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TERMS AND CONDITIONS

1. GENERAL

In these conditions:

- (a) "The Buyer" means the person, firm or company who accepts a quotation from the Seller for sale of the goods or whose order for the goods is accepted by the Seller.
- (b) "Dynamic Media" means Dynamic Media, Inc. of 2070 Speers Road, Oakville, Ontario, L6L 2X8, Canada, and any wholly owned subsidiary company.
- (c) "The Goods" means the goods, services and or materials, which Dynamic Media is to supply and which are the subject of the Contract between "Dynamic Media" and "The Buyer".
- (d) The Contract between "Dynamic Media" and "The Buyer" shall be subject to these conditions which shall govern the said Contract to the exclusion of any other terms and conditions subject to which any quotation is accepted or purported to be accepted or any order is made or purported to be made by "The Buyer".
- (e) "Dynamic Media" retains the right to modify, amend, or delete portions of these terms and conditions at any time to suit market conditions or to comply with Federal, Provincial or Municipal requirements.
- (f) No variations of these Conditions shall be binding unless agreed in writing by a Director of "Dynamic Media".
- (g) Any typographical, clerical or other error or omission in any sales literature, quotation, list price, acceptance of offer, invoice or other document or information issued by "Dynamic Media" shall be subject to correction without any liability on the part of "Dynamic Media."
- (h) The headings in these conditions are for convenience only and shall not effect their interpretation.
- (i) If any provision of these conditions is held by a competent authority to be invalid or unenforceable in whole or in part the validity of the other provisions of these conditions and the remainder of the provision in question shall not be affected thereby.

2. QUOTATIONS AND PRICE

- (a) Unless previously withdrawn by "Dynamic Media," quotations are open for acceptance for the period stated therein or if no period shall be stated therein within one month from the date thereof.
- (b) All prices specified in quotations and tenders are subject to variation by "Dynamic Media" without prior notice after the date specified in the document to "The Buyer."
- (c) Quotations and tenders are subject to confirmation by "Dynamic Media" upon receipt of orders from "The Buyer."
- (d) All prices quoted or accepted are exclusive of GST and PST and in the contract price shall be such quoted or accepted price plus GST and PST at the appropriate rate, even if not explicitly stated.
- (e) All prices unless otherwise stated are exclusive of all freight charges which shall be added to "The Buyer's" account.
- (f) Subsequent to the date of any quotation or tender any changes in specification made by "The Buyer" that increases the cost of fulfilling the contract by "Dynamic Media" for any reason whatsoever prior to the date of delivery shall be charged to "The Buyer's" account.

3. TERMS OF PAYMENT

- (a) Cash, Company Cheque (cleared funds), Visa/MasterCard Credit Cards and/or Bank transfer(s) or Money Order Terms are 50% with purchase order or order acceptance and 50% on shipment of goods from "Dynamic Media".
- (b) Rush orders must be prepaid in full by "The Buyer," including freight and any applicable taxes.
- (c) Direct mail fulfillment orders always require postage to be paid before mailing thus "The Buyer" will be informed of the exact postage amount after "Dynamic Media" receives "The Buyer's" mailing list.
- (d) "The Buyer" agrees to pay all costs, fees, charges and expenses of every nature (including legal fees) incurred by "Dynamic Media" in recovering any amounts owed to it by "The Buyer," whether or not legal action has taken place.
- (e) In the event "The Buyer" fails to pay "Dynamic Media" within ninety (90) days for any and all work completed or in the event "The Buyer" fails to accept delivery or pick up of their finished product within ninety (90) days from project completion, "The Buyer" grants "Dynamic Media" unlimited rights to dispose, destroy or recovery costs of any such material(s) on hand in any way "Dynamic Media" deems necessary.

4. DELIVERY

- (a) Delivery dates are quoted as estimates of full business days without guarantee or penalty and the time for delivery shall run from the date the entire order is received or the tender or estimate accepted or the date on which sufficient information is received from "The Buyer" to enable "Dynamic Media" to proceed with the execution thereof whichever is the later.
- (b) "The Buyer's" order(s) will be delayed if the "The Buyer" has failed to provide to "Dynamic Media" all the necessary materials (including without limitation master, graphics, deposit, signed estimate, signed Intellectual Property rights Form, and Audio Track Listing).
- (c) Every effort shall be made by "Dynamic Media" to affect delivery in accordance with these terms and conditions but "Dynamic Media" will not be liable for any loss or damage arising due to delay on delivery however caused, nor be responsible for any additional or premium shipping charges.

4.1 QUANTITY DEVIATION

- (a) "Dynamic Media" reserves the right to supply and invoice production overruns and underruns up to 5% of any title of "The Buyer's" order. "The Buyer" shall be invoiced for actual quantities shipped only.
- (b) If replication orders are prepaid in full by "The Buyer," including freight and applicable taxes, any production over-run will be included at no extra charge.

5. CLAIMS

"The Buyer" shall inspect the goods upon delivery or deemed delivery within seven (7) days of such delivery and notify "Dynamic Media" in writing of any matter or thing by reason whereof "The Buyer" alleges that the goods are not in accordance with the contract. If said notice is not received by "Dynamic Media" within the date indicated above, "Dynamic Media" will be deemed to be released by "The Buyer" from any and all liability.

Under no circumstances will "Dynamic Media" be held liable for any errors found on finished or partially finished or processed products or "Goods" resulting from errors present on "The Buyer's" master, materials, artwork, digital files, or other information supplied by of for the client, nor will "Dynamic Media" be held liable for any errors found on finished or partially finished or processed products or "Goods", masters, materials, artwork or other digital files created by or for the client once approved by the client.

6. LIMITATION OF SELLER'S LIABILITY

"Dynamic Media" warrants that material(s) produced and delivered by "Dynamic Media" meets "Dynamic Media's" standard specifications for the material(s) or such other specifications and meets generally accepted industry standards. Any express or implied statement, condition or warranty, statutory or otherwise, not stated herein is hereby excluded and deemed to be inconsistent herewith, and no responsibility is accepted by "Dynamic Media" for any damage or loss arising directly or indirectly out of goods, supplied or for any damage or loss arising by reason of any failure of goods to comply with the specification or with statutory requirements whether attributable to "Dynamic Media's" negligence or otherwise save to the extent that exclusion of liability is prohibited by law.

Subject to paragraph 5 "Dynamic Media's" liability for any loss and or damage whether direct or indirect consequential or howsoever caused shall be limited, at "Dynamic Media's" discretion, to:

The replacement of the goods supplied or the return of the purchase price and or the price paid for services and or the re-supply of the services.

7. BUYERS PROPERTY

Any property of "The Buyers" supplied to "Dynamic Media" for the purposes of the Contract will be held by "Dynamic Media" (for example: Master Disc's), and only returned to "The Buyer" on written request. Every care will be taken to secure the best results where materials are supplied by "Dynamic Media" but no responsibility will be accepted for errors caused by any defects or the unsuitability of materials so supplied. "Dynamic Media" recommends "The Buyer" keep copies of all original master discs and artwork. "Dynamic Media" shall retain title to all tooling (including masters, stampers, and other tooling) produced by "Dynamic Media" as required by any manufacturing stage or process. "Dynamic Media" shall also retain all rights in computer programs, specifications, or data developed by "Dynamic Media" in or for the performance of this Agreement, notwithstanding whether such computer programs, specifications or data were developed by "Dynamic Media" for "The Buyer" or otherwise.

8. FORCE MAJEURE

"Dynamic Media" shall not be liable to "The Buyer" or deemed to be in breach of contract by reason of any delay in performing or failing to perform any of "Dynamic Media's" obligations in relation to the goods if the delay or failure was due to any cause beyond "Dynamic Media's" control. Without prejudice to the generality of the foregoing any act of God, war, strikes, flood, fire and inability of "Dynamic Media" to procure materials or articles required for the performance of the contract which may prevent the fulfillment thereof shall be regarded as causes beyond "Dynamic Media's" reasonable control. In the event of any failure or delay to perform any contract as a result of the said causes such contracts, at "Dynamic Media's" discretion, may be varied or cancelled by "Dynamic Media" or delivery may be wholly or partly suspended and time for delivery may be extended by "Dynamic Media" without "Dynamic Media" being liable to "The Buyer" or being deemed to be in breach of contract.

9. LIMITS OF CONTRACT

Quotations or tenders include only such goods and work as are specified therein. Each order shall be deemed to be a separate contract to which these terms and conditions shall apply (and no liability can be accepted by "Dynamic Media" for the working in combination of goods, which have been ordered in separate parts and/or at different times).

10. INTELLECTUAL PROPERTY RIGHTS PROTECTION/ COPYRIGHT/ DESIGN

"Dynamic Media" adheres to standards established by the International Recording Media Association's (IRMA) Anti-Piracy Compliance Program, which protects property rights owners from the unauthorized distribution of their content. All "The Buyer's" orders must be accompanied with an intellectual property right's form. "The Buyer" will indemnify "Dynamic Media" against all damages, penalties, costs and expenses to which "Dynamic Media" may become liable as a result of work done in accordance with "The Buyer's" specification which involves the infringement of any letters, patents, copyright, or registered design. In the event a third party makes a claim against "Dynamic Media" that any work done in accordance with "The Buyer's" specification infringes the third party's intellectual property rights, "The Buyer" will be liable to "Dynamic Media" for any reasonable loss, liability, damages or costs (including legal fees) suffered by "Dynamic Media."

11. CONFIDENTIALITY

If "The Buyer" discloses confidential information to "Dynamic Media" and clearly identifies such information in writing as "confidential," "Dynamic Media" shall use reasonable care to ensure that such information is disclosed only to "Dynamic Media" employees or contractors requiring access to such information to render the services or manufactured products requested by "The Buyer." In no way shall "Dynamic Media" be held liable by "The Buyer" if information becomes available to the public without fault of "Dynamic Media" and or is lawfully acquired by "Dynamic Media" from a third party.

12. CHANGES

Changes to any orders accepted by "Dynamic Media" cannot be accepted without "Dynamic Media's" consent in writing and any additional costs involved will be chargeable to "The Buyer."

13. ORDER CANCELLATIONS

- (a) "Dynamic Media" reserves the right to refuse or cancel any order(s) made by "The Buyer" at their discretion.
- (b) Orders for products not yet manufactured by "Dynamic Media" may be cancelled by either party at any time. "The Buyer" will be responsible for all production cost(s) incurred by "Dynamic Media" related to pre-manufacturing of any partially complete or complete product.
- (c) "The Buyer" must provide a written notice of cancellation to "Dynamic Media." After such written cancellation notice, "The Buyer's" materials and any completed product may be delivered to "The Buyer" after all sums owed to "Dynamic Media" have been paid in full.

14. GOVERNING LAW

These Terms and Agreements shall be governed by and constructed in accordance with the laws of the Province of Ontario. Any suite or action by "The Buyer" against "Dynamic Media" shall be brought exclusively in the courts in Oakville, Ontario.