



General Terms and Conditions on Digital Copies

§ 1

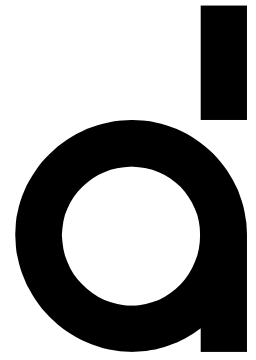
Conclusion of contract

Through the documenta archive, documenta und Museum Fridericianum gGmbH ("documenta") offers orderers, on the basis of these "General Terms and Conditions on Digital Copies" ("GTC") and within the limits of the copyright provisions, production and delivery of reproductions of works from the holdings of the documenta archiv ("digital copies") and, if applicable, the granting of rights with regard to the digital material, in the event that the rights of use were transferred to the documenta archiv.

The production and delivery of the digital copies ("purchase of digital copies") is not coupled with the granting of rights of use or the declaration of rights of consent according to copyright law, trademark law, right to a name, portrait rights, or other intellectual, commercial, industrial, or technical protective rights ("intellectual property rights") and is carried out for non-commercial purposes of the orderer.

For certain parts of the holdings, the documenta archiv itself possesses the rights of use and the consent of the owners of the intellectual property rights ("authorized persons"), e.g. of the photographer regarding the photography, of the artist regarding the artworks, of the persons regarding their portraits. Against this background, the documenta archiv can, when inquiries are made by interested parties, check whether in individual cases an orderer can obtain the rights of use to specific digital copies ("licensing"). Each licensing requires a special written agreement between documenta and the orderer.

- (1) By sending the attached order form filled out by them ("Form"), the orderer makes a binding application for the purchase of digital material vis-à-vis documenta. The application is processed by the documenta archiv if the orderer accepts these GTCs by checking the appropriate box.
- (2) documenta will then send an order confirmation to the orderer by e-mail. The contract between the orderer and documenta is only concluded upon receipt of the order confirmation, i.e. the acceptance by the orderer. However, documenta is not obliged to accept the the orderer's application. In particular, documenta may reject orders if the execution of the contract could result in an infringement of third party copyrights, if there are conservation reasons for not doing so, and/or if the relevant archive is not accessible as such at the time of the order.
- (3) The contract shall be concluded and executed in German.
- (4) If, when purchasing digitized material, the person placing the order has indicated by ticking the relevant box on the form that they are interested in a license in addition to purchasing the digitized material, documenta will, after examining and researching the legal situation, inform the person placing the order by sending them a corresponding licensing form, stating whether a license can be granted and, if so, under what conditions. The search and examination may take longer in individual cases and may therefore take place after delivery of the digital material. The licensing form represents an application by documenta to conclude a licensing agreement in accordance with the licensing form. The conclusion of the contract for the granting of a license is effected by acceptance by the



orderer, which can be declared either expressly by returning the license form or by payment of the license fee, i.e. by conclusive conduct (implied).

- (5) The purchase of digital copies on the part of the orderer must not be dependent on the possibility of a license being granted or on certain conditions pertaining to the granting of a license; any conflicting conditions are invalid.
- (6) The granting of a license requires the purchase of the digital copy in question by the orderer.

§ 2

Prices, invoicing, retention of title,
and rights reserved

- (1) The production as well as the delivery of the digital copies is subject to remuneration. The fees can be found in the following rules relating to documenta archive fees.
- (2) The granting of a license is subject to remuneration. documenta will state the licensing fee on the license form sent to the orderer in the case of § 1 paragraph (4).
- (3) All remuneration is understood to include statutory value added tax.
- (4) documenta will issue an invoice to the orderer for the fees for the purchase of digital copies and send it together with the digital copies; the orderer must pay the fees by bank transfer to the account stated on the invoice. documenta will issue a separate invoice for the licensing fee in the event that a license is granted when the license form is sent.
- (5) Invoices are to be paid within 14 days of receipt.
- (6) Procurement of ownership in the case of the purchase of digital copies and of rights of use and consent in the case of licensing by the documenta archiv to the orderer is subject to the condition precedent that the orderer pays the documenta in full.

§ 3

Sending of digital material

- (1) documenta will send the digital material to the orderer shortly after the order confirmation has been sent. If the order is a consumer, § 9 paragraph (1) of these General Terms and Conditions shall apply.
- (2) Digital material will be sent by e-mail and download link, unless otherwise agreed upon between the documenta archiv and the orderer in individual cases (in which case additional shipping costs may apply).
- (3) Digital copies can be sent in the following formats and resolutions:

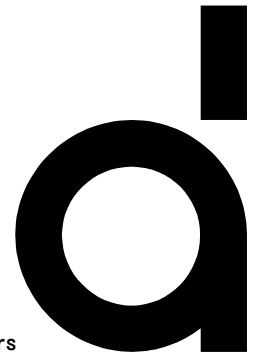
formats: PDF, TiF, JPG, MP4, WAV, MP3, FLAC;

unless the ordering party provides other information in the form, documenta will select the format of the digital copies from the formats listed above.

§ 4

Rights when purchasing
digital copies

- (1) documenta may only send individual orders from the library's holdings to orderers for non-commercial purposes for reproductions of up to 10 percent of a published work, as well as individual contributions that have appeared in specialist journals or academic journals. Full reference is made to §§ 60a ff. of the German Copyright Act (UrhG).
- (2) In relation to documenta, the authorized persons, and third parties, the orderer shall be solely responsible for compliance with any intellectual property rights that may be affected by the purchase of digital copies (production and delivery). If, when purchasing digital copies, the orderer wishes to use it for commercial purposes, for example, and/or to purchase reproductions of more than 10% of a published work in digital form, the customer must obtain the necessary rights from the respective rights holder themselves. This does



not apply if and to the extent that documenta grants a license to the orderer.

§ 5

Rights in case of licensing

- (1) Each granting of a license requires an agreement in accordance with § 1 paragraph (4) as well as the prior purchase of the digital copy in question by the orderer.
- (2) The scope of the license granted by documenta is determined by the agreement for the granting of licenses. In principle, the granting of a license is limited to the procurement of simple, non-transferable rights of use for the territory of the Federal Republic of Germany limited to the purpose agreed upon when the license was granted.

§ 6

Warranty

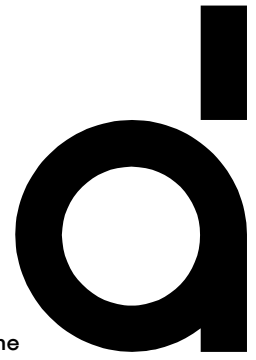
- (1) documenta shall be liable for defects in the digital copies – i.e. material defects and defects of title in relation to the ownership of the digital copies in question (but not in relation to intellectual property rights) – in accordance with the statutory provisions applicable to such defects.
- (2) With regard to intellectual property rights, documenta is not responsible for the existence of rights of use or for the orderer's possibilities of use when selling digital copies. Rather, the orderer themselves is solely responsible for determining whether the purchase of digital copies and/or the use of digitized copies intended by them affects the rights of those entitled to intellectual property rights in Germany and abroad. The orderer is obliged to obtain the consent and rights of use from the authorized persons as far as this is legally required for the purchase of the digital copies and/or the use intended by them.
- (3) Only if and insofar as the documenta archiv issues a license is documenta liable for defects of title in accordance with the applicable statutory provisions.

- (4) For orderers who are not consumers (§ 13 BGB), the warranty period shall be 12 (twelve) months and the provisions of § 377 HGB shall apply.

§ 7

Liability and indemnity

- (1) Claims for damages by the orderer (are excluded. This does not apply to claims for damages by the orderer arising from injury to life, limb, or health or from the violation of essential contractual obligations (cardinal obligations), nor to liability for other damages resulting from an intentional or grossly negligent breach of duty by documenta, its legal representatives, or vicarious agents. Essential contractual obligations are those obligations the fulfillment of which is essential for the proper execution of the contract and on whose compliance the orderer regularly relies and may rely.
- (2) In the event of a breach of essential contractual obligations, documenta shall only be liable for foreseeable damage typical of the contract, if this was caused by simple negligence, unless it is a matter of claims for damages by the orderer resulting from an injury to life, limb, or health.
- (3) The restrictions in paragraphs (1) and (2) shall also apply in favor of documenta's legal representatives and agents if claims are made directly against them.
- (4) The limitations of liability arising from paragraphs (1) and (2) shall not apply if documenta has fraudulently concealed the defect or has given a guarantee for the quality of the item. The same applies if documenta and the orderer have reached an agreement on the quality of the item. The provisions of the Product Liability Act shall remain unaffected.
- (5) The orderer warrants that through the purchase and use of the digital copies the intellectual property rights of third parties or of documenta are not violated and thus the obligations regarding credits (§ 8 (2) of these GTC) are also adhered to. The orderer further



warrants that in the event of a license being granted, the conditions of the license are strictly adhered to and the limits of the rights of use granted to them and the rights of consent declared to them are observed. In the event of non-compliance with these assurances, the orderer shall indemnify documenta against any claims made by third parties (including reasonable costs for legal defense at home and abroad), unless the orderer is not responsible for such non-compliance.

§ 8

Voucher copies, credits

- (1) A voucher copy must be sent to the documenta archiv free of charge and unsolicited.
- (2) The copyright and/or source names or other credits specified by the documenta archiv when the digitized copy is sent to the orderer must be reproduced legibly by the orderer each time the digital copy is used.

§ 9

Maturity of the service when ordered by a consumer, right of revocation

- (1) If the orderer is a consumer, they have a legal right of revocation. A consumer is any natural person who concludes a legal transaction for a purpose that cannot be attributed to their commercial or self-employed professional activity (§ 13 BGB). Information on this right of revocation can be found in this document in the attached revocation instruction.
- (2) Unless the orderer has assured otherwise, documenta assumes that the orderer is a consumer within the meaning of paragraph (1) above, which is why, with regard to the production and delivery of digital copies, documenta's service is only due for payment on expiry of the cancellation period; any provision of the service before the expiration of the right of revocation is made dependent on the consent of the orderer with the execution of the contract leading to the expiration of the right of revocation. This consent can be

obtained by the orderer by ticking the appropriate box on the form.

§ 10

Final provisions

- (1) The law of the Federal Republic of Germany shall apply to contracts between documenta and the orderer, excluding the UN Convention on Contracts for the International Sale of Goods. The statutory provisions restricting the choice of law and the applicability of mandatory provisions, in particular those of the state in which the orderer as a consumer have their habitual residence, shall remain unaffected.
- (2) If the orderer is a merchant, a legal entity of public law, or a special asset under public law, all disputes arising from contractual relationships between documenta and the orderer shall be subject to the exclusive jurisdiction of the courts responsible for the district of the Kassel Regional Court.
- (3) The contract remains binding in its remaining parts even if individual points are legally ineffective.
- (4) A reading copy in English is available at <https://www.documenta-archiv.de/en/archiv/46/help-with-your-research>. In the event of contradictions between the English reading copy and the German version of these GTC, the German version of these GTC shall prevail.

Annexes:

- Rules relating to fees
- Cancellation policy for consumers and sample cancellation form
- Order form



Rules relating to fees: documenta archiv

(valid from January 1, 2020)

The prices for ordering digital copies consist of general fees and processing fees per image/page as well as fees for the acquisition of reproduction rights, if applicable.

General fees

All prices are inclusive of the statutory value-added tax set in Germany.

<u>Service</u>	<u>Regular fees</u>	<u>Discounts*</u>
Handling fee	10,- €	5,- €
Express orders (within 2 working days)	Surcharge of 100%	Surcharge of 100%
Domestic mail delivery	Domestic 5,- € / abroad 15,- €	Domestic 5,- € / abroad 15,- €
Bank fee (for transfers from outside the EU monetary union)	10,- €	10,- €

* Reduced fees for school students and university students up to MA

** Reduced fees exclusively for non-commercial purposes by school students, university students, doctoral candidates, scientists, publicly funded people, scientifically oriented cultural institutions (also with third-party funding), and non-profit organizations.

The prerequisites for reduced fees must be proven by the orderer when they send in the form.



Processing fees: digital copies

(without granting of rights)

<u>Provision of existing digitized material:</u>	<u>Regular fees</u> <u>per page / image</u>	<u>Reduced** fees</u> <u>per page / image</u>
Archive material / printed matter / photographs (preview): Reading quality, compressed file format	0,- €	0,- €
Archive material / printed matter / photographs: Reproduction quality*	20,- €	0,- €
Film / video / sound recordings: Compressed file format	5,- € per 15 min	0,- €
Film / Video: Reproduction quality*	20,- € per 15 min	0,- € per 15 min
Sound recordings: Reproduction quality*	10,- € per 15 min	0,- € per 15 min

Digitization

Archives / printed matter: Reading quality, compressed	1,00 €	0,50 €
Archive material / printed matter / photographs / audiovisual Media: Reproduction quality*	20,- €	15,- € 5,- €*

* Photo reproduction file < 15 MB or < 5 000 px short page, 300 dpi

* Multimedia reproduction file: by arrangement



Purchase of licenses:

Permission for exploitation / publication

The following fees apply exclusively to the granting of rights by documenta to the orderer by way of licensing. If rights are not granted by documenta to the orderer, but are clarified by the orderer with a third party, only the licensing agreement between the orderer and the third party in question is relevant for the amount of the fee to be paid by the orderer.

<u>Archive material / Photographs:</u> <u>Publication in print</u>	<u>Regular fees</u> <u>per page / image</u>	<u>Reduced** fees</u> <u>per page / image</u>
up to 1.000 copies	40,- €	0,- €
from 1.000 copies	60,- €	0,- €
worldwide / no time limit	80,- €	0,- €

Archive material / photographs: Publication on the Internet

No time limit	100,- €	0,- €
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Audiovisual media

Film / video: one-time right to publication	75,- €	0,- €
Sound recording: one-time right to publication	40,- €	0,- €

Teaching and learning

Permission for use in teaching and class	0,- €	0,- €
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Archive material / Photographs for exhibitions

Digital reproduction	0,- €	0,- €
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Discounts are staggered according to the number of ordered digital copies:

- 10 or more image files – reduction of 20%
- From 25 image files – reduction of 30%
- From 100 image files – 40% discount



Cancellation policy for consumers

Right of revocation

You have the right to cancel this contract within fourteen days without giving reasons.

The revocation period is fourteen days from the day the contract is concluded.

In order to exercise your right of revocation, you must inform us (documenta und Museum Fridericianum gGmbH, documenta archiv, Friedrichsplatz 18, 34117 Kassel, Germany, fax +49 561 70727-39, e-mail: archiv@documenta.de, by means of a clear declaration (e.g. a letter send by postal mail, fax, or e-mail) of your decision to cancel this contract. You may use the attached model revocation form, which is not mandatory.

In order to comply with the revocation period, it is sufficient to send a notification stating that you are exercising your right of revocation before the end of the revocation period.

Consequences of revocation

If you withdraw from this contract, we will hold you liable for all payments we have received from you, including delivery costs (with the exception of additional costs resulting from the fact that you have chosen a different method of delivery than the one offered by us, the cheapest standard delivery), immediately and at the latest within fourteen days from the day on which we receive notification of your revocation of this contract. For this repayment, we will use the same means of payment that you used for the original transaction, unless expressly agreed otherwise with you; in no case will you be liable for this reimbursement

Expiry of the right of revocation

The right of revocation expires in the case of a contract for the delivery of digital content not contained on a physical data carrier, if the contractor has started to execute the contract after you have expressly agreed that the contractor will start to execute the contract before the end of the revocation period and have confirmed that you know that you will lose your right of revocation by giving your consent when the execution of the contract begins.



Sample revocation form

If you want to cancel the contract, please fill out this form and send it back.

To

documenta und Museum Fridericianum gGmbH
documenta archiv
Friedrichsplatz 18
34117 Kassel
F +49 561 70727-39
archiv@documenta.de

I / we (*) hereby revoke the contract concluded by me / us (*) for the purchase of the following goods (*) /
the provision of the following service (*):

Name of goods / if applicable order number and price

Ordered on:

Received on:

Date

Date

From

Last name, first name

Street and house number

Postcode / City

Place / Date

Signature of orderer

(only for paper messages)

(*) Delete as applicable.



Order form for digital material

Billing address

Organization

Contact person

Phone

Fax

E-mail

Street / House number

Postcode / City

Country

Homepage

Intended use

Remarks

(e.g. circulation, language,
other notes)

List of digital cioues ordered

<u>No.</u>	<u>Author</u> (photographer, author, etc.)	<u>Title</u>	<u>Signature / Inventory No.</u>
1			
2			
3			
4			
5			
6			



7

8

9

10

The ordering party undertakes to pay documenta for digital copies upon conclusion of the contract.

Please mark with a cross:

I agree with the validity of the General Terms and Conditions for Digital Copies.

If you are interested in licensing, please let us know using the form on the following page and describe – if necessary in detail in the cover letter – the purpose of use (where it will be published, circulation, size, etc.). documenta can only grant licenses for parts of its holdings and must check this in each individual case. documenta will send you a form stating whether a license can be granted, and if so, under what conditions.



I am interested in a license, in the scope as stated below:

Scope of use of the digitized material

<u>No. of digitized materials, for which rights are to be acquired</u> (from the "List of digital copies ordered)	<u>Where should the digital copies be used?</u> (Territory / Specification of the countries are sufficient)	<u>For what purposes should the digital copies be used?</u>	<u>Further information on use</u> (especially: in which media, number of copies, etc.)
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Place / Date

Signature of orderer