

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 local representative company of the stock photo agency StockFood in your country. If there is no local representative in your country, StockFood GmbH, Tumblingerstraße 32, 80337 Munich, Germany, shall be your contract partner. Your contract partner and licensor hereinafter is 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 and recipes (hereinafter referred to as "licence material"), copy texts and articles by StockFood. Please read the following conditions with care before using the website and before ordering or downloading any licence material. The licence material offered may not be used without having recognised these terms and conditions.

I. GENERAL

I. 1. [Conclusion of Agreement]

On registering on the website, the user confirms his or her consent to these terms and conditions. By continuing to access and use the website you are deemed to have understood and agreed to the terms and conditions. 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 personal data relating to his or her business relationship with StockFood and made available in the course of this relationship can be stored and electronically processed by StockFood, its licensors and affiliates and used for information purposes.

I. 3. [Duty to register]

The user is obliged to register him or herself under his or her own data and to make all statements accurately and in full. If a user (also) enters this contractual relationship in the name of a third party (employer etc.), he or she is obliged (also) to state 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; this is also the case where any other agreement is concerned. The terms and conditions shall continue to apply to all parties even after the end of the contractual relationship (employment relationship etc.). In this case, however, an authorised representative (employee etc.) is not entitled to further use of the licence material; in particular he or she 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 authorisation, all agreements and conditions shall apply as though they have come into being with the user personally.

I. 5. [Amendments]

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 him or herself regularly about the current status of these conditions and the current prices. The most recent update of these conditions took place on 09.09.2009.

I. 6. [Deviating conditions]

Any deviating conditions of the user, the licensee or third parties 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.

Inasmuch as licence material is purchased from foreign subsidiaries or distributors of StockFood, their individual terms and conditions shall have priority.

I. 7. [Deviating agreements]

The contractual conditions recorded here are the comprehensive and sole basis of licence material deliveries and their availment by the licensee. Through this agreement, all earlier agreements or arrangements, whether verbal or written, whether customary in the sector or based on earlier business transactions, are nullified. 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.

II. RIGHTS TO USE (LICENCES)

II. 1. [General Provisions]

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

StockFood grants the Licensee a licence for use which is in principle a non-exclusive, non-transferable right to use, which cannot be sub-licensed, in the licence material selected by the user. 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 in an individual agreement.

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 regarding the copyright in the licence material concerned shall be granted, in particular the photographic copyright in the photography or the photographic copyright in the video material concerned.

Not included in principle is any release or approval for the use of depicted persons, names, goods or trademarks, buildings, decorations and artistic designs or recipe creations. This particularly applies to the use of the licence material for advertising purposes. The user is solely responsible for obtaining such necessary permissions or approvals for proposed use from the authorised parties.

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

The publication of images of well-known personalities may only take place stating their names and only in an editorial context; any opposing justified interest of the persons depicted shall be observed by the user within the terms of section 23 sub-section 2 of the German Artistic Copyright Act (KUG).

Inasmuch as the existence and the validity of a release has not been confirmed in writing by StockFood, the user shall indemnify or release 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 to collecting societies. Clauses, in accordance with which the use of further rights are to be ruled out on acceptance of a fee, are not recognised.

In principle, no exclusive user rights are granted with the licence for use. Exclusive rights shall be queried on the purchase of rights to use and expressly granted in the licence for use.

II. 1. 5. [Copyright notation]

Referring to section 13 of the German Copyright Act (UrhG), an agency and copyright notation shall be attached to any use in a manner leaving no doubt about the assignment of the licence material concerned. Collective image references are only adequate in this respect inasmuch as they allow an assignment to the licence material concerned to be made without doubt. An increased fee cannot substitute for copyright notation.

These regulations apply expressly for advertising, overlays in TV programmes and films or other media if no expressed, written special agreement has been made.

II. 1. 6. [Reservation of title]

The complete 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 exclusively for the purchase of user rights in the terms of copyright.

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 makes application for the commencement of insolvency proceedings. In this case, the Licensee shall without delay cease use of the licence material, return any originals or copies in his or her possession 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 correspondingly within its own 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 restrictions on disposal and use]

II. 2. 1. [Press codex]

The user is obliged to observe the journalistic principles of the German Press Council (press codex). The user or party ordering bears the responsibility for the text.

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. Exceptions from this require a special written agreement.

Use and falsifications/modification which are foreign in tendency in image and in word and use which may lead to degrading of the imaged persons or produce a pornographic, defamatory, libellous or in any other way illegal or immoral allusion are not permitted and make the user liable to damages; furthermore, the user shall in such a case indemnify StockFood against any availment of the violated persons and/or other third parties.

For any violation of the general personal rights of depicted persons or copyright of the authors of the license material through use in image and/or text against agreement or distortion of the meaning, StockFood shall not be liable. In case of the violation of such rights, only the user is liable for damages towards any third parties and is also obliged to indemnify StockFood against such claims.

The digital watermark of a file and all other markings, properties or elements of the file or its appearance may not be manipulated, made unrecognisable or removed. For any licence material left over by licence for use, the user shall make sure that it 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. Exceptions require the written approval of StockFood.

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 license 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, to enable previews by staff members or customers inasmuch as more than ten (10) persons have access to them, even if 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 type of use]

The Licensee shall 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, at the time of ordering the licence material if possible and on the issuing of the invoice at the latest. 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. StockFood shall, in this case, be indemnified against any claims for damages of third parties. 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, in accordance with section 25 of the German Publishers Act (VerlagsG).

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

II. 4. 1. [Principle]

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

- a) any printed matter including advertising and promotional 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 may 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. here under, 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 Westend61](#)

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 or her withdrawal from the agreement and assert refund of the licence fee in the case of 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.

Justified 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. Justified complaints with respect to any concealed defects must be notified within ten working days of discovery in written form. If notification is not given in good time, 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 warranty, neither expressly nor through conclusive action, and shall rule out all warranty for economic use, quality and the suitability of the licence material for certain purposes of use or compatibility with computers and other technical equipment. In all other respects, StockFood shall only be liable for damage which has been caused by intent or gross negligence. Liability for gross negligence is also excluded in relation to Merchants (Section 1 of the German Trade Act, HGB).

III. 5. [Limitation of liability in case of exclusive licences]

If licence material for which an exclusive licence has been issued is provided for another purpose, conflicting with its exclusive use, due to a circumstance for which StockFood is responsible, StockFood's liability is limited to a maximum of 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 expressly rules out any liability for such content and the functions of such websites or for any losses which may arise through the use of such web sites. In using these web sites, the user shall renounce any claims against StockFood.

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

The user or Licensee holds StockFood and its licensors harmless against all demands, claims, costs and expenses including reasonable lawyers' and court costs which may result from the violation 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, 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 lump-sum damages amounting to five times the customary license fee. The Licensee is free to prove lower damages.

If the copyright notation is not stated in accordance with no. II.1.5. of these provisions, StockFood has a claim to damages in the form of a surcharge of one hundred percent on the license fee. The Licensee shall indemnify StockFood against any claims of third persons resulting from failure to provide a sufficient copyright notation.

Through the payment of damages, the Licensee or user acquires neither the ownership nor other rights in the licence material of the agency.

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 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 result in a surcharge of at least 100 percent of the basic fee.

Agency or information fees are incurred for the procurement of external material and information, and are aligned to the type and scope of the necessary work involved,. These fees cannot be offset against the fees 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 Rights Managed licence material (RM) are aligned to the medium, type, scope, language area and the term of use. If no previous fee query is made by the licensee or there is no other agreement on fees, StockFood is entitled to settle in accordance with the valid fee rates. If the licensee makes incomplete statements in the decisive criteria for use, StockFood is entitled to fix a lump-sum fee. The agreed fees shall apply only for one-off use.

The fees for Royalty Free licence material (RF) are aligned to StockFood's valid 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 the granting of licensing rights even if the publication or other use has not yet taken place. If the intended publication or other use does not then take place, a fee already paid 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 rewriting of an invoice at the request of the recipient shall be invoiced at a lump sum of € 20.00. Re-writing shall always only take place if simplification of administration is desired, in which case the original recipient of the invoice is not legally released from his or her obligation to pay.

V. MISCELLANEOUS

V. 1. [Applicable law]

This agreement, including deliveries made abroad, is governed by the law of the Federal Republic of Germany excluding the UN Convention on Contracts for the International Sale of Goods (CISG).

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

The place of jurisdiction and the place of performance is, inasmuch as is statutorily permissible, Munich. Irrespective of this, StockFood also has the right to initiate all necessary legal steps or proceedings in front of a statutory competent foreign court if such proceedings are necessary or desirable in StockFood's estimation.

V. 3. [Ineffective clauses]

If one or more of the above provisions should be ineffective, the validity of the remaining provisions is not affected. An ineffective provision shall be replaced in good faith by one that in a legally valid manner comes closest to the sense and economic purpose of the ineffective provision, in accordance with the will of the parties.