

# KIDS IMAGES

“WHAT WOULD THE WORLD BE WITHOUT KIDS”

## General Terms and Conditions

### General Terms and Conditions of Kids Images

#### Introductory Statement

Business processes involving pictorial material for advertising and publicity have a tremendous urgency associated with them; Kids Images makes available high-quality and precious pictures in a quick and unbureaucratic manner. Our range of services and potential options for utilization are comprehensive. Liability issues are of major importance. Copyrights and personal rights must be observed. We nevertheless do not insist on concluding a formal contractual agreement prior to the order of every single picture. Therefore these GTCs are of utmost importance. They form the basis for all our deliveries of pictorial material for granting utilization rights and represent the customs of the trade.

#### A. General Remarks

1. All offers, deliveries, electronic transfers of pictures and granting of utilization rights are subject to change and not limited to the GTCs stated hereinafter.
2. The terms “picture” and “pictorial material” refer to all photographic copies, transparencies, negatives and prints offered by Kids Images in our picture catalogues as well as in other publications, drawings, graphs as well as to all electronic data containing pictorial information on all media (e.g. CD ROM), on the internet, transferred by technical processes (e.g. via ISDN) or archived in online or offline databases.
3. Diverging terms and conditions stated by the client are valid only if acceptance is confirmed in writing by Kids Images. Terms and conditions of the client that are referred to on order forms, delivery confirmations and alike are hereby rejected.
4. Rejection of our GTCs is only valid in the event of complete return of the delivered, originally sealed pictorial material within three working days subsequent to receipt of the pictorial material by the client.
5. Complaints referring to the content of the picture delivery must be lodged by telephone within two working days subsequent to receipt of the pictorial material by the client and in writing within another three working days. Complaints referring to technical or other hidden flaws must be lodged in writing within ten working days subsequent to discovery. In the event that no such complaint is lodged, any liability by Kids Images for costs that may have arisen or are arising shall be rejected.
6. The delivery of our pictorial material does not automatically constitute permission for publication. Our written prior release is essential, especially for types of reproduction which are usually subject to a claim to prior rights, as well as for the utilization for advertising purposes of pictures showing the likenesses of actual persons. This is subject to a condition subsequently requiring complete payment of the agreed fee.
7. Upon ordering the pictures but no later than prior to technical utilization of the pictures the client must state type, volume and distribution region of intended utilization. In accordance with the information supplied by the client, Kids Images will issue a statement of release. In the event of discrepancy between the information supplied by the client and the actual type of utilization, the permission of utilization is considered not to have been granted and Kids Images shall be exempt from any third party claims for damage compensation.
8. The receipt of the GTCs and delivery of the ordered pictures constitute a contract of loan for use. Supplied pictorial material will always remain Kids Images or the author's property. Such material is made available exclusively in a preliminary manner and for the acquisition and exercise of utilization rights in the sense of the copyright.
9. All pictures supplied by Kids Images are furnished with a picture number and a copyright proof. The client shall be obliged to always ensure that this information is not removed from the pictorial material; this applies especially to digital pictorial data.

#### B. Fees / Utilization Agreement

1. Any use of our pictorial material is subject to payment of fees and requires our prior written approval. This applies also to the utilization of a picture or portion thereof as model for drawings, caricatures, imitations, utilization for layout purposes and customer presentations as well as for utilization of pictures and/or portions thereof which become part of a new picture by means of assembly, photo composing, electronic picture processing or similar techniques.
2. The client shall be liable to Kids Images for the undamaged return of the pictures, even if they are forwarded by the client to third parties. This is also applicable if the pictures are sent to a third party by Kids Images at the client's request.
3. The utilization of the pictures requires an express release statement by Kids Images conditional upon prior agreement as to purpose of utilization, total number of copies, distribution area and resulting fees. Only release statements made in writing shall be valid; they shall be contingent on the presentation of invoice by Kids Images. Granting of utilization rights shall be subject to the complete payment of the agreed fees. If no specific fees have been negotiated, utilization shall be charged according to remuneration customary for the market and determined by the Mittelstandsgemeinschaft Foto-Marketing (MFM - Association of Medium-Sized Ventures for Photo Marketing). If the client fails to supply precise specifications the agency shall be entitled to charge a lump-sum fee. All fee information supplied in offers, price lists and other documents are net prices to which value added tax and social security payment for self-employed artists will be added.
4. The rights granted by release statement and the resulting fees only apply to one-time utilization for the agreed purpose, volume and language area. Any other utilization and other expansion of the originally granted utilization rights are again subject to fee payment and require our prior written approval.
5. If a medium containing the provided pictorial material is presented in a new medium, especially for advertising purposes, fees are again payable for the identifiable pictorial material, regardless of already remunerated utilization rights for the identical picture in the original context of utilization. In this case the client shall be obliged to advise Kids Images of the intended purpose of utilization in advance and obtain the required release statement.
6. Exclusive rights and blocking periods must be negotiated separately and result in a supplement to the respective basic fee, the amount of which must be determined.

7. As soon as the client advises that he/she intends to use the supplied pictorial material as a whole or in parts, Kids Images shall be entitled to charge him/her for the granting of utilization rights even if the publication or other utilization has not yet occurred.

8. In the event that the planned publication or other utilization does not occur, fees that have already been paid will not be refunded.

9. Fee payment must always be effected with inclusion of client number and invoice number. If no invoice number is available (in the event of so-called direct payers via marked copy) the calculation must precisely state which picture (including picture number) was used in which publication and in which spot. If such data are missing an additional fee may be charged, the amount of which shall be determined by the extent of additional expense.

10. Modification is always performed in order to fulfill a request for simplified administration. The original recipient of the invoice is thereby not released from his/her obligation to effect payment.

11. For transfer and/or storage of high resolution pictorial data a fee at least in the amount of the fee applicable for layout utilization shall be due provided that no notification for use is submitted within a period of 2 months. More extensive claims shall be expressly reserved.

#### C. Limitation of the Right of Disposal, Liability, Utilization Rights and Copyrights

1. All pictures must be treated like originals using utmost care. In principle only the utilization right in the photographic copyright is transferred. This especially applies to pictures which, owing to their pictorial content, are subject to additional copyright protection (e.g. works of formative or performing arts). The redemption of additional copyrights as well as the obtaining of publication permits from collections, museums, etc. shall be the user's responsibility.
2. It shall not be permitted to pass the pictorial material or the right of reproduction on to third parties. Neither is it allowed to produce any type of copies or duplicates of the pictures or pass them on to third parties. Exceptional cases require our prior written approval. The client is obliged to inform us whether and to what extent copies and/or duplicates and/or other samples for his/her own archiving purposes have been produced.
3. The user shall be obliged to adhere to the publication principles defined by the Deutsche Presserat (German Press Council - press code of conduct). The user and/or client is responsible for the accompanying text. For violation of such rights the user is solely responsible for damage compensation to potential third parties.
4. Utilization with diverging tendencies and falsification in picture and word as well as utilization resulting in disparaging treatment of the depicted persons are not permitted. The user shall be obliged to provide compensation for any damage that the agency may suffer due to such utilization.
5. Although Kids Images will treat every order with utmost care we cannot assume any liability for loss or damage resulting from failure to deliver pictorial material in a timely manner, defective pictorial material, especially from flaws in film material or compatibility of electronic pictorial data, inaccuracy of picture description or of potentially delivered programs. To the extent that Kids Images can be accused neither of intent nor of gross negligence any liability shall be excluded.
6. Pictures showing persons from the public arena or well-known athletes must not be used in a manner which implies an endorsement of a certain product or contains textual or biased alienation. The client shall be responsible for obtaining any required approvals.
7. We expressly reserve the right to transfer secondary rights to performing rights societies and reject any provisions according to which the acceptance of fees excludes the payment of performance rights.
8. The mailing risk for return shall rest with the returning party. The cost and risk for complete and orderly return as well as for inappropriate or defective packaging shall rest with the client who is obliged to provide damage compensation in the event of loss or damage, even if the return to Kids Images was performed by third parties commissioned by the client. Incomplete return also refers to missing mounts and picture descriptions; in such circumstances possible administrative costs will be charged to the client.
9. The decision about whether the intended utilization of pictures requires explicit permission suitable for the specific utilization in terms of model release (rights in one's own picture, especially in the case of persons or building interiors) can only be made by the client. Therefore we cannot guarantee the existence of a suitably valid permission unless such permission was undertaken by us in writing. Without the mentioned written undertaking any liability shall be excluded to the extent that Kids Images can be accused neither of intent nor of gross negligence.
9. Kids Images shall not be liable for the utilization of pictorial material showing brands, trademarks or protected products, designs or graphs. The client is solely responsible for obtaining the required permissions.

#### D. Copyright / Voucher Copy

1. With reference to § 13 UrhG (German Copyright Act) we expressly request an agency and copyright statement in a manner which leaves no doubt about the attribution to the respective picture. Collective picture documentation is only sufficient in this sense if it permits unmistakable attribution to the respective picture.
2. The user shall hold the picture agency harmless from any third party claims resulting from the failure to include copyright statements. This also applies to advertising as well as to inserts in TV programs or other media, unless an express special agreement has been concluded.
3. To the extent that no provisions to the contrary have been previously stated, any utilization shall be subject to the regulations of the German Copyright Act.

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4. In accordance with § 25 VerlagsG (German Act Concerning the Law of Publication) we shall be provided with a minimum of two complete voucher copies without special request and free of charge.

### **E. Database Utilization**

Kids Images provides its customers Internet access to its pictorial database. In order to be able to use all functions, a release by Kids Images is required. Subsequent to examination the customer will be given a password and customer identification number. The customer shall be liable for all costs and damages resulting from use of password and customer identification number. Access and research are free of charge. For the delivery of ordered pictorial data a processing fee and digital costs will be charged. Kids Images does not assume any responsibility or guarantee for damages resulting from potential flaws in the database. Kids Images reserves the right to block customers and/or refuse access.

### **F. Costs, Contractual Penalty, Flat-Rate Compensation for Damage**

1. For all picture deliveries and picture transfers, processing costs and delivery or transfer costs shall be charged, the amount of which is determined by the type and scope of incurred expense. Likewise, we submit charges for the procurement of third-party material and information, intermediary and/or information fees resulting from the type and scope of incurred expense. Offsetting with potential utilization fees is not possible. Through payment of such costs the client acquires neither utilization nor property rights.

2. By providing compensation for damage and/or paying the contractual penalty determined according to these terms and conditions and/or effecting payment for the costs listed under item F1 the client acquires neither utilization nor property rights in the pictorial material.

3. In the event of unauthorized utilization, disfigurement or forwarding of our pictorial material, unauthorized forwarding of reproduction rights to third parties, unauthorized generation of any kind of copies and duplicates as well as forwarding of such material to third parties a minimum fee in the amount of five times the customary utilization fee shall be payable. Further claims for damage compensation shall be reserved.

4. If the copyright and/or agency statement is missing we shall be entitled to a 100% supplement in addition to the respective utilization fee as well as any incurred administrative charges.

5. Supplied pictorial material shall be returned prior to expiration of the examination and/or return deadline stipulated on the delivery note. Digital pictorial data must be erased after a maximum of four weeks. Permission for deadline extension must be individually negotiated.

Subsequent to expiration of the granted examination period and/or exceeding of the return deadline 1,- € (EURO) shall be payable per transparency per day, to the extent that the client is responsible for such exceeding of the deadline. By payment of such blocking fees no utilization rights are acquired.

6. In the event that data are erased subsequent to the expiration of the erasure deadline, blocking fees in the amount of 1,- € (EURO) per picture and day of exceeding of deadline shall be applicable. By payment of such blocking fees no utilization rights are acquired.

7. Compensation must be supplied for damaged or unreturned pictorial material. In the event of loss or damage which excludes the possible or further utilization (complete damage) 511,29 € (EURO) per original transparency and/or 127,- € (EURO) per duplicate transparency shall be applicable. The respective amounts per transparency shall be considered to be agreed upon without any obligation on the part of Kids Images to provide evidence of the amount of the individual damage. In the case of original transparencies the amounts represent the inability to make further utilization; in the case of duplicate transparencies the amounts are based on temporary loss of utilization as well as replacement costs. The client shall be free to provide evidence of lesser damage in individual cases; we shall be free to raise claims for more comprehensive damage compensation (up to the amount of damage compensation in the event of loss/destruction). Replacement duplicates offered by the responsible party as compensation for damaged or lost original transparencies will not be accepted.

8. In the event that the pictures have been insured, a deductible of 127,- € (EURO) shall be applicable per damaged or lost transparency. In this event the following provisions must be observed with respect to insurance coverage: 1. Insurance coverage will expire 12 months after the date at which the delivery note was issued. 2. In case a damage is reported more than 15 months after the date when the delivery note was issued no compensation shall be paid.

9. In the event that lost pictures, for which a charge was made, are found within one year subsequent to delivery and returned undamaged we will reimburse one third of the damage compensation.

10. Our transparency material is sealed. If the seal is broken without any information about specific utilization, we charge a flat rate for layout in the amount of 100,- € (EURO). We reserve the right to charge layout fees also in the event of electronic retrieval of our pictorial data, especially in the case of high-resolution pictorial data. We reserve the right to claim damages.

### **G. Concluding Provisions**

1. Our invoices are always payable net immediately.

2. Place of jurisdiction and place of performance for both parties, to the extent that they are commercial merchants, shall exclusively be Munich, Germany. Any disputes arising from this Agreement or its enforceability shall be settled by binding arbitration to be held in Munich, Germany. Kids Images may also institute all necessary legal proceedings at any other competent court. This agreement may not be assigned or modified without Kids Images written consent.

3. Deliveries abroad shall also be governed by German law.

4. In the event that any provision of this GTCs shall be unenforceable or invalid under any applicable law, or so held by applicable court decision, such unenforceability or invalidity shall not render this Agreement unenforceable or invalid as a whole, and in such event such provision shall be changed and interpreted so as to best accomplish the objectives of such provision.

5. The client agrees to us storing and electronically processing his personal data to the extent to which they refer to our business relationship and become available to us in the course of cooperation.

### **We accept the General Terms and Conditions of Kids Images**

Company:

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Address:

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Phone:

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Email:

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Date:

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Signature:

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Position:

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Name in Printing:

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Company's stamp: