



## Imperial War Museums – Terms and Conditions

**These Terms and Conditions govern the release and use of Material from IWM (Imperial War Museums) Collections and IWM Produced Digital Content (as defined below) (the “Terms”).**

Please read these Terms carefully and retain a copy for your records.

A separate Licence Agreement will be issued detailing the agreed permitted use, together with an invoice for Licence Fees.

**Imperial War Museums (“IWM”)**, a British Non-Departmental Public Body and exempt charity under The Charities Act 2011, is a global authority on conflict and its impact, from the First World War to the present day, in Britain, its former Empire and the Commonwealth. We are partly funded by the government but also rely on other sources of revenue, including income from the supply and licensing of material from our unique collections, to fund our work.

IWM is committed to respecting copyright and other intellectual property rights. We make every effort to protect IWM’s copyright and Crown copyright as well as pay attention to copyright in any Third-Party material, so that we can fully use and promote our assets and safeguard our collections to enrich people’s understanding of the causes, course, and consequences of war. Therefore, if you (the “User”) wish to use any of the Materials from the IWM Collections, you must accept these Terms including any third-party restrictions referenced in these Terms

### 1. INTERPRETATION

#### 1.1. Definitions

In these Terms, the following definitions apply:

**"Act"** means The Copyright, Designs and Patents Act 1988 as amended from time to time.

**"Advertising and Promotional Use Guidelines"** means the IWM’s policy for advertising and promotional use, as may be amended from time to time, and as available here: <https://www.iwm.org.uk/commercial/collections-sales-licensing>

**"Agreement"** means these Terms, Licence Agreement, and the Sales Invoice.

**"Body"** means and person, entity, group, club, holding company, or corporation

**"Colourisation Guidelines"** means the policy on the colourisation of original black and white film and photographs, as may be amended from time to time, and as available here: <https://www.iwm.org.uk/commercial/collections-sales-licensing>.

**"Crown copyright"** means a work made by officers or servants of the Crown in the course of their duties as defined in section 163 of the Copyright, Designs and Patents Act 1988.

**"Data Protection Legislation"** means all applicable laws and regulations, including without limitation, Regulation (EU) 2016/679 of 27 April 2016 (“GDPR (General Data Protection Regulation)”), Directive 2002/58/EC (“ePrivacy Regulations”), the Data Protection Act 2018, each as amended or superseded from time to time, and applicable local data protection laws, regulations, and codes of practice.

**"German Material"** means any Material that is subject to The Enemy Property Act 1953.

**"Intellectual Property Rights"** means the patents, utility models, rights to inventions, copyright and neighbouring and related rights, moral rights, trademarks and service marks, business names

and domain names, rights in get-up and trade dress, goodwill and the right to sue for passing off or unfair competition, rights in designs, rights in computer software, database rights, rights to use, and protect the confidentiality of, confidential information (including know-how and trade secrets) and all other intellectual property rights, in each case whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world.

**"IWM Collections"** means the objects, art, films, photographs, printed materials, documents, sounds, and other materials owned by or licensed by third parties to IWM.

**"IWM Produced Digital Content"** means any work produced by, or for, IWM including video footage, photographs, animation, a 3D model or other content in a format existing now or devised in the future which may be offered to you by us for the purposes of reproduction, which may be detailed in the Specific Terms or the invoice.

**"Licence Agreement"** means the agreement between IWM and the User detailing the specific terms (including the title of the Project, Licence Period, Territory, Permitted Media, and Licence Fee as all defined in the Licence Agreement together with and any special provisions) on which the Material is licensed.

**"Licence Fee"** means the usage fee payable by the User for the Material as specified in 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 copies of audio-visual or audio recordings, images, documents, or art works from the IWM Collections supplied in any medium (digital, analogue, or other).

**"Member State"** means a member state of NATO (North Atlantic Treaty Organisation) and/or the United Nations.

**"Museum"** means IWM and includes the Trustees of the IWM and the Imperial War Museum Trading Company Limited.

**"Permitted Media"** means the media forms, channels or platforms as approved for distribution or broadcast of the Project by the Museum as specified in the Licence Agreement.

**"Project"** means the User's production in which the Material is to be included, the title or other identifying detail as specified in this Agreement and/or as further described in the Licence 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 from third parties for the use and exploitation of the Material by the User in the Project.

**"Third-Party Material"** means such (if any) of 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.

**"Transit Film"** means Transit-Film GmbH whose contact details are: (i) website: [www.transitfilm.de](http://www.transitfilm.de) (ii) email [footage@transitfilm.de](mailto:footage@transitfilm.de) (iii) telephone: +49-89-59 98 85-0, or as may be amended by Transit-Film GmbH from time to time.

1.2. A reference to a statute or statutory provision is a reference to such statute or provision as amended or re-enacted from time to time. A reference to a statute or statutory provision includes

any subordinate legislation made from time to time under that statute or statutory provision, as amended or re-enacted from time to time.

- 1.3. A reference to writing or written includes emails.
- 1.4. Any obligation for a party not to do something includes an obligation not to allow that thing to be done.
- 1.5. Any words following the terms "including", "include", "in particular", "for example" or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase, or term preceding those terms.

## 2. GRANT OF RIGHTS

2.1. In consideration of and subject to the payment by the User of the Licence Fee specified in the Licence Agreement, the Museum grants to the User a non-exclusive, non-transferable licence to:

- a) incorporate the Material (or part of it) in the Project; and
- b) exploit the Material as incorporated in the Project,

in the Permitted Media, in the Territory for the duration of the Licence Period and subject to these Terms. No other use of the Material shall be made, authorised, or facilitated by the User.

2.2. The User may not assign, sub-license or sub-contract any rights under this Agreement without the prior written permission of the Museum. However, the User may sub-license reproduction rights to printers and other production suppliers solely to the extent necessary for production purposes.

## 3. COPYRIGHT

3.1. **Museum Copyright:** Except as specifically licensed hereunder, all right, title and interest to all Intellectual Property Rights in and to the Material are and shall be (as between the User and the Museum) reserved to and the property of the Museum (or its licensors, if applicable).

3.2. **Crown Copyright:** The Museum has authority delegated from The Keeper of Public Records, UK National Archives to administer and license Crown copyright material in its collections. All licences for the use of Crown copyright are issued by the Museum on behalf of The Keeper of Public Records. Crown copyright material is provided by the Museum for exploitation by the User subject to these Terms.

3.3. **German Material subject to the Enemy Property Act 1953:** The User acknowledges that the use of German Material is also subject to The Enemy Property Act 1953 and that such Materials are licensed by the Museum solely in connection with their exploitation in the United Kingdom. The User shall be solely responsible for obtaining all other licences, clearances, consents, and permissions which may be required in connection with exploitation of the German Materials outside of the United Kingdom. For film, as far as the Museum is aware, the world rights (excluding UK) are claimed by Transit Film.

3.4. **NATO and United Nations copyright Material:** The User acknowledges that the use of NATO and United Nations Material is subject to additional restrictions including without limitation that such Materials must not be used in parodies, theatrical productions or any programmes or products that defame the United Nations or NATO (in United Nations and/or NATO's sole discretion, as applicable). Any such Material must also only be used in objective and balanced documentaries, even though at times the Project may be critical of the United Nations or NATO. Where a Project is critical of a Member State, the United Nations or NATO the User must make it known that the foregoing do not associate themselves with the contents of the Project.

- 3.5. 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 exploiting any such Third-Party Material.
- 3.6. 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 to the Museum and agrees to indemnify the Museum in respect of all liabilities arising out of or in connection with the User's use of such Material.
- 3.7. The User shall (at its sole expense) obtain all necessary licences, permission, or consents from, and to pay or procure payment of all sums due to, any collecting societies, unions, and guilds in relation to any use pursuant to the Agreement of any musical work, sound recording, or performance contained in the Material.
- 3.8. If the use of the Material shall give rise in any country to a publication right (as defined in the Publication Right and Duration of Copyright and Rights in Performance Regulations 1995, or any analogous right) the User hereby assigns all such right or rights absolutely to the Museum for the full term(s).
- 3.9. The User acknowledges that the Museum is the owner of the Material, and/or has delegated authority and/or authorisation to process such Material. All ownership, title, interest, and licensing rights in the Material shall belong to the Museum, excluding any Material. In regard to any work (including images or film) derived from physical items that are no longer in copyright, in the event that any Intellectual Property Rights are created in the creation of such works, or in the process of their arrangement and selection, the Museum shall own (and to the extent that such rights do not vest automatically, the User, to the extent permitted by law, shall assign absolutely) all right, title and interest in these works and any Intellectual Property Rights associated therewith, if any, throughout the world for the full term for which such rights subsist (including extensions and renewals).

#### **4. RESTRICTIONS ON USE**

The User undertakes and agrees that:

- 4.1 the Material is for use in Projects intended to educate or illustrate, and that the Museum reserves the right not to release Material which in the Museum's sole opinion is likely to trivialise, sensationalise or demean the subject portrayed;
- 4.2 where Material is considered to be of a sensitive nature (e.g. features footage that includes without limitation the dead, wounded, shellshock, concentration camps, executions and images relating to atrocities or war crimes) the User shall provide, on request, copies of the complete script, treatment and/or other credible and accurate evidence relating to the Project in which the Material will be used (the "Evidence") to enable the Museum ascertain the veracity of such Project. Copies of Material will only be released if the Evidence submitted is verified and accepted in writing by the Museum. Use of the Material is restricted to the use specified in any such Evidence;
- 4.3 the User will ensure that the Material is not used in any way which will, or in the Museum's sole opinion, is likely to be detrimental to, disparaging of, or likely to tarnish the reputation of the Museum or the Material or its subject matter or bring either of them into disrepute;
- 4.4 the User will seek prior written approval where the Material is to be adapted, altered, cropped, or manipulated in any way (including any colourisation of original black and white film or photographs, and any such use must be in accordance with the Museum's Colourisation Guidelines);
- 4.5 the User will seek prior written approval for any use of the Material or any part of the Material in an advertising or promotional Project or in any packaging, marketing, or promotional material (whether for use in connection with a Project or otherwise), and

any such use must be in accordance with the Museum's Advertising and Promotional Use Guidelines;

- 4.6 the Museum reserves the right to withhold permission for use if the proposed use of the Material may infringe the applicable artist's moral rights (in the Museum's sole discretion);
- 4.7 the User will seek prior written approval to use only part of an image and any such approved use must include the word detail in the credit line as notified to the User by the Museum;
- 4.8 it shall be the sole responsibility of the User to ensure that in its use of the Material, it does not:
  - a) defame, libel, or slander any person;
  - b) infringe any rights of privacy, confidentiality, or publicity of any person (or any similar, analogous, or related personal rights);
  - c) infringe any copyrights, trademarks, or other rights of any person; or
  - d) breach any applicable laws, rules, codes, or guidelines,

and, for the avoidance of doubt, no approval by the Museum of evidence or any proposed use of Material shall relieve the User of the foregoing responsibilities.

- 4.9 the User will seek prior written approval to reproduce online any digital copies of images supplied at a resolution larger than 72dpi;
- 4.10 the User will seek prior written approval to issue a press release or any promotional material referring to the Museum (whether in connection with the Project or otherwise);
- 4.11 the User will immediately cease using any Material that the Museum notifies to such User as being subject to legal proceedings or that may expose the Museum to incur liability; and
- 4.12 the Museum reserves the right to withhold Material where permissions that are required from contributors or third parties have not been given, are not forthcoming or have been revoked.

## **5. CREDIT**

- 5.1 The User undertakes and agrees that all copies of the Project incorporating any of the Material shall be accorded a credit "Imperial War Museums" or "IWM," with Crown copyright Material accorded the credit "© Crown copyright. Imperial War Museums" or "© Crown copyright IWM" including that:
  - a) all audio-visual productions including film, and/or sound, and/or images shall carry an on-screen end credit;
  - b) all publications which include images shall credit each image with the relevant image number and attribution statement in an appropriate and prominent place;
  - c) all audio projects including sound shall include a verbal credit "Imperial War Museums" or "IWM": and
  - d) all publications including images of works of art shall also carry the artist's name and correct title for each work of art.

## **6. USER OBLIGATIONS**

6.1 The User undertakes and agrees:

- a) on request to promptly provide the Museum with a copy of the final version of the Project (or access to an online copy of the Project) at the User's sole expense, as soon as reasonably practicable following the final edit or publication;
- b) not to exclude the rights of those who have rights or interest in the Materials pursuant to the provisions of the Contracts (Rights of Third Parties) Act 1999 from any agreements relating to the Material;
- c) as soon as reasonably practicable upon expiry of the Licence Period, to delete all copies of the Material in the User's possession or under its control and to ensure that the User's licensees promptly do the same, and if requested by the Museum, to provide written evidence of this destruction; and
- d) inform the Museum as soon as reasonably practicable of any change in the title of the Project.

## **7. INTELLECTUAL PROPERTY RIGHTS**

7.1 The User acknowledges that all Intellectual Property Rights in the Material shall belong to the Museum or authorised to the Museum (or its licensors), and the User shall have no rights in or to the Material other than the right to use it in accordance with the terms of these Terms.

7.2 All modifications, iterations, derivations, improvements, and developments to the Material that are created, acquired or developed by the User after the User's acceptance of these Terms shall, as between the Museum and User, at the date of creation belong to the Museum.

7.3 At its own expense, each party shall, and shall use all reasonable endeavours to procure that any necessary Third-Party shall, promptly execute and deliver such documents and perform such acts as may be required for the purpose of giving full effect to this Agreement. For example, such acts may include (but not be limited to) where the rights referred to in clause 3.9 above, do not vest automatically in the Museum and the User may be required to execute or procure that a Third-Party executes a confirmatory assignment in respect of such rights.

7.4 The User shall immediately notify the Museum in writing giving full particulars if any of the following matters come to its attention:

- a) any actual, suspected or threatened infringement of the Material;
- b) any claim made or threatened that the Material infringes the rights of any Body ; or
- c) any other form of attack, charge or claim to which the Material may be subject.

7.5 In respect of any of the matters listed in clause 7.4:

- a) under Crown Copyright delegation, IWM is obligated to report any infringement of Intellectual Property Rights;
- b) the Museum shall have exclusive control over, and conduct of, all claims and proceedings;

- c) the User shall not make any admissions other than to the Museum and shall provide the User with all assistance that it may reasonably require in the conduct of any claims or proceedings; and
- d) the Museum shall bear the cost of any proceedings and shall be entitled to retain all sums recovered in any action for its own account.

## **8. TERMINATION**

8.1 The Museum may immediately terminate the Agreement without penalty to the Museum if:

- a) there is a breach by the User of any of its material obligations under the 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.
- b) the Museum is, or 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 User's exploitation of the Material;
- c) if the User repeatedly breaches any of the terms of this Agreement in such a manner as to justify the opinion that its conduct is inconsistent with it having the intention or ability to give effect to the terms of this Agreement;
- d) the User becomes or is likely to become unable to pay its debts or steps are taken to wind-up, dissolve or liquidate the User or the User becomes or is likely to become subject to an administration order or on the occurrence of any analogous event anywhere in the world; or
- e) there is a change of control of User (within the meaning of section 1124 of the Corporation Tax Act 2010). The User should promptly notify the Museum if a change of ownership has occurred. The Museum may waive its right to terminate the Agreement in accordance with this clause 8.1(e) within six (6) months of being notified by the User, or being made aware, of the change of ownership provided that the Museum is satisfied that such change of control will not materially affect the User's obligations under this Agreement.

8.2 Upon termination or expiry of the Agreement:

- a) the User shall, or procure that any of its licensees, contractors, end-users, or affiliates cease all use of the Material;
- b) on request from the Museum, the User shall promptly destroy all copies of the Material in its possession or under its control and provide the Museum with written evidence of such destruction;
- c) without prejudice to any right to damages of the Museum, the User shall immediately pay the Museum all sums owing for the supply and use of the Material under this Agreement; and
- d) clauses which by their intent or effect are intended to survive termination of the Agreement will remain in effect after such termination.

8.3 Termination of the Agreement howsoever caused shall not affect the rights and obligations of both Parties under this Agreement in the period up to the date of termination.

8.4 All rights of the Museum (including any right to damages and indemnities) shall survive termination of the Agreement.

## **9. INDEMNITY**

9.1 The User hereby agrees to indemnify the Museum, and shall hold the Museum harmless and keep it fully and effectively indemnified, against all costs (including without limitation legal costs), damages, loss and liability incurred by the Museum arising out of or in connection with:

- a) any breach by the User of its obligations under the Agreement; and
- b) any claim made against the Museum in respect of or arising out of any use or exploitation of the Material by the User.

## **10. LIABILITY**

10.1 IWM 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 in the 12 months preceding the event giving rise to death or personal injury arising from negligence or any other liability which may not be excluded by law.

10.2 IWM gives no warranty about the accuracy of any of the metadata describing any Material and accepts no liability in the event of any description proving to be inaccurate.

10.3 All terms, conditions, warranties, representations or guarantees whether expressed or implied by statute, common law or otherwise relating to delivery, description, performance, quality, or fitness for purpose are hereby excluded.

## **11. CONFIDENTIALITY**

11.1 Without prejudice to clause 13.9, the User undertakes that it shall not at any time during the Licence Period and following the termination of the Agreement, disclose to any person any confidential information concerning the business, affairs, customers, clients, or suppliers of the Museum nor any of the terms of these Terms except as permitted by clause 11.2 below.

11.2 The User may disclose the Museum's confidential information as set out in clause 11.1:

- a) to its employees, officers, representatives, advisers who need to know such information for the purposes of exercising the party's rights or carrying out its obligations under or in connection with these Terms. The User shall procure that its employees, officers, representatives, or advisers to whom it discloses the Museum's confidential information shall comply with the obligations set out in this clause 11 as if they were a party to these Terms; and
- b) as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.

## **12. PAYMENT TERMS**

12.1 In consideration for the rights granted to you under this Agreement, you will pay the Fees.

- a) Invoices raised by the Museum for payment of the Licence Fees are payable within 30 days of the date on which the invoice is raised, in accordance with the invoice Terms.
- b) Any Licence Agreement(s) issued under this Agreement may be cancelled by the User:



- c) if cancelled within seven days of the date of the issue of the Licence Agreement and invoice, a transaction fee will be charged to the User.
- d) if cancelled after seven days, but before 30 days, of the date of the issue of the Licence Agreement and invoice, a cancellation fee equivalent to 50% of the Licence Fee will be charged to the User.
- e) if cancelled after 30 days, no cancellation will be accepted, and the User will be responsible for the payment of the full amount of the Licence Fee.

### **13. GENERAL**

13.1 No variation of the Agreement shall be valid unless it is in writing in the English language and signed by or on behalf of each of the parties.

13.2 Any notice under or in connection with the Agreement shall be in writing in the English language and shall be delivered by hand, email or by pre-paid first-class post or other next Business Day delivery service. Any notice shall be deemed to have been received:

- a) If delivered by hand, on signature of a delivery receipt;
- b) If sent by email, when received in legible form; or
- c) If sent by pre-paid first-class post or other next Business Day delivery service, at 9.00 am on the second Business Day after posting.

13.3 No failure or delay by a party to exercise any right or remedy provided under these Terms or by law shall constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.

13.4 The Agreement constitutes the entire agreement, and supersedes any previous agreement, arrangement or understanding 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 the Agreement unless expressly stated herein, provided that nothing in the Agreement shall be deemed to exclude or restrict the Museum's liability to the User for fraudulent misrepresentations.

13.5 In the event of a conflict between the provisions of these Terms and the Licence Agreement, the provisions of the Licence Agreement shall prevail.

13.6 If any provision or part-provision of the Agreement is or becomes invalid, illegal, or unenforceable, it shall be deemed deleted, but that shall not affect the validity and enforceability of the rest of these Terms.

13.7 No term of the Agreement shall be enforceable under the Contracts (Rights of Third Parties) Act 1999 (or any equivalent legislation in any other jurisdiction) by any person other than the parties to these Terms.

13.8 The 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.

13.9 The Museum is subject to the Freedom of Information Act 2000 and may have to release information relating to the use and licensing of the Material, subject to any exemptions outlined in the Act.

13.10 The Museum is the data controller for any personal information relating to the licensing of its collections under the Data Protection Legislation. Personal information relating to the

licensing of its collections is held for that purpose only. Please see the Museum's Privacy Notice.,

**I have read the Terms set out above and accept them as binding to the exclusion of all other Terms and Conditions. I have signed to indicate agreement these terms and conditions. Signatures may be electronic or handwritten, both of which being of equal effect whether the Agreement is kept in electronic or paper form.**

Title of Production: \_\_\_\_\_

Production Reference Number (if applicable) \_\_\_\_\_

Name of User: \_\_\_\_\_

Name of authorised signatory: \_\_\_\_\_

Signature: \_\_\_\_\_

Date: \_\_\_\_\_

IWM 2023