

# **OTTO Archive, LLC CONTENT LICENSE AGREEMENT**

**This license agreement (the “License Agreement”) along with the Website Terms and Conditions located at [www.ottoarchive.com/terms](http://www.ottoarchive.com/terms) and the terms of any Subagent Agreement shall govern Your use of the images and any other content made available by OTTO Archive, LLC, its parents, affiliates, subsidiaries, agents and assigns (“Otto”) through its website or otherwise (“Content”). IF YOU DO NOT AGREE WITH ANY OF THE APPLICABLE TERMS, DO NOT OBTAIN OR USE ANY CONTENT FROM OTTO.**

## **1. Parties**

This Agreement is binding between Otto and You. “You” shall mean (a) the individual listed as the recipient of any Otto Content (“Recipient”); or (b) if Recipient is entering into this Agreement for the benefit of or as an agent on behalf of Recipient’s employer (“Employer”) or a third party (“Principal”), then such Employer or Principal. If Recipient is entering into this Agreement and the licenses granted hereunder for the benefit of, and/or as an agent on behalf of Employer and/or Principal, then Recipient (x) represents and warrants that such Principal or Employer has authorized Recipient to enter into this Agreement, that the licenses granted hereunder are on that Principal’s or Employer’s behalf, that such Principal or Employer has agreed to be bound hereby and that Recipient has actual and express authority to act on behalf of and bind such Principal or Employer to the terms hereof; (y) the Content and End Use are solely for the benefit of Employer or Principal, and that Recipient will not use the Content or End Use for the benefit of any other person or entity without entering into a separate license with Otto, and (z) Recipient will comply with all of the terms hereof and shall be jointly and severally liable for any breach of the terms of this Agreement by Principal or Employer.

## **2. License**

Your ability to access Content does not entitle You to use it. This license grant shall cover only the Content described in the invoice included herewith (“Invoice”).

- a) Any and all licenses granted by Otto are conditioned upon (i) Your compliance with all provisions of this Agreement, and (ii) Otto’s receipt of full payment hereunder.
- b) Subject to the terms and conditions of this Agreement, and excluding the rights granted in Section 2(c) and 2(d) below, Otto grants You a limited, non-exclusive right to use the Content solely for the End Use specified in the Invoice. For the avoidance of doubt nothing in this agreement shall be deemed to permit You to distribute, publish, display or otherwise use the Content in any way other than the End Use. Otto reserves all rights not specifically granted in this Agreement. Unless otherwise stated in the Invoice, the license granted hereunder for the Content shall run for one year from the date the applicable Invoice is issued (the “Term”).
- c) Subject to the terms and conditions of this Agreement and regardless of the form in or media on which the Content is delivered to You (including, but not limited to electronic or online transmission, CD or DVD), Otto grants You a limited, non-exclusive, perpetual, worldwide right to create and exploit the End Use for any purpose authorized under this

Agreement. The rights granted under this paragraph include the right to make the Content available to certain individuals for the sole purpose of formatting the Content to create the End Use according to the terms provided herein (“Users”). For the avoidance of doubt, nothing herein grants You any right or license to distort, manipulate or otherwise change, modify or edit any Content,

- d) Subject to the terms and conditions of this Agreement, Otto grants You the right to use certain Content solely for Your internal evaluation to determine whether such Content is appropriate for Your intended use (“Comps”). You may not use Comps in any manner except for internal evaluation. Unless otherwise stated in the applicable Invoice, the Term of the Comps license is sixty days from the date of copying, download or receipt. You may not copy, distribute, publish, display or otherwise use in any way the Comps after the Term without obtaining an appropriate Content license from Otto or its designated Subagent. If You do not obtain such a license, upon expiration of the Term, You must destroy all copies of the Comps.
- e) You may not sell, rent, loan, give, sublicense or otherwise transfer to anyone the Content or any right or license to use or reproduce the Content, except as may otherwise be specifically stated herein, and provided that such use has been incorporated into the permitted End Use set forth in the relevant Invoice. Only You may use the Content and the End Use must be solely for Your own use. Your employees and contractors (if any) may use the Content as necessary to create the End Use as provided herein, provided that each such employee or contractor has agreed to comply with the terms hereof, and further provided that You remain jointly and severally liable for any breach of the terms of this Agreement by such employee(s) and/or contractor(s).

### **3. Ownership and Intellectual Property**

Otto and its Content providers retain all right, title, and interest in and to all of the copyrights, patent rights, trademarks, trade secrets, and all other proprietary rights in the Content, and You agree to include the following credit with each published Image: “© [photographer name]/[any relevant company affiliate]/OTTO Archive, LLC.” You agree to pay triple the Invoice amount if You do not provide such proper credit and copyright notice. No rights in any Content are granted except the limited licenses specified in this Agreement. Any right, title or interest arising in any compilation or derivative work created using any Content shall not entitle You to use any Content except as permitted hereunder. You do not acquire any copyright ownership or equivalent rights in or to any Content or any other property of Otto or its Content providers as a result of any license Otto grants to You. You hereby allow Otto to use without charge Your End Use for Otto’s marketing and promotional purposes.

### **4. Disclaimer of Warranties**

Otto provides You with its Content on an “as is” basis without warranty of any kind, express or implied, including, without limitation, any implied warranties of merchantability or fitness for a particular purpose. Otto shall not be liable for any claims related to or arising from Your use of Content which: (a) has been modified by You, (b) has been combined by You with other Content, products, text, content or materials, or (c) Otto has otherwise notified You not to use prior to the beginning of the Term of the license for the applicable Content. While Otto makes

efforts to use accurate caption information, Otto does not warrant that such information is accurate.

## **5. Limitation of Liability**

EXCEPT FOR LIABILITY WHICH CANNOT BY LAW BE EXCLUDED OR LIMITED, NEITHER OTTO NOR ANY OTTO OFFICER, DIRECTOR, EMPLOYEE, CONTRACTOR, CONTENT PROVIDER, LICENSOR OR LICENSEE SHALL BE LIABLE TO YOU OR ANY THIRD PARTY FOR INDIRECT, INCIDENTAL, SPECIAL, PUNITIVE, STATUTORY OR CONSEQUENTIAL DAMAGES ARISING OUT OF, OR RELATING TO THIS AGREEMENT AND YOUR USE OR INABILITY TO USE THE CONTENT. OTTO'S TOTAL AGGREGATE LIABILITY TO YOU OR ANY THIRD PARTY ARISING FROM THIS AGREEMENT, ITS TERMINATION OR EXPIRATION, AND YOUR USE OF ANY CONTENT PROVIDED HEREUNDER, SHALL NOT EXCEED THE MONETARY AMOUNT ACTUALLY RECEIVED BY OTTO FOR THE USE OF THE APPLICABLE CONTENT. THE FOREGOING LIMITATIONS ARE APPLICABLE NOTWITHSTANDING ANY FAILURE OF ESSENTIAL PURPOSE.

## **6. Indemnification**

You agree to indemnify and hold harmless Otto and its Content providers, officers, directors, employees, contractors, subsidiaries, joint ventures, licensors and licensees against any and all claims (including, without limitation, claims by third parties), liability, damages (including punitive damages), judgments, settlements, costs and expenses, including without limitation reasonable legal fees and expenses, arising out of or related to (i) Your breach of any terms, conditions or restrictions of this Agreement (including the terms, conditions and restrictions identified on the Invoice(s)); (ii) Your use or modification of any Content, or combination of any Content, with any text or other content, (iii) Your failure to obtain all permissions necessary to use the Content, (iv) content which Otto has otherwise notified You not to license or otherwise use prior to the beginning of the Term of the license for such Content; and (v) any act or failure to act by You or any of Your employees, contractors, agents, clients, Employers, Principals, or Users.

## **7. Releases and Clearances**

Content may contain restrictions listed on the Invoice or in a separate rider, including, without limitation, restrictions as to time, manner, industry and territory of use, and required pre-approval by a depicted person or their representative. You acknowledge that Otto does not convey any permissions, permits, clearances, releases or other rights related to the persons, entities, private properties, products, trademarks or brands depicted in the Content ("Releases"), and You are solely responsible for obtaining any and all such Releases. If You are unsure whether Releases are needed for Your use, You are responsible for consulting with competent legal counsel. No employee or representative of Otto may make, and You shall not rely upon, any representations or warranties other than those stated herein.

## **8. Unauthorized Uses**

Without limitation, Content may not be used as a trademark, or for any pornographic use, unlawful purpose or use, or to defame any person, or to violate any person's right of privacy, publicity or moral rights, or to infringe upon any copyright, trade name or trademark of any person or entity. You do not acquire, and shall not claim, any rights (trademark, copyright or otherwise) in the Content itself apart from the End Use. Unauthorized use of Content constitutes infringement of copyright and other applicable rights and shall entitle Otto to exercise all rights and remedies under applicable copyright and other laws, including monetary damages against all users and beneficiaries of the use of such Content. Otto in its sole discretion reserves the right to bill You (and You hereby agree to pay) ten (10) times the license fee for any unauthorized use, in addition to any other fees, damages and penalties Otto may be entitled to under this Agreement and applicable law.

## **9. Payment/Reporting**

Except as otherwise provided herein, You agree to and are required to pay Otto for all Content that You obtain under the terms of this Agreement, regardless of whether You use it. Payment is due within thirty days from the date specified in the Invoice. A charge of one and one-half percent per month or the greatest amount allowed under applicable law may be added to any unpaid balance after thirty days, and You agree to reimburse Otto for its reasonable costs of collection of unpaid amounts, including without limitation attorneys' fees and costs of proceedings. You are responsible for the payment of all applicable sales and use taxes.

## **10. Cancellation/Termination**

Termination or cancellation ("Termination") of this Agreement by You within seven days from the date of the Invoice shall incur a charge of \$500 per Image; thereafter, You shall be responsible for payment of a cancellation fee equal to fifty percent of the Invoice amount. After thirty (30) days no cancellations will be accepted and You are responsible for and must pay the full amount of the invoice. Otto reserves the right to terminate this Agreement and Your license to use the Content by written notice in the event You fail to comply with any provision of this Agreement. Upon Termination or expiration hereunder, (a) You shall be solely responsible for payment of any and all service charges and production, processing, handling and shipping fees, (b) You shall have no further rights in or license to the Content, (c) You agree to cease use of the Content, and (d) You shall promptly delete or destroy any digital copies thereof, except that You may retain one copy of the permitted work incorporating the Content solely for archival purposes.

## **11. Protection of Content**

If use of Content is permitted on the internet, or any other online or interactive media, You shall use Your best efforts to protect the Content to ensure that it cannot be copied, downloaded or transmitted.

## **12. Miscellaneous**

You may not use the trademarks or service marks of Otto without its prior written consent. Any dispute regarding this Agreement shall be governed by the laws of the State of New York, and the parties agree to accept the exclusive jurisdiction of the state and federal courts located in New York, New York, regardless of conflicts of laws. This Agreement shall not be governed by the United Nations Convention on Contracts for the International Sale of Goods, the application of which is expressly disclaimed. In any dispute between Otto and You for breach of this Agreement where Otto prevails, it shall be entitled to recover its reasonable attorneys' fees other legal expenses. This Agreement and the applicable Invoice(s) constitute the entire agreement between the parties with respect to the subject matter hereof and merge and supersede any and all prior and contemporaneous written and oral communications. This Agreement may not be modified except by a written agreement signed by duly authorized representatives of Otto, provided that no purchase order or similar document issued by You shall modify this Agreement even if signed by Otto. If any provision of this Agreement is found invalid or unenforceable, the remainder of this Agreement shall remain valid and enforceable according to its terms. Accordingly, the parties agree that if any provisions are deemed not enforceable, they shall be deemed modified to the extent necessary to make them enforceable and in such manner as comes closest to the intentions of the parties to this Agreement as is possible. This Agreement will inure to the benefit of and be binding upon the parties, their successors and assigns, except that You may not assign or transfer this Agreement without Otto's prior written consent.

### **13. Non-Disclosure**

During this Agreement, Otto may provide You with certain pricing, technical, marketing and other confidential information. You acknowledge that such confidential information encompasses valuable trade secrets and is proprietary to Otto. You agree that You will maintain the confidentiality of any "Confidential Information" that Otto may provide to You, and You shall not use or disclose the same without the prior written consent of Otto. "Confidential Information" includes any information that is either designated as confidential by Otto or that, under the circumstances surrounding the disclosure, ought in good faith to be treated as confidential by You. During the term of this Agreement and without limitation of time thereafter, You will not, without Otto's prior express written consent, make any statements about Otto, its business, services, shareholders, directors, employees, contractors, licensors, content providers, agents or representatives, which may disparage any of their reputation or adversely affect Otto's business.