



## **General Terms and Conditions for the Use of Image Material from the erlenbacher Image Database**

### **1. Scope of Application**

- 1.1. The following provisions (hereinafter referred to as Terms of Use ("TOU")) shall apply for the use of image material, e.g. packshots, logos and other image files (hereinafter collectively referred to as "Image Material") held available by erlenbacher backwaren gmbh, Wasserweg 39, D-64521 Groß-Gerau (hereinafter referred to as "erlenbacher") in the erlenbacher in-house "Image Drive" image database and on the websites at [www.erlenbacher.de](http://www.erlenbacher.de), [www.erlenbacher.com](http://www.erlenbacher.com) and [www.erlenbacher.es](http://www.erlenbacher.es). The TOU regulate the conditions and scope for the use of the Image Material by a registered user (hereinafter referred to as "User").
- 1.2. Contracts for the use of the Image Material shall only be concluded on the basis of these TOU. Deviating terms and conditions of business of the User are not recognised.
- 1.3. Users declare their agreement to the exclusive validity of the TOU at the latest upon downloading the Image Material.
- 1.4. The use of the Image Material is only possible following registration. Registration requires a registration request from the User and acceptance of the registration request by erlenbacher. erlenbacher reserves its right to decide on whether to accept or reject registration requests from Users. Provision is made for this database to be used by erlenbacher customers and for third parties acting on behalf of customers operating in this sector, in particular advertising and marketing agencies and other service organisations.
- 1.5. Users are obliged to provide truthful information when registering.
- 1.6. The scope and content of the Image Database shall be defined at the discretion of erlenbacher and may be modified by erlenbacher at any time.

### **2. Purpose, Content and Scope of the Right of Use**

- 2.1. erlenbacher grants users a standard, non-exclusive, non-transferable right to use the Image Material in accordance with the provisions set out below:
- 2.2. The use of the Image Material is only permissible if and to the extent to which the following conditions are all met:
  - a) The Image Material is used for advertising and/or sales measures relating to the products purchased from erlenbacher or products to be purchased from erlenbacher (hereinafter referred to as "Products"); and
  - b) the Image Material is used for the purpose of selling in the food trading sector.
- 2.3. The Image Material may not be used for any purpose other than the purposes listed in 2.2. Use of the Image Material is in particular prohibited:
  - a) for measures that do not comply with statutory provisions, in particular a User's improper or unlawful measures (insults, abusive criticism, damage to reputation, libel, false assertions, etc.); or



- b) for the production or promotion of a mental association with products or natural or legal persons who have not expressly approved of such use; or
  - c) in a manner which may diminish or vilify the reputation of erlenbacher, the creator and/or the persons shown; or
  - d) in connection with pornographic, obscene, sexist, defamatory, slanderous or racist depictions, or with depictions glorifying violence, or offending minorities or religions; or
  - e) in connection with political contributions or advertising for political parties.
- 2.4. Provided the User remains within the scope of the permissible purpose of use as laid down in Clause 2.2., the User shall be granted the right to download the Image Material, to save it, duplicate it and use it for printing purposes (e.g. posters, printed matter, magazines, flyers, folders and POS and sales materials), and in particular to use the Image Material to produce, duplicate and distribute printed works.
- The User shall furthermore be entitled to use the Image Material within the scope of its permissible purpose of use as laid down in Clause 2.2. for multi-media applications, i.e. in particular to incorporate the Image Material in websites. However, when using the Image Material in the internet, the User is to ensure, insofar as technically possible, that third parties are not able to download, copy or store the Image Material on data carriers. The saving of the Image Material in online databases, online networks and/or other electronic archives to which third parties have access is in particular not permitted.
- 2.5. The User is not entitled to grant third parties access to the Image Material and is to apply appropriate security measures in order to ensure that no third party gains access to the Image Material. Passwords for registration are to be kept secret.
- 2.6. The passing on of the Image Material to third parties, the transferring of the licence to use the Image Material (including any legal successors or associated enterprises of the User) and/or the granting of sub-licences are not permitted. Passing the Image Material on to service organisations (printing works, advertising agencies, etc.) shall be exempted from this provision if and to the extent to which it is passed on as part of orders intended to make it possible for the User to use the Image Material according to these TOU (e.g. production of print media / printed products for advertising purposes for the User).
- 2.7. Rights to Image Material which have not been granted, including all exploitation rights, copyrights and/or neighbouring rights, shall all remain with erlenbacher or the creator of the Image Material.
- 2.8. The Image Material may be enlarged or reduced in size. Any other modification to the Image Material or the processing thereof, including the use of image details, requires the prior written approval of erlenbacher and shall be undertaken at the expense of the User. Copyright designations and other property right identifications (e.g. © ® ™) on the Image Material may not be removed.
- 2.9. Other uses and/or uses beyond the scope of the afore-mentioned provisions for use are only permissible with the express prior written approval of



erlenbacher. If there is any doubt as to whether the intended type of use is permissible, the User shall duly notify erlenbacher prior to commencement of the planned use and obtain a written decision from erlenbacher on the permissibility of use relating to the Image Material.

2.10. The User shall apply appropriate safety measures and relevant appropriate control to ensure that the Image Material is only used within the scope of its permissible purpose of use and content of use.

### **3. Duration of a Right of Use**

3.1. A Right of Use is granted to the User for a limited period and shall end due to the end of the contract by way of termination (letter a), the end of the business relationship (letter b) or upon written notification of prohibition of use (letter c).

a) The contract may be cancelled by both parties with a notice period of two weeks. The possibility to terminate the contract immediately (without notice) for good cause (Section 314 BGB (German Civil Code) shall not be affected.

b) The Right of Use shall end without requiring notice of termination when the business relationship between erlenbacher and a customer ends. The business relationship shall be deemed ended as soon as all the existing contracts between a customer and erlenbacher have expired so that a business relationship between the customer and erlenbacher no longer exists or when one party has notified the other party in writing of the end of the business relationship.

c) The Right of Use shall furthermore end when erlenbacher sends a written notification of prohibition of use.

3.2. When a Right of Use ends, Users are obliged to delete all the Image Material they have in an electronic form and to refrain from using any of the Image Material. Print media which has already been generated or for which an order has already been placed and which contains illustrations of Image Material on the date on which a Right of Use expires may continue to be used subsequent to the end of the Right of Use for a phasing-out period of three months, unless an order was only placed subsequent to the receipt of the prohibition of use / termination declaration.

### **4. No Utilisation Fee**

erlenbacher grants the User a Right to Use free of charge within the permissible scope of use.

### **5. User Liability and Contractual Penalty**

5.1. The User shall be liable for compensation in accordance with legal provisions. The User shall furthermore release erlenbacher from any claims by third parties resulting from use of the Image Material contrary to the contract or any other illegal use of the Image Material.

5.2. erlenbacher shall furthermore be entitled to claim a contractual penalty in the amount of EUR 500.00 per picture from the user in the event of any culpable



breach of these TOU. Other claims of erlenbacher, in particular concerning neglect and compensation, shall remain unaffected. A contractual penalty paid to erlenbacher will be offset against a claim for compensation laid by erlenbacher. The User does not acquire any further rights to use the Image Material by paying a claim for damages.

## **6. erlenbacher Guarantee and Liability**

- 6.1. erlenbacher declares and guarantees that erlenbacher is the owner of the rights to use the image material granted in these TOU and/or that erlenbacher can dispose of these rights in a contractually agreed scope.
- 6.2. erlenbacher does not provide any other guarantee for the quality and suitability of the Image Material for a specific purpose.
- 6.3. erlenbacher does not advise Users on the permissibility of advertising. Users themselves are responsible for the integrity of their advertising.
- 6.4. erlenbacher liability for damage to the User of any type whatsoever is excluded, unless erlenbacher is guilty of wilful intent and/or gross negligence. In cases of slightly negligent breaches of significant (major) obligations, erlenbacher shall only be held liable concerning the amount of typically foreseeable damage. Typically foreseeable damage shall in no event exceed EUR 1,000.00. The aforesaid liability limitations shall also apply for consequential damage.

## **7. Final Provisions**

- 7.1. The exclusive place of jurisdiction for any disputes arising from or in connection with these TOU and Rights of Use granted by erlenbacher shall be Darmstadt.
- 7.2. German law shall apply for these TOU and for the use of the Image Material.
- 7.3. The remaining provisions shall remain unaffected should one or several provisions of these TOU be fully or partially ineffective. In this case the parties shall undertake to agree on a legally effective clause which fully or partially complies with the economic regulatory content of the ineffective clause. This shall also apply in cases in which the parties fail to regulate a situation or fail to completely regulate a situation essential to the execution of the contract, or if a provision is fully or partially impracticable.