

AUDIO MANUFACTURE LICENCE APPLICATION

AUDIO FORMATS FOR NEW ZEALAND MANUFACTURE ONLY



Licence enquires sarah.douglas@apra.co.nz www.apraamcos.co.nz

PLEASE TYPE OR USE BLOCK LETTERS (Please tick ✓ boxes where required). POST COMPLETED FORM TO : APRA AMCOS, PO Box 6315, Victoria Street West, Auckland 1142

Name of Applicant _____ "You"

Business Type

Company Educational

Association Sole Trader/Individual

Trading Name _____ (please enter "n/a" if not applicable)

Postal Address _____

Website Address _____

Contact Person _____ **Position** _____

Phone () _____ **Fax** () _____ **Mobile** _____

Email Address _____

APPLICATION

You hereby apply for a licence to reproduce the AMCOS Works on the Recordings and to reproduce Records in the quantities and for the Purpose set out in the Application. By signing this Application You authorise the Manufacturer to release manufacturing details about the Recording to AMCOS at AMCOS' request. You acknowledge that a licence will only be granted when AMCOS has forwarded a Prescribed Notice and the corresponding tax invoice for AMCOS Royalties and the Processing Fee have been paid in full by You.

Signed for and on behalf of You

SIGNATURE (TYPE THE WORDS "SIGNED BY ME" FOLLOWED BY YOUR FULL NAME IN THE BOX ABOVE)

DATE

NAME OF PERSON SIGNING (BLOCK LETTERS)

POSITION (BLOCK LETTERS)

1. INFORMATION ABOUT THE RECORDING

Title of Recording _____

Catalogue Number _____ **Recording Artist** _____
(if applicable)

Compilation Yes No (Artist information is required for each track - please refer to track details on page 3-5)

Formats CD Cassette Vinyl Other (please specify) _____
Please tick box as required for each of the above formats

Number of tracks _____

Intended Release Date (if known) _____

OFFICE USE ONLY:

CMS CLIENT NAME &
NUMBER

CMS PROD NAME & FORMAT

CMS PROD NO & CAT NO

DATE ENTERED

	PN DUE		SB NO

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Breakdown of Total Manufactured Quantity:

A The minimum number of copies that will be licensed under this application is 20.

B If price varies, please specify the highest selling price.

C Promotional or giveaway unit royalties are calculated on a deemed price of \$10.00 per unit.

Retail Sale quantity:

(Includes non-retail sale, shop sales and physical sales online, excludes Sale At Performance Quantity - see below)

Retail Selling Price:

(excluding GST)

Sale At Performance Quantity:

Performance Selling Price:

(excluding GST)

Not for Sale Units:

(includes Promotional, Give Away and Demo)

Yes No

Is this recording dubbed from other commercially released recordings? (including dubbed backing tracks)

If you ticked YES, you may also need a licence from the copyright owner of the sound recording(s) - usually a record company. For more information, please contact Recorded Music NZ on 0800 88 77 69.

Yes No

Does this application vary or extend a previously submitted application?

Please specify below the changed details (e.g. additional production run, change to track listing, change in manufacturing facility or change to original purpose).

Existing AMCOS Production No (refer to original Prescribed Notice):

Details

(e.g. Additional production run)

2. INFORMATION ABOUT THE MANUFACTURER AND THE DISTRIBUTOR

Name of Manufacturer

Enter SELF if you are burning the CDs yourself.

Postal Address

Contact Person

Position

Phone

()

Email

Name of Distributor

Enter SELF if you are also the Distributor.

Postal Address

Contact Person

Position

Phone

()

Email

3. INFORMATION ABOUT YOU AND THE WORKS ON THE RECORDING

Yes No

Are you or any of your band members a member of AMCOS, and if so do you wish to obtain a licence back for any work you have written that is on the Recording? Please note that the royalty on works subject to a licence back will not be included in the AMCOS Royalty and must be paid direct to the copyright owner.

Yes No

Are any of the tracks contained on your Recording covers of other composers' works?

Yes No

Are any of the originally composed works contained on your Recording subject to a current publishing agreement(s)? You may need to check with any co-writers to confirm their publishing status or the publishing status of the originally composed works.

4. WORKS ON THE RECORDING (PLEASE ENTER ALL TEXT CLEARLY IN BLOCK CAPITALS)

- A You must list ALL musical works on this recording – even those you have written yourself and those you may think are out of copyright. Under section 55(1)(a) of the Copyright Act, you may only record another person’s musical works where they have been previously released on recordings in a country listed in Schedule 8 to the Copyright Regulations with the licence of the copyright owner. Where you intend to record and release a musical work that has not been previously released on record, you must have the copyright owner’s permission.
- B Any licence granted by AMCOS is only in respect of AMCOS Works, you are still required to obtain the permission of the copyright owner(s) of any other copyright musical works on the recording.
- C The COMPOSER is the person (or persons) who actually wrote the song (or musical work). It may not necessarily be the artist who originally performed it. If you only supply the name of the artist or band that originally performed the song, this can delay the processing of your application as AMCOS must cross-reference the song with the correct composer. Composer details are frequently available on the label or insert of an existing recording of the song.
- D An ARRANGER is a person who has adapted the song in an original way. For songs still in copyright that you have arranged, please only indicate the same of the original composer. For musical works that in the Public Domain or Traditional (i.e. out of copyright), the arranger may be the copyright owner of the arrangement. In these cases you should indicate the arranger’s name in a similar fashion to the following examples “BOTANY BAY” (Trad. Arr Peter Smith) or “Bolero” (Ravel, Arr Peter Smith).

TITLE OF COMPOSITIONS	COMPOSER(S) OR ARRANGER(S)	COPYRIGHT OWNER i.e. PUBLISHER (if known)	PREVIOUSLY PERFORMED OR RECORDED BY
1.			
2.			
3.			
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5. TERMS (AFTER READING THE TERMS, YOU MAY PROCEED TO SECTION 6 AND 7 TO ESTIMATE THE LICENCE FEE.)

BACKGROUND

- A. AMCOS controls in New Zealand the right to reproduce a large number of musical works.
- B. You wish to reproduce certain musical works into audio recordings, and to manufacture recordings, for the Purpose and require a licence from AMCOS to do so.
- C. AMCOS agrees to identify the works that it controls, and to grant a licence to reproduce those works, on the terms contained in this agreement.

AGREEMENTS

1. Definitions

Agreed Rate means the rate of interest at the overdraft rate for commercial overdrafts of \$100,000 or more charged by Westpac plus 2 percentage points, calculated on daily rates from the due date of payment.

AMCOS Royalty means the royalty payable to AMCOS calculated in accordance with clause 6 and is inclusive of GST, and does not include any royalty payable for Works that are not AMCOS Works;

AMCOS Works means those of the Works in respect of which AMCOS is entitled to grant the licence in clause 3;

Application means the application by You for a licence from AMCOS;

Processing Fee means the fee calculated in accordance with the Schedule and is inclusive of GST;

Purpose means the purpose for which the Recording is made, as set out in the Application;

Recording means the audio recording identified in the Application, to the extent that it contains AMCOS Works, and **Record** means copies of the Recording;

Royalty means the royalty calculated in accordance with clause 6 and is inclusive of GST; and

Works means the works listed in the Schedule, and a reference to a Work includes a reference to a share in any such Work.

2. Processing

- 2.1 On receipt of this Application, AMCOS must:
 - (a) identify the AMCOS Works and calculate the Royalties and Processing Fee;
 - (b) notify You in writing of:
 - (i) the AMCOS Works; and
 - (ii) the name of the AMCOS member that controls the mechanical right in the AMCOS Works for New Zealand and their ownership share of those AMCOS Works (**Prescribed Notice**);
 - (c) issue a tax invoice for the Royalties and Processing Fee; or
 - (d) notify You that AMCOS cannot license the Reproduction of any of the Works for the Purpose and issue a tax invoice for the Processing Fee.

3. Licence

- 3.1 Subject to the terms of this agreement including clause 4, by sending the Prescribed Notice to You in accordance with clause 2.1(b), AMCOS grants You a non-exclusive licence to:
 - (a) reproduce the AMCOS Works into the Recording; and
 - (b) manufacture the number of Records set out in the Application, for the Purpose.

- 3.2 No licence is granted in respect of Works that are not AMCOS Works.
- 3.3 If:
 - (a) AMCOS acquires the right to reproduce for the Purpose any Work that is not an AMCOS Work at the time of application, and the right to collect Royalties in respect of unlicensed reproductions of such Works; and
 - (b) the reproduction of such Works was unlicensed but otherwise in accordance with the Application,

AMCOS may issue an amended Prescribed Notice for the Recording and a tax invoice for the additional AMCOS Royalty calculated in accordance with this agreement and You must pay any tax invoice for the Royalties in respect of the reproduction of those Works, within 14 days after the date of the invoice.

- 3.4 On payment of any invoice referred to in clause 3.3, the reproduction of the Works and manufacture of Records in accordance with the Application will be deemed to have been licensed on these terms.

4. Restriction on grant

The licence granted under clause 3 is subject to You:

- (a) paying Royalties and the Processing Fee in accordance with this agreement;
- (b) distributing and selling Records strictly in accordance with the Purpose;

5. Your obligations

- 5.1 You must not under this Application:
 - (a) rent the Recording or any Records;
 - (b) sell, give away or use as an incentive, the Recording or any Records to promote any product or service other than the Recording itself; or

- (c) without prior written consent of the copyright owner in New Zealand:
 - (i) reproduce any lyrics or music in graphic (printed) form;
 - (ii) change any lyrics; or
 - (iii) change or make an adaptation or a parody (including the making of a dance remix or otherwise changing the structure), of an AMCOS Work.

- 5.2 On submitting the Application, You must provide AMCOS with the information requested in the Schedule, including:

- (a) full details of all works and recordings including the title of such works, names of composers, arrangers, artists if the recording is a compilation and any other information required by AMCOS;
- (b) the name, address, telephone number, facsimile number and email address of each manufacturing or distributing facility that is to manufacture or distribute Recordings made under this agreement;
- (c) a copy of any manufacturing facility's invoice or any other documentation from the facility that specifies the quantity of recordings manufactured by it, by the earlier of:
 - (i) 10 days after the manufacture of the records; or
 - (ii) the date of first distribution of the records
- (d) if requested by AMCOS, a copy of the Recording free of charge.

- 5.3 If You fail to provide AMCOS with sufficient information for AMCOS to determine whether a Work is an AMCOS Work, You must pay AMCOS' reasonable costs in relation to any further research conducted by AMCOS to ascertain full details of the Work.

- 5.4 You must ensure that:

- (a) the title;
- (b) the names of the composers, lyricists and arrangers (if any); and
- (c) the names of the copyright owners, of each AMCOS Work included in the Recording appear on the packaging of every Record that is manufactured.

- 5.5 You must ensure that the label surface or liner notes of every Record made under this agreement bears a prominent notice in the following terms:

Unauthorised copying, hiring, lending, public performance or communication to the public prohibited.

6. Fee and royalties

- 6.1 AMCOS must calculate the Processing Fee in accordance with the Schedule.
- 6.2 AMCOS must calculate the AMCOS Royalty as the greater of the amount calculated in accordance with the following formulae:
 - (a) retail selling price (**RSP**) of the Recording, subject to clause 6.7, exclusive of GST;
 - divided by the number of Works on the Recording;
 - multiplied by the royalty rate of 5.6%;
 - If the calculation of the per track royalty above, when taken to the third decimal place of a cent still leaves part of the royalty remaining then the third decimal figure will be increased by one.
 - multiplied by the total number of AMCOS Works on the Recording and then rounding that figure up to the next half cent;
 - multiplied by the number of Records manufactured; and
 - apply GST at 15% as appropriate; or
 - (b) 5.0 cents for each AMCOS Work on the Recording and then rounding that figure up to the next half cent;
 - multiplied by the number of Records manufactured; and
 - apply GST at 15% as appropriate.

- 6.3 You must pay any amount owing under a tax invoice issued under this agreement, within 14 days after the date of the tax invoice.

- 6.4 If You manufacture Recordings and Records that are not for retail sale, the **RSP** of the Record under this clause 6 will be deemed to be the maximum price [excluding GST] at which a comparable recording of the same format is ordinarily sold to the public, or such other lower RSP as AMCOS may determine.

- 6.5 For the purpose of determining the AMCOS Royalty, the Total Manufactured Quantity is the actual manufactured quantity and must not be reduced by the number of Records used for promotional purposes or that remain unsold.

- 6.6 If in any calculation of the Royalty in respect of a particular Work, when taken to third decimal place of a cent, there is still part of the Royalty remaining, then the third decimal place shall be increased by one.

- 6.7 If AMCOS reasonably believes that the RSP is not indicative of the market value of the Recording, or that it is otherwise reasonable to do so, AMCOS may determine a notional RSP for the purpose of calculating the AMCOS Royalty under this clause 6.

7. Interest

You must pay to AMCOS interest at the Agreed Rate on each amount outstanding under this agreement.

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8. Credit and refunds

If You do not manufacture a Recording in accordance with this application and inform AMCOS in writing before the distribution by AMCOS of all or part of the AMCOS Royalty, AMCOS will elect to either:

- (a) issue a credit note to You against future manufacture of recordings to the value of the AMCOS Royalty; or
- (b) refund the AMCOS Royalty to You.

9. Records and inspection

- 9.1 You must keep accurate books of account and other records in sufficient detail to ensure that any amount payable to AMCOS under this application can be properly ascertained.
- 9.2 AMCOS may at any time examine Your accounting and other records to:
 - (a) verify the correctness of any report, record or payment under this application; or
 - (b) in the case of a failure by You to provide records in accordance with clause 9.1 obtain information required to be provided under that clause.
- 9.3 You must pay the costs of the examination referred to above if the examination:
 - (a) establishes that the amount payable under this agreement was understated by more than 5%; or
 - (b) is undertaken because of a failure by You to provide records in accordance with this agreement.

10. Termination

- 10.1 If You:
 - (a) fail to pay any AMCOS Royalty due under this agreement in accordance with this agreement;
 - (b) distribute, sell or offer for sale records or copies of Records before AMCOS receives payment under this agreement;
 - (c) go into liquidation, have a receiver or receiver and manager appointed to You or any part of Your assets, enter into a scheme of arrangement with creditors or suffers any other form of external administration; or
 - (d) breach any provision of this agreement which is not capable of remedy, this agreement is automatically terminated.
- 10.2 AMCOS may by notice to You terminate this agreement if You fail, within 7 days after notice from AMCOS, to remedy any breach of Your obligations under this agreement.

11. Miscellaneous

- 11.1 You must pay any GST arising from the provision of services under this agreement.
- 11.2 AMCOS' only liability is as set out in this agreement. In no event will its liability to You be greater than any fee or Royalty paid to it under this agreement by You.
- 11.3 This agreement must be construed in accordance with the laws in force in the New Zealand and the parties agree to submit to the jurisdiction of New Zealand courts.

12. Privacy Notice

The information You are providing may be personal information under the Privacy Act. Information collected is only for the business purposes of APRA AMCOS and will not be disclosed to any third parties except in accordance with the privacy policy of APRA AMCOS.

6. PROCESSING FEE (FEE TO BE INCLUDED ON FIRST INVOICE – DO NOT PAY IN ADVANCE)

New Zealand Processing Fee \$15.00 + GST

7. ESTIMATED CALCULATION OF FEES PAYABLE

STEPS	EXAMPLE	YOUR RECORDING
A. What is the retail selling price you entered in section 1?	\$20.00	
B. How many tracks are there on the Recording?	14	
C. What is the total manufactured quantity you entered in section 1?	200	
D. Calculate retail selling price (A) % number of works in recording (B) x 5.6% = Royalty*	$(\$20.00/14) \times 5.6\% = \0.08	
E. Royalty* x number of AMCOS controlled tracks (B - C) x number being manufactured (D) = estimate of cost	$(0.08 \times 14) \times 200 = \224.00	
Estimated cost:	\$224.00 + GST	

*As per clause 6.2 of the licence, if the royalty rate is less than 0.05 then the rate is calculated on 5c per track unit