

# End User Licence Agreement

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Effective from 10. September 2009

## 1. Preamble

1.1 The present Agreement stipulates the conditions under which customers (hereinafter referred to as "customers") may use the photos, illustrations and other media contents made available by PantherMedia GmbH (hereinafter referred to as "PantherMedia") through the website [www.PantherMedia.net](http://www.PantherMedia.net).

1.2 The End User Licence Agreement applies in addition to the Terms and Conditions of Use which apply to the website and which have been entered into by all authors and customers (hereinafter collectively referred to as "members"). In the event of inconsistencies between the End User Licence Agreement and the Terms and Conditions of Use, the provisions of the present End User Licence Agreement shall apply.

## 2. Licences

### 2.1. Standard licence

2.1.1 PantherMedia grants customers a non-exclusive licence, unlimited as to time and place, to use the content for admissible purposes in accordance with the provisions below.

2.1.2 All other rights to the content and with respect to the contents, including all copyrights, shall remain with PantherMedia and the author of the contents respectively.

#### 2.1.3 Transfer:

(a) As a rule, the licence is non-transferable.

(b) Exception: The right to use the content may be transferred only to one single third party if the transfer is made within the scope of implementation of a customer project, for example by an advertising agency. Repeated use in projects of different customers is not permitted. In such a case, another licence must be acquired for each customer.

#### 2.1.4 Purpose of use:

(a) The contents may be used by customers in any media (such as online use of any kind, print use, TV, cinema, theatre, videograms (CD, DVD, etc.), interactive and multimedia use, etc.), with the restriction that the contents may not be the basis or the main component of the product distributed by the customer. This restriction applies only for the event that the contents are offered within the scope of resale products (resale product = goods which are not given free of charge but are offered for sale, such as calendars, posters, postcards, canvas prints, cups, toys, stuffed animals, sporting articles, household, bathroom and kitchen goods, clothing articles, coffee-table books and similar articles; utilization of images for advertising and sales promotion are covered by this standard licence). A merchandising licence must be acquired for such products intended for resale.

(b) If the content is labelled "only for editorial purposes", the content may be used only for editorial purposes (for example reporting, teaching material).

2.1.5 Right of processing: The content may be altered as long as it can be assumed that the alterations will not entail any disadvantages for the author, the model shown or for other third parties, as for example interference with the authors' personal rights, damage to reputation, infringement of proprietary rights. In no event may the contents be distorted by the alteration.

### 2.2. Corporate licence

2.2.1 PantherMedia grants customers a non-exclusive licence, unlimited as to time and place, to use the content for admissible purposes in accordance with the provisions below.

2.2.2 All other rights to the content and with respect to the contents, including all copyrights, shall remain with PantherMedia and the author of the contents respectively.

#### 2.2.3 Transfer:

(a) As a rule, the licence is non-transferable.

(b) Exception:

- The licence may be transferred to affiliated enterprises within the meaning of Section 15 of the German Stock Corporation Act. Affiliated enterprises are legally separate enterprises which in relationship to each other are subsidiary and parent company, controlled or controlling enterprises, members of a group, enterprises with cross-shareholdings, or parties to an enterprise agreement.

- The right to use the content may be transferred only to one single third party if the transfer is made within the scope of implementation of a customer project, for example by an advertising agency. Repeated use in projects of different customers is not permitted. In such a case, another licence must be acquired for each customer.

#### 2.2.4 Purpose of use:

(a) The contents may be used by customers in any media (such as online use of any kind, print use, TV, cinema, theatre, videograms (CD, DVD, etc.), interactive and multimedia use, etc.), with the restriction that the contents may not be the basis or the main component of the product distributed by the customer. This restriction applies only for the event that the contents are offered within the scope of resale products (resale product = goods which are not given free of charge but are offered for sale, such as calendars, posters, postcards, canvas prints, cups, toys, stuffed animals, sporting articles, household, bathroom and kitchen goods, clothing articles, coffee-table books and similar articles; utilization of images for advertising and sales promotion are covered by this standard licence). A merchandising licence must be acquired for such products intended for resale.

(b) If the content is labelled "only for editorial purposes", the content may be used only for editorial purposes (for example reporting, teaching material).

2.2.5 Right of processing: The content may be altered as long as it can be assumed that the alterations will not entail any disadvantages for the author, the model shown or for other third parties, as for example interference with the authors' personal rights, damage to reputation, infringement of proprietary rights. In no event may the contents be distorted by the alteration.

## **2.3 Merchandising licence**

2.3.1 PantherMedia grants customers a non-exclusive licence, unlimited as to time and place, to use the content for admissible purposes in accordance with the provisions below. No merchandising licence can be acquired if the content is labelled "only for editorial purposes".

2.3.2 All other rights to the content and with respect to the contents, including all copyrights, shall remain with PantherMedia and the author of the contents respectively.

2.3.3 Transfer:

(a) As a rule, the licence is non-transferable.

(b) Exceptions:

- The right to use the content may be transferred only to one single third party if the transfer is made within the scope of implementation of a customer project, for example by an advertising agency. Repeated use in projects of different customers is not permitted. In such a case, another licence must be acquired for each customer.
- The transfer of rights of use within the scope of press releases is permitted if the offer to download contents is not freely accessible and is always marked to the effect that the content may only be used in connection with the press release.
- The licence may be transferred to affiliated enterprises within the meaning of Section 15 of the German Stock Corporation Act. Affiliated enterprises are legally separate enterprises which in relationship to each other are subsidiary and parent company, controlled or controlling enterprises, members of a group, enterprises with cross-shareholdings, or parties to an enterprise agreement.

2.3.4 Purpose of use:

The contents may be used by customers in any media (such as online use of any kind, print use, TV, cinema, theatre, videograms (CD, DVD, etc.), interactive and multimedia use, etc.). This includes in particular the right of commercial exploitation of the contents by manufacturing and distributing goods of all kinds (products intended for resale such as posters, calendars, dolls, games, toys, stuffed animals, sporting articles, household, bathroom and kitchen goods, clothing articles, printed matter including comics, sound carriers, headgear, buttons, etc.), in particular interactive and multimedia products (such as computer games).

2.3.5 Right of processing: The content may be altered as long as it can be assumed that the alterations will not entail any disadvantages for the author, the model shown or for other third parties, as for example interference with the author's personal rights, damage to reputation, infringement of proprietary rights. In no event may the contents be distorted by the alteration.

## **2.4. Licence for layout images/ contents**

2.4.1 PantherMedia grants customers restricted use of all contents, with or without watermarks, for the sole purpose of preparing drafts, sample layouts, and demo presentations in view of the purchase of a content.

2.4.2 The free layout images/contents may not be used in end products - either for internal or for external purposes.

2.4.3 Layout images/contents may not be made accessible to the public, meaning they may not be used on another website, a server with free online access, or a company's intranet.

## **2.5. Licence for "free contents of the day"**

2.5.1 The terms of standard licences apply to the utilization of "free contents of the day", with the restriction that the contents, if they are used for print, may only be used up to a circulation of 10.000.

2.5.2 For all larger circulations, the normal licence fee per licence becomes due and payable.

## **3. Copyright Notice**

Within the scope of use for editorial purposes, customers must name - in the manner customary for each type of utilization and together with the contents itself as far as this is technically possible - both PantherMedia and the author (with the name given upon uploading the contents) in the following form: "© PantherMedia/name of the author".

## **4. Use Not Permitted**

The contents may not be used

(a) for pornographic, sexist, defamatory, slanderous or racist images or for depictions offensive to minorities or religious feelings;

(b) in a manner disparaging for the author or the person(s) depicted, or if it can be assumed that the author or the person depicted may not approve of the publication (despite a so-called model release - declaration of release). For clarification: This applies to all images depicting the person in a situation which may violate such persons personal rights, including sexual acts or implied sexual acts or preferences, use or abuse of drugs, crimes, physical or mental abuse or pain, or any other situation likely to be deemed offensive to any person depicted in the contents (for example dating pages, escort services, erotic offers, pornographic offers, pages morally harmful for adolescents). In this event, an express written approval from the person concerned must be obtained through PantherMedia (against a flat fee);

(c) as trademark, registered design, logo or company symbol or as part thereof;

(d) for the use in templates intended for resale, for example templates for websites, flash templates, templates for business cards, for electronic greeting cards and for the design of brochures;

(e) for inadmissible communication measures, either direct or indirect (for example spamming);

(f) for other wrongful acts.

## **5. Transfer of the Rights of Use**

5.1 The rights of use are transferred in accordance with the respective licence at the time the ordering process is completed.

5.2 The transfer is subject to the condition precedent that the licence fee payable is paid within the time for payment specified in the invoice. The time decisive for observing the time limit for payment is the receipt of the payment by PantherMedia.

5.3 In case of late payment, the rights of use revert to PantherMedia. This shall not affect the customer's obligation to pay.

5.4 Upon payment, the rights of use are granted again retroactively as from the time of first transfer.

## **6. Licence Fee**

6.1 The fee becomes due and payable immediately upon completion of the ordering process. The terms of licence fee payment contained in the Terms and Conditions of Use apply.

6.2 If the customer does not publish or utilize the content, PantherMedia is obligated neither to take the content back nor to refund the licence fee.

## **7. Limited Representations and Warranties**

7.1 Customers are responsible for obtaining the approvals required for each use of the contents if such approvals have not been obtained by then. This applies in particular to depictions of persons, works of art or architecture, places not accessible to the public or other depictions containing names, firm names, marks, registered designs or copyright-protected works (Section 2 of the Copyright Law) or affecting other proprietary rights of third parties.

7.2 If it is not stated in the image description that a model release exists in the data concerning the content on the website, the rights of use are granted without model release. The customer shall be responsible for obtaining all necessary releases. However, PantherMedia is prepared to cooperate with the customer in obtaining such releases (for a flat fee).

7.3 If it is not stated in the data concerning the contents on the website that a property release exists, the rights of use are granted without property release. The customer shall be responsible for obtaining all necessary releases (such as a release with respect to any possible proprietary rights apart from the property release, see 7.4). However, PantherMedia is prepared to cooperate with the customer in obtaining such releases (for a flat fee).

7.4 PantherMedia is not in possession of releases/permits from manufacturers of commercial products (for example motor vehicles, airplanes, packaging material, designer clothing, etc.). However, releases are often obtainable on a case-to-case basis. It is the sole responsibility of the customer to ascertain whether a permit from the proprietary right owner is required in connection with utilization of contents. The customer is responsible for obtaining all necessary releases. However, PantherMedia is prepared to cooperate with the customer in obtaining such releases (for a flat fee).

7.5 Irrespective of this, PantherMedia has no obligation to cooperate, nor does PantherMedia owe any success.

7.6 PantherMedia's liability and the liability of its vicarious agents for the breach of contractual duties and for tort are restricted to intent and gross negligence. This shall not apply in the event of any damage to life, body and health, claims due to a violation of cardinal obligations and compensation for damage caused by default (Section 286 of the German Civil Code). In this respect, PantherMedia is liable for each degree of its fault or the fault of its vicarious agents.

7.7 Liability for the violation of cardinal obligations shall be limited to foreseeable, typically occurring damage.

## **8. Final Provisions**

8.1 Munich shall be the exclusive place of jurisdiction for customers who are businessmen, legal entities under public law or special funds under public law.

8.2 This contract of use is subject exclusively to the substantive law of the Federal Republic of Germany, excluding the provisions of conflict of laws and UN sales law.

8.3 Should individual clauses be invalid, this shall not affect the validity of the remaining clauses.