

ZA-TCdwn04

Licence to use downloaded products

Licence agreement

These are the terms and conditions subject to which we license any of our Products to you. By using any Product, you agree to be bound by them. You may not use Our Website if you are under the age of 18 years.

We are [business name], a company registered in [country], number [company number]. Our address is [address]

VAT Number: [Number]

You are: Anyone who buys a Licence or Licensed Product from us.

It is now agreed as follows:

1. Definitions

In this agreement, the following words shall have the following meanings, unless the context requires otherwise:

“Copy or Publish”	with reference to a Licensed Product, means reproducing or publishing in whole or in part, using any means, in any medium. It includes breaking up, changing, cropping or any other change or use as part of some other created work.
“Editorial Licence”	means a non-exclusive, non-transferable, worldwide, right to reproduce the Licensed Product an unlimited number of times in connection with a single article.
”Product”	means a Licensed Product offered for sale through Our Website. It includes a soft copy downloaded.
”Intellectual Property”	means intellectual property owned by us, of every sort, whether or not registered or registrable in any country, including all Licensed Products, intellectual property of all kinds coming into existence after today; and including, among others, designs, copyrights and all rights which are derived from those rights.

“Licensed Product”	means any Product, material or thing offered for licence by us on Our Website, whether or not bought by you. A reference to “Product” shall be a reference to all or part of a Product or to a Product changed by you in any way.
“Marketing Licence”	means a non-exclusive, non-transferable, worldwide, right to reproduce the Licensed Product an unlimited number of times in connection with one or more marketing campaigns limited in time to the period for which you have bought the Licence.
“Our Website”	means any website of ours, and includes all web pages controlled by us.
“Restrictions on Use”	means first, the restrictions set out in this agreement and second, all restrictions or limitations arising from choices you made at the time of purchase. These may relate to limitations on use, territory, duration, or any other choice which defines the Licensed Product. Third, restrictions include those made by you, if any, in private correspondence between us before your purchase.
“Third Party Owner”	means an owner of a Licensed Product which is not owned by us.
“Website Licence”	means a non-exclusive, non-transferable, worldwide, right to reproduce the Licensed Product an unlimited number of times on or in connection with a single website for an indefinite period of time for the purpose of illustration, decoration, or provision of information or instruction.

2. Interpretation

In this agreement the following terms apply unless the context otherwise requires:

- 2.1. all Restrictions on Use whether expressly included or not shall be deemed to be part of this agreement. It doesn't matter how or when communicated to you.
- 2.2. a reference to a person includes a human individual, a corporate entity and any organisation which is managed or controlled as a unit.
- 2.3. a reference to a person includes reference to that person's successors, legal representatives, permitted assigns and any person to whom rights and obligations are transferred or pass as a result of a merger, division, reconstruction or other re-organisation involving that person.
- 2.4. in the context of permission, "may not" in connection with an action of yours, means "must not".
- 2.5. the headings to the paragraphs and schedules (if any) to this agreement are inserted for convenience only and do not affect the interpretation.
- 2.6. any agreement by any party not to do or omit to do something includes an obligation not to allow some other person to do or omit to do that same thing;
- 2.7. a reference to an act or regulation includes new law of substantially the same intent as the act or regulation referred to.
- 2.8. these terms and conditions apply to all supplies of Products by us. They prevail over any terms proposed by you.
- 2.9. this agreement is made only in the English language. If there is any conflict in meaning between the English language version of this agreement and any version or translation of this agreement in any other language, the English language version shall prevail.

3. The Licence

- 3.1. You confirm that you have authority to enter into this agreement **and have obtained all necessary approvals to do so.**
- 3.2. In entering into this contract you have not relied on any representation or information from any source except that on Our Website.
- 3.3. If any information you give us is inaccurate, your Licence is automatically terminated and no refund of money will be due to you.

- 3.4. You have no right to use a Licensed Product beyond the scope of use for which you have bought it.
- 3.5. Each Licensed Product is marked on Our Website as to whether the price is fixed or must be provided by us direct to you depending on information you give us via Our Website.
- 3.6. Subject to the terms of this agreement, we grant you the Licence to use a Licensed Product.
- 3.7. This Licence is limited by the Restrictions on Use and by the choices you have made which relate to time, extent, numbers, type of usage, and other matters, at the time of purchase of your Licence. You agree to comply with all Restrictions on Use.
- 3.8. No express or implied licence of the Licensed Product or any other material is granted to you other than the express Licence granted in this agreement.

4. Limitations and permissions on Licences

- 4.1. You must not sub-licence a Licensed Product.
- 4.2. You must not Copy or Publish a Licensed Product except as specifically allowed in this agreement.
- 4.3. You may not allow any other person to use a Licensed Product except in the situation or context for which you have bought it.
- 4.4. You may not represent or give the impression that you are the owner or originator of any Licensed Product.
- 4.5. You may not remove any identification or reference number or other information which may be embedded in any file of a Licensed Product.
- 4.6. Every publication or appearance of a Licensed Product on a website must be protected as far as the law allows by separate, specific or general provisions against copying or publishing. We allow you to use the definition of "Copy or Publish" used in this agreement.
- 4.7. You may not use a Licensed Product:
 - 4.7.1 except for the use specified at the time of purchase;
 - 4.7.2 in a context which is pornographic;

- 4.7.3 containing a human model in any way which might degrade that person in the eyes of a reasonable viewer;
- 4.7.4 in part or as a whole, as a logo or otherwise to incorporate it in any intellectual property of yours;
- 4.7.5 in an application for mobile/cell phone use, except as part of a marketing programme based on a website;
- 4.7.6 for a secondary use, for example on social networks.

5. The price

- 5.1. The prices payable for the Products are clearly set out on Our Website.
- 5.2. The price charged for any Product may differ from one country to another. You may not be entitled to the lowest price unless you reside in the qualifying country.
- 5.3. Prices are inclusive of any applicable value added tax or other sales tax.

6. Freedom to use

Despite the above limitations, you may copy a Licensed Product:

- 6.1. once for the purpose of system maintenance or to show or share with some other person who has a business interest in it;
- 6.2. to a contractor of yours whose contract is to work on the project or purpose for which you have bought the Licensed Product. In this case the Licence extends only to that project or purpose. If this happens, you remain liable to us in every way for the acts and omissions of your contractor. We advise you to obtain an appropriate agreement from your contractor to protect you in this regard.

7. Security of your credit card

We take care to make Our Website safe for you to use.

- 7.1. Card payments are not processed through pages controlled by us. We use one or more online payment service providers who will encrypt your card or bank account details in a secure environment.

8. Disclaimers and limitation of liability

- 8.1. The law differs from one country to another. This paragraph applies so far as the applicable law allows.
- 8.2. All implied conditions, warranties and terms are excluded from this agreement. If in any jurisdiction an implied condition, warrant or term cannot be excluded, then this sub paragraph shall be deemed to be reduced in effect, only to the extent necessary to release that specific condition, warranty or term.
- 8.3. We shall not be liable to you for any loss or expense arising out of or in connection with your use of Our Website, which is indirect or consequential loss, or economic loss or other loss of turnover, profits, business or goodwill. This applies whether in an action of contract, negligence or otherwise, even if such loss was reasonably foreseeable or we knew you might incur it.
- 8.4. We make no representation or warranty and accept no responsibility in law for:
- 8.4.1 accuracy of any Content or the impression or effect it gives;
 - 8.4.2 delivery of Content, material or any message;
 - 8.4.3 privacy of any transmission;
 - 8.4.4 any act or omission of any person or the identity of any person who introduces himself to you through Our Website;
 - 8.4.5 any aspect or characteristic of any goods or services advertised on Our Website;
- 8.5. We will do all we can to maintain access to Our Website, but it may be necessary for us to suspend all or part of our service for repairs, maintenance or other good reasons. We may do so without telling you first.
- 8.6. You agree that in any circumstances when we may become liable to you, the limit of our liability is the amount you have paid us in the immediately preceding 12 month period for the Product concerned.

- 8.7. If you become aware of any breach of any term of this agreement by any person, please tell us by joedy@alpineit.co.za. We welcome your input.
- 8.8. Nothing in this agreement excludes liability for a party's fraud.

9. You indemnify us

You agree to indemnify us against all costs, claims and expense arising directly or indirectly from:

- 9.1. your failure to comply with the law of any country;
- 9.2. your breach of this agreement;
- 9.3. any act, neglect or default by any agent, employee, licensee or customer of yours;
- 9.4. a contractual claim arising from your use of the Licensed Products;
- 9.5. a breach of the intellectual property rights of any person.

10. Copyright and other Intellectual Property

- 10.1. You agree that at all times you will:
 - 10.1.1 not cause or permit anything which may damage or endanger our title to any Licensed Product or other Intellectual Property or the title of any Third Party Owner whose work has been made available to us as a Licensed Product;
 - 10.1.2 notify us of any suspected infringement of the Intellectual Property.
- 10.2. If you use a Licensed Product in a way not allowed by this agreement we may take legal action anywhere in the World. If loss to us or any other person results from your wrongful action, you will be liable to pay.
- 10.3. If we terminate the Licence on account of your breach, you agree that you will:
 - 10.3.1 immediately stop using the Licensed Product;
 - 10.3.2 destroy all copies of the Licensed Product in your possession or control;

- 10.3.3 destroy any work of yours derived from a Licensed Product.
- 10.4. To assure us that you are using the Licensed Product in accordance with the terms of the Licence, you agree that you will give us copies of your works and materials containing or using a Licensed Product. We will give you 14 days notice of this requirement. You also agree to provide access to relevant pages which have restricted access or are fire-walled.
- 10.5. If we reasonably believe that you are using a Licensed Product beyond the scope of this Licence, you agree to provide written confirmation of your compliance, in a form to be drawn by us.

11. Assignment

Neither party may assign, delegate, sub-contract, mortgage, charge or otherwise transfer any or all of its rights and obligations under this agreement without the prior written consent of the other party, except that a party may assign and transfer all its rights and obligations under this agreement to any person to which it transfers all of its business, provided that the assignee undertakes in writing to the other party to be bound by the obligations of the assignor under this agreement.

12. Miscellaneous matters

- 12.1. We may change this agreement in any way at any time. The version applicable to your contract is the version which was posted on Our Website at the time that the contract was made.
- 12.2. Our privacy policy is strong and precise. It complies fully with the current privacy law which is at <https://alpineit.co.za/privacy-policy/>
- 12.3. At any time if we decide in our absolute discretion that you have failed to comply with any of the terms of this agreement, we reserve the right to terminate this agreement without refunding to you any payment made.
- 12.4. You undertake to provide us your, e-mail address and telephone numbers as often as they are changed together with all information that we may require to enable us to fulfil our obligations under this contract.
- 12.5. So far as any time, date or period is mentioned in this agreement, time shall be of the essence.

- 12.6. If any term or provision of this agreement is at any time held by any jurisdiction to be void, invalid or unenforceable, then it shall be treated as changed or reduced, only to the extent minimally necessary to bring it within the laws of that jurisdiction and to prevent it from being void and it shall be binding in that changed or reduced form. Subject to that, each provision shall be interpreted as severable and shall not in any way affect any other of these terms.
- 12.7. The rights and obligations of the parties set out in this agreement shall pass to any permitted successor in title.
- 12.8. If you are in breach of any term of this agreement, we may:
- 12.8.1 terminate any Licence of a Licensed Product;
 - 12.8.2 issue a claim in any court.
- 12.9. Any obligation in this agreement intended to continue to have effect after termination shall so continue.
- 12.10. No failure or delay by any party to exercise any right, power or remedy will operate as a waiver of it nor indicate any intention to reduce that or any other right in the future.
- 12.11. When you visit Our Website or send messages to us by email, you are communicating with us electronically. We communicate with you by e-mail or by posting notices on Our Website. You agree that all our electronic communications satisfy any legal requirement that such communications be in writing.
- 12.12. In the event of a dispute between the parties to this agreement, then they undertake to attempt to settle the dispute by engaging in good faith with the other in a process of mediation before commencing arbitration or litigation.
- 12.13. So far as the law permits, and unless otherwise stated, this agreement does not give any right to any third party.
- 12.14. In the event of any conflict between any term of this agreement and the provisions of the memorandum of incorporation of a limited company or any comparable document intended to regulate any other corporate or collective body, then the terms of this agreement shall prevail.
- 12.15. The validity, construction and performance of this agreement shall be governed by the laws of the Republic of South Africa and you agree that any dispute arising from it shall be litigated only in that country.

Explanatory notes

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Paragraph specific notes

Notes numbering refers to paragraph numbers.

1. Definitions

We know nothing about your business, so we cannot provide you with defined terms which precisely describe what you sell. Most people do not read your terms (even if they have to “tick the box”). The people who do take the trouble to read them are likely to be the sort of people who expect the same attention to detail from you as they themselves give to their purchase of your goods or services. It therefore helps you to obtain their business if your terms are accurate. You are free to change them, but be very careful. Here are examples of changes to defined terms:

We use

“Licensed Product”

“Our Website”

You decide to change to

“Sarah’s drawings” or “Soccer software”

“The Jones Site” / “The Site”

But if you do change the defined word, make sure it applies to every use of it in the document.

Remember too, that when a word or phrase is defined, the defined meaning, capitalised, takes precedence over the common meaning of that word or phrase.

You should first decide on the contents of the document, then return to check what definitions are needed and whether they really fit the text you have left in place.

We have provided for four categories of licence. This provides the basis to enable you to offer different terms or prices for different uses of the same image or product. If you wish to offer only a single usage-price, then you can easily edit by deletion, here and in other places which refer to the different usages.

2. Interpretation

Leave these items in place unless there is a good reason to edit or remove. These items are not “lawyer’s blurb”. Every item has been carefully considered in the context of this agreement and has been included for a purpose. Many of them strengthen the framework within which the agreement operates.

3. The Licence

It is not safe to allow copyright works to be released in a country which does not respect copyright.

Be careful not to delete the reference to the actual grant of the licence.

4. Limitations and permissions on Licences

These points are matters for your choice. You can delete what you do not need and add anything referable to your particular business.

The definition of “Limitations and permissions” refers also to your website. We assume that a buyer will be asked to make choices, on which, together, your fee will be calculated. Those choices may relate to territory, timescale, size of circulation, and so on.

5. The price

We have no comment

6. Freedom to use

Without these items basic requirements of a user will not be met. Some customers may be put off. But this paragraph is not strictly necessary to protect your interest.

7. Third Party Owners and additional restrictions

If you license only your own products, delete this paragraph and the reference in the definitions paragraph 1. Otherwise, edit to fit the arrangements you have made with your owners. We have assumed here that your deal with an owner is a standard contract whereby you pay them a percentage or fixed sum on each licence of their work on terms that leave you free to sub licence to your customers.

8. Release of third party rights

This is a difficult area, in practice and in law. Copyright in a photographic image may not be owned exclusively by the photographer. As an extreme example, sale or publication of a photo of a McDonald’s logo would undoubtedly breach the copyright of McDonald’s. The same applies to a photo

of any human being, but with a difference: the value of a damages claim by a professional model would be many times larger than a claim by you or me. We would probably have no claim in law at all.

So this paragraph covers you in the event that some claimant comes “out of the woodwork”.

9. Order cancelation and returns

This paragraph ensures compliance with Electronic Communications and Transactions Act 2002 (ECTA) and other consumer protection law. If you do not provide a physical object which is delivered, you can delete this paragraph. Under section 42(1)(g) of the ECTA the cooling-off period of 7 days set out in section 44 of the Act does not apply to an electronic transaction where audio or video recordings or computer software were unsealed by the consumer.

10. Defects

Consumers are permitted to return goods to suppliers, without penalty and at the suppliers' risk and expense, within a period of six (6) months after delivery of such goods, if the goods are of inferior quality, unsafe or defective. We have provided a sensible set of terms. However, the law everywhere provides that if you sell defective goods or services you are obliged to pay for all foreseeable resulting loss and expense. That is the common law, pre-dating any sale of goods act.

We have added for your convenience provisions for returning which may not be enforceable but which will certainly facilitate the procedure.

11. Security of your credit card

This short paragraph is intended primarily to re-assure your customer that you are careful with his money. It makes clear however that you are not responsible for credit card problems because you do not handle them.

For payment you may have various alternatives like the PayPal and cheque. Edit this paragraph accordingly.

12. Disclaimers and limitation of liability

We have given you very strong protection. Elsewhere we have specified concisely that any provision which offends should be reduced, as opposed to delete.

You will see that we have also included in the provision for directors and others to have the same protection. One way to get around disclaimer

provisions in the past was to claim not against the company with whom the claimant has a contract but against the directors or others in negligence.

13. You indemnify us

We advise you to leave this provision in place.

14. Copyright and other Intellectual Property

Although you cannot prevent some person from acting maliciously or unlawfully, this paragraph is drawn to give you the strongest legal protection. The last two sub paragraphs provide you with a basis in law to ask a judge for access so that you can take legal action if necessary. The reference to “a form drawn by us” would be a sworn declaration that the customer has complied and will continue to comply. That effectively gives you a personal guarantee.

15. Assignment

Give careful thought to this. Consider the circumstances on both sides which may require an assignment. You should not make rules and regret them later, but equally, you may not be happy to see the other side passing on either right or obligations under this contract.

16. Miscellaneous matters

We have identified each of these as important to protect you. Some are relevant to particular paragraphs in the document, some apply more generally. Some are included to strengthen your position generally. Do not delete unless you are quite positive of the legal effect of doing so.

End of notes