

General terms and conditions (GTC) for entrepreneurs

Manuel Faessler Photography

1. Scope and applicability of the general terms and conditions

1.1 The following GTC are in effect if the customer is a entrepreneur as defined in § 1 KSchG (Austrian customer protection law)

1.2 The photographer shall provide his services exclusively based on these GTC. The general terms and conditions are applicable – if no changes are published by the photographer – for all future business relationships as well, even if not referred to them explicitly.

1.3 Should individual clauses of these GTC be or become invalid, this will neither affect the remaining terms of this GTC nor the agreements concluded between the customer and the photographer based on this GTC.

1.4 All offers by the photographer are not-binding and noncommittal

1.5 This document has been translated into English. If there is any inconsistency or ambiguity between the German and the English versions, the German version shall prevail.

2. Copyright issues

2.1 The photographer has all copyrights and ancillary copyrights of the producer of a photograph (§§ 1, 2 Abs. 2, 73 ff. UrhG – Austrian copyright law)

2.2 Permits for use (e.g. rights of publicity, etc. shall apply only upon express written agreement and only on a case-by-case basis. In this case the contractual partner obtains a simple, non-exclusive, non-transferable permit for use only for the purpose agreed upon and within the boundaries specified in the contract (temporal and local restrictions, number of copies published, etc.). If in doubt, the extent of use defined on the invoice or delivery note are decisive. In any event the contractual partner only acquires the rights to fulfil the disclosed purposes of the agreement. If nothing different is agreed upon, the permit for use is only valid for one publication (in one edition), only for the medium expressly specified and not for advertising purposes.

2.3 In each case of use (copying, publishing, etc.) the customer is obliged – except when otherwise stated in the contract – to apply the photographers designation or the relevant copyright note as defined in the UCC (Universal Copyright Convention) clearly and well legible (visible), directly with the picture and clearly attributable as following: (c) Manuel Faessler Photography, Town, XXXX (Year of first publication). In any way the copyright note serves as photographers designation as defined in § 74 Abs. 3 UrhG (Austrian copyright law). If there is a watermark in the picture itself it doesn't replace the photographers designation as defined above.

2.4 Every change to the pictures requires written approval from the photographer. This is only not the case if this change is known to the photographer and of decisive importance in the contractual context.

2.5 The permit of use is only considered as given by the photographer after full payment has been made and the photographers designation is properly applied (paragraph 2.3).

2.6 In case of a printed publication two specimen copies should be sent to the photographer free of charge. If the products are expensive (Books, etc.) only one specimen copy should be sent. When published in the internet, the photographer should be given the URL of the website and should be provided with access date if necessary.

3. Ownership of the RAW-Data - archiving

3.1 The RAW-Data made is the property of the photographer. A right of transfer of the RAW-data only exists on prior express written agreement and only applies for a selection and not for all the data that has been made by the photographer. In any case the permit of use is only valid as defined in paragraphs 2.1 and 2.2.

3.2 Any reproduction or use of pictures in online-databases, in electronic archives, in the internets, in intranets which aren't solely used for internal purposes of the contractual partner, on data carriers is only allowed within the boundaries of the contract. The right to create a backup copy of the pictures remains unaffected thereby.

3.3 The photographer will archive all pictures made for one year without any prejudice and without there being a legal obligation to do so. In the event of loss or damage the contractual partner isn't entitled to claim compensation in any way.

4. Labeling

4.1 The photographer is entitled to label the photographs and other pictures in any form he considers appropriate (even on the front side) with his designation (unless otherwise agreed upon). The contractual partner is obliged to make sure the integrity of the photographers designation is protected in particular when transferred to third parties (e.g. for printing). If necessary the labeling has to be renewed.

4.2 The contractual partner is obliged to ensure that the photographers designation stays electronically linked with the pictures, in particularly with every data transmission. He has to make sure that the photographer is clearly identifiable as originator of the pictures.

5. Subsidiary obligations

5.1 It is the contractual partners responsibility to ensure the permits of use as well as the consent to being represented in the pictures of third parties if needed. With regard thereto he will indemnify, protect and hold harmless the photographer, in particular regarding claims that are based on the rights to their own image according to § 78 UrhG (Austrian copyright law) as well as use claims according to § 1041 ABGB (Austrian Civil Law Code). The photographer guarantees the approval of rights only in the case of prior written agreement for the contractual purposes (paragraphs 2.1 and 2.2).

5.2 Should the photographer be tasked with editing pictures from third parties by the contractual partner, the partner ensures he is entitled to do so and will indemnify, protect and hold harmless the photographer regarding claims that are based on this obligation.

5.3 The client is obliged to pick up any subjects needed immediatly after the shooting. Should these subjects haven't been picked up after maximum two days after the shooting, the photographer is entitled to charge storage costs or to store these subjects at the expense of the client. The client has to pay for any transportation and storage costs.

6. Loss or damage

6.1 In the event of loss or damage of pictures (diapositives, negatives, RAW-data) the photographer is only liable for intent or gross negligence. The liability is limited to contractor's actual fault or that of his servants and associates; Provided the choice of the legal representative was made by the contractors, they will be liable for third parties (laboratories, etc.) only in the event of intent and gross negligence. Any liability is limited to the material costs and gratuitous retrieval of the work, provided this is at all possible. Further claims are not possible, in particular, the photographer shall not be liable for possible travelling and stopover expenses, third-party charges (equipment hire, models, assistants and other personnel, etc.), missed profits or consequential damages.

6.2 Paragraph 6.1 shall apply correspondingly in case of loss or damage of templates passed (films, layouts, displays, other templates, etc.) and passed products and requisites. Items of greater value have to be insured by the client.

7. Early termination

The photographer is entitled to terminate the contract with immediate effect if there are important reasons. In particular an important reason is given if insolvency proceedings have been requested or initiated in respect of the assets of the client. An important reason is also in particular if a deterioration in the financial circumstances of the client occurs which compromises the photographers claim for payment and the client refuses an advanced payment or doesn't provide a suitable security upon the photographers request.

8. Scope of services and warranty

8.1 The photographer will execute the order thoroughly and is authorised to have the order fulfilled – completely or partially – by third parties. As long as the client doesn't specifies how the order has to be done in a written form, the photographer can fulfill it as he pleases. In particular he is completely free in image composition, the choice of photo-models, the location and the photographic techniques. Deviations from earlier deliveries do not constitute a defect by themselves.

8.2 The photographer is not liable for any discrepancies or damages resulting from incorrect, incomplete or vague details provided by the client when placing the order (§ 1186a ABGB – Austrian Civil Law Code). The photographer is liable only in cases of intent and gross negligence.

8.3 The client will bear the risk for circumstances that have nothing to do with the contractor's person, such as weather conditions during shooting, timely provision of products and requisites, cancellation of models, travel disability, force majeure risk in general, etc.

8.4 All shipments are done at the clients cost and risk.

8.5 No liability shall exist for negligible damages. Color differences that occur when reordering are not to be rated as defect. Paragraf 6.1 shall apply correspondingly.

8.6 The photographer is only liable for fixed dates with prior written agreement. In the case of delays paragraph 6.1 shall apply correspondingly.

8.7 Permits of use of the photographer doesn't include the public performance of audiovisual works in any form.

9. Compensation for work / professional fee

9.1 As far as there is no written agreement between the photographer and the client (e.g. accepted offer), rates as per the currently valid price lists of the photographer shall apply.

9.2 For layout or presentation pictures the photographer will charge an appropriate fee, even if the pictures are not published or otherwise utilised or is dependent on the decision of third parties. In this case no price reductions will be granted.

9.3 All materials and other costs (requisites, products, models, travel costs, etc.) even if they are provided by the photographer are to be paid seperately.

9.4 Any alterations desired by the client during the course of the assigned work will be carried out at the client's expense.

9.5 Conceptual services (Consulting, layout, other graphic services, etc.) are not included in the professional fee and must be paid for additionally. The same applies for above-average organizational work.

9.6 Should the client refrain from the implementation of the assigned order for any reason, the contractor shall, unless otherwise agreed, be entitled to half of the agreed remuneration in addition to all actual ancillary expenses. In the event of an absolutely essential change of date (e.g. due to weather conditions, force majeure etc.), remuneration and all ancillary expenses shall be reimbursed according to the expenditure of time wasted or reserved.

9.7 The fee shall be subject to value added tax at the applicable rate

9.8 The client expressly waives compensation. This shall not apply in the event of the photographer's insolvency and for counterclaims that are in legal connection with the photographer's claim, and have been legally determined or accepted by the photographer.

10. Licensing fee

As far as there is no written agreement between the photographer and the client (e.g. accepted offer), the permits of use have to be paid for based on the calculator provided online on the website of the Austrian photographers guild (<http://www.fotografen.at/rsv/rechner/index.htm>) separately.

11. Payment

11.1 Unless expressly agreed otherwise, the invoice amount is due within 30 days. The invoices are payable without any deductions and free of charges. In case the payment is done via money transfer, the payment shall only then be accepted as having been made when the full amount on the invoice has been credited irrevocably on the photographers account so that he has access to it (receipt of payment).

11.2 For orders which include several schedule units, the photographer is justified to submit an invoice after delivery of each unit or service.

11.3 In the event of the delayed payment of the client the photographer is entitled – irrespective of any claims for damages – to invoice interest at 9,2 percentage points above base interest rate annually.

11.4 The rights of use are transferred to the client only upon complete payment of the fee and the refunding of all additional expenses. In assertion of the proprietary rights, a withdrawal from contract is only given if it's explained expressly.

12. Privacy

The client acknowledges and recognises the following privacy disclosure agreement unless a further-reaching agreement was made before (in written form) and confirms that the photographer has fulfilled his information duties:

The photographer as responsible party processes the personal data of the client as follows:

12.1 Purpose of the data processing: the photographer processes the personal data as mentioned in paragraph 2 for the purpose of fulfilment of the agreement as well as the clients specified requirements and for the use of the pictures for advertising purposes of the photographer

12.2. Categories of data processed and legal basis: The photographer processes the personal data, especially full name, address, phone-numbers, e-mail addresses, bank details and image data to fulfil the purposes mentioned in paragraph 1

12.3 Transmission of the personal data of the client: if it is part of the agreement, the personal data of the client will be transferred to recipients named by the client to fulfil the agreement, especially to third parties in close relation to the agreement and the client, media (if an agreement concerning this is made with the client) and possible third parties involved in the fulfilment of the contract

12.4 storage period: The personal data of the client will only be stored as long as it is deemed necessary to fulfil the purposes mentioned in paragraph 1 and as long as it is necessary by the applicable laws. The personal data will be stored as long as retention requirements exist or periods of limitation of potential legal claims haven't expired.

12.5 Legal rights of the client regarding her/his personal data: According to applicable law the client is amongst other things entitled to

- Check which, if any personal data the photographer has stored and receive a copy (except image-data) of all the stored data
- Demand the updating, adjustment or if desired deleting of her/his personal data which are wrong or not processed according to law
- demand from the photographer to limit the processing of the personal data (if processed under lawful conditions)

- reject his consent to the processing of her/his personal data under certain circumstances
- be informed of the identities of possible third parties involved in the fulfilling of the contract
- reserve to right to make complaints to the relevant authorities in accordance with the statutory requirements

12.6 contact data of the responsible person: If the client has any questions regarding the processing of her/his personal data, she/he can contact the photographer under the name and address known to her/him.

13. Use of pictures for advertising purposes of the photographer

The photographer is entitled – unless expressly agreed otherwise – to use pictures made by him for his own advertising purposes. The client gives his express and irrevocable consent as to the publication of the pictures for the photographers own advertising purposes and waives all possible claims in particular regarding rights to his own image according to § 78 UrhG (Austrian copyright law) as well as use claims according to § 1041 ABGB (Austrian Civil Law Code)

14. Final clause

14.1 The place of fulfilment will be the company domicile of the photographer. In the case of a transfer of registered office, legal action may be taken before the court at the location of the old and new company domicile.

14.2 Contract partners and third parties may not bring general compensation claims against the photographer for product liability according to the PHG (Austrian Product Liability Law) unless they are alleging that the photographer caused the damage and was at least seriously negligent. The Austrian material law applies. Provisions of the UN convention on contracts for the international sale of goods are excluded. Contract language is German.

14.3 The present General Terms and Conditions are applicable to all audiovisual work and moving images made by the photographer correspondingly independently of the procedures and techniques used (film, video, etc.).

14.4 Should any of the provisions of the General Terms and Conditions change or prove ineffective, this shall not affect the validity of the remaining terms and conditions. Should any provision prove ineffective, the client shall agree an effective provision with the photographer that translates that ineffective provision as closely as possible into a lawful, effective form.