

## **Photo Licensing Terms (Terms and Conditions)**

### **Preamble**

Alimdi accepts to render digital photo data (subsequently photo material) by photo suppliers accessible to licensees worldwide by means of web pages and internet picture galleries. For this alimdi is granted comprehensive, non-exclusive user rights by photo suppliers and as far as possible has affected third parties verify consent.

Dependent on the licensing type below agreed upon with the licensee (RM or RF), alimdi concedes user rights subject to the provisions of the contract below.

### **1. Validity, contracting parties**

1.1. The photo licensing terms below (terms and conditions) are valid for all issued proposals, electronic transfers, services and awarding of user rights (licensing) compiled by Thomas Mueller, Am Eschtor 10, D-82041 Deisenhofen, telephone +49-89-72639481, fax +49-89-72635457, e-mail [info@alimdi.net](mailto:info@alimdi.net), homepage <http://www.alimdi.net> - subsequently referred to as alimdi. After a first effective agreement they as well apply to all future licensing agreements by alimdi to the licensee(s).

1.2. Acceptance of the terms and conditions takes place in lack of an explicit confirmation already at the time the order is placed, by accepting supplies or by downloading digital images.

1.3. Differing terms and conditions of the licensees only become binding, if they are acknowledged by alimdi explicitly or in writing.

### **2. Licensing, user rights**

2.1 Licensing: After complete payment alimdi concedes simple, non-transferable user rights to the licensee(s) agreed upon between the parties for the concrete photo material according to one of the two licensing models. Above and beyond that the subsequent general licensing conditions are valid for both licensing types (2.2 – 2.9).

#### **2.1.1 RM licence (rights management)**

As a rule alimdi grants the licensees a nonrecurring, non-transferable, simple user right for a previously concretely agreed upon user purpose within a specific user medium and user scope. For this purpose the licensee at the time of the order has to indicate type and scope of the intended use, at the latest, however, before actually using the photo material.

#### **2.1.2 RF license (royalty free = one-time fee)**

In concretely agreed upon cases alimdi grants the licensee a temporally (lasting) and spatially (worldwide) unlimited, non-transferable, simple user right limited in content (no agency usages, no usage of download offers, no usage for products, in which a not inessential value represents the picture itself as e.g. calendars, T-Shirts, posters, photo murals, stamps, postcards, puzzles, playing cards, collector cards, stickers, electronic greeting cards), on which the image is printed for commercial and non-commercial purposes or for a concretely named direct client. The online usages of the photo material are limited to 72 dpi.

2.2. Repetitions or other expansions of the originally agreed upon user rights are only permissible by means of a previous written consent by alimdi. The licensee is not authorized to transfer the user rights to third parties.

2.3. Editing, revising, distorting or copying of the photo material by means of copying, photographic reproduction and photocomposing is only permissible after previous written consent by alimdi. Abnormal usage and distortions in picture and word as well as usages which could lead to the vilification of persons, stamps, works etc. depicted are not permissible and render the licensee liable to damages.

2.4. The licensee bears the responsibility for the photo captions. A violation of general personal rights or copy rights by means of a counter contractual or distorting usage in picture and text is the sole responsibility of the licensee. The licensee insofar exempts alimdi from claims by third parties.

2.5. Alimdi explicitly reserves the transfer of secondary rights to collecting societies (VG Bild).\*

2.6. Alimdi transfers the photo material with keyword indexing by the author without retaining the option to examine these themselves. Therefore alimdi cannot be held liable for the contentual correctness of the captions, texts and the keyword indexing.

2.7. Regarding photo material alimdi principally grants mere authorial user rights and does not assume a clarification of ius tertii (esp. the right to one's own picture, authorial or copy right for the motive or components thereof). Here the licensee, dependent on the usage intended by him/ her, has to separately inform him- / herself about a potentially required consent by third parties and to acquire it. As far as possible alimdi supports the licensee herein as follows: with regard to ius tertii alimdi has the photo supplier confirm either the supplied photo material is free of ius tertii resp. whether the owners of rights on the motives by third parties (especially depicted persons, owner of rights of copyrighted works or copyright holders) have granted their consent to the usage required by this contract (subsequently called release certificate). As long as alimdi has a release certificate on hand (esp. model and/ or property release), alimdi avails the licensees with release certificates in digitalized form upon request. Alimdi does not conduct examinations of release certificates presented by photo suppliers and especially does not examine whether a release certificate on hand covers the usage of the photo material intended by the licensee. For this the licensee is responsible exclusively him-/ herself. This applies as well if persons depicted on the photo material do not consent to a publication in certain tendentious contexts.

If the licensee fails to acquire a release certificate, then he/ she cannot pose any claims to alimdi based on lacking release certificates (e.g. based on claims for compensation by depicted persons in advertising applications).

Similarly the same applies with regard to release certificates (property release) in art works, buildings, trademarks, company logos or other legally protected motives.

2.8. It is not permitted to utilize the photo material partially or entirely for pornographic purposes or in connection with pornography or in any way or form, which could be viewed calumnious or defamatory, fraudulent, offensive or in any form which could be regarded as not unlawful or could be unflattering or controversial to a photographic model or to permit such usages to others. For the usage of photo material on which a photographic model is depicted, first a written permission has to be acquired if the depiction of the photographic model is brought in connection with „awkward subjects“ – among others contraception, sexual or suggested sexual activities, sexual preferences, dating services, chats, drug abuse, psychological or physical abuse, violence, poverty, homelessness, troubled families, alcohol, tobacco, AIDS, cancer or other severe physical or mental handicaps or disabilities or other severe physical or psychological illnesses or diagnostic tests in that regard.

2.9. After usage of the photo material and/ or after the end of the license the photo material has to be deleted from all databases of the licensee. The same process applies to not used photo material.

### **3. Copyright note**

3.1. The licensee commits him-/herself to tag the publication of a photo with a copyright note (agency: ALIMDI.NET/ photographer: name of photographer). This has to be done in a way that no doubt exists in the correlation of the photo in question. Proofs of trading stickers only suffice, as long as these too permit an unequivocal attribution.

3.2. If this commitment is violated, alimdi bills a surcharge of 100 % to the royalty payment agreed upon; in case of unlawful usage to the royalty according to the MFM-Compendium of Royalty Fees.

### **4. Remuneration**

4.1. Each usage of photo material by alimdi is subject to a fee. This applies as well to usage of the photo material as master for drawings, caricatures, derivative photos, in the use of layout purposes and presentations as well as in the use of excerpts from the photo material, which becomes component of a new picture by means of montage, photocomposing, electronic picture carriers and comparable technology.

4.2. The royalty fee is to be agreed upon before usage and according to the licensing type (RF or RM) and in the case of RM licenses according to the concretely agreed upon temporal and contentual scope of the usage as well as the arranged language area. In case of doubt in the case of photo data the suggested royalties of the Mittelstandsgemeinschaft Photo Marketing (MFM) \*\* apply. The licensee is liable to relate the necessary information (i.e. medium of usage, size of depiction, number of copies etc.). Pending an explicit, differing regulation fee agreements in the case of RF licenses apply only for a one time publication and the intended purpose (RM license)

4.3. The agreed upon fee has to be paid as soon as the user right has been established, independent whether the licensee makes use of the user right. The licensee is contractual partner and recipient of the bill - even if the licensee acts by order of third parties. If the licensee acts by order of third parties he/she has to indicate that at the time of the agreement of the user right, so that a usage of the photo material can be entered into agreement by the contracting entity of the licensee. Principally alimdi only grants transferable user rights.

4.4. Royalties, fees and similar remuneration are calculated plus statutory sales tax; banking and shipping fees as well as additional fees connected with payment are the responsibility of the licensee. Invoices throughout are due within 14 days after receipt without deduction. Default directly takes place 30 days after receipt without further notice. Default charges lie 8 % above the base interest rate. A claim of additional damage caused by delay remains inviolate.

### **5. Indemnities**

5.1. In case of unauthorized use, revision or transfer of user rights of our image file to third parties pending the enforcement of claims for indemnity a fine in the amount of a fifth of the customary royalty fee falls due. By rendering indemnity claims and/ or contractual fees calculated after these conditions, the licensee acquires neither property nor user rights of the photo material.

5.2. The licensee is liable for all data bank accesses conducted under usage of his user data. This explicitly applies as well for all potentially arising downloading fees as well as all user fees. Potential additional claims for indemnity remain reserved.

5.3. Each reclamation of the photo material has to occur immediately and in writing within three working days (M - F). In case of a neglected claim liability on the part of alimdi for possibly arising costs or for costs that have arisen is precluded.

5.4. Alimdi operates its own IT-systems with the respective up-to-date security software. It is impossible for alimdi to act on the web portals of third parties through which photo material can be downloaded from alimdi. Therefore alimdi is not liable for their IT security. Licensees therefore always have to use up-to-date security software and implement data protection.

## **6. Voucher copies**

6.1. Before each publication alimdi is to be sent at least one complete copy without being asked and free of charge. In cases of online use alimdi is to be told the URL to the web pages in question and the URL to the respective image files.

## **7. Applicable law, place of jurisdiction**

7.1. For all contractual business relations, even in cases of supply, downloading of digital photo material or the awarding of user rights abroad supplementally the laws of the Federal Republic of Germany apply .

7.2. If individual regulations of these terms and conditions should turn out to be ineffective or not feasible, the contractual parties will replace this ineffective or not feasible regulation with an effective and feasible regulation, which most approximates the intention of the contractual parties at the time of the agreement on the regulation in question and will make good for the hitherto ineffective and non feasible transaction. The effectiveness of the remaining regulations remains intact. The previous regulation applies in the case that this contract should contain holes or that a formal requirement has not been adhered to.

7.3. This contract contains all agreements between the contractual parties regarding the contractual object and replaces all previous agreements between the contractual parties concerning this matter.

7.4. Changes and additions of this contract require written form and the signature of all contractual parties; this applies as well in case of a nullification of the written form.

7.5. The written form in the sense of this contract presupposes a legally binding signed paper document in the original. Textual forms (fax, computer fax or e-mail communications) only then suffice, if this has been explicitly mentioned.

7.6. As far as legally admissible, place of venue and execution will be Munich, Germany

State of 03/ 2009

\* VG = Verwertungsgesellschaft = collecting society\*\* Mittelstandsgemeinschaft = small business association (organization which does recommend image prices)