



General terms and conditions for image productions, the supply of images and the granting of licences

1. Validity of the terms and conditions

1.1. The production of images, the delivery and electronic transmission of images as well as the granting of image licences by Franco Casaccia ("Photographer") is based exclusively on these General Terms and Conditions (GTC).

1.2. Terms and conditions of the contractual partner that deviate from the following terms and conditions shall not be recognised and shall not become part of the contract even if the photographer does not expressly object to them.

1.3. The contractual partner ("client") is the party who commissions the photographer to produce images, requests images from the archive or obtains rights of use (licences).

2. Commissioned productions

2.1. Order processing

2.1.1. The client is obliged to provide the photographer with free access to the locations and objects that are to be photographed. He must also ensure that the locations and objects are in a photographable condition and that the photographic work is not hindered by construction work or other disruptive circumstances.

2.1.2. In the case of photographs of persons and photographs of places and objects to which copyrights, property rights or other rights of third parties exist, the Client shall also be obliged to obtain the consents or declarations of release required for the production and use of the images from the persons depicted and the rights holders. The consents or declarations of release must also extend to the utilisation of the images by the Photographer (Section 4.1.6.) and/or by third parties to whom the Photographer grants rights of use or to whom the Photographer transfers such rights.

2.1.3. If photographs are to be taken on a construction site or at a location where there is an increased risk of accidents or where increased health risks cannot be ruled out, the client must take appropriate protective measures to ensure that the photographer can work safely. The client shall be liable for all damages incurred by the photographer as a result of failure to take the necessary protective measures or failure to comply with official or statutory safety regulations.

2.1.4. If a photo shoot cannot be carried out or completed due to weather conditions, the current situation on site or for other reasons, the photographer must be informed of this in good time and given the opportunity to take the photos at a later date. The photographer is also entitled to a cancellation fee in accordance with section 2.2.8.

2.1.5. The photographer shall select the images to be presented to the client for acceptance upon completion of the photography work. Rights of use shall only be granted to the images that the client accepts as being in accordance with the contract. No rights of use are transferred with the provision of the images for viewing.

2.1.6. The client is obliged to inspect the images submitted to him after completion of the photographic work within a reasonable period of time and to notify the photographer of any defects. Notification of obvious defects must be made in writing within two weeks of delivery of the images, notification of non-obvious defects within two weeks of the defect being recognised. Timely dispatch of the complaint shall suffice to comply with the complaint period. In the event of a breach of the obligation to inspect and give notice of defects, the pictures shall be deemed to have been approved with regard to the defect in question.

2.2. Fees and ancillary costs

2.2.1. The photographer's cost estimates are non-binding. He only needs to indicate cost increases if the originally estimated total costs are expected to be exceeded by more than 15 %.

2.2.2. If the time scheduled for the photographic work is significantly exceeded for reasons for which the photographer is not responsible, an agreed flat fee shall be increased accordingly. If a time-based fee has been agreed, the photographer shall also receive the agreed hourly or daily rate for the time by which the photographic work is extended.

2.2.3. Additional services, in particular the production of images beyond the scope specified at the start of the contract, shall be remunerated separately on a time basis.

2.2.4. In addition to the fee owed, the Client shall reimburse the additional costs incurred by the Photographer in connection with the execution of the order (e.g. for film material, digital image processing, travel, accommodation, model bookings). The costs incurred by the photographer for particularly elaborate images (e.g. aerial shots) or for the use of special technology (e.g. lifting platform, elaborate lighting systems) shall also be reimbursed separately.

2.2.5. The fee is due upon delivery of the images. If an image production is delivered in parts, the corresponding partial fee shall be due upon delivery of each part. If the execution of an order extends over a longer period of time, the photographer may demand instalment payments in accordance with the amount of work performed.

2.2.6. The incidental costs shall be reimbursed as soon as they have been incurred by the photographer.

2.2.7. The fees and costs to be paid by the client are subject to VAT at the applicable statutory rate.

2.2.8. If a shooting date is cancelled, the photographer is entitled to claim a cancellation fee, unless the photographer is solely responsible for the cancellation. If a flat-rate fee has been agreed, the photographer shall receive a cancellation fee of 100% of the agreed flat-rate fee in the event of cancellation within 24 hours before the start of the shoot, and a cancellation fee of 50% in the event of cancellation within 25 to 72 hours before the start of the shoot. If a time-based fee has been agreed, the photographer shall receive a cancellation fee of 100% of the agreed hourly or daily rate if a cancellation is made within 24 hours before the start of the shoot, and a cancellation fee of 50% if a cancellation is made within 25 to 72 hours before the start of the shoot. In addition, the photographer's client shall reimburse the additional costs incurred in connection with the cancelled shooting date.

3. Request for archive images

3.1. Images requested by the client from the photographer's archive shall be made available for viewing and selection for a period of one month from the date of the delivery note or loan note. If no licence agreement is concluded within the selection period, all image data stored by the client on his own data carriers shall be deleted by the end of the period. The permanent archiving of images is not permitted without the photographer's prior written consent.

3.2. No rights of use are transferred with the provision of the images for viewing and selection. Any use requires the prior written consent of the photographer.

3.3. The use of the images as working templates for sketches or for layout purposes, as well as the presentation of the
The use of the website by customers is already a chargeable use.

3.4. The photographer may charge a processing fee for compiling the image selection, which shall be calculated according to the type and scope of the work involved and shall amount to at least € 30. Shipping costs (packaging, postage) including the costs for special shipping methods (taxi, air freight, express courier) shall be invoiced separately to the client.

3.5. Analogue images and image data carriers provided by the Photographer to the Client for viewing and selection in accordance with Section 3.1. shall be returned by the end of the selection period if no licence agreement is concluded. If slide frames or transparencies are opened, the photographer shall be entitled - subject to any further claim for payment - to charge a layout fee, even if the images are not used. If the return period for analogue images stipulated in Section 3.1. or agreed in the licence agreement is exceeded, the Photographer shall be entitled to charge a layout fee until the images are received.

a blocking fee must be paid to the photographer in addition to the other costs and fees. The blocking fee is € 1.50 per day and picture, whereby the maximum amount that can be demanded for the individual picture, irrespective of the respective blocking period, is the amount provided for in clause 5.5, sentence 2 of the terms and conditions as a lump sum for the loss of the picture. The client reserves the right to prove that the photographer has not suffered any damage as a result of the late return of the images or that the damage incurred is significantly lower than the blocking fee.

4. Acquisition and scope of rights of use (licences), use of images

4.1. Rights of use (licences)

4.1.1. The client only acquires simple, non-transferable and non-sublicensable rights of use to the photographic copyright to the extent specified in the contract. In principle, only copyright utilisation rights to the images are granted. Property rights are not transferred. Delivered or electronically transmitted images always remain the property of the photographer.

4.1.2. Rights of use must be obtained for each utilisation. Every use of the images is subject to a fee. The fee for granting the rights of use is based on the image fee list of the Mittelstands- gemeinschaft Foto-Marketing (mfm).

4.1.3. The rights of use to be granted under the contract shall not be acquired by the client until the fee has been paid in full and all ancillary costs have been reimbursed. The client shall only acquire the online rights of use to be granted under the contract when technical protection measures have been set up in accordance with section 4.3.4.

4.1.4. The redesign and/or editing of images (e.g. montage, cropping, colouring) is not permitted without the photographer's prior written consent.

4.1.5. The passing on of images to third parties and the transfer/sublicensing of the rights of use acquired by the client to/to third parties requires the prior written consent of the photographer. This also applies to the passing on of images to book, newspaper and magazine publishers and to the submission of images in the context of participation in competitions. The photographer is authorised to make the granting of consent to the planned third-party use dependent on the payment of an appropriate fee.

4.1.6. In the case of commissioned productions, the photographer shall remain entitled to utilise the images himself for all possible purposes, irrespective of the scope of the rights of use acquired by the client, without any restrictions in terms of content, time or space.

4.2. Copyright notice

4.2.1 The photographer Franco Casaccia must be named as the author for each use of the image. The naming must be included with the image. The copyright attribution is: Franco Casaccia photography .

4.2.2 When used on social media platforms and on media-sharing platforms, the author's name must be included as a watermark in the image.

4.3. Digital image processing

4.3.1. The digitisation of analogue images and the dissemination of digital images by means of remote data transmission or on data carriers is only permitted insofar as the exercise of the rights of use granted requires this form of reproduction and dissemination.

4.3.2. Image data may only be digitally archived for the client's own purposes and only for the duration of the right of use. The storage of the image data in online databases or other digital archives accessible to third parties requires a separate agreement between the photographer and the client.

4.3.3. The digital images provided to the client contain metadata, so-called IPTC data, with information about the photographer as the author as well as the modalities and conditions of use. The removal or modification of the metadata is not permitted without the prior express written consent of the photographer.

4.3.4. The client shall set up technical protective measures that restrict access to the images provided to him and prevent the images reproduced by him on the Internet with the photographer's consent from being used by third parties, in particular by means of inline links and frames as embedded content in

be integrated into their websites.

4.4. Third party rights

4.4.1. The photographer shall only grant the client rights of use to the photographic copyright. The Client shall itself observe the personal rights, data protection rights, copyrights, trademark rights, property rights, domestic and other industrial property rights of the persons depicted or of the owners of the rights to the places and objects depicted, such as buildings, objects, artistic designs, decorations, names and trademarks. The client must obtain the consent and release declarations of third parties required for use from the respective authorised parties themselves. This shall not apply if the photographer has expressly assured the existence of the necessary consents, release declarations or rights in writing.

4.4.2. In the case of commissioned productions, the client is obliged to obtain the necessary consent or release declarations from the persons depicted and the rights holders for the production and use of the images in the case of photographs of persons and photographs of locations and objects to which third-party copyrights, property and house rights or other third-party rights exist. The consents or declarations of release must also extend to the utilisation of the images by the Photographer (Section 4.1.6.) and/or by third parties to whom the Photographer grants rights of use or to whom the Photographer transfers such rights.

4.4.3. The client shall indemnify the photographer against all claims, including the costs of legal defence and/or prosecution, resulting from a breach of the obligation under section 4.4.2. The obligation to indemnify shall not apply if the client proves that he is not at fault.

4.4.4. The provisions of sections 4.4.1. and 4.4.2. shall also apply if the photographer selects the persons or objects to be photographed himself, provided that he informs the client of the selection made in good time so that the client can obtain the necessary declarations of consent and release or select and make available other suitable persons or objects for the photographic work.

4.4.5. If the client of a commissioned production is himself the author or owner of the objects to be photographed, he is obliged to consent to the utilisation of the images by the photographer (Section 4.1.6.), as well as to the utilisation by third parties to whom the photographer grants rights of use or to whom he transfers such rights. The same shall apply in the event that the Client is entitled to other industrial property rights to the objects and locations photographed, or if the Client himself is depicted in photographs of persons.

5. Liability and compensation

5.1. The photographer shall only be liable for damages caused intentionally or through gross negligence by himself or his vicarious agents. Excluded from this are damages resulting from the breach of a contractual obligation which is of essential importance for the fulfilment of the purpose of the contract (cardinal obligation), as well as damages resulting from injury to life, body or health, for which the photographer is also liable in the case of slight negligence.

5.2. The photographer is not liable for the way in which her images are used. In particular, she is not liable for the competitive admissibility of use under commercial and trade mark law.

5.3. Claims of the client arising from a breach of duty by the photographer or their vicarious agents shall become time-barred one year after the statutory limitation period begins. Excluded from this are claims for damages based on an intentional or grossly negligent breach of duty by the photographer or their vicarious agents and claims for damages due to injury to life, body or health, even if they are based on a slightly negligent breach of duty by the photographer or their vicarious agents; the statutory limitation periods shall apply to these claims for damages.

5.4. The sending and return of images shall be at the risk and for the account of the client.

5.5. If analogue images are lost within the client's sphere of risk or if such images are returned in a condition that precludes their further use in accordance with normal practice, the client shall pay compensation. In this case, the photographer shall be entitled to demand compensation of at least € 1,000 for each original and € 200 for each duplicate, unless the client can prove that no damage has been incurred or that the damage is significantly lower than the lump-sum compensation demanded. The photographer reserves the right to assert a higher claim for damages.

6. Contractual penalty

6.1. In the event of culpable unauthorised use, i.e. use, editing, redesign, archiving, transfer of an image to third parties or transfer/sublicensing of rights of use to/to third parties or other unauthorised use by the client, the photographer shall be entitled to demand a contractual penalty in the amount of five times the agreed usage fee for each case. In the absence of an agreement on the usage fee, the contractual penalty to be paid shall be five times the usage fee that would have resulted from the application of the usage fee applicable at the time of the unauthorised use.

The photographer may demand a contractual penalty of five times his usual usage fee. Alternatively, the photographer may demand five times his usual usage fee as a contractual penalty if he can prove that he usually charges a higher fee for the use in question than the fee shown in the MFM image fee list. Irrespective of how the usage fee is determined in the specific case, the contractual penalty shall be at least € 500.00 for each case. The assertion of a claim for damages remains unaffected by this.

6.2. If the photographer is culpably not named in the publication of an image (Section 4.2.1.) or if the photographer is not named in the image or as a watermark in the image when used on social media platforms or on media-sharing platforms (Section 4.2.2.), Section 6.1. shall apply analogously with the proviso that the contractual penalty to be paid is not 500% but 100% of the fee, but at least € 200.00 per image.

The photographer also reserves the right to assert a claim for damages in this respect.

7. Statute and place of jurisdiction

7.1. The law of the Federal Republic of Germany shall apply.

7.2. In the event that the client does not have a general place of jurisdiction in the Federal Republic of Germany or relocates his registered office or habitual residence abroad after conclusion of the contract, the photographer's place of residence shall be agreed as the place of jurisdiction.

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