

Knomad Chalkart Studio – Licence Agreement

PLEASE READ THE TERMS OF THE FOLLOWING LICENCE AGREEMENT CAREFULLY. BY PURCHASING, LICENCING OR DOWNLOADING ANY IMAGES ON THIS WEBSITE OR ASSOCIATED WITH THIS AGREEMENT, YOU ARE CONFIRMING YOUR ACCEPTANCE OF THE TERMS OF THIS LICENCE AGREEMENT (THE "LICENCE"). IF YOU DO NOT AGREE TO THE TERMS OF THIS AGREEMENT, YOU SHOULD NOT DOWNLOAD THE IMAGES, DIGITAL MEDIA AND/OR RETURN THE IMAGES, DIGITAL MEDIA FOR A REFUND OF ALL LICENCE FEES PAID BY YOU FOR SUCH.

THIS LICENCE AGREEMENT made on this day between

KNOMAD CHALKART SYSTEMS A.B.N 70 477 992 334.

of 28 Blandford St Collaroy Plateau in the State of New South Wales, Australia (hereinafter referred to as the "Supplier").

AND

YOU (hereinafter referred to as "Customer")

WHEREAS

- A. The Customer wishes to use the Images and Digital Media associated with the Product, Knomad Chalkart Studio, which the Customer agrees is to be Licenced, not sold, under this Agreement.
- B. The parties have entered into this Licence Agreement to set out the terms upon which the Customer is entitled to use the Licenced intellectual property.

IT IS AGREED AS FOLLOWS

1 Definitions

In this agreement the following words have the following meanings:

"**Covered Materials**" refers to computer disks, illustrations, fonts, all Images whether supplied on CD or downloaded, Trial Images, Designer Library Images, software and any other media or content associated with the Product.

"**CD Unlock Code**" refers to the individual code that is required by the Customer to unlock and access the Digital Media.

"**Derivative Works**" refers to custom manufactured signs, sign boards and sign writing services sold by the Customer, as part of its' normal retail sign business activities, to End Users.

"**Digital Media**" refers to the chalk art images contained in the Covered Materials being Licenced under this agreement. It includes the intellectual property associated with the illustrations, fonts, images and other media content of the Product. Any reference to the Digital Media shall be to each individual Image within the Digital Media and also to the Digital Media taken as a whole.

"**End Users**" refers to customers of the Licencee who purchase Derivative Works from the Licencee as part of the Licencee's normal retail sign business activities.

"**Licence**" refers to the Licence of the Digital Media granted to the user pursuant to this agreement.

"**Licencee**" refers to the Customer.

"**Licensor**" refers to the Supplier

"**Product**" refers Knomad Chalkart Studio.

"**Supplier**" Refers to Knomad Chalkart Systems

"**Website**" refers to the internet website found at www.chalkartstudio.com

2 Duration of Licence.

Subject to the terms of this agreement the Supplier grants to the Customer a Licence to use the Digital Media, for as long as the supplier retains its Exclusive Rights under the Copyright Act 1968 (Commonwealth) which is the life of the author of the Digital Media plus fifty (50) years.

3 Licence Fee

In consideration of the grant of the Licence under this agreement the Customer agrees:

- 3.1 To pay any Licence Fee as required by the Supplier.
 - (a) in advance for the Licenced use of the Product.
 - (b) directly to the Supplier by one of the approved methods as set out on the Website.
- 3.2 that permission to use the Product will only be deemed to have been given and passwords shall only be transmitted by the Supplier to the Customer, after receipt by the Supplier of the agreed Licence Fee.
- 3.3 that the Customer has no rights to use the Product in any manner until the said Licence Fee has been paid.

4 Permitted Uses

- 4.1 The Digital Media may only be used by the Customer to produce Derivative Works for retail sale to End Users as specified in this agreement. These include
 - (a) Physical signs, custom manufactured signs and sign boards, chalk art signs and chalk art sign products such as A-frames and menu boards as well as sign writing services, as normally sold by the Customer to its' End Users.
 - (b) advertising and promotional materials, packaging; materials for personal, non-commercial use.
- 4.2 Trial Images may only be used for trial print evaluation by the customer and not used in any other manner.
- 4.3 Designer Library Images may only be used for Design Mock Up purposes by a customer for the approval of a proposed design by an End User.

5 Assignment and Transfer

This Licence Agreement which shall be governed by the following conditions and restrictions.

- 5.1 The Licence shall be non-assignable and non-transferable.
- 5.2 The Customer may not share, SubLicence, rent, sell, lease, assign, convey or transfer any of its rights under this agreement but may sell Derivative Works incorporating the Digital Media to End Users in accordance with clause 4.1, Permitted Uses, in this agreement.
- 5.3 The Digital Media may not be used in any way to promote another business that sells or Licences images, or otherwise competes with Knomad Chalkart Systems in any manner.

6 Exclusivity

6.1 The rights assigned to the Customer under this Agreement are non-exclusive.

7 Restrictions on Use

7.1 The use of the Digital Media is to be restricted by the Customer as follows:

- (a) Permit access and use by up to five (5) employees, of the business entity named as the Customer on this Licence Agreement, used on a single computer.
- (b) To be used only in the business location of the Customer.
- (c) The Customer shall not make the Digital Media available to any other third party apart from End Users and then only in accordance with the terms of this agreement.
- (d) The Customer will not allow images of the Digital Media to be incorporated into a logo, trademark or service mark.
- (e) The Customer will not post the Digital Media to a network, a bulletin board or online or otherwise distribute or allow any of the images to be distributed or used by anyone other than the five (5) authorised employees of the Customer.
- (f) The Customer may not automatically under the terms of this Licence use the Digital Media in commercial products mass produced for re-sale, including, but not limited to products, such as Postcards, Posters, Calendars, Ceramics or other products where the Digital Media make up a significant part of the resale value of the product. For such uses "Commercial Product Image Licence" must be secured, from Knomad Chalkart Systems, prior to such use.

7.2 The Digital Media may not be used in a pornographic, defamatory, libelous or otherwise illegal manner, whether directly or in context or juxtaposition with other materials.

8 Installation

The Supplier is not required to install the Product or to provide any services or support in respect of the installation of the Product.

9 Ownership

The Customer may own the media (CD) on which the Digital Media are recorded but all intellectual property rights of the Digital Media are retained by the Supplier.

10 Copies

The Customer may make one (1) copy of the Digital Media for back up purposes providing the copy is also handled according to this Licence Agreement

11 Warranties of the Supplier

11.1 The Supplier warrants that it has the right to grant the Licence to the Customer.

11.2 The Supplier shall indemnify and hold harmless the Customer against any claim made against the Customer by a third party alleging an infringement of the Digital Media that are copyrighted to the third party.

11.3 The Company warrants the Digital Media to be free from defects in material and workmanship for 30 days from delivery. The sole and exclusive remedy for a breach of the foregoing warranty is the replacement of the Digital Media.

12 Reservation of rights

12.1 All rights not specifically granted under this agreement are reserved by Knomad Chalkart Systems.

13 Updates

13.1 The Supplier is not required to provide updates or new releases to this agreement.

14 Warranties of the Customer

The Customer warrants and undertakes, confirms and agrees with the Supplier:

14.1 That all rights of a proprietary and copyright nature and title in and to the Digital Media are expressly acknowledged as the property of the Supplier and subject only to the non exclusive, non-transferable Licence contained in this agreement, which does not confer any copyright or proprietary rights of any nature whatsoever on the Licensee aside from the uses specified in this Agreement.

14.2 The Customer shall use the works only in the manner and in the context agreed by the Supplier and as outlined in clause 4, Permitted Uses, of this Agreement and shall not by any act or omission impair or prejudice the copyright in the works, or violate any moral right or deal with the Digital Media so that any third party might obtain any lien or other right of whatever nature incompatible with the rights of the Supplier. Nothing may be superimposed, inserted, transposed, merged or added to the Digital Media nor may they be altered or distorted in any way or used in any fashion which could be regarded as derogatory, offensive, blasphemous, defamatory, libelous, obscene or pornographic.

14.3 The Customer shall ensure that all Derivative Works of the Digital Media distributed by the Customer to its End Users shall contain full and accurate copyright notices that the copyright is retained in the Digital Media by the Supplier, and that reproduction is permitted under limited Licence from the Supplier.

14.4 The Customer shall give full particulars to the Supplier as soon as the Customer becomes aware of any actual or threatened claim by any third party in connection with the Product.

14.5 The Customer shall retain total control and possession at all times of the Covered Materials and ensure these are kept in secure storage facilities and shall not allow the Covered Materials to fall into the hands of third parties not Licenced by this agreement.

14.6 The Customer warrants and undertakes not to share, sell, assign or Licence the use of the Digital Media or any image or any portion thereof for any purpose other than those purposes specifically agreed between the Supplier and the Customer under this Agreement. In particular, the Customer may not share, loan, rent, hire or otherwise transfer or purport to transfer the right to use the Digital Media in any way to any other person or entity.

15 Indemnity

The Customer shall indemnify and keep fully indemnified the Supplier from and against all actions, proceedings, claims, demands, costs (including any legal costs compensation costs and disbursements paid by the Licensee on the advice of their legal advisors to compromise or settle any claim), awards and damages arising directly or indirectly as a result of any breach or non-performance by the Customer of any of the Customers undertakings, warranties or obligations under this Agreement.

16 **Confidentiality**

The Licencee must keep confidential all information relating to the Product, its' pricing and this Licence Agreement provided that the Licencee has the right to disclose such information to its employees as it is necessary for them to know the information to be able to use the Product as provided for under this Agreement.

15 **Jurisdiction**

The provisions of this Agreement shall be governed by and construed according to the laws of New South Wales and the Commonwealth of Australia.

16 **Termination**

16.1 Termination of this agreement can be made by either party by written notice to the other party if the other party commits any breach of any provision of this Agreement and has failed to remedy such breach within thirty (30) days of receipt of written notice requiring it to do so.

16.2 The Supplier may by notice in writing terminate this Agreement in any of the following circumstances:

- (a) If any Insolvency Event occurs:
 - (i) The Licencee ceases to (or is unable to) pay its creditors (or any class of them) in the ordinary course of business, or announces its intention to do so;
 - (ii) A receiver, receiver and manager, administrator, liquidator or similar officer is appointed to the Licencee or any of its assets;
 - (iii) The Licencee enters into, or resolves to enter into, a scheme or arrangement, compromise or composition with any class of creditors;
 - (iv) A resolution is passed or an application to a court is taken for the winding up, dissolution, official management or administration of the Licencee;
 - (v) Anything having a substantially similar effect to any of the events specified above happens under the law of any application jurisdiction;
- (b) The making by the Licencee of an assignment or attempted assignment for the benefit of its creditors;

16.3 Any termination of this Agreement pursuant to clause 16(1) or 16(2) is without prejudice to the rights of the party terminating to seek and obtain damages for any breach of this Agreement by the other party.

16.4 Upon termination of this Agreement all Covered Materials must be returned to Knomad Chalkart Systems at the address contained in this agreement within 14 days.