



**STANDARD TERMS AND CONDITIONS GOVERNING THE
RELEASE AND USE OF FILM AND VISUAL MATERIAL FROM
THE IMPERIAL WAR MUSEUM'S FILM ARCHIVE**



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1. GRANT OF RIGHTS

- 1.1 Subject to payment of all sums specified in Clause 2.1 and to Clause 3, the Museum grants to the User a non-exclusive, non-transferable licence to incorporate the Material (or part of it) in the Production and to exploit the Material as incorporated in the Production in the Permitted Media in the Territory for the duration of the Licence Period. No other use of the Material shall be made or authorised by the User.
- 1.2 The Museum grants the User for the duration of this Agreement a licence to use the trade marks "IMPERIAL WAR MUSEUM" and "IWM" for the sole purpose of Clauses 5.1 and 5.2. All goodwill arising from the use of such trade marks shall accrue exclusively to the benefit of the Museum.
- 1.3 Clause 1.3 applies to Internet Media only. Where the User incorporates the Material in any on-line service the rights in Clause 1 are granted only subject to the Museum's prior written approval of all agreements between the User and its subscribers or licensees which will not be unreasonably withheld or delayed.

2. PAYMENT

The User undertakes and agrees with the Museum:

- 2.1 to pay to the Museum the following non-refundable sums: (a) the Minimum Fee; (b) the Licence Fee; and (c) all Service Charges, in each case within 30 days of the date of the Sales Invoices relating thereto;
- 2.2 immediately following the final editing of the Production, to return a Usage Declaration completed from information supplied with the Material and signed by or on behalf of the User to the Museum stating the exact duration and description of Material included in the Production (even if less than the value of the Minimum Fee or if none of the Material is used). If the User fails to submit a Usage Declaration within the time limit the Museum shall have the right to charge a usage fee calculated at the rate of the Licence Fee specified in the Licence Agreement (or if not so specified, of the Museum's Ratecard) for the total amount of Material supplied (without prejudice to the Museum's other rights or remedies).

3. COPYRIGHT

3.1 Museum Copyright

Unless otherwise stated all copyright and other rights in the Material are and shall be (as between the User and the Museum) the property of the Museum.

3.2 Crown Copyright

All Crown Copyright material is licensed by the Museum for exploitation by the User subject to this Agreement.

3.3 German Film Material subject to the Enemy Property Act 1953

The Enemy Property Act extinguished all German interests, both copyright and ownership, in all material belonging to former German enemies (whether individuals or businesses) which was brought into the UK between 3 September 1939 and 9 July 1951. German Material which falls under this Act is released by the Museum for exploitation within the United Kingdom only but in all other respects subject to this Agreement. World rights (excluding the UK) are claimed by Transit-Film GmbH, Dachauerstrasse 35, 80335 Munich, Germany, Telephone +49 89 59988515 Fax +49 89 59988519, e-mail: Daniele.Guerlain@transitfilm.de website www.transitfilm.de Clearance of rights for use of this Material outside the UK is the responsibility of the User.

3.4 **NATO and United Nations Copyright Material**

This material is released by the Museum subject to this Agreement and additionally subject to the following conditions (stipulated by NATO and the United Nations):

- (a) no material is to be used in parodies, theatrical productions or any programmes and products that defame the United Nations or NATO;
- (b) material is released for use only in objective and balanced documentaries, even though at times the end products may be critical of the United Nations or NATO. In those cases when a member state is criticised, the United Nations or NATO wish it to be made known that they do not associate themselves with the contents of the documentary.

3.5 **Other Material which is neither Crown Copyright nor owned by the Museum**

- (a) The User undertakes at the User's expense:
 - i) before using the Material and as a condition precedent to the grant of the licence under Clause 1.1, to obtain all Third Party Consents and any other consents which may be required for the use of the Material in the Production;
 - ii) to obtain all necessary licences, permission or consents from, and to pay all sums due to, any collecting societies, unions and guilds in relation to any use pursuant to this Agreement of any musical work, sound recording or performance contained in the Material.
- (b) The User acknowledges and agrees that the Museum grants no rights in respect of Third Party Material and the User shall obtain all Third Party Consents required prior to using such Third Party Material.
- (c) Where the Owner of the copyright in Third Party Material is not known and cannot be ascertained on reasonable enquiry, the User agrees to clear all rights and pay all fees that may become due and (for the avoidance of doubt) indemnifies the Museum in respect of all liabilities that may arise in relation to the User's use of such Material as set out in clause 1.1.

3.6 If any publication right (as provided by the Copyright and Related Rights Regulations 1996, or any analogous right in any part of the world) arises in the Material, the User hereby assigns all such rights or right absolutely to the Museum for the full term(s).

3.7 The Museum gives no warranty about the accuracy of any description of any Material and accepts no liability in the event of any description proving to be inaccurate.

4. RESTRICTIONS ON USE

The User undertakes and agrees with the Museum as follows:

- 4.1 the Museum releases copies of Material for use in Productions intended to educate or illustrate, and reserves the right not to release Material for Productions which appear to the Museum (in its sole discretion) liable to trivialise, sensationalise or demean the subject portrayed;
- 4.2 where Material is considered to be of a sensitive nature (e.g. dead, wounded, shellshock, concentration camp footage, executions and images relating to atrocities, war crimes etc.) the User shall provide, on request, the script, treatment and/or other evidence relating to the manner and content in which the Material will be used ("the evidence"). Copies of Material will be released if the evidence submitted is accepted by the Museum. Use of the Material is restricted to the use specified in the evidence;
- 4.3 the User will ensure that the Material is not used or edited in any way which will or is likely to tarnish the Museum's reputation or bring the Museum into disrepute or which may be detrimental to or disparaging of the Museum. It shall be the sole responsibility of the User to ensure that, in its use of the Material, it does not (i) defame, libel or slander any person; (ii) infringe any rights of privacy, confidentiality or publicity of any person (or any similar, analogous or related personal rights); (iii) infringe any copyrights, trade marks or other rights of any person; or (iv) breach any relevant laws, rules, codes or guidelines.

The User accordingly accepts that the Museum shall have no responsibility or liability of any nature whatsoever with respect to the foregoing matters;

- 4.4 the User will not without the Museum's prior written consent use any part of the Material in any packaging, marketing or promotional material (whether for the Production or otherwise);
- 4.5 the inclusion of Material in electronic, computer-based games, advertising and pop promos is specifically excluded and no licence will be granted for such use;
- 4.6 the User will not without the Museum's prior written consent issue any press release referring to the Museum or refer to the Museum in any promotional material (whether for the Production or otherwise);
- 4.7 the User will not use the Material in the Production if notified by the Museum that the Material or any part or parts of the Material are or may be subject to any legal proceedings or may subject the Museum to any liability.

5. USER'S OBLIGATIONS

Clauses 5.7 to 5.10 apply to Internet Media only.

The User undertakes and agrees with the Museum:

- 5.1 where 30 seconds or more of Material is incorporated in the Production to provide the Museum with the on-screen credit "IMPERIAL WAR MUSEUM, LONDON" in an appropriate and prominent place in the Production;
- 5.2 all Material incorporated in television news broadcasts, certain non-theatric displays, CD-ROM, any computer-based software, and any other media specified in the Licence Agreement, shall carry the letters "IWM" visibly on-screen to the Museum's specification;
- 5.3 to provide the Museum with a viewing copy of the final version of the Production free of charge on request immediately following final editing (or, where the Permitted Media are Internet, to notify the Museum when the Production is available for viewing on-line and provide any passwords required for access);
- 5.4 on request to provide the Museum with a copy in digitised form of all Material which the User digitises in every case immediately following final editing, which the Museum shall be entitled to retain and use in perpetuity free of charge;
- 5.5 to inform the Museum immediately of any change in the title of the Production;
- 5.6 promptly on completion of the Production to return all master materials and copies of the Material not physically incorporated into the Production and (if requested by the Museum) to certify that it has complied with this Clause 5.6;
- 5.7 immediately upon expiry of the Licence Period to delete all copies of all Material from all servers and other databases and electronic storage media under the control of the User and to procure that the User's licensees promptly do the same;
- 5.8 to incorporate the following term in all agreements which permit end users to download Material, and use its best endeavours to obtain end users' agreement to it (e.g. by means of click-wrap licensing) before making Material available to them:

The Production is licensed to end user for access only on end user's personal computer solely for end user's personal private use. No part of the Production shall be copied, downloaded, stored, manipulated, reformatted, republished, redistributed, posted, printed, displayed, broadcast, transmitted or otherwise used in any way.

- 5.9 to provide to the Museum promptly on the Museum's request copies of all agreements pursuant to which the User supplies Material;
- 5.10 to maintain in place effective on-line security in accordance with current industry standards (including but not limited to security arrangements specified in the Licence Agreement) as long as any Material is available on line. The User will consult and agree specific on-line security arrangements with the

Museum on a case-by-case basis;

- 5.11 not to exclude the provisions of the Contracts (Rights of Third Parties) Act 1999 from any agreements relating to the Material.

6. TERMINATION

- 6.1 This Agreement shall terminate, upon notice by and without penalty to the Museum, if there is a breach by the User of any of its material obligations under this Agreement which (if the breach is capable of remedy) the User has failed to remedy within 30 days after receipt of notice in writing from the Museum giving particulars of the breach and requiring the User to remedy it.
- 6.2 The Museum may terminate this Agreement with immediate effect by written notice to the User if (i) the Museum is or reasonably believes that it will become subject to any material costs (including legal costs), damages, loss or liability howsoever arising as a result of or in connection with the use by the User of the Material and/or (ii) the User goes into receivership or liquidation (other than for the purposes of amalgamation or reconstruction) or becomes insolvent or makes any composition or arrangement with its creditors (other than as part of a solvent reorganisation) or the equivalent anywhere in the world.
- 6.3 Save where otherwise provided in this Agreement or where the context otherwise requires, all rights and obligations of the parties shall cease to have effect immediately upon termination of this Agreement except that termination shall not affect the accrued rights and obligations of the parties at the date of termination.
- 6.4 **Upon termination of this Agreement:**
- i) the User shall if requested by the Museum promptly return to the Museum all copies of the Material which the User may have in its possession or under its control;
 - ii) without prejudice to any right to damages of the Museum, the User shall immediately pay to the Museum all sums owing and which will become due under this Agreement in respect of the Material;
 - iii) the User shall cease all use of the Material.

7. INDEMNITY

- 7.1 The User hereby indemnifies the Museum, and shall keep the Museum fully and effectively indemnified, against all costs (including without limitation legal costs), damages, loss and liability incurred by the Museum by reason of (i) any breach by the User of its obligations under this Agreement; and (ii) any claim made against the Museum in respect of or arising out of any use or exploitation of the Material by the User. The Museum shall notify the User in writing of any such claim, reasonably consult with the User on the defence of such claim and shall agree to any reasonable settlement thereof, in each case at the User's cost.
- 7.2 If any claim is made against the User in respect of or arising out of any use or exploitation of the Material by the User the User shall immediately notify the Museum in writing of such claim; the Museum shall have the right to elect to have the conduct of, and the User shall give all reasonable assistance to the Museum in, the defence of such claim at the User's expense; and the User shall not settle such claim without the Museum's written consent.

8. LIABILITY

- 8.1 The Museum shall not be liable for any consequential, indirect, incidental, economic or financial losses or loss of profits in connection with the supply or use of the Material. The liability of the Museum howsoever arising from or in connection with the supply or use of the Material (whether for breach of contract, negligence, misrepresentation or otherwise) shall not in any circumstances exceed an amount equal to the Licence Fee unless the Licence Period exceeds one year, in which case such liability of the Museum shall not exceed an amount equal to the Licence Fee payable during the year in which any claim giving rise to such liability arises.
- 8.2 All terms, conditions, warranties, representations or guarantees whether express or implied by statute, common law or otherwise relating to delivery, description, performance, quality or fitness for purpose are hereby excluded.

9. GENERAL

- 9.1 This Agreement and the rights under it may not be assigned or sub-licensed (other than as provided under this Agreement) by the User without the Museum's prior written consent.
- 9.2 No variation of this Agreement shall be valid unless it is in writing and signed by or on behalf of each of the parties.
- 9.3 Any notice under or in connection with this Agreement shall be in writing in the English language.
- 9.4 This Agreement constitutes the entire agreement, and supersedes any previous agreement, between the parties relating to the Material. No representations made by or on behalf of the Museum in relation to the Material shall form part of this Agreement unless expressly stated herein, provided that nothing in this Agreement shall be deemed to exclude or restrict the Museum's liability to the User for fraudulent misrepresentations.
- 9.5 In the event of any conflict between the provisions of these Standard Terms and Conditions and the Licence Agreement, the Usage Declaration, the Sales Invoice and the Museum's Ratecard (as the case may be), the provisions of the Licence Agreement shall prevail.
- 9.6 This Agreement shall be governed by, and shall be construed in accordance with, English law and the parties hereby submit to the non-exclusive jurisdiction of the Courts of England and Wales.

I have read the Standard Terms and Conditions set out above and accept them as binding to the exclusion of all other terms and conditions. I am fully aware of all charges that may be levied by the Museum and of the approximate costs and procedures of transferring the Museum's material at a designated facility house. I hereby authorise the Museum's Film and Video Archive to proceed with my request.

Title of Production:.....

Production/job number:.....

Signed:

Name of Company:

Date:

A separate licence will be issued on supply of broadcast quality material.

10. INTERPRETATION

In this Agreement:

“Agreement” means these Standard Terms and Conditions, the Museum's Ratecard prevailing at the date of the Licence Agreement, the Sales Invoice, the Licence Agreement and the Usage Declaration;

“Broadcast Media” means analogue and digital distribution by terrestrial cable and satellite broadcast media, and excludes all other distribution and all other media including video, “on demand” services, Internet Media, CD Rom, CD-I, DVD and interactive media now known or invented hereafter;

“Service Charges” means all delivery, handling, service, research, copying, retrieval and stock charges incurred in supplying the Material as specified in the Licence Agreement or, if not specified, as stated in the Museum's Ratecard in force at the date of the Licence Agreement;

“Home Video Media” means distribution by video cassettes and/or DVD only for exploitation by means of retail sale and hire in the domestic market only.

“Internet Media” means storage on the User's computer, incorporation in the User's web site, and distribution to end users by means of the worldwide system of computer networks including the World Wide Web as incorporated in the User's web site only for the sole purpose of displaying on end users' personal computers solely for end users' personal private use, and excludes all redistribution and other exploitation in whole or in part whether by Internet or in any other medium;

“Licence Agreement” means the agreement between the Museum and the User confirming the terms on which the Material is supplied;

“Licence Fee” means the usage fee payable for the Material as specified in the Licence Agreement or, if not specified, as stated in the Museum's Ratecard prevailing at the date of the Licence Agreement;

“Licence Period” means the period specified in the Licence Agreement commencing on the date stated therein or (if no date is specified) on the date of the Licence Agreement;

“Material” means the audio-visual recordings by film, tape or any other medium (whether analogue or digital) which are supplied by the Museum, as described in the Licence Agreement, in the format(s) specified therein;

“Minimum Fee” means the minimum fee payable for the supply of broadcast quality master copies of the Material, as specified in the Licence Agreement or, if not specified, 20 seconds at the Museum's Ratecard in force at the date of the Licence Agreement;

“Museum” means the Imperial War Museum and includes the Trustees of the Imperial War Museum;

“Production” means the production of the User (for example film, programme, product, web site or on-line service in which the Material is to be included), the provisional title or other brief details of which are specified in the Licence Agreement;

“Usage Declaration” means the Usage Declaration to be sent to the Museum by the User in accordance with this Agreement;

“Sales Invoice” means a Sales Invoice sent by the Museum to the User relating to the Material;

“Territory” means the territory specified in the Licence Agreement;

“Third Party Consents” means all licences, permissions and consents in writing which may be required for the use and exploitation of the Material by the User in the Production from third parties (which includes the owners of rights in Third Party Material and any individuals appearing recognisably in the Material and the holders of rights in any still photographs, trade marks or other proprietary rights comprised in the Material).

“Third Party Material” means such (if any) of the Material (including but not limited to all still photographs in the Material) in which the relevant rights are not (or may not be) owned or controlled by the Museum as specified in the Licence Agreement.

“the User” means the person stated in the Licence Agreement to whom the Material has been or will be supplied.