

## General Terms of Business for the Imaging Services

### 1. Scope

MAK – Austrian Museum of Applied Arts (hereinafter "MAK") shall provide all deliveries and electronic transmissions and shall grant licences to use photographs and images (hereinafter "graphic material") subject solely to the following general terms of business.

Customer's terms to the contrary shall only be applicable with MAK's express written consent.

### 2. Use of graphic material

Use shall be understood to mean any use of graphic material over and above mere viewing, and shall include any type of reproduction, such as by impression, duplication, projection, copying or storage, use as a model for drawings, caricatures and reset photographs, use for layout and customer presentations, any type of processing (irrespective of the medium used), use of details of the image, even where montage, photo composition, electronic image media or similar techniques are used in order to incorporate such details into a new graphic work, and any other form of distribution or publication. Use shall further be understood to mean the broadcasting of graphic material, irrespective of the medium used, especially via television, cable, telecommunications networks or the Internet.

### 3. Consent to use / licence

The customer shall detail the type and scope of use, medium and number of copies in the order. Consent to use ("licence") shall be granted solely on the basis of a written licence agreement signed by the customer and MAK, in which the graphic material and permitted use thereof are described in detail.

The user licence granted shall confer no ownership, copyright or user rights to the graphic material on the customer. Unless expressly agreed otherwise in the licence agreement, licences shall be non-exclusive, non-transferable licences valid for one-off use in Austria for the purpose stated in the agreement and shall be granted in return for a fee.

It is expressly prohibited to produce duplicates of or to pass on the graphic material or copies thereof. Digital graphic material and digital copies of analogue graphic material prepared by the customer may only be transferred once to a computer hard disk or other storage medium (and not to a network). The customer shall keep all graphic material secure from unauthorized access.

User rights transferred shall not exceed the photographer's user rights. This means in particular that where graphic material is used which depicts articles or signs protected under separate rights (such as under copyright, trademark or design law), the customer shall be responsible for obtaining the beneficiary's consent. Images of items in MAK's collection depicted in photographs shall be construed as approved. Images depicting persons shall only be used with the consent of the persons depicted, such consent to be obtained by the customer.

Where the licence includes the processing of graphic material, a licence shall also be required to use the processed graphic material.

### 4. Period of consent to use / return of graphic material

The period of consent to use shall be stipulated in the licence agreement.

Analogue images shall be returned to MAK after use or by the deadline stipulated in the licence agreement, whichever is the sooner, at the customer's risks and costs. Digital graphic material and

digital copies of analogue graphic material or analogue copies of digital graphic material shall be deleted from all storage media or destroyed by the said deadline.

## **5. Legal consequence of infringement of the terms of the licence**

The use of graphic material without a prior licence, and deviation from the terms of the licence without MAK's prior written consent shall be construed as infringement of MAK's and any third party's rights. The customer shall be liable for all damage pursuant to unlicensed use. Third party claims shall be borne by the customer, who shall indemnify MAK in this respect and ensure that no proceedings are instituted against it.

The customer shall be personally liable for fulfilling all obligations pursuant to this agreement, even if the graphic material was passed on to third parties or the customer granted a third party access to the graphic material in breach of his obligations under the agreement.

MAK shall further be entitled, in the event of infringement of the terms of the licence, to prohibit further use of the graphic material.

## **6. Consideration**

A fee shall be paid for every use of the graphic material. The fee agreed in the licence agreement shall be understood to be net of value added tax and despatch costs, and shall be payable without deduction on receipt of invoice. Late payments shall attract arrears interest of 10 % p.a., and an administration fee of EUR 20 shall be charged for every payment reminder.

Licences shall be postponed pending payment of the fee. In the event of late payment, therefore, the licence shall be construed as not having been granted, without this reducing MAK's claim to the fee.

Every use over and above the use agreed in the licence agreement, especially reprints, new editions, book club or licence editions, repeated broadcasting, reviews and accompanying advertising shall be subject to a new fee and renewed consent.

Licence fees already paid shall not be refunded in the event that the graphic material is not used as agreed.

The customer agrees to pay a penalty of USD 3.00 per image for every day's delay in returning the graphic material to MAK.

The customer agrees to pay a penalty of USD 70.00 per image if graphic material is lost or damaged.

The customer agrees to pay a penalty of 30 % of the agreed licence fee in the event of failure to provide mandatory proof of acknowledgment of origin in accordance with clause 8.

The aforementioned penalties shall be understood as minimum compensation, and MAK reserves the right to claim further damages.

## **7. Warranty / liability restriction**

No liability shall be accepted for defects which the customer fails to report in writing (including by e-mail to repro@mak.at) within 2 days of receipt. Otherwise the order shall be construed as having been duly performed and accepted. All risks for loss of or damage to the graphic material shall pass to the customer on delivery thereof.

The customer shall therefore be liable for the complete and proper return of the graphic material and shall compensate MAK for any graphic material lost or damaged at replacement cost.

Where defects are reported in good time, MAK shall endeavour, subject to availability, to replace the defective graphic material with perfect graphic material. MAK shall accept no further liability for quality defects, the suitability of the graphic material for the customer's purpose, or shortcomings in descriptions of images or other accompanying texts. No liability shall be accepted for indirect or consequential damage, especially loss of earnings or third party claims. MAK shall accept no liability whatsoever based on fault for damage caused by slight negligence.

All recourse claims shall be forfeited if the customer fails to notify MAK in writing of third party claims enforced against the customer following use of the graphic material in accordance with the agreement within no more than 1 week of learning of such claims and to provide MAK with any pertinent information. All recourse claims shall lapse if the customer meets third party claims without consulting MAK.

Customer's claims not enforced through the courts within three months of expiry of the licence shall be excluded.

## **8. Acknowledgments / sample acknowledgment of origin**

MAK shall be acknowledged as follows in the form of a signature on the image or in some other suitable place: MAK – Austrian Museum of Applied Arts / Contemporary Art, Vienna.

The customer shall name the photographer of graphic material supplied as follows: photograph: © photographer's name / MAK, date first published (if made known to the customer by MAK).

The name of MAK and of the photographer must be unequivocally ascribed to each image.

MAK shall automatically be sent a sample acknowledgment of origin free of charge directly after publication, in proof of compliance with the agreed terms of use.

## **9. Image withdrawal**

MAK reserves the right in exceptional circumstances to revoke the licence and refund the licence fee or a proportion thereof, and to replace the image with another image of equivalent value.

## **10. Final provisions**

If individual provisions herein are or become invalid, they shall be reinterpreted or supplemented such that the financial purpose of the provision in question is maintained. This shall not affect the validity of the remaining provisions.

There are no verbal riders hereto. Amendments and addenda hereto must be made in writing. The same applies to waiver of this written form requirement.

These terms are subject to Austrian law, to the exclusion of non-mandatory rules of transfer and the UN Sales Convention.