

## **Overview**

This Licence Agreement (Agreement) is between you (including any person or organisation representing you) (you) and MMC Interactive, 2 High Street, Pitlessie, Cupar, Fife, KY15 7ST (T/A RALLY-PHOTO.COM) (RALLY-PHOTO.COM, MMC Interactive, we, us).

By the downloading, acceptance or use (whether or not the use is for profit) of any image provided by us, or by your clicking on the "I Accept" control within the RALLY-PHOTO.COM web application or otherwise by using this service, you agree to be bound by this Agreement as at the date on which you download any image (Image) displayed on the RALLY-PHOTO.COM website for the purpose of licensing or otherwise using the Image.

By clicking on the "I Accept" control, and/or by using this service and any image supplied by RALLY-PHOTO.COM, you are indicating that you are at least 18 years old, and that you agree to be bound by all terms of this Agreement. You may print and keep a copy of this Agreement.

We may change the terms of this Agreement at any time and without notice, but changes will not be applied retrospectively. The most recent edition of this Agreement will be posted on the RALLY-PHOTO.COM website. If you do not agree to be bound by the terms of this Agreement You should not click on the "I Accept" button and not download or use any image.

## **Licence**

RALLY-PHOTO.COM grants you a worldwide, royalty-free, non-exclusive, revocable licence to reproduce an image solely for the purpose specified in the 'request for accreditation' and any other communications between you and us. Images may not be used for any purpose other than that which has been agreed. Except for the licence granted in this agreement, you have no right, title or interest in any of the Images. Unless agreed by us in writing, no modifications may be made to any of the images, except for cropping, colour correction, removal of imperfections and similar moderate editing. We reserve all rights not expressly granted in this agreement. You must pay the fee for the specified purpose (which may, for approved uses, be zero) either at the time of downloading the image, or in accordance with the terms specified in the RALLY-PHOTO.COM web application. Where images are supplied at a zero fee, your rights and responsibilities under this agreement remain in force.

## **Use of Images**

You agree not to use any of the images in a manner that would contravene any law of any country in which any of the images are to be published, including laws of defamation, obscenity, blasphemy and laws protecting rights of privacy and intellectual property. You agree to comply with all reasonable requests by us to withdraw any of the images from publication for reason of potential illegality or legal liability. You must inform us promptly of any claim of legal liability concerning the use of any images. Except as provided in this agreement, the logos and name of RALLY-PHOTO.COM, MMC Interactive and any other associated businesses or trading names must not be used in any way without our prior written permission.

## **Attribution of Images**

In any editorial use of an image in any medium, you must include a credit, or procure a credit, next to each image used. Before publication or commercial use of an image (or where impractical, as soon after publication or use as is reasonably possible), you must provide us with two copies of any publication, document or product in or on which an image is included. For electronic publications, you must notify us, by sending an email to RALLY-PHOTO.COM, the URL of the page on which the image is included. If this is not feasible due to the nature of or the medium of publication, you must inform RALLY-PHOTO.COM of this.

Attribution and the supply of file copies is extremely important to RALLY-PHOTO.COM. Continuing media accreditation depends on an ability to show a publication portfolio at the end of each year.

YOU CAN WAIVE THE REQUIREMENT FOR THE ABOVE TWO CONDITIONS BY PAYING AN ADDITIONAL £100 PUS VAT AT THE PREVAILING RATE FOR EACH IMAGE USED. Where images are provided free of charge, the waiver fee will be £100 plus VAT at the prevailing rate.

WHETHER OR NOT YOU FORMALLY NOTIFY US OF YOUR DESIRE TO WAIVE THE ATTRIBUTION CONDITIONS, FAILURE TO COMPLY WITH THEM WILL BE DEEMED AS A DE FACTO WAIVER, AND THE APPROPRIATE FEE WILL BE PAYABLE.

## **Electronic Storage and Distribution of Images**

An image must not be duplicated or otherwise electronically retained except as necessary for the purpose specified in the 'request for accreditation' form specified in the RALLY-PHOTO.COM web application, by subsequent modification, or purposes implied by the acquisition of images by any other route or means. In addition, you may only use or retain a single copy of an image on a single computer. You may only download a high-resolution image onto one computer hard drive or other computer medium and may not otherwise make, use or distribute copies of the image for any purpose. You may not store the image on any image sharing or similar network.

UNAUTHORISED DISTRIBUTION OF IMAGES WILL BE CHARGED AT THE VALUE OF THE IMAGE PLUS £100 PUS VAT AT THE PREVAILING RATE FOR EACH IMAGE DISTRIBUTED, AND FOR EACH OCCASION ON WHICH IMAGES ARE DISTRIBUTED WITHOUT THE WRITTEN AGREEMENT OF RALLY-PHOTO.COM. That is, if you pass on five images to five other people or organizations, the fee will be  $((5 \times 5) \times £100)$  plus VAT.

Where images are provided free of charge, the fee for unauthorized distribution will be £100 plus VAT at the prevailing rate per image per occasion.

## **Warranty**

We warrant that the copy of the image supplied to you will be free from defects in material and workmanship for 30 days. The sole and exclusive remedy for a breach of this warranty is the replacement of the image or a refund of the fee paid, at our option. Other than as stated in this agreement, you acknowledge that the image is supplied "as is" and that we have not made, and that no person acting on behalf of us has made, any other representation as to the image's merchantability or suitability for any particular purpose. To the maximum extent permitted by law, all terms and warranties expressed or implied by any legislation, the common law, equity, trade, custom or usage or otherwise in relation to the licence of the image are expressly excluded.

## **Releases and Licences**

Unless we specifically confirm in writing that we have secured a relevant release or licence in respect of a particular image, we do not make any representation or warranty with respect to the use of names, likenesses, trademarks, logos, uniforms, buildings, signs, registered or copyrighted designs, or works of art depicted in an image. You are responsible for ensuring that all necessary rights, consents, licences or permissions that may be required are obtained prior to publication, reproduction or other use of an image, except only for those releases or licences that we have specifically confirmed in writing to have been secured. You indemnify us and hold it harmless against any liability, damage, cost or expense arising out of or in connection with any failure on your part to obtain any necessary rights, consents, licences or permissions.

## **Infringement of Copyright**

You must notify us of any activity of anyone of which you become aware, that infringes (or may infringe) our rights in any image. If there is infringement of copyright in any image, you agree to provide assistance to us as reasonably required by us, including being joined in any proceedings at our expense. If we take legal proceedings at our own expense, we will be entitled to retain the entire proceeds recovered in those proceedings, including any sums ordered to be due to you. We will be under no obligation to take any action in the event of infringement.

## **Sensitive Subjects**

If You intend to use the image in a sensitive context - including (but not limited to) contraception, matters of a sexual nature, substance abuse, physical or mental abuse, alcohol, tobacco, HIV/AIDS, cancer, other serious physical or mental condition or the disparagement of a person or a product, you must obtain our prior written consent. We reserve the right not to permit the use of an image for any reason. If you use an image in those circumstances without our prior written consent, you indemnify us and hold us harmless against any liability, damage, cost or expense arising out of or in connection with that use.

From February 2007, we have endeavoured to obtain consent for the use of images of the main subject of any image whose age is under 18 years old at the time of capture. This may not be the case for all images of under-18s. If you intend using such an image, please ask for a check on, and a copy of, the subject's consent.

## **No Liability**

To the maximum extent permitted by law, we will not be liable to you in any way for loss or damages of any kind, including (without limitation) any consequential, special, indirect or direct damages, loss of data, or loss of profits in any way connected with or arising out of this agreement, including (without limitation) our negligence, willful act or default or the transmission of any computer virus or similar computer software that may be contained in an image. This limitation of liability applies even if we have been informed of the possibility of such damages, or if the damages may reasonably be supposed to have been in our or your contemplation at the date of this agreement as a probable result of any act or omission.

## **Termination**

In event of a breach by you of this agreement, we will give you 30 days written notice (the notice period) to rectify the breach. This agreement will automatically terminate upon the expiry of the notice period if you have not rectified the breach. Upon termination or expiration of this agreement for any reason (i) all rights granted to you will automatically revert to us and (ii) you must immediately cease any use of the images and must delete all

copies of the image from all electronic and / or magnetic media and destroy all other copies of the images or, upon our request, return all those copies to us.

### **Retention of Image**

Unless otherwise agreed in writing by us, any image must be deleted from all electronic and removable media and any other copies of the image must be destroyed no more than 30 days from the date on which the license expires. Until you delete or otherwise destroy all copies of the image, you must ensure that any person accessing the image (other than through the licensed purpose) is aware of the ownership of the image and of the fact that copyright restrictions apply.

### **Right to Refuse Order**

We reserve the right to refuse to accept your order or request for any reason including, without limitation and whether or not payment has been received by us, if one or more of the images you ordered was listed at an incorrect price due to a slip or typographical error. If we do refuse your order or request, we will notify you by e-mail and will refund any sum deducted by us from your credit card as soon as possible, but in any event within 30 days of your order or request. We will not be obliged to offer any additional compensation.

## **Assignment**

You may not assign, licence or transfer any rights granted to you, or any of your obligations under this agreement, without our express written permission.

## **Enforceability**

If any provision of this agreement is considered by a court or other official body to be unenforceable, that provision will be deleted only to the extent necessary, and the other provisions of this agreement will remain in full force and effect.

## **No Waiver**

No failure to exercise - or any delay in exercising - any right, power or remedy by a party will operate as a waiver. A single or partial exercise of any right, power or remedy does not preclude any other or further exercising of that or any other right, power or remedy. A waiver is not valid or binding on the party granting the waiver unless it is made in writing.

## **Entire Agreement**

This Agreement contains the entire agreement between the parties relating to your use of the Image and supersedes any previous agreement concerning use of the Image between the parties, including any oral agreement.

## **Governing Law**

These Terms of Use will be interpreted, construed and governed by the law of Scotland. You submit to the non-exclusive jurisdiction of courts exercising jurisdiction there, in connection with matters concerning this agreement.