

Quaver Member License and Terms of Use for Online Quaver Classrooms & Homeschool Rooms



QuaverMusic.com is a website (hereinafter the "Website") that is part of **Quaver's Marvelous World of Music** and is presented to you and operated by QuaverMusic.com, LLC., a Tennessee limited liability company whose address is: 1706 Grand Avenue, Nashville, Tennessee 37212 (hereinafter referred to as "Quaver"), a division of Mastran Music Group, Inc. A portion of QuaverMusic.com containing premium content is dedicated to online classrooms and homeschool rooms for teachers and homeschoolers.

Quaver and any and all entities that control, are controlled by, or are affiliated or under common control with Quaver are collectively referred to herein as "we," "us," or "our". "Quaver Sites" shall mean any and all portions of the Internet site of Quaver or its affiliated entities.

This document sets forth the terms and conditions of the Quaver Member License and Terms of Use for Online Quaver Classrooms & Online Quaver Homeschool Rooms.

1. DEFINITIONS

For the purposes of this website license agreement (hereinafter the "Agreement"), the following terms shall have the following meanings: "Service(s)" shall mean the use of the Website and improved versions of the materials introduced by Quaver from time to time during the Term. The "Member" shall mean the licensee who has purchased this non-exclusive membership license to access the premium portion of the Website for Online Quaver Classrooms & Homeschool Rooms for both school and home. "Participating Students" means the participating student-users who access the Services pursuant to this member license purchased by the member.

2. BACKGROUND

This non-exclusive membership license is granted by Quaver for the access and use of the Website by the Member and the Participating Student(s). The Agreement conveys the Member with a limited time membership license which provides the right to access premium content on the Website for the purpose of providing an interactive classroom/homeschool room teaching experience for Participating Student(s) in the subjects of music history, music theory, music style, and related topics.

By clicking a box below that states that the Member accepts or agrees to these terms and by paying the licensing fee noted below, the Member acknowledges and agrees to the terms and conditions of this Agreement.

3. QUAVER MEMBER USAGE AND PRIVILEGES

A corresponding virtual “classroom” or “homeschool room” has been developed by Quaver for each qualifying Quaver DVD episode and is produced at QuaverMusic.com by Quaver. The purchase of a qualifying Quaver DVD provides the Member with a gratis license to access the Services associated with the two corresponding Online Quaver Classrooms or Online Quaver Homeschool Rooms for a period of one (1) year following the e-mail or credit card activation of the gratis license (the “gratis period”). Alternatively, the license can be activated at any time by the Member and remain valid for one year thereafter.

After the expiration of the gratis period, the Member will be required to purchase a separate member license for each virtual “classroom” or “homeschool room” in order to continue access to the Service(s). Each member license (including the licenses activated during the gratis period) entitles the Member to access the Services hereunder for an unlimited number of Participating Students on an unlimited number of computer terminals located where the Member uses the license.

Each separate virtual online “classroom” or “homeschool room” requires the purchase of a separate membership license and the payment of the license fee noted below. An e-mail will be sent by Quaver to the Member which will provide a unique access code which will be used on all computers licensed by the Member. Each membership license entitles the Member’s Participating Students to the use of the non-downloadable audio and video content as well as the limited reproduction of the materials published on the Website. The Member is hereby granted access and may use the online tests for their participating students, print the pages for their participating students, and use the teaching presentations and audio-visual content for their participating students.

4. TERM AND LICENSING FEE

4.1 The effective term for each membership license purchased hereunder shall be for one year or twelve calendar months. Each membership license may be renewed for separate and successive years. The number of consecutive years purchased defines the term (sometimes referred to hereunder as the “Term”).

4.2 This Agreement may be terminated at any time upon mutual written agreement of the parties; by Quaver upon thirty (30) days written notice to the Member for failure by the Member to make payment due, unless such failure is cured within the fifteen (15) day period; or by either party if (i) the other party is in material breach of its obligations hereunder and such breach continues uncured for a period of thirty (30) days after written notice to the defaulting party, or (ii) the other party makes a general assignment for the benefit of its creditors, appoints or has appointed a receiver, trustee in bankruptcy or similar officer to take charge of all or part of its property, files or has a petition filed against it in any bankruptcy (unless such petition is dismissed within sixty (60) days of its filing), and/or is adjudged insolvent or bankrupt.

4.3 The price for each member license per year (for one classroom or one homeschool room) is eight dollars (\$8.00) USD (hereinafter the “Licensing Fee”). Prices do not include applicable sales or use taxes which shall be separately stated on our invoices and borne by The Member. The Licensing Fee shall be payable via credit card or other payment method established by Quaver.

4.4 Quaver reserves the right to change the prices at any time.

5. MEMBER WARRANTY

5.1 The Member warrants that all Services under this Agreement are only for use in School or in the Home, and that such Service shall not be sold nor shall title thereto be transferred to other schools or districts, other homeschool co-op groups, retail music stores, or parties other than the license rights specifically set forth in this section. Quaver shall retain all copyright, ownership right, title, and interest in the Service and any and all materials furnished to the Member pursuant to this Agreement.

5.2 Except as separately agreed to by Quaver, the Member may not modify in any way, or copy, or otherwise reproduce in any form, any programs or other materials (including any printable materials and other documentation) supplied with the Service or purchased hereunder. The Member will comply with the policies and requirements of Quaver in effect from time to time with respect to (i) the licensing by Quaver of its proprietary, protected, or confidential material and information including the QuaverMusic.com Terms of Use and Privacy Policy of the Websites and (ii) any products which are subject to one or more license agreements between Quaver and third parties.

5.3 The Services hereunder will not provide the Participating Student to anything other than the premium content associated with the Online Quaver Classrooms & Online Quaver Homeschool Rooms. In the event Quaver discovers any attempts by a Participating Student to circumvent the controls placed on the Website to prevent access to unauthorized areas, such actions will be grounds for immediate termination of the remaining Term of the membership licenses hereunder which may be effected by written notice from Quaver to the Member, and no refunds will be granted. The Member agrees to immediately inform Quaver in writing of any suspected violations or concerns under Federal COPPA laws and the Member hereby agrees to fully cooperate with Quaver's requests to remedy any such violations as soon as possible.

6. ACCOUNT, PASSWORD, AND SECURITY

The Member is responsible for maintaining the confidentiality of The Member's account identifier and password. The Member shall be responsible for all uses of its account, whether or not authorized by the Member. The Member agrees to immediately notify Quaver of any unauthorized use of its account or any other breach of security. The Member agrees to exit from its account after usual usage. The Member understands and agrees that the technical processing and transmission of any content may involve transmissions over various networks and changes to conform and adapt to technical requirements of connecting networks or devices.

7. NO RESALE OF SERVICE

The Member agrees not to reproduce, duplicate, copy, sell, resell, or exploit for any commercial purposes, any portion of the Service, use of the Service, or access to the Service without the specific written permission of Quaver.

8. PROPRIETARY NOTICES

This software and documentation constitutes several published and unpublished works and contains valuable trade secrets and proprietary information belonging to Quaver. None of the foregoing material may be copied, duplicated, or disclosed without the express written permission of Quaver.

9. PRODUCT WARRANTY, DISCLAIMER OF WARRANTIES

Quaver warrants to the Member that the Service purchased hereunder shall be free from defects in materials and workmanship and shall conform in all material respect to the specifications for a period of ninety (90) days from the date of delivery thereof, provided the Service in question has been used in accordance with ordinary industry practices and conditions. Quaver does not warrant that the operation of the service will be uninterrupted or error free. The foregoing express warranties are limited to Quaver and are not transferable and are in lieu of any other warranty by Quaver with respect to Services furnished hereunder. Quaver grants no other warranty, either express or implied, including without limitation, warranties of merchantability or fitness for a particular purpose.

10. MISCELLANEOUS

10.1 The rights and obligations of either party shall not be transferable without the prior written consent of the other party, which consent shall not be unreasonably withheld or delayed. All obligations of the parties herein shall be binding upon their respective successors or assigns.

10.2 This Agreement shall be governed by, and its terms shall be construed in accordance with, the laws of the State of Tennessee. The exclusive venue for any disputes hereunder shall be the state and federal courts located in Nashville, Tennessee.

10.3 Quaver shall have the right to modify the terms of this agreement, as needed (as reasonably determined by Quaver), in order to comply with Federal COPPA laws and any other relevant legislation including but not limited to any state or federal privacy laws.

10.4 Quaver and Member hereby indemnify the other and save and hold the other harmless from any and all claims, causes of action, damages, liabilities, costs, losses, and expenses (including legal costs and reasonable outside attorneys' fees) arising out of or connected with any claim, demand or action which is inconsistent with any of the warranties, representations, covenants, or agreements such party has made in this agreement including but not limited to any claim brought by a Participating Student (or the student's family) or any third party as a result of a failure of Licensee to obtain a valid parental consent/waiver which duly authorizes the Participating Student's participation in the Services and use of the Website pursuant to the membership license.

10.5 No waiver or breach of any term or condition of this Agreement shall operate as a waiver of any other breach of such term or condition, or of any other term or condition, nor shall any failure to enforce any provisions hereunder operate as a waiver of such provision or any other provision hereunder.

10.6 In case any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal, or unenforceable in any respect, except in those instances where removal or elimination of such invalid, illegal, or unenforceable provision or provisions would result in a failure of consideration under this Agreement, such invalidity, illegality, or unenforceability shall not affect any other provision hereof, and this Agreement shall be construed as if such invalid, illegal, or unenforceable provisions had never been contained herein.

10.7 All notices hereunder shall be in writing and shall be deemed to have been duly given and shall be effective only upon receipt. A copy of all notices to Quaver hereunder shall be sent to Amanda Thompson, 1706 Grand Ave, Nashville, TN 37212.

10.8 Headings used in this Agreement are for the purpose of reference only and are not to be considered in construction or interpretation of this Agreement.

10.9 This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall be deemed one and the same instrument.

10.10 This Agreement, including the Exhibits, contains the entire Agreement between the parties relating to the subject matter hereof. All prior agreements and all prior negotiations, representations, and communications relating to the same subject are superseded by this Agreement. This Agreement may not be modified other than by a written document signed by an authorized representative of each party.