

FUNKTASY



1. Acceptance

By using the Services of Funktasy Mastering whose address is Suite 44006, 541 Montreal Rd. Ottawa ON K1K 4P8 (hereinafter referred to as “Funktasy”), you (hereinafter, the “Client”) agree, without limitation or qualification, to be bound by and to comply with these Terms and Conditions.

2. Legal Disclaimer

Funktasy, its employees and contractors, act as the pre-mastering engineers of the Client’s recorded product only. Funktasy does not assume any liability for talent payroll, talent royalties, publisher's royalties, or for any infringement of any rights by the Client, nor does it assume any responsibility for other costs in the recording of the program. Funktasy further assumes that any information, likeness or performance being reproduced has been fully cleared by the Client. Funktasy shall master the Client’s submitted material at the Client’s direction, in the full assumption that the Client is entitled to do so. Funktasy therefore assumes no liability by following any or all of the Client’s directions. The Client hereby agrees to hold Funktasy free from any liability and will hold Funktasy, its officers, directors, and employees harmless from any suit or damages, in tort, contract, or otherwise, for unauthorized use, copyright infringement or any other responsibility of any sort or manner.

3. Limitation of Liability

Funktasy shall not be liable under any circumstances for any incidental or consequential loss or damages, including but not limited to loss of profits, and the Client expressly waives any and all claims for any such loss or damages. Under no circumstances shall Funktasy’s liability exceed, nor shall Client’s available remedies extend beyond return of the full fees or charges paid for any services provided by Funktasy.

4. Approvals

The Client will be provided with one approval master of his/her material before the final master is created. Approval or suggested changes to each approval master must be received by Funktasy within

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seven days following the delivery of each approval master. A project is considered fully approved and will therefore be finalized and delivered to the Client once the Client explicitly informs Funktasy via email, telephone or any other form of communication or when no approval or suggested changes are received to said approval master within seven days after the delivery of each approval master.

5. Revisions

All revisions needed prior to the Client's final approval of the approval master will be done free of charge. Revisions that the Client requests after he/she has already approved the final master will be charged at the normal rates. Should the Client decide to replace one or more of his/her songs with a new mix after the mastering has already been started, may be subjected to additional charges, which will be determined on a case-by-case basis.

6. Archiving

Funktasy will keep an Archive of Client's mastered project(s) for a length of 60 days from the day of Approval of each mastered track by the Client. After 60 days Funktasy will not retain any copies of the Clients' project. If the Client requires Funktasy to keep an Archive of his/her mastered project, Funktasy will do so for an additional one-time fee which will be based on the size of the Client's project and length of time to be Archived. Funktasy will only Archive material they have worked on. While Funktasy may be able to retrieve the project at any given time, Funktasy will not be held responsible for any partial or complete loss of the Client's project.

7. Payment

Payment in full is required before Funktasy begins any work on Client's material.

8. Terms of Payment

If the Client defaults in payment of any invoice on its due date, or in the event of any proceeding in bankruptcy or insolvency by or against the Client, Funktasy, in addition to any additional rights it has or that it may exercise, shall have the right: (a) to suspend or discontinue work until it has received payment

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in full for work performed; (b) to require cash in advance to cover further work; (c) to collect late charges of 7% per month from the due date; and/or (d) to recover all costs of collection, including attorney's fees. In the event credit or financial ability of the Client becomes impaired or unsatisfactory in the sole reasonable judgment of Funktasy, Funktasy shall have the right at any time thereafter to change the credit terms with respect to any further work for the Client.

9. Refund Policy

Funktasy does not provide any refunds subsequent to work commencing on mastering projects. Projects which are scheduled, but have not been formally commenced, and for which payment has been received, will be refunded in full upon a Client's request, minus a 25% preparation and scheduling fee. Once work has commenced on mastering projects, the revision policy set out in part 5 of this disclaimer applies; although refunds are not available once work has commenced, Funktasy will continue to make changes to mastered track(s) upon request, until final approval is received.

10. General

This writing, including attachments hereto, is intended by Funktasy and by the Client as the final expression of this agreement and is intended also as a complete and exclusive statement of the terms and conditions of this agreement. If any term or condition of this Agreement is held invalid, the remaining terms and conditions shall continue in full force and effect.

11. Jurisdictional Issues

This Agreement shall be deemed to have been made in Ontario, Canada and its validity, construction and effect shall be governed and interpreted by the laws of Ontario applicable to agreements wholly performed therein. Exclusive jurisdiction and venue for any disputes arising under these Terms and Conditions shall be submitted to the appropriate court in the City of Toronto, Ontario. The client hereby consents and submits to the jurisdiction of such courts for the purposes of litigating any such action. Nothing contained herein shall be construed as: (a) placing the Parties hereto in the relationship of joint ventures or partners; or (b) creating a fiduciary relationship between the Parties hereto.