

Terms and Conditions of business for North East Music Foundation CIC.

1. These Terms and Conditions apply to the provision of the services detailed in our quotation (Services) by North East Music Foundation CIC - Company number: 7705422 registered office: Crookhill House, Hexham Old Road, Ryton Tyne and Wear, NE40 3ET England UK (**we or us or Service Provider**) to the person or school or organisation (**you or Customer**).
2. You will be deemed to have accepted these Terms and Conditions when you have accepted our quotation or from the date of any performances of the Services (whichever is the earlier) and these Terms and Conditions constitute the entire agreement between us.
3. You acknowledge that you have not relied on any statement, promise or representation given or made by us or on our behalf. These Conditions apply to the Contract to the exclusion of any other terms that you try to impose or incorporate, or which are implied by trade, custom or practice.

Interpretation

4. A “business day” means any day other than a Saturday, Sunday or Bank Holiday in England and Wales.
5. The headings in these Terms and Conditions do not affect their interpretation and are for convenience only.
6. Words which impart the singular number shall include the plural and vice versa.

Services

7. We will use all reasonable endeavours to allow and complete the performance of the Services within the time agreed of any subscription taken up by the customer, as set out in the quotation or initial invoice.
8. We will use reasonable care and skill in our performance of the Services which will comply with the quotation given, including any specifications which may be added therein. We may make any changes to the Services which are necessary to comply with any applicable law, and we will notify the customer if this is necessary.

Your obligations

9. You must obtain any permissions, consents or licences that are required to provide the Services to your own users (pupils, other teachers, and members of the public).
10. If you do not comply with clause 9 we can terminate the Services

11. We will not be held liable for any delay or failure to provide the Services if this is caused by your own failure to comply with the provisions of this section.

Fees

12. The fees for the Services are set out in the quotation or on the invoice and are on a time and materials basis

13. You must pay us for any additional services provided by us that are not specified in the quotation or invoice in accordance with our then current, applicable rate in effect at the time of performance or such other rate as may be agreed between us.

14. The fees as of 1st January 2021 do not include any applicable VAT or other taxes.

15. We reserve the right to change the provision of clause 14 when VAT become chargeable by any competent authority within the country receiving the Services.

Cancellation and amendment of terms

16. We reserve the right to withdraw, cancel or amend a quotation if the customer has not accepted it, or if the Services have not started, within a period of 30 days from the date of the quotation.

17. If, due to circumstances beyond our control, we have to make any changes to the Services or how they are provided, we will notify you immediately and we will use all reasonable endeavours to keep such changes to a minimum.

Payment

18. We will invoice you for payment of fees for a 12-month subscription to the relevant section of the Addanote website 30 days prior to the date of commencement of the subscription for Services.

19. You will receive your unique login details in the form of a username and password with this invoice, which will expire 30 days from the date of the invoice unless payment is received into our bank account by that date.

20. If the subscription fee is settled within 30 days of the date of our invoice then your subscription will remain valid, together with your unique login details, for a further 12-month period.

21. Time for payment shall be of the essence of the contract.

22. All payments due under these Terms and Conditions must be made in full without any deduction or withholding except as required by law party can assert any credit, set-off or counterclaim against the other in order to justify withholding payment of any such amount in whole or in part.

23. Receipts for payment will be issued by us only at your request.

24. For UK Customers all payments must be made in UK pounds sterling. For overseas Customers, currencies are to be agreed in writing between parties.

Sub-contracting and assignment

25. We can at any time transfer, assign, or subcontract with all or any of our rights under these Terms and Conditions and can subcontract or delegate in any manner any or all of our obligations to any third party.

26. The Customer must not, without our prior written consent, transfer, assign or subcontract any or all of its rights under these Terms and Conditions.

Termination

27. The Service Provider can terminate the provision of the Services immediately if the Customer:

- a) fails to pay any amount due under the Contract by the due date for payment; or
- b) becomes, or in our reasonable opinion, is about to become the subject of a bankruptcy order; or
- c) commits a material breach of its obligations under these Terms and Conditions.

Intellectual property

28. We reserve all copyright and any other intellectual property rights which may subsist in any goods or materials supplied in connection with the provision of the Services. We reserve the right to take any appropriate action to prevent the infringement of such intellectual property rights.

Data protection

29. When supplying the Services to the Customer, we may gain access to or acquire the ability to transfer, store or process personal data of employees of the Customer.

30. Where such treatment of personal data takes place, the parties agree that the Customer shall be the 'data controller' and the Service Provider shall be the 'data processor' as defined in GDPR (the General Data Protection Regulation) and as may be amended, extended and/or re-enacted from time to time.

31. For the avoidance of doubt, the terms "Personal Data, Processing, Data Processor, Data Controller, and Data Subject" shall have the same meaning as set out in the UK GDPR.

32. The Service Provider shall not disclose any Personal Data to any third parties other than directors, employees, sub-contractors, agents or advisors on a strictly enacted "need to know" basis, as set out in these Terms and Conditions or to the extent required by applicable legislation and/or regulations.

33. The Service Provider shall only Process Personal Data to the extent reasonably required to enable it to supply the Services as set out in these Terms and Conditions or as requested by and agreed with the Customer.

34. In any case the Service Provider shall not retain any Personal Data longer than necessary for the Processing and will not Process any Data for its own or for any other party's purposes as set out in the UK GDPR.

35. The Service Provider shall carry out technical and organisational security measures as required to protect Personal Data Processed by the Service Provider on behalf of the Customer.

36. The Service Provider shall not disclose Personal Data to any third parties that fall outside of the following groups: employees, directors, sub-contractors, agents or advisors. Such disclosures to be on a strictly imposed 'need to know' basis as set out in these Terms and Conditions.

37. Further information about data protection can be found in the Service Providers Data Protection Policy which can be found here, or by emailing ukgdpr@nemfcic.co.uk

Circumstances beyond the control of a party

38. Neither party is liable for any failure or delay in performing its obligations which has resulted from any cause that is beyond the reasonable control of that party. Reasonable Control includes, but is not limited to: industrial action, fire, civil unrest, natural disasters, acts of terrorism, acts of war, governmental action or any other event that is beyond the control of the party in question. In the event of a delay greater than 60 days, either party may terminate or cancel the Services to be carried out under these Terms and Conditions.

Liability and Indemnity

39. Our liability under these Terms and Conditions, and in breach of statutory duty, and in tort or misrepresentation, shall be limited as set out in this section.

40. The total amount of our liability is limited to the total amount of fees payable by you under the Contract.

41. The Service Providers are not liable (whether caused by our employees, agents or other third parties) in connection with our provision of the Services or the performance of any of our other obligations under these Terms and Conditions for:

- i) any indirect, special or consequential loss, damages, costs or expenses or
- ii) any loss of profits; loss of anticipated profits; loss of business; loss of data; loss of reputation or goodwill; business interruption; or
- iii) any delay or failure to perform any of our obligations which results from a cause beyond our reasonable control; or

iv) any losses arising directly or indirectly from the choice of Services and how they will meet your requirements or your use of the Services or any goods supplied in connection with the Services.

42. You must indemnify the Service Provider against all damages, costs, claims and expenses suffered by the Service Provider arising from any loss or damage to any equipment caused by you or your agents (including that to equipment belonging to third parties)

43. Nothing in these Terms and Conditions shall limit or exclude our liability for death or personal injury caused by our negligence, or for any fraudulent misrepresentation, or for any other matters for which it would be unlawful to exclude or limit liability.

Communications

44. All notices under these Terms and Conditions must be in writing and signed by, or on behalf of, the party giving notice (or a duly authorised officer of that party).

45. Notices shall be deemed to have been duly given:

i) when delivered, if delivered by courier or other messenger (including registered mail) during the normal business hours of the recipient;

ii) when sent, by means of fax or email, and a successful return receipt or transmission report is generated;

iii) on the fifth business day following mailing, if mailed by national ordinary mail.

46. All notices under these Terms and Conditions must be addressed to the most recent address, email address or fax number notified to the other party.

No waiver

47. No delay, act or omission by a party in exercising any right or remedy will be deemed a waiver of that, or any other, right or remedy nor will stop further exercise of any other right or remedy.

Severance

48. If one or more of these conditions is found to be unlawful, invalid or otherwise unenforceable, then those relevant provisions will be deemed severed from the remainder of these Terms and Conditions (which will remain valid and enforceable).

Law and jurisdiction

This agreement shall be governed by and interpreted according to the law of England and Wales and all disputes arising under the Agreement (including non-contractual disputes or claims) shall be subject to the exclusive jurisdiction of the English and Welsh courts.