

AFLO Co., Ltd Royalty Free End User License Agreement

Terms & Conditions

TERMS & CONDITIONS OF DELIVERY AND USE CONTRACT

DEFINITIONS.

"Image" refers to a photograph, transparency, negative, design, illustration, artwork, painting, drawing, engraving, image on computer, video or laser disk, or on magnetic tape, or transmitted electronically in digital form, or stored in a retrieval system, or any other item that AFLO may offer for the purpose of reproduction.

The term "Reproduction" includes any form of copying, displaying or publication of the whole or part of any Image, whether by printing, photography, photocopier, scanner, or slide projection (whether or not to an audience), by electronic, digital or mechanical means, in a layout or presentation, or by any other means.

"Reproduction" further includes the copying or manipulation or distortion of the whole or part of any Image, (for example, digitally on a computer, manually by an artist, or by any other means) even though the resulting image may not appear to a reasonable person to be derived from the original picture. "Creator" refers to the photographer, illustrator, artist or any other party (or parties) responsible for producing the Image(s) that AFLO makes available and which are listed on our Delivery Contract (if we are sending you transparencies). The terms "AFLO", "Us" and "Our" refer to AFLO FOTO AGENCY Inc., creators authorized agent. "Client" (on reverse side), "You" and "Your" refer to the recipient and/or licensee of the Images and your/its representatives.

1. OBJECTIONS.

If you are receiving transparencies from AFLO, we have agreed to fulfill your picture request and grant you the use of our Images in accordance with the specifications of use stated on our Delivery Contract. Further, regardless of the format in which you receive our Image(s) (either digital or transparency), AFLO provides pictures only on the condition that you agree to the terms listed below.

IF YOU DO NOT AGREE TO ABIDE BY ALL OF THESE TERMS, INCLUDING THE ARBITRATION AND LIQUIDATED DAMAGE PROVISIONS, PLEASE RETURN OUR IMAGES IMMEDIATELY. RETENTION OF THESE IMAGES MEANS YOU ACCEPT ALL TERMS OF THIS DELIVERY CONTRACT, INCLUDING THE ARBITRATION AND LIQUIDATED DAMAGE PROVISIONS.

2. LIMITATIONS ON USAGE.

(a) Unless otherwise specifically stated, Images remain the property of AFLO or the particular Creator(s).

(b) Our Invoice is a license only, granting you reproduction rights to the Images for the use specified on the Invoice and for no other purpose other than the production of comps (see Clause 3 below), unless such Images are purchased outright. Unless otherwise stated on this Invoice, such use is granted for a period of one year from Invoice date, and license is for English language use in North America only.

(c) You do not acquire any right, title or interest in or to any Image, including, without limitation, any electronic or promotional rights, and you will not make, authorize or permit any use of the particular Images, plates, digital files or other reproductions made from them except as specified on our Delivery Contract and/or Invoice.

(d) Reproduction rights are strictly limited to the use, medium, period of time and territory specified on this License. You agree to advise us in writing of any additional or extended use of the pictures prior to such use. If you fail to advise us PRIOR to use, you agree that the fair liquidated damage for the additional use of our pictures is ten (10) times the applicable reproduction fee.

3. COMP USAGE PERMITTED

AFLO grants you a personal, non-transferable, non-exclusive right to copy any of the Images we have delivered to you onto your computer hard drive and to use the Images and any derivative works or copies on one computer and with one user at a time only in North America for the purpose of copying, modifying and incorporating them into materials for comprehensive layouts ("Comps"). The resulting Comps may only be used as in-house presentations, storyboards, or rough draft designs for yourself or your clients.

4. NO ADDITIONAL REPRODUCTION ALLOWED.

All Images from AFLO are copyrighted; YOU AGREE NOT TO USE, COPY, SCAN, PUBLICLY DISPLAY OR REPRODUCE THEM IN ANY MANNER, with the exception of the heretofore mentioned (in Clause 3, above) usage as comps, until payment is made. THE USE OF THESE PHOTOS AS ARTIST'S OR PHOTOGRAPHER'S REFERENCE, AS WELL AS PROJECTION OF THE PHOTOS, IS SPECIFICALLY PROHIBITED. AFLO's catalog Images are available on a rights-protected basis only and, unless otherwise agreed to by us, are licensed for one-time, non-exclusive use; some Images may have already been used in the past, or may be used in the future, by other customers. The usage history in North America of each Image is available upon request. Your Invoice serves as your Copyright License; it will define the rights granted to you, and comes with the specifications, terms and conditions of use. Only after payment of such Invoice has been received by us may you then use our Images in accordance with its Terms. You agree not to transfer our images to any third party except for the purpose of reproduction authorized by our Invoice/Copyright license.

5. SPECIFICALLY PROHIBITED USAGE.

- (a) Create any derivative use of an Image unless indicated on the Invoice;
- (b) Use an Image in a manner that is defamatory, pornographic or obscene, whether directly or in context or juxtaposition with specific subject matter.
- (c) Use an Image in any way that violates a depicted person's right of privacy or publicity;
- (d) ARCHIVE, REPUBLISH or TRANSMIT an Image on any DATABASE without AFLO's prior written consent;
- (e) Copy or publish any of the Images to a network or bulletin board, or otherwise distribute or allow any of the Images to be distributed to, or used by, anyone other than the authorized users without prior written consent from AFLO;
- (f) Sublicense, re-license, rent or lease any of the Images;
- (g) Use any of the Images to promote a business that sells or licenses photographic images, or otherwise competes with AFLO in any manner;
- (h) Ship, transfer or export any of the Images into any country or use any of the Images in any manner prohibited by any export laws, restrictions or regulations.

6. UNAUTHORIZED USAGE.

Any unauthorized use of the copyrighted Images we have provided to you is a violation of the U.S. Federal Copyright Act of 1976 as well as various international agreements prohibiting unauthorized use of copyrighted materials. Since it is difficult to determine damages resulting from unauthorized usage, in the event you utilize an Image other than for the usage indicated on our Invoice/Copyright License, or utilize an Image without our permission and an Invoice/Copyright License to do so, we agree to forego our right to sue you for copyright infringement and you agree to pay us within ten (10) days of our billing, as liquidated damages, a sum equal to ten (10) times the normal price we would have charged had such use been authorized by us. If you fail to make such payment within ten (10) days, this liquidated damage provision shall be void and we shall have the right to sue you for copyright infringement and/or breach of contract, in which case we will seek all damages and remedies available, including attorney's fees and all associated costs.

7. RELEASES

No valid model, property or other releases exist for any Image unless the existence of such release is specified in writing by AFLO. You agree to indemnify and hold the Creator of each Image, as well as AFLO, harmless against all claims arising out of the use of any Images where the existence of release(s), rights, consents or permissions have not been specified in writing by us. Notes and abbreviations on Image mounts or labels are not intended as indicators of the existence of model or other releases. In any event, the limit of liability of AFLO shall be the sum paid to us per our Invoice for the use of the particular Image involved. AFLO gives no rights or warranties with respect to the use of names, trademark, logotypes, registered or copyrighted designs or works of art contained in any Image, and you must satisfy yourself that all necessary rights, consents or permission as may be required for reproduction are secured.

8. CREDIT LINE.

(a) If non-editorial: If non-editorial: you agree to provide copyright protection by placing proper copyright notice on any use. Proper use may be either "Copyright c20__ Client Name" (which protects the whole and all of its component parts), or "Copyright c20__ AFLO FOTO AGENCY" adjacent to or within the Images (which protects the Images themselves).

(b) If editorial: If editorial: Credit line in the form "Copyright c2_0__AFLO FOTO AGENCY" in type no smaller than that of related text must appear adjacent to or within the Images; omission of such a credit line in an editorial use shall be subject to an additional reproduction fee equal to 20% of the original amount invoiced to you.

(c) Unless otherwise indicated by AFLO or on the mount or frame of a picture the copyright year of a picture is assumed to be the same year as the date of this license.

9. SAMPLES.

You agree to provide us with two (2) free copies of each use of Creator's Image(s) appearing in print; such copies shall be supplied to AFLO within fourteen (14) days of printing.

10. THESE PICTURES ARE VERY VALUABLE.

Some or all of the Images delivered to you may be duplicate photographic transparencies or prints, and it is costly and time consuming to replace them if they are lost or damaged. Accordingly, we both agree that the reasonable liquidated value of each lost or damaged transparency or print is one hundred fifty dollars (\$150.00). You agree to pay AFLO one hundred fifty dollars (\$150) for each lost or damaged transparency or print without requiring proof of value for each individual Image; AFLO agrees to limit our claim to that amount without regard to the actual value of the Image. This is a material part of this Contract and we agree to release the Images to you only if you expressly agree to abide by this liquidated damage provision. You agree to assume full liability for your employees, agents, assigns, messengers and freelance researchers for any loss, damage or misuse of the Images from the time you receive them until their safe receipt by AFLO.

11. DAMAGE IN SHIPMENT.

If you have been provided with transparencies or prints, we have inspected all the Images in this shipment prior to releasing them to you; please look them over carefully. IF ANY TRANSPARENCIES OR PRINTS HAVE BEEN DAMAGED IN SHIPMENT, CONTACT AFLO IMMEDIATELY. WE MUST HAVE NOTIFICATION WITHIN THREE BUSINESS DAYS OF YOUR RECEIPT TO AVOID CHARGING YOU FOR THE DAMAGED IMAGES.

12. RESPONSIBILITY FOR LOSS/DAMAGE.

You agree that you are solely responsible for any loss or damage to the Images we deliver to you, from the time you receive them until their safe return and delivery to AFLO. You further agree to indemnify us against any loss or damage to the Images, either while they are in your possession or in transit. This contract is NOT a bailment, and is specifically conditioned upon the Images we deliver to you being returned to AFLO in the same condition as delivered. You agree to assume an insurer's liability for the safe, undamaged and prepaid return of the pictures to AFLO by bonded messenger, air freight, courier service or registered mail (return receipt requested).

13. LOST IMAGES.

Any Images in print or transparency form that are not returned to us within ninety (90) days of delivery and for which you have not obtained a written extension approval shall be deemed lost and you agree to pay the fees specified in Clause 10 for them. Payment for lost Images does not entitle you to any ownership of, or reproduction rights to, the Images and, if subsequently found, they must be returned immediately to AFLO.

14. APPLICABLE FEES.

(a) SHIPPING FEES. You agree to pay for courier, express mail or any other delivery method used for the submission and return of our pictures.

(b) **HOLDING FEES.** Pictures leased for reproduction are to be returned by the sooner of thirty (30) days after publication or three (3) months after invoice date, whichever occurs first. You agree to pay us a **HOLDING FEE** of one dollar (\$1.00) per day per picture after the sooner of these periods until we receive the pictures.

15. PAYMENT POLICY.

Payment for the use of AFLO's Image(s) and/or other charges and services described on the front of this contract is to be made the sooner of next thirty (30) days from the Invoice date or prior to usage, whichever occurs first. Thereafter, you agree to pay an additional one-time past due charge of \$20.00 (twenty dollars), as well as a service charge of one and one half percent (1.5%) per month (18% per annum) on the accrued unpaid balance. Late payments may be reported by AFLO to professional credit agencies, thus affecting your credit worthiness and ability to obtain loans.

16. CANCELLATION.

Should you decide not to use the Images described on the front of this contract, you must submit a written request to us to cancel this Invoice within thirty (30) days of the Invoice date. AFLO will honor such requests by cancellation of the Invoice. Cancellation requests are, at AFLO's discretion, subject to a cancellation fee of 30% of the reproduction fee indicated on this Invoice. All normal charges (research fee, shipping fee, etc.) shall be applicable to any picture request for which an Invoice is issued and subsequently canceled by you. After 30 days there will be no cancellation for any reason whatsoever.

17. TIMELY PAYMENT REQUIRED.

Time is of the essence in the performance of your obligations to pay us. You have the right to reproduce an Image only when this Invoice/License is paid in full. Any reproduction before payment of Invoice constitutes an infringement of rights and a breach of this Contract entitling AFLO to rescind this License and rendering you liable for payment of damages. **NO RIGHTS OF REPRODUCTION ARE GRANTED UNTIL PAYMENT IS RECEIVED BY AFLO.**

18. VIRUSES; NO WARRANTY.

Although AFLO takes all reasonable care to prevent such occurrences, you agree that we cannot be held liable for viruses or any other form of damage that may be caused to your computer network, hardware or software by our delivery to you of digital files. Digital files are provided as is." AFLO makes no representation or warranty, either express or implied, including but not limited to any implied warranties of mechanic ability, fitness for any purpose, non-infringement, quality of image, or compatibility with any computer hardware or other equipment, operating system or software program.

19. RETENTION OF DIGITAL FILES.

Digital files may be retained for sixty(60) days or until the date indicated on this Invoice. Unless this period is extended in writing by us, you must delete the Images from all electronic and removable media and destroy any other copy of the Images, except as licensed under this Contract. AFLO copyright information and Image identification number must be retained with the digital files while you retain them.

20. THIS IS IMPORTANT; PLEASE READ CAREFULLY:

Any and all disputes, with the exception of copyright claims, arising out of, under, or in connection with this Contract including, without limitation, the validity, interpretation, performance and breach thereof, shall be settled by arbitration in the city of Denver, Colorado pursuant to the rules of the American Arbitration Association. Judgment upon any award rendered may be entered in the highest State or Federal Court having jurisdiction. Any dispute involving five thousand dollars (\$5000.00) or less may be submitted without arbitration to any Court having jurisdiction. This Contract, its validity and effect shall be interpreted under and governed by the laws of the State of Colorado. If you are an agent for or an employee of a non-U.S. company but operate in a place of business in the United States or its territories you expressly agree that any dispute regarding this contract shall be adjudicated within the United States in the manner described herein.

21. While AFLO takes all reasonable care in the performance of this Contract generally, AFLO shall not be liable for any loss or damage suffered by you, your Client or by any third party arising from any defect in any picture or its caption or in any way from its reproduction.

22. Copyright claims shall be brought in the Federal Court having jurisdiction.

23. If we are caused to present claims or suit as a result of any breach of the above terms set forth, you shall make AFLO whole for such reasonable legal fees, costs and other related disbursements as may be incurred by us. You further agree to pay any legally permissible interest amounts that may be added onto a past due award payment, past due Invoice or judgment.

24. No action of ours, other than an expressly written waiver, may be construed as a waiver of any clause of this contract. In the event we waive any specific part of this contract, it does not mean we waive any other part. Should any of the above clauses be found unenforceable, that will not affect any of the other clauses and they will remain in full force and effect.

25. This agreement is not assignable or transferable on your part. This Contract contains all the terms of the agreement between us (AFLO) and you(the recipient of the Images) concerning delivery and use of Images. All rights that are not specifically granted to you herein are reserved for AFLO's use and disposition without any limitations whatsoever.

26. You agree that the above terms are made pursuant to Article 2 of the UNIFORM COMMERCIAL CODE and agree to be bound by same.