

Terms of Use of The Pending

Welcome to The Pending! The Pending is a place without competition and comparison that promotes individual artistic growth through the feedback and exchange of a like-minded community. Additionally, The Pending serves as an internal search platform of artists for collaboration & project partners - both within your own scene and across scenes. The Pending is operated by The Pending GmbH, Arthur-Müller-Straße 24, 12487 Berlin (hereinafter: The Pending or we). The following Terms of Use regulate the paid and unpaid use of the platform by you as our registered user.

1. Subject matter of the contract

- 1.1. The Pending offers you access to an online platform that enables exchange between artists and creatives from all genres (hereinafter: the Platform). The Platform is accessible via mobile app for iOS and Android devices and includes both free and paid services.
- 1.2. The Pending is a social network that offers you the opportunity to present yourself with your own content and interact with other users. The Platform provided by The Pending contains user profiles, which are filled by the registered users with their own content within The Pending's framework.
- 1.3. The Platform consists of two components: On the one hand, it serves as an interactive source of information and inspiration ("Feedback & Exchange"). In this context, you can, for example, present work in progress, create surveys and share image, video and audio material with other users. The other users can give you feedback. On the other hand, the Platform serves to easily connect potential project and collaboration partners from all genres ("Jobs & Collaboration"). Both can be used free of charge. In addition, The Pending offers the paid premium membership "The Pending+"
-

2. Login and registration, user account

- 2.1. Access to the Platform requires your registration. For this you need an e-mail address, a user name and a password of your choice. The contractual relationship comes into effect through our confirmation.
- **2.2.** With the registration and our confirmation, you are able to use the Platform free of charge (also called Membership). Later, a paid premium membership (hereinafter: The Pending+) can be added. Unless otherwise stated in these Terms of Use, the provisions regarding Membership and the Platform also apply to The Pending+.
- 2.3. You must be at least 18 years old and fully capable of contracting to become a member.
- **2.4.** Membership is open exclusively to professional artists and creatives of all genres (hereinafter: Professional Artists) and artists and creatives of the hobby and amateur sector (hereinafter: Hobby Artists), whereby the focus of The Pending is on the first group. Professional Artists are those who create, practice, or teach art on a more than temporary basis, or who engage in creative activity accordingly. They may be employed or freelancer.
- 2.5. When registering, you must provide truthful, current and complete information about yourself and your creative/artistic activity, as well as whether you are a Professional artist or a Hobby artist. You can apply for verification as a Professional Artist. Verified Professional Artists can confirm other users as Professional Artists.
- 2.6. Your data about yourself and your activity must always be kept up to date. Multiple registrations under different names are prohibited. Re-registration after we have cancelled your Membership and prohibited re-registration is also forbidden.

- 2.7. The Membership is personal and only you are allowed to use your access data, not e.g. family members or friends. You must keep your access data secret.
- 2.8. If you discover a misuse of your user account or your access data by a third party, inform us immediately and change your password.

-

3. The Platform and its use

- **3.1.** An ethical and friendly interaction with each other is The Pending's top priority. Based on these principles, our goal is to create a place that is completely free of competition, likes and followers. The Pending wants to create a protected space for artists and creatives. For this, it is necessary that The Pending can guarantee a respectful interaction between the users.
- 3.2. The Pending does not warrant or guarantee any content provided by other users or any particular availability or functionality of the Platform, unless it is an express part of our contractual services of The Pending+.
- 3.3. You remain the owner of your content (e.g. photos, videos, comments or other contributions published by you on the Platform). If your content is protected by a copyright (e.g. a photo or text), by publishing your content you grant us the right to use the content for the operation of The Pending. The grant of the right of use is non-exclusive and geographically unrestricted for the duration of your Membership or until the content is deleted. To the extent necessary to perform the tasks set forth in these Terms of Use, we may also sublicense the right of use.

- 3.4. You remain the owner of your content (e.g. photos, videos, comments or other contributions published by you on the Platform). If your content is protected by a copyright (e.g. a photo or text), by publishing your content you grant us the right to use the content for the operation of The Pending. The grant of the right of use is non-exclusive and geographically unrestricted for the duration of your Membership or until the content is deleted. To the extent necessary to perform the tasks set forth in these Terms of Use, we may also sublicense the right of use.
- 3.5. By publishing your content on the Platform, you also grant an unlimited, non-exclusive right of use to other users of the Platform to repost, transmit or otherwise distribute and otherwise communicate to public your content on the Platform. You can track or limit the extent to which your content is available to other users at any time .
- 3.6. All rights to the Platform are owned by The Pending. The Pending grants the user the simple, revocable and non-transferable right to use the Platform. This applies exclusively to the use permitted under these Terms of Use.
- 3.7. You are also prohibited from copying, reproducing, imitating, modifying, or transferring the Platform and the accompanying app, or creating derivative works based thereon, examining or reproducing the source code or functionality of the Platform and the accompanying app by decompiling, reverse engineering, disassembling, or by any other technical means, or attempting to circumvent any technology used by us to protect the content.
- 3.8. You remain the owner of your content (e.g. photos, videos, comments or other contributions published by you on the Platform). If your content is protected by a copyright (e.g. a photo or text), by publishing your content you grant us the right to use the content for the operation of The Pending. The grant of the right of use is non-exclusive and geographically unrestricted for the duration of your Membership or until the content is deleted. To the extent necessary to perform the tasks set forth in these Terms of Use, we may also sublicense the right of use.

- 3.9. By publishing your content on the Platform, you also grant an unlimited, non-exclusive right of use to other users of the Platform to repost, transmit or otherwise distribute and otherwise communicate to public your content on the Platform. You can track or limit the extent to which your content is available to other users at any time .
- 3.10. All rights to the Platform are owned by The Pending. The Pending grants the user the simple, revocable and non-transferable right to use the Platform. This applies exclusively to the use permitted under these Terms of Use.
- 3.11. You are also prohibited from copying, reproducing, imitating, modifying, or transferring the Platform and the accompanying app, or creating derivative works based thereon, examining or reproducing the source code or functionality of the Platform and the accompanying app by decompiling, reverse engineering, disassembling, or by any other technical means, or attempting to circumvent any technology used by us to protect the content.
- **3.12.** The Pending strives for continuous availability of the Platform. However, no continuous availability of The Pending is owed to users. In particular, maintenance work and cases of force majeure may lead to restrictions in usability.
- 3.13. The Pending reserves the right to change the services offered by The Pending or to offer alternative services for good cause and at no additional cost to you,

4. Obligations of the user

- 4.1. When using the Platform, you agree to comply with the applicable legal provisions. This concerns, for example, the protection of the personal rights of other users or the copyright of third parties' photos and videos.

- 4.2. You are obliged to treat messages confidentially and not to make them accessible to third parties without the consent of the sender or without good cause. The same applies to other personal data of third parties.

- 4.3. The aim of the Platform is to be a forum for artists and creatives of all genres, where they can exchange ideas freely and undisturbed. Accordingly, the artistic freedom of our users is of utmost importance to The Pending and we pay attention to it concerning all our decisions. To avoid misuse in this regard, you agree in particular:
 - not to spread immoral, obscene, pornographic or right-wing/left-wing radical contents or photos in the profile or video chat;

 - not to distribute through the Service any defamatory, offensive or otherwise unlawful material or information; and

- **4.4** In addition, you specifically commit to:
 - not to upload any data that contains a virus (infected software) or contains software or other material that is protected by copyright unless you have the rights to it or the necessary consents;

 - not to systematically read the contents of other users (e.g. by means of a program or by mere copying) in order to use them outside the Platform for commercial purposes. In this respect, the use of computer programs for the automatic reading of files, such as crawlers, is also prohibited;

 - not to use the services in a manner that adversely affects the availability of the services to other users; and

 - not to intercept or attempt to intercept any messages

5. Liability and indemnification

- 5.1. Subject to the provisions of clause 6.2, claims for damages against The Pending are excluded. In particular, The Pending is not liable for the success of cooperations and other goals of networking on the Platform, the correctness of the users' and the actual qualification or suitability of the users. This also applies to damages due to a loss of data, insofar as the damage could have been prevented if you had made backup copies at reasonable intervals. As far as liability is excluded, this also applies to the personal liability of our employees, freelancers and other vicarious agents in the sense of Section 278 BGB.
- 5.2. The exclusion of liability does not apply in the event of intent or gross negligence on the part of The Pending or our vicarious agents, fraudulent concealment, injury to life, limb or health or in the event of slightly negligent breaches of a material contractual obligation (cardinal obligation). An essential contractual obligation is an obligation the fulfilment of which makes the proper performance of the contract possible in the first place and on the observance of which the contractual partner regularly relies and may rely. In such cases, we shall be liable to the extent provided by law. For damages based on a slightly negligent breach of a cardinal obligation, the obligation to pay compensation shall be limited to the foreseeable damage typical for the contract. In the other cases according to sentence 1 The Pending is liable to the full amount.
- 5.3. You agree to indemnify The Pending from and against any and all third party claims for copyright infringement or infringement of other intellectual property rights arising from content you publish on the Platform. The obligation to indemnify The Pending also arises if the claim is a consequence of your obligation pursuant to clause 2.7.

6. Term and termination

- 6.1. Your membership runs for an indefinite period.
- 6.2. Your paid membership may be terminated by either The Pending or you till 7 days before the end of the month. Your cancellation can be made either in text form (e.g. email) or at anytime with direct consequence in the app via the app store settings. Cancellation of your membership will always result in cancellation of The Pending+. A refund of the usage fee for a possible unexpired term of The Pending+ will not be made.
- 6.3. In the event of termination by The Pending or you, your data will be deleted immediately after the end of the contract. We will send you an email before the deletion, informing you of this consequence. We will only keep your data to the extent that we are legally obliged to do so or if this is necessary for a possible legal defence. For further information, please refer to our privacy policy .
- 6.4. With regard to The Pending+, the following applies additionally: The initial term of The Pending+ is 1 month, as specified by your order. You have the right to terminate the contract of The Pending+ after expiry of the initial term at anytime till one week before the end of the running month. Your cancellation can be made either in text form (e.g. e-mail) or via the app store settings. Upon receipt of your notice of cancellation, we will downgrade you to a free membership.

6.5.

The right to extraordinary termination of the Membership and of The Pending+ remains unaffected. An extraordinary right of termination for The Pending arises in particular

- in case of unauthorized use of the Platform and/or its contents,
- your material or repeated failure to comply with these Terms of Use,
- serious misuse of your access data, in particular through multiple disclosure to third parties, and/or

- deliberate misdeclaration of your status as an artist or creative. In addition to the right to extraordinary termination, we can block or delete you or your content. We will inform you about this and give you the opportunity to comment on the accusations. The Pending is not obliged to delete or block your content.

6.6 In addition to the right to extraordinary termination, we can block or delete you or your content. We will inform you about this and give you the opportunity to comment on the accusations. The Pending is not obliged to delete or block your content.

7. Data Protection

Information on how your personal data is processed and what rights you have in relation to data protection can be found in our privacy policy

8. Final provisions

- 8.1. German law shall apply to the exclusion of the UN Convention on Contracts for the International Sale of Goods.
- 8.2. For all disputes arising from and in connection with this contract, to the extent permitted by law, the exclusive jurisdiction of the courts at the place of business of The Pending is agreed.
- 8.3. Verbal collateral agreements do not exist. Changes or additions to these Terms of Use as well as all agreements between The Pending and you must be made in text form to be effective.
- 8.4. In the event of the invalidity of one or more provisions of these Terms of Use, the parties shall agree on a replacement provision that comes as close as possible to the invalid provision. The invalidity of one or more provisions of this contract shall not affect

the validity of the remaining provisions. An invalid provision will automatically be replaced by the valid provision that comes closest to the economic purpose of this agreement.

- **8.5.** Dispute resolution: The EU Commission has set up a website for online dispute resolution between entrepreneurs and consumers (OS platform), which you can reach via [http:// ec.europa.eu/consumers/odr/](http://ec.europa.eu/consumers/odr/). We are neither willing nor obliged to participate in a dispute resolution procedure before a consumer arbitration board.
- **8.6.** This version of the Terms of Use is only a convenient translation. In the event of any inconsistency between this version and the German version, the German version shall prevail.