



DIGITAL PICTURE LIBRARY

GENERAL TERMS AND CONDITIONS FOR DIGITAL IMAGE REPRODUCTION AND SUPPLY

1. BACKGROUND

The Client wishes to purchase and Reproduce Images from Tate, Tate wishes to sell and license Images to the Client and therefore the Client and Tate agree that these Terms and Conditions will govern the Client's purchase of Images from Tate and their reproduction.

2. DEFINITIONS AND INTERPRETATION

2.1 Definitions

In these Terms and Conditions, including the background above, the following words and phrases will have the following meanings, save where the context requires otherwise:

“Account” means a credit account held by the Client with Tate which the Client can use to purchase Images (up to a limit imposed by Tate) from Tate's website and which is invoiced to the Client monthly;

“Client” means the company, partnership, sole trader, individual or other legal person which has selected and purchased the Images online, will receive such Images electronically;

“Form” means the electronic form filled in by the Client on Tate's website indicating what the Client wishes to use the Images for;

“Image” means a digital photograph, computer generated facsimile, digital image, scan or any other item offered for the purposes of reproduction which is held by Tate as a digital image (including but not limited to Tate owned works of art) and can be offered to the Client for the purposes of reproduction;

“Licence” means the copyright licence agreed between the Parties as detailed in Clause 6 below together with any specific uses or occasions agreed between the Parties on the Form;

“Party” means the Client or Tate as applicable and **“Parties”** will be construed accordingly;

“Reproduce” has the meaning given to such term in Clause 6.1; and

“Tate” means Tate Enterprises Limited trading as Tate Images, a wholly-owned subsidiary of the Board of Trustees of the Tate Gallery (with registered company number 03173975 of Tate, Millbank, London SW1P 4RG), which owns and controls Tate Digital Picture Library.

2.2 Interpretation

- 2.2.1 Headings are for convenience only and do not affect the interpretation of these Terms and Conditions.
- 2.2.2 Unless otherwise stated, references to Clauses and Schedules are references to clauses and schedules in these Terms and Conditions.
- 2.2.3 Where the context so allows the masculine includes the feminine and the singular includes the plural and vice versa.
- 2.2.4 References to any statutory provisions include any modifications or re-enactments of those provisions.
- 2.2.5 A time is a reference to London time.

3. ACCEPTANCE

- 3.1 The Client agrees to comply with these Terms and Conditions following selection and purchase of the Images through Tate's website.
- 3.2 Any reproduction of any Image by the Client implies acceptance of these Terms and Conditions.

4. DELIVERY AND DESTRUCTION

- 4.1 Images shown as available at High Resolution will be made available for the Client to download for a period of thirty (30) days:
 - 4.1.1 immediately following purchase if the Client holds an Account or has paid online using a debit or credit card; and
 - 4.1.2 within three (3) working days if the Client applies for a new Account and is successful in its application.
- 4.2 Images which are not available at High Resolution will be scanned on demand and made available for the Client to download for a period of thirty (30) days:
 - 4.2.1 within three (3) working days of purchase if the Client holds an Account;
 - 4.2.2 within three (3) working days of payment if the Client has paid online by debit or credit card; and
 - 4.2.3 within fourteen (14) working days if the Client wishes to apply for a new Account and is successful in its application.
- 4.3 The total number of Images selected and purchased by the Client will be presumed to have been received by the Client unless written notice to the contrary is received by Tate within five (5) days of the Images being made available for download pursuant to Clause 4.1 and 4.2.
- 4.4 The Client acknowledges that prior to any consent for reproduction of the Images being granted by Tate:

- 4.4.1 it has had reasonable opportunity to inspect the Images in order to determine the nature and quality of the Images as to their fitness for their intended purpose; and
 - 4.4.2 it has not in any way relied upon any representation of Tate as to the suitability and fitness of the Images for their intended purpose or use as specified on the Form.
- 4.5** The Client agrees to destroy and/or delete all Images supplied or downloaded and any copies made by the Client of such Images pursuant to these Terms and Conditions once such Images have been used by the Client for the purpose or use specified on the Form and, in any event, within four (4) months of such Images being made available for download pursuant to Clauses 4.1 and 4.2 above.
- 4.6** Unless otherwise agreed, one (1) copy of any product, publication, publicity material or similar produced by the Client and containing a reproduction of the Image must be supplied by the Client to Tate within two (2) weeks of its publication or production.

5. COPYRIGHT

- 5.1** Permission to Reproduce the Images is strictly limited to the uses, purposes, means of transmission and target audience as detailed on the Form and, where applicable, as additionally agreed between Tate and the Client save that where Tate does not own the copyright to the Images, the Client is responsible for obtaining all relevant and necessary copyright consents, permissions and clearances from the relevant copyright holders.
- 5.2** No rights granted to the Client in these Terms and Conditions which relate to copyright may be assigned, loaned or transferred to any third party.
- 5.3** Tate reserves the right to request a colour proof of any reproduction of an Image prior to publication and Tate can, at its discretion, withhold the right to Reproduce an Image granted pursuant to the Licence if the quality of the reproduction falls below any standard as set by Tate.
- 5.4** The Image must not be cropped, edited, superimposed with type or other material or have any part deleted or in any way defaced without prior written permission of Tate.
- 5.5** Each reproduction of an Image must credit the relevant artist(s) in full, the title of the work and carry the copyright notice displayed on Tate's website with the Image.
- 5.6** Application to Reproduce a detail of an Image will be considered, but permission must be specifically granted in writing by Tate and, if permission is granted, the picture credit specified in Clause 5.5 above must include the following wording: "*(detail)*".
- 5.7** The Client will not use the name "Tate" or any similar name in any manner whatsoever in connection with any reproduction of an Image, except where part of the credit required in Clause 5.5 above.
- 5.8** Images will not be loaned, rented, delivered, supplied, sold or otherwise disposed of and no use other than those as set out on the Form will be made of them by the Client without the prior written consent of Tate.

- 5.9** Any artwork, printed matter, printing plates, digital files, film separations, colour separations or similar produced using or incorporating an Image or any part of it will not be offered by the Client to third parties for reproduction, re-publication or re-use without the prior written consent of Tate.

6. LICENCE

- 6.1** Subject to Clause 5 above, Tate hereby grants to the Client a non-exclusive, worldwide, royalty free, copyright licence to reproduce and store copies of the Images by any means or in any media (to “**Reproduce**”) for the purposes specified on the Form in accordance with applicable copyright law.

- 6.2** Tate warrants that:

6.2.1 where copyright to an Image is owned by the Board of Trustees of the Tate Gallery, it has adequate and appropriate permission to Reproduce such Image in accordance with this Clause 6; and

6.2.2 where copyright to an Image is not owned by the Board of Trustees of the Tate Gallery, the Client is responsible for ensuring that any consents, permissions or clearances required for reproduction of the Images are obtained.

- 6.3** Any publication right (as defined in the Copyright and Related Rights Regulations 1996) arising in respect of any Image or from the use of such Images by the Client will vest in the relevant copyright holder and the Client hereby assigns all such rights arising to the relevant copyright holder, and the Client undertakes that it will do all such acts and execute any documents reasonably required by the relevant copyright holder to give effect to this Clause 6.5.

7. PAYMENT ON ACCOUNT

- 7.1** The Client will be invoiced monthly for any outstanding balance on its Account and agrees to pay such invoice within thirty (30) days of receipt.

- 7.2** If after purchasing the Images and the Licence using an Account but before settlement of that Account, as set out above, but before payment the Client requests cancellation of the rights to Reproduce the Images, Tate may at its discretion cancel such rights subject to the Client paying a cancellation fee.

- 7.3** If the Client does not settle an Account in accordance with this Clause 7 then Tate may rescind these Terms and Conditions and the relevant Licence and recover damages, or at its option, may charge interest on the overdue amount at four per cent. (4%) per annum above the base rate on the outstanding balance from the due date of payment until actual payment.

8. INDEMNIFICATION AND DISCLAIMER

- 8.1** The Client agrees to indemnify Tate in respect of all and any claims, damages, losses or costs arising in any manner howsoever from the reproduction of the Images (including, but not limited to, the Client’s failure to obtain licences, consents,

permissions or clearances as are necessary to Reproduce the Images) unless such claims, damages, losses or costs arise by virtue of either the operation of these Terms and Conditions (which, for the avoidance of doubt, incorporate the relevant Licence) or Tate's negligence.

- 8.2** Tate shall not be held liable for any damage, howsoever caused, arising from the Client's use of the Images including, but not limited to, any damage arising from errors or omissions contained in and relating to the Image, the relevant copyright notice or in information otherwise displayed on Tate's website.

9. TERMINATION

- 9.1** Tate may terminate these Terms and Conditions and any Licence granted under these Terms and Conditions immediately by notice in writing to the Client if the Client:

9.1.1 is in breach of any of either the terms of the Licence and/or these Terms and Conditions and, in the case of a breach capable of remedy, fails to remedy such breach within thirty (30) days of receipt of written notice giving full particulars of the breach and of the steps required to remedy it; or

9.1.2 (being a company) passes a resolution for winding up (otherwise than for the purposes of a solvent amalgamation or reconstruction) or a court makes an order to that effect; or

9.1.3 (being a partnership or other unincorporated association) is dissolved or (being a natural person) dies; or

9.1.4 becomes or is declared insolvent or convenes a meeting of or makes or proposes to make any arrangement or composition with its creditors; or

9.1.5 has a liquidator, receiver, administrator, administrative receiver, manager, trustee or similar officer appointed over any of its assets; or

9.1.6 ceases, or threatens to cease, to carry on business; or

9.1.7 any analogous event occurs under the insolvency laws applicable to the Client.

- 9.2** In the event of termination pursuant to Clause 9.1 above, the Client will, at the Client's own cost, delete and/or destroy all Images supplied or downloaded and any copies made by the Client of such Images no later than three (3) working days after receipt of notice to terminate from Tate.

10. LIABILITY

Except for any liability which cannot by law be excluded or limited, Tate will on no account be liable to the Client (or any other third party claiming through it) for loss of profit, business, goodwill, revenue, wasted time or any indirect, incidental, special or consequential damages arising out of, or relating to the use of the Images, whether framed as a breach of warranty, in tort, contract, failure of essential purpose, breach of statutory duty, or otherwise. In no event (except for any liability which cannot by

law be excluded or limited) will Tate's liability in aggregate for any Image provided hereunder exceed the charges and fees paid to Tate for such Image.

11. RESTRICTION

The Client will not use the name "Tate", "Tate Enterprises Ltd" or any similar name in any manner in connection with any Image, except as expressly set out in these Terms and Conditions or as agreed by Tate, and the Client shall not do anything to bring Tate's name into disrepute.

12. ASSIGNMENT

These Terms and Conditions are personal as between the Parties and the Client can only assign the benefit of these Terms and Conditions with Tate's prior written consent.

13. VARIATIONS

Variations, amendments, additions or deletions to the terms of these Terms and Conditions may only be made if agreed in writing by the Parties.

14. VALIDITY OF THE AGREEMENT

If any provision of these Terms and Conditions is held to be, in whole or in part, for any reason illegal, invalid or unenforceable then the provisions which are legal, valid and enforceable will (to that extent) continue in force and effect.

15. ENTIRE AGREEMENT

These Terms and Conditions represent the entire understanding of the Parties with respect to the Images and their reproduction and supersede all other agreements and representations with respect to these matters made either orally or in writing.

16. NO WAIVER

Tate's failure to exercise or enforce any of its rights under these Terms and Conditions (or otherwise) will not be deemed to be a waiver of any such rights nor will that failure operate so as to bar the future exercise or enforcement of those rights.

17. RIGHTS OF THIRD PARTIES

No person who is not a Party to these Terms and Conditions will have the right under the Contract (Rights of Third Parties) Act 1999 to enforce any of its terms.

18. GOVERNING LAW

- 18.1** These Terms and Conditions will be governed by and construed in accordance with English law. All transactions to which these Terms and Conditions apply and all matters connected therewith will also be governed by English law.
- 18.2** The Parties irrevocably agree that the courts of England are to have exclusive jurisdiction to settle any dispute which may arise out of or in connection with these Terms and Conditions.