

BABYARCHIVE USER AGREEMENT

1. Introduction

- 1.1 Please read these Terms and Conditions carefully before using the website operated by Babyarchive Limited Liability Partnership (“Babyarchive”). In particular, we draw your attention to paragraphs 6 (Applicability of online materials) and 9 (Liability).
- 1.2 Without prejudice to the above, by using or accessing our website which contains photographic images (“Images”) and allows you to purchase rights to use Images (“Licences”), you agree to be legally bound by these Terms and Conditions of use as they apply to your use of or access to our website.
- 1.3 If you do not wish to be bound by these Terms and Conditions then you may not use our website.

2. Nature of our Website

- 2.1 Our website is a place for you to select, purchase and download Images (“an Image Transaction”).
- 2.2 Babyarchive acts predominantly as an agent for the sale of Images of which a third party (“Contributor”) is the owner of the copyright and/or moral rights. The Contributor has authorised Babyarchive to grant Licences of the relevant Image(s).
- 2.3 Please note that the contents of our website are aimed at users aged 16 years and above, but you must be over 18 years to purchase the Products, using the payment method displayed on our website.

3. Buying Licences of Images on our Website

- 3.1 To order a product you will need to follow the ordering procedures set out on the Image Library pages of our website.
- 3.2 Details of the prices (“Licence Fees”) for the Licences and the procedures for payment and downloading are displayed on our website. The price of any Licence is the price in force at the date and time of your order unless otherwise agreed in advance with Babyarchive in writing. The price of any Licence may change before you place an order.
- 3.3 You undertake that all details you provide to us for the purpose of purchasing Licences which may be offered by us on our website will be correct, that the credit or debit card, or any electronic cash, which you use is your own and that there are sufficient funds or credit facilities to cover the cost of any Licences purchased. We reserve the right to obtain validation of your credit or debit card details before providing you with any Licence.
- 3.4 Where applicable Value Added Tax shall be payable in addition to the Licence Fee.

- 3.5 You must pay for the Licences either by credit or debit card at the time of the order or within 30 days of the relevant Image Transaction. An invoice will be sent to you but no receipt will be issued without special request.
- 3.6 If you do not use the Image(s) you have downloaded you may cancel the Licence within 30 days from the date of the Invoice. Please inform us of the cancellation by emailing: queries@babyarchive.com. Please note that once you cancel the Licence you lose the right to publish, reproduce or use the Image(s) in any manner whatsoever without purchasing a valid Licence.
- 3.7 **Complaints**
If you have any complaints, you should direct them to us via e-mail at queries@babyarchive.com or by post to Babyarchive LLP, 36 South Street, Lewes, East Sussex BN7 2BS.

4. Modifications to Website

We reserve the right to alter, suspend or discontinue any aspect of our website or the content or services available through it, including your access to it. Unless stated otherwise, any new features including new content, and/or the sale of new Licences shall be subject to these Terms and Conditions.

5. Terms of the Licence

The terms of the Licence under which you may use any Image which has been the subject of an Image Transaction are as follows:

- 5.1 Babyarchive grants to you a **non-exclusive** (unless otherwise stated on invoice) licence to reproduce the Image(s) in the manner and for the purposes detailed in the Image Transaction. This licence is personal to you and may not be assigned or sublicensed by you to any third party or otherwise disposed of.
- 5.2 Reproduction rights are **strictly limited to the** use, medium, size and placement, print run, period of time, territory and any other restrictions stated in the Image Transaction. In these Terms and Conditions "**Reproduction**": means the reproduction by whatever means of the whole or any part of any Image including without limitation, slide projection or other display, electronic, digital or mechanical means, artist's reference or illustration or presentation of images by any means. Reproduction further includes the copying or distortion or manipulation of the whole or part of any Image (for example, by computer, electronically, digitally by an artist or by any other means), even though the resulting image may not appear to a reasonable person to be derived from the original Image.
- 5.3 The use of the Image(s) must NOT BE pornographic, defamatory, fraudulent, lewd, obscene or otherwise illegal or unlawful, and must not infringe any third party intellectual

property or privacy rights, whether directly or in context or by juxtaposition with other materials.

- 5.4 The licence is for the SINGLE use of the Image(s) within any design, literary work, editorial piece, advertisement or other printed or electronically transmitted work in accordance with the information given by you during the Image Transaction (“Authorised Publications”). A single use means a Reproduction in one size for one edition of a single publication, published in one language only.
- 5.5 The Reproduction of the whole or any part of the Image(s) into a logo, trademark or service mark or any incorporation an Image into or onto physical goods other than Authorised Publications is strictly forbidden. Image(s) must not be used as references for creating drawings or other visual works unless specifically agreed with Babyarchive at the time of making an Image Transaction.
- 5.6 Babyarchive makes no claim or warranty with regard to the accuracy of the captioning, keywording or any other information associated with the Image(s).
- 5.7 You agree to abide by any restriction on use notified to you by Babyarchive before, after or at the time of delivery of the Image(s), either in the information accompanying the Image(s), the Invoice or otherwise. Babyarchive, after reasonable notice, may inspect any records, accounts and books relating to the Reproduction of any of the Image(s) to ensure that the Image(s) are being used in accordance with this Agreement.
- 5.8 Babyarchive or the Contributor (as the case may be) retain ownership and copyright of any Image used. You **must** credit Babyarchive and the Contributor as specified by Babyarchive every time an Image is used. The credit line must be “(Photographer's name/Babyarchive.com)”, or any other credit line specified by Babyarchive. If you fail to credit the Image(s) an additional 50% of the original licence fee will be payable.
- 5.9 If any use of the Images is required which is outside the terms of the Licence such use may be authorized by Babyarchive upon payment of an additional Licence Fee. Application should be made to queries@babyarchive.com. No extended Licence shall be valid unless authorized by Babyarchive in writing.

6. Applicability of online materials

6.1 Third Party Materials

Our website is controlled and operated by us from our offices at 36 South Street, Lewes, East Sussex BN7 2BS. Where content published on the website is supplied by third parties, you understand that we do not control or endorse their contents in any way. All content which is offered by third parties that are not affiliated with or otherwise connected with us, is published in good faith but we do not (to the extent permitted by applicable law) accept responsibility for the accuracy application or otherwise of such content (whether

published on or off-line) and the use of such content, except for content which relates directly to Images you purchase. **You assume total responsibility and risk for your use of our website and use of all information contained within it. This will not affect any rights which you may have under warranties or otherwise against any Contributor.**

6.2 Compliance with law

We have used our best endeavours to ensure that our website complies with UK law. However, we make no representations that the materials on our website are appropriate or available for use in locations outside the UK.

6.3 Exclusion of warranties

Babyarchive makes no warranties, express or implied that making the Images available in any particular jurisdiction outside the UK is permitted under any applicable non-UK laws or regulations. Accordingly, if making the Images or any part available in your jurisdiction or to you (by reason of nationality, residence or otherwise) is prohibited, those Images or Licences of them are not offered for sale to you. You accept that if you are resident outside the UK, you must satisfy yourself that you are lawfully able to purchase the Images. Babyarchive accepts no liability, to the extent permitted by applicable law, for any costs, losses or damages resulting from or related to the purchase or attempted purchase of Licences by persons in jurisdictions outside the UK or who are nominees of or trustees for citizens, residents or nationals of other countries.

7. **Copyright and monitoring**

The contents of our website are protected by international copyright laws and other intellectual property rights. The owner of these rights is Babyarchive or other third party licensors. All product and company names and logos mentioned in our website are the trade marks, service marks or trading names of their respective owners, including us. You may download material from our website. However, you may not modify, copy, reproduce, republish, upload, post, transmit or distribute, by any means or in any manner, any material or information on or downloaded from our website including but not limited to text, graphics, video, messages, code and/or software without our prior written consent, except where expressly invited to do so, for example in order to complete any test or questionnaire.

8. **Availability of our Website**

We will try to make our website available but cannot guarantee that our website will operate continuously or without interruptions or be error free and can accept no liability for its unavailability. You must not attempt to interfere with the proper working of our website and, in particular, you must not attempt to circumvent security, tamper with, hack

into, or otherwise disrupt any computer system, server, website, router or any other internet connected device.

9. Liability

9.1 Indemnity

You will indemnify Babyarchive and its Contributors in respect of any claims, damages, expenses or costs, including legal costs, we incur arising from any reproduction of any Image supplied to you by Babyarchive, on behalf of the Contributor. You will indemnify Babyarchive and its Contributors in respect of any claims, damages, expenses or costs, including legal costs, we incur arising other breach by you of any of your obligations under this Agreement.

9.2 Use of control

We make no claim or warranty with regard to your use of content, names, text, people, trademarks or copyright material depicted in any Image and you will indemnify us in respect of any claims, damages, costs or expenses we incur arising from the use of any Image supplied to you.

9.3 Defects

You must check the Image(s) quality for possible defects (whether digital or otherwise) before sending the Image(s) for Reproduction. Babyarchive shall not be liable for any loss or damage suffered by you or any third party arising from any alleged or actual defect in any Image or its caption or in any way from its Reproduction.

9.4 Exclusion of liability

In relation to the purchase of Licences, we accept no liability for any indirect or consequential loss or damage, or for any loss of data, profit, revenue or business (whether direct or indirect), however caused, even if foreseeable. In circumstances where you suffer loss or damage arising out of or in connection with the viewing, use or performance of our website or its contents other than as a direct result of purchasing Licences, we accept no liability for this loss or damage (except where we have been negligent) whether due to inaccuracy, error, omission or any other cause and whether on the part of Babyarchive or our servants, agents or any other person.

9.5 Limit of liability

If we are liable to you for any reason, our liability will be limited to the amount paid by you for the Licence concerned. This limit does not apply to any liability we may have for death or personal injury resulting from our negligence.

9.6 Users responsibilities

You are responsible for ensuring that your computer system meets all relevant technical specifications necessary to use our website and is compatible with our website. You also

understand that we cannot and do not guarantee or warrant that any material available for downloading from our website will be free from infection, viruses and/or other code that has contaminating or destructive properties. You are responsible for implementing sufficient procedures and virus checks (including anti-virus and other security checks) to satisfy your particular requirements for the accuracy of data input and output.

9.7 Legal limitations

The limitations and exclusions in this paragraph only apply to the extent permitted by applicable law.

10. General

10.1 Alterations

We may alter these terms and conditions from time to time and post the new version on our website, following which all use of our website will be governed by that version. You must check the terms and conditions on the website regularly.

10.2 Entire Agreement

These Terms and Conditions are your whole agreement in relation to Babyarchive and any Image. You acknowledge that you have not entered into this agreement in reliance upon any warranty or representation made by Babyarchive or any other person and you waive any rights to damages/rescission you may have for misrepresentation (other than a fraudulent misrepresentation) that is not contained in the relevant terms and conditions, order form and payment method instructions.

10.3 Illegality

If any provision or term of these Terms and Conditions shall become or be declared illegal, unlawful, invalid or unenforceable for any reason whatsoever, such term or provision shall be divisible from the other Terms and Conditions and shall be deemed to be deleted from them

10.4 Jurisdiction

These terms and conditions and your use of our website are governed by English law and you submit to the non-exclusive jurisdiction of the English court.

10.5 Causes beyond Control

Neither you nor Babyarchive will be held liable for any failure to perform any obligation to the other due to causes beyond your or Babyarchive's respective reasonable control.

10.6 No Waiver

Failure by either party to exercise any right or remedy under this agreement does not constitute a waiver of that right or remedy.

11. Notices

All notices shall be given:

- to us via e-mail at queries@babyarchive.com; or
- to you at either the e-mail or postal address you provide during any ordering process.

Notice will be deemed received when an e-mail is received in full (or else on the next business day if it is received on a weekend or a public holiday in the place of receipt) or 3 days after the date of posting.

12. Replacement

These terms and conditions replace all other Terms and Conditions previously applicable to the use of our website.