

PART A INTERPRETATION

In these Conditions:

"Client" means the buyer of Goods and/or Services from DADC;
 "Contract" means the agreement between the Client and DADC for the supply of Goods and/or Services;
 "Force Majeure Event" shall have the meaning given in paragraph 1.4 of Part D;
 "Goods" means the goods agreed to be supplied to the Client by DADC;
 "liability in relation to" shall mean "liabilities, losses, damages, costs (including without limitation legal costs on a full indemnity basis and value added tax and other applicable taxation), expenses, actions, claims, proceedings and demands whatsoever arising directly or indirectly out of or in connection with";
 "Materials" means the content and/or materials provided by or on behalf of the Client to DADC for the performance of the Services and/or the provision of the Goods;
 "Order" means the order form, including any applicable specification, submitted by the Client to DADC for Goods and/or Services;
 "Products" shall mean all recorded material and any other goods and materials (including but not limited to gramophone record, compact discs, DVDs and videos) together with their packaging;
 "Services" means the services agreed to be provided to the Client by DADC;
 "Sony DADC Europe" or "DADC" means Sony DADC Europe Limited and each or any of: its Austrian branch, Sony DADC Czech Republic s.r.o., Sony DADC Iberia S.L. and ENS Entertainment Network Scandinavia AB as are applicable in the context;
 "Supplies" means the Goods and/or Services to be supplied under the Contract; and
 "Working Day" means a day which is not a Saturday, Sunday or public holiday either in London, England or in Salzburg, Austria and "Working Hour" means an hour between 9am and 5pm during a Working Day.

PART B SUPPLY CHAIN (PHYSICAL AND DIGITAL) SERVICES FOR HOME ENTERTAINMENT CLIENTS (INCLUDING WITHOUT LIMITATION: MANUFACTURING/ REPLICATION, DISTRIBUTION, DIGITAL, D2C, and/or GLOBAL PLATFORM SOLUTIONS SERVICES)

1. BASIS OF SALE

- 1.1. DADC shall sell and the Client shall purchase the Supplies in accordance with Orders accepted by DADC subject to these Conditions which shall govern the Contract to the exclusion of any other terms and conditions subject to which any such Order is made or purported to be made by the Client
- 1.2. Subject in any event to Part E of these Conditions, no variation to these Conditions shall be binding unless agreed in writing between the authorised representatives of the Client and DADC
- 1.3. DADC's employees or agents are not authorised to make any representations concerning the Supplies unless confirmed by DADC in writing. In entering into the Contract the Client acknowledges that it does not rely on any such representations which are not so confirmed
- 1.4. Any typographical, clerical or other error or omission in any document or information issued by DADC shall be subject to correction without any liability on the part of DADC
- 1.5. Paragraph headings shall be ignored in interpretation

2. ORDERS AND SPECIFICATIONS

- 2.1. No Order shall be deemed to be accepted by DADC unless and until confirmed in writing by DADC's authorised representative
- 2.2. The Client shall be responsible to DADC for ensuring the accuracy of the terms of any Order (including any applicable specification) submitted by the Client, and for giving DADC any necessary information relating to the Supplies within a sufficient time to enable DADC to perform the Contract in accordance with its terms
- 2.3. The quantity, quality and description of and any specification for the Supplies shall be those set out in DADC's confirmation of Order
- 2.4. If the Goods are to be manufactured or any process is to be applied to the Goods or any Services are to be provided by DADC in accordance with a specification submitted by the Client, the Client shall indemnify DADC against all loss, damages, costs and expenses awarded against or incurred by DADC in connection with or paid or agreed to be paid by DADC in settlement of any claim for infringement of any patent, copyright, design, trade mark or other intellectual property rights of any other person which results from DADC's use of the Client's specification
- 2.5. DADC reserves the right to make any changes in the specification of the Supplies which are required to conform to any applicable legal requirements or, where the Supplies are to be supplied to DADC's specification, which do not materially affect their quality or performance. If any variation in the Supplies or the Contract terms is agreed or is required for compliance with any applicable law, regulation or safety recommendation, the Client shall pay such additional amount as is fair and reasonable and DADC shall have reasonable additional time to perform the Contract
- 2.6. No Order which has been accepted by DADC may be cancelled by the Client except with the agreement in writing of DADC and on terms that the Client shall indemnify DADC in full against all loss (including loss of profit), costs (including the cost of all labour and materials used or appropriated to

the Contract), damages, charges and expenses incurred by DADC as a result of cancellation

3. PRICE OF THE GOODS AND SERVICES

- 3.1. The price of the Supplies shall be that stated in DADC's confirmation of Order which is exclusive of value added tax and any other sales tax or excise duties. DADC reserves the right to make an additional charge for packaging, carriage, insurance and other such items as are not listed on the Order
- 3.2. DADC reserves the right prior to delivery or final performance to increase the price of Supplies to reflect any increase in labour or material costs or other costs of production, any foreign exchange fluctuation, currency regulation, alteration of duties or any change in delivery dates, quantities or specifications for the Supplies which is requested by the Client, or any delay caused by any instructions of the Client or failure of the Client to give DADC adequate information or instructions or to perform its obligations for the Supplies

4. TERMS OF PAYMENT

- 4.1. Unless otherwise stated in the Order, or otherwise agreed in writing between the Client and DADC, payment shall be made in sterling in cleared funds within thirty (30) days of invoice and without any withholding, deduction, set-off, counterclaim or cross demand (whether in respect of the Contract or any other contract whatsoever)
- 4.2. The time of payment of the price shall be of the essence of the Contract.
- 4.3. If the Client fails to make any payment on the due date then, without prejudice to any other right or remedy available to DADC, DADC shall be entitled to:
 - 4.3.1. cancel the Contract in whole or in part or suspend any further deliveries to the Client or other performance;
 - 4.3.2. appropriate any payment made by the Client to such of the Goods or Services (or the goods or services supplied under any other contract between the Client and DADC) as DADC may think fit (notwithstanding any purported appropriation by the Client); and
 - 4.3.3. charge the Client interest (both before and after any judgment) on the amount unpaid, at the rate of four percentage points above National Westminster Bank plc base rate from time to time or at such rate as is the maximum permissible by statute until payment in full is made

5. DELIVERY

- 5.1. DADC shall effect delivery by making the Goods available for collection from its premises and so informing the Client or, if some other place for delivery is stated in DADC's written confirmation of Order, by DADC despatching the Goods from its premises in accordance with the Client's instructions
- 5.2. Delivery times are approximate and shall not be of the essence. The Goods may be delivered by DADC in advance of the quoted delivery date upon giving reasonable notice to the Client
- 5.3. If the Client fails to take delivery or to give adequate delivery instructions then, without prejudice to its other rights and at the Client's expense, DADC may store and/or dispose of the Goods or any goods the subject of any Services performed by DADC. Any shortfall in disposal proceeds below the Contract price shall be paid by the Client to DADC
- 5.4. DADC may deliver the quantity of Goods contracted for within a range of plus or minus 10% without thereby being in breach, subject to an appropriate price adjustment being made
- 5.5. DADC may deliver in instalments constituting separate Contracts and any delay in delivery or termination of any instalment will not entitle the Client to terminate the Contract as a whole, nor permit the set off of any payments in respect of one delivery against any claim in respect of any other delivery whether under one Contract or any related contract. Where Goods are delivered in instalments DADC may issue separate invoices.

6. INSPECTION AND ACCEPTANCE

- 6.1. (a) In any event, immediately upon receipt of the Goods and/or completion of the Services the Client shall note clearly on the proof of delivery (POD) any visible damage (to boxes and/or cellophane wrapping); and (b) Within five (5) Working Days of delivery of the Goods and/or completion of the Services the Client shall inspect and test the same and immediately give notice to DADC of any damage or non-conformity with the Contract.
- 6.2. In the absence of such notice pursuant to sub-clause 6.1(a) or (b), the Supplies shall be deemed to comply with the terms of the Contract and the Client bound to accept them
- 6.3. The Client will indemnify DADC against any loss which it suffers because any notification pursuant to sub-clause 6.1 is received too late to enable it to claim against carriers or insurers in respect of such damage or loss in transit

7. RISK AND PROPERTY

- 7.1. Risk of damage to or loss of the Goods shall pass to the Client at the earlier of the time when DADC notifies the Client that the Goods are available for collection or upon DADC first despatching the Goods from its premises in accordance with the Client's instructions
- 7.2. All other material or goods, including but not limited to items referred to in

clause 12.4.1, in the possession of DADC or otherwise shall be held, worked on and carried at the Client's risk in every respect and the Client is advised to retain duplicates or copies of any master artwork films tapes discs and other materials provided to DADC

- 7.3. Notwithstanding delivery and the passing of risk in the Goods, or any other provision of the Contract, title to and ownership of the Goods shall not pass to the Client until DADC has received in cash or cleared funds payment in full of the price of the Goods
- 7.4. If at the date that payment in full for the Goods is made any other monies then due for payment by the Client to DADC on any account have not been paid, title to the Goods shall not in any event pass to the Client until DADC has received in cash or cleared funds payment in full of the monies overdue
- 7.5. Until such time as property in the Goods passes to the Client, the Client shall:
 - 7.5.1. hold the Goods as DADC's fiduciary agent and bailee;
 - 7.5.2. keep the Goods separate from those belonging to the Client and third parties and properly stored, insured and identified as DADC's property; and
 - 7.5.3. DADC shall have a lien over any of the Client's assets in its possession or control

8. DIGITAL AND ELECTRONIC TRANSMISSIONS

Supplies may be delivered to the Client by digital or electronic transmission ("**Transmission**"), where the Order so provides. Where any material is sent by one party ("**Sender**") to the other party ("**Receiver**") by means of Transmission:

- 8.1. the Sender shall give the Receiver reasonable notice of any intended Transmission subject to which transmission shall be deemed to be effected when the Receiver's connection number has been dialled by the Sender
- 8.2. the Client undertakes to ensure that its receiver is compatible with that of DADC, is not part of a network and is capable of receiving Transmissions at the times notified to it by DADC
- 8.3. the Sender shall not be liable for late or non-delivery which is a result of the Receiver's failure to comply with this clause 8 or of failure of any connection or corruption of material in the course of Transmission outside the control of the Sender
- 8.4. Where the Order provides for Transmission, delivery shall be deemed to have taken place when Supplies are transmitted from DADC to the Client, Transmission being deemed to be effected when the Client's connection number has been dialled by DADC, subject to paragraph 8.1 of this Part B
- 8.5. The Receiver shall notify the Sender immediately that any Transmission has not been successful in any way and DADC reserves the right to deliver by any other means in accordance with the Contract
- 8.6. DADC shall not be liable for abuse of electronic or digital communications by third parties or for alterations or corruption in Transmission and the Client acknowledges that such communications may not be secure

9. TERMINATION OF CONTRACT

- 9.1. DADC shall be entitled to terminate the Contract forthwith by notice in writing to the Client if:
 - 9.1.1. the Client fails to pay to DADC any sum when due; or
 - 9.1.2. the Client fails to remedy any breach or non-performance within fourteen days of notice from DADC so to do; or
 - 9.1.2. the Client is, or is deemed to be insolvent or steps are taken to:
 - a. propose any composition, scheme or arrangement involving the Client and its creditors;
 - b. obtain an administration order or appoint any administrative or other receiver or manager of the Client or any of its property or otherwise enforce any security over the Client's property, or repossess its assets; or
 - c. file a petition in bankruptcy or to wind up or dissolve the Client, or sequester its estate
 or outside England anything corresponding to any of the above occurs
- 9.2. If the Contract is terminated, DADC (without prejudice to its other rights but subject to any relevant mandatory laws) may do any of the following:
 - 9.2.1. declare immediately payable (and so interest-bearing under clause 4) any sums owed by the Client, proceed against the Client for the same and/or damages, and appropriate any payment by the Client as DADC thinks fit (notwithstanding any purported appropriation by the Client);
 - 9.2.2. suspend further performance of any Contract and/or any credit granted to the Client on any account (and the time for delivery by DADC shall be extended by the period of such suspension);
 - 9.2.3. take possession of and deal with (including the sale of) any materials and other assets of the Client held by or on behalf of DADC and apply any proceeds of sale in payment of any sums owing under or damages arising in connection with any Contract including any interest and costs arising thereon, Without limitation to the generality of the foregoing DADC may retain any original or copy artwork films tapes discs and other materials of the Client and produce duplicates of and from the same (whether in whole or in part) for resale at such price as DADC shall in its discretion determine and in such quantities so as to realise sufficient funds

to compensate DADC for all loss and damage suffered by it (including interest and costs thereon) by reason of the Client's breach, The Client hereby grants DADC an irrevocable non-exclusive royalty-free licence to copy use produce sell and distribute such works and materials and shall indemnify DADC against any claim loss damage cost or expense suffered by it as a result of any such actions being in breach of the Client's or a third party's rights or entitlements

10. LICENCES AND COPYRIGHT CLEARANCES

- 10.1. The Client shall obtain in writing in good time and hereby warrants that it has so obtained any and all necessary licences, permits, consents or approvals for the import/export, copying, use, production, reproduction, distribution or sale of the Goods or the provision of the Services (including without limitation all necessary copyright, design right, registered design, trade mark, patents and other applicable intellectual property rights, consents, clearances, licences or approvals and any necessary waivers of moral rights) and will indemnify DADC and keep it fully and effectively indemnified on demand against any cost, claim, liability or expense DADC incurs as a result of any failure or delay so to do
- 10.2.
 - 10.2.1. If DADC is a signatory to the Mechanical Copyright Protection Society's (MCPS) "Code of Practice for Manufacturers of Discs, CDs and Tapes" from time to time in force or such other equivalent code as may be applicable to the relevant territory or territories to which the Contract relates ("**Code**"), it may:
 - 10.2.2. obtain from the Client or any other person, and/or require the Client to obtain from any other person such confirmations, consents and approvals as may be necessary for DADC to meet any obligations under the Code.
 - 10.2.3. DADC shall not be liable to perform all or any part of the Contract if it considers such action would or might be in breach of the Code.
 - 10.2.4. If DADC so requests, the Client shall further apply to be included on one of the two approved licensee lists, AP1 or AP2, of, or to take a specific licence to cover the particular Goods and/or Services from, the MCPS (or overseas equivalent).
 - 10.2.5. DADC may (without incurring liability) withhold performance of the Contract until such consents or approvals are provided and/or such registration or specific licence is complete and shall be entitled to further time for performance in the event of delay
- 10.3. DADC may at any time refuse to produce any Goods or provide any Services which it considers may be illegal or defamatory or might infringe any third party's rights or create any criminal or civil liability or otherwise bring DADC into disrepute in the minds of right thinking people
- 10.4. If any claim is made or action brought against DADC concerning the Supplies (and whether settled, litigated, discontinued or otherwise dealt with by DADC) and DADC thereby incurs any cost, loss, liability or penalty of any kind the Client shall upon demand pay to DADC on a full indemnity basis the full amount of such cost, loss, liability, expense or penalty without enquiry, deduction, withholding, set-off, counterclaim or cross demand (whether in respect of the Contract or any other contract whatsoever)
- 10.5. The Client agrees that DADC may include the Supplies, the Contract and the Client's name and marks in its promotional material. The Client shall not use the name or any trade marks of DADC (or any part thereof) for any purpose (including without limitation in relation to the Client's products, notices, business or advertising materials, unless and to the extent expressly agreed by DADC in writing
- 10.6. For the avoidance of any doubt DADC may retain any or all Materials (including without limitation entry components) for the purpose of documenting any alleged breach (whether substantiated or otherwise) of the Client's obligations under this paragraph 10 and the Contract and DADC may provide the same to any relevant governing institution (including but without limitation BIEM, IFPI, BSA).

11. INTELLECTUAL PROPERTY AND CONFIDENTIALITY

- 11.1. DADC retains ownership of all inventions, designs, copyrights and processes relevant to the Supplies and not provided by the Client. Copyright exists in all documents, designs, programs, or other material issued by or on behalf of DADC, which the Client shall keep confidential and not disclose or use the same (other than for the particular purpose for which it was disclosed) for his or another's benefit without DADC's prior written consent;
- 11.2. All film negatives and positives, discs, sketches, samples and original designs of any kind, moulds, tapes, designs and other materials created or acquired for the performance of a Contract shall remain the exclusive property of DADC including any items subject to an extra charge. DADC shall not be obliged to preserve any of the same unless expressly agreed in DADC's confirmation of Order and the cost of storage of which shall be an extra charge unless otherwise stated in such confirmation to be included within the price;
- 11.3. The Client hereby agrees and acknowledges that DADC may use any images, designs or similar of or relating to any and/or all of the Products and Supplies (including for the avoidance of any doubt any mock-ups or

early samples) for its marketing purposes including, but without limitation, presentations (internal and external), pitches and on its website and other marketing material.

12. BUYER'S MATERIALS AND OTHER ITEMS

- 12.1. DADC may reject any materials and other items supplied or specified by the Client but acceptance of them shall not constitute a warranty that they are suitable or comply with the Contract
- 12.2. DADC shall not be liable for any defect, wastage or other loss whatsoever arising from such materials, or other items, which shall be held and used at the Client's risk. Quantities of materials or other items supplied by the Client shall allow for normal spoilage
- 12.3. DADC shall not be responsible for any loss, damage, cost or expense arising from, or from any mistake, defect or inaccuracy in, any artwork, tapes, films, discs, or other materials or items specified or supplied by the Client. Any loss, damage, cost or expense arising therefrom or from DADC's reproduction of such mistakes, defects or inaccuracies shall be for the sole account of the Client who shall indemnify DADC accordingly
- 12.4.
 - 12.4.1. DADC's liability for discs, tapes, films, artwork and other materials or items specified or provided to DADC by or otherwise held by DADC on behalf of the Client shall be limited to the basic raw material cost of the media and not any production, artistic, aesthetic or rarity cost or value in the material
 - 12.4.2. Any materials and other items of the Client held by DADC may be dealt with by DADC in the manner and circumstances provided for under clause 10.2.3 above
- 12.5. Prior to their delivery to DADC the Client shall notify DADC of the nature of any materials or other items to be held by DADC on the Client's behalf, shall provide adequate warnings and instructions and shall ensure that they comply with any requirements or descriptions in the Contract or Contract documents
- 12.6. The Client shall indemnify DADC for any loss, damage or claim which arises from or relates to materials or items referred to in paragraph 12.5 of this Part B whilst in DADC's possession and which could not have been prevented by DADC acting in accordance with the Client's reasonable written instructions and which was not caused by the negligence or wilful default of DADC or its employees
- 12.7. Any physical or digital production material(s) furnished by the Client in relation to Supplies will be stored by DADC for up to twelve (12) months after the first order submitted in relation to the relevant Supplies and will then be destroyed/deleted without advance notice or returned at the Client's express request and expense; the Client should retain copies of all physical and digital production materials submitted to DADC.
- 12.8. Where appropriate DADC will save a digital copy of any production material (s) furnished by the Client (for example graphic files or production masters) in relation to Supplies. The digital copy will be archived by DADC in the most appropriate format for up to five (5) years after the last order submitted in relation to the relevant Supplies and will then be deleted without advance notice.

13. PROOFS AND SAMPLES

DADC may submit proofs, master discs and/or samples for the Client's approval and shall not be liable for any error not corrected by the Client. The Client's corrections (including alterations in style, composition and layout) and the costs in relation thereto (including without limitation as to any additional proofs) shall be an extra charge. Every effort will be made to see that the Supplies comply substantially with any samples previously supplied but DADC shall not be liable if they do not comply save in circumstances where there is a material non-compliance but subject always to the provisions of clause 9 of these Conditions

PART C PHYSICAL MEDIA DISTRIBUTION SERVICES TERMS FOR RETAIL CLIENTS

1. APPLICABILITY

- 1.1. The Conditions set out below shall apply without variation to every contract entered into by DADC for the supply of Products to the Client unless a variation thereto is expressly agreed in writing by a director of DADC. These Conditions shall apply notwithstanding any inconsistency between them and the terms and conditions of any form of contract sent by a Client of DADC.

2. ORDERS

- 2.1. A quotation for the Goods given by DADC shall not constitute an offer. A quotation shall only be valid for a period of twenty (20) Business Days from its date of issue.
- 2.2. The Client's order for Products constitutes an offer by the Client to purchase the Products in accordance with these Conditions. The Client is responsible for ensuring that the terms of the order and any applicable specification submitted by the Client are complete and accurate.
- 2.3. DADC shall not be obliged to accept any order from the Client. The Client's order shall only be deemed to be accepted when DADC issues a written acceptance of the order, or, if earlier, when DADC commences work on or

appropriates Products to the Contract, at which point the Contract shall come into existence.

- 2.4. The Contract constitutes the entire agreement between the parties and the Client acknowledges that it has not relied on any statement, promise or representation made or given by or on behalf of DADC which is not set out in the Contract.

3. DELIVERY

- 3.1. Where an order is accepted, DADC will endeavour to adhere to any delivery dates agreed but does not guarantee that any Products will be delivered by such dates and DADC shall not be liable for any loss or damage of any kind howsoever arising by reason of any failure on the part of DADC to deliver at such stated dates.
- 3.2. Delivery of the Products shall be completed on the Products' arrival at the location set out in the relevant order or such other location as the parties may agree. DADC shall not be liable for any delay in delivery of the Products that is caused by a Force Majeure Event or the Client's failure to provide DADC with adequate delivery instructions or any other instructions that are relevant to the supply of the Products.
- 3.3. Products delivered will be deemed accepted by the Client and as fully in accordance with the accompanying advice notes unless DADC is given notice in writing of the Client's rejection of the Products within seven days of the date of invoice.
- 3.4. DADC may deliver the Products by instalments, which shall be invoiced and paid for separately. Each instalment shall constitute a separate Contract. Any delay in delivery or defect in an instalment shall not entitle the Client to cancel any other instalment.
- 3.5. DADC may consolidate orders and parts of orders for the purposes of delivering Products and may deliver the Products which are the subject of such consolidated orders in one or more parcels as it sees fit.
- 3.6. DADC will not be responsible for any loss or damage of Products after delivery, and risk, as distinct from title in them, shall pass to the Client on delivery.

4. TITLE AND RISK

- 4.1. The risk in the Products supplied shall pass to the Client on delivery. Without limiting the foregoing, the Client shall maintain the Products in satisfactory condition and keep them insured against all risks for their full price from the time of delivery and the Client shall promptly provide written evidence of such insurance to DADC if requested.
- 4.2. Legal and beneficial title to the Products supplied by DADC to the Client shall not pass to the Client until the date when the Client has paid DADC for:
 - 4.2.1. the Products; and
 - 4.2.2. any other goods or services that DADC has supplied to the Client.
- 4.3. Until title passes to the Client, the Client shall:
 - 4.3.1. hold the Products on a fiduciary basis as DADC's bailee;
 - 4.3.2. be entitled, unless and until any of the events listed in paragraphs 11.1.1 to 11.1.12 inclusive of this Part C has occurred, to dispose of the Products by way of bona fide sale at full market value to third parties in the ordinary course of its business; and
 - 4.3.3. not remove, deface or obscure any identifying mark or packaging on or relating to the Products;
 - 4.3.4. notify DADC immediately in writing if it becomes subject to any of the events listed in paragraphs 11.1.3 to 11.1.12 inclusive of this Part C;
 - 4.3.5. segregate and store all Products delivered hereunder in such a way as to ensure that they can be readily identified as the property of DADC and allow DADC on reasonable request to access the Products and the storage area to verify the fact that this has been undertaken.
- 4.4. At any time after any of the events listed in paragraphs 11.1.1 to 11.1.12 inclusive of this Part C has occurred before title to the Products passes to the Client, and without limiting any other right or remedy DADC may have, DADC may require the Client to deliver up the Products and, if the Client fails to do so promptly, DADC may enter any premises of the Client or of any third party where the Products are stored in order to recover them.

5. INVOICES

- 5.1. DADC may invoice the Client for the Products on or at any time after the completion of delivery.
- 5.2. An invoice shall be deemed conclusively correct and binding on the Client in respect of the Products to which the invoice relates if the Client has not in good faith queried the invoice by notice in writing to DADC within the applicable credit period as defined in paragraph 6.1 of this Part C, such notice specifying the reason claimed for non-payment together with reasonable evidence to authenticate that claim.
- 5.3. Invoices shall be subject to correction or amendment by DADC at any time.

6. PAYMENT

- 6.1. Subject to paragraph 6.2 of this Part C, the Client shall pay all invoices in pounds sterling to such bank account as DADC from time to time specifies, in full and cleared funds within the terms stated on the face of the invoice and, if not so stated, within twenty Business Days of the date of the invoice

- ("the Credit Period").
- 6.2. If the Client has a bona fide reason to dispute any invoice:
- 6.2.1. the Client shall notify DADC in writing within the credit period stated on the face of the invoice, such notice specifying in reasonable detail the reason for the dispute; and
- 6.2.2. each of DADC and the Client shall use its reasonable endeavours in good faith promptly to resolve a dispute concerning any invoice; and
- 6.2.3. the Client shall pay the undisputed amount of such invoice in accordance with paragraph 6.1 of this Part C.
- 6.3. Without limiting DADC's remedies if payment is overdue, the Client shall indemnify DADC against any legal fees and other costs of collection and (as well after as before judgment) shall pay to it a sum equal to any loss suffered by DADC arising from exchange rate fluctuations and interest on such sum and on the amount overdue at the then current statutory rate, calculated from the date payment fell due until the date of actual payment and DADC may cancel the Contract and any other contracts with, and suspend deliveries to, the Client.
- 6.4. DADC shall be entitled at its discretion to charge interest on any overdue amount at a rate equal to 4% above the base rate of NatWest Bank plc from time to time in force. Such interest shall accrue on a daily basis from the due date until the date of actual payment of the overdue amount, whether before or after judgment. The Client shall pay the interest together with the overdue amount.
- 6.5. No statutory or other warranty, condition or representation of any kind whatsoever (including without limitation any relating to satisfactory quality, suitability or fitness for any purpose of the Client) is given or to be implied. The only warranties, conditions or representations made are those expressly stated to be such and contained within the Contract documents.
- 7. PRICE**
- 7.1. The price of Products sold and purchased hereunder shall be fixed from time to time by DADC as quoted to the Client or, if no price is quoted, the price shall be the price set out in DADC's published price list in force as at the date of delivery. DADC may, by giving notice to the Client at any time before delivery, increase the price of the Products to reflect any increase in the cost of the Products that is due to:
- 7.1.1. any request by the Client to change the delivery date(s), quantities or types of Products ordered; or
- 7.1.2. any delay caused by any instructions of the Client or failure of the Client to give DADC adequate or accurate information or instructions or otherwise to comply with its obligations.
- 7.2. Prices are shown on invoice net of all discounts given and are exclusive of VAT and all other tax and duty which, if applicable, will be charged at the applicable rate. The price of the Products is exclusive of the costs and charges of transport of the Products, which shall be invoiced to the Client. All invoices must be paid in full without deduction, withholding, counter-claim, credit or set off.
- 8. QUALITY**
- 8.1. Subject to the other provisions of this paragraph 9, if:
- 8.1.1. the Client gives notice in writing to DADC, accompanied by the applicable "faulty" report form properly completed, within three months of delivery and within a reasonable time of discovery that some or all of the Products are defective in design, material and/or workmanship;
- 8.1.2. DADC is promptly given a reasonable opportunity of examining such Products; and
- 8.1.3. the Client (if asked to do so by DADC) promptly returns such Products to DADC's place of business,
- then DADC shall, at its option, refund the price of the defective Products in full or, if and to the extent that DADC has the benefit of any warranties from its supplier of the Products, co-operate with and assist the Client to a reasonable extent in enforcing such warranties.
- 8.2. DADC reserves the right to recover the costs incurred in cases where any returned Products prove not to be materially defective. Without prejudice to paragraph 8.1 of this Part C, DADC will not accept any liability for damage arising as a result of alteration of the Products without the written consent of DADC, wear and tear, misuse, wilful damage, unsuitable storage conditions or the negligence or wilful default of the Client or any third party.
- 8.3. The Client acknowledges that DADC is not the manufacturer of the Products and that the design, specification, material and workmanship of the Products is outside DADC's control: accordingly DADC gives no warranty that the Products shall be free from defects in design, material and workmanship.
- 9. COPYRIGHT AND TRADEMARKS**
- 9.1. The Client shall exercise all due diligence in protecting the intellectual property rights in and to the Products, so far as it lies in its power, and without limitation the Client shall promptly report to DADC in writing any illegal copying of Products or contravention of the copyright restriction notices appearing on the Products that comes to its notice.
- 9.2. The Client shall not alter, edit or add to the sight and sound recordings on

or relating to and supplied with any Products (including but not limited to advertisements or promotional material in relation to the marketing of any Products).

10. NON COMPLIANCE

- 10.1. If the Client becomes subject to any of the following events, or DADC reasonably believes that the Client is about to become subject to any of them and notifies the Client accordingly, then, without limiting any other right or remedy available to DADC, DADC may cancel or suspend all further deliveries under any contract between the Client and DADC without incurring any liability to the Client, and all outstanding sums in respect of Products delivered to the Client shall become immediately due:
- 10.1.1. the Client fails to pay any invoice on or before the due date for such invoice;
- 10.1.2. the Client is in material breach of any of these Conditions;
- 10.1.3. the Client suspends, or threatens to suspend, payment of its debts, or is unable to pay its debts as they fall due or admits inability to pay its debts, or (being a company) is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986, or (being an individual) is deemed either unable to pay its debts or as having no reasonable prospect of so doing, in either case, within the meaning of section 268 of the Insolvency Act 1986, or (being a partnership) has any partner to whom any of the foregoing apply;
- 10.1.4. the Client commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with its creditors;
- 10.1.5. (being a company) a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of the Client, other than for the sole purpose of a scheme for a solvent amalgamation of the Client with one or more other companies or the solvent reconstruction of the Client;
- 10.1.6. a creditor or encumbrancer of the Client attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of its assets and such attachment or process is not discharged within 14 days;
- 10.1.7. an application is made to court, or an order is made, for the appointment of an administrator or if a notice of intention to appoint an administrator is given or if an administrator is appointed over the Client;
- 10.1.8. a floating charge holder over the Client's assets has become entitled to appoint or has appointed an administrative receiver;
- 10.1.9. a person becomes entitled to appoint a receiver over the Client's assets or a receiver is appointed over the Client's assets;
- 10.1.10. any event occurs, or proceeding is taken, with respect to the Client in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in paragraph 10.1.3 to clause 10.1.10(inclusive) of this Part C;
- 10.1.11. the Client suspends, threatens to suspend, ceases or threatens to cease to carry on all or substantially the whole of its business;
- 10.1.12. the Client's financial position deteriorates to such an extent that in DADC's opinion the Client's capability to adequately fulfil its obligations under the Contract has been placed in jeopardy; or
- 10.1.13. any act or conduct of the Client and/or its employees, agents or sub-contractors, in the reasonable opinion of DADC, interferes with or threatens any of DADC's and/or its suppliers' rights, or is in breach of any applicable law, or materially and/or adversely affect the interests and/or reputation of DADC and/or its suppliers.

PART D LIMITATIONS OF LIABILITY

- 1. LIMITATION OF LIABILITY, WARRANTIES AND INDEMNITY**
- 1.1. Nothing in these Conditions shall limit or exclude DADC's liability for:
- 1.1.1. death or personal injury caused by its negligence, or the negligence of its employees, agents or subcontractors (as applicable);
- 1.1.2. fraud or fraudulent misrepresentation;
- 1.1.3. breach of the terms implied by section 12 of the Sale of Goods Act 1979; or
- 1.1.4. any matter in respect of which it would be unlawful for DADC to exclude or restrict liability.
- 1.2. Subject to paragraph 1.1 of this Part D, DADC's liability to the Client for breach of any Contract, these Conditions or otherwise in connection with the supply of Products (arising for whatever reason including without limitation by way of negligence or any other tort, breach of contract, misrepresentation, breach of statutory duty, indemnity or otherwise) shall be limited to the price paid by the Client for the Products to which such liability relates or (as applicable) shall be limited to their repair or, replacement or if this is not possible. Without limiting the foregoing DADC shall not be liable for any lost or anticipated profits or savings or any special incidental or consequential losses or damages (including without limitation loss of value of any Goods packaged by DADC on behalf of the Client, loss of data, loss of use

- of any asset, loss of revenue, profit or goodwill, business interruption, management costs or third party liability).
- 1.3. Subject to paragraph 1.1 of this Part D, DADC shall not be liable for any loss of general profit, loss of anticipated benefit, loss of revenue, damage to reputation, loss of goodwill, business interruption, management time, third party liability, loss of use of any asset or for any consequential, special, punitive or indirect loss.
 - 1.4. Neither party shall be liable for any failure or delay in performing any or all of its obligations under any Contract to the extent that such failure or delay is caused by a Force Majeure Event. A '**Force Majeure Event**' means any event beyond a party's reasonable control, which by its nature could not have been foreseen, or, if it could have been foreseen, was unavoidable, including strikes, lock-outs or other industrial disputes, failure of energy sources or transport network, acts of God, war, terrorism, riot, civil commotion, interference by civil or military authorities, national or international calamity, armed conflict, malicious damage, breakdown of plant or machinery, nuclear, chemical or biological contamination, sonic boom, explosions, collapse of building structures, fires, floods, storms, earthquakes, loss at sea, epidemics or similar events, natural disasters or extreme adverse weather conditions, or default of suppliers or subcontractors caused by an event described herein
 - 1.5. The Client warrants that it shall not in respect of Products which are video-grams:
 - 1.5.1. sell, authorise, knowingly permit or allow the sale of any Products to consumers prior to the first videogram release in the relevant territory for such Products as notified to the Client; or
 - 1.5.2. alter the Products (including their content and/or packaging) in any way.
 - 1.6. The Client shall indemnify DADC and its suppliers on demand from and against any and all liability in relation to any breach of paragraph 1.5 of this Part D.

PART E MISCELLANEOUS

1. **GENERAL PROVISIONS**
- 1.1. In the event of a Force Majeure Event DADC may terminate the Contract whereupon the Client shall pay a sum equal to the costs to DADC to date of performing the Contract and DADC's liability shall be limited to repayment of any sums paid for undelivered Goods, Products or unperformed Services, less such costs
- 1.2. DADC's rights shall not be prejudiced by any indulgence, forbearance or previous waiver extended to the Client. The Client shall not assign, charge, or otherwise dispose of any Contract or any of its rights thereunder without DADC's prior written consent
- 1.3. All notices or other communications under a Contract shall be in writing in English addressed to the addressee's registered office or address stated in the Order (or other address notified to the other party) and shall be sent by hand (and thereby be deemed served when properly left at such address) or by first class pre-paid post (and thereby be deemed served 48 hours after posting)
- 1.4. No person who is not a party to the Contract shall have any right under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of the Contract but this does not affect any right or remedy which is available apart from that Act
- 1.5. Whenever the due date for payment of any amount under this Agreement is not a Working Day that payment shall instead be due on the next following day which is a Working Day
- 1.6. Not more frequently than once in any calendar year DADC by written notice to the Client may change any provisions of these Conditions; any such change will have effect in respect of all Orders issued more than thirty (30) days after the date upon which such notice is given by DADC to the Client.
- 1.7. The obligations of the Client and the rights of DADC under these Conditions are independent of and shall not be affected by any other rights or securities from time to time held by DADC or any affiliate of DADC from the Client or any other person
- 1.8. The Contract shall be governed and construed in all respects in accordance with the laws of England and Wales and the parties irrevocably submit to the exclusive jurisdiction of the courts of England and Wales provided that (and without prejudice thereto) DADC shall be entitled to apply for any provision of conservatory measures or interim relief in any other court having jurisdiction

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