

# Terms of Use

## General

THIS IS A LEGAL AND BINDING AGREEMENT BETWEEN YOU AND DIJITALIMAJ, RELATING TO THE USE OF DIJITALIMAJ'S WEB SITE, DOWNLOADING OF IMAGE FILES FROM SUCH WEB SITE, AND THE LICENSING OF IMAGES BY DIJITALIMAJ TO YOU.

When you download image files from this web site, or receive image files from Dijitalimaj through any other means, or receive images from Dijitalimaj via film or any other medium, you agree to and accept all the terms of this Agreement. If your actions are on behalf of your employer or another third party, then all the terms and conditions of this Agreement apply to you and your employer or other third party.

Images are not to be used in any manner without expressed permission from Dijitalimaj. All images are licensed under the terms and conditions as specified at time of purchase. No image licenses are valid until Dijitalimaj has received payment in full. Image usage without prior payment and Dijitalimaj's express written authorization is a copyright violation. All rights not specifically granted are retained by Dijitalimaj.

Images are not sold; their use is licensed and they remain the sole and exclusive property of Dijitalimaj and the individual photographer, artist or illustrator.

Images or image files cannot be distributed or re-sold independent from a product and may not be used in a manner allowing permanent storage or re-use by third parties. No licenses may be sublicensed, transferred or assigned. You agree not to make, authorize, or permit any use of any image except as specifically set forth here and on the invoice you will receive.

Failure to comply with any of the provisions of this Agreement may result in immediate revocation of the license granted.

## Copyright Protection

All images licensed by Dijitalimaj, whether Rights-managed or Royalty-free, are copyrighted and protected by the intellectual property laws of the Republic of Turkey.

You agree to provide each reproduction of an image with a credit line: ©photographer's name/Dijitalimaj, Inc. You agree to provide statutory copyright protection of the image by timely registering the work you created or the work in which the image appears, and such copyright shall be immediately assigned to Dijitalimaj or the photographer, artist or illustrator, upon request and without charge. Dijitalimaj has the exclusive right to pursue any copyright infringement without regard to the rights granted. In the event that Dijitalimaj pursues a copyright infringement and receives an award or settlement, its liability to the licensee shall not exceed that portion of the license, if any, paid for conflicting exclusivity.

## License Granted for Rights-managed Images

All licenses granted by Dijitalimaj for the use of Rights-managed images are limited to a period of one year on a non-exclusive basis, for a geographical distribution limited to the country in which the license is granted, unless otherwise specified at time of purchase and specified on your invoice. All rights specifically granted, as specified on your invoice, including but not limited to derivative uses, electronic, CD-ROM, on-line, or promotional rights, are reserved for use and disposition by Dijitalimaj without any limitation whatsoever.

## License Granted for Royalty-free Images

All licenses granted by Dijitalimaj for the use of Royalty-free images are on a worldwide, non-exclusive and perpetual basis, subject to the terms, conditions, restrictions and limitations as set forth in this Agreement, unless otherwise specified at time of purchase and specified on your invoice.

Royalty-free images may be shared via storage in an image library accessible by no more than ten (10) specific individuals. Access may only occur individually. Multiple simultaneous accesses is not permitted by this license agreement.

If you obtain Royalty-free images from Dijitalimaj via a CD, you agree to abide by the END USER LICENSE AGREEMENT which will be or has been made available to you along with the delivery of the CD.

## License Granted for Comping Images

You are entitled to download comping image files, whether Royalty-free or Rights-managed images, from Dijitalimaj's website, subject to the terms of this Agreement. These image files are intended for viewing of the image in more detail and for placement purposes only in unfinished products. Such permission to use comping files is not to be construed to be a grant of a license for usage.

## **Payment Terms**

No licenses are granted until full payment of our invoice is received. Payment of Dijitalimaj's invoices must be received on the sooner of thirty (30) days of its date net, without any discounts, or prior to the publication of any image. You agree to pay Dijitalimaj a service charge of two (2) percent per month on any unpaid balance after this time period or the use of the image.

Any disputes concerning the invoice must be submitted in writing, within five (5) business days of the invoice date, or you shall be deemed to have accepted the invoice as issued.

## **Cancellation Policy for Rights-Managed Images**

By issuing a license for a Rights-managed image, Dijitalimaj has reserved certain rights for your use. If you decide not to utilize these rights, you must notify us in writing within five (5) business days of the invoice date to be eligible for a complete refund. After this five (5) business day period, and up to thirty (30) days from the invoice date, you will be subject to a cancellation fee equal to fifty (50) percent of the invoice amount. Thirty (30) days from the date of the invoice, there will be no refunds issued and the invoiced amount must be paid in full. Credits due for cancellations will first be applied to any unpaid balance before refunds are issued.

An additional minimum service fee of US\$100 will be charged if you have downloaded any hi-resolution image file, whether or not you have been invoiced for the license at the time Dijitalimaj receives notification of your cancellation. Other service fees, such as for CD delivery, will be in addition to this minimum service fee.

## **Cancellation Policy for Royalty-Free Images**

Due to the liberal nature of the licenses for Royalty-free images, all licenses are final; no refunds or credits will be allowed. The successful completion of the download by you of any Royalty-free image is considered to be the complete fulfillment of Dijitalimaj's obligations.

## **Unauthorized Use of Images**

In the event that 1) you utilize any image, whether Rights-managed or Royalty-free, without or prior to the granting of a license, or 2) you utilize any Rights-managed image for any use other than that indicated on the invoice, including but not limited to the number of uses, the publications utilized, or the size or reproduction, Dijitalimaj reserves the right to seek damages through legal channels unless you agree to reimburse Dijitalimaj as follows. Since it is difficult to determine damages resulting from unauthorized usage, Dijitalimaj agrees to forgo our right to sue you for copyright infringement on the condition that you agree to pay, as liquidated damages:

- a sum equal to four (2) times the normal price we would have charged for such use of a Rights-managed image, or
- a sum equal to ten (5) times the normal price we would have charged for such use of a Royalty-free image.

Dijitalimaj will calculate a usage fee by relying in good faith on the information you provide and will issue an invoice detailing the license granted.

If you fail to make the payment as outlined above within ten (10) days of our billing such fee, this liquidated damage provision shall be void and we reserve the right to sue for copyright infringement plus attorneys' fees and all associated costs.

## **Releases, Permissions, and Sensitive Subject Usage**

Unless our invoice specifically indicates an image has a model or property release, it is not to be construed that such a release exists.

Dijitalimaj gives no rights or warranties with respect to the use of names, trademarks, logos, registered or copyrighted designs or works of art depicted in any image, and you must satisfy yourself that all necessary rights, consents or permissions as may be required for reproduction are secured.

You agree not to use any image in a defamatory manner or context, either by changing it or by any accompanying text. Advance written permission is required for use of images that depict any illegal goods or activities, or any sensitive subjects, including but not limited to, contraception, matters of a sexual nature, substance abuse, domestic violence, alcohol, tobacco, AIDS, cancer, acts of violence and other serious physical or mental ailments.

You agree to hold Dijitalimaj harmless from any and all claims and expenses arising from your use of an image. If you utilize an image prior to paying our invoice, or without our expressed permission in regard to sensitive subjects, we are relieved of any claim concerning the image's use or publication because it was published without permission. Dijitalimaj

reserves the right not to permit reproduction of an image for any reason whatsoever. Under all circumstances, our liability is strictly limited to the invoice price for the use of the images involved.

### **Delivery and Return of Film**

If you obtained the images from Dijitalimaj in the form of film, whether they are originals or duplicates, you may retain the film for a period of three (3) months after date of invoice. Note: This is not a bailment. After that date, unless this period is extended in writing, you will be charged a holding fee of one dollar (\$1) per day per image until their actual receipt by Dijitalimaj. Holding fees will accrue for eight (8) months from the stipulated date of return, fourteen (14) days from receipt, after which such unreturned images will be deemed to be lost and you will be billed for holding fees accrued to that date and the lost image fees in accordance with the provisions below.

The film was inspected prior to shipment. We verified their quality. They were sent to you in perfect condition. By retaining the film, you accept all responsibility for loss of or damage while they are in your possession or in transit, from the time you or your representative, agent or messenger take possession of the film until their safe and undamaged receipt by Dijitalimaj. You assume full liability for your employees, agents, assigns, couriers, messengers, freelance researchers, researchers, clients and printers for the loss, damage or misuse of the film. We highly recommend you return film by bonded messenger or registered mail - return receipt requested, fully insured and adequately packaged, and that you obtain a receipt proving delivery to Dijitalimaj.

Both of us agree that it is difficult to determine in advance the amount of monetary damage due to the loss or damage of an original transparency, print or negative (a lost or damaged image). Accordingly, we both agree that the establishment of a reasonable liquidated value for any lost or damaged image is in both our interests. We both accept the sum of fifteen hundred dollars (\$1,500) as the liquidated value of a lost or damaged image. The liquidated value of a duplicate transparency or print is agreed to be one hundred and fifty dollars (\$150). Dijitalimaj stipulates that a digital file has no liquidated value. Dijitalimaj agrees to deliver the photographs to you only upon your express agreement to the terms in this paragraph. If you do not accept this liquidated damage provision, or the arbitration clause below, please contact us immediately regarding the return of the images.

### **No Waiver, Complete Contract**

The terms set forth in this Agreement, any delivery contract and invoice, represent our entire agreement concerning the delivery of images to you, your review and usage thereof. All prior understandings or representations, whether written or oral, based on "industry custom" or past dealings, are hereby merged in this contract. No terms or conditions may be added, removed or modified unless made in writing and signed by both parties. No action of ours, other than an express written waiver, may be construed as a waiver of any part of this contract, and no employee of Dijitalimaj is authorized to waive it orally. In the event we waive any specific part of this contract, it does not mean we waive any other part.

### **Arbitration**

A material part of this contract is our mutual agreement to arbitrate disputes, except for copyright violations, which will be litigated solely in Republic of Turkey court. Any and all disputes arising out of, under or in connection with the contract, including without limitation its validity, interpretation, performance and breach, shall be settled by arbitration in Istanbul, pursuant to the rules of the Turkish Arbitration Association in effect at the time arbitration is demanded. Judgment upon any award rendered may be entered in the highest court of the forum, state or federal, having jurisdiction. This contract, its validity and effect shall be interpreted under, and governed by, the laws of Republic of Turkey, and you agree that the arbitrators shall award all costs of arbitration including legal fees, plus legal interest, to the successful party.

### **Governing Law and Jurisdiction**

This contract, its validity and effect shall be interpreted under, and governed by, the laws of the Republic of Turkey and shall be considered to have been made and accepted in Turkey. All suits that may be brought in regard to this contract, or any aspect of the relationship between the parties, shall be subject to the exclusive jurisdiction of the Republic of Turkey.

### **Legal Fees**

If Dijitalimaj is obligated to go to court, rather than arbitration, to enforce any of its rights, you agree to reimburse Dijitalimaj for Dijitalimaj's legal fees and disbursements if Dijitalimaj is successful.