

## ClipDealer Customer Licence Contract Video/Photo/Vector

### 1. Recital

1.1 The present agreement regulates the conditions under which the Customers (hereinafter referred to as "Customers") may use the Contents such as photographs, videos (for instance films, animations), graphics, illustrations, drawings (hereinafter referred to as "Content") - 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 Content for admissible purposes of use in accordance with the provisions hereinafter.

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

2.3 Further transfer:

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

(b) Exception: The utilisation 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 comprises

- the copying and dissemination rights, i.e. the right to copy and disseminate the Contents 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 Contents and use them online, i.e. the right to make the Contents 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 Contents 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 Contents 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 Contents 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 (e.g. 70, 35, 16, 8 and super 8 mm), and on image/sound/data carriers of all kinds.
- the clip licence rights, i.e. the right to utilise clips from the Contents without modifications, in an edited, modified or enhanced form, including the original film music and the original film soundtrack, 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 show and/or utilise the Contents, whether entirely or in part, without modifications or in an edited, modified or enhanced form, during exhibitions, (sales) shows and similar events.
- the printing rights, i.e. the right to utilise the Contents or parts thereof for the production, copying and dissemination of illustrated or non-illustrated books, magazines or other printed works.
- the editing rights, i.e. the right to edit or modify the image material using analogous, digital or other image editing methods (e.g. photomontage, alienation, colouring), taking into consideration the authors' copyrights.

#### 2.5 Merchandising Licence (not required for videos):

The provisions in 2.1 to 2.4 above shall apply for the acquirement of a merchandising licence. In addition, the following shall apply:

Encompassed in particular is the right to commercially exploit the Content by means of producing and distributing all types of goods (products for re-sale, such as posters, calendars, dolls, games, toys, stuffed toys, sports goods, household, bathroom and kitchen goods, clothing, printed texts, including comics, headgear, buttons, etc.)

#### 2.6 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 Contents may not be used

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

(b) in a way which would vilify the author or the person(s) shown, or if it must be assumed that the author or the person shown would not approve of the publication (in spite of the existence of a so-

called model release). For purposes of clarification: This refers to all images which show this person in a situation which may violate his/her personality rights, including sexual or insinuated sexual activities or preferences, use or abuse of drugs, crimes, physical or mental abuse or suffering or any other situation which would probably be offensive for any person shown in the content (e.g. dating pages, escort services, erotic offers, pornographic offers, pages with content which is harmful to minors). In such cases, an expressed written agreement must be obtained via Clipdealer from the person affected (against payment of a lump-sum fee).

(c) as a trademark, design mark, logo or company sign or as a part thereof;

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

(e) for other illegal activities.

#### **4. Transfer of the utilisation rights**

4.1 The utilisation 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 utilisation rights shall automatically return to Clipdealer. This shall not affect the Customer's payment obligations. Upon payment, the utilisation 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. 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 Content, Clipdealer shall not be obligated to take back the Content or reimburse the licence fee.

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

6.1 The Customer is responsible for obtaining the necessary permissions for the specific utilisation of the Content, if they do not already exist. This shall in particular apply for images of persons, pieces of art or architecture, locations which are not publicly accessible and for other images which contain names, company names, trademarks, registered design marks or copyrighted works (section 2 UrhG - Urheberrechtsgesetz - German Copyright Act), or affect other third-party property rights.

6.2 If the existence of a model release is not mentioned in the description of the Content in the media data on the website, the utilisation rights are granted without a model release. The Customer shall be responsible for obtaining all necessary release declarations. However, Clipdealer is prepared to cooperate with the Customer in obtaining such release declarations (against payment of a lump-sum fee).

6.3 If the existence of a property release is not mentioned in the data on the Content stipulated on the website, the utilisation rights are granted without a property release. The Customer shall be responsible for obtaining all necessary release declarations (such as a release regarding any existing protected rights - see clause 6.4 - in addition to a property release). However, Clipdealer is prepared to cooperate with the Customer in obtaining such release declarations (against payment of a lump-sum fee).

6.4 Clipdealer does not hold releases/permits from manufacturers of commercial products (e.g. motor vehicles, aeroplanes, packaging, designer clothes etc.). However, releases often are available on a case-by-case basis. It is the Customer's sole responsibility to determine whether permission by the holder of the protected right is necessary in connection with a corresponding utilisation of the content. The Customer shall be responsible for obtaining all necessary release declarations. However, Clipdealer is prepared to cooperate with the Customer in obtaining such release declarations (against payment of a lump-sum fee).

6.5 Notwithstanding the aforesaid, Clipdealer shall not have an obligation to cooperate in this way, nor is Clipdealer liable for a success of such endeavours.

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 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.