EJM ART NON-EXCLUSIVE & EXCLUSIVE LICENSE AGREEMENT

LAST UPDATED: February 2019

This is a license agreement between you and Ejm Art that explains how you can use Ejm Art´s **photo art**, **transformed** (photographic manipulated) and **graphic** (illustrations and vectors) print design files (also referred to as **artwork files**) that you license from Ejm Art. By downloading and/or in other ways purchasing content from Ejm Art, you accept the terms of this agreement.

* **Type of licenses:** Ejm Art offers royalty-free (“RF) **Non-Exclusive** and **Exclusive** artwork files.
Royalty-free does not mean there is no cost for the license. Royalty-free means that the license fee is paid once and there is no need to pay additional royalties if the content is re-used.
On a **non-exclusive** basis Royalty-free content is licensed for unlimited, perpetual use.

Royalty-free content, on an **exclusive basis**, is licensed for unlimited, perpetual use, within a timeframe of 1000 days of which a renewal can be negotiated (see “Contract length” on further notice).

Pricing is based on type of license (Non-Exclusive / Exclusive), the number of accessible files (file-series), the design, and the file size(s).

* **Use of licensed content:** You may use licensed content in any way consistent with the rights granted below and not restricted (see Restricted Uses below). Subject to those restrictions and the rest of the terms of this agreement, the rights granted to you by Ejm Art are:
* **Non-Exclusive**: You do not have exclusive rights on artwork files purchasable from Ejm Art´s website which are not specific named exclusive and/or exclusivity. Ejm Art can license the same content to other customers. For purposes of this agreement, “use” means to copy, reproduce, modify, edit, synchronize, perform, display, broadcast, publish, or otherwise make use of. Please make sure you read the Restricted Uses section for exceptions (followed after the Exclusivity section).
* **Exclusivity:** Only one organization can use the artwork file(s) due to which the licensees will pay more for an exclusive license. Exclusive artwork file(s) purchasable from Ejm Art´s website is licensed with one exclusive license within the timeframe set at the contract length below.
* **Contract length:** If no other agreement has been added and signed by both parties within and/or additional to this agreement, as soon as you have purchased & downloaded the artwork file(s), this content is exclusive licensed to you for unlimited, perpetual use within a timeframe of 1000 days of which a renewal can be negotiated. After your purchase, the expiration date (deadline) will be stated at the "Order Received" (Downloads) page. When placing the order, you agree to the terms and conditions of this agreement. When purchasing from Ejm Art´s website two downloads of the variations accessible (color variations and possible artwork-series (file-series) will be available within the permitted timeframe of the contract length (the actual download permitted and a backup download possibility). It is your responsibility to note the expiration date where after you no longer have exclusivity rights unless you act on the Renewal rules below. Should the expiration date for some reason not show at the "Order Received" (Downloads) page, you will have to note the date of purchase and calculate the expiration date yourself.
* **Renewal rules:** In case of a desired extension (renewal) the following rights are granted:
	1. The licensee must contact Ejm Art 30 days prior to the expiration date, for any wished exclusive rights on further use of the contents after the expiration date.
	2. A contract renewal is accepted by Ejm Art, when the licensee has paid the prior purchased price with an increase of 1000%. That means if you paid €800,- the extensions price would be: €8000,-

The payment has to be transferred to Ejm Art´s account before the expiration date has outrun. Hereafter a new 1000 days period is granted where after the licensee period expires.

* 1. If the licensee has interest in a longer or permanent license period, Ejm Art offers the following:
		+ A buy-out meaning the licensee receives full and permanent ownership of Ejm Arts artwork in question, in exchange of an agreed one-time final payment. If Ejm Art and the licensee cannot come to an agreement a buy-out will not be possible.
		+ A royalty fee on an agreed percentage of the licensee´s sold number of products with Ejm Arts artwork, is to be paid to the licensor after each end of sales seasons (A/W and S/S). The exact percentage and the final payment dates per season are to be added to the contract. Verifications of the licensee´s sales amount from each season are to be documented by the licensee with each payment.
* **Restricted Uses.**
1. No Unlawful Use. You may not use content in a pornographic, defamatory or other unlawful manner.
2. No Standalone File Use. You may not use content in any way that allows others to download, extract, or redistribute content as a standalone file (meaning just the content file itself, separate from the project or end use).
3. No False Representation of Authorship. You may not falsely represent that you are the original creator of a work that is made up largely of licensed content. For instance, you cannot create artwork based solely on licensed content and claim that you are the author.
* **Who, can use the licensed content?**
The rights granted to you are non-transferable and non-sublicensable, meaning that you cannot transfer or sublicense them to anyone else. There are two exceptions:
	1. Employer or client. If you are purchasing on behalf of your employer or client, then your employer or client can use the content. In that case, you represent and warrant that you have full legal authority to bind your employer or client to the terms of this agreement. If you do not have that authority, then your employer or client may not use the content. The rights purchased may only belong to you or your employer/client, depending on who is named as the “Licensee” at the time of purchase. In other words, if you purchase a royalty-free image, only one of you (and not both) may re-use that image for multiple projects.
	2. Subcontractors. You may allow subcontractors (for example, your printer or mailing house) or distributors to use content in any production or distribution process related to your final project or end use. These subcontractors and distributors must agree to be bound by the terms of this agreement and may not use the content for any other purpose.
* **Intellectual Property Rights.**

All of the licensed content is owned by Ejm Art. All rights not expressly granted in this agreement are reserved by Ejm Art. You may not assert any right to revenue from a collecting society in respect of photocopying, digital copying or other secondary uses of the licensed content.
Ejm Art property rights are under the protection of The Intellectual Property Rights Established by [The World Intellectual Property Organization](https://www.wipo.int/portal/en/index.html) (WIPO). Along with the Danish [Copyright](https://www.rettigheder.dk/copyright) Office.

* **Representations and Warranties.**

For licensed royalty-free content, Ejm Art warrants that your use of such content in accordance with this agreement and in the form delivered by Ejm Art (that is, excluding any modifications, overlays or re-focusing done by you) will not infringe on any trademark or other intellectual property right, and will not violate any right of privacy or right of publicity.

* **Indemnification/Limitation of Liability.**
	1. Indemnification of Ejm Art by you. You agree to defend, indemnify and hold harmless Ejm Art from all damages, liabilities and expenses (including reasonable outside legal fees) arising out of or in connection with (i) your use of any content outside the scope of this agreement; (ii) any breach or alleged breach by you (or anyone acting on your behalf) of any of the terms of this or any other agreement with Ejm Art; and (iii) your failure to obtain any required release for your use of content.
	2. Indemnification of you by Ejm Art. Provided that you are not in breach of this or any other agreement with Ejm Art, and as your sole and exclusive remedy for any breach of the warranties set forth in the Section **Representations and Warranties** above, Ejm Art agrees, subject to the terms of this Section, to defend, indemnify and hold harmless you, your corporate parent, subsidiaries and affiliates, and each of your respective officers, directors and employees from all damages, liabilities and expenses (including reasonable outside legal fees) arising out of or in connection with any breach or alleged breach by Ejm Art of its warranties in the Section **Representations and Warranties** above. This indemnification does not apply to the extent any damages, costs or losses arise out of or are a result of modifications made by you to the content or the context in which the content is used by you. This indemnification also does not apply to your continued use of content following notice from Ejm Art, or upon your knowledge, that the content is subject to a claim of infringement of a third party’s right.
	3. The party seeking indemnification must promptly notify in writing the other party about the claim. The indemnifying party (the one covering the costs) has the right to assume the handling, settlement or defense of any claim or litigation. The indemnified party (the one not covering the costs) has to cooperate in any way reasonably requested by the indemnifying party. The indemnifying party will not be liable for legal fees and other costs incurred prior to the other party giving notice of the claim for which indemnity is sought.
	4. **Limitation of Liability. EJM ART WILL NOT BE LIABLE TO YOU OR ANY OTHER PERSON OR ENTITY FOR ANY LOST PROFITS, PUNITIVE, SPECIAL, INDIRECT, CONSEQUENTIAL, INCIDENTAL OR OTHER SIMILAR DAMAGES, COSTS OR LOSSES ARISING OUT OF THIS AGREEMENT, EVEN IF EJM ART HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, COSTS OR LOSSES. SOME JURISDICTIONS DO NOT PERMIT THE EXCLUSION OR LIMITATION OF IMPLIED WARRANTIES OR LIABILITY.**
* **General Provisions.**
1. Assignment. This agreement is personal to you and is not assignable by you without Ejm Art prior written consent. Ejm Art may assign this agreement, without notice or consent, to any corporate affiliate or to any successor in interest, provided that such entity agrees to be bound by these terms.
2. Electronic storage. You agree to retain the copyright symbol, the name of Ejm Art, the content’s identification number and any other information or metadata that may be embedded in the electronic file containing the original content, and to maintain appropriate security to protect the content from unauthorized use by third parties.
3. Governing Law/Arbitration. This agreement will be governed by the laws of Denmark, without reference to its laws relating to conflicts of law. Ejm Art shall have the right to commence and prosecute any legal or equitable action or proceeding before any court of competent jurisdiction to obtain injunctive or other relief against you in the event that, in the opinion of Ejm Art, such action is necessary or desirable to protect its intellectual property rights. The parties agree that, notwithstanding any otherwise applicable statute(s) of limitation, any arbitration proceeding shall be commenced within two years of the acts, events or occurrences giving rise to the claim.
4. Severability. If one or more of the provisions in this agreement is found to be invalid, illegal or unenforceable in any respect, the validity, legality and enforceability of the remaining provisions should not be affected. Such provisions should be revised only to the extent necessary to make them enforceable.
5. Waiver. No action of either party, other than express written waiver, may be construed as a waiver of any provision of this agreement.
6. Entire Agreement. No terms of conditions of this agreement may be added or deleted unless made in writing and accepted in writing by both parties or issued electronically by Ejm Art and accepted by you. In the event of any inconsistency between the terms of this agreement and the terms contained on any purchase order sent by you, the terms of this agreement will apply.