

## ClipDealer Customer Licence Contract Audio

### 1. Recital

1.1 The present agreement regulates the conditions under which the customers may use the Sounds made available by ClipDealer GmbH (hereinafter referred to as "Clipdealer").

1.2 The Customer Licence Contract shall apply in addition to the Terms and Conditions of Use applicable for the internet site, which all authors and customers (hereinafter jointly referred to as "Members") have approved of. In case of discrepancies between the Customer Licence Contract and the Terms and Conditions of Use, the provisions of the present Customer Licence Contract shall prevail.

### 2. Licence

2.1 Clipdealer grants the Customer a non-exclusive licence, without restrictions as to time and place, for the utilisation of the Sounds for admissible purposes of utilisation in accordance with the provisions hereinafter.

2.2 All other rights to the Sounds and related to the Sounds, including any copyrights, shall remain with Clipdealer or the authors of the Sounds respectively.

2.3 Further transfer:

(a) As a principle, the licence is not transferable.

(b) Exception: The rights to the content may only be transferred to one single third party, if such transfer is carried out within the framework of the fulfilment of a customer project, e.g. by an advertising agency to its client. The repeated utilisation in projects for different clients is not permitted. In such cases, additional licences must be purchased for each individual client.

2.4 Purpose of utilisation:

The transfer of the utilisation rights and ancillary copyrights comprises

- the copying and dissemination rights, i.e. the right to copy and disseminate the Sounds and/or have them copied or disseminated as desired - also onto image/sound/data carriers other than the ones originally used - within the framework of the stipulated types of use.
- the right to call up the Sounds and use them online and the right to make them publicly accessible, i.e. the right to make the Sounds available by means of analogous, digital or other storage or data transmission technology, with or without interim storage, wireless or through cables.
- the broadcasting rights, i.e. the right to make the Sounds available to the public within the framework of the type of licence as stipulated above, as often as desired, by means of all technical processes (e.g. analogous, digital, high definition, incl. DVB-T, -C, -S, and -H), through transmissions such as radio or television transmission, wire transmission, Hertzian waves, laser, microwaves etc, or similar technical equipment, irrespective of whether the transmission is effected through terrestrial transmission equipment, cable TV (also through telephone networks), including re-transmission by cable, satellites, including direct satellites (DBS), other data or telephone cables or networks such as ISDN, DSL, GSM, UMTS, radio links systems, power lines etc., or other technical equipment, or through a combination of the stipulated ways of transmission.
- the videogramme rights, i.e. the right to utilise the Sounds by means of copying and disseminating them on all types of analogous and digital image/sound/data carriers. The rights

to videogrammes in particular comprise all storage media (image/sound carriers) of all kinds (CDs, DVDs, etc.).

- the theatre rights (showing/cinema rights), i.e. the right to exploit the Sounds for public showing - live, if applicable - in film theatres and other suitable locations (such as hospitals, residential homes, schools, vehicles, trains, aeroplanes, hotels etc. or in public locations such as streets, stations, airports, drive-in cinemas etc.). The showing may be against payment or free of charge, using all suitable processes/techniques (including digital and electro-magnetic systems), and in all formats (*mp3*, *wav*, *aif*), and on image/sound/data carriers of all kinds.
- the clip licence rights, i.e. the right to utilise clips from the Sounds without modifications, in an edited, modified or enhanced form, as often as desired, against payment or free of charge, in all media (e.g. analogous or digital image/sound/data carriers and/or other media).
- the exhibition rights, i.e. the right to publicly present and/or utilise the Sounds, whether entirely or in part, without modifications or in an edited, modified or enhanced form, during exhibitions, (sales) shows and similar events.
- the editing rights, i.e. the right to edit or modify the Sounds using analogous, digital or other editing methods, taking into consideration the authors' copyrights.

### 2.5 Social Media License

The provisions of items 2.1 to 2.4 apply as a matter of principle when acquiring a Social-Media License. The license includes the right to use the content within social networks (e.g. Facebook, Google+, MySpace and the like). Sub-licensing the content is authorised within this scope (contrary to item 2.3). The principles of the copyright and personal privacy rights as well as the limitations of item 3 below must be observed and in particular content showing a person may not be used as a profile picture.

### 3. Prohibited types of utilisation

The Sounds may not be used

(a) in pornographic, sexist, defamatory, libellous or racist presentations or for presentations offending minorities or religious groups;

(b) as a trademark or company sign (jingle) or as a part thereof;

(c) for the utilisation in sample templates intended for re-sale, such as templates for websites, flash templates, templates for electronic greeting cards and samplers;

(d) for unauthorised communication measures, neither direct nor indirect (e.g. spamming);

(e) for other illegal activities.

### 4. Transfer of the rights

4.1 The rights will be transferred upon finalisation of the order process.

4.2 This transfer is subject to the resolutive condition that payment of the licence fee due is effected within the payment period stated on the invoice. The decisive point of time for the meeting of the deadline shall be receipt of such payment by Clipdealer.

4.3. Should payment be delayed, the rights shall automatically return to Clipdealer. This shall not affect the Customer's payment obligations. Upon payment, the rights shall be re-granted with retroactive effect from the time of the initial transfer.

## **5. Licence fee**

5.1 The licence fee shall become due for payment at the time stated on the invoice. If payment is to be effected through a credit card, the credit card will be charged upon finalisation of the order process. For purposes of clarification of any questions, we recommend you store your transaction data in an easily accessible location. In this context, the licence payment conditions as contained in the Terms and Conditions of Use shall apply.

5.2 Should the Customer not publish or use the Sound(s), Clipdealer shall not be obligated to take back the Sound(s) or reimburse the licence fee.

## **6. Restricted representations and warranties**

6.1 All Sounds are free of claims or rights by domestic or foreign performing rights societies.

6.2 Clipdealer's liability, as well as the liability of its vicarious agents, for violations of contractual duties and based on tort shall be limited to intent and gross negligence. This shall not apply for cases of death, injury or violations of health, claims based on violations of cardinal duties and compensation for default damages (section 286 BGB - Bürgerliches Gesetzbuch, German Civil Code). In these areas, Clipdealer shall be liable for all degrees of culpability by itself and its vicarious agents.

6.3 Liability for the violation of cardinal duties is limited to the foreseeable damages which typically occur in cases of this kind.

## **7. Final provisions**

7.1 For Customers who are businesses, legal entities under public law, or special funds under public law, Munich shall be the exclusive place of jurisdiction.

7.2 This contract is governed by the material law of the Federal Republic of Germany exclusively, excluding conflict of law provisions as well as UN sales law.

7.3 Should individual provisions be invalid, this shall not affect the validity of the remaining provisions.