

Duplication Order - Terms and Conditions

TOP HAT GUARANTEE

TOP HAT guarantees that quality materials and workmanship will be used in the production of all video copies.

DEFINITIONS

TOP HAT shall mean Top Hat Productions LLC, a limited liability company.

CUSTOMER, with reference to the definitions and terms below, shall mean a person signing this form on their own behalf in the section titled "AUTHORIZED PERSON", or the company, organization, or other party named in the section titled "CUSTOMER INFORMATION" that purchases SERVICES and COPIES from TOP HAT.

DUPLICATION shall mean any copying and/or reproduction of **RECORDED MATERIALS** at CUSTOMER'S request – by or upon order of TOP HAT - either in whole or in part(s), onto any media and/or network, that results in the creation of either single or multiple copies and/or reproductions of **RECORDED MATERIALS (COPIES)**.

ARTWORK shall mean any one, combination, or all of the following that is submitted by CUSTOMER to TOP HAT, either in printed, hand-drawn, or digital form, and that may subsequently be edited and/or modified by TOP HAT for benefit of CUSTOMER: designs, text, layouts, logos, illustrations, photographs, and the like.

PACKAGING shall mean boxes, cases, sleeves, and other containers that TOP HAT prints upon or has printed with ARTWORK for CUSTOMER.

LABELING shall mean reproductions of ARTWORK that are printed directly upon COPIES and/or upon labels.

INSERTS shall mean paper or other material that TOP HAT prints or has printed with ARTWORK and that is intended for insertion into PACKAGING.

DISTRIBUTION shall mean providing any party or parties with COPIES, by any and all processes, means, networks, and channels - and whether or not for profit.

SERVICES shall mean DUPLICATION, PACKAGING, LABELING, INSERTS, and DISTRIBUTION.

AUTHORIZED PERSON'S REPRESENTATIONS AND WARRANTIES

The person signing this "Duplication Order -Terms and Conditions" form (**AGREEMENT**) represents and warrants to have full authority to enter into **AGREEMENT** on behalf CUSTOMER.

CUSTOMER HAS PERMISSION TO MAKE COPIES

CUSTOMER represents and warrants all of the following:

- 1) That DUPLICATION, ARTWORK, LABELING, INSERTS, and DISTRIBUTION – whether taken collectively, individually, or in combination thereof - do not violate or infringe upon any: United States or foreign copyrights, patents, trademarks, service marks or trade names - whether or not registered; intellectual property rights; rights to proprietary information, processes, and trade secrets; property rights; depiction rights and appearance rights; personal rights, rights of privacy and/or any other rights of any individual, party, or entity (all such rights being referred to hereinafter, either individually, collectively, or in any combination thereof as **RIGHTS**);
- 2) With regards to **RECORDED MATERIALS (MATERIALS)** and ARTWORK, CUSTOMER is in possession of all necessary permissions, licenses and legally enforceable rights, such that any and all work that CUSTOMER requests TOP HAT to perform - and that TOP HAT might customarily perform in the normal course of completing such work - including, but not necessarily limited to SERVICES - will not violate or infringe upon RIGHTS;
- 3) Pursuant to the laws of the United States and other governing jurisdictions – and for purposes governed by **AGREEMENT** - any and all royalties and other charges due in relation to CUSTOMER'S instructions for TOP HAT'S use of MATERIALS and ARTWORK, have been paid to the appropriate parties;
- 4) MATERIALS and ARTWORK do not contain any matter that is libelous, defamatory, obscene, or pornographic; or that is prohibited by law;
- 5) No persons or parties have any pending claims against CUSTOMER with respect to violation of RIGHTS.

CUSTOMER ACCEPTS RESPONSIBILITY FOR ANY INFRINGEMENT OF RIGHTS

As material consideration hereunder, CUSTOMER agrees to indemnify, protect, defend and hold harmless TOP HAT and its officers, members, managing members, employees, interns, subcontractors, and affiliates (all of the foregoing being hereinafter referred to as **INDEMNIFIED**) against: any and all liabilities, losses, claims, damages (whether direct, collateral, consequential, or punitive), lawsuits, causes of action, administrative proceedings (including, but not limited to, interest from the date of such damages), and costs and expenses (including, without limitation, all reasonable attorneys' fees and disbursements) as may be suffered, incurred, sustained, or paid by **INDEMNIFIED** in connection with, resulting from, or arising directly or indirectly out of: (a) any claim, demand, proceeding, or lawsuit by a third party, based on any assertion that SERVICES, COPIES, and/or DISTRIBUTION thereof violates, infringes upon or breaches RIGHTS; and/or (b) any breach by CUSTOMER of any representation or warranty set forth in: **AGREEMENT**, CUSTOMER'S purchase order, or in any other form or document in which CUSTOMER provides to TOP HAT specifications for SERVICES or agreement thereon.

TOP HAT MAY REFUSE SERVICES

TOP HAT shall not be under any obligation to provide CUSTOMER with SERVICES and/or COPIES. In the event that TOP HAT decides it is in its own best interest to refuse to provide CUSTOMER with SERVICES and/or COPIES, then TOP HAT'S only obligation shall be to return MATERIALS to CUSTOMER and refund CUSTOMER'S payment, if any. TOP HAT shall not be responsible for any direct, indirect, or consequential damages and losses incurred or sustained by CUSTOMER or by any third party as a result of such decision.

TOP HAT'S LIABILITY IS LIMITED

In accordance with general practices in both the film and video industry, and with regards to MATERIALS and other items that may be provided by CUSTOMER (**OTHER MATERIALS**), the responsibility and liability of TOP HAT and **INDEMNIFIED**, financial and otherwise, for loss or damage of any kind from any cause whatsoever, shall be limited solely to the value of raw stock and/or raw material. In these regards, CUSTOMER agrees to assume and accept all other liability. CUSTOMER acknowledges being herein advised to insure MATERIALS and OTHER MATERIALS for all risks, at their assessed or replacement cost value, prior to their delivery to TOP HAT.

CUSTOMER IS RESPONSIBLE FOR QUALITY OF SUBMITTED MATERIALS AND ARTWORK

CUSTOMER acknowledges that the quality of submitted MATERIALS and ARTWORK will have a direct and substantial affect upon the quality of the work produced for CUSTOMER. Therefore, CUSTOMER shall not hold TOP HAT accountable for poor quality COPIES, PACKAGING, LABELING, and INSERTS (**WORK**) derived from poor quality MATERIALS and/or ARTWORK. TOP HAT shall have no responsibility whatsoever to inspect or review CUSTOMER'S MATERIALS and ARTWORK. WORK shall not be deemed unsatisfactory due to defects inherited from CUSTOMER'S MATERIALS and/or ARTWORK.

STANDARD PROCEDURES

- 1) TOP HAT will not duplicate color bars, reference tone, or countdown appearing at the beginning of MATERIALS or add any black leader or black trailer to COPIES unless, prior to start of DUPLICATION, CUSTOMER has specifically instructed TOP HAT to do so.
- 2) TOP HAT typically removes record-enabling tabs and engages record-prevention mechanisms on MATERIALS prior to DUPLICATION and on COPIES; however, enabling of such safety precautions shall be CUSTOMER'S sole responsibility.
- 3) COPIES, in DVD format, that have been created by TOP HAT from MATERIALS other than CUSTOMER'S DVD master and/or DVD original will be authored to autoplay and will have chapter break intervals set according to TOP HAT'S discretion. Additional services such as creation of a menu screen or custom chapter breaks are available at additional charge.
- 4) If TOP HAT submits to CUSTOMER a proof of text, artwork, and/or layout for any duplication-related printing, then printing will not commence until CUSTOMER approves proof. Any delay in completion of work, due to

CUSTOMER'S delay in approving proof, shall be CUSTOMER'S sole responsibility. 5) CUSTOMER grants permission and sole discretion to TOP HAT to ship and/or transport (**SHIP**) CUSTOMER'S MATERIALS, COPIES and CUSTOMER'S OTHER MATERIALS between any and all such locations as may be required in order for TOP HAT to complete CUSTOMER'S order and deliver finished work. 6) An over or under quantity that varies by no more than 5% from CUSTOMER'S ordered quantity shall be acceptable to CUSTOMER and orders varying in quantity by such amount shall be considered complete; the amount due from CUSTOMER being adjusted accordingly by TOP HAT.

STANDARD CHARGES

Published duplication prices are based upon A) CUSTOMER submitting an order that is complete and ready for duplication; meaning, that when order is received, it includes all of the following: 1) this duplication form, completed and signed; 2) form authorizing TOP HAT to charge a credit card for SERVICES and COPIES; 3) a tape, optical disc, and/or other media accepted by TOP HAT that is ready for duplication, conversion, encoding, or authoring – as the case may be; and B) CUSTOMER submitting, on TOP HAT'S templates, and in accordance with TOP HAT'S specifications, printer-ready artwork for any and all labels and inserts ordered by CUSTOMER. If CUSTOMER does not comply with the foregoing requirements, CUSTOMER will be subject to an order processing charge. Additional charges may apply for design work, artwork, and proofs that are required to complete order.

SHIPPING

MATERIALS, COPIES and OTHER MATERIALS SHIPPED by TOP HAT shall be transported at CUSTOMER'S expense and at CUSTOMER'S sole risk. Unless instructed otherwise, in writing, by CUSTOMER, TOP HAT shall have sole discretion to select the mode of transport and to decide whether to bundle MATERIALS and OTHER MATERIALS with COPIES or to SHIP such materials separately.

Miscellaneous

- a) Headings, in bold type, preceding paragraphs are descriptive only and for convenience in referring to AGREEMENT.
- b) CUSTOMER has read and understands the specifications, terms and conditions of AGREEMENT.
- c) The provisions of AGREEMENT shall apply to and bind successors and assigns.
- d) CUSTOMER agrees that any and all charges pertaining to and/or arising from CUSTOMER'S obligations under AGREEMENT may be charged by TOP HAT to CUSTOMER'S credit card without prior notice and without CUSTOMER'S further authorization.
- e) TOP HAT shall have a lien on CUSTOMER'S MATERIALS and OTHER MATERIALS in TOP HAT'S possession until TOP HAT is paid in full.
- f) This AGREEMENT shall be construed, interpreted and enforced in accordance with the laws of the Commonwealth of Pennsylvania, and any dispute arising thereof shall be resolved in a court of law in Pennsylvania. In event of any conflict between any provisions hereof and any applicable laws to the contrary, the latter shall prevail, and AGREEMENT shall thereupon be deemed modified, but only to the extent necessary to remove such conflicts.
- g) This Agreement constitutes the entire agreement between CUSTOMER and TOP HAT (collectively, the **PARTIES**) and supersedes all oral and written agreements and understandings made or entered into by PARTIES prior to the date noted below. No amendment, change or modification of AGREEMENT shall be valid unless it is made in writing and signed by PARTIES.

CUSTOMER INFORMATION *(this section must be completed)*

> Customer's Name _____

AUTHORIZED PERSON *(this section must be completed)*

I have read, understand, and agree to the above terms and conditions.

**Include this form with your order
or fax to 800.505.1329**

_____ sign

_____ date

_____ print name

_____ title (if applicable)

Phone 1.877.786.7428

> Street Address _____

> City, State, Zip _____ Phone # _____