

## Mad on Music Pty Ltd – Terms & Conditions of Trade

### 1. Definitions

- 1.1 "MOM" shall mean Mad on Music Pty Ltd its successors and assigns or any person acting on behalf of and with the authority of Mad on Music Pty Ltd.
- 1.2 "Parents/Guardian" shall mean the Parents/Guardian (or any person acting on behalf of and with the authority of the Parents/Guardian) as described on any enrolment form, quotation, work authorisation or other form as provided by MOM to the Parents/Guardian.
- 1.3 "Guarantor" means that person (or persons), or entity, who agrees to be liable for the debts of the Parents/Guardian on a principal debtor basis.
- 1.4 "Goods" shall mean Goods supplied by MOM to the Parents/Guardian (and where the context so permits shall include any supply of Services as hereinafter defined) and are as described on the enrolment form, invoices, quotation, work authorisation or any other forms as provided by MOM to the Parents/Guardian.
- 1.5 "Services" shall mean all Services supplied by MOM to the Parents/Guardian and includes any advice or recommendations (and where the context so permits shall include any supply of Goods as defined above).
- 1.6 "Price" shall mean the price payable for the Goods as agreed between MOM and the Parents/Guardian in accordance with clause 3 of this contract.

### 2. Acceptance

- 2.1 Any instructions received by MOM from the Parents/Guardian for the supply of Services and/or the Parents/Guardian's acceptance of Services supplied by MOM shall constitute acceptance of the terms and conditions contained herein.
- 2.2 Where more than one Parents/Guardian has entered into this agreement, the Parents/Guardians shall be jointly and severally liable for all payments of the Price.
- 2.3 Upon acceptance of these terms and conditions by the Parents/Guardian the terms and conditions are binding and can only be amended with the written consent of MOM. MOM reserves the right to change these terms and conditions at any time, and will notify the Parents/Guardian in writing of such changes.
- 2.4 The Parents/Guardian shall give MOM not less than fourteen (14) days prior written notice of any change of name of the Parents/Guardian and/or any other change in the Parents/Guardian's details (including but not limited to, changes in the Parents/Guardian's address, facsimile number). The Parents/Guardian shall be liable for any loss incurred by MOM as a result of the Parents/Guardian's failure to comply with this clause.

### 3. Price And Payment

- 3.1 At MOM's sole discretion the Price shall be as indicated on the enrolment form, fee schedule and/or the invoice provided by MOM to the Parents/Guardian in respect of the Services provided.
- 3.2 MOM reserves the right to change the Price.
- 3.3 At MOM's sole discretion a deposit may be required.
- 3.4 The Price for any Goods provided by MOM in conjunction with the Services shall be stated on the invoice, and distributed once payment has been received.
- 3.5 At MOM's sole discretion:
- (a) payment shall be due on delivery of the Services; or
- (b) payment shall be due before delivery of the Services.
- 3.6 Time for payment for the Goods shall be of the essence and will be stated on the invoice or any other forms. If no time is stated then payment shall be due seven (7) days following the date of the invoice.
- 3.7 Payment will be made by cash, or by cheque, or by bank cheque, or by money order or by direct credit (such as internet banking), or by any other method as agreed to between the Parents/Guardian and MOM.
- 3.8 No refunds will be made whatsoever.
- 3.9 GST and other taxes and duties that may be applicable shall be added to the Price except when they are expressly included in the Price.

### 4. Delivery Of Services

- 4.1 Delivery of the Services shall take place at the student's school during school hours, and on occasion after school hours, on the same day each week. A total of thirty-six (36) lessons, of 30 minutes duration each, will be provided to the student in a group forum.
- 4.2 If a student is absent on the day of the lesson, MOM is required to be advised of the student's absence before 9.00am on the day of the lesson, otherwise no opportunity to make up the missed lesson will be provided. Only one (1) lesson per term can be rescheduled. Duration times for these lessons may vary, according to how many students attend the makeup lessons at any one time. The last lesson of each term is allocated for makeup's and is not included in the Price.
- 4.3 Student absence due to excursions and other planned school events require at least one (1) week's notice. If no notification of school events or excursions is provided to MOM as requested, no opportunity for the student to make up the missed lesson will be provided.
- 4.4 In the event a Teacher is absent, MOM guarantees that lessons missed as a result will be rescheduled. Make-up lessons may occasionally need to be rescheduled for the following term.
- 4.5 In the event the student's school is unavailable as a venue for a lesson(s) to be held, MOM will make arrangements to deliver the Service at a substitute venue. The cost of hiring such shall be passed on to the Parents/Guardian.
- 4.6 The failure of MOM to deliver shall not entitle either party to treat this contract as repudiated.
- 4.7 MOM shall not be liable for any loss or damage whatever due to failure by MOM to deliver the Services (or any of them) promptly or at all.

### 5. Parent/Guardian Responsibilities

- 5.1 An evening concert is held annually and is compulsory for all students to participate in. A minimal charge to cover production costs shall be shown as an extra on the invoice. Payment for any extras must be paid in full in accordance with clause 3.6. If a student does not participate in the production, the production costs will still apply.

### 6. Risk

- 6.1 If MOM retains ownership of the Goods nonetheless, all risk for the Goods passes to the Parents/Guardian on delivery.
- 6.2 If any of the Goods are damaged or destroyed following delivery but prior to ownership passing to the Parents/Guardian, MOM is entitled to receive all insurance proceeds payable for the Goods. The production of these terms and conditions by MOM is sufficient evidence of MOM's rights to receive the insurance proceeds without the need for any person dealing with MOM to make further enquiries.

### 7. Title

- 7.1 MOM and Parents/Guardian agree that ownership of the Goods shall not pass until:
- (a) the Parents/Guardian has paid MOM all amounts owing for the particular Goods; and

- (b) the Parents/Guardian has met all other obligations due by the Parents/Guardian to MOM in respect of all contracts between MOM and the Parents/Guardian.

- 7.2 Receipt by MOM of any form of payment other than cash shall not be deemed to be payment until that form of payment has been honoured, cleared or recognised and until then MOM's ownership or rights in respect of the Goods shall continue.

- 7.3 It is further agreed that:

- (a) where practicable the Goods shall be kept separate and identifiable until MOM shall have received payment and all other obligations of the Parents/Guardian are met; and
- (b) until such time as ownership of the Goods shall pass from MOM to the Parents/Guardian MOM may give notice in writing to the Parents/Guardian to return the Goods or any of them to MOM. Upon such notice the rights of the Parents/Guardian to obtain ownership or any other interest in the Goods shall cease; and
- (c) MOM shall have the right of stopping the Goods in transit whether or not delivery has been made; and
- (d) if the Parents/Guardian fails to return the Goods to MOM then MOM or MOM's agent may enter upon and into land and premises owned, occupied or used by the Parents/Guardian, or any premises as the invitee of the Parents/Guardian, where the Goods are situated and take possession of the Goods; and
- (e) the Parents/Guardian is only a bailee of the Goods and until such time as MOM has received payment in full for the Goods then the Parents/Guardian shall hold any proceeds from the sale or disposal of the Goods on trust for MOM; and
- (f) the Parents/Guardian shall not deal with the money of MOM in any way which may be adverse to MOM; and
- (g) the Parents/Guardian shall not charge the Goods in any way nor grant nor otherwise give any interest in the Goods while they remain the property of MOM; and
- (h) MOM can issue proceedings to recover the Price of the Goods sold notwithstanding that ownership of the Goods may not have passed to the Parents/Guardian; and
- (i) until such time that ownership in the Goods passes to the Parents/Guardian, if the Goods are converted into other products, the parties agree that MOM will be the owner of the end products.

### Parents/Guardian's Disclaimer

The Parents/Guardian hereby disclaims any right to rescind, or cancel any contract with MOM or to sue for damages or to claim restitution arising out of any misrepresentation made to the Parents/Guardian by MOM and the Parents/Guardian acknowledges that the Services are bought relying solely upon the Parents/Guardian's skill and judgment.

### The Commonwealth Trade Practices Act 1974 ("TPA") and Fair Trading Acts ("FTA")

- 9.1 Nothing in this agreement is intended to have the effect of contracting out of any applicable provisions of the TPA or the FTA in each of the States and Territories of Australia, except to the extent permitted by those Acts where applicable.

### 10. Intellectual Property

- 10.1 The Parents/Guardian warrants that all instructions to MOM will not cause MOM to infringe any patent, copyright or registered trademark in the execution of the Parents/Guardian's order and the Parents/Guardian agrees to indemnify MOM against any action taken by a third party against MOM in respect of any such infringement.

### 11. Default & Consequences of Default

- 11.1 Interest on overdue invoices shall accrue daily from the date when payment becomes due, until the date of payment, at a rate of two and one half percent (2.5%) per calendar month and such interest shall compound monthly at such a rate after as well as before any judgment.
- 11.2 If the Parents/Guardian defaults in payment of any invoice when due, the Parents/Guardian shall indemnify MOM from and against all costs and disbursements incurred by MOM in pursuing the debt including legal costs on a solicitor and own client basis and MOM's collection agency costs.

- 11.3 In the event of default of payment, the Parents/Guardians accept MOM charging a communication fee of two dollars (\$2.00) per week to cover costs incurred in sending out letters of demand.

- 11.4 Without prejudice to any other remedies MOM may have, if at any time the Parents/Guardian is in breach of any obligation (including those relating to payment), MOM may suspend or terminate the supply of Services to the Parents/Guardian and any of its other obligations under the terms and conditions. MOM will not be liable to the Parents/Guardian for any loss or damage the Parents/Guardian suffers because MOM has exercised its rights under this clause.

- 11.5 If any account remains overdue after thirty (30) days then an amount of the greater of twenty dollars (\$20.00) or ten percent (10.00%) of the amount overdue (up to a maximum of two hundred dollars (\$200.00)) shall be levied for administration fees which sum shall become immediately due and payable.

- 11.6 Without prejudice to MOM's other remedies at law MOM shall be entitled to cancel all or any part of any order of the Parents/Guardian which remains unfulfilled and all amounts owing to MOM shall, whether or not due for payment, become immediately payable in the event that:

- (a) any money payable to MOM becomes overdue, or in MOM's opinion the Parents/Guardian will be unable to meet its payments as they fall due; or
- (b) the Parents/Guardian becomes insolvent, convenes a meeting with its creditors or proposes or enters into an arrangement with creditors, or makes an assignment for the benefit of its creditors; or
- (c) a receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Parents/Guardian or any asset of the Parents/Guardian.

### 12. Security And Charge

- 12.1 Despite anything to the contrary contained herein or any other rights which MOM may have howsoever:

- (a) where the Parents/Guardian and/or the Guarantor (if any) is the owner of land, realty or any other asset capable of being charged, both the Parents/Guardian and/or the Guarantor agree to mortgage and/or charge all of their joint and/or several interest in the said land, realty or any other asset to MOM or MOM's nominee to secure all amounts and other monetary obligations payable under these terms and conditions. The Parents/Guardian and/or the Guarantor acknowledge and agree that MOM (or MOM's nominee) shall be entitled to lodge where appropriate a caveat, which caveat shall be withdrawn once all payments and other monetary obligations payable hereunder have been met.
- (b) should MOM elect to proceed in any manner in accordance with this clause and/or its sub-clauses, the Parents/Guardian and/or Guarantor shall indemnify MOM from and against all MOM's costs

and disbursements including legal costs on a solicitor and own client basis.

- (c) the Parents/Guardian and/or the Guarantor (if any) agree to irrevocably nominate constitute and appoint MOM or MOM's nominee as the Parents/Guardian's and/or Guarantor's true and lawful attorney to perform all necessary acts to give effect to the provisions of this clause 12.1.

### 13. Cancellation/Discontinuance

- 13.1 MOM may cancel any contract to which these terms and conditions apply or cancel delivery of Services at any time before the Services are delivered by giving written notice to the Parents/Guardian. On giving such notice MOM shall repay to the Parents/Guardian any sums paid in respect of the Price. MOM shall not be liable for any loss or damage whatever arising from such cancellation.

- 13.2 In the event that the Parents/Guardian cancels delivery of Services the Parents/Guardian shall be liable for any loss incurred by MOM (including, but not limited to, any loss of profits) up to the time of cancellation.

- 13.3 Parents/Guardian are required to give **four (4) weeks written notice of cancellation of enrolment prior to the commencement of term one, and three (3) weeks written notice prior to the commencement of each of the remaining school terms.** If no such written notice is received by MOM within the stated timeframe, full payment for the term is expected no later than seven (7) days following the date of the invoice. Parents/Guardian must notify the MOM office in writing, no later than three (3) weeks before the commencement of term 2, 3 and 4, of discontinuance of lessons. Four (4) weeks notice is required prior to the start of Term 1. It is the Parents/Guardian responsibility to ensure MOM has received notice of discontinuance.

- 13.5 **The Parents/Guardian agrees to follow up all written discontinuance notification with a phone call to MOM. The Parents/Guardian accepts that failure to follow up written notice of discontinuance with a phone call to MOM will result in the term fees still applying.**

- 13.6 All students are automatically re-enrolled and payment is expected no later than seven (7) days following the date of the invoice, unless written notification of discontinuing lessons is received within the stated time frame.

### 14. Privacy Act 1988

- 14.1 The Parents/Guardian and/or the Guarantor/s agree for MOM to obtain from a credit reporting agency a credit report containing personal credit information about the Parents/Guardian and Guarantor/s in relation to credit provided by MOM.

- 14.2 The Parents/Guardian and/or the Guarantor/s agree that MOM may exchange information about the Parents/Guardian and the Guarantor/s with those credit providers either named as trade referees by the Parents/Guardian or named in a consumer credit report issued by a credit reporting agency for the following purposes:

- (a) to assess an application by the Parents/Guardian; and/or
- (b) to notify other credit providers of a default by the Parents/Guardian; and/or
- (c) to exchange information with other credit providers as to the status of this credit account, where the Parents/Guardian is in default with other credit providers; and/or
- (d) to assess the credit worthiness of the Parents/Guardian and/or Guarantor/s.

- 14.3 The Parents/Guardian consents to MOM being given a consumer credit report to collect overdue payment on commercial credit (Section 18K(1)(h) Privacy Act 1988).

- 14.4 The Parents/Guardian agrees that personal credit information provided may be used and retained by MOM for the following purposes and for other purposes as shall be agreed between the Parents/Guardian and MOM or required by law from time to time:

- (a) provision of Goods; and/or
- (b) marketing of Goods by MOM, its agents or distributors in relation to the Goods; and/or
- (c) analysing, verifying and/or checking the Parents/Guardian's credit, payment and/or status in relation to provision of Goods; and/or
- (d) processing of any payment instructions, direct debit facilities and/or credit facilities requested by Parents/Guardian; and/or
- (e) enabling the daily operation of Parents/Guardian's account and/or the collection of amounts outstanding in the Parents/Guardian's account in relation to the Goods.

- 14.5 MOM may give information about the Parents/Guardian to a credit reporting agency for the following purposes:

- (a) to obtain a consumer credit report about the Parents/Guardian; and/or
- (b) allow the credit reporting agency to create or maintain a credit information file containing information about the Parents/Guardian.

- 14.6 The Parents/Guardian consent to MOM and/or its collection agency obtaining current phone & contact details of the Parents/Guardian through other legal means other than the Parents/Guardian direct notification, and give MOM permission to contact the School their child is attending and obtain the release of all current contact details to enable MOM/MOM's nominated collection agency to pursue any debt incurred by the Parents/Guardian due to a default in payment.

### 15. General

- 15.1 If any provision of these terms and conditions shall be invalid, void, illegal or unenforceable the validity, existence, legality and enforceability of the remaining provisions shall not be affected, prejudiced or impaired.

- 15.2 These terms and conditions and any contract to which they apply shall be governed by the laws of Victoria and are subject to the jurisdiction of the courts of Victoria.

- 15.3 MOM shall be under no liability whatever to the Parents/Guardian for any indirect loss and/or expense (including loss of profit) suffered by the Parents/Guardian arising out of a breach by MOM of these terms and conditions.

- 15.4 In the event of any breach of this contract by MOM the remedies of the Parents/Guardian shall be limited to damages which under no circumstances shall exceed the Price of the Goods.

- 15.5 The Parents/Guardian shall not be entitled to set off against or deduct from the Price any sums owed or claimed to be owed to the Parents/Guardian by MOM.

- 15.6 MOM may license or sub-contract all or any part of its rights and obligations without the Parents/Guardian's consent.

- 15.7 MOM reserves the right to review these terms and conditions at any time. If, following any such review, there is to be any change to these terms and conditions, then that change will take effect from the date on which MOM notifies the Parents/Guardian of such change.

- 15.8 Neither party shall be liable for any default due to any act of God, war, terrorism, strike, lock-out, industrial action, fire, flood, drought, storm or other event beyond the reasonable control of either party.

- 15.9 The failure by MOM to enforce any provision of these terms and conditions shall not be treated as a waiver of that provision, nor shall it affect MOM's right to subsequently enforce that provision.