

K.E. Pack Photography
Royalty Free License Agreement

This Agreement is by and between you or the employer or other entity on whose behalf you are entering into this agreement (hereinafter referred to as "Licensee") and Kevin E. Pack dba K.E. Pack Photography and his legal agents and representatives (hereinafter referred to as "Licensor").

K.E. Pack Photography and/or its contributing photographers is the owner of various Image(s) and other intellectual property that may be in the form of any visual representation generated optically, electronically, digitally or by any other means, original digital files, including any negatives, transparencies, prints or any Reproductions thereof, or any other product protected by a copyright, trademark, or other intellectual property right (hereinafter referred to as "Image(s)").

Licensee desires a license to use the Image(s), described in Exhibit A and as outlined in this document. Use of these Image(s) constitutes Licensee's agreement to be bound by the terms of this Agreement. If the use you are planning is not permitted by this Agreement, please contact K.E. Pack Photography regarding a Rights-Managed Licensing Agreement.

1. TERMS OF USE

This Agreement grants Licensee a non-exclusive, non-transferable right to use and reproduce Image(s), as described in the Schedule A, in the following ways, subject to the limitations set forth herein and in these Terms of Use.

A. Advertising, Print Publications and Promotional Materials

1. As prints, posters (i.e. hardcopy) and other reproductions for your own personal, non-commercial use and display, not for resale download, or distribution;
2. As a single hand painted original (whether in whole or in part) on canvas or other material, for personal use or re-sale (not as a printed reproduction such as a Giclee, off-set litho or other mechanical reproduction);
3. In coordination with opt-in email marketing. However, Image(s) cannot be used in connection with unsolicited email, or linked from unsolicited email, and providing that no Image(s) may be reproduced or used more than two hundred and fifty thousand (250,000) times, unless agreed to, in advance and in writing by K.E. Pack Photography;
4. On letterhead and business cards, pamphlets, brochures, catalogs and on pop up and/or panel displays for use in conventions and trade shows, providing that no Image(s) may be reproduced or used more than two hundred and fifty thousand (250,000) times, unless agreed to, in advance and in writing by K.E. Pack Photography;
5. In the artwork for the packaging of any product, providing that the print and/or manufacturing run does not exceed two hundred and fifty thousand (250,000) copies in the aggregate, unless agreed to, in advance and in writing by K.E. Pack Photography;
6. As CD or DVD cover art and/or artwork, provided that the manufacturing or print run of such CDs or DVDs (including downloads of such artwork) does not exceed two hundred fifty thousand (250,000) copies in the aggregate, unless agreed to, in advance and in writing by K.E. Pack Photography;
7. As part of editorial or advertising copy in magazines, newspapers, books, book covers, textbooks, editorials and directories, provided that the print or manufacturing run(s) of such magazines, newspapers, books, book covers, textbooks, editorials and directories does not exceed two hundred fifty thousand (250,000) copies in the aggregate, unless agreed to, in advance and in writing by K.E. Pack Photography;
8. As advertising posters for use in promoting the sale of other products (not to promote the sale of the prints, posters, etc. containing the Image(s)), provided that such prints and/or posters and/or other reproductions combine words and an Image(s) and further provided that the print or manufacturing run(s) of such posters and/or prints does not exceed two hundred fifty thousand (250,00) copies in the aggregate, unless agreed to, in advance and in writing by K.E. Pack Photography;
9. As paper greeting cards, magnets, etc. for use in promoting your company or the sales of other products (not to promote the sale of the greeting cards, magnets, etc. containing the Image(s)), provided such greeting cards and/or magnets, etc. combine words and an Image(s) and further provided you do not produce more than one thousand (1,000) copies of any single item that bears one or more Image(s) in the aggregate, unless agreed to, in advance and in writing by K.E. Pack Photography;

B. Electronic Publications, including website design

1. On websites, provided that no Image(s) is displayed at a resolution greater than 750 x 500 pixels at a resolution of 72 ppi;
2. As toolbar skins and screensavers for your own personal non-commercial use, not for resale, download or distribution;
3. Incorporated into software, including design or project template(s), provided that the Image(s) or any digital file(s) containing the Image(s) cannot be unincorporated from the software and further provided that the manufacturing or duplication run(s) of such software (including downloads of such software) does not exceed two hundred and fifty thousand (250,000) copies in the aggregate, unless agreed to, in advance and in writing by K.E. Pack Photography;

C. Broadcast and theatrical exhibitions

1. In multimedia presentations and incorporated into film and video for television and/or internet broadcast, and theatrical display only where the intended audience will consist of fewer than two hundred fifty thousand (250,000) viewers, unless agreed to, in advance and in writing by K.E. Pack Photography;
2. In multimedia presentations and incorporated into film and video for distribution and/or sale in the home video market, provided that the manufacturing or duplication run (including downloads) of such home videos does not exceed two hundred fifty thousand (250,000) copies in the aggregate, unless agreed to, in advance and in writing by K.E. Pack Photography;

2. RESTRICTIONS

A. Licensee may store the Image(s) in a digital library, network configuration or similar arrangements to allow the Image(s) to be viewed by employees, partners and clients of Licensee (hereinafter referred to as "Users"), but under no circumstances may the Image(s) ever be used by more than 10 Users unless a separate seat license is purchased for each additional User, before such additional use begins;

B. Licensee must retain information that is invisibly embedded in the electronic file containing the original Image(s), including, but not limited to, the copyright symbol, the name of Kevin E. Pack and/or K.E. Pack Photography, the Image(s) identification number and any other information.

C. If the Image(s) is used in an editorial manner, Licensee must include the following credit adjacent to the Image(s) : "Kevin Pack/K.E. Pack Photography.com".

****YOU MAY NOT****

D. Use an Image(s) other than as specific in Section 1 Terms of Use;

E. Except as expressly provided in Section 1, hereof directly or indirectly copy or reproduce any Image(s), in whole or in part, more than two hundred fifty thousand (250,000) times. Nor may you produce, cause to be produced or otherwise create for resale or distribution, printed reproductions of any Image(s) on canvas, paper, plastic or any other medium unless expressly permitted by this Agreement;

F. Use or display an Image(s) on websites or in connection with any service designed to sell or induce sales of "print on demand" products using or incorporating Image(s) , including, but not limited to postcards, mugs, t-shirts, posters, Giclee prints, lithographic prints, wallpaper, artwork and other items.

G. Use an Image(s) together with pornographic, defamatory, or otherwise unlawful or immoral content or in such a manner that it infringes upon any third party's trademark or intellectual property;

H. Use an Image(s) in a way that places any person depicted in the Image(s) in a bad light or in a way that they may find offensive – including but not limited to the use of Image(s) : i) in pornography, "adult videos" or the like; ii) in ads for tobacco products; iii) in ads or promotional materials for adult entertainment clubs or similar venues, or for escort, dating or similar services; iv) in connection with political endorsements; v) in advertisements or promotional materials for pharmaceutical or healthcare, herbal or medical products, including but not limited to dietary supplements, digestive aid, herbal supplements, personal hygiene or birth control products, sexual enhancement products; vi) uses that are defamatory, or contain otherwise unlawful, offensive or immoral content; whether directly or in context or juxtaposition with other materials;

I. Use an Image(s) in conjunction with any political advertisement, promotion or endorsement;

J. Use an Image(s) containing the likeness of a person if such use implies that the model i) engages in any immoral or illegal activity or suffers from a physical or mental infirmity, ailment or condition; ii) personally uses or endorses a product or service. Licensee must accompany the use of any Image(s), with the likeness of a person, with a statement that indicates that the person is a model and the Image(s) is being used for illustrative purposes only;

K. Resell, redistribute or transfer any Image(s) except as specifically provided herein. Displaying any Image(s) in any digital format or for any digital use at a resolution greater than 750 x 500 pixels at 72 ppi, except in preliminary design work, will be deemed to be an attempt to redistribute the Image(s) and could result in the termination of Licensee's rights under this Agreement.

L. You may not create a digital or print greeting card line based on K.E. Pack Photography Image(s), or use K.E. Pack Photography Image(s) as the basis for any individual or collection of physical or digital objects which you then offer for sale. You may not sell or distribute items, including but not limited to: calendars, greeting cards, mouse pads, t-shirts, mugs, bookmarks, etc., that incorporate Image(s). If you wish to use an Image(s) in connection with the production of any items prohibited in this Agreement, please contact us regarding a Rights-Managed Licensing Agreement.

M. Use any Image(s) (in whole or in part) as a trademark, service mark, logo, or other indication of origin, or as part thereof, to otherwise endorse or imply the endorsement of any goods and/or services;

N. Use or display any Image(s) in such a manner that gives the impression that the Image(s) was created by you or a person other than the copyright holder of that Image(s)/Licensed Product;

O. Stockpile, or otherwise store Image(s) not used within six (6) months of the expiration date of the term of this Agreement.

3. TERM

The term of this agreement shall be for two (2) years from the date of this agreement.

4. PAYMENT

All sums as outlined in the Schedule A are due and payable upon receipt. Licensee's rights to use Image(s) are subject to the terms of this Agreement and are conditioned upon your payment to K.E. Pack Photography for your use of the Image(s). If you fail to make any payment to K.E. Pack Photography or if any check is dishonored, credit card charge is refused or charged back, your right to use any Image(s) shall immediately and automatically terminate until such a time as all outstanding sums including licensing fees, costs of collection, bank charges, credit card processing fees, other appropriate fees are brought current.

5. GEOGRAPHIC LIMITATIONS

Licensee's right to the Image(s) is worldwide.

6. MISCELLANEOUS

A. "Non-Transferable" as used herein means that except as specifically provided in this Agreement, you may not sell, rent, load, give, sublicense, mortgage, or otherwise transfer to anyone, the Image(s) or the right to use the Image(s). You may however transfer Image(s) to a third party for the sole purpose of causing such third party to produce and/or manufacture your goods incorporating Image(s) subject to the terms and condition herein. In addition, the work you produce with the Image(s) must be used for yourself, your direct employer, client or customer, who must be the end user of your work. You agree to take all commercially responsible steps to prevent third parties from duplicating any Image(s). If you become aware of any unauthorized duplication or use of any K.E. Pack Photography Image(s), please notify K.E. Pack Photography via email at info@kepackphotography.com;

B. "Non-Exclusive" as used herein means that other people, companies and entities may be licensed to use the same image, for the same use, in the same industry, geographic region, and/or time period.

C. If you plan on using or do use Image(s) as part of work for a client or customer, you must keep accurate and detailed records of the use of each Image. These records must include the name of the client, the Image Number as well as the date(s) on which the Image(s) were used. You shall deliver copies of such records to K.E. Pack Photography at K.E. Pack Photography's request.

D. You agree to indemnify and hold harmless K.E. Pack Photography, its officers, employees and/or agents against any damages or liability of any kind arising from any use of the Image(s) other than the uses expressly permitted by this Agreement. You further agree to indemnify K.E. Pack Photography for all costs and expenses that K.E. Pack Photography incurs in the event that you breach any of the terms of this or any other agreement with K.E. Pack Photography;

E. If you are unsure of your rights under this Agreement, or if you wish to use an Image(s) in a manner not expressly permitted under this Agreement, please contact K.E. Pack Photography at info@kepackphotography.com ;

F. If you are entering into this Agreement on behalf of your employer or other entity, you warrant and represent that you have the full right and authority to do so. In the event that you do not have such authority, you agree that you will be personally liable to K.E. Pack Photography for any breaches of the terms of this Agreement;

G. K.E. Pack Photography reserves the right to revoke the license to use the Image(s) for good cause and elect to replace such Image(s) with alternative Image(s). Upon notice of any revocation of a license for any particular Image(s) Licensee shall immediately cease using such Image(s) and shall where possible ensure that its clients and customer do likewise;

H. In the event that Licensee breaches any of the terms, of this or any other Agreement with K.E. Pack Photography, K.E. Pack Photography shall have the right to terminate Licensee's licensing Agreement(s) without further notice. Such termination shall be in addition to K.E. Pack Photography's other rights at law and or equity. K.E. Pack shall be under no obligation to refund any fees paid by Licensee in the event that Licensee's licensing Agreement is terminated by reason of a breach or breaches of this or any other Agreement.

7. DERIVATIVE WORK

In the event that you create a derivative work based on or incorporating one or more Image(s), whether in whole or in part, all rights in and to such Image(s) shall continue to be owned by K.E. Pack Photography or its contributing photographer(s), subject to your rights to use such Image(s) pursuant to the terms and limitations set forth herein.

8. COPYRIGHT AND OTHER RIGHTS

No ownership or copyright in any Image(s) shall pass to Licensee by the issuance of the license contained in this Agreement. Except as expressly stated in this Agreement, K.E. Pack Photography and/or its contributing photographers, grants Licensee no right or license express or implied to the Image(s). All other rights in or to the Image(s) are expressly reserved by K.E. Pack Photography for itself and its contributing photographers.

All Image(s) on the K.E. Pack Photography website are protected by United States and International copyright laws and treaties. K.E. Pack Photography and/or various contributing photographers that provide content and/or Image(s) to K.E. Pack Photography own all rights, including the copyrights in and to the content and/or Image(s).

9. SEVERABILITY

If one or more of the provisions contained in the Agreement is found to be invalid, illegal or unenforceable in any respect, the validity, legality and enforceability of the remaining provisions shall not be affected. Such provisions shall be revised only to the extent necessary to make them enforceable.

10. WAIVER

No action of K.E. Pack Photography, other than express written waiver may be construed as a waiver of any provision of this Agreement. A delay on the part of K.E. Pack Photography in the exercise of its rights or remedies will not operate as a waiver of such rights, and a single or partial exercise by K.E. Pack Photography of any such rights or remedies will not preclude other or further exercise of that right or remedy. A waiver of a right or remedy by Licensee on any one occasion shall not be construed as a bar or waiver of rights or remedies on any other occasion.

11. WARRANTIES AND REPRESENTATIONS

A. K.E. Pack Photography warrants that it has all necessary rights and authority to enter into and perform this Agreement; and that the Image(s) will be free from defects in material and workmanship for thirty (30) days from delivery. Licensee's sole and exclusive remedy for breach of this warranty being the replacement of the Image(s) or licensed product.

B. K.E. Pack Photography does not warrant that the Image(s) will meet your requirements or that use will be uninterrupted or error free.

C. The representations and warranties made by K.E. Pack Photography, in this Agreement, apply only to the licensed Image(s) as delivered by K.E. Pack Photography and will be invalid if the licensed Image(s) is used by Licensee in any manner not specifically authorized in this agreement or if licensee is otherwise in breach of this Agreement

D. K.E. Pack Photography grants no rights and makes no representations or warranties with respect to the use of any names, trademarks, service mark, logotypes, copyrighted design, or works of art or architecture depicted in any Image(s). It is Licensee's responsibility to assure that all necessary rights, consents, or permissions that may be required for Licensee's use of any Images(s) are obtained. If required for publication, the Licensee should contact K.E. Pack Photography to obtain copies of releases and clearances that are available.

E. Licensee understands and agrees that they should see competent counsel before using images on or in connection with any goods or services or for any other commercial purposes.

12. LAWS & JURISDICTION

This Agreement shall be deemed to have been accepted and signed in the County of San Diego, State of California, U.S.A and shall be construed and interpreted in accordance with the laws of the State of California. In the event of any dispute arising from this Agreement, both K.E. Pack Photography and Licensee consent and agree to *in personam* jurisdiction and venue in the federal and state courts of San Diego County. If litigation is commenced to enforce any of the provisions of this Agreement, to recover damages for breach of the provisions of this Agreement or to obtain declaratory relief in connection with any of the provisions of this Agreement, the prevailing party shall be entitled to recover reasonable attorney's fees, expenses (including, but not limited to experts) and costs. Licensee acknowledges and agrees that K.E. Pack Photography will have adequate remedy at law if Licensee continues to manufacture, sell, distribute, advertise, promote or exploit the Image(s) and/or Licensed Intellectual Property upon the expiration or termination of this Agreement. Licensee further acknowledges and agrees that, in addition to any and all other remedies available to K.E. Pack Photography, K.E. Pack Photography shall have the right to have any such activity by Licensee restrained by equitable relief, including but not limited to a temporary restraining order, preliminary injunction, or such other alternative relief as may be appropriate, with the necessity of K.E. Pack Photography having to post a bond.

In the event Licensee used fraudulent credit card information to fund a licensing Agreement or otherwise engage in any criminal activity affecting K.E. Pack Photography, K.E. Pack Photography will promptly file a complaint with the Federal Bureau of Investigation (FBI), the National White Collar Crime Center and other such authorities as may be appropriate.

K.E. PACK PHOTOGRAPHY SHALL NOT BE LIABLE TO YOU OR TO ANY OTHER PERSON OR ENTITY FOR ANY GENERAL, PUNITIVE, SPECIAL, INDIRECT, CONSEQUENTIAL OR INCIDENT DAMAGES, OR LOST PROFITS OR ANY OTHER DAMAGES, COSTS OF LOSSES ARISING OUT OF LICENSEE'S USE OF THE IMAGE(S), K.E. PACK PHOTOGRAPHY'S BREACH OF THIS AGREEMENT, OR OTHERWISE, EVEN IF K.E. PACK PHOTOGRAPHY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, COSTS OR LOSSES. IN NO EVENT SHALL K.E. PACK PHOTOGRAPHY'S TOTAL AGGREGATE LIABILITY TO THE LICENSEE, OR TO ANY THIRD PARTY CLAIMING THROUGH YOU, ARISING OUT OF OR IN CONNECTION WITH YOUR USE OR INABILITY TO USE THE IMAGES(S) OR LICENSED PRODUCTS CONTAINED THEREON (WHETHER IN CONTRACT, TORT OR OTHERWISE) EXCEED THE MONETARY AMOUNT ACTUALLY RECEIVED BY K.E. PACK PHOTOGRAPHY FROM YOU FOR YOUR USE OF THE APPLICABLE IMAGE(S) OR LICENSED

13. ENTIRE AGREEMENT

This Agreement contains all the terms of the license agreement and no terms or conditions may be added or deleted unless made in writing and signed by an authorized representative of both parties. In the event of any inconsistency between the terms contained herein and the terms contained on any purchase order or other communication sent by Licensee, the terms of this Agreement shall govern.