



1. VALIDITY OF THE TERMS AND CONDITIONS

1.1. The production of images, the delivery and electronic transmission of images as well as the granting of image licenses by ABC-Photographer ("photographer") is exclusively based on these Terms and Conditions (T&C).

1.2. Terms and conditions of the contractual partner that deviate from the following terms and conditions shall not be recognized and shall not become part of the contract even if the photographer does not expressly object to them.

1.3. The contractual partner ("client") is the party who commissions the photographer to produce images, requests images from the archive or obtains rights of use (licenses).

2. COMMISSIONED PRODUCTIONS

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2.1. Order processing

2.1.1. The client is obliged to provide the photographer with free access to the locations and objects to be photographed. He must also ensure that the locations and objects are in a photographable condition and that the photographic work is not hindered by construction work or other disturbing circumstances.

2.1.2. In addition, the client is obliged to obtain the necessary consents or release declarations from the persons depicted and the rights holders for the production and use of the images in the case of photographs of persons and in the case of photographs of locations and objects in which third-party copyrights, property rights or other rights of third parties exist. The consents or release declarations must also extend to the exploitation of the images by the photographer (Item 4.1.6.) and/or by third parties to whom the photographer grants rights of use or to whom the photographer transfers such rights.

2.1.3. If photographs are to be taken on a construction site or at a location where there is an increased risk of accidents or increased health risks cannot be ruled out, the client must take appropriate protective measures to ensure that the photographer can work without danger. The client shall be liable for all damages incurred by the photographer as a result of the photographer's failure to take necessary protective measures or to comply with official or statutory protective regulations.

2.1.4. If a shooting date cannot be carried out or completed due to weather conditions, the current situation on site or for other reasons, the photographer must be informed of this in good time and given the opportunity to make up for the shooting at a later date. The photographer shall also be entitled to a cancellation fee in accordance with Item 2.2.8.

2.1.5. The photographer selects the images to be submitted to the client for approval upon completion of the shooting work. Rights of use shall only be granted to the images which the client accepts as being in accordance with the contract. No rights of use are transferred with the surrender of the images for viewing.



2.1.6. The client shall be obliged to examine the images submitted to him after completion of the shooting work within a reasonable period of time and to notify the photographer of any defects. Notification of obvious defects must be made in writing within two weeks after delivery of the images, notification of non-obvious defects must be made within a period of two weeks after recognition of the defect. The timely dispatch of the complaint shall be sufficient to comply with the time limit for lodging a complaint. In the event of a breach of the duty to inspect and give notice of defects, the images shall be deemed to have been approved in view of the defect in question.

2.2. Fees and incidental expenses

2.2.1. Cost estimates of the photographer are not binding. He only needs to notify cost increases if an overrun of more than 15% of the originally estimated total costs is to be expected.

2.2.2. If the time allotted for the shooting work is substantially exceeded for reasons for which the photographer is not responsible, an agreed flat fee shall be increased accordingly. If a time 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.

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

2.2.4. 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 film material, digital image processing, travel, overnight accommodation, booking of models). The costs incurred by the photographer due to particularly complex images (e.g. aerial shots) or the use of special technology (e.g. lifting platform, complex lighting systems) are also to be reimbursed separately.

2.2.5. The fee is due upon delivery of the images. If an image 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.

2.2.6. Incidental expenses are to be reimbursed as soon as they are incurred by the photographer.

2.2.7. Value added tax at the respective statutory rate shall be added to the fees and costs to be paid by the client.

2.2.8. In case of cancellation of a shooting date, the photographer is entitled to claim a cancellation fee, unless the photographer is solely responsible for the cancellation. If a flat fee has been agreed, the photographer shall receive a cancellation fee of 100% of the agreed flat fee in the event of a cancellation within 24 hours before the start of the shooting date, and a cancellation fee of 50% in the event of a cancellation within 25 to 72 hours before the start of the shooting date. If a time fee has been agreed, the photographer shall receive a cancellation fee of 100% of the agreed hourly or daily rate if a cancellation is made within 24 hours before the start of the shooting date, and a cancellation fee of 50% if a cancellation is made within 25 to 72 hours before the start of the shooting date. In addition, the client shall reimburse the photographer for any incidental expenses incurred in connection with the cancelled shooting date.



3. REQUEST FOR ARCHIVE IMAGES

3.1. Images requested by the client from the photographer's archive shall be made available for viewing and selection for a period of one month from the date of the delivery bill or loan bill. If no license agreement is concluded within the selection period, all image data which the client has stored on his own data carriers must be deleted by the end of the period. The permanent archiving of images is not permitted without the prior written consent of the photographer.

3.2. No rights of use are transferred with the surrender of the images for viewing and selection. Any use requires the prior written consent of the photographer.

3.3. The use of the images as working templates for sketches or for layout purposes, as well as the presentation to customers, already represents a chargeable use.

3.4. The photographer may charge a processing fee for compiling the selection of images, which shall be calculated according to the type and scope of the work involved and shall amount to at least € 30. Shipping costs (packaging, postage) including the costs for special shipping methods (taxi, air freight, express delivery) shall be invoiced separately to the client.

3.5. Analog images and image data carriers which are made available by the photographer to the client for viewing and selection pursuant to Item 3.1. shall be returned by the end of the selection period if no license agreement is concluded. If slide frames or transparencies are opened, the photographer is entitled to charge a layout fee - subject to any further claim for payment - even if the images are not used. If the deadline for the return of analog images set out in Item 3.1. or the deadline agreed in the license agreement is exceeded, a blocking fee shall be payable in addition to other costs and fees until the images are received by the photographer. The blocking fee amounts to 1.50 € per day and image, whereby for the individual image, regardless of the respective blocking duration, a maximum of the amount can be demanded which is provided for in Item 5.5., Sentence 2 of the terms and conditions as a lump sum for damages for the loss of the image. The client reserves the right to prove that the photographer has not suffered any loss as a result of the delayed return of the images or that the damage incurred is significantly lower than the blocking fee.

4. ACQUISITION AND SCOPE OF RIGHTS OF USE (LICENSES), USE OF IMAGES

4.1. Rights of use (licenses)

4.1.1. The client acquires only simple, non-transferable and non-sub-licensable rights of use to the photographic copyright to the extent stipulated in the contract. In principle, only copyrighted rights of use to the images are granted. Property rights are not transferred. Delivered or electronically transmitted images always remain the property of the photographer.

4.1.2. Rights of use must be obtained for each use. Any use of the images is subject to a fee. The fee for the granting of the rights of use is calculated according to the image fee list of the Mittelstandsgemeinschaft Foto-Marketing (MFM).



4.1.3. The client does not acquire the rights of use to be granted under the contract until the fee has been paid in full and all incidental expenses have been reimbursed. The client shall not acquire the online usage rights to be granted under the contract until technical protection measures have been set up in accordance with Item 4.3.4.

4.1.4. The redesign and/or editing of images (e.g. montage, cropping, coloring) is not permitted without the prior written consent of the photographer.

4.1.5. The transfer of images to third parties and the transfer/sub-licensing of the rights of use acquired by the client to/by third parties shall require the photographer's prior written consent. This also applies to the forwarding of images to book, newspaper and magazine publishers and to the submission of images as part of participation in competitions. The photographer is entitled to make the granting of consent to the planned third-party use dependent on the payment of an appropriate fee.

4.1.6. In the case of commissioned productions, the photographer shall remain entitled, irrespective of the scope of the rights of use acquired by the client, to exploit the images himself without any restriction in terms of content, time or space for all purposes that may come into consideration.

4.2. Copyright notice

4.2.1 The photographer must be named as the copyright holder for each use of the image. The naming must be done at the image. The copyright attribution is: ABC Photographer

4.2.2. When used on social media platforms and on media-sharing platforms, the copyright attribution must be included as a watermark in the image.

4.3. Digital image processing

4.3.1. The digitization of analog images and the transfer of digital images 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.

4.3.2. Image data 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 image data in online databases or other digital archives accessible to third parties requires a separate agreement between the photographer and the client.

4.3.3. The digital images provided to the client contain metadata, so-called IPTC data, with information about the photographer as the author and about the modalities and conditions of use. The removal or alteration of the metadata is not permitted without the prior express written consent of the photographer.

4.3.4. The client shall set up technical protective measures that restrict access to the images provided to him and prevent the images reproduced by him on the Internet with the photographer's consent from being integrated by third parties as embedded content in their websites, in particular by means of inline links and frames.



4.4. Third party rights

4.4.1. The photographer grants the client only rights of use to the photographic copyright. The client shall observe the personal rights, data protection rights, copyrights, trademark rights, property rights, house rights and other protective rights of persons depicted or of holders of the rights to depicted locations and objects, such as buildings, objects, artistic designs, decorations, names and trademarks themselves. The client shall obtain the necessary consents and release declarations of third parties from the respective entitled parties himself. This does not apply if the photographer has expressly assured the existence of the necessary consents, release declarations or rights in written form.

4.4.2. In the case of commissioned productions, the client is obliged to obtain the necessary consents or release declarations from the persons depicted and the rights holders for the production and use of the images in the case of photographs of persons and photographs of locations and objects in which third-party copyrights, property and house rights or other rights of third parties exist. The consents or release declarations must also extend to the exploitation of the images by the photographer (Item 4.1.6.) and/or by third parties to whom the photographer grants rights of use or to whom the photographer transfers such rights.

4.4.3. The client shall indemnify the photographer against all claims, including the costs of legal defense and/or prosecution, resulting from a breach of the obligation pursuant to Item 4.4.2. The obligation to indemnify shall not apply if the client proves that he is not at fault.

4.4.4. The provisions pursuant to Items 4.4.1. and 4.4.2. 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 and release or to select and make available other suitable persons or objects for the photographic work.

4.4.5. If the client of a commissioned production is himself the author or owner of the objects to be photographed, he is obliged to consent to the use of the images by the photographer (Item 4.1.6.), as well as to the use by third parties to whom the photographer grants rights of use or to whom he transfers such rights. The same applies in the event that the client is entitled to other property rights to the objects and locations photographed, or if he himself is depicted in photographs of persons.

5. LIABILITY AND COMPENSATION

5.1. 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.

5.2. The photographer is not liable for the way his images are used. In particular, he is not liable for the admissibility of the use under competition and trademark law.



5.3. 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 on the part of 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 on the part of the photographer or his vicarious agents; the statutory limitation periods shall apply to these claims for damages.

5.4. The sending and return of images shall be at the risk and for the account of the client.

5.5. If analog images are lost within the client's sphere of risk or if such images are returned in a condition which precludes further use in accordance with customary practice, the client shall pay compensation. In this case, the photographer shall be entitled to claim at least compensation of € 1,000 for each original and € 200 for each duplicate, unless the client proves that no damage has been incurred at all or that the damage is considerably less than the lump sum claimed. The photographer reserves the right to assert a higher claim for damages.

6. CONTRACTUAL PENALTY

6.1. In the event of culpable unauthorized use by the client, i.e. use of an image without obtaining the rights of use from the photographer or use of an image in the form of archiving (Item 3.1.), redesign and/or editing (Item 4.1.4.), disclosure to third parties or transfer/sub-licensing of rights of use to/to third parties (Item 4.1.5.) or removal or alteration of metadata (Item 4.3.3.), the photographer shall be entitled to claim a contractual penalty of 500% of the total agreed fee for each case, i.e. for each unauthorized use realized, whereby the use of only one image and the realization of only one act of use shall be sufficient. There is no cumulation. In the absence of an agreement on the fee, 500% of that fee is to be paid as a contractual penalty which results from the application of the picture fee list of the Mittelstandsgemeinschaft Foto-Marketing (MFM) valid at the time of the unauthorized use per picture for each use. Alternatively, the photographer may claim 500% of his usual fee as a contractual penalty if he provides evidence that he usually charges a higher fee per image for the use in question than the fee stated in the MFM picture fee list. Irrespective of how the fee is determined in a specific case, the contractual penalty shall amount to at least € 500.00 per image. The assertion of a claim for damages remains unaffected by this.

6.2. If the photographer is culpably not named in the publication of an image (Item 4.2.1.) or if the photographer is not named with the image or as a watermark in the image when used on social media platforms or on media relaying platforms (Item 4.2.2.), Item 6.1. is to be applied analogously with the proviso that not 500% but 100% of the fee, but at least € 200.00 per image is to be paid as a contractual penalty. The photographer also reserves the right to assert a claim for damages in this respect.



7. STATUTE AND PLACE OF JURISDICTION

7.1. The law of the Federal Republic of Germany shall apply.

7.2. In the event that the client does not have a general place of jurisdiction in the Federal Republic of Germany or relocates his 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.