

General Terms and Conditions for Victor.Berlin

1 Application of the Terms and Conditions

- 1.1 Images are produced and image licenses conferred solely on the basis of the Terms and Conditions set forth hereinbelow. These Terms and Conditions shall also apply to all future production and license agreements unless or to the extent that regulations deviating herefrom are explicitly agreed.
- 1.2 Terms and conditions of the customer deviating from the Terms and Conditions set forth hereinbelow are not accepted. Such deviating terms and conditions shall not become part of the agreement even if not explicitly repudiated by the photographer.

2 Production Orders

- 2.1 Cost estimates by the photographer are not binding. The photographer has to indicate increased costs only if the difference to be anticipated compared with the overall costs originally estimated exceeds 15 percent.
- 2.2 In the case of photographs of people and of objects enjoying third party copyright, ownership or other third party rights, the customer is obliged to obtain the consent required for the production and use of the images from the person depicted and from the holders of the rights. The customer must indemnify the photographer against compensation claims asserted by third parties resulting from a breach of this duty. The indemnification obligation shall lapse insofar as the customer evidences that he is not at fault.
The aforementioned provision shall also apply if the photographer himself selects the persons or objects to be depicted, provided that the photographer informs the customer of his selection in such good time as to enable the customer to obtain the necessary declarations of consent or to select other suitable persons or objects for the photographic work and make them available.
- 2.3 If, during the processing of the assignment, the services of a third party have to be used or if any other contract has to be concluded with third parties, the photographer is authorized to enter into the respective obligations in the name and for the account of the customer.
- 2.4 The photographer selects the images he presents to the customer for acceptance upon conclusion of the production. Subject to the condition that full payment is made (Section 3.4), rights of use are conferred only with respect to those photographs accepted by the customer as being compliant with the agreement.
- 2.5 The customer is obliged to examine the photographs presented to him upon completion of the production work within a reasonable period of time and to make any complaints as to defects to the photographer. A complaint regarding obvious defects must be asserted in writing within two weeks of delivery of the images, a complaint relating to defects which are not obvious must be raised within a deadline of two weeks after the defect is detected. The deadline for raising complaints is met if the complaint is dispatched in good time. In the event of a violation of the duty to examine the photographs and to assert complaints, the photographs shall be deemed approved with regard to the respective defect.

3 Production Fee and Incidental Costs

- 3.1 If the time period set for the photographic work is considerably exceeded for reasons for which the photographer is not accountable, any flat rate fee agreed upon shall be increased accordingly. If an hourly or daily fee has been agreed upon, the photographer shall also be paid the hourly or daily rate agreed upon for that period of time by which the photographic work is extended.
- 3.2 In addition to the fee owed, the customer shall also reimburse the photographer for the incidental costs he incurs in connection with conducting the assignment (e.g. on film material, digital image processing, models, travel).
- 3.3 The production fee is due upon delivery of the images. If an image production is delivered in parts, that respective part of the fee shall fall due when a part is delivered. If the assignment is for a lengthy period of time, the photographer may demand advance payments in accordance with the time expended.
- 3.4 The customer does not acquire the rights of use under copyright law until the fee has been paid in full and all incidental costs have been reimbursed.

4 Rights of Use

- 4.1 The customer only acquires the rights to use the images for the scope defined in the agreement. No ownership rights are transferred. Irrespective of the scope of the rights of use conferred in individual cases, the photographer remains entitled to use the images within the framework of his own advertising.
- 4.2 The written consent of the photographer is required prior to conferring and transferring to third parties, including the editors of a publishing house, the rights of use acquired by the customer.
- 4.3 In principle, only the original version of the image may be used. The consent of the photographer is required prior to any re-working (e.g. montage, alienation using photographic techniques, colouring) and each and any change in the reproduction of the image (e.g. publication of excerpts). The only exception to this is eliminating any undesired lack of focus or colour weaknesses by electronic retouching.
- 4.4 The photographer must be named as the creator of the image in every publication thereof. The name must be indicated with the image.

5 Digital Image Processing

- 5.1 Digitalizing analogue images and transmitting digital images by remote data transmission or on data media is only admissible if and insofar as exercising the rights of use conferred requires this form of reproduction and dissemination.
- 5.2 Image data may only be digitally archived for the customer's own purposes and only for the duration of the right of use. A separate agreement between the photographer and the customer is required for storing the image data in online databases or in other digital archives accessible to third parties.
- 5.3 During the digital recording of the images, the name of the photographer must be electronically linked to the image data. Furthermore, the customer is obliged to ensure, by taking suitable technical precautions, that this linking is preserved during every transmission of the data, when the image data are transferred onto other data media, when the data are reproduced on a screen and during any publication, and that the photographer can always be identified as the creator of the image.

6 Liability and Compensation

- 6.1 The photographer is only liable for damage which he or his agents cause by deliberate acts or gross negligence. This does not apply to damage resulting from the breach of a contractual duty which is of material significance for achieving the object of the agreement (cardinal duty) or to damage resulting from fatal injury, physical injury or damage to health for which the photographer is also liable in case of slight negligence.
- 6.2 The photographer assumes no liability for the type of use of his images. In particular the photographer is not liable for the admissibility of the use under competition or trademark law.
- 6.3 Claims by the customer arising from a breach of duty by the photographer or the photographer's agents shall become time-barred one year after commencement of the statutory period of limitations. This does not include claims for damages based on a deliberate or grossly negligent breach of duty by the photographer or the photographer's agents or to claims for damages on account of fatal or physical injury or damage to health, even insofar as these are based on a slightly negligent breach of duty by the photographer or the photographer's agents; the statutory period of limitation applies to claims for damages of this kind.
- 6.6 In case of the unjustified use, change, reworking or passing on of an image, the photographer has the right to demand a contractual penalty in the amount of five times the agreed fee for use, or, in the absence of such agreement, five times the customary fee for use, but not less than € 500 per picture and individual case. Asserting a claim for any further damages shall remain unaffected hereby.
- 6.7 If, when an image is published, there is no indication of the name of the photographer (Section 5.4) or if the photographer's name is not permanently linked with a digital image (Section 6.3), the customer shall pay a contractual penalty in the amount of 100 percent of the agreed fee for use, or, in the absence of such agreement, five times the customary fee for use, but not less than € 200 per picture and individual case. The photographer also reserves the right to assert a claim for a higher amount of damages in this respect.

7 Value Added Tax, social security for self-employed artists

The fees, charges and costs to be paid for by the customer also include Value Added Tax, which the photographer may incur on third party services.

8 Governing Law and Jurisdiction

- 8.1 The law of the Federal Republic of Germany shall apply hereto.
- 8.2 Place of jurisdiction is Berlin, Federal Republic of Germany