

Bandemonium – Terms & Conditions of Trade

1. Acceptance

- 1.1 The Guardian is taken to have exclusively accepted and is immediately bound, jointly and severally, by these terms and conditions if the Guardian completes and signs Bandemonium's *Enrolment Form* and/or if the Student partakes in Lessons provided by Bandemonium.
- 1.2 These terms and conditions may only be amended with Bandemonium's consent in writing and shall prevail to the extent of any inconsistency with the *Enrolment Form*, any other document or agreement between the Guardian and Bandemonium.
- 1.3 None of Bandemonium's employees, agents or representatives are authorised to make any representations, statements, conditions, views, opinions or agreements not expressed by the Director of Bandemonium in writing, nor is Bandemonium bound by any such unauthorised statements.

2. Electronic Transactions Act 2000

- 2.1 Electronic signatures shall be deemed to be accepted by either party providing that the parties have complied with Section 9 of the Electronic Transactions Act 2000 or any other applicable provisions of that Act or any Regulations referred to in that Act.

3. Change in Control

- 3.1 The Guardian shall give Bandemonium not less than fourteen (14) days prior written notice of any proposed change in the payment arrangements and/or any change (in circumstances from) to the details as outlined in the *Enrolment Form*; including, but not limited to, change of name, address, contact phone or fax number/s of the Student and/or Guardian, and/or any changes or developments in the Student's medical history that should be brought to Bandemonium's attention. The Guardian shall be liable for any loss incurred by Bandemonium as a result of the Guardian's failure to comply with this clause.

4. Accident or Emergency

- 4.1 Whilst every reasonable effort shall be made by Bandemonium to contact the Guardian (or Emergency Contacts) in the event of an accident or emergency, the Guardian hereby gives authority to the Director of Bandemonium (or their delegate) to, on behalf of the Guardian, authorise the administration of medication, transportation to hospital and administration of treatment as is recommended by the Student's doctor, any attending doctor, ambulance officer, police or Government Officer. The Guardian will be responsible for any costs incurred as a result of transportation or treatment.

5. Intellectual Property

- 5.1 Where Bandemonium has designed, drawn, written, or created programs, techniques and curriculum in relation to the Student, then the copyright in those designs, drawings, documents, programs, techniques and curriculum shall remain vested in Bandemonium, and shall only be used by the Student (and Guardian) at Bandemonium's discretion.

6. Quality Assurance

- 6.1 Unless expressly requested otherwise in writing, the Guardian permits Bandemonium to photograph or video record the Student for quality assurance, assessment, planning, evaluation, documentation, promotional or marketing purposes (including newsletters and slideshows, and DVD's for display in the centre and/or gifts to parents), or to be used within Bandemonium (as well as on Bandemonium's website), and/or local and national newspaper stories.

7. Complaints and Grievance Policy

- 7.1 The Guardian shall be entitled to report any concern they may have in relation to the Lessons, any matters of safety, care or quality of services, or where the Guardian wishes to make a suggestion. These shall be addressed with the appropriate Bandemonium staff member, or if the complaint is in relation to any of the staff, to the Director of Bandemonium, where in most incidences the issue can be rectified.
- 7.2 Verbal complaints will be verbally acknowledged by Bandemonium, and a timeframe specified on when a response will be provided to the complainant. Written complaints will be acknowledged by Bandemonium in writing within forty-eight (48) hours of receiving the complaint.
- 7.3 Where the complaint is in relation to any staff member of Bandemonium:
- the complaint, and the identity of the complainant, will be kept confidential between the parties concerned;
 - a written record of events may be required to be documented by Bandemonium's staff in order to authenticate the complaint;
 - all compiled written information will be supplied to the Director of Bandemonium to enable an informed decision to be made regarding the complaint;
 - the complainant and applicable staff member(s) will be advised of the outcome of the investigation and any disciplinary action, which will be managed in accordance with the Fair Work Act 2009, etc.;
 - in the event the complainant is unsatisfied with the outcome of the investigation, Bandemonium's management and the complainant shall confer to discuss the matter further;
 - if the complainant is still not satisfied with the outcome, they are within their rights to contact the Department of Education and/or the Australian Competition and Consumer Commission.

8. Personal Property Securities Act 2009 ("PPSA")

- 8.1 In this clause financing statement, financing change statement, security agreement, and security interest has the meaning given to it by the PPSA.
- 8.2 Upon assenting to these terms and conditions in writing the Guardian acknowledges and agrees that these terms and conditions constitute a security agreement for the purposes of the PPSA and creates a security interest in all Resources/Equipment and/or collateral (account) – being a monetary obligation of the Guardian to Bandemonium for Services – that have previously been supplied and that will be supplied in the future by Bandemonium to the Guardian.
- 8.3 The Guardian undertakes to:
- promptly sign any further documents and/or provide any further information (such information to be complete, accurate and up-to-date in all respects) which Bandemonium may reasonably require to;
 - register a financing statement or financing change statement in relation to a security interest on the Personal Property Securities Register;

- register any other document required to be registered by the PPSA; or
 - correct a defect in a statement referred to in clause 8.2(a)(i) or 8.2(a)(ii);
- indemnify, and upon demand reimburse, Bandemonium for all expenses incurred in registering a financing statement or financing change statement on the Personal Property Securities Register established by the PPSA or releasing any Lessons/Equipment charged thereby;
 - not register a financing change statement in respect of a security interest without the prior written consent of Bandemonium;
 - not register, or permit to be registered, a financing statement or a financing change statement in relation to the Lessons/Equipment and/or collateral (account) in favour of a third party without the prior written consent of Bandemonium.

- 8.4 Bandemonium and the Guardian agree that sections 96, 115 and 125 of the PPSA do not apply to the security agreement created by these terms and conditions.

- 8.5 The Guardian waives their rights to receive notices under sections 95, 118, 121(4), 130, 132(3)(d) and 132(4) of the PPSA.

- 8.6 The Guardian waives their rights as a grantor and/or a debtor under sections 142 and 143 of the PPSA.

- 8.7 Unless otherwise agreed to in writing by Bandemonium, the Guardian waives their right to receive a verification statement in accordance with section 157 of the PPSA.

- 8.8 The Guardian must unconditionally ratify any actions taken by Bandemonium under clauses 8.2 to 8.5.

- 8.9 Subject to any express provisions to the contrary nothing in these terms and conditions is intended to have the effect of contracting out of any of the provisions of the PPSA.

9. Security and Charge

- 9.1 In consideration of Bandemonium agreeing to supply the Lessons/Equipment, the Guardian charges all of its rights, title and interest (whether joint or several) in any land, realty or other assets capable of being charged, owned by the Guardian either now or in the future, to secure the performance by the Guardian of its obligations under these terms and conditions (including, but not limited to, the payment of any money).

- 9.2 The Guardian indemnifies Bandemonium from and against all Bandemonium's costs and disbursements including legal costs on a solicitor and own client basis incurred in exercising Bandemonium's rights under this clause.

- 9.3 The Guardian irrevocably appoints Bandemonium and each director of Bandemonium as the Guardian's true and lawful attorney/s to perform all necessary acts to give effect to the provisions of this clause 9 including, but not limited to, signing any document on the Guardian's behalf.

10. Default and Consequences of Default

- 10.1 Interest on overdue invoices shall accrue daily from the date when payment becomes due, until the date of payment, at a rate of two and a half percent (2.5%) per calendar month (and at Bandemonium's sole discretion such interest shall compound monthly at such a rate) after as well as before any judgment.

- 10.2 If the Guardian owes Bandemonium any money the Guardian shall indemnify Bandemonium from and against all costs and disbursements incurred by Bandemonium in recovering the debt (including but not limited to internal administration fees, legal costs on a solicitor and own client basis, Bandemonium's contract default fee, and bank dishonour fees).

- 10.3 Further to any other rights or remedies Bandemonium may have under this contract, if a Guardian has made payment to Bandemonium by credit card, and the transaction is subsequently reversed, the Guardian shall be liable for the amount of the reversed transaction, in addition to any further costs incurred by Bandemonium under this clause 10 where it can be proven that such reversal is found to be illegal, fraudulent or in contravention to the Guardian's obligations under this agreement.

- 10.4 Without prejudice to any other remedies Bandemonium may have, if at any time the Guardian is in breach of any obligation (including those relating to payment) under these terms and conditions Bandemonium may suspend or terminate the supply of Lessons/Equipment to the Guardian. Bandemonium will not be liable to the Guardian for any loss or damage the Guardian suffers because Bandemonium has exercised its rights under this clause.

- 10.5 Without prejudice to Bandemonium's other remedies at law Bandemonium shall be entitled to cancel all or any part of any order of the Guardian which remains unfulfilled and all amounts owing to Bandemonium shall, whether or not due for payment, become immediately payable if:

- any money payable to Bandemonium becomes overdue, or in Bandemonium's opinion the Guardian will be unable to make a payment when it falls due;
- the Guardian becomes insolvent, convenes a meeting with its creditors or proposes or enters into an arrangement with creditors, or makes an assignment for the benefit of its creditors; or
- a receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Guardian or any asset of the Guardian.

11. The Commonwealth Competition and Consumer Act 2010 ("CCA") and Fair Trading Acts ("FTA")

- 11.1 Nothing in this contract is intended to have the effect of contracting out of any applicable provisions of the CCA or the FTA in each of the States and Territories of Australia (including any substitute to those Acts or re-enactment thereof), except to the extent permitted by those Acts where applicable.

12. Privacy Act 1988

- 12.1 The Guardian agrees for Bandemonium to obtain from a credit reporting body (CRB) a credit report containing personal credit information (e.g. name, address, D.O.B, occupation, previous credit applications, credit history) about the Guardian in relation to credit provided by Bandemonium.

- 12.2 The Guardian agrees that Bandemonium may exchange information about the Guardian with those credit providers and with related body corporates for the following purposes:

- to assess an application by the Guardian; and/or
- to notify other credit providers of a default by the Guardian; and/or
- to exchange information with other credit providers as to the status of this credit account, where the Guardian is in default with other credit providers; and/or

- to assess the creditworthiness of the Guardian including the Guardian's repayment history in the preceding two years.

- The Guardian consents to Bandemonium being given a consumer credit report to collect overdue payment on commercial credit.

- The Guardian agrees that personal credit information provided may be used and retained by Bandemonium for the following purposes (and for other agreed purposes or required by):

- the provision of Lessons/Equipment; and/or
- analysing, verifying and/or checking the Guardian's credit, payment and/or status in relation to the provision of Lessons/Equipment; and/or
- processing of any payment instructions, direct debit facilities and/or credit facilities requested by the Guardian; and/or
- enabling the collection of amounts outstanding in relation to the Lessons/Equipment.

- 12.5 Bandemonium may give information about the Guardian to a CRB for the following purposes:

- to obtain a consumer credit report;
- to allow the CRB to create or maintain a credit information file about the Guardian including credit history.

- 12.6 The information given to the CRB may include:

- personal information as outlined in 12.1 above;
- name of the credit provider and that Bandemonium is a current credit provider to the Guardian;
- whether the credit provider is a licensee;
- type of consumer credit;
- details concerning the Guardian's application for credit or commercial credit (e.g. date of commencement/termination of the credit account and the amount requested);
- advice of consumer credit defaults, overdue accounts, loan repayments or outstanding monies which are overdue by more than sixty (60) days and for which written notice for request of payment has been made and debt recovery action commenced or alternatively that the Guardian no longer has any overdue accounts and Bandemonium has been paid or otherwise discharged and all details surrounding that discharge (e.g. dates of payments);
- information that, in the opinion of Bandemonium, the Guardian has committed a serious credit infringement;
- advice that the amount of the Guardian's overdue payment is equal to or more than one hundred and fifty dollars (\$150).

- 12.7 The Guardian shall have the right to request (by e-mail) from Bandemonium:

- a copy of the information about the Guardian retained by Bandemonium and the right to request that Bandemonium correct any incorrect information; and
- that Bandemonium does not disclose any personal information about the Guardian for the purpose of direct marketing.

- 12.8 Bandemonium will destroy personal information upon the Guardian's request (by e-mail) or if it is no longer required unless it is required in order to fulfil the obligations of this agreement or is required to be maintained and/or stored in accordance with the law.

- 12.9 The Guardian can make a privacy complaint by contacting Bandemonium via e-mail. Bandemonium will respond to that complaint within seven (7) days of receipt and will take all reasonable steps to make a decision as to the complaint within thirty (30) days of receipt of the complaint. In the event that the Guardian is not satisfied with the resolution provided, the Guardian can make a complaint to the Information Commissioner at www.oaic.gov.au.

13. General

- 13.1 The failure by Bandemonium to enforce any provision of these terms and conditions shall not be treated as a waiver of that provision, nor shall it affect Bandemonium's right to subsequently enforce that provision. If any provision of these terms and conditions shall be invalid, void, illegal or unenforceable the validity, existence, legality and enforceability of the remaining provisions shall not be affected, prejudiced or impaired.

- 13.2 These terms and conditions and any contract to which they apply shall be governed by the laws of New South Wales, the state in which Bandemonium has its principal place of business, and are subject to the jurisdiction of the Camden courts in that state.

- 13.3 Subject to clause 11, Bandemonium shall be under no liability whatsoever to the Guardian for any indirect and/or consequential loss and/or expense (including loss of profit) suffered by the Guardian arising out of a breach by Bandemonium of these terms and conditions (alternatively Bandemonium's liability shall be limited to damages which under no circumstances shall exceed the Fee of the Lessons/Equipment hire).

- 13.4 The Guardian shall not be entitled to set off against, or deduct from the Fee, any sums owed or claimed to be owed to the Guardian by Bandemonium nor to withhold payment of any invoice because part of that invoice is in dispute.

- Bandemonium may license or sub-contract all or any part of its rights and obligations without the Guardian's consent.

- 13.5 The Guardian agrees that Bandemonium may amend these terms and conditions at any time. If Bandemonium makes a change to these terms and conditions, then that change will take effect from the date on which Bandemonium notifies the Guardian of such change. The Guardian will be taken to have accepted such changes if the Guardian makes a further request for Bandemonium to provide Lessons/Equipment to the Guardian.

- 13.7 Neither party shall be liable for any default due to any act of God, war, terrorism, strike, lock-out, industrial action, fire, flood, storm or other event beyond the reasonable control of either party.

- 13.8 The Guardian warrants that it has the power to enter into this agreement and has obtained all necessary authorisations to allow it to do so, it is not insolvent and that this agreement creates binding and valid legal obligations on it.

