

GENERAL TERMS AND CONDITIONS.

1 Validity of the terms and conditions

1.1 Area of application

The production of photos, films and videos (hereinafter referred to as "recordings") as well as the granting of licenses to already existing recordings shall take place exclusively on the basis of the following terms and conditions. These terms and conditions shall also apply to all future production and license agreements, unless deviating provisions are expressly agreed. These GTC shall apply as of 01.01.2021. All previous GTC shall lose their validity as of this date.

1.2 Foreign GTC

Terms and conditions of the client that deviate from the following terms and conditions shall not be recognized. Such deviating terms and conditions shall not become part of the contract even if the Photographer does not expressly object to them.

2 Production Orders

Production orders include the production of photographs by the photographer on behalf of the client.

2.1 Cost estimates

The Photographer's cost estimates are not binding. The Photographer is only required to report cost increases if an overrun of more than 15% of the originally estimated total costs is to be expected.

2.2 Authorization to commission third parties

If the performance of a third party must be utilized in the processing of the order or if any other contract must be concluded with third parties, the Photographer shall be authorized to enter into the corresponding obligations in the name and for the account of the Client.

2.3 Briefing

The Client's briefing shall form the basis for the photographs and calculations to be produced by the Photographer. The Client shall provide the Photographer with the Briefing in full, conclusively and in writing (e.g. as written minutes of a meeting, by e-mail, etc.). In the event that the Client does not provide the Photographer with a written briefing, the Pre-Production Meeting (PPM), the previous e-mail correspondence between the Client and the Photographer, as well as the Photographer's memorial minutes of the PPM and telephone notes shall form the basis for the production of the Photographs.

2.4 Artistic design freedom

When taking the photographs, the photographer has artistic freedom of design, although the client's binding specifications from the briefing, PPM and/or verbal or telephone instructions must be observed. Complaints and/or notices of defects with regard to the artistic freedom exercised by the Photographer are excluded. Subsequent change requests by the Client require a separate agreement and shall be remunerated separately.

2.5 Complaints

If the client himself or a person authorized by him is present during the production of the photographs, he must inspect the photographs while still on the set and immediately notify the photographer of any defects so that the photographer can rectify the defect and produce new photographs. If no notice of defects is given, the photographs shall be deemed to have been approved and accepted. If neither the Client nor a person authorized by the Client is present during the production of the Photographs, the Photographer shall send the Photographs to the Client after they have been produced. The Client shall immediately inspect the photographs for any defects. If, in the opinion of the Client, the Photographs are defective, the Client shall notify the Photographer in writing of the defectiveness without delay, but no later than 14 days after receipt of the Photographs, and shall specify at least one defect. In this case, the Client may refuse acceptance. After expiry of this period, the Photographs shall be deemed to have been accepted by the Client (§ 640 Section 2 BGB).

2.6 Accessibility

If the Client or a person authorized by the Client is not present during the production of the photographs, the Client shall ensure that the Client or a person authorized by the Client is permanently available to the Photographer at least by telephone and by electronic communication media (e.g. e-mail, SMS, etc.) for short-term coordination and decisions.

2.7 Cooperation obligations of the customer

Insofar as the Client is required to supply information, items (e.g. products, goods, etc.), releases, etc. necessary for the production of the Photographs or is responsible for other tasks relevant to the production of the Photographs (e.g. booking of models, locations or catering, etc.), the Client shall ensure that the delivery, provision, access to locations, arrival of models, etc. takes place in good time so that the production of the Photographs can commence punctually on the agreed date. As soon as the Client becomes aware that timely delivery, provision, access to locations, arrival of models, etc. is not possible, he shall notify the Photographer thereof without delay. If this results in a delay in the production of the photograph, and if the cause of this delay lies within the Client's sphere of influence, the Client shall bear the costs incurred as a result of the delay (e.g. additional hotel accommodation, location days, bookings of models, stylists, make-up artists, assistants, re-bookings, etc.).

2.8 Collection of releases

Unless otherwise agreed in an individual contract, the Client shall be obliged, in the case of photographs of persons and objects in which third-party copyrights, property rights or other third-party rights exist, to obtain the consent of the persons depicted and the rights holders required for the production and use of the images in accordance with the German Art Copyright Act (KUG), the German Data Protection Regulation (DSGVO) and any other statutory provisions. In this case, the Client shall indemnify the Photographer against any claims for compensation by third parties resulting from the breach of this obligation. The obligation to indemnify shall not apply if the Client proves that he is not at fault. The above provision shall also apply if the Photographer selects the persons or objects to be photographed himself, provided that he informs the Client of the selection made in sufficient time to enable the Client to obtain the necessary declarations of consent or to select and make available other suitable persons or objects for the photographic work.

2.9 Delivered items

The Photographer may proceed as follows with the items supplied by the Client for the Production: If the items supplied by the Client are perishable items (e.g., food), they will be disposed of by the Photographer upon completion of the Production. If the items supplied by the Client are non-perishable items (e.g. clothing, etc.), they will be returned to the Client at the Client's expense after completion of the Production.

2.10 Image selection

The photographer selects the photographs to be submitted to the client for acceptance upon completion of the production. Rights of use shall be granted, subject to payment in full, only to those photographs that the client accepts as being in accordance with the contract.

3 Cancellation / Production fee / Additional costs / Invoicing

3.1 Cancellation

Both parties may terminate the order in accordance with the statutory provisions.

3.2 Overtime

If the time allotted for the shooting work is significantly exceeded for reasons for which the photographer is not responsible, an agreed flat fee shall be increased accordingly. If a time-based fee has been agreed, the photographer shall also receive the agreed hourly or daily rate for the time by which the shooting work is extended.

3.3 Additional services and additional work

Additional services and work beyond the contractually agreed scope, in particular the production of images beyond the scope specified at the beginning of the contract, shall be remunerated separately on a time basis.

3.4 Additional costs

In addition to the fee owed, the Client shall reimburse any incidental expenses incurred by the Photographer in connection with the execution of the order (e.g. for digital image processing, models, make-up artists, stylists, assistants, travel, etc.).

3.5 Due date of the fee / advance on costs

The production fee is due upon delivery of the recordings. If a production is delivered in parts, the corresponding partial fee is due upon delivery of each part. If the execution of an order extends over a longer period of time, the photographer may demand partial payments in accordance with the amount of work performed. Incidental costs shall be reimbursed as soon as they have been incurred by the Photographer. In addition, the Photographer shall be entitled to demand advances on costs in a reasonable amount.

3.6 Transfer of rights of use

The client acquires the rights of use to the recordings under copyright law only upon full payment of the fee and reimbursement of all ancillary costs.

3.7 Electronic invoicing

The Photographer is entitled to issue his invoice in electronic form and to send it to the Client (§ 14 UStG). The Client agrees to electronic invoicing and electronic invoice delivery.

4 Archive material

Archive Material shall be Photographs that are in the Photographer's archive and to which the Photographer grants the Client licenses of use to the extent individually agreed in each case.

4.1 Viewing material

Photographs requested by the client from the photographer's archive shall only be made available for viewing and selection. No rights of use are transferred with the provision of the photographs for viewing and selection. Any use requires the prior written consent of the Photographer. The use of the photographs as working templates for sketches or for layout purposes, as well as the presentation to customers, already constitutes a chargeable use.

4.2 License fee

The contractually agreed usage license fee shall be payable for the granting of usage rights to the photographs from the Photographer's archive. Unless a usage license fee has been expressly contractually agreed, the usage license fee to be paid by the Client shall be determined in accordance with the respective current image fees of the Mittelstandsgemeinschaft Fotomarketing (MFM).

5 Rights of use

5.1 Individual granting of rights of use / self-promotion

The client acquires rights of use to the recordings only to the extent stipulated in the contract. Ownership rights are not transferred. Regardless of the scope of the rights of use granted in the individual case, the photographer shall remain entitled to use the images within the scope of his own advertising.

5.2 No transfer to third parties

The transfer and/or granting of the rights of use acquired by the Client to third parties, even if these are companies affiliated with the Group, subsidiaries, distribution partners of the Client or other editorial departments of a publishing house, shall require the Photographer's prior written consent. The Photographer shall be entitled to make the granting of consent to the planned third-party use dependent on the payment of an appropriate license fee.

5.3 No image editing

As a matter of principle, the photographs may only be used in their original version. Any modification or alteration (e.g. montage, photo-technical alteration, coloring) and any change in the image reproduction (e.g. publication in cutouts) requires the prior consent of the photographer. The only exception to this is the removal of unwanted blurring or color weaknesses by means of digital retouching.

5.4 Copyright designation

The photographer must be named as the author of each image publication. The designation must be made with the image.

6 Image data / digital image processing

6.1 Data transfer / data format

The Photographer shall hand over the selected photographs as well as the associated data, files and data carriers (photographic material) to the Client after completion of the order. The parties shall determine the data format by mutual agreement. If no determination is made, the Photographer may determine a suitable data format and select a suitable data carrier. The Photographer shall not be obligated to archive the photographs that are the subject of the contract on his own data carriers and shall not assume any warranty for keeping the photographic material available after the photographic material has been handed over to the Client.

6.2 Digital transfer

The transfer of digital recordings by means of remote data transmission or on data carriers is only permitted insofar as the exercise of the rights of use granted requires this form of reproduction and distribution.

6.3 Archiving

The photographs may only be digitally archived for the client's own purposes and only for the duration of the right of use. The storage of the recordings in online databases or other digital archives accessible to third parties requires a separate agreement between the photographer and the client.

6.4 Image data

The EXIF, IPTC and/or XMP data contained in the files of the photographs may neither be changed nor removed by the client. The Client shall ensure by suitable technical means that this data is preserved during any data transmission, during any transfer of the image data to other data carriers, during any reproduction on a screen and during any public reproduction.

7 Liability and compensation

7.1 Extent of liability

The Photographer shall only be liable for damage caused by himself or his vicarious agents intentionally or through gross negligence. Excluded from this are damages arising from the breach of a contractual obligation that is essential for achieving the purpose of the contract (cardinal obligation), as well as damages arising from injury to life, limb or health, for which the photographer is also liable in the case of slight negligence.

7.2 Disclaimer for services of third parties

If the Photographer concludes a contract with third parties on behalf and for the account of the Client on the basis of a corresponding power of attorney, the Photographer shall not be liable for the services and work results of the persons and companies commissioned.

7.3 Disclaimer for use of the recordings

The photographer assumes no liability for the type of use of his images. In particular, he is not liable for the admissibility of the use under competition and trademark law.

7.4 Statute of limitation

The Client's claims arising from a breach of duty by the Photographer or his vicarious agents shall become statute-barred one year after the statutory commencement of the limitation period. Excluded from this are claims for damages based on an intentional or grossly negligent breach of duty by the Photographer or his vicarious agents and claims for damages due to injury to life, limb or health, also insofar as they are based on a slightly negligent breach of duty by the Photographer or his vicarious agents; the statutory limitation periods shall apply to these claims for damages.

7.5 Contractual penalty for infringement of rights of use

In the event of unauthorized use, unauthorized exceeding of rights of use, unauthorized alteration or redesign or transfer of an image to third parties by the client, the photographer shall be entitled to demand a contractual penalty in the amount of 200 % of the agreed or - in the absence of an agreement - of the customary usage fee, but at least € 500 per image and individual case. The assertion of a further claim for damages remains unaffected by this.

7.6 Contractual penalty in the event of missing / incorrect author naming

If the Photographer is not named when a picture is published (Item 5.4) or if the Photographer's name is not permanently linked to the digital picture (Item 6.3), the Client shall pay a contractual penalty of 100% of the agreed fee or, in the absence of an agreement, of the customary usage fee, but at least € 200 per picture and individual case. The Photographer also reserves the right to assert a further claim for damages in this respect.

8 Sales tax, artists' social security contribution

In addition to the fees, charges and costs to be paid by the Client, value added tax and the artists' social security contribution, which may be payable by the Photographer for outside services, shall be added at the respective statutory rate.

9 Statute and place of jurisdiction

The law of the Federal Republic of Germany shall apply. In the event that the Client does not have a general place of jurisdiction in the Federal Republic of Germany or relocates its registered office or habitual residence abroad after conclusion of the contract, the Photographer's place of residence shall be agreed as the place of jurisdiction.