

Distribution Agreement between user and Swirly Music LLC

Welcome to Swirly Music. The Swirly Music website (the “Site”) is comprised of various web pages operated by Swirly Music LLC, (“Swirly Music.”). The tools, functions and services of Swirly Music are offered to you conditioned on your acceptance without modification of the terms, conditions, and notices contained herein (the “Terms”). Your use of Swirly Music constitutes your agreement to all such Terms. Please read these terms carefully, and keep a copy of them for your reference. Because these Terms may be modified in the future, we ask you to review the Terms often.

These Terms apply to members who intend to post their sheet music for distribution and sale, along with their various marketing content and links to marketing related third party website content.

We may post user guidelines, policies or rules (collectively referred to as “guidelines) on our site. All such guidelines are incorporated by reference as if fully set forth within these Terms.

Swirly Music is an Ecommerce Site and an Advertising Platform only.

Swirly Music offers a convenient solution for self-published composers to make their work available in print for purchase online. Swirly Music is not a music publisher, merely a distributor and advertising platform for your printable compositions and related content. Swirly Music will not, and is under no obligation, to provide music-publishing services to you. As such, Swirly Music will not be involved with the negotiation of any performance license of your compositions and we are not associated in any manner with the Harry Fox Agency. We will also not endeavor to perfect or protect your copyrights and you agree that we do not have any obligation regarding protecting your intellectual property from infringement nor do we have any duty to enforce your copyrights via a copyright infringement action or any other legal cause of action. Any music that you place on Swirly Music is potentially available to copyright infringement, as such, it is your duty and responsibility to ensure that you have registered the copyright for each of your compositions with Copyright.gov prior to the publication of your compositions via Swirly Music.

You agree to proceed to Copyright.gov before making any composition available for sale on Swirly Music and you agree to read the FAQs about copyrights that are published on Copyright.gov and to register each and every copyright via Copyright.gov prior to making your copyrighted material available for purchase on Swirly Music. Your legal rights are greatly reduced if infringement takes place prior to copyright registration. Please see Copyright.gov for further details.

You must possess the legal right to sell the sheet music you place on Swirly Music for sale. Should you place sheet music (or any other copyrighted material of any nature) that you do not have the legal right to sell, distribute or publish on the Swirly Music Site, we will ban you from the site and we will not refund your membership fees.

Electronic Communications

Visiting Swirly Music or sending emails to Swirly Music constitutes electronic communications. You consent to receive electronic communications and you agree that all agreements, notices, disclosures and other communications that we provide to you electronically, via email and on the Site, satisfy any legal requirement that such communications be in writing.

Your account

If you use this site, you are responsible for maintaining the confidentiality of your account and password and for restricting access to your computer, and you agree to accept responsibility for all activities that occur under your account or password. You may not assign or otherwise transfer your account to any other person or entity. You acknowledge that Swirly Music is not responsible for third party access to your account that results from theft or misappropriation of your account. Swirly Music and its associates reserve the right to refuse or cancel service, terminate accounts, or remove or edit content in our sole discretion.

Swirly Music does not knowingly collect, either online or offline, personal information from persons under the age of thirteen. If you are under 18, you may use Swirly Music only with permission of a parent or guardian.

Membership Fees

Swirly Music imposes a membership fee to those users who wish to offer their compositions and scores for sale to the general public. The current fee schedule, which is subject to change, is posted on our Site.

Payments to Composer Members

We are required to report payments to the IRS under certain circumstances. This may require us to obtain your tax ID in order for us to file the appropriate IRS 1099 form or other legal tax document. Payments for the sale of your music shall be made on a monthly basis. You shall be paid forty percent (40%) of all sales of your music. Should your membership fee be in arrears, you authorize Swirly Music to deduct any such arrearages from sales proceeds owed to you by Swirly Music. Swirly Music reserves the right to cancel any sale and to refuse to make payment for any sale where Swirly Music, in its sole discretion, has deemed that the sale is due to the unauthorized use of any credit card or financial account.

Cancellation/Refund Policy

We offer the consumers who purchase your sheet music a refund policy. They may return any item purchased if it is defective or if they have not actually received their order due to a shipping mistake. Although we limit refunds to "14 days of receipt," we may receive credit card charge backs at any time after a sale. All charge backs will be debited from your account.

Your Content

We do not own the copyright to any of your content, including your sheet music and marketing and biographical content. You may remove your content at anytime but Swirly Music must fulfill any sales that have been made prior to the removal of your content.

Third Party Fulfillment

Certain services made available via Swirly Music are delivered by third party sites and organizations, such as the Printing on Demand service providers we contract with.

By using any product, service or functionality originating from the Swirly Music domain, you hereby acknowledge and consent that Swirly Music may share such information and data with any third party with whom Swirly Music has a contractual relationship to

provide the requested product, service or functionality on behalf of Swirly Music users and customers as may be needed.

Privacy Policy

Swirly Music provides you with a privacy policy. Please review this important document prior to using our tools, services or functions and prior to obtaining a membership.

No unlawful or prohibited use of any Intellectual Property

You are granted a limited, non-exclusive, non-transferable, revocable license to access and use the Swirly Music tools, functions and services (but not the copyrighted compositions found herein) strictly in accordance with these terms of use. As a condition of your use of the Site, you warrant to Swirly Music that you will not use the Site for any purpose that is unlawful or prohibited by these Terms. You may not use the Site in any manner which could damage, disable, overburden, or impair the Site or interfere with any other party's use and enjoyment of the Site. You may not obtain or attempt to obtain any materials or information through any means not intentionally made available or provided for through the Site.

All content included as part of the Service, such as text, graphics, logos, images, as well as the compilation thereof, and any software used on the Site, is the property of Swirly Music or its suppliers and protected by copyright and other laws that protect intellectual property and proprietary rights. You agree to observe and abide by all copyright and other proprietary notices, legends or other restrictions contained in any such content and will not make any changes thereto.

You will not modify, publish, transmit, reverse engineer, distribute, participate in the transfer or sale, create derivative works, or in any way exploit any of the content, tools, services or functions in whole or in part, found or offered through the Site. Swirly Music content is not for resale. Your use of the Site does not entitle you to make any unauthorized use of any content, and in particular you will not delete or alter any proprietary rights or attribution notices in any content.

Purchased and Viewed Scores

Swirly Music may offer users the ability to view all or part of any score prior to purchase. This means that users may be able to copy your sheet music without purchasing it. We think this is not a significant problem in that a screen-captured version of your sheet music is not particularly useful. However, this exposure of your sheet music may allow users to view parts of your melodies and other elements of your composition, which they might illegally use in their own compositions. You assume this risk by placing your sheet music on Swirly Music. However, anyone who views sheet music at a bookstore, or anyone who purchases sheet music from any store, could also decide to infringe your copyright.

Your best protection against potential copyright infringement is to make sure that your compositions are registered with the United States Copyright office (copyright.gov.) Any publication or distribution of any sheet music carries an inherent risk of copyright infringement.

Please make sure that you have registered with a performance right organization. In the United States, you have three to select from: ASCAP, BMI and SESAC.

Regarding the copyright to each composition or score

Swirly Music does not own the copyright to the compositions or scores that are placed on the Swirly Music site by you. All such copyrights remain solely owned by their individual owner. Each user who places any such copyrighted composition or score upon Swirly Music grants Swirly Music a limited, revocable, transferable license to publish the composition in its entirety on the Internet via our Site, and to distribute the music via sales to consumers. Each copyright owner who places their scores or compositions on Swirly Music assumes the risk of copyright infringement and agrees that they HOLD Swirly Music HARMLESS from any losses, damages, statutory awards, attorney's fees, fees, and costs related to any third party copyright infringement.

International Users

The Service is controlled, operated and administered by Swirly Music from our offices within the USA. If you access the Service from a location outside the USA, you are responsible for compliance with all local laws. You agree that you will not use the Swirly Music Content accessed through Swirly Music in any country or in any manner prohibited by any applicable laws, restrictions or regulations.

Intellectual Property owned by Swirly Music

All intellectual property owned by Swirly Music, including trademarks, trade dress, copyrights, patents, ideas, concepts and inventions belong solely to Swirly Music and may not be used, copied, distributed, or published without the prior written consent of Swirly Music.

Indemnification

You agree to indemnify, defend and hold harmless Swirly Music, its officers, directors, employees, agents and third parties, for any losses, costs, liabilities and expenses (including reasonable attorneys' fees) relating to or arising out of your use of or inability to use the Site or services, any user postings made by you, your violation of any terms of this Agreement or your violation of any rights of a third party, or your violation of any applicable laws, rules or regulations. Swirly Music reserves the right, at its own cost, to assume the exclusive defense and control of any matter otherwise subject to indemnification by you, in which event you will fully cooperate with Swirly Music in asserting any available defenses.

Swirly Music may not be operational 100% of the time. While we endeavor to keep downtime to a minimum, we are not responsible for any reduction in sales that take place due to our being offline for maintenance, or during events that are out of our reasonable control, such as denial of service attacks or other internet interruptions.

Keep copies of your PDFs on a separate computer. We are not responsible for any loss of your content should we suffer data base losses.

Liability disclaimer

THE INFORMATION, SOFTWARE, PRODUCTS, AND SERVICES INCLUDED IN OR AVAILABLE THROUGH THE SITE MAY INCLUDE INACCURACIES OR TYPOGRAPHICAL ERRORS. CHANGES ARE PERIODICALLY ADDED TO THE INFORMATION HEREIN. SWIRLY MUSIC, AND/OR ITS SUPPLIERS MAY MAKE IMPROVEMENTS AND/OR CHANGES IN THE SITE AT ANY TIME.

SWIRLY MUSIC AND/OR ITS SUPPLIERS MAKE NO REPRESENTATIONS ABOUT THE SUITABILITY, RELIABILITY, AVAILABILITY, TIMELINESS, AND ACCURACY

OF THE INFORMATION, SOFTWARE, PRODUCTS, SERVICES AND RELATED GRAPHICS CONTAINED ON THE SITE FOR ANY PURPOSE. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, ALL SUCH INFORMATION, SOFTWARE, PRODUCTS, SERVICES AND RELATED GRAPHICS ARE PROVIDED "AS IS" WITHOUT WARRANTY OR CONDITION OF ANY KIND. SWIRLY MUSIC, AND/OR ITS SUPPLIERS HEREBY DISCLAIM ALL WARRANTIES AND CONDITIONS WITH REGARD TO THIS INFORMATION, SOFTWARE, PRODUCTS, SERVICES AND RELATED GRAPHICS, INCLUDING ALL IMPLIED WARRANTIES OR CONDITIONS OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE AND NON-INFRINGEMENT.

TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, IN NO EVENT SHALL SWIRLY MUSIC AND/OR ITS SUPPLIERS BE LIABLE FOR ANY DIRECT, INDIRECT, PUNITIVE, INCIDENTAL, SPECIAL, CONSEQUENTIAL DAMAGES OR ANY DAMAGES WHATSOEVER INCLUDING, WITHOUT LIMITATION, DAMAGES FOR LOSS OF USE, DATA OR PROFITS, ARISING OUT OF OR IN ANY WAY CONNECTED WITH THE USE OR PERFORMANCE OF THE SITE, WITH THE DELAY OR INABILITY TO USE THE SITE OR RELATED SERVICES, THE PROVISION OF OR FAILURE TO PROVIDE SERVICES, OR FOR ANY INFORMATION, SOFTWARE, PRODUCTS, SERVICES AND RELATED GRAPHICS OBTAINED THROUGH THE SITE, OR OTHERWISE ARISING OUT OF THE USE OF THE SITE, WHETHER BASED ON CONTRACT, TORT, NEGLIGENCE, STRICT LIABILITY OR OTHERWISE, EVEN IF SWIRLY MUSIC OR ANY OF ITS SUPPLIERS HAS BEEN ADVISED OF THE POSSIBILITY OF DAMAGES. BECAUSE SOME STATES/JURISDICTIONS DO NOT ALLOW THE EXCLUSION OR LIMITATION OF LIABILITY FOR CONSEQUENTIAL OR INCIDENTAL DAMAGES, THE ABOVE LIMITATION MAY NOT APPLY TO YOU. IF YOU ARE DISSATISFIED WITH ANY PORTION OF THE SITE, OR WITH ANY OF THESE TERMS OF USE, YOUR SOLE AND EXCLUSIVE REMEDY IS TO DISCONTINUE USING THE SITE.

Termination/access restriction/Jurisdiction

Swirly Music reserves the right, in its sole discretion, to terminate your access to the Site and the related services or any portion thereof at any time, without notice. To the maximum extent permitted by law, this agreement is governed by the laws of the State of California and you hereby consent to the exclusive jurisdiction and venue of courts in California in all disputes arising out of or relating to the use of the Site. Use of the Site is unauthorized in any jurisdiction that does not give effect to all provisions of these Terms, including, without limitation, this section.

You agree that no joint venture, partnership, employment, or agency relationship exists between you and Swirly Music as a result of this agreement or use of the Site. Swirly Music's performance of this agreement is subject to existing laws and legal process, and nothing contained in this agreement is in derogation of Swirly Music's right to comply with governmental, court and law enforcement requests or requirements relating to your use of the Site or information provided to or gathered by Swirly Music with respect to such use. If any part of this agreement is determined to be invalid or unenforceable pursuant to applicable law including, but not limited to, the warranty disclaimers and liability limitations set forth above, then the invalid or unenforceable provision will be deemed superseded by a valid, enforceable provision that most closely matches the intent of the original provision and the remainder of the agreement shall continue in effect.

Unless otherwise specified herein, this agreement constitutes the entire agreement between the user and Swirly Music with respect to the Site and it supersedes all prior or contemporaneous communications and proposals, whether electronic, oral or written, between the user and Swirly Music with respect to the Site. A printed version of this agreement and of any notice given in electronic form shall be admissible in judicial or administrative proceedings based upon or relating to this agreement to the same extent and subject to the same conditions as other business documents and records originally generated and maintained in printed form. It is the express wish to the parties that this agreement and all related documents be written in English.

Changes to Terms

Swirly Music reserves the right, in its sole discretion, to change the Terms under which Swirly Music is offered. The most current version of the Terms will supersede all previous versions. Swirly Music encourages you to periodically review the Terms to stay informed of our updates. Your use of any tool, function or service provided by Swirly subsequent to any modification or change of the Terms is your express indication to us that you agree to be bound by the modified Terms.

Invalidity of any Term or Condition

Should any term be found by a court of law to be invalid, the remainder of these terms and conditions shall remain in full force and effect.

Transfer and Assignment. You may not assign or transfer these Terms, in whole or in part, without the written authorization of Swirly Music. Swirly Music may freely transfer these Terms, in whole or in part, without any prior notice to you.

Digital Millennium Copyright Act (DMCA)

Swirly Music respects copyright law. Should you find that a user is infringing your copyright, you may send a properly drafted DMCA take down notice to us at copyright@swirlymusic.com

Upon the receipt of a properly drafted DMCA notice, we will follow the procedures as established by the DMCA law. If your DMCA notice is not compliant with the requirements of the DMCA law, we will take no action until we receive a properly drafted DMCA notice. Please consult with your attorney for assistance with the rules and regulations of the DMCA law.

Contact Us

Swirly Music welcomes your questions or comments regarding the Terms:

Swirly Music LLC
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Effective as of April 20, 2014