

General Terms and Conditions of the Zoonar GmbH Photo Agency for Photographers

I. Purpose of the Contract

1. The Zoonar GmbH photo agency (hereafter referred to as “Zoonar”) presents visual material from many different areas as provided by the photographer (hereafter Licensor) and markets the visual material thus placed in its own name and for its own account. For this purpose, the photo agency has established an internet portal under the website www.zoonar.de and www.zoonar.com, in addition to corresponding language-specific versions, where Licence Holders may use the visual material in return for payment of the appropriate licence fees.

2. The purpose of this contract is

- for the Licensor to assign the necessary rights of use for Zoonar on its part to be entitled to pass on rights of use to third parties,
- to stipulate the billing of fees between Zoonar and the photographer.

In so doing, Zoonar - to the extent permitted by law - shall be permitted to exercise the same rights as the originator himself.

II. Definitions

Visual material: For the purpose of these General Terms and Conditions, visual material means all photography, illustrations, drawings, diagrams or other pictorial (computer-generated) graphics, and/or other materials at any stage of creation and irrespective of technical form.

Net proceeds: For the purpose of these General Terms and Conditions, net proceeds means

- remuneration paid by the Licence Holder, or
- remuneration paid to Zoonar by a partner agency for commercial use of visual material by the partner agency,

after deduction for

- value added tax,
- artist social security payments,
- fees payable to the partner agencies,
- brokerage commissions payable to employees or third parties, and/or
- charges payable to service partners (e.g. costs for delivery of postcards, such as postage and printing costs, transaction fees for network providers for delivery of mobile phone images, etc.) and costs for transfer of fees (credit card charges, PayPal, Moneybookers, cheque, etc.).

III. Assignment of Rights

1. The photographer assigns to Zoonar all (copyrighted) rights of use of the visual material for use of the placed visual material - to the extent permitted by law - in unlimited quantity for every type of commercial and/or non-commercial use, including the exercise of ancillary and resale rights.

2. Accordingly, Zoonar shall acquire in particular the rights outlined below, in which it is expressly stipulated that the following list is not exhaustive:

2.1 The right to transfer, copy and/or otherwise reproduce and/or distribute or supply the visual material to online networks (e.g. the internet) and provide access to online users in any image, audiovisual and/or other multimedia format that is known at the time of concluding the contract.

2.2 The rights to make the visual material available for retrieval, i.e. the right to maintain visual material ready for use in electronic databases and/or make it accessible for large numbers of users by means of digital and/or other data transfer technology, including against payment, in a manner that enables the material to be presented/portrayed upon individual retrieval by a television, mobile telephone, computer, mobile internet, PDA or other device, including for interactive use (e.g. television on demand, video on demand, IPTV, push/pull services, online, etc.) and/or for the public if required.

2.3 The right to use, reproduce and/or distribute and/or cause to be distributed the visual material for design of audio, audiovisual or other multimedia data storage media (e.g. CD-ROM, DVD, HD-DVD, blue ray disk, video, photo CD, USB stick, etc.).

2.4 The right to use, reproduce and/or distribute the visual material, in particular for sale, advertising, promotion and marketing purposes in the printed media (e.g. journals, newspapers, magazines, books), for design of sales and/or other posters and billboards, postcards, advertisements, advertising brochures, prospectuses, programme booklets, catalogues, press folders, biographies, advertising spots, image brochures and/or in in-house advertising etc., in any print run or rerun.

2.5 The right to make commercial use of the visual material in other than the delivered form. Subject to compliance with the personal rights of the originator, Zoonar and the Licence Holder may edit and/or remodel the visual material, cause the visual material to be edited and/or remodelled, in particular by imitating in whole or in part by some means involving phototechnical manipulation, montages, computer scanning and/or subsequent computer technical manipulation, etc. (e.g. colouring, printing colours in black-and-white, retouching, etc.), to make commercial use in excerpts or in connection with other works

(e.g. artist photos) and/or freely distribute in the edited form.

2.6 The right to use the visual material in the merchandising field. A merchandising right is a right for production, reproduction and distribution of goods of every kind, in particular those in which visual material (including that in processed or modified form) is also portrayed on the goods. The merchandising right includes commercial use of visual material for marketing and promotion of all possible products, such as for example T-shirts, sweatshirts, jackets, caps and/or other textile products, party articles, mousepads, stickers, calendars, posters, toys and stationery of all kinds, film and publication works and/or other promotional articles.

2.7. The photographer assigns the foregoing outlined rights on a non-exclusive basis, but nevertheless without limitation by time and location. Zoonar shall be entitled under the provisions of this contract, in particular under the assignment of rights, to sublicense the respective photographs in unlimited or restricted quantity to third parties.

2.8. Zoonar shall be entitled to transfer to third parties the assigned rights, either in their entirety or on an individual basis. Insofar as not agreed otherwise, Zoonar shall receive the right of distribution of recorded images and is therefore entitled to pass on images to distribution partners, meta databases such as Picturemaxx, Fotofinder or other partner agencies.

2.9. Zoonar shall also make the visual material available free of charge for advertising for its own purposes and for its own online databases (www.zoonar.com/www.zoonar.de etc.).

2.10. Zoonar shall be entitled to transfer the visual material, in whole or in part, for marketing purposes.

2.11. Zoonar shall be entitled to duplicate, digitalise and/or record in any form the placed visual material.

2.12. Recorded images may be deleted from the database only after expiration of a blocking period. The blocking period for usual recording is six months. Blocking periods may be extended if in the partner management section, the photographer releases images for content partners for which deletion of data shall not be possible for an agreed period, or is not desired by reason of increased costs incurred by the agent. When accepting a partner in the partner management, the photographer shall sign the relevant Supplementary General Terms and Conditions in which is stipulated the exact retention period.

2.13. Zoonar shall be entitled to negotiate Individual Licences with the Licence Holder on behalf of the photographer, if necessary without his consent.

IV. Warranties/Representations of the Photographer

1. The photographer warrants that he shall deliver the visual material unencumbered by third party rights, and in particular that he is able to freely dispose of the images and their rights of use.

2. The photographer warrants within the context of his sphere of influence of design, that no rights of any third party, in particular their privacy rights, are or could be infringed either

by the production or by commercial use of the visual material in unmodified form by the photo agency.

3. The photographer warrants and has a duty to prove that photographed persons and/or owners of rights thereto and/or owners of rights to photographed works [e.g. decorations, sets, costumes, (public) buildings, etc.] have provided the required permissions for fine or applied arts (paintings) and/or use of such for artwork - also for future use of the visual material by the photo agency and/or third parties. Should any photographs of persons or works be placed with Zoonar where such permission is not given or is given only within a limited scope, they will be clearly indicated by the photographer in equivalent to written form by selecting the option of “no model release” or “no property release.” The photographer shall bear full liability for claims for damages brought against Zoonar or partner agencies as a result of missing or inadequate indication in this regard. The photographer furthermore undertakes to disclose all release contracts in their entire form, and if necessary in original, immediately upon first request by Zoonar by mail (scan or PDF) or by postal delivery.

4. The photographer warrants that the visual material placed by him do not infringe any copyright, competition and/or trademark regulations and in particular the regulations concerning registered trademarks.

5. The photographer shall indemnify Zoonar against all third party claims (including co-originators, e.g. photo models).

6. The costs and associated risks arising from infringing use as defined in section 3 of the visual material of Zoonar and/or authorised partner agencies shall be borne solely by the photographer. For clarification: if the rights of any third party are infringed by the use of the visual material and such party files claim for compensation and/or presses other claim against Zoonar and/or its partner agencies, the photographer shall indemnify Zoonar and/or its partner agency(ies) upon the first request and shall bear alone all costs incurred thereby.

7. The photographer shall only release such images for the royalty-free licence where use for such purpose is not prevented by third party rights. This means in particular that these images are not held by other agencies with exclusive licensable Right of Management Licences. In the event of any breach, the photographer shall bear liability for any claims for damages. However, no problem arises when the images are similarly licensed royalty-free by other agencies.

8. The photographer shall only activate the model release or property release “has been obtained” option for such builders when he has possession of such a contract for all persons portrayed. The photographer is required to produce the contracts to Zoonar without any need to provide a reason. The photographer shall bear sole liability for any damages arising from false information provided to the agent.

9 The photographer guarantees for such images only to select the option of “model release not required” or “property release not required” when he is certain that the photography took place under conditions (e.g. no private property) or portrays content (e.g. no trademark protected object) that beyond doubt permit such option to be selected. In case of the slightest doubt, the photographer undertakes always to select the “property

release not obtained” or “model release not obtained” and shall indemnify Zoonar against all claims by third parties.

10. The photographer accepts that Zoonar may refuse images that do not conform to the requirements of the photo agency with regard to quality, size and/or tag words. For tag words, the rule applies that at least 10 correctly spelled keywords must be provided. Concerning size, the rule applies that images must have a file size of least 6 megapixels. Exact data can be found on the Zoonar home page. In addition, the existence of similar motifs may constitute a reason for refusal. Further grounds for refusal may arise from non-fulfilment of technical prerequisites (noise, artefacts, fuzziness, excessive/insufficient lighting, etc.). Zoonar is under no obligation to provide reasons for refusal.

11. The photographer bears his own responsibility in every meaning of the word for his tax and insurance requirements and is required to pay any taxes incurred from income from the contract on his own behalf.

12. Where the photographer has no or only limited tax liability in the Federal Republic of Germany, he must inform Zoonar accordingly. In such cases, Zoonar will deduct contractual payments by the legally applicable withholding tax and pay this tax to the competent tax office, unless the photographer has obtained an exemption certificate from the competent authority within the framework of a double taxation treaty and produced such certificate to Zoonar.

13. Where the photographer must pay value added tax and informs Zoonar accordingly, in addition he shall receive value added tax. Any subsequent retroactive claim for value added tax is excluded.

V. Pricing Policy

Zoonar is entitled to apply a quantity discount for subscription models or for licensing images in bulk quantities and to change individual image prices at any time under its pricing policy or in reaction to new market conditions.

VI. Compensation

As consideration for all performance and assignment of rights obligatory under this contract, the photographer shall receive compensation as follows:

1. The net proceeds from commercial use of the visual material, with the exception of the paid uses and fixed share of proceeds under 1.9 and 1.10 shall be apportioned between Zoonar and the photographer as follows:

1.1. The fee for photographers is 50% of the net proceeds received by Zoonar.

1.2. Zoonar expressly reserves the right to adjust certain percentage apportioning of fees in the sliding scale to the relevant economic conditions for justifiable reasons. In such case, the photographer has the right of termination pursuant to section X.

1.3. Within the meaning of this contract, turnover is the final selling price that is earned and paid (net) by the customer.

1.4. Any costs incurred by Zoonar to press for payment and/or collection of proceeds from the rights of use extended to third parties by the photographer for his visual material, including any legal and/or court costs and/or other costs of proceeds incurred thereby, may be charged by Zoonar against the photographer by pro rata deduction from the photographer's entitlement to net proceeds.

1.5. Value tax shall be added to all payments to photographers insofar as it can be proven that value added tax is payable on the remuneration paid to the photographer.

1.6. Payments may be made via PayPal or Moneybookers, subject to a minimum of EUR 35. Photographers residing in the EU may also request payment by bank transfer. To receive payment, the photographer must log on the website and click on the "withdraw funds" link in his user profile.

1.7. An exception from the fee sharing for photographers prescribed in clause V.1 until V.1.1.2.6 is provided for use of visual material for which Zoonar incurs additional costs through third parties. In particular, this relates to the following use of images

- mobile phone images
- printing of postcards
- printing of posters and billboards
- T-shirts and textiles
- promotional materials such as ballpoint pens, mousepads, stickers, bags, etc.

1.8. Sale of Images via Distribution Partners and Partner Agencies

Zoonar supplies visual material to a wide range of content and distribution partners. If the photographer intends to supply his photographs to one or more of these content or distribution partners via Zoonar, he must first accept the General Terms and Conditions for content/distribution, which apply separately for this purpose. In this case, the special fee arrangements, terms of delivery and notice period for deletion prescribed for this purpose shall apply as set forth in the respective General Terms and Conditions for content/distribution.

Concerning this, we also refer to our fee policy.

1.9 Provision of Layout Data

Zoonar shall be entitled to provide image data free of charge to potential clients for layout purposes. Such layout data will be used only for presentation and preparation purposes of use to subsequent regular use of images and may not be disclosed to the public by the Licence Holder of the layout licence.

VII. Liability of Zoonar and/or Partner Agencies

1. Zoonar and/or any of its partner agencies shall be liable only in the event of damage caused wilfully or through gross negligence by Zoonar itself, its legal representative and/or its servants.

2. Zoonar shall not be liable for the loss and/or damage to the visual material insofar as this comes within the scope of risk and/or responsibility of the relevant Licence Holder or the Partner Agency to whom Zoonar has transferred the visual material for use and/or further commercial use.

3. Zoonar shall handle visual material accepted for marketing with the greatest care, notwithstanding without accepting liability for loss or damage. Should any third-party negligence be substantiated, Zoonar will to the extent possible calculate the charge for loss incurred and invoice the photographer under to section V of this contract. This applies equally for proceeds from insurance payments. Outdated motifs, black-and-white photo files that have become technically unusable and analogous visual material may be destroyed by Zoonar if the photographer has not specified otherwise with Zoonar in this contract.

4. Zoonar makes no guarantee of the continual accessibility of the database on the internet. Any claim for compensation arising from failure of the database is excluded.

5. Zoonar reserves the right to delete images at any time without providing reasons. No guarantee is made of continued availability. Likewise, Zoonar is under no obligation to provide long-term access to images.

6. 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.

7. Zoonar may make adjustments to prices or change its pricing structure. Zoonar will provide advance notice to photographers of such changes within an appropriate period. In such case, the photographer has the right of termination pursuant to section X.

8. Zoonar makes no guarantee of the continual accessibility of the database on the internet.

VIII. Recognition of Originator

The photographer authorises Zoonar to assert his claims to recognition as originator pursuant to Section 13 of the German Copyright Law and if necessary to pursue claims for compensation insofar as Zoonar deems appropriate. The proceeds acquired thereby shall be paid in accordance with section V.

IX. Data Protection

Zoonar hereby undertakes toward the photographer 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.

X. Termination

1. The contract is for an indefinite term. The contract may be terminated by either party at any time. The photographer may terminate the contract by logging on the website and clicking on the “terminate photographer contract” link within his user profile. Termination by Zoonar may be effected at its discretion by an email, fax message or letter delivered by post. It is the responsibility of the photographer to maintain an updated profile at all times in his user profile at zoonar.de or zoonar.com.
2. After the expiration/termination of the contract, material delivered by the photographer to Zoonar may be used within a period of six months for the purpose of assignment of rights as defined under section III to enable fulfilment of any contracts with third parties that are outstanding at the expiration/termination of the contract.
3. No later than six months after the expiration/termination of the contract, the photo agency must destroy all its own data originating from the materials delivered by the photographer. Furthermore, the photo agency must render any and all copies in its possession unusable in a manner that is irreversible. All reproductions of materials must be deleted from all data storage media.
4. If images from the photographer are supplied with his permission to partner agencies that have a longer notice period for termination, such data shall only be deleted after expiration of the effective notice of termination at such agencies or of the relevant special agreements. The six-month notice of termination stipulated in clause X.2 shall apply only internally between Zoonar and the photographer, given that Zoonar has no control over the notice of termination applied by partner agencies.
5. Any credit balance for which the photographer has not requested withdrawal of funds or that is below €35 will be transferred to the photographer’s PayPal account after the six-month period, and in any event no later than the agreed blocking period under clause 2.12, to the extent this applies. For this purpose, the photographer must inform Zoonar of his current PayPal details by email or in writing.

XI. Death of the Photographer

In the event of the death of the photographer, the contract shall remain effective until the end of the statutory period of protection if not terminated pursuant to section X by Zoonar or the heirs to the photographer. The agreed remuneration under section VI. shall be passed on to heirs as soon as Zoonar is notified in writing and provided with evidence of the succession.

XII. Final Provisions

1. No oral collateral agreements were made between the contracting parties. All notifications that pertain to the contractual relationship must always be made in writing;

declarations of consent may also be provided by email.

2. All claims arising from this contract shall be statute-barred at the end of the second calendar year after assertion of the claim.

3. In the event of change of postal address and/or email address, the photographer must promptly update his user profile accordingly.

4. Should any provision of these General Terms and Conditions be invalid, the validity of the remaining provisions shall not be affected thereby.

5. The place of performance is Hamburg.

6. For any disputes arising from this contract, the agreed jurisdiction is the District court or High Court of Hamburg unless mandatory statutory provisions stipulate otherwise.