

General Terms and Conditions of Delivery and Business

I. General

1. The following General Terms and Conditions of Delivery and Business (hereinafter referred to as the General Terms and Conditions) shall apply to all of Christine Frei Photography's (hereinafter referred to as the Photographer) orders, offers, deliveries and services.
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 or other use.
3. If the Customer does not accept the General Terms and Conditions, he shall lodge written notification to this effect within three work days. Any alternative general terms and conditions on the part of the Customer are hereby rejected. Alternative general 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. The General 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. Photographic material supplied

1. The General Terms and Conditions shall apply to all photographic material with which the Customer is provided 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 § 2 (1) No. 5 of the German Copyright Act.
3. Any suggestions submitted by the Customer for modifications or adaptations shall be deemed to be individual services subject to separate remuneration.
4. The photographic material provided shall remain the Photographer's property notwithstanding the fact that damages may have been paid for.
5. The Customer may only make the photographic material available to third parties for internal business purposes, i.e. for viewing, selection 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.

III. Utilization rights

1. The Customer shall fundamentally only receive simple utilization rights for onetime utilization.
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.
3. Any use, exploitation, dissemination, copying or publication going beyond that provided for in Section 3 above shall be subject to separate remuneration and require the Photographer's prior written approval.
4. Any modifications to the photographic material using photo compositing, 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.
5. The Customer may not transfer the rights of utilization or any part thereof to any third parties or to members of its group or subsidiaries.
6. 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.

IV. Liability

1. The Photographer shall not be liable for the breach of any rights held by persons or objects depicted in the photographic material unless a duly signed release is enclosed. The Customer shall be responsible for acquiring rights of utilization over and above the copyright to the photograph in question and for obtaining releases from right holders.
2. The Customer shall be responsible for the legend as well as the context in which the photograph is used.
3. The photographer can't be held responsible for not fulfilling the contract. No compensation is therefore granted.

4. The photographer is not obliged to archive the image files.
5. No liability is taken for legal effectiveness of images produced.
6. For damage to persons and objects, as well resulting from actions that were ordered by the photographer, neither the photographer nor his team can be held liable.

V. Fees

1. The agreed fee as specified in the offer of the photographer shall apply and shall be subject to value added tax at the applicable rate.
2. The fee shall be payable for one-time use of the photographic material for the use agreed upon pursuant to III 1.-3. herein. If the fee is also to cover further use, this shall require written confirmation.
3. The fee shall not include 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 provided for in V. 1. herein shall be payable in full either prior to the delivery of any photographic material, or in accordance with the payment terms specified in the Invoice, notwithstanding the fact that the photographic material ordered and supplied is not published or made use of otherwise.
5. If the assignment is revoked or not claimed by the Customer, a compensation fee of ½ of the total value of the assignment (at least 150 Euro) are payable to the photographer.
6. Approval of the Customer is not condition for claim for remuneration by the photographer.
7. In case the Customer obtained a price deduction for granting utilization rights for promotional purposes to the photographer, the amount of this price deduction has to be reimbursed to the photographer on revocation of these rights.
8. Only counter-receivables which are not disputed or have been upheld in a court of law may be netted or are 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.

VI. Penalty, 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 equalling 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. Excluded hereof are private copies.
2. If the copyright notice is missing, incomplete (pursuant to III 7. herein), in the wrong position or not possible of being clearly allocated to the picture in question, a surcharge of 100% of the agreed fee shall be payable.
3. In the case of damage, the above rates shall be reduced depending on the extent of damage and the possibility for continued use of the material. Either Party shall be entitled to prove that actual loss is either greater or lower or that no loss at all has been sustained.
4. The payments anticipated in VII of these General Terms and Conditions shall not give rise to any rights of utilization.

VII. Concluding Remarks

1. The contractual relationships anticipated by these General 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 General Terms and Conditions shall be in writing only.
3. If any of the provisions contained herein are void, this shall have no effect on 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 fulfilment 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.
5. In case the Customer has no legal venue within Germany or moved abroad after contracting the photographer, the Photographer's domicile becomes the legal venue.

VIII. General Terms and Conditions Version

The General Terms and Conditions are valid from 1st of November 2011 on, previous General Terms and Conditions are void.