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# Universalmuseum Joanneum

## Standard Terms and Conditions

### 1. Scope of Application:

- a) These Standard Terms and Conditions apply to the Permission Agreement with the Universalmuseum Joanneum GmbH (hereafter: 'UMJ'), which is appended overleaf or attached. Contract partner (hereafter: 'Contract Partner') of the UMJ is the natural and/or legal person named in the Permission Agreement appended overleaf or attached, and contracting with the UMJ in his own name, irrespective of whether he acts on behalf of a third party. The Standard Terms and Conditions govern the right to use any kind of visual recordings (pictures and photographic material) on which a building or premises belonging to the UMJ or objects of the UMJ on display appear, irrespective of the type of visual recording (photographs, shots, blueprints, drawings, plans, etc.), of its use as a whole or in parts (details), of the person who produced it, of the process of production and of the fact that the objects which appear in the visual recordings or the visual recording itself may be protected by copyright or ancillary copyright.
- b) By signing the Permission Agreement appended overleaf or attached, the Contract Partner agrees to be bound by the present Standard Terms and Conditions. Any variation of, or deviation from, these Standard Terms and Conditions has to be specifically agreed upon in writing. Further, these Standard Terms and Conditions shall prevail over any standard terms and conditions of the Contract Partner.
- c) The Contract Partner is liable for the complete fulfillment of all obligations arising under this Permission Agreement even if he passes on the pictures and photographic material to third parties or if, at his request, a third party is invoiced directly to simplify processing, or if an invoice is amended to show a third party as invoicee. In particular, the Contract Partner's liability extends to all claims relating to, and resulting from, use, damage, late return or loss of the pictures and photographic material by a third party.

### 2. Pictures and Photographic Material:

- a) Pictures and Photographic Material (hereafter: 'Visual Material' or 'Picture') includes all pictures or visual recordings in any form whatsoever (including reproductions in digital form or in form of a plan) which are offered to the Contract Partner by the UMJ. All Visual Material is protected by copyright and ancillary copyright. This means that, irrespective of the purpose and type of use, the Contract Partner may only use the Visual Material with express written permission by the UMJ.
- b) In case that the Contract Partner produces the pictures or visual recordings himself under a photography or filming permit by the UMJ, he grants the UMJ an unlimited and exclusive right to use said pictures and visual recordings according to § 24 Sect. 2 Sentence 2 of the Austrian Copyright Act at the moment of the photography or film being made. Simultaneously, he assigns all his rights to the pictures and visual recordings under §§ 73 et seq. of the Austrian Copyright Act to the UMJ without any further declaration on his part being necessary. Any pictures and visual recordings produced by the Contract Partner shall subsequently only be used in accordance with the provisions of the present Standard Terms and Conditions and the Permission Agreement with the UMJ.

### 3. Permission to Use (hereafter: 'Permission' or 'Permission Agreement'):

- a) Use constitutes any use of Visual Material, as a whole or in part (exploitation under the Austrian Copyright Act). Thus, above all, use includes any type of exploitation under the Austrian Copyright Act, such as exploitation by reproduction, distribution, rental, lending, display, broadcasting, performance and making available to the public (exploitation in online media), for instance by printing, reproducing, projecting, copying or storing in a retrieval system, further any alteration or editing, such as alterations of the Visual Material through distortion, mirrorimaging, coloring, etc., irrespective of the technical means employed, as well as any use of a picture as master material for drawings, caricatures and subsequently altered photographs, further, any use for layouts of, and presentations, by the Contract Partner, any use of particular details of pictures, irrespective of whether they become part of a new composition by means of montage, photo composition, electronic image carrier or similar technical processes, and all other types of publication including any new technical use or independent economic use which may be developed subsequent to the signing of the Permission Agreement.

- b) Any and all use of Visual Material belonging to the UMJ requires an express prior Permission to Use in writing. Receiving Visual Material for review or selection alone does not constitute a Permission to use this Material. To determine the scope of the Permission, the Contract Partner is required to provide prior to the production precise and binding information on the intended use. Any use of pictures or visual recordings without obtaining a Permission in advance, any use for purposes other than the one specified in said Permission, any deviation from the type of use permitted – be it only a minor deviation such as distorting, mirror-imaging, or coloring – and any variation of other terms of the Permission (e.g. circulation, etc.) without prior written consent by the UMJ entails, in addition to the legal consequences provided by the Austrian Copyright Act, those provided by Numbers 5 and 6 ('Payment' and 'Liability') of the present Standard Terms and Conditions.
- c) The Permission of Use does not convey to the Contract Partner any right of ownership, copyright, or rights of utilization with regard to the Visual Material. Unless agreed otherwise in writing, the Permission is subject to payment of a fee, is non-exclusive and restricted to a one-time use in Austria for the stipulated purpose within a period of one year beginning with the signing of the Permission Agreement. Any other or additional use has to be agreed upon separately with the UMJ. In case that a Permission is granted, but no use is made of it for the period of one year, the permission has expired.
- d) All rights granted in the Permission are granted only to the extent to which the UMJ itself is entitled to grant these rights. Any rights and ancillary rights of third parties cannot be assigned. Permission to use such rights has to be obtained separately from the persons entitled to these rights by the Contract Partner. This includes, in particular, that whenever Visual Material is used on which appear objects, persons or marks protected by specific legislation (e.g. under copyright law, trademark law or copyright in designs law), the Contract Partner himself is required to seek permission from the persons entitled to the respective rights. In such cases, it is up to the Contract Partner himself to determine whether, and to what extent, permissions are necessary.
- e) The Contract Partner undertakes to abide by the code of conduct of the Austrian Press Council (Österreichischer Presserat), to abstain from any biased or derogatory use of the Visual Material, and to comply with all other restrictions imposed on the use of the Visual Material by law (e.g. copyright law, media law, and competition law).
- f) Whenever the Visual Material is used, credit (picture credit or production credit) in form of 'Universalmuseum Joanneum, Graz' has to be included in a manner which does not give rise to any doubts concerning the attribution of the copyright acknowledgement to the respective Visual Material. In case that said credit does not appear on the Visual Material itself or next to it, but in the imprint of the publication, the precise position of the Visual Material to which the credit is attributed to has to be stated.
- g) To prove that the Visual Material has been used in conformity with the terms of the Permission Agreement, the Contract Partner is required to send without delay and free of charges a voucher copy to the UMJ.

#### **4. Delivery, Notice of Defects:**

- a) The Visual Material is shipped or delivered by the UMJ with a bill of delivery. (In case of shipment of digital Visual Material via the internet, the respective bill of delivery may be sent separately by mail, fax or email). Pursuant to §§ 377 and 378 of the Austrian Commercial Code, the Contract Partner is responsible for inspecting the Visual Material delivered to determine whether it is defective, and for giving notice of any defect whatsoever. The UMJ has to be notified without delay and within 24 hours of receipt of the Visual Material by telephone and within two days of receipt in writing of any defect, in particular, of any non-conformity with regard to the order of the Contract Partner, of any defect in the quality of the Visual Material and of any inaccuracy of its description. In case that the Contract Partner does not notify the UMJ accordingly, any liability of the UMJ is excluded and the shipment or delivery is considered to be in good order and accepted by the Contract Partner.
- b) By handing over the Visual Material to the carrier or the Contract Partner's transferee, the UMJ fulfils its obligation to deliver, and all risk of loss and damage is passed on to the Contract Partner. The Contract Partner is liable for full and proper return of the Visual Material to the UMJ and for any defects in, or damage resulting from, the packaging of the Visual Material.
- c) The Contract Partner has to return the Visual Material immediately after its use so that the UMJ receives it by the date of return stipulated in the Permission Agreement, at the latest, however, within six weeks, provided that no longer period of use has been agreed upon.

#### **5. Payment**

- a) Any use of the Visual Material is subject to payment of a permission fee (hereafter: 'Fee'). The amount of this Fee is determined by the extent and type of use and has to be agreed upon prior to the commencement of the use. Absent of such agreement, the Fee is set at a reasonable level which, at the choice of the UMJ, is determined either based on the standard schedule of charges of the UMJ or

- according to the applicable version of "Bildhonorare", that is, the non-binding Guidelines in the business of photographers in Austria regulating remuneration for publication.
- b) In case that the purpose of use has not been determined at the time the Visual Material is delivered or photographed or filmed, the Contract Partner is required to notify the UMJ as soon as possible of the purpose of use of the Visual Material. If such notice is not made within four weeks after the Visual Material has been sent to the Contract Partner, the UMJ is entitled to charge the maximum fee provided by the standard schedule of charges or said Guidelines, respectively.
  - c) Handling and shipping fees shall be charged for all Visual Material, delivery of which is not taken by the Contract Partner directly on the premises of the UMJ. The amount of such fees is determined by the type and extent of the expenses incurred. Payment of the handling fees does not grant the Contract Partner any right to use or ownership right.
  - d) Payment is due within 14 days of the date of the invoice without discount. In case of late payment, it is agreed that an interest rate shall be charged which exceeds the prevailing discount rate of the Österreichische Nationalbank (Austrian National Bank) by 3%, but amounts to no less than 10% per annum. Further, the Contract Partner undertakes to bear any costs associated with the collection of claims out-of-court as provided by the Austrian Act on Lawyer's Fees.
  - e) Granting a Permission to Use is subject to the condition precedent of full payment, meaning that the full amount charged, including all expenses, has to be received by the UMJ. In case of late payment, the Permission shall be deemed not to have been granted. Claims to payment by the UMJ, however, shall not be impaired thereby.
  - f) No refund shall be made should the Visual Material not be used.

## 6. Liability

- a) Any liability and warranty of the UMJ is restricted to claims concerning the existence and the transfer of a Permission to use the Visual Material delivered. The UMJ is liable only for those injuries suffered by the Contract Partner which have been caused by intent or gross negligence. In case of defects in the technical quality of the Visual Material, the UMJ shall provide, subject to availability, its Contract Partner with non-defective Visual Material, provided that notice of the defects has been given in time. Apart from this, no liability is assumed for defects in quality, unavailability, late delivery, suitability of the Visual Material for the purposes of the Contract Partner, inaccurate descriptions of the Visual Material, or inaccuracies in other texts supplied together with the Visual Material. Liability for indirect and consequential damage, in particular, for lost profits and claims advanced by third parties is excluded. In case that the Contract Partner fulfils claims of third parties, he waives all claims to recourse against the UMJ resulting therefrom. Claims for damages advanced against the UMJ are limited to the amount of the Fee agreed upon. All claims of the Contract Partner shall be considered waived unless they are asserted by legal action in court within 6 months of the delivery of the Visual Material.
- b) With regard to the cases listed below, regardless of whether actual damage incurred, the Contract Partner agrees to pay the following penalties which are unrelated to fault. These penalties constitute a minimum compensation and are not subject to reduction such as may be ordered by court or law:
  - Damage to, or loss of, Visual Material: Euro 160,00 per damaged or lost picture. By virtue of payment of these penalties, the Contract Partner does not acquire any rights to the Visual Material which extend beyond those granted by the Permission Agreement and paid for.
  - For any use without Permission and any use beyond the one stipulated in the Permission: At minimum, twice the fee regularly charged by the UMJ for such use.
  - For any omission or inadequate manner of copyright acknowledgement (indication of the producer / indication of sources): Twice the fee stipulated or regularly charged by the UMJ.
  - For late return: At minimum, Euro 36,34 per picture and month.
  - For missing framing masks or descriptions: At minimum, Euro 7,27 per picture.
- c) The Contract Partner is further liable for all damage resulting from any violation of his contractual obligations under the Permission Agreement and these Standard Terms and Conditions. The Contract Partner assumes liability for all claims advanced by third parties and agrees to indemnify and save the UMJ harmless from any and all such losses and claims.
- d) Upon request by the UMJ, the Contract Partner is required to render an account of his use of the Visual Material, to furnish information about such use, to permit inspection of his books, and to allow accessing his business and private premises for the latter purpose. Further, in case that the Contract Partner denies that any Visual Material which he uses belongs to the UMJ, he is obliged to provide information on the origin of all Visual Material used by him.

## 7. Revocation of a Permission to Use

In the event of an important reason, the UMJ is entitled to withdraw or revoke with immediate effect any Permission to Use which it has granted. Such important reason would be, for example, any violation of the provisions of the present Standard Terms and Conditions, in particular, any use of the Visual Material contrary to said provisions or any behavior on part of the Contract Partner damaging the UMJ. Any liability

of the UMJ in the event that damage is suffered by the Contract Partner as result of a revocation is excluded.

#### **8. Severability Clause**

In case that individual clauses of the Permission Agreement or of the present Standard Terms and Conditions are invalid or found to be so, the remainder of the Permission Agreement or the Standard Terms and Conditions, respectively, shall remain valid. Any invalid clause shall be replaced by that valid clause which contents comes economically and/or artistically closest to the regulative purpose originally intended.

#### **9. Miscellaneous**

All amounts listed in the Permission Agreement and the present Standard Terms and Conditions do not include value added tax. Place of fulfillment and place of jurisdiction is Graz, Austria. Austrian Law shall apply. Application of the UN Convention on the International Sale of Goods (CISG) is excluded.

Universalmuseum Joanneum GmbH  
Mariahilferstraße 2-4  
8020 Graz  
Austria

UID: ATU 56 45 65 79

Tel.: +43 316 8017-0  
Fax: +43 316 8017-9800  
E-mail: [direktion@museum-joanneum.at](mailto:direktion@museum-joanneum.at)