

TERMS AND CONDITIONS

This order is accepted on the following terms and conditions which shall apply to this order, as well as to all orders hereafter accepted from the Customer and (as applicable) to all other transactions between Optical Disc Solutions, Inc. ("ODS") and the Customer.

As used herein, the term "compact disc" or "CD" shall mean any optical data disc, having digital information recorded thereon, including without limitation, discs, commonly designated as CD-Audio, CD-ROM, CD-I, CD-V, CD-G, Photo CD, CD-R, GD-ROM and DVD.

"Subject Matter" shall mean all material or information provided to ODS by Customer in whatever form whether intended to be embodied or contained in CDs or not.

1. Credit terms are as stated in the order acknowledgement or any other documents provided to Customer from ODS.
2. CDs shall not be returned for any reason unless authorized by ODS in writing. All CDs for which a return is authorized shall be returned to the plant designated by ODS at the Customer's expense. Any authorized return shall include a detailed, written description of the alleged error or defect which is sufficient to permit ODS to verify the presence, nature and extent of the defect. Except for factory defects confirmed by ODS, ODS shall not be obligated to credit the Customer's account for CDs returned to ODS for any reason, whether a return authorization is issued by ODS or whether ODS accepts returned CDs without issuing a return authorization. Where a factory defect is confirmed by ODS, the credit to be given to Customer shall not exceed the actual sales price and freight charges paid by Customer in shipping the subject CDs from ODS to the first delivery point. It is specifically understood and agreed that ODS shall not be responsible for any loss, damage or expense which the Customer may incur by reason of, or which may be connected with, ODS's acceptance of returned CDs without a return authorization being issued by ODS. ODS's count or audit in respect to returned CDs shall be final and binding.
3. Customer shall not make any deductions from remittances to ODS unless an approved Credit Memo has been issued by ODS. All claims for credit due to shortages or breakage must be made within five (5) days of Customer's receipt of invoice or within seven (7) days of ODS mailing the invoice to Customer, whichever occurs later. Where Customer makes no such claim within the designated time period, the shipment shall be conclusively presumed to be acceptable.
4. Customer expressly warrants to ODS that it is: i) authorized to acknowledge these Terms and Conditions; ii) authorized to provide the CDs and Subject Matter to ODS for mastering, processing, duplication and packaging; iii) the owner of all copyrights, patents, trademarks, trade secrets and other intellectual property rights in the CDs and Subject Matter or has received the appropriate legal authority from the copyright owner to sublicense to ODS all such rights; iv) in compliance with all anti-piracy policies of ODS. The warranties contained herein shall survive the termination of these Terms and Conditions and shall continue in perpetuity. Customer shall execute and provide any documents ODS may deem necessary or desirable to evidence Customer's ownership of intellectual property in the Subject Matter or authorization from the copyright owner to sublicense to ODS the rights to master, process, duplicate and package the CDs and Subject Matter. Customer agrees to indemnify, defend and hold harmless ODS, its officers, agents and employees, from and against any and all losses, damages, liabilities, demands, claims, suits, actions, including reasonable attorneys' fees and court costs, which may arise as a result of Customer breaching any of the warranties set forth herein.
5. Customer warrants that it shall bear responsibility for all sales, use and gross receipt taxes, however designated, levied or based in any way upon such CDs. Customer will execute any documents ODS may deem necessary or desirable to evidence the fact that Customer is liable for these taxes. In the event that any taxing authority levies an assessment against ODS for such taxes, Customer shall promptly remit such sums to ODS. Customer shall further indemnify, defend and hold ODS harmless from and against any and all losses, damages, liabilities, demands, claims, suits, actions, including reasonable attorneys' fees and court costs, arising out of or connected, directly or indirectly, with the filing of Customer's orders, or the exercise of the rights granted to ODS pursuant to this order or any future order. The warranty and indemnity contained herein applies to all current and future orders which are processed or produced for the Customer and shall survive the termination of these Terms and Conditions.
6. Title to, and risk of loss for, any and all CDs that are manufactured by ODS pursuant to this or any other order shall vest in the Customer immediately upon the completion of the manufacturing of such CDs regardless of the contemplated time of delivery to the Customer. Title to and risk of loss of any CDs and Subject Matter of Customer which may come into ODS's possession shall remain solely with Customer. Customer shall obtain and maintain appropriate insurance coverage for any CDs, Subject Matter and other related materials of Customer which may be in ODS's possession.
7. Customer shall retain sole ownership and control of any and all master tapes and Subject Matter provided to ODS for the mastering, processing, duplicating or packaging of CDs and shall defend, indemnify and hold ODS harmless from and against any claim, demand, action or suit for loss or damage to such master tapes or Subject Matter from whatever cause, including but not limited to the negligence of ODS, its employees and agents. ODS shall own and retain all rights in any copy of the Subject Matter used in the manufacture of CDs, including, but not limited to all mothers and stamper. ODS shall have the right to retain one (1) copy of all print materials submitted to ODS from Customer. Because ODS cannot be responsible for any loss or damage to any master tapes or Subject Matter, Customer should retain duplicate back-up copies of all master tapes and Subject Matter provided to ODS. ODS shall produce CDs only from the Subject Matter provided to it from Customer. Should Customer wish to modify the Subject Matter or substitute or add new Subject Matter, Customer shall promptly pay for all CDs which have already been produced and all costs arising from or relating to the modification, addition or substitution.
8. ODS will retain any master tape for a period of sixty (60) days from the date of receipt or until all outstanding amounts owed to ODS by Customer for all orders have been paid in full, whichever occurs later. At the expiration of the time period specified, where all amounts have been paid in full, ODS may either return the master tapes to Customer upon Customer's request and at its sole cost and risk or destroy the master tape.
9. Unless ODS, through its duly authorized officer, agrees in writing to a higher valuation, ODS and Customer agree that the value of any and all master tapes and Subject Matter, as well as all copies and duplicates thereof, shall be limited to the actual value of the physical components of the master tape and Subject Matter and shall exclude any value arising from or relating to the contents or information contained therein, with a maximum agreed value of U.S. \$100.00.
10. ODS shall have no responsibility or obligation to Customer regarding any master tapes or Subject Matter manufactured or processed by ODS with regard to this order or any other orders placed by Customer with ODS, and ODS shall have the right, at any time and at its sole discretion, to destroy or deface any or all such master tapes, Subject Matter or CDs produced therefrom.
11. ODS reserves the right to stop any production run of CDs at any point if ODS, in its sole discretion, believes or suspects that any of the Subject Matter provided by the Customer for duplication contains matter which is obscene, lewd, indecent or immoral or that the duplication of the Subject Matter is not authorized by the owner of the rights therein. Upon any such occurrence, ODS may destroy any CDs produced as well as all related Subject Matter. Customer shall be responsible for all costs incurred by ODS in the mastering, processing, production and packaging of any CDs containing the offensive Subject Matter. ODS further reserves the right to take any and all action it deems to be appropriate which may include turning the matter over to the proper authorities and assisting in any resulting investigation.
12. ODS shall not be liable for any delays in delivery or non-delivery of any CDs or other items where such delay or non-delivery is the result of events beyond the reasonable control of ODS. Where any delay in delivery occurs, ODS may, without liability, terminate all or any part of these Terms and Conditions or suspend and thereafter resume delivery of all or part of the undelivered CDs and Customer shall accept such delivery; providing that such delay in delivery exceeds sixty (60) days, Customer may, by registered or certified mail, demand delivery of the delayed CDs and Customer's obligations shall terminate as to such items if ODS does not ship the CDs within ten (10) days after receipt of such a demand.
13. Customer shall not use or permit the use of ODS's name or trademarks or any names, trademarks, or trade names similar thereto in any manner or for any purpose without obtaining the prior written approval of ODS.
14. All shipments are F.O.B. ODS's plant. Customer shall be responsible for all shipping and freight costs.
15. Overruns or under-runs which do not exceed ten percent (10%) of the quantity ordered shall be delivered in full compliance with the Terms and Conditions of this order and all future orders. Amounts due for any order will be adjusted for any order where the number of CDs produced varies from the number ordered by greater than ten percent (10%).
16. **ODS MAKES NO WARRANTIES REGARDING THE CDS AND EXPRESSLY DISCLAIMS ANY AND ALL WARRANTIES INCLUDING THE WARRANTIES OF FITNESS FOR A PARTICULAR PURPOSE, MERCHANTABILITY AND NONINFRINGEMENT, AND FURTHER SHALL NOT BE LIABLE FOR ANY INCIDENTAL, CONSEQUENTIAL, SPECIAL, OR INDIRECT DAMAGES OR FOR ANY LOST PROFITS OF CUSTOMER.**
17. These Terms and Conditions shall be governed by and construed in accordance with the laws of the State of Indiana, without regard to the conflict of law rules thereof. No waiver or modification of these Terms and Conditions shall be effective unless in writing and signed by an authorized officer of ODS.
18. Any and all actions brought by ODS or Customer against the other in connection with or arising out of these Terms and Conditions shall be brought only in a court of appropriate jurisdiction in Wayne County, Indiana, or in the United States District Court for the Southern District of Indiana. Customer hereby submits itself to the jurisdiction of any and all such courts for purposes of any litigation between the parties in connection with or arising out of these Terms and Conditions and waives any defense it may have based on jurisdiction or venue.
19. The waiver of ODS to insist in any one or more instances upon the strict performance of any of the terms or provisions of these Terms and Conditions by the Customer shall not be construed as a waiver or relinquishment for the future of any such term or provision, but the same shall continue in full force and effect.
20. Any notices or written communication required under these Terms and Conditions shall be in writing and shall be deemed to be given when mailed by first-class, certified or registered mail, postage prepaid, to:

To ODS: Optical Disc Solutions, Inc.
 1767 Sheridan Street
 Richmond, IN 47374-1811
21. If any provision of these Terms and Conditions or the application thereof to any person or circumstance is found to be illegal, invalid or void by a court of competent jurisdiction under any applicable law, it shall be severable, the remaining provisions of these Terms and Conditions shall not be impaired and these Terms and Conditions shall be interpreted as far as possible so as to give effect to their stated purpose.
22. Both ODS and Customer shall be acting as independent contractors and not as agents, employees, partners, or associates of each other. Neither ODS nor Customer shall be liable for any representation made by the other with respect to third parties.
23. The export or reexport of U.S. items, technology and software (including foreign-made products incorporating U.S. items or direct products of U.S. technology) are subject to U.S. export control laws and regulations. Prior authorization from the U.S. government is required for all export or reexports of U.S. items, technology and software to certain terrorist-supporting and embargoed countries and nationals of those countries, including Cuba, Iran, Iraq, Libya, North Korea, Sudan and Syria. Additionally, prior authorization is required for the export or reexport of U.S. items, technology and software to prohibited end-users and end-users proscribed by U.S. export control laws and regulations. Diversion of U.S. items, technology and software is contrary to U.S. law.