



<b>Policy name:</b>	TERMS AND CONDITIONS	<b>Date:</b>	24/11/2020
<b>Policy no:</b>	002	<b>Version:</b>	1.3

## Acceptance

The Parent/Guardian is taken to have exclusively accepted and is immediately bound, jointly and severally, by these terms and conditions if the Parent/Guardian completes and signs Bandemonium's Enrolment Form and/or if the Student partakes in Lessons provided by Bandemonium.

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 Parent/Guardian and Bandemonium.

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.

## Fee Payment

Payment in full for TERM 1 2020 and Band Starter Pack (BSP) is required upon online enrolment of your child in a Bandemonium Training Band. We cannot guarantee your child's place or instrument choice until full payment for Term 1 2020 and BSP is made.

BSP is a Band Starter Pack and consists of: Essentials Instrument Tuition Book (or similar), music stand and Bandemonium tote bag.

TERM 2, 3 and 4 invoice payments must be received in full by the due date and prior to lessons commencing. If payment is not made by the due date then your child's position may be allocated to children on waiting lists.

In addition, if full payment is not by Week 2 of the said unpaid term, Bandemonium reserves the right to exclude your child from attending any Bandemonium tutorial, Band Rehearsal or any other Bandemonium related event until full payment is made. Bandemonium will not be liable to the Parent/Guardian for any loss or damage the Parent/Guardian suffers because Bandemonium has exercised its rights under this clause.

All payments must be made to as per the requirements set out in the invoice emailed to Parent/Guardians from Bandemonium. No cash payments are accepted. Neither our tutors, conductors or school office staff can accept any payments.



## Refunds, Missed and Make up Lessons

There are no credits/refunds for 3 or less missed lessons due to the inability of the child to attend, such as illness, holidays etc. No missed or make up lessons can be offered in such a scenario.

In instances of more 4 or more missed lessons, and where Parent/Guardians have given sufficient notice (7 days' notice BEFORE first missed lesson for holidays, within 7 days of first missed lesson for accident/illness) students will be provided with credit on missed lessons. A credit will be provided, which reduces the following term fees. Refunds are only provided if a student has terminated their enrolment for the following term.

Students may be offered make up lessons if available, as provided by class tutor. If make up is offered by tutor, and agreed to by Parent/Guardian, in instances where the student does not then turn up for make up lesson, there will be no credit, and the lesson will be forfeited.

Where lessons are missed due to School or Principal directive, through no fault of Bandemonium, its staff or contractors, no credit or refund will be issued and the lesson will be forfeited.

Where lessons are missed, due to scheduled school events such as excursions/camps/school activities or Bandemonium error, a make up class will be provided, where possible. If a make up class is not possible, then a credit will be placed on our account which reduces the following term fees. This will only be refunded if you do not enrol in the following term.

There are no lessons provided on Public Holidays or during school holidays and you will not be charged for these days.

There are no refunds for change of mind or change of circumstance (eg changing schools, clash with another activity) once the term has started.

## Overdue Accounts

Overdue accounts are subject to collection by legal means and will include any collection costs incurred by Bandemonium. 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.

All overdue accounts will be referred to an external debt collection agency.

If the Parent/Guardian owes Bandemonium any money the Parent/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).

Without prejudice to any other remedies Bandemonium may have, if at any time the Parent/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 Parent/Guardian. Bandemonium will not be liable to the Parent/Guardian for any loss or damage the Parent/Guardian suffers because Bandemonium has exercised its rights under this clause.

## Force Majeure Events

A Force Majeure event is any act of God, war, terrorism, school closure, strike, lock-out, industrial action, pandemic, fire, flood, storm or other event, beyond the reasonable control of either party.

If up to four (4) in any one (1) given School Term, scheduled Bandemonium events (Tutorial/Band Rehearsal/Concert etc.) are affected by a Force Majeure event, Online Zoom sessions will be provided as an alternative. If the child is unable to attend any alternative scheduled Zoom session, a credit will be provided for the missed lesson. If Bandemonium is unable to schedule or provide the online Zoom Session, a refund will be issued for the missed lesson (within 4 weeks of cancelled lesson).

If 5 or more scheduled Bandemonium events (see previous definition) in any one (1) given School Term are cancelled due to a Force Majeure event, Online Zoom sessions will be provided as an alternative. If a student is unable to attend, for any reason, their Parent/Guardian can request in writing, a refund for all missed weeks. An administration charge of \$3 for each week is payable for each missed week requested to be refunded.

## Termination

### **Every student is an essential member of a Training or Concert Band.**

Parent/Guardians should consider that in withdrawing their child from the band, it impacts the whole Band. It is therefore a condition that:

**Training Band** is a contracted commitment of the FULL SCHOOL YEAR, ALL FOUR (4) TERMS (including financial) ending in the final week of Term 4. Full payment is required these four (4) terms, even if the student does not attend.



Students in the **Concert Band** are required to give four (4) weeks' notice in writing for termination of enrolment. Notice of termination will be accepted and effective from the date of notice. Fees are still applicable if the student does not attend lessons during this time.

Any notice of termination must be made in writing to [accounts@bandemonium.com.au](mailto:accounts@bandemonium.com.au), not to the child's tutor and/or conductor.

If you do not advise us that your child is not returning and your child attends lessons you will be charged for those lessons.

## **Creative Kids Vouchers**

Valid Creative Kids vouchers will be accepted in the year in which they are current and be applied to any term, to reduce the Term fee of the voucher holder by \$100. If we have applied the \$100 reduction to a child's account, and we found on redeeming the Creative Kids voucher, that the details supplied were invalid, incomplete or incorrect, the invoice will be amended and increased by \$100, and be required to be paid in full by the Parent/Guardian.

## **Image permission**

Unless expressly requested otherwise in writing, the Parent/Guardian permits Bandemonium to photograph and/or video record the Student for quality assurance, assessment, planning, evaluation, documentation, promotional or marketing purposes (including newsletters, slideshows, online including social media site) or to be used within Bandemonium (as well as on Bandemonium's website and online social media sites), and/or local and national newspaper stories.

## **Change in Control**

The Parent/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, email address of the Student and/or Parent/Guardian, and/or any changes or developments in the Student's medical history that should be brought to Bandemonium's attention.

The Parent/Guardian shall be liable for any loss incurred by Bandemonium as a result of the Parent/Guardian's failure to comply with this clause.

## **Accident or Emergency**

Whilst every reasonable effort shall be made by Bandemonium to contact the Parent/Guardian in the event of an accident or emergency, the Parent/Guardian hereby gives authority to the



Director of Bandemonium (or their delegate) to, on behalf of the Parent/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 Parent/Guardian will be responsible for any costs incurred as a result of transportation or treatment.

## **Intellectual Property**

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 Parent/Guardian) at Bandemonium's discretion.

## **Electronic Transactions Act 2000**

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.

## **Personal Property Securities Act 2009 (PPSA)**

In this clause financing statement, financing change statement, security agreement, and security interest has the meaning given to it by the PPSA.

Upon assenting to these terms and conditions in writing the Parent/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 Parent/Guardian to Bandemonium for Services – that have previously been supplied and that will be supplied in the future by Bandemonium to the Parent/Guardian.

The Parent/Guardian undertakes to:

(a) 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;

- (i) register a financing statement or financing change statement in relation to a security interest on the Personal Property Securities Register;
- (ii) register any other document required to be registered by the PPSA; or
- (iii) correct a defect in a statement referred to in clause 8.2(a)(i) or 8.2(a)(ii);



(b) 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;

(c) not register a financing change statement in respect of a security interest without the prior written consent of Bandemonium;

(d) 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.

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

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

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

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

The Parent/Guardian must unconditionally ratify any actions taken by Bandemonium under these clauses

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.

## General

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.

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.

Subject to above clauses, Bandemonium shall be under no liability whatsoever to the Parent/Guardian for any indirect and/or consequential loss and/or expense (including loss of profit) suffered by the Parent/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 Term Fee/Rental Equipment hire/Rent to Own monthly charge).

The Parent/Guardian agrees that participation in any Bandemonium event (as previously described herein) that their child attends is entirely at their own risk; and

Bandemonium do not accept any liability of whatsoever nature and however arising in respect of any claim, damages, loss, injury or expenses suffered directly or indirectly by any student arising out of or in connection with his/her participation in the event.

The Parent/Guardian shall not be entitled to set off against, or deduct from the Fee, any sums owed or claimed to be owed to the Parent/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 Parent/Guardian's consent.

The Parent/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 Parent/Guardian of such change. The Parent/Guardian will be taken to have accepted such changes if the Parent/Guardian makes a further request for Bandemonium to provide Lessons/Equipment to the Parent/Guardian.

The Parent/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.