

General Terms and Conditions of Business

I. General

1. The subsequent General Terms and Conditions of Business shall apply to all orders, quotations and supplies and services implemented by the photographer.
2. They are deemed to have been agreed following the customers receipt of the photographers supplies/services or quotation, in any case following acceptance of the photographic material for publication at the latest.
3. In the event that the customer intends to object to the General Terms and Conditions of Business, he shall declare so in writing within three working days. An objection is hereby made to diverging Terms and Conditions of Business stipulated by the customer. Diverging Terms and Conditions of Business stipulated by the customer shall not be valid unless approved in writing by the photographer.
4. Within the framework of an ongoing business relationship the General Terms and Conditions of Business shall also apply to all future orders, quotations and supplies and services, without having to include them specifically.

II. Photographic material surrendered for use

1. The General Terms and Conditions of Business apply to all photographic material provided to the customer, irrespective of its completion stage or available technical format. The conditions shall apply especially to electronic or digitally transmitted photographic material.
2. The customer accepts that the photographic material supplied by the photographer consists of photographs in accordance with α 2, Section 1, Clause 5 of the Copyright Act.
3. Design proposals or concepts commissioned by the customer are independent services which must be remunerated separately.
4. The surrendered photographic material remains the photographers property; the aforesaid shall also apply in the case of compensation payments.
5. The customer shall treat the photographic material with due care and may only pass it on to third parties for internal business purposes, i.e. inspection, selection and technical processing.
6. Complaints relating to the content of the supplied items or the content, quality or state of the photographic material, must be communicated within 48 hours of receipt. The photographic material is otherwise deemed to have been delivered appropriately, in accordance with the contract and as noted.

III. Rights of utilisation

1. In principle, the customer only acquires a non-exclusive license for single usage.
2. Exclusive rights of utilisation, media-related or territorial exclusive rights or blocking periods must be agreed separately and are subject to a minimum surcharge of 100% on the relevant basic fee.
3. The delivery only constitutes the transferral of the right of utilisation for the single usage of the photographic material for the purpose specified by the customer and in the publication, medium or data carrier which has been specified by the customer or which results from the relevant circumstances under which the order has been placed. If in doubt, the relevant object (newspaper, magazine etc.) for which the photographic material has been provided in accordance with the delivery docket or the dispatch address, shall be decisive.
4. Any use, utilisation, duplication, dissemination or publication beyond the stipulations contained in Clause 3 is subject to payment and requires prior explicit approval by the photographer. In particular, this shall apply to
 - Ø secondary utilisation or publication, especially in anthologies, product-related brochures, advertising campaigns or other reprints,
 - any editing, changing or redesigning of the photographic material
 - Ø the digitalisation, storage or duplication of the photographic material on any type of data carrier (e.g. magnetic, optic, magneto-optic or electronic carrier media such as CD ROM/DVD, CDi, diskettes, hard drives, RAM, microfilm etc.) unless such transactions are only performed for the technical processing of the photographic material in accordance with Clause III, 3 of the General Terms and Conditions of Business,
 - any duplication or utilisation of the picture data on CD ROM/DVD, CDi, diskettes or similar data carriers;
 - any recording or reproduction of picture data on the Internet or in online databases or in other electronic archives (this even applies to the customers internal electronic archives),
 - the disclosure of digitalised photographic material within the scope of remote data transmission or on data carriers which are suitable for public reproduction on screens or for the creation of hard copies.
5. Changes to the photographic material implemented by photo-composing or photomontage or with electronic aids for the creation of a new copyrighted item are only permitted with the photographers prior approval in writing and only if such material is marked with [M]. Nor may the photographic material be drawn, copied, photographed or otherwise used as a motive.
6. The customer is not authorised to transfer the rights of utilisation granted to him to third parties including other group companies or subsidiaries, either in whole or in part.
7. Any utilisation, reproduction or transfer of the photographic material shall only be permitted with the proviso that the photographers copyright notice has been attached.

IV. Fees

1. The agreed fee shall apply. In the event that no fee has been agreed, the relevant work is governed by the current photograph fee guideline issued by the Mittelstandsgemeinschaft Foto-Marketing (small business association for photo marketing). The fee is subject to VAT at the statutory rate.
2. The fee shall only be valid for the non-recurrent use of the photographic material for the agreed purpose, in accordance with Clause III, 3 or 2 of the General Terms and Conditions of Business. In the event that the fee is also to include further use, this must be agreed separately.
3. Any costs and expenditure incurred by the order (e.g. material and laboratory costs, model fees, costs for required props, travel expenses, per diems etc.) are not included in the fee and shall be at the customers expense.
4. The fee in accordance with IV. 1 of the General Terms and Conditions of Business shall also be settled in full if the commissioned and supplied photographic material is not published. If the photographs are used as a working model for layout and presentation purposes, a minimum fee of DM 150 per photograph shall be payable, except as otherwise agreed.
5. The fee shall be paid within 3 weeks of the invoice date at the latest, unless a shorter payment period is stipulated in the invoice. Following a reminder, the customer is deemed to be in default. When default occurs, interest of 10% p.a. shall be payable on this fee. Setoff of costs or the exercise of the retention right shall only be permitted in the event that the relevant claims brought forward by the customer are undisputed and recognised by declaratory judgement.

V. Return of the photographic material

1. The photographic material must be returned in the form in which it was originally supplied, without being asked to do so, immediately upon publication or the agreed use, in any case within three months of the delivery date at the latest. Two proofs must be attached. An extension of the three-month period requires the photographers written approval.
2. In the event that the photographer surrenders photographic material to the customer for test purposes only, at the customers request or with his approval, in order to determine whether utilisation or publication is desirable, the customer shall return the photographic material within one month of receipt at the latest, unless a different period is stipulated in the delivery docket. This period may only be extended if confirmed by the photographer in writing.
3. The photographic material shall be returned at the customers expense and with the customary packaging. The customer shall bear the risk of loss or damage during transport until such time as the package has been received by the photographer.

VI. Contractual penalty, blocking, compensation

1. Each incident of unauthorised use, utilisation, reproduction or transfer of the photographic material (without the photographers approval) is subject to a contractual penalty of five times the usage fee, subject to further claims for damages.
2. In the event that the copyright notice is not included, incomplete, incorrectly placed or non-allocable, a surcharge of 100% of the utilisation fee shall be paid.
3. In the event that the photographic material is not returned in good time (blocking), the period after the expiry of the periods specified in Clause V.1 or 2, is subject to a contractual penalty amounting to
 - EURO 0.25 per day and picture for black & white or colour prints or slide duplicates
 - EURO 1.00 per day and picture for slides, negatives or other unique copies
4. Damaged, destroyed or lost photographic material is subject to compensation without the photographer having to furnish evidence of the amount of damage incurred, where such damage amounts to:
 - EURO 40.00 per black & white or colour print or KB slide duplicate
 - EURO 125.00 per medium or large format slide duplicate
 - EURO 250.00 per slide original, negative or other unique copy
 - EURO 500.00 per non-reproducible slide, negative or other unique copyIn the case of damage, the above rates must be reduced in accordance with the relevant extent of damage and the scope of remaining utilisation options. In principle, both contracting parties reserve the right to furnish proof of more/less damage.
5. In the absence of a proof or when billing is implemented without a proof or when billing is implemented without specifying which picture has been used where and in which publication, a contractual penalty of 50% of the usage fee is to be paid.
6. The payments in accordance with Clause VI do not substantiate any rights of use.

VII.

1. These conditions are governed by German law, also in the event that deliveries are effected abroad.
2. Ancillary agreements to this contract or to these General Terms and Conditions of Business must be implemented in writing in order to be effective.
3. In the event that one or several stipulations of these General Terms and Conditions of Business are void or ineffective, the validity of the remaining stipulations shall not be affected. The parties are obliged to replace the invalid stipulation with an analogous, effective regulation that corresponds as far as possible to the intended regulation in terms of its economic and legal effect.
4. If the customer is a merchant who has been entered in the Commercial Register (as a merchant), the place of performance and court venue shall be the photographers place of residence.