

General Terms and Conditions for Reproductions and Photographs

Last Update: 2020

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1. The Scope of Application

The MAK – Museum of Applied Arts (hereinafter referred to as “MAK”) shall provide all materials, electronic transmissions and the granting of licenses for the use of photographs and graphical representation (hereinafter referred to as “photographic material”) in strict accordance with the following General Terms and Conditions. Any client conditions which deviate from these General Terms and Conditions shall be valid only by prior and express written approval of the MAK.

2. Utilization of Graphic Material

Utilization is defined as the use of graphic material beyond that of mere viewing. The latter includes, in particular, any form of duplication whatsoever, e.g. by means of printing, reproduction, projection, copying, or storage, as well as the use thereof as a template for illustrations, caricatures, and reproduced photographic images; the same holds, furthermore, for the use of such material for layout and customer presentations as well as any processing (irrespective of medium) and the use of image details, including cases in which such details constitute part of a new pictorial work by way of montage, photographic composition, electronic image carriers, or similar such techniques, as well as any other form of distribution and publication. Usage also applies to the transmission of photographic material via any medium, in particular via television, cable, telecommunication networks, or the Internet.

3. Authorization for Utilization

When placing an order, the purchaser must furnish specific details regarding the type and scope of usage, the medium, and the edition. The utilization of photographic material shall be deemed authorized when subject to the following conditions:

- a) Disclosure of the type and scope of utilization
- b) Actual acceptance of the General Terms and Conditions for reproductions/photos
- c) Payment of the utilization fee

When issued with a license for utilization, the purchaser acquires neither ownership, nor copyright, nor the right to use the photographic material. The authorization of utilization is subject to payment, non-exclusive, non-transferable and is valid for a non-recurring use in Austria for the specified purpose. The production of duplicates or the transfer of photographic material or copies thereof is strictly prohibited. Digital photographic material may be transferred one time only to the hard disk of a computer or other storage media (but not to a network). The purchaser shall safeguard all photographic material from access by third parties. The rights of use shall be granted only to the extent to which the photographer is entitled. Specifically, this entails that in the event photographic material is used on which are depicted objects or signs protected by special laws (such as copyright, trademark or design rights), the purchaser shall be required to seek the consent of the entitled party. Should an image depict an object in the MAK's collection, the image shall then be deemed authorized. Images in which persons are depicted may only be used with the consent of the person depicted, which must be obtained from the purchaser.

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4. Duration of Authorized Utilization

The duration of authorized usage is determined by the type and scope of usage. Digital image material must be deleted from all storage media immediately after use.

5. Legal Implications of Violations to the General Terms and Conditions

The utilization of image material without prior authorization for use and any deviation from the same without the prior written consent of the MAK is in violation of the MAK's rights and possibly those of third parties. The customer shall be deemed liable for all damage resulting from unauthorized usage, in particular for damage resulting from the unauthorized transfer of photographic material to third parties. The purchaser shall bear any claims brought by third parties and shall be obliged to indemnify the MAK in this respect. Furthermore, any infringement of these General Terms and Conditions shall entitle the MAK to prohibit further use of the graphic material.

6. Remuneration

The use of photographic material shall be subject to a fee. The invoiced fee excludes value added tax, payable upon receipt of the invoice, and without deduction. Should payment be in arrears, interest on arrears at a rate of 10 % p.a. is agreed. A fee of EUR 20,- is charged for each reminder. Authorized usage is limited in time pending payment of the fee. Accordingly, in the event of default of payment, the authorization of usage shall be deemed as not having been granted. However, this shall not diminish the MAK's claim to payment. Any further use exceeding that of authorized usage, notably reprints, new editions, book club and licensed editions, repeated broadcasts, reviews and accompanying advertising, shall again be subject to the payment of a fee and to approval. If an approved usage does not eventuate, a previously paid usage fee cannot be refunded.

Should the obligatory proof of copyright pursuant to point 8 be violated, the purchaser undertakes to pay a contractual penalty amounting to 30 % of the usage fee. The foregoing contractual penalties are agreed as minimum



compensation. The MAK reserves the right to pursue claims for damages in excess thereof.

7. Guarantee / Limitation of Liability

Any defects in the photographic material are to be reported by the purchaser in written form (also by e-mail to: repro@MAK.at) no later than two days following receipt, failing which any liability shall be waived. The delivery shall otherwise be deemed as duly executed and authorized. The complete risk of loss and damage shall devolve to the purchaser upon delivery of the photographic material to the latter.

In the event of defects being reported in good time, the MAK shall undertake every effort—subject to availability—to ensure that fault-free photographic material is supplied in lieu of the defective photographic material. Moreover, the MAK shall not be held liable for defects in quality, usability of the photographic material for the purchaser's purposes, or for incorrect image specifications or any other texts supplied. Liability for indirect and consequential damage, notably for loss of profit and third-party claims, shall be excluded. In the event of damage caused by minor negligence, any liability on the part of the MAK based on fault shall be entirely waived. In the event that third parties lodge claims against the purchaser arising from the agreed use of the photographic material, the purchaser shall—in the absence of any other loss of any rights of recourse—notify the MAK in writing within a maximum of one week of learning of the third party's claims, and shall supply the MAK with all relevant information. Should the purchaser satisfy third-party claims without consulting the MAK, all claims of recourse shall be forfeited in all cases. All claims on the part of the purchaser shall be pursued in court within three months following the expiry of authorized usage, failing which they shall be excluded.

8. Photographic Evidence / Voucher Copy

The MAK is to be cited as a caption or in a suitable place as follows:

MAK – Museum of Applied Arts

Should the photographic material be provided with details of the photographer's name, the purchaser is under obligation to make the required reference: Photo: © Name of the photographer / MAK, year of first publication (if the MAK has notified the purchaser). The affiliation of the MAK and the photographer to the respective image shall be unambiguous. As proof of utilization, the MAK shall receive a specimen copy, unsolicited and free of charge immediately upon publication as pursuant to the contractual agreement.

9. Recalling of Images

In exceptional cases, the MAK reserves the right to revoke authorization of use in return for reimbursement of the (pro rata) usage fee, or to substitute one image for another of equal quality.

10. Data Protection

The purchaser agrees that data obtained in connection with the processing of an image order may be processed by the MAK (also by means of automation) for the purposes of executing the contract. The collected data shall not be disclosed to third parties, unless this is essential for completing the contract



(e.g. transport companies, insurance companies) or fulfilling legal obligations (e.g. declarations to the Federal Revenue Office or in connection with auditing the annual accounts and the documentation obligation under the Federal Museums Act). Insofar as is necessary, the MAK shall ensure that appropriate contract processing agreements are concluded with third parties which guarantee the necessary security in handling the data.

Following the processing of the image order, any data obtained shall be stored solely for the purpose of compliance with accounting retention periods, and for the purpose of continuing the MAK's historical archive.

In accordance with the statutory provisions, the purchaser shall be entitled to information, amendments, deletion, restriction, and transferability of the data, as well as the right to lodge objections. The MAK shall be deemed legally accountable in accordance with the General Data Protection Regulation.

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11. Concluding Provisions

Whenever personal or seemingly gender-specific expressions are used in these terms and conditions, women and men are meant equally.

Amendments or modifications to these terms and conditions are deemed valid only when consented to in writing. All parties agree not to deviate from this formal requirement, including by mutual agreement.

This agreement is subject to Austrian substantive law.

The contractual parties agree to submit any disputes arising out of or in connection with this Agreement to the relevant court of law for the 1st district of Vienna.

