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## **1. TERMS OF USE OF THE SITE**

1.1. This website is owned and operated by Mostphotos AB, Munkgatan 20, SE-722 12, Västerås, SWEDEN (hereinafter referred to as "MOSTPHOTOS"). These TERMS OF USE OF THE SITE are in force between you as USER and/or SELLER and/or BUYER (as applicable) on one side and MOSTPHOTOS on the other side and governs the use of www.mostphotos.com (hereinafter referred to as "THE SITE"). Simply browsing without a membership nor selling nor buying and, if possible, contributing, constitutes USE. It is strongly recommended that you read and learn about the usage rights.

1.2. MOSTPHOTOS maintains THE SITE as a service to its visitors, subject to the following terms and conditions concerning the use of THE SITE. When you use THE SITE, you accept the TERMS OF USE OF THE SITE; if you do not agree to the TERMS OF USE OF THE SITE you may not use THE SITE. MOSTPHOTOS reserves the right to modify these TERMS OF USE OF THE SITE periodically without prior notice. You are cautioned to review the TERMS OF USE OF THE SITE posted on the web site periodically.

1.3. Any use of THE SITE shall be with respect to good manners. It is strictly forbidden to take racial, hateful, harassing or in any other way abusive actions against MOSTPHOTOS or anyone else, or make statements of such nature. MOSTPHOTOS holds the final decision as to what is to be considered as such actions and statements.

## **2. INTELLECTUAL PROPERTY**

2.1. All materials contained in THE SITE are the copyrighted property of MOSTPHOTOS or third-party licensors and may also be protected by other intellectual property laws. This may include laws relating to copyrights, trade marks, tradenames, Internet domain names and other rights of similar character. All intellectual property rights connected with the services provided by MOSTPHOTOS shall always stay with the provider of the service and not be used without its written consent. All types of infringements will be enforced. Any use of this material is strictly prohibited unless you have entered into a separate agreement with MOSTPHOTOS. The materials may only be used and copied for personal, non-commercial or educational purposes, provided that materials are neither modified in any way nor has any property notices been deleted. Materials may not be exploited in any other way, such as for creation of other similar works.

## **3. CURRENCY OF WEB SITE**

3.1. MOSTPHOTOS updates all information on regular basis. However, MOSTPHOTOS cannot guarantee or accept any responsibility or liability for any decision taken on the basis of information contained in or omitted from this site. MOSTPHOTOS reserves the right to revise, supplement or delete information, content, services or/and resources contained on THE SITE and to make all changes without prior notification to any past, current or prospective visitors.

## **4. NOTICE AND PROCEDURE FOR MAKING CLAIMS OF COPYRIGHT INFRINGEMENT**

4.1. MOSTPHOTOS is committed to comply with copyright laws and expects all who access our websites, including subscribers and SELLERS, to do the same. If you believe that your copyrights have been infringed, or if a notice of copyright infringement has been filed against you, you are advised to contact MOSTPHOTOS to report alleged infringements of their protected works appearing on MOSTPHOTOS web site.

4.2. To be effective, the notification must be in writing and include the following information:

1. A physical or electronic signature of a person authorized to act on behalf of the owner of the copyright interest;
2. Identification of the copyrighted work claimed to have been infringed, or if multiple copyrighted works at a single online site are covered by a single notification, a representative list of such works at that site;
3. Identification of the material that is claimed to be infringing or to be the subject of infringing activity and that is to be removed or access to which is to be disabled, and information reasonably sufficient to permit the service provider to locate the material;

4. Information reasonably sufficient to permit the service provider to contact the Complaining Party, such as an address, telephone number, and if available, an electronic mail address at which the complaining party may be contacted;
5. A statement by you that you were in good faith that use of the material that is the object of complaint was not authorized by the copyright owner, its agent, or the law; and
6. A statement that the information in the notification is accurate, and under penalty of perjury, that the Complaining Party is authorized to act on behalf of the owner of an exclusive right that is allegedly infringed.
7. Send the written communication to the following address:

MOSTPHOTOS AB  
Munkgatan 20  
SE-722 12 Västerås  
SWEDEN

## **5. GENERAL TERMS**

5.1. MOSTPHOTOS failure to insist upon or reinforce strict performance of any provision of these terms and conditions shall not be construed as a waiver of any provision or right. Neither the course of conduct between the parties nor trade practice shall act to modify any of these terms and conditions. MOSTPHOTOS may assign its rights and duties under this Agreement to any party at any time without notice to you.

## **6. TERM OF AGREEMENT**

6.1. This Agreement is effective until it is terminated by ceasing to use THE SITE for any purpose. The Agreement can also be terminated without prior notice from MOSTPHOTOS if at any time you fail to comply with any of its terms. Upon termination, you must immediately cease using THE SITE.

## **7. LIMITATION OF LIABILITY**

7.1. MOSTPHOTOS shall not be responsible or liable for any software, computer viruses or other harmful files or material downloaded or otherwise obtained through the use of this site. It is at your own discretion and risk and that you will be solely responsible for any damage to your computer system or loss of data that results from the download of any such material.

7.2. MOSTPHOTOS is a provider and not able to accept any responsibilities related to any rights clearances, fulfillments of model releases, relations between USERS, SELLERS and BUYERS or any other responsibilities or liabilities of any kind. MOSTPHOTOS is not capable of supervising uploaded content and cannot be held responsible for any infringements of any kind.

7.3. You expressly understand and agree that MOSTPHOTOS shall not be liable for any direct, indirect, incidental, special, consequential or exemplary damages, including but not limited to, damages for loss of profits, goodwill, use, data or other intangible losses resulting from: the use or the inability to use this site; the cost of procurement of substitute goods and services resulting from any goods, data, information or services purchased or obtained or messages received or transactions entered into through or from this site; unauthorized access to or alteration of your transmissions or data; statements or conduct of any third party on this site; or any other matter relating to this site.

## **8. LIMITED REPRESENTATIONS AND WARRANTIES**

8.1. THE SITE acts as an exchange of CONTENT between those who provide CONTENT to THE SITE and those who wish to use such CONTENT. MOSTPHOTOS grants no rights and makes no warranties regarding the use of names, people, trade marks, trade dress, patented or copyrighted designs or works of art or architecture or other forms of intellectual property represented in any CONTENT. MOSTPHOTOS made reasonable efforts to correctly categorize and keyword THE CONTENT and does not warrant the accuracy of such information.

8.2. THE SITE IS PROVIDED "AS IS" WITHOUT REPRESENTATION, WARRANTY OR CONDITION OF ANY KIND, EITHER EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO THE IMPLIED REPRESENTATIONS, WARRANTIES OR CONDITIONS OF MERCHANTABILITY, OR FITNESS FOR A PARTICULAR PURPOSE. MOSTPHOTOS DOES NOT REPRESENT OR WARRANT THAT THE SITE WILL MEET YOUR REQUIREMENTS OR THAT ITS USE WILL BE UNINTERRUPTED OR ERROR FREE. THE ENTIRE RISK AS TO THE QUALITY AND PERFORMANCE OF THE SITE IS WITH YOU. SHOULD THE SITE PROVE DEFECTIVE, YOU (AND NOT MOSTPHOTOS) ASSUME THE ENTIRE RISK AND/OR COST OF ALL NECESSARY CORRECTIONS.

#### **9. LIMITATION OF WARRANTIES AND LIABILITY**

9.1. IN NO EVENT SHALL MOSTPHOTOS OR ANY OF ITS AFFILIATES OR CONTENT PROVIDERS OR THEIR RESPECTIVE DIRECTORS, OFFICERS, EMPLOYEES, SHAREHOLDERS, PARTNERS OR AGENTS BE LIABLE FOR ANY INCIDENTAL, INDIRECT, PUNITIVE, EXEMPLARY, OR CONSEQUENTIAL DAMAGES WHATSOEVER (INCLUDING DAMAGES FOR LOSS OF PROFITS, INTERRUPTION, LOSS OF BUSINESS INFORMATION, OR ANY OTHER PECUNIARY LOSS) IN CONNECTION WITH ANY CLAIM, LOSS, DAMAGE, ACTION, SUIT OR OTHER PROCEEDING ARISING UNDER OR OUT OF THIS AGREEMENT, INCLUDING WITHOUT LIMITATION YOUR USE OF, RELIANCE UPON, ACCESS TO THE SITE, OR ANY PART THEREOF, OR ANY RIGHTS GRANTED TO YOU HEREUNDER, EVEN IF WE HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, WHETHER THE ACTION IS BASED ON CONTRACT, TORT (INCLUDING NEGLIGENCE), INFRINGEMENT OF INTELLECTUAL PROPERTY RIGHTS OR OTHERWISE.

## **10. MEMBERSHIP AGREEMENT**

10.1. This MEMBERSHIP AGREEMENT governs your membership with MOSTPHOTOS and provides access to membership areas of THE SITE. You may only access THE SITE on the condition that you accept the terms and conditions of the MEMBERSHIP AGREEMENT and TERMS OF USE OF THE SITE. This MEMBERSHIP AGREEMENT shall prevail in case of any inconsistency with the TERMS OF USE OF THE SITE.

10.2. MOSTPHOTOS reserves the right in its own discretion to change or modify this agreement in whole or in part at any time, any changes entering into effect immediately at the publication on THE SITE. A continued use of THE SITE after the changes constitutes a binding acceptance of the new terms and conditions. If at any time the terms and conditions of the MEMBERSHIP AGREEMENT are no longer acceptable to you, all use of the member area of THE SITE must be ceased.

10.3. MOSTPHOTOS can e-mail news and offers to members. After the account has been terminated MOSTPHOTOS can e-mail news and offers on two more occasions.

10.4. THE SITE contains or may contain content for example, but not limited to, information, photographs, illustrations, software, audio files, video files and animations, that are protected by copyright, trade mark or other proprietary rights of MOSTPHOTOS and its affiliates or other third parties. (Hereinafter referred to as "CONTENT" or "THE CONTENT") CONTENT may not be modified, transmitted, published, transferred or sold, performed, form derivates for other works, distributed, reproduced, reversely engineered, displayed, unless otherwise expressly permitted by this document or any other document in force at time of downloading of such content.

10.5. CONTENT is supplied to THE SITE by members and purchased on THE SITE by members entering into the MEMBERSHIP AGREEMENT. It is done on royalty free, non-exclusive terms, accepting THE CONTENT LICENSE AGREEMENT, providing that any CONTENT supplied to THE SITE is owned wholly by the member. Only after acceptance of this MEMBERSHIP AGREEMENT followed by CONTENT LICENSE AGREEMENT may you upload or download CONTENT.

10.6. You acknowledge and agree to keep confidential your Membership Name and Membership password selected by you and approved by MOSTPHOTOS. You must ensure that any password(s) allocated to you are kept secret and secure. Your Membership Name and Membership password are personal to you and may not be shared with, or transferred to, any other person or entity. You agree that you shall not disclose such Member Name or password to any other party without the written permission of MOSTPHOTOS.

10.7. You acknowledge and agree that you will be entirely responsible for any and all access or use of the membership portions of THE SITE that occurs under your Membership Name and such passwords, and that MOSTPHOTOS is authorized to accept your Membership Name and password as conclusive evidence that you have accessed or utilized the membership portions of THE SITE. You acknowledge that such password(s) are unique to you and that, although MOSTPHOTOS does have the ability to require password(s) to meet certain requirements (such as a minimum or maximum number of characters) and to reset such password(s), MOSTPHOTOS does not have the ability to access the password(s) themselves.

10.8. By entering into this agreement you accept the administration of your personal information, according to the Swedish Personal Data Act (PUL), such as, but not limited to, storage and treatment of information related to you in order to facilitate the administration of your membership with MOSTPHOTOS.

10.9. Member understands and agrees that MOSTPHOTOS or its authorized agents may collect and maintain the personal information entered by the member and/or USER, including but not limited to:

- First and last name
- Gender
- e-mail address
- Birth date

MOSTPHOTOS takes technical and organizational measures in order to protect all personal information. Information given is used for administrative purposes and will not be transferred for any uses not connected with the interests of MOSTPHOTOS.

## **11. RULES OF CONDUCT**

11.1. You may use THE SITE for lawful purposes only. You agree that when uploading or communicating via THE SITE you may not use THE SITE to post, transmit or otherwise distribute unlawful material.

11.2. You expressly agree and acknowledge abiding by the following:

- You shall not defame, abuse, harass, threaten or otherwise violate the legal rights of others or of any third party including MOSTPHOTOS.
- You shall not in any manner publish or post any inappropriate, defamatory, infringing, obscene, racist, terrorist, politically slanted, indecent or unlawful topic, name, material or information.
- You shall not contribute to destructive activities such as dissemination of viruses, spam or any other activity that might harm the services provided by MOSTPHOTOS in any way.
- You shall not upload or otherwise make available, files that contain images, photographs or other material protected by intellectual property laws, including, by way of example, and not as limitation, copyright or trade mark laws (or by rights of privacy or publicity) unless You own or control the rights thereto or have received all necessary consent to do the same.
- You shall not falsify or delete any copyright management information, such as author attributions, legal or other proper notices or proprietary designations or labels of the origin or other material contained in a file that is uploaded.
- You shall not download any file posted that You know, or reasonably should know, cannot be legally reproduced, displayed, performed, and/or distributed in such manner.
- You shall not use any CONTENT or other information obtained through THE SITE in a manner that is competitive with THE SITE or MOSTPHOTOS.

You acknowledge and agree that Forums are public and not private communications. You acknowledge and agree that the Third Party Content is not created or endorsed by MOSTPHOTOS. Further on, MOSTPHOTOS reserves the rights, for any reason and its sole discretion, to remove without notice or any communication, content or other material uploaded to THE SITE.

## **12. MANAGING CONTENT**

12.1. MOSTPHOTOS does not and cannot review all communication, CONTENT and material posted or uploaded to THE SITE and is not responsible for the content of this communication, materials or CONTENT.

MOSTPHOTOS reserve the right to delete, move or edit any of the above that it may determine, in its sole discretion, violates or may violate MEMBERSHIP AGREEMENT or any other terms or conditions.

## **13. CONFIDENTIAL INFORMATION**

13.1. In order to protect confidential information obtained by entering MEMBERSHIP AGREEMENT and the use of THE SITE, you agree that you shall not use or disclose any such CONFIDENTIAL INFORMATION, that means, for the purpose of this MEMBERSHIP AGREEMENT, any and all data, information, documents or materials relating to the business and management of MOSTPHOTOS, and its members or any other third party involved that is designated as confidential or ought reasonably be considered confidential, including but not limited to, their working model and operations, process, products, designs, pricing, promotions, research, finances, development, staff, clients, site belonging to others and other intellectual property.

#### **14. TERM AND TERMINATION**

14.1. This MEMBERSHIP AGREEMENT is effective until terminated. You may terminate this Agreement at any time, with or without cause, by emailing us or by giving us written notice of such termination acceptable by MOSTPHOTOS, which enables confirmation of your identity and your intention to terminate. MOSTPHOTOS may terminate this Agreement and a membership and/or block a member at any time, with or without cause, by giving you written notice of such termination, which is effective immediately including the availability of any feature, database or content, without prior notice or liability. You must continue to accept, confirm, and fulfill all orders that you may have placed prior to the effective date of termination.

#### **15. LIMITATION OF LIABILITY**

15.1. MOSTPHOTOS SHALL NOT BE LIABLE FOR ANY DAMAGES WHATSOEVER AND SHALL NOT BE LIABLE FOR ANY SPECIAL, INDIRECT, CONSEQUENTIAL, OR INCIDENTAL DAMAGES, OR DAMAGES FOR LOST PROFITS, LOSS OF REVENUE, OR LOSS OF USE, ARISING OUT OF OR RELATED TO THIS WEB SITE OR THE INFORMATION CONTAINED IN IT, WHETHER SUCH DAMAGES ARISE IN CONTRACT, NEGLIGENCE, TORT, UNDER STATUTE, IN EQUITY, AT LAW, OR OTHERWISE, EVEN IF MOSTPHOTOS HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

#### **16. AGE AND RESPONSIBILITY**

16.1. You assure that you have the legal capacity, or consent, to enter into an agreement, which creates legally binding obligations and will answer to use of the services provided by MOSTPHOTOS. You shall answer to all obligations that follow with a use of the services, including, but not limited to, misuse or unauthorized use of your account. In the event that person using the services does not hold the appropriate age for entering into legally binding agreements, it is expected that the person gains permission from its parent (or equivalent), regarding use of the service under the hereby established provisions. You agree to be responsible for all of your use of THE SITE (as well as for use of your Member Name and password(s) by others, including without limitation, minors living with you). You agree to supervise all usage by minors of THE SITE under your name or account.

#### **17. GENERAL**

17.1. You specifically agree and acknowledge that you have, in addition to the terms of this Agreement, reviewed the terms of the CONTENT LICENSE AGREEMENT, TERMS OF USE OF THE SITE, TERMS OF USE FOR SELLERS, TERMS OF USE FOR BUYERS and any other agreements which may be incorporated by reference therein, and to the extent of their incorporation in this Agreement you agree to be bound by them.

17.2. MOSTPHOTOS failure to insist upon or enforce strict performance of any provision of this Agreement shall not be construed as a waiver of any provision or right.

#### **18. ACKNOWLEDGEMENT**

18.1. You acknowledge that you have read and understood the terms of this Agreement and that you accept to be bound by its provisions. You further agree that it is the complete and exclusive statement between you and MOSTPHOTOS, which supersedes any proposal or prior agreement and any other communication between you and MOSTPHOTOS relating to the subject of this MEMBERSHIP AGREEMENT.

## **19. TERMS OF USE FOR PHOTO SELLERS**

19.1. This agreement regulates the relationship between MOSTPHOTOS and the provider of CONTENT, registered through a membership, to the service made available through the membership (hereinafter referred to as "SELLER"). By completing the registration procedure, the subject is considered as being a SELLER and must abide to the following rules as accepting this agreement in its entirety. By entering into this agreement SELLER is also bound by all other applicable provisions in TERMS OF USE OF THE SITE, MEMBERSHIP AGREEMENT and CONTENT LICENSE AGREEMENT.

19.2. The SELLER shall provide MOSTPHOTOS with current, true, updated and complete information regarding name and contact information in the registration procedure. More than one account by one SELLER is not permitted. Any SELLER found registering more than one account or creating false accounts to improve contest winning odds, or for any other reason, may have its membership terminated without prior warning. The SELLER must also keep its information current, true, updated and complete throughout the duration of the membership. Any amendments to this agreement will be published on [www.mostphotos.com](http://www.mostphotos.com) and communicated via e-mail to the SELLER.

19.3. The term "CONTENT" in this agreement covers all types of graphic presentations, regardless of how produced, reproduced and regardless of the technique, for purpose of this agreement and the services provided by MOSTPHOTOS.

19.4. By registering for membership, SELLER is allowed access to MOSTPHOTOS services regarding uploading and storage of CONTENTS at MOSTPHOTOS, for making available and marketing of CONTENT to a third party.

## **20. OBLIGATIONS**

20.1. Every SELLER is wholly and fully responsible for all material that the SELLER transfers to, uploads or makes available by means of the service and the SELLER's account or in any other way.

20.2. It is strictly forbidden to make available any CONTENT of a pornographic, racial, hateful, harassing or in any other way of abusive nature. MOSTPHOTOS holds the final decision as to what is to be considered as such material and its decision is final and cannot be appealed. Every kind of making available of such CONTENTS may result in legal enforcement and the abolition of all rights connected with the services provided by MOSTPHOTOS, including banning for future membership and use of its services.

20.3. SELLER is not allowed to, under any circumstances; make available CONTENT to which SELLER does not hold all rights. All CONTENT may be regarded as a copyright protected work, as well as a photographic work. Under both these regimes, any potential rightful owner of the right must have given its consent to its making available on MOSTPHOTOS. This also involves contributors whose contributions are visible in the CONTENT without taking the CONTENT themselves. In addition, reproductions of actual objects visible in the CONTENT may require consent of its right holders. The SELLER is solely responsible for acquiring every such consent necessary prior to any making available of CONTENTS of such nature.

20.4. It is not allowed to publish CONTENT, which SELLER does not hold the copyright for or has gained consent for, uploads CONTENTS of an offensive nature (according to MOSTPHOTOS), posts contributions on forums that may infringe any intellectual property rights, uploads material that may harm the function of MOSTPHOTOS, erases material without permission, downloads CONTENT that may be infringing copyright or in any other way uses information from MOSTPHOTOS for the benefit of other purposes. By entering into this agreement, SELLER accepts uses that do not violate or harm the rights of MOSTPHOTOS or its users.

20.5. SELLER is not allowed to, in any way, act in a destructive manner by means of unmotivated grading, offensive criticism, offensive or wrongful comments or in any other way disseminate offensive contributions. SELLER is not allowed to disseminate marketing, spam or unsolicited material to members of MOSTPHOTOS.

## **21. MODEL RELEASES**

21.1. All CONTENTS that a SELLER uploads portraying identifiable individual or individuals must be followed by a "Model Release" or other necessary clearance, consisting of a signed document where the subject/subjects represented in the CONTENT gives its/their consent for the photography to be used and sold. Each and every one being identifiable in CONTENT is to be considered a model and each CONTENT that contains a person or persons whose face or body is visible must be followed by a model release. The same requirement may be applicable for certain types of property. If you do not have a model release for CONTENT described as above, we urge you not to upload the CONTENT.

21.2. MOSTPHOTOS is not able to accept any responsibility or obligations of any form regarding SELLERS model releases, copyright infringements or other wrong doings of any kind.

## **22. SECURITY AND DISCLAIMER**

22.1. MOSTPHOTOS reserve the right to exclude and remove CONTENT(S) and also modify contributions in forums and critiques of CONTENT(S).

22.2. MOSTPHOTOS is not able to accept any responsibility for any SELLERS tax-declarations regarding CONTENT(S) sold or any other form of remuneration connected to services provided by MOSTPHOTOS

22.3. No taxes or fees of any kind connected with the use of the services on THE SITE are to be covered by MOSTPHOTOS.

22.4. MOSTPHOTOS is acting at the fullest of its abilities to avoid data getting lost. In the eventuality of system failure and possible non-reparable loss of digital CONTENT on SELLERS account, MOSTPHOTOS is not able to accept any liability for any loss or damage resulting from such system failure. SELLER is obligated to keep back-up copies of material forwarded to MOSTPHOTOS. In the event of system failure, SELLER will be provided the opportunity to upload any material being affected by such loss of data.

22.5. MOSTPHOTOS is acting at the fullest of its abilities to keep the provided service free from destructive activities, trespassing and criminal activities. In the event of manipulation of a SELLERS account caused by any third party, MOSTPHOTOS cannot accept any responsibility related to losses of any kind. MOSTPHOTOS recommends all its SELLERS to collect any funds from its account on a regular basis.

22.6. By entering into this agreement SELLER accepts that it may not hold MOSTPHOTOS responsible for any damages, losses, costs, infringements of intellectual property or any other occurrence of any kind, or on any other ground.

## **23. INTELLECTUAL PROPERTY**

23.1. The CONTENTS displayed as previews do not hold any kind of markings. The resolution of these CONTENTS is low and SELLER is aware that these CONTENTS may be downloaded by other SELLERS and visitors. If it is brought to the attention of SELLER that CONTENT is being used without prior consent, SELLER may under current laws enforce such misuse. MOSTPHOTOS can however not in any way participate or contribute with any kind of support in the event of infringement.

23.2. The SELLER agrees to the terms of use in the CONTENT LICENSE AGREEMENT for NON EXCLUSIVE and ROYALTY FREE CONTENT being the object for the providing of services of MOSTPHOTOS. The copyright stays with the SELLER unless otherwise negotiated between the parties by means of written agreements. All CONTENTS available through MOSTPHOTOS are protected by international and national copyright laws and all forms of use of CONTENT(S) must be executed under the provisions given in the respective license. No sale, reproduction nor modification may be executed without the consent of SELLER. MOSTPHOTOS makes available primarily user generated content and all uses must abide to this agreement, the CONTENT LICENSE AGREEMENT and the TERMS OF USE OF THE SITE. All deviations from above must be followed by a written permission from the photographer or rightholder to the CONTENT.

## **24. CONTENTS OFFERED AS ROYALTY FREE**

24.1. CONTENT offered as ROYALTY FREE shall be sold for an established amount of money and with a few restrictions as stipulated in the CONTENT LICENSE AGREEMENT. CONTENT that is advertised as ROYALTY FREE can be sold many times to different buyers. All ROYALTY FREE CONTENTS are sold to one fixed price decided by Mostphotos. ROYALTY FREE CONTENTS can be advertised and sold on other places simultaneously as they are advertised and sold at MOSTPHOTOS. If you are unsure whether the photographer's copyrights are violated, please contact the photographer and ask before uploading the CONTENT. All deviations from above must be followed by a written permission from the photographer.

24.2. SELLER transfers the right of setting the price to MOSTPHOTOS for CONTENTS in the ROYALTY FREE category.

24.3. ROYALTY FREE NON EXCLUSIVE CONTENT may simultaneously, be offered by the SELLER, for sale in any other circumstance and in any other way.

## **25. SUBSCRIPTION OPTION**

25.1. By accepting this agreement SELLER agrees that all uploaded photos will automatically be included in the subscription option that is available to BUYERS on THE SITE. SELLER can choose to not include his/her photos in the subscription features through the settings on their membership page.

25.2. Seller receives commission from the different types of subscriptions according to the following calculation: Subscription price / number of images the buyer has bought during the subscription month \* 50% commission.

## **26. DURATION AND TERMINATION**

26.1. This agreement is to be considered to be binding and in force for the duration of the membership.

26.2. This agreement is no longer binding on any party in the event of a membership being terminated, regardless of the reasons there for.

26.3. Termination of agreement and membership may be executed by either party and is valid and executed on the day of communication by either party of this agreement.

## **27. COMMISSION AND PAYMENT**

27.1. MOSTPHOTOS will receive a commission of up to 50% of the price on every CONTENT that is sold by usage of the provided service or sale in connection therewith.

27.2. The price is the price given at the point of sale.

27.3. If payment on SELLERS'S account is not claimed prior to the closing down of the account and termination of membership, for any reason, SELLER may not forward any claims regarding remuneration to MOSTPHOTOS. Any outstanding claims from MOSTPHOTOS on SELLER are NOT terminated by the termination of this agreement.

## **28. TERMS OF USE FOR PHOTO BUYERS**

28.1. This following governs the TERMS OF USE FOR PHOTO BUYERS making use of the service provided by MOSTPHOTOS at [www.mostphotos.com](http://www.mostphotos.com), as a buyer of CONTENT (hereinafter referred to as BUYER).

28.2. The use of THE SITE is governed by TERMS OF USE OF THE SITE, MEMBERSHIP AGREEMENT, TERMS OF USE FOR PHOTO BUYERS, TERMS OF USE FOR PHOTO SELLERS and CONTENT LICENSE AGREEMENT.

28.3. By completing a purchase on THE SITE, THE BUYER becomes a member of MOSTPHOTOS on THE SITE and is considered a part of this agreement and the CONTENT LICENSE AGREEMENT and accepts the terms in their entirety and without limitations.

28.4. BUYER that purchases and downloads CONTENT understands and accepts all conditions as stipulated, including any party that acts on behalf of BUYER or employer.

28.5. CONTENT may only be purchased in accordance with CONTENT LICENSE AGREEMENT as NON-EXCLUSIVE and ROYALTY FREE. The copyright stays with the SELLER unless otherwise negotiated between the parties by means of written agreements.

28.6. If BUYER is unsure if violating the rightholder's copyrights or this agreement, please contact the rightholder and ask before using the CONTENT. All deviations from above must be followed by a written permission from the rightholder.

## **29. SUBSCRIPTION OPTION**

29.1. As a buyer you can choose to subscribe on photos on THE SITE. For more information please visit [http://www.mostphotos.com/buying\\_images\\_subscription](http://www.mostphotos.com/buying_images_subscription). By purchasing the subscription, the e-commerce system of MOSTPHOTOS will automatically charge your bank account every month continually. You may review your subscription at any time and cancel your subscription through the settings on your membership page. Once you have cancelled your subscription your bank account will no longer be charged.

29.2. The subscription option is for serious members who have the intentions to use THE CONTENT in serious projects. You may not download CONTENT for fun or in any other abusive way.

## **30. DISCLAIMER**

30.1. MOSTPHOTOS provides a service, which facilitates a market place for the exhibition, selling of and purchase of CONTENT, made available by registered members on THE SITE governed and bound by MEMBERSHIP AGREEMENT (here after referred to as "SELLER"). The term "CONTENT" in this agreement covers all types of graphic presentations, regardless of how produced, reproduced and regardless of the technique, for purpose of this agreement and the services provided by MOSTPHOTOS.

30.2. MOSTPHOTOS does not accept any responsibilities connected to the relationship between SELLER and BUYER. MOSTPHOTOS does not accept neither transactions of any kind between SELLER and BUYER nor establishing any consequences of any kind for MOSTPHOTOS. MOSTPHOTOS does not accept any responsibilities relating to, but not limited to, CONTENT offered for sale, its members other material, activities or standpoints or any transactions that might occur between SELLER and BUYER.

30.3. No taxes nor fees connected with the use of the services on THE SITE are to be covered by MOSTPHOTOS.

30.4. All CONTENT on MOSTPHOTOS is offered "as is".

30.5. In the event of a manipulation by a third party, MOSTPHOTOS cannot accept any responsibility related to losses of any kind.

30.6. MOSTPHOTOS cannot be held responsible for CONTENT, which does not meet any requirements or expectations of any kind.

### **31. DURATION AND TERMINATION**

31.1. This agreement shall be considered in effect, from acceptance of its terms by BUYER until terminated by either party.

31.2. MOSTPHOTOS may terminate this agreement in the event of BUYER being in breach of the provisions of this agreement and, moreover, for any reason, without having to state its reasons therefore.

### **32. CONTENT LICENSE AGREEMENT**

32.1. This Agreement governs the terms by which BUYERS using the services provided by MOSTPHOTOS obtain a licensed right to use stock photographic, illustrations, animations, video, footage, and other media content (hereinafter referred to as "CONTENT" or "THE CONTENT") provided by SELLERS on MOSTPHOTOS by use of THE SITE. This CONTENT LICENSE AGREEMENT is connected with the TERMS OF USE OF THE SITE, the TERMS OF USE FOR PHOTO BUYERS, the TERMS OF USE FOR PHOTO SELLERS and to the MEMBERSHIP AGREEMENT that users of THE SITE have previously entered into. In the event of any inconsistency between this Agreement, the MEMBERSHIP AGREEMENT and the TERMS OF USE OF THE SITE, the terms and conditions of this Agreement shall apply.

### **33. BACKGROUND OF AGREEMENT**

33.1. This agreement applies between SELLER(s) and/or BUYER(s) making use of the services provided by MOSTPHOTOS, entering into agreement(s) regarding CONTENT. It contains vital provisions that affect rights and obligations and provide the legal framework governing use of THE CONTENT.

33.2. Your agreement to comply with and be bound by these terms and conditions is deemed to occur upon your first use of MOSTPHOTOS. If you do not agree to be bound by these terms and conditions, you should stop using MOSTPHOTOS immediately.

33.3. By accepting this Agreement, whether you accept this Agreement for yourself or on behalf of your employer or the entity that is identified as the member account holder, you agree to be bound by its provisions.

33.4. In this Agreement: (i) "you" or the "SELLER" or "BUYER" means you or, if you are accepting on behalf of your employer or member account entity, then "you" means that employer or entity and affiliates; (ii) MOSTPHOTOS, is the operator THE SITE; and (iii) "CONTENT" means any photographic image, illustration, animation, Flash file, film or video footage, visual representation generated optically, electronically, digitally or by any other means or in any media or other material that you are downloading from THE SITE, together with any accompanying material.

33.5. This Agreement allows BUYER and SELLER to enter into an agreement containing our license terms for royalty-free, non-exclusive CONTENT provided by SELLERS on MOSTPHOTOS.

33.6. The SELLER will be held responsible for CONTENT it provides

- To which SELLER is not right holder and CONTENT that is not cleared.
- To which a model-release, of any kind required, is not completed and not following CONTENT provided.

### **34. ROYALTY FREE STANDARD LICENSE TERMS**

34.1. You are granted a non-exclusive, non-transferable worldwide license to use THE CONTENT for the Permitted Uses (as defined below). Unless the activity or use is a Permitted Use, you are not allowed to do it. All other rights in and to THE CONTENT, including, without limitation, all copyright and other intellectual property rights relating to THE CONTENT, are retained by the supplier of THE CONTENT, THE SELLER. That is under the strict condition that THE SELLER is the right owner to THE CONTENT.

### **35. PERMITTED ROYALTY FREE STANDARD LICENSE USES**

35.1. You may only use THE CONTENT for those advertising, promotional and other specified purposes which are Permitted Uses (as defined below). You may use the image in countless editions, infinitely larger prints and also unlimited in your future projects. For clarity, you may not use THE CONTENT in products for resale, license or other distribution. For example, you cannot superficially modify THE CONTENT, print it on a t-shirt, mug, poster, template or other item, and sell it to others for consumption, reproduction or re-sale. Any use of THE CONTENT that is not a Permitted Use shall constitute infringement of copyright.

35.2. We urge you to apply common sense when using CONTENT consisting of images of human models. Don't use the image of a model if you wouldn't want your own face to be used in a particular way. The usage should not cause any embarrassment or inconvenience.

35.3. Permitted Uses. Subject to the restrictions described under Prohibited Uses below, the following are "Permitted Uses" of CONTENT:

1. advertising and promotional projects, including printed materials, product packaging, presentations, film and video presentations, commercials, catalogues, brochures, promotional greeting cards and promotional postcards (i.e. not for resale or license);
2. entertainment applications, such as books and book covers, magazines, newspapers, editorials, newsletters, and video, broadcast and theatrical presentations;
3. on-line or electronic publications, including web pages to a maximum of 800 x 600 pixels, but excluding use in web-based or desktop prototyping or page building tools and applications;
4. prints, posters (i.e. a hardcopy) and other reproductions for personal use or promotional purposes specified in (1) above, but not for resale, license or other distribution; and
5. any other uses approved in writing by MOSTPHOTOS.

35.4. If there is any doubt that a proposed use is a Permitted Use, you should contact MOSTPHOTOS for guidance.

### **36. ROYALTY FREE STANDARD LICENSE PROHIBITIONS**

36.1. Prohibited Uses. You may not do anything with THE CONTENT that is not expressly permitted in the preceding section or permitted by an Extended License. For greater certainty the following, but not exhaustive, list are "Prohibited Uses" and you may not:

1. include THE CONTENT on a hard drive/DVD/CD or other storage device and sell, transfer or redistribute THE CONTENT or part of THE CONTENT or give it away for free;
2. post a copy of THE CONTENT on a network server or web server for usage by others outside your organization;
3. manipulate THE CONTENT so that it is only partly recognizable and then sell or try to distribute the manipulated content for free;
4. use THE CONTENT in design template applications intended for resale, whether on-line or not, including, without limitation, website templates, Flash templates, business card templates, electronic greeting card templates, and brochure design templates;
5. use or display THE CONTENT on websites or other venues designed to induce or involving the sale, license or other distribution of "on demand" products, including postcards, mugs, t-shirts, posters and other items (this includes custom designed websites, as well as sites such as [www.cafepress.com](http://www.cafepress.com));
6. use THE CONTENT in any posters (printed on paper, canvas or any other media) or other items for resale, license or other distribution for profit;
7. use any of THE CONTENT as part of a trade mark, design mark, trade name, business name, service mark, or logo. (Non-exclusive CONTENT should not be used for the mentioned purposes because they need to be exclusive);
8. incorporate THE CONTENT in any product that results in a re-distribution or re-use of THE CONTENT (such as electronic greeting card web sites, web templates and the like) or is otherwise made available in a manner such that a person can extract or access or reproduce THE CONTENT as an electronic file;

9. remove any notice of copyright, trade mark or other proprietary right from any place where it is on or embedded in THE CONTENT;
10. sub-license, re-sell, rent, lend, assign, gift or otherwise transfer or distribute THE CONTENT or the rights granted under this Agreement;
11. use or display THE CONTENT in an electronic format that enables it to be downloaded or distributed via mobile devices or shared in any peer-to-peer or similar file sharing arrangement;
12. use THE CONTENT for editorial purposes without including the following credit adjacent to THE CONTENT: MOSTPHOTOS/artist/Member Name;
13. You MAY digitally edit the CONTENT but we urge you to apply common sense. Example; You may not: use CONTENT consisting of images of human models edited, used and/or displayed with:
  - text balloons,
  - texts insinuating the model makes a statement or saying something,
  - a name edited into the image supposed to be identifying the model,
  - applications using the image as an avatar or as an interactive virtual person or entity,
  - a label with the name of someone else, pretending the model is someone else;
14. use CONTENT consisting of human models in a way that is pornographic, unlawful or in any way defamatory. Some examples of sensitive subject that are likely to be insulting or unflattering to any person reflected in the images include but are not limited to mental and physical health issues, crime, substance abuse, physical or mental abuse, social issues and sexual activity or preferences.

### **37. ROYALTY FREE EXTENDED LICENSE**

37.1. In addition to the permitted royalty free standard license uses above the royalty free extended license grants you the right to print the CONTENT on products for resale, such as T-shirts, postcards, mugs etc. Besides the royalty free standard license prohibitions above you cannot print the image on more than one thousand (1000) products.

### **38. ROYALTY FREE UNLIMITED LICENSE**

38.1. In addition to the permitted royalty free standard license uses above the royalty free unlimited license grants you the right to print the CONTENT on products for resale, such as T-shirts, postcards, mugs etc on countless number of products. Furthermore the royalty free unlimited license is subject to the royalty free standard license prohibitions above.

### **39. EDITORIAL IMAGES**

39.1. Editorial images are images that the photographer does not have a model release on. These images may not be used for commercial purposes but can for example be used in news contexts. Editorial images are not exclusive and can be sold to many others as well. You may use the image many times in countless editions, infinitely larger prints and also unlimited in your future projects. In addition to this the editorial images are subject to the permitted royalty free standard license uses and the royalty free standard license prohibitions.

### **40. TERM OF AGREEMENT**

40.1. This Agreement is effective until it is terminated. You can terminate this Agreement by destroying THE CONTENT along with any copies or archives of it or accompanying materials (if applicable), and ceasing to use THE CONTENT for any purpose. The Agreement can also be terminated without prior notice from MOSTPHOTOS if at any time you fail to comply with any of its terms. Upon termination, you must immediately (i) cease using THE CONTENT and for any purpose; (ii) destroy or delete all copies and archives of THE CONTENT or accompanying materials; and (iii) if requested, confirm to MOSTPHOTOS that you have complied with these requirements.

40.2. MOSTPHOTOS reserves the right to elect at a later date to revoke or amend the license granted by this Agreement and replace THE CONTENT with an alternative for any reason. Upon notice, sent to the address or contact information provided by you for your member account, or such other address as you may advise us in writing to use, from time to time, of such replacement, the license for the replaced CONTENT immediately terminates for any products that do not already exist, and this license automatically applies to the replacement CONTENT. You agree not to use the replaced CONTENT for future products and to take all necessary steps to discontinue use of the replaced CONTENT, in products that already exist.

#### **41. LIMITED REPRESENTATIONS AND WARRANTIES**

41.1. MOSTPHOTOS grants no rights and makes no warranties regarding the use of names, people, trade marks, trade dress, patented or copyrighted designs or works of art or architecture or other forms of intellectual property represented in any CONTENT. MOSTPHOTOS made reasonable efforts to correctly categorize and keyword THE CONTENT and does not warrant the accuracy of such information.

41.2. THE CONTENT IS PROVIDED "AS IS" WITHOUT REPRESENTATION, WARRANTY OR CONDITION OF ANY KIND, EITHER EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO THE IMPLIED REPRESENTATIONS, WARRANTIES OR CONDITIONS OF MERCHANTABILITY, OR FITNESS FOR A PARTICULAR PURPOSE. MOSTPHOTOS DOES NOT REPRESENT OR WARRANT THAT THE CONTENT WILL MEET YOUR REQUIREMENTS OR THAT ITS USE WILL BE UNINTERRUPTED OR ERROR FREE. THE ENTIRE RISK AS TO THE QUALITY AND PERFORMANCE OF THE CONTENT IS WITH YOU. SHOULD THE CONTENT PROVE DEFECTIVE, YOU (AND NOT MOSTPHOTOS) ASSUME THE ENTIRE RISK AND/OR COST OF ALL NECESSARY CORRECTIONS. IN PARTICULAR AND WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, IF YOU ARE DOWNLOADING CONTENT THAT IS IN A FLASH FORMAT OR FILE (WHETHER .SWF OR OTHERWISE) MOSTPHOTOS MAKES NO REPRESENTATION OR WARRANTY RESPECTING SUCH CONTENT WHATSOEVER, WHETHER AS TO OWNERSHIP, TECHNICAL OR LEGAL COMPLIANCE, OR OTHERWISE.

#### **42. LIMITATIONS OF WARRANTIES AND LIABILITY**

42.1. IN NO EVENT SHALL MOSTPHOTOS OR ANY OF ITS AFFILIATES OR CONTENT PROVIDERS OR THEIR RESPECTIVE DIRECTORS, OFFICERS, EMPLOYEES, SHAREHOLDERS, PARTNERS OR AGENTS BE LIABLE FOR ANY INCIDENTAL, INDIRECT, PUNITIVE, EXEMPLARY, OR CONSEQUENTIAL DAMAGES WHATSOEVER (INCLUDING DAMAGES FOR LOSS OF PROFITS, INTERRUPTION, LOSS OF BUSINESS INFORMATION, OR ANY OTHER PECUNIARY LOSS) IN CONNECTION WITH ANY CLAIM, LOSS, DAMAGE, ACTION, SUIT OR OTHER PROCEEDING ARISING UNDER OR OUT OF THIS AGREEMENT, INCLUDING WITHOUT LIMITATION YOUR USE OF, RELIANCE UPON, ACCESS TO, OR EXPLOITATION OF THE CONTENT, OR ANY PART THEREOF, OR ANY RIGHTS GRANTED TO YOU HEREUNDER, EVEN IF WE HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, WHETHER THE ACTION IS BASED ON CONTRACT, TORT (INCLUDING NEGLIGENCE), INFRINGEMENT OF INTELLECTUAL PROPERTY RIGHTS OR OTHERWISE.

42.2. IN ANY EVENT, THE TOTAL MAXIMUM AGGREGATE LIABILITY OF MOSTPHOTOS UNDER THIS AGREEMENT, THE LICENSE PROVIDED HEREUNDER, OR THE USE OR EXPLOITATION OF ANY OR ALL OF THE CONTENT IN ANY MANNER WHATSOEVER SHALL BE LIMITED TO THE FEES ACTUALLY PAID BY YOU TO MOSTPHOTOS UNDER THIS AGREEMENT IN RESPECT OF THE USE OF THE RELEVANT CONTENT.

#### **43. GENERAL PROVISIONS**

43.1. MOSTPHOTOS failure to insist upon or enforce strict performance of any term of this Agreement shall not be construed as a waiver of any term or right.

43.2. This Agreement is personal to BUYER and/or SELLER and is not assignable without MOSTPHOTOS prior written consent. MOSTPHOTOS may assign this Agreement without the consent of the SELLER and/or USER to any other party as long as such party agrees to be bound by its terms.

#### **44. ACKNOWLEDGEMENT**

44.1. You acknowledge that you have read this Agreement, understand it, and had an opportunity to seek independent legal advice prior to agreeing to it. In consideration of MOSTPHOTOS agreeing to provide THE CONTENT, you agree to be bound by the terms and conditions of this Agreement. You further agree that it is the complete and exclusive statement of the Agreement between you and MOSTPHOTOS, which supersedes any proposal or prior agreement, oral or written, and any other communication between you and MOSTPHOTOS relating to the subject of this agreement.

#### 45. DISPUTE RESOLUTION AND CHOICE OF LAW

45.1. All Agreements will be governed under the laws of Sweden. This Agreement will not be governed by the United Nations Convention on Contracts for the International Sale of Goods, the application of which is expressly excluded.

45.2. Any and all disputes arising out of, under or in connection with this Agreement, including without limitation, its validity, interpretation, performance and breach, shall be finally settled under the Rules of Arbitration of the International Chamber of Commerce by a single Arbitrator appointed in accordance with such rules. The arbitration shall take place in Stockholm, Sweden, and shall be conducted in the Swedish language.

45.3. If all or part of any term of this Agreement is wholly or partially unenforceable, the parties or, in the event the parties are unable to agree, an Arbitrator of the International Chamber of Commerce, shall put in place of such whole or part term an enforceable term or terms, that as nearly as possible reflects the terms of the unenforceable whole or part term.