

Noisedeck Terms of Service

Effective date: September 10, 2021

A. Definitions

An "Account" represents your legal relationship with Generative Toys. A "User Account" represents an individual User's authorization to log in to and use the Service and serves as a User's identity on Noisedeck.

The "Agreement" refers, collectively, to all the terms, conditions, notices contained or referenced in this document (the "Terms of Service" or the "Terms") and all other operating rules, policies (including the Generative Toys Privacy Statement).

"Beta Previews" mean software, services, or features identified as alpha, beta, preview, early access, or evaluation, or words or phrases with similar meanings.

"Content" refers to content featured or displayed through the Website. "Content" also includes Services. "User-Generated Content" is Content, written or otherwise, created by our Users. "Your Content" is Content that you create or own.

"Generative Toys," "We," and "Us" refer to Generative Toys, as well as our affiliates, directors, subsidiaries, contractors, licensors, officers, agents, and employees.

The "Service" refers to the applications, software, products, and services provided by Generative Toys, including any Beta Previews.

"The User," "You," and "Your" refer to the individual person, company, or organization that has visited or is using the Website or Service; that accesses or uses any part of the Account; or that directs the use of the Account in the performance of its functions. A User must be at least 13 years of age to purchase Pro access.

The "Website" refers to Noisedeck's website located at noisedeck.app, and all content, services, and products provided by Generative Toys at or through the Website. It also refers to subdomains of noisedeck.app, such as pro.noisedeck.app and get-pro.noisedeck.app.

B. Account Terms

1. Account Controls

Users. Subject to these Terms, you retain ultimate administrative control over your User Account.

2. Required Information

You must provide a valid email address in order to complete the signup process.

3. Account Requirements

You must be age 13 or older to have a Pro user account. If we learn of any Pro user under the age of 13, we will terminate that user's Account immediately. If you are a resident of a country outside the United States, your country's minimum age may be older; in such a case, you are responsible for complying with your country's laws.

4. User Account Security

You are responsible for maintaining the security of your Account and password. Generative Toys cannot and will not be liable for any loss or damage from your failure to comply with this security obligation. You will promptly notify Generative Toys if you become aware of any unauthorized use of, or access to, our Service through your Account, including any unauthorized use of your password or Account.

C. Acceptable Use

Your use of the Website and Service must not violate any applicable laws, including copyright or trademark laws, or other laws in your jurisdiction. You are responsible for making sure that your use of the Service is in compliance with laws and any applicable regulations.

While using our Website and Service, you must not harass, abuse, threaten, or incite violence towards any individual or group, including our employees, officers, and agents, or other users.

D. User-Generated Content

1. Responsibility for User-Generated Content

You may create User-Generated Content while using the Service. You are solely responsible for the content of, and for any harm resulting from, any User-Generated Content that you create. We are not responsible for any public display or misuse of your User-Generated Content.

2. Ownership of Content

You retain ownership of and responsibility for Your Content. You agree that you are responsible for any Content you create and that you will fully comply with any related copyright or trademark laws.

E. Intellectual Property Notice

1. Generative Toys's Rights to Content

Generative Toys and our licensors, vendors, agents, and/or our content providers retain ownership of all intellectual property rights of any kind related to the Website and Service. We reserve all rights that are not expressly granted to you under this Agreement or by law. The look and feel of the Website and Service is copyright © Generative Toys. All rights reserved. You may not duplicate, copy, or reuse any portion of the HTML/CSS, Javascript, or visual design elements or concepts without express written permission from Generative Toys.

2. Generative Toys Trademarks and Logos

If you'd like to use Generative Toys's trademarks, you must follow all of our trademark guidelines.

F. Beta Previews

1. Subject to Change

Beta Previews may not be supported and may be changed at any time without notice. In addition, Beta Previews are not subject to the same security measures and auditing to which the Service has been and is subject. By using a Beta Preview, you use it at your own risk.

2. Confidentiality

As a user of Beta Previews, you may get access to special information that isn't available to the rest of the world. Due to the sensitive nature of this information, it's important for us to make sure that you keep that information secret. You agree to only use such confidential information for the express purpose of testing and evaluating the Beta Preview, and not for any other purpose.

3. Feedback

We're always trying to improve our products and services, and your feedback as a Beta Preview user will help us do that. If you choose to give us any ideas, know-how, algorithms, code contributions, suggestions, enhancement requests, recommendations or any other feedback for our products or services (collectively, "Feedback"), you acknowledge and agree that Generative Toys will have a royalty-free, fully paid-up, worldwide, transferable, sub-licensable, irrevocable

and perpetual license to implement, use, modify, commercially exploit and/or incorporate the Feedback into our products, services, and documentation.

G. Payment

1. Pricing

Our pricing and payment terms are available at get-pro.noisedeck.app. If you agree to a subscription price, that will remain your price for the duration of the payment term; however, prices are subject to change at the end of a payment term.

2. Upgrades, Downgrades, and Changes

We will immediately bill you when you upgrade from the free plan to any paying plan. If you upgrade to a higher level of service, we will bill you for the upgraded plan immediately. You may change your level of service at any time by choosing a plan option or going into our customer portal. If you choose to downgrade your Account, you may lose access to Content, features, or capacity of your Account.

3. Billing Schedule; No Refunds

Payment Based on Plan

For yearly payment plans, the Service is billed in advance on a yearly basis respectively and is non-refundable. There will be no refunds or credits for partial months of service, downgrade refunds, or refunds for months unused with an open Account; however, the service will remain active for the length of the paid billing period. In order to treat everyone equally, no exceptions will be made.

For one-time payment plans, the Service is billed immediately and is non-refundable.

4. Authorization

By agreeing to these Terms, you are giving us permission to charge your on-file credit card, or other approved methods of payment for fees that you authorize for Noisedeck.

5. Responsibility for Payment

You are responsible for all fees, including taxes, associated with your use of the Service. By using the Service, you agree to pay Generative Toys any charge incurred in connection with your use of the Service. If you dispute the matter, contact Noisedeck Support. You are responsible for providing us with a valid means of payment for paid Accounts. Free Accounts are not required to provide payment information.

H. Cancellation and Termination

1. Account Cancellation

It is your responsibility to properly cancel your Account with Noisedeck. You can request cancellation at any time by emailing Noisedeck Support. Cancelling your Account will terminate your access to Noisedeck paid features.

2. Upon Cancellation

We will retain and use your information as necessary to comply with our legal obligations, resolve disputes, and enforce our agreements, but barring legal requirements, we will delete your account within 90 days of cancellation or termination (though some information may remain in encrypted backups). This information can not be recovered once your Account is cancelled.

3. Generative Toys May Terminate

Generative Toys has the right to suspend or terminate your access to all or any part of the Website at any time, with or without cause, with or without notice, effective immediately. Generative Toys reserves the right to refuse service to anyone for any reason at any time.

4. Survival

All provisions of this Agreement which, by their nature, should survive termination will survive termination — including, without limitation: ownership provisions, warranty disclaimers, indemnity, and limitations of liability.

I. Communications with Generative Toys

1. Electronic Communication Required

For contractual purposes, you (1) consent to receive communications from us in an electronic form via the email address you have submitted or via the Service; and (2) agree that all Terms of Service, agreements, notices, disclosures, and other communications that we provide to you electronically satisfy any legal requirement that those communications would satisfy if they were on paper. This section does not affect your non-waivable rights.

2. Legal Notice to Generative Toys Must Be in Writing

Communications made through email or Noisedeck Support's messaging system will not constitute legal notice to Generative Toys or any of its officers, employees, agents or representatives in any situation where notice to Generative Toys is required by contract or any law or regulation. Legal notice to Generative Toys must be in writing and served on Generative Toys's legal agent.

3. No Phone Support

Noisedeck only offers support via email and electronic messages. We do not offer telephone support.

J. Disclaimer of Warranties

Generative Toys provides the Website and the Service “as is” and “as available,” without warranty of any kind. Without limiting this, we expressly disclaim all warranties, whether express, implied or statutory, regarding the Website and the Service including without limitation any warranty of merchantability, fitness for a particular purpose, title, security, accuracy and non-infringement.

Generative Toys does not warrant that the Service will meet your requirements; that the Service will be uninterrupted, timely, secure, or error-free; that the information provided through the Service is accurate, reliable or correct; that any defects or errors will be corrected; that the Service will be available at any particular time or location; or that the Service is free of viruses or other harmful components. You assume full responsibility and risk of loss resulting from your downloading and/or use of files, information, content or other material obtained from the Service.

K. Limitation of Liability

You understand and agree that we will not be liable to you or any third party for any loss of profits, use, goodwill, or data, or for any incidental, indirect, special, consequential or exemplary damages, however arising, that result from

- the use, disclosure, or display of your User-Generated Content
- your use or inability to use the Service
- any modification, price change, suspension or discontinuance of the Service
- the Service generally or the software or systems that make the Service available
- unauthorized access to or alterations of your transmissions or data
- statements or conduct of any third party on the Service
- any other user interactions that you input or receive through your use of the Service
- any other matter relating to the Service.

Our liability is limited whether or not we have been informed of the possibility of such damages, and even if a remedy set forth in this Agreement is found to have failed of its essential purpose. We will have no liability for any failure or delay due to matters beyond our reasonable control.

L. Release and Indemnification

If you have a dispute with one or more Users, you agree to release Generative Toys from any and all claims, demands and damages (actual and consequential) of every kind and nature, known and unknown, arising out of or in any way connected with such disputes.

You agree to indemnify us, defend us, and hold us harmless from and against any and all claims, liabilities, and expenses, including attorneys' fees, arising out of your use of the Website and the Service, including but not limited to your violation of this Agreement, provided that Generative Toys (1) promptly gives you written notice of the claim, demand, suit or proceeding; (2) gives you sole control of the defense and settlement of the claim, demand, suit or proceeding (provided that you may not settle any claim, demand, suit or proceeding unless the settlement unconditionally releases Generative Toys of all liability); and (3) provides to you all reasonable assistance, at your expense.

M. Changes to These Terms

We reserve the right, at our sole discretion, to amend these Terms of Service at any time and will update these Terms of Service in the event of any such amendments. We will notify our Users of material changes to this Agreement, such as price increases, at least 30 days prior to the change taking effect by posting a notice on our Website or sending email to the primary email address specified in your Noisedeck account. Customer's continued use of the Service after those 30 days constitutes agreement to those revisions of this Agreement. For any other modifications, your continued use of the Website constitutes agreement to our revisions of these Terms of Service.

We reserve the right at any time and from time to time to modify or discontinue, temporarily or permanently, the Website (or any part of it) with or without notice.

N. Miscellaneous

1. Governing Law

Except to the extent applicable law provides otherwise, this Agreement between you and Generative Toys and any access to or use of the Website or the Service are governed by the federal laws of the United States of America and the laws of the State of Colorado, without regard to conflict of law provisions. You and Generative Toys agree to submit to the exclusive jurisdiction and venue of the courts located in the City and County of Denver, Colorado.

2. Non-Assignability

Generative Toys may assign or delegate these Terms of Service and/or the Generative Toys Privacy Statement, in whole or in part, to any person or entity at any time with or without your

consent, including the license grant in Section D.4. You may not assign or delegate any rights or obligations under the Terms of Service or Privacy Statement without our prior written consent, and any unauthorized assignment and delegation by you is void.

3. Section Headings and Summaries

Throughout this Agreement, each section includes titles and brief summaries of the following terms and conditions. These section titles and brief summaries are not legally binding.

4. Severability, No Waiver, and Survival

If any part of this Agreement is held invalid or unenforceable, that portion of the Agreement will be construed to reflect the parties' original intent. The remaining portions will remain in full force and effect. Any failure on the part of Generative Toys to enforce any provision of this Agreement will not be considered a waiver of our right to enforce such provision. Our rights under this Agreement will survive any termination of this Agreement.

5. Amendments; Complete Agreement

This Agreement may only be modified by a written amendment signed by an authorized representative of Generative Toys, or by the posting by Generative Toys of a revised version in accordance with Section Q. Changes to These Terms. These Terms of Service, together with the Generative Toys Privacy Statement, represent the complete and exclusive statement of the agreement between you and us. This Agreement supersedes any proposal or prior agreement oral or written, and any other communications between you and Generative Toys relating to the subject matter of these terms including any confidentiality or nondisclosure agreements.

6. Questions

Questions about the Terms of Service? Contact us at toys@generative.toys.