



PURCHASE ORDER

Ovation HAMER GUITARS USA



P.O. NUMBER

PAGE

P.O. DATE

ORDER TYPE

CHANGE/CANCEL

KMC Music, Inc.

37 Greenwoods Rd. • P.O. Box 205 • New Hartford, CT 06057-0205

TEL: (860) 379-7575 • FAX: (860) 379-8972

www.kmcmusic.com

ORDERED FROM:

SHIP TO:

BUYER	TERMS	ACKNOW	CONFIRM	FOB	SHIP VIA	PPD/COL

LINE NO.	QTY ORDERED BLANKET TYPE	UOM	OUR ITEM NUMBER / DESCRIPTION	YOUR ITEM NUMBER	UNIT PRICE	REQUESTED DATE
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COMMENTS

This purchase order is subject to all of the terms and conditions on the reverse side hereof.

ORDERED BY

TERMS AND CONDITIONS OF PURCHASE

1. **ACCEPTANCE.** (a) The order incorporating these Terms and Conditions of Purchase becomes a binding contract when it is accepted by Vendor. Either an acknowledgment by Vendor or the commencement of performance by Vendor shall constitute acceptance. Acceptance may be only on the exact terms herein set forth. No condition stated by Vendor in accepting this order shall be binding on Purchaser if different from or in addition to the conditions set forth herein, unless agreed to in writing by Purchaser.

(b) If this order follows an offer by Vendor setting forth Vendor's conditions of sale, Purchaser's acceptance of Vendor's offer is expressly conditioned on Vendor's assent to the addition of different conditions set forth herein. Prior to or in the absence of Vendor's assent to Purchaser's conditions, there shall be no agreement in effect between Vendor and Purchaser.

2. **SPECIFICATIONS.** Vendor shall comply with any specifications stated on the face of this order or incorporated herein, and with any applicable United States Government specifications. Upon request Vendor shall furnish Purchaser with a certificate executed by an authorized representative of Vendor confirming Vendor's compliance with all applicable specifications.

3. **PRICES.** Unless otherwise specified, the prices set forth in this order include all applicable federal, state and local taxes and all shipping costs, duties and other charges.

4. **ASSIGNMENT.** Neither this order nor its performance nor any interest herein nor any monies due or to become due Vendor hereunder may be assigned or otherwise transferred by Vendor without the prior written consent of Purchaser.

5. **SUBCONTRACTING.** Vendor may not enter into a subcontract for the procurement of end items covered by this order in completed or substantially completed form without the prior written consent of Purchaser.

6. **TIME OF THE ESSENCE.** Time is of the essence under this order. Failure of Vendor to make delivery of items or provide services within the time specified on the face hereof, or within any extension specified by written amendment hereto, shall be a breach hereof. If no time is specified herein, Purchaser may by reasonable advance notification to Vendor terminate this order in whole or in part if Vendor fails to make delivery of items or to provide services within a reasonable time after the date of this order.

7. **EXCUSABLE DELAYS.** Vendor shall not be charged with any liability for failure or delay in performance when such failure or delay is due to any cause beyond the control and without the fault or negligence of Vendor; provided that Vendor shall give to Purchaser prompt notice in writing when it appears that such cause will delay performance under this order. If any such failure or delay shall threaten to impair Purchaser's ability to meet delivery requirements for its products or to meet other contractual obligations, Purchaser shall have the right, at its option and without being under any liability to Vendor, to cancel by notice in writing to Vendor the portion or portions of this order so affected. Correspondingly, Purchaser shall be excused for failure or delay in its performance herein due to any cause beyond its control and without its fault or negligence.

8. **WARRANTIES.** Vendor warrants that all items delivered and services provided hereunder shall be free from defects in workmanship, material and manufacture; shall comply with the requirements of this order, including any drawings or specifications incorporated herein or samples furnished by Vendor; shall be non-surplus goods of new manufacture; and, if of Vendor's design, shall be free from defects in design. Vendor further warrants that all items purchased hereunder shall be of merchantable quality and shall be fit and suitable for the purposes intended, whether expressed or reasonably implied. The foregoing warranties shall survive any delivery, inspection, acceptance or payment by Purchaser, and shall run to Purchaser, its successors, assigns, customers and any third parties injured in person or property by reason of any breach thereof.

9. **INSPECTION.** (a) Purchaser shall have the right to inspect and test all work under this order at all reasonable times including during manufacture. Vendor shall furnish without additional charge all reasonable facilities and assistance for safe and convenient inspections or tests.

(b) Notwithstanding any prior examination, payment, or the passage of title, all items are subject to final inspection and acceptance at Purchaser's plant. If the time for final inspection is not specified on the face of this order, such final inspection shall be made within 180 days after receipt of the items at Purchaser's plant.

10. **DEFECTIVE OR NONCONFORMING ITEMS.** (a) If any items are found to be defective or otherwise not in conformity with the requirements of this order, Purchaser, in addition to its other rights and remedies, may reject all or some of such items and require either their correction or their replacement at Vendor's expense, including inspection, shipping and packing charges. Alternatively, Purchaser may at its option repair or replace all or some of such nonconforming items at Vendor's expense. Purchaser may charge back to Vendor's account the amount paid for rejected items pending redelivery of same or replacements thereof. Any items previously rejected shall not be resubmitted for Purchaser's acceptance without concurrent notice of the prior rejection.

(b) All risk of loss of or damage to the items to be delivered hereunder shall be upon Vendor until such items are delivered at the F.O.B. point specified in this order. In addition, Vendor shall bear all risk of loss of or damage to items rejected by Purchaser after notice of rejection to Vendor until such items or replacements thereof are redelivered, except for any loss or damage resulting from the negligence of officers, employees or agents of Purchaser, acting within the scope of their employment.

(c) No action taken by Purchaser under this section shall be deemed to extend any delivery dates specified on the face of this order.

11. **TERMINATION FOR DEFAULT.** Purchaser may terminate this order in whole or in part for default, without further cost or liability to it, if Vendor fails to comply with any of the order's provisions. In the event of termination pursuant to this provision, Purchaser may procure, upon such terms and in such manner as it may deem appropriate, items or services similar or substantially similar to those so terminated; and Vendor shall be liable to Purchaser for any excess cost, direct or indirect, resulting therefrom. Vendor shall continue performance to the extent not terminated. Without limiting the foregoing, Purchaser shall have the right to terminate this order or any part thereof in the event of the happening of any one of the following: the commencement by Vendor of a voluntary case in bankruptcy; the commencement against Vendor of an involuntary case in bankruptcy, if such case is not dismissed within thirty days from the date of filing; the appointment of a receiver or trustee for Vendor if such appointment is not vacated within thirty days from the date thereof; the execution by Vendor of an assignment for the benefit of creditors; Vendor's failure to perform or delay in performing hereunder which failure or delay is not otherwise excusable hereunder; and Vendor's failure to provide adequate assurance of due performance when Purchaser has reasonable grounds for insecurity with respect to such performance and following a written demand by Purchaser for such assurance.

12. **TERMINATION FOR CONVENIENCE.** (a) Purchaser may terminate this order in whole or in part whenever Purchaser determines for any reason that such termination is in its best interests. Termination hereunder shall be effected by delivery to Vendor of a notice of termination specifying the extent to which performance of work under this order is terminated and the date upon which such termination becomes effective.

(b) Vendor shall stop work under this order and terminate all order and subcontracts for materials, services or facilities in accordance with and as appropriate under the notice of termination. With respect to the termination by Vendor of such related orders and subcontract, Vendor shall settle outstanding liabilities and claims only with the approval of Purchaser, except to the extent that such approval is waived by Purchaser.

(c) Upon termination under this section, there shall be made an equitable adjustment reducing the purchase order price. Vendor shall submit to Purchaser promptly following receipt of the notice of termination an accounting of the work due under this order which was completed as of the effective date of termination and of all monies which Vendor believes are due to it as a result of the termination. Purchaser shall not be liable for any profit on completed work or for any termination costs incurred by Vendor which are not presented to Purchaser within six months of the date of termination, unless Purchaser agrees in writing to an extension of such six-month period.

(d) Vendor agrees to transfer title and deliver to Purchaser such information and items which, if the order had been completed, would have been required to be furnished to Purchaser, including completed or partially completed plans, drawings and information and materials or equipment produced, in process or acquired in connection with performance of the order.

(e) This section in no way limits Purchaser's right to terminate this order for default.

13. **CHANGES.** (a) Purchaser may at any time by written order to Vendor and without notice to sureties, if any, make changes within the general scope of this order in any one or more of the following: (1) quantity of items or services ordered; (2) drawings, designs or specifications; (3) delivery or performance schedules; (4) shipping and billing instructions; and (5) place of delivery.

(b) Vendor shall proceed promptly to make such changes in accordance with the terms of Purchaser's written change order. If any such change causes an increase or decrease in the cost of performance of this order, or in the time required for performance, an equitable adjustment shall be made in the purchase order price or the performance schedule or both and this order shall be amended in writing accordingly. Any claim by Vendor for adjustment under this provision shall be asserted in writing within thirty days from the date of the written order effecting the change. In the absence of such notification Purchaser shall not be obligated to consider Vendor's claim for an equitable adjustment resulting from the change. In no event shall Purchaser be obligated to consider any claim for any increase in price after final payment to Vendor hereunder. Where the cost of property made obsolete or excess as a result of a change is included in Vendor's claim for adjustment, Purchaser shall have the right to prescribe the manner of disposition of such property.

14. **INFORMATION AND INVENTIONS.** (a) All information, specifications and drawings furnished to Vendor in connection with this order shall be used only in the manufacture of items or the performance of services for Purchaser, and shall not be disclosed by Vendor. In the absence of a written agreement to the contrary, all information, specifications and drawings furnished to Purchaser in connection with this order shall be considered nonproprietary and may be used or disclosed to third parties by Purchaser as Purchaser chooses.

(b) Any invention, sole or joint, made by employees of Vendor and arising out of the subject matter of this order, as amended or extended, shall be fully disclosed and completely assigned by Vendor to Purchaser without further compensation.

15. **INDEMNIFICATION.** Vendor agrees to indemnify and hold harmless Purchaser, its successors, assigns and customers, against any and all claims, losses, costs or damages (including attorneys' fees) based upon or arising out of any nonperformance or poor performance by Vendor or any infringement or alleged infringement of any letters patent, trademarks, or copyrights by reason of the sale or use by Purchaser or its customers of any item, service or process sold or furnished under this order, unless the item, service or process is made or furnished to Purchaser's drawings, designs or specifications. Vendor further agrees to indemnify and hold harmless Purchaser, its successors and assigns from and against any and all claims, losses, costs or damages (including attorneys' fees) based upon or arising out of (1) any defect in any item furnished under this order, (2) any construction, installation, services or facilities furnished under or in connection with this order, (3) the use of any equipment or goods furnished to Purchaser on an experimental basis, or (4) any violation by Vendor of any governmental law, ordinance, regulation or order with respect to any item, service or process sold or furnished under this order.

16. **MATERIAL, TOOLING AND EQUIPMENT FURNISHED BY PURCHASER.** (a) All material, tooling and equipment which Purchaser is required hereunder to furnish to Vendor shall be delivered in sufficient time to enable Vendor to meet its performance schedule. If any such material, tooling or equipment is not delivered to Vendor in sufficient time, the resultant delay of Vendor in performance shall be excusable. If Purchaser shall terminate this order as a result of any such delay in performance or failure to perform by Vendor, such termination shall be for the convenience of Purchaser and settlement shall be made in accordance with Section 13 hereof. Purchaser shall have no liability to Vendor by reason of any delay in delivery of, or failure to deliver, any such material, tooling or equipment.

(b) All risk of loss of or damage to any material, tooling or equipment furnished by Purchaser for performance of this order, other than from ordinary wear and tear, shall be upon Vendor until the same has been redelivered to Purchaser, and Vendor shall maintain insurance at least equal to the replacement value of same. Vendor shall properly segregate, identify, maintain and protect all such material, tooling and equipment and shall use same only in the performance of this order.

(c) Vendor shall not be required to account to Purchaser for the proceeds from the sale of scrap generated during the performance of this order by the processing of material furnished by Purchaser; provided, however, that Vendor shall replace by purchase from Purchaser at Purchaser's price then current any such material lost or damaged because of spoilage, breakage or defective workmanship of Vendor in excess of any allowance made thereby by Purchaser. Upon completion of this order, any of the material furnished by Purchaser and not consumed in the performance of this order and any tooling or equipment furnished by Purchaser shall be returned to Purchaser or otherwise disposed of in accordance with instructions from Purchaser.

(d) When Purchaser furnishes any material for use in furnishing the items or services called for hereunder, Vendor shall neither substitute material from any other source nor alter the physical or chemical properties of the material furnished to it except in accordance with applicable Purchaser specifications or Purchaser's written approval.

17. **SERVICES SUPPLIED BY VENDOR.** (a) If this order covers the performance of services on the premises of Purchaser, Vendor agrees to furnish certificates from its insurance carriers showing that it carries worker's compensation, automobile liability, public liability, and property damage insurance coverage with limits satisfactory to Purchaser. If Vendor is a self-insurer, it must have the appropriate state agency of the state in which the services are to be performed furnish to Purchaser a certificate to the same effect. Vendor will be responsible for all materials and workmanship until the items or services are completed and accepted by Purchaser. Vendor further agrees to keep Purchaser's premises free and clear of all mechanic's liens; notwithstanding the foregoing, in the event a lien is placed on the premises as a result of Vendor's actions, Vendor shall take all steps necessary to effect a prompt removal of any such lien. Purchaser may withhold any and all payments due under this order until Vendor has furnished to it satisfactory evidence that all bills for labor and material referable to this order have been paid in full by Vendor.

(b) Vendor agrees to indemnify and hold harmless Purchaser from and against any and all loss or expense by reason of liability imposed by law upon Purchaser for liability due to bodily injury or property damage sustained by any person arising out of or in consequence of the performance of work or services hereunder whether such injuries to persons or property are due or claimed to be due to any negligence of the Vendor, Purchaser, its or their employees or agents or any other person.

(c) The Vendor agrees that Vendor and Vendor's employees are acting strictly as independent contractors and not as employees of Purchaser in the performance of this Purchase Order and Vendor acknowledges neither it nor Vendor's employees are eligible for any Purchaser benefits of any nature whatsoever.

18. **SHIPPING AND BILLING.** (a) Packing. All items shall be packed in suitable containers for protection in shipment and storage and in accordance with any specifications of Purchaser. Vendor shall be responsible for all packaging and packing costs unless otherwise agreed to in writing by Purchaser.

(b) Marking. Vendor shall indicate plainly the number of this order on all packages shipped pursuant hereto and on all packing slips and bills of lading relating to this order. All goods for resale shipped by the Vendor shall be fully bar coded. All bar codes will comply with industry standard UPC bar code technology and will be easily located both at the master carton level and on individual packagings. If Vendor fails to comply with this requirement, all non-bar coded shipments delivered to Purchaser will be subject to a 10% charge on the value of the applicable invoice, up to a maximum of \$250, to defray costs incurred by Purchaser in applying bar codes to such shipments on behalf of the Vendor.

(c) Shipping. Unless otherwise provided on the face hereof, all items shall be delivered at Vendor's expense F.O.B. Purchaser's receiving dock. If Purchaser agrees to pay shipping costs, Vendor shall nevertheless pay shipping costs to the extent that they exceed the costs of the mode of shipment specified on the face of this order or, if no mode of shipment is specified, any such costs in excess of normal shipping costs, including additional costs necessitated by reason of any delay by Vendor in making deliveries hereunder.

(d) Value. If Purchaser agrees in writing that the delivery point shall be F.O.B. origin, Vendor shall make no declaration of value above \$50.00 on a bill of lading.

(e) Invoice. Vendor shall render to Purchaser's Accounts Payable Department on the date of shipment a separate invoice in duplicate for each shipment made pursuant to this order and shall indicate thereon the number of this order. Any discount period shall be calculated from the date an acceptable invoice is received or the date items are received by Purchaser, whichever is later.

19. **COMPLIANCE WITH STATUTES AND REGULATIONS.** Vendor warrants and certifies that in the performance of this order it will comply with all applicable statutes, rules, regulations and orders, now in effect or hereafter enacted, of the United States and of any state or political subdivision of any state, including statutes, rules, regulations and orders pertaining to labor, wages, hours and other conditions of employment, wage and price ceilings, if applicable, and the Fair Labor Standards Act, as amended.

20. **CUMULATIVE RIGHTS AND REMEDIES.** The rights and remedies herein provided to Purchaser shall be cumulative, as to one another, and shall be in addition to any other rights and remedies provided in law or equity.

21. **WAIVERS.** A waiver of any failure on Vendor's part to carry out any conditions, term or part of this order shall not act as a waiver with respect to any recurrence of such failure or with respect to a failure to carry out any other condition, term or part.

22. **CAPTIONS.** Captions used in this order are for convenience of reference only and shall not be deemed a part of the order.

23. **ENTIRE AGREEMENT; MODIFICATIONS.** This order sets forth the entire agreement between the parties hereto with respect to the subject matter and supersedes all communications, representations or agreements, whether oral or written. No agreement or understanding varying or extending the provisions of this order and no consent or waiver relating hereto will be binding on Purchaser unless in writing and signed by an Officer, Purchasing Manager, Purchasing Agent or other duly authorized representative of Purchaser.

24. **APPLICABLE LAW.** This order shall be governed by and construed according to the laws of the State of Connecticut, and the parties hereto hereby submit to the jurisdiction of the courts of said state.