

Charamel Terms of Service

This Terms of Service ("Terms") is a legally binding agreement that governs your use of mocito.com and/or the contents and/or applications offered by Charamel GmbH (www.charamel.com). ("Charamel") and accessed through third party web sites (collectively, the "Service"). By using or accessing the Service, you agree to be bound by these Terms.

1) Access to Charamel Service

a) Subject to your acceptance of these Terms, Charamel grants to you a non-exclusive, non-transferable, revocable limited license to use and display the Service and related software (excluding source and object code) for your personal (or household) non-commercial use by any machine(s) of which you are the primary user. You agree not to use the Service for any other purpose, or to copy or distribute the content of the Service except as specifically allowed in this agreement.

b) Charamel Reserves the right to change these Terms in any way and at any time. However, no amendment to these Terms shall apply to a dispute of which Charamel had actual notice on the date of amendment.

c) We will notify you of any modifications to these Terms with one or both of the following methods: 1) we will post any modifications on www.charamel.com/solutions/animatedvideomessaging/talkingfriends.html or within the Service, and/or 2) we will send you a message informing you of the modified terms and linking you to the posting at www.charamel.com/solutions/animatedvideomessaging/talkingfriends.html. You agree that you will, 1) periodically check www.charamel.com/solutions/animatedvideomessaging/talkingfriends.html for updates to these Terms, and 2) you will read the messages we send you to inform you of any changes. You agree that you will be considered to have been given notice of any modifications once we post them to www.charamel.com/solutions/animatedvideomessaging/talkingfriends.html and that your continued use of the Service after such notice shall be deemed an acceptance of any changes.

d) Charamel reserves the right to discontinue the Service or to change the content of the Service in any way and at any time, with or without notice to you, without liability.

e) You agree to be bound by any application, forum, or content specific rules published within the Service.

f) Your use of the Service is conditioned upon your compliance with these Terms and any use of the Service in violation of these Terms will be regarded as an infringement of Charamel's copyrights in and to the Service. Charamel reserves the right to

terminate your access to the service without notice if you violate these Terms.

g) You represent that you are 14 years old or older. Additionally, if you are between the ages of 14 and 18, you represent that your legal guardian has reviewed and agrees to the Terms.

2) Ownership of Intellectual Property

a) Unless otherwise specified in writing, all materials that are part of the Service are owned, controlled, or licensed by Charamel and are protected by law from unauthorized use. The entire contents of the Service are copyrighted under the German copyright laws and/or similar laws of other jurisdictions. Charamel, the Charamel logos, and all application and website or Service names are trademarks of Charamel and may not be used without the express written permission of Charamel.

b) You do not acquire any ownership rights by using the Service, downloading material from or uploading material to the Service, or by purchasing any virtual goods.

c) You agree not to copy, redistribute, publish or otherwise exploit material from the Service, except as expressly permitted herein, without the express prior written permission of Charamel.

d) You agree not to copy, redistribute, publish or otherwise exploit material from the Service, except as expressly permitted herein, without the express prior written permission of Charamel.

e) All comments, feedback, suggestions, ideas, and other submissions ("Ideas") disclosed, submitted, or offered to Charamel in connection with the use of the Service shall be the exclusive property of Charamel. You agree that unless otherwise prohibited by law Charamel may use, sell, exploit and disclose the Ideas in any manner, without restriction and without compensation to you.

3) Application contents/virtual goods

a) The Service may include virtual application contents or digital items e. g. avatars, picture, accessoires, sounds, text etc. ("Virtual Contents") that may be purchased from Charamel for "real world" money if you are a legal adult in your country of residence.

b) Other than a limited, personal, revocable, non-transferable, non-sublicenseable license to use the Virtual Contents in the Service, you have no right or title in or to any such Virtual Contents appearing or originating in the Service, or any other attributes associated with use of the Service or stored within the Service.

c) Charamel has the absolute right to manage, regulate, control, modify and/or eliminate such Virtual Contents as it sees fit in its sole discretion, and Charamel shall have no liability to you or anyone for the exercise of such rights.

d) Transfers of Virtual Contents are strictly prohibited except where explicitly authorized

within the Service. Outside of the application, you may not buy or sell any Virtual Contents for "real world" money or otherwise exchange items for value. Any attempt to do so is in violation of these Terms and may result in a lifetime ban from Charamel Service and possible legal action.

e) You agree that all sales of Virtual Contents are final. No refunds will be given, except in our sole and absolute discretion. All Virtual Contents are forfeited if your account is terminated or suspended for any reason, in Charamel's sole and absolute discretion, or if Charamel discontinues providing the Service.

4) User Content

a) The Service may invite you to chat or participate in blogs, message boards, online forums and other functionality and may provide you with the opportunity to create, submit, post, display, transmit, perform, publish, distribute or broadcast content and materials to Charamel and/or to or via the Service, including, without limitation, text, writings, photographs, graphics, comments, suggestions or personally identifiable information or other material (collectively "User Content"). Any material you transmit to Charamel will be treated as non-confidential and non-proprietary.

b) You agree that your User Content is wholly original to you and you exclusively own the rights to your User Content, including the right to grant all of the rights and licenses in these Terms without Charamel incurring any third party obligations or liability arising out of its exercise of the rights thereto granted herein by you.

c) You grant to Charamel the unrestricted, unconditional, unlimited, worldwide, irrevocable, perpetual fully-paid and royalty-free right and license to host, use, copy, distribute, reproduce, disclose, sell, resell, sublicense, display, perform, transmit, publish, broadcast, modify, make derivative works from, retitle, reformat, translate, archive, store, cache or otherwise exploit in any manner whatsoever, all or any portion of your User Content to which you have contributed, for any purpose whatsoever, in any and all formats; on or through any and all media, software, formula or medium now known or hereafter known; and with any technology or devices now known or hereafter developed and to advertise, market and promote same.

d) Charamel has no obligation to monitor or enforce any intellectual property rights that may be associated with your User Content, but Charamel does have the right to enforce such rights through any means it sees fit, including bringing and controlling actions on your behalf.

e) Charamel has no obligation to accept, display, review, monitor, or maintain any User Content. We have the right to delete User Content from the Service without

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notice for any reason at any time. Charamel may move, re-format, edit, alter, distort, remove or refuse to exploit User Content without notice to you and without liability; provided, however, that Charamel reserves the right to treat User Content as content stored at the direction of users for which Charamel will not exercise editorial control except to enforce the rights of third parties and the Content Restrictions set forth below when violations are brought to Charamel's attention.

f) You acknowledge that you do not rely on Charamel to monitor or edit the Service and that the Service may contain content which you find offensive and you hereby waive any objections you might have with respect to viewing such content.

5) Posting on Other Web Sites

a) You are granted a limited revocable license to post an image of your personal avatar and/or screen shot from your account, of your video-content, within the Service and any other materials that Charamel specifically gives you notice may be posted on other web sites, on your own personal web site or on a third party web site that permits posting of content at the direction of users provided that such third party web site (i) is not commercially competitive to Charamel, (ii) does not criticize or injure Charamel, (iii) does not obtain any rights to such content other than a non-exclusive license to post it at your direction, and (iv) does not charge for access to such content or associated products, services or advertising with such content, so long as the web site where the link resides, and all other locations to which such site links, comply with all applicable laws and do not in any way abuse, defame, stalk, threaten or violate the rights of privacy, publicity, intellectual property or other legal rights of others or, in any way, post, publish, distribute, disseminate or facilitate any inappropriate, infringing, defamatory, profane, indecent, obscene, illegal/unlawful or otherwise objectionable information, topic, name or other material (an "Authorized Web Site"). All of Charamel's rights and remedies are expressly reserved, and Charamel may revoke this limited license, in whole or in part, upon notice.

b) Conditions on Posting on Other Web Sites: Without limitation, the following terms and conditions apply to your posting of a copy of your avatar and/or screen shots on an Authorized Web Site:

i) You must a display a prominent link to the Service's homepage in connection with any of your use of Collaborative Content permitted hereunder, including, without limitation, in e-mails you are sending friends; and

ii) You agree to include, and not remove or alter, Charamel's trademark, copyright or other proprietary rights notices, as provided

by Charamel on the Service and within e-mail page(s), when displaying an avatar or images from a Charamel application, and you agree to comply with usage guidelines that may be provided by Charamel from time to time. You agree that all goodwill that arises in connection with your use of Charamel's trademarks inures exclusively to Charamel, and you agree not to challenge Charamel's ownership or control of any Charamel trademarks, nor use or adopt any trademarks that might be confusingly similar to such Charamel trademarks.

6) Usage Rules

a) As a condition of your use of and access to the Service, you agree to comply with these Usage Rules, which are provided as an example rather than as a limitation, and any application or specific rules published within the Service.

b) You agree that your use of and conduct on the Service shall be lawful and your User Content will not:

i) include any offensive comments that are connected to race, national origin, gender, sexual preference or physical handicap;

ii) include profanity or any obscene, indecent, pornographic, sexual or otherwise objectionable content or language;

iii) defame, libel, ridicule, mock, disparage, threaten, harass, intimidate or abuse anyone;

iv) promote violence or describe how to perform a violent act

v) violate the contractual, personal, intellectual property or other rights of any party, or promote or constitute illegal activity; or

vi) be in violation of these Terms or the application rules of conduct (collectively "Content Restrictions").

c) You and your activities on the Service will not:

i) reveal any personal information about another individual, including another person's address, phone number, e-mail address, credit card number or any information that may be used to track, contact or impersonate that individual;

ii) attempt to impersonate any other party;

iii) create user accounts by automated means or under false pretenses or mislead others as to the origins of your communications;

iv) trick, defraud or mislead Charamel and other users, especially in any attempt to learn sensitive account information such as passwords;

v) make improper use of Charamel's support services or submit false reports of abuse or misconduct;

vi) engage in any commercial activities, including, without limitation, any attempt to raise money for anyone or advertise or promote a product, service, website, pyramid scheme or other multi-tiered marketing scheme;

vii) disparage, tarnish, or otherwise harm, in Charamel's opinion, Charamel and/or the Service;

viii) violate these Terms or any local, state, federal or international law, rule or regulation or any other requirements or restrictions posted by Charamel on the Service;

ix) disseminate or transmit viruses, worms, Trojan horses, RATs, keyboard loggers, time bombs, spyware, adware, cancelbots or any other malicious or invasive code or program;

x) upload or transmit (or attempt to upload or to transmit) viruses, Trojan horses or other material, including excessive use of capital letters and spamming (continuous posting of repetitive text) that interferes with any party's uninterrupted use and enjoyment of the Service and User Content or modifies, impairs, disrupts, alters or interferes with the use, features, functions, operation or maintenance of the Service, the User Content;

xi) copy or adapt the Service's software including but not limited to Flash, PHP, HTML, JavaScript or other code;

xii) reverse engineer, decompile, reverse assemble, modify or attempt to discover any software (source code or object code) that the Service create to generate web pages or any software or other products or processes accessible through the Service;

xiii) upload or transmit (or attempt to upload or to transmit) any material that acts as a passive or active information collection or transmission mechanism, including, without limitation, clear graphics interchange formats ("gifs"), 1x1 pixels, web bugs, cookies or other similar devices (sometimes referred to as "spyware," "passive collection mechanisms" or "pcms");

xiv) except as may be the result of standard search engine or Internet browser usage, use or launch, develop or distribute any automated system, including, without limitation, any spider, robot (or "bot"), cheat utility, scraper or offline reader that accesses the Service, or use or launch any unauthorized script or other software;

xv) cover or obscure any notice, banner or advertisement on the Service;

xvi) disguise the source of your User Content or other information you submit to the Service or use tools which anonymize your internet protocol address (e.g. anonymous proxy) to access the Service;

xvii) interfere with or circumvent any security feature of the Service or any feature that restricts or enforces limitations on use of or access to the Service, Collaborative Content or the User Content;

xviii) sell the Service or any part thereof including but not limited to Virtual Content, user accounts and access to them in exchange for real currency or items of monetary value; or

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xix) engage in cheating or any other activity deemed by Charamel to be in conflict with the spirit or intent of the Service.

d) Charamel does not control or endorse the content, messages or information found in User Content portions of the Service or external sites that may be linked to or from the application or their forums and, therefore, Charamel specifically disclaims any responsibility with regard thereto.

7) Privacy and Protection of Personal Information.

a) Charamel respects the privacy of visitors to our application. Information collected from you is subject to the pertinent social network's policy. By using the application, you may be granting your social network permission to share your e-mail address and any other personally identifiable information with Charamel. Please see Charamel's Privacy Policy at

www.charamel.com/solutions/animatedvideomessaging/talkingfriends.html

for more information on the collection and use of your information. You acknowledge and agree that this Privacy Policy, including, but not limited to, the manner in which Charamel collects, uses and discloses your personally identifiable information, is incorporated and made part of these Terms. If User does not agree to each and every part of Charamel's Privacy Policy, then you should not use the application or submit any personally identifiable information through this application. Questions regarding privacy issues should be directed to talkingfriends@charamel.com.

8) Account Responsibility

a) This Service is offered through various social networks. The Service is only available to persons who are registered members of the social network through which they access the application and are in compliance with the policies or terms of use/service of that social network. In creating your account with a social network through which you will access the Service ("Account"), you agree to:

i) provide true, accurate, current and complete information about yourself ("Registration Data"); and

ii) maintain and promptly update the Registration Data to keep it true, accurate, current and complete.

b) Users that maintain more than one account on a social network may not access this Service from multiple accounts. If you provide any information that is untrue, inaccurate, not current or incomplete, or Charamel has reasonable grounds to suspect that such information is untrue, inaccurate, not current or incomplete, Charamel has the right to suspend or terminate your ability to participate in the Service and refuse any and all current or future use of the Service (or any portion

thereof). Charamel/Provider reserves the right to terminate accounts that have been inactive for 90 consecutive days.

9) Disputes with Others

a) We reserve the right, but have no obligation, to monitor and/or manage disputes between you and other users of the Service. If you have a dispute with other users, you release Charamel and hereby agree to indemnify Charamel from claims, demands, and damages (actual and consequential) of every kind and nature, known and unknown, arising out of or in any way connected with such dispute.

10) Disclaimers; Limitations; Waivers of Liability

a) YOU EXPRESSLY AGREE THAT USE OF THE SERVICE IS AT YOUR SOLE RISK AND IS PROVIDED ON AN "AS IS" BASIS WITHOUT WARRANTIES OF ANY KIND, EITHER EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, WARRANTIES OF TITLE OR IMPLIED WARRANTIES OF NON-INFRINGEMENT, MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE (EXCEPT ONLY TO THE EXTENT PROHIBITED UNDER THE LAWS APPLICABLE TO TERMS OF USE WITH ANY LEGALLY REQUIRED WARRANTY PERIOD TO THE SHORTER OF THIRTY DAYS FROM FIRST USE OR THE MINIMUM PERIOD REQUIRED). WITHOUT LIMITING THE FOREGOING, NEITHER CHARAMEL NOR ITS AFFILIATES OR SUBSIDIARIES, OR ANY OF THEIR DIRECTORS, EMPLOYEES, AGENTS, ATTORNEYS, THIRD-PARTY CONTENT PROVIDERS, DISTRIBUTORS, LICENSEES OR LICENSORS (COLLECTIVELY, "CHARAMEL PARTIES") WARRANT THAT THE SERVICE WILL BE UNINTERRUPTED OR ERROR-FREE.

b) TO THE FULLEST EXTENT PERMITTED BY LAW, THE DISCLAIMERS OF LIABILITY CONTAINED HEREIN APPLY TO ANY AND ALL DAMAGES OR INJURY WHATSOEVER CAUSED BY OR RELATED TO USE OF, OR INABILITY TO USE, THE SERVICE UNDER ANY CAUSE OR ACTION WHATSOEVER OF ANY JURISDICTION, INCLUDING, WITHOUT LIMITATION, ACTIONS FOR BREACH OF WARRANTY, BREACH OF CONTRACT OR TORT AND THAT THE CHARAMEL PARTIES SHALL NOT BE LIABLE FOR ANY DIRECT, INDIRECT, INCIDENTAL, SPECIAL, EXEMPLARY OR CONSEQUENTIAL DAMAGES IN ANY WAY WHATSOEVER ARISING OUT OF THE USE OF, OR INABILITY TO USE, THE SERVICE. YOU FURTHER SPECIFICALLY ACKNOWLEDGE THAT THE CHARAMEL PARTIES ARE NOT LIABLE, AND YOU AGREE NOT TO SEEK TO HOLD THE CHARAMEL PARTIES LIABLE, FOR THE CONDUCT OF THIRD PARTIES, INCLUDING OTHER USERS OF THE

SERVICE AND OPERATORS OF EXTERNAL SITES, AND THAT THE RISK OF THE SERVICE AND EXTERNAL SITES AND OF INJURY FROM THE FOREGOING RESTS ENTIRELY WITH YOU.

c) UNDER NO CIRCUMSTANCES WILL THE CHARAMEL PARTIES BE LIABLE TO YOU FOR MORE THAN THE AMOUNT YOU HAVE PAID CHARAMEL IN THE THIRTY (30) DAYS IMMEDIATELY PRECEDING THE DATE ON WHICH YOU FIRST ASSERT ANY SUCH CLAIM.

11) Indemnification

a) You agree to defend, indemnify and hold harmless the Charamel Parties from and against all claims and expenses, including attorneys' fees and costs, arising out of your use of the Service and/or your breach or alleged breach of any term, condition, obligation, representation or warranty in these Terms. You agree that the provisions in this paragraph will survive any termination of your account(s) or the Service.

12) Governing Law/Waiver of Injunctive Relief

a) This Agreement and all aspects of the Federal Republic of Germany and specifically excludes the UN law of sales. With respect to any disputes or claims not subject to informal dispute resolution or arbitration (as set forth below), you agree not to commence or prosecute any action in connection therewith other than in the courts located in Koeln/Cologne, Germany and you hereby consent to, and waive all defenses of lack of personal jurisdiction and forum non conveniens with respect to, venue and jurisdiction in the courts located in in Koeln/Cologne, Germany.

b) You acknowledge that the rights granted and obligations made hereunder to Charamel are of a unique and irreplaceable nature, the loss of which shall irreparably harm Charamel and which cannot be replaced by monetary damages alone so that Charamel shall be entitled to injunctive or other equitable relief (without the obligations of posting any bond or surety) in the event of any breach or anticipatory breach by you. You irrevocably waive all rights to seek injunctive or other equitable relief and agree to limit your claims to claims for monetary damages (if any).

c) Informal Negotiations. To expedite resolution and control the cost of any dispute, controversy or claim related to this Terms ("Dispute"), you and Charamel agree to first attempt to negotiate any Dispute (except those Disputes expressly provided below) informally for at least thirty (30) days before initiating any arbitration or court proceeding. Such informal negotiations commence upon written notice from one person to the other. You will send your notice to Charamel GmbH, Richard-

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Wagner-Str. 39, D 50674 Koeln/Cologne, ATTENTION: LEGAL DEPARTMENT.

d) Binding Arbitration. If you and Charamel are unable to resolve a Dispute through informal negotiations, either you or Charamel may elect to have the Dispute (except those Disputes expressly excluded below) finally and exclusively resolved by binding arbitration. Any election to arbitrate by one party shall be final and binding on the other. YOU UNDERSTAND THAT ABSENT THIS PROVISION, YOU WOULD HAVE THE RIGHT TO SUE IN COURT AND HAVE A JURY TRIAL. The arbitration shall be commenced and conducted according to the rules of arbitration of the Chamber of Commerce in Cologne, Germany in its then current version and under exclusion of judicial legal process. Any decision will be reached by an arbitrator. Arbitration may also reach a binding decision on the validity of this arbitration clause. The place of arbitration is Cologne, Germany.

e) Restrictions. You and Charamel agree that any arbitration shall be limited to the Dispute between Charamel and you individually. To the full extent permitted by law, (1) no arbitration shall be joined with any other; (2) there is no right or authority for any Dispute to be arbitrated on a class-action basis or to utilize class action procedures; and (3) there is no right or authority for any Dispute to be brought in a purported representative capacity on behalf of the general public or any other persons.

f) Exceptions to Informal Negotiations and Arbitration. You and Charamel agree that the following Disputes are not subject to the above provisions concerning informal negotiations and binding arbitration: (1) any Disputes seeking to enforce or protect, or concerning the validity of, any of your or Charamel's intellectual property rights; (2) any Dispute related to, or arising from, allegations of theft, piracy, invasion of privacy or unauthorized use; and (3) any claim for injunctive relief.

13) Waiver/Severability

a) The failure of Charamel to require or enforce strict performance by you of any provision of these Terms or to exercise any right under them shall not be construed as a waiver or relinquishment of Charamel's right to assert or rely upon any such provision or right in that or any other instance.

b) You and Charamel agree that if any portion of these Terms, except any portion of section 12(e), is found illegal or unenforceable, in whole or in part by any court of competent jurisdiction, such provision shall, as to such jurisdiction, be ineffective to the extent of such determination of invalidity or unenforceability without affecting the validity or enforceability thereof in any other manner or jurisdiction and without affecting the remaining provisions of the Terms, which

shall continue to be in full force and effect. If Section 12(e) is found to be illegal or unenforceable then neither you nor Charamel will elect to arbitrate any Dispute falling within that portion of Section 12(e) found to be illegal or unenforceable and such Dispute shall be decided by a court of competent jurisdiction in Koeln/Cologne, Germany, and you and Charamel agree to submit to the personal jurisdiction of that court.

14) Miscellaneous

a) Charamel operates and controls the Service from its offices in Germany. Charamel makes no representation that the Service is appropriate or available in other locations. The information provided on the Service is not intended for distribution to or use by any person or entity in any jurisdiction or country where such distribution or use would be contrary to law or regulation or which would subject Charamel to any registration requirement within such jurisdiction or country. Accordingly, those persons who choose to access the Service from other locations do so on their own initiative and are solely responsible for compliance with local laws, if and to the extent local laws are applicable. These Terms are effective until terminated by either party. You may terminate these Terms by destroying all Service-related materials obtained from the Service, Charamel or any other web site or source. The privileges granted to you under these Terms will terminate immediately and automatically without notice from Charamel if, in our sole discretion, you fail to comply with any term or provision of these Terms. Neither the course of conduct between the parties nor trade practice will act to modify these Terms to any party at any time without any notice to you. You may not assign these Terms without Charamel's prior written consent. These Terms contain the entire understanding of you and Charamel, and supersede all prior understandings of the parties hereto relating to the subject matter hereof, and cannot be changed or modified by you except as posted on the Service by Charamel. If any provision of these Terms is found to be illegal or unenforceable, the Terms will be deemed curtailed to the extent necessary to make it legal and enforceable and will remain, as modified, in full force and effect. No waiver by either party of any breach or default hereunder shall be deemed to be a waiver of any preceding or subsequent breach or default. The section headings used herein are for convenience only and shall not be given any legal import. Upon Charamel's request, you will furnish Charamel any documentation, substantiation or releases necessary to verify your compliance with these Terms. You agree that these Terms will not be construed against Charamel by virtue of

having drafted them. You hereby waive any and all defenses you may have based on the electronic form of these Terms and the lack of signing by the parties hereto to execute these Terms.

15) Statute of Limitations

a) You and Charamel both agree that regardless of any statute or law to the contrary, any claim or cause of action arising out of or related to use of the Service, Terms or Privacy Policy must be filed within ONE (1) YEAR after such claim or cause of action arose or be forever barred.

Contact:

Charamel GmbH
Richard-Wagner-Str. 39
50674 Koeln/Cologne
Germany
www.charamel.com