

GENERAL TERMS AND CONDITIONS

for majajuzwiak.com

Preamble

The GTC is intended to achieve a fair balance of interests between the Photographer and the Client.

I. Definitions

1. Photographic work. The term "Photographic Work" means the result of work performed by the Photographer for the Client following the agreement reached between the Parties.
2. Photographer. The "Photographer" is the person hired to perform the Photographic Work. The term "Photographer" in these General Terms and Conditions refers to persons of all genders. In addition, it also includes photo designers.
3. Client. The "Client" is the person who orders the photographic work from the Photographer. The term "Client" herewith refers to persons of all sexes.
4. Parties. The " Parties " are the Photographer and the Client.
5. Copy of the photographic work / copy. Any reproduction of the photographic work in analogue or digital form on any (data) carrier (such as on paper, slide, CD-ROM, computer hard disk) or online (such as in computer networks or websites) is considered a "copy of the photographic work" or a "copy".

II. execution of the photographic work

1. Subject to the Client's written instructions, the photographic work's design shall be entirely at the Photographer's discretion. In particular, the Photographer shall have the sole right to decide on the technical and artistic means of design, such as lighting and composition of the image, and the selection of the means for their implementation.
2. The Photographer may use assistants of his choice in the execution of the photographic work.
3. The Photographer shall provide the photographic equipment required for the execution of the photographic work.
4. Unless otherwise agreed in writing, the Client shall ensure that the locations, objects and persons necessary for the photographic work are available in due time.
5. If the Client postpones a shooting session less than two days before its date to a later date or fails to meet his obligations, e.g. in accordance with Section II.4, the Photographer shall be entitled to compensation for the costs already incurred (incl. third-party costs). In addition, he shall be entitled to compensation. This compensation is calculated based on the tariff valid at the time of the conclusion of the contract and amounts to 50% of the fee, which would have been due according to the tariff for the execution of the cancelled shooting session.
6. The rule of point II.5. also applies if a shooting session is postponed to a later date, less than two days before the shooting session, due to unfavourable weather conditions.
7. The place of performance shall be the Photographer's place of business. If the Client asks the Photographer to send him/her the photographic work done or copies of this work (physical or electronic), the risks of transportation shall pass to the Client.
8. The fee agreed between the parties is due plus VAT (if applicable) and - unless otherwise agreed in writing - is to be paid within 10 days of the invoice date.

III Liability of the Photographer

1. The Photographer shall be liable, including liability for defects, only for intentional and grossly negligent conduct. The limitation of liability shall also apply to the conduct of his employees and auxiliary persons.
2. The Client has to give notice of defects in writing within five working days from the work's delivery date. Otherwise, the photographic work is considered approved, and no further claims can be made.

IV. Use of the photographic work by the Client

a. In general

1. The Client may use the photographic work only for the purpose agreed with the Photographer and for the agreed period. If no such period has been agreed, the duration shall be determined by the purpose of the order. Any use contrary to the agreement shall oblige the Client to pay the Photographer compensation in the amount of 150% of the fee due to the Photographer according to the SAB (Schweizerische Arbeitsgemeinschaft der BildAgenturen und -Archive) tariff in force at the time of the conclusion of the contract.
2. Only the Client is entitled to make use of the photographic work within the framework of the agreement reached with the Photographer. Without a mutual written agreement, the Client is not entitled to give third parties the right to use the photographic work.
3. The Client has to mention the name of the Photographer appropriately when using the work as agreed with the Photographer, with the prefix ©majajuzwiak and the following or a similar note decided upon with the Photographer (e.g. "All rights by ..."). In the event of omission of the endorsement, the Client shall owe, in addition to the agreed fee, compensation in the amount of 50% of the fee that would be payable for the unlawful use of the photographic work in accordance with the SAB (Schweizerische Arbeitsgemeinschaft der Bild-Agenturen und -Archive - Swiss Working Group of Picture Agencies and Archives) tariff in force at the time of conclusion of the contract.
4. The Federal Copyright and Related Rights Act provisions shall remain reserved.

b. Rights of third parties

1. If the Client has indicated to the Photographer that he wishes to photograph individuals in the course of the photographic work, the Client shall ensure that these persons give their consent to be photographed and to the subsequent use of the photographic work within the scope of the purpose of the contract.
2. If the Client has handed over objects and/or equipment to the Photographer or has indicated specific locations which are to be photographed as part of the photographic work, the Client must ensure that no third party has the right to the creation of the photographic work and its subsequent use within the scope of the purpose of the contract.
3. In the event of a breach of the obligations set out in the two preceding paragraphs, the Client undertakes to reimburse the Photographer for any payment (e.g. damages) to which the Photographer may be obliged to make for the benefit of the rightful and to compensate him for all costs incurred in connection with the settlement of the situation (e.g. costs related to settlement or court proceedings).

V. Use of the photographic work by the Photographer

Unless it has been expressly agreed in writing in an individual case that the Client shall receive the copyright to the photographic work, the Photographer shall retain the right to use the photographic work for his own purposes, in particular on his own website, in portfolios, at art exhibitions, etc.

VI. References

The Photographer shall at all times have the right to refer to the cooperation with the Client and to the photographic work created for the Client, in particular in publications (Internet, printed matter and other media outlets), at exhibitions and in discussions with potential clients.

VII. Applicable law and place of jurisdiction

Contracts between the Client and the Photographer shall be governed exclusively by Swiss law. The exclusive place of jurisdiction shall be the Photographer's place of business.

Source: Swiss Professional Photographers and Film Creators, 12.02.2016