



MIKE SMALL

P H O T O G R A P H Y

LICENSE AGREEMENT

1. DEFINITIONS

Image: The "Image" is defined as a Mike Small Photography single image.

Purchaser of Record: The "Purchaser of Record" is defined as the end user for whom the image is purchased and who is the intended user.

Disclosed Agent: The "Disclosed Agent" is defined as the party who purchases the license on behalf of the Purchaser of Record. The Disclosed Agent may be a design firm, freelancer, employee, or any other party contracted by the Purchaser of Record. In some cases, the Disclosed Agent may be the same as the Purchaser of Record. If the Disclosed Agent is NOT the same as the Purchaser of Record, the Disclosed Agent acts as an agent for the Purchaser of Record, and both parties are bound by these terms.

You and Your: In this document, "you" and "your" refer both to the Purchaser of Record and to the Disclosed Agent.

Mike Small Photography: "Mike Small Photography" refers to Mike Small Photography or Mike Small, owner of said business.

2. LICENSE

a) Geographic limits:

Mike Small Photography licenses to the Purchaser of Record the use of the Image only as provided below in the United States and other countries on a non-exclusive and non-transferable basis. All other rights to the Image and any accompanying materials, including without limitation, copyright and all other rights, are retained by Mike Small Photography.

b) Permitted Uses: The Purchaser of Record has a nontransferable, nonexclusive right to:

- (i) Back up, copy, or archive the Image as necessary for internal use, and only as necessary for that use. Any copy or archive you make must include the Image's copyright information.
- (ii) Use the Image in any electronic or print media, including advertising and editorial use, and consumer merchandise.
- (iii) Use the Image for any items for resale, including book covers and consumer merchandise, provided these products are not intended to allow the re-distribution or re-use of the Image.
- (iv) Modify or alter the Image as necessary for your use, as allowed for elsewhere in these terms and conditions, provided that the rights to any derivative work shall belong to Mike Small Photography. You may use such derivative work only as permitted in accordance with these terms and conditions. All copyrights with respect to such derivative work are assigned

to Mike Small Photography, which assignment the parties hereby agree is valid under the U.S. Copyright Law. If requested by Mike Small Photography, you agree to execute a written assignment of any such copyrights with respect to such derivative work.

(v) In the normal course of workflow, convey to a third party (such as a printer) temporary copies of the Image that are integral to your work product and without which the product could not be completed.

c) Rights of Agents

(i) The Disclosed Agent is granted the rights listed in paragraph 2(b) provided that these rights are used solely in a final product published by the Purchaser of Record.

(ii) The Purchaser of Record may transfer these rights to other agents or contractors, provided that these rights are used solely in a final product published by the Purchaser of Record.

d) Prohibited Uses: You may not:

(i) Transfer the rights to the Image or accompanying materials except as specifically provided for elsewhere in this Agreement. All other rights are reserved by Mike Small Photography.

(ii) Reverse engineer, decompile, or disassemble any part of the Image or accompanying materials, subject to applicable law.

(iii) Copy or reproduce the Image or accompanying materials except as specifically provided for in paragraph 2(b).

(iv) Remove any copyright or trademark from any place where it appears on the Image or its accompanying materials.

(v) USE THE IMAGE IN ANY WAY THAT COULD BE CONSIDERED DEFAMATORY, LIBELOUS, PORNOGRAPHIC, OBSCENE, IMMORAL, OR FRAUDULENT.

(vi) Display the Image in any digital format or for any digital use at a resolution greater than 640x480 pixels, except in editorial or preliminary design work. Doing so will be viewed as an attempt to distribute the Image in violation of this Agreement. Mike Small Photography is specifying this so that no one can steal the Image from you, even if that was not your intention.

(vii) Use the Image or any part of it as part of a trademark, service mark, or logo. Mike Small Photography retains the full rights to the Image, and therefore you cannot establish your own rights over any part of it.

(viii) Re-sell, distribute or sub-license the Image or the rights to use the Image to anyone for any purpose, except as specifically provided for elsewhere in this agreement. It is also prohibited to use the Image in a product whereby the purchaser or licensee of that product can then use the Image for its own purposes.

3. PAYMENT TERMS

No rights are granted until the invoice is paid in full.

4. TERMS AND PHOTO CREDIT

This License is effective until it is terminated. You can terminate this license by destroying the Image, along with any copies or archives of it, and any accompanying materials, and ceasing to use the Image for any purpose.

The license also terminates if at any time you fail to comply with the terms of this Agreement. If this happens, you hereby agree to destroy all copies and archives of the Image immediately, to cease using the Image for any purpose, and to confirm to Mike Small

Photography in writing that you have complied with these requirements.

5. LIMITED WARRANTY

Mike Small Photography represents that it has the right to enter into this Agreement and has the right to grant this license under the terms provided in this Agreement.

Mike Small Photography warrants that the copy of the Image supplied to you will be free from defects in materials and workmanship under normal use for a period of 30 days from the date you download it.

EXCEPT AS PROVIDED ABOVE, THE IMAGE IS PROVIDED "AS IS" WITHOUT WARRANTY OF ANY KIND, EITHER EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. MIKE SMALL PHOTOGRAPHY DOES NOT WARRANT THAT THE IMAGE 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 IMAGE IS WITH YOU.

6. LIMITATION OF REMEDIES

a) Replacement or Refund:

Mike Small Photography's entire liability and your exclusive remedy, with respect to any claims arising out of your use of the Image or out of your actions in downloading the Image, shall be that you may be permitted to download the Image again. If you continue to be unable to download the Image, Mike Small Photography will refund your money.

b) No Money Damages:

UNDER NO CIRCUMSTANCES WHATSOEVER WILL MIKE SMALL PHOTOGRAPHY BE LIABLE TO YOU FOR ANY DAMAGES, INCLUDING ANY LOST PROFITS, LOST SAVINGS, OR OTHER INCIDENTAL OR CONSEQUENTIAL DAMAGES ARISING OUT OF THE USE OR INABILITY TO USE THE IMAGE EVEN IF MIKE SMALL PHOTOGRAPHY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, OR FOR ANY CLAIM BY ANY OTHER PARTY.

7 . INDEMNIFICATION

You agree to indemnify and hold Mike Small Photography harmless against all claims or liability asserted against Mike Small Photography arising out of or in connection with any breach or alleged breach of any of the terms of this Agreement.

8. GENERAL

a) Additional Rights:

If you would like to discuss the acquisition of further rights than are provided for under this Agreement, please contact Mike Small Photography concerning a separate license.

b) International Law:

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.

9. GOVERNING LAW, AND JURISDICTION

a) Governing Law:

This Agreement, and its validity and effectiveness, shall be interpreted under and governed by the laws of the United State of America and the State of Arizona.

b) Jurisdiction:

All court proceedings (including, but not limited to, judgment upon any arbitral award or and copyright infringement claims) shall be brought in the US District Court, District of Arizona, You agree to reimburse Mike Small Photography for its legal fees, costs and disbursements if Mike Small Photography is successful, and you consent to service of any required notice or process upon you by registered mail or overnight courier with proof of delivery, to the address you provided to Mike Small Photography.

10. ENTIRE CONTRACT

YOU ACKNOWLEDGE THAT YOU HAVE READ THIS AGREEMENT, UNDERSTAND IT, AND AGREE TO BE BOUND BY ITS TERMS AND CONDITIONS. YOU FURTHER AGREE THAT IT IS THE COMPLETE AND EXCLUSIVE STATEMENT OF THE AGREEMENT BETWEEN YOU AND MIKE SMALL PHOTOGRAPHY, WHICH SUPERSEDES ANY PROPOSAL OR PRIOR AGREEMENT, ORAL OR WRITTEN, AND ANY OTHER COMMUNICATION BETWEEN YOU AND MIKE SMALL PHOTOGRAPHY RELATING TO THE SUBJECT OF THIS AGREEMENT.

Dated: _____

MIKE SMALL PHOTOGRAPHY

YOUR COMPANY OR NAME

BY: _____

BY: _____

Michael J. Small
Owner and Sole Proprietor