



**mediafast**<sup>TM</sup>  
right pieces. right place.

## General Terms & Conditions

**TERMS AND CONDITIONS:** The individual, proprietorship, partnership, LLC, corporation or other entity ("Client") and each individual guarantor ("Guarantor") entering into this Credit Application Account Agreement (or opening a C.O.D. account) both hereinafter referred to as the "agreement" with Mediafast, LLC (MF) do hereby agree with MF, as follows:

- 1. DEFINITIONS:** Except where otherwise expressly stated in this Agreement, all terms herein employed shall have the same definition as set forth in the Uniform Commercial Code as adapted and presently effective in the State of Utah.
- 2. AGREEMENT BETWEEN MERCHANTS:** This Agreement shall be deemed an agreement between merchants as that term is defined by the Uniform Commercial Code of the State of Utah.
- 3. PURCHASE ORDERS:** Client agrees to provide a written purchase order for each order. All purchase orders will have Bill to and Ship to information, order date, due date and shipping date, cancellation date, description of product or service, quantity, unit price, extended totals, grand total for order, and an authorized signature. Receipt of a purchase order by MF is not acceptance thereof nor is MF bound to perform under any of the terms thereof. MF shall not be bound until the purchase order is accepted in writing by MF.
- 4. CANCELLATION OR ALTERATION OF PURCHASE ORDER:** Client agrees that Client may not cancel or alter a purchase order after three (3) days from the date the purchase order is received by MF. Any cancellation or alteration must be delivered to MF within the said three (3) day period, and must be in writing. Client agrees that if a purchase order is altered or canceled prior to three (3) days from the date a purchase order is received by MF, Client shall accept delivery of, and pay for, all work done by MF until notified of the said alteration or cancellation. Client also agrees that if an alteration changes the prices of an original purchase order, purchase order totals may be changed to conform to the altered prices. In the event Client cancels a purchase order after the agreed three (3) days period, the Client shall be liable for the entire amount due for the purchase order, and Client agrees to take delivery of all product which has been, or is in process of being, manufactured.
- 5. DELIVERY AND FREIGHT:** All prices are F.O.B. Plant of Origin. Charges will be added to invoice totals. Delivery by MF to carrier shall constitute delivery to Client.
- 6. PAYMENT TERMS:** Unless otherwise agreed in writing, all amounts due to MF by Client are payable in full upon receipt of an invoice from MF. All payments made pursuant to this Agreement and any invoices hereunder shall be made to: Mediafast, LLC P.O. Box 913 American Fork, UT 84043.
- 7. FINANCE CHARGES:** Client agrees to pay according to the terms of this Agreement and of each invoice. Finance charges at the rate of 2% per month, 24% per annum (APR) may be charged on any invoice or fraction thereof remaining unpaid after the due date that is specified on the invoice. Non Cash payments are subject to a 3.5% convenience.
- 8. LIEN AND SECURITY INTEREST:** MF shall have a lien on, and Client grants MF a security interest in, all products ordered by the Client and all of Client's master tapes and all other items furnished by Client to MF, until all obligations of the Client to MF are paid in full, and MF may execute and file financing statements or such other instruments or take such other action to perfect such security interest as MF deems appropriate. Client grants to MF the right to make and sell copies from Client's masters, or to sell any manufactured product and convert the same to cash, if Client's default is not cured within 90 days of MF's notification to Client of default.
- 9. LIABILITY:** MF's liability is solely limited to replacement of defectively manufactured product. MF shall not be liable for any other claims, including, but not limited to: Damage or loss of client master tapes, art work or text (Client is responsible for retaining an original copy of any and all materials delivered to MF by the client); loss, damage, or shortages attributable to a commercial shipper; inclusion or exclusion of audio/video material; any defect attributable to a Client's audio or video master; incorrect or inaccurate text; or, where PMS colors were not specified by the Client; defects associated with the use of Client's equipment; claims of damage or repairs to any electric equipment; loss of business revenue or profit; interruption of business; or, costs incurred by a Client without MF's prior written approval.
- 10. RISK OF LOSS:** Risk of loss, injury, or destruction of the goods shall be borne by Client, and any such loss, injury, or destruction shall not release Client from any obligation under this Agreement. In the event a shipment or any part thereof is received in damaged condition, the Client is responsible for filing a claim with the carrier.
- 11. SHORTAGES/NONCONFORMING GOODS:** Claims for shortages that are not attributable to a carrier, or for nonconforming goods, are to be reported in writing to MF's customer service department within 30 days after the receipt of shipment or the claim will not be allowed and Client will be deemed to have waived such claim.
- 12. DEFECTIVELY MANUFACTURED PRODUCTS:** MF warrants its products to be free of manufacturing defects. MF will not be liable for any other defects or damages, including but not limited to, product that is damaged in the Client's machine, by a carrier, or by the Client in any form or fashion. Any product alleged to have been defectively manufactured shall be returned to MF within a reasonable time after the discovery of the defect could or should have been reasonably discovered, whichever occurred first, and MF shall review and analyze the returned product to determine the actual defects and the cause thereof. MF shall not be responsible for any returns that have not been defectively manufactured, and Client shall be responsible for obtaining the return of such product from MF. In cases where the product has been defectively manufactured, MF will, at its sole discretion, either issue a credit for the product and the original freight charge, or remanufacture the product and ship it to Client, with freight prepaid, using the same shipping method as used with the original order. Although Client may offer its customers a guaranteed sales program, or an option to return product for any reason or at any time, such offers are the sole responsibility of the Client. Except for product that has been determined by MF to be defectively manufactured under the above provisions, in which case MF may elect either of its options set forth above, Client shall be solely responsible for all products returned under such offers or programs.
- 13. WARRANTIES OF MATERIALS:** Client warrants that it is the sole owner and/or has the right to possession and use of all materials delivered to MF by or on behalf of Client. Client further expressly warrants that materials delivered to MF do not in any way libel, slander, defame, violate or invade the right of privacy of any person. Client further warrants that his use of the material and his delivery thereof to MF do not infringe any copyright, patent, trademark or other proprietary right of any person, firm or corporation. Client also expressly warrants that the materials delivered to MF are not obscene, and do not violate state or federal laws. MF shall be under no obligation to inspect any materials delivered to it by Client, nor make any inquiries regarding the same, and MF shall be entitled to rely on all representations and warranties made by Client herein. Client will indemnify, protect, save and hold harmless MF and its successors, assigns, principals and agents, by the use of legal counsel chosen by MF at their sole option, from and against any and all losses, damages, injuries, claims, demands, expenses and any other liability (including attorneys' fees and court costs of any nature) arising out of Customer's breach of any of the representations and warranties made pursuant to this General Terms and Conditions, including without limitation any copyright, patent or trademark infringement, or infringement on any intellectual property, by client or MF or their agents.
- 14. RETURN OF MATERIALS:** Subject to the limitations set forth in Paragraph 9 above, MF at its option may, or on written demand of Client shall, when all outstanding obligations of Client to MF have been satisfied, return any of Client's materials retained by MF to Client at Client's expense. MF shall have no obligation to return to Client any materials still in MF's possession six months after the date of completion of Client's order.
- 15. WARRANTY OF MERCHANTABILITY/EXCLUSION OF OTHER WARRANTIES:** MF warrants that the goods manufactured for Client shall be merchantable within the meaning of the Uniform Commercial Code as adopted in the State of Utah. There are no other warranties, express or implied, including fitness for a particular use, except as specifically set forth herein.
- 16. QUOTATIONS:** All written quotations provided by MF are subject to change by MF without notice to Client. Verbal quotations are provided as a convenience and are not binding on MF.
- 17. CLERICAL ERRORS:** Client and MF agree that clerical errors may be corrected at any point after they are discovered.
- 18. TAXES:** Client agrees to pay all applicable sales and use taxes on any products or services sold to Client by MF.
- 19. ASSIGNMENT:** MF, at its own election, may assign its rights under the terms and conditions of this Agreement to any party without notification of Client. MF reserves the right to subcontract all or any part of the work ordered by the Client.
- 20. NOTICES/NOTIFICATION:** Any notices to Client by MF shall be deemed to have been duly given when deposited in the United States mail, postage prepaid, to Client at the address for Client shown in MF records.
- 21. SEVERABILITY:** If any clause of this Agreement is held unenforceable, invalid, or illegal by any court of competent jurisdiction, the clause in question shall be modified to eliminate the unenforceable, invalid, or illegal element and as so modified the clause shall be binding on the parties. If the clause cannot be so modified, it shall be deleted from this Agreement. The modification or deletion of any unenforceable, invalid, or illegal clause shall not affect the remaining provisions of the agreement as long as the essential provisions of this agreement for each party remain valid, binding and enforceable.
- 22. CREDIT APPROVAL:** This agreement is not binding on MF until accepted by MF. Client and Guarantor do hereby waive notice of acceptance of this Agreement.
- 23. AUTHORIZATION:** Client and Guarantor do hereby grant MF authorization to obtain and/or review any consumer or commercial credit agency records, and to contact any credit references contained herein for establishing and maintaining credit with MF. MF will hold all such information confidential. Client and Guarantor agree to provide such additional financial data and/or documents that MF may feel are necessary.
- 24. DEFAULT:** On default by Client, MF shall have the option of (a) refusing to perform further under this and any other existing agreement between the parties that MF may elect, and MF may rescind any agreements between the parties and hold Client liable for all damages and losses occasioned thereby; or (b) reselling, at public or private sale, undelivered goods covered by this and any other existing agreement between the parties that MF may elect. MF shall not be liable to Client for the difference between (1) the prices of the goods, plus all expenses and charges of the account of Client specified in this and any other existing agreement between the parties and all expense of storage and resale, and (2) the actual price of the goods sold under any such public or private sale by MF.
- 25. ATTORNEY FEES AND EXPENSES:** In the event of default the Client and Guarantor agree to pay any and all costs incurred by MF arising from the breach, including attorney fees and legal costs.
- 26. COMPLETE AGREEMENT/MODIFICATION:** This Agreement is the entire agreement between the parties and all negotiations, discussions, representations, and other communications between the parties are merged herein. No modification may be made hereto except in a writing identifying itself as a modification hereof and signed by the parties hereto; provided, however that MF may modify this Agreement with only the consent of the Client and without consent of or notice to the Guarantor(s). Each Guarantor waives notice of acceptance hereof, and notice of orders, sales and deliveries to Client, and of the amounts and terms thereof, and of all defaults or disputes with Client, and of the settlement or adjustment of such defaults or disputes. Each Guarantor, without affecting his liability hereunder in any respect, consents to and waives notice of all changes of terms, the withdrawal or extension of credit or time to pay, the release of the whole or any part of the amounts due hereunder, the settlement or compromise of differences, the acceptance or release of security, the acceptance of notes, trade acceptances, or any other form of obligation for Client's indebtedness to MF, and the demand, protest, and notice of protest of such instruments or their indorsements.
- 27. RETURNED CHECKS:** For any returned check despite reason for return, Client agrees to pay a returned check charge of \$30.00.
- 28. REVOCATION:** This Agreement shall continue in full force and effect until revoked in writing as hereinafter set forth, and shall cover all indebtedness incurred pursuant to this Agreement. Client specifically understands that the account of the Client may, from time to time, be paid in full, and a new indebtedness subsequently created, and Client specifically agrees that this Agreement shall cover all such indebtedness. This Agreement shall be in effect until ten (10) days after the receipt by MF of a written notice, signed by an authorized officer of the Client, revoking this Agreement and such revocation shall apply only to indebtedness arising from purchase orders received by MF after such 10-day period and shall not terminate the obligations of each party under this Agreement with respect to purchase orders received by MF prior to the expiration of such 10-day period.
- 29. FORCE MAJEURE:** MF shall not be liable for any delay in delivery of, or failure to deliver, any or all of the products or services ordered by Client where the delay or failure is caused by labor troubles, strikes, lockouts, war, riots, terrorism, insurrection, civil commotion, failure of supplies from ordinary sources, fire, flood, storm, accident, any act of God, or any other cause beyond the control of MF. Client shall not be liable for failure to take delivery of the goods purchased under this Agreement where any of the above causes prevent carrier of Client from accepting delivery on behalf of Client. But, in any case, the party claiming the benefit of this provision shall use due diligence to remove any such causes and to resume performance under this Agreement as soon as is feasible. Performance by the other party shall be suspended and excused during any such delay or failure.
- 30. JURISDICTION:** The laws of the State of Utah shall govern this Agreement. The federal and state courts of the State of Utah shall have exclusive jurisdiction of all disputes arising from this Agreement.
- 31. CONTENT POLICY:** MF will not intentionally process orders for Customers that contain excessively vulgar language, anti-religious or satanic themes, explicit sex, explicit nudity, explicit violence, promote the use of drugs or alcohol or that contain any material that may be construed, either in or out of context, as pornographic (hereinafter "Offensive Content"). Upon discovery of nonconforming media, Mediafast reserves the right to terminate any replication thereof, and the Customer will be liable to pay for all work performed by MF up to the date of termination. The submission of any master, artwork or title to MF by any Customer is a representation and warranty by that Customer that the master, artwork or title so submitted does not contain any Offensive Content.