

GENERAL INTEREST COVERMOUNTS (MAGAZINES- GIT) TERMS AND CONDITIONS



1. Definitions

“Application For Licence” or “AFL”

means the MCPS covermount application for licence form.

“Commissioned Work”

means a Musical Work specially and expressly commissioned by the Licensee or a third party from composer/writer members of MCPS for inclusion in the specific audio-visual material contained on a particular Product.

“Cover Mounted Product”

means a physical product containing audio and/or audio-visual recordings of Musical Works where music is not the primary feature of the product (and is 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).

“PMSR”

means any production music sound recording being a sound recording (as opposed to a Musical Work) the copyright in which is owned or controlled in the United Kingdom and the Republic of Ireland by MCPS or any member (or any affiliated society or affiliated society member) and where such party has authorised MCPS to license such recordings as so-called production or library music.

“Production Music Work”

means any Musical Work:

- (a) embodied on a PMSR; and

(b) 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).

“Products”

means Cover Mounted Products and Token Collect Products.

“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 Product, the total royalty fee payable by the Licensee to MCPS in accordance with clause 6.

“Token Collect Product”

means a physical product containing audio and/or audio-visual recordings of Musical Works where music is not the primary feature of the product (and is merely secondary or incidental to other material that is featured) and that product is provided by the Licensee (or a retailer of the Licensee's magazine publication) to members of the public upon redemption by them of a token or tokens that they have collected from the Licensee's magazine publication.

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 Products; and
- (b) manufacture from such master the number of units of each Product specified on the relevant Application For Licence within the United Kingdom; and
- (c) put such units of each 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 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 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 Product using an alternative third party.

3. Procedure for obtaining a licence

3.1 Unless clause 3.2 applies, a Product shall only qualify for a licence under these terms and conditions where prior approval in writing is given by the individual copyright owners.

3.2 Subject always to the other provisions of these terms and conditions, prior written approval from the copyright owner is not required in respect of any:

(i) Product which comprises material, a substantial part of which has been previously licensed for broadcast on television in the United Kingdom or elsewhere in the world (whether or not actually broadcast);

(ii) Product made for children;

(iii) fitness Product;

(iv) sports Product;

(v) use of Production Music Works and PMSRs in any Product;

(vi) use of Repertoire Works as background music in interviews with recording artists and/or composers who are associated with that music; or

(vii) use of Repertoire Works within promotional music videos and live music concert footage (without prejudice to the restriction that music cannot be the primary feature of the Product and must be merely secondary or incidental to other material that is featured).

For the avoidance of doubt, where any aspect or part of a Product requires prior approval, the entire Product shall remain unlicensed until such approval is obtained.

3.3 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 Product. Where prior approval is required in accordance with clauses 3.1 and 3.2 above, the Licensee must submit the AFL at least 28 days prior to the intended date of manufacture.

3.4 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) If the Product requires prior approval MCPS shall contact the individual copyright owners to request approval.

(iii) Where such approval is obtained (and in those cases where it is not required) MCPS shall issue an invoice in respect of the Repertoire Works identified in step (i) above, 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.

Where approval is requested by the Licensee but not granted by the relevant MCPS member(s), MCPS shall notify the Licensee accordingly and MCPS will be unable to grant a licence in respect of that Product.

(iv) Where a Repertoire Work is subject to a first recording restriction (as described in clause 3.5 below), MCPS shall notify the Licensee that a licence has been refused in respect of that Repertoire Work.

(v) 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.

3.5 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.

3.6 The Licensee shall notify MCPS promptly of any material change in the information provided in an AFL 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 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, in respect of a Cover Mounted Product applies only for the manufacture of the Cover Mounted 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 All Products licensed under these terms and conditions must bear:

(i) the capitalised initials MCPS; and

(ii) a notice to the following effect:

"ALL RIGHTS OF THE PRODUCER AND OF THE OWNER OF THE MUSICAL WORKS REPRODUCED RESERVED. UNAUTHORISED COPYING, HIRING, LENDING, PUBLIC PERFORMANCE AND COMMUNICATION TO THE PUBLIC OF THIS DISC PROHIBITED."

These requirements must be displayed together, without separation, and placed on the label of the Product (as opposed to any packaging sleeve in which the Product is provided).

5.4 The Licensee shall provide to MCPS, upon request, a copy of any Product (in the case of a Cover Mounted 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 (if applicable), whichever is later).

5.5 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 a 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 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 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 other than PMSRs.

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

(e) any distribution of a Cover Mounted Product other than by being affixed to or bagged with a magazine publication.

(f) any distribution of a Token Collect Product other than through a retailer who would ordinarily distribute products of a similar format and content.

(g) 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.

(h) 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.

(i) 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).

(j) 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.

(k) 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.

(l) 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.

(m) the public performance, broadcasting or other communication to the public of Repertoire Works.

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

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

5.6 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 pence per unit rate for each unit of a Product manufactured, as follows:

	Cover Mounted Product	Token Collect Product
Repertoire Work* (excluding Commissioned Works)	0.375 pence per work per unit	1.35 pence per work per unit
Commissioned works <50% of total Product duration	0.75 pence per unit	2.7 pence per unit
Commissioned works >50% of total Product duration	1.5 pence per unit	5.4 pence per unit

*this fee applies to each use of up to 5 minutes in duration of each Repertoire Work (excluding Commissioned Works) on the Product. Separate uses of the same Repertoire Work (or part thereof) will be aggregated, but uses of different Repertoire Works will not, and a separate fee will be payable in respect of each such use. Each inclusion of any part of a Repertoire Work will be counted, including repetitions. If the aggregate duration of a Repertoire Work used on a Product exceeds 5 minutes, an additional use will be charged for each additional aggregated increment of 5 minutes (or part thereof) of that Repertoire Work.

For the avoidance of doubt, where a Product contains both a Repertoire Work(s) (that is not a Commissioned Work) and a Commissioned Work(s), the Licensee shall pay both fees set out in the above table.

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

6.3 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 Product being returned to the Licensee, nor is a promotional allowance granted to the Licensee by MCPS in respect of any Product.

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 under-payment of the correct Royalty Fee 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 Product. All units of the 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.