



## Take it away Scheme Rules

### 1. The Scheme

- 1.1 The Take it away Scheme (“the Scheme”) is an Arts Council England initiative operated by Creative Sector Services CIC (“we/us”) to provide approved retailers of musical instruments in England (“Members”) with the ability to offer their customers interest-free loans to enable them to purchase musical instruments, and where available, music tuition services.
- 1.2 The Scheme is run by Creative Sector Services CIC currently in partnership with Secure Trust Bank PLC, trading as ‘Moneyway’ (“the Credit Provider”) which provides the loans to customers.
- 1.3 The Take it away ‘stamp’ logo is a registered trademark of Creative Sector Services CIC.
- 1.4 For these purposes “musical instrument/s” may be described as wind (which may be subdivided into woodwind and brass), percussion, string, keyboard, and electronic instruments. Peripherals to these instruments such as bows, piano stools, amplifiers, contact microphones, music stands, and tuition may be included but only where an instrument is included as part of the sale and included on the credit agreement.
- 1.5 Public Address (PA) systems and computer hardware/software may not be included as part of the credit agreement.

### 2. Applications for membership

- 2.1 Scheme Membership is open to sole traders, partnerships or companies operating in England. Where an applicant is a sole trader, the Member must be over 18 years of age.
- 2.2 Members must operate a UK bank account, and be capable of administering standard banking procedures on regular payments and BACS payments from their trading premises or registered offices.
- 2.3 By signing the Application Form the prospective Member agrees to be bound by the Scheme Terms and Conditions of Membership in the form required by us and consents to

Creative Sector Services CIC and the Credit Provider using the information to carry out credit reference enquiries of credit agencies and to undertake enquiries of the bankruptcy registers, electoral roll registers and Companies House registers.

- 2.4 We will assess all applications against the published Guidelines and Criteria for Membership (set out for convenience below). We may revise the Guidelines and Criteria from time to time. If you are unsuccessful we will inform you in writing, giving reasons.
- 2.5 If accepted for membership, Members must be willing to attend a mandatory retailer training course at a venue and on a date to be arranged by us at our discretion. A failure to attend any mandatory training may lead to a suspension of membership until the training is completed.
- 2.6 As a pre-condition of admission to membership all Members must sign an agreement between the Credit Provider and the Member in the form required by the Credit Provider ("the Credit Provider Agreement")
- 2.7 All Members must promptly complete and submit to us an annual survey in a form required by us, which we will use for evaluation and monitoring purposes.
- 2.8 We reserve the right periodically to review and reassess each Member's participation in the Scheme, to ensure that they continue to comply with the then-current Criteria for Membership and are meeting all their obligations under the Take it away Member Agreement and these Rules. If not satisfied that you are in compliance we will inform you of the reasons and if you continue to fail to meet our standards we reserve the right to terminate your Membership at any time.

### **3. Criteria for Membership of the Scheme**

- 3.1 The overall criterion is that the prospective member should be committed to promoting and selling musical instruments appropriate for the needs of musicians, from entry level through to aspiring professionals. Creative Sector Services CIC and Arts Council England seek to support musical instrument retailers who can provide specialist advice and support to a wide range of customers, particularly those who are new to music.
- 3.2 For assessment of applications, prospective members will be expected to meet the following criteria:
  - 3.2.1 to specialise in the sale of musical instruments appropriate for players across a range of abilities, and to offer before and after sales support and advice to all customers appropriate to their needs
  - 3.2.2 to operate a business that has a positive net worth and has been trading for a minimum of 12 months at the time of application. The applicant must be able to supply full accounts (not in draft form) for the previous year's trading
  - 3.2.3 to undertake regular marketing activities in the promotion of the profile of the shop and its range of goods and services

- 3.2.4 to operate from retail premises based in England which are open and available for customers to attend in person and to have regular, advertised opening hours and not be open solely on an appointment basis
- 3.2.5 to employ fully trained and well informed staff available during working hours to talk to customers about Take it away as well as being able to effect a sale
- 3.1.6 to operate a UK bank account capable of accepting payments by BACS
- 3.1.7 to hold or be capable of holding a Standard Licence under the Consumer Credit Act 1974 (as amended) covering the category of credit brokerage. This is a legal requirement. *(Please note: ArtCo Trading advises that a prospective Member which does not hold such licence should not apply until formally accepted for membership of the Scheme. Any acceptance will be conditional upon the member obtaining such licence);*
- 3.1.8 to be prepared to attend training days as required
- 3.1.9 to participate in ongoing evaluations of the Scheme to monitor achievements against objectives (i.e. share information and statistics with Creative Sector Services CIC and Arts Council England on audiences, turnover and payments relating to Take it away) including ensuring the return of customer surveys that are to be completed by all customers applying successfully for a Take it away loan at the point of sale, and end of year retailer survey
- 3.1.10 to effectively advertise and promote their membership of the Scheme by displaying appropriate signage and customer information about the Scheme both in the venue itself and on the Shop's website (if applicable)
- 3.1.11 to comply with the Take it away Brand Guidelines in the promotion of the Scheme
- 3.1.12 to continue offering Take it away as a payment option for customers once the available loan subsidy quota allocation has been expended

#### **4 Consumer Credit Licence**

- 4.1 As a participant in the Scheme, Members will be involved in activities relating to credit and therefore, as required by the Consumer Credit Act 1974 as amended ("the Act"), all Members must hold a Standard Licence under the Act, at least covering the category of credit brokerage ("the Licence"). Failure to hold a Licence at all times could result in:-
  - (a) refusal of entry to the Scheme;
  - (b) as a current Member, being expelled from the Scheme;
  - (c) committing a criminal offence; and
  - (d) the inability of the Member in future to carry out any consumer credit business.
- 4.2 We reserve the right to terminate your membership if your Licence is revoked or you fail to renew it when it expires.
- 4.3 You must at all times comply with the requirements of the Licence and in particular you should not commit any of the 'unfair business practices' which may render you liable to have your licence revoked. A list of these practices has been published by the Office of Fair

Trading (see Annex : ‘Consumer Credit Licensing: General Guidance for licensees and applicants on fitness and requirements’:  
[http://www.offt.gov.uk/shared\\_offt/business\\_leaflets/credit\\_licences/oft969.pdf](http://www.offt.gov.uk/shared_offt/business_leaflets/credit_licences/oft969.pdf))

## **5 Credit Terms and Procedures**

- 5.1 The Scheme is intended to offer loans of sums between £100 and £5,000 (subject to change) to qualifying individuals subject to status and in accordance with Scheme criteria agreed by Creative Sector Services CIC. We hope to support all qualifying loan applications, but our capacity to do so will always depend on the level of demand from customers and the availability of resources.
- 5.2 In order that we can operate the Scheme effectively within budget, each participating Member may be issued a subsidy quota allocation. The value of the quota will be set at the start of each financial year and will vary according to the projected needs of each business and shall also be dependent on the number of Member Retailers participating in the Scheme. Once this quota has been expended, the Member shall be responsible for funding the full cost of any further loan applications for the remainder of the financial year at the prevailing unsubsidised rate as determined by the Credit Provider under its agreement with Creative Sector Services CIC.
- 5.3 The Scheme does not offer credit to businesses, i.e. sole traders, partnerships or companies. Members must ensure that all applications for credit are only completed by individuals (i.e. natural persons) and then make it clear that the application for consumer credit is subject to acceptance by and at the discretion of the Credit Provider. The Member should also make clear to the customer that it is not the Member’s decision whether the customer is offered credit under the Scheme but a decision of the Credit Provider whose decision is final.
- 5.4 Loans are not available to customers who have disclosed to a Member in the course of enquiry about the Scheme, that they
- intend to reside abroad or
  - intend to relocate abroad for a substantial period of time, or
  - are persons domiciled abroad, or
  - are persons who are under the age of 18 years of age or do not meet the age relevant customer age criteria
  - are non-UK citizens.

If a Member is in any doubt, the Member should raise its concern with the Credit Provider before submitting the loan application.

- 5.5 Loans are available to staff of Members provided that the applicant has the permission of a Company Director or the Store manager who must process the loan application.
- 5.6 Loans are repayable by the customer to the Credit Provider by direct debit only, commencing in accordance with the terms of the loan agreement, in equal monthly instalments (subject to minimum monthly repayment of £10).

- 5.7 Any loan application must contain the full particulars of the customer in order to identify the customer accurately. A customer may apply for one or more concurrent or consecutive loans under the Scheme to buy one or more musical instruments.
- 5.8 Members may advise the customer that there are several factors involved in a decision to offer interest free or low rate credit on any particular sale, only some of which relate to customer's personal circumstances. Unsuccessful applicants should be given the Credit Provider's standard 'Decline' letter.
- 5.9 If the musical instrument/s cost more than the particular loan available to the customer, the customer must pay the balance of the purchase price to the Member before the goods are released to the customer. If the Member releases the goods before the full price is paid, the Member shall bear the risk of any amount unpaid.
- 5.10 A customer may repay the loan at any time without penalty for early repayment except for any allowance that may be permitted to the Credit Provider by the Consumer Credit (Early Settlement) Regulations 2004.
- 5.11 If a sale of a musical instrument has been concluded in accordance with these Rules, the default, death or bankruptcy of the customer should not affect the Member. The loan agreement will continue to bind the estate of the deceased or bankrupt customer, and his or her personal representatives.
- 5.12 Only authorised and approved current versions of the Credit Provider's loan agreement can be used for the Scheme. The Credit Provider will notify Members, in writing, of any new issues of the loan agreement from time to time.
- 5.13 A sale will be complete when the loan has been approved and the customer has signed the agreement and direct debit mandate.
- 5.14 The decision of the Credit Provider as to whether to grant or decline a loan application is final and no reasons need be given.

## **6 Loan Subsidy and Fees**

- 6.1 Members will be required to pay the Credit Provider a fee equal to a fixed percentage of the amount of each loan determined by us from time to time ("the Fee"). The Fee may be changed from time to time at our sole discretion. We will notify Members of any changes in writing.
- 6.2 The Fee will be deducted by the Credit Provider from the loan amount financed under the loan agreement.
- 6.3 The Member may not charge the customer any part of the Fee or any other charge for credit, or charge the customer any amount other than the Total Cash Price of the goods, plus (where applicable) any delivery or framing charge. To do so may render the loan

agreement unenforceable and may also result in termination of membership of the Scheme.

If a Member is found to have breached this term, or any of the other Scheme Rules, we also reserve the right to invoice the Member for the full cost of the loan at the unsubsidised rate chargeable by the Credit Provider.

6.4 All payments fees and charges will be calculated and paid in sterling.

## **7 Data Protection**

7.1 If required under the Data Protection Act 1998 (“DPA”) Member Retailers must notify their personal data (as defined in the DPA) processing activities to the Office of the Information Commissioner and are responsible for complying with their obligations under the DPA, including (but not limited to) the need to process personal data fairly and keep it securely.

7.2 Any personal data given by any prospective Member in the course of the application for Membership and any information subsequently provided whilst a Member of the Scheme, will be held by us and may be shared with the Credit Provider and the Scheme Partners.

The personal data will be used to enable the Credit Provider to conduct credit reference, bankruptcy and other relevant inquiries about the Member Retailer and subsequently for Scheme administration purposes.

## **8 Promotional Literature**

These Rules describe the Scheme and the conditions and procedure governing its operation. All descriptions of the Scheme and all advertisements, statements and announcements relating to it must be consistent with the Consumer Credit Act (and all regulations made under the Act) as well as these Scheme Rules, and must include the Scheme logo and the logo of the relevant Scheme Partner.

## **9 Member’s default**

We reserve the right at any time accordance with the terms of the Member Agreement to suspend or terminate membership of the Scheme in respect of any Member who fails to comply with the Scheme Rules, and take the other actions set out in the Member Agreement.

## **10 Management Information**

Our duly authorised representatives may from time to time visit any Member without prior notice during working hours to monitor the Member’s compliance with the Rules of the Scheme. The Member will co-operate fully with the authorised representatives’ reasonable requests.

## **11 Variation of the Rules and Termination of the Scheme**

11.1 We may from time to time amend these Rules as we deem necessary, expedient or convenient for the proper management of the Scheme or to take into account changed circumstances. We will give the Members at least 30 days' written notice of any amendment to these Rules.

11.2 We may, in our discretion, at any time resolve to terminate this Scheme on 30 days' written notice to Members at any time.

## **12 Complaints**

12.1 You can complain if you think that:

12.1.1 'maladministration' has taken place (for example, if we have delayed, made mistakes in or failed to follow the procedures in our application process); or

12.1.2 we have failed to give you access to information or have given you incorrect advice or information; or

12.1.3 we have not treated you politely; or

12.1.4 we have discriminated against you or not treated you fairly.

12.2 However if your complaint is about our refusal to admit you to membership of the Scheme, we can only look at your application again if:

- we discover (through dealing with a complaint) that we did not follow the published procedures for assessing your application;
- you can show that we have misunderstood a significant part of your application; or
- you can show that we did not take notice of relevant information.

12.3 All complaints should be made by following the Creative Sector Services CIC Complaint Procedure, available upon request from us.

May 2013

**ANNEXE**

## Consumer Credit Licensing: General Guidance for licensees and applicants on fitness and requirements'

**All licence holders must ensure that they adhere to relevant legislation and sector-specific guidance issued by the OFT.**

Now available are guidance documents

- on debt management
- on debt collection
- for car dealers
- on non-status lending.

To order copies go to our website [www.oft.gov.uk](http://www.oft.gov.uk) or call our mailing house on 0800 389 3158.

**Below is a general list of practices that are unlawful and/or are considered unfair or improper, according to subject (please note that this list is not exhaustive):**

### **Actions prohibited under the Consumer Protection from Unfair Trading Regulations 2008**

The Consumer Protection from Unfair Trading Regulations (in force from 6 April 2008) prohibit unfair commercial practices that distort consumers' decisions.

They contain:

- a general duty on businesses dealing with consumers not to trade unfairly
- prohibitions against misleading actions and omissions, and aggressive commercial practices
- in Schedule 1 of the Regulations, 31 specific practices that are always considered to be unfair.

### **Credit brokerage services and fees**

- Failing to return fees in excess of £5 when a consumer does not take up a loan or enter into an agreement within six months of an introduction to a lender, for whatever reasons, contrary to section 155 of the Consumer Credit Act 1974.
- Inducing consumers to enter into agreements for mortgage arrangements where the licensee knew or ought to have known that the outcome of the loan application was uncertain.
- Setting terms covering when fees paid as commission become refundable which state that such fees are non-returnable and/or that the consumer would only be entitled to a refund of a proportion of the original fee, contrary to sections 155 and 173(1)



of the Consumer Credit Act 1974.

### **Consumer credit advertising**

- Using false or misleading statements in order to induce consumers to enter into a contract, by way of misleading information relating to finance contrary to Regulation 5(2) of the Consumer Protection from Unfair Trading Regulations 2008 or Regulations 3 or 4 of the Business Protection from Misleading Marketing Regulations 2007.
- Advertising in a way that contravenes paragraphs 5, 6 or 7 of Schedule I of the Consumer Protection from Unfair Trading Regulations 2008.
- Hiding important details about credit deals in the small print.
- Failing to include information required under the Consumer Credit Advertising Regulations 2004 (such as the Typical APR and other required financial information).

### **Consumer credit agreements**

- Requiring consumers to enter into credit agreements in a manner not meeting the requirements of proper execution as prescribed by section 61(1)(a)-(c) of the Consumer Credit Act 1974.
- Requiring consumers to sign credit agreements that are not easily legible and are difficult to understand.
- Failing to comply with the information provision requirements of the Consumer Credit Act 1974.
- Failing to include key information required under the Consumer Credit Agreements Regulations 2004.
- Using terms that are unfair contrary to the Unfair Terms in Consumer Contracts Regulations 1999.

### **Consumer goods and services**

- Inducing consumers to enter into contracts for the purchase of goods by making false statements about the description and availability of goods, contrary to the Sale of Goods Act 1968 and/or the Consumer Protection from Unfair Trading Regulations 2008.
- Inducing consumers to enter into contracts for the provision of services by knowingly, recklessly or negligently making false statements as to the nature of those services contrary to the Consumer Protection from Unfair Trading Regulations 2008.
- Failing to carry out work as agreed or with reasonable care and skill.
- Failing to perform contractual obligations to consumers, and failing, when in breach of contract, to give a refund, to pay damages, or to provide the goods or services as agreed.
- Failing to give consumers any or any adequate redress when in breach of any other legal duty owed to them.
- Selling of unroadworthy vehicles, contrary to section 75(5) of the Road Traffic Act 1988.

## **Responsibilities under the Company Directors Disqualification Act 1986**

- Directly or indirectly taking part in the management of a company without leave of the court, contrary to section 1(1) of the Company Directors Disqualification Act 1986.

## **Business advertisements**

- Causing an advertisement to be published that did not make it clear that the goods were being sold in the course of a business, contrary to the Business Advertisements (Disclosure) Order 1977 and paragraph 22 of Schedule 1 of the Consumer Protection from Unfair Trading Regulations 2008.

## **Handling money in the course of business administration**

- Inappropriate or improper dealing with money held in trust for clients.
- Misappropriating business funds without having regard to the interests of creditors.

## **Companies Act 1985**

- Failing to ensure that accounts are prepared and delivered for filing to the Registrar of Companies in accordance with sections 227, 241 and 242 of the Companies Act 1985.
  - Failing to ensure that annual returns are delivered for filing with the Registrar of Companies in accordance with sections 363 and 365 of the Companies Act 1985.
- Office of Fair Trading **29**
- Failure to ensure that the accounting records of a company are sufficient to comply with section 221 of the Companies Act 1985.

## **Credit repair**

- Encouraging consumers to lie to the courts so as to set county court judgments aside, in order to improve credit ratings and thus to obtain loans.
- Publishing advertisements promising to remove negative information from credit reference files even if they are accurate and timely.
- Failing to refund fees paid upfront, where services are not subsequently provided.
- Providing worthless 'money back' guarantees as follow-up literature to consumers in order to induce consumers to continue to proceed with credit repair services.

## **Non-status lending**

- Inducing consumers to borrow on excessive or oppressive terms against the security of their homes without regard to their ability to repay the loan.
- Offers of inappropriate loans that fail to take into account the

consumer's ability to repay, sometimes with catastrophic results.

- Marketing or targeting loans explicitly at consumers in debt.
- Failing (as a broker) to act in the best interests of the borrower; a preoccupation with the value of the security rather than the borrower's credit-worthiness ('equity lending').
- Imposing substantial brokerage or other advance fees separately, while failing to explain that such fees could be charged and deducted from the loan.
- Imposing very high interest rates, and increasing interest rates when a loan is in arrears, sometimes in breach of section 93 of the Consumer Credit Act 1974.
- Illegally canvassing agreements in consumers' homes, when not licensed to do so.
- Providing misleading documentation that fails to give, or misrepresents, key information, including misquoting interest rates and APRs.
- Improperly tying-in insurance products that the consumer is unaware of/misled about.
- Falsifying information as to a borrower's income or other aspects of their financial status in order to secure the loan.
- Misrepresenting the form, nature, purpose or long-term implications of loan agreements.
- Using unacceptably high-pressure selling techniques or engaging in any other aggressive commercial practices contrary to Regulation 7 of the Consumer Protection from Unfair Trading Regulations 2008.

### **Irresponsible lending**

- Lending irresponsibly contrary to the provisions of section 25(2B) of the Consumer Credit Act 1974, by failing to take reasonable care in making loans or advancing lines of credit, including making only limited or no enquiries about consumers' income before offering loans, and failing to take full account of the interests of consumers in doing so.