

**1 general**

- a) the following general terms and conditions of delivery and business (hereinafter referred to as the general terms and conditions) shall apply to all of jalens - joachim affeldt's orders, offers, deliveries and services.
- b) they shall be deemed to be binding on both parties upon acceptance of jalens - joachim affeldt's delivery, service or offer by the client, however no later than upon the photographic material being accepted for publication.
- c) if the client does not accept the general terms and conditions, it shall lodge written notification to this effect within three work days. any alternative general terms and conditions on the part of the client are hereby rejected. alternative general terms and conditions on the part of the client shall be deemed to be void unless jalens - joachim affeldt agrees in writing to be bound by them.
- d) the general terms and conditions shall also apply to all of jalens - joachim affeldt's future orders, offers, deliveries and services under the ongoing business relationship notwithstanding the absence of any express reference to them.

**2 photographic material supplied**

- a) the general terms and conditions shall apply to all photographic material with which the client is provided regardless of its degree of completion or technical form. they shall expressly also apply to photographic material transmitted electronically or digitally.
- b) the client acknowledges that the photographic material provided by jalens - joachim affeldt constitutes copyright material as defined in § 2 (1) no. 5 of the german copyright act.
- c) any suggestions submitted by the client for modifications or adaptations shall be deemed to be individual services subject to separate remuneration.
- d) the photographic material provided shall remain the property of jalens - joachim affeldt notwithstanding the fact that damages may have been paid for the same.
- e) the client shall treat the photographic material carefully and may only make it available to third parties for internal business purposes, i.e. for viewing, selection and technical editing.
- f) any complaints concerning the content of the delivery or the content, quality or state of the photographic material shall be lodged within 48 hours of receipt. failing this, the photographic material shall be deemed to have been received in proper condition, in conformance with the contract and as described.

**3 utilization rights**

- a) the client shall basically only receive single utilization rights for one-time utilization.
- b) 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.
- c) upon the photographic material being delivered, only the utilization rights shall be granted for one-time use of the photographic material for the purpose specified by the client and in the publication, medium or data vehicle which has been stated by the client or can be reasonably assumed in the light of the circumstances surrounding the placing of the order. in the case of any doubt, the property (newspaper, magazine etc.) for which the photographic material has been supplied as evidenced by the delivery note or the recipient address shall be decisive.
- d) any use, exploitation, dissemination, copying or publication going beyond that provided for in this section shall be subject to separate remuneration and require prior approval in writing by jalens - joachim affeldt. this shall particularly apply to
  - secondary exploitation or publication particularly in anthologies, product-related brochures, advertising or other types of reprinting,
  - any editing work, modifications or alterations to the photographic material,
  - digitalization, storage or duplication of the photographic material on data media of any type (e.g. magnetic, optic, magneto-optic or electronic media such as cd-rom, cdi, disks, hard disks, ram, microfilms etc.) other than for the technical editing of the photographic material pursuant to 3 c). herein,
  - any form of copying or utilization of the photographic data on cd-rom, cdi, diskette or similar data media,
  - any inclusion or display of the photographic data on the internet or in on-line databases or other electronic archives (including the client's internal electronic archives),
  - the transmission of digitalized photographic material by data transmission lines or on data media for reproduction on screens or for the production of hardcopies.

- e) any modifications to the photographic material using photo composing, mounting or electronic means to produce a new copyright work shall require prior approval in writing by jalens - joachim affeldt's and shall be designated as such by [m]. in addition, the photographic material may not be copied in drawing form, recreated photographically or used in any other manner as a motive.
- f) the client 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.
- g) **all use, reproduction and transfer of the photographic material shall be subject to the condition that the copyright / credit notice / information » jalens - joachim affeldt « be included in such a way that it can be clearly allocated to the picture in question.**

**4 liability**

jalens - joachim affeldt shall not be liable for the breach of any rights held by persons or objects depicted in the photographic material unless a duly signed release is enclosed. the client shall be responsible for acquiring rights of utilization over and above the copyright to the photograph in question and for obtaining releases from collections, museums etc. the client shall be responsible for the legend as well as the context in which the photograph is used.

**5 fees**

- a) 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.
- b) the fee shall be payable for one-time use of the photographic material for the use agreed upon pursuant to 3 c) or 2 herein. if the fee is also to cover further use, this shall require written confirmation.
- c) the fee shall not include costs and expenses arising in connection with the order (e.g. cost of materials, laboratory, models, props, travel, other necessary expenses), which shall be borne by the client.
- d) the fee provided for in 5 a) herein shall be payable in full notwithstanding the fact that the photographic material ordered and supplied is not published. if the photographic material 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.
- e) only counter-receivables which are not disputed or have been upheld in a court of law may be netted or are 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.

**6 extra / additional fees - surcharges**

- a) **in the event of any unauthorized utilization, use, reproduction or disclosure of the photographic material (i.e. without jalens - joachim affeldt's consent), the client shall be liable to pay an additional fee equaling 500 % the applicable fee for each individual instance, it being understood that this shall not operate to restrict any other remedies available to jalens - joachim affeldt.**
- b) **if the copyright / credit 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 fee shall be payable.**
- c) **a surcharge of 50 % of the agreed fee shall be payable if no sample copy is provided or the statement of account does not include a sample copy or details of which picture was used in what place and in what publication.**
- d) **the payments anticipated in 6 of these general terms and conditions shall not constitute any rights of utilization.**

**7 various**

- a) the contractual relationships anticipated by these general terms and conditions shall be subject to german law also in the case of deliveries to foreign destinations.
- b) any additions or modifications to these general terms and conditions shall be in writing only.
- c) if any of the provisions contained herein are void, this shall have no effect on 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.
- d) the place of fulfillment and the legal venue shall be jalens - joachim affeldt's domicile in cases in which the client is a full merchant as defined by german commercial law.

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