

Terms of use

Preamble

Hereafter you find the terms of Use of the **wikiloops media UG (haftungsbeschränkt)** (hereafter “operator”).

On the website www.wikiloops.com the operator maintains an internet portal (hereafter “portal” or “platform”) for retrieving and sharing tracks, which have been privately recorded for practice. The services offered on www.wikiloops.com can be used exclusively on these terms of use. These conditions are available online at www.wikiloops.com/nutzungsbedingungen.php anytime and can be printed by the user. These terms of use control the contractual relationship between the operator and individual or corporate body (hereafter “user”), who use the platform.

§ 1 Scope and changes to the terms of use

- (1) These terms of use apply exclusively; terms opposing or deviant from these terms will not be accepted.
- (2) The scope of these terms of use captures the complete platform, including all integrated and more divisions to be integrated.
- (3) For unregistered users, these terms apply in the current version at the point of time when they use the platform. For registered users, these terms are applicable as amended on the time of registration.
- (4) Changes in the terms of use will be announced to registered users by email at least six weeks in advance. They are considered as accepted by the user when the user does not object to the terms within six weeks of receiving the notice. It is sufficient to send the notification of objection within the period specified. The opposition shall be addressed to the operator by post or email, whose address is available on the legal information of the website. The operator agrees to the user in the email announcing the changes, specifically pointing out the importance of the six weeks period and the said legal consequences of his silence. The said legal consequence will occur only if the reference has been made. In the event of the opposition of the user, the operator reserves the right to terminate the contract properly according to § 11 para. 1 of these terms of use.

§ 2 Registration

- (1) While the pure access to public content of the platform requires no registration, the active participation in the platform requires the user’s registration. If the operator accepts the request of registration of the user, a gratuitous license agreement between the registered user and the operator is concluded. The user is not allowed to transfer the license agreement to a third party.
- (2) There is no entitlement of registration.
- (3) Any individual who is at least at the age of 16 and consents these conditions can apply for registration by filling the registry form on the platform.

- (4) The registration requires entering a valid email-address, user name and password selected. Each user is committed to give correct and complete particulars as part of his registration and specifically not to violate the rights of third parties. Among other things, a violation of the rights of third parties is given, when personal information or other third party data is used without their consent, e.g. the name or email address.
- (5) Users are obliged to keep secret the password chosen at registration and not to pass on to others. Any registered user is obliged to inform the operator immediately in case of loss or unauthorized use of its access information. To prevent the disclosure of the password chosen, the operator will neither pass it on to third party nor ask for it via phone, email or on the internal communication channels.
- (6) Registered users are responsible for the confidential treatment of the received and chosen access information (especially password). They are liable to the operator for damages resulting from negligent breach of these duties of care.

§ 3 Charges

- (1) The application and use of the platform are free.
- (2) The operator reserves the right to authorize the use of specific services on the platform against payment in due time. If necessary, the user will be informed accordingly. The operator also reserves the right to place advertisement in reasonable amount.

§ 4 Right of revocation for consumers

(1) Right of revocation

The following provisions apply for customers in terms of section 13 BGB (Civil Code after German law):

Within two weeks, the user may revoke the registration without giving reason in text form (by letter, fax or email). The revocation period begins at the point of time when the operator has activated the membership, but not before the user has received this instruction.

The revocation period begins at the point of time when the customer has been informed in text form, but not before the contract has been concluded and neither before the duties to provide information under section 312 c (2) BGB in conjunction with section 1 (1), (2) and (4) BGB-InfoV have been performed. To comply with the time limit, dispatch in good time is sufficient. The revocation must be addressed to: wikiloops media UG (limited liability), Am Pferdekopf 7, 53925 Kall or via email to widerruf@wikiloops.com .

(2) Premature termination of the right of revocation

The right of revocation is extinguished according to section 312d (3) BGB before the user exercised his right of revocation, if the operator has started the completion of the services at the express wish of the user or if the user has initiated the completion of the services himself.

(3) Consequences

In case of an effective revocation, performance received and emoluments taken (e.g. interest) are to be returned according to the laws. If the user cannot or not partly return the performance received or only in worsened condition, the user must provide compensation for value. The user must fulfill obligations for the restitution of payment within 30 days after dispatch of his revocation.

§ 5 User generated content

- (1) Within the services offered, users can place sound recordings and compositions as well as texts and images (hereafter “content”) on the platform.
- (2) For the purpose of participation in the platform, the data released by the user in conjunction with his profile is used to represent the individual user on the platform. The user must determine itself the manner of presentation of his user profile. The operator only takes the data released for the presentation of the profile and uses a uniform profile form for all users.
- (3) The users are fully responsible for the content they set on the platform. Data of the users are not examined by the operator before the publication for content, correctness or right conformity.
- (4) The users decide which photos are to be used for their profile, and they provide the operator with them for the purpose of the membership. The users commit not to place any photos of pornographic, inhuman, racist or insulting content on their profile or on the platform. The operator does not examine the content before the publication. The operator uses the photos released for the profile of the users only for the production of the user profile and will not pass them on to third party.

§ 6 Grant of right of use

- (1) The user commits to keep the existing legal regulations to copyright when posting content on the platform.
- (2) The user guarantees for all uploaded files that
 - he is the author of the work and the alone participating exercising artist by the recording or possesses written consent of all participating artists;
 - he has produced the work himself or possesses written consent of the producer;
 - he is the owner or person entitled of all rights at the work and the possibly used trademarks, which he grants to the operator, and that the work is free of ownership rights of third parties.
- (3) By posting content, the user grants to the operator all exclusive rights of temporally unlimited use and throughout the universe in perpetuity of the content for the purposes of the platform, in particular to offer it to other users for retrieving, storing and printing.
- (4) Regarding sound recordings and compositions (hereafter “audio content”), which are produced by the user himself and placed on the platform (“template session”), besides depending upon freely selectable license model, the following rights of use are granted to the operator:

(4.1) License model “public session template”

(4.1.1) If a user defines audio content provided as public session template or if he takes part in public master of another user by adding his own audio content, the user grants the right to the operator to publish this on the platform, offer it for download and to grant the right to further development/treatment and addition of the work to third parties free of charge, if this revised version is not created for commercial purpose and the user is named as participant of the revised version.

(4.1.2) According to the scope of the previous sentence, the operator may work on the material, multiply, spread, make it publicly accessible, sent and use or use it otherwise. Within the offer, the material adjusted can be also editorially represented, emphasized and evaluated. For the exclusive purpose of advertisement for the platform also outside of the platform, the operator is entitled to use audio content free of charge.

(4.1.3) In case of inquiry from a third party of commercial use of audio content defined as public, the operator is entitled to grant the use for a fee, which he can determine individually and/or grant a sub-license. The individual user and/or the users will have a share in the royalties in accordance with § 7.

(4.2) License model “private session template”

Audio content defined by the user as private **session template** is exclusively accessible to him and to a specific group of other users defined by him (hereafter “band”). Those entitled users may work on and revise the audio content like a public **session template**. Here it is to be noticed, that an access once guaranteed to a band later cannot be withdrawn. The operator only has the right to use the audio content for data-backup in order to ensure the services of the platform. The operator is not entitled e.g. to pass on, publish, transmit the audio content. For any case of publication of an audio content, that has been defined as private **session template**, which is caused by technical defect or abusive use of a third party, liability of the operator is excluded.

(4.3) Users can change the license model for audio content only if a content declared as private **session template** can be licensed as public **session template**. The user who founded the band may decide, if the license model will be changed regarding content in which several users participated. The further users, who are authorized to access, comply with this agreement by participating in the band. The granting of rights to the operator in context of the license model of the public **session template** cannot be withdrawn afterwards.

- (5) Regarding audio content, which the user has worked on (so called “mix”), and that has been worked on and revised before by third parties, the user accepts the license model selected by the author. §§ 4.1 and 4.2 apply mutatis mutandis, whereby it is to be noted, that the share of royalties described in § 4.1.3, is divided by the number of participants who worked on the audio content.

According to the scope of the previous sentence, the operator may work on the material, multiply, spread, make it publicly accessible, sent and use or use it otherwise. Within the offer adjusted, material can be also represented, emphasized and evaluated editorially.

§ 7 Profit sharing

- (1) All profit-sharings out of § 4.1.3 are credited to the user(s) after receipt of the license payment agreed upon in the individual case. In case of participation of several users, the profit-sharing is split by the number of users.
- (2) If the sum of the credited profit-sharings of the user exceeds an amount of € 25 per calendar year, the disbursement will occur in accordance with § 8. The operator receives all license payment, if the profit-sharing remains under € 25 credited per year and user.

§ 8 Disbursement

- (1) Until the online information on the current status/balance of the users account is made available, the operator will draw up an account on request by the user maximally twice a year concerning the credit items. On request of the user, the operator will disburse the profit-sharing at the latest to the 20th day according to the individual requirement, if the gratification amounts at least to € 25. The operator provides a credit note according to the provisions of tax law. There is no payment of interest on the assets of user account.
- (2) In all cases the disbursement of the profit-sharing occurs only after receipt of the license payment.
- (3) In Germany the disbursement occurs by transfer on the bank account specified by the user. The disbursement on a foreign bank account occurs by check, for which a handling fee of € 2,50 is charged.
- (4) In case of a cancellation of the license purchase and/or each other case of a revocation, after the disbursement to the user, the operator is entitled to debit the amount of the disbursement against the user's account or to call in the amount of the disbursement within a period of twelve weeks from the point of time when the profit-sharing was disbursed.
- (5) If necessary, the disbursement occurs without an examination of the operator, whether the users are holding the rights to make the audio content available on the platform in accordance with § 5. As far as the upload was done by a manipulation or a deception and/or breach of these terms of use, the operator is entitled to debit the amount of the disbursement against the user's account or to call in the amount of the disbursement within a period of twelve weeks from the point of time when the profit-sharing was disbursed.

§ 9 Substantive contributions

- (1) The rules of good and respectful handling are valid among the users. While making audio content accessible on the platform to others, no user may offend against legal prohibitions or ethical principals or infringe rights of third parties (e.g. the rights to a name, trademarks and copyright, data privacy and privacy law etc.). In particular, it is forbidden to spread content which is directly or indirectly pornographic, morally harmful to youth, glorifying violence or inciting to hatred and violence against segments of the population. Moreover, it is forbidden to appeal to or give instructions to criminal offences or to not to respect the political, ideological or religious opinion of others. The operator and his authorized representative decide which behaviors and content violate the principles mentioned above. These decisions are obligatory to the users.

- (2) The following selected content and actions may for example not be published and/or spread and/or transacted on the platform. The operator reserves the right to examine and take adequate steps against everyone, who infringes these regulations. The operator judges at his discretion whether a user has infringed the regulations. As a consequence of the infringement, the content may be deleted and the user may immediately be excluded from the services of the platform. Among other things, forbidden content and forbidden actions cover the following
- content, which is obviously offensive, and such, which supports right-wing radicalism, racism, fanaticism, hate or physical force of any kind against any group or individual;
 - harassment of another person or the support of such harassment;
 - support of the sexual or violent utilization of persons;
 - support of information, which is wrong or misleading and promotes illegal activities or behaviors, which are insulting, threatening, obscene, defaming or slanderous;
 - criminal activities or the support of those intentions or content, which contain instructions for criminal activities
 - advertisement for products or services and/or the use of data for the purpose of advertisement and its spreading (e.g. Spam);
 - excessive use of the platform for the purpose of advertisement without the operator's consent
- (3) The operator does not examine the individual content provided before the publication.
- (4) While using the services of the platform, no user may dispatch or store data on a data medium of the operator, which may – because of its kind or condition, size or number – damage the functionality of the computer installation of the operator or of third parties or may violate their rights (e.g. viruses, Trojans, spam-emails etc.).
- (5) It is forbidden to select, store or pass on personal data of other users for other purposes than the intended use of the platform. The users have to treat information about other users as well as content of communication that has come to their attention confidentially, as far as this was not published by the entitled one.
- (6) As soon as an offence against these or legal regulations comes to the attention of the operator, he may additionally exercise the rights of § 10.

§ 10 Rights of Administration

- (1) For the purpose of the administration of the platform, the operator reserves the right to limit the functionality of the platform temporarily partially or also completely. In order to improve constantly the network according to the requirements of the users, the operator is entitled to switch off or complete sub-ranges of the platform. The user is not entitled to require on the retention of functionalities of the platform, as they were set up at the time of his registration.

- (2) The operator is also entitled to restrict the functionalities of the platform temporarily, in order to take up the pursuit of the infringement effectively. The operator may in particular temporarily or finally block and/or exclude the user of individual ranges of the platform.
- (3) If users notify the operator of content that does not go in line with the aims and principles of the platform, the operator will examine the content. Moreover, the operator may immediately delete the content without having consulted the user, who is responsible for the upload of the content which infringes the rights of others or these terms of use.
- (4) In case of a culpable breach of these terms of use, the user shall be liable to the operator for any direct or indirect damages, also the damages to finance. In case of an offence against the provisions of §§ 5-9, the user shall indemnify the operator from any claims of a third party, which are lodged against the operator and/or his auxiliary persons because of the mentioned offence. Entitlement to claims in excess shall remain unaffected.

§ 11 Termination and deactivation of user account

- (1) Both the user and the operator are entitled to terminate the contract by regular notice within a period of one day to the end of the week.
- (2) Beyond that, the operator may take the following measures, if there are concrete indicators of violation of laws, rights of third parties, these terms of use, in particular §§ 5-9 of a user, or that the operator has another legitimate interest, in particular to protect other users from fraudulent activities:
 - Issue a caution to users
 - Restriction of the use of the platform
 - Preliminary blocking of the user account
 - Final blocking of the user account.

With the choice of measures the operator considers the justified interests of the user, in particular whether there are indicators that the user was not responsible for the offence.

- (3) Entitlement to terminate the contract by extraordinary notice shall remain unaffected for both parties. In particular, the operator is entitled to terminate the contract by extraordinary notice and deactivate the account of the user in case of serious and sustainable breaches of these terms of use.

§ 12 Warranty and liability

- (1) The operator assumes no warranty for information and data of third parties. This particularly applies for the completeness, correctness, freedom of rights of third parties or the conformity with legal or other obligatory provisions.
- (2) The contract does not include the supply of storage or keeping of content in the interest of the users who uploaded content. At any time the operator may delete content without advance notice – for example for capacity or topicality reason – without incurring any liability of the operator. The users are solely responsible for savings of content which they want to keep accessible permanently.
- (3) The operator is only liable as far as he or his auxiliary persons and/or legal representatives acted deliberately or roughly negligently. This does not apply, if substantial obligations of the contract are breached by the operator, his auxiliary persons and/or legal representatives.
- (4) In case of ordinary negligence, the operator and/or his auxiliary persons or legal representatives will not be held liable for financial losses as to consequential damage, in particular consequential harm caused by a defect, unpredictable or atypical damages.
- (5) The operator does not assume warranty for the operability of the provided systems. In particular, the operator assumes no responsibility for error, omissions, interruptions, deletions, defects, delay concerning the service and the transmission, failures of communication lines as well as unauthorized access to or theft, destruction or change of reports/messages of the users. The operator is neither responsible for technical difficulties nor technical disturbances in conjunction with telephone networks or electrical lines, online systems, servers or internet service providers, computer equipments, software or for failure because of technical difficulties or data jam on the internet and/or one of the services, or a combination from this. The operator also assumes no warranty for the transmission and/or the transmission of information, data, emails and other messages in a timely manner.

§ 13 Court of jurisdiction

- (1) If an individual provision of these terms of use is or shall become invalid, extent permissible under law, all other provisions shall remain valid.
- (2) The Terms of Use are available in English and in German. In case of doubt the German version shall be binding.
- (3) The place of performances is at the location of the registered office of the operator.
- (4) Court of jurisdiction for tradesman in the sense of the commercial code of Germany (HGB) is Aachen, Germany.
- (5) This agreement is to be governed exclusively by German law to the exclusion of private international law as well as the UN Convention on Contracts for the International Sale of Goods.