

These **Standard Terms and Conditions of Sale** govern all orders issued by _____, an individual or _____ corporation/ limited liability company with offices at _____ (herein referred to as the "Customer" or "you") to Brooklynphono LLC (herein referred to as the "Company" or "we" or "us"), a New York limited liability company with offices at 270 42nd Street, Brooklyn, NY 11232-2814.

1. **Terms and Conditions are part of Purchase Order.** These terms and conditions are an integral part of Customer's order. Our Order form and these terms and conditions together determine titles, quantities, prices, delivery, and specifications for the records ordered. Despite any writing in Customer's order or correspondence to the contrary, these Standard Terms and Conditions of Sale shall govern. Orders are binding only upon written acceptance by an authorized representative of the Company which will occur only after all required and acceptable Intellectual Property Right (IPR) materials are delivered to the Company.

2. **Pricing.** All prices quoted are our best estimate based on Customer's representations at time of quote. When your order is received and reviewed, you will be advised of any optional or additional charges. Prices are subject to change without further notice if estimates are open for over 15 days.

3. **Payment Terms.** Unless otherwise established with the Customer in advance of placing the order, all orders require a minimum 75% advance deposit. Orders of 1000 units or less require complete payment of the estimate amount. All invoices are to be paid in US Dollars. Payment by most internationally recognized credit cards, personal check, money order, and/or cashier's check from a New York City bank are accepted; do not send cash. Any remaining balance is due and is subject to collection prior to shipment. Partial delivery of an order can be made only if the entire order is paid in full. Overseas customers may make a direct bank transfer (account and routing number available upon request). Bank transfers must be complete before an order can be released. Overseas and bank transfer customers may incur additional administrative costs to process and service the order. Past due invoices are subject to a recurring monthly administration fee of \$25 plus a 1.5% monthly finance charge (i.e. 18% APR).

4. **Quantities.** Consistent with industry standards, quantities delivered are not exact and may be up to 10% over or under the

purchase order quantities unless specifically agreed upon in writing by the Company. Customer will be charged for an overrun, or credited for an underrun.

5. **Shipping.** Prices are FOB our plant. If you request us to arrange shipping, shipment is by UPS regular ground service unless otherwise specified by you. The Company is NOT responsible for loss or damage once any product has left our premises. UPS shipments are insured automatically up to a maximum of \$100 per box. If additional insurance is desired, Customer is to obtain such.

6. **Limited License of Master Recordings and Materials.** The Customer has full power to and hereby grants to the Company a non-exclusive license to manufacture, for the purpose of order fulfillment, the product from the Master Recording(s) identified on this order and to use any related graphic and other materials provided to the Company by the Customer.

7. **Warranty.** THE COMPANY WILL REPLACE OR CORRECT ANY PRODUCTS THAT ARE DEEMED BY THE COMPANY TO BE DEFECTIVE IN MATERIALS OR WORKMANSHIP; ANY IMPLIED WARRANTIES OR MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE ARE EXCLUDED TO THE EXTENT PERMITTED BY LAW. EXCEPT AS STATED IN THIS PARAGRAPH, THERE ARE NO OTHER WARRANTIES, EXPRESSED OR IMPLIED. Customer must advise the Company, in writing, of any claimed defect within 10 business days of billing date for the product. Products should not be returned without specific return authorization and delivery will be refused. In no event is the Company responsible for special, indirect or consequential damage or costs of any kind.

8. **Delivery Times.** Unless otherwise stated in writing by the Company, delivery times are best estimates, and time is not of the essence. Acts of God and other events of force majeure may also effect delivery dates.

9. **Sales Tax.** Customers located in New York and states with sales tax reciprocity must supply a sales tax exemption certificate; otherwise sales tax must be billed.

10. **References and Test Pressings.** References are strongly recommended and test pressings are required. We will not produce your finished product until you have listened to and approved a test pressing which must be done within 5 business days of submission to you the order is subject to a order reinstatement fee of the greater of \$150.00 or 10% of the order amount. All references and test pressings will be submitted with an Approval Form. We will

not schedule manufacturing until this form is completed, signed and returned to us.

11. Warehousing and Storage/Risk of Loss. Unless otherwise confirmed by us in advance, we do not store finished product or components beyond 30 days. A minimum warehouse fee of \$50 per month will be charged for materials left on our premises more than 30 days. Vinyl record parts inactive for 3 months may be discarded without liability on our part. Customer's Masters, graphic artwork, photographs, film, stickers, etc. unclaimed for more than 3 months may be discarded by us without further notice to you. Customer's property stored on our premises is not insured and is stored strictly at the Customer's sole risk of loss.

12. Termination. Customer orders for products not yet manufactured by the Company may be terminated by either party upon 30 days written notice. If terminated by the Customer for any reason, or by the Company because of unresolved IPR issues, there will be no refund or credit of the Order deposit.

13. Customer Representations. Customer represents, warrants and agrees that:

- (a) Each Master Recording provided to the Company under this license is free of all liens and encumbrances.
- (b) Customer is the rightful owner or holder of all required rights in respect of the Master Recordings and related materials submitted for replication. Nothing contained on the Master Recordings, or in any related materials or artwork provided to the Company, violates any proprietary rights of any person, including without limitation, trademarks, or copyright. Orders cannot be processed without a completed IPR form.
- (c) The Customer is solely responsible for all monies payable to or on behalf of all parties rendering any services in connection with the Master Recordings and plating work.
- (d) The Company shall be subject to no cost, fees, royalties whatsoever for or in connection with the manufacturing of any product from the Master Recordings, including, but not limited to the payment of mechanical or publishing royalties.
- (e) The Master Recordings do not contain any obscene material, and the Customer will assume full responsibility if any product manufactured hereunder is claimed or found to be associated with any act of crime, violence, profane or unlawful act.

14. Indemnification. Customer hereby agrees to indemnify, save and hold the Company from any and all costs (including, without

limitation, court costs and reasonable attorneys' fees) arising out of, connected with or as a result of the Company's manufacturing of any product from the Master Recordings, or any claim of copyright infringement which may result. The Company will give Customer prompt notice of any claim for which it seeks indemnification and the right to control the defense of such claim.

15. **Review of Audios and Other Materials.** As part of the Company's due diligence efforts in satisfaction of RIAA anti-piracy rules and other compliance obligations, all audio CDs and/or other materials submitted are subject to being auditioned at any stage of the production process and all graphics materials screened in the context of possible illegal manufacturing (piracy, bootlegging, counterfeiting). Orders considered by the Company to be of a questionable nature will require additional detailed licensing documentation. If the order is subsequently cancelled, pre-mastering and handling charges will be levied.

16. **Miscellaneous.** Orders and these Standard Terms and Conditions of Sale, their validity, construction and effect shall be governed and construed under the laws of the State of New York. Orders and these Terms and Conditions may not be modified orally. No waiver, amendment or modification shall be binding or effective unless in writing and signed by the party to be bound.