

# **GHEA MUSIC GROUP TERMS OF USE**

These Terms of Use apply to this website which is operated by Ghea Music Group (A.B.N. 71 549 283 937) (**GMG**), under the domain name <https://www.gheamusicgroup.com.au> (**Website**) and the Services provided by GMG.

## **Your Consent**

1. 1.1. By using or accessing any of the Services or any part of the Website (or any other applications, services or products of GMG) you agree to be bound by these Terms of Use, as amended from time to time and posted on this Website.
- 1.2. If you do not agree to any of these Terms of Use, including the GMG Privacy Policy, then you must immediately cease access to and use of the Services and Website.
- 1.3. GMG reserves the right to amend these Terms of Use at any time and without notice, and it is your responsibility to review these Terms of Use for any changes. Your access to and use of the Services and the Website following any amendment of these Terms of Use will signify that you agree to be bound by those amended Terms of Use.

## **Term**

2. 2.1. These Terms of Use apply:
  - (a) Where you visit or access the Website without ordering or purchasing any goods or services, for the duration of your visit or access to the Website; and
  - (b) Where you order, purchase or download any goods or services from the Website, whilst you are using the Website and whilst GMG is providing any service following your order or purchase;

## **Your use of the Website**

3. 3.1. These Terms of Use are applicable to any use of the Website.
- 3.2. You agree to comply with all reasonable directions by GMG when you use or access the Services or the Website.

## **GMG Account**

4. 4.1. In order to access certain features of the Website, you will need to subscribe to a GMG Account. You may never use another person's GMG Account without their express permission.
- 4.2. When creating your GMG Account, you must provide accurate and complete information and you are responsible for maintaining the accuracy and currency of the information provided by you.
- 4.3. You are solely responsible for any activity that occurs on your GMG Account, and you must keep any GMG Account password secure. You are solely responsible for maintaining the secrecy and confidentiality of any identification and log-in information required to access and use the Website.
- 4.4. Your GMG Account is not transferable. You must notify GMG immediately of any breach of security or unauthorised access or use of your GMG Account.

4.5. Although GMG will not be liable for any losses you suffer as a result of any unauthorised use of your GMG Account, you may be liable for the losses of GMG or others due to such unauthorised use.

4.6. All applications for GMG Accounts are subject to acceptance by GMG. GMG reserves the right to not to accept an application for a GMG Account.

## **Acceptable Use of the Website**

5. 5.1. Where GMG permits you to submit Content to the Website, you acknowledge that GMG does not guarantee any confidentiality with respect to any content you submit to the Website.

5.2. You are solely responsible for your Content and any consequences of submitting and publishing your Content on or through the website. GMG is not responsible for taking or maintaining backups of your Content.

5.3. You must ensure that Content submitted by you:

- (a) Is accurate and not false, misleading or deceptive; and
- (b) Does not breach any law, or breach any person's rights of privacy, confidentiality or intellectual property.

5.4. GMG may in its discretion intercept, remove, alter or prevent access to any Content or data submitted by you that GMG, acting reasonably, believes is unlawful, harmful, obscene, pornographic, vulgar, libellous, defamatory, harassing, malicious, abusive, offensive, threatening, or racially, ethnically or otherwise objectionable, or contravenes these Terms of Use.

5.5. You must not:

- (a) Upload to, post, distribute, publish or otherwise make available through the Website:
  - (i) Any Content or communication that is unlawful, harmful, obscene, pornographic, vulgar, libellous, defamatory, harassing, malicious, abusive, offensive, threatening, or racially, ethnically or otherwise objectionable;
  - (ii) Any advertising or promotional materials unauthorised by us, "junk mail", "spam" or "chain letters"; or
  - (iii) Any Content or material that contains malicious code, software viruses or any other computer code, files or programs designed to interrupt, destroy or limit the functionality of any computer software or hardware or telecommunications equipment.
- (b) Reverse engineer, reverse compile, de-compile or disassemble the object code in any of our proprietary software, or otherwise attempt to derive the source code any of our proprietary software, except to the extent permitted by law;
- (c) Disrupt or interfere with the Website, any services, accounts, system resources, servers or networks connected to or accessible through this Website or linked websites;
- (d) Conduct any data mining, reproduction, automated queries or other data extraction processes; or
- (e) Take any action that imposes an unreasonable or disproportionately large load on the infrastructure of the Website.

## **GMG Content**

6. 6.1. All Intellectual Property Rights in the Website, GMG's Content and material created by GMG and any improvements, adaptations, translations and derivative works in it, are and will remain GMG's exclusive property (and GMG's licensors, if any).
- 6.2. To the extent that GMG or the Service provides you with Content or goods in a form that can be downloaded, copied, reproduced, altered or adapted, GMG grants you a limited, non-exclusive, non-transferable, revocable licence to use any goods purchased or downloaded from the Website, for your own personal benefit and purposes only. You must not reproduce, adapt, create derivative works of, or translate any goods purchased or downloaded from the Website or communicate, sub-licence, commercialise or provide any such goods to any other person.

## **Privacy**

7. 7.1. GMG is committed to protecting your personal information. The GMG Privacy Policy is incorporated into this Terms of Use and binds us both. GMG may update its Privacy Policy from time to time by posting a new version on the Website and it will be binding on you and GMG from the date it is posted on the Website. The GMG Privacy Policy may be accessed here: <https://www.gheamusicgroup.com.au/documentation/>

## **Third Party Links**

8. 8.1. Links to websites of third parties may appear on the Website. Such links may be provided by GMG or third party suppliers of goods and services and GMG does not endorse the content of those websites, their operators, their services or products.
- 8.2. GMG makes no representations about and cannot accept any liability for third party websites.
- 8.3. Where GMG includes advertisements by third parties on the Website, GMG disclaims all liability for any advertisement and/or any transaction, act or omission you make as a result of that advertisement.
- 8.4. Your access to third party websites may be governed by their own terms of use. It is your responsibility to ensure you read and accept the terms of use and privacy policy of any third party website or service that you access or use.
- 8.5. You are solely responsible for ensuring that you have secured appropriate rights to use, copy, adapt, translate, publish or otherwise deal with any third party software, Content and other materials on any third party websites.
- 8.6. GMG reserves the right to remove or delete any third party links and backlinks to the Website, at GMG's absolute discretion, without liability to you.

## **Making A Payment**

9. 9.1. You must pay GMG the Purchase Price of any goods purchased at the time of your purchase, using an Approved Payment Mechanism.
- 9.2. You are responsible for any exchange rate fees or charges for international transactions charged, or any other charges levied by the provider of the Approved Payment Mechanism that you use, so that the net amount received by us is the Purchase Price.

9.3. GMG may be collecting the Purchase Price as an agent of a third party supplier who is providing you with goods or services. In that case GMG will pass on to the third party supplier the amount GMG is contracted to pay for the relevant goods or services in accordance with GMG's agreement with the third party supplier.

9.4. If any payment is made to GMG using an Approved Payment Mechanism and the financial institution subsequently refuses to honour the payment for any reason, or for any reason the payment is not honoured or completed (other than providing a refund as required by law) or GMG is required to make a chargeback, then:

- (a) You must immediately pay the relevant Purchase Price that the Approved Payment Mechanism was used to attempt payment by a means acceptable to GMG; and
- (b) You must pay a non-payment fee of \$35 for each occasion when payment was not made properly, when GMG incurred a chargeback.

9.5. To the maximum extent permitted by law, all amounts payable by you are non-cancellable and non-refundable and must be paid without set-off or deduction.

## **Delivery**

10. 10.1. It is your responsibility to ensure the delivery address for any products or services ordered and purchased by you is correct. GMG takes no responsibility for any good or service you do not receive because of errors in the delivery address provided by you.

10.2. Risk and title in goods or services ordered by you passes to you upon receipt of the purchase price in full by GMG.

10.3. To the maximum extent permitted by law, GMG excludes all liability for the delivery or supply, or failure to deliver or supply, any good or service where the transaction has been properly processed by GMG.

## **Website**

11. 11.1. GMG does not guarantee that access to and use of the Website and the Services will be uninterrupted or error free.

## **Warranty for Consumers**

12. 12.1. Where you are entitled to a statutory guarantee under sections 54 to 59 of the Australian Consumer Law then, to the extent that GMG fails to comply with such statutory guarantee, GMG's liability for a failure to comply with such statutory guarantee is limited to one or more of the following, at GMG's option:

- (a) The replacement of the goods or the supply of equivalent goods;
- (b) The repair of the goods;
- (c) The payment of the cost of replacing the goods or of acquiring equivalent goods; or
- (d) The payment of the cost of having the goods repaired,

unless it is not fair or reasonable for GMG to rely on this term of the Agreement.

12.2. Where you are entitled to a statutory guarantee under sections 60 to 62 of the Australian Consumer Law then, to the extent that GMG fails to comply with such statutory guarantee, GMG's liability for a failure to comply with such statutory guarantee is limited to one of the following, at GMG's option:

- (a) Supplying the services again; or
- (b) The payment of the cost of having the services supplied again,

unless it is not fair or reasonable for GMG to rely on this term of the Agreement.

## **Limitation of Liability**

13. 13.1. To the maximum extent permitted by law, GMG make no representations and give no warranties about the contents of the Website or the Services including we do not warrant:

- (a) Any fitness for purpose of the Website or the Services;
- (b) That the Website or Services are free of inaccuracies, defects or errors;
- (c) That the Website or Services will operate without any interruption; or
- (d) That the Website or any Content on the Website will be compatible with any third party software or hardware.

13.2. GMG may, at its discretion, change, delete or add features, functions, applications, offers, competitions, advertisement, branding or any other item on the Website, including the infrastructure or technology on which it is operated, without liability to you.

13.3. Nothing in these Terms of Use excludes, restricts or modifies, or has the effect of excluding or modifying the provisions of the Australian Consumer Law, or any other legislation which may not be excluded, restricted or modified by this Agreement.

13.4. Subject to clause 12 and to the fullest extent permitted by law, GMG's liability to you for any Claim in respect of any act or omission of GMG arising out of or in connection with its obligations under these Terms of Use will be limited to any membership subscription fees paid (if any) in connection with the Website.

13.5. GMG (including its related bodies corporate, directors, officers, employees, agents and contractors) will not be liable for any indirect, consequential or special loss or damage arising out of your use of or access to the Website or the Services, including loss or damage to goodwill, loss of expected savings or loss or damage to any other expectation or benefit of any kind. If a jurisdiction allows liability to be limited but not excluded, GMG's total liability is limited to the maximum extent possible.

13.6. GMG is not liable for any breach of these Terms of Use which arises as the result of:

- (a) Any use of the Website not in accordance with these Terms of Use or documentation provided by GMG;
- (b) The combination, operation or use of the Website or the Services with any other product, equipment, business method, software or data;
- (c) Any modification of the Website, Services or GMG's Content by any person other than GMG or its authorised agents or contractors; or
- (d) Any act, error, fault, neglect, misuse or omission by you.

13.7. If an infringement claim is made based on one of the exclusions in clause 13.6 you must indemnify GMG and pay for all losses, damages, expenses or costs (including reasonable lawyer's fees) it suffers or incurs arising out of or in connection with such an infringement claim.

13.8. Subject to any rights that you may have under the Australian Consumer Law, this clause 13 states GMG's entire liability and your sole and exclusive remedy for any Claims

related to any infringement of Intellectual Property Rights in respect of any Services or the Website.

## **Indemnity**

14. 14.1. By accessing and using the Website, you agree to indemnify and hold GMG harmless from all claims, actions, damages, costs and expenses including legal fees arising from or in connection with:

- (a) Your breach of these Terms of Use;
- (b) Your access to and use of the Website and the Services;
- (c) Your access to and use of your GMG Account;
- (d) Your use of any Content or third party website;
- (e) Any claim made against us by a third party alleging that of any your Content (or your use of the Website) infringes the copyright of that third party.

## **Termination**

15. 15.1. GMG may, without notice to you, discontinue, suspend or terminate:

- (a) Your access to and use of the Services; or
- (b) Your GMG Account,

if:

- (i) You do not pay GMG any Fees by the due date and then you have not remedied that payment within 10 business days;
- (ii) You are in breach of these Terms of Use; or
- (iii) GMG suspects that you are using the Website or the Services to commit an illegal or immoral act.

15.2. All provisions of these Terms of Use which by their nature should survive termination shall survive termination, including, without limitation, ownership provisions, disclaimers and limitations of liability.

15.3. You are only entitled to a refund of any amount paid to GMG, if that refund must be paid by law, including under the Australian Consumer Law.

15.4. All Fees previously paid remain the property of GMG and you agree to make no claim in respect of such Fees. You must further pay to GMG any Fees that have accrued but are unpaid as of the date of the termination or expiration.

## **General Provisions**

### **16. EmailCommunication**

16.1. GMG may correspond with you by email. As you are aware, email is not secure and may be read, copied or interfered with in transit or impaired. You agree to assume the risks associated with transmission and to release GMG from any claim you may have arising from transmission defects.

### **Marketing**

16.2. GMG reserves the right to use your personal, company or trading name in any promotional or marketing material. This may be of the form print, TV, radio or multimedia.

## **Waiver**

16.3. No waiver by GMG of GMG's rights under these Terms of Use shall be deemed a waiver of any other term or provision and shall be limited to a single waiver limited to the specific circumstances under which such waiver was granted.

16.4. GMG's rights and remedies under these Terms of Use cannot be waived except in writing signed by GMG. Any GMG delay in exercising a right or remedy does not constitute a waiver of that right or remedy, nor does GMG waiver (either wholly or in part) of a right operate as a subsequent waiver of the same right or of any of GMG's other rights.

## **Currency**

16.5. A reference to "\$" or "dollars" throughout this Agreement is a reference to Australian currency, unless otherwise stated.

## **Applicable Law**

16.6. These Terms are governed by and construed in accordance with the laws of the State of South Australia and the Commonwealth of Australia, and each party must submit to the non-exclusive jurisdiction of the courts of that State and of the Commonwealth of Australia.

## **Construction**

16.7. No rule of construction applies to the disadvantage of a party because that party was responsible for the preparation of, or seeks to rely on, these Terms of Use.

## **Legal Effect**

16.8. Each party to this Agreement intends the provisions of these Terms of Use to be legally binding and enforceable.

## **Exclusion of Partnership**

16.9. Nothing in these Terms of Use is to be treated as creating a partnership between the parties under the laws of any applicable jurisdiction.

16.10. Except as specifically provided for in these Terms of Use, no party has any authority to act as agent of another party, or to otherwise bind or commit another party to any obligation.

## **Force Majeure Events**

16.11. No party is liable to another party where any Force Majeure Event prevents or delays the performance by the first party of its obligations under these Terms of Use.

## **Goods and Services Tax**

16.12. If a supply made under or in connection with these Terms of Use, the Website or the Services by one party (the **Supplier**) to the other party (the **Recipient**) is subject to GST, then, in addition to any other amount payable by the Recipient to the Supplier, the Recipient must pay to the Supplier an additional amount (the **Additional Amount**) determined by

multiplying the consideration for the supply by the prevailing GST rate at the time the Recipient makes a payment or part payment for that supply.

16.13. Additional Amounts recoverable from the Recipient under this clause must be calculated without any deduction or set-off of any amount.

16.14. Additional Amounts payable under this clause are payable after receipt by the Recipient from the Supplier of a tax invoice complying with GST law for the supply.

### **Severance of Invalid Provisions**

16.15. If any of these Terms of Use are determined to be invalid, illegal or unenforceable for any reason by any court of competent jurisdiction then such term will be severed and the remaining terms will survive and remain in full force and effect and continue to be binding and enforceable.

### **Disputes**

16.16. Any dispute that arises out of these Terms of Use must first be referred to GMG for resolution, by providing GMG with an email notice to [info@gheamusicgroup.com.au](mailto:info@gheamusicgroup.com.au) containing a summary of the issues and your proposed resolutions. GMG will do its best to resolve this dispute by discussion with you within 5 business days of being notified. If the parties are not able to resolve the dispute in that time frame, then it may be referred to a court of competent jurisdiction.

## **Definitions**

**Approved Payment Mechanism** means Visa, Mastercard, PayPal or other such card or payment mechanism as GMG allows to be used to pay for the Services or any other Fees;

**Australian Consumer Law** means Schedule 2 to the *Competition and Consumer Act 2010* (Cth);

**GMG CMS** means Ghea Music Group's proprietary content management system;

**GMG Marks** means all trade marks (whether registered or not), service marks, logos, trading names or other words, symbols or indicia identifying the services or business of Ghea Music Group (A.B.N. 71 549 283 937);

**GMG Account** means the Website subscription as set out in this Terms of Use;

**Claim** includes any actions, liabilities, suits, causes of action, proceedings, arbitrations, accounts, rights, entitlements, obligations, interests (whether legal or equitable), demands, costs and expenses, whether currently known or not and whether presently in existence or arising in the future;

**Content** means any data, domain names, stock photos, other images, SSL certificates, images, text, logos, web links, video, social media applications, creative, editorial or technical specifications or other material;

**Fees** means the amounts payable by you for the Services, as applicable, exclusive of GST;

**Force Majeure Event:**

- (a) Means any circumstance or delay beyond the reasonable control of a party which prevents that party from performing or carrying out any obligation under this Agreement, either indefinitely or within the time required in this Agreement; and
- (b) Includes any circumstance or delay arising out of any industrial action, fire, war, terrorist act, explosion, civil commotion, change of government, malicious damage, storm, flood, tempest, earthquake, tidal wave or legal enactment;

**GST** means 'goods and services tax' as defined in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth);

**Intellectual Property Rights** means all existing, contingent and future rights in copyright, trade marks, trade/business or company names, designs, service marks, patents, semi-conductor or circuit layout rights, trade secrets, know-how, database rights or other rights in the nature of intellectual property (whether registered or unregistered), including the right to keep confidential information confidential, or any right to register such rights, existing anywhere in the world, or protected by statute from time to time, but for avoidance of doubt excludes Moral Rights;

**Moral Rights** means the rights of an individual that are defined as Moral Rights in the *Copyright Act 1968* (Cth);

**Purchase Price** means the amount payable for any goods or services ordered by you via the Website, such amount being exclusive of GST;

**Services** means the online retail business operated on the Website;

**Website** means the GMG website at <https://www.gheamusicgroup.com.au>