

GENERAL TERMS AND CONDITIONS OF DELIVERY AND BUSINESS

I. Scope of application

1. The following General Terms and Conditions shall apply to all orders, quotations, deliveries, and services provided by the photographer, subject to individual agreements.
2. They shall be deemed to have been agreed upon the client's acceptance of the photographer's delivery, service or offer, but no later than the client's acceptance of the photographic material for publication.
3. If the client wishes to object to the General Terms and Conditions, this must be declared in writing within three working days. Any deviating terms and conditions of the client are hereby rejected. Deviating terms and conditions of the client shall not apply unless the photographer accepts them in writing.
4. The General Terms and Conditions shall also apply to all future orders, quotations, deliveries, and services of the Photographer within the framework of an ongoing business relationship, even without express inclusion, unless expressly agreed otherwise.

II. Commissioned productions

1. Should cost increases occur during production, the photographer shall only notify the client if it becomes apparent that the originally estimated total costs are likely to be exceeded by more than 15%. If the planned production time is exceeded for reasons for which the photographer is not responsible, additional remuneration shall be payable on the basis of the agreed time-based fee or in the form of a reasonable increase in the fixed fee.
2. Concepts commissioned by the client are independent services that are to be remunerated.
3. The photographer is authorised to commission the services of third parties, which must be purchased in order to carry out the production, on behalf of, and with the authorisation of and for the account of the client.
4. The client's briefing forms the basis for the photographs and calculations to be produced by the photographer. The briefing must be provided by the client to the photographer in full, conclusively and in writing (e.g. as written minutes of a meeting, by email). In the event that the client does not provide the photographer with a written briefing, the pre-production meeting (PPM), any prior email correspondence between the client and photographer, and the photographer's notes from the PPM and telephone calls shall form the basis for the production of the photographs.
5. The client or their authorised representatives are required to be present during the production of the photographs and to give their consent to the photographer's creative concept. The final decision shall rest with the photographer. If neither the client nor their authorised representatives are present at the time of the shooting, the client may not subsequently object to the artistic design of the work. In such a case, each new creation of photographic material shall be remunerated separately.
6. To the extent that the client has to provide information, objects (e.g. products, goods), permits, etc. necessary for the production of the photographs or to perform other tasks relevant to the production of the photographs themselves (e.g. booking of photo models, locations or catering), the client shall ensure that the delivery, provision, access to locations, arrival of photo models, etc. takes place in good time so that the production of the photographs can begin on time. As soon as the client becomes aware that timely delivery, provision, access to the location, the arrival of models, etc. is not possible, they must notify the photographer immediately. If this results in a delay in the production of the photo shoot and the cause of the delay is within the client's control, the client shall bear any costs incurred as a result of the delay (e.g. additional hotel accommodation, location days, bookings of models, make-up artists, assistants, rebooking).
7. The client shall ensure that the persons to be photographed have given their consent to the production and publication of the photographic material. To this end, the client must provide corresponding written releases and make them available to the photographer upon request.
8. Unless otherwise agreed, the photographer will select the photographs to be presented to the client for approval upon completion of the production.

9. If no written complaint is received by the photographer within two weeks of delivery of the photographs, the photographs shall be deemed to have been accepted in accordance with the contract and to be free from defects.

III. Image material provided (analogue, digital, moving image)

1. The General Terms and Conditions apply to all image material (including audio) supplied to the client, regardless of the creative stage or technical form in which it is available.
2. The copyright-relevant metadata contained in the files must not be altered or deleted by the client. The client must use appropriate technical means to ensure that this data is preserved during any data transfer, any transfer to other data carriers, any reproduction on a screen and any public reproduction.
3. The client acknowledges that the photographic material supplied by the photographer is a photographic work protected by copyright under Section 2(1) (5) of the German Act on Copyright and Related Rights.
4. The parties shall agree on the data format of the photographs. If no agreement is made, the photographer may specify a suitable data format. The provision of RAW files requires a separate agreement.
5. The client may only provide images to third parties for internal business purposes of viewing, selection, and technical processing. The client must treat analogue imagery with care and consideration.
6. Complaints about the content of the delivery or the content, quality or condition of the photographic material must be made within two weeks of receipt. Otherwise, the photographic material shall be deemed to have been received in good order, in accordance with the agreement and as recorded.

IV. Rights of use

a) Corporate assignments

The client shall only acquire rights of use to the extent contractually agreed (quotation, assignment, framework agreement). If no such agreement has been made, the following shall apply:

1. Non-exclusive, unlimited time and space usage rights are granted for the client's print and online media and social media profiles.
2. The transfer and/or granting of the rights of use acquired by the client to third parties, even if these are group companies or subsidiaries, requires the prior written consent of the photographer. This also applies to any inclusion in and transfer to third party databases. The photographer is entitled to make the granting of consent to the planned use by third parties dependent on the payment of an appropriate licence fee.
3. The photographer must be credited in all publications.
4. The image material may not be used by the client or on behalf of the client for the purpose of AI learning and for the creation of new works using artificial intelligence.
5. Even if the exclusive rights of use are transferred, the photographer retains the right to use their photos themselves or to have them used for self-promotional purposes.

b) Editorial assignments

1. The client shall only acquire rights of use to the extent contractually agreed (offer, assignment, framework agreement). If no agreement has been made, only a simple right of use shall be granted, for one-time use for the purpose specified by the client and in the publication and in the medium or data carrier specified by the client or resulting from the circumstances of the order placement. Unless otherwise agreed, publication on the Internet or inclusion in digital databases shall be limited in time to the duration of the publication period of the corresponding or a comparable print or online object.
2. Exclusive rights of use, exclusive media or territorial rights or blocking periods must be agreed separately and require a surcharge of at least 100% on the respective basic fee.

3. Any use, exploitation, reproduction, distribution, or publication of the photographic material beyond the scope of section IV b) 1 is subject to a fee and requires the prior express consent of the photographer. This also applies to any inclusion in and transfer to third party databases.
4. Alteration of the photographic material by photocomposing, montage, or electronic means to create a new copyrightable work is permitted only with the prior written consent of the photographer and only if marked [M]. Images may not be copied, photographed, or otherwise used as a motif. The image(s) may not be used by the client or on behalf of the client for the purpose of AI learning or the creation of new works using artificial intelligence.
5. The client is not authorised to transfer the rights of use granted to them, in whole or in part, to third parties, including to other group companies or subsidiaries. Any use, reproduction or distribution of the image material is only permitted on condition that the copyright notice specified by the photographer is clearly attached to the image in question.
6. The granting of the rights of use shall be subject to the condition precedent of full payment of all the photographer's claims for remuneration arising from the contractual relationship in question.
- × 7. Even if the exclusive rights of use are transferred, the photographer retains the right to use their photos themselves or to have them used for self-promotional purposes and to use their photos for secondary utilisation after the expiry of an agreed blocking period.

V. Liability

1. The photographer accepts no liability for the infringement of any rights of any depicted trademarks (brands, company designs), persons or objects, unless a signed release form is supplied. The acquisition of rights of use beyond the photographic copyright, e.g. for depicted works of fine or applied art, as well as the obtaining of publication permissions from collections, museums, etc. are the responsibility of the client. The client is responsible for the text and the context resulting from the specific publication.
2. The client is responsible for the proper use of the images from the time of delivery.
3. The existence and/or possibility of re-delivery of the data is not the responsibility of the photographer.
4. The photographer's liability for damages shall be limited to the fee for the order in question. The parties reserve the right to prove that higher, lower or no damages have been incurred.

VI. Fees and payment

1. The agreed fee applies. If no fee has been agreed, the fee shall be determined in accordance with the current overview of fees for image utilisation rights of the Mittelstandsgemeinschaft Foto-Marketing (MFM). The fee is subject to VAT at the applicable rate.
2. Unless otherwise agreed, the agreed fee shall cover the one-off use of the photographic material for the agreed purpose in accordance with Clause IV b)1.
3. Costs and expenses incurred as a result of the assignment (e.g. material and laboratory costs, model fees, costs for necessary props, travel costs, necessary expenses) are not included in the fee and shall be borne by the client.
4. The fee is due on delivery of the material. If a production is delivered in parts, the corresponding partial fee shall be due with the respective delivery. The photographer is entitled to demand payment by instalments for production orders in accordance with the scope of services provided.
5. The fee in accordance with VI 1 of the General Terms and Conditions shall be payable in full even if the commissioned and supplied photographic material is not published.
6. Offsetting or the exercise of a right of retention is only permitted against undisputed or legally established claims of the client. Offsetting against disputed counterclaims that are ready for judgment is also permitted.

VII. Sample copies

1. The client is obliged to send a sample copy (e.g. print, digital file, online link) to the photographer unsolicited and no later than 6 weeks after publication of the photographs.

VIII. Contractual penalty, damages, cancellation Fee

1. In the event of any unauthorised use, reproduction, or disclosure of the photographic material (without the photographer's consent), a contractual penalty in the amount of twice the usage fee shall be payable for each instance, subject to further claims for damages.
2. If the copyright notice is missing, incomplete, incorrectly placed or not assignable, a surcharge of 100% of the agreed or customary usage fee will be payable.
3. If an order is cancelled for reasons for which the client is responsible, a cancellation fee will be charged. If the cancellation is made no later than 7 working days before the agreed date, the cancellation fee shall be 50% of the agreed fee. In the event of later cancellation, the full agreed fee shall be payable, including the fees of any vicarious agent (employees, models, stylists, make-up artists) already engaged.

IX. General rules

1. The law of the Federal Republic of Germany shall apply as agreed, including for deliveries abroad.
2. Ancillary agreements to the contract or to these General Terms and Conditions must be in text form to be valid.
3. The possible invalidity or ineffectiveness of one or more provisions of these General Terms and Conditions shall not affect the validity of the remaining provisions. The parties undertake to replace the invalid provision with a valid provision that comes as close as possible to the intended provision in economic and legal terms.
4. The place of performance and jurisdiction shall be the photographer's place of residence if the client is a registered trade

FL_03/24