

HERMAN® LICENSE AGREEMENT

WHEREAS, YOU warrant that you are the owner or co-owner of the specified PUBLICATION which shall incorporate the LICENSED MATERIALS (hereinafter known as “PUBLISHER”), an employee of PUBLISHER, or a lawful third-party agent of PUBLISHER, with the appropriate authority to enter into this AGREEMENT. For the purposes of this AGREEMENT, PUBLICATION shall mean any newsletter, e-newsletter, magazine, book, printed material or personal presentation, as specified by PUBLISHER and/or its AGENT acting on behalf of PUBLISHER.

AND WHEREAS, HERMAN® comic images, created by Jim Unger, (hereinafter known as “COMIC PROPERTY”) are owned by LaughingStock Licensing Inc. (hereinafter known “LICENSOR”), and are protected by trademark, copyright, and other international intellectual property laws, treaties and conventions.

THEREFORE, IN CONSIDERATION of the non-refundable licensing fee to be paid in advance by PUBLISHER to LICENSOR, and in accordance with the terms and conditions contained herein, the PARTIES agree as follows:

1. GRANT, LIMITED RIGHTS

- (a) LICENSOR hereby grants PUBLISHER the one-time non-exclusive and non-transferable right to reproduce selected images of the COMIC PROPERTY requested by PUBLISHER and provided by LICENSOR for sole use in the PUBLICATION, including worldwide and electronic versions, to the limited audience and for the limited quantities specified by PUBLISHER and as confirmed by LICENSOR (hereinafter known as “LICENSED MATERIALS”).
- (b) PUBLISHER warrants that all information provided to LICENSOR is true and accurate, and that any changes shall be immediately communicated in writing to LICENSOR prior to use.
- (c) PUBLISHER warrants that the PUBLICATION is for informational purposes only. PUBLISHER acknowledges that the LICENSED MATERIAL shall not be used in any PUBLICATION advertisement or promotional material whatsoever, as deemed by LICENSOR at its sole discretion.
- (d) PUBLISHER agrees not to reproduce or distribute LICENSED MATERIALS in association with any theme, topic or political message that may be controversial, unlawful, or unsuitable as deemed by LICENSOR at its sole discretion.
- (e) PUBLISHER agrees not to use LICENSED MATERIALS on the cover or back cover of the PUBLICATION without prior written consent from LICENSOR.
- (f) PUBLISHER warrants that all agents, associates, contractors and employees of PUBLISHER understand the limitations of use as indicated herein, and that any unauthorized use shall constitute a material breach of this AGREEMENT, and may result in copyright and/or trademark infringement penalties.

2. TERM, TERMINATION

This AGREEMENT shall commence immediately upon receipt of payment by LICENSOR, and shall be limited to one-time use in the specified edition of the PUBLICATION, and may not be used in subsequent editions or revisions without prior written approval.

3. CONSIDERATION

PUBLISHER shall pay LICENSOR a mutually agreed upon one-time non-refundable royalty fee, which shall be received by LICENSOR prior to use of LICENSED MATERIALS by PUBLISHER.

4. NOTICES

- (a) PUBLISHER shall ensure that the creators' signature and copyright notice appear with the creators' artwork.
- (b) In addition to the creators' signature and copyright notice, PUBLISHER shall include the following credit notice in the PUBLICATION:

HERMAN® is reprinted with permission from LaughingStock Licensing Inc., Ottawa, Canada. All Rights Reserved.

- (c) Upon request from LICENSOR, PUBLISHER agrees to promptly submit three copies of the entire PUBLICATION to LICENSOR at PUBLISHER's expense.
- (d) PUBLISHER understands that the Notices described herein shall be material to this AGREEMENT.

5. STANDARDS OF USE; NO MODIFICATIONS

- (a) PUBLISHER agrees not to change, modify or alter LICENSED MATERIALS in any manner whatsoever, except for purposes of translation in accordance with sub-paragraph 5(b) herein, without first obtaining prior written permission from LICENSOR.
- (b) PUBLISHER shall have the right, without prior approval of LICENSOR, to translate text contained in LICENSED MATERIALS into languages other than the original language of the text, providing that such translation does not change or compromise the intent, meaning, quality or humor of LICENSED MATERIALS.
- (c) The quality of the PUBLICATION and related materials shall be of such style, appearance and quality as to be suited for the goodwill associated with LICENSED MATERIALS, which PUBLISHER acknowledges is of substantial value, and that such acceptable standards shall be determined at the sole discretion of LICENSOR.
- (d) PUBLISHER understands that the Standards of Use described herein shall be material to this AGREEMENT.

6. OWNERSHIP OF RIGHTS

- (a) It is understood and agreed that the LICENSOR is the sole and exclusive owner of all right, title and interest in and to LICENSED MATERIALS and/or the Trademarks. PUBLISHER shall not, directly or indirectly, contest or otherwise challenge or attack the LICENSOR's rights in LICENSED MATERIALS or the Trademarks or the validity of the LICENSE being granted herein. Nothing contained in this AGREEMENT shall be construed as an assignment to the PUBLISHER of any right, title and/or interest in and to LICENSED MATERIALS and/or to the Trademarks, except for the rights being expressly licensed hereunder.
- (b) The PUBLISHER shall not use the LICENSOR's name, LICENSED MATERIALS and/or the Trademarks other than as permitted hereunder and, in particular, shall not incorporate the LICENSOR's name, LICENSED MATERIALS and/or the Trademarks in the PUBLISHER's corporate or business name in any manner whatsoever.

7. GOODWILL VALUE

The PUBLISHER recognizes the value of the goodwill associated with LICENSED MATERIALS and/or the Trademarks and acknowledges that LICENSED MATERIALS and/or the Trademarks, and all rights therein and the goodwill pertaining thereto, belong exclusively to the LICENSOR. The PUBLISHER further recognizes and acknowledges that LICENSED MATERIALS and/or the Trademarks have acquired secondary meaning in the mind of the public.

8. INDEMNIFICATION

The PUBLISHER hereby agrees to defend, indemnify and hold the LICENSOR harmless against any third party claims, including any claim arising out of the editorial use of LICENSED MATERIALS, demands, causes of action and judgments arising out of the use of LICENSED MATERIALS and/or the Trademarks as authorized in this AGREEMENT.

9. ASSIGNABILITY AND SUB-LICENSING

This AGREEMENT shall be personal to the PUBLISHER and shall not be assigned by any act of the PUBLISHER or by operation of law. The PUBLISHER shall have no right to grant any sublicenses without the LICENSOR's prior express written approval. Any attempt on the part of PUBLISHER to arrange for a sub-license or assign to third parties its rights under this AGREEMENT shall constitute a material breach of this AGREEMENT.

10. TERMINATION

In addition to the termination rights provided elsewhere in this AGREEMENT, LICENSOR shall have the right to immediately terminate this AGREEMENT where the PUBLISHER:

- (i) Manufactures, offers for sale, sells, advertises, promotes, ships, distributes and/or uses LICENSED MATERIALS in any way that is not as a LICENSED USE as deemed by LICENSOR at its sole discretion;

- (ii) Breaches any of the provisions of this AGREEMENT relating to the unauthorized assertion of rights in LICENSED MATERIALS and/or the Trademarks;
- (iii) Violates any of its obligations under this AGREEMENT including its payment obligations.

11. EFFECT OF TERMINATION

- (a) After the expiration or termination of this AGREEMENT, all rights granted to PUBLISHER shall forthwith revert to the LICENSOR, and PUBLISHER shall refrain from further use of LICENSED MATERIALS and/or the Trademarks. PUBLISHER shall immediately delete all of THE COMIC images in PUBLISHER's possession, in either print or electronic form and shall certify as destroyed or return to LICENSOR all print and electronic copies or reproductions of LICENSED MATERIALS in PUBLISHER's possession.
- (b) The PUBLISHER acknowledges that its failure to cease the use and distribution of LICENSED MATERIALS at the termination or expiration of this AGREEMENT will result in immediate and irreparable damage to the LICENSOR and to the rights of any subsequent PUBLISHER of the LICENSOR. The PUBLISHER acknowledges and admits that there is no adequate remedy at law for failure to cease such activities and the PUBLISHER agrees that in the event of such failure, the LICENSOR shall be entitled to equitable relief by way of injunctive relief and such other relief as any court with jurisdiction may deem just and proper.

12. APPLICABLE LAW AND DISPUTE

This AGREEMENT shall be governed by the laws of Ontario, Canada.

13. SURVIVAL OF THE RIGHTS

Notwithstanding anything to the contrary contained herein, such obligations which remain executory after expiration of the Term of this AGREEMENT, shall remain in full force and effect until discharged by performance and such rights as pertain thereto shall remain in force until their expiration.

14. SEVERABILITY

In the event that any term or provision of this AGREEMENT shall for any reason be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other term or provision and this AGREEMENT shall be interpreted and construed as if such term or provision, to the extent the same shall have been held to be invalid, illegal or unenforceable, had never been contained herein.

15. INTEGRATION

This AGREEMENT represents the entire understanding between the parties hereto with respect to the subject matter hereof and this AGREEMENT supersedes all previous representations, understandings or agreements, oral or written, between the LICENSOR and PUBLISHER with respect to the subject matter hereof and cannot be modified except by a written instrument signed by the parties hereto.

16. LIMITED WARRANTY AND DISCLAIMER; LIMITATION OF REMEDIES AND DAMAGES

PUBLISHER agrees that LICENSOR, its developers, directors, officers, employees, agents or affiliates shall not be liable to PUBLISHER for any consequential, incidental or indirect damages (including damages for loss of business profits, business interruption, loss of business information, and the like), whether foreseeable or unforeseeable, arising out of the use of, or inability to use LICENSOR's web site, on-line purchasing system, LICENSED MATERIALS, or any accompanying materials, regardless of the basis of the claim and even if LICENSOR or an authorized representative has been advised of the possibility of such damages. LICENSOR's liability to PUBLISHER for actual damages for any cause whatsoever, and regardless of the form of the action, will be limited to the greater of \$200 or the money paid for LICENSED MATERIALS and accompanying materials that caused the damages of the form of the action, will be limited to the greater of \$200 or the money paid for LICENSED MATERIALS and accompanying materials that caused the damages.

17. CONTACT LICENSOR

Any questions or requests to modify the LICENSE shall be submitted in writing to LICENSOR's exclusive business agent at:

LaughingStock Licensing Inc.

7 Windeyer Crescent
Ottawa, ON K2K 2P6
Tel: 613-592-0010
permissions@laughingstock.com

© LaughingStock Licensing Inc. All Rights Reserved.

HERMAN® is a registered trademark of LaughingStock International Inc.