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FOTODESIGN

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General Terms and Conditions for Photographers (AGB/BFF)

1 Application of the Terms and Conditions

- 1.1 Images are produced and image licenses conferred solely on the basis of the Terms and Conditions set forth hereinbelow. These Terms and Conditions shall also apply to all future production and license agreements unless or to the extent that regulations deviating herefrom are explicitly agreed.
- 1.2 Terms and conditions of the customer deviating from the Terms and Conditions set forth hereinbelow are not accepted. Such deviating terms and conditions shall not become part of the agreement even if not explicitly repudiated by the photographer.

2 Production Orders

- 2.1 Cost estimates by the photographer are not binding. The photographer has to indicate increased costs only if the difference to be anticipated compared with the overall costs originally estimated exceeds 15 percent.
- 2.2 In the case of photographs of people and of objects enjoying third party copyright, ownership or other third party rights, the customer is obliged to obtain the consent required for the production and use of the images from the person depicted and from the holders of the rights. The customer must indemnify the photographer against compensation claims asserted by third parties resulting from a breach of this duty. The indemnification obligation shall lapse insofar as the customer evidences that he is not at fault.
The aforementioned provision shall also apply if the photographer himself selects the persons or objects to be depicted, provided that the photographer informs the customer of his selection in such good time as to enable the customer to obtain the necessary declarations of consent or to select other suitable persons or objects for the photographic work and make them available.
- 2.3 If, during the processing of the assignment, the services of a third party have to be used or if any other contract has to be concluded with third parties, the photographer is authorized to enter into the respective obligations in the name and for the account of the customer.
- 2.4 The photographer selects the images he presents to the customer for acceptance upon conclusion of the production. Subject to the condition that full payment is made (Section 3.4), rights of use are conferred only with respect to those photographs accepted by the customer as being compliant with the agreement.
- 2.5 The customer is obliged to examine the photographs presented to him upon completion of the production work within a reasonable period of time and to make any complaints as to defects to the photographer. A complaint regarding obvious defects must be asserted in writing within two weeks of delivery of the images, a complaint relating to defects which are not obvious must be raised within a deadline of two weeks after the defect is detected. The deadline for raising complaints is met if the complaint is dispatched in good time. In the event of a violation of the duty to examine the photographs and to assert complaints, the photographs shall be deemed approved with regard to the respective defect.

3 Production Fee and Incidental Costs

- 3.1 If the time period set for the photographic work is considerably exceeded for reasons for which the photographer is not accountable, any flat rate fee agreed upon shall be increased accordingly. If an hourly or daily fee has been agreed upon, the photographer shall also be paid the hourly or daily rate agreed upon for that period of time by which the photographic work is extended.
- 3.2 In addition to the fee owed, the customer shall also reimburse the photographer for the incidental costs he incurs in connection with conducting the assignment (e.g. on film material, digital image processing, models, travel).

- 3.3 The production fee is due upon delivery of the images. If an image production is delivered in parts, that respective part of the fee shall fall due when a part is delivered. If the assignment is for a lengthy period of time, the photographer may demand advance payments in accordance with the time expended.
- 3.4 The customer does not acquire the rights of use under copyright law until the fee has been paid in full and all incidental costs have been reimbursed.

4 Request for Archived Images

- 4.1 Images which the customer requests from the photographer's archives shall be made available for viewing and selection for a period of one month from the date of the delivery note. If no license agreement is entered into within the selection period, analogue images and image data media provided by the photographer must be returned to the photographer before expiry of this period and all and any image data stored by the customer on his own data media must be deleted.
- 4.2 No rights of use are transferred upon provision of images for viewing and selection. Each and any use requires the prior written declaration of approval by the photographer.
- 4.3 The use of the images as work copy for sketches or layout purposes and a presentation to customers already constitutes use subject to payment of a fee. If slide frames or foil are/is opened, the photographer is entitled to charge a layout fee - without prejudice to any entitlement to further payment – even if there has been no use of the images.
- 4.4 The photographer may charge a processing fee for the composition of the image selection; this fee is calculated on the basis of the type and scope of the work entailed and amounts to no less than € 30. Carriage costs (packaging, postage), including the costs of special types of transport (taxi, air freight, express courier), must be reimbursed separately by the customer.
- 4.5 If the period for returning the analogue image material set forth in Section 4.1 or agreed in the license agreement is not met, a blocking fee shall also be payable – in addition to the other costs and fees – pending receipt of the images by the photographer. The blocking fee amounts to € 1.50 per picture and day, whereby the maximum amount which may be demanded for each individual image shall not exceed the amount provided for in Section 7.5 (sentence 2) of the General Terms and Conditions as flat rate compensation for the loss of the image, irrespective of the duration of the blocked period. The customer remains entitled to evidence that the photographer did not incur any damage due to the belated return of the images or that the damage incurred is considerably lower than the blocking fee.

5 Rights of Use

- 5.1 The customer only acquires the rights to use the images for the scope defined in the agreement. No ownership rights are transferred. Irrespective of the scope of the rights of use conferred in individual cases, the photographer remains entitled to use the images within the framework of his own advertising.
- 5.2 The written consent of the photographer is required prior to conferring and transferring to third parties, including the editors of a publishing house, the rights of use acquired by the customer.
- 5.3 In principle, only the original version of the image may be used. The consent of the photographer is required prior to any re-working (e.g. montage, alienation using photographic techniques, colouring) and each and any change in the reproduction of the image (e.g. publication of excerpts). The only exception to this is eliminating any undesired lack of focus or colour weaknesses by electronic retouching.
- 5.4 The photographer must be named as the creator of the image in every publication thereof. The name must be indicated with the image.

6 Digital Image Processing

- 6.1 Digitalizing analogue images and transmitting digital images by remote data transmission or on data media is only admissible if and insofar as exercising the rights of use conferred requires this form of reproduction and dissemination.
- 6.2 Image data may only be digitally archived for the customer's own purposes and only for the duration of the right of use. A separate agreement between the photographer and the customer is required for storing the image data in online databases or in other digital archives accessible to third parties.

- 6.3 During the digital recording of the images, the name of the photographer must be electronically linked to the image data. Furthermore, the customer is obliged to ensure, by taking suitable technical precautions, that this linking is preserved during every transmission of the data, when the image data are transferred onto other data media, when the data are reproduced on a screen and during any publication, and that the photographer can always be identified as the creator of the image.

7 Liability and Compensation

- 7.1 The photographer is only liable for damage which he or his agents cause by deliberate acts or gross negligence. This does not apply to damage resulting from the breach of a contractual duty which is of material significance for achieving the object of the agreement (cardinal duty) or to damage resulting from fatal injury, physical injury or damage to health for which the photographer is also liable in case of slight negligence.
- 7.2 The photographer assumes no liability for the type of use of his images. In particular the photographer is not liable for the admissibility of the use under competition or trademark law.
- 7.3 Claims by the customer arising from a breach of duty by the photographer or the photographer's agents shall become time-barred one year after commencement of the statutory period of limitations. This does not include claims for damages based on a deliberate or grossly negligent breach of duty by the photographer or the photographer's agents or to claims for damages on account of fatal or physical injury or damage to health, even insofar as these are based on a slightly negligent breach of duty by the photographer or the photographer's agents; the statutory period of limitation applies to claims for damages of this kind.
- 7.4 Images are sent and returned at the risk and expense of the customer.
- 7.5 If analogue pictures are lost in the area of risk of the customer, or if such pictures are returned in a condition precluding any further use in accordance with customary practice, then the customer shall pay compensation. In such a case the photographer shall be entitled to demand compensation in an amount of € 1,000 for each original and of € 200 for each duplicate, unless or to the extent that the customer can evidence that no damage arose at all or that it is considerably less than the flat rate demanded as compensation. The photographer reserves the right to assert a claim for a higher amount of compensation.
- 7.6 In case of the unjustified use, change, reworking or passing on of an image, the photographer has the right to demand a contractual penalty in the amount of five times the agreed fee for use, or, in the absence of such agreement, five times the customary fee for use, but not less than € 500 per picture and individual case. Asserting a claim for any further damages shall remain unaffected hereby.
- 7.7 If, when an image is published, there is no indication of the name of the photographer (Section 5.4) or if the photographer's name is not permanently linked with a digital image (Section 6.3), the customer shall pay a contractual penalty in the amount of 100 percent of the agreed fee for use, or, in the absence of such agreement, five times the customary fee for use, but not less than € 200 per picture and individual case. The photographer also reserves the right to assert a claim for a higher amount of damages in this respect.

8 Value Added Tax, social security for self-employed artists

The fees, charges and costs to be paid for by the customer also include Value Added Tax and social security for self-employed artists at the respective statutory rate, which the photographer may incur on third party services.

9 Governing Law and Jurisdiction

- 9.1 The law of the Federal Republic of Germany shall apply hereto.
- 9.2 In the event that the customer has no general place of jurisdiction in the Federal Republic of Germany or if he relocates his registered office or normal place of residence abroad after entering into the contract, the place of residence of the photographer is agreed as being the place of jurisdiction.