

EOS MUSIC (“Seller”) CONDITIONS OF SALE (“Conditions”)

1. BUYERS STATUTORY RIGHTS

These Conditions shall not exclude, limit, restrict or modify the rights, entitlements and remedies conferred upon the Buyer or the liabilities imposed upon the Seller, by any condition or warranty implied by any applicable legislation rendering void or prohibiting such exclusion, limitation, restriction or modification. To the full extent permitted by law all terms, conditions and warranties not expressly set out below are excluded.

2. ACCEPTANCE

All goods are sold subject to these Conditions. No terms or conditions at variance with these Conditions nor any qualification or restriction of these Conditions (whether set out in the Buyer’s purchase order or other document) will be applicable or binding upon the Seller or of any force or effect UNLESS expressly noted and agreed by the Seller in writing.

3. ORDERS

- (a) Orders for goods will constitute offers by the Buyer and will not be deemed to be binding on the Seller unless and until confirmed by the Seller in writing.
- (b) If the Buyer (with the written consent of the Seller) cancels all or part of an order prior to dispatch of the goods it shall pay to the Seller as liquidated damages reflecting costs incurred by the Seller an amount equal to 5% plus GST of the price of the cancelled goods. If the Buyer (with the written consent of the Seller) cancels all or part of the order after dispatch it shall pay to the Seller as liquidated damages reflecting costs incurred by the Seller the full price of the goods cancelled.
- (c) The Seller may in its absolute discretion accept goods returned and credit the Buyer’s credit account with the Seller. Any goods returned for credit are subject to a 15% plus GST handling and restocking charge which the Seller may deduct from the credit account or claim from the Buyer which must be paid upon receipt of the Seller’s invoice.

4. WARRANTIES

Subject to Condition 1.

- (a) The Seller warrants that the goods supplied shall be of merchantable quality. All goods are supplied subject to this warranty only and any liability arising out of or in respect of the sale of supply, re-sale or re-supply, use or re-use whether singly or otherwise of the goods, howsoever arising including without limitation any liability arising from any negligent act or omission and whether for consequential loss or otherwise, and including any liability the Seller may otherwise have had by virtue of any representation, warranty, condition or term, whether expressed or implied by law is hereby excluded. In particular, but without limitation, the Seller shall not be liable for any damage to the audio tapes, compact discs, digital versatile discs or records including, without limitation, audio tape breakages, scratching or warping of compact discs, digital versatile discs or records or any other faults due to use, storage or handling after dispatch of the goods to the Buyer.
- (b) Any liability incurred by the Seller to the Buyer is limited to the replacement of the goods or (at the option of the Seller) refund of the price paid by the Buyer and in particular does not extend to consequential loss and is conditional upon the Buyer within 14 days of delivery making a written claim to the Seller setting out full particulars of such claim and returning the goods to enable a proper examination.
- (c) The Buyer shall not make any representation or give any warranty in relation to the goods unless expressly approved by the Seller in writing. The Seller shall not be liable for any representation or warranty given by the Buyer which has not been authorised by the Seller in writing and the Buyer agrees to indemnify the Seller and keep it indemnified against any loss, claim or expense suffered by it arising from any breach or alleged breach thereof.
- (d) The Seller does not warrant or claim that it has any copyright or related right or interest in the goods.

5. DELIVERY

- (a) The Seller will make all reasonable efforts to have the goods delivered on the agreed delivery date, but the Seller shall be under no liability whatsoever should delivery not be made on this date.
- (b) Where the goods are to be delivered by partial shipments, each partial shipment shall be deemed to be sold under a separate contract. Any failure on the part of the Seller to deliver within the time stated shall not entitle the Buyer to repudiate the contract with regard to the balance remaining undelivered.
- (c) If the Buyer requests and the Seller agrees to a deferment of delivery of the goods, the date from which delivery is deferred shall be deemed to be the date on which delivery is made and the risk in respect of the goods shall pass to the Buyer with effect from such date. From that date until the date of actual delivery the Buyer shall pay a storage fee as nominated by the Seller.
- (d) The Buyer shall be responsible for all delivery, insurance and all other costs and charges including any customs duty.
- (e) Unless otherwise arranged by the Buyer seven days prior to delivery, the Seller will arrange for insurance and delivery of the goods to the Buyer’s premises on the Buyer’s account.

6. TITLE

- (a) Goods supplied by the Seller to the Buyer will be at the Buyer’s risk upon delivery to the Buyer’s warehouse or upon delivery deemed in accordance with Condition 5(c) and the Buyer must insure the goods thereafter against such risks as the Seller reasonably requires.
- (b) Ownership of the goods supplied by the Seller will not pass to the Buyer and will remain with the Seller until such time as the goods, the subject of any sale, and all other goods supplied by the Seller to the Buyer have been paid in full.
- (c) Until such time as all goods have been paid in full or any other monies due to the Seller have been paid in full, the Seller authorises the Buyer to sell the goods as fiduciary agent for the Seller in the ordinary course of its business. The Buyer must not represent to any third party that it is acting for the Seller and the Seller will not be bound by any contract to third parties to which the Buyer is a party. The Buyer in holding the goods will act as the Seller’s fiduciary agent and bailee. The proceeds of the sale of goods by the Buyer must be paid into a separate account and held in trust for the Seller. The Buyer must forthwith make payment to the Seller from the account all amounts which may be owing by the Buyer to the Seller from time to time.
- (d) Until such time as the goods have been paid in full and all other debts discharged by the Buyer, the Buyer must store the goods in such manner as to show clearly that they are the property of the Seller.
- (e) The Buyer irrevocably agrees and undertakes that the Seller (its servants or agents) will have the right forthwith (and without prejudice to any rights the Seller may have pursuant to these Conditions or at law or in equity) without notice or demand to immediately enter upon the Buyer’s premises and re-take possession and remove the goods in the possession of the Buyer of wheresoever situated.

7. PRICE

The price(s) quoted are net and no further deductions or discounts apply. The price charged shall be the price ruling at delivery unless otherwise agreed in writing. Price indications or price lists are subject to alteration to prices ruling at the delivery date. The total invoice price is in respect of all goods (including promotional materials) supplied by EOS MUSIC.

8. GST

The price does not include GST or any tax in the nature of goods and services or value added tax. If applicable to any goods, GST and any tax in the nature of a goods and services or value added tax will be included in the invoice(s) and will be payable by the Buyer in accordance with these Conditions.

9. VARIATION

If the Seller incurs additional costs or expenses by reason of the instructions or information given by the Buyer being incorrect or due to the lack or insufficiency of instructions or due to any variations or amendments to the Buyer's requirements for the goods being supplied by the Seller, then such additional cost will be added to the price and will be paid by the Buyer in accordance with these Conditions.

10. TERMS

- (a) Invoice(s) will be sent throughout the month and full payment is required within 30 days of the date of issue of the invoice (unless expressly agreed otherwise by the Seller in writing).
- (b) Where the Buyer has a current supply account with the Seller, full payment of the amount shown in the supply account statement issued by the Seller to the Buyer is required within the period specified in the supply account statement.
- (c) Interest at the rate of 3 per cent per month shall, at the Seller's discretion, accrue on all amounts not paid by the due date and such interest shall compound monthly. Payment in full is a condition precedent to further deliveries of goods after the due date for payment and shall be of the essence of this contract.
- (d) If the Buyer makes full payment to the Seller within seven (7) days of the date of the Seller's invoice, or supply account (as the case may be), the Seller shall allow a rebate of 3% of the total price appearing on the invoice (but not including past dues or any tax in the nature of a goods and services or value added tax and interest) to the Buyer.

11. FORCE MAJEURE

Deliveries may be suspended by the Seller during any period in which the Seller may be prevented or hindered from delivering by the Seller's normal means of supply or delivering by the normal route through any circumstances outside its reasonable control. The Seller shall not be liable in respect of such suspension, and in particular the Seller shall not be obliged to deliver at any future date any goods not delivered during the period of suspension.

12. DEFAULT

If the Buyer makes default in any payment or commits any act of bankruptcy or, being a company, enters into liquidation or provisional liquidation whether compulsory or voluntary other than for the purpose of amalgamation or reconstruction, or compounds with its creditors generally or has a receiver or receiver and manager or administrator appointed over all or part of its assets, suffers any similar action in consequence of debt, or becomes unable to pay its debts as they fall due, or passes a resolution for winding-up other than for the purpose of reconstruction or a petition is presented for its winding-up, the Seller may without prejudice to any of its rights or remedies under these Conditions or at law or in equity by notice to the Buyer:

- (a) suspend further deliveries and require payment in advance for all such deliveries; and/or
- (b) terminate all or any contract or contracts for the supply of goods; and/or
- (c) claim immediate payment of all monies due by the Buyer in respect of all sales of goods which will become agreed by the Buyer; and/or
- (d) continue to enforce its rights and recover from the Buyer such payments and any other amounts owing as and when they fall due.

13. SEVERABILITY

If any terms in these Conditions are for any reason whatsoever declared or become unenforceable, invalid or illegal for any reason whatsoever, the other terms and provisions of these Conditions will remain in full force and effect as if these Conditions had been executed without the invalid provisions appearing therein.

14. WAIVER

Any leniency, indulgence or extension of time which may be granted by the Seller to the Buyer shall not prejudice any of the Seller's rights in any way, nor shall same constitute a novation of these Conditions or waiver of any of the Seller's rights.

15. NOTICES

Any notice or other notification required to be given to the Buyer in these Conditions shall be in writing and shall be deemed duly served three (3) business days after it is mailed, postage pre-paid or by registered mail or by security post or one (1) business day after transmission by email, telex, cable, facsimile or other electronic mechanism by the Seller to the Buyer at the address shown herein or at the last known business address or relevant telex or facsimile number.

16. JURISDICTION

These Conditions will be governed in accordance with the law in force in the State of New South Wales and any applicable Federal legislation and the Buyer hereby submits to the non-exclusive jurisdiction of the Courts of New South Wales and to any Federal Courts.

17. APPROPRIATION

The Seller in its sole and absolute discretion may appropriate any payment made by the Buyer to any cause of indebtedness as may be owed by the Buyer to the Seller.

18. CERTIFICATE

The Buyer agrees that a certificate signed by any director of the Seller or any partner of the Seller's auditors setting out the balance owing by the Buyer or the Seller for goods sold will be final, binding and conclusive upon the Buyer.

19. SUCCESSORS

These Conditions will be binding upon the executors, trustees or other legal personal representatives of the Buyer or its successors in title or assigns.

20. INTERPRETATION

In these Conditions unless the context otherwise requires:

- (a) the "Buyer" means the party purchasing goods from the Seller;
- (b) the "Seller" means J.B. Hodge and S.C. Hodge trading as EOS MUSIC ABN 81 935 978 701
- (c) the "Goods" means all products distributed by the Seller including all promotional materials delivered with the products or separately at the discretion of the Buyer;
- (d) the "Conditions" means these Conditions of Sale;
- (e) the "GST" means Goods and Services Tax;
- (f) the headings to these Conditions have been inserted for information purposes only and must not be taken into account in interpreting these Conditions.