



PRIVATE AND CONFIDENTIAL DEALERSHIP APPLICATION FORM

Legal Name of Dealer: _____

Trading Name (if different): _____

Registered Office Address: _____

Trading Address & Contact Name if Different: _____

Tel: _____ Fax: _____

Tel: _____ Fax: _____

Email: _____

Email: _____

Website: _____

Website: _____

Number of years trading: _____

Company registration number: _____

Legal status: statutory body / partnership / sole trader / *public limited company / private limited company **(please delete as appropriate)**

Name of all Directors, Trustees, Partners or Proprietors: _____

Have any of the above been involved in a bankruptcy, liquidation or insolvency: YES/NO

Partnerships/Proprietorships only – please give name and private address:

Number of employees (excluding directors): _____

BANKERS name and address: _____

Post code: _____

Sort Code: _____

Accounts No: _____

TRADE REFERENCES: name and address (including post code)

1. _____

2. _____

DECLARATION

I understand that the answers in this questionnaire will be the principal source of information used in evaluating this request for a Frederick Hyde Ltd trading as Tom and Will Main Dealership. I confirm that all the information given is true and that I have read and hereby agree to the terms and conditions of sale and delivery herein forming the entire agreement between us in respect of all supplies of goods and/or services. I authorise Frederick Hyde Limited trading as Tom and Will to make any enquiries necessary in the evaluation of this application.

Signature of Dealer: _____

Date: ___/___/___

Print Name: _____

Position: _____

PO Box 264, Haslemere, Surrey, GU27 9AT

0845 0945 659

info@tomandwill.com

TRADING TERMS

SCOPE

These trading terms apply to all offer, quotations and sales by Frederick Hyde Ltd trading as Tom and Will, (The Company), of musical instruments, bags and accessories. Acceptance by the Company of, the Dealer's offer in this application form shall create a binding agreement incorporating these trading terms. These trading terms shall prevail over any other terms and conditions contained in or referred to in the Dealer's order or elsewhere or implied by trade custom or course of dealing unless those other terms or conditions are specifically agreed to in writing by a duly authorised director or company secretary of the Company and any purported provisions to the contrary are hereby excluded or extinguished. Every deviation from or modification of these trading terms requires the express written agreement of the Company in each instance. Modification or waiver of any provision in one instance shall not constitute modification or waiver in any other instance.

PRICES

The Dealer will be invoiced at the prevailing trade price, less trade discount plus VAT. The recommended trade price will be that shown in the price list applicable at the time of despatch, unless otherwise advised. The Company shall have the right at any time up until the date of despatch to withdraw any discount and/or to revise prices.

PAYMENT TERMS

The purchase price for each order shall be paid in full. Statements will be issued monthly and payment is due no later than 30 days after the invoice date. A 5 (five) percent settlement discount is offered for payment with order. Failure to pay within the terms will result in the withholding of supply and a service fee. Notwithstanding this the Company is entitled, at its sole option, to require earlier payment of all or part of the purchase price of any order, including full payment at the time the order is placed. No counterclaim or set-off by the Dealer may be deducted from any payment due on any account whatsoever. For the avoidance of doubt, the Company may maintain an action against the Dealer for the price of the goods at any time after payment of price of the goods has become due, even though property of those goods may not yet have passed to the Dealer. If the Dealer fails to make any payment when due, the Company is entitled, without judicial intervention to require immediate payment of all outstanding orders, deem the related order and all other order by the Dealer cancelled or to delay delivery on such orders without prejudice to the Company other rights or remedies (including the right to recover damages). Any extension of credit allowed may be changed or withdrawn at any time. If due to such events or circumstances the Company has insufficient stocks to meet all its commitments it may apportion available stocks between customers at its sole discretion.

FREIGHT

A carriage charge will be made on any order under £200 in value for delivery in the United Kingdom mainland, IOW and Northern Ireland. Carriage charges for deliveries in the Highlands & Islands, Channel Islands and Southern Ireland will be agreed with the Dealer before despatch of goods.

DELIVERY AND RISK

- Delivery dates specified in any quotation, order acceptance form or elsewhere are approximate only and not of any contractual effect. Delivery shall be at the Dealer's premises unless otherwise agreed by the Company in its order form. Risk of loss or of damage to the goods shall pass to the Dealer on delivery to its premises as stipulated in the order or when placed in their possession or that of any carrier or transport provided by the Dealer, whichever shall occur first.
- If the Dealer refuses or fails to take delivery of goods tendered in accordance with these trading terms risk of loss or damage to the goods shall nonetheless pass to the Dealer. Without prejudice to any other rights the Company may have against the Dealer (for breach of contract or otherwise) the Company shall be entitled both to immediate payment in full for the goods so tendered and either to effect delivery by whatever means it considers most appropriate or to store those goods at the risk of the Dealer. In addition to the purchase price the Dealer shall pay on demand all cost of such storage and any additional costs incurred as a result of such refusal or failure. Following the expiry of 60 days from the agreed date for delivery the Company shall be entitled to dispose of the goods in such manner as it may determine and may set off any proceeds of sale against any sums due to it from the Dealer, but shall be under no duty to account to the Dealer of any excess (which shall be retained by the Company as agreed compensation for the Dealer's breach).
- The Company shall be treated as having fulfilled its contractual obligations in respect of any delivery notwithstanding that the quantity may be less than the quantity specified in the contract. The Dealer shall not be entitled to reject the goods in whole or in part by reason of short delivery. The Dealer shall pay in full notwithstanding short delivery or non-delivery unless the shortfall has not been made good by the due date for payment whereupon the Dealer shall only be obliged to pay for the quantity actually delivered. All claims not so notified are waived.
- Unless otherwise agreed in writing, the Company shall be entitled to deliver the goods by instalments. In such cases each instalment shall constitute a separate contract and any defect in any one or more instalments shall not entitle the Dealer to repudiate the contract as a whole nor to cancel any subsequent instalment.

GOODS RETURNED

In those cases where the Company, agrees to accept returned stock, credit will only be issued subject to the following conditions:

- Faulty product: in this case claims will only be recognised if lodged within three (3) days.
- Transit damage claims: in this case claims will only be recognised if lodged within three (3) days of receipt of goods.

The Company must be contacted prior to goods being returned for credit purposes. A Return Authorisation number will then be issued. Failure to follow this procedure will result in the Company refusing delivery in all instances.

PASSING OF PROPERTY

- The Company reserves the following rights in relation to products supplied by it until:
 - Payment in full of the price due and payable to the Company in respect of the same order (including any interest or other payment due in respect of those goods); and (as a separate obligation) until
 - Payment in full of all other indebtedness of the Dealer to the Company.
 - Legal ownership of the products, whereby the Dealer agrees to hold the goods as bailee for the Company and shall store such goods in such a way as to enable them to be readily identified as the property of the Company. In this regard the Dealer shall keep proper and accurate records to enable the Company to distinguish goods for which the purchase price has been paid in full from those goods for which any part of such purchase is outstanding.
 - To enter the Dealer's premises, (or the premises of any associated company or agent where the goods are located) without liability for trespass or any resulting damage and retake possession of the products.
 - To keep or resell any product repossessed pursuant to ii) above.
- If any of the products are resold by the Dealer, the Dealer shall hold such part of the proceeds of any such sale in a separate identifiable account as beneficial property of the Company and shall pay such amount to the Company upon request. Notwithstanding the provisions above the Company shall be entitled to maintain an action against the Dealer for the purchase price and risk of the products shall pass to the Dealer upon delivery.
- If any sum paid by the Dealer is less than all the amounts then due, the Company may (notwithstanding any direction to the contrary by the Dealer) apply that sum to amounts due in respect of goods which at the that time have been re-sold or otherwise disposed of by the dealer, before applying any part of that sum to goods still in the Dealer's possession.

INTEREST AND COMPENSATION

Interest and compensation will be charged on all overdue balances in line with late payment legislation. Thus, it is the responsibility of the Dealer to ensure his payment arrives within the time allowed under the Company's trading terms.

COLLECTION EXPENSES

All expenses including any legal costs and disbursements on a solicitor client basis incurred by the Company in collection of overdue accounts will payable in full by the Dealer.

BACK ORDERS

Back orders will be supplied when stock becomes available, except where the Dealer specifies on order that back orders are not applicable. The Company will charge at prices prevailing at date of dispatch.

ASSIGNMENT OF AGREEMENT

The Dealer hereby consents to assignment by the Company of any of its rights under this agreement on such terms and conditions, as the Company in its absolute discretion shall nominate.

PROMOTIONAL MATERIAL

Goods supplied will comply substantially with the Company's specification for the particular item as varied from time to time, a copy of which is available on request. All other specifications, illustrations, drawings, particulars, dimensions, performance data and other information made available by the Company are intended to present no more than a general idea of the goods described and do not constitute a warranty or representation that any of the goods will conform herewith.

DEALER'S OBLIGATIONS ON RESALE AND INSTALLATION OF GOODS

The Dealer agrees not to give to end-users of the goods any warranty or commitment or assume any other obligation on the Company's behalf without the Company's express prior written consent.

LIABILITY

- The Company shall not be liable to the Dealer whether for damages or repair or replacement of the goods or otherwise and the Dealer shall not be entitled to reject the goods, except on account of:
 - Damage to or loss of the goods or any part thereof in transit (where the goods are carried by the Company's own transport or by a carrier on behalf of the Company) notified in writing to the Company within 3 working days of receipt of the goods or the relevant invoice or delivery note;
 - Any defects in the goods at the time of delivery (not being defects caused by an act, neglect or default of the Dealer or of any third party) notified in writing to the Company within 3 working days of receipt of the goods; or
 - Other defects in the goods notified in writing to the Company within 1 month of receipt of goods or, where the defect would not be apparent on reasonable inspection, within 6 months of receipt of the goods.
- The Company shall not be liable for any damage or loss to any person arising from defective installation of the goods or from the use of the goods in connection with other defective, unsuitable or defectively installed equipment.
- In any case where the Company is liable to the Dealer on account of any defect in or damage to the goods, the Company may at its option either make good any shortage or non-delivery and/or replace or repair or refund the price paid for or issue a credit note in respect of any goods found to be damaged or defective.
- The Company's aggregate liability to the Dealer whether for negligence, breach of contract, misrepresentation or otherwise shall in no circumstances exceed the cost of the defective, damaged or undelivered goods determined by the net price invoiced to the Dealer in respect of any single occurrence or series of occurrences. The Dealer agrees to waive any right it may have to claim any special, indirect, incidental or consequential damages including without limitation any damages for loss of revenue or goodwill from the Company.
- Subject to any express provision to the contrary set out herein, all conditions, warranties and representations express or implied by statute common law or otherwise in relation to the goods (other than any liability which the Company is not permitted by law to exclude) are hereby excluded and the Company shall be under no liability to the Dealer for any loss, damage or injury direct or indirect whether resulting from defective material, faulty workmanship or otherwise howsoever arising and whether or not caused by the negligence of the Company, its employees or agents.
- The Dealer acknowledges and confirms that it is purchasing the goods in the course of an for the purpose of the business carried on by it and accordingly the Dealer is not to be treated as a "consumer" within the meaning of Section 12 of the Unfair Contract Terms Act 1977; and the price payable for the goods has been agreed by the Company after taking into account the limitations and exclusions of liability contained herein.
- THESE TERMS AND CONDITIONS DO NOT AFFECT OR PREJUDICE THE STATUTORY RIGHTS OF THE DEALER IN ANY CASE WHERE THE DEALER IS A CONSUMER ACQUIRING GOODS OTHERWISE THAN IN THE COURSE OF A BUSINESS.

INSOLVENCY

If the Dealer commits an act of bankruptcy or compounds or enters into a deed of arrangement with his creditors or if a receiving order is made against him or if (being a company) an order is made or a resolution is passed for winding-up (otherwise than for the purposes of amalgamation or reconstruction) or a petition is presented for the making of an administration order the Company reasonable believes that the Dealer is unable to pay its debts within the meaning of section 123 of the insolvency Act 1986; or a receiver is appointed of any of the Dealer's assets or undertaking or if circumstances arise which entitle a court or a creditor to appoint a receiver or manager or which entitle a court to make a winding-up order; or the Dealer takes or suffers any similar or analogous action in consequence of debt; or the Dealer fails to pay any amount due on its due date or commits any other breach of this or any other agreement between the parties then the Company may without prejudice to any of its other rights:

- stop any goods in transit; and/or
- suspend further deliveries; and/or
- determine the rights of the Dealer to sell any goods which have not been paid for in full; and/or
- by notice in writing to the Dealer determine all or any other contracts between the Company and the Dealer; and/or
- by its employees or agents enter upon or into any land, building or vehicles where the goods or any part of them are situated or are reasonably thought to be situated to repossess the same (and the Dealer shall for such purpose notify the Company of the whereabouts of the goods).

FORCE MAJEURE

The Company shall not be liable to the Dealer for any loss or damage which may be suffered by the Dealer as a direct or indirect result of the supply of goods by the Company being prevented, hindered, delayed or rendered uneconomical by reason of circumstances or events beyond the Company's reasonable control, including but not limited to Act of God, war, riot, strike, lock-out, trade dispute or labour disturbance, accident, breakdown of plant or machinery, fire, flood, storm, difficulty or increased expense in obtaining workmen, materials or transport or other circumstances affecting the supply of the goods or of raw materials therefore from the Company's normal source of supply or the manufacture of the goods by the Company's normal means or the delivery of the goods by the Company's normal means of delivery.

WAIVER

Failure by the Company to exercise or enforce any rights hereunder shall not be deemed to be a waiver of any such right nor operate so as to bar the exercise or enforcement thereof at any time or times thereafter.

SEVERABILITY

To the fullest extent possible each provision and part provision of these trading terms shall be construed in such fashion as to be effective and valid under applicable law. If any provision or part provision is declared void, illegal or unenforceable by a court of competent jurisdiction with respect to particular circumstances such provision or part provision shall remain in full force and effect in all other circumstances. If any provision or part provision is declared entirely void, illegal or unenforceable by a court of competent jurisdiction, all other provisions of these trading terms shall remain in full force and effect.

NOTICES

Any notice hereunder shall be deemed to have been duly given if sent by prepaid first class post to the party concerned at its last known address. Notices sent by first class post shall be deemed to have been given 24 hours after dispatch.

LAW TO BE APPLIED

This agreement shall be deemed to have been entered into in England and the law to be applied shall be the law applicable for the time being in England. The parties hereby submit to the exclusive jurisdiction of the English Courts with regard to any dispute in connection with this agreement.

PO Box 264, Haslemere, Surrey, GU27 9AT 0845 0945 659 - info@tomandwill.com