

ROYALTY FREE END USER LICENSE AGREEMENT

This is a legal agreement between licensee purchaser (here referred to as customer) or purchaser and Malestockphoto. This agreement applies to licenses issued via the web and is applicable to on-line and digital delivery of licensed image content (here referred to as ,content'). Malestockphoto has all necessary rights and authority to enter into perform this agreement.

Rights & Obligations

By selecting the correct box at the end of this agreement and typing ,I agree' or otherwise signifying your acceptance, you accept this agreement either for yourself or on behalf of your employer or the entity that is identified as the member account holder, and agree to be bound by its provisions. If you are accepting on behalf of your employer or the entity that is the member account holder, you represent and warrant that you have full legal authority to bind your employer or such other entity. You warrant and attest that you are of the **age of majority**, and that clicking to ,I agree' shall serve as confirmation and attestation to this statement. **If you do not have such authority or you do not accept or agree with these terms, do not accept the Agreement and do not download the Content.**

Definitions

In this agreement the following definitions apply:

- **,Invoice'** means the computer-generated or pre-printed standard form invoice provided by Malestockphoto or an authorized distributor that may include, without limitation, the content selected, any limitations on the license in addition to those specified herein and the corresponding price for the license of such content. The invoice shall be incorporated into this agreement and all references to the agreement shall include the invoice.
- **,Licensed Image Content'**, here referred to as **,content'**, 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 Malestockphoto under the terms of this agreement. Any reference in this agreement to the content shall be to each individual item within the content and also to the content as a whole.
- **,Licensee'**, here referred to as **,customer'** 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.
- **,Purchaser'**, here also referred to as **,customer'** means a person or entity purchasing the license hereunder on behalf of a third party licensee.
- **,Reproduction'** and **,Reproduce'** mean any form of copying or publication of the whole or part of any content, via any medium by whatever means, and the distortion, alteration, cropping or manipulation of the whole or any part of the content and the creation of any derivative work from the content.
- **,User'** means any employee or subcontractor of licensee (customer) who: a) downloads, manipulates, edits, modifies or saves the digital file containing the content; b) is otherwise directly involved in the creative process utilizing the content; or c) incorporates the content within any derivative work.

1. Grant of Rights.

By this agreement, Malestockphoto grants you a personal, non-exclusive, non-transferable, right to use and reproduce content in the following ways, subject to the limitations set forth herein:

- 1.1 Malestockphoto content may be used in erotic and/or sexual contexts (text, photo, film), if these contexts are absolutely **legal**.
- 1.2 On web sites, provided that no Image is displayed at a resolution greater than 800 x 600 pixels;
- 1.3 As toolbar skins, screensavers and mobile phone "wallpaper" for your **personal**, non-commercial use, not for resale, download or distribution.
- 1.4 As prints, posters, calendars (i.e. a hardcopy) and other reproductions for personal, **non-commercial** use and display, **not for resale, download or distribution**;
- 1.5 As a single hand painted reproduction (not as a printed reproduction) on canvas or other material to be used as decoration and not resold;
- 1.6 In coordination with opt-in email marketing. However, content cannot be used in connection with unsolicited email - or linked from unsolicited email and no content may be reproduced.
- 1.7 On letterhead and business cards, pamphlets, brochures, catalogs and on pop up and/or panel displays for use in conventions and trade shows
- 1.8 In the artwork for the packaging
- 1.9 Incorporated into software as a background image or splash screen, provided that the content or any digital files containing the content cannot be unincorporated from the software.
- 1.10 In multimedia presentations and incorporated into film and video for television and/or internet broadcast, and theatrical display.
- 1.11 In multimedia presentations and incorporated into film and video for distribution and/or sale in the home video market.
- 1.12 As CD or DVD cover art and/or artwork.
- 1.13 As part of editorial or advertising use in magazines, newspapers, books, book covers, textbooks, editorials and directories.
- 1.14 In eBooks, including multi seat license electronic textbooks.
- 1.15 As advertising posters for use in promoting the sale of other products (as opposed to promoting the sale of the prints, posters, etc. containing the content).
- 1.16 In the event that customer creates a derivative work based on or incorporating one or more Images (content), all rights in and to such image (content) shall continue to be owned by Malestockphoto), subject to customer's rights to use such Image(s) (content) pursuant to the terms and limitations set forth herein.
- 1.17 Customer may have the content reproduced by subcontractors of customer for preparation of a final product, provided that such subcontractors fully agree with the terms and conditions of this agreement.

2. Termination and Revocation.

The license contained in this agreement will terminate automatically without notice from Malestockphoto if customer fails to comply with any provision of this agreement. Upon termination, customer must immediately a) stop using the content; b) destroy or, upon the request of Malestockphoto, return the content to Malestockphoto; and c)

delete and remove the content from customer's premises, computer systems and storage (electronic or physical). See also 5.2

3. Restrictions

The restrictions listed here refer to the Malestockphoto Royalty Free Licence which is the standard licence. If there is any doubt that a proposed use is a permitted use, you should contact Malestockphoto before purchase. See also ,Copyright'

- 3.1 **Customer may not sublicense, sell, assign, convey or transfer this agreement or any of its rights under this agreement.**
- 3.2 Customer may **not**:
 - a) make the content available (separate from the end product into which it is incorporated) in any medium accessible by persons other than authorized users;
 - b) sell, license or distribute any end product containing the content in a way that is intended to allow or invite a third party to download, extract or access the content as a **standalone file**;
 - c) include the content in an electronic **template** intended to be reproduced by third parties on electronic or printed products, eg. website templates, Flash templates, business card templates, electronic greeting card templates, and brochure design templates; or
 - d) use or display the content 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:
 - **calendars, postcards, greeting cards, e-cards;**
 - **posters, mugs, t-shirts, caps and similar items;**
- 3.3 Customer may not falsely represent, expressly or impliedly, that customer 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 content.
- 3.4 Content shall not be incorporated into a logo, trademark or service mark.
- 3.5 Content 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 content on mobile devices, eg. download of screensavers, wallpapers etc. to cell phones. *Providers of cell phone contents (screens, wallpapers etc.) can obtain the ,Extended Licence' by Malestockphoto.*
- 3.6 If any content featuring a model or property is used in connection with a subject that would be unflattering or unduly controversial to a reasonable person, customer must accompany each such use with a statement that indicates that:
 - a) the content is being used for illustrative purposes only; and
 - b) any person depicted in the content, if any, is a model.
- 3.7 Defamatory or otherwise unlawful use of content is strictly prohibited.
- 3.8 The content must not be used for religious or political propaganda.**
- 3.9 If the content is reproduced in an editorial manner, customer must include the following author's credit adjacent to the content: «**©www.malestockphoto.com**» or as otherwise notified by Malestockphoto.
- 3.10 Where purchaser is licensing content on behalf of a customer, purchaser hereby represents and warrants that:
 - a) Purchaser is authorized to act as an agent on behalf of customer and has full power and authority to bind customer to this agreement; and
 - b) if customer disputes purchaser's power and authority to act on behalf of customer

with respect to this agreement, purchaser shall be bound and liable for any failure of customer to comply with the terms of this agreement. Nothing in this section shall serve to excuse purchaser's obligation to make payment to Malestockphoto for the content.

4. Copyright

4.1 No ownership or copyright in any material shall pass to customer by the issuance of the license contained in this agreement. Without any exception the licence as stated in this agreement applies.

4.2 With the Malestock ,Extended Licence' content can be sublicenced.

5. Unauthorized Use

5.1 Any use of content in a manner not expressly authorized in breach of a term constitutes copyright infringement, entitling Malestockphoto to exercise all rights and remedies available to it under copyright laws around the world. The customer 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 Malestockphoto other remedies under this agreement, Malestockphoto reserves the right to charge and the customer agrees to pay a fee equal to five times Malestockphoto normal licence fee for use of the content.

5.2 Where Malestockphoto reasonably believes that content is being used outside of the scope of the license granted under this agreement, customer shall, at Malestockphoto' request, provide a certificate of compliance signed by an officer of customer, in a form to be approved by Malestockphoto.

5.3 Upon notice from Malestockphoto, or upon customer's knowledge that any content is subject to a threatened or actual claim of infringement, violation of another right, or any other claim for which Malestockphoto may be liable herein, or if Malestockphoto withdraws any content for any good reason, customer will physically remove the content from its premises, computer systems and storage (electronic or physical) and, if possible, cease any future use at its own expense. Malestockphoto shall provide customer with comparable content (which comparability will be determined by Malestockphoto in its reasonable commercial judgment) free of charge, but subject to the other terms and conditions of this agreement.

5.4 The customer may not sublicense, sell, assign, convey or transfer this agreement or any of its rights under this agreement but the customer may sell or license derivative works incorporating the content. However, the customer may not include the content in an electronic template intended to be reproduced by third parties on electronic or printed products.

With the Malestock ,Extended Licence' content can be sublicenced.

5.5 The customer may not sell, license or distribute any derivative work containing the content in a way that would allow a third party to download, extract or access the content as a standalone file.

5.6 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.

6. Model Releases

All content by Malestockphoto is model-released.

Customer's use of the content in its original form and when used in accordance with this agreement, will not infringe on any copyright, moral right, trademark or other intellectual property right and will not violate any right of privacy or right of publicity.

7. Electronic Storage

For all content that the customer takes delivery of in electronic form, the customer must retain the copyright symbol, the name of Malestockphoto «**@www.malestockphoto.com**» and the image (content) number or other identification number associated with the content as may be included as part of the electronic file. the customer may not make additional high-resolution copies of the content and the customer will maintain a robust firewall to safeguard against unauthorized third-party access to the content. Notwithstanding the foregoing, the customer may make one high-resolution backup copy of the content for security reasons only. Upon the expiration or earlier termination of this agreement, the customer shall promptly delete the content from its computer or other electronic storage systems and shall ensure that its sub-contractors do likewise.

8. Sample Copies

After any publication in the print media at least **two** sample copies must be forwarded to Malestockphoto.

9. Prices

Prices in € without VAT; all rights of price modifications reserved.

10. Refunds

Once your purchase is made, no refunds or exchanges can be offered without any exception. customer should examine all content for possible defects before sending any content for reproduction. Malestockphoto shall not be liable for any loss or damage suffered by customer or any third party, whether directly or indirectly, arising from any alleged or actual defect in any Content or its caption or in any way from its possible reproduction. If customer can prove that content could not be downloaded properly, Malestockphoto is engaged to provide equivalent replacement within shortest terms.

11. 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 customer, the terms of this agreement shall go.

12. Malestockphoto shall not be liable to customer or any other person or entity for any punitive, special, indirect, consequential or incidental damages, or lost lost profits or any other damages, cost or losses arising of this agreement, even if Malestockphoto, as applicable, has been advised of the possibility of such damages, costs or losses.

Customer shall defend, indemnify and hold Malestockphoto, its director and employees harmless from all damages (excluding punitive damages not directly attributable to acts of customer), 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 customer's use of any content outside the scope of this agreement or any other actual or alleged breach by customer of this agreement.

13. Governing law and venue

Court of jurisdiction is Zurich / Switzerland. Only Swiss law applies.

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