

CREDIT APPLICATION AND TERMS AND CONDITIONS OF TRADE

TERMS AND CONDITIONS OF TRADE DEFINITIONS

Business Day means a day on which trading banks are open for business in Auckland, New Zealand, except a Saturday, Sunday or public holiday.

Consequential Loss means any loss or damage suffered by the Customer or any other person which is indirect or consequential; or which is by way of loss of revenue, loss of profits, loss of goodwill or credit, loss of business reputation, future reputation or publicity, loss of use, loss of interest, damage to credit rating, or loss or denial of opportunity.

Customer means a customer supplied or to be supplied Products by Madman.

Defect means a defect, flaw or imperfection in a Product which prevents the Product from being used for the purposes intended under this agreement or which makes the use of the Product dangerous, but does not include anything which has been disclosed as a feature or limitation of the Product by Madman prior to the date of purchase, any defect, flaw or imperfection that is trivial or insubstantial, accidental damage or damage resulting from wilful neglect.

Delivery Details means the requested details of delivery of the Products set out in the Purchase Order, including details of multiple delivery dates (where applicable), date, time, location and freight forwarder or port for delivery (where applicable).

Force Majeure Event means any failure or delay in the performance of a parties' obligations under this agreement as a result of a national strike, lockout, work stoppage, labour dispute, material shortage, utility outage, delay in transportation, fire, flood, earthquake, severe weather, act of God, accident, trade sanction, embargo, act of war, act of terror, condition caused by national emergency, new or changed Law, or any other act or cause beyond the reasonable control and without fault of the delayed party, and whether affecting that party or its agents, subcontractors, dealers or suppliers, for as long as such circumstances prevail.

GST means any goods and services tax and any replacement or similar tax.

GST Law means the Goods and Services Tax Act 1985.

Guarantor means the guarantor or guarantors that have signed this agreement and a reference to "Guarantor" includes all Guarantors.

Invoice means Madman's invoice for Products issued in accordance with clause 3.1 of this agreement.

Law means any legislation, ordinance, regulation, by-law, order, award, proclamation, direction and practice note of New Zealand or any government agency, certificate, licence, consent, permit, approval, qualification, registration, standard and requirement, or any other law from which legal rights and obligations arise.

Liabilities means all damages, losses, liabilities, costs, charges, expenses, outgoing payments (whether direct or indirect, consequential or incidental) including any damages, losses, liabilities, costs, charges, expenses, outgoing payments in respect of any damage to property or injury to, or death of, any person.

Madman means Madman NZ Limited (NZ company number 2271138) of 8A Ponsonby Road, Ponsonby, Auckland, New Zealand and each of its Related Companies, successors and assigns.

Manufacturer means a third party entity engaged by Madman to manufacture Products.

Personnel mean all employees, officers, agents and contractors.

Products means products supplied by Madman as set out in the applicable Purchase Order.

Purchase Price means the list price of Products provided by Madman in accordance with clause 2.1.

Purchase Order means any order for Products, including the Delivery Details, placed by Customer in accordance with clause 2.2.

Related Company has the meaning given in subsection 2(3) of the Companies Act 1993.

1. SUPPLY OF PRODUCTS

1.1 Supply

Madman will sell and Customer will buy Products in accordance with this agreement. Products are supplied solely for resale or rental within New Zealand and accordingly will include New Zealand Office of Film and Literature classification markings.

1.2 Exclusion of all other terms and conditions

This agreement includes any schedule that is executed by both parties. This agreement applies to the exclusion of all other terms and conditions and supersedes all terms and conditions previously issued by Madman or otherwise agreed between Madman and Customer. This agreement overrides any terms of purchase used by Customer in relation to ordering and purchasing Products. No variation of this agreement is binding unless expressly agreed in writing by an authorised representative of Madman.

2. PRODUCT ORDERING

2.1 Price of Products

- (a) Madman will advise the Customer of the Purchase Price of the Products. Madman will publish the WSP (Wholesale Selling Price) in the launch month Dealer Guide and on the Madman b2b site: www.b2b.madman.co.nz
- (b) Madman reserves the right to change the Purchase Price in its absolute discretion.

2.2 Purchase Order

- (a) Placement of a Purchase Order constitutes acceptance by Customer of the terms and conditions of this agreement.
- (b) Purchase Orders must be in writing and include:
 - (i) full details of Customer, including name, contact details and address;
 - (ii) full description of requested Products to be provided by Madman;
 - (iii) quantity of Products required; and
 - (iv) full Delivery Details.
- (c) Once accepted by Madman Purchase Orders cannot be cancelled or varied by the Customer.

3. INVOICING AND PAYMENT

3.1 Details in Invoice

All Invoices issued by Madman will include details of the Purchase Price and any other costs and charges payable by the Customer in accordance with this agreement, including (where relevant) all reasonable charges associated with delivery of the Products.

3.2 Payment of Purchase Price

- (a) Unless otherwise stated in writing by Madman, Customer must pay the Purchase Price plus any delivery charges set out in the Invoice, without deduction, within 30 days from the end of month in which the invoice was issued.
- (b) Where the Customer has requested multiple delivery dates, Madman may choose to issue multiple Invoices.

3.3 Payment in cleared funds

Payment by cheque or other negotiable instrument is not regarded as received until funds are cleared.

3.4 Interest

Without in any way limiting Madman's right to require payment in full in accordance with clause 3.2, Madman may at its sole discretion charge interest on overdue accounts each day that the account remains overdue at the rate of 2.5% above the Westpac Bank's Business Overdraft Rate as applicable from time to time.

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3.5 Recovery Costs

The Customer shall pay all costs and expenses incurred by Madman, its advisers, mercantile agents and any other person, in respect of any action instituted or considered against Customer, whether for debt, possession of Products or otherwise.

3.6 GST

- (a) Any reference in this clause 3.6 to a term defined or used in the GST Law is, unless the context indicates otherwise, a reference to that term as defined in the GST Law.
- (b) Unless expressly included, the consideration for any supply made under or in connection with this agreement does not include an amount on account of GST in respect of the supply (GST Exclusive Consideration) except as provided under this clause 3.6. Any amount referred to in this agreement (other than an amount referred to in clause 3.6(f)) which is relevant in determining a payment to be made by one of the parties to the other is, unless indicated otherwise, a reference to that amount expressed on a GST exclusive basis.
- (c) To the extent that GST is payable in respect of any supply made by a party (GST Supplier) under or in connection with this agreement, the consideration to be provided under this agreement for that supply (unless it is expressly stated to include GST) is increased by an amount equal to the GST Exclusive Consideration (or its GST exclusive market value if applicable) multiplied by the rate at which GST is imposed in respect of the supply. The recipient must pay the additional amount payable under clause 3.6(c) to the GST Supplier at the same time as the GST Exclusive Consideration is otherwise required to be provided.
- (d) The GST Supplier must issue to the recipient, before the time of payment of the consideration for the supply, an invoice that constitutes a tax invoice under the GST Law, that will, where applicable, enable the recipient to claim any input tax credits for the GST in respect of supplies to which the invoice relates, or at such other time as the parties agree.
- (e) Whenever an adjustment event occurs in relation to any taxable supply made under or in connection with this agreement, the GST Supplier must determine the net GST in relation to the supply (taking into account any adjustment) and if the net GST differs from the amount previously paid under clause 3.6(c) the amount of the difference must be paid by, refunded to or credited to the recipient, as applicable.
- (f) If one of the parties to this agreement is entitled to be reimbursed or indemnified for a loss, cost, expense or outgoing incurred in connection with this agreement, then the amount of the reimbursement or indemnity payment must first be reduced by an amount equal to any input tax credit to which the party being reimbursed or indemnified (or its representative member) is entitled in relation to that loss, cost, expense or outgoing and then, if the amount of the payment is consideration or part consideration for a taxable supply, it must be increased on account of GST in accordance with clause 3.6(c).

3.7 No right to offset

No amount owing, whether present or future, actual, contingent or prospective and on any account whatsoever by Customer to Madman may be offset against any liability whether present, future, actual, contingent or prospective of Customer to Madman hereunder or on any other account whatsoever.

4. DELIVERY OF PRODUCTS

4.1 Date for Delivery and Delay

- (a) New Releases - Provided that the Customer's credit application has been processed by Madman and the Purchase Order is received by Madman before the relevant cut-off date, Madman will use all commercially reasonable efforts to effect delivery of Products in accordance with the Customer's Delivery Details set out in the Purchase Order and in any event, on or before the published shelf date of the relevant Product.
- (b) Back Catalogue & Other Products - Subject to inventory availability, Madman will use all commercially reasonable efforts to effect delivery of non-new release Products in accordance with the Customer's Delivery Details set out in the Purchase Order.
- (c) Madman will not be liable for any delay, failure or inability to deliver, including any delay caused by the Manufacturer.

(d) If Madman becomes aware of any event likely to affect the Delivery Details, Madman will give the Customer written notice of the event and take all reasonable steps to minimise the delay.

(e) The Customer is not relieved of any obligation to accept or pay for Products because of any delay in delivery.

4.2 Frustrated Delivery

A charge may be rendered to cover Madman's cost of any frustrated delivery (i.e. the Customer is not present at the delivery location on the date for delivery as set out in the Delivery Details).

4.3 Shortage and Overage in Products delivered

- (a) If the quantity of Products delivered is less than the amount specified on the Invoice, the Customer must notify Madman of the shortfall in writing via the email address returns@madman.co.nz within 7 Business Days after receipt of Products by Customer. Unless Madman is so notified, the correct quantity of Products is deemed to have been delivered, and Customer must accept Products and pay in full despite the shortfall.
- (b) If the quantity of Products delivered is more than the amount specified on the invoice Customer must immediately inform Madman in writing via the email address returns@madman.co.nz and Madman is either entitled to charge Customer for the excess Product or to raise a credit for the excess product and will arrange for the collection and return to Madman.

4.4 Goods Supplied In Error Or Damaged In Transit

- (a) Claims for return of goods Supplied in Error or Damaged in Transit must be pre-authorized by Madman by obtaining a return authorisation number in writing via the email address returns@madman.co.nz within 7 days of delivery of the Goods
- (b) Goods Supplied in Error will only be accepted as returns if they are in the same condition as when they were issued by Madman. Should this not be the case, no credit note will be issued by Madman and these Goods will be returned to the Customer at the Customer's cost.

5. DEFECTIVE PRODUCT

5.1 Inspection

To the extent possible (acknowledging that the Customer does not play DVDs before sale), the Customer must, within 7 Business Days of delivery of the Products, check whether Products suffer from any Defect.

5.2 Notice of defect

The Customer must give Madman written notice via the email address returns@madman.co.nz of any Defect within 7 Business Days of delivery if the Defect is detected by the Customer, or within 7 days of being notified of a Defect by a consumer.

5.3 Customer's obligations

If Customer gives Madman notice under clause 5.2, it must:

- (a) preserve Products in the state in which they were delivered to the Customer or the consumer (as applicable); and/or
- (b) allow Madman (or its nominated agent) access to Customer's premises to inspect Products.

5.4 Replacement of Products

Madman will, at its option, replace Products, supply equivalent Products or pay the cost of acquiring equivalent Products only where:

- (a) Customer has given written notice under clause 5.2 and complied with clause 5.3, and Madman is satisfied with Customer's claim;
- (b) if Madman elects to have Products returned, Products are returned to Madman (or as Madman directs) in the same condition as when first delivered to Customer; and
- (c) returns are made in accordance with Madman's returns procedures, details of which are available on Madman's b2b website at: b2b.madman.co.nz

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5.5 Madman's liability for Defects

- (a) So far as permitted by law:
- (i) Madman's liability to the Customer in relation to any Defects is limited to replacement of Products, supply of equivalent Products or payment of the cost of replacement of Products or acquiring equivalent Products in accordance with clause 5.4; and
- (ii) Madman is not liable under any circumstances for damage arising from any Defects except in accordance with this clause 5.
- (b) Should product returned to Madman as defective be found on inspection by Madman not to be faulty, such product 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.
- (c) Credits may also be issued for defective Goods to be destroyed in store under the following conditions only:
- (i) A copy of proof of return or proof of exchange by the Customer is provided to Madman in the form of register receipts.
- (ii) Photographic evidence provided to Madman that the goods received by the customer arrived damaged.

6. SALE OR RETURN

This clause 6 only applies to Customers whose accounts have been pre-authorised in writing, by Madman, as trading under a 'sale or return' basis.

- (a) Where a Customer's account has been approved by Madman as a sale or return account, and such Customer wishes to make a claim to return goods to Madman which have been purchased under a written sale or return agreement, it must first obtain a return authorisation number by emailing: returns@madman.com.au. Authority for return will only be given at Madman's sole discretion and under the following conditions:
- (i) the customer provides Catalogue Number (or APN), Title and quantity on official return form provided by Madman or submitted in a format pre-approved by Madman; and
- (ii) goods returning were purchased from Madman for retail purpose only; and
- (iii) goods returning were purchased from Madman within a period that is no sooner than 90 days and no longer than 12 months, from invoice date; or
- (iv) goods returning were purchased from Madman within a period given in writing to the customer, and agreed to in advance by Madman, before the supply of said goods.
- (b) Any goods authorised for return under a 'sale or return' agreement will only be credited if they are in the same condition as when they were delivered by Madman. Should this not be the case, no credit note will be issued by Madman and these Goods will be returned to the Customer at the Customer's cost.

7. RISK, TITLE AND THE PPSA

7.1 Risk and Insurance

- (a) The risk in the Products passes to Customer on delivery of the Products to Customer's requested delivery location or to a freight forwarder nominated by Customer (whichever occurs first) ("Delivery"). Madman is not liable to Customer for any loss or damage or deterioration of the Products after Delivery, even if Madman arranges freight.
- (b) Customer must insure the Products for any loss or damage from the date of Delivery. Customer shall be responsible for taking out insurance in relation to Delivery.

7.2 Registration of Title under the New Zealand Personal Property Securities Act 1999 ("PPSA")

- (a) The Customer consents to Madman affecting a registration on the PPSA

register (in any manner Madman considers appropriate) in relation to any security interest contemplated by these trading terms and the Customer agrees to provide all assistance reasonably required to facilitate this. The Customer waives the right to receive notice of a verification statement in relation to any registration on the PPSA register.

- (b) Notices or documents required or permitted to be given to Madman for the purposes of the PPSA must be provided in accordance with the PPSA.

7.3 Title and the PPSA

- (a) Ownership of the Products will remain with Madman until all amounts owing by the customer to Madman (including without limitation, the purchase price of the Products and other debts between the Customer and Madman) have been paid in full.
- (b) Until all amounts owing by the Customer have been paid in full, the Customer may sell the Products in the ordinary course of its business, but only as trustee of Madman. The Customer must not represent to any third party that it is acting for Madman and Madman will not be bound by any contracts with third parties to which the Customer is party to.
- (c) The Customer must hold the proceeds it receives from any sale of the Products on trust for Madman. The Customer must place all proceeds from the sale of the Products in an account separate from its own monies and the Customer must not allow any person to have control of, or grant a security interest over the proceeds or the accounts in which they are held. The Customer must make immediate payment to Madman (from the accounts in which the proceeds are held_ of all amounts which may be owing to Madman.
- (d) Until all amounts owing by the Customer have been paid in full, the Customer may, subject to clause 7.3(b), take possession of the Products and hold them on trust for Madman. The Customer must store the Products in such a manner that they are readily distinguishable from the other products held by the Customer and so that it is clear the Products are the property of Madman.
- (e) If the Customer makes a payment to Madman at any time, whether in connection with these Trading Terms or otherwise, Madman may, in its absolute discretion, apply that payment to first satisfy obligations that are not secured, then obligations that are secured, but not by a purchase money security interest, in the order in which those obligations were incurred, and then obligations that are secured by a purchase money security interest in the order in which those obligations were incurred.

7.4 Application of PPSA

If Part 9 of the PPSA would otherwise apply to the enforcement of a security interest arising in connection with these Trading Terms, the Customer agrees that the following provisions of the PPSA will not apply to the enforcement of these Trading Terms:

- (a) section 116 (statement of account)
- (b) section 120(2) (notice of retention of collateral)
- (c) section 121 (objection to retention);
- (d) section 125 (damage of goods);
- (e) section 126 (reimbursement for damage)
- (f) section 127 (refusal of permission to remove);
- (g) section 129 (notice of removal accession), to the extent that it requires Madman to give notice to the Customer;
- (h) section 131 (application to Court).

8. INTELLECTUAL PROPERTY

8.1 No licence or assignment

Customer's purchase of Products does not confer on Customer any licence or assignment of any copyright, patent, design or trademark, or any other intellectual property right (whether registered, registrable or not) that subsists in Products.

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8.2 No warranty

Madman makes no representation or warranty to Customer of any kind, express or implied, that Products will not infringe any intellectual property rights of a third party.

9. THIRD PARTY CLAIMS AND ALL DEALINGS WITH THIRD PARTIES

- (a) In relation to any third party complaints or claims, Customer must:
- (i) deal promptly with all third party complaints or claims relation to Products;
 - (ii) promptly inform Madman of all material complaints or claims;
 - (iii) not admit liability on behalf of Madman in respect of any complaint or claim; and
 - (iv) not resolve or settle any complaint or claim in a way which may result in Madman incurring any liability (whether to a Customer, consumer or any other person).
- (b) In relation to all dealings with third parties, Customer must:
- (i) not hold itself out, and procure that its Personnel do not hold out, to be associated with or employed by, Madman; and
 - (ii) use its best endeavours, and procure that its Personnel use their best endeavours, to maintain the reputation of Madman at all times.

10. INDEMNITY

The Customer indemnifies Madman against any Liabilities which Madman suffers, incurs or is liable for as a result, directly or indirectly, of:

- (a) any breach of this agreement by the Customer; or
- (b) any negligent act or omission by the Customer.

11. NO CONSEQUENTIAL LOSS

Madman is not liable for any Consequential Loss under or in connection with this agreement.

12. GUARANTEE INDEMNITY AND CHARGE

- (a) The Guarantor guarantees to Madman payment of all monies and performance of all obligations including any past, present and future indebtedness by the Customer or the Guarantor arising from any past, present or future dealing with Madman and indemnifies Madman against all Liabilities suffered by Madman arising from any past, present or future dealing with the Customer or any the Guarantor.
- (b) The Guarantor agrees:
- (i) to pay to any person nominated by Madman any amount Madman certifies is payable before being entitled to dispute whether that amount is payable;
 - (ii) that this agreement shall remain effective notwithstanding any conduct or event (including any Deed of Company Arrangement whether or not agreed to by Madman) which, but for this clause, may be released or varied any obligation of the Customer or the Guarantor;
 - (iii) any payment which is subsequently avoided by any Law relating to insolvency shall be deemed not to have been paid; and
- (iv) that the Guarantor signs both in his or her personal capacity and as trustee of every trust of which the Guarantor is a trustee.
- (c) The Guarantor grants a charge in favour of Madman over all the Guarantor's estate and interest in any land and in any other assets whether tangible or intangible in which the Guarantor has any legal or

beneficial interest or in which the Guarantor acquires any such interest in the future, to secure Madman's rights under this agreement and the Guarantor agrees, upon request, to execute any document requested by Madman to further secure Madman's rights under this agreement.

- (d) In consideration of the Guarantor's promises under this agreement, Madman may grant credit to the Customer from time to time at Madman's discretion and/or forbear from taking any legal action for one month from the date hereof against the Customer.
- (e) For the purpose of giving effect to the Guarantor's obligations pursuant to this Agreement, the Customer hereby irrevocably appoints the Guarantor's general manager its attorney in all things.
- (f) If there is more than one Guarantor, each Guarantor agrees to be jointly and severally liable for the full amount owed to Madman under this agreement.
- (g) Madman may make any arrangement or compromise with the Guarantor, obtain additional guarantees, indemnities or securities from any party or release or compromise with any Guarantor or party without affecting the Guarantor's liability.
- (h) Madman may grant or apply a credit limit to the Customer at Madman's absolute discretion and any such credit limit will not limit the Guarantor's liability to Madman.
- (i) Madman may handle the Guarantor's personal information (including credit worthiness information) in accordance with clause 13.
- (j) The Guarantor acknowledges that the Customer is indebted to Madman as set out in this agreement and agrees that the Guarantee, Indemnity & Charge set out in this clause is unlimited.

13. PRIVACY AND CREDIT INFORMATION

13.1 Handling of personal and credit information

The Customer and Guarantor separately agree that Madman may, to the extent permitted by law:

- (a) obtain information about the Customer's commercial credit activities from any of the trade references or the accountant named in this Credit Application or any business which provides information about the commercial credit worthiness of persons;
- (b) obtain a consumer credit report from a credit reporting agency:
 - (i) about the Customer to assess this or any application for credit made by the Customer, or to collect overdue payments; and
 - (ii) about the Guarantor for the purpose of assessing whether to accept them as a guarantor in respect of this agreement.
- (c) at any time (including before and after any provision of credit to the Customer), give a credit reporting agency certain personal information about the Customer or Guarantor as authorised by law, including (as applicable):
 - (i) permitted identity details;
 - (ii) that the Customer has applied for credit and the amount;
 - (iii) that Madman is or is no longer a current credit provider to the Customer;
 - (iv) that the Guarantor has offered to act as guarantor; and
 - (v) any other information authorised by law.
- (d) disclose the Customer's personal information (including credit reports and other information relating to the Customer's credit worthiness) to a guarantor or prospective guarantor. Credit reports and credit worthiness information would be disclosed to prospective guarantors for the purpose of them deciding whether to act as guarantor;
- (e) exchange the Customer's and Guarantor's personal information (including banker's opinions, credit reports and other information relating to credit worthiness) with other credit providers for purposes including:

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- (i) assessing the Customer's application(s) for credit or the Guarantor's application to act as guarantor;
 - (ii) notifying other credit providers of the Customer's defaults or the Guarantor's failure to comply with its guarantor obligations;
 - (iii) exchanging information about the status of the person's obligations to Madman where the person is in default with another credit provider;
 - (iv) assessing the Customer's or Guarantor's credit worthiness; and
 - (v) any other purpose authorised by law;
- (f) exchange the Customer's and Guarantor's personal information (including credit reports and other information relating to credit worthiness) with its Related Companies;
- (g) use or disclose personal information about the Customer and Guarantor:
- (i) for the management of the Customer's account and administrative purposes including research, planning, service development, security and risk management;
 - (ii) where a third party acquires or wishes to acquire, or makes inquiries in relation to acquiring, an interest in all or part of Madman's business;
 - (iii) for the investigation and prevention of fraud and crime prevention and investigation; or
 - (iv) to the extent that Madman is required or authorised by law to do so.
 - (h) share personal information with the Customer's or Guarantor's executor, administrator, trustee, guardian, attorney and agents (such as financial or legal advisers); and
 - (i) share personal information with Madman's service providers including organisations that provide archival, auditing, debt collection, banking, marketing, advertising, mailhouse, delivery, recruitment, call centre, technology, research, utility, professional advisory and security services.

13.2 Access to personal information

The Customer and the Guarantor may contact Madman to request access to any of their personal information which Madman may hold.

14. TERMINATION

14.1 Breach of agreement

Madman may terminate the agreement with immediate effect by giving written notice to Customer if:

- (a) Customer breaches any material provision of the agreement (including without limitation any breach in respect of an obligation to pay money) and fails to remedy the breach within 7 days after receiving notice requiring it to do so; or
- (b) Customer breaches a material provision of the agreement where that breach is not capable of remedy and fails to take any action required of it by Madman within 7 days after receiving notice requiring it to do so.

14.2 Termination events

Customer must notify Madman immediately if:

- (a) it disposes of the whole or any material part of its assets, operations or business;
- (b) it ceases to carry on business;
- (c) it ceases to be able to pay its debts as they become due;
- (d) any step is taken by a mortgagee to take possession or dispose of the whole or part of its assets, operations or business;
- (e) any step is taken to enter into any arrangement between it and its creditors; or

- (f) any step is taken to appoint a receiver, a receiver and manager, a trustee in bankruptcy, a provisional liquidator, a liquidator, an administrator or other like person in relation to the whole or part of its assets, operations or business.

14.3 Termination for termination events

Madman may terminate the agreement immediately without notice if any event referred to in clause 14.2 occurs.

15. AFTER TERMINATION

15.1 After termination

If the agreement is terminated Customer must, within 5 Business Days after the date of termination, pay Madman all amounts it owes Madman irrespective of whether those amounts have fallen due and whether or not an Invoice has been issued by Madman.

15.2 Surviving provisions

Clauses 1 and 7 to 12 inclusive continue to apply after termination of the agreement.

16. FORCE MAJEURE

No party is liable for any failure to perform or delay in performing its obligations under the agreement if that failure or delay is due to a Force Majeure Event. If that failure or delay exceeds 90 days, the other party may terminate the agreement with immediate effect by giving written notice to the other party. This clause does not apply to any obligation to pay money.

17. ASSIGNMENT

Madman may in its absolute discretion sub-contract the manufacture or delivery of Products or otherwise assign this agreement. Customer must not otherwise assign or otherwise deal with the agreement or any rights under the agreement without the prior written consent of Madman.

18. GENERAL

18.1 Notice

A notice to be given by a party to another party under the agreement must be in writing and sent to the address previously nominated by that party and will be deemed to be duly given:

- (a) in the case of hand delivery, on the day of delivery;
- (b) three (3) Business Days after the date of posting by pre-paid registered post; or
- (c) if sent by facsimile or email, when sent.

18.2 Electronic signatures binding

Delivery of a signature page of this agreement by facsimile or by PDF file (portable document format file) shall be effective as delivery of a manually executed version of this agreement and shall be deemed legally binding.

18.3 Costs

Each party must bear its own costs for the preparation and execution of the agreement.

18.4 Governing law

The agreement is governed by the law applicable in the Auckland, New Zealand and the parties consent to the exclusive jurisdiction of the courts of Auckland, New Zealand.

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18.5 Time

Time is not of the essence except in relation to payment.

18.6 Business Day

Where the day on or by which something must be done is not a Business Day, that thing must be done on or by the next Business Day.

18.7 Waiver

The failure of a party at any time to require performance of any obligation under the agreement is not a waiver of that party's right:

- (a) to insist on performance of, or claim damages for breach of, that obligation unless that party acknowledges in writing that the failure is a waiver; and
- (b) at any other time to require performance of that or any other obligation under the agreement.

18.8 Unenforceable provision

- (a) If a provision of, or the application of a provision of, this agreement which is void, illegal or unenforceable in any jurisdiction does not affect the validity, legality or enforceability of that provision in any other jurisdiction or of the remaining provisions in that or any other jurisdiction.
- (b) Where a clause in this agreement is void, illegal or unenforceable, it may be severed without affecting the enforceability of the other provisions in this agreement.

18.9 Relationship between the Parties

Nothing in this agreement creates any fiduciary relationship, nor any partnership, joint venture or agency relationship between the parties.