



### Duplication rights

You have asked us to duplicate certain materials which are identified in Schedule "A" to this letter (the "Materials"). We do not wish to become involved in the duplication of any material without proper authorization.

In consideration of our agreement to duplicate the Materials on the terms set out in the agreement (the "Duplication Agreement") to be entered into between us, we require that you warrant, represent and agree as follows:

1. You represent and warrant to us that:
  - a) The duplication of the Materials under the Duplication Agreement will not infringe any copyright, right of privacy, trade mark, patent, trade name, performing right or any literary, dramatic, musical, artistic, personal, civil, private, contract or property right, or any other right of any person the "Intellectual Property Rights";
  - b) The Materials do not contain any libelous or slanderous material;
  - c) You possess the right, power and authority to enter into the Duplication Agreement and to authorize us to duplicate the Materials under the Duplication Agreement;
  - d) To the best of your knowledge, no one owns or claims to own (or has or claims to have) any interest in the Materials, or in the Intellectual Property Rights in the Materials, which is in conflict with any of the foregoing.
2. You agree to indemnify us and save us harmless from and against all claims, demands, actions, causes of actions, suits, proceedings, settlements and judgments (the "Claims") which may be made or brought against us, or which we may suffer or incur, as a result of or in respect of or arising out of anything which, if true, would constitute a breach of any representation, warranty or agreement contained on your part in this letter. If we are made a party to any Claim, then you agree to pay all expenses and reasonable legal fees (on a solicitor/client basis) incurred or paid by us in connection with that Claim.
3. You acknowledge that we will be acting in reliance on your representations; warranties and agreements contained in this letter and that you have received adequate consideration for the execution of this letter.

Please confirm your agreement with the foregoing by signing the enclosed copy of this letter where indicated below.

Yours Truly,  
Nordex Advanced Technology, Inc.

We have read this letter and we agree to its terms.

Per: \_\_\_\_\_

\_\_\_\_\_  
Date

\_\_\_\_\_  
Customer Name and Title (please print)

\_\_\_\_\_  
Customer Signature



## Duplication standard terms and conditions Schedule "A"

This Agreement contains the entire agreement between Nordex Advanced Technology, Inc. and its subsidiaries and the Customer concerning the production, packaging and delivery of compact discs and other materials (the "Products") from items (including, without limitation, master media, photographs, artwork, label data and packaging materials) delivered to NORDEX by or for the Customer (the "Materials"). This Agreement supersedes all prior oral or written understandings, representations and warranties (including any terms and conditions which may appear on the Customer's order form) between NORDEX and the customer, and may not be amended except pursuant to a written document signed by both parties.

**1. Acceptance.** This Agreement will only be accepted by: (a) Written confirmation from an authorized Representative of NORDEX or (b) Shipment of goods in accordance with the terms set forth herein. NORDEX reserves the right to refuse to accept any purchase order for any reason. The Customer agrees to be bound by all of the terms and conditions set out herein and on the reverse side of this form.

**2. Orders.** Prices charged for services and Products provided to the Customer hereunder shall be as agreed upon between NORDEX and the Customer. Orders may not be cancelled by the Customer after NORDEX has begun processing or manufacturing. All shipments of Products will be F.O.B. NORDEX facility and shipping charges and risk of loss or damage in transit shall be the Customer's sole responsibility. Shipment is by regular ground service unless otherwise specified by the Customer. NORDEX reserves the right to make partial shipments. NORDEX reserves the right to produce and charge for production overruns up to 10% over the Customer's order quantity. NORDEX will consider the Customer's order complete upon shipment of 90% or more of the total quantity ordered.

**3. Terms of Payment.** Invoices will be issued upon shipment of Products (unless shipment is delayed by the Customer, in which case an invoice will be issued upon the completion of manufacturing). Invoices for services performed by NORDEX hereunder will be issued upon completion of those services. The Customer shall be responsible for all taxes, duties, excises and other charges associated with the production, sale or transportation of Products and performance of services hereunder (other than taxes on NORDEX net income). Unless otherwise noted, payment of invoices is due within thirty (30) days of the invoice date. Claims for adjustments in amounts due NORDEX must be presented to NORDEX in writing within five (5) days from the date of invoice. If any amount remains outstanding after its due date, interest shall run on that amount from the initial billing date at the rate of 1. % per month (18% per annum) and shall accrue daily. Any credit on the Customer's account must be claimed or used within 12 months from the shipping date of the goods to which the credit relates. Notwithstanding the foregoing, NORDEX may require part or full payment, security or a guarantee of payment in advance of any work or services to be performed or any shipment. NORDEX shall have a security interest in all Products and Materials until all amounts due hereunder are paid in full. NORDEX reserves the right to delay or withhold shipment of any order if payment in full has not been received on any prior order. The Customer agrees to pay all costs, fees, charges and expenses of every nature (including legal fees) incurred by NORDEX in recovering any amounts owed to it by the Customer, whether or not a lawsuit is commenced.

**4. License.** The Customer grants NORDEX a non-transferable license to reproduce and distribute copies of Materials to the extent necessary for NORDEX to perform its obligations under this Agreement.

**5. Delivery Times.** Unless otherwise agreed by NORDEX in writing, delivery times are estimates and scheduled shipment dates are subject to change.

**6. Warranty, Disclaimer and Limitation of Liability.** NORDEX warrants that the Products will meet NORDEX's standard specifications, or such other specifications as are agreed to in writing by NORDEX, for a period of one year from the date of shipment by NORDEX. As the Customer's sole remedy, and as NORDEX sole liability, for breach of this warranty, NORDEX will, at its option, replace any Products or refund the amount paid by the Customer to NORDEX for any Products that are returned to and found defective by NORDEX. EXCEPT AS OTHERWISE EXPRESSLY PROVIDED IN THIS PARAGRAPH, NORDEX DISCLAIMS ALL WARRANTIES AND CONDITIONS, WHETHER EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION ANY WARRANTY OR CONDITION AS TO PERFORMANCE, MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. IN NO EVENT SHALL NORDEX BE LIABLE FOR AND THE CUSTOMER EXPRESSLY WAIVES ANY CLAIM FOR, INDIRECT, INCIDENTAL, PUNITIVE, EXEMPLARY, SPECIAL OR CONSEQUENTIAL DAMAGES, INCLUDING (BUT NOT LIMITED TO) LOST DATA, PROGRAMS OR OTHER INFORMATION OR LOST PROFITS.

Notwithstanding any other provision of this Agreement and in no event (including, but not limited to, lost data, programs or other information, business interruption, or delay or failure of delivery), shall NORDEX liability to the Customer under any theory exceed the amount paid by the Customer to NORDEX pursuant to NORDEX invoice(s) for the related services or Products.

No action, regardless of form, arising out of any claimed breach of this Agreement or transactions under this Agreement may be brought by either party more than one (1) year after the cause of action has accrued.

**7. Materials.** The Customer shall retain title to all Materials, including the content of such Materials. The Customer warrants that it owns all Materials or that it has the right and authority to reproduce the Materials and has the right to deliver all Materials to NORDEX. The Customer also warrants that it owns all copyright in the contents of the Materials (including without limitation any computer code embedded therein) or has the unrestricted right to permit NORDEX to perform the services requested hereunder. The Customer warrants that the Materials do not contain any obscene or objectionable matter. The Customer agrees to indemnify, defend and hold NORDEX harmless from and against any and all actions, suits, claims, liabilities, damages, losses and expenses (including legal fees) arising directly or indirectly out of or in connection with any claim that the services rendered or Products manufactured under this Agreement violate any law, rule or regulation or violate any rights of third parties (including without limitation, any liability for slander, defamation, invasion of privacy, or infringement of any patent, copyright, trademark or other proprietary right of any third party). If the Customer is to provide artwork to NORDEX in connection with the production of disc label printing or packaging of discs hereunder, such artwork must be received by NORDEX prior to the commencement of work by NORDEX. If the Customer is to provide Materials for label printing or the final packaging or compact discs produced hereunder, such Materials must be received by NORDEX not more than one (1) week after the delivery of the applicable master media to NORDEX.

The Customer is solely responsible for delivering Materials to and retrieving Materials from NORDEX hereunder. At the Customer's request and sole risk, NORDEX will store Materials as long as NORDEX is providing services hereunder, at any place that NORDEX deems appropriate. During such period, a storage charge may be assessed. After such period, a storage charge will be assessed until the Customer retrieves such Materials from NORDEX. The Customer is responsible for removal of all Materials within thirty (30) days of notification by NORDEX. If the Customer fails to remove Materials, as requested, NORDEX shall have the right to: (i) return the Materials to customer at the address indicated on the last order placed by the Customer, at the Customer's expense, or (ii) destroy, erase, or make any other disposition of such Materials without liability to the Customer or any other person.

**8. Tooling, Programs, Specifications and Data.** NORDEX shall retain title to all tooling (including masters, stampers, and other tooling) produced by NORDEX. NORDEX shall also retain all rights in computer programs, specifications, or data developed by NORDEX in or for the performance of this Agreement, notwithstanding whether such computer programs, specifications or data were developed by NORDEX for the Customer or otherwise.

**9. Export.** The Customer agrees not to export any Product in violation of any export control laws, rules or regulations.

**10. Risk of Loss.** The Products shall remain the property of NORDEX until shipment. Products held by NORDEX at the Customer's request shall be held at the Customer's sole risk.

**11. Confidentiality.** If Client discloses confidential information to NORDEX and clearly identifies such information in writing as "confidential", NORDEX shall use reasonable care to ensure that such information is disclosed only to NORDEX employees or contractors requiring access to such information to render the services or manufacture Products requested by the Customer. Nothing herein shall limit NORDEX right to use or disclose information that (a) becomes available to the public without fault of NORDEX, (b) is lawfully acquired by NORDEX from a third party, (c) is in the possession of NORDEX at the time of disclosure by the Customer, or (d) is developed by or on behalf of NORDEX by persons who have not received the customer's confidential information.

**12. Force Majuro.** NORDEX will not be responsible for failure to fulfill its obligations under this Agreement if such failure is caused by circumstances beyond the reasonable control of NORDEX or its suppliers or contractors (including, but not limited to, acts of God, unavailability of materials, equipment failures, strikes or other labor disturbances).

**13. Severability.** If any provision of this Agreement is found to be invalid, unenforceable or void by a court of competent jurisdiction, such provision shall be deemed to be severed from this Agreement and the remaining provisions will remain in full force and effect.

**14. Governing Law.** This Agreement shall be governed by and constructed in accordance with the laws of the Province of California. Any suit or action by the Customer against NORDEX shall be brought exclusively in the courts in Camarillo, California.