API Terms of Use

Definitions

„**API**" is a term used to describe the programming interface that facilitates to access designs from Pattern Design for the further embellishment of end products.

„**API Key**" describes the unique identification number of an API User.

„**User**" describes every company holding a valid API User Account and API Key.

„**User Account**" describes an account on www.patterndesigns.com/api which enables log-on and use of the API.

„**Design**" describes patterns and illustrations, which have been made by designers and can be purchased via the API as vector files.

„**Designer**" describes a contractual partner of Pattern Design, who offers at least one design on patterndesigns.com.

„**Preview Image**" describes an exported, rasterized (non-vectorised) graphic of the original design. The preview image does not necessarily represent the exact content of the original design but can include watermarks or trimmed edges.

„**End Product**" describes a physical product, e.g. wallpapers, canvas or postboxes, which are manufactured to further sell to end customers.

„**End Customer**" describes natural persons or entities who purchase end products as end customers from the user.

„**Licensed Material**" describes designs in respect of which according to this terms of use a right of use has been granted.

„**Net Sales Price**" describes the sales price of the end product of the user without any license fees of the used designs.

„**End Customer Net Sales Price**" describes the final sales price, which an end customer has to pay for an end product, including all license fees for the used designs.

By using the API („the API") of Pattern Design GmbH („Pattern Design"), provided on its website (at present: „patterndesigns.com"), you agree with the Pattern Design terms of use („the terms of use") and you are contractually bound to the terms of use. The terms of use can be viewed at: www.patterndesigns.com/api/legal/terms

It is not possible to have any right of use of the designs provided by the API of Pattern Desgin as far as you do not agree with the terms of use.

I. The API

I.1. The API is a programming interface which is provided by Pattern Design to allow access to its design database. The API enables to retrieve designs from the design database and further use the retrieved designs.

The term designs comprehends patterns and illustrations.

I.2. In order to use the API you have to be registered on patterndesigns.com/api and be in possession of a valid API key. By registering on patterndesigns.com/api you apply for an user account at Pattern Design including the API key. Hence, you agree with the terms of use. Pattern Design ist entitled to refuse the granting of this user account without stating any reasons for doing so respectively to not process the application, what from the user applicant does not acquire any rights.

I.3. After having been granted a user account and upon receipt of the API key from Pattern Design the user can use the API and retrieve designs as well as the corresponding preview images.

I.4. The terms of use apply upon granting the user account.

II.　　Scope of the Permission of Use

II.1 Pattern Design has worldwide, unrestricted, sub-licensable rights of use to the API and the designs provided by the API. In this regard, Pattern Design provides, according to the terms of use, a worldwide, non-exclusive, non-sub-licensable, non-transferable and revocable license. The terms of use shall set out the content and scope of the license for the licensed designs. All rights which are not granted to the user within this contract shall be accorded to Pattern Design.

II.2. The API shall only be used to sell end products.

II.3. The designs retrieved from the API shall be applied to those end products. In doing so it is not allowed to change the retrieved designs in any way. This excludes the changes according to point II.7.b.

II.4. The granted license according to this contract allows the user to apply the retrieved designs (from the API) once on the corresponding end product. Any further use shall not be permitted.

The user is free to retrieve an already used design again for a new one-time use and be granted a new license from the API.

II.5. General provisions

a)   The user must indicate all personal data truthfully, especially his or her identity.

b)   Each user applies the licensed material exclusively in accordance with the terms of use.

c)   Each user confirms that Pattern Design has the worldwide, unrestricted, sub-licensable right of use on the licensed material and referring to this, Pattern Design has intellectual property rights, trademarks and similar rights. The users will protect the licensed designs with the same diligence as in one's own concern and consequently, prevent any copying, distributing, presenting, editing or similar actions which do not correspond to the terms of use. The user commits to give the authorship/rights of use of the retrieved designs (from the API) in a legible and visible form as follows:

„forename surname of the designer, patterndesigns.com", e.g. „John Doe, patterndesigns.com"

The only case where this obligation does not apply is for designs that are applied to the end product.

d) Moreover, the user commits to indicate the designer in the format specified in point II.5. c) on the invoices for the end products on which the Designer's designs are applied.

e) Designs retrieved from the API shall not be kept longer or temporarily stored than reasonably required.

f) It is prohibited to use the API in any way which contravenes the economic interests of Pattern Design.

g) The user is strictly prohibited to transfer or copy designs retrieved from the API. The only exception is the transmission to third parties that are involved in the production of the end product and only to the extent necessary in each case.

The user shall be liable for any violation of the granted rights of use according to the terms of use by third parties as well as by the user itself.

h) The user shall be liable to obtain and to use the most recent version of the licensed material.
This is very important as designs can be removed by Pattern Design.
Thus, Pattern Design recommends to update the selection of designs at least on a weekly basis.

Sales already carried out, the presentation of products with the requested designs in already produced, non-digital, promotional tools (e.g. product catalog), as well as with the designs manufactured products, are excluded from the update.

II.6. Preview images

a) The user is entitled with a prior written consent by Pattern Design to use preview images online and free of charge for promotional and advertising purposes. Such use does not need any approval by Pattern Design as far as the preview images used for promotion and advertising of designs and or of the end products serve the predominant purpose of selling end products.

b) The preview images can be retrieved from the API too.

c) The use of preview images for purposes such as advertising materials, print and online promotions (online banner, slider and/or similar tools) are generally approved by Pattern Design. In this regard, the user will contact Pattern Design in order to receive the approval to carry out advertising and to be possibly supplied with the vector file (source file).

d) The authorship/rights of use have to be clearly indicated for the use of preview images too. This has to be carried out in the same way as it is requested for retrieved design by the API (according to point II.5. c). This obligation concerns individual displays (detailed views) but does not necessarily comprehend the presentation of designs as a preview image in overviews and galleries (thus always, when designs of various designers are being displayed on one and the same page).

II.7. Modifications

a) The designs retrieved by the API as well as its corresponding preview images must not be altered.

b) Alterations within the meaning of II.7. a) are not:

i.   the repeat (which means the multiple connecting of the same design or preview image with the purpose to complete a certain space)
ii.   the selection of a different, smaller part of the design or preview image
iii. the scaling (enlarging and reducing) of the design whilst retaining the original proportions
iv.   the reduction of the preview image whilst retaining the original proportions
v.   the rotation as well as the reflection of the preview image
vi.   the recoloring of the design
vii. the use of the design in combination with photos, texts, monograms etc.

III.   Termination of the Agreement

III.1. Pattern Design is entitled to revoke the permission of use (of the API) at any time with no need to state its reasons.

Nevertheless, Pattern Design is allowed to concede a deadline of 3 months to the user by written notification. Within this extension of time the terms of use apply.

III.2. The agreement is concluded for an indefinite period of time.

III.3. The user may terminate the agreement without providing any reasons, without compliance to a date of termination or a period of notice.

The notice of termination must be made in writing (by mail, fax or e-mail).

III.4. The right of Pattern Design to terminate the agreement at any time with immediate effect for a compelling reason shall remain unaffected.

III.5. Upon termination of this agreement all rights of use within the terms of use shall expire immediately.

III.6. Even after the termination of the agreement – for whatever reason – the points II.5., III.7., as well as IV – X continue to be binding.

As long as the user has acquired a right of use at the time of termination, but has not exercised the right yet, the points II.2. – II.4., 1. Paragraph 1, apply, after termination of the agreement; however, it did so under the proviso that only those alterations are permitted which are necessary for the application of the design on the end product, for which the user and the client (of the user) have concluded a sales contract before the termination of the agreement.

III.7. Upon the termination of the agreement the user's access to the API will be revoked by Pattern Design. Consequently, no rights or claims shall result in favour of the user.

IV. Warranty and Liability

You expressly acknowledge and accept that:

IV.1. Pattern Design warrants and shall assume liability that Pattern Design is not aware of any circumstances on the day of conclusion of the agreement which are in conflict with the actual use of the licensed materials. Pattern Design has no duties or responsibilities related to investigations concerning such circumstances.

Pattern Design does not give warranty and assumes no liability insofar as not otherwise regulated within the terms of use or by mandatory law.

Pattern Design shall be solely liable in case of gross negligence and willful intent, unless mandatory law provides otherwise.

IV.2. Pattern Design cooperates with different designers who create and visually represent the designs. Pattern Design gives the warranty and assumes the liability that the present designs are displayed in due data processed via the API.

Pattern Design cannot give the warranty or assume the liability in case there is a deterioration in the graphical quality, if the just described requirements have been fulfilled.

IV.3. The user commits to check the design immediately after obtaining it; especially regarding the fitness of the design to be applied to the end product using the technical method for applying to the end product.

Pattern Design cannot be held liable for damages that result from the use of a defective or inadequate design, to the extent permitted by law.

The liability and warranty of Pattern Design is excluded from any claims of damages, which result from the production of the end product by the use of a defected design, insofar as mandatory law so permits

V.   License Fee

The license fee consists at least of the fees indicated in the points V.1. and V.2.. Depending on the use of the offered add-ons with costs, the license fee can be increased by the points V.3. – V.6..

V.1. The user has to pay a license fee to Pattern Design for the acquired rights of use. The license fee has to be paid per produced, physical end product.

a. The license fee is due with the download of the corresponding design via the API.

b. The license fee will be surcharged on the net sales price as a percentage share of the net sales price. The net sales price of the user plus the license fee results in the end customer net sales price.

c. This surcharge is calculated as follows:

12% of the net sales price will be surcharged as license fee.

Starting at a net sales price of EUR 300.00 the license fee is capped at EUR 36.00.

d. For an interpretative clarification the following is provided:

„In case a user wants to earn EUR 140.00 net with his product, then the user has to calculate EUR 16.80 in addition for the use/application of the design." The net sales price for the end customer would be EUR 156.80.

That is calculated as follows:

EUR 140,00 * 0,12 = EUR 16.80

e. In order to retrieve or download the designs which are necessary to produce the end product, the user is obligated to forward a report of the sale to Pattern Design. The report of the sale must include the following information:

i) API Key of the user

ii) Design Ids – All designs which have been used for the end product must be indicated. Those designs can be uniquely identified by the design Ids apparent in the API.

iii) Net sales price of the end product

iv) Unique order number – The internal, unique order number of the corresponding customer order of the user, which warrants a clear identifiability of the order transaction and the customer.

Upon proper fulfilment of this obligation the user is allowed to download the design. The license fee shall be due after delivery/download of the design.

V.2. The user can use the designs at the conditions outlined above and make use of the API by paying a monthly fee of € 50,- per month to Pattern Design.

V.3. Create own collections – add-on with costs
The user can deploy the add-on to create own collections by paying a monthly fee of € 50,- per month to Pattern Design.

V.4. Use own custom watermark – add-on with costs
The user can deploy its own logo as a watermark – „Whitelabelling" - to further strengthen its brand by paing a monthly fee of € 50,- per month to Pattern Design.

V.5. 3D previews of own products – add-on with costs
The user can deploy 3D previews of its products to guarantee a more realistic product preview by paying a monthly fee of € 50,- per month to Pattern Design.

V.6. Upload own designs – add-on with costs
The user can upload his own designs as vector files (EPS, SVG) that the user can use in the same way as the designs which Pattern Design provides (e.g. with recoloring). This add-on is also available by paying a monthly fee of € 50,- per month to Pattern Design. The user may only upload designs of which the user has the necessary rights. The user grants Pattern Design the right to process and store the designs, and make them available on the web for the user's presentation purposes only. All usage rights remain with the user. Pattern Design shall not use the designs for any other purposes. The user is responsible for solving possible legal problems regarding the use of the designs which the user uploaded. Please note, that the designs need to satisfy the same criteria as all designs used by Pattern Design, and as such, not all of the user's own designs may be usable for this feature. Currently known restrictions in a technical sense are:

- the resulting svg files used for internal processing need to be smaller than 40 MB
- contain no embedded pixel data or links to external files

- the designs must not be taller than a width-height ratio of 1:2
- recoloring will only work on designs with less than 200 colors and a fast enough on-the-fly rendering time

V.7. Billing

a. Recurring Billing
By registration for the API and providing or designating a Payment Method, the user authorizes Pattern Design to charge a monthly usage fee (API, add-ons) as well as the license fees for the licensed material incurred and registered within the settlement period.

b. Billing Cycle

i) Usage fee for API and add-ons
The usage fee will be charged directly by registration for the API and the chosen add-ons. Thereafter, the usage fee will be charged each month on the first of the month.

ii) License fee for licensed material
The license fee for licensed material will be charged each month on the first of month for the preceding month (settlement period).

c. Billing Document.
The user will be sent a complete and clearly arranged billing document by Pattern Design at the beginning respectively on the first of the month, including all necessary billing information from i) and ii).

VI.   Infringements of the Agreement

VI.1. Pattern Design will verify the compliance of the reporting obligation according to point V.6. by ghost shopping and other control activities. In case of infringements of the agreement, particularly the reporting obligation of point V.6. and/or infringements of regulations concerning the rights of use of the user, the user has to pay under exclusion of the continuation connection, a penalty regardless of culpability of EUR 10.000,00 for each infringement, which shall not be subject to judicial reduction.

Exeptions are made in those infringements which have been caused by unencumbered technical failure.

VI.2. Pattern Design ist entitled to claim full compensation for damage that exceeds the above amount.

VII.   Compensation

VII.1. For all claims which will be asserted against Pattern Design due to the use of the designs by the user, the user will indemnify Pattern Design against any damage or claims.

VIII.   Set-off and Retention

VIII.1. A set-off with any claims of the user with claims of Pattern Design is unacceptable.

VIII.2. The user has no right of retention and/or lien.

IX.   Legal Nature

IX.1. The user acts at his own risk, on his own account and in his name.

IX.2.This agreement constitutes no enterprise or any similar relationship, no employment- and no sales representative relationship.

IX.3. The user is not allowed to act on the account or in the name of Pattern Design.

X.   Final Provisions

X.1. This agreement governs the legal relations between Pattern Design and the user, as far as it concerns the use of designs, which the user has acquired by the API.
Any arrangements in regards to the object of the agreement which have been made before or whilst the conclusion of the agreement will be mutually annulled upon the conclusion of this agreement.

X.2. An act or omission of Pattern Design does not automatically result in a waiver of claims of Pattern Design, unless Pattern Design has explicitly declared so in written form.

X.3. Austrian law excluding any and all principles on conflicts of laws shall exclusively be applicable. The UN Sales Convention is expressly excluded.

X.4. Place of venue shall be the competent court at the seat of Pattern Design.

X.5. The ineffecitveness of one of the provisions contained in this agreement shall not affect the effectiveness of the remaining provisions thereof.

X.6. This provisions can be replaced by such valid and enforceable provision, which are closest to the intended economic intent.