Terms and Conditions for Digital Image Reproduction and Supply

1. **BACKGROUND**
The Client wishes to purchase and Reproduce Images from The Wiener Holocaust Library. The Wiener Holocaust Library wishes to sell and licence Images to the Client. The Client and The Wiener Holocaust Library agree that these Terms and Conditions will govern the Client’s purchase of Images from The Wiener Holocaust Library and their reproduction.

2. **DEFINITIONS**
In these Terms and Conditions, the following words and phrases will have the following meanings:

   “**Client**” means the company, partnership, sole trader, individual or other legal person which has selected and purchased the images will receive such Images electronically;

   “**Image**” means a digital photograph, digital image, scan or any item offered for the purposes of reproduction which is held by The Wiener Holocaust Library as a digital image and can be offered to the Client for the purposes of reproduction;

   “**Licence**” means the copyright licence agreed between the Parties as detailed in Clause 6 below together with any specific uses or occasions agreed between the Parties in writing;

   “**Party**” means the Client or The Wiener Holocaust Library as applicable and “**Parties**” will be construed accordingly;

   “**Reproduce**” has the meaning given to such term in Clause 6;

3. **ACCEPTANCE**
3.1. The Client agrees to comply with these Terms and Conditions following selection and purchase of Images from The Wiener Holocaust Library.

3.2. The Images will be presumed to have been received and the Terms and Conditions of this agreement will be presumed to have been accepted by the Client unless written notice to the contrary is received by The Wiener Holocaust Library within five (5) days of the receipt of the Images, Delivery Note.

3.3. Any reproduction of any Image by the Client implies acceptance of these Terms and Conditions.
4. DELIVERY AND DESTRUCTION OF MATERIAL

4.1. **Service Fee:** The Client may pay a non-refundable service fee of £10 to cover administrative costs on each submission and resubmission of Images if reproduction rights are granted.

4.2. **Supply of Images:** Images are delivered electronically with a Delivery Note, listing the requested Images by the Client. The total number of Images selected by the Client will be presumed to have been received by the Client in good condition unless written notice to the contrary is received by The Wiener Holocaust Library within 48 hours of receipt of the supplied Images.

4.3. **Destruction:** The Client agrees to destroy and/or delete all Images supplied and any copies made by the Client of such Images pursuant to these Terms and Conditions once such Images have been used by the Client for the purpose or use specified in the Licence agreed by both Parties.

4.4. Unless otherwise agreed, one (1) copy of any product, publication, publicity material or similar produced by the Client and containing a reproduction of the Image must be supplied by the Client to The Wiener Holocaust Library within two (2) weeks of its publication or production.

5. COPYRIGHT

5.1. Permission to Reproduce the Images is strictly limited to the uses, purposes, means of transmission and target audience as detailed on the Delivery Note and, where applicable, as additionally agreed between The Wiener Holocaust Library and the Client. Where The Wiener Holocaust Library does not own the copyright to the Images, the Client is responsible for obtaining all relevant and necessary copyright consents, permissions and clearances from the relevant copyright holders.

5.2. Copyright in the Images remains the property of The Wiener Holocaust Library.

5.3. No rights granted to the Client in these Terms and conditions which relate to copyright may be assigned, loaned or transferred to any third party.

5.4. The Image must not be cropped, edited, superimposed with type or other material or have any part deleted or in any way defaced without prior written permission of The Wiener Holocaust Library. In addition, the Image must not be used or altered in any way that would trivialise, sensationalise or demean the subject portrayed, or be disparaging of The Wiener Holocaust Library itself. All Images are to be used in a way that is appropriate of the seriousness of the subject matter illustrated.

5.5. Each reproduction of an Image must credit the author, where applicable, and The Wiener Holocaust Library. The following acknowledgement is to be made next to Images supplied by The Wiener Holocaust Library, “The Wiener
Holocaust Library collections”; where applicable, any additional copyright notice must be added to the credit.

5.6. Images will not be loaned, rented, delivered, supplied, sold or otherwise disposed of and no use other than those as set out in the Delivery Note by the Client without the prior written consent of The Wiener Holocaust Library.

5.7. Any printed matter, printing plates, digital files, artwork, film separations, colour separations or similar produced using or incorporating an Image or any part of it will not be offered by the Client to third parties for reproduction, re-publication or re-use without the prior written consent of The Wiener Holocaust Library.

5.8. No reproduction rights are granted by virtue of delivery of Images unless explicitly indicated in writing by The Wiener Holocaust Library. The Client’s right to reproduce an Image protected by copyright arises only if (a) the licence terms are agreed in writing and (b) the request relating to the grant of such right is fully paid.

Any reproduction before payment of the Delivery Note or outside the terms of any licence constitutes an infringement of copyright and also a breach of this agreement entitling us to rescind and claim damages. You must indemnify us in respect of any claims, damages, costs or expenses we incur arising from any reproduction of any Image supplied to you.

6. LICENCE

6.1. Subject to Clause 5 above The Wiener Holocaust Library hereby grants to the Client a copyright licence to reproduce and store copies of the Images by any means or in any media (to “Reproduce”) for the purposes specified in the Delivery Note in accordance with applicable copyright law. For the avoidance of doubt, permission to reproduce the Images is strictly limited to the specific use/s detailed in this agreement. All secondary reproductions, including but not limited to, reprints, subsequent editions, offshoot productions, compilations, further series, renewal of the licence period, or use of the Images other than for the specified purpose for which permission is granted necessitates a new application to The Wiener Holocaust Library and payment of a further fee.

6.2. If any publication right as defined in the Copyright and Related Rights Regulations 1996 or any analogous right in any part of the world arises in the Client’s use of the Licenced Image, the Client hereby assigns all such right/s absolutely to The Wiener Holocaust Library for the full term of such right/s.

7. PAYMENT

7.1. The final Licence fee and any applicable service fees shall be stated on the Delivery Note.
7.2. The Client agrees to pay within thirty (30) days of receipt. However, the Client may also pay by the end of the calendar month, immediately after use or publication of the Image, or within six months of receipt, whichever is sooner. This latter option is only available for Images used in newspapers, journals and broadcasts.

7.3. If the Client does not pay in accordance with this Clause 7 then The Wiener Holocaust Library may rescind these Terms and Conditions and the relevant Licence and recover damages, or at its option, may charge interest on the overdue amount at the rate prescribed by the Late Payment of Commercial Debts (Interest) Act 1998 from the due date of payment until actual payment.

8. INDEMNIFICATION AND DISCLAIMER

8.1. The Client agrees to indemnify The Wiener Holocaust Library in respect of all and any claims, damages, losses or costs arising in any manner howsoever from the reproduction of the Images (including, but not limited to, the Client’s failure to obtain licences, consents, permissions or clearances as are necessary to Reproduce the Images).

8.2. The Wiener Holocaust Library shall not be held liable for any damage, howsoever caused, arising from the Client’s use of the Images including, but not limited to, any damage arising from errors or omissions contained in and relating to the Image, relevant copyright notice or in information otherwise given to the Client or displayed on The Wiener Holocaust Library’s website.

9. TERMINATION

9.1. The Wiener Holocaust Library may terminate these Terms and Conditions and any Licence granted under these Terms and Conditions immediately by notice in writing to the Client if the Client:

9.1.1. is in breach of any of either terms of the Licence and/or these Terms and Conditions and, in the case of a breach capable of remedy, fails to remedy such breach within thirty (30) days of receipt of written notice giving full particulars of the breach and of the steps required to remedy it; or

9.1.2. (being a company) passes a resolution for winding up (otherwise than for the purposes of a solvent amalgamation or reconstruction) or a court makes an order to that effect; or

9.1.3. (being in a partnership or other unincorporated association) is dissolved or (being a natural person) dies; or

9.1.4. becomes or is declared insolvent or convenes a meeting of or makes or proposes to make any arrangement or composition with its creditors; or

9.1.5. has a liquidator, receiver, administrator, administrative receiver, manager, trustee or similar officer appointed over any of its assets; or
9.1.6. ceases, or threatens to cease, to carry on business; or

9.1.7. any analogous event occurs under the insolvent laws applicable to the Client.

9.2. In the event of termination, all rights granted will immediately revert to The Wiener Holocaust Library and any further exploitation of any Image shall constitute an infringement of copyright.

9.3. In the event of termination, the Client will, at the Client’s own cost, delete and/or destroy all Images supplied by The Wiener Holocaust Library and any copies made by the Client of such Images no later than three (3) days after receipt of notice to terminate from The Wiener Holocaust Library.

10. LIABILITY
Except for any liability which cannot by law be excluded or limited, The Wiener Holocaust Library will on no account be liable to the Client (or any other third party claiming through it) for loss of profit, business, goodwill, revenue, wasted time or any indirect, incidental, special or consequential damages arising out of, or relating to the use of the Images, whether framed as a breach of warranty, in tort, contract, failure of essential purpose, breach of statutory duty, or otherwise. In no event (except for any liability which cannot by law be excluded or limited) will The Wiener Holocaust Library’s liability aggregate for any Image provided hereunder exceed the charges and fees paid to The Wiener Holocaust Library for such Image.

11. ASSIGNMENT
These Terms and Conditions are personal as between the Parties and the Client can only assign the benefit of these Terms and Conditions with The Wiener Holocaust Library’s prior written consent.

12. VARIATIONS
Variations, amendments, additions or deletions to the terms of these Terms and Conditions may only be made if agreed in writing by the Parties.

13. NO WAIVER
The Wiener Holocaust Library’s failure to exercise or enforce any of its rights under these Terms and Conditions (or otherwise) will not be deemed to be a waiver of any such rights nor will that failure operate so as to bar the future exercise or enforcement of those rights.

14. RIGHTS OF THIRD PARTIES
No person who is not a Party to these Terms and Conditions will have the right under the Contract (Rights of Third parties) Act 1999 to enforce any of those rights.
15. GOVERNING LAW

15.1. These Terms and Conditions will be governed by and construed in accordance with English law. All transactions to which these Terms and Conditions apply and all matters concerned therewith will also be governed by English law.

15.2. The Parties irrevocably agree that the courts of England are to have exclusive jurisdiction to settle any dispute which may arise out or in connection with these Terms and Conditions.

Read and approved by: Greg Toth

Date approved: 27/09/2019
Date of review: 27/09/2020