

MUSIC COVERMOUNTS (MAGAZINES-AP7) TERMS AND CONDITIONS



1. Definitions

"Application For Licence" or "AFL"

means the MCPS covermount application for licence form.

"Base Price"

means 50% of the cover price of the relevant magazine publication, subject to a minimum of £1.65.

"Cover Mounted Music Product"

means a physical product containing audio and/or audio-visual recordings of Musical Works where music is the primary feature of the product (and not merely secondary or incidental to other material that is featured) and that product is provided with a magazine publication on sale to the public by means of either:

- (a) affixing it to the magazine; or
- (b) sealing it in a bag with the magazine.

"Licensee"

means the party that submits an AFL and is granted a licence by MCPS subject to these terms and conditions.

"MCPS"

means Mechanical-Copyright Protection Society Limited, contracting for and on behalf of itself and for and on behalf of and as agents of its various members and affiliated societies.

"Musical Work"

means any work (or part thereof) consisting of music (and any words written to be used with such music).

"Repertoire Work"

means each Musical Work the copyright in which is owned or controlled in the United Kingdom by MCPS (or an MCPS member or an affiliated society or an affiliated society member) PROVIDED THAT if one or more of those who own or control the copyright in a relevant Repertoire Work is not MCPS (or an MCPS member or an affiliated society or an affiliated society member), the expression "Repertoire Work" shall only apply to such interest in Repertoire Work as is owned or controlled by MCPS (or an MCPS member or an affiliated society or an affiliated society member).

"Royalty Fee"

means, in relation to each Cover Mounted Music Product, the total royalty fee payable by the Licensee to MCPS in accordance with clause 6.

"Royalty Rate"

means 6.5%.

2. Grant of Licence

2.1 Subject to these terms and conditions, MCPS grants to the Licensee a non-exclusive licence to:

- (a) reproduce Repertoire Works in the United Kingdom (in synchronisation or otherwise with images, whether moving or still) into a master for the sole purpose of manufacturing Cover Mounted Music Products; and
- (b) manufacture from such master the number of units of each Cover Mounted Music Product specified on the relevant Application For Licence within the United Kingdom; and
- (c) put such units of each Cover Mounted Music Product as have been manufactured under (b) above into circulation in accordance with these terms and conditions.

2.2 Notwithstanding clause 2.1 above, MCPS authorises the Licensee to appoint third parties to manufacture any Cover Mounted Music Product (or any component thereof) incorporating any Repertoire Work that is validly licensed hereunder PROVIDED THAT:

- (a) the Licensee notifies MCPS of the identity and location of the manufacturer; and
- (b) any breach of these terms and conditions by such manufacturer shall be deemed to be a breach also by the Licensee; and
- (c) if MCPS obtains reasonable evidence that such manufacturer is infringing any music copyright in relation to either the Cover Mounted Music Products or any other product manufactured at the same premises, then MCPS shall, on reasonable notice, have the right to require the Licensee to manufacture the Cover Mounted Music Product using an alternative third party.

3. Procedure for obtaining a licence

3.1 The Licensee shall submit to MCPS a fully and accurately completed Application For Licence at least 21 calendar days prior to the intended date of manufacture of a Cover Mounted Music Product.

3.2 Upon receipt of a fully and accurately completed AFL, MCPS will process the Licensee's application as follows:

- (i) MCPS shall inform the Licensee as to which of the Musical Works set out in the AFL are Repertoire Works.
- (ii) MCPS shall issue an invoice in respect of those Repertoire Works, together with confirmation that a licence is offered to the Licensee, which will be granted upon payment in full of the Royalty Fee by the Licensee. MCPS will also send a notification to the manufacturer indicated on the AFL.

(iii) Where a Repertoire Work is subject to a first recording restriction (as described in clause 3.3 below), MCPS shall notify the Licensee that a licence has been refused in respect of that Repertoire Work.

(iv) Where any Musical Work is not a Repertoire Work, it shall be the responsibility of the Licensee to obtain permission for its use from the person owning or controlling the copyright in that Musical Work.

3.3 The Licensee acknowledges that where, in relation to any particular Repertoire Work, no pre-recorded audio-only sound carrier embodying that Repertoire Work has previously been manufactured in or imported into the EC with the consent of the party entitled to grant consent for such reproduction or importation, no licence shall apply in relation to that Repertoire Work until all the relevant members of MCPS owning or controlling the rights in the Repertoire Work have consented to the grant of the licence.

3.4 Cover Mounted Music Products that comprise recordings from a single artist or group only, or that have more than two Musical Works written by the same composer or writing partnership, will only qualify for a licence under these terms and conditions where advance approval in writing is given by the individual copyright owners. The Licensee must submit AFLs for such Cover Mounted Music Products at least 28 calendar days in advance of the intended date of manufacture. The restriction set out in this clause 3.4 applies only in the case of recordings whose first commercial release was within the 24 months preceding the intended distribution date of the Cover Mounted Music Product.

3.5 The Licensee shall notify MCPS promptly of any material change in the information provided in an AFL, including but not limited to any change in the Base Price and the effective date of such change.

4. Copyright control account

4.1 The Licensee shall maintain an interest-bearing copyright control account, and shall pay into such account in relation to any Musical Work or interest therein which has been designated by MCPS as "SAI" (copyright status not known at present) or "PAI" (copyright owner not known at present) a sum equal to the royalties which would have been payable under these terms and conditions had such Musical Work been designated as a Repertoire Work. The Licensee shall continue to pay royalties in relation to that Musical Work or interest therein into that account until it has discovered the person, firm or company entitled to the relevant royalties, or until MCPS notifies the Producer that the Musical Work or interest is a Repertoire Work.

4.2 Where MCPS identifies that a Musical Work or interest therein previously designated SAI or PAI is a Repertoire Work, it shall notify the Licensee and the Licensee shall transfer to MCPS promptly any royalties held in its copyright control account in relation thereto, together with the interest thereon.

4.3 Where a third party (not being an MCPS member or a member of a society affiliated to MCPS) claims the right to grant a licence in relation to a Musical Work or interest therein which remains designated by MCPS as SAI or PAI:

(i) the Licensee shall notify MCPS in writing within 7 days of such claim; and

(ii) at the same time as giving such notice, the Licensee may require MCPS to investigate the position, and notify the Licensee within 3 months of receipt of such notification whether MCPS claims that the relevant rights are controlled by a member or a non-member of MCPS. In default of MCPS so notifying the Licensee, the relevant Musical Work or interest therein shall be deemed to be of non-member status, and MCPS shall then have no right to claim any royalties which are subsequently paid to the third party by MCPS, unless such royalties were paid to the third party after MCPS has made a new claim in relation to the relevant Musical Work or interest therein.

4.4 Nothing in these terms and conditions shall prevent the Licensee, at its own risk, in good faith paying royalties arising in relation to a Musical Work or interest therein which remains designated by MCPS as SAI or PAI to a bona fide third party which is not an MCPS member (or a member of a society affiliated to MCPS) claiming the same provided that the Licensee shall where possible give 7 days' prior notice of its intention so to do to MCPS.

5. Conditions of Licence

5.1 No licence is granted hereunder in respect of any Cover Mounted Music Product until MCPS has received payment in full of the Royalty Fee from the Licensee.

5.2 Any licence granted under these terms and conditions applies only for the manufacture of the Cover Mounted Music Product for distribution:

(i) with the specific magazine publication; and

(ii) on the exact date of publication specified by the Licensee on the relevant AFL.

5.3 Any licence granted subject to these terms and conditions applies only where the Cover Mounted Music Product is distributed for the purpose of review in the magazine publication specified on the relevant AFL. Reviews must strictly consist of a commentary in respect of each individual Repertoire Work and/or Musical Work on the Cover Mounted Music Product, including a reference to the album(s) available for retail sale from which the recordings have been taken.

5.4 All Cover Mounted Music Products licensed under these terms and conditions must carry a copyright awareness statement that consists of both:

(i) the British Music Rights "respect the value of music" logo; and

(ii) the strap-line "the producers of this CD [insert other format if applicable] have paid the composers and publishers for the use of their music".

These requirements must be displayed together, without separation, and placed on either the Cover Mounted Music Product itself and/or the packaging sleeve. MCPS will provide the Licensee with a copy of the British Music Rights logo referred to above upon request. No other use of this logo shall be made by the Licensee without the express permission of British Music Rights.

5.5 Where Musical Works are incorporated into audio-visual material, any licence granted hereunder shall only apply to such audio-visual material where it consists of either:

- (i) pop promo videos; or
- (ii) live performances and concert footage; or
- (iii) photographs or other still images relating to the relevant artists or composers; or
- (iv) interviews with artists, composers and producers or other persons involved in the creation, performance or production of the music used.

5.6 The Licensee shall provide to MCPS, upon request, a copy of any Cover Mounted Music Product together with the publication to which it is attached. The Licensee will deliver this to MCPS within 7 days of a request (or within 7 days of the pressing of the Cover Mounted Music Product or the printing of the publication, whichever is later).

5.7 Any licence granted under these terms and conditions will not cover the following (for which either a separate licence and/or the approval of the relevant copyright owner(s) would be required):

(a) incorporation of Repertoire Works into advertising or sponsorship of whatsoever nature or use of a Repertoire Work in such a way that a reasonable person might associate the Repertoire Work with the advertising or sponsorship. For the avoidance of doubt this exclusion also prohibits the use of any Repertoire Work in any advertisement for the Cover Mounted Music Product. This restriction extends to any branding that is not of the publication, owners of the sound recording or copyright owners of the musical works.

(b) any 'premium' use of a Cover Mounted Music Product, which for the purposes of these terms and conditions means any use (or supply with the express or implied authority to sell for use) of a Cover Mounted Music Product as an incentive to purchase or acquire other goods or services of whatsoever nature or to encourage brand awareness and/or loyalty.

(c) the copyright in any sound recording;

(d) any distribution of a Cover Mounted Music Product:

(i) in a non-physical format (which, for the avoidance of doubt, includes any form of online or mobile distribution of the Cover Mounted Music Product (or any part thereof) or any clips of music).

(ii) other than by being affixed to or bagged with a magazine publication;

(e) the recording of any Repertoire Work in the form of any type of arrangement (including, for the avoidance of doubt, in the form of a combination of two or more Repertoire Works) or adaptation of whatsoever nature;

(f) parodies and burlesques of any Repertoire Work, composer or writer or any artist associated with the work, or any derogatory or defamatory images or references thereto;

(g) the use of any Repertoire Work in synchronisation or combination with visual images except as set out in clause 5.5 above;

(h) any arrangements or adaptations (including using music with lyrics which were not written for use with that music and vice versa) or the sampling of Repertoire Works unless this has been authorised by the copyright owner(s);

(i) the use of any Repertoire Work in such a way that the Licensee ought reasonably to consider as being insulting or detrimental to the composer, member or to the artist performing the Repertoire Work;

(j) the use of any political, religious, sexual or drug-related visual image in connection with any Repertoire Work, unless this is a direct pictorial image of the lyrics of that work;

(k) the use of any Repertoire Work in a way that implies approval or endorsement by the composer, writer or any artist associated with the work;

(l) the public performance, broadcasting or other communication to the public of Repertoire Works;

(m) the graphical depiction of lyrics, whether on screen or in a booklet (for the avoidance of doubt, this includes any karaoke material);

(n) any other rights not specifically granted under these terms and conditions.

5.8 The moral rights of the composers of Repertoire Works are unaffected by these terms and conditions.

6. Royalty Fee

6.1 In consideration of MCPS granting the licences set out in clause 2 above, the Licensee will pay MCPS the Royalty Fee, which shall be calculated at a rate per unit for each Cover Mounted Music Product manufactured, as follows:

$$\text{Royalty Fee} = (\text{the Royalty Rate} \times \text{the Base Price}) \times \text{number of units}$$

The Base Price applies to Cover Mounted Music Products with a maximum of 15 tracks. Each further track, over 15, that is included on a Cover Mounted Music Product will have the effect of increasing the Base Price by an additional 6.5%.

6.2 Where a Cover Mounted Music Product reproduces Repertoire Works together with Musical Works which are not Repertoire Works, MCPS shall be entitled to a share of the Royalty Fee in the proportion which the total duration of each of the Repertoire Works bears to the total duration of all the Musical Works on the Cover Mounted Music Product in question.

6.3 The rates quoted above are exclusive of VAT, which shall be payable upon the Royalty Fee.

6.4 For the avoidance of doubt, no allowances shall be made by MCPS in respect of any copies of a publication and the attached Cover Mounted Music Product being returned to the Licensee, nor is any promotional allowance granted to the Licensee by MCPS.

7. Invoicing and Payment

7.1 The Licensee shall pay all invoices issued by MCPS under these terms and conditions in full within 7 days of the date of issue.

8. Right of Audit

8.1 The Licensee shall maintain sufficient data, documentation and accounting records relating to its activities under these terms and conditions from which an audit trail may be established and followed through. Any and all such documentation and accounting records shall be open to inspection by MCPS' duly authorised representatives, upon reasonable notice.

8.2 The duly appointed representatives of MCPS may, during normal office hours and on reasonable notice, visit the Licensee's premises and inspect, make extracts or take copies of any information, data and or accounting records available solely for the purposes of verifying the amount of royalties, and interest (if appropriate), payable to MCPS. Audits may only be carried out a maximum of twice in any calendar year.

8.3 If tests under any audit and verification process indicate underpayment of the correct Royalty Fees over the period during which monitoring has been carried out by or on behalf of MCPS, then, without prejudice to MCPS's other rights under these terms and conditions, the Licensee shall pay the amount of the underpayment plus interest based on the period from which the correct fee should have been paid to MCPS to the date when it was actually paid (at the rate of 3% over the base rate current from time to time of National Westminster Bank Plc).

8.4 If any audit and verification process discloses under-payment of more than 7.5% of the correct Royalty Fees over the period during which monitoring has been carried out by or on behalf of MCPS, then, without prejudice to MCPS's other rights under these terms and conditions, the Licensee shall pay, in addition to the payment referred to in clause 8.3, MCPS's reasonable costs of such audit and verification within 28 days of receipt of MCPS's VAT invoice therefor.

8.5 In conducting an audit under this clause 8, MCPS agrees not to disclose any confidential information of the Licensee to any third party, except that MCPS may disclose any such information to

(a) the MCPS-PRS Alliance Limited and the Performing Right Society Limited for the purpose of administering these terms and conditions and distributions to members and

(b) MCPS's professional advisors for purposes connected to the administration of these terms and conditions, provided such recipients are subject to the same confidentiality obligations in respect of such information.

9. Termination of Licence

9.1 Either party shall have the right to terminate any licence granted under these terms and conditions immediately by written notice to the other party if:

- (a) the other commits a material breach of these terms and conditions which is not capable of remedy; or
- (b) the other commits a material breach of these terms and conditions which is capable of remedy but which has not been so remedied within 14 days of notice thereof; or
- (c) the other goes into receivership or any resolution is passed for its winding-up or liquidation (other than for the purposes of reconstruction or amalgamation) or is otherwise unable to pay its debts.

9.2 Where MCPS has terminated a licence granted under these terms and conditions in accordance with clause 9.1, the Licensee shall immediately cease to manufacture or distribute the Cover Mounted Music Product. All units of the Cover Mounted Music Product that remain in the possession or control of the Licensee shall be deemed unlicensed and must immediately be destroyed by the Licensee.

10. Miscellaneous

10.1 Any licence granted under these terms and conditions is personal and the Licensee shall not assign, sub-license, sub-contract or otherwise transfer any AFL or any of its rights or obligations under these terms and conditions in whole or in part without the prior written consent of MCPS, except as set out in clause 2.2 above.

10.2 No delay or omission in exercising any right or remedy hereunder shall operate as a waiver thereof or of any other right or remedy and no single or partial exercise thereof shall preclude any other or further exercise thereof or the exercise of any other rights or remedies. No waiver shall be binding or effectual for any purpose unless expressed in writing and signed by the party giving it and any such waiver shall be effective only in the specific instance and for the purpose given.

10.3 If these terms and conditions create any rights which would in the absence of this provision be enforceable by any person not a party to these terms and conditions, such rights shall not be enforceable.

10.4 These terms and conditions shall be construed in accordance with the laws of England and Wales and the parties submit to the exclusive jurisdiction of the English courts.