

# GENERAL TERMS AND CONDITIONS OF DELIVERY AND BUSINESS

THORSTEN MISCHKE FOTODESIGN – FRIEDRICH-VOSS-UFER 20, 24159 KIEL – VERSION FREELENS 01/2012

## I. APPLICATION

1. The following Standard Terms and Conditions of Delivery and Business (hereinafter referred to as the Standard Terms and Conditions) shall apply to all of orders, offers, deliveries and services executed by the photographer.
2. They shall be deemed to be binding on both parties upon acceptance of the photographer's delivery, service or offer by the customer, however no later than upon the photographic material being accepted for publication.
3. If the customer does not accept these Standard Terms and Conditions, it shall lodge written notification to this effect within three work days. Any alternative Standard Terms and Conditions on the part of the customer are hereby rejected. Alternative Standard Terms and Conditions on the part of the customer shall be deemed to be void unless the photographer agrees in writing to be bound by them.
4. In the absence of any express reference to the contrary, these Standard Terms and Conditions shall also apply to all of the photographer's future orders, offers, deliveries and services under the ongoing business relationship notwithstanding the absence of any express reference to them.

## II. COMMISSION PRODUCTS

1. Any cost estimates provided by the photographer shall be given without engagement. If any increase in costs occurs during production, the photographer shall only report such increase when it becomes evident that the original estimate of the total costs is likely to be exceeded by more than 15%. If the planned production period is exceeded for reasons beyond the photographer's control, additional remuneration shall be paid on the basis of the agreed time-based fee or in the form of a reasonable increase in the flat-rate fee agreed upon.
2. The photographer may commission third party services which are required for the execution of the production on behalf and for the account of the customer and with the customer's authorization.
3. Subject to any other provisions, the photographer shall be responsible for selecting the photographs to be presented to the customer for approval at the conclusion of production.
4. The photographs shall be deemed to have been duly accepted in accordance with the terms of the contract and be free of any faults unless notification to the contrary is served upon the photographer within two weeks of submission of the photographs.

## III. PROVISION OF PHOTOGRAPHIC MATERIAL (ANALOG AND DIGITAL)

1. These Standard Terms and Conditions shall apply to all photographic material submitted to the customer regardless of its degree of completion or technical form. They shall expressly also apply to photographic material transmitted electronically or digitally.
2. The customer acknowledges that the photographic material provided by the photographer constitutes copyright material as defined in Section 2 (1) No. 5 of the German Copyright Act.
3. Any suggestions submitted by the customer concerning modifications or adjustments shall be deemed to constitute individual services which shall be subject to separate remuneration.
4. The photographic material provided shall remain the photographer's property notwithstanding the fact that consideration may have been received for it.
5. The customer shall treat the photographic material carefully and may only make it available to third parties for internal business purposes, i. e. for viewing, selection purposes and technical editing.
6. Any complaints concerning the content of the delivery or the content, quality or state of the photographic material shall be lodged within 48 hours of receipt. Failing this, the photographic material shall be deemed to have been received in proper condition, in conformance with the contract and as described.

## IV. UTILIZATION RIGHTS

1. The customer shall fundamentally only receive simple rights for one-time utilization. Subject to any other agreements, the right of publication on the Internet or inclusion in digital databases shall be limited to the duration of the publication period of the corresponding or a comparable printed item.
2. Exclusive utilization rights, exclusive rights for certain geographic territories or periods of time shall be subject to separate agreement as well as a surcharge of at least 100% on top of the basic fee in question.
3. Upon the photographic material being delivered, only the utilization rights shall be granted for one-time use of the photographic material for the purpose specified by the customer and in the publication, medium or data vehicle which has been stated by the customer or can be reasonably assumed in the light of the circumstances surrounding the placing of the order. In the case of any doubt, the purpose for which the photographic material has been supplied as evidenced by the delivery note or the recipient address shall be decisive.
4. Any use, exploitation, dissemination, copying or publication going beyond the scope provided for in Section 3 above shall be subject to separate remuneration and require the photographer's prior written approval. This shall particularly apply to
  - secondary exploitation or publication including but not limited to anthologies, product-related brochures, advertising or, in the case of any other types of reprinting, any editing of or modifications or changes to the photographic material,
  - digitalization, storage or duplication of the photographic material on data media of any type (e. g. magnetic, optic, magneto-optic or electronic media such as CD-ROM, DVD, hard disks, RAM, microfilms etc.) other than for the technical editing and management of the photographic material pursuant to III. 5. herein,
  - any reproduction or utilization of the photographic data on digital data media, inclusion or display of the photographic data on the Internet or in on-line databases or other electronic archives (including the customer's internal electronic archives),
  - the transmission of digitalized photographic material by data transmission lines or on data media for reproduction on screens or for the production of hardcopies.
5. Any modifications to the photographic material using photo composing, mounting or electronic means to produce a new copyright work shall require the photographer's prior written approval and shall be designated as such by [M]. In addition, the photographic material may not be copied in drawing form, recreated photographically or used in any other manner as a motive.

6. The customer may not transfer the rights of utilization or any part thereof granted to it to any third parties unless these are members of its group or subsidiaries. All use, reproduction and transfer of the photographic material shall be subject to the condition that the copyright information stipulated by the photographer be included in such a way that it can be clearly allocated to the picture in question.
7. The grant of the rights of utilization shall be subject to the condition precedent of full settlement of all of the photographer's claims for payment under the applicable contractual relationship.
8. The photographer still has the right to use his photographs for house advertising purposes even if he grants exclusive rights to the customer.

## V. LIABILITY

1. The photographer shall not be held liable for the breach of any rights (trademarks, company names, design rights) shown in the photographs or held by persons or objects depicted in the photographic material unless a duly signed release is enclosed. The customer shall be responsible for acquiring the rights of utilization over and above the copyright to the photograph in question and for obtaining releases from collections, museums etc., e. g. for images showing works of applied or plastic arts. The customer shall be responsible for the legend as well as the context in which the photograph is used.
2. The customer shall assume responsibility for the due and proper utilization of the photographic material as of the date of delivery.

## VI. FEES

1. The agreed fee shall apply. If no fee has been agreed upon, it shall be determined on the basis of the prevailing list of photographic fees issued by Mittelstandsgemeinschaft Foto-Marketing (MFM). The fee shall be subject to value added tax at the applicable rate.
2. The fee shall be deemed to constitute good consideration for the one-time utilization of the photographic material for the agreed purpose in accordance with Section IV.3 herein.
3. The fee shall not include any costs and expenses arising in connection with the order (e. g. cost of materials, laboratory, models, props, travel, other necessary expenses), which shall be borne by the customer.
4. The fee shall be payable upon delivery of the photographs. If the results of the production are supplied in parts, the corresponding part payment shall fall due upon receipt of the corresponding delivery. In the case of commission productions, the photographer may request advance payments matching the percentage of completion of the production.
5. The fee provided for in Section VI. 1 herein shall be payable in full notwithstanding the fact that the photographic material ordered and supplied is not published. If the photographic material is to be used as a basis for layout and presentation purposes, a fee of at least Euro 75.00 shall be payable in the absence of any other agreement to the contrary.
6. Only counter-receivables which are not disputed or have been upheld in a court of law may be netted or shall be subject to a right of retention. Moreover, counter-receivables which are disputed but on which a decision is soon to be made may also be netted.

## VII. RETURN OF PHOTOGRAPHIC MATERIAL

1. Analog photographic material shall be returned in the form in which it was supplied immediately after it has been published or utilized for the agreed purpose provided that this is no later than three months after the date of delivery; two sample copies of the publication in which the photographic material appears shall be enclosed. An extension to this three-month period shall require the photographer's written approval.
2. Digital data shall be deleted and/or the data media destroyed upon completion of utilization. The photographer shall be under no duty to ensure the continued existence and/or possibility of renewed delivery of the data.
3. If at the customer's request or with its approval the photographer supplies photographic material solely for the purpose of determining whether it is suitable for use or publication, the customer shall return analog photographic material no later than one month of receipt in the absence of any other period stated on the consignment note. Digital data shall be deleted and/or the data media destroyed or returned. This period may only be extended with the photographer's written consent.
4. The customer shall return the photographic material at its own cost in standard packaging. The customer shall bear the risk of loss or damage during transportation until the photographic material reaches the photographer.

## VIII. PENALTIES, DAMAGES

1. In the event of any unauthorized utilization, use, reproduction or disclosure of the photographic material (i. e. without the photographer's consent), the customer shall be liable to pay a penalty equaling five times the applicable fee for each individual instance, it being understood that this shall not operate to restrict any other remedies available to the photographer.
2. If the copyright notice is missing, incomplete, in the wrong position or not possible of being clearly allocated to the picture in question, a surcharge of 100% of the agreed or customary fee shall be payable.

## IX. GENERAL PROVISIONS

1. The contractual relationship anticipated by these Standard Terms and Conditions shall be subject to German law including in the case of deliveries to foreign destinations.
2. Any additions or modifications to these Standard Terms and Conditions shall be in writing only.
3. If any of the provisions contained herein are void, this shall not prejudice the validity of the remaining provisions. In such a case, the Parties undertake to replace the void provision with a valid one coming as commercially and economically close as possible to what they intended with the void provision.
4. The place of fulfillment and the legal venue shall be the photographer's domicile in cases in which the customer is a full merchant as defined by German commercial law.