

# Music New Zealand Terms & Conditions of Trade

The terms of trade set out below govern all of the supplies of goods and services from Webb Enterprises Limited trading as Music New Zealand (MNZ) to you (Customer).

## 1. Orders

- 1.1 MNZ accepts orders from the Customer only on the terms set out in these Terms of Trade (Order). An Order has not been accepted by MNZ until confirmed in writing by MNZ.
- 1.2 Where MNZ delivers an order by instalments, each instalment will comprise a separate contract.
- 1.3 Orders may be cancelled only if MNZ agrees in writing to the cancellation and the Order has not been processed by MNZ.
- 1.4 The brands and/or products that the Customer is able to order from MNZ for resale are set out in schedule 1. Schedule 1 can be changed at anytime without notice by MNZ.
- 1.5 By placing an Order and/or accepting goods or services from MNZ, the Customer is deemed to have accepted these Terms of Trade

## 2. Delivery

- 2.1 All Orders are shipped ex our Auckland warehouse.
- 2.2 The Customer does not have the right to possess goods until they are delivered to the Customer. Where the Customer asks for goods to be delivered directly to another person, that person takes possession of the goods as the Customer's agent.
  - 2.2.1 Where goods appear to be missing or damaged the Customer must notify MNZ immediately and in any event within 5 days of delivery, if notice is not given within this time the goods shall be deemed to be accepted by the Customer.
  - 2.2.2 All claims for shortage or damage during delivery must be made to the carrier within 5 days of delivery. MNZ is not liable for shortage or damage during delivery.
- 2.3 MNZ will make every effort to ensure delivery of goods or performance of services is on time but will not be liable for any loss or damage arising in anyway from any delay in delivery or performance.

## 3. Price

- 3.1 Prices are subject to change without notice. MNZ will invoice goods at the prices ruling at the time the Order is placed.
- 3.2 The Customer will be charged freight. The freight charge includes packaging and a portion of administration fee. Where the Customer requests a special mode of delivery, the Customer will be responsible for the cost
- 3.3 The Customer agrees to pay goods and services tax and any other government duties, levies or taxes in respect of the goods or services provided by MNZ.
- 3.4 Authorised reseller discounts off the recommended retails prices are set out in schedule 2. These discounts are subject to change without notice.
- 3.5 MNZ will not be bound by clerical errors or omissions whether in computation or otherwise in any quotation, acknowledgment or invoice and the same shall be subject to correction.

## 4. Payments

- 4.1 The Customer must pay for goods or services on placement of the Order, unless MNZ has agreed in writing to extend to open a credit account.
- 4.2 MNZ reserves the right to require payment of the whole or part of the price of the goods or services before accepting any Order.
- 4.3 The Customer will not be considered to have paid until the payment has been fully cleared through the banking system into MNZ's bank account.
- 4.4 Payment is to be made without deduction or set off in cash or in such other manner as MNZ shall stipulate from time to time.
- 4.5 If MNZ has agreed to accept payment by direct debit from the Customer's bank account, the Customer undertakes to keep its bank account in sufficient funds to meet the direct debit. If any direct debit is reversed, MNZ will refuse to supply any further goods until the Customer has paid all outstanding sums in full.
- 4.6 Where MNZ has agreed to extend credit to the Customer, the Customer must pay in full by the 20th day of the month following the date of invoice. If the Customer's account becomes overdue, MNZ reserves the right to place the account on a non-supply or cash only basis.
- 4.7 Interest may be charged on any amount which is not paid within 5 days of the due date at the rate of 15% per annum calculated on a daily basis (default interest). MNZ may suspend delivery of further goods or performance of further services until the account is paid.
- 4.8 Notwithstanding anything else, all payments shall immediately become due to MNZ if:
  - 4.8.1 MNZ reasonably believes that the information which the Customer has provided in the application for credit is not correct and the Customer has failed to give correct information within 5 days of MNZ's request;
  - 4.8.2 the Customer sells or otherwise disposes of any unpaid goods without MNZ consent;
  - 4.8.3 the Customer becomes insolvent, commits any act of bankruptcy, or if a receiver, liquidator or statutory manager is appointed over any of the Customer's assets or undertaking;
  - 4.8.4 the Customer fails to comply with any of the provisions of clause 4.5 or 6; or
  - 4.8.5 the Customer makes or attempts to make an arrangement or composition with creditors.
- 4.9 All expenses, disbursements, legal costs (on a solicitor/own client basis) and/or debt collection agency fees incurred by MNZ in the enforcement of any rights arising from these Terms of Trade shall be paid by the Customer on demand from MNZ. If not paid within 5 days of the date of the demand those costs shall incur interest at the default interest rate set out above.

## 5. Property and Risk

- 5.1 The risk of any loss or damage to or deterioration of goods supplied by MNZ shall pass to the Customer when the goods have been delivered to the Customer by MNZ, or when the Customer (or an agent of the Customer) collects the goods from MNZ's premises and it shall be the Customer's obligation to insure the goods from that time.
- 5.2 Property and ownership in goods (whether in their original form or incorporated into or attached to another product) will not pass to the Customer but shall be retained by MNZ until all moneys (whether for the goods, services or otherwise and including default interest) owed by the Customer to MNZ are paid in full.
- 5.3 Until payment is made, the Customer must:
  - 5.3.1 not resell or part possession with any goods, unless MNZ has given written consent, or the goods are supplied as consignment stock or inventory for re-supply (subject to clause 5.4 below)
  - 5.3.2 keep the goods in a good and secure condition;
  - 5.3.3 keep the goods fully insured to their full replacement value against all risks;
  - 5.3.4 not encumber the goods in any way;
  - 5.3.5 hold the goods as bailee and keep the goods separately from other property in possession of the Customer (including goods already supplied by MNZ) and in a manner which enables the goods to be easily identified as goods supplied by MNZ.
- 5.4 Where goods are supplied to the Customer as consignment stock or inventory for re-supply, the Customer is authorised to sell the goods in the ordinary course of the Customer's business (unless otherwise notified in writing), provided that the Customer keeps the proceeds of any goods sold in a separate account in trust for MNZ.
- 5.5 MNZ shall be entitled to repossess all goods which it claims belongs to it at any time without notice and for such purpose it shall be lawful for MNZ and/or its agent to enter any premises where the goods are or are believed to be and to remove the goods (whether or not those goods are installed in or attached to any other goods), using such force as is necessary, and without prejudice to any other of MNZ's rights. The Customer indemnifies MNZ against all costs and claims in respect of its exercise of rights under this clause.
- 5.6 If MNZ repossess goods under the above clause, MNZ may retain those goods or dispose of them without notice or statement of account to the Customer or any other person and after deducting reasonable costs (including costs of sale), MNZ may credit any surplus by way of setoff against any sums owing. MNZ will not be obliged to re-supply any repossessed goods.

## 6. Security Interest

- 6.1 The Customer acknowledges that MNZ holds a "security interest" in the goods pursuant to Section 17 of the Personal Property Securities Act 1999 (PPSA) and that MNZ may register a financing statement in respect of the goods in accordance with the provisions of the PPSA.

- 6.2 The Customer shall provide all information, execute or arrange for the execution of all documents and do all other things that MNZ may require to ensure that MNZ has a perfected first ranking security interest in the goods or their proceeds under the PPSA. The Customer shall immediately upon request by MNZ, procure from any person considered by MNZ to be relevant to its security position such agreements and waivers as MNZ may at any time require.
  - 6.3 The Customer waives its rights to receive a verification statement in respect of any financing statement or financing change statement registered by MNZ under the PPSA and agrees that as between MNZ and the Customer, the Customer shall have no rights under (or by reference to) sections 114(1)(a), 116, 117(1)(c), 119, 120(2), 121, 125, 129, 131, 132, 133 and 134 of the PPSA and where MNZ has rights in addition to those in part 9 of the PPSA, those rights continue to apply.
  - 6.4 The Customer shall immediately notify MNZ of any change in the Customer's name, address details and any other information provided to MNZ to enable MNZ to register a financing change statement if required.
  - 6.5 The Customer agrees that MNZ may require the Customer to pay all reasonable costs, including legal costs on a solicitor-client basis, associated with the registration, discharge or amendment of any financing statement registered by MNZ, whether or not the change was initiated by the Customer.
- ## 7. Goods returned for credit
- 7.1 MNZ will not accept the return of goods which are not faulty, unless MNZ in its sole discretion, agrees in writing to their return. If MNZ agrees to the return of the goods a restocking fee may be charged. The goods must be returned freight and insurance prepaid in original packing in "as new" and saleable condition, with a copy of the original purchase invoice including the RA number to be provided by MNZ clearly noted.
- ## 8. MNZ Warranties
- 8.1 Goods are subject to the manufacturers' warranties only. MNZ will use reasonable endeavours to assign to the Customer the benefit of any manufacturers' warranties (where possible), without itself being directly liable to the Customer under any warranty.
  - 8.2 Other than for any warranties provided in writing by MNZ, MNZ makes no representation and gives no assurance, condition or warranty of any kind to the Customer (including any assurance, condition or warranty implied by law to the extent that the assurance, condition or warranty can be excluded) in relation to the goods and Services and accepts no liability for any assurance, condition, warranty, representation, statement or term not expressly set out in these Terms of Trade.
  - 8.3 Where goods are subject to a return to base warranty, the Customer is responsible for returning them to MNZ, and the Customer may be responsible for additional costs including (but not limited to) freight.
  - 8.4 Any warranty will be voided by damage to or misuse of the goods, including problems caused by misuse or damage after the goods have left MNZ's care, negligent installation or operations, inadequate packaging, cleaning or maintenance, unauthorised repairs, modifications or the addition of hardware, software or consumables not supplied by MNZ.
  - 8.5 Where the goods or services that you acquire from MNZ are not of a kind ordinarily acquired for personal household or domestic use or consumption, or where you acquire, or hold yourself out as acquiring, the goods or services for the purposes of a business, the provisions of the Consumer Guarantees Act 1993 and the conditions, warranties and guarantees set out in the Sale of Goods Act 1908 or implied by common law will not apply and are excluded from these Terms of Trade.
- ## 9. Customer Warranties
- 9.1 If the Customer acquires any goods or services from MNZ for re-supply as, or incorporate or attach any goods or services into, goods or services ordinarily acquired for personal household or domestic use or consumption (Consumer Products), the Customer warrants that:
    - 9.1.1 it will do so using terms and conditions of supply which exclude liability for any claims under the Consumer Guarantees Act 1993, where supply is made by the Customer directly to an end user/consumer; and
    - 9.1.2 it's customer and each person in the distribution chain will exclude liability in its contract for supply for any claims under the Consumer Guarantees Act 1993, where the Customer's customer acquires the goods for re-supply but in each case only where the end user/consumer acquires the Consumer Products for business purposes.
  - 9.2 The Customer agrees to indemnify MNZ against any failure by the Customer, its customers or any person in the Customer's distribution chain to properly contract out of liability to business end users/consumers under the Consumer Guarantees Act 1993.
- ## 10. Limitation of liability
- 10.1 MNZ shall not be liable to the Customer or any other person for any indirect or consequential loss or damage of any kind arising out of any breach by MNZ of its warranties or obligations, negligence or otherwise. Regardless of the legal basis of any claim, MNZ's maximum liability to the Customer under any circumstances is limited to a sum not exceeding the invoiced value of the goods and services.
  - 10.2 No employee, agent of, or independent contractor engaged by MNZ shall in any circumstances be under any liability of any kind to the Customer for any loss or damage whether arising or resulting directly, indirectly or consequentially from an act, neglect or default on the part of such person while acting in the course of or in connection with his or her employment, agency or engagement and, without prejudice to the generality of the foregoing provision, every exemption, limitation, condition and right expressed or implied in these Terms of Trade on the part of or in favour of MNZ shall extend to protect every such employee, agent or independent contractor.
- ## 11. Cancellation
- 11.1 MNZ shall, without any liability, and without prejudice to any other right it has in law or equity, have the right to suspend or cancel in whole or in part the provision of any goods or services to the Customer if the Customer fails to pay any money due, or the Customer commits an act of bankruptcy, is insolvent, is placed in liquidation or suffers any similar event.
  - 11.2 Any cancellation or suspension under clause 11.1 shall not affect MNZ's claim for money due at the time of cancellation or suspension or for damages for any breach of any Term.
- ## 12. Collection and Use of Information
- 12.1 The Customer authorises MNZ to collect, retain and use any information about the Customer for the purpose of assessing the Customer's credit worthiness, enforcing any rights under these Terms of Trade and marketing and promoting its goods and services.
  - 12.2 The Customer authorises MNZ to disclose any information obtained to any other person.
  - 12.3 To the extent required under the Privacy Act 1993 the Customer is entitled to have access to and to request correction of personal information concerning the Customer which has been collected by MNZ.
- ## 13. Miscellaneous
- 13.1 The Customer may not assign all or any of its rights or obligations under these Terms of Trade without the prior written consent of MNZ
  - 13.2 MNZ shall not be liable for delay or failure to perform its obligations if the cause of the delay or failure is beyond its reasonable control.
  - 13.3 Failure by MNZ to enforce any of its rights at any time shall not be deemed to be a waiver of such rights.
  - 13.4 If any provision of these terms is invalid, void, illegal or unenforceable the validity, existence, legality and enforceability of the remaining provisions shall not be affected, prejudiced or impaired.
  - 13.5 The laws of New Zealand shall apply to these terms and conditions and the parties agree to submit to the non exclusive jurisdiction of the New Zealand courts.
  - 13.6 These Terms of trade shall prevail over the Customer's terms and conditions (if any).
  - 13.7 MNZ may alter or replace these Terms of Trade from time to time without notice to the Customer