

WENN TERMS AND CONDITIONS OF SUBMISSION AND REPRODUCTION OF IMAGES

This is a legal agreement between you, the client, and us, the image supplier. You will be deemed to have accepted all the terms of this Agreement in respect of any image you receive or download (including preview images and thumbnails).

1. DEFINITIONS AND INTERPRETATION

- 1.1. "Agreement": all the terms of this Agreement including these terms and conditions, all terms set out in the delivery note and any terms set out in the invoice. The terms set out in the delivery note and the invoice replaces these terms and conditions to the extent of any inconsistency.
- 1.2. "Digital Image": any Image other than a Physical Image.
- 1.3. "End User": your customer or client for, and the ultimate user of, the Images.
- 1.4. "Image": any image which has been selected (whether by you or by us on your behalf) for the purposes of licensing reproduction rights.
- 1.5. "Image Carrier": any disk, memory stick, hard drive or other physical medium containing Digital Images.
- 1.6. "Licence": the licence set out in clause 4.
- 1.7. "Licence Fee": any sum(s) payable by you to us in respect of the Licence.
- 1.8. "Physical Image": any transparency, negative, print or other image in analogue physical form.
- 1.9. Intentionally omitted
- 1.10. "we": the image supplier.
- 1.11. "you": our client.
- 1.12. References to clauses are to the clauses of these terms and conditions.

2. PHYSICAL DELIVERY OF IMAGES

- 2.1. This clause 2 applies to Physical Images delivered to you by post, by courier or any other means and to Digital Images delivered to you on an Image Carrier.
- 2.2. The Images and any Image Carrier are submitted on loan at your request, on approval only
- 2.3. The Images and any Image Carrier belong to us at all times. All Images are your responsibility from the time we despatch them.
- 2.4. We reserve the right to charge you any service fee to cover administrative costs and despatch of the Images on each submission and resubmission of the Images whether or not reproduction rights are required or granted. Any such service fee shall be non-refundable unless otherwise specified. We will deliver Images to you by the most appropriate safe method which affords proof of delivery, and may invoice you for the delivery costs.
- 2.5. Intentionally omitted
- 2.6. Digital Images must be deleted in accordance with clause 6.3 or clause 12.2.
- 2.7. Intentionally omitted

3. DIGITAL DELIVERY OF IMAGES

- 3.1. This clause 3 applies to Digital Images (including preview images and thumbnails) downloaded by you, delivered to you online, or delivered to you by email or other purely digital means.
- 3.2. You agree to be bound by all the terms of this Agreement. You confirm your acceptance of these terms and conditions each time you download or receive from us any image, whether or not you have logged in or set up a user agreement.

4. GRANT OF LICENCE

- 4.1. Subject to the terms of this Agreement, we grant to you a non-transferable, non-exclusive (unless otherwise agreed in writing) licence, on payment of the Licence Fee, to reproduce the Images during the licence period, in the territory and for the purposes specified on the invoice.
- 4.2. Use of the Images is strictly limited to the purpose, medium, licence period, print run, placement, size of licensed material, territory and any other terms agreed. Unless otherwise specified in writing, the Licence is for single use, meaning a reproduction in one size for one edition of a single publication in one medium only, published in one language only. The licence period commences on the date specified on the invoice (or if no date is specified, on the date of the invoice itself) and is for the full duration specified on the invoice, but the Licence only comes into effect on payment in full of the Licence Fee. If the Licence is for online use no licence for offline use is implied, and vice versa. For example, a licence to reproduce Images in a printed publication does not imply any licence to reproduce the Images online. Digital use will be treated as a separate use from physical use, requiring payment of an additional fee to be agreed in advance in respect of each digital medium. In the event no such agreement has been reached, you agree to pay a supplementary fee for the right to publish an Image or Images equal to 20% of the fee agreed in respect of non-digital publication rights which shall be applied in respect of use in each digital medium.
- 4.3. You may not grant sub-licences of any of the rights included in the Licence, or sub-contract any aspects of exploitation of the rights licensed to you, without our prior written consent. However, you may grant sub-licences to End Users to reproduce the Images on terms that prohibit those End Users from granting any further sub-licence and require those End Users to comply with all the terms of this Agreement. You may also sublicense reproduction rights to printers and other production suppliers solely to the extent necessary for production purposes.
- 4.4. We reserve all rights in relation to the Images that are not expressly granted to you under this Agreement, whether known now, or created later, and whether or not in the contemplation of the parties at the time of this Agreement.
- 4.5. We may require you to cease all use of any of the Images if we reasonably believe that your use of such Images infringes the intellectual property rights of any third party, or breaches any applicable law or regulation. In this instance, we may, at our option either:
 - a. provide you with alternative Image(s) so as to avoid the infringement; or
 - b. terminate this Agreement immediately on written notice in respect of the relevant Images.

5. RESTRICTIONS AND OBLIGATIONS

- 5.1. You must comply with all applicable laws and regulations in performing your obligations and exercising your rights under this Agreement.
- 5.2. You must not incorporate Images (or any part of them) into a logo, trade mark or service mark.
- 5.3. Images must not be used as references for creating drawings or other visual works unless expressly agreed by us in writing.
- 5.4. Images must not be used in comps, presentations or layouts, nor may Images be used in slide projections or other presentations, unless expressly agreed by us in writing.
- 5.5. Images must not be reproduced more than once within any design, editorial piece, advertisement or other work product, unless expressly agreed by us in writing.
- 5.6. A licence to use an Image on or in a product, including a book or magazine cover, does not imply any licence on your part to use the Image in the advertising or promotion of that product, except as part of an image of the product itself showing the Image in its context.
- 5.7. You must not use Images in a pornographic, obscene, defamatory, misleading, unlawful or offensive manner, whether directly or in context or by juxtaposition with other materials.
- 5.8. You must comply with any special instructions or restriction on use notified to you by us before, after or at the time of delivery of the Images, either in the information or metadata accompanying the Images, the delivery note, the invoice or by any other means.
- 5.9. Images shall not be altered or manipulated, added to nor have any part cropped or deleted without our prior written consent. Such consent is deemed to have been granted in respect of normal editorial cropping.
- 5.10. The Images must not be made available for use or distribution separately or detached from a product or web page. For example, the Images may be used as an integral part of

a web page design, but may not be made available for downloading separately or in a format designed or intended for storage or re-use by website users. Similarly, End Users may be provided with copies of the Images as an integral part of your work product, but must not be provided with the Images or permitted to use the Images separately. Images must not be made available on or linked to via websites, products or services such as Pixazza, Luminare, Stipple or Clic2c.

- 5.11. Images may not be modified, reconfigured or repurposed for use in any mobile-directed web sites or mobile applications that are specifically created for viewing of material on mobile devices, without our prior written consent which might require payment of an additional licence fee. For clarification, this restriction on mobile use is not breached if an Image that is licensed for web site use can be viewed via mobile devices in a “pull” (as opposed to “push”) fashion, provided it is not so specifically modified, reconfigured or repurposed for this purpose.
- 5.12. The Images must not, unless expressly agreed by us in writing, be posted on social networking or file-sharing sites such as Flickr, Plixi, YouTube, Facebook or MySpace.
- 5.13. You acknowledge the original nature of and agree not to challenge on the ground of non-originality the subsistence of copyright in Images consisting of skilled photographic reproductions of artistic works such as paintings, photographs and sculptures.

6. DIGITAL RIGHTS MANAGEMENT

- 6.1. You acknowledge that the Images are our valuable property, as are any Digital Images created from the Images.
- 6.2. You may store the Images in a digital library, network configuration or similar arrangement to allow them to be viewed within your organisation or within the End User's organisation for planning or production purposes, but you must retain the copyright symbol, our name, the Image identification numbers and any other information which may be embedded in the electronic files containing the original Images. You must not remove metadata information supplied in Images under any circumstances including without limitation from Images published online.
- 6.3. When the work product for which the Images were licensed has been created or within 90 days, whichever is sooner, the Images, including any pre-press or pre-production copies, must be promptly deleted from your and any End User's computer or other electronic storage systems.

7. CREDITS

Unless otherwise agreed, you must credit us and the photographer or other author of the Image whenever the Image is used in the form indicated in the credit field or, if there is no such indication, “©[photographer's name]/WENN.com”. An additional fee equal to the original amount invoiced may be charged by us should you fail to publish the required credit. You will be liable to pay the additional penalty fee within 14 days from the date of the invoice. Failure to provide a credit may also breach the photographer's moral right to be identified under section 77 of the Copyright, Designs and Patents Act 1988 and equivalent laws in other jurisdictions.

8. PAYMENT

- 8.1. Unless otherwise agreed by us in writing no reproduction of any Image is authorised until payment in full has been received by us. Any reproduction by you or the End User before payment in full has been received constitutes an infringement of copyright and a breach of this Agreement entitling us to terminate this Agreement immediately on written notice to you.
- 8.2. Unless otherwise agreed by us in writing, all invoices are payable by you upon receipt. If you do not make full payment of an invoice on time we reserve the right to charge interest on the outstanding amount at the rate prescribed by the Late Payment of Commercial Debts (Interest) Act 1998 (and equivalent laws in other jurisdictions) from the date payment was due until payment is made.
- 8.3. All amounts due under this Agreement are exclusive of VAT (and equivalent taxes in other jurisdictions) which shall, where applicable, be paid by you at the prevailing rates on the due date for payment and on receipt of a VAT invoice from us.
- 8.4. All payments to be made by you under this Agreement (except any deduction or withholding which is required by law) shall be paid free and clear of any deductions or withholdings for or on account of set-offs or counterclaims.

9. MODEL AND OTHER RELEASES; CAPTIONS AND OTHER INFORMATION

- 9.1. We give no warranties whatsoever as to the existence of any model, property or other releases associated with the Images.
- 9.2. We give no warranties whatsoever as to the use of names, trademarks, logos, uniforms, registered or unregistered designs, artistic works or other material depicted in any Image which may be subject to intellectual property rights or other restrictions.
- 9.3. You must satisfy yourself that all releases, consents, licences or permissions as may be required for use of the Images have been secured. You are solely responsible for obtaining all such releases, consents, licences or permissions and the Licence is conditional in each case on your obtaining them. You must not rely on any representation in this connection which may be made on our website and may only rely on an express representation given specifically to you by us in writing.
- 9.4. We do not warrant the accuracy of the captioning, keywording or any other information associated with the Images. You must satisfy yourself that all such information is correct.

10. AUDIT

- 10.1. You shall keep separate and detailed records of all uses of the Images to enable us to verify your compliance with the terms of this Agreement. After giving written notice of 10 days, we, or any other person authorised by us, may inspect your records, premises and/or servers during normal business hours, and take away copies to verify the information provided by you. This right of inspection shall remain in effect for a period of one year after the expiry or termination of this Agreement.

11. INDEMNITY

- 11.1. You agree to indemnify and hold us harmless against any claims, damages, losses, expenses or costs (including any direct, indirect or consequential losses, loss of profit and loss of reputation and all interest, penalties and legal costs and other expenses) arising in any manner whatsoever from or as a result of your unauthorised use of any Image supplied by us to you, or any other breach by you of any of your obligations under this Agreement.

12. TERMINATION

- 12.1. We may (by written notice to you) terminate this Agreement immediately if:
 - a. you fail to pay any amount due under this Agreement in full within 14 days of its due date and this failure is not remedied within 7 days of receipt of written notice to this effect; or
 - b. you commit any material breach of your obligations under this Agreement which is incapable of remedy, or if capable of remedy, is not remedied within 14 days of our giving written notice requiring the breach to be remedied; or
 - c. you cease, or threaten to cease, to carry on business, or any of the following events occur in respect of you or any of your holding companies:
 - i. a proposal is made for a voluntary arrangement or for any other composition scheme or arrangement with or assignment for the benefit of creditors;
 - ii. a resolution for winding-up is passed;
 - iii. a petition for winding-up is presented, or an application is made for the appointment of a provisional liquidator, or a creditors' meeting is convened;
 - iv. a receiver, administrative receiver or similar officer is appointed over the whole or any part of your business or assets; or
 - v. an application is made either for the appointment of an administrator or for an administration order.
- 12.2. On any expiry or termination of this Agreement the Licence shall automatically terminate and there must be no further use of the Images. All Physical Images and any Image Carrier must be promptly returned to us and any other Digital Images must be promptly deleted from your and any End User's computer or other electronic storage systems.

13. WARRANTY AND LIMITATION OF LIABILITY

- 13.1. We warrant that (a) the Images will be free from defects in material and workmanship for 30 days from delivery (your sole remedy for a breach of this warranty being the replacement of the defective Image); (b) we have all necessary rights and authority to enter into and perform this Agreement; and (c) your use of the Images in accordance with this Agreement and in the form delivered by us will not infringe any copyright in the Images or any moral rights of the authors of the Images.
- 13.2. Save where expressly provided, all terms which might be implied into this Agreement or any collateral contract, whether by statute, common law or otherwise, are hereby excluded to the maximum extent permitted by law.
- 13.3. Nothing in this Agreement shall operate to exclude or limit our liability for (a) death or personal injury caused by our negligence; (b) any breach of the terms implied by section

12 of the Sale of Goods Act 1979 or section 2 of the Supply of Goods and Services Act 1982; (c) fraud; or (d) any other liability which cannot be excluded or limited under applicable law and equivalent laws in other jurisdictions.

- 13.4. We shall have no liability for any losses or damages which may be suffered by you (or any person claiming under or through you), whether the same are suffered directly or indirectly or are immediate or consequential, and whether the same arise in contract, tort (including negligence) or otherwise howsoever, which fall within any of the following categories: (a) loss of profits; (b) loss of business opportunity; (c) loss of contracts; (d) loss of goodwill; or (e) loss arising from damaged, corrupted or lost data; provided that this clause 13.4 shall not prevent claims for direct financial loss that are not excluded by any of categories (a) to (e) inclusive of this clause 13.4.
- 13.5. Subject to clause 13.3, our liability, whether in contract, tort (including negligence) or otherwise and whether in connection with this Agreement or any collateral contract, shall not exceed the Licence Fee multiplied by 10.

14. ASSIGNMENT

- 14.1. You shall not, without our prior written consent, assign, transfer or deal in any manner with this Agreement or any of your rights and obligations under this Agreement.

15. COPYRIGHT AND PUBLICATION RIGHT

- 15.1. No interest in the copyright in any Image shall pass to you by virtue of this Agreement. Any publication right (as defined in the Copyright and Related Rights Regulations 1996) and equivalent rights in all other jurisdictions arising from your or the End User's use of any Image shall vest in us and you hereby assign and agree to procure the assignment of all such rights arising to us.
- 15.2. You will promptly notify us of any actual or suspected infringement of the copyright in the Images within the licensed territory ("**Infringement**") that comes to your attention. You will co-operate fully with us by taking all steps required by us (in our sole discretion) in connection with any Infringement including, without limitation, where the Licence is exclusive, proceedings in our name or in the joint names of the parties. You will use your best endeavours to assist us in any legal proceedings relating to any Infringement.

16. MISCELLANEOUS TERMS

- 16.1. This Agreement constitutes the entire agreement between the parties and supersedes and extinguishes all previous agreements, arrangements and understandings between them, whether written or oral, relating to its subject matter. Each party agrees that it shall have no remedies in respect of any representation or warranty (whether made innocently or negligently) that is not set out in this Agreement. No party shall have any claim for innocent or negligent misrepresentation based upon any statement in this Agreement.
- 16.2. No variation of this Agreement shall be effective unless it is in writing and signed by the parties (or their authorised representatives). If there is an inconsistency between any of the provisions of this Agreement and the provisions of your purchase order, your standard terms and conditions or any other document, the provisions of this Agreement shall prevail.
- 16.3. If any court or competent authority finds that any provision of this Agreement (or part of any provision) is invalid, illegal or unenforceable, that provision or part-provision shall, to the extent required, be deemed to be deleted, and the validity and enforceability of the other provisions of this Agreement shall not be affected. If any invalid, unenforceable or illegal provision of this Agreement would be valid, enforceable and legal if some part of it were deleted, the provision shall apply with the minimum modification necessary to make it legal, valid and enforceable.
- 16.4. No failure or delay by a party to exercise any right or remedy provided under this Agreement or by law shall constitute a waiver of that or any other right or remedy, nor shall it preclude or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall preclude or restrict the further exercise of that or any other right or remedy.
- 16.5. This Agreement and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the laws of the state of New York. The parties agree that the courts of the state of New York shall have exclusive jurisdiction to settle any dispute or claim that arises out of or in connection with this Agreement or its subject matter or formation (including non-contractual disputes or claims), save for infringement of copyright or non-payment of the Licence Fee where it shall be non-exclusive.

17. If this Agreement forms part of a separate subscription agreement and there is a conflict of terms, the terms of the separate agreement shall take precedence over this Agreement.
18. Any charges made in respect of screen images and/or PR photos represent charges for WENN's services only, and do not, nor are they intended to, convey any ownership of Copyright or License in the material. As advised at the time of supply, by publishing this material, the user expressly agrees to indemnify and to hold WENN harmless from any claims, demands, or causes of action arising out of or connected in any way with user's publication of the material.