



Credit and Trading Terms

Definitions

Customer is an individual, legal entity, partnership, or agent purchasing on behalf of an individual, legal entity or partnership.

MAD – Madman Entertainment Pty Ltd.

Goods – All items supplied by MAD to the Customer including, but not limited to;

- Copies of films on any format, including VHS tape, DVD, 35mm film, and digital files such as Jpeg, Mpeg and MP3
- Marketing and merchandising material such as display stands, preview material, news magazines
- Any other items delivered to the Customer by MAD for resale.

Application For Credit and Guarantee Form – The form supplied by MAD for the purpose of initiating, varying or updating the trading terms offered by MAD to the Customer.

Business Address – The address appearing on the MAD Application for Credit and Guarantee Form, or other delivery address as notified by the Customer in writing from time to time.

1. GENERAL

1.1 By placing an order with MAD the Customer agrees to be bound by the Credit and Trading Terms as set out hereunder, in relation to all Goods supplied by MAD.

1.2 MAD may accept or reject any order for Goods which the Customer places. Acceptance may be in writing or by delivery of the goods to the Customer. If MAD rejects any order, it will return to the Customer any cleared funds for that order which accompany the order form.

1.3 All contracts and agreements for the sale of Products by the head office or by any agent of the Vendor shall be deemed to have been made in Melbourne and the Purchaser acknowledges that any dispute arising between the parties shall be heard in and be governed by the laws of the State of Victoria.

2. DELIVERY

2.1 MAD will arrange delivery of any Goods which MAD supplies in accordance with an order by the Customer. Delivery will be to the Customer at the Customer's Business Address. MAD may, at its sole discretion, charge the Customer for costs associated with transporting the Goods.

2.2 For the purpose of Credit and Trading Terms, delivery of the Goods is deemed to have occurred if the Goods are left by MAD or its agent or courier, at the Customer's Business Address.

2.3 Notwithstanding anything else in the Credit and Trading Terms:

- a) MAD is not liable for any delay or any failure for any reason to deliver the whole or any part of an order for Goods placed by the Customer; and
- b) MAD may at any time withhold or delay delivery of Goods for any reason.

2.4 MAD may in its absolute discretion supply the Customer with a range of promotional material to facilitate the Customer's promotion of the sale or rental of the Goods.

3. TITLE AND RISK

3.1 MAD reserves the following rights in relation to any and all goods supplied by it to the Customer until all accounts and/or monies owed by the Customer to it, (whether for the goods or otherwise) are fully paid:

- 3.1.1 Legal ownership of the goods;
- 3.1.2 To enter the Customer's premises (or the premises of any associated Company or agent where the goods are located) without liability for trespass or any resulting damage and to retake possession of the goods; and
- 3.1.3 To keep or resell any goods repossessed pursuant to 3.1.2 above.
- 3.1.4 If the goods are resold by the Customer, the Customer shall hold such parts of the proceeds of any such sale as represents the invoiced price of the goods sold in a separate identifiable account as the beneficial property of MAD and shall pay such amount to MAD upon request. Notwithstanding the provisions above, MAD shall be entitled to maintain an action against the Customer for the purchase price and the risk of the goods shall pass to the Customer upon delivery.

4. PRICES AND OTHER CHARGES

4.1 MAD may vary the price charged for goods and other charges at their sole discretion.

4.2 Stamp duty and all other duties, levies, government charges and taxes, bank fees, or any similar charge are for the Customer's account and will be added to the invoice.

4.3

- a) The Price for the supply of Goods to the Customer, and any other charges for any other taxable supply made under or in connection with the Credit and Trading Terms, includes GST at the rate of 10%.
- b) If the rate of GST is varied, MAD may adjust in consideration for any taxable supply made after that variation takes effect to reflect the new GST rate.

4.4 Requests for Proof of Delivery may incur a charge which will be invoiced to the Customer's account.

5. CREDIT AND PAYMENT

5.1 At the discretion of MAD, a monthly credit account may be established for the Customer.

5.2 In all other cases, MAD will only supply Goods on the basis of cleared funds accompanying the Customer's order.

5.3 MAD will prepare Statements each month in respect of Credit Accounts and the Customer agrees to pay MAD within the Credit period any debit balance shown on those statements.

5.4 MAD may at any time, at its sole discretion, cancel or at its option, suspend the Customer's credit immediately and without notice.

5.5 The Customer agrees to notify MAD in writing immediately if it ceases to trade or agrees to sell its business. The Customer remains liable to pay the Price, and any other charges for which it is liable under the Credit and Trading Terms, for all Goods delivered to the business of the Customer, whether before or after the Customer ceases to trade or transfers its business to a new owner, until:

- a) MAD receives written notification from the Customer that it has ceased to trade or agreed to sell its business; and
- b) MAD has been paid for all charges relating to the Goods delivered to the business of the Customer.

5.6 The Customer must notify MAD within 7 days by certified mail of any change or proposed change in:

- a) The address of the Customer's business and/ or the address at which the Goods will be located
- b) The trading name or Company name of the Customer;
- c) The directors, the trustee or partners of the Customer;
- d) Ownership of the Customer or the business conducted by the Customer (including and change in legal or equitable ownership);
- e) The Customer or any associated entity goes into liquidation.

6. RETURNS AND CREDITS

In respect of goods supplied by Aztec Music Pty Ltd:

6.1 All goods are supplied to the Customer on a Firm Sale basis. Credit Claims will only be recognized if:

- a) The goods supplied are defective in their manufacture
- b) The goods supplied are other than the goods ordered
- c) All other credit claims conditions required by AV Channel are met

In respect of all other goods supplied:

6.2 Claims for Goods to be returned must be pre-authorized by MAD by obtaining a return authorisation number from the Call Centre within 7 days of delivery of the Goods

6.3 Having obtained such authority to return the goods, delivering to MAD:

- 1) The Goods supplied in error together with written details of the
 - a) Return authorisation number from MAD
 - b) Catalogue Number and Title; and

c) quantities

6.4 Goods will only be accepted as returns if they are in the same condition as when they were issued by MAD. Should this not be the case, no credit note will be issued by MAD and these Goods will be returned to the Customer at the Customer's cost.

6.3 MAD is not liable for any defective Goods unless the Goods have been returned to MAD and are accompanied by written details of the:

1. return authorisation number obtained from the MAD
2. catalogue Number (or APN) and title; and
3. quantities.

6.4 Where these returns to MAD prove not to be faulty due to the actions of MAD or its suppliers and agents, Goods will be returned to the Customer and all charges for the freight and handling will be charged to and must be paid for by the Customer.

6.5 Claims relating to defective stock by the Customer may be settled, at AV's option, by replacement of the Goods or by Credit to the Customer's Credit Account.

6.6 MAD does not give cash refunds, except upon termination of the Credit and Trading Terms in accordance with clause 7 in which case a cash refund of any credit balance in the Customer's Credit Account may be given by MAD, upon request in writing by the Customer.

7. TERMINATION

7.1 If a Termination event occurs, the customer agrees that all monies owing to MAD become immediately due and payable.

7.2 MAD may at its option, with immediate effect on notice to the Customer, do one or more of the following:

- a) cease the provision of credit to the Customer
- b) suspend all further deliveries until the Customer has remedied any default to MAD's satisfaction;

Any such termination by MAD, pursuant to this clause will be without prejudice to any such rights or claims that may have accrued to MAD prior to the termination.

7.3 Without limiting any of its rights, MAD may terminate the Credit and Trading Terms including any supplies of Goods with the Customer if, without the prior consent of MAD:

a) The Customer sells its business or agrees to sell its business;

b) if the Customer is a company, there is any change to the identity of, or legal or beneficial ownership of, any person or persons who between them:

- 1) Control the composition of the board of Directors of the Customer;
- 2) Control the voting power of the board of directors or any class of shareholders or both of the Director; or
- 3) Holds more than one-half of the issued share capital (either beneficially or otherwise) of the Business.
- 4) Act as guarantor of the debt of the Customer

c) if the Customer is a trustee of a unit trust, there is any change in the legal or beneficial ownership of more than one half of the units in the trust; or

d) if the Customer is of a trust, any change in the identity of a beneficiary who is entitled directly or indirectly to more than one half of the corpus or profits of the trust.

7.4 Prior to determining whether to give its consent to a continuance of trade, MAD may at its sole discretion require a new Application For Credit and Guarantee Form to be completed and returned to MAD by the Customer, or the entity that has acquired an interest in the Customer or the business conducted by the Customer.

| 7.5 Any termination pursuant to this clause will be without prejudice to any of MAD's rights or claims that may have arisen prior to termination.

7.6 Either Party may terminate the Credit and Trading Terms, on providing 14 days prior written notice to the other. Such termination will be without prejudice to any rights or claims that may have accrued prior to the date of termination.

8. ASSIGNMENT, RELATIONSHIP AND CONSENT

| 8.1 The Customer may not assign, transfer or delegate any of its rights or obligations under the Credit and Trading Terms without MAD's prior written consent.

| 8.2 The Customer is not an agent or representative of MAD, nor does this agreement create a joint venture or partnership between the Dealer and MAD. The Customer has no right or authority to assume, accept or create any obligation or responsibility in the name of MAD, or to bind MAD in any manner.

| 8.3 Where the Credit and Trading Terms refers to consent from MAD, MAD may withhold its consent in its absolute discretion or provide subject to conditions. Any consent must be in writing.

9. WAIVERS

| 9.1 Waiver of any right, power, authority, discretion or remedy arising upon default under the Credit and Trading Terms must be in writing and signed by the party granting the waiver.

9.2 A failure or delay in exercise, or partial exercise, of a right, power, authority, discretion or remedy created or arising upon default under the Credit and Trading Terms, does not result in a waiver of that right, power, authority, discretion or remedy.

9.3 A party is not entitled to rely on a delay in the exercise or non-exercise of a right, power, authority, discretion or remedy arising from a breach of this agreement or on a default under the Credit and Trading Terms as constituting a waiver of that right, power, authority, discretion or remedy.

| 9.4 A party may not rely on any conduct of another party as a defence to exercise of a right, power, authority, discretion or remedy by that other party.

This clause itself may not be waived except by writing.