

## General Terms and Conditions of Business of “Hear The Music”

### Section 1 - General Information, Provider Identification

1. **Hear The Music** offers a service for the digital promotion of music (“sampling”) via the domain <http://www.hearthemusic.de> by means of **Hear The Music** providing you, as **customer**, with web applications for sampling, so that your music and/or other sampling material is made available to your media partners in digital form. You decide which format your media partner receives (e.g. mp3 or wav files or even picture material, video clips) as well as which additional information (for example label copies and information sheets as well as video-link incorporation) is forwarded to him. The watermark protection of the files sent gives you maximum security as regards use of your sampling material. We subsequently carry out an effective evaluation of the sampling in the form of tables and charts, and forward the results to you. **Hear The Music** also enables you to prepare and send your newsletter in HTML format.

2. For the purpose of our General Terms and Conditions of Business, **customers** are exclusively entrepreneurs. For the purpose of our General Terms and Conditions of Business, entrepreneurs are natural or juridical persons or legally constituted partnerships with whom business relations are established and who act in performance of a commercial or self-employed professional activity. Our **customers** are, for example, record companies, small labels, promotion agencies, tour promoters, music publishers, producers and artists.

3. The provider of the domain <http://www.hearthemusic.de> and contract partner for the service is:

HEAR THE MUSIC  
Jan Hagenkoetter  
Eckenheimer Landstraße 156  
60318 Frankfurt am Main  
Germany  
phone: +49 (0)69 254 72 72 7  
contact@hearthemusic.de

### Section 2 - Scope of application

1. These General Terms and Conditions of Business are applicable to all business relations between **Hear The Music** and the **customer** in the respectively latest version at the time of conclusion of the contract.

2. Conflicting or deviating terms and conditions of the **customer** will not be accepted unless **Hear The Music** has issued its written consent to this in the particular individual case.

### Section 3 – Conclusion of contract

1. You can complete the order procedure under our navigation point “Order“ at the

top right of the start page. You will receive step-by-step instructions and must log on/register there. By logging on/registering you accept our offer of conclusion of a contract. The amount payable shown during the order procedure following logging on/registration must be transferred in order to obtain the access data. Upon receipt of payment **Hear The Music will** send you the access data with which you can then upload your data material.

2. Before sending your order, you must confirm that you have noted and accept our General Terms and Conditions of Business. Before completing the order you will also be given the opportunity of checking and possibly correcting the content of your confirmation.

3. After sending your order, you will receive technical acknowledgement of receipt of the order for sampling via the website and by e-mail. This automatic acknowledgement of receipt via the website and by e-mail will show your order and the invoice amount together with our General Terms and Conditions of Business as data attachment which you can save. Please check the confirmation for apparent spelling mistakes and calculation errors as well as for discrepancies between the order and the confirmation. You are obliged to notify us without delay of any such discrepancies.

#### **Section 4 – Price models, contract term, traffic, payment conditions**

1. All prices, which are also stated under “Costs“ on the **Hear The Music** website, are exclusive of the statutory German value added tax at the current rate of 19%. This will be shown in addition on the invoice. **(only for european member states without a valid tax identification number)** The prices as per the latest **Hear The Music** pricelist as of the date of the **customer’s** order shall apply.

#### 2. Price models

As a fundamental rule, we offer two price models which are use-dependent. You can choose one-off use (this is particularly suitable for small labels, publishing companies or even artists with just 3-5 samplings per year) or a yearly subscription (this includes an unlimited number of samplings and permanent access to the system).

##### a. Storage space

one-off use : 2 GB

yearly subscription: 20 GB

##### b. Costs

One-off use: 89.00 €

yearly subscription: 649.00 € (payable in one sum)

Three templates (digital data model) incl. / additional templates (max. 3 per contract): 30.00 €

#### 3. Contract term

one-off use: 12 weeks as from acceptance of contract

yearly subscription: 12 months as from acceptance of contract

The sampling material, including the evaluations, will remain stored for a further 12 months to cover the possibility of additional samplings being carried out.

#### 4. Traffic:

Based on our extensive experience we have provided both price models with sufficient storage space and traffic volumes:

One-off use: 40 GB  
yearly subscription: 720 GB (per year)

In the event of more traffic being required in exceptional cases, this can be provided at 1 € per Gigabyte. Any additional consumption of traffic will be invoiced following the end of the individual use, with annual subscriptions at the end of the month in which the traffic is exceeded.

5. We offer various comfortable payment facilities for your order:

- by bank transfer (payment in advance)
- PayPal (direct debit, bank transfer, credit card or PayPal balance)

In the event of payment not being received within 10 days of receipt of your order, the order will be cancelled automatically.

#### Bank transfer

If you select the payment form “bank transfer” you will avoid any further charges. Following receipt of your order we shall forward our account details to the e-mail address provided as part of the order confirmation procedure. Kindly transfer the invoice amount as quickly as possible as we cannot supply your access data until following receipt of payment in our account.

We kindly ask you to observe the following so as to ensure problem-free and speedy processing:

- Please enter the complete order number – as stated in our e-mail confirmation - in the “purpose” field of the transfer form as well as your name. No other information is required under “purpose”.
- Kindly state the precise invoice amount. Rounding up or down will prevent immediate allocation of your payment and may delay delivery.
- Please transfer the invoice amount in a single sum. The transfer of several partial amounts will delay or even prevent allocation.
- Please use one transfer form only per order. Failure to comply will prevent clear allocation of the invoice amount and can delay delivery.

Our bank details:

Account holder: Jan Hagenkötter  
Bank: Nassauische Sparkasse Frankfurt.  
Account number: 143 074 242  
Sort code: 510 500 15

*When transferring from other European countries:*

*IBAN number:: DE 84 5105 0015 0143 0742 42  
BIC/SWIFT code: nassde55*

*Under current legislation you should incur the same costs for transfers within the EU as when transferring within the same country.*

### PayPal

Our PayPal link offers you a payment facility for sending (and receiving) money. You incur no fees or other additional costs. Payments are processed quickly and securely. PayPal is an Internet bank with which you hold an Internet account.

Select the desired payment method in the PayPal window. A prerequisite is that you hold or open a PayPal account. PayPal enables you to effect payment by direct debit, transfer, credit card or from your PayPal balance. Further information is available at [www.PayPal.de](http://www.PayPal.de)

Our PayPal account is: [account@hearthemusic.de](mailto:account@hearthemusic.de)

### Credit card (currently only available via PayPal)

If you wish to pay with your credit card, kindly enter the card information requested, including the card security number. This can be found on the reverse of your credit card and corresponds to the last three figures. If payment is made via credit card, we debit the invoice amount to your credit card. We accept Master Card and VISA . In our own interests, we reserve the right to refuse credit card orders following thorough checking.

6. Payments must be made exclusively to the account of **Hear The Music** as stated in the order confirmation. Payments shall be considered received upon crediting of the amount to **Hear the Music**. You will receive a detailed invoice showing the value added tax. This invoice also applies as evidence and should therefore be kept carefully.

7. In the event of payment arrears or late payment (for example non-payment of additional traffic), **Hear The Music** is entitled to discontinue the ongoing sampling ordered by the **customer** until such time as all due claims have been settled or to make sampling dependent on payment in advance.

## **Section 5 – Content of the order**

1. The web applications make it possible for the **customer** to sample media partners of his choice (hereinafter referred to as “media partners”) with varying information on future publications of visual/audio recordings via e-mail. You can obtain an overview of your samplings already made under the heading “Promo Overview“. The number of addresses and distribution lists is unlimited. Addresses of existing contacts are imported in Excel format. Various attachments can be enclosed with the e-mails (music files, visual files, texts etc.). The files with the sampling material must only be uploaded once, the format conversion is carried out by **Hear The Music**. The above mentioned files are made available to the media partners on the **Hear The Music** server in the form of “streamings” and “downloads”. The number of possible download attempts can be determined in order to avoid link-sharing.

2. The content of your sampling order plus files will be stored on the servers for 12 months, unless you explicitly wish for earlier deletion of the files. Storage enables you to carry out renewed sampling within the 12 months. The prices applicable for the original sampling will remain valid for the renewed sampling.

3. Together with the access data you will be informed that you can set up several access facilities under your name for employees and/or vicarious agents; each individual access facility set up must be given a separate password.

## **Section 6 - Rights and obligations of Hear the Music**

**Hear the Music** is responsible for ensuring that the storage space, required for the files to be uploaded by the **customer** and assured in the order, is made available and that the sampling stated in the order can be carried out. Down-times of short duration can result exclusively during technical maintenance work; however, we shall endeavour to carry out necessary technical maintenance work at night. Unforeseen down-times can also result from server faults etc. In all cases, however, the **customer** will be informed in good time.

## **Section 7 – Obligations of the customer to cooperate**

1. The **customer** must have functioning Internet access with corresponding transmission capacity.

2. He guarantees that he will not make the access data available to third parties and that he will also impose this obligation on his employees /vicarious agents. If he has several access facilities, he guarantees that these are exclusively for employees/vicarious agents.

## **Section 8 – Transfer of rights and guarantee of rights by the customer**

1. The **customer** hereby grants **Hear The Music** the rights necessary for performance of the order on a non-exclusive basis. In particular, the **customer** grants **Hear The Music** the right to store, reproduce and edit the data material uploaded and to make it publicly accessible. Nevertheless, it is the sole responsibility of the **customer** to grant his media partners any farther reaching rights, in particular the extent to which they are allowed to make the sampling data available to third parties.

2. The **customer** guarantees that the reproduction of the sampling ordered, its making publicly accessible and data provided in this context do not violate any rights of third parties, in particular, but not exclusively, copyright and other protected privileges, and that other laws do not stand in the way of the sampling. The **customer** guarantees furthermore that the content of the sampling material is not of a violence-extolling, pornographic, racist or anti-foreigner nature. The **customer** also guarantees that the sampling material delivered is technically perfect and does not feature any other damage (e.g. viruses, Trojans etc.). Furthermore, the **customer** undertakes to arrange the licensing of the streams and downloads with the German Performing Rights Society (GEMA) or any other exploitation company that may be responsible. Finally, the **customer** declares that the media partners are in agreement with receiving the sampling data material via e-mail.

3. The **customer** shall indemnify **Hear The Music** at the first request against all claims of third parties asserted on the basis of violation of the above mentioned rights and/or in so far as the customer violates the guarantees issued by himself. This includes all direct and indirect damage and expenditure as well as the costs of legal pursuit and defence.

4. **Hear The Music** is entitled but not obliged to check the sampling material delivered for its legality. The **customer** undertakes to demonstrate the legality and/or to have it checked by third parties on request. If the **customer** refuses to do so, **Hear The Music** is entitled to withdraw from the order. Any resulting delays in the execution of the order or the consequences of refusal of the order in the event of violations of third-party rights or other violations of the law and damage incurred as a result shall be the exclusive responsibility of the **customer**. In particular, the **customer** cannot assert any claims to fulfilment and/or damages or similar against **Hear The Music**. Rather, in the event of withdrawal, delay or refusal of further execution of the order for the above mentioned reasons, **Hear The Music** can assert all costs incurred up until this time against the customer.

## **Section 9 - Liability**

1. Our liability for damages is limited to intentional conduct and gross negligence irrespective of the legal grounds. This shall not apply for damages resulting from injury to life, limb or health caused by intentional or negligent violation of obligations on our part or for claims under the Product Liability Act. The limitation of liability likewise does not apply for other damage caused by intentional or grossly negligent violation of obligations on our part or by conduct on our part that culpably violates the fundamental contractual obligations. We are likewise not liable for our legal representatives, employees and vicarious agents.

2. If liability for damage, which is not based on injury to the life, limb or health of the customer, or for slight negligence is not excluded, these claims shall become statute barred one year following creation of the claim.

## **Section 10 – Data protection**

1. The treatment of the data provided will be in accordance with the statutory provisions. The **customer** consents to the electronic processing and

storage of his data by us within the scope of the contractual relation. The data will not be forwarded to third parties in unauthorised manner.

We shall exchange data with credit service companies for the purpose of checking credit facilities and creditworthiness. The **customer** consents to the data to be forwarded to him by us (e.g. confirmation of the order) as well as the forwarding of the sampling data material to the media partners also being via e-mail.

2. Each **customer** is entitled to request information concerning the data stored on him by **Hear the Music** at any time and to have this deleted if so desired. For this purpose, **Hear The Music** can be contacted by the **customer** at [contact@hearthemusic.de](mailto:contact@hearthemusic.de).

### **Section 11 - Miscellaneous / concluding provisions**

1. The **customer** is obliged to inform **Hear The Music** immediately of any change to his address. Until such time as the **customer** can demonstrate having sent such notification, the previously known address shall continue to apply as the **customer's** valid address.

2. You are only entitled to a right of offsetting if your counterclaims have been determined as legally binding or we have confirmed them in writing. The exercising of a right of withholding is only possible if the counterclaim is based on the same contractual relation.

3. Subsidiary agreements, amendments and extensions require the written form. This shall also apply for the requirement of the written form itself.

4. The law of the Federal Republic of Germany shall apply.

5. In so far as an agreement on place of jurisdiction is admissible in business dealings, the place of jurisdiction shall be the respectively current registered office of **Hear The Music**. Place of performance is likewise the current registered office of **Hear The Music**.

6. Should individual provisions of these General Terms and Conditions of Business be or become invalid, the legal validity of the other provisions shall not be affected. The same shall apply for any loopholes in the contract.

**Frankfurt am Main, January 2015**