

GENERAL TERMS AND CONDITIONS OF BUSINESS

Whereas

The GTC are intended to strike a fair balance between the interests of the Photographer and those of the Client.

I. Definitions

1. Photographic Work. The expression "Photographic Work" refers to the result of work performed by the Photographer for the Client in accordance with the agreement reached between the parties.
2. Photographer. The "Photographer" is the person commissioned with the creation of the Photographic Work. For the purposes of these GTC, usage of the male pronoun in relation to the term "Photographer" refers naturally to persons of either gender. The term shall also include photo designers.
3. Client. The "Customer" is the person who commissions the Photographic Work from the Photographer. For the purposes of these GTC, usage of the male pronoun in relation to the term "Client" refers naturally to persons of either gender.
4. Parties. The "Parties" are the Photographer and the Client.
5. Copy of the Photographic Work / Copy. Any disclosure of the Photographic Work in analogue or digital forms on a (data) carrier (in particular on paper, slide, CD-ROM, computer hard disc) or online (in particular in computer networks or on websites) shall constitute a "Copy of the Photographic Work" or a "Copy".

II. Performance of the Photographic Work

1. Unless agreed otherwise in writing with the Client, the configuration of the Photographic Work shall be fully and entirely a matter for the discretion of the Photographer. In particular, he shall take the sole decision concerning the technical and artistic design medium, such as for example lighting, picture composition and the selection of instruments in order to achieve them.
2. When performing the Photographic Work the Photographer may engage auxiliary staff of his choosing.
3. The shooting equipment that is necessary for the performance of the Photographic Work shall be provided by the Photographer.
4. Unless agreed otherwise in writing, the Client shall be responsible for ensuring that the locations, objects and persons necessary for the Photographic Work are made available in due time.
5. In the event that the Client postpones until a later date a shoot session less than two days prior to the appointment or fails to comply with his obligations under clause II.4., the Photographer shall be entitled to the reimbursement of any costs thereby incurred (including third party costs). He shall in addition be entitled to compensation. This shall be determined on the basis of the tariff scale of the SBF applicable at the time the contract was concluded (non-binding SBF guidelines for the calculation of photographic contract work) and shall amount to 50% of the fee that would have been owed in accordance with the tariff scale for holding the photoshoot that was cancelled.
- 6. The rule set forth in clause II.5. shall also apply in the event that a photoshoot is postponed until a later date on account of adverse weather conditions less than two days prior to the start of the photoshoot.**
7. The place of performance shall be at the registered office of the Photographer. In the event that the Client requests the Photographer to send him the Photographic Work or Copies of this work (hard or electronic copies), the transportation risk shall be borne by the Client.
8. The fee agreed upon between the Parties shall be subject to VAT (in addition) and – unless agreed otherwise in writing – shall be paid within 30 days of the issue of an invoice.

III. Liability of the Photographer

1. **The Photographer shall only bear liability, including for defects, for intentional or grossly negligent conduct.** The limitation of liability shall also apply to the conduct of his employees and auxiliary agents.

- The Client must raise any objections relating to a defect in writing within six working days of the date of delivery of the work, failing which the Photographic Work shall be deemed to have been approved and no further claims may be raised.

IV. Use of the Photographic Work by the Client

a. General

- The Client may only use the Photographic Work for the purpose agreed upon with the Photographer and for the agreed period. If no such period has been agreed upon, the duration shall be determined in accordance with the purpose of the appointment. **In the event of any usage in breach of the agreement, the Client shall be obliged to pay compensation to the Photographer in the amount of 150% of the remuneration owed in that regard in accordance with the tariff scale of the SAB applicable at the time the contract was concluded** (Swiss Association of Photo Agencies and Archives).
- Only the Client shall be entitled to use the Photographic Work, in accordance with the agreement reached with the Photographer. Unless agreed otherwise in writing, the Client shall have no entitlement to transfer the right to use the Photographic Work to a third party.
- The Customer shall state the name of the Photographer in a suitable form when using the Work in the manner agreed upon with the Photographer. It must be preceded by the © sign and be followed by the following note, or by another agreed upon with the Photographer (e.g. "All rights reserved by ..."). **In the event that the note is not included, in addition to the fee agreed upon the Client shall owe compensation in the amount of 50% of the fee that would have been paid for the unlawful use of the Photographic Work in accordance with the tariff scale of the SAB applicable at the time the contract was concluded** (Swiss Association of Photo Agencies and Archives).
- The foregoing shall be without prejudice to the provisions of the Swiss Federal Act on Copyright and Neighbouring Rights (CopA).

b. Third party rights

- If the Client has indicated to the Photographer that he must photograph (particular) persons when performing the Photographic Work, the Client must ensure that these persons have granted their consent to be photographed and to the subsequent usage of the Photographic Work in line with the contractual purpose.
- If the Client has provided the Photographer with objects and/or equipment or indicated specific locations to him that are to be photographed as part of the Photographic Work, the Client shall ensure that no third party rights preclude the creation of the Photographic Work or its subsequent usage in line with the contractual purpose.
- In the event that the obligations set forth in the two previous sub-clauses are breached, the Client undertakes to reimburse to the Photographer for any payment (e.g. damages) that the latter may be obliged to make to the entitled party and to compensate him for all costs arising in relation to the rectification of the situation (e.g. costs relating to settlement proceedings or litigation).

V. Use of the Photographic Work by the Photographer

If expressly so agreed in an individual case that the Client shall obtain copyright over the Photographic Work, the Photographer shall retain the right to use the Photographic Work for his own purposes, including in particular on his own website, in portfolios, at art exhibitions etc.

VI. References

The Photographer shall be entitled at any time to refer to the cooperation with the Client and to the Photographic Work carried out for him, in particular in publications (internet, printed matter), at exhibitions and in discussions with potential clients.

VII. Applicable law and jurisdiction

- All contracts between the Customer and the Photographer shall be governed exclusively by Swiss law.
- Exclusive jurisdiction shall lie at the place of business of the Photographer.**