
PROBLEMO TERMS OF USE

Please review these terms carefully.

In order to use the Online Teacher Resource Platform known as "Problemo" ("**the System**") available at <http://problemo.edu.au> (**the Website**) which is owned and operated by AMTT Ltd as trustee for the Australian Mathematics Trust ABN 39 120 172 502 (referred to as "**AMT**", "**Our**", "**We**" or "**Us**"), You must first agree to these terms and conditions of use and purchase (**the Terms**) which sets out the general legal relationship between You and Us.

You acknowledge that:

1. You are over the age of eighteen (18) years; and
2. You have read and You agree to these Terms and Our Privacy Policy; and
3. (where you are applying for registration on behalf of Your School) You are authorised to apply and bind Your School to these Terms and Our Privacy Policy;

by clicking to accept, or ticking the box, "*I have read and agree to the Terms and Privacy Policy of the Australian Maths Trust*".

1. CONTRACT

1.1 Contract Formation

- (a) You agree that by clicking to accept or ticking the box, "*I have read and agree to the Terms and Privacy Policy of the Australian Maths Trust*", You are making an offer to enter into a contract with Us.
- (b) You agree that the contract between You and AMT is formed when we communicate acceptance of Your offer either by email (this may be in the form of a 'confirmation of registration'), or by Us granting You access to the System.
- (c) We reserve the right to accept or reject Your subscription application to the System.

1.2 These Terms will prevail over any other documentation or communication from You or Us.

1.3 We reserve the right to amend these Terms from time to time. You agree to be bound by any such amendments when they are posted on the Website or notified to You within the System provided We give You at least one day's notice of the amendments. If You continue to use the System after We have notified You of the amended Terms, You are taken to accept and be bound to the amended Terms.

1.4 By using Our website and any information or services provided through it, You agree that these Terms, as well as any disclaimers or copyright notices displayed elsewhere by Us on the website (<http://problemo.edu.au> and <http://amt.edu.au>) apply.

2. INITIAL REGISTRATION

2.1 School Registration

- (a) To access and use the System:
 - (i) Your School must first be registered with Us and have paid the Subscription Fee (if applicable) for the relevant Subscription Period; and
 - (ii) all proposed Users must be approved by Us or a Teacher - Approver.
- (b) Once a School is registered, a School may have any number of Users from within their teacher pool and other necessary staff.
- (c) If You are registering Your School, You represent and warrant to Us that:
 - (i) You have authority to bind the School to these Terms; and
 - (ii) You have the School's authority to be nominated as the 'Teacher - Approver'.
- (d) We may grant You access to the System while We verify the School's details in accordance with clause 2.1(e) below.
- (e) We will verify the School's details and (assuming payment for the Subscription Fee is received (if applicable) and all other Terms are complied with) we will register the School and approve You as the Teacher - Approver.
- (f) If the details of a School's application are incomplete, or if payment is not received (when due) or if there is otherwise a breach of the Terms, we will terminate Your access to the System immediately.
- (g) A Teacher - Approver will have the authority to approve or reject new Users from their School (in their absolute discretion) to access the System. We are not liable for:
 - (i) any delay by a Teacher - Approver when considering an application to approve or reject a new User; or
 - (ii) any approval or rejection by a Teacher - Approver of a new User.
- (h) Either the nominated Teacher - Approver or the School may:
 - (i) notify Us of a change to the nominated Teacher - Approver from time to time by either (1) updating the Teacher - Approver role within the System or (2) by email to info@problemo.edu.au; and
 - (ii) withdraw approval of any User from their School by either (1) updating the approved User list within the System or (2) by email to info@problemo.edu.au.
- (i) If a User leaves the School (for whatever reason) either the Teacher - Approver or the School must notify Us by email to info@problemo.edu.au within 14 days of their departure so we can terminate that User's access to the System.

2.3 User Registration

- (a) If Your School is registered with Us, then You can apply for registration as a User.
- (b) We may grant You access to the System pending Your approval as a User by the Teacher - Approver.
- (c) If the Teacher - Approver rejects Your application then we will terminate Your access to the System immediately.
- (d) Your access to the System will cease on the earliest occurring of:
 - (i) the end of the relevant Subscription Period; or
 - (ii) the date You cease to be part of the School (whether as a teacher or other staff member); or
 - (iii) the date these Terms are terminated with either You or the School.
- (e) We may (in Our absolute discretion) remove or refuse access to any User where a User has breached any of these Terms.

2.4 Payment Terms

- (a) You must pay to Us the Subscription Fees as and when they are due and payable under these Terms.
- (b) Upon registration You may elect to pay the Subscription Fees by credit card, debit card or tax invoice emailed to the School.
- (c) The Subscription Fees is a sum due to Us for the Subscription Period due in advance (if paid by credit or debit card) or otherwise due on or before the due date of the tax invoice.
- (d) All amounts payable under these Terms are expressed inclusive of GST, and GST must be paid by You in respect of any taxable supply, subject to the receipt by You of a valid tax invoice.
- (e) If payment is denied (if credit card or debit card is chosen) or if payment is not received in accordance with clause 2.3(c), We may suspend or terminate access to the System (in our absolute discretion).

3. THE SYSTEM AND OUR OBLIGATIONS

3.1 In consideration for the Subscription Fee (if applicable) during a Subscription Period and in consideration for agreeing to these Terms, We will grant each registered User a non-exclusive, Australia-wide, non-transferable licence to access and use the System and the Material:

- (a) in accordance with Your Subscription Type, including for You to search, download, print and use the Material, and use templates and materials for the production and uploading of New Material; and
- (b) only for the purpose of:
 - (i) teaching students within Your School; and
 - (ii) uploading New Material onto the System,

- 3.2 During the Subscription Period, We will take all reasonable steps to ensure the System is in good working order, subject to internet and network connection issues which are beyond Our control.
- 3.3 While We will take reasonable precautions to ensure Our System is secure, no data transmission over the Internet can be guaranteed as totally secure. Accordingly, we cannot ensure the security of any information transmitted to, from or using our systems and Users do so at their Own risk.
- 3.4 Nothing in these Terms constitutes a transfer of any Intellectual Property Rights in the System or the Material.
- 3.5 You acknowledge that We own all Intellectual Property Rights in the System, the Material (including the lesson card template/s) and all New Material uploaded by Users.
- 3.6 You acknowledge and agree that copyright in all Material (including problems and solutions) is owned by Us and may only be reproduced as permitted by these Terms.
- 3.7 You acknowledge and agree that We may:
 - (a) make changes to the System and the Material and services related to them; and
 - (b) monitor access to and use of Our System by Users.

4. YOUR OBLIGATIONS

- 4.1 You must give Us all relevant information required to facilitate Your access to the System, including:
 - (a) Your School;
 - (b) Your identity and contact details (including a School email address);
 - (c) (if You have elected to pay Us by credit or debit card) Your credit card or debit card information for billing;
 - (d) Your address; and
 - (e) any other information which may affect or assist Our ability to provide access to the Services as reasonably required by Us.
- 4.2 With respect to Your User account You warrant and represent that You will:
 - (a) only submit accurate information;
 - (b) keep it up to date and accurate at all times;
 - (c) choose an appropriate password (having regard to any password criteria posted on the Website); and
 - (d) not transfer Your account to another individual without our consent (which may be withheld in Our absolute discretion).
- 4.3 If You allow third parties to access to Your customer account (whether by choice, accident or fraud) We disclaim any liability in connection with a third party abusing or misusing Your customer account.
- 4.4 You must keep Us up to date with any changes to Your information.

- 4.5 We will manage Your personal information in accordance with Our Privacy Policy which can be found at <https://www.amt.edu.au/privacy-policy>.
- 4.6 You must use reasonable efforts to prevent unauthorised third parties from accessing the Services including by use of strong passwords.
- 4.7 These Terms are binding on You and any additional Users authorised by these Terms and, subject to the licence We grant to You, You must not allow any other person or entity to use or have access to the System at any time, unless otherwise agreed to in writing by Us.
- 4.8 You must use the System in accordance with these Terms and any other terms or policies notified to You by Us.
- 4.9 We may also collect additional information based on your school or usage of our products. We may use the information collected from Your use of the System to provide a personalised experience for you on Our website and for Our own business and administrative purposes.

5. USE OF THE SYSTEM

- 5.1 As a User of the System, You agree to comply with the following:
 - (a) You may download, print and use the Material only for the purposes of providing teaching and educational services within Your School;
 - (b) the System is for Your non-commercial, educational use only and You must not use the System (or any Material) for any commercial or business purposes or for providing any teaching and educational services outside of Your School;
 - (c) You must not hack or extract data (except as permitted by these Terms) from the System, including data regarding other Users, or otherwise interfere with the security or software of the System;
 - (d) You must not act in use the System for any fraudulent or illegal purposes;
 - (e) You must not engage in any conduct which restricts or inhibits any other User from using or enjoying the System or which overrides any security or protective measures embedded in the System;
 - (f) You must not facilitate or allow unauthorised persons to access or use the System or any Material stored on the System;
 - (g) You must not de-compile, disassemble or otherwise reverse engineer the System or permit any third party to do so;
 - (h) You must not modify or remove any copyright or proprietary notices on the System or the Material;
 - (i) You must notify Us of any unauthorised access to the System or use of the Material; and
 - (j) You must comply with all reasonable directions given by Us as to the use of any access codes, passwords or other security measures implemented by Us to protect the integrity of the System.

- 5.2 To use the System, You will require internet connectivity. You are responsible for any third party charges regarding this connectivity.
- 5.3 You must not directly or indirectly do anything that would or might invalidate or put in dispute Our title in the System, the Material or any of Our registered or unregistered trade marks (Trade Marks).
- 5.4 You must comply with Our reasonable usage guidelines and directions with respect to the System and the Trade Marks as notified to You from time to time.

6. NEW MATERIAL

- 6.1 You are responsible for any New Material uploaded to the System and any opinions and views expressed in any New Material represents the opinions and views of the User who uploaded them.
- 6.2 The uploading of New Material to the System does not represent Our endorsement or support of any views or opinions in that New Material.
- 6.3 We are not responsible for, and accept no liability with respect to, any New Material submitted, uploaded, posted or transmitted to, on or through Our System by Users.
- 6.4 You warrant that You have all Intellectual Property Rights for any New Material You upload to the System and by uploading the New Material You are transferring ownership of all Intellectual Property Rights in that New Material to Us.
- 6.5 You must not post any New Material on the System that:
 - (a) is offensive, unlawful, defamatory, false or misleading, discriminatory, pornographic, sexually explicit, unsuitable for minors, of an abusive, violent, obscene or menacing nature, is racist or hateful, or is contrary to any of Our guidelines as notified to You from time to time;
 - (b) is reasonably likely to offend another User;
 - (c) contains advertising or is otherwise submitted, uploaded, posted or transmitted for commercial purposes;
 - (d) contains financial, legal, medical or other professional advice;
 - (e) violates or infringes the intellectual property or other rights of any other person or entity;
 - (f) contains the personal information of any person, except with the relevant person's permission;
 - (g) contains or transmits malware, viruses or other harmful computer code; or
 - (h) solicits other Users to buy or sell goods or services.
- 6.6 Only You will be able to view and access the New Material uploaded to the System. If Your access to the System is suspended or terminated for any reason then We are not obliged to provide You copies of (or access to) any New Material uploaded by You.

- 6.7 If You move to another school which is also registered to use the System We may be able to allow for a migration of the New Material uploaded by You to the new account You establish with Your new school. We do not provide any guarantee that a migration is possible, or the conditions of such a migration, and each request is dealt with on a case-by-case basis.

7. AVAILABILITY, SYSTEM UPDATES AND MAINTENANCE

7.1 You acknowledge and agree that:

- (a) We do not warrant that access and use of the System will be uninterrupted, error-free, or completely secure;
- (b) We do not warrant that the System will be compatible, or operate in any combination with Your equipment and other programs which may be selected for use by You;
- (c) Access to the System depends on your internet provider and other external factors and We do not guarantee the availability of the System at all times or at any specific times;
- (d) While We take reasonable precautions to ensure the System is secure, We do not guarantee the System to be free from virus, spyware or malware (as those terms are generally understood in the IT industry); and
- (e) We may monitor access and use of the System by You.

7.2 We may make changes to the System and any information and features contained within. These changes will typically be to improve the System. We may undertake such changes, upgrades or maintenance to the System without providing any notice to You and We will have no liability to You for any delay or interruption to Your access.

7.3 We may also remove or disable the System at any time. If We remove or disable the System for a period of more than 14 days, We will refund any Fees You have paid for any period after the removal or disablement.

7.4 Your access to the System may be occasionally restricted to allow for repairs, maintenance or the introduction of new facilities on the System. We will attempt to restore access to the System as soon as We reasonably can but We will have no liability to You for any delay or interruption to Your access.

7.5 Technical support will be provided via phone or email within the business hours of the Australian Maths Trust By phone or email as follows:

Phone: (02) 6201 2138

Email: info@problemo.edu.au

7.6 While We will endeavour to respond to all technical support requests within a reasonable time, We provide no guarantee that We can provide to all requests and We are not liable for any delay or failure to respond to a request for technical support.

9. TERMINATION

- 9.1 If You (as a User) breach these Terms, We may suspend or terminate Your use of the System at Our discretion.
- 9.2 If You (as a School) breach these Terms, We may suspend or terminate:
- (a) Your use of the System at Our discretion; and/or
 - (b) all of Your registered Users use of the System at Our discretion.
- 9.3 If We suspend use or access to the System, We may refuse to allow You (and/or Your Users) to use the System until You have rectified the breach of these Terms and confirm that there will be no further breaches.
- 9.4 If We terminate these Terms due to Your breach (or Your School's breach) then You are not entitled to a refund of any portion of the Subscription Fee paid for the remainder of the Subscription Period after the termination takes effect.
- 9.5 If We breach these Terms, and You have given Us written notice of the breach to info@problemo.edu.au, and We have failed to rectify the breach within fourteen (14) days of receiving the notice, then You may terminate these Terms immediately by giving Us a further written notice by email to: info@problemo.edu.au. Upon termination We will provide You with a refund (calculated on a pro-rata basis) for any Subscriptions Fees which apply for the remainder of the Subscription Period after the termination takes effect.
- 9.6 If these Terms is terminated or expire for any reason, then, in addition and without prejudice to any other rights or remedies available:
- (a) each party retains the Claims it has against the other;
 - (b) Your right to use the System, the Material and the Trade Marks immediately ceases and the licences granted under these Terms terminate; and
 - (c) You must immediately remove all of Our System, Material and Trade Marks from Your electronic devices.

10. DISCLAIMER & LIABILITY

- 10.1 The System, Material and related content is provided as a general information resource only and is not designed to replace professional advice.
- 10.2 While We have made every effort to provide accurate advice and information through the System, We do not make any representations or warranties that the information provided in the System is reliable, accurate or complete.
- 10.3 We are not liable for any loss or damage resulting from any action taken or reliance made by You on any information or Materials contained within the System.
- 10.4 We are not liable for the actions of any other Users on the System.
- 10.5 You acknowledge that the System is provided as is and as available and Your use of the System is entirely at Your own risk.
- 10.6 You warrant that You have satisfied Yourself as to the description and condition of the System provided and its fitness for the purpose to which You use it.

- 10.7 The website links provided in the System are provided for Your convenience only. We do not take any responsibility for their content or endorse any opinions or recommendations provided in those websites. By clicking on those website links, You agree that You are solely responsible for agreeing to the terms and conditions of those websites and for any damages or loss caused from following those links.
- 10.8 To the fullest extent permitted by law, We are not liable to You for any loss or damage you might suffer in respect of Your use of the System. Such losses include (but are not limited to) loss of data, interruption of business, wasted management time or any consequential or incidental damages.
- 10.9 To the fullest extent permitted by law, We exclude all representations and warranties about the System and our obligations, except those expressly set out in these Terms and except for the Prescribed Terms.
- 10.10 Subject to liability for breaches of Prescribed Terms, Our total aggregate Liability for all Claims is limited to the total amount paid by You to Us for use of the System and the Material.
- 10.11 Our liability for the breach of any Prescribed Term, is limited to (at Our election) to:
- (a) in the case of a major failure (as defined in the Australian Consumer Law), the extent permitted by the Australian Consumer Law; or
 - (b) in the case of services associated with the System, the supply of the services again or payment of the cost of having the services supplied again.
- 10.12 If You wish to make a claim for breach of a Prescribed Term (Warranty Claim), You must notify us by contacting Our nominated contact person as soon as reasonably possible after the defect becomes evident setting out the nature of the defect.
- 10.13 If You wish to make a Warranty Claim You must contact:
- Australian Maths Trust
ABN 39 120 172 502
Attention: CEO
by email to: mail@amt.edu.au
- 10.14 You must describe the fault in the System at the time of making the Warranty Claim.
- 10.15 If Your claim is valid, Our liability is limited and You will bear any expenses incurred by You that arise from making the Claim.
- 10.16 You are liable to Us, and indemnify Us, for all Claims and Liability suffered by Us as a result of You breaching these Terms or acting inconsistently with Our policies, except to the extent that we cause or contribute to the relevant Claim or Liability.
- 10.17 A School is liable to Us (in accordance with clause 9.16) for all acts and omissions of the Users (within their School) in connection with their use of the System.

12. GENERAL

- 12.1 The System may be accessed within Australia and, where permitted by technology and as decided by Us, outside Australia.
- 12.2 The law of the Australian Capital Territory shall apply to these Terms and You hereby submit to the jurisdiction of the Courts of that Territory.
- 12.3 A provision of or a right under these Terms may not be waived or varied except in writing signed by the person to be bound.
- 12.4 You must not assign any of Your rights under these Terms to any person without Our written consent. Any such consent may be given or withheld in Our absolute discretion.
- 12.5 We may assign any of Our rights under these Terms to any person by written notice to You.

13. DEFINITIONS

- 13.1 In these Terms the following definitions apply:

Business Day means a day which is not a Saturday, Sunday or a public holiday in the Australian Capital Territory.

Claim includes any claim, action, demand or proceeding

- (a) under, arising out of, or in any way in connection with these Terms;
- (b) arising out of, or in any way in connection with the System or the Material; or
- (c) arising otherwise at law including in equity, by statute, tort (whether for negligence or otherwise), contract, for restitution or unjust enrichment.

GST has the meaning given in *A New Tax System (Goods and Services Tax) Act 1999 (Cth)*, or any other similar tax.

Intellectual Property Rights means all intellectual property rights, including all copyright, patents, trade marks, design rights, trade secrets, domain names, know how and other rights of a similar nature, whether registrable or not and whether registered or not, and any applications for registration or rights to make such an application.

Liability means all liabilities, costs, damages, losses, expenses and outgoings of whatever description, including the costs and expenses of defending or settling any Claim.

Material means any materials uploaded onto the System available for access and use by Users as well as any documentation for use with the System, including any user's guide.

New Material means any materials (i.e lesson cards) uploaded to the System by You.

Prescribed Terms means any terms, conditions and warranties which the law expressly provides may not in respect of these Terms be excluded, restricted or modified, or may be excluded, restricted or modified only to a limited extent.

Subscription Fees mean:

- (a) for the initial subscription period:
 - (i) for Freemium - \$0; and
 - (ii) for Problemo Plus – \$49 including GST; and
- (b) for subsequent subscription periods – the amount advised by Us on the Website at least 14 days in advance of each Subscription Period commencing.

Subscription Period means:

- (a) the initial subscription period is from the date You subscribed to either Freemium or Problemo Plus until 18 December 2020; and
- (b) subsequent subscription periods will be based on Australian school years, the specifics of which will be advised by Us on the Website at least 14 days in advance of each Subscription Period commencing.

Subscription Type means:

- (a) “Freemium” which is a free version of the System which has access to limited Material and features;
- (b) “Problemo Plus” which is a paid version of the System which has access to all Materials and features; and
- (c) any other Subscription Type developed by Us from time to time.

System means the Online Teacher Resource Platform referred to as “Problemo” maintained by Us and containing the Material, which You are granted access to on the terms of these Terms.

User means parties accessing and using the System.

You, Your means the person/entity using the System and includes its directors, agents, subcontractors and employees, as applicable.