

SundayPhoto's End User License Agreement (Royalty-Free)

THIS IS A LEGAL AGREEMENT BETWEEN SUNDAYPHOTO EUROPE A.S. („SUNDAYPHOTO“), LICENSEE AND PURCHASER (IF ANY). THIS AGREEMENT IS APPLICABLE TO ONLINE, DIGITAL AND ANALOGUE (PHYSICAL) DELIVERY OF LICENSED MATERIAL (THE "AGREEMENT").

1. Definitions. In this Agreement the following definitions apply:

1.1 "Invoice" means the standard form invoice provided by SundayPhoto or an authorized distributor that may include, without limitation, the Licensed Material selected and the corresponding price for the license of such Licensed Material.

1.2 "Licensed Material" means any still image, film or video footage, audio product, visual representation generated optically, electronically, digitally or by any other means, including any negatives, transparencies, film imprints, prints, original digital files or any Reproductions thereof, or any other product protected by copyright, trademark, patent or other intellectual property right, which is licensed to Licensee by SundayPhoto under the terms of this Agreement. Any reference in this Agreement to the Licensed Material shall be to each individual item within the Licensed Material and also to the Licensed Material as a whole.

1.3 "Licensee" means the person or entity purchasing a license hereunder or, if there is a separate Purchaser, the person or entity specifically designated as Licensee during the purchase process and set forth as such in the Invoice.

1.4 "Purchaser" means a person or entity purchasing the license hereunder on behalf of a third party Licensee.

1.5 "Reproduction" and "Reproduce" mean any form of copying or publication of the whole or part of any Licensed Material, via any medium by whatever means, and the distortion, alteration, cropping or manipulation of the whole or any part of the Licensed Material and the creation of any derivative work from the Licensed Material.

1.6 "User" means any employee or subcontractor of Licensee who: (i) downloads, manipulates, edits, modifies or saves the digital file containing the Licensed Material; (ii) is otherwise directly involved in the creative process utilizing the Licensed Material; or (iii) incorporates the Licensed Material within any derivative work.

2. Grant of Rights. Subject to the terms of this Agreement:

2.1 SundayPhoto grants to Licensee a perpetual, non-exclusive, non-transferable, non-sublicensable, worldwide right to Reproduce the Licensed Material identified in the Invoice an unlimited number of times in any and all media for all purposes other than those uses prohibited under Section 3 of this Agreement.

2.2 Licensee may have the Licensed Material Reproduced by subcontractors of Licensee for preparation of a final product, provided that such subcontractors agree to abide by the provisions of this Agreement.

2.3 Licensee may store the Licensed Material in a digital library, network configuration or similar arrangement to allow the Licensed Material to be viewed by employees, partners and clients of Licensee, so long as there are no more than ten (10) Users. Licensee must purchase additional seat licenses if there are more than ten (10) Users before such additional use begins.

3. Restrictions.

3.1 Licensee may not sublicense, sell, assign, convey or transfer this Agreement or any of its rights under this Agreement.

3.2 Licensee may not:

(i) make the Licensed Material available (separate from the end product into which it is incorporated) in any medium accessible by persons other than authorized Users;

(ii) sell, license or distribute any end product containing the Licensed Material in a way that is intended to allow or invite a third party to download, extract or access the Licensed Material as a standalone file, including posting the Licensed Material online in a downloadable format, posting the Licensed Material on any electronic bulletin board or using the Licensed Material in electronic greeting cards;

(iii) include the Licensed Material in an electronic template intended to be Reproduced by third parties on electronic or printed products; or

(iv) use the Licensed Material in any products for sale or license where the primary value resides in the Licensed Material itself or use or display the Licensed Material on websites or in any other medium designed to induce or involving the sale, license or other distribution of "on demand" products, including, without limitation, postcards, mugs, t-shirts, calendars, posters and other items.

3.3 Licensee may not falsely represent, expressly or impliedly, that Licensee is the original creator of a work that is a stand-alone pictorial, graphic or sculptural work or motion picture or other visual work that derives a substantial part of its artistic components from the Licensed Material.

3.4 Licensed Material shall not be incorporated into a logo, trademark or service mark.

3.5 Licensed Material 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 Licensed Material on mobile device.

3.6 SundayPhoto will notify Licensee if it has obtained a model release and/or a property release for Licensed Material. If no such notification is given, then no such model or property release has been obtained. No releases are generally obtained for Licensed Material. The warranty and indemnity set forth in this Agreement are only provided if and when such written notification is given. Licensee acknowledges that some jurisdictions provide legal protection against a person's image, likeness or property being used for commercial purposes when they have not provided a release. Licensee shall be solely responsible for determining whether release(s) is/are required in connection with any proposed use of Licensed Material, and Licensee shall be responsible for obtaining such release(s). Irrespective of whether a model release has been obtained, Licensee shall be responsible for payment of any amounts that may be due under, and compliance with any other terms of, any applicable collective bargaining agreement(s) as a result of Licensee's use of the Licensed Material. SundayPhoto does not grant any right nor make any warranty with regard to the use of names, people, trademarks, trade dress, logos, registered, unregistered or copyrighted audio, designs or works of art or architecture depicted in any Licensed Material. If any Licensed Material featuring a model or property is used in connection with a subject that would be unflattering or unduly controversial to a reasonable person, or is used in a manner that would lead a reasonable person to believe that the model personally endorses or uses a product or service, or if the depiction of the model is used in connection with "Sensitive Issue" subjects, including, but not limited to subjects such as contraception, sexual or implied sexual activity, sexual preferences, dating services, chat lines, substance abuse, physical or mental abuse, violence, poverty, homelessness, dysfunctional family matters, alcohol, tobacco, AIDS, cancer or other serious physical or mental ailment or disability or serious physical or mental disease or any diagnostic test for same, Licensee must accompany each such use with a statement that indicates that: (i) the Licensed Material is being used for illustrative purposes only; and (ii) any person depicted in the Licensed Material, if any, is a model.

3.7 Pornographic, libelous, defamatory or otherwise unlawful use of Licensed Material is strictly prohibited, whether directly or in context or juxtaposition with specific subject matter.

3.8 Where Purchaser is licensing Licensed Material on behalf of a Licensee, Purchaser hereby represents and warrants that: (i) Purchaser is authorized to act as an agent on behalf of Licensee and has full power and authority to bind Licensee to this Agreement; and (ii) if Licensee disputes Purchaser's power and authority to act on behalf of Licensee with respect to this Agreement, Purchaser shall be bound and liable for any failure of Licensee to comply with the terms of this Agreement. Nothing in this Section 3.8 shall serve to excuse Purchaser's obligation to make payment to SundayPhoto for the Licensed Material.

4. Copyright and Trademarks. No ownership or copyright in any Licensed Material shall pass to Licensee by the issuance of the license contained in this Agreement. Except as expressly stated in this Agreement, SundayPhoto grants Licensee no right or license, express or implied, to the Licensed Material.

5. Warranty and Limitation of Liability.

5.1 SundayPhoto warrants that: (i) it has all necessary rights and authority to enter into and perform this Agreement; (ii) the Licensed Material will be free from defects in material and workmanship for thirty (30) days from delivery (Licensee's sole and exclusive remedy for a breach of this warranty being the replacement of the Licensed Material);

Licensee should examine all Licensed Material for possible defects (whether digital or otherwise) before sending any Licensed Material for Reproduction. Without prejudice to Section 5.1.(ii), SundayPhoto shall not be liable for any loss or damage suffered by Licensee or any third party, whether directly or indirectly, arising from any alleged or actual defect in any Licensed Material or its caption or in any way from its Reproduction.

While efforts have been made to correctly caption the subject matter of, and to provide other information (including metadata) related to, the Licensed Material, SundayPhoto, nor any party on whose behalf SundayPhoto licenses Licensed Material (each, a "Licensor"), makes any representations or warranties as to the accuracy of such information.

5.2 Neither SundayPhoto, nor any party on whose behalf SundayPhoto licenses Licensed Material (each, a "Licensor"), makes any representations or warranties as to whether any additional fees or payments may be due to any person depicted in Licensed Material pursuant to the requirements of any applicable trade union, and Licensee shall be solely responsible for any such additional fees or payments to such trade union.

NEITHER SUNDAYPHOTO NOR ANY LICENSOR MAKES ANY OTHER WARRANTIES, EXPRESS OR IMPLIED, REGARDING THE LICENSED MATERIAL OR ITS DELIVERY SYSTEMS, INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. NEITHER SUNDAYPHOTO NOR ANY LICENSOR MAKES ANY OTHER WARRANTIES, EXPRESS OR IMPLIED, REGARDING THE USE OF NAMES, TRADEMARKS, TRADE DRESS, REGISTERED, UNREGISTERED OR COPYRIGHTED DESIGNS OR WORKS OF ART OR ARCHITECTURE DEPICTED IN THE LICENSED MATERIAL AND SUNDAYPHOTO GIVES NO WARRANTY AS TO THE ACCURACY OR AUTHENTICITY OF THE LICENSED MATERIAL OR ANY DESCRIPTION OF THEM OR THE IDENTIFICATION OF PERSONS, OBJECTS OR SCENES APPEARING IN THE LICENSED MATERIAL AND SHALL NOT BE LIABLE FOR ANY OF THE

FOREGOING, AND LICENSEE MUST SATISFY ITSELF THAT ALL THE NECESSARY RIGHTS OR CONSENTS REGARDING ANY OF THE ABOVE, AS MAY BE REQUIRED FOR REPRODUCTION, HAVE BEEN OBTAINED. THE REPRESENTATIONS AND WARRANTIES MADE BY SUNDAYPHOTO IN THIS AGREEMENT APPLY ONLY TO THE LICENSED MATERIAL AS DELIVERED BY SUNDAYPHOTO AND WILL BE INVALID IF THE LICENSED MATERIAL IS USED BY LICENSEE IN ANY MANNER NOT SPECIFICALLY AUTHORIZED IN THE AGREEMENT OR IF LICENSEE IS OTHERWISE IN BREACH OF THIS AGREEMENT.

NEITHER SUNDAYPHOTO NOR ITS LICENSORS SHALL BE LIABLE TO LICENSEE OR ANY OTHER PERSON OR ENTITY FOR ANY PUNITIVE, SPECIAL, INDIRECT, CONSEQUENTIAL OR INCIDENTAL DAMAGES, OR LOST PROFITS OR ANY OTHER DAMAGES, COSTS OR LOSSES ARISING OUT OF THIS AGREEMENT, EVEN IF SUNDAYPHOTO OR ITS LICENSORS, AS APPLICABLE, HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, COSTS OR LOSSES.

SOME JURISDICTIONS DO NOT PERMIT THE EXCLUSION OR LIMITATION OF IMPLIED WARRANTIES OR LIABILITY FOR CERTAIN CATEGORIES OF DAMAGES.

6. Indemnification.

6.1 Provided Licensed Material is only used in accordance with this Agreement and Licensee is not otherwise in breach of this Agreement and as Licensee's sole and exclusive remedy for any alleged or actual breach of the representations and warranties set forth in Section 5 above, SundayPhoto shall defend, indemnify and hold Licensee and its parent, subsidiaries and commonly owned or controlled affiliates and their respective officers, directors and employees harmless from all damages (excluding punitive damages not directly attributable to acts of SundayPhoto), liabilities and expenses (including reasonable attorney's fees and permitted and authorized costs), arising out of or connected with any actual or threatened lawsuit, claim or legal proceeding alleging that SundayPhoto is in breach of its warranties set forth in Section 5 above. The foregoing states SundayPhoto's entire indemnification obligation under this Agreement.

6.2 Licensee shall defend, indemnify and hold SundayPhoto and its parent, subsidiaries and commonly owned or controlled affiliates and their respective officers, directors and employees harmless from all damages (excluding punitive damages not directly attributable to acts of Licensee), liabilities and expenses (including reasonable attorneys' fees and permitted and authorized costs), arising out of or as a result of claims by third parties relating to Licensee's use of any Licensed Material outside the scope of this Agreement, Licensee's failure to obtain any required release or any other actual or alleged breach by Licensee of this Agreement.

6.3 The party seeking indemnification pursuant to this Section 6 shall promptly notify the other party of such claim. At indemnifying party's option, indemnifying party may assume the handling, settlement or defense of any claim or litigation, in which event indemnified party shall cooperate in the defense of any such claim or litigation. Indemnified party shall have the right to participate in such litigation, at its expense, through counsel selected by indemnified party. The indemnifying party will not be liable for legal fees or other costs incurred prior to the other party giving notice of the claim for which indemnity is sought.

7. Miscellaneous Terms.

7.1 Termination and Revocation. The license contained in this Agreement will terminate automatically without notice from SundayPhoto if Licensee fails to comply with any provision of this Agreement. Upon termination, Licensee must immediately (i) stop using the Licensed Material; (ii) destroy or, upon the request of SundayPhoto, return the Licensed Material to SundayPhoto; and (iii) delete and remove the Licensed Material from Licensee's premises, computer systems and storage (electronic or physical).

7.2 Unauthorized Use. Any use of Licensed Material in a manner not expressly authorized by this Agreement or in breach of a term of this Agreement (including, without limitation, use of Licensed Material by more than ten (10) Users without purchase of additional seat licenses) constitutes copyright infringement, entitling SundayPhoto to exercise all rights and remedies available to it under copyright laws around the world. Licensee shall be responsible for any damages resulting from any such copyright infringement, including any claims by a third party. In addition and without prejudice to SundayPhoto's other remedies under this Agreement, SundayPhoto reserves the right to charge and Licensee agrees to pay a fee equal to five (5) times SundayPhoto's standard license fee for use of the Licensed Material.

7.3 Withdrawal. Upon notice from SundayPhoto, or upon Licensee's knowledge that any Licensed Material is subject to a threatened or actual claim of infringement, violation of another right, or any other claim for which SundayPhoto may be liable herein, or if SundayPhoto withdraws any Licensed Material for any good reason, Licensee will immediately and at its own expense: stop using the Licensed Material, physically remove the Licensed Material from its premises, computer systems and storage (electronic or physical). SundayPhoto shall provide Licensee with comparable Licensed Material (which comparability will be determined by SundayPhoto in its reasonable commercial judgment) free of charge, but subject to the other terms and conditions of this Agreement.

7.4 Governing Law. This Agreement will be governed in all respects by the laws of Czech republic.

7.5 Severability. If one or more of the provisions contained in the Agreement is found to be invalid, illegal or unenforceable in any respect, the validity, legality and enforceability of the remaining provisions shall not be affected. Such provisions shall be revised only to the extent necessary to make them enforceable.

7.6 Waiver. No action of either party, other than express written waiver, may be construed as a waiver of any provision of this Agreement. A delay on the part of either party in the exercise of its rights or remedies will not operate as a waiver of such rights or remedies, and a single or partial exercise by either party of any such rights or remedies will not preclude other or further exercise of that right or remedy. A waiver of a right or remedy on any one occasion will not be construed as a bar to or waiver of rights or remedies on any other occasion.

7.7 Entire Agreement. This Agreement contains all the terms of the license agreement and no terms or conditions may be added or deleted unless made in writing and signed by an authorized representative of both parties. In the event of any inconsistency between the terms contained herein and the terms contained on any purchase order or other communication sent by Licensee, the terms of this Agreement shall govern.