

Rubato

TERMS AND CONDITIONS OF USE

1. Acceptance of Terms

1.1 Rubato (referred to as "Rubato," "us" or "we"), provides rubatomouthpieces.com (the "Site"), as well as online retail services of accessories for musical instruments and related products (collectively referred to as "Offerings"), subject to your compliance with the following Terms and Conditions of Use ("Terms"), as well as any other written agreement(s) between us and you.

1.2 We reserve the right to change these Terms from time to time with or without notice to you. You acknowledge and agree that it is your responsibility to periodically review this Site and these Terms. Your continued use of this Site and Offerings after such modifications will constitute acknowledgement and acceptance of the modified Terms.

1.3 As used in these Terms, references to our "Affiliates" include our owners, licensees, assigns, subsidiaries, affiliated companies, officers, directors, suppliers, partners, sponsors, advertisers, and includes (without limitation) all parties involved in creating, producing, and/or delivering this Site and/or contents and Offerings available on this Site.

1.4 BY USING THIS SITE AND OFFERINGS ON THIS SITE, YOU AGREE TO BE BOUND BY THESE TERMS. IF YOU DO NOT WISH TO BE BOUND BY THE THESE TERMS, PLEASE EXIT THE SITE. YOUR SOLE REMEDY FOR DISSATISFACTION WITH THIS SITE OR OFFERINGS AVAILABLE ON THIS SITE, OR THESE TERMS IS TO CEASE USING THE SITE AND/OR THOSE PARTICULAR PRODUCTS, SERVICES OR OFFERINGS. THESE TERMS ARE EFFECTIVE ONCE YOU CLICK THE 'I AGREE' BUTTON BELOW.

2. Offerings

2.1 No Guarantee. Although Rubato works hard to provide quality Offerings, you understand and acknowledge that we cannot promise or guarantee specific results from using the Site or Offerings available on this site.

2.2 Returns & Exchanges Policy. Please refer to our Returns & Exchanges Policy for the terms, conditions, and policies applicable to your ordering and purchasing of products from Rubato as well as returns, exchanges and shipping of products ordered from Rubato. You may view the Returns & Exchanges Policy at:

<http://rubatomouthpieces.com/content/RubatoReturnExchange.pdf>. Our Returns & Exchanges Policy applies to all purchases made as a result of using the Site, and by ordering products through the Site you acknowledge and agree to the policies contained in the Returns & Exchanges Policy. Please review our Returns & Exchanges Policy for any changes before any purchase as we reserve the right to change the Returns & Exchanges Policy at any time.

2.3 Warranty. Please review our Warranty Policy at <http://rubatomouthpieces.com/content/Warranty.pdf> before purchasing any products through the Site as we reserve the right to change the Warranty Policy at any time, and by purchasing any products or using any Offerings available through the Site, you acknowledge and agree to the policies contained in the Warranty Policy.

2.4 Temporary Interruptions. You understand and agree that temporary interruptions of the Site may occur as normal events that are out of our control. You also understand and agree that we have no control over the third-party networks or service(s) that we may use to provide you with Offerings. You agree that the Offerings available on this Site are provided "AS IS".

3. Third Party Websites

3.1 Third-Party Sites and Information. This Site may redirect or link to other websites on the Internet, or may otherwise include references to information, products or services made available by unaffiliated third parties. While we make every effort to work with trusted, reputable providers, from time to time such sites may contain information, material or policies that some may find inappropriate or personally objectionable. You understand that we are not responsible for the accuracy, completeness, decency or legality of content hosted by third party websites, nor are we responsible for errors or omissions in any references made on those websites. The inclusion of such a link or reference is provided merely as a convenience and does not imply endorsement of, or association with the Site or party by us, or any warranty of any kind, either express or implied.

3.2 Products and Promotions. From time to time, this Site may include advertisements or information about products and promotions offered by third parties. You may purchase products from or participate in promotions of third parties whose promotions or products are listed on this Site. Any such correspondence or promotions, including the delivery of and the payment for goods and services by those third parties, and any other terms, conditions, warranties or representations associated therewith, are solely between you and the third party. We assume no liability, obligation or responsibility for any part of any such purchase or promotion.

4. Rubato Intellectual Property

4.1 Content. For purposes of these Terms, "content" is defined as any information, communications, published works, photos, video, graphics, music, sounds, or other material that can be viewed by users on our Site and is owned by Rubato or our Affiliates.

4.2 Ownership of Content. By accepting these Terms, you agree that all content presented to you on this Site is protected by any and all intellectual property and/or other proprietary rights available within the United States, and is the sole property of Rubato or our Affiliates.

4.3 Trademarks. Trademarks or service marks of Rubato include, but are not limited to, RUBATO™; and the Rubato logo. All custom graphics, icons, logos and service names are registered trademarks, trademarks or service marks of Rubato or our Affiliates. All other trademarks or service marks are property of their respective owners. Nothing in these Terms grants you any right to use any trademark, service mark, logo, and/or the name of Rubato or our Affiliates.

4.4 Site Use. Rubato grants you a limited, revocable, nonexclusive license to use the Site solely for your own personal purposes only and not for republication, distribution, assignment, sublicense, sale, commercial use, preparation of derivative works, or other use. You may not use any content from the Site for commercial use. You agree not to copy the site, reverse engineer or break into the site, or use materials, products or services in violation of any law. Any use of the Site or the content or materials contained therein, other than as specifically authorized in the Agreement, without the prior written permission of Rubato, is strictly prohibited and will terminate the license granted herein. Unless explicitly stated herein, nothing in the Agreement shall be construed as conferring to you, whether by implication, estoppel or otherwise, any title or ownership of, or exclusive use-rights to, any intellectual property or other right and any goodwill associated therewith. Rubato reserves the right, without notice and in its sole discretion, to terminate your license to use the Site at any time and to block or prevent your future access to, and use of, the Site.

4.5 No Warranty for Third-Party Infringement. Neither we nor our Affiliates warrant or represent that your use of materials displayed on, or obtained through, this Site will not infringe the rights of third parties.

5. Content You Create

5.1 Your Intellectual Property Rights. Subject to our Privacy Policy (located at <http://rubatomouthpieces.com/content/RubatoPrivacyPolicy.pdf>), any communication or material that you transmit to this Site or to us through the email address submissions@rubatomouthpieces.com, for any reason, will be treated as non-confidential and non-proprietary user content ("User Content"). While you retain

all rights to the User Content, you grant us (including our employees and Affiliates), a non-exclusive, paid-up, perpetual, and worldwide license to copy, distribute, display, publish, translate, adapt, modify, and otherwise use the User Content for any purpose whatsoever, regardless of the form or medium in which it is used.

5.2 We respect the intellectual property rights of others, and we ask you to do the same. In instances where we are notified of alleged infringing Rubato or User Content, a decision may be made to remove access or disable access to such materials, in compliance with the safe harbor provisions of the Digital Millennium Copyright Act, 17 U.S.C. § 512(c).

5.3 If you believe that you or someone else's copyright has been infringed by Rubato or User Content provided on this Site, you (or the owner or rights holder, collectively, "Rights Holder") should send notification to us immediately. Prior to sending us notice, the Rights Holder may wish to consult a lawyer to determine their rights and legal obligations under the DMCA and any other applicable laws. Nothing here or anywhere on this Site is intended as a substitute for qualified legal advice. To file a Notice of Infringing Material, we ask that the Rights Holder provide the following information:

- i.** Reasonably sufficient details about the nature of the copyrighted work in question, or, in the case of multiple alleged infringements, a representative list of such works. This should include, title(s), author(s), any U.S. Copyright Registration number(s), URL(s) etc.;
- ii.** Reasonably sufficient details to enable us to identify and locate the material that is allegedly infringing the Rights Holders' work(s) (for example, file name or URL of the page(s) that contain(s) the material);
- iii.** The Rights Holder's contact information so that we can contact them (including for example, the Rights Holder's address, telephone number, and email address);
- iv.** A statement that the Rights Holder has a good faith belief that the use of the material identified above in 2 is not authorized by the copyright owner, its agent, or the law;
- v.** A statement, under penalty of perjury, that the information in the notification is accurate and that the Rights Holder is authorized to act on behalf of the copyright owner; and
- vi.** The Rights Holder's electronic signature.

Notice may be sent to us at customerservice@rubatomouthpieces.com.

5.4 You also acknowledge and agree that upon receipt of a notice of a claim of copyright infringement, we may temporarily or permanently remove the identified materials from our Site without liability to you or any other party.

5.5 Confidential Information. As stated above, all communications sent by you to us will be treated as non-confidential and non-proprietary (subject to our privacy policy). Please do not submit confidential or proprietary information to us (including patentable ideas, new content suggestions or business proposals) unless we have mutually agreed in writing otherwise. Ideas that we receive unsolicited will be treated as property owned by Rubato and will not be returned to you.

6. Privacy & Security

6.1 Login Required. In order to access some of the Offerings on this Site, or to post User Content, you may be asked to set up an account and password. Our account registration page requests certain personal information from you ("Registration Info"). You will have the ability to maintain and periodically update your Registration Info as you see fit. By registering, you agree that all information provided by you as Registration Info is true and accurate and that you will maintain and update this information as required in order to keep it current, complete and accurate.

6.2 Passwords & Security. If you register for an account on the Site, you agree that you are responsible for maintaining the security and confidentiality of your password and that you are fully responsible for all activities that occur under your account. Therefore, you must take reasonable steps to ensure that others do not gain access to your password and account. Our employees will never ask you for your password.

7. Disclaimer

7.1 ALL CONTENT AND OFFERINGS ON THIS SITE ARE PROVIDED ON AN "AS IS" AND "AS AVAILABLE" BASIS WITHOUT WARRANTY OF ANY KIND, EITHER EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, OR THE WARRANTY OF NON-INFRINGEMENT. WITHOUT LIMITING THE FOREGOING, WE MAKE NO WARRANTY THAT (A) THE CONTENT OR OFFERINGS WILL MEET YOUR REQUIREMENTS, (B) THE CONTENT, OFFERINGS OR SITE WILL BE UNINTERRUPTED, TIMELY, SECURE, OR ERROR-FREE, (C) THE INFORMATION OR RESULTS THAT MAY BE OBTAINED FROM THE USE OF THE CONTENT OR OFFERINGS OFFERED WILL BE EFFECTIVE, ACCURATE OR RELIABLE, OR (D) THE QUALITY OF ANY CONTENT OR OFFERINGS PURCHASED OR OBTAINED BY YOU FROM THE SITE FROM US OR OUR AFFILIATES WILL MEET

YOUR EXPECTATIONS OR NEEDS OR BE FREE FROM MISTAKES, ERRORS OR DEFECTS.

7.2 THIS SITE COULD INCLUDE TECHNICAL OR OTHER MISTAKES, INACCURACIES OR TYPOGRAPHICAL ERRORS. WE MAY MAKE CHANGES TO THE CONTENT AND OFFERINGS AT THIS SITE, INCLUDING THE PRICES AND DESCRIPTIONS OF ANY PRODUCTS OR OFFERINGS LISTED HEREIN, AT ANY TIME WITHOUT NOTICE. THE CONTENT OR PRODUCT INFORMATION AVAILABLE AT THIS SITE MAY BE OUT OF DATE, AND WE MAKE NO COMMITMENT TO UPDATE SUCH CONTENT OR PRODUCTS.

THE USE OF THE OFFERINGS OR OTHER ACQUISITION OF ANY PRODUCTS OR CONTENT THROUGH THIS SITE IS DONE AT YOUR OWN DISCRETION AND RISK AND WITH YOUR AGREEMENT THAT YOU WILL BE SOLELY RESPONSIBLE FOR ANY DAMAGES YOU INCUR AS A RESULT.

7.3 Through your use of the Site, you may have the opportunities to engage in commercial transactions with other users and vendors. You acknowledge that all transactions relating to any products or Offerings provided by any third party, including, but not limited to the purchase terms, payment terms, warranties, guarantees relating to such transactions, are agreed to solely between the seller of such merchandise and you. WE MAKE NO WARRANTY REGARDING ANY TRANSACTIONS EXECUTED THROUGH A THIRD PARTY, OR IN CONNECTION WITH THIS SITE, AND YOU UNDERSTAND AND AGREE THAT SUCH TRANSACTIONS ARE CONDUCTED ENTIRELY AT YOUR OWN RISK. ANY WARRANTY THAT IS PROVIDED IN CONNECTION WITH ANY OFFERINGS OR CONTENT AVAILABLE ON OR THROUGH THIS SITE FROM A THIRD PARTY IS PROVIDED SOLELY BY SUCH THIRD PARTY, AND NOT BY US OR ANY OTHER OF OUR AFFILIATES.

7.4 WE RESERVE THE SOLE RIGHT TO EITHER MODIFY OR DISCONTINUE THE SITE, INCLUDING ANY OFFERINGS OR FEATURES THEREIN, AT ANY TIME WITH OR WITHOUT NOTICE TO YOU. WE SHALL NOT BE LIABLE TO YOU OR ANY THIRD PARTY SHOULD WE EXERCISE SUCH RIGHT. MODIFICATIONS MAY INCLUDE, BUT ARE NOT LIMITED TO, THE ADDITION OF FREE OR FEE-BASED SERVICES OR CHANGES TO LIMITATIONS ON ALLOWABLE CONTENT, FILE SIZES OR FILE TYPES. ANY NEW FEATURES THAT AUGMENT OR ENHANCE THE THEN-CURRENT OFFERINGS ON THIS SITE SHALL ALSO BE SUBJECT TO THESE TERMS OF USE.

7.5 SOME STATES OR JURISDICTIONS DO NOT ALLOW THE EXCLUSION OF CERTAIN WARRANTIES, SO SOME OF THE ABOVE LIMITATIONS MAY NOT APPLY TO YOU. PLEASE CONSULT THE LAWS IN YOUR JURISDICTION.

8. Limitation of Liability & Indemnification

8.1 IN NO EVENT SHALL WE OR OUR AFFILIATES BE LIABLE TO YOU OR ANY THIRD PARTY FOR ANY SPECIAL, PUNITIVE, INCIDENTAL, INDIRECT OR CONSEQUENTIAL DAMAGES OF ANY KIND, OR ANY DAMAGES WHATSOEVER, INCLUDING, WITHOUT LIMITATION, THOSE RESULTING FROM LOSS OF USE, DATA OR PROFIT LOSS; YOUR USE OF THE INFORMATION OR CONTENT CONTAINED ON THE SITE; OR YOUR RELIANCE UPON THE ACCURACY OF INFORMATION CONTAINED ON THE SITE, WHETHER OR NOT WE HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, AND ON ANY THEORY OF LIABILITY, ARISING OUT OF OR IN CONNECTION WITH THE USE OF THIS SITE OR OF ANY WEBSITE REFERENCED OR LINKED TO FROM THIS SITE.

FURTHER, WE SHALL NOT BE LIABLE IN ANY WAY FOR THIRD PARTY PROMISES REGARDING OUR OFFERINGS OR CONTENT OR FOR ASSISTANCE IN CONDUCTING COMMERCIAL TRANSACTIONS WITH THE THIRD PARTY THROUGH THIS SITE, INCLUDING WITHOUT LIMITATION THE PROCESSING OF ORDERS.

SOME JURISDICTIONS PROHIBIT THE EXCLUSION OR LIMITATION OF LIABILITY FOR CONSEQUENTIAL OR INCIDENTAL DAMAGES, SO THE ABOVE LIMITATIONS MAY NOT APPLY TO YOU. PLEASE CONSULT THE LAWS IN YOUR JURISDICTION.

8.2 You agree to defend, indemnify, and hold us and our Affiliates harmless from all liabilities, claims, and expenses, including attorneys' fees that may arise from your use or misuse of this Site. We reserve the right, at our own expense, to assume the exclusive defense and control of any matter otherwise subject to indemnification by you, in which event you will cooperate with us in asserting any available defenses.

9. Termination of Use

9.1 Grounds for Termination. You agree that we may, at our sole discretion, terminate or suspend your access to all or part of the Site with or without notice and for any reason, including, without limitation, breach of these Terms. Any suspected fraudulent, abusive or illegal activity may be grounds for barring your access to this Site, and reporting you to the proper authorities, if necessary.

9.2 No Right to Offerings Upon Termination. Upon termination and regardless of the reason(s) motivating such termination, your right to use the Offerings available on this Site will immediately cease. We shall not be liable to you or any third party for any claims for damages arising out of any termination or suspension or any other actions taken by us in connection therewith. Sections 1 and 3-10 of these Terms, as well as your liability for any unpaid fees, shall survive any termination.

10. Miscellaneous Provisions

10.1 International Use. Although this Site may be accessible worldwide, those who choose to access this Site from other locations do so on their own initiative and at their own risk. If you choose to access this Site from outside the United States, you are responsible for compliance with local laws in your jurisdiction, including but not limited to, the taxation of products purchased over the Internet. Any offer for any product, Service, and/or information made in connection with this Site is void where prohibited.

10.2 Governing Law. This Site (excluding any Third Party websites) is controlled by us from our offices in Orange County, California, and the statutes and laws of the State of California shall be controlling, without regard to the conflicts of laws principles thereof. Any dispute arising out of this Agreement or your use of the Site shall be decided solely and exclusively by State or Federal courts located in Orange County, California. Any party who unsuccessfully challenges the enforceability of this forum selection clause shall reimburse the prevailing party for its attorney's fees, and the party prevailing in any such dispute shall be awarded its attorneys' fees.

10.3 Notices. All notices to Rubato shall be in writing and shall be sent to customerservice@rubatomouthpieces.com. You agree to allow us to submit notices to you using the email address provided by you in the Registration Info. Any notices or communication under these Terms will be deemed delivered to the party receiving such communication on the delivery date when transmitted by email.

10.4 No Resale Right. You agree not to sell, resell, reproduce, duplicate, distribute, copy or use for any commercial purposes any portion of this Site, or use of or access to this Site or Offerings provided through this Site, beyond the limited rights granted to you under Section 5 of these Terms.

10.5 Force Majeure. In addition to any excuse provided by applicable law, we shall be excused from liability for non-delivery or delay in delivery of Offerings available through our Site arising from any event beyond our reasonable control, whether or not foreseeable by either party, including but not limited to: labor disturbance, war, fire, accident, adverse weather, inability to secure transportation, governmental act

or regulation, and other causes or events beyond our reasonable control, whether or not similar to those which are enumerated above.

10.6 Savings Clause. If any part of these Terms is held invalid or unenforceable, that portion shall be construed in a manner consistent with applicable law to reflect, as nearly as possible, the original intentions of the parties, and the remaining portions shall remain in full force and effect.

10.7 No Waiver. Any failure by us to enforce or exercise any provision of these Terms or related rights shall not constitute a waiver of that right or provision.

10.8 Entire Agreement. These terms and conditions constitute the entire agreement and understanding between the parties concerning the subject matter hereof and supersedes all prior agreements and understandings of the parties with respect thereto. These Terms may NOT be altered, supplemented, or amended by the use of any other document(s). To the extent that anything in or associated with this Site is in conflict or inconsistent with these Terms, these Terms shall take precedence.

REVISION – 8/09/2013