

Dated
7th December 2020

Terms And Conditions For The Supply Of Services

Between

The Hirer

And

**Barbara De Biasi acting as a sole trader under the trading name Fireworks Music
School**

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THE CUSTOMER'S ATTENTION IS PARTICULARLY DRAWN TO THE PROVISIONS OF CLAUSE 7 (LIMITATION OF LIABILITY).

1. Interpretation

The following definitions and rules of interpretation apply in these Conditions.

1.1 Definitions:

Business Day: a day other than a Saturday, Sunday or public holiday in England, when banks in London are open for business.

Charges: the charges payable by the Customer for the supply of the Services in accordance with clause 5.

Commencement Date: has the meaning given in clause 2.1.

Conditions: these terms and conditions as amended from time to time in accordance with clause 14.

Contract: the contract between Fireworks Music School and the Customer for the supply of Services in accordance with these Conditions.

Employment Agency: as defined in section 13 of the Employment Agencies Act 1973.

Fireworks Music School: Barbara De Biasi acting as a sole trader under the trading name Fireworks Music School.

Fireworks Music School's Bank Account: the bank account details provided by Fireworks Music School to the Hirer.

Hirer: the person or entity who purchases the Services from Fireworks Music School as a Pupil or on behalf of a Pupil.

Hirer Enquiry: has the meaning given in clause 4.1.

Lesson: the prospective music lessons to be given from the Teacher to the Pupil.

Pupil: the person who shall receive Lessons from the Teacher.

Services: the services supplied by Fireworks Music School to the Hirer as set out in Schedule 1.

Teacher: a music teacher of any discipline who shall be engaged [by the Hirer] to provide music lessons for the Pupil and shall be a Work Seeker.

Work Seeker: has the meaning as defined as defined in section 13 of the Employment Agencies Act 1973.

1.2 Interpretation:

1.2.1 A reference to a statute or statutory provision is a reference to it as amended or re-enacted. A reference to a statute or statutory provision includes all subordinate legislation made under that statute or statutory provision.

1.2.2 Any words following the terms **including, include, in particular, for example** or any similar expression, shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms.

1.2.3 A reference to **writing** or **written** includes email.

2. Basis of contract

2.1 The Contract and these Conditions shall come into force once the Hirer has provided the Hirer Enquiry to Fireworks Music School in accordance with clause 4.1(**Commencement Date**).

2.2 Any samples, drawings, descriptive matter or advertising issued by Fireworks Music School, and any descriptions or illustrations contained in Fireworks Music School's catalogues or brochures or website, are issued or published for the sole purpose of giving an approximate idea of the services described in them. They shall not form part of the Contract or have any contractual force.

2.3 These Conditions apply to the Contract to the exclusion (to the extent applicable law allows) of any other terms that the Hirer seeks to impose or incorporate, or which are implied by law, trade, custom, practice or course of dealing.

3. Supply of Services

3.1 Fireworks Music School shall supply the Services to the Hirer as an Employment Agency.

3.2 Fireworks Music School shall notify the Hirer in writing once it has passed on the Hirer Enquiry to a relevant Teacher.

3.3 Fireworks Music School reserves the right to amend the Services if necessary to comply with any applicable law or regulatory requirement, or if the amendment will not materially affect the nature or quality of the Services, and Fireworks Music School shall notify the Hirer as soon as reasonably practicable in any such event.

3.4 Fireworks Music School warrants to the Hirer that the Services will be provided using reasonable care and skill.

4. Hirer's obligations

4.1 The Hirer shall provide in writing to Fireworks Music School:

4.1.1 the type and frequency of Lessons wanted;

4.1.2 the level of experience of the Hirer, or Pupil if appropriate; and

4.1.3 the required duration of each Lesson.

(Hirer Enquiry)

4.2 The Hirer shall co-operate with Fireworks Music School in all matters relating to the Services and shall provide Fireworks Music School with such information and materials as Fireworks Music School may reasonably require in order to supply the Services, and

the Hirer shall ensure that such information is complete and accurate in all material respects.

5. Charges and payment

- 5.1 The Hirer shall pay the Charges in accordance with this clause 5, time being of the essence. The Charges for the Services, from time to time, shall be as set out in current price list at the Commencement Date displayed on Fireworks Music School's website.
- 5.2 The Charges shall be paid by the Hirer, in advance by electronic bank transfer to Fireworks Music School's Bank Account in either monthly, termly, or yearly instalments as agreed by the parties (**Payment Period**) in writing in advance of the Commencement Date.
- 5.3 The Payment Period may be amended by written agreement of the parties.
- 5.4 The first payment of the Charges shall be paid on the date that Fireworks Music School informs the Hirer that the Hirer Query has been passed on to a relevant Teacher, in accordance with clause 3.2. All subsequent Charges shall become due and be paid on the first Business Day of each Payment Period (**Due Date**).
- 5.5 All amounts payable by the Hirer under the Contract are exclusive of amounts in respect of value added tax chargeable from time to time (VAT). Where any taxable supply for VAT purposes is made under the Contract by Fireworks Music School to the Hirer, the Hirer shall, on receipt of a valid VAT invoice from Fireworks Music School, pay to Fireworks Music School such additional amounts in respect of VAT as are chargeable on the supply of the Services at the same time as payment is due for the supply of the Services.
- 5.6 If the Hirer fails to make a payment due to Fireworks Music School under the Contract by the Due Date, then, without limiting Fireworks Music School's remedies under clause 8, the Hirer shall pay interest on the overdue sum from the Due Date until payment of the overdue sum, whether before or after judgment. Interest under this clause 5.6 will accrue each day at 4% a year above the Bank of England's base rate from time to time, but at 4% a year for any period when that base rate is below 0%.
- 5.7 All amounts due under the Contract shall be paid in full without any set-off, counterclaim, deduction or withholding (other than any deduction or withholding of tax as required by law).

6. Data protection

The parties shall comply with their data protection obligations as set out at the Commencement Date in the data protection policy on Fireworks Music School's website.

7. Limitation of liability: THE HIRER'S ATTENTION IS PARTICULARLY DRAWN TO THIS CLAUSE.

- 7.1 References to liability in this clause 7 include every kind of liability arising under or in connection with the Contract including liability in contract, tort (including negligence), misrepresentation, restitution or otherwise.

- 7.2 Nothing in this clause 7 shall limit the Hirer's payment obligations under the Contract.
- 7.3 Nothing in the Contract limits any liability which cannot legally be limited, including but not limited to, liability for fraud or fraudulent misrepresentation.
- 7.4 Subject to clause 7.3, Fireworks Music School's total liability to the Hirer for all loss or damage shall not exceed the lesser of £1,000 or the Charges paid by the Hirer in the preceding 12 month period.
- 7.5 The caps on Fireworks Music School's liabilities shall be reduced by amounts awarded by a court or arbitrator, using their procedural or statutory powers in respect of costs of proceedings or interest for late payment.
- 7.6 Subject to clauses 7.2 and 7.3, this clause 7.6 sets out the types of loss that are wholly excluded from the liability of Fireworks Music School:
- 7.6.1 loss of profits,
 - 7.6.2 loss of business,
 - 7.6.3 loss of agreements or contracts,
 - 7.6.4 loss of anticipated savings,
 - 7.6.5 loss of or damage to goodwill, and
 - 7.6.6 indirect or consequential loss.
- 7.7 Unless the Hirer notifies Fireworks Music School that it intends to make a claim in respect of an event within the notice period, Fireworks Music School shall have no liability for that event. The notice period for an event shall expire on the earlier of:
- 7.7.1 six months from the day on which the Hirer became, or ought reasonably to have become, aware of the event having occurred; or
 - 7.7.2 one year from the date of the event.
- 7.8 The notice must be in writing and must identify the event and the grounds for the claim in reasonable detail.
- 7.9 Fireworks Music School shall not be liable for any acts of the Teacher.
- 7.10 This clause 7 shall survive termination of the Contract.

8. Termination

- 8.1 Without affecting any other right or remedy available to it:
- 8.1.1 either party may terminate the Contract with immediate effect by giving the other party written notice; and
 - 8.1.2 Fireworks Music School may suspend the supply of Services under the Contract if the Hirer fails to pay any amount due under the Contract on the Due Date.

9. Consequences of termination

- 9.1 On termination of the Contract the Hirer shall immediately pay to Fireworks Music School all of Fireworks Music School's outstanding Charges and interest.
- 9.2 The Hirer will not be entitled for any refund of the Charges that have been paid for a Payment Period regardless of whether the relevant Payment Period has expired, or if any lessons have been organised or attended.
- 9.3 Termination of the Contract shall not affect any rights, remedies, obligations or liabilities of the parties that have accrued up to the date of termination, including the right to claim damages in respect of any breach of the Contract which existed at or before the date of termination.
- 9.4 Any provision of the Contract that expressly or by implication is intended to come into or continue in force on or after termination of the Contract shall remain in full force and effect.

10. Force majeure

- 10.1 Neither party shall be in breach of the Contract nor liable for delay in performing, or failure to perform, any of its obligations under the Contract if such delay or failure result from:
 - 10.1.1 events, circumstances or causes beyond its reasonable control;
 - 10.1.2 an epidemic or pandemic; and
 - 10.1.3 any law or any action taken by a government or public authority, including without limitation imposing restrictions on social gatherings or lockdowns, which would prevent either party from performing its obligations under the Contract.

11. Assignment and other dealings

- 11.1 Fireworks Music School may at any time assign, subcontract, delegate, or deal in any other manner with any or all of its rights and obligations under the Contract.
- 11.2 The Hirer shall not assign, transfer, subcontract, delegate, or deal in any other manner with any of its rights and obligations under the Contract.

12. Confidentiality

- 12.1 The Hirer undertakes that it shall not at any time disclose to any person any confidential information concerning the business, affairs, customers or clients of Fireworks Music School, except as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.
- 12.2 The Hirer shall not use Fireworks Music School's confidential information for any purpose other than to perform its obligations under the Contract.

13. Entire agreement

13.1 The Contract 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.

13.2 Each party acknowledges that in entering into the Contract it does not rely on, and shall have no remedies in respect of any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in the Contract. Each party agrees that it shall have no claim for innocent or negligent misrepresentation based on any statement in the Contract.

14. Variation

Except as set out in these Conditions, no variation of the Contract shall be effective unless it is agreed by the parties in writing.

15. Waiver

A waiver of any right or remedy under the Contract or by law is only effective if given in writing and shall not be deemed a waiver of any subsequent right or remedy. A failure or delay by a party to exercise any right or remedy provided under the Contract or by law shall not constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict any further exercise of that or any other right or remedy. No single or partial exercise of any right or remedy provided under the Contract or by law shall prevent or restrict the further exercise of that or any other right or remedy.

16. Severance

If any provision or part-provision of the Contract is or becomes invalid, illegal or unenforceable, it shall be deemed deleted, but that shall not affect the validity and enforceability of the rest of this agreement. If any provision or part-provision of this Contract deleted under this clause 16 the parties shall negotiate in good faith to agree a replacement provision that, to the greatest extent possible, achieves the intended commercial result of the original provision.

17. Third party rights

Unless it expressly states otherwise, the Contract does not give rise to any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of the Contract.

18. Governing law

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

19. Jurisdiction

19.1 Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim (including non-contractual disputes

or claims) arising out of or in connection with the Contract or its subject matter or formation.

SCHEDULE 1

Services

1. Fireworks Music School shall pass on enquiries from the Hirer to relevant Teachers, who Fireworks Music School considers appropriate by reference to their availability and expertise. This shall be done with a view to the Hirer organising lessons with a Teacher either as Pupil or on behalf on a Pupil.
2. Fireworks Music School shall, at their own discretion and cost, organise a concert once per year to be held at a date, time and venue determined by Fireworks Music School for the Pupil and any other pupils of the Teachers.
3. At Fireworks Music School's own discretion and cost, Fireworks Music School may carry out and provide a DBS check of the relevant Teacher.