

General Terms and Conditions of Zoonar GmbH for Licence Holders

I. General Provisions

1. We wish to inform you that these General Terms and Conditions contain important provisions governing the entire business relationship between Zoonar GmbH (hereafter also referred to as “Zoonar”) and you. Our General Terms and Conditions govern not only the use of this website, but also the services offered on this website and particularly the uploading and downloading of visual material and the ordering process. It is therefore imperative that, you, the customer, read carefully through our General Terms and Conditions.
2. Please note furthermore that we will not accept any different, contrary or additional General Terms and Conditions not originating from Zoonar, even if we are deemed to have been informed of them. Therefore, they will not constitute a part of the Contract, unless we have expressly agreed to their validity in writing.
3. For you and Zoonar, the version of our General Terms of Business effective at the time of concluding the Contract shall be decisive.

II. Definitions

For the purpose of these General Terms and Conditions, visual materials mean all photography, illustrations, drawings, diagrams or other pictorial (computer-generated) graphics, and/or other materials assigned by you as Licence Holder at any stage of creation and irrespective of their technical form.

III. Conclusion of the Contract

1. A contractual relationship between you, the License Holder, and Zoonar may only be concluded on the basis of these General Terms and Conditions, otherwise the assigned visual material may not be used.
2. Presentation of visual material on the online portal and the prices for such material are non-binding. A binding quotation for concluding a contract shall be effective only when you, the Licence Holder, indicate the relevant visual materials and perform the ordering process prescribed by the ordering software and finally confirm issuance of the order by clicking the ordering button. The contract itself, however, shall be effective only when the ordered visual materials are made available by Zoonar for downloading for your account and thereby upon acceptance of the offer.

IV. Ownership of Image Materials

Image material that is delivered or electronically transferred to you, the Licence Holder, by Zoonar, shall remain the property of Zoonar. It shall be made available solely for temporary exercise of right of use within the meaning of copyright according to the type of use specified in the purchase receipt within the specified licence time frame.

V. Copyright, Commercialisation and Use Rights

Depending on the type of licence, as Licence Holder you receive non-exclusive right of use subject to restrictions of time, location, and/or content as determined below of the purchased visual material:

1. For this purpose, Zoonar offers four types of licence, i.e.

- Standard Licence (Rights Management Licence)
- Merchandising Licence
- Royalty-Free Licence (RF)
- Individual Licence

I.1 Standard Licence (RM)

The Standard Licence grants the licensee a single, non-exclusive use of image material, which is not limited in quantity and time.

The Standard Licence does not cover use of the acquired visual material for commercial products in exchange for payment as well as for cover pages, postcards or calendars. For this purpose a Merchandising Licence is necessary, the requirements of which are defined in clause 3. Otherwise, reference is made to the general restrictions under clause 7.

2. Merchandising Licence

The Merchandising Licence similarly grants single, non-exclusive use of the visual material. Granting of a Merchandising Licence is subject to an additional charge of 100% (in words: one hundred percent) on the fee payable for the corresponding Standard Licence (see section IV). 2) Fees due This, however, grants the Licence Holder permission in addition to the Standard Licence to use the licensed visual material for commercial products in exchange for payment and for cover pages, postcards or calendars. In

all other respects, the limitations of the Standard Licence (clause V.2) apply.

3. Royalty-Free Licence

The Royalty Free Licence also grants the Licence Holder single, non-exclusive use of visual material. The Royalty Free Licence nevertheless imposes no restrictions on print runs, print size, regional use and period of use. The Royalty-Free Licence is similar to the Standard Licence, but does not include use of acquired visual materials for commercial products in exchange for payment as well as for cover pages, postcards or calendars. For this purpose a Merchandising Licence is necessary, the requirements of which are defined in clause 2. A Royalty-Free Licence may only be used for such images expressly indicated as available for royalty-free licensing from Zoonar. For this, Zoonar has obtained individual granting of rights on the part of the photographer for the relevant visual material. In all other respects, reference is made to the general restrictions under clause V.7 (see below).

4. Individual Licence

The Individual Licence again offers a combination of extended granting of the rights of the Merchandising Licence and Royalty-Free Licence and is only possible with an individual agreement.

Such Individual Licence will be granted by Zoonar to the Licence Holder at an individually negotiated price. The precise conditions and the scope of granting rights shall be effected by a written, individual agreement.

To obtain an Individual Licence, the Licence Holder may negotiate directly with Zoonar to place a non-binding enquiry about price and use. If the photographer accepts the offer of the Licence Holder, Zoonar shall prepare an individual Licence offer for the Licence Holder. The Licence Holder shall receive a confirmation thereof by e-mail. In the e-mail, the Licence Holder will receive a link connecting directly to the licensing process. In such case, agreed contractual conditions between the Licence Holder and Zoonar shall come into effect, including the granting of rights of use and the fee to be paid, that similarly serve as the basis for invoices to be issued by Zoonar.

An Individual Licence may be arranged by contacting Zoonar (tel: +49 (0)40 390 9291 or support@zoonar.com) or using the negotiating tool.

5. Restrictions on Use

Visual material from Zoonar under all types of licence shall NEVER be used for logos, templates,

trademark protected designs, erotic and other content not approved for minors or for exclusive use, unless the Licence Holder has obtained an Individual Licence from Zoonar for such purpose in writing, as stipulated under clause V.4 of these General Terms and Conditions, in the form of an invoice or a separate Licence Agreement in which are set forth the expanded rights of use. Use of images is strictly and without exception prohibited

- a) for racist, violence-glorifying or discriminatory purposes,
- b) for defamatory, illegal, slanderous and/or immoral use;
- c) where infringing the laws, provisions or statutory regulations in a valid jurisdiction;
- d) where infringing the intellectual property or rights of any person or legal entity;
- e) where portraying the originator of the visual material or photographed person in association with pornography (including gentlemen's clubs, nude bars and/or escort services, erotic partner matchmaking or similar services),
- f) for advertising of cigarettes or tobacco and/or
- g) where expressing political support.

Manipulation or altering of licensed visual material shall only be permitted insofar as no privacy rights would be affected and/or no photographic model would suffer defamation. In event of any breach, the Licence Holder shall bear sole liability for all resulting loss and damages or consequential damages and shall hold Zoonar harmless from all claims by third parties.

6. Editorial Images

Before and during the ordering process, the Licence Holder shall be advised that no property or model releases have been obtained for the visual material. These visual materials may NOT be used for promotional or commercial purposes. They are so-called editorial images usable only for journalistic purposes. To be able to licence such visual material, the Licence Holder is required to confirm with a mouse click during the ordering process that the visual material will not be used for business and/or commercial purposes. In event of any breach, the Licence Holder shall bear sole liability for all resulting loss and damages or consequential damages and shall hold Zoonar harmless from all claims by third parties.

7. Simple right of use will be transferred only to the visual material. The visual material is subject to further copyright protection arising from the content of images. The Licence Holder bears sole responsibility for obtaining any such further copyrights and for the effect of permission for publication in the case of

collections, museums, etc.

8. Image material will be made available by Zoonar only for use in accordance with contract and must be deleted from all data storage media of the Licence Holder upon expiration of the licence period. The granting of rights shall apply only within the agreed scope. Any further use shall require payment of a new fee. If permission is not obtained and the aggrieved person claims compensation for damages, the Licence Holder must indemnify Zoonar against all claims for compensation.
9. Tendentious use and falsification in images and words and use that may be disparaging to the persons portrayed therein is not permitted and shall render the Licence Holder and user liable to damages. The Licence Holder is obligated to inform Zoonar without prior request of whether and in what scope he has duplicated, prepared other presentations for his own archives, or saved digital data of the visual materials without permission from Zoonar. All copies, etc., made with or without permission from Zoonar shall be deleted from the data storage of the computer systems of the Licence Holder after use.
10. The Licence Holder is solely responsible for captioning. Zoonar shall not be liable for any infringement of general privacy rights or copyright arising from non-agreed, immoral or distorted use in images and text. Instead, the Licence Holder shall bear sole liability for damages towards any third party.
11. The publication of photos of well-known personalities is only permitted with the statement of their names and for editorial purposes.
12. Passing on/resale of visual material or assignment of reprint rights to third parties shall require a separate contract with Zoonar. Exclusive rights, special rights or blocking periods may be granted only under a separate agreement. Agents who purchase visual material on behalf of their customers are obligated to delete the relevant files from their systems after transfer to their customers.

VI. Licence Fees

1. Every use of visual material from Zoonar is subject to payment of a fee. This also applies, for example, to use of visual material as a template for drawings, caricatures and re-enacted photographs, and use of image details that are made part of a new image work by means of montage, photo composing, electronic composition or similar techniques.
2. The fees described under ... with the exception of Royalty Free Licences apply only for one-off use for the specified purpose within the given scope and the agreed linguistic area. Every additional use shall require a new licence and as such is subject to payment of a fee.

3. Fees shall be due and payable immediately after you, as Licence Holder, have indicated your intention for use, even when at the present time the publication or other use has not taken place or will not take place at all.
4. For any unauthorised use or passing on of our visual material, while reserving right to further claim for compensation a minimum fee shall be payable at five times the customary fee for use. The customary fees of the German Mittelstandsgemeinschaft Fotomarketing (MFM) Image Fees – Overview of Customary Compensation for Image Use rights” shall apply.
5. Zoonar reserves the right to change prices at any time.

VII. Right of Cancellation

Note:

Right of cancellation shall not apply where goods and/or visual material are delivered electronically in file form. Furthermore, right of cancellation shall not apply to delivery of goods and/or visual material to customer specifications, and moreover to audio or video records or software where the customer has removed the seal from the delivered data storage media.

VIII. Liability and Compensation

1. Zoonar accepts no liability for damages arising from use of the visual material. Instead, the responsible party for the relevant printing work, online publication or other medium shall bear sole responsibility. This applies similarly to any infringement of the privacy rights of photographed persons.
2. The Licence Holder or user shall bear the risks of downloading and performing other tasks with the online service provided by Zoonar. Zoonar assumes no liability for compensation in the event of any damage to the software or hardware of the Licence Holder or user.
3. Quality (size, resolution, sharpness, etc.) of transferred visual material may vary. Zoonar assumes no liability for image errors. Return of an image shall be possibly only within the period stipulated in these General Terms and Conditions.

4. Zoonar makes no guarantee of the continual accessibility of the database on the internet. Zoonar may at its own discretion shut down the server temporarily or permanently or to modify, delete or supplement the content stored therein. Server outages/malfunctions may result in data loss or damage to visual materials. Zoonar accepts no responsibility for image materials that cannot be delivered due to loss of data. The costs of any image rights that have been paid for will be refunded. Any consequential liability (compensation for damages, etc.) is excluded.

IX. Copyright Notice, Sample Copies

1. With reference to Section 13 of the German Copyright Law (UrhG), Zoonar shall demand an agent and copyright notice from you in the format provided by (Zoonar/name of photographer). This must be provided to remove any doubt over attribution of the respective images. Collective image credit shall be sufficient for this purpose only to the extent that there is no doubt as to the attribution of each image. The Licence Holder shall indemnify Zoonar from any third party claims arising from neglect of the attribution requirement. This shall also apply to advertisements, placements in television broadcasts and films or other media, as long as no written special agreement has been reached.
2. In the case of images published without an agency and/or copyright notice or with one that is falsified, a surcharge of 100% of the applicable fee for use shall be payable.

X. Data Protection

Zoonar hereby undertakes to observe and comply with the relevant statutory provisions for data protection. This applies in particular to the provisions of the German Telemedia Law (TMG) and the German Data Protection Law (BDSG). Zoonar will also obtain corresponding undertakings from its employees.

Concerning this, we also refer to our privacy policy at ...

XI. Operation of the Electronic Platform on the Internet

1. We reserve the right to delete images at any time without reason. Therefore, we do not guarantee you any continued availability of image materials on the Internet. Only after the ordering process are we able on our part to guarantee that the visual material is available. Notwithstanding, we are under no obligation to provide long-term access to image materials. Except for refund the costs for any image rights you have paid, you shall have no recourse to claim for damages against Zoonar insofar as is permitted by law.

2. The same limitation shall apply to claim for damages in the event of delays in release of visual material, even where Zoonar is responsible for such delays.
3. Furthermore, we make no guarantee of the continual accessibility of the database on the internet. At our own discretion, we may shut down the server temporarily or permanently or to modify, delete or supplement the content stored therein. Server outages/malfunctions may result in data loss or damage to visual materials. We assume no responsibility for visual material that cannot be delivered due to loss of data. You will be refunded the costs for any image rights that you have paid. Any consequential liability (compensation for damages, etc.) is excluded.

XII. Other Provisions

1. The sole jurisdiction and place of performance for the customer and Zoonar, to the extent permitted by law, is Hamburg.
2. All contractual relationships, including for delivery to or granting of rights of use in other countries, shall be governed by the laws of the Federal Republic of Germany subject to exclusion of the UN Convention on Contracts for International Sale of Goods.
3. Should any provision of these General Terms and Conditions be invalid, the validity of the remaining provisions shall not be affected thereby.