

## GENERAL TERMS AND CONDITIONS

of [insert name of representative/vendor/photographer/artist]

### 1. Scope

The orders to be executed by [insert name] (hereinafter referred to as "Contractor") are subject to the general terms and conditions set forth herein.

The client ("Client") agrees to these terms and conditions for the current order as well as for any additional and future business with the Contractor.

Any general terms and conditions of the Client shall apply only if the Contractor expressly agrees to them in writing.

### 2. Quote and order confirmation

2.1 **Quotes** are not binding.

2.2 Orders placed by the Client will not be effective until a written **order confirmation** has been provided; the parties will then enter into an agreement provided that the order confirmation reflects the quote. The Client shall ensure that the Contractor receives the order confirmation in time prior to a shoot.

2.3 All amounts shall be given in euros.

### 3. Services and deadlines

3.1 The Contractor is entitled to execute the order at his or her **own discretion in creative terms** unless the briefing or any other documentation stipulates otherwise. Any complaints about the approach, perspective, colors, composition, models, locations, and the optical/technical tools used are therefore excluded. The Contractor shall adhere to any guidelines provided by the Client.

3.2 The Contractor is not required to archive negatives and/or image data.

3.3 **Deadlines** shall be set in writing in order to be binding. They have to be clearly and expressly stated as deadlines. Otherwise, dates will be deemed tentative and preliminary.

3.4 If deadlines are changed or rescheduled after the agreement has been entered into, the new dates are subject to the Contractor's express consent.

### 4. Approval

4.1 The approval may not be withheld if the services rendered are in accordance with the briefing. Late changes to the briefing are subject to the Contractor's consent. In the case of shoots, the approval should usually be given on location by an agent acting on behalf of the Client.

4.2 Minor color-related deviations in subsequent orders may occur as they cannot be prevented completely; they do not constitute an actionable defect.

4.3 Complaints must be filed immediately upon receipt of the materials. With regard to apparent defects, the work is deemed approved in accordance with the agreement after a period of five (5) business days.

4.4 The Client has seven (7) days to review and select works that have been delivered to him or her. If the license agreement is not concluded within the above-mentioned period, all works and/or storage devices shall be returned immediately and all image data which the Client has stored on his or her end shall be deleted. Supplying the works for the purpose of review and selection does not constitute a transfer of usage rights. Using works as layouts or in any other way as templates, including presentations with the Client, is subject to remuneration.

### 5. Rights

5.1 After the Client has made full payment of the total amount agreed upon (i.e. inclusive of fees and any (third-party) costs), he or she will be granted a non-exclusive right to use the works pursuant to the purpose set forth in the agreement and based on the quote and/or the individual agreement.

5.2 If the Client is granted rights for "all **relevant** media," this comprises the following scenarios:

#### 5.2.1 *Above the line:*

- Ads in mass-circulation titles, daily newspapers, technical publications, plus supplements and advertorials
- Outdoor posters, including CLPs up to size 18/1 and ads placed on mass transit vehicles (printed or electronic)

### 5.2.2 *Below the line*

- POS materials (to remain at the POP), e.g. displays, banners, stickers, wobblers, etc., including posters up to size 18/1 at or in front of the POS, including trade shows (printed or electronic)
- Promotional materials (distributed for free at the POP), e.g. brochures, catalogs, flyers, postcards, and give-aways
- Direct marketing (personalized advertising, e.g. mailers and leaflets)
- PR, e.g. customer magazines and annual reports
- Internal use, including intranets

### 5.2.3 *Online*

- Client's website or apps (owned media)
- Web-based advertising, in-app advertising, including banners, pop-up windows, etc. (paid media)
- Social media and blogs
- Downloads (PDF, brochures)
- Emailers

Any other usage, including usage beyond the period or outside of the geography agreed upon, is subject to express written consent and shall be reimbursed separately.

- 5.3 Unless covered by the usage rights set forth in the agreement, any reproduction, distribution, publication, modification, manipulation, public presentation or transformation for the purpose of reproduction on other media etc. is subject to the Contractor's written consent. In particular, the Client may not scan the works and/or save, edit, manipulate or copy all or parts of it, use it as a basis for creating new digital images or transfer it to other media.
- 5.4 The right to **edit**, modify or transform the work will only be granted after a written agreement has been entered into. Furthermore, the imagery may not be traced, photographed or used in any way as a template.
- 5.5 Unless otherwise agreed upon, the invoice date will be the start date of the agreed-upon usage period.
- 5.6 No usage rights may be transferred to any third party without the Contractor's express consent.
- 5.7 The Contractor and all artists/authors involved in the creation of the work in behalf of the Contractor will be entitled to use the work created by them for self-promotion and competitions and mention the Client and his or her client and the project and use their identifier, e.g. logos.
- 5.8 Options to usage rights must be claimed in writing with the Contractor no later than one (1) year after invoicing. Afterward the options will no longer be binding for the Contractor.
- 5.9 Digital data used to finish the work, e.g. 3D data and texture maps of objects and sets, and any rights to these digital data will not be granted to the Client but will exclusively remain with the artist/author.
- 5.10 Clients that order a portrait or pictures of people will not be entitled to reproduce or distribute the photographs. Section 60 of the German Copyright Act shall not apply.
- 5.11 All property rights to the original of the work and to imagery supplied will remain with the Contractor. The Contractor is not required to archive the works created by him or her or the devices on which these works are stored.
- 5.12 The Contractor is entitled to commission third-party services necessary to perform the production, e.g. model fees, props, etc., in behalf and on account of the Client.
- 5.13 The right to publish works that depict people will not be transferred to the Client until all people depicted have given their express written consent. If the services to be provided by the Contractor include model rights, such rights will not be granted until all agreed-upon production costs have been paid.

### 6. **(Additional) expenses and charges levied by the German social security service for artists**

- 6.1 The Contractor reserves the right to mark up quoted total costs by up to ten (10) percent and change the allocation of costs within the quote. Cost overruns must be reported by the Contractor only if the overrun is or will likely be more than ten (10) percent above the net total amount originally quoted.
- 6.2 Any costs or expenses (e.g. for materials, laboratories, models, props, travel, etc.) are not included in the photographer's or illustrator's professional fees and shall be covered by the Client.
- 6.3 Any additional costs incurred due to additions to the original scope of the order will be invoiced accordingly. Any incidental costs (including, but not limited to, materials, props, models, travel, etc.) shall be covered by the Client.

- 6.4 The Client is required to fully pay the Contractor for any third-party costs quoted prior to the beginning of a production. If payment is not made in time before a production is scheduled to begin, the Contractor will not be required to execute the order.
- 6.5 Furthermore, the Client shall pay the charge levied by the German social security service for artists, which the Contractor may be subject to for third-party services he or she may have to seek in order to execute the order.

## **7. Reimbursement and payment**

- 7.1 The agreed-upon grand total (i.e. professional fees plus third-party costs), which comprises the contractual services and the usage rights to be granted pursuant to section 5 hereof, shall apply regardless of whether and to what extent the Client takes advantage of the services. If the amount of fees has not been specified, that amount will be based, in the case of photographs, upon the latest edition of the fee chart published by Mittelstandsgemeinschaft Foto-Marketing (MFM), or, in the case of illustrations, upon the rates issued by the Alliance of German Designers (AGD).
- 7.2 The Contractor is entitled to demand down payments for orders in accordance with the scope of services already performed. Moreover, if the net total of the order is 5,000 euros or higher, the Contractor will be entitled to demand a down payment in the amount of 75% of the grand total for the order.
- 7.3 All invoices are due at the time of receipt.
- 7.4 The payment claims agreed upon will persist in the full amount regardless of the reservation of rights pursuant to section 5.1 hereof.
- 7.5 All amounts invoiced by the Contractor are subject to value-added tax at the rate that is valid at the time of invoicing.
- 7.6 The Client is in default if no payment is made within thirty (30) days after receipt of the invoice or an adequate request for payment. The Contractor reserves the right to make claims for any damage caused by default, e.g. interest and fees for reminders.
- 7.7 The Client shall bear the currency risk.

## **8. Cancellation, deadline changes and cancellation fees**

- 8.1 Cancellations and deadline changes or delays that occur after the agreement has been entered into must be in writing.
- 8.2 Cancellations and deadline changes or delays shall be reimbursed as follows:
- 8.2.1 The Client shall cover all third-party costs already incurred.
- 8.2.2 The Contractor's professional fees shall be covered according to the following formula:
- 8.2.2.1.1 Cancellation due to inclement weather: [insert number]% (professional fees), [insert number]% (documented costs)
- 8.2.2.1.2 Cancellation
- [insert number] business days prior to performance/shoot [insert number]%
  - [insert number] business days prior to performance/shoot [insert number]%
- 8.3 The Client shall bear the risk for any circumstances for which the Contractor cannot be held accountable, including, but not limited to, cancellation of outdoor shoots due to inclement weather, unavailability of products, props or models (if they need to be furnished by the Contractor), travel restrictions, and force majeure.
- 8.4 If an order is not executed for reasons which the Contractor cannot be held accountable, he or she can charge the Client for the full amount of the fees agreed upon. If an order has been initiated but is not completed for reasons which the Contractor cannot be held accountable, the Contractor will be entitled to the full amount of professional fees. An order is considered as initiated once the Contractor begins rendering the service as set forth in the agreement. If the time required to execute the order is exceeded or if the execution of the order is delayed or repeated for reasons which the Contractor is not responsible—e. g. due to last-minute changes to the original briefing, inclement weather, late delivery of products, mistakes at the photo laboratory, non-appearance of models, loss of luggage, etc.—, the professional fee will increase in relation to the fees agreed upon for the initial scope of service. In this case, incidental expenses will increase according to the actual costs incurred.

## **9. Liability and insurance**

- 9.1 Apart from possible claims for damages, unauthorized use, distribution or any other use not agreed upon will result in a minimum of five (5) times the amount of the usage fees agreed upon.
- 9.2 The Client warrants that he or she has the right to use and modify any templates, materials, programs, layouts, etc. that he or she provides or delivers to the Contractor and that the fact that the Contractor will use them will not affect the rights of any third party. If the Client commissions the Contractor to implement a layout with which he or she was provided and, based on the implementation of the layout or the use of any materials provided to the Contractor, damages are claimed or any other claims are made against the Contractor or artists commissioned by the Contractor, the Client shall release the Contractor from any claims made by third parties and undertake to bear all costs related to appropriate legal action. The Client shall ensure that neither the production nor the evaluation of services set forth in the agreement will violate any rights of any third party, e.g. copyrights (brands, companies, designs, etc.), or of persons, proprietors, or objects that will be involved in performing the services as set forth in the agreement. The Contractor will not assume liability for the legal admissibility or protectability of the services to be performed unless this is agreed upon in writing. There will be no legal review of any such agreements.
- 9.3 The Contractor does not assume liability for the existence and/or the possibility of another delivery of data and/or the premature loss of data caused by technical defects and/or force majeure.
- 9.4 The Client is required to procure insurance against damage, loss, theft, etc. for objects provided to the Contractor in order to execute the order. If the Contractor makes and wins claims for damages against a third party, the Contractor shall transfer all claims to the Client.
- 9.5 The Client assumes the risk of accidental loss or damage as soon as the materials to be delivered are handed over to the person in charge of transportation. The Contractor will purchase transportation insurance only at the Client's express request and at the Client's expense.
- 9.6 The Client must return originals provided to him or her immediately after use to the Contractor at the Client's own risk and expense. If the Client fails to return originals even after he or she has received a written reminder, or if originals become lost for reasons which the Contractor cannot be held accountable, the Contractor is entitled to compensation.
- 9.7 The Contractor does not assume liability if the Client commissions third parties, e.g. models, on his or her own account.
- 9.8 Damages may be claimed against the Contractor only in cases of gross negligence and willful intent. The Contractor is not liable for costs incurred with regard to models, travel, etc. Enforcement of a claim for indirect damage shall be excluded. If the work is destroyed while with the Contractor for reasons which the Contractor cannot be held accountable, this will not affect the Contractor's claim to remuneration.
- 9.9 Claims against the Contractor for damages are limited to the amount of professional fees agreed upon. Both parties to the agreement reserve the right to prove that the damage is higher or lower or that no damage has occurred at all. By providing payment for damages or other costs and charges incurred, the Client acquires no property or usage rights to the works.
- 9.10 Any damages that may be claimed by the Client from the Contractor are subject to a limitation of one (1) year except in cases of damage arising from loss of life, bodily harm or damage to health and/or gross negligence or intent. The period of limitation commences upon delivery of the works.
- 9.11 If the Contractor procures insurance against production liability or is required to do so, the Client shall be invoiced for all related costs.

## **10. Final provisions**

- 10.1 The Client may not assign or transfer any claims or rights he or she is entitled to with regard to the Contractor to any third party.
- 10.2 Modifications, supplements, or amendments to these terms and conditions must be in writing.
- 10.3 If a provision of the agreement or these terms and conditions becomes ineffective, the remaining provisions of the agreement and these terms and conditions will remain in full force and effect. If a provision of the agreement or these terms and conditions becomes invalid or void, this does not affect these terms and conditions or the agreement in their entirety. The parties to the agreement undertake to replace the invalid or void provision with a provision that adheres to applicable law and most closely fulfills the intended purpose and desired business objective of the parties. This also applies to closing any loopholes that these terms and conditions or the

agreement might have. The place of performance and the place of jurisdiction for both parties to the agreement is the place of business of the Contractor, unless otherwise required by law.

10.4 The place of performance and the place of jurisdiction for delivery and payment as well as for any legal disputes arising from the contractual relationship is the place of business of the Contractor if the Client is a merchant, a public law entity or a public law fund. The Contractor reserves the right to sue the Client, if he or she is a merchant, in any other place of jurisdiction stipulated by law.

10.5 These terms and conditions are governed by the laws of the Federal Republic of Germany. Any services rendered outside of the Federal Republic of Germany are also governed by German law. The terms and conditions of the United Nations Convention on Contracts for the International Sale of Goods signed on April 11, 1980 in Vienna, Austria shall not apply.

*Last update: November 2013*

Note: The German language version of these terms and conditions shall be the version used in the event any dispute arises hereunder. The English translation of these terms and conditions is for convenience only and shall not be used by the parties or any court when interpreting or construing these terms and conditions.