

Terms and Conditions

MUSIC FACTORY ENTERTAINMENT GROUP LIMITED T/A 'PURE ENERGY' ('PE')

Standard Terms and Conditions ('Agreement')

1. The Subscriber applies to subscribe to one (1) of the services offered as PE's Subscription Service (known as Pure & Essential, Pure & Active or Pure & Physical) in respect of the work-out products produced by PE for the PE Subscription Service (known as the 'Copyright Product') and the additional PE products and services as may be provided to Subscriber (known as the 'Additional Product') (known collectively as the 'Subscription Service' and as detailed in paragraph 4 below) and PE accepts Subscriber's application to the Subscription Service subject to paragraph 2 below.

2. Regardless of the above the Subscriber's application to the Subscription Service will not be accepted until the Subscriber has completed and delivered to PE the relevant application form to the satisfaction of PE. For the avoidance of doubt PE shall have sole and absolute discretion to accept or refuse an application for the Subscription Service from a potential subscriber.

3. The Subscriber will be bound by the terms and conditions of this Agreement and the Subscription Service will remain in existence for a minimum of Twelve (12) months from the date of receipt by PE of an accepted application form from Subscriber (known as the 'Initial Period') and will then automatically continue until either party gives thirty (30) days written notice to the other (known collectively as the 'Term').

4. In consideration of the Subscriber's application as set out in paragraph 1 above and of the payment by the Subscriber of the Fee referred to in paragraph 5 below (as defined below), PE shall enrol the Subscriber to the applicable Subscription Service which will entitle the Subscriber to membership to the applicable so-called 'Pure Energy' membership during the Initial Period and / or Term (as applicable), entitling the Subscriber to the following:-

(a) Access to members area on the Pure Energy web site to view or download unlimited online downloads including choreography;
(b) to obtain access to the members area of the PE website;
(c) to receive PE Fitness discounts (as available from time to time);
(d) to receive a PPL 200 / 200 Plus Licence (as applicable) providing the Subscriber with the right to publicly perform the copyright recordings contained on the Copyright Product for the purposes of holding aerobic and/or fitness and/or dance classes. For the avoidance of doubt it is acknowledged between the parties to this Agreement that the subscription to the Subscription Service includes a minimum usage Phonographic Performance Limited annual fee for the use of the PPL 200 / 200 Plus Licence (as applicable) which allows the Subscriber to publicly perform the copyright recordings contained in the Copyright Product (for the purposes laid out above) at any PRS licensed public venue. It is also acknowledged between the parties that the right to publicly perform the copyright recordings will cease to exist immediately upon expiration of the Initial Period and / or Term (as applicable) or earlier termination of this Agreement;
(e) to receive Copyright Product as advertised via the Pure Energy Update and / or Pure Energy Flyers and / or Pure Energy web site (where applicable).

5. In consideration of the provision by PE of the Subscription Service and Copyright Product (as applicable) as detailed in paragraph 4 above, the Subscriber shall pay to PE the following sums:-

(a) the annual subscription fee of (i) Two Hundred and Eight Pounds Sterling Twelve Pence (£208.12) in respect of the Subscription Service known as 'Pure & Essential', (b) Two Hundred and Fifty Three Pounds Sterling Five Pence (£253.05) in respect of the Subscription Service known as 'Pure & Active', (c) Two Hundred and Ninety Seven Pounds Sterling Nine Pence (£297.99) in respect of the Subscription Service known as 'Pure & Physical' (individually and collectively known as the 'Fee').

(i) The Fee referred to in paragraph 5 (A) above will be payable by one of the following methods only:-

(a) monthly direct debit, to be paid over Twelve (12) calendar months, set up by the Subscriber completing and submitting to PE the 'Pure Energy' Direct Debit Mandate (a copy of which is provided with the application form) or;

(b) credit card payment via PE's credit line (by telephoning PE on 01709 710022 and requesting the 'PE Credit Card Line') such payment to be made using the so-called 3-digit 'CV2' number on the back of the credit card, or;

(c) a cheque made payable to 'The Music Factory Entertainment Group Limited'. Post dated cheques will not be accepted unless agreed with PE prior to the placing of the order.

(B) the cost of the public performance licence (incorporated in the Fee (as applicable)) is regulated by PPL and is subject to annual review on the first day of May each year in line with the official retail price index. PE will be entitled to automatically vary Subscribers' annual fee by the same amount imposed on PE by PPL, such adjustment to be made at the next following renewal date.

(C) For the avoidance of doubt any payment by credit card or cheque must be made as one (1) single payment for the full Fee due and must be paid at the time of placing the order with PE.

(D) To further avoid doubt in the event that Subscriber pays for the Fee via monthly direct debit Subscriber acknowledges that the monthly payments will be divided into equal payments.

Further, where Subscriber opts to pay the Fee via direct debit Subscriber also acknowledges that they are required to provide PE with a valid credit card number (including the so-called 3-digit 'CV2' number) and in the event that any direct debit payment is declined for any reason whatsoever, Subscriber agrees to authorise PE to charge any such declined payment to such credit card.

(G) In the event that any direct debit / credit card payment be rejected PE reserve the right to charge Subscriber a Ten Pounds Sterling (£10) administration charge, such charge to be applicable each and every time Subscriber's direct debit / credit card payment is rejected.

6. In respect of Copyright Product exceeding the Fee (as applicable) and product purchased and not included in paragraph 4 above (known as 'Additional Product') the Subscriber will pay to PE the relevant fee(s) as specified in the Pure Energy Update and / or Pure Energy Flyers and / or Pure Energy web site (as applicable). The payment of such fee(s) to be made by the following methods only:-

(a) credit card payment to PE's credit line (by telephoning PE on 01709 710022 and requesting the 'Pure Energy Credit Card Line') such payment to be made using the so-called 3-digit 'CV2' number on the back of the credit card, or;

(b) a cheque made payable to 'Music Factory Entertainment Group Limited'. Post dated cheques will not be accepted unless agreed with PE prior to the placing of the order.

(c) To avoid doubt any payment by credit card or cheque must be made as one (1) single payment for the full fee due and will be paid at the time of placing the order with PE.

7. It is acknowledged that in the event that Subscriber does not allocate the Copyright Product, the amount remaining will be carried over to the following renewal year and the Subscriber shall be entitled to access such Copyright Product during renewal year.

8. The Subscriber hereby warrants, undertakes and represents with PE as follows:-

(a) The Subscriber will not copy, re-record, edit, rent, hire, lend, exchange, broadcast, transmit, sell or re-sell or otherwise deal in any manner whatsoever with the Copyright Product and/or Additional Product or any part of such, which would infringe the rights of the copyright owners of the recordings (or any applicable licensees) contained in the Copyright Product and/or Additional Product (as applicable).

(b) The Subscriber will not publicly perform or broadcast the recordings contained in the Copyright Product and / or Additional Product other than in accordance with the PE Subscription Service/PPL licence (as specified in paragraph 4 (e) above).

(c) The Subscriber will indemnify and keep PE indemnified against all losses, damages, claims, costs and expenses (including without limitation legal costs) arising out of any breach or alleged breach or act or omission or default of the Subscriber's obligations warranties representatives and/or undertakings contained within this Agreement. PE will not be liable for any act and/or omissions of the Subscriber and the Subscriber agrees to keep PE fully informed of any claims by third parties which arise as a result of an act and/or omission by Subscriber.

(d) It is acknowledged by the Subscriber that the trading name 'Pure Energy' and any PE logo(s) are registered trademarks belonging to Music Factory Entertainment Group Limited and the Subscriber covenants not to trade or otherwise deal under such name and/or logo at any time except that it is acknowledged by the parties to this Agreement that during the Initial period and/or Term (as applicable) the Subscriber shall be entitled to advertise the use by the Subscriber of PE PPL approved work-out mix CDs under the Subscription Service only.

(e) It is acknowledged by the Subscriber that the Copyright Product and/or Additional Product and all the intellectual property rights contained in such will at all times, including but not limited to, during the Initial Period and/or the Term (as applicable) remain the exclusive property of PE and PPL and PE's supply of the Copyright Product and/or Additional Product to the Subscriber will not imply or be construed in any way whatsoever as ownership of any rights in the Copyright Product and/or Additional Product by the Subscriber. For the avoidance of doubt it is also acknowledged by the parties to this Agreement that the rights granted by PE to the Subscriber will be by way of a license for Subscriber to use the Copyright Product and/or Additional Product (strictly in accordance with the rules of any applicable public performance rights association) and such licence will be revocable by PE upon the Subscriber's default of any of the provisions contained in this Agreement.

(f) The Subscriber warrants that their use of the Copyright Product and/or Additional Product will be in accordance with one (1) of the following purposes only;

(a) to teach fitness classes as a qualified fitness instructor holding a nationally recognised Exercise to Music Qualification, Part of an NVQ Level 2 or equivalent thereof,

(b) to teach fitness classes as a trainee fitness instructor training to become a qualified fitness instructor;

(c) to use for private domestic use only.

(g) It is acknowledged by the Subscriber that they must immediately inform PE, in writing, of any change of address (from that address provided at the time of applying for the Subscription Service) during the Initial Period and / or the Term (as applicable).

9. PE warrants represents and undertakes with the Subscriber as follows:-

(a) that PE will obtain all necessary consents for the use of the recordings contained in the Copyright Product and/or Additional Product.

(b) that, except for fees and other payments relating to public performance income, PE will be responsible for paying or procuring payment to all third parties claiming rights in the recordings contained in the Copyright Product and/or Additional Product and the musical compositions contained within such.

10. Regardless of anything to the contrary in this Agreement this Agreement will automatically terminate in the event that:-

(a) the Subscriber is in breach of any or all of the terms or conditions of this Agreement or if the Subscriber goes into liquidation or a petition in bankruptcy is entered against the Subscriber;

(b) the Subscriber fails to pay all and any sums due in relation to the provisions of PE's Standard Terms and Conditions within Thirty (30) days after such sums are due whether or not such sums are demanded by PE;

(c) upon the Subscriber giving to PE not less than Thirty (30) days written notice to terminate this Agreement prior to the expiry of the Initial Period or prior to expiry of the relevant renewal date of the Term;

(d) regardless of anything to the contrary in this Agreement PE reserves the right in any event to terminate this Agreement at any time, upon Thirty (30) days written notice, however, in the event that such termination takes place prior to the expiry of the relevant period for which the Subscriber has paid PE in relation to the Subscription Service, PE shall reimburse the Subscriber with that part of any monies paid in relation to the Subscription Service relating to the unexpired period.

(e) Regardless of anything to the contrary in this Agreement in the event that Subscriber fails to pay to PE any monies outstanding in accordance with this Agreement Subscriber acknowledges and agrees that PE has the option to forward his/her details to PE's debt collection agency for recovery of any such monies.

11. The Subscriber acknowledges that PE has a licence agreement with Phonographic Performance Limited (PPL) and agrees to and understands that his / her name will be forwarded to PPL.

12. (a) This Agreement will be deemed to supersede and replace any previous agreements issued by PE in relation to the Subscription Service (whether verbal or written).

(b) It is acknowledged and agreed by the parties to this Agreement that this Agreement is personal to the Subscriber and that the Subscriber may not assign or otherwise dispose of this Agreement without the prior written consent of PE. PE may assign the benefit of this Agreement.

(c) In the event that either party terminates this Agreement in accordance with the above provisions the party terminating this Agreement must give written notice detailing the termination which must be sent via registered post to the other party's address. In the event that PE terminates this Agreement notice will be deemed to be received by Subscriber two (2) days following the date of postage and in the event that Subscriber terminates this Agreement notice will be deemed to be received by PE upon the receipt by Subscriber of written confirmation of such termination.

For the avoidance of doubt PE's address for this purpose is Music Factory Entertainment Group Limited, Hawthorne House, Fitzwilliam Street, Parkgate, Rotherham, South Yorkshire, S62 6EP. The Subscriber's address for this purpose will be that postage address provided by the Subscriber when applying for the Subscription Service.

(d) It is acknowledged and agreed that PE will be entitled to amend, vary, alter or change the provisions of this Agreement at any time, any such amendment, variation, alteration or change to be notified to the Subscriber at the earliest opportunity. Any such amendment, variation, alteration or change will be deemed to be automatically incorporated into this Agreement as an addendum and shall not affect the validity of any other provisions of this Agreement which shall remain in full and effective force.

(e) For the avoidance of doubt it is acknowledged that any warranties (except for paragraph 8(g) above, given by the Subscriber shall remain in force following the expiry or termination in accordance with the provisions of this Agreement.

(f) In the event that any provision of this Agreement is declared to be void or unenforceable then that provision will be removed from this Agreement and the remaining provisions will continue in full force and effect.

(g) This Agreement will not constitute or be deemed to form a partnership or joint venture between the parties to this Agreement.

(h) All expressions contained in this Agreement will, unless defined herein or otherwise expressed as being to the contrary, have the meanings generically ascribed to them in the United Kingdom entertainment industry.

(i) This Agreement will be governed by the laws of England and the English Courts will have jurisdiction.