

BAUER RETAIL AGREEMENT



MEDIA GROUP

Name of Agent's shop:	Network account number:
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Address of Agent's shop:	Contact name:
E-mail:	Phone:
	Fax:
	Mobile:

Agent's postal address (if different from address of Agent's shop):

Business type:	<input type="checkbox"/> Sole Trader	<input type="checkbox"/> Partnership	<input type="checkbox"/> Company	<input type="checkbox"/> Trust
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Name of person or entity who owns business (Agent):	ACN / ABN of Agent:
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Details of directors / owners / principals of Agent:		
Name	Address	Contact Number
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____

Agent is authorised to provide:	<input type="checkbox"/> Retail Services	<input type="checkbox"/> Sub-agent Management Services
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Application for Commercial Credit (Privacy Act 1988) Submission of this agreement to Bauer constitutes an application by Agent for provision of commercial credit by Bauer to Agent. Agent agrees that Bauer may obtain information about Agent from a business which provides information about the commercial creditworthiness of persons for the purpose of assessing Agent's application for commercial credit under this agreement.
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When signed by Bauer Media Pty Limited ACN 053 273 546 of 54 Park Street, Sydney, New South Wales (Bauer) this document will form an agreement between Bauer and Agent. By signing below, Agent offers to enter an agreement with Bauer on the following terms.	
_____ Signature of Agent or authorised representative	_____ Signature of Bauer authorised representative
_____ Date of signing	_____ Date of acceptance

1. APPOINTMENT OF AGENT

1.1. Appointment

Bauer appoints Agent to provide the Services on the terms of this agreement. Agent must not:

- a) operate a retail shop for the sale of Magazines, including through Home Delivery, unless authorised under this agreement to provide Retail Services; and
- b) distribute Magazines to Sub-agents or manage Sub-agent accounts unless authorised under this agreement to provide Sub-agent Management Services.

1.2. Period of agreement

This agreement commences on the date Bauer signs it. Either party may terminate this agreement by giving 6 months' written notice to the other at any time. This agreement may also be terminated in accordance with its terms.

1.3. Publisher Agreements

This agreement is subject to the terms of any Publisher Agreement and such terms prevail over this agreement to the extent of any inconsistency.

1.4. Trial Period

Within 3 months after the end of the Trial Period, Bauer may:

- a) terminate this agreement by giving Agent one month's written notice;
- b) extend the Trial Period for a further 6-month period; or
- c) notify Agent of the successful completion of the Trial Period.

If Bauer fails to do any of those things, on expiry of the 3-month period, Bauer will be deemed to have notified Agent of the successful completion of the Trial Period. If Bauer exercises its right to extend the Trial Period, then this clause 1.4 will apply from the end of that extended Trial Period except that Bauer will have no right to further extend the Trial Period.

1.5. Change of details

- a) Agent warrants that the information on the cover sheet and Shop Plan is accurate as at the commencement of this agreement.
- b) Agent must promptly notify Bauer if any change renders any information set out on the cover sheet or Shop Plan (including as varied by this clause 1.5(b)) inaccurate.

2. DELIVERY

2.1. Range and quantity of Magazines

Bauer must use reasonable endeavours to deliver to Agent such range and quantity of Magazines as Bauer reasonably determines appropriate.

2.2. Sales efficiency

Bauer must use reasonable endeavours to ensure that Agent is supplied with sufficient range and quantity of Magazines to meet demand from customers and, if applicable, Sub-agents and to minimise waste.

2.3. Acceptance of delivery

Agent must accept delivery of all Magazines delivered to Agent under this agreement. Risk in all Magazines delivered to Agent under this agreement, including Magazines in the possession of any Sub-agent, will pass to Agent upon delivery of such Magazines.

2.4. Retention of title

- a) Agent must deal with Magazines under this agreement as Bauer's agent and no title in any Magazine will pass to Agent in any circumstances.
- b) At any time at which Bauer reasonably believes that Agent is or may become insolvent, and without the need to give notice, Bauer and any of its agents and employees may enter upon any property where any Unsold Copy is stored, or upon which Bauer reasonably believes Unsold Copies to be stored, for the purpose of retaking (and then selling or otherwise dealing with) them.
- c) Agent must store or mark Unsold Copies in a manner reasonably satisfactory to Bauer and sufficient to distinguish them from other goods and indicating that title to them remains vested in Bauer.
- d) Agent must maintain property and contents insurance sufficient to cover the value of the contents of Agent's shop, including the full replacement value of Unsold Copies.
- e) Agent consents to Bauer effecting and maintaining a registration (in any manner it considers appropriate) in relation to any security interest contemplated by this agreement and must sign any document and provide all assistance and information to Bauer required to facilitate any such registration.
- f) Nothing in this agreement limits the terms of any credit arrangement between Agent and Bauer and, to the extent of any inconsistency between this agreement and such credit arrangement, the terms of the credit arrangement prevail.

2.5. Delivery location

Agent must provide a secure, weatherproof location with easy access for the delivery of Magazines and must notify Bauer of this location. This location must comply with all legal requirements, including applicable planning and work health and safety requirements, and must otherwise be reasonably appropriate for the receipt of Magazines.

2.6. Short deliveries

Agent must notify Bauer within 24 hours of delivery if the actual number of Magazines delivered is not consistent with the number of Magazines listed on the accompanying delivery label or if any such Magazines are damaged. If Agent does not notify Bauer within this time, then, in the absence of obvious error, the delivery label will be deemed to accurately state the number of undamaged Magazines delivered.

3. DISTRIBUTION

3.1. Appointment

Bauer may appoint any person (including any related body corporate of Bauer or any business unit within Bauer) as its distributor to perform any of Bauer's functions or obligations under this agreement that relate to the distribution of Magazines.

3.2. Distribution agreement

Provided Bauer complies with any legal requirements, Agent must enter into a distribution agreement with any person appointed under clause 3.1 if that agreement is not contrary to the terms of this agreement or materially less advantageous to Agent than this agreement.

4. RETAIL SERVICES

4.1. Application of this clause

This clause 4 only applies if Agent is authorised to provide Retail Services.

4.2. Agent to represent Bauer

Agent must at all times represent Bauer to the best of Agent's ability by providing a courteous and efficient service and must ensure that all magazine racks are kept tidy and that Magazines are correctly sorted into the appropriate categories and pockets.

4.3. Retail selling space

Agent must allocate at least 20% of Retail Selling Space to the magazine category.

4.4. Display of Magazines

Agent must use best endeavours to maximise the sale of Magazines on behalf of Bauer by displaying Magazines in prominent position inside Agent's shop. Agent must devote at least one Facing to each Magazine. Agent must install at least one Primary Impulse Location within Agent's shop and display major weekly and key monthly Magazines within that Primary Impulse Location.

4.5. On-sale Period

Agent must ensure that a reasonable number of copies of each Magazine are displayed for the entirety of the relevant On-sale Period. Bauer must use reasonable endeavours to ensure that the On-sale Period of a Magazine is a maximum of two months except in the case of quarterlies, biannuals, annuals, one-shots and other specials.

4.6. Display of Promotional Material

Bauer may provide Agent with Promotional Material for the purposes of marketing and promoting Magazines and attracting customers to Agent's shop. Agent must display such Promotional Material in prominent positions inside or outside Agent's shop.

4.7. Representatives

Agent must allow representatives of Bauer to enter Agent's shop to advise in relation to and assist with the display of Magazines and Promotional Material when reasonably requested to do so by any such representative.

4.8. Training

Agent must attend such training sessions as are reasonably requested by Bauer.

4.9. Authorisation of Home Delivery

Agent must not conduct Home Deliveries in any area other than an area in which Bauer has given Agent written authorisation to conduct Home Deliveries. Bauer may revoke or vary any such authorisation on reasonable notice to Agent and Agent must comply with any such revocation or variation.

4.10. Nature of Home Delivery

This clause 4.10 applies only to Home Delivery. Subject to clause 4.9, Agent must:

- a) use best endeavours to deliver all Magazines by 8:00am on the first day of the On-sale Period for each Magazine or as is otherwise reasonably requested by the relevant customer;
- b) at Agent's cost, flat-wrap all Magazines in waterproof plastic before delivery (except where hand-delivered) and must ensure that all Magazines are delivered in good condition;
- c) ensure that all Magazines are delivered to the letter box, front porch or other suitable place agreed with the customer; and
- d) provide each customer with reasonable terms of credit.

5. BAUER MAGAZINES AND BAUER BOOKS

5.1. Application of this clause

This clause 5 only applies if Agent is authorised to provide Retail Services. If Agent is unable for any reason to comply with any term of this clause 5, Agent must give Bauer notice in writing of this inability and the reasons for this inability. Bauer may in its reasonable discretion waive Agent's obligations to comply with the relevant term.

5.2. Positioning of Bauer Magazines

- a) Agent must display Bauer Magazines in prominent positions in each magazine category.
- b) Agent must display all delivered copies of Bauer Magazines within the clear view of customers and not keep such copies in non-display areas. If Agent is unable to display all such copies, then Agent must display as many such copies as practicable of each Bauer Magazine.
- c) Agent must allocate at least 50% of Facings in the Primary Impulse Location to Bauer Magazines.

5.3. Bauer Books

- a) Agent must accept and install in prominent positions all racking provided by Bauer for Bauer Books. Bauer must

use reasonable endeavours to ensure such racking is proportionate in size to the size of Agent's shop. Agent must display Bauer Books on such racking in the manner notified by Bauer from time to time.

- b) Agent must ensure that Bauer Books are displayed in a manner at least equal to the products of other publishers in the cookbook category and in a prominent position in the cookbook category. If Agent's shop includes an area dedicated to cookbooks and similar publications, Agent must ensure that at least 50% of this area is dedicated to Bauer Books.

5.4. Floor display units and counter packs

Agent must dedicate space for at least one floor display unit and one counter pack to be permanently available for Bauer Magazines and Bauer Promotional Material and actively utilise such space for the sale and promotion of Bauer Magazines. Where space for additional floor display units or counter packs is available, Agent must allocate at least the Sales Proportion of that space to Bauer Magazines and Bauer Promotional Material and actively utilise that space for the sale and promotion of Bauer Magazines. Where no counter pack is available, Agent may substitute a stack of Bauer Magazines selected by Agent.

5.5. Launch support

Whenever Bauer launches a new Magazine, Agent must support the launch by following any reasonable directions of Bauer. Bauer's directions may include the use of floor display units, counter packs, window displays, signage, posters or a significant number of prominently positioned Facings for cascade display.

5.6. Posters

Agent must allocate at least 50% of Agent's total interior and exterior magazine poster space to posters promoting Bauer Magazines.

5.7. Signage

If reasonably requested by Bauer and permitted by the terms of Agent's lease of premises, Agent must install at Bauer's cost a prominent sign nominated by Bauer on or under Agent's awning or similar position, and such other signage as may be reasonably requested by Bauer from time to time.

5.8. Window display

Agent must allocate at least 20% of the total window space in Agent's shop to Bauer Promotional Material.

5.9. Equal treatment

Without limiting any other provision of this clause 5, Agent must display Bauer Magazines and Bauer Promotional Material in a manner that is at least equal to the display of products and promotional material of other publishers.

5.10. Lease or other restrictions

Agent must use reasonable endeavours to obtain approvals from lessors, councils, shopping centre management or other

persons exercising control as to signage, street displays and other matters as necessary to facilitate the requirements set out in this clause 5. Agent must advise Bauer of steps taken to fulfil these requirements and follow Bauer's reasonable directions in relation to obtaining these approvals.

6. SUB-AGENT MANAGEMENT SERVICES

6.1. Application of this clause

This clause 6 only applies if Agent is authorised to provide Sub-agent Management Services.

6.2. Delivery to Sub-agents

Agent must:

- a) use best endeavours to maximise the sales of Magazines through and minimise returns of Magazines from Sub-agents;
- b) comply with delivery directions given by Bauer about which Magazines Agent must distribute to each Sub-agent, quantities of Magazines to be distributed to each Sub-agent and Promotional Material to be displayed by each Sub-agent;
- c) notify each Sub-agent of any directions of Bauer in relation to the Sub-agent's display of Magazines and Promotional Material;
- d) if such stock is available, supplement a Sub-agent's stock of Magazines as soon as is practicable after a reasonable request from the Sub-agent or from Bauer;
- e) ensure that Magazines are delivered to Sub-agents as soon as possible after Agent receives them from Bauer;
- f) provide any information about a Sub-agent requested by Bauer, including information about the terms on which Agent delivers Magazines to the Sub-agent;
- g) promptly notify Bauer if Agent ceases to supply a Sub-agent for any reason or if a Sub-agent gives Agent notice of termination of a Sub-agency Agreement;
- h) pay Bauer all amounts owed by Agent under this agreement regardless of any default or non-payment by a Sub-agent. Agent is responsible for collecting on its own behalf all amounts owed by each Sub-agent to Agent; and
- i) use best endeavours to ensure that at least the Sales Proportion of all Magazines displayed in each Sub-agent's shop are Bauer Magazines.

6.3. Authorisation of delivery to Sub-agents

Except where permitted to conduct Home Deliveries and to the extent necessary to do so, Agent must not deliver Magazines to any person other than an authorised Sub-agent.

6.4. Sub-agency Agreements

- a) Agent must use best endeavours to procure that each Sub-agent signs a Sub-agency Agreement with Agent.
- b) Agent must send to Bauer a copy of each signed Sub-agency Agreement within seven days of signing.
- c) Agent must not terminate any Sub-agency Agreement except with Bauer's written consent. Agent may request

such consent at any time if a Sub-agent is in breach of its obligations under its Sub-agency Agreement.

- d) Bauer may at any time direct Agent to terminate any Sub-agency Agreement according to its terms.

6.5. New Sub-agents requested by Bauer

Bauer may, on one or more occasion, request that Agent appoint a new Sub-agent. Upon receipt of such a request, Agent must use best endeavours to procure that any such new Sub-agent signs a Sub-agency Agreement with Agent.

6.6. New Sub-agents requested by Agent

If Agent wishes to deliver Magazines to a new Sub-agent, Agent may request authorisation from Bauer. If Bauer gives its written authorisation, Agent must procure that the new Sub-agent signs a Sub-agency Agreement with Agent.

6.7. Direct delivery

Bauer may revoke Agent's authorisation to deliver Magazines to a Sub-agent if Bauer chooses to deliver directly to that Sub-agent and gives Agent 3 months' notice of its intention to do so. On revocation of such authorisation, Agent must immediately cease delivery to the relevant Sub-agent. During the 3-month notice period, Agent must continue to deliver Magazines to the Sub-agent and otherwise service the Sub-agent, including by issuing invoices to the Sub-agent.

7. SALES DATA AND OTHER INFORMATION

7.1. POS System

- a) Unless it has already done so, within six months of notification to Agent of the successful completion of the Trial Period, Agent must install a POS System.
- b) Agent must ensure that, at all times during the term of this agreement, any POS System installed in Agent's shop runs the then current version of an electronic data interchange software that has been approved by Bauer.

7.2. Sales Data

- a) Agent must provide Bauer with Sales Data to the maximum of Agent's technical ability to do so.
- b) Agent must comply with Bauer's reasonable directions relating to the form and frequency of the provision of Sales Data.
- c) Without limiting clauses 7.2(a) or (b), Agent must, if technically able to do so, provide Bauer with a daily feed of Sales Data via Agent's POS System.
- d) Agent must ensure that in-store processes and staff behaviours support the accurate and timely capture and provision of Sales Data.

7.3. Credit information

- a) Agent must provide Bauer with all financial and other information requested by Bauer to enable Bauer to determine Agent's creditworthiness.
- b) Bauer may use such information to determine the credit terms on which to provide Agent with Magazines.

- c) If a material change in Agent's financial circumstances occurs or if Bauer's review of information provided under clause 7.3(a) concludes that Agent is a credit risk based on Bauer's credit policy, Bauer may require Agent to provide additional security, including one or more of the following: a security deposit; a bank guarantee; or personal guarantees from directors, shareholders, beneficiaries and unit holders of trusts.

7.4. Other information

Agent must advise Bauer immediately if Agent becomes aware of:

- a) a proposed, likely or actual material change in Agent's financial circumstances; or
- b) any thing that can reasonably be expected to have a material effect on Agent's ability to perform Agent's obligations under this agreement.

8. DEFAULT AND TERMINATION

8.1. Default by Bauer

Agent may terminate this agreement at any time if:

- a) an Insolvency Event occurs in relation to Bauer;
- b) Agent proceeds with a sale of Agent's business in the circumstances set out in clause 11.3; or
- c) Bauer commits a material breach of this agreement and does not remedy that breach within 30 days of notice by Agent specifying the breach and requiring rectification.

8.2. Default by Agent

Agent is in default under this agreement if, at any time:

- a) an Insolvency Event occurs in relation to Agent;
- b) Agent commits a material breach of this agreement, including:
 - i) non-payment of any amount due to Bauer that remains outstanding for seven days after notice by Bauer specifying the non-payment and requiring payment;
 - ii) improper disclosure of Confidential Information;
 - iii) transferring the benefit of this agreement to any purchaser of Agent's business without giving Bauer notice in accordance with clause 11.1; or
 - iv) delivery of Magazines to any person to whom Agent is not authorised to deliver under this agreement;
- c) Bauer:
 - i) forms the view that a change has occurred in relation to Agent's business that has materially adversely affected or is likely to materially adversely affect the sale of Magazines in Agent's shop or the commercial viability to Bauer of continuing to receive the Services from Agent (including a material decrease in revenue from the sale of Magazines in Agent's shop since the commencement of this agreement); and
 - ii) notifies Agent of that view and Agent does not address Bauer's concerns to Bauer's reasonable

satisfaction within 30 days of the notice by Bauer;

- d) without limiting clause 8.2(b), Agent commits a breach of clause 4, 5 or 6 that is not remedied within seven days of notice by Bauer specifying the breach and requiring rectification;
- e) Agent commits any other breach of this agreement that is not remedied within 30 days of notice by Bauer specifying the breach and requiring rectification; or
- f) Bauer reasonably believes that Agent is an unacceptable credit risk based on Bauer's credit policy and that Bauer's concerns cannot be satisfied under clause 7.3(c).

8.3. Consequences of default by Agent

If Agent is in default under this agreement, Bauer may do one or more of the following:

- a) withhold delivery or Magazines from Agent until Agent has rectified the default to Bauer's satisfaction;
- b) revoke Agent's authorisation to deliver Magazines to an affected Sub-agent and arrange alternative delivery to that Sub-agent; or
- c) terminate all or part of this agreement by giving notice to Agent, which termination will take effect from the date of Bauer's notice.

9. DELIVERY AND RETURN PROCEDURE

9.1. No resale

Agent must not sell or otherwise provide any Magazine to any person on behalf of Bauer if Agent has reason to believe that the Magazine will be or is likely to be resold.

9.2. Payment

- a) After each month, Bauer must provide to Agent a statement setting out the Wholesale Sales Value of Magazines delivered by Bauer to Agent during that month less the Wholesale Sales Value of Magazines returned by Agent in accordance with clause 9.5 during that month.
- b) Agent must pay Bauer the amount specified in any such statement by the 20th day of the month in which the statement is issued. Bauer may hold this amount as a security deposit to be applied against the future sale of Magazines, the return of Magazines or the expiry of the deadline for return of Magazines.
- c) The Commission is the only remuneration payable by Bauer for performance by Agent of its obligations under this agreement.
- d) If, immediately prior to the commencement of this agreement, Agent is a Sub-agent, then, for some or all of the Trial Period, Agent's managing agent may continue to invoice Agent on Bauer's behalf. Agent must pay the amount set out in the relevant invoice to Agent's managing agent.

9.3. GST

- a) Expressions in this clause 9.3 have the same meaning as those expressions in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth).
- b) Unless specifically stated otherwise, any consideration payable under this agreement is exclusive of GST.
- c) If a supply made under or in connection with this agreement is subject to GST, the recipient must pay to the supplier an additional amount on account of the GST.
- d) Subject to receipt by the recipient of a tax invoice, the recipient must pay the additional amount at the same time and in the same manner as the consideration for the supply.
- e) If the additional amount differs from the amount of GST payable on the supply by the supplier, the parties must adjust the additional amount accordingly.
- f) If a party is entitled to be reimbursed or indemnified under this agreement, the amount to be reimbursed or indemnified will be reduced by the amount of any GST for which that party or its representative member is entitled to as an input tax credit.
- g) If the GST Law treats part of a supply as a separate supply for the purpose of determining whether GST is payable on that part of the supply or for the purpose of determining the tax period to which that part of the supply is attributable, such part of the supply is to be treated as a separate supply.

9.4. Interest on late payments

If requested to do so by Bauer, Agent must pay interest on any overdue amount at the rate of two percentage points per annum above the Reserve Bank of Australia reference rate for business loans under \$100,000 as published from time to time.

9.5. Return of Magazines

- a) Bauer will issue a Returns Form weekly or at another frequency, not less than monthly, as may be advised by Bauer from time to time. Agent must report Unsold Copies by accurately completing and submitting to Bauer that Returns Form via either EDI Software or a website nominated by Bauer within such time as may be specified by Bauer.
- b) Agent must verify Unsold Copies reported under clause 9.5(a) by physically returning the barcodes (or full covers, including barcode) of those Unsold Copies or, if Bauer so requests, the full copies of those Unsold Copies to Bauer or a representative nominated by Bauer. Physical returns verifying those Unsold Copies must be registered for shipment within 28 days of the relevant Returns Form being submitted to Bauer. Physical returns verifying those Unsold Copies must be received by Bauer or its nominated representative within 28 days of being registered for shipment.
- c) Bauer may refuse to accept, or reverse credits previously issued for, any Unsold Copies not reported or returned by the applicable due date or otherwise as required under this clause 9.5.

9.6. Alteration of arrangements

Bauer may reasonably alter any part of the arrangements for delivery, sale and return described in this agreement (including by requiring payment of a reasonable delivery fee (or reasonably varying the amount of any delivery fee)) by providing notice to Agent and without prejudice to any other term of this agreement.

10. CONFIDENTIALITY

- a) Agent must not disclose any Confidential Information except to the extent that disclosure is required by law or is necessary for Agent's legitimate business purposes and must use the Confidential Information only for Agent's legitimate business purposes or for fulfilling Agent's obligations under this agreement and only to the extent necessary to fulfil those obligations. Disclosure of Confidential Information to any publisher of magazines other than Bauer is not a legitimate business purpose.
- b) Agent may disclose Sales Data to an industry body representing newsagents on terms agreed in writing by Bauer.

11. SALE OF NEWSAGENCY BUSINESS

11.1. Notification and retention money

If Agent wishes to transfer the benefit of this agreement to any purchaser of Agent's business, Agent must first provide Bauer with 45 days' notice of the proposed transfer date and must, at least 30 days prior to the proposed transfer date:

- a) procure that the proposed transferee provides to Bauer details about its financial position and a completed Bauer credit application form; and
- b) pay retention moneys to Bauer sufficient to meet Bauer's estimate of the Wholesale Sales Value of all Magazines to be delivered to Agent up to the proposed transfer date (**Retention Monies**). Bauer may set off any amounts which become due to Bauer under this agreement against the Retention Monies.

11.2. Approval granted

If Bauer approves the proposed transferee (which approval may be given conditionally), Bauer must give Agent notice of such approval and:

- a) upon payment to Bauer of all amounts due to Bauer up to the transfer date, Bauer may consent to the assignment or novation of this agreement to the transferee or enter into a new agreement with the transferee on Bauer's then standard terms; and
- b) 45 days after the transfer date Bauer must return to Agent the Retention Monies less amounts set off under clause 11.1(b). If the Retention Monies are insufficient to satisfy any amounts due to Bauer under this agreement, Agent must meet any shortfall within seven days of notification by Bauer.

11.3. Approval withheld

If Bauer does not approve the proposed transferee, Bauer must give Agent notice of Bauer's decision and, if Agent decides to proceed with the sale of Agent's business notwithstanding Bauer's decision:

- a) Agent must pay all amounts due to Bauer at the transfer date;
- b) this agreement will terminate on the date on which the payment referred to in clause 11.3(a) is received by Bauer; and
- c) 30 days after the transfer date Bauer must return to Agent the Retention Monies less amounts set off under clause 11.1(b).

11.4. Sale of business abandoned

If Agent decides not to proceed with the sale of Agent's business, upon written notice by Agent, Bauer must return to Agent the Retention Monies less amounts set off under clause 11.1(b).

12. COMPLAINTS AND DISPUTE RESOLUTION

If Agent reasonably considers that Bauer is in breach of this agreement or has exercised a discretion under this agreement in bad faith:

- a) Agent may write to Bauer setting out full details of Agent's complaint and the reasons why Agent feels Bauer should have acted differently;
- b) if Bauer considers it necessary to further investigate Agent's complaint, Bauer may contact Agent and allow Agent a reasonable opportunity to present the complaint to Bauer;
- c) Bauer must give reasonable consideration in good faith to Agent's complaint and must take Agent's complaint into account in deciding whether to depart from its earlier action or decision; and
- d) if Agent remains unhappy with Bauer's decision, Bauer and Agent must submit to non-binding mediation for a period not exceeding seven days before an independent mediator chosen by agreement between the parties or, where the parties cannot agree, chosen by the Chair of the Magazine Publishers of Australia Association.

13. GENERAL

13.1. Dealing with this agreement

Bauer may assign, novate or otherwise transfer the benefit of this agreement, any part of this agreement or any of Bauer's rights and remedies under this agreement to any person by giving written notice to Agent. If Bauer so deals with the parts of this agreement that relate to the distribution of Magazines, all other rights and obligations under this agreement remain in effect between Bauer and Agent.

13.2. Governing law and jurisdiction

This agreement is governed by the laws of New South Wales. Each party irrevocably and unconditionally submits to the non-exclusive jurisdiction of the courts of New South Wales.

13.3. Further assurances

Each party must do all things necessary to give full effect to this agreement and the transactions contemplated by this agreement including any assignment or novation under clause 13.1.

13.4. Notices

A notice given to either party under this agreement must be in writing and addressed to the address stated on the front page, unless another address is advised by that party. A notice given to Bauer under this agreement should be given to the attention of the National Contracts Manager, Bauer Media.

In this agreement:

Bauer Books means publications that are in "The Australian Women's Weekly Cookbooks" series or that are otherwise in the nature of cookbooks or other home reference material and that are published by Bauer.

Bauer Magazines means all Magazines that are published by Bauer, any division or related body corporate of Bauer or any joint venture in which Bauer is a participant.

Bauer Promotional Material means all Promotional Material relating to Bauer Magazines.

Commission means 25% of the Recommended Retail Price (less GST) of a Magazine or such other percentage as is agreed between Bauer and Agent from time to time.

Confidential Information means the following, whether or not in material form:

- a) the terms of this agreement;
- b) all information (including information relating to Bauer's business dealings, contracts, computer systems, marketing, sales and business plans, Bauer Promotional Material, financial data and other sensitive corporate information) that is treated or designated by Bauer as confidential, that is not generally known other than to personnel of Bauer or that should reasonably be regarded as confidential to Bauer; and
- c) all Sales Data.

EDI Software means electronic data interchange software approved or nominated by Bauer.

Facing means a pocket, flat stack or other device allowing the entire cover of a Magazine (or, where this is not available, at least the entire masthead of a Magazine) to be displayed.

GST has the meaning given to that term in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

Home Delivery means sales of Magazines by delivery to homes or businesses at the request of the occupier of the relevant home or business.

Insolvency Event means, in relation to a person:

- a) the person ceasing to carry on business;
- b) the person committing an act of bankruptcy, a partnership or trust being dissolved or filing an application for dissolution or winding up or a company being wound up or being subject to an application for winding up or any step being taken to enter into any scheme or arrangement between the person and its creditors;
- c) any step being taken by a mortgagee to enter into possession or dispose of the whole or any part of the person's assets or business;
- d) any step being taken to appoint a receiver, a receiver and manager, a liquidator, a provisional liquidator, an

- e) administrator or other like person of the whole or any part of the person's assets or business;
- f) the person disposing of the whole or any part of its assets, operations or business other than in the normal course of business, only insofar as such actions affect the ability of that person to meet its obligations under this agreement; or
- f) the person ceasing to be able to pay its debts as they become due.

Magazines means all magazines, periodicals and other printed products published or distributed by Bauer.

On-sale Period means the period notified by Bauer during which an issue of a Magazine is to remain on display and for sale, beginning on the date notified by Bauer and ending when Bauer recalls the Magazine by the issue of a Returns Form or otherwise in writing.

POS System means a computerised point of sale system capable of electronic data exchange to an industry approved standard.

Primary Impulse Location means a permanent fixture for display of Magazines that is located within Agent's shop and within reach of the point of purchase/queuing area, that has an unobstructed view from the point of purchase and that displays the entire cover of each Magazine located within it.

Promotional Material means all posters, point of sale promotional material, window display material and other material used to promote Magazines.

Publisher means Bauer and any other publisher or distributor of magazines or other periodicals who has appointed Bauer to distribute its Magazines to Agent in accordance with this agreement.

Publisher Agreement means any agreement or arrangement between Agent and a Publisher (including Bauer acting on behalf of a Publisher):

- a) under which the Publisher agrees certain terms in relation to the supply of magazines to Agent; or
- b) in relation to which Bauer agrees with the Publisher to undertake the distribution of magazines to Agent.

Recommended Retail Price means the price indicated on the cover of a Magazine or, when no such price is indicated or such price is not in Australian currency, as advised by Bauer.

Retail Selling Space means the space in Agent's shop in which customers may browse and products are displayed for sale, but does not include any office space, storage space or counter space.

Retail Services means the operation of a retail shop for the sale of magazines and other print products to the general public, including through Home Delivery.

Retention Monies has the meaning given in clause 11.1(b).

Returns Form means an electronic form issued by Bauer to Agent either via EDI Software or a website outlining Magazines being recalled from Agent and through which Agent notifies Bauer of Unsold Copies of those Magazines.

Sales Data means all information about sales, returns and stock levels of Magazines sold by Agent and Sub-agents (and any other product supplied to Agent by Bauer).

Sales Proportion means the annualised proportion of all audited magazine sales by number of copies sold that are Bauer Magazines, as audited by the Audit Bureau of Circulation from time to time.

Services means the services Agent is authorised by Bauer to provide on Bauer's behalf (as specified on the cover sheet or as agreed in writing), being Retail Services, Sub-agent Management Services or both.

Shop Plan means the details of Agent's shop as set out on the attached "Shop Plan".

Sub-agency Agreement means an agreement between Agent and a Sub-agent in the form specified by Bauer from time to time.

Sub-agent means a person who sells or intends to sell Magazines received from Agent and to whom Bauer has authorised Agent to deliver Magazines.

Sub-agent Management Services means the distribution of Magazines to Sub-agents and the management of Sub-agent accounts.

Trial Period means the 6-month period beginning on the commencement of this agreement.

Unsold Copy means a copy of a Magazine delivered to Agent that has not been sold by Agent (or a Sub-agent) to a Customer.

Wholesale Sales Value means the Recommended Retail Price (less GST) of a Magazine less the Commission.

Size of Retail Selling Space (m²):

Proportion of Retail Selling Space dedicated to magazines (%):

Number of Facings in Agent's shop:

Pockets

Flat stacks

Total

Number of Facings in Primary Impulse Location:

Agent's shop has space for a total of:

- Dump bins (number)
- Poster racks inside (number)
- Poster racks outside (number)
- Counter packs (number)

Window space (m²)

Signage on external walls (m²)

Under awning signs (m²)

Awning (m²) Yes No

Computerised point of sale system:

None Tower POS Browser Access POS Computer Link NBS Palace News POS

Other _____

Opening hours:

Mon _____ Tue _____ Wed _____ Thurs _____ Fri _____

Sat _____ Sun _____ Pub Hol _____

Attach any available professional plans or drawings of Agent's shop layout (defining dimensions in metres). Please highlight the Primary Impulse Location, magazine racking, counter, windows and door.