

# Terms and Conditions

## 1. GENERAL

1.1 Universal Publishing Production Music GmbH (henceforth 'UPM') provides users (henceforth 'users') music recordings (henceforth 'recordings') and the music works underlying the same (henceforth 'work', and a recording and work together shall also henceforth be referred to as a 'title') for use in media productions such as advertising, film and software, and distributes the licences necessary for use.

1.2 The titles of UPM are published on audio carriers of different labels that are provided as such or on other data carriers to selected users on an individual basis free of charge for the selection of music. There is no entitlement to the provision of audio or data carriers. The scope of provision lies in the sole discretion of UPM.

1.3 In addition, users can listen to titles directly from the online catalogue (henceforth 'catalogue'), at [www.unippm.de](http://www.unippm.de) and obtain the same against payment of the necessary licences for use in media productions in accordance with the applicable price list.

1.4 By using the offering on the website, the user irrevocably declares its agreement to the application of the following General Terms of Business in their valid version for the relationship between UPM and the user. Contrary, deviating or supplementary conditions to these General Terms of Business on the part of the customer are excluded. Any general terms of business on the part of the user which are referenced in the forms of the user or in the websites of the user are hereby expressly rejected. A contractual relationship between UPM and the user shall only become effective on the basis of these General Terms of Business.

1.5 The user shall be informed of any amendments or supplements to these General Terms of Business in writing. The user is deemed to have accepted the amendment of the General Terms of Business if the user fails to object within two weeks of receipt of the written notification. The user shall be informed of this consequence in the written notification.

1.6 These General Terms of Business together with the user's licence application approved in writing by UPM shall form the licence agreement for the use of the catalogue titles (for contractual conclusion please see the following Number 4).

## 2. USER REGISTRATION

Universal Publishing Production Music GmbH | Stralauer Allee 1 | 10245 Berlin, Germany  
T: +49 (0)30 52007-2080 | [productionmusic.de@umusic.com](mailto:productionmusic.de@umusic.com)  
**[www.universalproductionmusic.com](http://www.universalproductionmusic.com)**





2.1 The registration necessary for use of the catalogue is performed on the website and involves the determination of a username and a password. The user is required to enter the requisite data correctly and in full.

2.2 Registration can be refused on important grounds in individual cases. There is no entitlement to registration.

2.3 After receipt of registration confirmation by email, the user data shall be checked by UPM before the release of additional functions such as the play or download feature for the titles in the catalogue. There is no entitlement to the release of use functions after registration. This is subject to the check performed by UPM.

2.4 The user may not provide access data to third parties. Access data must be protected against unauthorised third-party use.

2.5 The user undertakes to indemnify UPM from any liability that arises due to the unauthorised use of access data, provided the user is not able to prove that it is not responsible for the unauthorised use.

2.6 Changes to the user data must be promptly entered into the user profile.

### **3. PROVISION OF TITLES, RETENTION OF TITLE**

3.1 The audio and data carriers provided to the user remain the property of UPM. Provision is granted strictly on a temporary basis only and solely for the subsequent purchase of use rights.

3.2 UPM reserves the right to request the return of audio and data carriers provided. This shall particularly apply in the event that a licence agreement for the use of one or more titles provided is not concluded within a period of 12 weeks. The user shall bear the costs of return.

3.3 The titles are likewise provided to the user after successful registration under the condition that the download function is released for the download of selected file formats from the catalogue on the website. The user can browse the catalogue on the website for suitable titles using various search functions; the user can also play the titles directly and view information regarding each individual title.

3.4 In the event a licence agreement for the use of a musical piece is not concluded within 12 weeks of downloading the musical piece, the user is no longer permitted to use the musical piece as part of the production or otherwise. The file obtained by download must be deleted upon expiry of the above-mentioned period. The exception to this regulation is internal storage for archive purposes.

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**3.5** In any case, the user acquires no rights whatsoever to the use of the titles provided, reserving the conclusion of a licence agreement on further use according to Numbers 4 to 6 of these General Terms of Business.

**3.6** The user is notified that the recording of titles using digital recording devices or software during the use of the play function of the online catalogue is deemed an unauthorised act of duplication and that an authorised use of the titles provided is only possible after the due download of the file and proper licencing in accordance with Number 4 of the General Terms and Conditions.

#### **4. CONCLUSION OF A LICENCE AGREEMENT WITH UPM**

**4.1** In the event the rights required for the intended use of the title are not or not exclusively protected by the Society for Musical Performing and Mechanical Reproduction Rights, Berlin and Munich (henceforth 'GEMA'), the user undertakes to conclude a licence agreement with UPM for the use of the title in the event a title is to be used for a production.

**4.2** In the case of TV commissioned productions and/or TV own productions, the film production rights in Germany are issued by GEMA. Further details are stipulated in GEMA's deed of assignment, in particular under §1 i) Paragraph 3, accessible at [www.gema.de](http://www.gema.de).

**4.3** The licence is issued exclusively under the terms of the valid price list applicable at the time of the provision of the requisite licence applications or copy notices. The respective bases of calculation for the relevant licence fee can be found under Number 6.1 of these General Terms of Business with reference to the valid price list. The user shall be provided price lists by UPM upon request.

**4.4** The user undertakes to provide UPM precise details regarding the type and scope of the use of the title(s) by no later than two weeks after completion of the production. In addition, the user shall also send a copy of the music information (known as the 'cue sheet') submitted to the collecting society together with this information. The conclusion of a licence agreement and the respective notification of the requisite information must always however occur prior to the release of the production.

**4.5** Conclusion of the licence agreement requires the submission of a licence application by the user. This may only occur with the use of the licence application template accessible at [www.universalproductionmusic.com](http://www.universalproductionmusic.com) indicating all the required information. The signed licence application has to be sent to UPM by fax to the fax number indicated on the printed form or by email in a scanned PDF format.

**4.6** In the event only one copy notice is sent with the licence application template, a licence agreement shall become effective upon release declaration by UPM vis-à-vis the client. The user

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undertakes to inform the client of these General Terms of Business before submitting the copy notice.

**4.7** The user, or respectively the client, is only permitted to use the title upon the written release declaration by UPM (email suffices) and the complete payment of the relevant licence fee in accordance with the following Number 6 in the scope of rights granted pursuant to the following Number 5.

**4.8** Insofar as the performance and broadcasting rights as well as the mechanical duplication rights to the work are protected by GEMA or another collecting society, these shall be retrieved by the user from GEMA or the other collecting society. In this case, the user is obligated to duly enter the used works with the required information on the corresponding GEMA registration forms and to forward the same to GEMA; one copy of which is to be sent to UPM. The approval required by UPM for the use of the title shall be deemed issued upon submission of these lists.

**4.9** In the event the performance and broadcasting rights to recordings are protected by the Gesellschaft zu Verwertung von Leistungsschutzrechten mbH (Collecting Society for Neighbouring Rights, henceforth 'GVL') or another collecting society, these must be retrieved by the user from GVL or the other collecting society. In this case, the user is obligated to duly enter the used titles with the requisite information on the registration forms and to forward the same to GVL; a copy of which is to be sent to UPM.

## **5. SCOPE OF RIGHTS GRANTED**

**5.1** The rights of use that are to be granted by UPM shall only be deemed issued upon the payment of the respective licence fee to the account of UPM in accordance with Number 7 of these General Terms of Business.

**5.2** The scope of the licence granted shall be determined by the information on the intended uses in the licence application as well as the release declaration by UPM.

Amendments to the scope of use or the supplement of further uses in the form of another type of use or playing time of the title shall always require the conclusion of a new licence agreement.

The use right to the titles released by UPM is strictly limited to audio-visual uses; with the exception of telephone queues and audio books / audio plays, which do not exclusively or primarily comprise one title. The exclusive audio use of a title therefore requires the advance express consent by UPM in writing (email suffices).

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5.3 Upon conclusion of the licence agreement, the user shall not be granted any use rights in the name of the artist or title whatsoever. Use in the name of the artist and/or title requires the advance written consent of UPM.

## **6. LICENCE FEES, CONTRACTUAL PENALTY**

6.1 The licence fees are calculated in accordance with the price list valid on the day on which UPM receives the licence application or copy notice. The licence fees are calculated on the basis of the notice (licence application) sent to UPM and are based on the type of the production, the selected types of use, the area of distribution, the length of the licence as well as the playing time of the title.

6.2 For any use performed without due licencing or in excess of the scope of the existing licence, at least twice the licence fee shall be payable. UPM reserves further claims for compensation.

6.3 The sound archives (such as Sound Ideas) are dispensed at the respective list price.

6.4 The user shall be provided price lists by UPM upon request.

## **7. TERMS OF PAYMENT**

The respective licensee shall be sent an invoice upon release. The invoice must be paid in net and without any deductions within 14 days of receipt.

## **8. SET-OFF AND RETENTION**

The user is only entitled to the right to set-off with legally determined receivables or receivables which are not disputed by UPM. The user may only exercise a right to retention with regard to the receivables relating to the same contractual relationship.

## **9. WARRANTY AND GUARANTEES**

9.1 In the case of exploitation rights duly acquired by UPM, UPM shall release the user from all legitimate third-party (musicians, conductors, producers, etc.) claims, reserving any deviating regulations as part of these General Terms of Business. This excludes all claims on the part of GEMA or other copyright collecting societies and GWL or other collecting societies for neighbouring rights.

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9.2 In addition, with the descriptions of the performances of UPM, in particular the titles provided, no guarantees are assumed for their condition.

## 10. LIABILITY

10.1 UPM shall accept liability for all damages incurred in conjunction with the use of the website and the service relationship between the user and UPM, regardless of the legal basis, in particular for breach of contract or tort, only in accordance with the following regulations:

- In the event of wilful intent, claims according to the Product Liability Act as well as for the loss of life, bodily injury or damage to health, UPM shall accept liability exclusively in accordance with statutory provisions;
- in the event of gross negligence, the liability of UPM is limited to the compensation of the typical foreseeable damage; this limitation does not apply if the damage was caused by executive employees of UPM;
- in the event of simple negligence, UPM shall only accept liability if an essential contractual duty has been violated. Essential contractual duties refer to contractual duties upon whose fulfilment the user may normally rely and whose non-fulfilment would compromise the achievement of the contractual purpose ('cardinal duties'). In this case, liability shall be limited to the typical foreseeable damage;
- insofar as UPM is not an enterprise in the terms of Section 14 BGB (Civil Code) or a legal person under public law, UPM shall be liable without limitation for damages caused by gross negligence.

10.2 In the event other content is transferred on this website free of charge other than the titles licenced by UPM, the warranty claims for material defects and defects of title of this content, in particular for their correctness, faultlessness, freedom from third-party property rights and copyrights, completeness and/or applicability - excluding in the cases of deceitful concealment of a defect or a guarantee in opposition to the above regulation - are excluded.

10.3 UPM has no influence over the content and design of the referenced websites. In this respect, UPM accepts no responsibility for risks or damages of any kind which are caused by the knowledge, visit or use of the referenced websites. In this respect, UPM expressly distances itself from all content displayed on all websites referenced by this website and expressly states that it does not make their content its own.







## 11. COPY SPECIMEN

The user is asked to provide UPM a copy specimen (DVD or digital format) promptly after completion of the respective production.

## 12. SHOWREEL

UPM is permitted to use the respective released production in excerpts, i.e. limited to parts of the production which are accompanied with the contractual titles, for the purposes of self-promotion. UPM is permitted in particular to use these excerpts (with reference to the user where applicable) on the UPM website and/or websites of other companies which belong to the Universal Music Group, as well as in social networks, YouTube channels etc. In this respect, the user grants UPM the excerpt rights to the production without restriction in terms of time and place and guarantees the existence of these rights as well as possession of the corresponding authorisation over these rights.

## 13. DATA PROTECTION

Due to the statutory obligations of UPM to provide information regarding data handling in connection with the use of the website, reference is made to the [Data Privacy Policy](#).

## 14. FINAL PROVISIONS

14.1 Should one provision of these General Terms of Business be or become ineffective or unenforceable, this shall not thereby affect the validity of the remaining provisions. In the event of the ineffectiveness or unenforceability of a provision of these General Terms of Business, the valid and enforceable provision which comes closest to the ineffective or unenforceable provision proposed between the parties shall automatically apply.

14.2 Amendments to these General Terms of Business require compliance with the written form. This likewise applies to the cancellation of the written form requirement.

14.3 In the event the user is a merchant, legal person under public law or a special fund under public law, the courts of the state district of Berlin Charlottenburg shall be responsible for all disputes which arise from or relate to these General Terms of Business or your use of the website.

14.4 The place of fulfilment is Berlin.

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**14.5** The legal relationship between the user and UPM is subject to German law, excluding the UN sales law, regardless of the nationality and usual place of residence of the user. The regulations of Article 29 Paragraphs 1, 3 and 4 of EGBGB (Introductory Act to the Civil Code) remain unaffected.

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