

STARDUST License Agreement

STARDUSTFASHION.COM License Agreement 20.10.2000

THIS IS A LEGAL AGREEMENT BETWEEN YOU, YOUR COMPANY, YOUR EMPLOYER AND/OR YOUR CLIENT (in the case you are an agent acting for a single client) (COLLECTIVELY HEREINAFTER "LICENSEE") AND THE STOCK PHOTO AGENCY STARDUST, REGISTERED HOLDER M. KOEPEL (HEREINAFTER "STARDUST"). THIS AGREEMENT APPLIES TO LICENSES ISSUED VIA THE WEB AND VIA LOCAL SALES REPRESENTATIVES, AND IS APPLICABLE TO ONLINE, DIGITAL AND ANALOGUE (PHYSICAL) DELIVERY OF LICENSED MATERIAL (HEREINAFTER THE "AGREEMENT").

PLEASE READ THE FOLLOWING TERMS AND CONDITIONS. YOUR ACCEPTANCE OF THESE TERMS IS AN ABSOLUTE CONDITION TO YOUR ACCESS TO AND USE OF ANY IMAGE(S). DOWNLOADING AND/OR USING ANY IMAGE(S) FROM STARDUST CONFIRMS YOUR ACCEPTANCE OF THESE TERMS AND FORMS A LEGAL CONTRACT BETWEEN YOU AND STARDUST.

1. Definitions.

In this Agreement the following definitions apply:

- 1.1. "Invoice" means the invoice provided by STARDUST or an authorized distributor that may include, without limitation, the permitted scope of use of the Licensed Material selected, any limitations on the license in addition to those specified herein and the corresponding price for the license of such Licensed Material. The Invoice shall be incorporated into this Agreement and all references to the Agreement shall include the Invoice.
- 1.2. "Licensed Material" means any still image, film or video footage, audio product, visual representation generated optically, electronically, digitally or by any other means, including any negatives, transparencies, film imprints, prints, original digital files or any Reproductions thereof, or any other product protected by copyright, trademark, patent or other intellectual property rights, which is licensed to LICENSEE by STARDUST under the terms of this Agreement. Any reference in this Agreement to the Licensed Material shall be to each individual item within the Licensed Material and also to the Licensed Material taken as a whole.
- 1.3. "Reproduction" and "Reproduce" mean any form of copying or publication of the whole or a part of any Licensed Material, via any medium and by whatever means.

2. Grant of Rights & Restrictions.

- 2.1. Unless stated otherwise in the Invoice, STARDUST grants to LICENSEE a non-exclusive, non-sublicensable and non-assignable right to use and Reproduce the Licensed Material identified in the Invoice, solely to the extent explicitly stated in this Agreement. This right may be exercised by subcontractors of LICENSEE, provided that such subcontractors agree to abide by the terms of this Agreement.
- 2.2. Use of the Licensed Material is strictly limited to the use, medium, period of time, print run, placement, size of Licensed Material, territory and any other restrictions specified in the Invoice. LICENSEE may utilize the Licensed Material in any production process that may be necessary for the intended use specified in the Invoice.
- 2.3. Unless additional rights are granted pursuant to a separate license Agreement Licensed Material may only be used in an editorial manner, relating to events that are newsworthy or of public interest, and may not be used for any commercial, promotional, advertising or merchandising use.
- 2.4. While STARDUST makes efforts to correctly caption the subject matter of the Licensed Material, STARDUST does not warrant that such information is accurate.
- 2.5. Pornographic, defamatory or otherwise unlawful use of Licensed Material is strictly prohibited whether directly or in context or juxtaposition with specific subject matter.
- 2.6. Licensed Material may be cropped but shall not, under any circumstances, otherwise be rotated, altered, changed or tampered with, either manually or electronically, without STARDUST express written permission.
- 2.7. Upon reasonable notice, STARDUST may inspect any records, accounts and books relating to the Reproduction of any of the Licensed Material to ensure that the Licensed Material is being used in accordance with this Agreement.
- 2.8. LICENSEE grants to STARDUST the irrevocable, perpetual, non-exclusive right and license to use Final Elements solely for the promotion of STARDUST or any of its subsidiaries. For purposes of this paragraph, "Final Elements" shall mean any end product produced by LICENSEE pursuant to this Agreement, including but not limited to use in magazines, books, feature films, television productions and other print.
- 2.9. Licensed Material shall not be used contrary to any restriction on use provided to LICENSEE prior to or at the time the Licensed Material is delivered to LICENSEE. Such restrictions may be included in the information provided with the Licensed Material on STARDUST's website or in any other communication by STARDUST. Any such restriction provided to LICENSEE shall be incorporated into and become part of this Agreement.

3. Photo Credit and Intellectual Property.

- 3.1. Copyright. STARDUST or its contributing photographers or image partners own all copyrights in the Licensed Material. No ownership or copyright in any Licensed Material shall pass to LICENSEE by the issuance of the License contained in this Agreement. Except as expressly stated in this Agreement, STARDUST grants LICENSEE no right or license, express or implied, to the Licensed Material.
- 3.2. Photo Credit. The following photo credit must appear adjacent to the use of Licensed Material: "stardustfashion.com". If LICENSEE omits the credit, LICENSEE will be charged an additional fee equal to one hundred percent (100%) of the license fee.
- 3.3. Trademarks. In connection with the use of " STARDUST " or "STARDUSTFASHION.COM" or any other of STARDUST trade names, trademarks, logos or service marks ("Marks"), LICENSEE acknowledges and agrees that (i) STARDUST Marks are and shall remain the sole property of STARDUST, (ii) nothing in this Agreement shall confer upon LICENSEE any right of ownership in STARDUST Marks and (iii) LICENSEE shall not now or in the future contest the validity of STARDUST Marks.
- 3.4. Notice of Violations. LICENSEE will immediately notify STARDUST if it becomes aware or suspects that any third party is wrongfully using the Licensed Material, in whole or in part, or is violating any of STARDUST intellectual property rights, including, but not limited to, Marks and copyrights.

4. Releases.

STARDUST gives no rights and makes no warranties with regard to the use of people, names, trademarks, logos, registered, unregistered or copyrighted designs or works of art depicted in any Licensed Material. Unless otherwise agreed in writing, no model, property, team logo, trademark or other releases are delivered by STARDUST in connection with the delivery of Licensed Material hereunder. As to any release delivered with any Licensed Material, STARDUST makes no representation, warranty or guarantee as to its sufficiency with regard to any use of the Licensed Material made by LICENSEE. LICENSEE bears the responsibility of obtaining all necessary individual, property, team logo, trademark and other releases, approvals and clearances from third parties prior to using the Licensed Material.

5. Warranty and Limitation of Liability.

- 5.1. **OTHER THAN AS EXPRESSLY SET FORTH HEREIN, STARDUST MAKES NO REPRESENTATION OR WARRANTY OF ANY KIND, EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO THE IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, REGARDING (I) THE LICENSED MATERIAL, (II) CAPTION INFORMATION ACCOMPANYING LICENSED MATERIAL, (III) THIRD-PARTY DIGITAL DELIVERY SYSTEMS, (IV) THE AVAILABILITY OR OPERATION OF THE DIGITAL ARCHIVE WHETHER ACCESSED VIA THE INTERNET OR OTHERWISE OR (V) THE AVAILABILITY OR OPERATION OF EQUIPMENT, SOFTWARE OR SERVICE PROVIDED BY THIRD PARTIES. STARDUST IS ONLY LIABLE TO LICENSEE OR ANY OTHER PERSON OR ENTITY FOR DAMAGES CAUSED DELIBERATELY OR DUE TO GROSS NEGLIGENCE OR FOR DAMAGES CAUSED BY INJURY TO LIFE, BODY OR DEATH.**
- 5.2. **THE REPRESENTATIONS AND WARRANTIES MADE BY STARDUST IN THIS AGREEMENT APPLY ONLY TO THE LICENSED MATERIAL AS DELIVERED BY STARDUST AND WILL BE INVALID IF THE LICENSED MATERIAL IS USED BY LICENSEE IN ANY MANNER NOT SPECIFICALLY AUTHORIZED IN THIS AGREEMENT OR IF LICENSEE IS OTHERWISE IN BREACH OF THIS AGREEMENT.**

6. Indemnification.

- 6.1. STARDUST. Provided that Licensed Material is only used in accordance with this Agreement and LICENSEE is not otherwise in breach of this Agreement, STARDUST shall defend, indemnify and hold LICENSEE and its parent, subsidiaries and commonly owned or controlled affiliates and their respective officers, directors and employees harmless from all damages (except punitive damages), liabilities and expenses (including reasonable attorneys' fees and permitted and authorized costs) arising out of or connected with any actual or threatened lawsuit, claim or legal proceeding alleging that the possession, distribution or use of the Licensed Material by LICENSEE pursuant to and in accordance with this Agreement infringes on any copyright of any third party.
- 6.2. LICENSEE. LICENSEE shall defend, indemnify and hold STARDUST and its parent, subsidiaries and commonly owned or controlled affiliates and their respective officers, directors and employees harmless from all damages (except punitive damages), liabilities and expenses (including reasonable attorneys' fees and permitted and authorized costs) arising out of or as a result of claims by third parties relating to LICENSEE's use of any Licensed Material or any breach of this Agreement.
- 6.3. Notice of Defense. The party seeking indemnification hereunder shall promptly notify the other party of such claim. The cost of defense shall be borne by the indemnifying party. At indemnifying party's option, indemnifying party may assume the handling, settlement or defense of any claim or litigation, in which event indemnified party shall cooperate in the defense thereof. Indemnified party shall have the right to participate in such litigation, at its expense, through counsel selected by indemnified party. The indemnifying party will not be liable for legal fees and other costs incurred prior to the other party giving notice of the pending action for which indemnity is sought.

7. Interest or Cancellation on Overdue Invoices.

If LICENSEE fails to pay STARDUST invoice in full within the time specified in the Invoice, STARDUST may add a service charge of one-and-one-half percent (1½ %) per month, or such lesser amount as is allowed by law, on any unpaid balance until payment is received. STARDUST also reserves the right, in its sole discretion, to revoke the license if payment is not made in full on time.

8. Miscellaneous Terms.

- 8.1. Seasonal purchases. If not stated otherwise LICENSEE who receives Licensed Material on a seasonal charge has a minimum purchase of two seasons and minimum contract duration of 12 months. The Agreement starts with the first login if not declared differently in the Agreement. The Agreement extends automatically for another 12 months if not cancelled in written form three months prior to the expiration of the Agreement.
- 8.2. Unauthorized Use. Any use of Licensed Material in a manner not expressly authorized by this Agreement or in breach of a term of this Agreement constitutes copyright infringement, entitling STARDUST to exercise all rights and remedies available to it under copyright laws around the world. LICENSEE shall be responsible for any damages resulting from any such copyright infringement, including any claims by a third party. LICENSEE agrees to indemnify and hold STARDUST (including its parent, affiliate and subsidiary companies and their respective directors, officers, employees and agents) harmless against any claim for damages, losses or any costs, including attorneys' fees, arising in any manner whatsoever from LICENSEE's unauthorized use of any Licensed Material or for LICENSEE's breach of any of the terms of this Agreement.
- 8.3. Electronic Storage. For all Licensed Material that LICENSEE takes delivery of in electronic form, LICENSEE must retain the copyright symbol, the name of STARDUST and the image number or other identification number associated with the Licensed Material as may be included as part of the electronic file. LICENSEE may not make additional high-resolution copies of the Licensed Material and LICENSEE will maintain a robust firewall to safeguard against unauthorized third-party access to the Licensed Material. Notwithstanding the foregoing, LICENSEE may make one (1) high-resolution backup copy of the Licensed Material for security reasons only. Upon the expiration or earlier termination of this Agreement, LICENSEE shall promptly delete the Licensed Material from its computer or other electronic storage systems and shall ensure that its sub-contractors do likewise.
- 8.4. Governing Law. This Agreement shall be subject to the laws of the Federal Republic of Germany. Berlin shall be the place of venue. Modifications of and amendments to this Agreement shall be made in writing. This shall also apply to modifications of and amendments to this written form requirement. STARDUST shall have the right to commence and prosecute any legal or equitable action or proceeding before any court of competent jurisdiction to obtain injunctive or other relief against LICENSEE in the event that, in the opinion of STARDUST, such action is necessary or desirable.
- 8.5. Waiver. No action of STARDUST, other than express written waiver, may be construed as a waiver of any provision of this Agreement. A delay on the part of either party in the exercise of its rights or remedies will not operate as a waiver of such rights or remedies, and a single or partial exercise by a party of any such rights or remedies will not preclude other or further exercise of that right or remedy. A waiver of a right or remedy on any one occasion will not be construed as a bar to or waiver of rights or remedies on any other occasion.

- 8.6. Entire Agreement.** This Agreement contains all the terms of the license Agreement and no terms or conditions may be added or deleted unless made in writing and signed by an authorized representative of STARDUST. In the event of any inconsistency between the terms contained herein and the terms contained on any purchase order sent by LICENSEE, the terms of this Agreement shall govern.