

Silver Memories trading as
Music Broadcasting Society of Queensland Limited
ABN 39 009 992 554

TERMS AND CONDITIONS OF SALE

1. Interpretation

1.1 In these Terms:

“Company” means Music Broadcasting Society of Queensland Limited

“Customer” means the purchaser of Goods and services from the Company.

“Goods” means all goods and services sold and/or delivered by the Company to the Customer.

“Terms” means these terms and conditions of sale.

“Intellectual Property” has the meaning given in clause 18.6.

2. Application

2.1 These Terms apply to all contracts for the sale of Goods by the Company.

2.2 No amendment, alteration, waiver or cancellation of any of these Terms is binding on the Company unless confirmed by the Company in writing.

2.3 The Customer acknowledges that no employee or agent of the Company has any right to make any representation, warranty or promise in relation to the Goods or the sale of the Goods other than as contained in these Terms.

3. Prices, GST and Quotations

3.1 The purchase price for each Product ordered by a Customer will be: (a) the price for that Product quoted in writing by Music Broadcasting Society of Queensland Limited to the Customer (or otherwise agreed in writing between the parties) in connection with the Order; or (b) if no such quote was given or price agreed, the price set out in Music Broadcasting Society of Queensland Limited’s prevailing price list for the supply of the relevant Products in Australia, as in effect at the time the Product is supplied to the Customer.

3.2 All prices on any Music Broadcasting Society of Queensland Limited price lists are subject to change without notice.

3.3 Any quotations from Music Broadcasting Society of Queensland Limited are valid for a period of 30 days from the date of issue or otherwise as specified in the quotation.

3.4 Prices given by Music Broadcasting Society of Queensland Limited in any quotation are applicable to that quotation only.

3. Prices and GST

3.3 If GST is levied or imposed on or in respect of any supply made by a party (the Supplier) under or in connection with a Contract, then the recipient of that supply (the Recipient) must, in addition to

the purchase price or other consideration payable for that supply under these Music Broadcasting Society of Queensland Limited Standard Terms (GST Exclusive Consideration), pay the Supplier an amount on account of GST calculated by multiplying the GST Exclusive Consideration by the GST rate prevailing at the time that the supply is made.

3.5 The Recipient is only required to pay an amount for GST in respect of a taxable supply to it once the Recipient has received a tax invoice from the Supplier.

4. Payment

4.1 The Customer must pay Music Broadcasting Society of Queensland Limited the purchase price for the Products and any other amounts (including any GST) payable in relation to a Contract, in full, without any deduction or discount other than as stated in these Terms or in the relevant invoice or statement, within 30 days of the date of the invoice issued by Music Broadcasting Society of Queensland Limited in respect of those Products.

4.2 Music Broadcasting Society of Queensland Limited, in its sole discretion, requires a deposit of 50% of the invoice price which must be paid when placing an order or accessing the service. The customer must provide the required payment to Music Broadcasting Society of Queensland Limited prior to any future supply of Products by Music Broadcasting Society of Queensland Limited.

4.3 The balance of the invoice price must be paid in full on completion of installation and commissioning of the Silver Memories service.

4.4 Interest is payable on all overdue accounts calculated on a daily basis at the rate of 1.5% per month as from the date due for payment until payment is received by the Company.

4.5 Ongoing access to the Silver Memories broadcast service and web-based resources may be terminated at the Company's discretion if the Customer falls into arrears of their monthly access fees by more than 90 days

5. Delivery

5.1 The Customer must, within 7 days of being notified of their availability accept delivery of the Goods and pay the balance of the invoice price on completion of installation and commissioning of the Silver Memories service.

6. Title

6.1 Full legal and equitable ownership of, and title to, Goods passes to the Customer at the time of Delivery or the time at which the Customer makes full payment to Music Broadcasting Society of Queensland Limited (in cleared funds) of all amounts payable for the Goods under the relevant Sale Contract, whichever occurs later. Music Broadcasting Society of Queensland Limited retains full ownership of and title to all Goods until that time.

7. Risk and Insurance

7.1 The Goods are entirely at the risk of the Customer from the moment of delivery to the Customer's point of delivery, even though title in the Goods has not passed to the Customer at that time.

7.2 The Customer must, at its own expense, maintain the Goods and insure them for the benefit of the Company against theft, breakdown, fire, water and other risks as from the moment of delivery to the Customer and until title in the Goods has passed to the Customer.

8. Inspection

8.1 Unless the Customer has inspected the Goods and given written notice to the Company within 7 days after delivery that the Goods do not comply with the relevant specifications or descriptions, the Goods are deemed to have been accepted in good order and condition.

9. Cancellations

9.1 No order may be cancelled, modified or deferred without the prior written consent of the Company (which is at the Company's sole discretion). If such consent is given it is, at the Company's election, subject to the Company being reimbursed all losses, including loss of profits, and paid a cancellation fee (being not less than 20% of the invoice price of the Goods).

9.2 If an order is cancelled once goods have been shipped, they are to be returned at customer's expense.

10. Limited Liability

10.1 These Terms do not affect the rights, entitlements and remedies conferred by the Trade Practices Act 1974.

10.2 The Company is not subject to, and the Customer releases the Company from, any liability (including but not limited to consequential loss or damage) because of any delay in delivery or fault or defect in the Goods. The Customer acknowledges that the Company is not:

- (a) responsible if the Goods do not comply with any applicable safety standard or similar regulation; and
- (b) liable for any claim, damage or demand resulting from such non-compliance.

10.3 If any statutory provisions under the Trade Practices Act 1974 or any other statute apply to the contract between the Company and the Customer (Contract) then, to the extent to which the Company is entitled to do so, the Company's liability under the statutory provisions is limited, at the Company's option, to:

- (a) replacement or repair of the Goods or the supply of equivalent Goods; or
- (b) payment of the cost of replacing or repairing the Goods or of acquiring equivalent goods;

and in either case, the Company will not be liable or accept liability for any consequential loss or damage or other direct or indirect loss or damage.

11. Warranty

11.1 All Goods supplied are covered by such warranties as are specified by the manufacturer and provided by the installer and supplied subject to the product standards detailed by the manufacturer.

11.2 On discovery of any defect in the Goods, the Customer must immediately notify the Company in writing of such defect. The Customer must not carry out any remedial work to alleged defective Goods without first obtaining the written consent of the Company to do so.

11.3 The provisions of any act or law (including but not limited to the Trade Practices Act 1974) implying terms, conditions and warranties, or any other terms, conditions and warranties which

might otherwise apply to or arise out of the Contract are hereby expressly negated and excluded to the full extent permitted by law.

11.4 The Customer expressly acknowledges and agrees that it has not relied upon, and the Company is not liable for any advice given by the Company, its employees, agents or representatives in relation to the suitability for any purpose of the Goods.

12. Contract

12.1 The terms of the Contract are wholly contained in these Terms and any other writing signed by both parties. The Contract is deemed to have been made at the Company's place of business where an order was placed and any cause of action is deemed to have arisen there.

13. Right to Enter Premises

13.1 The Customer

(a) authorises the Company by itself, its agents or representatives at all reasonable times, without notice, to enter onto and to remain in and on any premises where the Goods are located in order to collect the Goods, without being guilty of any manner of trespass; and

(b) assigns to the Company all the Customer's rights to enter onto and remain in and on such premises until all the Goods have been collected.

14. Force Majeure

14.1 The Company will not be liable for any costs relating to equipment repair, realignment or reinstatement, or breach of contract due to any matter or thing beyond the Company's control (including but not limited to transport stoppages, transport breakdown, fire, flood, earthquake, acts of God, strikes, lock-outs, work stoppages, wars, riots or civil commotion, intervention or public authority, explosion or accident).

15. Waiver of Breach

15.1 No failure by the Company to insist on strict performance of any of these Terms is a waiver of any right or remedy which the Company may have, and is not a waiver of any subsequent breach or default by the Customer.

16. No Assignment

16.1 Neither the Contract, nor any rights under the Contract may be assigned by the Customer without the prior written consent of the Company, which is at the Company's absolute discretion.

17. Severability

17.1 If any provision contained in these Terms is held by a court to be unlawful, invalid or unenforceable, the validity and enforceability of the remaining provisions are not affected.

18. Governing Law

18.1 These Terms and the Contract shall be governed by the law of Queensland and the parties submit to the courts of Queensland in respect of any dispute arising.

18. Intellectual Property and confidential information

18.1 The Customer acknowledges that all right, title and interest in and to Intellectual Property is the sole property of, or licensed by, Music Broadcasting Society of Queensland Limited (as the case may be) and the Customer will gain no rights, title or interest in or to the Intellectual Property whatsoever.

18.2 The Customer specifically acknowledges Music Broadcasting Society of Queensland Limited's exclusive rights to ownership of any modification, translation or adaptation of Products or Music Broadcasting Society of Queensland Limited's documentation relating to Products and any other improvement or development based thereon, whether developed, supplied, installed or paid for by or on behalf of the Customer or any customer of the Customer or otherwise.

18.3 The Customer may only use the Intellectual Property for any purposes reasonably necessary for, or reasonably incidental to, the use of Products for their intended purpose and must not allow any third party to use the Intellectual Property unless prior written consent has been obtained from Music Broadcasting Society of Queensland Limited.

18.4 The Customer must not, and must not permit any person reasonably within its control nor procure any person to, modify, copy, clone or reverse engineer any Products, or copy, modify or decompile any of Music Broadcasting Society of Queensland Limited's documentation relating to Products.

18.5 If the Customer receives any information from Music Broadcasting Society of Queensland Limited in connection with Products that is, by its nature, confidential or that the Customer is or ought reasonably to be aware is confidential, the Customer must keep that information confidential and not disclose the whole or any part of the information to a third party unless: it receives the prior written consent of Music Broadcasting Society of Queensland Limited; such information enters the public domain (other than as a result of a breach of any obligation of confidence owed by the Customer); such disclosure is reasonably necessary for any purposes described in clause 18.3; or such disclosure is required by law.

18.6 In this clause 18, Intellectual Property means any and all present and future intellectual property rights conferred or recognised by statute, common law or equity in or relating to any Products, including such rights in or in respect of patents, inventions, improvements, designs, drawings, instruction booklets, specifications, computer software, programs and databases, technical data, confidential information, trade secrets, trademarks, business names, trade names, domain names, logos, knowhow and copyright, and any application or right to apply for registration of, and any licence or right to use, any such rights.

19 4MBS Privacy Policy and Data Management Code of Practice

19.1 Details of **4MBS Privacy Policy and Data Management Code of Practice** can be found on our website, www.4mbs.com.au/