

TERMS AND CONDITIONS - YAMAHA MUSIC COURSES

This document sets out the terms and conditions which apply to participation in Yamaha music courses. By submitting an Enrolment Application or otherwise participating or permitting a Student to participate in a Course, the Customer agrees that they have read, understood and will be bound by these Terms.

Important Notice

Yamaha's courses are designed to follow a structured curriculum designed by Yamaha Music Japan. It is not possible to amend or vary the content, speed or delivery of the courses. As such, the Yamaha Music Education System and the Yamaha courses may not be suitable for all students.

A course is made up of a number of Lessons during the Semester. The Student is expected to attend all of the Lessons during the Semester and to undertake additional practice in their own time.

- (a) If a Customer withdraws **before** commencement of the fourth week of teaching they will only incur the cost of tuition fees for lessons undertaken along with any material fees issued. Yamaha will then refund any additional tuition fees incurred by the customer for the remainder of the semester. Notification of withdrawal to Yamaha will be accepted via the appropriate channels.
- (b) If a Customer withdraws **after** commencement of the fourth week of teaching, they will not be entitled to any refund of tuition or material fees. Notification of withdrawal to Yamaha will be accepted via the appropriate channels. The full Fees for the course (including full Tuition Fees) will remain payable whether or not the Student continues to attend the Lessons.

1 Dictionary

In these Terms, the words below have the following meanings:

Agreement has the meaning provided to it in clause 2.2. **Australian Consumer Law** means Schedule 2 of the *Competition and Consumer Act 2010* (Cth) and any equivalent State or Territory legislation.

Business Day means any day except a Saturday, Sunday or public holiday in Victoria.

Consequential Loss means:

- (a) loss of reputation, loss of revenue, loss of profits, loss of actual or anticipated savings, loss of bargain and loss of opportunity; and
- (b) any special, indirect or consequential loss.

Consumer has the meaning provided to it in section 3 of the Australian Consumer Law.

Consumer Guarantee means a guarantee provided under Division 1 of Part 3-2 of the Australian Consumer Law.

Course means the music course set out in the Enrolment Application.

Course Materials means those Learning Materials set out in the Enrolment Application or otherwise notified by Yamaha to the Customer from time to time.

Customer means the Customer named in the Enrolment Application, being the parent or legal guardian of the Student or a person who has authority from the parents or legal guardians of the Student to enter into the Agreement.

Default Rate means the interest rate which is fixed from time to time under section 2 of the *Penalty Interest Rate Act 1983* (Vic). **Deposit** means the amount (if any) set out in the Enrolment Application and designated as the deposit for enrolment in the Course.

Due Date means any date by which payment of the Fees is required to be made by the Customer, as described in clause 4.1.

Enrolment Application means the application for enrolment submitted by the Customer to Yamaha for Yamaha to supply to the Customer the Tuition Services and Course Materials (including through the website located at [www.yamahamusiceducation.com.au]).

Fees means the Tuition Fees, the Materials Fees and any other fees for enrolment or participation in a Course set out in the Enrolment Application.

Intellectual Property Rights means any and all intellectual and industrial property rights anywhere in the world, including but not limited to the rights comprised in any patent, copyright, design, trade mark, eligible layout or similar right whether at common law or conferred by statute, rights to apply for registration under a statute in respect of those

or like rights and rights to protect trade secrets and know how, throughout the world for the full period of the rights and all renewals and extensions.

Learning Materials means the books, sheet music, workbooks, instruments and manuals together with any other training or educational information or materials supplied to the Customer by Yamaha for use by the Student from time to time.

Leave of Absence means a period of time approved by Yamaha in which a student can take a break from their studies and receive a maximum of 3 credits for that period per semester.

Lesson means a scheduled session to be attended by students during which the Course is taught to the Student and which is to be held at the Premises.

Lesson Fee means the amount determined by dividing the total Tuition Fees by the number of Lessons in the Course.

Loss means any loss, liability, cost, expense, damage, charge, penalty, outgoing or payment however arising, whether present, unascertained, immediate, future or contingent and includes direct loss and Consequential Loss.

Materials Fees means the fees payable by the Customer for the Course Materials, as specified in the Enrolment Application. Any material fees incurred are non-refundable.

New Customer means a Customer named in the Enrolment Application, being the parent or legal guardian of the Student or a person who has authority from the parents or legal guardians of the Student to enter into the Agreement, who has not previously enrolled in a course with Yamaha.

Notification means communication by the customer to Yamaha via accepted channels. The accepted channels are via phone 1300 139 506 or via email hello@yamahamusic.edu.au

Offer has the meaning provided to it in clause 2.1.

Payment Facility means any credit card, bank card, bank account or other payment facility, details for which are provided by the Customer to Yamaha in connection with the payment of the Fees.

PDH Goods or Services means goods or services which, for the purposes of the Australian Consumer Law, are of a kind ordinarily acquired for personal, domestic or household use or consumption.

Policies means any policies which Yamaha notifies the Customer of from time to time (which notification may be provided by Yamaha making the relevant policies accessible at [www.yamahamusiceducation.com.au]).

Premises means the premises where, from time to time, the Lessons will be held as set out in the Enrolment Application or as otherwise notified by Yamaha to the Customer from time to time.

Re-enrolling Customer means a Customer named in the Enrolment Application, being the parent or legal guardian of the Student or a person who has authority from the parents or legal guardians of the Student to enter into the Agreement, who has previously been enrolled in a course with Yamaha.

Semester means the period of time set out in the Enrolment Application during which the Lessons which make up the Course are provided.

Student means the child set out in the Enrolment Application.

Tuition Fees means the fees payable by the Customer for the Tuition Services, as specified in the Enrolment Application.

Tuition Services means the services provided by Yamaha in respect of the participation by the Student in the Course which are to be provided during the Semester over the number of Lessons set out in the Enrolment Application.

Terms means these Terms and Conditions. **Yamaha** means Yamaha Music Australia Pty Ltd (ACN 004 259 527).

2 Formation of Agreement

2.1 The Customer acknowledges and agrees that by submitting the Enrolment Application the Customer has made an irrevocable offer to Yamaha for Yamaha to supply it with the Tuition Services and Course Materials on the terms of these Terms and the Enrolment Application (**Offer**).

2.2 An agreement will be formed between Yamaha and the Customer in respect of the Offer upon the earlier of Yamaha:

- (a) notifying the Customer, either verbally or in writing, that it accepts the Customer's Offer and/or has enrolled the Student in the relevant Course;
 - (b) accepting, in full or part, payment from the Customer for the Tuition Services or Course Materials the subject of the Offer; or
 - (c) performing the Tuition Services or making delivery of the Course Materials the subject of the Offer, (**Agreement**).
- 2.3 The Agreement formed under clause 2.2 will comprise these Terms and the Enrolment Application.
- 2.4 Yamaha is not bound to accept any Offer and may not accept any Offer or decline to enrol a Student in a Course for any reason and in the sole discretion of Yamaha.
- 3 Deposit**
- 3.1 Subject to clause 3.3, the Customer must pay the non-refundable Deposit to Yamaha at the time it submits the Enrolment Application.
- 3.2 The Deposit shall be applied by Yamaha towards the payment of the Fees for any Course that the Student is enrolled in.
- 3.3 Yamaha shall only be required to refund the Deposit to the Customer if Yamaha terminates the Agreement in accordance with clause 10.1(a).
- 4 Fees and payment**
- 4.1 The Fees must be paid to Yamaha by the Customer:
- (a) subject to clause 4.1(b), by the due date set out in the Enrolment Application, which the Customer acknowledges may be prior to the commencement of the first Lesson for the Semester;
 - (b) if Yamaha has agreed in writing to allow the Customer to make payment of the Fees in a number of instalments throughout the Semester, on the due date or due dates agreed to by Yamaha; or
 - (c) in accordance with any other payment terms or arrangements approved by Yamaha in writing.
- 4.2 If Yamaha has agreed to allow the Customer to make payments in a number of instalments throughout the Semester in accordance with clause 4.1(b):
- (a) prior to the commencement of the first Lesson of the Semester, the Customer must provide Yamaha with details of its Payment Facility and a signed authority which enables Yamaha to direct debit the Fees from that Payment Facility in accordance with clause 4.2(b) below; and
 - (b) Yamaha may debit the relevant instalment of the Fees from the Payment Facility at any time from the Due Date for the payment of the relevant Fees.
- 4.3 If the Customer fails to make any payment by the Due Date (including if any payment via a Payment Facility is declined), then, without prejudice to any other right or remedy available to Yamaha, Yamaha may, charge the Customer:
- (a) interest (both before and after any judgement) on the unpaid amount at the Default Rate, which interest will accrue and be chargeable from the first day on which such amounts become overdue until the Company receives payment of all such amounts (including all interest) by way of cleared funds; and
 - (b) any reasonable costs incurred by Yamaha in recovering the overdue amounts from the Customer.
- 4.4 Without limiting Yamaha's rights under clause 4.3, if the Customer fails to make any payment by the Due Date (including if any payment via a Payment Facility is declined), then, without prejudice to any other right or remedy available to Yamaha, Yamaha may, in its sole discretion:
- (a) terminate the Agreement and cease providing the Tuition Services to the Customer; or
 - (b) suspend the Agreement and the provision of the Tuition Services to the Customer until such time as the relevant outstanding amount is paid in full, with such suspension effective immediately upon Yamaha providing the Customer with written notice of suspension and the Customer will continue to be liable for the payment of the:
 - (i) Materials Fees; and
 - (ii) the Tuition Fees in respect of any Lessons held during the suspension notwithstanding the Student will not be entitled to attend those Lessons.
- 4.5 Yamaha may set off any amount it may owe the Customer under the Agreement (including any refund or credit) against any amount that the Customer owes, or Yamaha reasonably expects the Customer will owe, Yamaha under the Agreement or under any other agreement or arrangement with Yamaha.
- 5 Provision of Tuition Services and Course Materials**
- 5.1 The Customer acknowledges that it is a condition of the Student participating in the Course and the provision of the Tuition Services that the Customer acquire the Course Materials from Yamaha.
- 5.2 Yamaha will provide the Tuition Services and deliver the Course Materials to the Customer during Lessons and in the manner:
- (a) determined by Yamaha (including any published schedule of Lessons); or
 - (b) as otherwise notified to the Customer by Yamaha.
- 5.3 If the Student is:
- (a) participating in the "Music Wonderland" or "Junior Music" Course, a parent or guardian of the Student must be; or
 - (b) participating in any Course other than the "Music Wonderland" or "Junior Music" Course, Yamaha recommends and encourages that a parent or guardian of the Student be,
- present at, and attend for the duration of, each Lesson which the Student attends as part of that Course.
- 5.4 Unless otherwise agreed by Yamaha, siblings must not attend any Lesson which the Student attends unless that sibling is also a student to whom Yamaha is providing tuition services to at the Lesson.
- 5.5 If a Student does not attend any Lesson:
- (a) And the customer has applied for a leave of absence at least 24 hours prior to class commencement that is approved by Yamaha, Yamaha will apply a credit for approved lessons to equivalent value of lessons missed. The maximum number of approved absences per semester will not exceed 3 lessons.
 - (b) Yamaha may, in its discretion, make homework or assignments in respect of that Lesson available to the Student by email or post.
- 6 Liability**
- 6.1 Yamaha acknowledges that, as a Consumer, the Customer may have certain rights under the Australian Consumer Law in respect of the Consumer Guarantees as they apply to the PDH Goods or Services supplied by Yamaha under the Agreement and nothing in these Terms or the Agreement should be interpreted as attempting to exclude, restrict or modify the application of any such rights.
- 6.2 If the Customer makes a claim against Yamaha in connection with the Agreement (including in connection with the Tuition Services, Course Materials or Learning Materials) which includes a cause of action other than for a breach of a Consumer Guarantee then, to the extent the claim, or part of the claim, does not relate to a Consumer Guarantee, Yamaha expressly limits all liability to an aggregate amount equal to the Fees paid by the Customer to Yamaha under the Agreement in respect of the relevant Course.
- 6.3 Subject to clause 6.1, Yamaha shall not be liable to the Customer in any circumstances for any Consequential Loss that may be suffered or incurred by the Customer in connection with the Agreement or the provision of the Tuition Services, the Course Materials or the Learning Materials.
- 7 Intellectual Property**
- 7.1 The Customer acknowledges and agrees that as between the Customer and Yamaha, Yamaha owns all of the Intellectual Property Rights in the Learning Materials, Course Materials, materials created as part of the Tuition Services and any other Intellectual Property Rights owned by or licensed to Yamaha (**Yamaha IP**) and nothing in these Terms or the Agreement grants the Customer or Student any ownership of, or rights in respect of, any Yamaha IP.

- 7.2 The Customer agrees that it must not, and must ensure that the Student does not:
- infringe or use the Intellectual Property Rights of Yamaha or any other third party which exist in the Learning Materials or materials created as part of the Tuition Services for anything other than for the sole purpose of using the Learning Materials and participating in the Course; and
 - use the Course Materials or Learning Materials for any purpose other than participating in the Course.
- 7.3 Except as expressly permitted under these Terms, the Customer must not, and must ensure that the Student does not, copy, reproduce, re-use, publish, communicate or commercially exploit the Course Materials or Learning Materials.
- 7.4 The Intellectual Property Rights in any materials or content created or developed by the Student during a Lesson or otherwise as a result of the Student's participation in the Course (**Student Content**) shall be owned by the Student, provided that Yamaha is granted a non-exclusive, perpetual, worldwide, royalty-free, transferrable licence to exploit, use, reproduce, modify and adapt the Student Content for any purpose and in any way Yamaha considers appropriate.

8 Acknowledgements and Warranties

- 8.1 If an Offer has been accepted by Yamaha, the Customer acknowledges that the Offer was accepted by Yamaha on the basis of, and in reliance upon, any information, representations, statements and documents provided by the Customer.
- 8.2 The Customer acknowledges that:
- the Course is made up of a number of Lessons during the Semester and that, subject to these Terms, the Student is required to attend all of the Lessons during the Semester;
 - Yamaha will provide instruments for the use of Students during the Lessons (**Yamaha Instruments**);
 - the Student must not remove the Yamaha Instruments from the Premises and the Student will need to use their own instruments for the purposes of undertaking additional practice outside of the Lessons;
 - the Student is expected to undertake additional practice, including assigned homework, outside of the Lessons and in their own time; and
 - the Student may not obtain the full benefit of the Course and the Tuition Services if they:
 - do not attend all of the Lessons; or
 - do not undertake additional practice outside of the Lessons.
- 8.3 The Customer represents and warrants to Yamaha that:
- it is the parent or legal guardian of the Student or it has the authority of the parent or legal guardian of the Student to enter into the Agreement;
 - the information set out in the Enrolment Application and otherwise submitted by the Customer to Yamaha is true and correct;
 - at the commencement of the first Lesson, the Student will be of an age which Yamaha has designated as a suitable age for persons undertaking the Course;
 - it has not relied on any representations, inducements or statements made to it by Yamaha regarding the supply of Tuition Services or the Learning Materials and it has satisfied itself that Tuition Services and the Learning Materials are appropriate for the Student taking into account the needs, requirements and interests of the Student;
 - it understands that Yamaha does not provide any warranties that participation in the Course will have any particular outcome, benefit or result for the Student;
 - it has considered the Student's ability and suitability for the Course; and
 - it has read and understood these Terms prior to making the Offer, and agrees to be bound by them in full.

9 Leave of Absence

A customer may apply for a leave of absence from Yamaha lessons for no more than 3 lessons per semester. Approval of a leave of absence application is wholly at the discretion of Yamaha Music Australia.

10 Withdrawal of Student and termination by Customer

- 10.1 The Customer may withdraw the Student from the Course and terminate the Agreement at any time by written notice to Yamaha.
- 10.2 If a Customer provides written notice to Yamaha under clause 10.1:
- prior to the student attending more than 3 lessons:
 - The customer will be liable for tuition fees for lessons undertaken and material costs. Yamaha Music will refund any further charges to the customer.
 - After attending more than three lessons Yamaha will retain all Fees and material costs. Any Fees which have not yet been paid by the Customer to Yamaha will immediately become due and payable.

11 Termination by Yamaha

Without limiting Yamaha's other rights under these Terms, Yamaha may terminate the Agreement with immediate effect by written notice to the Customer:

- at any time prior to the commencement of lessons;
- at any time if Yamaha is prevented from providing the Tuition Services because of any event arising from, or attributable to, acts, events, omissions, accidents or circumstances beyond its control;
- if the Customer has breached any material term of the Agreement (including these Terms) which is not capable of remedy;
- if the Customer has breached a term of the Agreement (including these Terms) and, if the breach is capable of remedy, has not remedied the breach within 5 Business Days after being required to do so by written notice from Yamaha; or
- in accordance with clause 4.4(a).

12 Effect of termination

- Upon termination of the Agreement:
 - Yamaha is entitled to retain the Deposit;
 - subject to clauses 9.3(a), 11(b) and 11(c), Yamaha may retain all of the Fees and any Fees which have not yet been paid will immediately become due and payable;
 - Yamaha is released from its obligations to provide the Tuition Services; and
 - each party retains any rights, entitlements or remedies it has accrued before termination, including the right to pursue all remedies available to either party at law or in equity.
- If the Agreement is terminated by Yamaha under clause 10.1(a) Yamaha will refund to the Customer any Materials Fees and Tuition Fees already paid by the Customer to Yamaha (unless the Customer has already received the Course Materials, in which case Yamaha will be entitled to retain the Materials Fees).
- If the Agreement is terminated by Yamaha under clause 10.1(b) Yamaha will be entitled to retain the Materials Fees already paid but will only be entitled to retain Tuition Fees in respect of the Lessons conducted prior to the date of termination.
- Subject to clause 6.1 and to the extent permitted by law, the refund of any amounts under clauses 11(b) and 11(c) will be the Customer's sole remedy against Yamaha in respect of any termination of the Agreement pursuant to clause 10.1(a) or 10.1(b) (as applicable).

13 Re-enrolment

If the Customer wishes to enrol the Student in:

- other courses or lessons after the completion of the Course; or

(b) the Course for a further semester,
the Customer must complete an application for enrolment in that course or lessons by the date specified by Yamaha and in accordance with any other conditions specified by Yamaha.

SIGNATURE

I understand and agree to the attached terms and conditions:

Parent/Guardian Name

Parent/Guardian Signature

Date:

14 Inconsistency

14.1 In the event of an inconsistency between any of the documents listed in clause 2.3, the following order of precedence shall apply to the extent of the inconsistency:

- (a) the Enrolment Application;
- (b) these Terms; and
- (c) without limiting clause 13.2, any terms which are accepted by Yamaha in writing.

14.2 These Terms shall prevail over any Customer terms and conditions, except to the extent specifically agreed by Yamaha in writing and any terms or conditions included in any document provided or issued by the Customer will only be binding on Yamaha if expressly agreed by Yamaha in writing.

15 Cancellation

15.1 Yamaha may cancel a Lesson where Yamaha believes (for any reason) that it will be unable to supply the Tuition Services during the Lesson.

15.2 If Yamaha cancels a lesson under clause 14.1, Yamaha reserved the right to re-schedule the lesson during Term and Semester breaks.

15.3 If Yamaha cancels a Lesson under clause 14.1 and does not reschedule the Lesson it will refund to the Customer an amount equal to the Lesson Fee.

15.4 Subject to clause 6.1, the refund of any such amounts under clause 3 will be the Customer's sole remedy against Yamaha in respect of any Lesson cancellation pursuant to clause 14.1.

15.5 Subject to clause 9, neither the Agreement nor any Offer that has been submitted can be cancelled by the Customer except with the prior written consent of Yamaha.

16 Miscellaneous

16.1 In these Terms:

- (a) no provision will be construed to the disadvantage of a party merely because that party was responsible for the preparation of the Terms or the inclusion of the provision in the Terms; and
- (b) unless otherwise provided, all monetary amounts are in Australian dollars and a reference to payment means payment in Australian dollars.

16.2 The Customer must comply, and ensure the Student complies, with the Policies.

16.3 A failure to exercise or delay in exercising any right under these Terms does not constitute a waiver and any right may be exercised in the future.

16.4 If any provision of these Terms is void, unenforceable or illegal and would not be so if words were omitted, then those words are to be severed and if this cannot be done, the entire provision is to be severed from these Terms without affecting the validity or enforceability of the remaining provisions.

16.5 These Terms and the accepted Agreement constitute the entire agreement between the Customer and Yamaha in respect of the supply of the Tuition Services and Learning Materials the subject of the Agreement and supersede all previous communications, representations, understandings or agreements.

16.6 These Terms are governed by the laws in force in Victoria, and the Customer and Yamaha submit to the non-exclusive jurisdiction of the courts of Victoria.

16.7 The provisions of clauses 1, 4.3, 4.5, 6, 7, 8, 11, 12, 13, 14.4 and 15 of these Terms survive the expiry or termination of the Agreement.