



## **Terms and Conditions**

# Terms and Conditions

These are the terms and conditions subject to which we allow you to use Our Website. By visiting or using Our Website, or signing up for our services, you agree to be bound by them. You may not use Our Website if you are under the age of 18 years.

If you violate these terms we may terminate your use of Our Website, bar you from future use of Our Website, cancel your order, and/or take appropriate legal action against you.

We are Tunesmith Solutions, an individual/sole trader business registered in Australia, number ABN 37 024 596 672.

Our address is 6/21 Hamlet St, Greensborough, VIC, 3088.

You are: Anyone who uses Our Website or buys from us.

Please read this agreement and our "Product Licence Terms" carefully and save both documents. If you do not agree with our terms and conditions, you should leave Our Website and stop using our products or the Services immediately.

**It is now agreed as follows:**

## 1. Definitions

In this agreement, the following words shall have the following meanings, unless the context requires otherwise:

- |                         |   |
|-------------------------|---|
| "Content"               | means the textual, visual or aural content that is encountered as part of your experience on Our Website. It may include, among other things: text, images, sounds, videos and animations.  |
| "Intellectual Property" | means intellectual property owned by us or by any third party, of every sort, whether or not registered or registrable in any country, including intellectual property of all kinds coming into existence after today; and including, among others, patents, trade marks, unregistered marks, designs, copyrights, domain names, discoveries, creations and |

inventions, together with all rights which are derived from those rights or for which application for registration has been made in any country.

“Our Website”	means the entire computing hardware and software installation that is or supports our website including any communication or peripheral system. It includes any website of ours, and all web pages controlled by us.
“Post”	means place on or into Our Website any Content or material of any sort by any means.
“Licence”	means a licence granted by us to you in the terms of this agreement for use of a Licensed Product.
“Licensed Product”	means any product, material or thing offered for Licence by us on Our Website, whether or not bought by you. A reference to “Product” shall be a reference to all or part of a Product or to a Product changed by you in any way.
“Service”	means any service we sell from time to time, whether or not connected to a Licensed Product.

## **2. Interpretation**

In this agreement the following meanings apply unless the context otherwise requires:

- 2.1. a reference to a person includes a human individual, a corporate entity and any organisation which is managed or controlled as a unit.
- 2.2. a reference to a person includes reference to that person’s successors, legal representatives, permitted assigns and any person to whom rights and obligations are transferred or pass as a result of a merger, division, reconstruction or other re-organisation involving that person.
- 2.3. the headings to the paragraphs and schedules (if any) to this agreement are inserted for convenience only and do not affect the interpretation.

- 2.4. any agreement by either party not to do or omit to do something includes an obligation not to allow some other person to do or omit to do that same thing.
- 2.5. a reference to an act or regulation includes new law of substantially the same intent as the act or regulation referred to.
- 2.6. these terms and conditions apply to all supplies of Licensed Products by us. They prevail over any terms proposed by you.
- 2.7. this agreement is made only in the English language. If there is any conflict in meaning between the English language version of this agreement and any version or translation of this agreement in any other language, the English language version shall prevail.

### **3. Basis of Contract**

- 3.1. If you use Our Website in any way on behalf of another person you warrant that you have full authority to do so and you accept personal responsibility for every act or omission by you.
- 3.2. When you buy a Licensed Product, you are in fact buying a licence to use that Licensed Product. The terms of use vary from one Licensed Product to another and are contained in our "Product Licence Terms". That Licence is supplemental to this agreement and to be read with this agreement to provide the full agreement between us.
- 3.3. In entering into this contract you have not relied on any representation or information from any source except Our Website.
- 3.4. There is no contract between us for any free service, so you do not become a client by using any free service and we are not liable to you in any way resulting from your use of any free service.
- 3.5. The price of any Licensed Product or Service may be changed by us at any time. We will never change a price so as to affect the price charged to you at the time when you buy that Licensed Product or Service.
- 3.6. You agree that you are bound by these terms (or the latest version of them) for all future contracts with us, whether ordered through Our Website or in some other way.

- 3.7. You now agree that you commit a breach of this contract if you seek repayment of money paid to us by asking your credit card provider to credit back a payment made to us, without attempting to seek repayment from us first. In that event, you agree that you will owe us first the sum charged to us by our payment service provider and secondly a sum based on time spent at \$100 per hour in dealing with your breach. You also agree that this provision is reasonable.
- 3.8. The contract between us comes into existence at the earlier of:
  - 3.8.1 when we write to you to confirm that your order has been delivered; or
  - 3.8.2 when you download the Licensed Product you have bought.
- 3.9. We may change this agreement and / or the way we provide a Product, at any time. If we do:
  - 3.9.1 the change will take effect when we Post it on Our Website. You are advised to check this page from time to time.
  - 3.9.2 if you make any payment for Licensed Products or Services in the future, you will do so under the terms Posted on Our Website at that time.

## **4. The price**

- 4.1. The prices payable for the Licensed Product and Services are clearly set out on Our Website.
- 4.2. The price charged for any Licensed Product or Service may differ from one country to another. You may not be entitled to the lowest price unless you reside in the qualifying country.
- 4.3. Prices are inclusive of any applicable goods and services tax or other sales tax.
- 4.4. Charges for Services are fixed whenever it is reasonably possible for us to ascertain the price.
- 4.5. When we do not provide fixed charges for the Service, we will charge by the hour. In that case all work done, including all letters, e-mails, faxes and telephone calls made and received will be charged on a time basis in minimum units of one tenth of an hour.

- 4.6. Estimates of charges will be provided to you wherever possible.
- 4.7. You can find our hourly charging rate, time travel rate and motor mileage rate on Our Website. Other travel costs will be re-charged at cost incurred.
- 4.8. Our Services require payment in advance in every case.

## **5. Security of your credit card**

We take care to make Our Website safe for you to use.

- 5.1. Card payments are not processed through pages controlled by us. We use one or more online payment service providers who will encrypt your card or bank account details in a secure environment.
- 5.2. If you have asked us to remember your credit card details in readiness for your next purchase or subscription, we will securely store your payment details on our systems. These details will be fully encrypted and only used to process your automatic monthly payments or other transactions which you have initiated.

## **6. Security of Our Website**

Our privacy policy is strong and precise. It complies fully with current privacy law. Our Website Privacy Policy can be located in the footer of our website: [www.tunesmithsolutions.com](http://www.tunesmithsolutions.com)

If you violate Our Website we shall take legal action against you.

You now agree that you will not, and will not allow any other person to:

- 6.1. modify, copy, or cause damage or unintended effect to any portion of Our Website, or any software used within it.
- 6.2. link to Our Website in any way that would cause the appearance or presentation of Our Website to be different from what would be seen by a user who accessed Our Website by typing the URL into a standard browser;
- 6.3. download any part of Our Website, without our express written consent;

- 6.4. collect or use any product listings, descriptions, or prices;
- 6.5. collect or use any information obtained from or about Our Website or the Content except as intended by this agreement;
- 6.6. aggregate, copy or duplicate in any manner any of the Content or information available from Our Website, other than as permitted by this agreement or as is reasonably necessary for your use of the Services;
- 6.7. share with a third party any login credentials to Our Website.
- 6.8. Despite the above terms, we now grant a licence to you to:
  - 6.8.1 create a hyperlink to Our Website for the purpose of promoting an interest common to both of us. You can do this without specific permission. This licence is conditional upon your not portraying us or any Product or Service in a false, misleading, derogatory, or otherwise offensive manner. You may not use any logo or other proprietary graphic or trademark of ours as part of the link without our express written consent.
  - 6.8.2 you may copy the text of any page for your personal use in connection with the purpose of Our Website or a Service we provide.

## **7. Interruption to Tunesmith Solutions service**

- 7.1. If it is necessary for us to interrupt our service, we will give you reasonable notice where this is possible and when we think the down time is such as to justify telling you.
- 7.2. You acknowledge that Tunesmith Solutions service may also be interrupted for many reasons beyond our control.
- 7.3. You agree that we are not liable to you for any loss, foreseeable or not, arising from any interruption to our service.

## **8. Intellectual Property**

- 8.1. We will defend our Intellectual Property rights in all countries.
- 8.2. Except as provided in our Product Licence Terms, you may not copy, modify, publish, transmit, or sell, create derivative works from,

distribute, perform, display, or in any way exploit any of our Intellectual Property or that owned by any third party and accessible to you via Our Website.

- 8.3. You may not use our name or logos or trademarks or any other content on any website of yours or that of any other person.
- 8.4. You agree that at all times you will:
  - 8.4.1 not cause or permit anything which may damage or endanger our title to any of our Intellectual Property;
  - 8.4.2 notify us of any suspected infringement of the Intellectual Property;
  - 8.4.3 indemnify us for any loss or expense arising from your misuse of the Intellectual Property;
  - 8.4.4 not use any name or mark similar to or capable of being confused with any name or mark of ours.

## **9. Disclaimers and limitation of liability**

- 9.1. The law differs from one country to another. This paragraph applies so far as the applicable law allows.
- 9.2. All implied conditions, warranties and terms are excluded from this agreement.
- 9.3. Our Website includes Content Posted by third parties. We are not responsible for any such Posting. If you come across any Content which offends against this document, please contact us via the "Contact" page on Our Website.
- 9.4. You are advised that Content may include technical inaccuracies or typographical errors. This is inevitable in any large website. We would be grateful if you bring to our immediate attention, any that you find.
- 9.5. We sell Licensed Products and Services in good faith. But we make no representation or warranty that any Licensed Product or Service will be:
  - 9.5.1 useful to you;
  - 9.5.2 of satisfactory quality;



- 9.5.3 fit for a particular purpose;
- 9.5.4 available or accessible, without interruption, or without error.
- 9.6. Our Website contains links to other Internet websites. We have neither power nor control over any such website. You acknowledge and agree that we shall not be liable in any way for the content of any such linked website, nor for any loss or damage arising from your use of any such website.
- 9.7. We claim no expert knowledge in any subject. We disclaim any obligation or liability to you arising directly or indirectly from information you take from Our Website.
- 9.8. You agree that in any circumstances when we may become liable to you, the limit of our liability is the amount you have paid us in the immediately preceding 12 month period for the Licensed Products concerned.
- 9.9. We shall not be liable to you for any loss or expense which is:
  - 9.9.1 indirect or consequential loss; or
  - 9.9.2 economic loss or other loss of turnover, profits, business or goodwill even if such loss was reasonably foreseeable or we knew you might incur it.
- 9.10. This paragraph (and any other paragraph which excludes or restricts our liability) applies to our directors, officers, employees, subcontractors, agents and affiliated companies as well as to us.
- 9.11. If you become aware of any breach of any term of this agreement by any person, please tell us by email. We welcome your input but do not guarantee to agree with your judgement.

## **10. You Indemnify Us**

You agree to indemnify us against all costs, claims and expense arising directly or indirectly from:

- 10.1. your failure to comply with the law of any country;
- 10.2. your breach of this agreement;
- 10.3. a breach of the intellectual property rights of any person;

- 10.4. your failure to conform to any relevant Internet protocol;
- 10.5. a contractual claim arising from your use of the Licensed Products;

For the purpose of this paragraph you agree that the cost of our management and technical time is properly recoverable and can reasonably be valued at \$100.00 per hour without further proof.

## **11. Miscellaneous matters**

- 11.1. If any term or provision of this agreement is at any time held by any jurisdiction to be void, invalid or unenforceable, then it shall be treated as changed or reduced, only to the extent minimally necessary to bring it within the laws of that jurisdiction and to prevent it from being void and it shall be binding in that changed or reduced form. Subject to that, each provision shall be interpreted as severable and shall not in any way affect any other of these terms.
- 11.2. You undertake to provide to us your current land address, e-mail address and telephone number as often as they are changed together with all information that we may require to enable us to fulfil our obligations under this contract.
- 11.3. If you are in breach of any term of this agreement, we may:
  - 11.3.1 publish all text and Content relating to the claimed breach, including your name and email address and all correspondence between us and our respective advisers; and you now irrevocably give your consent to such publication.
  - 11.3.2 terminate your account and refuse access to Our Website;
  - 11.3.3 issue a claim in any court.
- 11.4. Any obligation in this agreement intended to continue to have effect after termination or completion shall so continue.
- 11.5. No failure or delay by any party to exercise any right, power or remedy will operate as a waiver of it nor indicate any intention to reduce that or any other right in the future.
- 11.6. You agree that we may disclose your information including assigned IP numbers, account history, account use, etc. to any judicial or proper

legal authority who makes a written request without further consent or notification to you.

- 11.7. Any communication to be served on either of the Parties by the other shall be delivered by hand or sent by express post or recorded delivery or by e-mail.

It shall be deemed to have been delivered:

if delivered by hand: on the day of delivery;

if sent by post to the correct address: within 72 hours of posting;

if sent by e-mail to the address from which the receiving party has last sent e-mail: within 24 hours if no notice of non-receipt has been received by the sender.

- 11.8. In the event of a dispute between the parties to this agreement, then they undertake to attempt to settle the dispute by engaging in good faith with the other in a process of mediation before commencing arbitration or litigation.

- 11.9. So far as the law permits, and unless otherwise stated, this agreement does not give any right to any third party.

- 11.10. The validity, construction and performance of this agreement shall be governed by the laws of the State of Victoria, and you agree that any dispute arising from it shall be litigated in that State.

# Product Licence Terms

We are Tunesmith Solutions, an individual/sole trader business registered in Australia, number ABN 37 024 596 672.

Our address is 6/21 Hamlet St, Greensborough, VIC, 3088

You are: Anyone who buys a Licence from us.

## These are the agreed terms

These Product Licence Terms are supplemental and additional to the above terms and conditions (the "T&C") relating to use of Our Website. By buying or using any Licensed Product, you agree to be bound by them.

## 1. Definitions

In this agreement, the definitions in the T&C apply. In addition, the following words shall have the following meanings, unless the context requires otherwise:

"Copy or Publish"	with reference to a Licensed Product, means reproducing or publishing in whole or in part, using any means, in any medium. It includes breaking up, changing, cropping or any other change or use as part of some other created work.
"Restrictions on Use"	means first, the restrictions set out in this agreement and second, all restrictions or limitations arising from choices you made at the time of purchase. These may relate to limitations on use, territory, duration, or any other choice which defines the Licensed Product.
"Licence"	means a licence granted by us to you in the terms of this agreement for use of a Licensed Product.
"Licensed Product"	means any product, material or thing offered for Licence by us on Our Website, whether or not bought by you. A reference to "Product" shall be a reference to all or part of a Product or to a Product changed by you in any way.

## **2. Interpretation**

The interpretation and definition provisions of the T&C apply also to this agreement.

## **3. The Licence**

- 3.1. You confirm that you have authority to enter into this agreement and have obtained all necessary approvals to do so.
- 3.2. In entering into this contract you have not relied on any representation or information from any source except that on Our Website.
- 3.3. We do not offer the Licensed Products in all countries. We may refuse a Licence if you live in a country we do not serve.
- 3.4. If any information you give us is inaccurate, your Licence is automatically terminated and no refund of money will be due to you.
- 3.5. Subject to the terms of this agreement, we grant to you a Licence to use a Licensed Product.
- 3.6. This Licence is limited by the Restrictions on Use. You agree to comply with all Restrictions on Use no matter how communicated to you.
- 3.7. No express or implied licence of the Licensed Product or any other material is granted to you other than the express Licence granted in this agreement.

## **4. Limitations and permissions on Licences**

- 4.1. You must not sub-license a Licensed Product.
- 4.2. You must not Copy or Publish a Licensed Product except as specifically allowed in this agreement.
- 4.3. You may not allow any other person to use a Licensed Product except in the situation or context for which you have bought it.
- 4.4. You may not represent or give the impression that you are the owner or originator of any Licensed Product.

- 4.5. You may not remove any identification or reference number or other information which may be embedded in any file of a Licensed Product.
- 4.6. Every publication or appearance of a Licensed Product on a website must be protected as far as the law allows by separate, specific or general provisions against copying or publishing. We allow you to use the definition of “Copy or Publish” used in this agreement.
- 4.7. You may not use a Licensed Product:
  - 4.7.1 except for the use specified at the time of purchase;
  - 4.7.2 in a context which is pornographic;
  - 4.7.3 containing a human model in any way which might degrade that person in the eyes of a reasonable viewer;
  - 4.7.4 in part or as a whole, as a logo or otherwise to incorporate it in any intellectual property of yours;
  - 4.7.5 in an application for mobile/cell phone use, except as part of a marketing programme based on a website;
  - 4.7.6 for a secondary use in music notation/score form, for example on social networks.
- 4.8. Once payment has been received and PDF successfully downloaded by the customer, no refunds will be processed.
- 4.9. If the customer experiences difficulty downloading the product, Tunesmith Solutions will resend the file(s) within 10 business days in order for the transaction to be completed to the satisfaction of both parties

## **5. Freedom to use**

Despite the above limitations, you may copy a Licensed Product:

- 5.1. full scores - per quantity necessary for individual use;
- 5.2. Individual parts - per quantity of performers.

## **6. Copyright and other Intellectual Property**

- 6.1. You agree that at all times you will:
  - 6.1.1 not cause or permit anything which may damage or endanger our title to any Licensed Product;
  - 6.1.2 notify us of any suspected infringement of the Intellectual Property.
- 6.2. If you use a Licensed Product in a way not allowed by this agreement we may take legal action anywhere in the World. If loss to us or any other person results from your wrongful action, you will be liable to pay.
- 6.3. If we terminate the Licence on account of your breach, you agree that you will:
  - 6.3.1 immediately stop using the Licensed Product;
  - 6.3.2 destroy all copies of the Licensed Product in your possession or control;
  - 6.3.3 destroy any work of yours derived from a Licensed Product.
- 6.4. To give us assurance that you are using the Licensed Product in accordance with the terms of the Licence, you agree that you will give us copies of your works and materials containing or using a Licensed Product. We will give you 15 days notice of this requirement. You agree also to provide access to relevant pages which have restricted access or are fire-walled.
- 6.5. If we reasonably believe that you are using a Licensed Product outside the scope of this Licence, you agree to provide written confirmation of your compliance, in a form to be drawn by us.

## **7. Assignment**

- 7.1. You may not assign, delegate, sub-contract, mortgage, charge or otherwise transfer any or all of its rights and obligations under this agreement without our prior written consent, except that:
  - 7.1.1 You may assign and transfer all your rights and obligations under this agreement to any person to which you transfer all of your business, provided that the assignee undertakes in writing

to the other party to be bound by your obligations under this agreement.

## **8. Miscellaneous matters**

- 8.1. At any time if we decide in our absolute discretion that you have failed to comply with any of the terms of this agreement, we reserve the right to terminate this agreement without refunding to you any payment made.
- 8.2. For large ensemble works, conductors are permitted to use their purchased score and parts with multiple ensembles. At the conclusion of the concert, all individual parts are to be returned to the conductor for future use, and are not to be retained by the performing ensemble. If the conductor is only providing their own purchased score, the ensemble must purchase a full set of score and parts.
- 8.3. In some jurisdictions you may not use a human image without the consent of that person. That may apply to any person or only to a model. The permission is generally known as a “release”. You alone are responsible for obtaining any necessary release and for paying any fees due.
- 8.4. Our Licensed Products are marked on Our Website with a notation as to whether a release may be necessary. If not marked, you may take it that the Licensed Product in question has not been released.
- 8.5. This agreement shall not be governed by the United Nations Convention on Contracts for the International Sale of Goods, the application of which is hereby expressly excluded.