

SAMPLE

DIANE AUBE PHOTOGRAPHY LICENSE AGREEMENT

■ 1. ESSENTIAL INFORMATION

PLEASE READ THE FOLLOWING TERMS AND CONDITIONS. YOUR ACCEPTANCE OF THESE TERMS IS AN ABSOLUTE CONDITION OF YOUR USE OF THIS PRODUCT.

■ 2. DEFINITIONS

Image: The "Image" is defined as a Diane Aube Photography single image.

Purchaser of Record: The "Purchaser of Record" is defined as the end user for whom the image is purchased and who is the intended user.

Disclosed Agent: The "Disclosed Agent" is defined as the party who purchases the license on behalf of the Purchaser of Record. The Disclosed Agent may be a design firm, freelancer, employee, or any other party contracted by the Purchaser of Record. In some cases, the Disclosed Agent may be the same as the Purchaser of Record. If the Disclosed Agent is NOT the same as the Purchaser of Record, the Disclosed Agent acts as an agent for the Purchaser of Record, and both parties are bound by these terms.

You and Your: In this document, "you" and "your" refer both to the Purchaser of Record and to the Disclosed Agent.

Diane Aube Photography: "Diane Aube Photography" refers to Diane Aube Photography or Diane Aube, owner of said business.

■ 3. IDENTIFICATION OF PURCHASER OF RECORD

Proper identification of the Purchaser of Record is a material term of this Agreement. No rights are granted until the Purchaser of Record is identified to Diane Aube Photography. Diane Aube Photography reserves the right to revoke this License Agreement at any time if, in Diane Aube Photography's sole discretion, the Purchaser of Record has not been identified properly.

■ 4. LICENSE

a) Geographic limits:

Diane Aube Photography licenses to the Purchaser of Record, as identified to Diane Aube Photography, the use of the Image only as provided below in the United States and other countries on a non-exclusive and non-transferable basis. All other rights to the Image and any accompanying materials, including without limitation, copyright and all other rights, are retained by Diane Aube Photography.

b) Permitted Uses:

The Purchaser of Record has a nontransferable, nonexclusive right to:

- (i) Back up, copy, or archive the Image as necessary for internal use, and only as necessary for that use. Any copy or archive you make must include the Image's copyright information.
- (ii) Use the Image in any electronic or print media, including advertising and editorial use, and consumer merchandise.
- (iii) Use the Image for any items for resale, including book covers and consumer merchandise, provided these products are not intended to allow the re-distribution or re-use of the Image.
- (iv) Modify or alter the Image as necessary for your use, as allowed for elsewhere in these terms and conditions, provided that the rights to any derivative work shall belong to Diane Aube Photography. You may use such derivative work only as permitted in accordance with these terms and conditions. All copyrights with respect to such derivative work are assigned to Diane Aube Photography, which assignment the parties hereby agree is valid under the U.S. Copyright Law. If requested by Diane Aube Photography, you agree to execute a written assignment of any such copyrights with respect to such derivative work.
- (v) In the normal course of workflow, convey to a third party (such as a printer) temporary copies of the Image that are integral to your work product and without which the product could not be completed.

c) Rights of Agents

- (i) The Disclosed Agent is granted the rights listed in paragraph 4(b) provided that these rights are used solely in a final product published by the Purchaser of Record.
- (ii) The Purchaser of Record may transfer these rights to other agents or contractors, provided that these rights are used solely in a final product published by the Purchaser of Record.

d) Prohibited Uses: You may not:

- (i)** Transfer the rights to the Image or accompanying materials except as specifically provided for elsewhere in this Agreement. All other rights are reserved by Diane Aube Photography.
- (ii)** Reverse engineer, decompile, or disassemble any part of the Image or accompanying materials, subject to applicable law.
- (iii)** Copy or reproduce the Image or accompanying materials except as specifically provided for in paragraph 4(b).
- (iv)** Remove any copyright or trademark from any place where it appears on the Image or its accompanying materials.
- (v) USE THE IMAGE IN ANY WAY THAT COULD BE CONSIDERED DEFAMATORY, LIBELOUS, PORNOGRAPHIC, OBSCENE, IMMORAL, OR FRAUDULENT.**
- (vi)** Display the Image in any digital format or for any digital use at a resolution greater than 640x480 pixels, except in editorial or preliminary design work. Doing so will be viewed as an attempt to distribute the Image in violation of this Agreement. Diane Aube Photography is specifying this so that no one can steal the Image from you, even if that was not your intention.
- (vii)** Use the Image or any part of it as part of a trademark, service mark, or logo. Diane Aube Photography retains the full rights to the Image, and therefore you cannot establish your own rights over any part of it.
- (viii) Re-sell, distribute or sub-license** the Image or the rights to use the Image to anyone for any purpose, except as specifically provided for elsewhere in this agreement. It is also prohibited to use the Image in a product whereby the purchaser or licensee of that product can then use the Image for its own purposes.

■ 5. PAYMENT TERMS

No rights are granted until the invoice is paid in full.

■ 6. TERMS AND PHOTO CREDIT

This License is effective until it is terminated. You can terminate this license by destroying the Image, along with any copies or archives of it, and any accompanying materials, and ceasing to use the Image for any purpose.

The license also terminates if at any time you fail to comply with the terms of this Agreement. If this happens, you hereby agree to destroy all copies and archives of the Image immediately, to cease using the Image for any purpose, and to confirm to Diane Aube Photography in writing that you have complied with these requirements.

Diane Aube Photography requests the phrase **Photo: photographyinmaine.com** appear adjacent to the Image or on a credit page.

■ 7. LIMITED WARRANTY

Diane Aube Photography represents that it has the right to enter into this Agreement and has the right to grant this license under the terms provided in this Agreement.

Diane Aube Photography warrants that the copy of the Image supplied to you will be free from defects in materials and workmanship under normal use for a period of 30 days from the date you download it.

EXCEPT AS PROVIDED ABOVE, THE IMAGE IS PROVIDED "AS IS" WITHOUT WARRANTY OF ANY KIND, EITHER EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. DIANE AUBE PHOTOGRAPHY DOES NOT WARRANT THAT THE IMAGE WILL MEET YOUR REQUIREMENTS OR THAT ITS USE WILL BE UNINTERRUPTED OR ERROR FREE. THE ENTIRE RISK AS TO THE QUALITY AND PERFORMANCE OF THE IMAGE IS WITH YOU.

■ 8. LIMITATION OF REMEDIES

a) Replacement or Refund:

Diane Aube Photography's entire liability and your exclusive remedy, with respect to any claims arising out of your use of the Image or out of your actions in downloading the Image, shall be that you may be permitted to download the Image again. If you continue to be unable to download the Image, Diane Aube Photography will refund your money.

b) No Money Damages:

UNDER NO CIRCUMSTANCES WHATSOEVER WILL DIANE AUBE PHOTOGRAPHY BE LIABLE TO YOU FOR ANY DAMAGES, INCLUDING ANY LOST PROFITS, LOST SAVINGS, OR OTHER INCIDENTAL OR CONSEQUENTIAL DAMAGES ARISING OUT OF THE USE OR INABILITY TO USE THE IMAGE EVEN IF DIANE AUBE PHOTOGRAPHY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, OR FOR ANY CLAIM BY ANY OTHER PARTY.

■ 9. INDEMNIFICATION

You agree to indemnify and hold Diane Aube Photography harmless against all claims or liability asserted against Diane Aube Photography arising out of or in connection with any breach or alleged breach of any of the terms of this Agreement.

■ 10 . GENERAL

a) Additional Rights:

If you would like to discuss the acquisition of further rights than are provided for under this Agreement, please contact Diane Aube Photography concerning a separate license.

b) International Law:

This Agreement will not be governed by the United Nations Convention on Contracts for the International Sale of Goods, the application of which is expressly excluded.

11. GOVERNING LAW, AND JURISDICTION

a) Governing Law:

This Agreement, and its validity and effectiveness, shall be interpreted under and governed by the laws of the United State of America and the State of Maine.

b) Jurisdiction:

All court proceedings (including, but not limited to, judgment upon any arbitral award or and copyright infringement claims) shall be brought in the US District Court, District of Maine, You agree to reimburse Diane Aube Photography for its legal fees, costs and disbursements if Diane Aube Photography is successful, and you consent to service of any required notice or process upon you by registered mail or overnight courier with proof of delivery, to the address you provided to Diane Aube Photography.

■ 12. ENTIRE CONTRACT

YOU ACKNOWLEDGE THAT YOU HAVE READ THIS AGREEMENT, UNDERSTAND IT, AND AGREE TO BE BOUND BY ITS TERMS AND CONDITIONS. YOU FURTHER AGREE THAT IT IS THE COMPLETE AND EXCLUSIVE STATEMENT OF THE AGREEMENT BETWEEN YOU AND DIANE AUBE PHOTOGRAPHY, WHICH SUPERSEDES ANY PROPOSAL OR PRIOR AGREEMENT, ORAL OR WRITTEN, AND ANY OTHER COMMUNICATION BETWEEN YOU AND DIANE AUBE PHOTOGRAPHY RELATING TO THE SUBJECT OF THIS AGREEMENT.

Dated: _____

DIANE AUBE PHOTOGRAPHY

YOUR COMPANY OR NAME

BY: _____

Diane R. Aube
Owner and Sole Proprieter

BY: _____