

AAP Newswire – AAP Photo Commercial Terms as at 9 December 2017

1 Introduction and warning

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2 Terms

- 2.1 These AAP Newswire – AAP Photo Commercial terms (**Commercial Terms**) set out the terms upon which Australian Associated Press Pty Limited ACN: 006 180 801 (**AAP**) will allow you, (**you or Licensee**) to access and use an image (**Image**) available for Online Purchase from AAP Photos, a department of AAP and made available at photos.aap.com.au or as otherwise advised from time to time (**Multimedia Site**).
- 2.2 Licensee's use of the Image is also governed by the AAP Newswire - Multimedia Terms and Conditions (**Multimedia Terms**) as agreed to by you in the Multimedia Site registration process and upon making your Online Purchase. In agreeing to these Commercial Terms, Licensee also agrees to be bound by the Multimedia Terms and any future amendments to them. In the event of an inconsistency between these Commercial Terms and the Multimedia Terms these Commercial Terms shall prevail *to the extent of that inconsistency*. You are acknowledging by accepting these Commercial Terms and continuing to access the Multimedia Site that you are bound by these Commercial Terms and the Multimedia Terms.
- 2.3 In these Commercial Terms, capitalised words will have the same meaning as that set out in the Multimedia Terms unless otherwise specified.

3 Scope of License and clearances

- 3.1 Subject to these Commercial Terms and the Multimedia Terms, AAP grants to Licensee a non-exclusive, non-transferable right and licence to access and use the image(s) selected by Licensee during the Online Purchase on a once off basis only and only for the permitted use displayed in the tiles clicked on by you during the Online Purchase (and as confirmed in the tax invoice received by you subsequent to your Online Purchase).
- 3.2 AAP makes no representation and gives no warranties with regard to any third party rights, including the use of names, likenesses, logos, trade marks, or other copyrighted material that may be contained within the Image. Licensee shall be solely responsible for determining whether additional clearances need to be obtained for Licensee's use of the Images and shall be solely responsible for obtaining those clearances.
- 3.3 Licensee is fully responsible for obtaining at its own cost any necessary rights clearances from third parties relating to any part/aspect of Image which may be protected by proprietary rights, copyright, neighbouring rights (including moral rights and performers' rights) or privacy rights prior to the use of the Image by Licensee, including:
- (1) clearances from people whose name, portrait or images or performance appears in the relevant Image; and
 - (2) clearances in respect of (as applicable) musical works, sound recordings, buildings, works of art, designs, public monuments and/or other inanimate objects contained in the relevant or Image.
- 3.4 Licensee must provide, where requested by AAP, a copy of any relevant clearances within seven (7) days of such request being made by AAP.
- 3.5 Licensee acknowledges that all right, title and interest in and to the Image remain vested in AAP.
- 3.6 Licensee must comply with any limitations contained in the special instructions or use restrictions accompanying the images (for example limits on update or display times).

4 Warranties

- 4.1 The Licensee warrants to AAP that:
- (1) it will obtain, at Licensee's expense, all necessary model and third party clearances and will use the image in accordance with all applicable laws;
 - (2) it will not use or distribute any part of the Image in such a manner so as to harm or reduce the legal protection accorded to the copyright and all other rights of AAP in the Image; and
 - (3) it will not use or distribute any part of the AAP Service in transmissions or other publications which are reasonably likely to be obscene, defamatory, or offensive to any person or classes of person;
 - (4) the primary and intended market is Australia or as otherwise agreed to by AAP in writing; and

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- (5) the Licensee will use the Image as permitted by these Commercial Terms and the Multimedia Terms.
- 4.2 Where any claims or legal actions of a third party are made or commenced against Licensee by any third party howsoever arising, Licensee hereby,
- (1) acknowledges and agrees that AAP shall have no liability in respect of any such claims or legal actions or any expenses or damages suffered or incurred by Licensee as a result of such claims or legal actions being commenced; and
- (2) waives and releases AAP from any liability in respect of such claims or legal actions.
- 4.3 The Licensee indemnifies AAP against all liabilities, losses, costs and expenses, damages or other costs (including, without limitation, reasonable legal costs) that AAP suffers or incurs as a result of a breach by Licensee of any warranties under these Commercial Terms.

5 Restriction on the Use of the Image

- 5.1 Licensee may use each Image once only per order.
- 5.2 Licensee must comply with any form of restriction accompanying any Image (either in the caption or another information field), including but not limited to "No sales", "No magazines" or "Internet Out".
- 5.3 Licensee must promptly provide AAP, if requested, with a copy of any work in which an Image is used or access to all services or areas where an Image is displayed electronically.

6 Termination

- 6.1 AAP may terminate these Commercial terms in the event that Licensee:
- (1) breaches any term and fails to rectify the breach within 7 days of the date of notice from AAP requiring it to do so; or
- (2) enters into liquidation or has any receiver or receiver and manager appointed over any of its assets or becomes insolvent.
- 6.2 Upon termination of these Commercial Terms under this clause, Licensee must destroy all materials which include Image, whether in whole or in part and were created as a result of the Licensee's use of the Image.

7 Limitation of Liability

- 7.1 All statutory or implied conditions and warranties are excluded to the extent permitted by law.
- 7.2 If the law, including the Competition and Consumer Act 2010 (Cth) (as amended) or any similar legislation, implies or imposes a non-excludable condition, warranty or guarantee which can be limited, the liability of AAP to the Licensee for breach of that condition or warranty will be limited, to the extent permitted by law - as AAP determines - to:
- (1) provision of replacement Image; or
- (2) cost of providing replacement Images.
- 7.3 To the extent permitted by law, AAP is not liable for any indirect, consequential, special or punitive loss or damage in respect of the Image or any act or omission on its part in relation to its obligations under these Commercial Terms or for any payments to third parties, loss of revenue, loss of profits, loss of goodwill or data however caused, whether or not:
- (1) such loss or damage was foreseeable or contemplated by either party; or
- (2) AAP is advised of the possibility of such loss or damage.
- 7.4 To the extent permitted by law, the total liability in all circumstances of AAP to Licensee in contract, tort (including negligence) or otherwise for any loss or damage is limited to the amount paid by Licensee for the Online Purchase.
- 7.5 Licensee may not assign or deal with any of its rights under these Commercial Terms without the prior written consent of AAP.
- 7.6 These Commercial Terms is governed by the law of New South Wales. The parties irrevocably submit to the non-exclusive jurisdiction of Courts of NSW.