

MDM DANCEWEAR TERMS & CONDITIONS





Terms & Conditions

'Buyer' means the purchaser of any goods specified on a purchaser order to the Company

'Company' means MDM Dancewear Pty Ltd (ACN) 163 398 374

'Consumer' means and individual who buys products for personal use and not for resale

'Goods' means the products and if any services specified on a purchase order from the Buyer to the Company.

'GST' means Goods and Services Tax in Australia as determined in accordance with the GST Act.

'GST Act' means the Goods and Services Act 1999.

GENERAL:

These Terms and Conditions of trade (Terms and Conditions) apply to all sales of goods by the Company to the Buyer and supersede any previous terms of trade applying between the Company and the Buyer (however communicated).

PRICING AND DELIVERY:

The price of the Goods to be calculated by reference to the Company's current price list.

The prices and product specifications contained in the company's price list are subject to change at the absolute discretion of the company without notice to the buyer.

The buyer is responsible for the shipping and delivery costs included in the invoice.

The company will organise courier, postage according to the specifications of the Buyers delivery time frames. We cannot guarantee our delivery times.

The buyer agrees that the delivery docket signed, whether by any employee of the Buyer or any other person signing for or on behalf of Buyer, shall be conclusive evidence of delivery.

Delivery Time Frames:

Melbourne 2-4 business days
Sydney 2-4 business days
Perth 5 – 10 business days
Adelaide 3 - 4 business days
Hobart 3 -5 business days
Brisbane 4-9 business days

Other regional and country areas: 4 – 10 days

TERMS OF PAYMENT

Payment is due 30 days from the end of the month of invoicing or earlier if the approved credit limit is exceeded.

We accept VISA, Mastercard and EFT payments.

The buyer shall pay all of the Company's costs and expenses (including legal costs and agent fees) which may be incurred in the recovery or attempted recovery of the overdue amounts from the Buyer.

The Buyer will be subject to late penalty of 10% of balance of the account for all outstanding invoices.

ORDERS:

An order for Goods constitutes an offer to purchase the Goods by the Buyer subject to these Terms and Conditions.

Orders accepted by the company may not be cancelled or altered in whole or in part without the Company's written consent. The Company may at its absolute discretion decline any order either in whole or in part.

In placing any order the Buyer expressly represents that the Buyer:

Is Solvent: and

Has not committed any act of Bankruptcy

Knows of no circumstances which would entitle any creditor or secured creditor to appoint a receiver or would entitle any creditor or shareholder to apply to the Court to liquidate the Company or exercise any rights over or against the Buyers' assets.

OUT OF STOCK:

Out of stock orders will be back-ordered and shown on your invoice. If you wish to cancel any back-order or to not have back-orders listed at all, please inform us.

We cannot guarantee delivery dates of back-orders as new stock orders can take 1- 3 months.

GOODS AND SERVICES TAX ('GST')

All prices quoted in the price list are exclusive of GST. All goods will be sold within Australia on inclusive of GST basis. Invoices will be issued in the prescribed form as set out by Section 195-1 of the GST Act and the related imposition Acts of the Commonwealth (the GST Law).

REFUNDS

Customers are to return items at the place of purchase within 30 days.

Customers must contact office to discuss and obtain an RAN (Return Authorisation Number) prior to returning any product.

Hosiery and underwear items will not be refunded, exchanged or replaced.

Any related enquiries or claims should be directed to:

MDM Dancewear

5/ 111 Lewis Road

Knoxfield, Victoria 3180

Customer Service: 03 9800 1265

Unless otherwise specified, the process for making a warranty claim by or on behalf of a Consumer is as follows:

The Company must be informed as soon as the warranty claim arises;

The original proof of purchase along with the written description of the fault must be provided;

If the warranty claim is accepted, the Company will, at its cost, credit, repair or replace any faulty parts or rectify any faulty workmanship.

OTHER CLAIMS

Any claims by the Buyer for short or wrongful delivery of the Goods must be notified to the Company in writing within two working days after delivery of the Goods to the Buyer and any claim which the Buyer does not notify within the time aforesaid (time being of the essence) shall be deemed to have been absolutely waived.

Any claims by the Buyer associated with trade promotions in relation to the Company's products must be made in writing within 1 month of completion of the trade promotion and must be accompanied by copies of all documents that are necessary to justify the Buyer's claim.

Any other claims for adjustment to any invoice for any reason whatsoever must be made in writing within the prescribed time periods provided by law.

RETURN OF GOODS

All claims for return (including defective/faulty) must be made within 30 days of purchase. The Company will not accept returns for credit, other than defective Goods and warranty claims for which a credit or refund is required by law, without prior authorisation. No returns will be authorised prior to Buyer obtaining a RAN (Returns Authorisation Number) from the Company..

Any Goods which the Buyer returns for credit, other than defective Goods and warranty claims will only be accepted if they are in the original packaging and in as new saleable order and condition.

The Company reserves the right, except for credits for defective Goods, to charge a handling fee equal to 10% of the credit value (plus GST) and to deduct this fee from the credit amount.

IMPLIED TERMS

It is hereby acknowledged by the Buyer that, under the Australian Consumer Law, certain conditions and warranties may be implied in the contract between the Company and the Buyer and rights and remedies conferred upon the Buyer and other parties in relation to Goods or services which cannot be excluded, restricted or modified by agreement ("Non-excludable Rights"). The limitations below are subject to these Non-excludable Rights.

The Company disclaims all conditions and warranties expressed or implied, and rights and remedies conferred on the Buyer or other parties, by statute the common law, equity, trade, custom or usage or otherwise howsoever and all such conditions and warranties and such rights and remedies are hereby expressly excluded other than any Non-excludable Rights.

The Company's liability under s74 of the Competition and Consumer Act 2010 (CCA) is expressly limited to a liability to pay or credit to the purchaser an amount equal to:

- the cost of replacing the Goods;

- the cost of obtaining equivalent Goods;
- or the cost of having the Goods repaired, whichever is the lowest amount.

Where so permitted the liability of the Company for a breach of a Non-excludable Right is limited, at the Company's option, in the case of Goods, to the replacement or repair of the Goods or the supply of equivalent Goods or the cost of replacing or repairing the Goods or of acquiring equivalent Goods and, in the case of services, to the supplying of the services again or the payment of the cost of having the services supplied again.

Accordingly, in no event shall the Company be liable (whether before or after discharge of the contract or otherwise) for any loss or damage to the Buyer howsoever arising including any loss or damage arising from or caused or contributed to by negligence of the Company, its servants or agents, nor shall the Company be liable for special, incidental, indirect or consequential loss or damage suffered by the Buyer as a result of a breach by the Company of its obligations or otherwise including but not limited to economic or moral loss, loss of profits or revenue or costs arising from such breach.

INDEMNITY

The Buyer shall indemnify and keep indemnified and hold the Company harmless from and against all liabilities, losses, damages, costs or expenses incurred or suffered by the Company, and from and against all actions, proceedings, claims or demands made against the Company, arising from one or more of the following:

As a result of the Buyer's failure to comply with any laws, rules, standards or regulations applicable in relation to the Goods or the use of the Goods;

- As a result of any other negligence or other breach of duty by the Buyer; or
- As a result of any compliance or adherence by the Company with any instructions of the Buyer in relation to the Goods or their manner of fabrication.

RIGHTS IN RELATION TO THE GOODS

In connection with the Goods while they remain the property of the Company, the Buyer agrees with the Company that:

- The Buyer has no right or claim to any interest in the Goods to secure any liquidated or unliquidated debt or obligation the Company owes to the Buyer;
- The Buyer cannot claim any lien over the Goods;
- The Buyer will not create any absolute or defeasible interest in the Goods in relation to any third party except as may be authorised by the Company;
- Where the Buyer is in actual or constructive possession of the Goods:
- The Buyer will not deliver them or any document of title to the Goods to any person except as directed by the Company; and
- It is in possession of the Goods as a bailee of those Goods and owes the Company the duties and liabilities of a bailee.

In connection with the Goods, the Company states to the Buyer that:

- The Company has the right to supply the Goods to the Buyer; and
- If the Goods are not owned by the Company, that the Company is authorised to supply the Goods to the Buyer.

The Company and the Buyer agree that:

- All risk of loss in respect of the Goods transfers to the Buyer upon completion of the Company's delivery obligations;
- The property of the Company in the Goods remains with the Company until the Company has been paid in full for the Goods under all individual contracts for the supply of the Goods between the Company and the Buyer;

- The Buyer is a bailee of the Goods until such time as property in them passes to the Buyer and that this bailment continues in relation to each of the Goods until the price of the Goods has been paid in full;

Pending payment in full for the Goods, the Buyer:

- Must not supply any of the Goods to any person outside of its ordinary or usual course of business;
- Must not allow any person to have or acquire any security interest in the Goods;
- Must insure the Goods for their full insurable or replacement value (whichever is the higher) with an insurer licensed or authorised to conduct the business of insurance in the place where the Buyer carries on business and;
- Must not remove, deface or obliterate any identifying plate, mark or number on any of the Goods.

If the Buyer supplies any of the Goods to any person before all monies payable by the Buyer have been paid to the Company (and have not been claimed or clawed-back by any person standing in the place of or representing the Buyer), the Buyer agrees that:

- It holds the proceeds of re-supply of all the Goods on trust for and as agent for the Company immediately when they are receivable or are received;
- It must either pay the amount of the proceeds or re-supply to the Company immediately when they are received or pay those proceeds into an account with a bank or a financial institution or deposit-taking institution as trustee for the Company;
- Any accessory or item which accedes to any of the Goods by an act of the Buyer or any person at the direction or request of the Buyer becomes and remains the property of the Company until the Company is paid when the property in the Goods (including the accessory) passes to the Buyer and;

- If the Buyer fails to pay for the Goods within the period of credit (if any) extended by the Company to the Buyer, the Company may recover possession of all the Goods at any site owned, possessed or controlled by the Buyer and the Buyer agrees that the Company has an irrevocable license to do so.
- The Buyer acknowledges and agrees that a failure to comply with a direction by the Company in accordance with the above will constitute a default and breach of the security agreement between the Company and the Buyer which will allow the Company to enforce the Buyer's obligations to the Company.

WITHHOLDING SUPPLY

The Company reserves the right, irrespective of whether or not an order has been accepted and without notice to the Buyer, to withhold supply to the Buyer and the Company will not be liable for loss or damage resulting directly or indirectly from such action where:

- The Company has insufficient Goods to fill the order;
- The Goods ordered have been discontinued; or
- The Company has determined in the Company's absolute discretion that credit should no longer be extended to the Buyer.

MODIFICATIONS OF LABELS

The Buyer shall not, without the Company's written consent, alter, remove, or obliterate any labels which the Company attaches to the Goods.

PERFORMANCE AND REPRESENTATIONS

The Buyer acknowledges that neither the Company nor any person purporting to act on its behalf has made any representation or given any promise or undertaking which is not expressly set out in writing whether as to the fitness of the Goods for any particular purpose or any other matter.

DEFAULT IN PAYMENT

The Company will treat any default by the Buyer in payment of any monies due to the Company as a breach of these Terms and Conditions. The Company reserves the right thereupon to cease work on the relevant order and all other orders placed by the Buyer and hold all the Buyer's work until the due payment or payments on all moneys owed are made. Recurring payment defaults may, at the Company's discretion, lead to the Buyer's account with the Company being closed and any further order placed by the Buyer and accepted by the Company will only be processed when prepaid at the Company's absolute discretion.

WAIVER

Failure by the Company to insist upon strict performance of any term, warranty or condition of these Terms and Conditions shall not be deemed as a waiver thereof or of any rights the Company may have and no express waiver shall be deemed a waiver of any subsequent breach of any term warranty or condition.

BUYER'S ACKNOWLEDGMENT

The Buyer acknowledges that the Goods are not of a kind ordinarily acquired for private use or consumption but are acquired for business purposes.

INTELLECTUAL PROPERTY RIGHTS

The Buyer warrants that any design or instruction furnished to the Company shall not be such as will cause the Company to infringe any intellectual property rights (including patents, registered designs, trademarks, copyright, confidential information and the like) in the execution of the Buyer's order and the Buyer agrees to indemnify the Company against any infringement or unauthorised use of the intellectual property rights arising out of the manufacture or use of the Goods and it is especially agreed that the sale and purchase of Goods does not confer on the Buyer any license or rights under any intellectual property rights which is the property of the Company.

Buyer acknowledges and agrees that Company and/or its affiliates are the sole and exclusive owners of all trademarks, trade dress and trade names used by the Company and its affiliates in connection with the Goods and any local language variants thereof (the "Trademarks"). Any use of the Trademarks by Buyer shall be made only with the Company's prior written approval and solely in connection with the advertising, promoting or selling of the Goods and any such use shall inure to the benefit of Company and/or its affiliates. In no event shall Buyer or its affiliates file any application to register a trademark or a domain name or use any trademark, domain name, business name or trade style that incorporates or is confusingly similar to any of the Trademarks. If Buyer files any application of any kind that incorporates or is confusingly similar to any Trademark, it shall immediately transfer such application or any rights derived therefrom to Company or an affiliate as designated by Company.

GEOGRAPHICAL EXCLUSIVITY

Geographical Exclusivity is defined as a 20 minute drive time from the Buyer's location in any direction in the metropolitan area. This duration may differ for rural and regional centres at the Company's discretion

In order to qualify for MDM Geographical Exclusivity, the Company expects the Buyer to meet the following minimums:

- Hold size runs in a minimum of two core MDM styles
- Core styles limited to - MB100, MB105, MB126, MB115, MB117, MB118, MJ320
- Size run is defined as a minimum of two widths and whole and half sizes (where applicable)

Geographical Exclusivity cannot be guaranteed unless a minimum \$25k annual spend is met. MDM reserves the right to review this figure at any time.

GOVERNING LAW

These Terms and Conditions shall be governed by and construed in accordance with the laws of Victoria. The Buyer and the Company agree to submit to the non-exclusive jurisdiction of Victoria and the Federal Court of Australia.

ENTIRE AGREEMENT

These Terms and Conditions contain all the terms of the agreement between the parties and supersede all prior discussions and arrangements. In the event that there is any conflict between the provisions of these Terms and Conditions and the provisions of a Purchase Order or any record of any other agreement that the Company may have with the Buyer, then the provisions of these Terms and Conditions shall prevail. The only exception to the foregoing will be a signed Trading Terms agreement (if applicable) that will prevail in relation to specific clauses relating to Pricing, Minimum Order Values and Delivery Terms.

CLERICAL ERROR

The Company reserves the right to correct clerical errors without notification.

NOTICES

Any notice to be given by the Buyer to the Company must be in writing and shall be sent to the Company's address which is, until notified otherwise, as follows:

MDM Dancewear

5/ 111 Lewis Road

Knoxfield, Victoria 3180

No notice shall be deemed to have been given until it is actually received at such address.

SEVERANCE

It is agreed that if any provision of these Terms and Conditions should be determined to be void by any court of competent jurisdiction, then such determination shall not affect any other provision hereof and each such other provision shall remain in full force and effect.

Unit 5/111 Lewis Road
Knoxfield VIC 3180

T: +61 (3) 9800 1265
E: info@mdmdance.com

www.mdmdance.com



mdm

www.mdmdance.com