

## KIELDER COMPUTERS LTD CONTENT LICENSE AGREEMENT

LAST UPDATED: 2 May 2020

**This is a license agreement between you and Kielder Computers Ltd that explains how you can use photos, illustrations, vectors and video clips that you license from Kielder Computers Ltd. By downloading content from Kielder Computers Ltd, you accept the terms of this agreement.**

### 1. What types of licenses does Kielder Computers Ltd offer?

Kielder Computers Ltd offers two types of licenses: standard and extended. Every file downloaded from Kielder Computers Ltd under the terms of this content license agreement comes with a standard license. An extended license gives you additional rights in exchange for an additional license fee. Unless you purchase an extended license, your use of content is subject to the standard license terms.

You can license files from Kielder Computers Ltd by purchasing an appropriate license. Licenses are available directly from Kielder Computers Ltd. No third parties have been authorised by Kielder Computers Ltd to issue licenses on Kielder Computers Ltd behalf.

### 2. How can I use licensed content?

You may use content in any way that is not restricted (see Restricted Uses below). Subject to those restrictions and the rest of the terms of this agreement, the rights granted to you by Kielder Computers Ltd are:

- i. **Perpetual**, meaning there is no expiration or end date on your rights to use the content. Please see Section 8 for more information.
- ii. **Non-exclusive**, meaning that you do not have exclusive rights to use the content. Kielder Computers Ltd can license the same content to other customers.
- iii. **Unlimited**, meaning you can use the content in an unlimited number of projects and in any media.

For purposes of this agreement, "use" means to copy, reproduce, modify, edit, synchronize, perform, display, broadcast, publish, or otherwise make use of.

**Examples of how you can use licensed content include:** websites; blog posts; social media; business presentations; printed or digital forms; printed or digital documents; web and mobile applications.

Please make sure you read the Restricted Uses section below for exceptions.

### 3. Restricted Uses.

- a) **No Unlawful Use.** You may not use content in a defamatory, offensive, or unlawful manner.
- b) **No Commercial Use.** You may not use content for marketing, advertising, promotional, endorsement, or merchandising purposes, in newspapers, magazines, books, video productions or product packaging.
- c) **No Standalone File Use.** You may not use content in any way that allows others to download, extract, or redistribute content as a standalone file (meaning just the content file itself, separate from the project or end use).
- d) **No False Representation of Authorship.** You may not falsely represent that you are the original creator or original copyright holder of a work that is made up largely of licensed content. For instance, you cannot create a web page or printed page based solely on licensed content and claim that you are the author.

#### **Restricted Uses - unless extended license purchased.**

- e) **No Use in Trademark or Logo.** Unless you purchase an extended license, you may not use content as part of a trademark, design mark, trade name, business name, service mark, or logo.
- f) **No Use in Marketing or Advertising.** Unless you purchase an extended license, you may not use content as part of your marketing or advertising.
- g) **No Use in Merchandising or Product Packaging.** Unless you purchase an extended license, you may not use content for merchandising or product packaging purposes.
- h) **No Use in Video Production.** Unless you purchase an extended license, you may not use content for video or television production.

- i) **No Products for Resale.** Unless you purchase an extended license, you may not use content in connection with any goods or services intended for resale or distribution **where the primary value** lies in the content itself including, without limitation, cards, stationery items, paper products, calendars, apparel items, posters (printed on paper, canvas, or any other media), DVDs, mobile applications or other items for resale, license or other distribution for profit. This includes "on demand" products (meaning products in which content is selected by a third party for customization on such product on a made-to-order basis), including, without limitation, postcards, mugs, t-shirts, posters and other items (this includes the sale of products through custom designed websites, as well as sites such as zazzle.com and cafepress.com)
- j) **No Electronic Templates.** Unless you purchase an extended license, you may not use content in electronic or digital templates intended for resale or other distribution (for example, website templates, business card templates, electronic greeting card templates, brochure design templates).

#### 4. Who, besides me, can use the licensed content?

The rights granted to you are **non-transferable** and **non-sublicensable**, meaning that you cannot transfer or sublicense them to anyone else. There are two exceptions:

- **Employer or client.** If you are purchasing on behalf of your employer or client, then your employer or client can use the content. In that case, you represent and warrant that you have full legal authority to bind your employer or client to the terms of this agreement. If you do not have that authority, then your employer or client may not use the content.
- **Subcontractors.** You may allow subcontractors (for example, your printer or mailing house) or distributors to use content in any production or distribution process related to your final project or end use. These subcontractors and distributors may not use the content for any other purpose.

## 5. Are there any user license restrictions?

Yes. The standard and extended license is for a single user. The user restrictions refer to the raw file of content, not the end project or use.

**If you need more than a single user to access the content** you must purchase a license for each user.

## 6. User Account

You will be responsible for tracking all activity for your user account, and you agree to: (1) maintain the security of all passwords and usernames; (2) notify Kielder Computers Ltd immediately of any unauthorized use or other breach of security; and (3) accept all responsibility for activity that occurs under your user account. Kielder Computers Ltd reserves the right to monitor downloads and user activity to ensure compliance with the terms of this agreement. If Kielder Computers Ltd determines that you are in breach of this or any other term of this agreement, it may revoke your license, suspend access to your account and seek further legal remedies.

## 7. Intellectual property rights.

a) **Who owns the content?** All the licensed content is owned by Kielder Computers Ltd. All rights not expressly granted in this agreement are reserved by Kielder Computers Ltd.

b) Attribution.

- i. **Do I need to include a photo credit?** You do not need to include a photo credit for commercial use, but if you are using content for editorial purposes, you must include the following credit adjacent to the content or in visual production credits: "improvability.tv/Neil Broadbent."
- ii. **Do I need to include a video credit?** Yes, if technically feasible, you must include the following credit in visual productions: "improvability.tv/Neil Broadbent."

## 8. Termination/Cancellation/Withdrawal.

### a) Termination.

This agreement is effective until it is terminated by either party. You can terminate this agreement by ceasing use of the content and deleting or destroying any copies. Kielder Computers Ltd may terminate this agreement at any time if you fail to comply with any of the terms, in which case you must immediately: cease using the content; delete or destroy any copies; and, if requested, confirm to Kielder Computers Ltd in writing that you have complied with these requirements.

- i. **Social Media Termination.** If you use the content on a social media platform or other third party website and the platform or website uses (or announces that it plans to use) the content for its own purpose or in a way that is contrary to this agreement, this agreement shall immediately terminate.

### b) Refunds/Cancellation.

- i. **File Download Refunds** - Kielder Computers Ltd does not offer refunds for downloaded files. File returns will only be considered based on technical issues with the file at the sole discretion of Kielder Computers Ltd.

All requests for refunds/cancellations must be made in writing. If the request is approved, Kielder Computers Ltd will issue a credit to your credit card. In the event of cancellation, your rights to use the content terminate, and you must delete or destroy any copies of the content.

- c) **Content Withdrawal.** Kielder Computers Ltd may discontinue licensing any item of content at any time in its sole discretion. Upon notice from Kielder Computers Ltd, or upon your knowledge, that any content may be subject to a claim of infringement of a third party's right for which Kielder Computers Ltd may be liable, Kielder Computers Ltd may require you to immediately, and at your own expense: cease using the content, delete or destroy any copies; and ensure that your clients, distributors and/or employer do likewise. Kielder Computers Ltd will provide you with replacement content (determined by Kielder Computers Ltd in its reasonable commercial judgment) free of charge, subject to the other terms of this agreement.

## 9. Representations and Warranties.

Kielder Computers Ltd makes the following representations and warranties:

- a) **Warranty of Non-Infringement.** Your use of the content in accordance with this agreement and in the form delivered by Kielder Computers Ltd will not infringe on any copyright, moral right, trademark or other intellectual property right and will not violate any right of privacy or right of publicity; and all necessary model and/or property releases for use of the content in the manner authorised by this agreement have been obtained. Note that you are solely responsible for any edits made to the content.
- b) **"Editorial Use Only" Warranty Disclaimer.** For content identified as "editorial use only," Kielder Computers Ltd warrants that the content will not infringe on any copyright or moral right of the artist, but it does not grant any right or make any warranty with regard to the use of names, people, trademarks, trade dress, logos, registered, unregistered or copyrighted designs, works of art or architecture depicted or contained in the content. In such cases, you are solely responsible for determining whether release(s) is/are required in connection with your proposed use of the content identified as "editorial use only," and you are solely responsible for obtaining such release(s). You acknowledge that no releases are generally obtained for content identified as "editorial use only," and that some jurisdictions provide legal protection against a person's image, likeness or property being used for commercial purposes when they have not provided a release.
- c) **No Other Warranties.** Except as provided in the "warranty of non-infringement" section above, the content is provided "as is" without representation, warranty or condition of any kind, either express or implied, including, but not limited to, implied representations, warranties or conditions of merchantability, or fitness for a particular purpose. Kielder Computers Ltd does not represent or warrant that the content will meet your requirements or that its use will be uninterrupted or error free.

**10. Indemnification/Limitation of Liability.**

- a) **Indemnification of Kielder Computers Ltd by you.** You agree to defend, indemnify and hold harmless Kielder Computers Ltd and its parent, subsidiaries, affiliates, and content suppliers, and each of their respective officers, directors and employees from all damages, liabilities and expenses (including reasonable outside legal fees) arising out of or in connection with any breach or alleged breach by you (or anyone acting on your behalf) of any of the terms of this agreement.
- b) **Indemnification of you by Kielder Computers Ltd.** Provided that the content is only used in accordance with this agreement and you are not otherwise in breach of this agreement, and as your sole and exclusive remedy for any breach of the warranties set forth in Section 9(a) above, Kielder Computers Ltd agrees, subject to the terms of this Section 10, to defend, indemnify and hold harmless you, your corporate parent, subsidiaries and affiliates, and each of your respective officers, directors and employees from all damages, liabilities and expenses (including reasonable outside legal fees) arising out of or in connection with any breach or alleged breach by Kielder Computers Ltd of its warranty in Section 9(a) above. This indemnification does not apply to the extent any damages, costs or losses arise out of or are a result of modifications made by you to the content or the context in which the content is used by you. This indemnification also does not apply to your continued use of content following notice from Kielder Computers Ltd, or upon your knowledge, that the content is subject to a claim of infringement of a third party's right.

**Limitation of Liability. KIELDER COMPUTERS LTD WILL NOT BE LIABLE TO YOU OR ANY OTHER PERSON OR ENTITY FOR ANY PUNITIVE, SPECIAL, INDIRECT, CONSEQUENTIAL, INCIDENTAL OR OTHER SIMILAR DAMAGES, COSTS OR LOSSES ARISING OUT OF THIS AGREEMENT, EVEN IF KIELDER COMPUTERS LTD HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, COSTS OR LOSSES. SOME JURISDICTIONS DO NOT PERMIT THE EXCLUSION OR LIMITATION OF IMPLIED WARRANTIES OR LIABILITY.**

## 11. General Provisions.

- a) **Assignment.** This agreement is personal to you and is not assignable by you without Kielder Computers Ltd.'s prior written consent. Kielder Computers Ltd may assign this agreement, without notice or consent, to any corporate affiliate or to any successor in interest, provided that such entity agrees to be bound by these terms.
- b) **Audit/Certificate of Compliance.** Upon reasonable notice, you agree to provide to Kielder Computers Ltd sample copies of projects or end uses that contain licensed content, including by providing Kielder Computers Ltd with free of charge access to any pay-walled or otherwise restricted access website or platform where content is reproduced. In addition, upon reasonable notice, Kielder Computers Ltd may, at its discretion, either through its own employees or through a third party, audit your records directly related to this agreement and your use of licensed content in order to verify compliance with the terms of this agreement. If any audit reveals an underpayment by you to Kielder Computers Ltd of five percent (5%) or more of the amount you should have paid, then in addition to paying Kielder Computers Ltd the amount of the underpayment, you also agree to reimburse Kielder Computers Ltd for the costs of conducting the audit. Where Kielder Computers Ltd reasonably believes that content is being used outside of the scope of the license granted under this agreement, you agree, at Kielder Computers Ltd.'s request, to provide a certificate of compliance signed by an officer of your company, in a form to be approved by Kielder Computers Ltd.
- c) **Electronic storage.** You agree to retain the copyright symbol, the name of Kielder Computers Ltd, the content's identification number and any other information that may be embedded in the electronic file containing the original content, and to maintain appropriate security to protect the content from unauthorized use by third parties. You may make one (1) copy of the content for back-up purposes.
- d) **Governing Law.** This agreement will be governed by the laws of the United Kingdom.
- e) **Severability.** If one or more of the provisions in this agreement is found to be invalid, illegal or unenforceable in any respect, the validity, legality and enforceability of the remaining provisions should not be affected. Such provisions should be revised only to the extent necessary to make them enforceable.



- f) **Waiver.** No action of either party, other than express written waiver, may be construed as a waiver of any provision of this agreement.
- g) **Entire Agreement.** No terms of conditions of this agreement may be added or deleted unless made in writing and accepted in writing by both parties or issued electronically by Kielder Computers Ltd and accepted in writing by you. In the event of any inconsistency between the terms of this agreement and the terms contained on any purchase order sent by you, the terms of this agreement will apply.
- h) **Notice.** All notices required to be sent to Kielder Computers Ltd under this agreement should be sent via email to [neil@kieldercomputers.co.uk](mailto:neil@kieldercomputers.co.uk). All notices to you will be sent via email to the email set out in your account.
- i) **Taxes.** You agree to pay and be responsible for any and all sales taxes, use taxes, value added taxes and duties imposed by any jurisdiction as a result of the license granted to you, or of your use of the licensed content.
- j) **Licensing Entity.** The licensing entity under this agreement is determined based on your billing address.