

General Terms and Conditions

1. Definitions applying to these General Terms and Conditions

Aw: Auteurswet 1912 [Dutch Copyright Act of 1912]

Photographic Work: photographic works as referred to in Article 10 section 1 subsection 9 *Aw*. or other works covered by the *Aw* that can be equated with the said photographic works.

Photographer: the user as defined by Book 6, Article 231 of the Dutch Civil Code.

Other Party: the other party as defined by Book 6, article 231 of the Dutch Civil Code.

Usage: copying ad/or publication as defined by Article 1 in conjunction with Articles 12 and 13 of the *Aw*.

2. Application

These General Terms and Conditions apply to all legal relationships between a Photographer and Other Party, including offers, confirmations of orders and oral or written agreements, even after the terminations of an agreement, unless the parties have explicitly deviated from these Terms and Conditions in writing.

3. Invoice and payment

3.1 Payment shall be made within 14 days of the date of the invoice.

3.2 If the Photographer has not received the amount due within the period specified in 3.1 above, the Other Party is in breach and therefore liable for interest at the statutory rate plus 2%.

3.3 If the Other Party is in breach of any of its obligations under the agreement, including any infringement of copyright, then it is liable for all judicial and extra-judicial costs incurred in seeking compensation for the same.

4. Complimentary copy

Upon publication of a Photographic Work the Other Party should immediately and free of charge provide the Photographer with a complimentary copy of the publication.

5. Possession/ownership of Image Carriers

5.1 If Photographic Works have been delivered in digital form, the Other Party shall immediately erase and/or destroy them following the agreed usage and not store them for re-usage. Doing so too late or not at all shall not result in the Photographer losing any of his rights.

5.2 Image Carriers remain the property of the Photographer. The Other Party is only entitled to acquire the ownership if this has been expressly agreed.

6. Commission

6.1 The Photographer is entitled to carry out every part of the commission contract not explicitly described according to his own technical and creative judgment.

6.2 In the event that a commission contract has been cancelled by the Other Party at whatever time and for whatever reason, the Photographer is entitled to receive the agreed price, minus costs not yet made.

6.3 Unless expressly agreed otherwise, the Photographer is at complete liberty to choose the suppliers and third parties with whom he will work in order to carry out the commission contract, including models and stylists.

7. Internet

7.1 In the event that the usage of Photographic Works on the Internet is agreed, the Other Party shall ensure that the size of the Photographic Works shown does not exceed 800 by 600 pixels.

7.2 The Other Party shall not make any copies or the Photographic Works - digital or otherwise - other than those that are strictly required for the agreed usage on the Internet. At the completion of the agreed usage, the Other Party shall erase or destroy the used (working) copy(ies) of the Photographic Works.

7.3 The Other Party shall provide the Photographer with unlimited access free of charge to each part of its website on which the Photographic Work is reproduced.

If special arrangements need to be made to achieve this, then the Other Party will ensure these are made.

8. Copyright

Copyright of the Photographic Works is owned by the Photographer.

9. Licence

9.1 Use by the Other Party of a Photographic Work requires prior written consent in the form of a licence the nature and scope of which is described by the Photographer in the offer and/or the confirmation of the commission and/or the relevant invoice.

9.2 If the scope of the licence is not specified, it shall not extend beyond the right to one single use, in original form and for a purpose, circulation and method as intended by the parties at the time they enter into the agreement, in accordance with the interpretation of the Photographer.

9.3 In the absence of a specifically-agreed method of publication and/or described purpose and/or described circulation, the only authority deemed to have been conferred is that which is included in the licence as standard or which, given the nature and scope of the agreement, necessarily follows from this.

9.4 If the Photographer has given permission for image manipulation, electronically or otherwise, the result may only be used once explicit written consent has been obtained.

10. Sublicences

Unless otherwise agreed, the Other Party is not entitled to grant sub-licences to a third party.

11. Infringement of copyright

11.1 Each unauthorized use of a Photographic Work is deemed to be an infringement of the Photographer's copyright.

11.2 Any infringement entitles the Photographer to claim compensation of at least three times the licence fee usually charged by the Photographer for such type of use, without losing any right to claim compensation of other damages (including the right to compensation of all direct and indirect damages and all judicial and extra-judicial costs actually incurred).

12. Photographer's credit

12.1 The name of the Photographer should be clearly credited alongside the Photographic Work used, or included elsewhere in the publication with reference to the Photographic Work.

12.2 Failure to comply with this condition entitles the Photographer to claim compensation of at least 100% of the licence fee usually charged by the Photographer for such a type of use, without losing any right to claim compensation of other damages (including the right to compensation for all direct and indirect damages and all judicial and extra-judicial costs actually incurred).

13. Moral rights

13.1 The Other Party shall always respect the moral rights of the Photographer in accordance with Article 25(1)(c) and (d) *Aw* when reproducing or publishing a Photographic Work.

13.2 any infringement of these moral rights entitles the Photographer to claim compensation of at least 100% of the licence fee usually charged by the Photographer for such a type of use, without losing any right to claim compensation of other damages (including the right to compensation for all direct and indirect damages and all judicial and extra-judicial costs actually incurred).

14. Third party rights

14.1 If the Other Party publishes a Photographic Work, it is solely responsible for obtaining the consent of those persons depicted and/or other legally entitled parties. The Other Party indemnifies the Photographer from all claims relating to the same.

14.2 The Photographer is obliged to cooperate in tracing the persons referred to this article.

15. Liability of the Photographer

The Photographer is not liable for any loss suffered by the Other Party unless such loss is caused by the gross negligence or deliberate act of the Photographer or any third party acting on his behalf. any liability is limited to the amount of the invoice or if and insofar as damage is insured, up to the amount of the sum actually paid out under the insurance policy.

16. Bankruptcy/moratorium

The Photographer and the Other Party are each entitled to terminate the agreement with immediate effect if the Other Party becomes bankrupt or is granted a moratorium. In the event of the bankruptcy of the Other Party, the Photographer has the right to terminate the licence, unless the consequences of doing so would be in breach of the principles of reasonableness and fairness.

17. Choice of law and form

17.1 All matters governed by these General Terms and Conditions are subject to Dutch law.

17.2 The Vienna Sales Convention 1980 (CISG) shall not apply.

17.3 Any dispute concerning the wording and explanation of these General Terms and Conditions and a legal relationship between the Photographer and the Other Party shall be brought before the court with relevant jurisdiction in the Netherlands.