

# Oberösterreichisches Landesmuseum / Upper Austrian State Museum

## General Terms and Conditions of Business for Image Rights and Photographic Works



### 1. Area of application

1.1. These General Terms and Conditions of Business shall apply for the attached agreement with the Oberösterreichisches Landesmuseum / Upper Austrian State Museum, A-4010 Linz, Museumstrasse 14 (hereinafter referred to as the „Museum“). The contractual partner (hereinafter referred to as the „Contractual Partner“) of the Museum shall be the person specified on the attached agreement, who is concluding a contract in its own name with the Museum - independent from whether it is acting on behalf of a third party.

1.2. The Contractual Partner shall be subject to these General Terms and Conditions of Business. Any terms and conditions of business of the Contractual Partner shall not apply.

1.3. The Contractual Partner itself shall be liable for the performance of all obligations under this agreement even if image materials are forwarded by the Contractual Partner to a third party or if the invoice is issued directly to a third party or is transferred to a third party. This liability shall particularly encompass any claims on the basis of usage, damage, delayed return or loss of image materials by a third party.

### 2. Object:

2.1. Image materials shall include all images or photographs offered to the Contractual Partner. They shall enjoy copyright protection.

2.2. If the Contractual Partner manufactures the images or photographs itself on the basis of a permission to photograph granted by the Museums then it shall grant the Museum at the point in time of the photograph unlimited and exclusive right of use pursuant § 24 Paragraph 1, Section 2 of the Copyright Act [UrhG] and shall at the same time assign to the Museum all rights to the photograph to which it is entitled pursuant §§ 73 ff of the Copyright Act, without a further declaration being required. Any use of the photographs manufactured by the Contractual Partner may only be pursuant the provisions specified in these Terms and Conditions of Business for the use of image materials in the framework of the rights of use granted by the Museum.

### 3. Rights of use:

3.1. Use shall mean any use of the image materials going beyond mere viewing in the framework of an offer from the Museum. This shall include any duplication, for example by printing, reproduction, projection, copying or storing, alteration by distortion, mirroring, changing the colour etc. as well as the use of an image as a template for drawings, caricatures and edited photos, also the use for layout and Contractual Partner presentations, as well as the use of portions of the image, even if these become a component of a new image through montages, photo composing, electronic image carriers or similar techniques, as well as any other type of dissemination and publication, as well as all new technological and commercially independent types of usage, which are not yet known on the date of the conclusion of contract.

3.2. Any use of the Museum's image materials may only be on the basis of authorisations of use granted in writing. The mere sending of image materials for viewing or selection purposes shall not entitle the Contractual Partner to any rights of use. To determine the scope of the authorisation to use the Contractual Partner shall be obligated prior to production to provide specific information regarding its intended use. The use of images or photographs without prior authorisation to use and/or without the Museum's previous written consent shall entail the legal consequences set forth in Paragraphs 5 and 6 of these Terms and Conditions of Business in addition to the legal consequences under the Copyright Act.

3.3. The Contractual Partner shall acquire neither proprietary rights nor copyrights nor work licenses to the image materials through the authorisations of use granted. If not otherwise agreed in writing, the authorisation to use shall be against payment, exclusive, and shall apply for a single use in Austria for the purpose stated by the Contractual Partner. Any other or additional use shall be agreed anew with the Museum. If an authorisation of use is granted but not used within two years then it shall expire.

3.4. Usage rights shall only be transferred in the scope to which the Museum is entitled to them.

3.5. Every use of the image shall be captioned „Oberösterreichisches Landesmuseum“ in such manner as to leave no doubt regarding the attribution of this copyright notice to the respective image.

3.6. The Contractual Partner shall be obligated to provide at least one specimen copy free of charge to document the contractual use of the image materials to the Museum.

### 4. Delivery, notification of defects:

4.1. The image materials shall be sent or delivered by the Museum following receipt of the invoice amount. (When transmitting digital image materials via the Internet the associated invoice can also be sent separately from the transmission by post or fax or email.) With respect to the image materials delivered the Contractual Partner shall have a duty to examine and give notice of defects pursuant §§ 377, 378 of the Commercial Code [HGB]. All defects, in particular deviations from the order as well as qualitative defects of the image materials and the accuracy of the image description, shall be immediately reported by telephone, in any event however within 24 hours following receipt, as well as in writing within 2 days. Otherwise the delivery shall be deemed to have been duly executed and approved.

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*(Continuation of the Upper Austrian State Museum General Terms and Conditions of Business for Image Rights and Photographic Works from Page 1/2)*

4.2. Upon transfer of the image materials to the Contractual Partner's recipient the Museum shall be deemed to have fulfilled its delivery obligation and the full risk of loss and damage shall pass to the Contractual Partner. The Contractual Partner shall hence be liable for complete return to the Museum. Packaging defects shall be borne by the Contractual Partner.

4.3. The image materials shall be returned by the Contractual Partner immediately following use by the return date specified in the agreement at the latest, however within four weeks at the latest if no other term of use has been agreed.

5. Remuneration:

5.1. Every use of image materials shall be against payment. The amount of remuneration shall be oriented according to the scope and type of use and shall be agreed prior to the start of use. In lieu of an agreement the remuneration shall be calculated according to the Museum's customary billing rates.

5.2. If the purpose of use has not yet been specified at the point in time of the transfer of the image materials it shall be disclosed by the Contractual Partner at the earliest possible time. If this does not occur at the latest four weeks after sending the image materials to the Contractual Partner then the Museum shall be entitled to charge the maximum rate of the Museum's respective customary billing rates.

5.3. The remuneration shall be payable within 14 days after the invoice date without deduction.

5.4. The granting of the authorisation to use shall be conditional upon payment of the remuneration. In the event of delayed payment, the authorisation of use shall hence apply as not granted. The Museum's right to remuneration shall not be thereby reduced.

5.5. If the intended use is not effected a fee previously rendered shall not be reimbursed.

6. Liability:

6.1. The Museum shall be liable to the Contractual Partner only for damage caused deliberately or due to gross negligence. In the event of timely reporting of technical defects in quality, the Museum shall strive to provide defect-free materials in place of the defective image materials. Moreover there shall be no liability for defects in quality, for lack of availability, for timeliness of the shipment, for usability of the image materials, for erroneous image descriptions or for texts provided. Liability for indirect and consequential damages, particularly for loss of profits and for third party claims, shall be excluded. The maximum amount of any compensation for damages shall be restricted to the agreed remuneration.

6.2. The Contractual Partner shall be obligated in the following cases to the following contractual penalties irrespective of fault, which are independent from the incidence of a damage and not subject to judicial reduction:

- for damages to or loss of image materials: 400 euros per damaged or lost image; if further use is possible despite the damage: 200 euros per image. By paying these amounts the Contractual Partner shall acquire no rights to the slides etc., which exceed any agreed and paid usage rights;
- for any unauthorised use a surcharge of 100% of the normal licensing fee or in the event of exceeding an authorisation to use a surcharge of 100% of the fee charged by the Museum for such use
- in the event of omission and/or inadequate copyright notice a surcharge of 100% of the agreed fee
- in the event of delayed return 50 euros per image and month;
- in the event of lack of image masks or captioning 20 euros per image;

6.3. The Contractual Partner shall also be liable for all damages incurred due to the breach of the obligations under Paragraphs 3.2 and 3.3. The Contractual Party shall bear third party claims and hold the Museum harmless in this regard.

6.4. In the event of a contractual breach, the Contractual Partner shall be obligated at the Museum's request to render an account of the uses it has made and provide information in this regard and shall be obligated to permit inspection of its books as well as allow entry to its business or private premises for this purpose. The Contractual Partner shall be further obligated to disclose the origin of all images it has used if it disputes that these came from the Museum.

7. Jurisdiction, applicable law:

Place of performance and jurisdiction shall be Linz. Austrian Law shall apply. The UN Convention on the International Sale of Goods shall not apply.