

General Terms and Conditions of Delivery and Business

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 Jannis Keil (hereinafter referred to as the filmmaker).
2. They shall be deemed to be binding on both parties upon acceptance of the filmmaker's delivery, service or offer by the customer, however no later than upon the picture 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 filmmaker 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 filmmaker'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 filmmaker shall be given without engagement. If any increase in costs occurs during production, the filmmaker 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 filmmaker'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 filmmaker 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 filmmaker shall be responsible for selecting the pictures to be presented to the customer for approval at the conclusion of production.
4. The pictures 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 filmmaker within two weeks of submission of the pictures.

III. Provision of photographic material or footage (analog and digital)

1. These Standard Terms and Conditions shall apply to all photographic material or footage submitted to the customer regardless of its degree of completion or technical form. They shall expressly also apply to photographic material or footage transmitted electronically or digitally.
2. The customer acknowledges that the pictures provided by the filmmaker 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 picture material provided shall remain the filmmaker's property notwithstanding the fact that consideration may have been received for it.
5. The customer shall treat the picture 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 picture material shall be lodged within 48 hours of receipt. Failing this, the picture 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 picture being delivered, only the utilization rights shall be granted for one-time use of the picture 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 picture 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 filmmaker's prior written approval. This shall particularly apply to
 - secondary exploitation or publication including but not limited to anthologies, product-related brochures, social media, advertising or, in the case of any other types of reprinting, any editing of or modifications or changes to the picture,
 - digitalization, storage or duplication of the picture 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 picture pursuant to III 5. herein,
 - any reproduction or utilization of the picture on digital data media, inclusion or display of the picture on the Internet or in online databases or other electronic archives (including the customer's internal electronic archives),
 - the transmission of digitalized pictures by data transmission lines or on data media for reproduction on screens or for the production of hardcopies.
5. Any modifications to the picture using composing, editing, mounting or electronic means to produce a new copyright work shall require the filmmaker's prior written approval and shall be designated as such by [M]. In addition, the picture may not be copied in drawing form, recreated photographically or as moving images 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 picture shall be subject to the condition that the copyright information stipulated by the filmmaker 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 filmmaker's claims for payment under the applicable contractual relationship.

V. Liability

1. The filmmaker shall not be held liable for the breach of any rights held by persons or objects depicted in the picture 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 image 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 picture is used.
2. The customer shall assume responsibility for the due and proper utilization of the picture as of the date of delivery.
3. Exclusive is a weather insurance; excl. is a indemnity insurance, excl. is a data insurance. All other insurance upon request.

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 picture 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, rent equipment, models, props, travel, other necessary expenses), which shall be borne by the customer.
4. The fee shall be payable upon delivery of the picture. 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 filmmaker 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 picture ordered and supplied is not published. If the picture is to be used as a basis for layout and presentation purposes, a fee of at least € 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.
7. Customer and weather-related loss is calculated as follows:
 - 50% cancellation fee filmmaker, assistant, sound, hair, and make-up, styling, models (up to 24 hours before shooting starts.)
 - 100% cancellation fee filmmaker, assistant, sound, hair and make-up, styling, models (from 24 hours before shooting starts.)
 - 100% incurred costs (travel, venue bookings, etc).

VII. Return of photographic material or footage

1. Analog film 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 picture appears shall be enclosed. An extension to this three-month period shall require the filmmaker's written approval.
2. Digital data shall be deleted and/or the data media destroyed upon completion of utilization. The filmmaker 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 filmmaker supplies a picture solely for the purpose of determining whether it is suitable for use or publication, the customer shall return analog film 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 filmmaker's written consent.
4. The customer shall return the picture at its own cost in standard packaging. The customer shall bear the risk of loss or damage during transportation until the picture reaches the filmmaker.

VIII. Penalties, damages

1. In the event of any unauthorized utilization, use, reproduction or disclosure of the picture (i.e. without the filmmaker'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 filmmaker.
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. A working day is set at 10 hours maximum.
2. Digital data will be archived for a period of one year.
3. 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.
4. Any additions or modifications to these Standard Terms and Conditions shall be in writing only.
5. 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.
6. The place of fulfillment and the legal venue shall be the filmmaker's domicile in cases in which the customer is a full merchant as defined by German commercial law.