

# Disclaimers

## **PREAMBLE:**

The following Terms and Conditions constitute a legal agreement between you, the User (the Licencee), and the photo agency F1online digital stock photo agency GmbH, Hanauer Landstrasse 188, 60314 Frankfurt am Main, Germany (hereinafter "F1online").

These Terms and Conditions apply to all offers, deliveries, electronic communications of and granting of rights to use graphics, illustrations, photographic images, film or video footage, audio products, visual representations generated optically, electronically, digitally or by other means, including negatives, transparencies, film copies, prints, original digital files or duplicates, and image descriptions (hereinafter "Licenced Material") by F1online.

Please read the following conditions carefully before using the website and before ordering or downloading any Licenced Material. The Terms and Conditions can be downloaded and printed out. Without acknowledgment of the Terms and Conditions, Licenced Material on offer may not be used.

## **I. GENERAL**

### **1. Conclusion of contract**

By registering on the website the User confirms his acceptance of these Terms and Conditions. If these conditions are not accepted, the site may not be used. Opening the packaging of a purchased CD-ROM, installing a CD-ROM or downloading Licenced Material shall also be deemed acceptance of these Terms and Conditions.

### **2. Data Protection**

The User/Licencee agrees that his personal data, insofar as they relate to the business relationship with F1online and are made accessible in the course of business, will be electronically stored, processed and used for information purposes by F1online.

### **3. Mandatory registration**

The User is required to register under his own identity and provide all information correctly and completely. If the User of this Agreement is (also) registering on behalf of a third party (employer, etc.), this must (also) be indicated when registering.

#### **4. Online image service/Use of the portal**

To access the site each User shall receive a login ID and a password. The password is confidential and may not be disclosed to third parties. The User or Licencee is liable in full for all and any damage caused by any abuse of his personal password. Setting up user access is free of charge. In the event of violations of these Terms and Conditions or other serious violations of the Licencee or User, F1online is entitled to block online access.

#### **5. Contractual party**

These Terms and Conditions and any other agreement shall apply to the User as well as any third parties (employers, etc.) in whose name or on whose behalf the User acts. Even following completion of a contractual relationship (employment relationship, etc.) the Terms and Conditions shall continue to be valid for all parties. A representative (employee, etc.) is, however, not entitled in this case to continue using Licenced Material; in particular, he is not entitled to copy any Licenced Material and/or use it at another workstation.

If a User acts on behalf of third parties without having been adequately authorised by these, all agreements and conditions will be deemed to have been concluded with the User personally.

#### **6. Subject to Change**

F1online is entitled to amend these Terms and Conditions, prices and other terms at any time and without prior notice. Any further access to or continued use of the site following any such change shall be deemed to constitute your consent to the changed terms. It is the responsibility of the User or Licencee to check up regularly on the current status of these conditions and the current prices. The last update of these conditions was made on 8 May 2013.

#### **7. Conflicting conditions**

Conflicting terms and conditions of the User, Licencee or a third party shall be deemed valid only if confirmed in writing by F1online. Terms and conditions of the User, Licencee or third parties referred to on order forms, delivery notes etc. or in separate files, computers, the Internet or similar media, are hereby expressly excluded. When purchasing a CD or other media, any printed "End User Licence Agreements" (EULA) of the manufacturer also apply in their respective current versions. In the case of rules that conflict with these conditions, the more restrictive interpretation of the rights granted shall apply.

#### **8. Conflicting agreements**

The Terms and Conditions set out here constitute the comprehensive and sole basis for copyright material deliveries and their use by the Licencee. With this Agreement, all previous agreements and understandings, whether made orally or in writing and whether based on past industry practice or business operations, are suspended. No action of F1online may be construed as a waiver of the validity of any one of these regulations, unless the waiver is made expressly and in writing by an authorised representative.

## **II. USE RIGHTS (LICENCES)**

### **II. 1. General Provisions**

### **1.1. Subject matter of the Agreement**

F1online grants the Licencee a licence that grants in principle a non-exclusive, non-transferable, non-sub-licensable right to use Licenced Material chosen by the User. The User is entitled to use Licenced Material solely in accordance with the present conditions and has no claim to any other user rights other than those hereby agreed to or expressly agreed to in individual cases.

### **1.2. Licencing**

Licencing shall be deemed to have taken place through the acceptance of these terms and the full payment of the invoiced licence fee. Before the fee has been paid in full, the use rights shall be deemed to have been transferred only if F1online has given its approval expressly and in writing in advance.

### **1.3. Social Media**

The Licencee is permitted to upload the LICENSED MATERIAL or duplicates, reproductions or adaptations of the LICENSED MATERIAL to social media platforms which release data, such as Facebook, YouTube, MySpace or Google Plus, provided that:

- o the LICENSED MATERIAL is integrated into a composition/layout (end product) and cannot be saved as an individual and independent image and that composition/layout clearly refers to the Licencee
- o or a copyright notice or reference to F1online is graphically affixed
- o the image size does not exceed a width of 1,200 pixels.

Images of people are excluded from the above permission if they will be used as profile pictures or avatars (graphic representations of a person in the virtual world). In principle such use is not permitted.

### **1.4. Rights of third parties**

Only user rights to the respective Licenced Material protected by copyright, particularly the photographic copyright to the respective photography or film copyright to film material, shall be transferred.

F1online seeks to provide Licenced Material that is largely unencumbered by third-party rights and also seeks to obtain necessary clarifications of rights. F1online cannot, however, assume the corresponding risk or corresponding warranty.

The licence agreement therefore does not include a release or consent to exploit any depicted persons, names, trademarks or service marks, buildings, decorations and artistic designs. This applies particularly to the use of Licenced Material for advertising. The User is solely responsible in this context for obtaining the necessary permissions and approvals for the planned use from the copyright owner.

If Licenced Material on which or in which persons are illustrated is marked with "model released", model releases are in principle available on request (consent forms). However, the respective names of the persons shown must be redacted to protect their privacy.

Pictures of well-known personalities can be published only if their name is stated and only in an editorial context; possible

conflicting legitimate interests of the person portrayed as referred to in § 23 (2) of the Copyright Act (Kunsturhebergesetz, or KUG) must be taken account of by the User.

If the existence or validity of a release from F1online has not been confirmed in writing, the User shall indemnify or hold harmless F1online for all third-party claims arising from the particular use of Licenced Material. If due to an error the User of F1online is wrongly informed that a release or use consent has been granted for Licenced Material, i.e. where this is not actually the case, the liability of F1online shall be limited exclusively to the use of the relevant Licenced Material for the amount invoiced and paid for.

### **1.5. Secondary rights, exclusive rights**

F1online expressly reserves the right to transfer secondary rights to collective rights managers. Clauses intended to exclude the exercise of further rights following acceptance of a fee will not be accepted.

In principle, no exclusive user rights are granted with the user licence. Exclusive rights must be requested on the acquisition of user rights and expressly granted in the user licence.

### **1.6. Copyright notice**

With reference to § 13 of the Copyright Act (UrhG), an agency and copyright notice is to be indicated on each occasion of use and in such a way that no doubt may arise over the ownership of the respective item of Licenced Material. Collective image information is sufficient in this sense only insofar as this too unambiguously attributes ownership of the respective Licenced Material. An increased fee cannot substitute the copyright notice. These provisions also apply expressly to advertising and superimpositions (overlays) in TV programmes, movies or other media, unless prior express written agreements have been made.

### **1.7. Retention of title**

All Licenced Material is protected by copyright. Delivered or electronically transmitted Licenced Material remains the property of F1online and/or its licensors and is provided solely for the obtaining of user rights under copyright law.

### **1.8. Termination/withdrawal; cancellation fee**

Licences granted may be terminated by F1online without notice if the Licensee violates these terms or enters insolvency proceedings. In this case, the Licensee shall immediately discontinue the use of Licenced Material, return to F1online the originals and copies in his possession and delete or destroy all electronic duplicates.

If the intended publication or other use of Licenced Material is not carried out within 30 days after the downloading or sending of Licenced Material, F1online is entitled to revoke the licence. Following that period the Licensee must independently and permanently erase any electronic copies. F1online may also request that the Licensee submit a clarifying statement (injunction), requiring that Licenced Material will not be used and that any electronic copies in the possession of the Licensee be deleted.

## **II. 2. General restrictions on disposal and on use**

### **2.1. Press Code**

**The User is obliged to observe the journalistic principles of the German Press Council (Press Code). The User or customer is responsible for the captioning.**

## **2.2. Distortions, alterations, etc.**

**Distorting the copyrighted work (Licenced Material) by tracing, copying, photographic manipulation or electronic means is not allowed. Exceptions require a separate written agreement.**

**Tendentious uses and distortions/alterations to words and pictures or use that can lead to the vilification of persons or produce a pornographic, defamatory, libellous or otherwise unlawful or immoral association are impermissible and render the User liable for damages; in such cases the User must also indemnify F1online for all claims of injured persons and/or other third parties.**

**F1online assumes no liability for any violation of the personal rights of persons depicted or authorial copyright to Licenced Material through any use of image and/or text that runs contrary to the spirit of the agreement or that is misleading. If such rights of the User are violated, the User shall be solely liable for damages to any third party and must also hold F1online harmless from any such claims.**

**The digital watermark of a file and any other markings, features or elements of the file or its appearance may not be tampered with, defaced or removed. For each item of Licenced Material provided to the User per user licence, the User must ensure that it is used exclusively with the copyright symbol, the name "F1online" and the image number of F1online as part of the electronic file name.**

## **2.3. Unauthorised reproduction or transmission**

**The Licenced Material or reprinting rights may not be passed on to third parties. Likewise, copies, reproductions and enlargements for archiving purposes of the customer as well as transfer of same to third parties are also not permitted. Exceptions require the written approval of F1online.**

## **2.4. Impermissible forms of use**

**In particular, the Licencee, without the express and written consent of F1online, is not authorised to:**

- licence, pass on or sell to third parties the rights granted by F1online, or to embed Licenced Material in an electronic template ("template") intended to be used by third parties in electronic media or printed matter, such as design templates for web pages, presentation templates, electronic greeting cards or business cards;**
- incorporate Licenced Material in a logo, brand image, or other trademarks;**
- distribute or make available Licenced Material in a format that allows a separate or independent download of the image file by itself or to enable its distribution by mobile phones;**
- store Licenced Material on a server, in a picture library, in a network configuration or similar environment in order to allow employees or customers to preview that material if more than ten (10) persons have access to it, regardless of whether that access is at different times;**
- sell, licence or distribute any products manufactured under use of the licence in a form that allows end users of the Licencee to access or to select images as individual files.**

## **II. 3. Special provisions for rights-managed Licenced Material (RM)**

### **3.1. Specifying the type of use**

The Licencee shall, at the latest when the invoice is issued or, where possible, when Licenced Material is ordered, state the type, scope and language area of the intended User. In accordance with the statements of the Licencee, F1online declares its agreement to the use of Licenced Material delivered.

If the statements made by the Licencee do not correspond to the actual use or if the actual use does not correspond to the information, permission for use shall be deemed not to have been granted. In this case, F1online shall be indemnified against any third-party claims for damages. The same shall apply if the personal details of the User are not truthfully stated.

### **3.2. Period of use and purpose**

The respective rights granted for the use of rights-managed Licenced Material (RM) apply only for one-off use and in the scope agreed to. Repetitions or other extensions (purpose, type, scope, duration or area of distribution) of the originally granted user right are again subject to payment of a fee and are permitted only with the prior written approval of F1online.

The use of Licenced Material for advertising or presentations is permitted only if such use is specifically granted in the user licence.

### **3.3. Specimen copies**

Before any print publication, F1online must automatically and without charge be sent at least two complete copies, in compliance with § 25 of the Publishing Act (VerlagsG). For electronic use of Licenced Material, F1online is to be sent a digital screenshot giving the corresponding URL or an appropriate document.

## **II. 4. Special provisions for royalty-free material (RF)**

### **4.1. Principle**

For royalty-free material F1online grants a worldwide, perpetual, non-exclusive and non-transferable right to use Licenced Material of the respective CD or separately downloaded Licenced Material for the following purposes:

- a) all printed materials including advertising and promotional materials (e.g. brochures, advertisements, promotional posters, CD cover, graphic design), editorial publications and end-user advertising;
- b) any digital or electronic media, so long as the resolution/dpi of the image(s) does not exceed 72;
- c) for the resale of certain products, so long as the series produced without the additional licence does not exceed 10,000 units;
- d) additional uses that have been approved in writing by F1online.

## **4.2 Specific restrictions on RF use**

**The manufactured products may not be intended to enable or to permit a resale or reuse of Licenced Material.**

**The permitted use of the downloaded Licenced Material or purchased CDs is moreover explicitly restricted to use of the product by a single end-user (company or person). The customer is to be identified by name and address. The transfer of Licenced Material or transfer or granting of user rights to third parties is not permitted.**

**When purchasing a CD or other media or downloading Licenced Material that originates with a third party, any "End User Licence Agreements" (EULA) of the manufacturer as printed on the data carrier, attached in some other manner or accessible via "Licence Provisions" in the image preview, shall apply in their currently valid versions. In the case of provisions that conflict with these conditions, the more restrictive interpretation of the rights granted shall apply.**

## **III. WARRANTY, LIABILITY**

### **III. 1. Guarantee**

**F1online guarantees for a period of 60 days from delivery that Licenced Material delivered or electronically transmitted is free from material defects and processing errors.**

### **III. 2. Supplementary performance**

**In the case of justified complaints, the Licencee has the right to replacement. The Licencee may only declare withdrawal from the Agreement and request a refund of the licence fee if subsequent performance fails.**

### **III. 3. Duty to inspect**

**The User must inspect the delivered or electronically transmitted Licenced Material without delay after receipt and before any further use.**

**Justified complaints shall be indicated within one week of receipt of Licenced Material by the Licencee and, on request by F1online, in written form in the week following. Justified complaints regarding any hidden defects must be reported in writing within ten working days of discovery. If F1online is not notified within the period stipulated, F1online will no longer be liable for any damage which may have been incurred or which may yet be incurred.**

### **III. 4. Limitation of warranty**

**F1online assumes no other warranty, neither express nor implied, and excludes any guarantee of commercial utility, quality and suitability of Licenced Material for specific purposes of use or for compatibility with computers and other technical equipment. In addition, F1online is liable only for damages caused by intent or gross negligence. Liability for gross negligence is also excluded with regard to commercial partners.**

### **III. 5. Limitation of liability in exclusive licencing**

If due to circumstances for which F1online is responsible Licenced Material for which an exclusive licence has been granted to the User has also been made available for another purpose that conflicts with that exclusive use, the liability of F1online shall be limited to a maximum of the fee invoiced and paid for the use of the relevant Licenced Material.

### **III. 6. Links**

This website contains links to other sites whose content and functionality are not determined by F1online. F1online expressly disclaims all liability for the content and functionality of such sites or for any losses that may result from the use of such websites. In using this website the User waives any claims against F1online.

### **III. 7. General exemption from liability; liability of the User/Licencee**

The User or Licencee shall hold F1online and its licensors harmless against all claims, demands, costs and expenses including necessary legal fees and court costs that may result from a breach of the provisions of this Agreement by the Licencee, use or alterations of images contrary to the agreement, or combinations of images with other material contrary to the agreement.

In the event of unauthorised use, distortion or passing on of delivered or electronically transmitted Licenced Material, the unauthorised granting of rights to third parties or the unauthorised production of duplicates, reproductions and/or enlargements for archival purposes of the Licencee and the transfer thereof to third parties, the Licencee shall without prejudice to any assertion of further claims by F1online pay a lump-sum for damages of five times the normal fee for use. The Licencee is free to assert and prove minor damage.

If copyright notice is not declared as stipulated under II.1.5. of these provisions, F1online is entitled to compensation in the form of a surcharge of one hundred percent of the usage fee. The Licencee shall indemnify F1online from third party claims resulting from the omission of an adequate copyright notice.

No ownership or other rights to Licenced Material of the agency are conferred on the Licencee or User through the paying of compensation for damages.

## **IV. FEES**

### **IV. 1. Obligation to pay the fee**

Any use of Licenced Material, with the exception of use for internal purposes in the layout phase of the project, is subject to the payment of a fee.

Any printed or digital reproduction or use of Licenced Material as a template for drawings, cartoons, derivative photographs, customer presentations and the use of image details, that by means of montage, photographic manipulation, photo-editing or similar techniques become part of new image, shall be considered 'use'.

### **IV. 2. Amount of Fee**

The amount of the fee charged by F1online for the use of Licenced Material depends on the type of use.



Exclusive rights or blocking periods must be agreed separately and involve an additional fee of at least one hundred percent of the respective basic fee.

Agency or information fees that result from the type and scope of the necessary work involved are charged for procuring external material and information. These fees cannot be set off against the licence fee for use. For the transmission of image data in electronic form a download fee of ten (10) EUR is charged per image; this will be offset against the use fee for actual use of the corresponding image. Derogations are possible in individual cases. The customer acquires neither use nor ownership rights from paying handling fees.

Fees for the use of rights-managed Licenced Material (RM) depend on the medium, nature, scope, language area and duration of use. If the Licencee has not submitted any prior fee request or no other fee has been agreed to, F1online is entitled to charge in accordance with its current fee rates. If the Licencee fails properly to disclose how the material is to be used, F1online is entitled to set a lump-sum fee. The agreed fees apply only for one-off use.

Fees for royalty-free material (RF) are determined by F1online's current price list.

#### **IV. 3. Maturity; invoicing**

Once the Licencee has indicated that he wants to use Licenced Material in whole or in part, F1online is entitled to bill for the granting of a licence even if the material has not yet been published or used in any other way. If the material is not published as intended or used in another way, any fee paid cannot be refunded.

Invoices are payable within 14 days. Fees stated in offers, price lists and other documents do not include VAT. Any re-addressing of an invoice will be done solely for administrative convenience. The original recipient of the invoice is thus not legally released from his obligation to pay.

Fee payments must always include the customer number, image number and the name of the originator. If this information is not provided, F1online is entitled to charge an additional handling fee, which will depend on the expenses entailed.

### **V. MISCELLANEOUS**

#### **V. 1. Applicable law**

This agreement, and any deliveries abroad made in compliance with it, are governed by the law of the Federal Republic of Germany and exclude the UN Convention on the International Sales of Goods.

#### **V. 2. Jurisdiction; place of performance**

Jurisdiction and performance is, to the extent legally permissible, exclusively Frankfurt am Main. Notwithstanding this, F1online has the right to initiate any necessary legal actions or proceedings before a legally competent foreign court, if such an approach is, in the opinion of F1online, necessary or desirable.

#### **V. 3. Invalid clauses**

Should one or more of the above provisions be or become invalid, the validity of the remaining provisions shall remain

**unaffected. An ineffective provision shall be replaced in good faith by a valid or enforceable provision that accords most closely to the will of the parties or the intended commercial success.**

**(08.05.2013)**