



## **MUSIC RESOURCES TERMS AND CONDITIONS FOR HIRERS (“Conditions”)**

### **1. General Terms**

- 1.1 The following terms and conditions exclusively form the constituent part of the contractual relations between Kent Music (registered charity number 1110639 and company number 05464855) (“**Kent Music**”, “**We**”, “**Us**”) and the Hirer identified in the instrument hire application form (“**Hirer**”, “**You**”, “**Your**”) who is requesting the provision by Kent Music of the instruments (“**Instruments**”) to the exclusion of any other terms that the Hirer seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing.
- 1.2 The Agreement constitutes the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations, and understandings between them, whether written or oral, relating to its subject matter. The Hirer acknowledges that it has not relied on any statement, promise or representation made or given by or on behalf of Kent Music which is not set out in the Agreement.
- 1.3 Any variation, including the introduction of any additional terms and conditions, alterations or amendments to the Agreement will only be binding when agreed in writing and signed by Kent Music.

### **2. The Instruments**

- 2.1 Where applicable, We shall hire to You and You are taking on hire the Instruments together with any Accessories described in the Agreement for the Term (as set out in clause 8.2), subject to these Conditions.
- 2.2 The Instruments and Accessories will remain Our property at all times and You shall have no right, title or interest in or to the Instruments and Accessories (save the right to possession and use of the Instruments and Accessories subject to these Conditions). You must not sell or dispose of the Instruments or Accessories.
- 2.3 Please ensure that You do not remove the labels provided with the Instruments and Accessories during the Term or add Your own identifiers, including sticky labels. All Instruments and Accessories are checked by Us before going out to You and when returned to Us.

### **3. Your obligations**

- 3.1 You will:
  - 3.1.1 Check the Instruments and Accessories on collection and report to Us anything that is deemed unfit for use within five (5) working days.
  - 3.1.2 Pay to Us, without previous demand, the Fee specified on the invoice punctually in accordance with the Payment Schedule. Any payments sent to Us by post will be at Your risk.
  - 3.1.4 Be responsible for, and indemnify Us against, loss of or damage to the Instruments and Accessories whilst in Your possession, howsoever, caused and notify Us immediately of any such loss or damage.

- 3.1.5 Not sell or dispose of the Instruments or Accessories nor allow them to be seized in satisfaction of your debts or for any other legal process and will indemnify Us against all losses, costs, claims, damage and expenses, howsoever, occasioned by Your breach of this clause.

#### **4. Care of the Goods**

4.1 We will provide You the first reed, strings or other disposable or replacement ancillaries for the Instruments free of charge.

4.2 You must use the Instruments and Accessories in a careful and proper manner and (apart from any arrangements for maintenance under clause 5) keep them in good working order. You shall be responsible for sourcing and buying any replacement reeds, strings or other disposable or replacement ancillaries for the Instruments, as required.

#### **5. Maintenance**

We shall maintain the Instruments and Accessories in good repair and working condition. We reserve the right to request return of the Instruments and/or Accessories (as applicable) in order to undertake any required maintenance and/or repairs, if applicable. You agree to contact Us immediately on the occurrence of anything which requires the Instruments or Accessories to be repaired or otherwise maintained. For these purposes We shall be at liberty to remove the Instruments and Accessories or any part of them for such length of time as may be necessary and to replace them with equipment of similar (but not necessarily identical) type, which shall be held by You on these Conditions. Unless We agree otherwise in writing, You will not be entitled to any abatement or refund of the Fee between the dates of removal and replacement or substitution. You agree not to repair the Instruments or Accessories Yourself, or arrange for the Instruments or Accessories to be repaired (unless You have prior permission from Us), although You will be liable to pay for all repairs deemed necessary by Us after the first term's hire.

#### **6. Insurance**

You are responsible for all loss, theft, destruction or damage to the Instruments and Accessories even if caused by acts or events outside Your control. The Instruments and Accessories shall remain at Your sole risk during the Term and You must therefore insure the Instruments and Accessories against all usual risks of loss, damage or destruction by fire, theft or accident and such other risks as We may from time to time nominate in writing to the Insurance Value.

#### **7. Liability**

7.1 Nothing in these Conditions shall limit or exclude Our liability for:

- 7.1.1 death or personal injury caused by Our negligence, or the negligence of Our employees, agents or subcontractors;
- 7.1.2 fraud or fraudulent misrepresentation; or
- 7.1.3 any other liability which cannot be excluded by law.

7.2 Subject to clause 7.1:

- 7.2.1 We shall under no circumstances whatever be liable to You, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, for any loss of profit, or any indirect or consequential loss arising under or in connection with the Agreement; and
- 7.2.2 Our total liability to You in respect of all other losses arising under or in connection with the Agreement whether in contract, tort (including negligence), breach of

statutory duty, or otherwise, shall in no circumstances exceed the amount of the Fee paid or payable within the 12 months prior to the date of any such liability arising.

- 7.3 We take no responsibility for:
- 7.3.1 the use of any Instrument or Accessory by the Hirer for which such Instrument or Accessory is not appropriate (unless such use was in accordance with advice given by or on behalf of Us); or
  - 7.3.2 use of the Instruments or Accessories in a manner inconsistent with advice given by Us; or
  - 7.3.3 the use of damaged or defective Instruments or Accessories where such damage was caused by You, Your agent or any person under Your supervision or after the damage or defect was, or ought to have been, known to You.

and You shall indemnify Us against any liability incurred by Us to any third party as a consequence of the Instruments or Accessories being used in breach of this clause 7.3.

- 7.4 You shall indemnify Us against all liabilities, costs, expenses, damages and losses suffered or incurred by Us arising out of or in connection with a breach by You of any term of the Agreement.

## **8. Term and Termination**

- 8.1 Unless the Agreement is terminated earlier in accordance with these Conditions, You agree to take the Instruments and any Accessories for the Minimum Period of one term which shall start on the date that You collect the Instruments and any Accessories.
- 8.2 The Agreement shall commence on the Commencement Date and shall continue for the Minimum Period (one term) and shall automatically continue thereafter unless and until terminated by either party in accordance with this clause 8 ("**Term**").
- 8.3 Without affecting any other right or remedy available to Us, We may terminate the Agreement with immediate effect by giving written notice to You if:
- 8.3.1 You fail to make payment of any amount due under the Agreement on the due date for payment;
  - 8.3.2 You commit any other breach of the Agreement which is irremediable or (if such breach is remediable) fail to remedy that breach within 14 days after being notified in writing to do so;
  - 8.3.3 You cease to do business, become unable to pay Your debts as they fall due, become or are deemed insolvent, have a receiver, liquidator, manager, administrator, administrative receiver or similar officer appointed in respect of the whole or any part of Your assets or business (or are the subject of a filing with any court for the appointment of any such officer), make any composition or arrangement with Your creditors, take or suffer any similar action in consequence of debt or an order or resolution is made for Your dissolution or liquidation (other than for the purpose of solvent amalgamation or reconstruction), or any equivalent or similar action or proceeding is taken or suffered in any jurisdiction;
  - 8.3.4 You have made any misrepresentation to Us, whether or not recorded in the Music Resources Kent Form, or You move or propose to move to an address outside the area as We, in our complete discretion, consider reasonable to allow Us to efficiently service or maintain the Instruments and Accessories, or if We decide within Our

absolute discretion that the Instruments or Accessories can no longer be efficiently serviced or maintained; or

8.3.5 You discontinue music lessons for any reason.

8.4 You have the right to terminate the Agreement by a half term's written notice to Us expiring on or at any time after the Minimum Period.

## **9. Return of the Goods**

9.1 At the end of the Term, You must ensure the Instruments and Accessories are checked and ready to be returned to an agreed Kent Music office.

9.2 Please ensure that the Instruments and Accessories are returned in the cases provided by Us. Failure to do this may result in You being charged for missing Instruments or cases.

9.3 The Instruments and Accessories returned must be in good condition and You must pay to Us all amounts due but unpaid up to the date of termination of the Agreement.

## **10 Failure to return Instruments and Accessories**

10.1 If You fail to return the Instruments or Accessories on termination of the Agreement, You are liable to pay Us the Insurance Value of the Instruments and Accessories (Insurance Values can be obtained from Music Resources). If You are making a claim on an insurance policy, You should notify Us and keep Us informed of the progress of the claim. We may, at Our discretion, charge You a fee equivalent to the Fees for any period between the date the Instruments and/or Accessories were due to be returned to Us and the date of payment of the Insurance Value to Us.

10.2 If Instruments or Accessories (including cases) are returned to Us that require replacement or repair, You will be charged accordingly. You must settle invoices within 14 days of receipt, otherwise We are at liberty to terminate the Agreement with You and will arrange to collect any Instruments and Accessories in Your possession or control. You will be unable to borrow or hire any more Instruments and Accessories until We receive payment.

## **11. Assignment**

We shall be entitled at any time to assign the benefit of the Agreement, but You may assign Your obligations under the Agreement only after obtaining Our written consent to the assignment.

## **12. Severance**

If any provision or part-provision of the Agreement is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this clause shall not affect the validity and enforceability of the rest of the Agreement.

## **13. Third Parties**

A person who is not a party to the Agreement shall not have any rights to enforce its terms.

## **14. Waiver**

A waiver of any right under the Agreement or law is only effective if it is in writing and shall not be deemed to be a waiver of any subsequent breach or default. No failure or delay by a party in exercising any right or remedy provided under the Agreement or by law shall constitute a waiver of that or any other right or remedy,

nor shall it prevent or restrict its further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.

**15. Governing law**

The Agreement, and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims), shall be governed by, and construed in accordance with the law of England and Wales.

**16. Jurisdiction**

Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim arising out of or in connection with the Agreement or its subject matter or formation (including non-contractual disputes or claims).