

# PRO MUSIC PTY LTD

## TRADING TERMS AND CONDITIONS

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Whenever Pro Music Pty Ltd agrees to supply goods to a dealer, the following terms and conditions will apply unless otherwise agreed in writing.

(The word 'buyer' is used to mean a retailer as well as anyone else who orders goods from Pro Music.)

### 1. AGREEMENT

- 1.1. **Parties** - This Agreement is made between Pro Music Pty Ltd ABN 15 007 958 617 ("Pro Music") and the applicant ("The Buyer") specified in item 1 of the Schedule.
- 1.2. **Entire Agreement** - Unless otherwise provided by the parties in writing, and subject to clause 4.1 of this Agreement, the terms of this Agreement represent the entire agreement between the parties and will apply to each order for supply of Goods which the Buyer places with Pro Music.
- 1.3. **Company Buyer** - Where the Buyer is a company, Pro Music will only supply Goods to the Buyer subject to it obtaining guarantees under clause 15 from the Guarantors. The Guarantors will sign this Agreement as a Deed.

### 2. MEANINGS

**Definitions** - In this Agreement-

**"Carrier"** means the freight carrier nominated by Pro Music under clause 8.1 or by the Buyer under clause 8.2 to carry the Goods between Pro Music and the Buyer;

**"Due Date"** means thirty days after the end of the month in which Pro Music issues the invoice for the Goods to the Buyer;

**"Goods"** means any goods which the Buyer has requested Pro Music to supply at any time by placing an order with Pro Music and which Pro Music then agrees to supply to the Buyer;

**"Guarantors"** means, where the Buyer is a company, the person referred to in item 2 of the Schedule;

**"Information Sheet"** means the Information Sheet attached to the Pro Music Catalogue as published from time to time and which is available to the Buyer upon request;

**"Schedule"** means the Application for Credit Form annexed to this Agreement which has been completed by the Buyer;

**"Outstanding Debt"** means all money which the Buyer owes to Pro Music under any agreement which is due and payable;

**"Price"** means the invoice price of the Goods supplied to the Buyer which is the sum of:-

- (i) the price stated in Pro Music's current Catalogue for those particular Goods on the date of despatch to the Buyer;
- (ii) less any trade discount;
- (iii) plus any goods and sales tax payable on the Goods;
- (iv) plus the insurance costs (being Pro Music's calculation of the insurance premium amount, its administrative and stamp duty costs) where Pro Music has effected insurance under clause 8.3;
- (v) plus any freight costs under 8.1.

**"Repossessed Goods"** means any Goods in which title has not passed to the Buyer under clause 6.1.

### 3. MORE THAN ONE PERSON

If a party consists of more than one person, this Agreement binds them jointly and each of them severally.

### 4. INCORPORATED TERMS

The Buyer acknowledges that the terms of the most recently published Information Sheet at the time the Buyer places its order with Pro Music will be deemed to form part of this Agreement.

### 5. PAYMENT

5.1. **Payments** - The Buyer must pay Pro Music:-

- (a) the Price no later than the Due Date.
- (b) without demand, interest (calculated from the Due Date to the date of actual payment at the rate being charged by Pro Music's financier at the Due Date) on:-
  - (i) any part of the Price not paid within 30 days of the Due Date.
  - (ii) any judgement which Pro Music may obtain against the Buyer.
- (c) on demand, all Pro Music's costs and expense in:-
  - (i) obtaining (or attempting to obtain) payment of the Price after the Due Date; and or
  - (ii) repossessing (or attempting to repossess) any Repossessed Goods.

5.2. **Price Changes** - The Buyer acknowledges that all prices specified in the Pro Music Catalogue are subject to change without notice, and the price at the time of submitting the order is the price which shall be applied and the Buyer agrees to be bound by same.

5.3. **Statement** - A written statement signed by Pro Music's directors or credit officer stating the amount of money which the Buyer owes to Pro Music will be prima facie evidence of the Buyer's debt to Pro Music at the date of the statement.

5.4. **Place for Payment** - The Buyer must pay all money payable under this Agreement to Pro Music at its Brisbane Head Office (or any other place notified under this Agreement by Pro Music).

5.5. **Dishonoured Cheques** - The Buyer must not give Pro Music any cheque or instrument in payment of money due under this Agreement which is dishonoured on presentation. If a cheque is dishonoured, the Buyer must pay Pro Music the dishonoured cheque and bank charges it incurs within seven days.

5.6. The Buyer acknowledges that it remains liable for any tax, excise, levy, duty or any other amount imposed by law upon the transaction, regardless if it is included in the Tax Invoice provided by Pro Music or not.

### 6. TITLE TO GOODS

6.1. **Title** - Title to the Goods will not pass to the Buyer until the Buyer has made the following payments to Pro Music in full.-

- (a) the Price for those Goods; and
- (b) all Outstanding Debts.

## **Pro Music Trading Terms and Conditions Cont'd**

- 6.2. **Acknowledgement** - The Buyer acknowledges that the following acts alone will not divest Pro Music of its title in the Goods:-  
(a) delivery of the Goods to the Buyer; or  
(b) Pro Music's acceptance of the Buyer's orders for other goods.
- 6.3. **Bailee** - Until title in the Goods passes to the Buyer under clause 6.1, the Buyer:-  
(a) will hold Goods as Pro Music's bailee, trustee and fiduciary and/or to Pro Music's order and direction;  
(b) must keep the Goods separate from its own and those of third parties;  
(c) must keep the Goods properly stored, protected and insured;  
(d) may only re-sell the Goods as Pro Music's agent and must not represent to others that it is acting for Pro Music (and Pro Music will not be liable under any such re-sale contracts);  
(e) acknowledges that if it re-sells the Goods under clause 6.3 (a), the proceeds resulting from any re-sale belongs to Pro Music and is held on trust by the Buyer for and on behalf of Pro Music.
- 6.4. **Indemnity** - The Buyer agrees to indemnify Pro Music against all losses and expenses which Pro Music incurs as a result of the use or storage of the Goods by the Buyer.
- 6.5. **Risk** - Despite clause 6.1, the parties agree the risk in the Goods passes to the Buyer upon Pro Music delivering the Goods to the Carrier.
7. **RIGHT TO REPOSSESS GOODS**
- 7.1. **Repossession** - Pro Music is entitled to retake possession of the Repossessed Goods, if:-  
(a) The Buyer fails to pay the full Price on or before the Due Date;  
(b) The Buyer commits an act of bankruptcy or makes arrangements with its creditors;  
(c) the Buyer becomes an externally-administered body within the meaning of the Corporations Law or is wound up voluntarily;  
(d) the Buyer ceases to carry on business;  
(e) the Buyer has judgement made against it which is not set aside or satisfied within 7 days; or  
(f) a person who has given a guarantee in terms of the Guarantee clause of this Agreement commits an act of bankruptcy.
- 7.2. **Right of Entry** - The Buyer authorises Pro Music (and its agents) for the purpose of enforcing its rights under clause 7.1, to enter upon any premises where the Repossessed Goods are being stored or where Pro Music reasonably believes the Repossessed Goods are being stored.
- 7.3. **Right of Resale** - Pro Music has the right to resell any Repossessed Goods.
8. **FREIGHT ARRANGEMENTS**
- 8.1. **Freight** - All orders are ex-Brisbane and, subject to clause 8.2, Pro Music will organise at the Buyer's expense the freight of the Goods by carrier to the Buyer.
- 8.2. **Written Notice** - If the Buyer gives Pro Music written notice of the Carrier and method of freight before the date of despatch, Pro Music will arrange for the Goods to be delivered to the Buyer in accordance with that method and using the Carrier specified in that notice.
- 8.3. **Insurance** - Unless the Buyer gives contrary written directions to Pro Music, Pro Music will effect freight insurance on all Goods it despatches. Any amounts due and owing under such policies are the responsibility of the buyer.
- 8.4. **Damage** - If the Goods are damaged when delivered to the Buyer, Pro Music will not lodge a claim under its Special Insurance Policy, unless the Buyer has fully complied with the requirements set out in Information Sheet.
- 8.5. **Risk** - The Buyer acknowledges that once the Goods are dispatched by Pro Music, and from the time that Pro Music delivers the Goods to a third party for transport, Pro Music is not liable for any loss or damage arising, either directly or indirectly. Further, the Buyer accepts any and all liability for loss or damage arising from the transport of the Goods.
9. **RETURN OF GOODS**
- 9.1. **Approval** - The Buyer may return Goods to Pro Music only if:-  
(a) Pro Music Head Office has, in its absolute discretion, given its approval to the return of the Goods; and  
(b) Pro Music and the Buyer have agreed on the amount to be paid to the Buyer under clause 9.2 and the freight arrangements for the return of the Goods.
- 9.2. **Payment on Return** - On return of the goods, Pro Music will pay the Buyer an amount which is:-  
(a) 100% of the Price paid by the Buyer, if the Goods are returned to Pro Music within 30 days of the date of delivery to the Buyer;  
or  
(b) 85% of the Price paid by the Buyer, if the Goods are returned to Pro Music after 30 days of the date of delivery to the Buyer.
- 9.3. **Time for Complaint** - Any complaint by the Buyer arising under this clause must be made within seven (7) days of receiving the invoice. To avoid confusion, the Invoice is deemed to have been received on the next business day after sending.
10. **WARRANTIES**
- 10.1. **Exclusion of Warranties** - Pro Music excludes any express or implied condition or warranty, statutory or otherwise which is not stated in this Agreement to the extent permitted by the law of Australia or the law of any State or Territory of Australia.
- 10.2. **Liability** - Pro Music's liability for a breach of any warranty or condition will be limited to one or more of the following:-  
(a) the replacement of the Goods or supply of equivalent Goods  
(b) the repair of the Goods.  
(c) the payment of the cost of replacing the Goods or of acquiring equivalent goods.  
(d) the payment of the cost of having the Goods repaired.
- 10.3. **No Liability** - Where Pro Music supplies Goods to the Buyer, and:-  
(a) the Buyer does not sell the Goods by the end of the 12 month after the date of delivery of the Goods to the Buyer ("the Sale Date"); and  
(b) the Goods breakdown after the Sale Date and before they are sold by the Buyer;  
then Pro Music will not honour any manufacturer's warranty in respect of those goods, unless Pro Music in its absolute discretion thinks fit.

## **Pro Music Trading Terms and Conditions Cont'd**

- 10.4. **Loss and Damage Arising** – Pro Music does not accept liability, and the Buyer acknowledges that Pro Music will not be liable, for any loss and or damage arising from late delivery of Goods, or acts of third parties (including, but not limited to, the manufacturer) in the supply, transport and delivery of Goods under this Agreement.
- 10.5. **Return of Goods under Warranty** - Before the Buyer returns any Goods to Pro Music for repair under warranty; the Buyer must first obtain Pro Music Head Office's approval for the return of the Goods. The Buyer agrees that-
- (a) Pro Music will pay the cost of freight of the Goods to Pro Music using a Carrier nominated by Pro Music;
  - (b) it will pay the cost of the freight of the repaired Goods from Pro Music to the Buyer;
  - (c) unless it nominates a Carrier in accordance with clause 8.2, Pro Music may freight the repaired Goods to the Buyer using any Carrier that Pro Music thinks fit; and
  - (d) It is the Buyer's responsibility (or the Buyer's customer's responsibility if the goods have been on sold) to effect insurance on any Goods returned for repair.
11. **CHANGE OF OWNERSHIP OF BUYER'S BUSINESS**
- 11.1. **Notice** - The Buyer must, not later than 14 days before any reconstitution of the ownership of its business, any change of its directors or shareholding or its trading, notify Pro Music of the details of that proposed change.
- 11.2. **Further Orders** - If the ownership of the Buyer's business is reconstituted so that the business is conducted by a company instead of a sole trader or partnership, the placement of further orders for Goods by the Company constitutes acceptance of these trading terms by the company.
- 11.3. **Guarantee** - If the ownership of the Buyer's business is reconstituted so that the business is conducted by a company instead of a sole trader or partnership and if the Buyer continues to have an interest in that company (whether as a director, shareholder or employee) the Buyer;
- (a) will continue to be liable under this Agreement for Goods ordered up to the date of the reconstitution of the Buyer's business; and
  - (b) agrees to guarantee the company's liability (in terms of the Guarantee in clause 15) in respect of any further Goods which ProMusic supplies to the company under the terms of this Agreement.
12. **NO WAIVER**  
No waiver by Pro Music is effective unless it is in writing and signed by Pro Music. Waiver of a breach is not to be deemed a waiver of a continuing breach or future breach.
13. **PRIVACY ACT AUTHORISATION**
- 13.1. **Authority** - The Buyer agrees that Pro Music may:-
- (a) make any enquiries of the Buyer's bankers, other credit providers or any credit reporting agency which it considers necessary to assess the Buyer's credit worthiness or collect overdue payments; and
  - (b) collect a credit report containing personal information about the Buyer to assess whether or not to give the Buyer credit.
- 13.2. **Disclosure** - To the extent that Pro Music is permitted to do so by law, the Buyer authorises Pro Music to disclose any information it has about the Buyer to anyone including the Buyer's bankers, other credit providers or credit reporting agencies for credit related purposes.
- 13.3. **Subsistence of Authority** - The Buyer agrees that this authorisation remains in force until Pro Music no longer has any rights under this Agreement.
14. **NOTICES**
- 14.1. **In Writing**- Any notice given under this Agreement must be in writing.
- 14.2. **Service on Buyer** - In addition to the service requirements under the Corporations Law, Pro Music may serve a notice or demand on the Buyer by delivering or posting it to the Buyer at the Buyer's last notified address for delivery.
- 14.3. **Notice of Buyer's Address** - The Buyer must promptly notify ProMusic of its address for delivery, registered office if applicable, and facsimile and phone numbers and update the notice if any changes occur.
15. **PERSONAL PROPERTIES SECURITIES ACT 2009 (Cth)**
- 15.1. **Proceeds and Security Agreement** - The Buyer acknowledges that Pro Music's interest under this Agreement is a Security Interest for the purposes of the PPSA, and:
- (a) that Security Interest relates to any goods provided to the Buyer under this agreement and all Proceeds of any kind; and
  - (b) that this Agreement is a security agreement for the purposes of the PPSA.
- 15.2. **Registration on PPSR** - The Buyer consents to Pro Music effecting a registration on the PPSR (in any manner Pro Music considers appropriate) in relation to any Security Interest arising under or in connection with this Agreement and the Buyer agrees to provide all assistance reasonably required by Pro Music to facilitate this.
- 15.3. **Verification Certificate** - The Buyer waives its right to receive any notice under the PPSA (including notice of a verification statement) unless the notice is required by the PPSA and cannot be excluded.
16. **GOVERNING LAW**
- 16.1. This agreement will be governed by the laws of Queensland.
- 16.2. Pro Music and the Buyer irrevocably consent to the exclusive jurisdiction of the Courts of Queensland.
17. **RESULTING LOSS**  
**Third Party Costs** – should Pro Music incur loss and or damage as a result of the Buyer's default under this Agreement, then the Buyer agrees to indemnify and reimburse Pro Music for and against all such loss.
18. **BUYER'S ACKNOWLEDGEMENT & WARRANTY**
- 18.1. **Acknowledgement** - The Buyer acknowledges that before it signed this Agreement and placed any order for Goods, The Buyer has read, understood and accepted the terms of this Agreement.
- 18.2. **Warranty** - The Buyer warrants that all information it has provided to Pro Music is correct.

## DISCLAIMER

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Fender®, Stratocaster®, Strat®, Telecaster®, and Tele® are the registered Trade Marks of Fender Australia P/L, or its products. Pro Music has no connection with Fender Australia P/L, or its products. The products advertised are not approved or licensed by Fender Australia P/L.

## INFORMATION SECTION

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### Freight

- a) Unless specifically notified in writing, Pro Music will arrange for all goods from Pro Music's Brisbane warehouse to the dealer's address and will add all freight costs to the invoiced amount.
- b) When ordering goods from Pro Music you **must tell us in writing** if you do not want us to arrange freight. A fax to (07) 3718 0666 will suffice.
- c) The same procedure applies to insurance as to freight – Pro Music will arrange it, and invoice the premium to you unless you tell us otherwise in **writing**.

### Transit Claims

- a) NEVER give a clearance signature to the carrier unless you have opened and examined all the goods.
- b) If you must sign without examining the goods you **MUST** clearly mark on the consignment note "**UNEXAMINED**".
- c) If there is obvious damage, please state what appears to be wrong on the consignment note. If any carton appears to have been opened, please also state that fact next to your signature on the consignment note. Only when the dealer complies with all of the above conditions, will Pro Music be able to make a claim under the *Special Insurance Policy*.

### Return of Goods

- a) **No merchandise may be returned without first notifying Pro Music Head Office for specific freight instructions and return approval.**
- b) **Goods returned for attention under approved warranty must be sent to Pro Music, freight pre-paid.**
- c) **Retail Customers Warranty Claims**

**Pro Music accepts no liability for damage in transit of retail customers warranty claims. Transit insurance is the responsibility of the owner and it is recommended transit insurance be obtained prior to sending goods to Pro Music or its service agents.**

### Credit Policy

- a) All dealers of Pro Music should read and understand the Trading Terms and Conditions as published in our current catalogue.
- b) We reserve the right to restrict or withhold supplies where terms are not met by the dealer.
- c) Our policy is based upon the utmost co-operation at all times. The dealer should contact our Accounts Receivable Department where trading terms cannot be met.
- d) When accepting orders, we rely upon our understanding that none of the following circumstances exist:
  - i. That the dealer is insolvent.
  - ii. Circumstances which would entitle a debenture holder or other creditor to appoint a receiver, to apply for winding up or apply for the appointment of a manager or exercise any other rights over or against the assets of the dealer.

***It is a strict requirement that a dealer inform us immediately if any of the above circumstances exist.***

For whatever reason, claim for credit for goods delivered to you cannot be considered unless made within seven (7) calendar days from receipt of those goods.

## PRO MUSIC PRICES DISCLAIMER

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**PRO MUSIC PTY LTD WILL NOT BE HELD RESPONSIBLE FOR INCORRECT IMAGES, DESCRIPTIONS OR PRICES SHOWN ON OUR WEBSITE.**

**DETAILS ARE SUBJECT TO CHANGE WITHOUT NOTICE SHOULD THE NEED ARISE AS WE ENDEAVOUR AT ALL TIMES TO PROVIDE ACCURATE UP TO DATE INFORMATION. NEW PRODUCTS AND PRICE ADJUSTMENTS WILL BE ADDED AS THEY COME TO HAND. IF YOU ARE UNABLE TO FIND THE INFORMATION YOU NEED, PLEASE CONTACT OUR FRIENDLY & HELPFUL INTERNAL SALES TEAM TO ASSIST YOU WITH YOUR ENQUIRY.**

**ALL PRICES LISTED ON THIS WEBSITE ARE RECOMMENDED RETAIL PRICES ONLY.**