

# NORWOOD INDUSTRIES PTY LTD

---

## Terms of Use for ETAG and EPHOTO

August 2014

## **1. About these terms**

- 1.1 These terms apply to the web-based applications known as ETAG and EPHOTO which are owned by us, Norwood Industries Pty Ltd (“**Norwood**”) (ABN 90 004 817 207).
- 1.2 By using ETAG and/or EPHOTO you are agreeing to these terms and a binding agreement is formed between us and you incorporating these terms.
- 1.3 If you supply us with digital images in EPHOTO then the additional terms contained in the Image Supply Terms apply and the agreement between us and you will incorporate those additional terms as well.
- 1.4 You may use ETAG and/or EPHOTO if you comply with these terms and all additional terms that apply to you. If you do not accept these terms or the additional terms, do not use ETAG or EPHOTO.

## **2. Using ETAG**

- 2.1 We provide ETAG as an online service that offers you, as an approved Norwood customer, a fast and convenient way to create digital artwork designs. We may designate which of our customers are approved to use ETAG at our discretion.
- 2.2 Using ETAG does not make you the owner of any intellectual property rights in ETAG. We retain ownership of all intellectual property rights (including copyright) in ETAG which includes:
  - (a) all software forming part of ETAG and all elements of the graphical user interface in ETAG; and
  - (b) all artwork design templates (including plant tag, poster and wobler templates) and Norwood horticultural content (including our cultural notes, planting symbols and logos) appearing in ETAG.
- 2.3 You must not use any trade marks appearing in ETAG without permission from their respective owners.

## **3. Purchasing print-ready files in ETAG**

- 3.1 ETAG offers you a way to purchase licences from us for print-ready file versions of the artwork designs you create in ETAG. You may purchase ETAG print-ready file licences if you comply with these terms.
- 3.2 You can purchase ETAG print-ready file licences within ETAG after requesting a print-ready file for your artwork design.
- 3.3 When you purchase an ETAG print-ready file licence, we grant you a personal, worldwide, non-exclusive, non-transferable and royalty-free licence to use the print-ready file for the permitted uses that apply to it under these terms. All other uses are strictly prohibited. Prohibited use includes using an ETAG print-ready file, or any part of it, to create or print, or to attempt to create or print, any materials designed or intended to be affixed to or included with plants or plant products at the point of sale (such as plant tags), except where we print those materials for you.

- 3.4 When you purchase an ETAG print-ready file licence for a print-ready file that includes an EPHOTO third party image, the image is not covered by the licence and you must purchase a separate EPHOTO image licence for the image in accordance with these terms.
- 3.5 You must include the copyright notice: "Used under licence from ETAG" wherever possible when using ETAG print-ready files in accordance with these terms.
- 3.6 Purchasing an ETAG print-ready file licence does not make you the owner of any intellectual property rights in the print-ready file that are not already held by you. Ownership of such intellectual property rights (including copyright) is retained at all times by us or our licensors.

## **4. Using EPHOTO**

- 4.1 We provide EPHOTO as an online service that allows you to:
  - (a) upload images for your own personal use in artwork designs you create using ETAG;
  - (b) purchase licences for third party images; and
  - (c) supply us with your images so that we can sub-licence those images to other EPHOTO users (in which case the Image Supply Terms also apply).
- 4.2 Using EPHOTO does not make you the owner of any intellectual property rights in EPHOTO, or any EPHOTO images. We retain ownership of all intellectual property rights (including copyright) in EPHOTO which includes all software forming part of EPHOTO and all elements of the graphical user interface in EPHOTO. You must not use any trade marks appearing in EPHOTO without permission from their respective owners.

## **5. Purchasing images in EPHOTO**

- 5.1 EPHOTO offers you a way to purchase licences from us for the digital images available in EPHOTO. You may purchase EPHOTO image licences if you comply with these terms.
- 5.2 You can purchase an EPHOTO image licence by using the online checkout facility within EPHOTO to complete a transaction for your selected image. Alternatively, if you are an ETAG user you can purchase an EPHOTO image licence within ETAG by requesting an ETAG print-ready file for an artwork design that includes the image.
- 5.3 When you purchase an EPHOTO image licence, we grant you a personal, worldwide, non-exclusive, non-transferable and royalty-free licence to use the image for the permitted uses that apply to it under these terms. All other uses are strictly prohibited. Prohibited use includes using an EPHOTO image, or any part of it, to create or print or attempt to create or print any materials designed or intended to be affixed to or included with plants or plant products at the point of sale (such as plant tags), except where we print those materials for you.

- 5.4 You must include the copyright notice: “Used under licence from EPHOTO” wherever possible when using EPHOTO images in accordance with these terms.
- 5.5 Purchasing an EPHOTO image licence does not make you the owner of any intellectual property rights in the image. Ownership of all intellectual property rights (including copyright) in images is retained at all times by us or our licensors.

## 6. Licence fees and permitted uses

- 6.1 Licence fees for ETAG print-ready files and EPHOTO images are due and payable by you at the time of purchase. If you have a credit account with us, we may accept payment by charging your account and you hereby authorise us to do so. If you do not have a credit account, or if we decide not to accept payment by charging your credit account, you must make payment by our nominated payment method at the time of purchase.
- 6.2 The prices for licence fees payable under these terms are the prices displayed in ETAG and EPHOTO from time to time. All prices are displayed in Australian dollars and are subject to change without notice.
- 6.3 The permitted uses applicable to any ETAG print-ready files and EPHOTO images you purchase a licence for under these terms depend on the type of licence fees you pay us. The table below sets out the permitted uses that apply for each type of licence fee. However, in no circumstances are you permitted to use any ETAG print-ready files or EPHOTO images, or any part of them, to create or print or attempt to create or print any materials designed or intended to be affixed to or included with plants or plant products at the point of sale (such as plant tags), except where we print those materials for you.

Licence fee type	Permitted uses
Low-resolution ETAG print-ready file	The file may be reproduced without modification in online material related to your business, such as on your company website or in online advertising.
High-resolution ETAG print-ready file	The file may be reproduced without modification in online material related to your business, such as on your company website or in online advertising <u>and</u> in printed publications related to your business, including magazines, brochures and advertising material.
Low-resolution EPHOTO image	The image may be reproduced without modification in online material related to your business, such as on your company website or in online advertising.
High-resolution EPHOTO image	The image may be reproduced without modification in online material related to your business, such as on your company website or in online advertising <u>and</u> in printed publications related to your business, including magazines, brochures and advertising material.
EPHOTO image for use in ETAG	The image may be used in artwork designs you create using <i>ETAG</i> and in <i>ETAG</i> print-ready files.

## **7. Your ESERVICES account**

- 7.1 You must have a Norwood ESERVICES account to use ETAG and/or EPHOTO. You may sign up online to open an ESERVICES account, provided you meet all eligibility requirements set by us from time to time. You must provide complete and accurate information when signing up. If your account information changes, you must tell us about the changes as and when they occur. You will need to confirm that you accept these terms in order to access ETAG and/or EPHOTO after opening an ESERVICES account.
- 7.2 You may have multiple employees create individual signups to use ETAG on your behalf. Your ESERVICES account will cover all your employee signups and you will be responsible for them. Under these terms use of ETAG and/or EPHOTO by your employees will be taken as use by you.
- 7.3 You must keep all login details for your ESERVICES account secret and secure. You are solely responsible for the user activity that occurs in relation to your ESERVICES account. You must notify us immediately if you become aware of any suspected or actual breach of security or unauthorised use in relation to your ESERVICES account. Despite the security measures we employ, we will not be liable for any loss (including consequential loss) you suffer as a result of any fraudulent or unauthorised user activity in relation to your ESERVICES account, although you may be liable for any loss we suffer.

## **8. Rights in your content**

- 8.1 You retain ownership of any intellectual property rights you hold in any content you upload to ETAG or EPHOTO. You grant us a worldwide, non-exclusive, transferable and royalty-free licence to use any content you upload to ETAG or EPHOTO for any purposes related to ETAG or EPHOTO (including maintaining, improving and developing ETAG and EPHOTO). While this licence covers content generally, it does not apply to any images that you supply us with under the Image Supply Terms which images will be subject instead to the licences you grant us under those additional terms. For the avoidance of doubt, the provisions in these terms below regarding content do apply to images that you supply us with under the Image Supply Terms (as well as any other content you upload to ETAG or EPHOTO).
- 8.2 All content that you upload to ETAG or EPHOTO must meet all technical and aesthetic standards that we set from time to time, including standards relating to computer file sizes, image resolution and photographic aesthetics. We may reject any content you upload if it does not meet our standards.
- 8.3 You must provide complete and accurate data about all content you upload as and when requested (such as the name of a plant appearing in a photo). We may amend or replace the data you provide if we consider it is incomplete or inaccurate.
- 8.4 You must not upload any content that depicts or refers to matters that would be considered morally or socially inappropriate by ordinary community standards (including pornography, graphic violence, animal abuse, illicit drug use or weapons), or content that is inciting, defamatory, denigrating or discriminatory against any group or individual.
- 8.5 We reserve the right at any time to delete and/or disable access to any content that you upload if it does not comply with these terms, or for any other reason at our discretion, without notice to you and without us incurring any liability.

## **9. Your warranties and liability**

- 9.1 In relation to any content you upload to ETAG or EPHOTO, you warrant to us that our use of the content in accordance with these terms (including the licence granted by you to us under these terms) will not infringe the intellectual property rights (including copyright) of any third party anywhere in the world.
- 9.2 You indemnify us (and our officers, employees, contractors, agents and related bodies corporate) against any liability or loss (including legal fees and costs) for any claim or demand made against us by any third party relating to any intellectual property rights in any content you upload to ETAG or EPHOTO.
- 9.3 You indemnify us (and our officers, employees, contractors, agents and related bodies corporate) against any liability or loss (including legal fees and costs) for any breach by you of these terms or any additional terms that apply.
- 9.4 Any warranties and indemnities you provide under the Image Supply Terms apply in addition to and without limiting the warranties and indemnities you provide under these terms.

## **10. General restrictions on use**

- 10.1 You must not do or attempt any of the following without our permission:
- (a) rent, lease, lend, sell, redistribute, sublicense or on-supply ETAG or EPHOTO;
  - (b) remove, obscure or alter any trade marks or legal notices displayed in ETAG or EPHOTO;
  - (c) interfere with or disrupt the use of ETAG or EPHOTO by other users;
  - (d) damage, disable, overburden or impair ETAG or EPHOTO or any networks connected to them;
  - (e) solicit or advertise to other users of ETAG or EPHOTO for commercial purposes;
  - (f) access ETAG or EPHOTO using any automated process or service (such as a bot or spider);
  - (g) deliberately or recklessly cause harm (whether financial or not) to us or our affiliates;
  - (h) engage in, facilitate or further any illegal conduct,
- and you must ensure that none of your officers, employees, contractors or agents do or attempt any of these things without our permission.

## **11. Cancellation of your ESERVICES account**

- 11.1 Your ESERVICES account will remain open unless and until it is cancelled in accordance with these terms.
- 11.2 You may cancel your ESERVICES account by giving us at least 30 days' prior notice by email to [eservices@norwood.com.au](mailto:eservices@norwood.com.au).

- 11.3 We may cancel your ESERVICES account at any time without notice for no reason or for any reason, including if you breach these terms or any additional terms that apply, or if you breach any other agreement between us and you (such as agreements relating to us printing artwork designs for you).
- 11.4 All licences granted by us to you under these terms terminate immediately upon cancellation of your ESERVICES account. Following cancellation of your account, you must immediately stop using all ETAG print-ready files and EPHOTO images and you must at your cost permanently delete and destroy all copies of them in your possession and provide us proof that this has been done, unless we tell you otherwise.
- 11.5 Following cancellation of your ESERVICES account we will, within a reasonable time, stop actively using any content you uploaded to ETAG or EPHOTO, unless you agree otherwise. We will also stop marketing, publishing, distributing and sub-licensing any images that you supplied us with under the Image Supply Terms. However, despite anything else in these terms or the Image Supply Terms, cancellation of your ESERVICES account does not affect any of the sub-licences or other rights granted by us to any EPHOTO users in relation to EPHOTO images supplied by you under the Image Supply Terms. Those sub-licences and other rights survive both cancellation of your ESERVICES account and any termination of the agreement between us and you incorporating these terms.
- 11.6 If following cancellation of your ESERVICE account we continue to receive licence fees from other EPHOTO users for sub-licences granted by us in respect of EPHOTO images supplied by you, we will pay you in accordance with our obligations under the Image Supply Terms.
- 11.7 Except as expressly stated otherwise in these terms, cancellation of your ESERVICES account does not affect any of your obligations or any of our rights under sections 9, 10, 11, 13 and 15 of these terms; and sections 3, 4 and 6 of the Image Supply Terms, all of which continue to be enforceable by us after cancellation of your ESERVICES account and all of which survive termination of the agreement between us and you incorporating these terms.

## **12. Variations by us**

- 12.1 We may vary these terms and any additional terms at any time without notice, except where these terms or the additional terms provide otherwise. You should check our website regularly to see the current terms. These terms and any additional terms apply as varied by us to all use by you of ETAG and/or EPHOTO after the date of variation.
- 12.2 If we vary these terms by requiring you to start paying us new charges to use ETAG and/or EPHOTO (including if we start charging for use of enhanced or additional features), we will give you 30 days' prior notice of the variations and allow you to cancel your ESERVICES account during the notice period to avoid paying the new charges if you disagree with them. If you do not cancel your ESERVICES account during the notice period, you will be taken to accept the new charges. We may provide notice by sending an email to the email address recorded in your ESERVICES account.
- 12.3 We may vary any of the features or functionalities of ETAG and/or EPHOTO, including by suspending or removing them, at any time without notice. We may also change the website addresses where you can access ETAG and/or EPHOTO.

### **13. Our disclaimers and liability**

- 13.1 You expressly acknowledge and agree that, to the extent permitted by applicable law, use of ETAG and/or EPHOTO is at your sole risk and that the entire risk as to satisfactory quality, performance, accuracy and effort is with you. To the maximum extent permitted by applicable law, ETAG and EPHOTO are provided "as is" and "as available", with all faults and without warranty of any kind and we hereby disclaim all warranties and conditions with respect to ETAG and EPHOTO, whether express, implied or statutory, including, but not limited to, the implied warranties and/or conditions of merchantability, satisfactory quality, fitness for a particular purpose, accuracy, quiet enjoyment, and non-infringement of third party rights (including intellectual property rights). We do not warrant against interference with your enjoyment of ETAG or EPHOTO, that the functions contained in, or services performed or provided by, ETAG or EPHOTO will meet your requirements, that the operation of ETAG or EPHOTO will be uninterrupted or error-free, that ETAG or EPHOTO will continue to be made available, that defects in ETAG or EPHOTO will be corrected, or that ETAG or EPHOTO will be compatible or work with any third party software, applications or services.
- 13.2 You expressly acknowledge and agree that, to the extent permitted by applicable law, use of any EPHOTO images and/or ETAG print-ready files is at your sole risk and that the entire risk as to satisfactory quality, performance, accuracy and effort is with you. To the maximum extent permitted by applicable law, we hereby disclaim all warranties and conditions with respect to all EPHOTO images and ETAG print-ready files, whether express, implied or statutory, including, but not limited to, the implied warranties and/or conditions of merchantability, satisfactory quality, fitness for a particular purpose, accuracy, quiet enjoyment and non-infringement of third party rights (including intellectual property rights). We do not warrant against interference with your enjoyment of EPHOTO images or ETAG print-ready files, or that EPHOTO images and ETAG print-ready files will meet your requirements.
- 13.3 No oral or written information or advice given by us or our representatives creates a warranty. Some jurisdictions do not allow the exclusion of implied warranties or limitations on applicable statutory rights of a consumer, so the above exclusions and limitations may not apply to you.
- 13.4 To the extent permitted by applicable law, we exclude all liability to you under these terms, and in no event will we be liable for personal injury, or any incidental, special, indirect or consequential damages whatsoever, including, without limitation, damages for loss of profits, corruption or loss of data, failure to transmit or receive any data, business interruption or any other commercial damages or losses, arising out of or related to your use or inability to use ETAG or EPHOTO, or any third party software or applications in conjunction with ETAG or EPHOTO, however caused, regardless of the theory of liability (contract, tort or otherwise) and even if we have been advised of the possibility of such damages. Some jurisdictions do not allow the exclusion or limitation of liability for personal injury, or of incidental or consequential damages, so this limitation may not apply to you.

### **14. Privacy**

- 14.1 Our Privacy Policy explains how we collect, use, disclose, store and grant access to personal information in relation to ETAG and EPHOTO.

## **15. General legal terms**

- 15.1 ETAG and EPHOTO may be used from within Australia and throughout the world. We make no representations or warranties that ETAG or EPHOTO (or use of them) complies with the laws of any country other than Australia. If you access ETAG or EPHOTO outside Australia, you do so at your own risk and you are solely responsible for complying with the laws in the place of access.
- 15.2 These terms and any additional terms that apply in accordance with these terms, set out the entire agreement between us and you in relation to your use of ETAG and/or EPHOTO. These terms are governed by the laws in force in Victoria, Australia and you submit to the non-exclusive jurisdiction of the courts in Victoria, Australia.
- 15.3 Invalidity of any provisions in these terms or any additional terms does not affect any other provisions. Any delay or failure by us to enforce our rights under these terms or any additional terms does not constitute waiver.
- 15.4 You must not assign your rights or novate your obligations under these terms or any additional terms without our prior written consent. We may give or withhold consent at our discretion. We may assign any of our rights and novate any of our obligations under these terms and any additional terms at any time without your consent.
- 15.5 In this document and in the Image Supply Terms, the words “include”, “including”, “such as”, and similar expressions, must not be interpreted as limiting.
- 15.6 The inclusion in ETAG or EPHOTO of any hyperlinks or other pointers to any third party websites or applications does not imply our endorsement or approval of such third parties or their websites, products or other activities.