

SundayPhoto's End User License Agreement (Rights-Managed)

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3. Restrictions.

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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 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.

7.2.1 Audit/Certificate of Compliance. Upon reasonable notice, Licensee shall provide sample copies of Reproductions containing Licensed Material to SundayPhoto. In addition, upon reasonable notice, SundayPhoto may, at its discretion, either through its own employees or through a third party, audit Licensee's records directly related to this Agreement and use of Licensed Material in order to verify compliance with the terms of this Agreement. If any such audit reveals an underpayment by Licensee to SundayPhoto of five percent (5%) or more of the amount Licensee should have paid for the time period that is the subject of the audit, in addition to paying SundayPhoto the amount of such underpayment, Licensee shall also reimburse SundayPhoto for the costs of conducting such audit. Where SundayPhoto reasonably believes that Licensed Material is being used outside of the scope of the license granted under this Agreement, Licensee shall, at SundayPhoto's request, provide a certificate of compliance signed by an officer of Licensee, in a form to be approved by SundayPhoto.

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.