

General Licensing Terms and Conditions (Images)

I Scope of the Terms and Conditions

1. The following General Licensing Terms and Conditions (Images) apply to all licenses of image material as well as the grant of any rights of use in image material by the Axel Springer Syndication GmbH (hereinafter referred to as the “Licensor”).
2. The Licensor expressly rejects the inclusion of any contrary terms and conditions of the user in contracts with the Licensor.
3. All offers by the Licensor to provide and license image material is intended exclusively for entrepreneurs, i.e. natural or legal persons or partnerships with legal capacity, that in concluding a contract are acting in the execution of their commercial or independent business activity.

II Contractual rights and obligations

1. The user may download image material from the Licensor’s database (“Download”) or may request such materials from the Licensor by other means. Downloads are free of charge. The grant of rights of use in image material is not linked to the Download. However, the Licensor permits the use of image material exclusively for purposes of inspection and selection to the extent necessary and common for image selection for a period of thirty days. The user must immediately delete downloaded image material if the user has not acquired rights of use in the relevant image material within 30 days of Download.
2. If the user intends to acquire rights of use, the user will state the desired scope in a “Usage rights declaration”. This may be submitted to the Licensor or its representative using the corresponding form on the website, by regular mail or email. The Usage rights declaration must include the following information at a minimum: Medium / publication, size, print run, term of the usage rights, circulation area, form of use (e.g. editorial, marketing or internal use). By submitting the Usage rights declaration, the user is making an offer to the Licensor to conclude a license agreement for the use of image material for the purposes indicated and the intended scope in exchange for payment of remuneration in accordance with the Licensor’s price list. The user waives receipt of a declaration of acceptance on the part of the Licensor.

If the user fails to submit a Usage rights declaration, the Licensor is entitled, however not obliged, to submit a usage inquiry. This may also be submitted to an email address provided by the user. The user replies to the usage inquiry with a Usage rights declaration. The user will not be granted any usage rights prior to receipt of the Usage rights declaration.

3. In the event that the Licensor grants the user rights of use in the image material, this comprises in all cases a simple right of use to the photographic copyright and/or ancillary copyrights. The photographs are provided by the Licensor on a single-use basis and, following use, are to be deleted from any electronic storage or, in the case of physical copies, to be returned. No database or archive rights are granted.
4. If use beyond what is stated in the Usage rights declaration is planned, the user is required to obtain the prior written (including email or fax) consent of the Licensor.
5. A separate written agreement is required (including email or fax) in the event image material supplied is intended to be used for marketing purposes. Exclusive rights, rights to multiple use or lock-up periods likewise require a separate agreement.
6. The Licensor grants no rights to the contents of photographs, e.g. personality rights of those depicted, rights to depicted works or visual and performing arts or to brands depicted or protected trade marks. To the extent consent is needed (e.g. for marketing use), the user is responsible for obtaining consent or publication authorisation from museums, collections and other rights holders.
7. To the extent the Licensor grants rights to image material, in all cases this is subject to the condition precedent of complete payment of the agreed fee.
8. Modification of photographs of any type, e.g. by means of misleading photo editing, electronic modification by means of photo composition, etc. and duplication by means of copying or re-creation is prohibited. Exceptions require a written agreement (including email or fax).
9. If image material is supplied in physical form, this creates a lending arrangement for a limited term.
10. Complaints about obvious defects in image material provided in physical form must be received by the Licensor within one week of receipt of the image material by the user. Complaints about latent defects must be submitted in writing (including email or fax) within one week of discovery. In the event notice of a defect is untimely, the image material provided is deemed to have been accepted and conforming to the contract with regard to the relevant defect. This does not apply if the Licensor has fraudulently concealed a defect.

11. Any image material supplied in physical form that is not used must be returned to the Licensor within 30 days. Image material in physical form that the user would like to use and denotes as used shall be returned to the Licensor within a period of 90 days following delivery. Corresponding deletion periods apply to image material provided electronically. Any extension of the return and/or deletion period requires a written agreement (including email or fax). Reproductions and/or electronically stored copies of image material that are directly related to the intended use must be destroyed or deleted, as applicable, immediately following conclusion of the production.
12. All photographs in physical form are to be treated as originals and remain the property of the Licensor at all times.
13. Any limits on use by the Licensor or any other usage restrictions must be observed.
14. The Licensor expressly reserves the right to transfer secondary rights to collecting societies and does not accept any clauses that purport to preclude the exercise of any other rights by the Licensor upon acceptance of the license fee.
15. Upon using the image material, the user is obliged to comply with the publishing principles (press code of conduct) of the German Press Council (Deutscher Presserat).

III Fees and costs

1. Any use of image material from the Licensor is subject to a fee. The amount of the fee is based on the Licensor's applicable price list and depends on the medium used as well as the type and scope of usage. Deviations from listed prices are only valid if agreed in writing. All references to fees in offers, price lists and other documents are always indicated as net prices without value added tax. The right to be paid the fee arises upon conclusion of the contract for the use of the image material, however upon use of the image material at the latest.
2. The fees apply to one-time use in accordance with the Usage rights declaration. Any additional use is subject to a renewed requirement to provide a declaration and pay a fee and requires the written consent (including email or fax) of the Licensor.
3. If an object pictured (e.g. book, CD cover, magazine, newspaper, etc.) is depicted in a new medium, a new fee is due for the photo subject shown therein, regardless of any rights of use that have already been paid for in relation to the same image in connection with the original use. This applies to use for marketing purposes only if the promotional reproduction is larger than 1:1. The user is required to provide the Licensor comprehensive information regarding the new intended use and must obtain the Licensor's consent to such use in advance.
4. Usage requiring a fee also includes reproduction of an image in the form of drawings, caricatures or re-created photos as well as use for layout and presentation purposes or image projections and use of image details for new works (e.g. photo montages, photo composition) that are created manually or using electronic or similar technology.
5. If a user fails to provide or provides imprecise information about the scope of use, the Licensor is entitled to establish media-specific flat fee based on its applicable price list.
6. In addition to license fees, additional fees for research, editing, shipping and/or transfer may be charged for image delivery and/or electronic image delivery. The amount of these costs depends on the scope and expense of research associated with the order as well as the manner of dispatch. There are no download fees.

IV Terms of payment

1. Invoices from the Licensor are payable immediately upon receipt without discount in all cases. Pursuant to section 286 subsection (3) German Civil Code ("BGB"), at the latest the user is in default if payment is not made within 30 days of receipt of the invoice. From the date of default in payment, the Licensor will charge interest on arrears in the amount of 9% above the base lending rate.
2. In every case, the subject matter of the contract comprises the then-current version of the Licensor's price list in effect upon conclusion of the license agreement.

V Costs / Damages / Penalty

1. For each case of willful unauthorised use of licensed image material from the Licensor, or the unauthorised transfer of image material to third parties, the user undertakes to pay a penalty for breach of contract to the Licensor equal to five times the agreed license fee. In the event of unauthorised archiving by the user, the penalty for breach of contract shall be €150.00 per image. This is without prejudice to the Licensor's right to

assert claims for additional damages. However, any contractual penalty actually paid is to be credited against any claims for damages.

2. If images that are not designated for use are returned after the expiry of the 30 day deadline for returning goods indicated in the delivery note, blocking charges in the amount of €1.00 per image/per day shall be due in addition to the license fee/the medium specific fixed fee. Blocking charges in the same amount shall be due if image material to which the user acquired usage rights are not returned within 90 days of receipt. Blocking charges are imposed in the same amount for both positives and negatives. If other return periods have been agreed in writing (including email or fax), blocking charges shall be due upon the expiry of such periods. Blocking charges are not due or are due in a lower amount if the user can demonstrate that the Licensor incurred no damages or damages in a materially lesser amount.
3. The user bears the shipping risk and the costs for complete and undamaged return of analogue images. In the event of loss or damage, the user is obliged to pay compensation for damages even if the return shipment to the Licensor was made by a third party commissioned by the user. Compensation for damages in the amount of €500.00 per original/one-off image as well as €75.00 per copy is due for each damaged or unreturned image. The sums are calculated based on the loss of other opportunities for use as well as the costs of recreation in the case of copies. They are deemed to have been agreed without need for the Licensor to prove the amount of damages in any specific case. The Licensor reserves the right to assert claims for any additional damages. The user is free to demonstrate lower damages or no damages in any particular case.
4. If physical images for which the Licensor has submitted an invoice for damages are found and returned within one year of delivery, the Licensor will refund the one-third of such damages to the user. Replacement copies are not accepted.
5. The user does not acquire rights of use or ownership in the images by paying service charges, damages or penalties for breach of contract, the user does not.

VI Liability

1. Disclaimer of warranty/Indemnification
 - a) The Licensor merely grants a simple right of use to the photographic copyright / ancillary copyright and assumes no liability for the completeness and correctness of image information.
 - b) The Licensor assumes neither liability for the infringement of rights of depicted persons pursuant to the German Act on Copyrights in Works of Art ("KUG") nor for infringements of rights in other contents of the images.
 - c) The Licensor assumes no liability for any infringements of copyrights or other ancillary copyrights resulting from alteration or distortions to the image by the user. The user is solely liable for damages to any third parties resulting from the infringement of such rights.
 - d) The Licensor assumes no liability for any infringements of any personality rights. The user is liable for use of image material for uses other than those intended or adulteration of images and text as well as uses that could result in disparagement of depicted persons.
 - e) The Licensor's prior consent must be obtained if image material is intended to be used for marketing purposes.

If a third party asserts a claim for infringement of such third party's general rights of personality, or due to the infringement of any other third-party rights to an object depicted in the image material, as a result of the user's usage of the image material, the user shall indemnify and hold the Licensor harmless from such third-party claims to such an extent. Indemnification also includes the necessary costs of the Licensor's legal defense.

2. Disclaimer
 - a) The Licensor is liable for damages suffered by the user based on provisions of applicable law to the extent such damages were caused intentionally or as a result of gross negligence, they resulted from the lack of a guaranteed quality in performance, they resulted from a culpable breach of essential contractual obligations, they were the result of a culpable injury to life, limb or health or as provided in the German Product Liability Act. In the case of the breach of an essential contractual obligation based on simple negligence, the Licensor's liability is however limited to damages that may be typically expected and foreseeable in relation to the contract. This restriction does not apply to the extent the damages are the result of an injury to life, limb or health.

- b) Essential contractual obligations are those contractual obligations which enable the fulfilment of the contract's proper execution in the first place, and on whose compliance the user regularly relies on and may rely on, and whose violation by the other party endangers the purpose of the contract.
- c) In all other cases, the Licensor's liability is excluded regardless of the legal basis.

VII Copyright notice; Agency notice; Specimen copies

1. Pursuant to section 13 Germany Copyright Act ("UrhG"), the user is obliged to distribute and/or publish image material exclusively with the copyright/agency notice "ullstein photo/name of the photographer" and namely in such a manner that no doubt may arise as to the attribution of the respective image. For such purposes, collective references are only sufficient if they likewise permit the unequivocal attribution of each respective photograph. This applies in the case of film, television, CD-ROM and marketing use in particular. The user shall indemnify the Licensor against any third-party claims resulting from the omission of the copyright and agency notices.
2. If the copyright and/or agency notice is omitted, the Licensor shall be entitled to a surcharge equal to 100% of the compensation due.
3. Pursuant to section 25 German Publishing Act, the Licensor is to be provided at least two complete specimen copies prior to publication in print form voluntarily and at no charge.

VII Registration in the Internet database

1. The user is required to keep its login details for the password-protected user area on the website secret and protected against access by unauthorized third parties. If the user loses such login details or discovers or suspects that such login details have been used by third parties, the user is required to notify the Licensor of this without delay. In the event of a violation of the foregoing provisions for which the user is at fault, the user is obliged to pay the Licensor compensation for all damages caused by the unauthorised use of such login details by a third party that should have been prevented by the user had the user complies with the foregoing provisions. For each case of willful unauthorised disclosure of login details to third parties, the user undertakes to pay a penalty for breach of contract to the Licensor in the amount of €5,000.00. This is without prejudice to any claims for damages on the part of the Licensor. However, a paid contractual penalty is to be credited against any corresponding claims for damages.
2. The Licensor does not warrant the uninterrupted availability of the technical systems.
3. The user has no right to access to the Licensor's database. The Licensor may block access with prospective effect at any time without an indication of grounds. This does not affect any previously-concluded license agreements.

IX Miscellaneous

1. The laws of the Federal Republic of Germany apply exclusively to the contractual relationship with the user. The application of the UN-Convention on Contract for the International Sale of Goods shall be excluded.
2. If the user is a merchant, a legal entity under public law or public special fund, the exclusive jurisdiction for any disputes arising under or in connection with this contract shall be Berlin. The Licensor may nevertheless also seek legal recourse from the courts with jurisdiction over the user.

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