when it is due and payable, Sony DADC may, in addition to its rights and remedies at law or equity, do any one or more of the following, as relevant:
- (i) suspend all or part of any of its obligations under these Terms and Conditions until the Customer has paid to Sony DADC all outstanding amounts;
  - (ii) if the Customer has a credit account, immediately suspend or cancel the Customer's credit account; and/or
  - (iii) charge interest on overdue amounts at the cash rate target stated by the Reserve Bank of Australia (current at the due date of the applicable charges) increased by a further 6% calculated daily from the due date of the applicable charges until the date all outstanding amounts (including overtime charges and interest) are paid to Sony DADC in full,

and Sony DADC will not be in breach of these Terms and Conditions if it takes any such action.

## **6 CANCELLATION OR VARIATION BY THE CUSTOMER**

- (a) The Customer must advise Sony DADC in writing between 9am and 5pm on a working day if the Customer wishes to cancel or vary any of the Services and/or Final Product.
- (b) Any variation of the Agreed Order by the Customer may only be made with the prior written agreement of Sony DADC.
- (c) The Customer must pay to Sony DADC all disbursements incurred by Sony DADC for, and all charges relating to, the Services undertaken and/or Final Product produced by Sony DADC prior to receiving the Customer's notice of cancellation in accordance with clause 6(a).

## **7 TERMINATION BY SONY DADC**

Without limiting its other rights under these Terms and Conditions at law or in equity, Sony DADC may terminate a Contract with immediate effect by giving written notice to the Customer if:

- (a) an Insolvency Event occurs in respect of the Customer or Sony DADC reasonably suspects that the Customer will not be able to pay applicable charges when due;
- (b) Sony DADC reasonably suspects that the Customer is in breach of or is not entitled to give any of the covenants and warranties under clause 12.1; or
- (c) the Customer Materials contain obscene matter (such as lewd, lascivious, sexually explicit or excessively violent content) or matter which is or may be rated "R" or "X" by the Office of Film and Literature Classification or may be refused classification.

## **8 DELIVERY**

- (a) The delivery dates for Final Product (if any) specified in an Agreed Order or otherwise are approximate only, timely delivery is not of the essence, and any delay in delivery of Final Product

by Sony DADC will not be a basis for cancellation of any Services.

- (b) Sony DADC may make part or advance deliveries of Final Product, unless otherwise agreed in an Agreed Order, and if part deliveries are made Sony DADC may issue separate invoices.
- (c) The method of delivery and packing will be determined by Sony DADC and free of insurance unless the Customer directs Sony DADC as to how delivery is to be effected or insured at the time of placing the Order and this is agreed in an Agreed Order.
- (d) The Customer will be responsible for all of Sony DADC's expenses incurred in connection with delivery and insurance (if any) of the Final Product and these will be included in the relevant invoice rendered by Sony DADC for the Services.
- (e) If the Customer fails to take delivery of the Final Product or fails to give adequate instructions regarding delivery, Sony DADC may store or dispose of the Final Product at the Customer's expense.
- (f) Sony DADC is taken to have duly delivered the Final Product to an address if a person there signs a delivery docket for the Final Product.

## **9 STORAGE**

- (a) All Storage Materials will be stored by Sony DADC solely at the Customer's risk, on and from their delivery to, or creation by, Sony DADC (as the case may be) and for a period of three (3) months after the last use of the Storage Materials by Sony DADC.
- (b) After the expiration of the three (3) month period referred to in clause 9(a), Sony DADC may notify the Customer that it requires the Customer to direct Sony DADC to:
  - (i) destroy the Storage Materials (at the Customer's sole expense and risk);
  - (ii) continue to store the Storage Materials at an agreed storage fee; or
  - (iii) allow a thirty (30) day period for the Customer to take delivery of the Storage Materials,

and if the Customer does not respond within 30 days or does not take delivery in accordance with clause 9(b)(iii) Sony DADC may destroy the Storage Materials.

## **10 INSPECTION AND ACCEPTANCE**

The Customer must inspect and test the Final Product upon delivery and give notice in writing to Sony DADC of any claim for missing, damaged or non-conforming Final Product within forty eight (48) hours after delivery to the Customer.

## **11 PROPERTY AND INTELLECTUAL PROPERTY**

### **11.1 Property in Final Product**

Property and risk in and to the Final Product will pass to the Customer on the Final Product being passed to the carrier for delivery to the Customer and Sony DADC will not be responsible for any damage or loss to the Final Product after that time.

### **11.2 Sony DADC's property and intellectual property**

Sony DADC will retain all right and title, including all intellectual property rights, in and to: all tooling

(including masters, stampers, knives and other tooling); any drawings, plans, designs, models, specifications and materials (including creative designs and mock ups presented to the Customer); and to any computer programs and data (including layered print files), in each case where produced or developed by Sony DADC in order to provide the Services and/or produce the Final Product unless expressly required to be delivered to and paid for by the Customer under a Contract.

### 11.3 Use of Sony DADC trade marks

The Customer must not use the registered or unregistered trade marks of Sony DADC, including its name, without obtaining the prior written consent of Sony DADC.

## 12 CUSTOMER'S COVENANTS, WARRANTIES AND INDEMNITIES

### 12.1 Covenants and warranties

The Customer covenants and warrants with and to Sony DADC that:

- (a) it has the rights (including copyright) in the Customer Materials (including any performances, compositions, sound recordings, works or other material contained in the Customer Materials) necessary to grant to Sony DADC the right to use the Customer Materials to provide the Services and/or produce the Final Product and the use of the Customer Materials by Sony DADC in order to provide the Services and/or produce the Final Product will not infringe the rights of any person or breach any law or regulation;
- (b) all Customer Materials are reproduced on the basis that if any infringement of copyright occurs by virtue of reproduction by Sony DADC, Sony DADC will not be held responsible for the infringement of copyright;
- (c) the Customer will not use, and will not authorise any other person to use, the Final Product for any illegal purpose;
- (d) the Customer Materials are not originals;
- (e) the Customer Materials are not faulty or dangerous and, to the extent they are electronic or consist of digital data, they do not contain defects, viruses or errors; and
- (f) the Customer will comply with its obligations under these Terms and Conditions, including in respect of payment.

### 12.2 Customer indemnities

The Customer will hold harmless, protect, indemnify and defend the Indemnified Persons in respect of any loss, costs (including legal fees and costs on a full indemnity basis), expense, damages or liability which Sony DADC suffers or incurs consequent on or arising directly or indirectly from or in connection with:

- (i) any breach of a covenant or warranty given by the Customer under clause 12.1;
- (ii) any warranty given by the Customer under clause 12.1 not being complete, true or correct; or
- (iii) Sony DADC's use of the Customer Materials as contemplated by the Agreed Order,

and against all actions, proceedings, claims and demands brought against Sony DADC as a result.

### 12.3 Rights of the Indemnified Persons

The Customer acknowledges that, Sony DADC has entered into these Terms and Conditions on behalf of each of the Indemnified Persons and, in spite of any rule of law or equity to the contrary, the indemnities in clause 12.2 may be relied upon and enforced by each of the Indemnified Persons and each of the Indemnified Persons is entitled to enforce the indemnity in clause 12.2 by legal proceedings in their own name, notwithstanding that any such person may not be a party to a Contract, and the Customer undertakes that it will not make any assertion denying their right to do so.

## 13 LIMITATION OF LIABILITY

- (a) All conditions and warranties in relation to the provision of Services and/or Final Product expressed or implied by law (including under the Trade Practices Act 1974 (Cth.) and the relevant State fair trading legislation) are, to the extent permitted by law, expressly excluded from a Contract (including these Terms and Conditions).
- (b) The Customer's remedy for breach by Sony DADC of any condition or warranty which may not be expressly excluded under clause 13(a) is, to the extent permitted by law, limited to:
  - (i) in the case of goods, at Sony DADC's option: the replacement of the goods or supply of equivalent goods; or the repair of the goods or the payment of the cost of having the goods repaired; and
  - (ii) in the case of the Services, at Sony DADC's option: the supply of the Services again; or the payment of the cost of having the Services supplied again.
- (c) Subject to clause 13(b), Sony DADC, its officers, employees, contractors and agents will not be liable to the Customer or to the Customer's officers, employees, contractors and agents for any direct, indirect, incidental or consequential damage or loss of any nature however caused (whether based on tort, contract or otherwise) including loss of profits, loss of production, loss of sales opportunity or business reputation, direct or indirect labour costs and overhead expenses and damage to equipment or property or any other claim however arising directly or indirectly or in any way attributable to the performance or non-performance of Sony DADC's obligations under a Contract (including any delay in such performance).
- (d) If the Customer Materials are lost or damaged, Sony DADC will either (at its option) replace the Customer Materials by duplication from the originals or else pay the Customer the reasonable cost of replacement by duplication from the originals and Sony DADC will not otherwise be liable for any loss of or damage to the Customer Materials.

## 14 SUB-CONTRACTING SERVICES

- (a) Sony DADC may sub-contract all or part of the provision of the Services and/or production of the

Final Product in its absolute discretion without the consent of the Customer.

- (b) If the Customer directs or requests Sony DADC to engage the services of any person that is not an employee of Sony DADC, Sony DADC will be acting as agent of the Customer in engaging such services and the Customer must pay all monies due to such person for the provision of such services.

**15 PRIVACY**

The Customer consents to Sony DADC before, during and after the provision of Services to give and receive information about the Customer in order for Sony DADC to provide the Services and to protect Sony DADC's interests in accordance with the Privacy Act 1988 (Cth.). The Customer acknowledges that this information may include credit reports and references (including in relation to the creditworthiness, credit history or credit capacity of the Customer) and Sony DADC may provide this information to such persons that Sony DADC considers necessary to protect Sony DADC's interests.

**16 GENERAL**

- (a) A Contract is personal to the Customer and may not be assigned.
- (b) Any attempt to exclude, modify or restrict these Terms and Conditions by the Customer or by a person on behalf of the Customer will be void and ineffective.
- (c) Any failure or delay by or on behalf of Sony DADC in insisting upon strict performance by the Customer of any provision of any Contract (including these Terms and Conditions) will not be taken to be a waiver of such provision or of any rights under or in relation to such Contract and will not be taken to be a waiver of the same provision on any subsequent occasion.
- (d) The failure by Sony DADC to observe or perform wholly or in part any obligation under these Terms and Conditions will not be a breach of these Terms and Conditions, and Sony DADC will not be liable to the Customer, to the extent that the failure was caused by or arose as a result of an Event of Force Majeure.
- (e) If any part of these Terms and Conditions is unenforceable, invalid or void then that part of these Terms and Conditions is severed and the rights and obligations of the remaining parts of these Terms and Conditions continue to apply.
- (f) These Terms and Conditions are governed by the laws of the state of New South Wales and the parties submit to the non-exclusive jurisdiction of the courts of New South Wales.