



ANNEX A

Terms and Conditions

1. Grant of Waiver

- 1.1 Subject strictly to the terms and conditions set out herein, MCPS (acting for and on behalf of itself and its members) hereby waives any and all rights it may have to take proceedings against the Manufacturer for copyright infringement when, acting in good faith, the Manufacturer has made or has authorised the making of Discs reproducing Repertoire Works administered by MCPS which infringe copyright.
- 1.2 For the avoidance of doubt the Waiver applies to the creation and use by the Manufacturer of Reproduction Masters in the same way as it applies to the Discs themselves.

2. Scope of the Waiver

- 2.1 The Waiver granted under clause 1 above applies only to the Manufacturer and is without prejudice to any rights or remedies that MCPS or its members may have against any other party. The grant of the Waiver is conditional upon the Manufacturer having complied with this Agreement in all material respects. Nothing in this Agreement grants any licence to reproduce any musical work.
- 2.2 Where the Manufacturer sub-contracts work to a third party manufacturer that has also entered into a waiver agreement with MCPS on these terms and conditions, the third party will be liable for ensuring that the terms of this Agreement in relation to the reporting of information specified in clauses 4.4 to 4.7 are complied with in respect of the work undertaken by the third party. When the third party has no such agreement in place with MCPS, the Manufacturer remains liable for any breach of this Agreement. For the avoidance of doubt, where the Manufacturer acts as a sub-contractor itself and the party instructing the Manufacturer is not a signatory to a waiver agreement with MCPS it is the responsibility of the Manufacturer to adhere to the terms of this Agreement.

3. Limitations on the Waiver

- 3.1. In cases of unauthorised reproduction of Repertoire Works where the Waiver does not apply, MCPS may look to the Manufacturer to compensate it and its relevant member(s) for any reasonable loss, damage or expense suffered by reason of that infringement, save to the extent that compensation has been received from the Customer in question. MCPS agrees that it will first look to the Customer to compensate MCPS and its members for any damage suffered through the alleged infringement, but if the Customer fails or refuses to pay reasonable compensation, MCPS and

its members reserve the right to take such action against the Manufacturer as they are entitled to in law.

- 3.2 The parties acknowledge that every Customer that has entered into a licence agreement with MCPS is required to comply with an obligation to use its best endeavours to ensure that its co-exploitants (i.e. manufacturers and distributors) co-operate fully with MCPS. Only those signatories to a waiver agreement on the same terms as this Agreement will be included on the approved list of co-exploitants supplied to Customers by MCPS. MCPS reserves the right to remove a co-exploitant from the approved list in the event that it materially fails to comply with the terms of its waiver agreement. Those co-exploitants who are not on the approved list supplied to Customers will not benefit from the Waiver and MCPS may look to any such manufacturer to compensate it and its relevant member(s) as described in clause 3.1 above.
- 3.3 In exceptional cases where, by a Customer's actions (which, for the avoidance of doubt, shall include a failure to act or refusal to act), MCPS has reasonable grounds to believe that the Customer has infringed or may infringe the copyright in a Repertoire Work, MCPS may implement a pressing ban. This will take the form of a written notice to the Manufacturer which states that MCPS has not granted a licence to the relevant Customer or that the Customer's licence does not cover the Discs it wishes to manufacture, and will request that the Manufacturer cease production of certain Discs. The parties acknowledge that MCPS only has the authority to stop production of Discs containing Repertoire Works.
- 3.4 The Waiver shall not apply to any Discs made after such a notice has been received by the Manufacturer with the exception of any Work in Progress (which the Manufacturer demonstrates to MCPS was Work in Progress on the relevant date) on the date that the notice was received. Discs manufactured before the notice is received will be covered by the Waiver.

4. Obligations on the manufacturer

- 4.1 In order to benefit from the Waiver referred to in clause 1, the Manufacturer must comply with the obligations set out in clauses 4.2 to 4.9 below.
- 4.2 Each time the Manufacturer receives a request from a Customer to manufacture Discs, it must check whether the Customer has obtained the necessary licence(s), by following the applicable process set out below (depending upon the type of product to be manufactured). Where the Customer informs the Manufacturer that it has obtained a licence from a collecting society situated outside the UK, then regardless of the type of product to be manufactured, the provisions of clause 4.3 shall apply.

(i) **Audio products for retail sale:**

MCPS's (a) The Manufacturer must check whether the Customer is on current AP1 List.

(b) If so, the Manufacturer may proceed to manufacture the Discs. If not, the Manufacturer must obtain written confirmation from the Customer that it has applied to MCPS for an AP2 or AP2A licence for the relevant Discs. Once it has received this, the Manufacturer may proceed to manufacture the Discs. If it is not received, the Manufacturer must inform the Customer of the need to obtain the appropriate licence from MCPS and provide MCPS with full details of the request to manufacture Discs together with the Customer's contact details. However, the Manufacturer may proceed to manufacture the Discs.

(ii) **Audio-visual products for retail sale:**

MCPS's (a) The Manufacturer must check whether the Customer is on current DVD1 List or AVP List (depending upon whether the product is a music product or general interest product, respectively).

(b) If so, the Manufacturer may proceed to manufacture the Discs. If not, the Manufacturer must contact the MCPS licensing team by email or telephone to obtain email confirmation that the Customer has obtained (or is in the process of obtaining) the necessary licence(s) from MCPS. If such confirmation is not received, the Manufacturer must decline to manufacture the Discs.

(iii) **Corporate products and branded products:**

(a) The Manufacturer must ask the Customer for written evidence that it has obtained the necessary licence(s), whether from MCPS or directly from the relevant MCPS member. If such confirmation is not received, the Manufacturer must decline to manufacture the Discs.

4.3 Where a Customer informs the Manufacturer that it has obtained a licence agreement with a collecting society situated outside the UK, the Manufacturer shall seek confirmation from MCPS that an appropriate licence has been applied for or received before manufacture starts. However, if the Manufacturer receives no response from MCPS within 3 working days then it may contact the licensing society directly to verify that a licence is in place before commencing manufacture.

4.4 The Manufacturer shall retain the following details for each order that it takes from a Customer: Customer name, address and telephone number and the catalogue number, format and quantity of each Disc to be manufactured.

4.5 If making Reproduction Masters, the Manufacturer shall ensure that the Customer supplies a full list of musical works to be included on the Reproduction Master.

4.6 Within 15 days of the end of each month, the Manufacturer shall send fully and accurately completed Pressing Returns to MCPS by email

(*ap.info@mcps.co.uk*), covering all Discs containing musical works that have been manufactured in the previous month. From time to time, MCPS may revise the format of the Pressing Return upon two months' written notice to the Manufacturer, following which the Manufacturer shall use the revised format.

- 4.7 Upon request, the Manufacturer will supply to MCPS within a reasonable period of time any further relevant information required by MCPS in respect of the manufacture of Discs (by way of example only, this might include additional contact details for the relevant Customer or agent or confirmation that the number of units manufactured is consistent with what has been notified to MCPS by the Customer).
- 4.8 Any Reproduction Master supplied by or on behalf of a Customer to the Manufacturer will be returned (unless destroyed) to the Customer or to any person or firm on the express authority of the Customer. Where the Manufacturer needs to retain a Reproduction Master for future manufacture of Discs the Manufacturer will store it securely.
- 4.9 The Manufacturer undertakes that if it has any doubts or concerns over any aspect of copyright in relation to a musical work that it shall contact MCPS without delay.

5. Termination

- 5.1 Either party may terminate this Agreement at any time upon three months' written notice to the other party.
- 5.2 In addition, MCPS shall have the right to terminate this Agreement immediately by written notice if the Manufacturer:
 - (i) commits a material breach of the Agreement which is capable of remedy but fails to rectify such a breach within 14 days of notification of such a breach; or
 - (ii) commits a material breach of the Agreement which is not capable of remedy; or
 - (iii) ceases trading or enters into liquidation (other than voluntary liquidation for the purposes of amalgamation or re-organisation) or has a petition presented against it for its winding up which is not dismissed within 21 days from the date of such petition or if it makes any arrangement with its creditors or if a trustee or receiver or administrator is appointed to take over all or a substantial part of its assets or undertaking.
- 5.3 The terms and conditions of this Agreement will continue in full force and effect after termination or expiry of the Agreement in relation to Discs and Reproduction Masters made prior to such termination or expiry.

6. Confidentiality

- 6.1 The parties to this Agreement will at all times keep confidential information acquired in consequence of this Agreement, except for information which they may be entitled or bound to disclose under compulsion of law or where requested by regulatory agencies or to their professional advisers where reasonably necessary for the performance of their professional services.

For the avoidance of doubt, nothing in this clause 6.1 shall prevent MCPS from using information obtained in accordance with this Agreement for the purposes of administering its members' rights or from supplying any such information to:

- (a) the Performing Right Society Limited for all purposes connected with the _____ rights which it administers and/or the collection and distribution of royalties _____ and other fees arising thereto; and
- (b) the MCPS-PRS Alliance Limited, for all purposes connected with the _____ administrative services carried out by it for MCPS and the Performing Right _____ Society Limited.

7. Miscellaneous

- 7.1 The Waiver granted under these terms and conditions is personal and the Manufacturer shall not be entitled to assign or otherwise transfer the Waiver 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. Any purported assignment in breach of this clause shall confer no rights on the purported assignee.
- 7.2 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.
- 7.3 This Agreement sets forth the entire agreement of the parties in relation to the subject matter hereof and each of the parties hereto acknowledges that it has not entered into this Agreement in reliance on any representation or term not contained in this Agreement. This Agreement shall not be modified or varied except by a written instrument signed by the parties hereto.
- 7.4 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.
- 7.5 The headings to the clauses in this Agreement are included for ease of reference only and are not part of this Agreement and are not to be taken into account in its construction.
- 7.6 The parties respectively shall and shall procure that any other necessary party within its control shall execute and do all such documents, acts and things as may be reasonably be required on or subsequent to completion

of this Agreement for securing each of the obligations of the respective parties under this Agreement.

7.7 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.

8. Definitions

For the purposes of this Agreement the following definitions apply:

“Agreement”	means this waiver agreement.
“AP1 List”	means the list sent to the Manufacturer by MCPS on a monthly basis detailing those companies that have ‘AP1’ licence agreements with MCPS.
“AVP List”	means the list sent to the Manufacturer by MCPS on a monthly basis detailing those companies that have ‘AVP’ licence agreements with MCPS.
“Customer”	means any person, firm or company or any third party for whom the Manufacturer manufactures or arranges the manufacture of Discs, whether or not the Manufacturer is instructed directly or through an intermediary.
“Disc”	means a pre-recorded audio or audio-visual sound carrier and shall include all formats whether now known or hereafter invented or exploited.
“DVD1 List”	means the list sent to the Manufacturer by MCPS on a monthly basis detailing those companies that have ‘DVD1’ licence agreements with MCPS.
“Master Recordings”	means any primary Disc, tape, CD or other physical or non-physical embodiment of a musical work to be used to reproduce subsequent copies of the work for distribution.
“Pressing Return”	means an MCPS standard format pressing return in the form set out in the Appendix to this Agreement, or as may be notified to the Manufacturer from time to time in accordance with clause 4.6.
“Repertoire Works”	means each musical work the copyright in which is owned or controlled in the United Kingdom by MCPS or a MCPS member or an associated society or an associated 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 a MCPS member or an associated society or an associated society member the expression “Repertoire Work” shall only apply to such interest in the Repertoire Work as is owned or controlled by MCPS or the associated society or the relevant MCPS member or

	associated society member.
"Reproduction Masters"	means any Master Recording used or intended to be used for the purpose of making Discs, as opposed to being used either for the purposes of the initial recording of the musical work or the editing or remixing of such a recording.
"Term"	means the period starting on the Commencement Date and ending upon termination in accordance with clause 5.
"Waiver"	means the waiver set out in clause 1 of this Agreement.
"Work in Progress"	means Discs, Master Recordings, sleeves, labels, inlays which are in the process of manufacture at the time a request to stop production (pressing ban) is received from MCPS by the Manufacturer. It also includes Discs that have been manufactured and are awaiting shipment.
"United Kingdom" or "UK"	means the United Kingdom, the Channel Islands and the Isle of Man.

Appendix

MCPS standard format pressing return

Order Date	Customer Name	Delivery Address	Country	Email Address	Cat Number	Artist	Title	Format	Quantity