

## TERMS AND CONDITIONS

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## **PREAMBLE**

The following general terms and conditions constitute a legally effective agreement between you, the user (the licensee) and the stock photo agency StockFood Limited whose Registered Office is situated at 327-329 Harrow Rd, London, W9 3RB (a Company registered in England and Wales under Registration No. 05951778) (hereinafter referred to as "StockFood"). PhotoCuisine is a division of StockFood.

The terms and conditions shall apply to all StockFood's quotations, deliveries, electronic transmissions and the granting of user rights in graphics, illustrations, photographic images, film or video material, audio products, visual presentations which are made with optical, electronic, digital or other means including negatives, slides, film copies, print-outs, original digital files or their duplicates, image descriptions, nutritional value information, recipes (hereinafter referred to as "licence material"), copy texts and articles by StockFood. Please read the following conditions with care therefore before using the website and before ordering or downloading any licence material. The licence material offered may not be used without you having accepted these terms and conditions.

## **I. GENERAL**

### **I. 1. [Conclusion of Agreement]**

On registering on the website, the user confirms his/her consent to these terms and conditions. If these terms and conditions are not agreed, the website may not be used. The opening of the packaging of a purchased CD-ROM, the installation of a CD-ROM or the downloading of licence material is also regarded as acceptance of these terms and conditions.

### **I. 2. [Data protection]**

The user/licensee agrees that his/her personal data, given that they relate to the business relationship with StockFood and are made available in the course of this relationship, can be stored and electronically processed by StockFood and used for information purposes.

### **I. 3. [Duty to registration]**

The user is obliged to register himself under his own data and to make all statements correctly and completely. If a user enters this contractual relationship in the name of a third party (employer etc.), he may only do so if he is authorised by that person or entity and in so registering the user warrants that he is so authorised and must identify that person or entity on registration.

### **I. 4. [Contract partner]**

The terms and conditions apply both to the user and to any third parties (employer etc.) in the name and/or on behalf of whom the user acts. The terms and conditions shall continue to apply for all parties even after the end of the contractual relationship (employment relationship etc.). An authorised representative (employee etc.) is in this case, however, not entitled to further use of the licence material; in particular he is not entitled to copy licence material and/or use it at another workplace.

If a user acts in the name of a third party without sufficient authority, all agreements and conditions shall apply as though they have come into being with the user personally.

### **I. 5. [Reservation of amendment]**

StockFood is entitled to amend these terms and conditions, prices and other conditions at any time and without previous announcement. Any further access to, or any further use of the website after such amendment, shall be regarded as agreement to the amended conditions. It is the duty of the user or licensee to inform himself regularly about the current status of these conditions and the current prices. The most recent update of these conditions took place on 06th June 2016.

## **I. 6. [Conflicting conditions]**

Any conflicting conditions of the user, the licensee or third parties which conflict or are inconsistent with these terms shall apply only on written confirmation by StockFood. The terms and conditions of the user, the licensee or third parties to which reference is made on order forms, confirmations of delivery or similar, or in their own files, computers, on the Internet or in/on corresponding media are hereby expressly rejected.

In purchasing a CD or any other data carrier, any printed "end-user licence agreements" (EULA) of the manufacturer shall apply in addition, in their currently valid version. In the case of any regulations differing from these conditions, the tighter rights to use granted shall apply.

If licence material is purchased from foreign subsidiaries or distributors of StockFood, their terms and conditions shall prevail insofar as they conflict or are inconsistent with these terms and conditions.

## **I. 7. [Conflicting agreements]**

The contractual conditions recorded here are the comprehensive and sole basis of licence material deliveries and their availment by the licensee. All earlier agreements or arrangements, whether verbal or written, whether customary in the sector or based on earlier business transactions, are void. No action by StockFood can be interpreted as waiver of validity of one of these regulations inasmuch as the disclaimer does not take place expressly and in written form by an authorised representative. Any variation of the terms to this agreement must be in writing and be signed by an authorised representative of StockFood.

## **II. RIGHTS TO USE (LICENCES)**

### **II. 1. [General Provisions]**

#### **II. 1. 1. [Subject matter of the agreement]**

StockFood grants the Licensee a licence of the licence material on a non-exclusive and non-transferable basis and the user cannot grant any sub-license. The user is only entitled to use the licence material in accordance with these conditions and shall receive no further rights apart from the rights expressly agreed hereby or otherwise agreed in writing.

#### **II. 1. 2. [Licensing]**

Licensing shall become effective through acceptance of these conditions and on full payment of the royalty stated in the invoice. Before full payment of the fee, the rights to use shall only be regarded as having been transferred if StockFood has expressly recorded its approval for use in advance in writing.

#### **II. 1. 3. [Rights of third parties]**

Only user rights in the licence material shall be granted.

Excluded is any release or approval for the use of depicted persons, names, goods or trademarks, buildings, decorations and artistic designs or recipe creations. This shall apply in particular for the use of the licence material in an advertising connection. The user himself is responsible for obtaining any such necessary permissions or approvals from the authorised parties for the planned use.

Inasmuch as licence material on or in which persons are depicted is marked with the note "model released", model releases (declarations of agreement) are obtainable on request whereby the names of such persons shall be made unrecognisable for the protection of the privacy of the imaged persons.

The publication of images of well-known personalities may only take place stating their names and only editorially. In any other context any copyright of the persons appearing in the image shall be observed by the user.

Inasmuch as the existence and the validity of a release has not been confirmed in writing by StockFood, the user shall indemnify and keep indemnified StockFood against or from all demands of third parties which may arise from the use of the licence material concerned. If the user has been incorrectly notified by StockFood due to an error that there is a release from or approval for use of licence material although this is not the case, the scope of liability of StockFood is limited exclusively to the amount invoiced and paid for the use of the licence material concerned.

#### **II. 1. 4. [Secondary rights; exclusive rights]**

StockFood expressly reserves the right to transfer secondary rights (or the right to collect royalties or licence fees in respect of them) to collecting societies. Any term which seeks to obtain for the payer of a royalty of licence fee demanded or paid in connection with secondary rights or a third party shall be void.

No exclusive user rights are granted with the licence for use. If such rights are required by the licensee the licensee shall request them and, subject to any agreement by StockFood, any such rights will, upon payment of additional fees as agreed, be expressly granted in the licence for use.

#### **II. 1. 5. [Copyright notation]**

An agency and copyright notation shall be attached to any use in a manner leaving no doubt about the ownership of the licence material concerned. Collective image references are only sufficient if an absolute assignment to the licence material concerned has been granted. The copyright notation requirement cannot be satisfied by way of an increased fee.

These regulations apply expressly for advertising, overlays in TV programmes and films or other media if no express, written agreement is made to the contrary.

#### **II. 1. 6. [Reservation of title]**

The whole of the licence material is protected by copyright. Delivered or electronically transmitted licence material shall always remain the property of StockFood and/or its licensors and shall be provided for use in accordance with the terms of these terms and conditions.

#### **II. 1. 7. [Right to termination/revocation; cancellation fee]**

Licences which have been granted can be cancelled by StockFood without notice if the Licensee violates these provisions or brings or becomes subject to insolvency proceedings or otherwise becomes insolvent. In this case, the Licensee shall cease use of the licence material without delay, return any originals or copies, which he may possess to Stock Food and delete or destroy all electronic duplicates.

If the intended publication or other use does not take place and is revoked within a period of 30 days after the licence material is downloaded, StockFood can cancel the licence at its discretion and issue a credit. The cancellation fee which becomes due in this case shall amount to fifty percent of the fee for use.

### **II. 2. [General disposal and restrictions of use]**

#### **II. 2. 1. [Press code of Practice]**

The user is obliged to observe the journalistic principles set out in the Code of Practice ratified by the Press Complaints Commission from time to time. The user will indemnify and keep StockFood indemnified against all claims costs and expenses that StockFood may incur in respect of any breach of the Code.

#### **II. 2. 2. [Distortion, modifications, etc.]**

Any disfiguration of the copyright protected work (licence material) by way of drawings, derivative photography, photo-composing or the use of electronic equipment is not permitted unless agreed by StockFood in writing.

Unauthorised modification of the licence material or which may lead to degrading of the imaged persons or produce a pornographic, defamatory or in any other way illegal or immoral allusion are not permitted and the user will indemnify and keep indemnified StockFood against all claims, costs and expenses that StockFood may thereby incur.

The digital watermark of a file and all other markings, properties or elements of the file or its appearance may not be altered, made unrecognisable or removed. The user shall make sure that licence material is used exclusively together with the copyright symbol, the name "StockFood" and the image number of StockFood as a part of the electronic file name.

#### **II. 2. 3. [Unauthorised duplication or transfer of rights]**

The passing on of the licence material or the transfer of re-printing rights to third parties is not permitted. Duplication, reproduction and enlargement for archiving purposes of the party ordering and the transfer of the same to third parties is also not permitted unless approved by StockFood in writing.

#### **II. 2. 4. [Individual types of use]**

Without the expressed and written approval of StockFood, the Licensee is not permitted in particular:

- to license, transfer and/or resell the rights granted to third parties or to integrate licence material in an electronic template which is intended for use by third parties in electronic media or print, for example, design templates for websites, presentation templates, electronic greetings cards or business cards;
- to embed licence material in a logo, brand image or any other trademark;
- to distribute or make licence material available in a format suitable for download or to enable a distribution via mobile phone devices;
- to store licence material on a server, in an image library, network configuration or similar environments, which enables more than 10 staff members or customers access to them, whether or not that access is at different times.
- to sell, license or distribute any products produced using the licence material in a form which enables end customers of the Licensee access to or the selection of images as individual files.

## **II. 3. [Special provisions for Rights Managed licence material (RM)]**

### **II. 3. 1. [Statement of the type of use]**

The Licensee shall, at the latest on the issuing of the invoice and, where possible, on ordering the licence material, state the type, scope and language area of the intended use and, in the case of the licensing of Rights Managed licence material (RM) the name of the end user. In accordance with the statements made by the Licensee, StockFood shall declare its agreement to the use of the delivered licence material.

If the statements made by the Licensee do not correspond to the actual type of use or the actual use does not correspond to the statements, the license shall be regarded as not having been granted. In such circumstances the licensee shall indemnify and keep indemnified StockFood against all claims, costs and expenses that StockFood may thereby incur. The same shall apply if the personal data of the user are not stated truthfully.

### **II. 3. 2. [Period and purpose of use]**

The rights granted for the use of Rights Managed licence material (RM) apply only for one-off use in the agreed scope. Repeats or other extensions (purpose, type, scope, term or area of distribution) of the originally granted license shall again be subject to payment of a fee and only permitted with the previous written approval of StockFood.

The use of the licence material for advertising measures or presentations is only permitted if this use is expressly granted in the licence.

### **II. 3. 3. [Specimen copies]**

Before any publication in print, StockFood shall be provided with at least two complete specimen copies, without the need for special request and at no cost.

## **II. 4. [Special provisions for Royalty Free licence material (RF)]**

### **II. 4. 1. [Principle]**

For Royalty Free licence material ("RF"), StockFood grants the worldwide, unlimited in time, non-exclusive and non-transferable right to use the licence material of a respective CD or individually downloaded license material for the following purposes:

- a) any printed matter including advertising and promotion material (e.g. brochures, advertisements, advertising posters, CD covers, graphic design), editorial publications and end-user advertising;
- b) any digital or electronic media inasmuch as the resolution of the image / images does not exceed 72 dpi;
- c) products intended for re-sale inasmuch as the series produced without further licence does not exceed 10,000 pcs;
- d) additional use which has been approved in writing by StockFood.

### **II. 4. 2. [Special restrictions of use (RF)]**

The products are not be intended to enable or permit re-sale or renewed use of the licence material.

The permitted use of downloaded licence material or purchased CDs is further limited to use for the product(s) of an individual end customer (company or person). The customer shall be stated together with his name and address. The passing on of licence material or the transfer or granting of user rights to third parties is not permitted.

On purchase of a CD or another data carrier as well as in case of the download of license material marketed in third party i.e. external collections, "end-user licence agreements" (EULA) of the manufacturer, which are printed on the

data carrier, attached in some other manner or listed under II. 4.3. hereunder, shall apply in addition, in their currently valid version. In the case of regulations different from these conditions, the tighter granted rights to use shall apply.

#### **II. 4. 3. [Licensing terms of external collections]**

In respect of the following external collections, the following EULAs that are accessible electronically via Hyperlink shall apply additionally (cf. II. 4.2.); upon request, these EULAs will be also forwarded in written form (free of charge):

- a) [End User License Agreement AGE Fotostock](#)
- b) [End User License Agreement Blend Images, Spaces Images](#)
- c) [End User License Agreement Built Images, Sheltered Images \(Lived In Images\)](#)
- d) [End User License Agreement emotive images](#)
- e) [End User License Agreement fstop](#)
- f) [End User License Agreement I love images](#)
- g) [End User License Agreement Johnér, ETSA, Naturbild \(Johnér\)](#)
- h) [End User License Agreement Juice Images Ltd.](#)
- i) [End User License Agreement Maskot Bildbyrå AB](#)
- j) [End User License Agreement People Pictures](#)
- k) [End User License Agreement PhotoAlto](#)
- l) [End User License Agreement Pixtal](#)
- m) [End User License Agreement Radius](#)
- n) [End User License Agreement RHPL](#)
- o) [End User License Agreement Tetra Images LLC](#)
- p) [End User License Agreement Wave](#)
- q) [End User License Agreement Westendó1](#)

### **III. III. WARRANTY, LIABILITY**

#### **III. 1. [Guarantee]**

For a term of 30 days starting on delivery date, StockFood shall guarantee that the delivered or electronically transmitted licence material is free of material and processing errors.

#### **III. 2. [Subsequent performance]**

In the case of justified complaint, the licensee shall have the right to a replacement delivery. The Licensee can only declare his withdrawal from the agreement and assert refund of the licence fee in the case failed subsequent performance.

#### **III. 3. [Duty to check]**

The user is obliged to check the delivered or electronically transmitted licence material without delay after receipt and prior to any use.

Any complaints shall be notified within one week of receipt of the licence material by the Licensee and, on request by StockFood, within one further week in written form. Complaints with respect to any latent defects must be notified within ten workdays of discovery in written form. If notification is not given within the stipulated period, all liability on the part of StockFood for any damage which may already have arisen or which may arise shall cease to apply.

#### **III. 4. [Limitation of warranty]**

StockFood shall assume no further liability (whether caused by its negligence or otherwise) either expressly or implied by and shall not be liable for consequential loss, quality and the suitability of the licence material for use or the compatibility with computers and other technical equipment. Otherwise, StockFood shall only be liable for damage which has been caused by intent or gross negligence.

#### **III. 5. [Limitation of liability in case of exclusive licensing]**

Where StockFood is liable to the licensee then such liability shall be limited to the fee invoiced and paid for the use of the licence material concerned.

### **III. 6. [Links]**

This website contains links to other web sites the content and functions of which are not determined by StockFood. StockFood shall not be liable for such content and the functions of such websites or for any losses (consequential or otherwise) which may arise through the use of such web sites. In using these web sites, the user shall waive all claims against StockFood.

### **III. 7. [General exemption from liability; user's/licensee's liability]**

The user or licensee shall indemnify and keep indemnified StockFood and its licensors against all demands, claims, costs and expenses including reasonable lawyers' and court costs which may result from the breach of the provisions of this agreement by the licensee, use or modification of images contrary to agreement or the connection or combination of images with other material contrary to agreement.

In case of unauthorised use, disfiguration or passing on of the delivered or electronically transmitted licence material the purported unauthorised granting of rights to third parties or the unauthorised production of duplicates, reproductions and/or enlargements for the archive purposes of the licensee or the passing on of the same to third parties, the licensee agrees, irrespective of the assertion of further claims for damages by StockFood, to pay an additional licence fee of five times the license fee that would otherwise have been payable or such other lesser sum as a Court deems appropriate.

If the copyright notation is not stated in accordance with clause II. 1.5. of these provisions, then the license fee shall be twice the licence fee that would otherwise have been payable. The licensee shall indemnify StockFood against any claims of third persons resulting from failure to provide a sufficient copyright notation.

## **IV. FEES**

### **IV. 1. [Fee obligation]**

Any use of the licence material, with the exception of use for internal layout purposes in the project phase, is subject to payment of a fee.

Any printed or digital reproduction or use of the licence material as a template for drawings, caricatures, derivative images, customer presentations or the use of image details which, by means of mounting, photo-composing, image processing or similar technologies become the part of a new image shall be regarded as use.

### **IV. 2. [Amount of fee]**

The amount of the license fee invoiced by StockFood depends on the type of use.

Exclusive rights or blocking periods shall be agreed separately and mean a surcharge of at least 100 percent of the basic fee.

Agency or information fees, which arise from the type and scope of the necessary work involved, are incurred for the procurement of external material and information. These fees cannot be set-off against the licence fee for use. On payment of the processing fees, the party ordering shall acquire neither the rights to use nor ownership.

Fees for the use of RM are charged according to the medium, type, scope, language area and the term of use. If no fee has been agreed StockFood is entitled to charge in accordance with its current fee rates. If the licensee fails to fully disclose its intended use of the material StockFood is entitled to fix a lump-sum fee. The agreed fees shall apply only for one-off use.

The fees for RF are set out in to StockFood's current price list.

### **IV. 3. [Due date; invoice]**

As soon as the licensee has given notification that he wishes to use the delivered licence material, fully or partly, StockFood is entitled to invoice for the granting of a license even if the publication or other use has not yet taken place. If the intended publication or other use does not occur, any paid fee cannot be refunded.

Invoices are always payable immediately. All statements of fees in offers, price lists and other documents are net prices without VAT or the artists' social security payment. The re-addressing of an invoice at the request of the recipi-

ent shall be charged at GBP 20.00. Re-addressing an invoice will be for the administrative convenience of the licensee and will not affect the licensee's liability as primary obligator to pay the invoice.

## V. MISCELLANEOUS

### V. 1. [Applicable law]

This agreement, including deliveries made abroad, is governed by the laws of England and Wales and the UN Convention on Contracts for the International Sale of Goods (CISG). In the case of conflict the Laws of England and Wales shall prevail.

### V. 2. [Place of jurisdiction; place of performance]

Any disputes arising from this Agreement or its enforceability at the election of StockFood shall be excluded

### V. 3. [Notices]

A notice required or permitted to be given by either party to the other under these Terms shall be in writing addressed to that other party at its registered office or principal place of business or such other address as may at the relevant time have been notified pursuant to this provision to the party giving the notice.

### V. 4. [Non-Waiver]

No waiver by StockFood of any breach of the contract by the Licensee shall be considered as a waiver of any subsequent breach of the same or any other provisions.

### V. 5. [Ineffective Terms]

If any dispute of the contract is held by a Court or other competent authority to be invalid or unenforceable in whole or in part the validity of the other provisions of the contract and the remainder of the provision in question shall not be affected and the invalid or unenforceable term shall stand amended insofar as may be necessary for it to be valid and enforceable.

### V. 6. [Disputes]

Any dispute arising under or in connection with this contract or the rights and obligations of StockFood or the user shall be referred to arbitration in London by a single arbitrator appointed by agreement or (in default) nominated on the application of either party by the President for the time being of the Law Society in accordance with the rules of the Arbitration Act 1996.