

## TERMS OF USE, SERVICE CONDITIONS AND TERMS OF SALE

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### 1. Introduction

The Picster application (**App**) is owned and operated by Atomic Design Solutions Pty Ltd ABN [25 111 666 472](https://abn.gov.au/abn/25111666472) (trading as Atomic Design) (**Atomic, We, Us, Our**). The website at URL [www.picster.me](http://www.picster.me) or such other URL as We determine from time to time (**Picster Website**) is owned and operated by Atomic. The access by you (**You, Your**) to the Picster Website, the App, images, video and sound recordings uploaded by You or on Your behalf via the App (**Your Items**) images, video and sound recordings uploaded by third parties via the App (**Third Party Items**) and all other data and information contained in the App and/or the Picster Website from time to time (**Content**) is conditional upon Your acceptance and compliance with the terms, conditions, notices and disclaimers contained in this document (collectively known as **Terms of Use or these Terms**). Atomic reserves the right to amend the Terms of Use at any time. You agree to these Terms of Use by accessing the App and You acknowledge that such agreement is legally binding.

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### 2. Your rights and obligations

- 2.1** You may use the App to upload Your Items to the Picster server for sharing Your Items with other persons via the internet, for viewing and downloading Third Party Items which the relevant third party has authorised You to download and for other purposes outlined in the Picster Website.
- 2.2** All intellectual property and other rights in all materials constituting Your Items must be owned or be licensed to You.
- 2.3** You may remove Your Items from the Picster Website and/or App server at any time. You agree to promptly delete any of Your Items that you no longer wish to display on Picster. You must delete all of Your Items before deleting the App from all your digital devices. If Your ability to use the App or Your access to the Picster Website has been blocked, You may require Us to remove Your Items from the Picster Website and/or App server at any time upon giving us at least 48 hours written notice.
- 2.4** You must use the App in a responsible manner.
- 2.5** You must not:
- (a) use the App for any activities or post or transmit via the App, any information or materials which breach any laws or regulations, infringe a third party's rights, or are contrary to any relevant standard or codes;
  - (b) use the App to post or transmit any material which interferes with other users or defames, harasses, threatens, menaces, offends or restricts any person or which inhibits any user from accessing and/or using the App or the Internet;
  - (c) use the App to post or transmit any material which is pornographic, lewd, violent, demeaning or generally inappropriate for public exhibition;
  - (d) use the App to send unsolicited email messages;
  - (e) in any way tamper with, hinder or modify the App;
  - (f) knowingly transmit any viruses or other disabling features to the App or via the App;
  - (g) attempt to derive revenue directly from use of the App without first obtaining Atomic's written consent - which consent may be conditional upon entering into a short agreement for the payment of royalties;
  - (h) attempt any of the above acts or facilitate or assist another person to do any of the above acts; and
  - (i) use the App in any manner which is prohibited by the Terms of Use, use the App for any unlawful purpose, or in any manner, which violates any right of Atomic (or an associated entity), another user of the App, or any other third party.
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### **3. Copyright and trade mark notice**

- 3.1** Copyright in the Content, the software used in, the design of, and the text and graphics used in the App and/or Picster Website and the selection and layout of the App and/or Picster Website and the trade marks appearing in the Content including without limitation *PICSTER* whether registered or unregistered (**Trade Marks**) are owned by or licensed to Atomic and protected by international laws. The making available of access to and use of the App does not constitute the grant of a licence to use of any of the Trade Marks. The express written permission of the trade mark owner must first be obtained for any such use.
- 3.2** You may view the App and its contents using Your Web browser. In accessing and/or using the App, You are able to save an electronic copy of the App by means of the usual operation of Your Web browser only.
- 3.3** You may print, copy, download and view materials on the App subject to:
- (a) the material being used in a manner reasonably anticipated by Atomic;
  - (b) the material being used strictly only for personal social or business promotion purposes; and
  - (c) the material not being modified in any way.
- 3.4** As between You and Atomic, You own all copyright and other rights of like nature in and to Your Items.
- 3.5** As between You and Atomic, Atomic owns all copyright and other rights of like nature in and to Third Party Items.
- 3.6** You must not modify, copy, reproduce, republish, frame, upload to a third party, post, transmit or distribute the Content or any part of the App in any way except as expressly provided for by Atomic in these Terms of Use.

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### **4. Links to or from other apps**

Certain pages of the App may contain links to external apps or websites. Such links are for the convenience of users only. Atomic accepts no responsibility for or liability in respect of the content of those apps or websites. Atomic should not be taken as having reviewed or approved such apps or websites or their content, nor does Atomic warrant that any links to such apps or websites work or are up to date. Atomic cannot and does not guarantee that an external app or website is free of viruses and therefore accepts no responsibility for any virus which may be obtained as a result of visiting those apps or websites.

The use of any such links to external apps or websites is entirely at Your own risk.

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### **5. Information does not represent professional advice**

You acknowledge and agree that information published by Atomic is intended to provide general information only which may or may not be applicable to Your particular circumstances. You agree to access the information at Your own risk and Atomic is not liable to You for the content of the information or any reliance by You on that information.

In no event will Atomic be liable to You or anyone else for any decision made or action taken by You or anyone else in reliance upon any information contained in or omitted from the App.

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### **6. Indemnity**

By accessing and/or using the App, You agree to irrevocably indemnify Atomic from and against all actions, claims, suits, demands, damages, liabilities, costs or expenses (whether in tort or in contract, including and without limitation, negligence) arising out of or in any way connected to Your use of the App or any action(s) You have taken, done or pursued in reliance upon, as a result of or in any way connected with the information You have accessed or been provided with through Your use of the App.

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### **7. Disclaimer**

- 7.1** Consumer protection laws and regulations in other states or territories may give You rights and remedies relating to the provision of goods or services to You by

Atomic via the App which cannot be excluded, restricted or modified (Your **Statutory Rights**). Atomic excludes all conditions and warranties implied by custom, law or statute except for Your Statutory Rights.

- 7.2** Except for Your Statutory Rights, in respect of the App:
- (a) all material on the App is provided to You without warranties of any kind, either express or implied;
  - (b) Atomic expressly disclaims all warranties of any kind including but not limited to implied warranties of merchantability and fitness for a particular purpose;
- 7.3** To the extent permitted by law, including but not limited to any act or omission on the part of Atomic, Atomic will not be liable for any loss, damage, costs or expense whether direct, indirect, incidental, special and/or consequential, including loss of profits, suffered by You or claims made against You which result from any use or access of, or any inability to use or access, the App.
- 7.4** You expressly acknowledge that Atomic does not exert control over users of the Internet and is not liable for damage suffered by You, either directly or indirectly, because of You accessing and/or using the App.
- 7.5** The information contained on the App is provided in good faith however, Atomic gives no representation or warranty in respect of all information You may access by Your use of the App and all such representations and warranties regarding any information available through the use of the App, whether express or implied, are excluded.
- 7.6** No liability is accepted by Atomic for any loss or damage which may arise out of any person relying on or using any information on the App. Atomic shall not be liable to any person relying on or using any such information for:
- (a) loss of revenue, loss of actual or anticipated salary; loss of actual or anticipated profits whether arising in the normal course of business or otherwise (including, without limitation, loss of profits on contracts); loss of or damage to employment prospects; loss of opportunity; loss of anticipated savings; loss of business; loss of goodwill; loss of or damage to reputation; loss of or corruption to data; legal and other professional fees and expenses; or
  - (b) any indirect or consequential loss or damages however caused (including without limitation by reason of misrepresentation, negligence, other tort, breach of contract or breach of statutory duty) which arise directly or indirectly from the subject matter of the App. However, nothing in the above shall limit or exclude Atomic's liability for fraud or for death or personal injury caused by negligence, or to the extent otherwise not permitted by law.
- 7.7** You agree fully to indemnify Atomic and keep Atomic fully indemnified against all costs, expenses, claims, losses, liabilities or proceedings arising from use or misuse by You of the App.
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## **8. No warranty**

- 8.1** We take all reasonable care in compiling the Content. However, the Content is provided 'as is' and We do not warrant or represent that it is complete, current or free from errors or omissions.
- 8.2** We cannot screen all content provided on the App and the information provided on any open discussion site or forum available through the App. We do not assume any responsibility for the content of any open discussion site or forum available through the App. We will not be responsible for any offensive language or otherwise objectionable content contained in the App.
- 8.3** We provide Our services and products with reasonable care and skill and endeavour to ensure availability of Our services and products and access to the App. However, the availability of Our services and products and access to the App may be interfered with by numerous factors, including those outside Our control (such as malfunction in equipment or software, Internet access difficulties, or delay
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or failure of transmission). Accordingly, We do not warrant or represent that Our services and products and/or Your access to the App or the Content will be continuous, uninterrupted, timely, fault free, virus free or secure.

- 8.4** If You become aware of any inaccuracies or omissions in the information on the App We would be grateful if You could bring this to Our attention by emailing us at [anthony@atomicdesign.biz](mailto:anthony@atomicdesign.biz)
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## **9. Responsibility for Your password and log-in details**

To become a registered user of the App, You must register Your details and provide a password and a log-in name. You are entirely responsible if You do not maintain the confidentiality of Your password and log-in name. Furthermore, You are entirely responsible for any and all activities that occur under Your log-in name.

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## **10. No responsibility for the security of Your information**

Atomic takes all due care in ensuring the privacy and integrity of the information You provide via the App. However, the possibility exists that Your information could be unlawfully observed by a third party while in transit over the Internet, or while stored on Atomic's systems (including servers) or on the App. Atomic disclaims all liability to You to the greatest extent possible pursuant to law should security or integrity of Your information be jeopardised.

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## **11. Use of intellectual property and information**

- 11.1** Atomic will not use, republish, alter or insert meta data or other code in any of Your Items without your express written prior consent
- 11.2** Atomic welcomes ideas and feedback from You about all aspects of the App. You agree that Atomic may use, reproduce, distribute, transmit, create derivative works of, and publicly display any information (not being Your Items) (including ideas for new or improved products and services) that You submit to any public areas of the App or by email to Atomic. (Please read the Atomic Privacy Notice for more information as to how We store and treat information You send to us).
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## **12. Membership and Competitions**

Atomic may from time to time organise competitions in which, as a member of the App, You will be entitled to participate. You acknowledge and agree that We are not responsible or liable, directly or indirectly, for any damage, loss or cost caused or alleged to be caused by or in connection with participation in or reliance on any information provided in connection with any such competition.

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## **13. Other Policies**

The Atomic [Privacy Policy](#) and the [Service Conditions and Terms of Sale](#) form part of the Terms of Use. By agreeing to these Terms of Use and accessing and/or using the App, You also agree to the terms set out in those statements.

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## **14. Termination, suspension and limitation of Your access - material breach by You**

We may suspend, terminate or limit Your access to the App at any time if You are in material breach of these Terms and:

- (a) We have told You in writing of Your breach and You have failed to remedy it within 14 days of us telling You; or
  - (b) the breach is something which cannot be remedied (in which case We can cancel the service immediately by telling You).
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## **15. Our other rights to terminate, suspend or limit Your access**

We may suspend, terminate or limit Your access to the App with as much warning as We reasonably can, if:

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- (a) We reasonably believe that there is a real risk of loss or damage to us or another if We do not suspend, terminate or limit Your access to the App;
  - (b) the law requires us to do so;
  - (c) We believe on reasonable grounds that providing You with access to the App, Third Party Items or to the Content is illegal or may become illegal; or
  - (d) there is an emergency.
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## **16. Miscellaneous**

- 16.1** The Terms of Use for use of the App are governed by and construed in accordance with the laws of the New South Wales and You agree to submit to the jurisdiction of the courts of the New South Wales in relation to any dispute regarding these Terms of Use.
- 16.2** If any of the Terms of Use are found to be unenforceable under New South Wales law, this will not affect the remainder of the Terms of Use.
- 16.3** Events outside Atomic's control will not be a breach of Atomic's obligations under these Terms of Use to the extent that any failure or delay in performing its obligations occurs because of an event or circumstance outside of Atomic's reasonable control including without limitation, any act of God, war and other hostilities, fire, flood, strikes, lock-outs, delays in transport, breakdowns in machinery, or restrictions or prohibitions or any other acts by any government or semi-government authority.
- 16.4** You agree to Atomic using the information provided by You via Your use of the App for purposes of its ongoing reporting requirements to relevant government agencies or departments.
- 16.5** Atomic relies upon Your continued observance of the Terms of Use. In the event that Atomic suffers loss or damage or incurs any costs associated with any breach of the Terms of Use or any associated legal obligation, You agree to indemnify Atomic for those losses, damages and costs.
- 16.6** All rights not expressly granted in the Terms of Use are reserved.
- 16.7** If Atomic does not act in relation to a breach of the Terms of Use by You, this does not waive Atomic's rights to act with respect to subsequent or similar breaches of the Terms of Use by You.

## Service Conditions and Terms of Sale

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### 17. Terms & Conditions

**17.1** The terms and conditions set out in these Service Conditions and Terms of Sale (**Terms of Sale**) govern the use by You of the service offered by Atomic (**Service**) enabling You to:

- (a) preview certain materials over the internet accessed through the App; or
- (b) purchase from Atomic or its authorised distributor, a licence to use a File (as defined in clause 17.2 below) by the download or transfer of Files licensed for use in accordance with these Terms.

**17.2** In these Terms of Sale, "File" means any digital file (irrespective of the software language or code in which it is written) which can be downloaded from the App through the internet once prescribed preconditions have been met including without limitation the payment of the applicable purchase price for the licence to use that File in accordance with these Terms and Terms of Sale (**File Licence**). You agree to use the Service and acquire the File Licences on these Terms each time You use the App and each time You stream a preview or download a File.

**17.3** Refunds are not provided unless downloaded Files are faulty. You are required to ensure that all Files are correctly downloaded and saved to Your computer or other digital storage and payback device.

**17.4** From time to time, We need to be able to change these Terms of Sale to reflect Our changing business. We may change these Terms of Sale at any time by posting the changed terms on the App. Any change in the Terms of Sale will not affect previous purchases from Us.

**17.5** Prices may change at any time. You will be charged the price that applies and is displayed at the time You purchase the relevant File Licence.

**17.6** It is Your responsibility to ensure that all necessary hardware, software and internet access to use the Service and download Files are available to You.

**17.7** You must only access or download (or attempt to access or download) Content or Files in accordance with these Terms and the Terms of Use.

**17.8** On the Service, there may be links to content or applications or websites of third parties. We are not responsible for anything to do with those links or applications or that content.

**17.9** The agreement created each time You use the Service or download Files is governed by and construed in accordance with the laws of the New South Wales and You agree to submit to the jurisdiction of the courts of the New South Wales.

**17.10** If any of the Terms of Sale are found to be unenforceable under New South Wales law, this will not affect the remainder of the Terms of Sale.

**17.11** Events outside Atomic's control will not be a breach of Atomic's obligations under these Terms of Sale to the extent that any failure or delay in performing its obligations occurs because of an event or circumstance outside of Atomic's reasonable control including without limitation, any act of God, war and other hostilities, fire, flood, strikes, lock-outs, delays in transport, breakdowns in machinery, or restrictions or prohibitions or any other acts by any government or semi-government authority.

- (a) When You purchase a File Licence You agree to pay taxes that we assess on Your purchase.
- (b) By purchasing or otherwise acquiring a File Licence as set out above, You obtain a limited licence to access, select from and use Content that we expressly make available as part of the App for the purpose stated in the Picster Website or the App.

#### **Purchase Process**

- (c) To purchase a File Licence,
  - (i) follow the instructions on the applicable website

- (ii) sign into Your Account if required (or create an Account if required);
  - (iii) provide Your billing or other relevant payment information; and
  - (iv) confirm the details of what You are purchasing and that You have read and accepted these terms and conditions (and any other relevant terms and conditions).
- (d) The price payable by You (the "Price") is the price indicated on the applicable webpage for the relevant File. If You are resident in Europe, the Price includes any applicable VAT.
- (e) We reserve the right to change the Price for a File Licence and specifications shown in relation to the App.
- (f) If the price or specification published on the applicable webpage for the File or App is materially incorrect when You place an order for those products or services and You contact us to inform us of this incorrect information, we will:
  - (i) provide You with the correct price or specification; and
  - (ii) ask You to confirm whether You would like to purchase the applicable products or services at the correct price or specification.

If applicable, we will also state the period for which the offer or Price remains valid. If You choose not to complete Your purchase at the corrected price or product specification, we will provide You with a full refund for any amounts already paid by You.

#### **Payment**

- (g) You may pay for a either by credit card or by using the services of any alternate billing and payment provider (such as PayPal) that we identify on the App. If You pay for a File Licence by credit card, then You must supply Your credit card details when You place Your order.
- (h) We or Our distributor will not supply any products or services to You until Your credit card issuer or alternative billing and payment provider has authorised the use of Your card or other applicable method for payment. If You elect to use the services of an alternate billing and payment provider, You will be bound by that third party provider's terms & conditions, which are available from the provider.
- (i) You may be required to create an account with the alternate provider, and to provide that provider with Your bank account or credit or debit card details. Costs associated with accessing and/or using the App depends on Your Internet Service Provider. Please see Your Internet Service Provider's terms and conditions.

**17.12** Events outside Atomic's control will not be a breach of Atomic's obligations under these Terms of Sale to the extent that any failure or delay in performing its obligations occurs because of an event or circumstance outside of Atomic's reasonable control including without limitation, any act of God, war and other hostilities, fire, flood, strikes, lock-outs, delays in transport, breakdowns in machinery, or restrictions or prohibitions or any other acts by any government or semi-government authority.

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## **18. Licence**

**18.1** All intellectual property related to the Service and the Files (and in particular the content which is contained in a File including the performance of a musical work) belongs to Us or Our licensors. You must not do anything with the Service or a File that is not expressly authorised by these Terms of Sale.

**18.2** On the downloading of a File, You are permitted to do certain acts and You are granted a non-transferable licence to use the File for the purposes referred to and in accordance with clauses 2 and 3 above. In particular:

- (a) You are expressly permitted to
  - (i) download the File,
  - (ii) copy the File an unlimited number of times to playback devices

owned by You and

- (iii) print the Content in the File in conjunction with Your Items an unlimited number of times,

provided always that such activities are not undertaken for, or in connection with, a revenue producing purpose other than general promotion of a business or an individual, without first obtaining Atomic's written consent - which consent may be conditional upon entering into a short agreement for the payment of royalties.

(b) You must not:

- (i) infringe the rights of the owners of the copyright in the Files and must comply with all applicable laws in Your use of the Files; and
- (ii) synchronise, publicly perform, use in any way for promotional purposes, commercially sell, resell, reproduce, communicate or distribute Files, or use the Files in any way other than for Your personal, non-commercial entertainment use;
- (iii) do anything with the File that is not authorised in 18.2(a) above (including re-sale, rental or allowing or assisting anyone else to do the same);
- (iv) attempt to circumvent or modify any technological measure used on the File (or allow or assist anyone else to do the same); and
- (v) use or reproduce any Files unless You have paid Us and the payment is not dishonoured or charged back to Us.

**18.3** You must not do anything with previews available as part of the Service other than streaming it. Specifically, You must not attempt to circumvent or modify any technological measure used to prevent reproductions or downloading of the previews available as part of the Service (or assist anyone else to do the same).

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## **19. Liability**

**19.1** We do not accept liability for loss arising out of Our supply of the Files except to the extent that We are required to by law. In particular, except to the extent required by law, We do not accept, and exclude, liability for:

- (a) any business losses, or losses of data or profits; or
- (b) any other direct, indirect or consequential losses or damage, which You may suffer in connection with Our supply, non-supply or defective supply of the Service, even if We have been negligent.

**19.2** This clause is subject to clause 7 above.

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