## General Terms and Conditions of Business of the Image Archive of the Stiftung Deutsches Historisches Museum

## A. General Provisions

1. All offers, deliveries and licensing shall occur exclusively subject to change and not exclusively in accordance with the terms and conditions of business below. Other license agreements must be agreed/negotiated separately (individually).

2. Variant terms and conditions of business of the orderer[[1]](#footnote-1) shall only apply if confirmed in writing by the Image Archive of the Stiftung Deutsches Historisches Museum (hereinafter, the "Image Archive"). Terms and conditions of business of the orderer referred to in order forms, delivery confirmations, etc. or in the orderer's own files, computers, in the Internet or corresponding media are hereby expressly opposed. If analog image material is delivered and used or if electronically transmitted image data is transmitted and used, a contractual relation shall only come about based on these General Terms and Conditions of Business; otherwise, the transmitted image material or data may not be used.

3. Any refusal of our terms and conditions of delivery shall only be valid (in the case of analog image material) provided the delivered image material is returned within three working days after the receipt of the image material by the orderer and, in the case of digital image material, provided so-called "low resolution material" is deleted and this is confirmed in writing to the Image Archive before requesting the fine image material data.

4.Reclamations relating (in the case of analog image material) to the content of the shipments are to be notified within two working days after the receipt of the image material by the orderer by phone or within a further three working days in writing; reclamations (also in the case of digital image material) relating to technical or other hidden defects must be lodged in writing immediately after discovery. If no such reclamations are made, any liability on our part for any previously incurred or arising costs/damage shall be excluded.

5. With the order or at the latest before the technical use of the images, the orderer must specify the type, scope and language region of the planned use; in the case of advertising, also the product. The material may first be used after the Image Archive has approved the notified purpose of use. "Low resolution material" from the website of the Stiftung Deutsches Historisches Museum may in principle not be used for publication or dissemination. Analog material may only be digitalized and digital material may only be transferred by way of remote data transmissions or on data carriers as necessary for the exercise of the licenses granted to the customer.

If the information specified by the orderer does not correspond to the actual type of use, the use shall be considered as unauthorized and the Image Archive shall be released from any damage compensation claims of third parties; otherwise, the provisions of Section E of these General Terms and Conditions of Business shall apply in such cases.

The delivered and/or offered image material/the offered image data may not be modified or processed in any fashion without the prior written approval of the Image Archive.

6. Any analog image material supplied shall always remain the property of the Image Archive. Such material shall exclusively be provided temporarily and for the acquisition of licenses in the terms of the Copyright Act. This shall also apply to any digital image material and image data provided in this regard.

7. Analog image material for which the orderer has not acquired and is not interested in acquiring any licenses is to be released within the period noted on the delivery slip; if the period of the loan is exceeded, blockage fees pursuant to Section E of these General Terms and Conditions of Business shall be applicable. In the case of digital image material, the corresponding electronic image data are to be deleted without delay if no licenses are acquired.

Analog image material which the orderer has acquired and/or announced his or her intent to use must be returned within 8 weeks after receipt, irrespective of whether the orderer has actually used it or not. For digital image material, a corresponding period of 90 days shall apply for the deletion of the transferred image data.

8. In the case of analog image material, commitment and processing fees based on the type and scope of expenses incurred shall be charged for all image deliveries. Likewise, for the procurement of third-party material and information, we shall charge intermediary and/or information fees based on the type and scope of expenses incurred; this shall also apply if corresponding digital image material or electronic image data is/are procured. Such charges may not be netted out with any user fees. With the payment of the processing fees, the orderer shall not acquire either use or property rights (see also Section B. 7.).

Through the payment of damage compensation and/or any contractual penalty which is charged pursuant to Section E of these Terms and Conditions, the orderer shall not acquire either any title or licenses to the image material.

## B. Fees

1. Any use of our image material shall be subject to charges. This shall also apply if an image is used as a template for drawings, caricatures, postposed photographs, layout purposes and customer presentations as well as image details that become a component of a new image using montages, photocomposing, electronic image carriers and other techniques.

2. Fees shall be agreed before use. Fee shall be oriented on the medium, type and scope of use, which must be specified to us. If the orderer does not inquire about the fees or if the fees are not agreed otherwise, the fees shall automatically be charged in accordance with the applicable fee rates of the Image Archive; otherwise, The "Image Fee Schedule of the Photo Marketing Society for Small and Medium-Sized Businesses (MFM) – Overview of Standard Market Rates for Image Use Rights" shall apply as amended to the calculation of such fees or fee rates for the underlying use.

All fees specified in offers, price lists and other documents shall be net fees without any value-added tax or social security insurance contributions for artists.

All fee and cost invoices shall be payable within 14 days after the receipt of the invoice without any deductions to the Stiftung Deutsches Historisches Museum.

3. Fees shall apply for one-time use and only for the specified purpose, scope and language region. Any further use shall be subject to new charges and shall require our prior written approval. In the event of unauthorized use and/or disclosure of our image material, the contractual penalties arrangement pursuant to Section E. 1. of these General Terms and Conditions of Business shall apply.

4. If an object containing images (e.g. a book, record cover, CD case, DVD case, brochure, etc.) is depicted in a new medium, a new fee shall be due for the photo motif recognizable therein, irrespective of any previously paid licenses for the same image in the original use context.

This shall apply in particular to use for advertising purposes. The user must inform the Image Archive of any new purpose of use and obtain the approval for the use in advance in writing; otherwise, the contractual penalty arrangement pursuant to Section E. 1. of these General Terms and Conditions of Business shall apply.

5. Exclusive rights or freeze periods must be agreed separately and shall condition a minimum surcharge of **100%** of the basic fee.

6. For the search and composition of analog image material, a processing fee shall be charged, which shall be oriented on the type and scope of time required, but shall amount at minimum to EUR 30.00. Image scans and transmissions shall be charged as agreed. For complicated searches and procurement of images, separate processing fees shall be payable; these too shall be oriented on the type and scope of work required.

Postage, airfreight fees and courier costs must be borne by the customer; this shall also apply to photographic and technical reproduction costs.

7. As soon as the orderer has announced that the orderer intends to use the delivered or electronically transmitted image material in whole or in part, the Image Archive shall be entitled to invoice the orderer for the issued licenses, even if the publication or other use has not yet occurred.

8. If the foreseen publication or other use does not occur, any previously paid fees may not be reimbursed/requested back.

9. The invoice number must be specified with all fee payments. Without this information, an additional indemnity charge oriented on the scope of the additional time required shall apply. Moreover, the settlement statement must specify precisely the image used, the publication and the place within the publication.

## C. Restriction on Disposal, Liability, Exploitation Rights and Copyrights

1. All analog image templates are to be treated like originals. In principle, only the license to the photographic copyright shall be transferred. This shall apply in particular to image templates that are subject to further copyright protection based on the image content (e.g. plastic and performance art works). The user shall be responsible for redeeming further copyrights and obtaining publication approvals from collections, museums, etc.

2. The copyright protected work (photo) may not be distorted through drawings, subsequent photographs, photocompositions or electronic aids. Exceptions must be agreed separately.

Images and words may not be misused or falsified/changed or used in a fashion disparaging to the persons depicted; in such events, the user shall be subject to pay damage compensation and must indemnify the Image Archive against any recourse from injured persons and/or third parties.

3. Image material may not be disclosed and subsequent printing rights and electronically transmitted image data may not be transferred to third parties (see also Section B.3). Likewise, the orderer may not duplicate slides or produce Internet negatives, reproductions or enlargements for his or her own archival purposes nor store electronic image data and/or transfer such to third parties. Special cases shall require our written approval. The orderer shall be obliged to inform us if and insofar as the orderer nonetheless duplicates image material, stores image data or otherwise produces templates for the his or her own archival purposes.

4. The user shall be obliged to observe the publishing principles of the German Press Council (Press Code). The user or the orderer shall bear the responsibility for the added text. We shall assume no liability for any infringement of the general privacy rights of any depicted persons or the copyrights of image authors as a result of use of images and/or texts in breach of agreements or which distorts images and/or texts. In the event of any such rights infringement, solely the user shall be liable to pay damage compensation to third parties.

5. Depictions of well-known personalities may only be published with their names for editorial purposes; any legitimate opposing interests of the person(s) depicted in the terms of § 23(2) of the Art Copyright Act (*Kunsturhebergesetz; KUG*) must be observed by the user.

6. We hereby expressly reserve the right to transfer ancillary rights to performing rights societies and do not recognize clauses that exclude the exercise of further rights upon the acceptance of remuneration; cases in which the orderer/user has been granted exclusive licenses to or for the provided image material shall be excluded herefrom.

7. The shipping risk for the return of analog image material shall be borne by the return sender based on the underlying loan or quasi-loan relation. The cost and risk of the full and proper return shipment and for improper or defective packing shall be borne by the orderer and shall obligate the orderer to pay damage compensation in the event of any loss or damage, even if the return shipment to the Image Archive is undertaken by third parties commissioned by the orderer (§ 278 of the Civil Code); regarding the damage compensation payable in any such damage event, the provision in Section E.4. of these General Terms and Conditions of Business as related to the Annex to Section E shall apply. Missing image masks and texts shall also be considered as "incomplete"; any administrative costs incurred by us in this connection shall be borne by the orderer.

## D. Copyright/Specimen Copy

1. With reference to § 13 of the Copyright Act, we hereby expressly request the inclusion of a copyright notice referring to both the image author and the Stiftung Deutsches Historisches Museum that leaves no doubt regarding the attribution of the relevant image. Collective image credits shall only be sufficient in this sense if an unequivocal attribution to the relevant image can likewise be derived. The user must indemnify the Image Archive against any third-party claims resulting from the omission of copyright notices.

2. Paragraph 1 shall expressly apply to advertising, inserts in television broadcasts, films or other media, unless expressively agreed separately.

3. Prior to any print publication, we must be sent at least one complete specimen copy without need of request and free of charge pursuant to § 25 of the Publishing House Act.

E. Contractual Penalty/Lump-Sum Damage Compensation

 (see also the Annex E)

1. In the event of unauthorized use, distortion or disclosure of our image material, unauthorized transfer of subsequent printing rights to third parties, unauthorized duplication of slides or Internet negatives, reproductions or enlargements, or the copying of digital data records or analog reproduction of the image content contained in data records for the archival purposes of the orderer or the transfer thereof to third parties, or in the event the customer fails to delete data in accordance with this Agreement, a minimum charge of five-times the agreed standard user fee or the fee to be calculated in accordance with the applicable MFM image rates shall be due, without prejudice to further damage compensation claims.

2. If the copyright and/or image source notice is omitted, we shall have the claim to a surcharge of up to 100% of the relevant user fee plus any administrative costs.

3. If analog image material is not returned or is returned late after the expiry of the free viewing period, "blockage" costs shall be due for unused images pursuant to Annex E.1. In the case of prolonged blockage periods, such blockage costs shall be limited as relevant to the value of the loss associated with the image material pursuant to Annex E.2c.

Likewise, the blockage costs pursuant to Annex E.1 shall be due if image material to which the orderer has acquired licenses and/or for which the orderer has announced his or her intent to use the image material is not returned within 8 weeks after receipt thereof, in addition to the user fee.

4. For damaged or unreturned analog image templates, damage compensation shall be payable pursuant to the scale in Annex E.2. The amounts per analog image according to the scale shall be considered as agreed, without the Image Archive having to document the amount of damage in detail. The amounts shall be calculated based on the elimination of further use possibilities. The orderer shall reserve the right to document lesser damage in specific cases, just as we shall reserve the right to assert further damage compensation claims and blockage costs (up to the amount of damage compensation in the event of loss/destruction).

Duplicates offered to us as replacements by the party obliged to pay damage compensation for damaged or lost image templates or photographs produced as replacements in any other fashion based on scanned image templates or stored electronic image data shall not be accepted.

5. If analog image templates previously reported and considered lost are found and returned again within one year after delivery, we shall credit one-third of the compensation for the loss; we shall reserve the right to charge blockage costs and/or not to refund already charged blockage costs.

## F. Terms and Conditions of Payment, Jurisdiction, Miscellaneous

1. Our invoices shall always be payable within 14 days after receipt; after the expiration of this period, we shall charge default interest at a rate of five percentage points above the base interest rate of the ECB plus any incurred payment reminder charges.

2. Berlin shall be the exclusive place of jurisdiction and performance for both Parties, provided they are registered merchants (*Vollkaufleute*).

3. German law shall be considered as agreed upon, even in the case of deliveries abroad.

4. Should any provision of these Terms and Conditions of Business and Delivery be null and void, the validity of the other provisions shall not be affected thereby.

Annex E (Contractual Penalty/Lump-Sum Damage Compensation):

1. Blockage fee (per item) if the return period for analog image material is exceeded:

from 1 - 2 weeks € 12.00,

from 3 - 4 weeks € 18.00,

from 5 - 8 weeks € 22.00,

from 9 - 12 weeks € 28.00,

more than 12 weeks € 50.00.

2. Lump-sum damage compensation in the case of damage, destruction/loss of color slides, color templates, negatives (i.e. of all original image material):

a) slight damage permitting further use € 150.00

b) heavy damage permitting restricted further use € 250.00

c) loss/destruction:

- slides up to 6 x 9 € 500.00

- slides 9 x 12 and 13 x 18 € 600.00

- slides 18 x 24 € 1,000.00

1. Within the meaning of these General Terms and Conditions of Business, the term "orderer" shall signify both the orderer/user of analog (physical) image material and the orderer/user of digital image material (i.e. image material transmitted by electronic means in the form of image data). [↑](#footnote-ref-1)