

## ClipDealer Author's Licence Agreement Audio

### 1. Preliminary remarks

1.1 The present agreement regulates the conditions under which the Authors make their Sounds available to ClipDealer GmbH (hereinafter referred to as "Clipdealer"). In particular, it contains regulations on the transfer of the rights by the Authors to Clipdealer.

1.2 Customers and Authors shall be jointly referred to as "Members".

1.3 The Author's Licence Contract shall apply in addition to the Terms and Conditions of Use which all Members accept. In case of discrepancies between the Author's Licence Contract and the Terms and Conditions of Use, the provisions of the present Author's Licence Contract shall prevail.

### 2. Transfer of rights

2.1 The Author transfers to Clipdealer on a non-exclusive basis, all utilisation rights and ancillary copyrights to the Sounds he/she makes available. Said utilisation rights and ancillary copyrights are transferable, and unrestricted as to contents, time and place.

#### 2.2

a) The rights are transferred in order to grant third parties the utilisation rights and ancillary copyrights pursuant to the provisions of the Customer Licence Contract (see however item b), in order to utilise the Sounds for other purposes as stipulated hereinafter and in order to transfer the utilisation rights and ancillary copyrights for marketing purposes, whether entirely or in part, to other agencies or marketing partners (hereinafter jointly referred to as "Partners"). Clipdealer may also transfer the granted utilisation rights and ancillary copyrights entirely or in part to a third company (such as a foreign subsidiary or an affiliated company).

b) Exception: ClipDealer shall not license the author's content within the scope of a Social Media License (see Customer License Agreement, item 2.6) without the author's specific authorisation.

2.3 The Author agrees that all licences for the Sounds provided by him/her may be effected without mentioning his/her name (i.e. anonymously). The Author hereby expressly waives his/her right to a credit line.

2.4 Clipdealer is not obligated to exploit the transferred rights.

2.5 The transfer of the utilisation rights and ancillary copyrights comprises all presently known types of use, including

- 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 advertising right, in particular including the right to advertise for Clipdealer and its partners themselves, i.e. the right to utilise the Sounds for advertising purposes in all forms of advertising. This includes the right to use the Sounds for Clipdealer's own advertising purposes in all media, free of charge; Clipdealer's partners shall also hold this right to the Sounds for their own advertising purposes, in particular with regard to advertising measures regarding the cooperation. The author shall not receive any remuneration for such utilisation.
- 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.

### 3. Representations

3.1 By uploading Sounds, the Author ensures the User and Clipdealer that he/she is authorised to grant all licence rights to be granted under this agreement, and that he/she has not granted any rights or licences regarding the Sounds which may stand against the present agreement. He/she in particular guarantees that he/she is not a member of GEMA or other domestic or foreign performance rights societies. He/she guarantees that all Sounds may be used without paying any royalties to a domestic or foreign performance rights society. The Author furthermore guarantees that no publication rights exist with regard to the Sounds.

3.2 The Author furthermore guarantees towards the user and Clipdealer that the Sounds and information he/she makes available on Clipdealer do not violate any copyrights, ancillary copyrights, trademark rights, publicity rights or other third-party rights.

3.3 The Authors indemnifies and holds the user and Clipdealer harmless from any claims by third parties, including costs of legal action, which may have been incurred due to the culpable violation of the author's licence agreement and the above granting of rights.

3.4 The Author furthermore guarantees:

(a) that the information describing the Sounds provided to Clipdealer is in accordance with the present agreement, does not violate any copyrights, trademark rights, privacy rights, publicity rights or other third-party rights, and does not offend or disrepute any third parties.

(b) that the Sounds supplied to Clipdealer do not contain any locking mechanisms or safety devices intended to prevent the Sounds from being used, copied or utilised in the way as intended under this agreement.

(c) that the Sounds contain all necessary descriptive information required to be able to effectively market them on the website; that all essential points of the descriptive information are complete and correct, and that they do not contain any incorrect, ambiguous or non-functional meta data, which have, or are meant to have, the effect of "keyword spamming" or which in an incorrect way alter search results which otherwise would be provided for such content.

3.5 During the term of the contract with Clipdealer, the Authors are prohibited from contracting with Clipdealer's Customers for their own or for a third-party's account. For cases of infringements, Clipdealer reserves the right to request damages or surrender of the proceeds obtained through such transactions.

#### **4. Remuneration**

4.1 The current prices as listed on the internet site at the respective time by Clipdealer or its Partners shall apply. The Price List may be amended upon prior notification and at Clipdealer's discretion. The changes shall be posted in good time on the website and shall become effective two weeks after posting. Should the price change to the Authors' disadvantage (i.e. reductions in price for the Sounds), the Author shall have the opportunity to terminate the Sounds extraordinarily upon 2 weeks' notice. However, after expiry of this period, Clipdealer and its Partners shall continue to have the right to exploit the Sounds at the old prices for another 3 months.

4.2 For the provision of the Sounds, the Author shall receive a share amounting to 50% of the net turnover from all royalties falling due (royalties according to price list, less any rebates or other special rates).

4.3 Net turnover is defined as

(a) the remuneration paid by the Customer, less

- any customer rebates granted;
- payable taxes or other charges due under applicable laws;
- lawyers' fees and other adequate fees incurred during the enforcement of the present contract or the Customer Licence Agreement;
- fees charged for the transaction by a financial institution (PayPal, others);
- third-party costs incurred in connection with the transaction.

(b) the remuneration paid to Clipdealer by the Partners for the exploitation of the Sounds (= less Partner commissions).

4.4 Costs for advertising commissions (such as affiliate programmes, gift promotions) shall, however, always be borne by Clipdealer alone.

4.5 Remuneration is due when payment by the Customer for the licence has been received by Clipdealer.

4.6 Payout of the credit balance must be applied for with Clipdealer. For this purpose, the Member will have to click "Request payment" in the member area, thus applying for payout of the credit balance. The share of the income from the purchased Sounds will be transferred at the beginning of the month following the application, provided that the credit balance has reached a minimum value of 50 €; if the amount is below 50 €, payout of the credit can only be applied for once the credit sum has exceeded this minimum amount. Upon written request, sums below the minimum amount can be paid out by Clipdealer once per quarter for a processing fee of 5 €. If the credit balance is to be transferred to an account in a foreign country, the Author shall be any costs incurred for this. Fees for payment providers such as PayPal shall be borne by Clipdealer.

4.7 Clipdealer shall have the right to request repayment of any credit already paid out, if the transaction is subsequently cancelled or is invalid (e.g. credit card chargebacks).

## **5. Contract term**

5.1 The contract between Clipdealer and the Author is concluded for an indefinite period of time. Either party may terminate the contract with regard to the entire content (Sounds) or with regard to individual pieces of content (Sounds) upon 6 months' notice with effect as of the end of a month.

5.2 Clipdealer may terminate the contractual relations by sending an e-mail or a written message to the contact address last registered as the Author's address data.

5.3 This shall not affect the right to terminate the contract extraordinarily.

5.4 Upon termination of the present agreement, termination of the Terms and Conditions of Use shall be deemed to have been declared as well.

5.5 Clipdealer shall be obligated to delete all the Author's Sounds upon the end of the contractual relations.

5.6 Clipdealer shall have the right to continue licensing the Sounds up until the end of the contract term. Clipdealer shall continue to pay the share of the royalties. Should a credit balance remain at the end of a quarter, this shall be transferred at the end of the quarter.

5.7 If the Author only wishes to have individual Sounds deleted from the data bank, he/she can do so himself/herself in his/her personal area. Clipdealer shall delete the Sound(s) from the data bank within a maximum of 3 months, without charging a fee. Clipdealer shall furthermore send the Partners a message regarding the deletion during the next update cycle (at the latest once per quarter). The Partners shall delete the Sounds from the data bank within a maximum of 3 months after receipt of this message. If a Sound is to be deleted as quickly as possible, for instance due to legal reasons, Clipdealer should be informed of this immediately in writing (facsimile suffices).

5.8 Exceptions from the deletion of the Sounds:

(a) the content preview will not be deleted, but will remain on the Clipdealer servers in a separate area.

(b) Sounds which have been licensed to Customers will not be deleted but rendered inactive. The related data will be preserved for administrative and tax purposes as well as for questions relating to liability for defects; however, they will no longer be displayed in the public area.

5.9 From the end of the contractual relations, the rights will no longer be granted to third parties.

5.10 Any rights already granted to Customers shall continue to be valid.

## **6. Examination of the Sounds, provisions on liability**

6.1 Clipdealer shall have the right, but not the obligation, to editorially examine any Sounds placed. Keywords listed by the Author may under certain circumstances be modified by Clipdealer. Clipdealer reserves the right to reject individual Sounds without having to state reasons for this, or to delete Sounds which had already been accepted from the data bank at any time. We would like to expressly state that Clipdealer, due to the quantity of the Sounds placed, is unable to examine all Sounds. The Author shall be exclusively responsible for the lawfulness of the Sounds as well as for his/her right to grant rights to the Sounds. Any liability by Clipdealer in this context is hereby expressly excluded.

6.2 Should third parties assert claims against Clipdealer due to a culpable violation of the Author's obligations, in particular due to violations of copyrights, personality rights, property rights or industrial property rights, the Author shall indemnify and hold Clipdealer harmless from any liability and costs, including the costs of legal proceedings.

6.3 The same shall apply if a third party asserts claims against a Customer due to a culpable violation of the Author's obligations.

6.4 Clipdealer shall in particular not accept any liability resulting from the Customer utilising the placed Sounds in a way that breaches the contract.

6.5 Should an Author or a third party consider his/her own rights or third-party rights to have been violated, Clipdealer shall immediately be informed accordingly. Clipdealer will immediately delete the Sounds concerned from the data bank.

6.6 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.

6.7 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 Authors 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.