

Terms of Service

Pro Music Terms Of Service

June 7, 2007

This Terms of Service is a legal agreement between you and Pro Music a wholly-owned subsidiary of Pro Music Inc. ("Pro Music"), that governs your access to and use of Pro Music Checkout as a purchaser of merchandise, goods, or services. Please review this entire Terms of Service before you decide whether to accept it and continue with the registration process.

BY CLICKING ON THE "CHECK OUT" BUTTON ON THE VIEW CART PAGE, YOU AGREE TO BE BOUND BY THIS TERMS OF SERVICE.

1. Certain Defined Terms

The following defined terms appear in this Terms of Service.

- "You", "you" or "Buyer": A Customer that applies to, or registers to use, or uses, the Service to make Payment Transactions.
- Customer: A person that registers with the Service as a Buyer.
- Pro Music Web Sites: The web site pages of Pro Music, Pro Music Inc., or a Pro Music-affiliated or partner company.
- Payment Instrument: The credit card or debit card that is registered by a Customer with the Service to facilitate the processing of Payment Transactions. The Payment Instrument must be associated with a billing address in a country where the Service is made available.
- Payment Transaction: The processing of a payment through the Service that results in the debiting or charging of the Purchase Amount to a Buyer's Payment Instrument and the crediting of funds to Pro Music.
- Product: Any merchandise, good or service that is listed for sale that a Buyer may pay for using the Service.
- Purchase Amount: The dollar amount of a Payment Transaction to pay for a Product, and any related fees, taxes or shipping charges, as applicable.
- Service: The Pro Music Checkout service, described in this Terms of Service, that facilitates the processing of Payment Transactions on behalf of Pro Music.
- "Pro Music", "we", or "us": Pro Music Inc.

2. Requirements for Registration

In order to use the Service, you must complete all required information

elements on the Service registration web pages. You must register a valid credit or debit card as a Payment Instrument to make Payment Transactions and pay fees and other obligations arising from your use of the Service. You must provide current, complete and accurate information and maintain it as current and accurate. We may require you to provide additional information as a condition of continued use of the Service, or to assist in determining whether to permit you to continue to use the Service.

You authorize us to confirm that your Payment Instrument is in good standing with the issuing financial institution, including, but not limited to, by submitting a request for a payment authorization and/or a low dollar credit and/or debit to the Payment Instrument, in accordance with the relevant card association rules. You also authorize us to obtain from time to time a credit report and/or to otherwise make credit or other background inquiries as we deem appropriate to evaluate your registration for or continued use of the Service

We, in our sole and absolute discretion, may refuse to approve or may terminate existing registrations with or without cause or notice, other than any notice required by any applicable law, and not waived herein.

By agreeing to this Terms of Service for Buyers, you represent that you are:

- 18 years old or older; and
- capable of entering into a legally binding agreement.

If you are a business entity, you also represent that you are:

- duly authorized to do business in the country or countries where you operate; and
- your employees, officers, representatives, and other agents accessing the Service are duly authorized to access the Service and to legally bind you to these Terms of Service and all transactions conducted under your email.

3. Payment Transaction Processing

The Service facilitates the processing of Payment Transactions to complete a payment for a purchase between a Buyer and Pro Music. The Service will store information from Buyers, such as their Payment Instruments and shipping information, and will process Payment Transactions on behalf of Pro Musics through the appropriate credit card or debit card network. Pro Music may delay payment processing of suspicious transactions or transactions which may involve fraud, misconduct, or violate applicable law, this Terms of Service for Buyers, or other applicable Pro Music or Service policies, as determined in Pro Music's sole and absolute discretion. Buyer authorizes the charge or debit to Buyer's Payment Instrument as necessary to complete processing of a Payment Transaction. Buyer also authorizes the crediting to Buyer's Payment Instrument in connection with reversals, refunds, or adjustments through the Service.

4. Permissible Payment Transactions

You may only use the Service to process a Payment Transaction for a Product that is purchased from Pro Music through a legitimate, bona fide sale of the Product. The Service may not be used to process a Payment Transaction, or otherwise transfer money between a Buyer and Pro Music, that is unrelated to a purchase of a Product. The Service may not be used to receive cash advances from Pro Music or to facilitate the purchase of cash equivalents (travelers checks, prepaid cards, money orders, etc.). You may not use the Service to process Payment Transactions in connection with the sale or exchange of any illegal goods or services or any other underlying illegal transaction.

You agree that you will not use the Service to process Payment Transactions for any Products that violate this Terms of Service, other policies or rules applicable to the Service, or applicable law. The current policy that establishes the Products and other transactions that may not be paid for with the Service is provided here. Failure to comply with these limitations may result in suspension or termination of your use of the Service.

5. Limitations on the Use of Service

We do not warrant that the functions contained in the Service will be uninterrupted or error free, and we shall not be responsible for any service interruptions (including, but not limited to, power outages, system failures or other interruptions that may affect the receipt, processing, acceptance, completion or settlement of Payment Transactions or the Service).

We may limit or suspend your use of the Service at any time, in our sole and absolute discretion. If we suspend your use of the Service, we will attempt to notify you by electronic mail. Suspension of your use of the Service will not affect your rights and obligations pursuant to this Terms of Service arising before or after such suspension.

6. Email and Personal Information

You are responsible for: 1) maintaining the confidentiality of your email and personal information, 2) any and all transactions by persons that you give access to or that otherwise use such email and personal information, and 3) any and all consequences of use or misuse of your email and personal information. You agree to notify us immediately of any unauthorized use of your email and personal information or any other breach of security regarding the Service of which you have knowledge.

If Buyer is a business entity, Buyer agrees that all officers, employees, agents, representatives and others having access to the email and personal information shall be vested by Buyer with the authority to use the Service and legally bind Buyer. Buyer shall be responsible for all actions by current and former officers, employees, agents, representatives and others, regardless of whether authorized by Buyer, that access the Service using Buyer's email and personal information.

7. Privacy

You understand and agree that personal information provided to us in

connection with the Service is subject to the Service's Privacy Policy.

8. Use of Electronic Communications

We may communicate with you regarding the Service by means of electronic communications, including (a) sending electronic mail to the email address you provided during registration, or (b) posting notices or communications on a Pro Music Web Site. You agree that we may communicate with you by means of electronic communications the following: this Terms of Service (and revisions or amendments), notices or disclosures regarding the Service, payment authorizations, and any other matter relating to your use of the Service.

You should maintain copies of electronic communications by printing a paper copy or saving an electronic copy. Electronic communications shall be deemed received by you when we send the electronic communication to the email address you provided at the time of registration or as revised by you thereafter in accordance with this Terms of Service, or when we post the electronic communication on a Pro Music Web Site.

For those communications or records that we are otherwise required under applicable law to provide in a written paper form to you, you agree that we may provide such communications or records by means of electronic communications. The following additional terms will apply to such electronic communications: (a) you may contact us through the Service contact page to request another electronic copy of the electronic communication without a fee; (b) you may request a paper copy of such an electronic communication, and we reserve the right to charge a fee to provide such paper copy; (c) you may contact us through the contact page to update your registration information used for electronic communications or to withdraw consent to receive electronic communications; and (d) we reserve the right to terminate your use of the Service if you decline or withdraw consent to receive electronic communications from us.

9. Service Fees

We do not charge a fee to use the Service as a Buyer. The financial institution that issues your Payment Instrument may charge a fee in connection with the debiting or charging of the Payment Instrument resulting from the Payment Transaction. You should consult the terms and conditions governing your Payment Instrument for more information about any such fees.

10. Disputes

Pro Music will provide various tools to assist Customers in communicating with Pro Music to resolve a dispute that may arise between Buyers and Pro Music with respect to their transaction.

Pro Music may offer a feedback or other ranking system on the Service to assist you in evaluating Pro Music. You acknowledge that any such feedback or ranking system represents solely the opinion of other Customers of the Service, and is not an opinion, representation, or warranty by Pro Music with respect to other Customers of the Service.

You agree to release, Pro Music, Pro Music Inc., and other Pro Music affiliates, and their agents, contractors, officers and employees, from all claims, demands and damages (actual and consequential) arising out of or in any way connected with a dispute. You agree that you will not involve Pro Music in any litigation or other dispute arising out of or related to any transaction, agreement, or arrangement with Pro Music, other Buyer, advertiser or other third party in connection with the Service. If you attempt to do so, (i) you shall pay all costs and attorneys' fees of Pro Music, Pro Music Inc., and other Pro Music affiliates and shall provide indemnification as set forth below, and (ii) the jurisdiction for any such litigation or dispute shall be limited as set forth below. However, nothing in this Terms of Service shall constitute a waiver of any rights, claims or defenses that you may have with respect to a Payment Transaction under the Buyer's card issuer agreement, the card association rules or applicable state and federal laws, such as the federal Truth in Lending Act or the Electronic Fund Transfer Act.

If you are a California resident, you hereby expressly waive California Civil Code §1542, which states: "A general release does not extend to claims which the creditor does not know or suspect to exist in his favor at the time of executing the release, which if not known by him must have materially affected his settlement with the debtor."

11. Refunds

Except as set forth in this Terms of Service, all Payment Transactions processed through the Service are non-refundable to Buyer by Pro Music and are non-reversible by Buyer through the Service.

12. Pro Music Not a Banking Institution

Pro Music processes Payment Transactions on behalf of Pro Music Inc. Pro Music is not a bank or other chartered depository institution. Funds held by Pro Music or its service providers (including any bank service providers) in connection with the processing of Payment Transactions are not deposit obligations of Buyer and are not insured for the benefit of Buyer by the Federal Deposit Insurance Corporation or any other governmental agency.

13. Termination of Service

We may, in our sole and absolute discretion without liability to you or any third party, terminate your use of the Service for any reason, including without limitation inactivity or violation of this Terms of Service or other policies we may establish from time to time.

Upon termination of your use of the Service, you remain liable for all Payment Transactions and any other obligations you have incurred. Upon termination, we have the right to prohibit your access to the Service, including without limitation by deactivating your email and personal information, and to refuse future access to the Service by you (or your relatives or known acquaintances or if a business entity, its parent, affiliates or subsidiaries or its or their successors).

14. Buyer Responsibility for Taxes

The reporting and payment of any applicable taxes arising from the use of the Service is your responsibility. You hereby agree to comply with any and all applicable tax laws, including the reporting and payment of any taxes arising in connection with Payment Transactions.

15. No Endorsement of Products

Pro Music does not represent or endorse, and shall not be responsible for: (a) the safety, quality, accuracy, reliability, integrity or legality of any Product, the truth or accuracy of the description of Products, or of any advice, opinion, offer, proposal, statement, data or other information (collectively, "Content") displayed or distributed, purchased or paid through the Service, or the Pro Music Web Sites; or (b) the ability of Buyers to buy Products or Pro Music to deliver Products. Pro Music hereby disclaims any liability or responsibility for errors or omissions in any Content or in the Service. Pro Music reserves the right, but shall have no responsibility, to edit, modify, refuse to post or remove any Content, in whole or in part, that in Pro Music's sole and absolute discretion is objectionable, erroneous, illegal, fraudulent or otherwise in violation of this Terms of Service for Buyers.

16. Unclaimed Property

If we are holding funds due to you arising from a Payment Transaction processed through the Service or otherwise, and we are unable to contact you and have no record of your use of the Service for several years, applicable law may require us to report these funds as unclaimed property. If this occurs, we will try to locate you at the address shown in our records, but if we are unable to locate you, we may be required to deliver any such funds to the applicable state as unclaimed property. We reserve the right to deduct a dormancy fee or other administrative charges from such unclaimed funds, as permitted by applicable law.

17. Indemnification

You agree to indemnify, defend and hold harmless Pro Music, Pro Music Inc., and their, subsidiaries and other affiliates, and its and their directors, officers, owners, agents, co-branders or other partners, employees, information providers, licensors, licensees, consultants, contractors and other applicable third parties from and against any and all claims, demands, causes of action, debt or liability, including reasonable attorneys fees, including without limitation attorneys fees and costs incurred by the Indemnified Parties arising out of, related to, or which may arise from: (i) your use of the Service; (ii) any breach or non-compliance by you of any term of this Terms of Service or any of Pro Music's policies; (iii) any dispute or litigation caused by your actions or omissions; or (iv) your negligence or violation or alleged violation of any law or rights of a third party.

18. Disclaimer of Warranties

THE SERVICE, INCLUDING ALL CONTENT, SOFTWARE, FUNCTIONS, MATERIALS, AND INFORMATION MADE AVAILABLE ON, PROVIDED IN CONNECTION WITH OR ACCESSIBLE THROUGH THE SERVICE, IS PROVIDED "AS IS." TO THE FULLEST EXTENT PERMISSIBLE BY LAW, Pro Music, Pro Music Inc., AND THEIR SUBSIDIARIES AND OTHER AFFILIATES, AND THEIR AGENTS, CO-BRANDERS OR OTHER PARTNERS (COLLECTIVELY, "Pro Music PARTIES"), MAKE NO REPRESENTATION OR WARRANTY OF ANY KIND WHATSOEVER FOR THE SERVICE OR THE CONTENT, MATERIALS, INFORMATION AND FUNCTIONS MADE ACCESSIBLE BY THE SOFTWARE USED ON OR ACCESSED THROUGH THE SERVICE, OR FOR ANY BREACH OF SECURITY ASSOCIATED WITH THE TRANSMISSION OF SENSITIVE INFORMATION THROUGH THE SERVICE. EACH Pro Music PARTY DISCLAIMS WITHOUT LIMITATION, ANY WARRANTY OF ANY KIND WITH RESPECT TO THE SERVICE, NONINFRINGEMENT, MERCHANTABILITY, OR FITNESS FOR A PARTICULAR PURPOSE. THE Pro Music PARTIES DO NOT WARRANT THAT THE FUNCTIONS CONTAINED IN THE SERVICE WILL BE UNINTERRUPTED OR ERROR FREE. THE Pro Music PARTIES SHALL NOT BE RESPONSIBLE FOR ANY SERVICE INTERRUPTIONS, INCLUDING, BUT NOT LIMITED TO, SYSTEM FAILURES OR OTHER INTERRUPTIONS THAT MAY AFFECT THE RECEIPT, PROCESSING, ACCEPTANCE, COMPLETION OR SETTLEMENT OF PAYMENT TRANSACTIONS OR THE SERVICE.

19. Limitations of Liability; Force Majeure

IN NO EVENT SHALL ANY Pro Music PARTY BE RESPONSIBLE OR LIABLE TO BUYER OR ANY THIRD PARTY UNDER ANY CIRCUMSTANCES FOR ANY INDIRECT, CONSEQUENTIAL, SPECIAL, PUNITIVE OR EXEMPLARY, DAMAGES OR LOSSES, INCLUDING BUT NOT LIMITED TO DAMAGES FOR LOSS OF PROFITS, GOODWILL, USE, DATA, OR OTHER INTANGIBLE LOSSES WHICH MAY BE INCURRED IN CONNECTION WITH ANY Pro Music PARTY OR THE SERVICE, OR ANY GOODS, SERVICES, OR INFORMATION PURCHASED, RECEIVED, SOLD, OR PAID FOR BY WAY OF THE SERVICE, REGARDLESS OF THE TYPE OF CLAIM OR THE NATURE OF THE CAUSE OF ACTION, EVEN IF THE Pro Music PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGE OR LOSS. IN NO EVENT SHALL THE Pro Music PARTIES' TOTAL CUMULATIVE LIABILITY ARISING FROM OR RELATING TO THIS AGREEMENT EXCEED THE NET FEES Pro Music HAS ACTUALLY RECEIVED AND RETAINED FROM THE BUYER'S VALID PAYMENT TRANSACTIONS DURING THE THREE MONTH PERIOD IMMEDIATELY PRECEDING THE DATE OF THE CLAIM. Each party acknowledges that the other party has entered into this Terms of Service relying on the limitations of liability stated herein and that those limitations are an essential basis of the bargain between the parties. In addition to and without limiting any of the foregoing, no Pro Music Party shall have any liability for any failure or delay resulting from any condition beyond the reasonable control of such party, including but not limited to governmental action or acts of terrorism, earthquake, fire, flood or other acts of God, labor conditions, power failures and Internet disturbances.

20. Jurisdiction; Governing Law

This Terms of Service shall be governed by the laws of Alaska, except for Alaska's choice of law rules, and applicable federal United States laws. Each party agrees to submit to personal and exclusive jurisdiction of the courts located in Fairbanks, Alaska. The parties specifically exclude from application to the Terms of Service the United Nations Convention on Contracts for the International Sale of Goods and the Uniform Computer Information Transactions Act.

21. Notice

In addition to the electronic communications authorized under the Section entitled, "Use of Electronic Communications", statements, notices and other communications to Buyer may be made by mail, email, postings on the Pro Music Web Site or other reasonable means. We may also provide notices of changes to the Terms of Service or other matters by displaying links to notices on the Pro Music Web Sites. Notice to Pro Music may be made by mail to:

Pro Music Inc.

Attn: Pro Music Checkout

300 Front St.

Fairbanks, AK 99701

22. Modification of Terms of Service for Buyers

We have the right, in our sole and absolute discretion, to change, modify, or amend any portion of this Terms of Service at any time by posting notification on a Pro Music Web Site or otherwise communicating the notification to you. The changes will become effective, and shall be deemed accepted by you, after the initial posting and shall apply on a going-forward basis with respect to Payment Transactions initiated after the posting date. In the event that you do not agree with any such modification, your sole and exclusive remedy is to terminate your use of the Service.

23. Assignment

You may not assign this Terms of Service or any rights or obligations hereunder, by operation of law or otherwise, without our prior written approval and any such attempted assignment shall be void. We reserve the right to freely assign this Terms of Service and the rights and obligations hereunder, to any third party without notice or consent. Subject to the foregoing, this Terms of Service shall be binding upon and inure to the benefit of the parties hereto, their successors and permitted assigns.

24. Survival

Upon termination of your use of the Service or termination of this Terms of Service for any reason, in addition to this section, the following sections shall survive termination: 3, 5, 7, 8, 10, 12 through 21, and 25.

25. Other Provisions

The failure of Pro Music to exercise or enforce any right or provision of the Terms of Service shall not constitute a waiver of such right or provision. If any provision of this Terms of Service shall be adjudged by any court of competent jurisdiction to be unenforceable or invalid, that provision shall be limited or eliminated to the minimum extent necessary so that this Terms of Service shall otherwise remain in full force and effect and remain enforceable between the parties. Headings are for reference purposes only and

in no way define, limit, construe or describe the scope or extent of such section. This Terms of Service, including Pro Music's policies governing the Service referenced herein, constitutes the entire agreement between Pro Music and Buyer with respect to Buyer's use of the Service. This Terms of Service is not intended and shall not be construed to create any rights or remedies in any parties other than Buyer and Pro Music, Pro Music Inc., and other Pro Music affiliates which each shall be a third party beneficiary of this Terms of Service for Buyers, and no other person shall assert any rights as a third party beneficiary hereunder.