

## **ClipDealer Terms and Conditions of Use (last updated 20.05.2009)**

### **1. Scope of Application & Modifications of these Terms and Conditions of Use**

1.1 ClipDealer GmbH (hereinafter referred to as "Clipdealer") operates a platform for multi-media content. Through this platform, Clipdealer offers the Customers Videos - such as films, animations etc. - Images, Graphics and Sounds (hereinafter jointly referred to as "Content") for licensing.

1.2 The Members are the Authors registered with Clipdealer (hereinafter referred to as "Authors") and natural persons and legal entities and associations registering for the download of Content (hereinafter referred to as "Customers"). Authors and Customers shall hereinafter be jointly referred to as "Members".

1.3 The Terms and Conditions of Use hereinafter regulate the conditions under which the services offered by Clipdealer may be used by the Members. Upon registration with Clipdealer, the Member expressly approves of the present Terms and Conditions. In doing so, the Member acknowledges to have read and understood the Terms and Conditions of Use and to accept them. These Terms and Conditions of Use and these contracts shall apply exclusively for all Members registering on the Clipdealer internet site, even if the pages are utilised and accessed from a country other than the Federal Republic of Germany.

1.4 Clipdealer shall have the right to modify the contents of these Terms and Conditions with the Members' approval, if the modification is reasonable for the Members, taking into consideration Clipdealer's interests. Clipdealer shall inform the Members of a modification of the Terms and Conditions of Use, 2 weeks prior to such modification at the latest, via an e-mail to the address stipulated by the respective Member.

1.5 Clipdealer undertakes to specifically inform the Members in the notification on such modifications of the possibility to object to the modification or terminate the contract, of the deadline and the legal consequences, in particular the consequences of not submitting an objection.

1.6 Modifications of the Terms and Conditions of Use shall be deemed to have been approved of if the Member does not object to the modification within one month from receipt of the modification notification, nor terminates the contract within this period of time.

1.7 Should the Member object to a modification of the Terms and Conditions of Use, Clipdealer shall have the right to terminate the membership extraordinarily.

1.8 Clipdealer may transfer its rights and obligations under this contract to a third company (for instance a foreign subsidiary or an affiliated company) (takeover of the contract). In such cases, the Member shall have the right to terminate the contract with effect as of the time of the takeover of the contract.

1.9 Any regulations deviating from the present Terms and Conditions of Use, in particular terms and conditions used by the Members, are hereby expressly rejected. Should a Member not accept the present Terms and Conditions of Use, he/she may not use the website.

## 2. Services

Clipdealer provides the possibility of searching for content, purchasing rights to the placed Content, and downloading the Content. The rights are regulated in the Customer Licence Agreement. The prices for the rights are stipulated in the [Price List](#).

## 3. Registration

3.1 In order to use Clipdealer without any restrictions, the Member will have to register and open a member's account.

Without this registration, it will only be possible to use individual features.

3.2 The Member is obligated to truthfully and correctly complete the boxes in the order form. If changes occur after registration regarding the collected data, the Member must immediately update the information in the member's account.

3.3 Upon registration, the Member defines a user name and a password for his/her login to Clipdealer (hereinafter referred to as "Login Data"). User names violating third-party rights, in particular trademark rights or name rights, are not admissible. Illegal and immoral user names are not admissible either.

3.4 The Member shall be obligated to keep the Login Data secret and store them in such a way as to protect them against access by unauthorised third parties. If the Member loses the Login Data, or if he/she finds out or suspects that his/her Login Data may be being used by a third person, he/she shall immediately inform Clipdealer thereof. Clipdealer shall not accept any liability for damages caused by Login Data falling into third-party hands. Clipdealer will never ask a Member for his/her password.

3.5 Upon sending the data in the registration form, the Member submits an offer to Clipdealer for the conclusion of a utilisation contract for the platform. Clipdealer reserves the right to refuse registration of a Member without having to state reasons for the refusal. As soon as Clipdealer accepts the Member's offer for registration, the Member will receive a confirmation e-mail containing the registration data and an activation link. Upon receipt of this confirmation e-mail, the user contract for the platform is concluded between Clipdealer and the Member.

3.6 Only Members with full legal capacity are entitled to use the site.

## 4. Granting of rights

4.1 The Authors transfer the rights to the placed content to Clipdealer, on the basis of the Authors' Licence Contract.

4.2 Clipdealer transfers rights to the placed content to the Customers, on the basis of the Customer Licence Contract Video or the Customer Licence Contract Audio.

## 5. Royalties

Payment can be effected through various payment methods (e.g. via bank transfer or credit card). The prices valid at the time the order is placed shall apply. Clipdealer reserves the right to not allow all methods of payment in individual cases.

## **6. Prohibited utilisation**

6.1 Clipdealer may only be used for legal purposes.

6.2 Clipdealer may not be used to disseminate defamatory, pornographic or other illegal material, to threaten or harass third parties or to violate third-party rights (including personality rights).

6.3 The utilisation of Clipdealer in a way which impairs the availability of the Clipdealer data bank or other Clipdealer services for other Members is prohibited.

6.4 The Members are responsible to ensure that Content placed by them and the forum articles written by them are free of viruses, worms, Trojans or other damaging programmes which may endanger or impair the functionality or the inventory of Clipdealer, or of the Members' websites.

6.5 It is prohibited to publish Content or forum articles etc. of the following kind on Clipdealer:

- content which may violate third-party rights, in particular third-party copyrights, performing rights, name and trademark rights, design rights, property rights and personality rights;
- pornographic, obscene, sexist, defamatory, libellous or racist presentations, or presentations offending minorities or religious groups;
- discrimination, defamation or insults;
- false allegations;
- abusive criticism, libel, speculations or slander;
- vilification of the Author the person(s) shown;
- political content or advertising for political parties;
- calls for boycotts or deletion requests of any kind;
- Members' private data (e.g. address, telephone number, bank details)
- quotes from private e-mails/text messages from other Members, Clipdealer or third parties (privacy of mail);
- links to internet sites with illegal content;
- unauthorised communication measures, neither direct nor indirect (e.g. spamming)
- advertising

## **7. Deletion of Content and forum contributions, freeze**

Clipdealer reserves the right to delete Content and forum articles without having to state any special reasons for this.

A right to place or maintain placed Content or forum articles on Clipdealer does not exist.

In the case of a violation of the present Terms and Conditions of Use, Clipdealer shall have the right to freeze the Member's access to Clipdealer or parts thereof with immediate effect. The affected Member is prohibited from re-registering under a different user profile or using Clipdealer in any other way.

Clipdealer reserves the right to initiate measures under criminal law and to assert claims (in particular for damages) against the Member.

## **8. Duration of the utilisation rights**

8.1 The contract between Clipdealer and the Customer is concluded for an indefinite period of time. It can be terminated by the Customer or by Clipdealer at any time without prior notice.

8.2 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 or with regard to individual pieces of content, upon 6 months' notice with effect as of the end of a month. The Author may only terminate the membership in connection with the Authors' Licence Contract.

8.3 For the termination, the Member shall send an e-mail message to Clipdealer, providing the first three letters of the password, and shall also send a written notification pursuant to clause 8.2.

8.4 Special termination rights: Clipdealer shall furthermore at any time and without prior notice have the right to cease providing the platform, the services provided through the platform or parts of these services. The Members' utilisation rights shall automatically expire to the same extent.

## **9. Contact**

Members may also contact Clipdealer via e-mail. However, the internet is not an absolutely safe medium, and there always is the danger that messages may be lost, intercepted or altered. Clipdealer shall not accept any liability for damages in connection with messages sent to or from the Clipdealer e-mail addresses.

## **10. Data bank rights**

The content and forum articles accessible on Clipdealer as a whole constitute a copyrighted data bank. It is prohibited to completely or partially take over or edit the structure of this data bank without Clipdealer's consent.

## **11. Liability**

11.1 Except for provisions No. 11.6 and 11.7 below, Clipdealer shall not accept any liability for damages caused due to the utilisation of the internet site or the direct or indirect utilisation of the content.

11.2 A legal claim to the operation, continuous availability and error-free functioning of the internet site [www.Clipdealer.de](http://www.Clipdealer.de) does not exist.

11.3 The information content of this website is updated regularly by Clipdealer. However, Clipdealer is not in a position to accept a guarantee or any responsibility or liability for the information on the website being correct, up to date or complete.

11.4 Clipdealer shall have the right, but not the obligation, to editorially examine any Content or forum articles placed. We would like to expressly state that Clipdealer, due to the quantity of the Content and forum articles placed, neither has the technical nor the personnel capacity to examine all Content and articles for infringements of third-party rights.

11.5 The Author shall be exclusively responsible for the lawfulness of the Content and forum articles as well as for his/her right to grant rights to the Content. Any liability by Clipdealer in this context is hereby expressly excluded.

11.6 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.

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

## **12. Final provisions**

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

12.2 This utilisation 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.

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