

## General Terms of Use and Service for Castupload.com version: May 25<sup>th</sup>, 2018

### Preamble

Denkungsart GmbH (hereinafter referred to as "**Principal**") provides an interactive platform for film, television, theater and new visual media on Castupload.com as well as on the web-services, web-applications and all related sub-domains as for example [simone-baer.castupload.com](http://simone-baer.castupload.com), [anja-dihlberg.castupload.com](http://anja-dihlberg.castupload.com) (hereinafter referred to as "**Castupload**")

Castupload is an online casting portal, which provides casters (especially casting-directors and other with the casting of productions engaged persons) and their clients (especially producers and directors), as well as actors and agents (hereinafter jointly referred to as "**Users**" or "**User Groups**") a place to network and collaborate in a decentralized manner as regards location and time zone. Castupload contains an intelligent actor database with eCasting, Live Casting and Content Management functionality.

Casters can access an actor database using the expert search function, manage classic studio castings, and conduct eCastings. Then a selection can be made and jointly assessed with clients (as producers, directors) and employees.

Actors may also use the eCasting function providing the opportunity to successfully and easily participate in castings across the globe. Actors can create and manage their own show reels with a showreel manager. In addition, roles that fit the respective profile are displayed.

Agents can manage their actors with Castupload centrally and receive information and feedback on Castings and eCastings. Furthermore, agents receive messages when roles become available that fit their actors' profiles.

Now, therefore, the following General Terms of Use and Service apply between the parties.

The Principal provides the English version of the General Terms of Use and Service only for your convenience; the German version prevails.

### 1. Scope of Application

The following General Terms of Use and Service, as amended, apply exclusively to the relationship between the Principal and the Users. Any conflicting or deviating User terms are not recognized, unless the Principal expressly consents to such modification in writing.

### 2. Registration

- a. The use of Castupload is offered exclusively to professional Users from the areas: film, television, theater, new visual media (including but not limited to Web-TV), advertising and acting schools for professional use.
- b. The use of Castupload is dependent on the truthful registration of the User's first name, last name, e-mail address and User Group (Caster, Actor, and Agent). The User selects a password. The User can complete the registration process via the registration link that is sent to the e-mail address provided during the registration process, and hereby enters into an Agreement with the Principal (hereinafter "**Usage Agreement**"). The Principal is, however, not obligated to send the prospective User a registration link. Any modifications to the registration information provided in Sentence 1 are to be updated without undue delay. For minors section 7 will also apply.
- c. Multiple registrations are not permitted. However, if the User provides services to other User Groups, the User may register once in the respective User Group.

### 3. Access Data

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- a. The Email address and password provided by the User (hereinafter referred to as "**Access Data**") are to be kept confidential and to be safeguarded against unauthorized access by any third party. Should the Access Data be lost or should the User believe there is evidence the Access Data has been compromised, the User is to notify the Principal immediately and is obligated to change its password at the Castupload site immediately.
- b. In the case of reasonable suspicion of the unauthorized use of a user account, the Principal can block the user account immediately. The Principal can unlock the user account after proof of the User's identity has been provided to the Principal and a new password has been selected and entered into Castupload.

## 4. Services

- a. The Usage Agreement is free of charge.

## 5. Content the User Enters and Deletes

- a. The User is provided numerous options to publish information using the Castupload form fields. Any such publication must comply with the format templates and the form fields.
- b. The User may only enter information that conforms with the purpose of Castupload, in particular to identify partners to implement projects in the areas of film, television, theater or new visual media; for example by publishing show reels, information on the actor's personality, appearance, skills and abilities, web presence (hyperlinks) and the actor's Vita (résumé) by the actor or the actor's agent or by publishing casting texts by a castor (producer).
- c. The User undertakes only to enter legal content. Accordingly, representations are prohibited which incite racial hatred, pornographic elements, elements that endanger the welfare of minors or insulting elements, which otherwise, after balancing artistic freedom and freedom of expression with the right of personal privacy of the affected individuals, may not be disseminated in the particular case. If a Caster or an Agent create or edit the profile of a User in any way, the creator/editor of the profile assures to be authorized by the User for the undertaken action; hence the creation of the profile of a User by a Caster or an Agent establishes the relationship between Principal and this specific User governed by these General Terms of Use and Service for Castupload.com.
- d. The User is obligated to comply with the applicable laws, in particular any copyrights and intellectual property rights, as well as any legal requirements to provide imprint information. **In particular, show reels and other videos, as well as casting texts may be subject to the exclusive license rights of third parties**, such that the User is required to obtain the consent of the relevant third party for any publication of such materials. If the User publishes contents on Castupload that may be protected under copyright or intellectual property law, the User represents and warrants to the Principal that he or she is authorized to make such publication. The Principal may demand that the User furnishes proof of the respective authorization. If a user publishes third party personal data on Castupload the user commits themselves to unrestricted adherence to the provisions of data-protection law.
- e. Information provided by the User must be truthful. The provided information must be updated without undue delay in the event of any user data changes.
- f. Content entered by the User is the sole responsibility of the User. The Principal assumes no guarantee or warranty for the accuracy of such information.
- g. The User may edit or delete any data the User entered into Castupload at any time by signing onto Castupload using the User Access Data.
- h. The Principal may delete or block specific User content, if the Principal is of the opinion that such content violates the General Terms of Use and Service or applicable law. In this case, the User must be provided the opportunity to present counter arguments.

## 6. Data Backup and Right of Indemnity

- a. The User is responsible for backing up its data on Castupload by making backup copies.
- b. The User indemnifies and holds the Principal harmless from and against any and all

claims of any third party that are enforced by such third parties against the Principal based on content entered by the User and for which the User is liable. This indemnity includes, in particular, any legal costs associated with the Principal's legal defense.

- c. If any third party asserts any claim against the Principal, the User is obligated to disclose any information to the Principal without undue delay, which the Principal requires for the review and defense against such asserted claims. In particular, the User is obligated to furnish relevant third party consent agreements, if intellectual property rights for content that the User has entered are being disputed.

## **7. Minor users and legal guardians**

- a. Users under the age of 18 are referred to as minors or minor users in the following and are only admitted to Castupload with participation of a legally acceptable representative. For minor users below the age of 7 a contract of use can only be concluded by a legally acceptable representative. Minor users above the age of 7 may conclude a contract of use on their own given the consent of a legally acceptable representative. For such cases the Principal will provide additional information on the exact procedure.
- b. To help protect minor users following functions have been integrated on Castupload:
  - The profiles of minors can only be searched/found by verified agents and casters
  - Unverified users and unregistered visitors of Castupload can only see the profile of minor users without display of their contact information
  - The profile of minor users is characterized by a graphic mark on the profile picture of the minor user
  - Minor users can only be invited to Auditions after the inviter has seen and accepted the age of the user
- c. All user accept by agreeing to these terms and conditions, that anything that the laws for the protection of children and young persons must be observed in dealing with minor users on Castupload.

## **8. Agreement Term and Termination of the Usage Agreement (Standard Membership)**

- a. The Usage Agreement (Standard Membership) is concluded for an indefinite period.
- b. The Usage Agreement may be terminated in text form by either party with a notice period of 2 weeks to month's end.
- c. This Usage Agreement may be terminated for good cause in text form with immediate effect, if the continuation of this Usage Agreement is considered to be unreasonable - even if the legitimate interests of the other party are taken into consideration. Grounds for termination for good cause include:
  - If the other party violates its obligations under these General Terms of Use and Service and the User fails to remedy such breach within a fixed period set by the Principal or the User fails to remedy such breach after having received a warning letter from the Principal. A remedy period or warning letter is not required, if the other party categorically refuses to meet its obligations or circumstances are such that under consideration of both parties' interests a termination with immediate effect is justified.

Such termination does not affect or exclude the Principal's right to demand damages.

- d. The Principal will delete the user account and the associated personal data directly after the Usage Agreement has been terminated for good cause or after the notice period for termination without cause has expired. The User's option to delete the user's account i.e. all personal data, by signing onto Castupload using the User Access Data to access the "Delete Account" function, remains unaffected; excepted is personal data that is required for the performance of this Agreement. To the extent legal, statutory or contractual retention periods for personal data apply, such personal data will be blocked rather than deleted.

## **9. Agreement Term and Termination of the Professional Membership**

- a. The Agreement term for Professional Membership is one month.
- b. The Professional Membership is renewed for another month, if the User or the Principal do not object to the renewal of the Professional Membership in text form at

least two weeks prior to the expiration of the Agreement. To terminate the Professional Membership the User can change its settings in Castupload indicating that the User will continue its membership using the Standard Module. If the Professional Membership is terminated, the User is automatically downgraded to the Standard Membership.

- c. The Professional Membership may be terminated for good cause in text form with immediate effect, if the continuation of the Professional Membership is considered to be unreasonable – even if the legitimate interests of the other party are taken into consideration. In particular, termination for good cause is justified as stipulated in Section 8c. Such termination does not affect or exclude the right to demand damages.

## **10. User Data Usage**

- a. Contact data and other personal data of other Users published on Castupload may only be used for the purposes of Castupload, in particular, to identify parties to the agreement to collaborate in the implementation of a project in the areas of film, television, theater or new visual media. Contacting Users for other advertising purposes outside of this scope is prohibited. In addition, the User is prohibited from reading out data that has been provided by other Castupload Users in any manner whatsoever (e.g. manually or via Webcrawler), in particular, the User is prohibited to use such data for any other purpose than those defined in Sentence 1.
- b. If a commercial User or any other User violates the obligation under sub-paragraph 7a for the benefit of a commercial principal (service provider), such User is obligated to pay a contractual penalty to the Principal for each case of intentional or negligent violation of such obligation. The Principal will determine the penalty amount in its fair judgment. In the event of a dispute, such contractual penalty will be reviewed by a competent court.

## **11. Liability**

- a. The User is not entitled to any damage claims. Excepted from this provision are damage claims based on injury to life, body, or health or a violation of material contractual obligations (Essential Contractual Obligations), as well as liability for other damages resulting from an intentional or gross negligent breach of duty on the part of the Principal, its legal representatives or vicarious agents. Material contractual obligations are such obligations that are required to satisfy the purpose of the Agreement.
- b. In the event of a violation of material contractual obligations, the Principal is only liable for damages typical and foreseeable for such agreements, provided such damage was caused by simple negligence, unless such user damage claims are based on injury to life, body, or health.
- c. The limitations in Section a and b also apply to the Principal's legal representatives and vicarious agents, if such claims are enforced directly against the Principal's legal representatives or vicarious agents.

## **12. Offsetting Prohibition**

The User is not entitled to set-off any claims against the Principal, unless the offsetting is based on an uncontested claim recognized by declaratory judgment.

## **13. Assignment**

- a. The Principal may assign the rights and obligations under the Usage Agreement, in full or in part, to any third party.
- b. The User will be notified in text form of the planned assignment of the Agreement one month prior to the scheduled assignment, at the latest. The User may object to the assignment in writing within a three week period after receipt of the notification. If the User does not object, the User's consent is deemed to have been given. The Principal's notification will include a separate notice on the legal consequences of objecting or not objecting to the assignment.

## **14. Consumer arbitrational settlement**

The principal is neither willing nor bound to participate in out-of-court dispute resolution by a consumer conciliation committee or similar.

**15. Amendments to the General Terms of Use and Service**

- a. The Principal may amend the General Terms of Use and Service with the User's consent.
- b. The Principal will notify the User in text form that new General Terms of Use and Service have been released. The User may object to the new General Terms of Use and Service in text form within a two week period after receipt of the notification. If the User does not object, the User's consent is deemed to have been given. The Principal's notification will include a separate notice on the legal consequences of objecting or not objecting to the assignment.

**16. Final Provisions and Place of Jurisdiction**

- a. Should a provision of these General Terms of Use and Service be invalid or ineffective, this does not affect the validity or effectiveness of the other provisions of these General Terms of Use and Service. The invalid or ineffective provision is to be replaced by a valid or effective provision which most closely reflects the economic intent of the original provision.
- b. The place of jurisdiction for all disputes arising from this Agreement between the Principal and the User is Mainz, unless the User is a consumer.
- c. The General Terms of Use and Service are subject to German law.