

General terms and conditions

for picture productions, the delivery of pictures and the granting of licences.

1. Validity of the general terms and conditions

1.1. The production of pictures, the delivery and the electronic transmission of pictures as well as the granting of picture licences by Stefan Schilling ("photographer") are exclusively based on these terms and conditions (AGB).

1.2. Business conditions of the contractual partner that deviate from the following terms and conditions are not recognised and do not even become part of the contract if the photographer does not expressly contradict them.

1.3. Contractual partner ("client") is the person who commissions the photographer with the production of pictures, requests pictures from the photographer's archives or obtains permits for rights of use (licenses).

2. Commissioned productions

2.1. Order Processing

2.1.1. The client is required to ensure free access for the photographer to localities and objects that shall be photographed. He should also ensure that the localities and objects are in a condition that allows taking photographs and that the photographic works are not obstructed by building measures or other adverse conditions.

2.1.2. If photographs of persons or localities or objects are to be taken for which copyrights of others, ownership or domiciliary rights or other rights of third parties exist, the client is further obliged to obtain the necessary consents or release declarations from the persons depicted or from the holders of the rights to create and use such images. The consents or clearance certificates must also include the photographer's exploitation of the images (section **4.1.6.**) and/or its exploitation by third parties to whom the photographer grants rights of use or to whom he transfers those rights.

2.1.3. If the photos are to be taken at a construction site or place where a heightened risk of accident exists or an increased health risks cannot be excluded, the client has to provide for corresponding protective measures that permit the photographer to perform his work safely. The client is liable for any damage suffered by the photographer as a result of the failure to take the necessary safeguard measures or the non-compliance with statutory or regulatory protection requirements.

2.1.4. If a photo shooting cannot be performed or completed on the scheduled date as a result of poor weather conditions, the current situation on the spot or for other reasons, the photographer shall be given the opportunity to proceed with the photo shooting at a later point in time.

2.1.5. The photographer selects the pictures to be presented to the client for approval at the conclusion of production. Rights of use are granted only for those pictures the client accepts as being in conformity with the conditions of the contract.

2.1.6. The client is obliged to inspect the pictures submitted to him at the conclusion of production within a reasonable period of time and shall inform the photographer of any defects found.

The notice of obvious defects must be given in writing within two weeks as from submission of the pictures, the notice of hidden defects must be given within a time-limit of two weeks as from time of determination of the defect. Timely dispatch of the notice of defect shall suffice to meet the notice period. In the event that the obligation to inspect and give notice of defects is violated, the pictures shall be deemed to be approved with regard to the relevant defect.

2.2. Fees and additional costs

2.2.1. Cost estimates by the photographer are not binding. The photographer is required to indicate cost increases only if the initially estimated overall costs are expected to be increased by more than 15 %.

2.2.2. If the time provided for the photographic works is significantly exceeded for reasons beyond the photographer's control, an agreed flat fee shall be increased accordingly. If a time-based fee has been agreed upon, the photographer also receives payment at the agreed hourly or daily rate for the time period by which the photographic work is extended.

2.2.3. Additional services, in particular the production of pictures beyond the extend that had been fixed at the inception of the contract, are to be remunerated separately based on the expenditure of time.

2.2.4. In addition to the agreed fee, the client is to refund all additional expenses which the photographer has incurred in connection with the performance of the ordered services (e.g. for film material, digital image processing, travelling, overnight accommodation, model booking). Costs which the photographer will incur emerging from elaborately taken pictures (e.g. aerial photographs) or by the use of special technology (e.g. lifting platform, complex lighting installation) are as well to be reimbursed separately.

2.2.5. The fee is due upon delivery of the pictures. Should a picture production be delivered in parts, the appropriate partial fee is due on delivery of each part. If the fulfillment of an order extends over a longer period, the photographer may require instalment payments that conform with the work performed during each interval.

2.2.6. The additional costs are to refund as soon as the photographer has incurred them.

2.2.7. Value added tax in the respective statutory amount is to be added to the fees and costs payable by the client.

3. Request of archive pictures

3.1. Pictures from the photographer's archive that are requested by the client will be made available for viewing and selection for a period of one month, calculated from the date of the delivery note or borrower's ticket. If no license agreement is concluded within this period, all picture data stored on the client's own data carriers must be deleted until expiry of that period.

3.2. No usage rights are transferred with the temporary provision of pictures for viewing and selection. Every use requires the photographer's prior written declaration of release.

3.3. Any use of the pictures as model for sketches or for layout purposes as well as their presentation to customers already constitutes a fee-based use.

3.4. The photographer may charge a service fee for the selection of photographs, calculated in accordance to the nature and extent of the expenditure incurred, which amounts to at least 30 €. Forwarding expenses (packaging, postage) inclusive of costs of specific forms of shipment (taxi, air freight, special messenger) shall be invoiced to the client separately.

3.5. Analogue pictures and image carrying media provided by the photographer to the client for the purpose of viewing and selection pursuant to section **3.1.** must be returned until expiry of the selection period if no contract were set up. Should slide frames or filmic face materials be opened, the photographer is entitled to charge a layout fee - notwithstanding the assertion of further claims for payment - even if the pictures have not been used. If the return period pursuant to section **3.1.** or the period for analogue pictures to return pursuant to the license agreement has expired, the client has to pay a blocking fee in addition to the other costs and fees until receipt of the pictures by the photographer. The blocking fee is amounting to 1,50 € per day and picture, although the total amount claimed for each picture, irrespective of each blocking period, is limited to the amount laid down in section **5.5.**, sentence **2** of the terms and conditions as lump-sum compensation for the loss of the picture. The client reserves the right to furnish proof that the photographer has not incurred any damage due to the delayed return of the pictures at all or that the incurred damage is substantially smaller than the blocking fee.

3.6 Acquisition and scope of rights of use (licences), usage of pictures

4.1. Rights of use (licences)

4.1.1. The client acquires only the non-exclusive, non-transferable, non-sublicensable usage rights derived from the photographic copyright as contractually specified. Copyright exploitation rights are in principle only be granted. Any ownership is not transferred. Delivered and electronically transmitted pictures always remain property of the photographer.

4.1.2. Rights of use have to be obtained for each usage. Every use of the pictures is subject to a fee.

4.1.3. The client will acquire contractually granted rights of use as recently as full payment of the fee and reimbursement of all additional expenses is made. The client will acquire contractually granted rights of online use only if technological protection measures are installed pursuant to section **4.3.4.**

4.1.4. The redesign and/or editing of pictures is not permitted without prior written approval by the photographer.

4.1.5. The passing on of pictures to third parties and the transfer of usage rights/sublicenses, acquired by the client, to third parties requires the prior written agreement of the photographer. The same applies to the passing on of pictures to book, newspaper and magazine publishers as well as the submission of pictures in relation to the participation in competitions. The photograph is entitled to make his approval for any intended usage by third parties dependent on the payment of an appropriate license fee.

4.1.6. In case of commissioned production, the photographer remains entitled to use the pictures himself for all relevant purposes without any restriction in time, place or content,

regardless of the extent of usage rights acquired by the client.

4.2. Copyright notice

4.2.1. With every publication of the picture it is required to designate the photographer as author. The designation shall be positioned at the picture. The author's naming is as follows: Stefan Schilling

4.2.2. In case of usage on social media platforms and media communicating platforms, the author's note is to add as a digital watermark in the picture.

4.3. Digital image processing

4.3.1. The digitalisation of analogue pictures and the transmission of digital pictures by data transmission lines or on data media are only permissible to the extent that the exploitation of granted usage rights require this form of duplication and distribution.

4.3.2. Image data may only be digitally archived by the client for his own purposes and only for the duration of the acquired usage rights. The storage of the image data in online data bases or other digital archives, which are accessible to third parties, requires a separate agreement between the photographer and the client.

4.3.3. The digital images transferred to the client contains so-called IPTC data, including information on the photographer as originator as well as modalities and conditions regarding the use. Removing or altering of metadata without the photographer's express written consent is not permitted.

4.3.4. The client has to install technological protection measures which limit access to the pictures transferred to him and prevent the inclusion of pictures, which are presented on the Internet with the photographer's consent, into a third party website via inline links and frames as embedded content.

4.4. Rights of third parties

4.4.1. The photographer grants the client only rights of use on the photographic copyright. The client must himself observe the rights of personality, data protection, copyrights, trademark, property, domiciliary and other rights of depicted persons or of owners of the rights of photographed localities and objects, such as buildings, objects, artistic designs, decorations, names and trademarks. The consents and release declarations of third parties necessary for the usage has to be obtained from the respective entitled persons by the client himself. This shall not apply if the photographer has in writing expressly guaranteed the receipt of those necessary consents, release declarations or rights.

4.4.2. If photographs of persons or localities or objects are to be taken in connection with commissioned productions, for which copyrights of others, ownership or domiciliary rights or other rights of third parties exist, the client is obliged to obtain the necessary consents or clearance certificates from the persons depicted or from the holders of the rights to create and use such images. The consents or clearance certificates must also include the photographer's exploitation of

the images (section **4.1.6.**) and/or its exploitation by third parties to whom the photographer grants rights of use or to whom he transfers those rights.

4.4.3. The client has to release the photographer from any claims including the costs of a legal defence and/or prosecution resulting from a violation of the obligation pursuant to section 4.4.2. The obligation to grant release shall not apply if the client proves evidence that he is not at fault.

4.4.4. The regulations under section 4.4.1. and section 4.4.2. apply as well if the persons or objects to be photographed are chosen by the photographer, provided that he informs the client about the choice he has made timely enough to enable the client to secure all necessary declarations of consent or to choose and provide other suitable persons or objects for the photographic work.

4.4.5. In so far as the client of a commissioned production is himself the author or the owner of the object to be photographed, the client is obligated to agree to the exploitation of the pictures by the photographer (section 4.1.6.) just as much as to the usage by third parties which are granted rights of use by the photographer or to whom the latter transfers those rights. The same applies in the event that the client is entitled to other protective rights to the object or localities to be photographed or if the client himself is depicted.

5. Liability and compensation for damages

5.1. The photographer is only liable for damage which is caused by him or his executing aides through wilful intent or gross negligence. This shall not apply if damage results from a contractual obligation, which is of essential importance to achieving the object of the contract (cardinal obligation), as well as damage resulting from injury to life, body or health, for which the photographer is also liable in case of slight negligence.

5.2. The photographer carries no liability for the method of use of his pictures. He is especially not liable for the admissibility of the use in regard to competition and trademark law.

5.3. Claims of the client arising from a breach of duty of the photographer or his executing aides become statute-barred within one year as of the start of the statutory limitation period. Excluded from this regulation are claims of compensation that are based on a breach of duty through wilful intent or gross negligence of the photographer or his executing aides as well as claims of compensation resulting from injury to life, body or health, even if such claims are based on a slightly negligent breach of duty of the photographer or his executing aides; those claims for compensation are subject to the statutory periods.

5.4. The delivery and return of pictures is carried out at the risk of and for the account of the client.

5.5. Should conventional pictures be lost within the client's sphere of risk or should such pictures be returned in a condition that excludes any further use according to the usual conventions, the client is liable for damage. In such case, the photographer is entitled to claim damages amounting to at least 1000 € for each original and 200 € for each duplicate, unless the client proves evidence that a damage did not occur at all or that the occurred damage is substantially smaller than the demanded damage claims. The right of the photographer to assert higher claims for damages shall remain unaffected.

6. Contractual penalty

6.1. In the event of culpably unauthorized - occurred without the photographer's consent - use, processing, redesign, archiving, transmission of a picture to third parties or transfer/sublicensing of usage rights to third parties or other unauthorized usage by the client, the photographer is entitled to claim a contractual penalty amounting for each case to the fivefold of the usage fee agreed upon. In the absence of an agreement regarding the usage fee, the payment of the contractual penalty is amounting to the fivefold of that usage fee which results from the application of the list of photographic fees issued by the Mittelstandsgemeinschaft Foto-Marketing (MFM), valid at the time of the unauthorized use. The photographer may alternatively demand a contractual penalty in the amount of the fivefold of his usual usage fee if he proves evidence that his fee, usually charged for the relevant usage, would be higher than the specified MFM photographic fee. Regardless of how the usage fee is calculated in a specific case, the contractual penalty amounts to at least 500 € per individual case. The assertion of any further claims for damages remains unaffected.

6.2. Should a picture culpably be published without designation of the photographer as author or should the designation not be positioned at the picture or in case of usage on social media platforms and media communicating platforms as a digital watermark not be positioned in the picture, section 6.1. shall apply in conformity, subject to the condition that the contractual penalty is not amounting to the fivefold but to 100 % of the usage fee, however, not less than 200 € per individual case. The right of the photographer to assert higher claims for damages shall in this respect as well remain unaffected.

7. Statute and Place of Jurisdiction

7.1. The laws of the Federal Republic of Germany apply.

7.2. In the event that the client does not have a general place of jurisdiction within the Federal Republic of Germany or if he has moved his place of business or habitual residence outside the country after conclusion of the contract, the photographer's place of residence is agreed to be the legal venue.

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