



## GENERAL TERMS AND CONDITIONS OF DELIVERY AND BUSINESS Claudia Weaver Photography

### 1. Application

1.1. The following Standard Terms and Conditions of Delivery and Business (hereinafter referred to as the Standard Terms and Conditions) shall apply to all of orders, offers, deliveries and services executed by Claudia Weaver (from now on named 'the photographer').

1.2. They shall be deemed to be binding on both parties upon acceptance of the photographer's delivery, service or offer by the customer, however no later than upon the photographic material being accepted for publication.

1.3. If the customer does not accept these Standard Terms and Conditions, it shall lodge written notification to this effect within three work days. Any alternative Standard Terms and Conditions on the part of the customer are hereby rejected. Alternative Standard Terms and Conditions on the part of the customer shall be deemed to be void unless the photographer agrees in writing to be bound by them.

1.4. In the absence of any express reference to the contrary, these Standard Terms and Conditions shall also apply to all of the photographer's future orders, offers, deliveries and services under the ongoing business relationship notwithstanding the absence of any express reference to them.

1.5. The photographer may engage third parties (who have at least equivalent technical skills) for the performance of its services – for instance if a team member suddenly falls ill.

### 2. Commission products, Conclusion of the Contract and Contents of the Contract

2.1. Any cost estimates provided by the photographer shall be given without engagement. If any increase in costs occurs during production, the photographer shall only report such increase when it becomes evident that the original estimate of the total costs is likely to be exceeded by more than 15 %. If the planned production period is exceeded for reasons beyond the photographer's control, additional remuneration shall be paid on the basis of the agreed time-based fee or in the form of a reasonable increase in the flat-rate fee agreed upon.

However, a contract shall be deemed to be concluded and thus a contractually binding agreement on the individual services shall be deemed to exist, if the photographer explicitly accepts the customer's offers (e.g. by an order confirmation) or by conclusive actions (e.g. agreement on a date for the Shooting).

2.2. The photographer may commission third party services which are required for the execution of the production on behalf and for the account of the customer and with the customer's authorization.

2.3. Subject to any other provisions, the photographer shall be responsible for selecting the photographs to be presented to the customer for approval at the conclusion of production.

2.4. The photographs shall be deemed to have been duly accepted in accordance with the terms of the contract and be free of any faults unless notification to the contrary is served upon the photographer within two weeks of submission of the photographs.

2.5. The photographer will notify the customer about any services to be performed by the latter, such as the obtainment of rights for film music or other preexisting works. The customer has, in addition, no claim for the surrender of memory cards, templates or other initial products such as, e.g. raw film data, RAW format images.



### 3. Provision of photographic material (analog and digital)

3.1. These Standard Terms and Conditions shall apply to all photographic material submitted

to the customer regardless of its degree of completion or technical form. They shall expressly also apply to photographic material transmitted electronically or digitally.

3.2. The customer acknowledges that the photographic material provided by the photographer

constitutes copyright material as defined in Austrian Copyright Act.

3.3. Any suggestions submitted by the customer concerning modifications or adjustments shall be deemed to constitute individual services which shall be subject to separate remuneration.

3.4. The photographic material provided shall remain the photographer's property notwithstanding the fact that consideration may have been received for it.

3.5. The customer shall treat the photographic material carefully and may only make it available to third parties for internal business purposes, i.e. for viewing, selection purposes and technical editing.

3.6. 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.

### 4. Copyrights and Rights of Use

4.1. If the customer makes contents available or transmit them in connection with the services rendered by the photographer, regarding which the customer is entitled to copyrights or other rights of use, the photographer shall, for the term of the service performance, be entitled to perform those reproduction activities regarding these contents which the photographer must perform to achieve the purpose of the contract.

4.2. The photographs prepared by the photographer are subject to copyright protection. The authors are (and remain) the executing photographers personally. Therefore, the customer is not allowed to copy, edit and/or distribute the data and contents in a manner which goes beyond the right of use as granted by the photographer for the individual case.

4.3. If these rights are granted, and unless otherwise agreed, the photographer grants a simple, timely unlimited and transferable, free of charge, right to use the work. The customer will then be allowed to reproduce, distribute and/or make publicly accessible the work, insofar as the relevant distribution or disclosure of the reproductions to third parties (e.g. family members) is made free of charge. Any disclosure for a free-lance and/or commercial use by third parties shall remain excluded, unless the photographer has given their separate consent.

4.4. In case of a utilisation by the customer, the exercising photographer shall be named ("Photographer: Claudia Weaver", Claudia Weaver or a different name if third parties were involved). The customer must, in addition, not change or distort any notes regarding the authorship which were incorporated by the photographer themselves, without the consent of the photographer. If the customer uses, changes or joins the works in a permitted and reasonable manner, the customer will attach the copyright notices of the photographer to the newly created work.

4.5. The customer will only acquire the right of use and/or the ownership to the goods (e.g. printed images, DVD) subject to the condition precedent that the owed remuneration is paid in full.

4.6. Unless otherwise agreed, the customer will not receive a right to use the raw materials such as e.g. RAW files.



4.7. 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.

4.8. The grant of the rights of utilization shall be subject to the condition precedent of full settlement of all of the photographer's claims for payment under the applicable contractual relationship.

## 5. Liability

5.1. The photographer shall not be held 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 customer shall be responsible for acquiring the rights of utilization over and above the copyright to the photograph in question and for obtaining releases from collections, museums etc., e.g. for images showing works of applied or plastic arts. The customer shall be responsible for the legend as well as the context in which the photograph is used.

5.2. The customer shall assume responsibility for the due and proper utilization of the photographic material as of the date of delivery.

5.3. The photographer accepts no liability and claims for damages due to failure and abort of an shooting (bad weather, bomb disruption, etc.), also not due to technical failures, in particular on power units and all rented equipment.

5.4. The photographer doesn't take personal liability of the contributors (models, make-up artist, assistant etc.) on the photo shootings. The customer is responsible for any personal liability.

## 6. Fees

6.1. 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.

6.2. The fee shall be deemed to constitute good consideration for the one-time utilization of the photographic material for the agreed purpose in accordance with Section IV.3 herein.

6.3. The fee shall not include any 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 customer.

6.4. The fee shall be payable upon delivery of the photographs. If the results of the production are supplied in parts, the corresponding part payment shall fall due upon receipt of the corresponding delivery. In the case of commission productions, the photographer may request advance payments matching the percentage of completion of the production.

6.5. The fee provided for in Section VI.1 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 Euro 75.00 shall be payable in the absence of any other agreement to the contrary.

6.6. Only counter-receivables which are not disputed or have been upheld in a court of law may be netted or shall be 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.



## 7. Return of photographic material

7.1. Analog photographic material shall be returned in the form in which it was supplied immediately after it has been published or utilized for the agreed purpose provided that this is no later than three months after the date of delivery; two sample copies of the publication in which the photographic material appears shall be enclosed. An extension to this three-month period shall require the photographer's written approval.

7.2. Digital data shall be deleted and/or the data media destroyed upon completion of utilization. The photographer shall be under no duty to ensure the continued existence and/or possibility of renewed delivery of the data.

7.3. If at the customer's request or with its approval the photographer supplies photographic material solely for the purpose of determining whether it is suitable for use or publication, the customer shall return analog photographic material no later than one month of receipt in the absence of any other period stated on the consignment note. Digital data shall be deleted and/or the data media destroyed or returned. This period may only be extended with the photographer's written consent.

7.4. The customer shall return the photographic material at its own cost in standard packaging. The customer shall bear the risk of loss or damage during transportation until the photographic material reaches the photographer.

## 8. Penalties, damages

8.1. In the event of any unauthorized utilization, use, reproduction or disclosure of the photographic material (i.e. without the photographer's consent), the customer shall be liable to pay a penalty equaling five times the applicable fee for each individual instance, it being understood that this shall not operate to restrict any other remedies available to the photographer.

8.2. If the copyright 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 or customary fee shall be payable.

## 9. General provisions

9.1. The contractual relationship anticipated by these Standard Terms and Conditions shall be subject to Austrian law including in the case of deliveries to foreign destinations.

9.2. Any additions or modifications to these Standard Terms and Conditions shall be in writing only.

9.3. If any of the provisions contained herein are void, this shall not prejudice 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.

9.4. The place of fulfillment and the legal venue shall be the photographer's domicile in cases in which the customer is a full merchant as defined by German commercial law.

9.5. In case of a cancellation, there are following payments: up to 4 weeks before the shoot: 35%, less than 30 days before: 50%, 2 weeks before: 100% of the total amount, even if there is no commission.

## 10. Right of Revocation for Consumers and Sample Revocation Form

If the contract is concluded outside of our premises or by way of distance selling and if you order our services as a consumer – which should normally be the case – the following will apply in your favour:



## Information on Right of Revocation

### Right of Revocation

You have the right to revoke this contract within fourteen days without stating reasons. The revocation period is

10.1. fourteen days from the date of the conclusion of the contract if it is a service contract or in case of a contract on the delivery of digital contents which are not delivered on physical data carriers;

10.2. fourteen days from the date on which you or a third party appointed by you who is not the transporter, have taken possession of the goods, if it is a purchase contract on individual goods which are sent in one individual shipment;

10.3. fourteen days from the date on which you or a third party appointed by you who is not the transporter have taken possession of the goods, if it is a purchase contract on several goods which you have ordered in the context of a uniform purchase order and which are delivered separately;

10.4. fourteen days from the date on which you or a third party appointed by you who is not the transporter have taken possession of the last partial delivery or the last piece, if it is a purchase contract on the delivery of goods in several partial shipments or pieces; and

10.5. fourteen days from the date on which you or a third party appointed by you who is not the transporter, have taken possession of the first goods, if it is a purchase contract on the regular delivery of goods over a specified period.

In order to exercise your right of revocation you need to inform us (Claudia Weaver, trading as Claudia Weaver Photography, Einsiedeleigasse 14b/5, 1130 Vienna, Austria, email: [photo@claudiaweaver.com](mailto:photo@claudiaweaver.com)) about your decision to revoke this contract by making a unique declaration (e.g. a letter sent by post, fax or email). You may, but are not obliged to, use the sample revocation form attached.

In order to comply with the period of revocation it suffices that you send the notification on the exercise of the right of revocation before the expiry of the revocation period.

**Consequences of a Revocation** If you revoke this contract, we shall reimburse to you all payments that we have received from you, including the delivery costs (apart from additional costs arising from the fact that you have selected a different type of delivery than the most favourable standard delivery we have offered), immediately however no later than fourteen days from the date on which we have received the notification on your revocation of this contract. We will use the same payment method for this repayment that you have used in the original transaction, unless that was explicitly otherwise agreed with you; in no way will any charges be invoiced to you due to this repayment. We may reject the repayment until we have received the returned goods or until you have provided evidence that you have returned the goods, whatever is earlier.

You shall send or return to us the goods immediately and in no case later than within fourteen days from the date on which you have notified us about the revocation of this contract. The period shall be deemed to be complied with if you send the goods before the expiry of the period of fourteen days.

You will bear the direct costs arising from the return of the goods. You will only need to pay for any loss of value in the goods, if this loss of value results from the fact that you have handled the goods in manner which is not necessary to inspect the quality, properties and functioning of the goods. If the contract is a service contract and you have requested that the services should start during the period of revocation, you shall pay to us an adequate amount which corresponds to the share of the services which have already been rendered until the date on which you inform us about the exercise of the right of revocation regarding the contract, in proportion to the total scope of the services provided for in the contract. The right of revocation will be cancelled for a contract on the delivery of digital contents which is not stored on physical data carriers, even if we have commenced exercising the contract, after you have



1. agreed explicitly that we commence exercising the contract before the expiry of the period of revocation; and
2. confirmed your knowledge that you will lose your right of revocation upon commencement of the exercise of the contract by giving your consent.

#### Exclusion of the Right of Revocation

No right of revocation shall apply to the following contracts:

1. Contracts on the delivery of goods which are not prefabricated and for the manufacturing of which an individual selection or determination to be made by the consumer is decisive or which are uniquely tailored to the personal needs of the consumer,
2. Contracts on the delivery of sound or video recordings or computer software in a sealed packaging, if the sealing was removed after the delivery; or
3. Contracts on the delivery of newspapers, magazines or illustrated reviews, apart from subscription contracts.

Art. 3 c Sample Revocation Form

Sample Revocation Form

(If you wish to revoke the Contract, please complete and return this form.)

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Claudia Weaver Photography, Einsiedeleigasse 14b/5, 1130 Vienna, Austria, email:

[photo@claudiaweaver.com](mailto:photo@claudiaweaver.com)

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I / We (\*) hereby revoke the Contract that I / we (\*) have concluded on the purchase of the following goods (\*) / the performance of the following services (\*)

–

Ordered on (\*) / received on (\*)

–

Name of the consumer(s)

–

Address of the consumer(s)

–

Signature of the consumer(s) (only in case of notification on paper)

–

Date

(\*) Please delete inapplicable parts.

#### 11. Customer's General Duties to Cooperate and to Supply Materials, Contacts for Exclusive Memories, Insurances

11.1 The customer will adequately support the work of the photographer. The customer will, in particular, provide the photographer with any and all information and documents necessary for rendering the services in accordance with the contract and will provide any text, image and sound material in a quality customary in the industry in due time, insofar as the customer is obliged to provide information, data and/or raw materials (e.g. older photographs of grandparents or of the childhood for post-processing to be used in a



wedding album) in order to achieve the purpose of the contract. Any regulations set forth in the individual contract which go beyond those set out herein shall remain unaffected.

11.2. The customer is obliged to reimburse to the photographer any damage which arises from a violation of the duty to cooperate or supply material as defined in para. 1. Any schedule will be adapted, if necessary. The photographer will then grant the customer – insofar as the purpose of the Contract has not yet been achieved – a reasonable period to fulfil the duties to cooperate or supply material. When this period has expired without success or insofar as it is unnecessary according to the above sentence, the photographer may withdraw from the Contract and request, in addition to damages, a remuneration which corresponds to the services rendered to that date.

11.3. The customer has been informed that the objects and/or data provided to the photographer during the performance of the contract are not covered by a separate insurance on the part of the photographer. The customer shall, therefore, be obliged to ensure a sufficient insurance coverage for the objects and data provided to the photographer.

## 12. Secondary Obligations such as Conduct and Consideration on the Part of the Customer

12.1. The customer is obliged to not use any services rendered by the photographer in an illegal or immoral manner, to meet the legal requirements and to respect the rights of third parties. That includes, in particular, the following duties of the customer:

1. The customer shall ensure that the data they provide to the photographer do not infringe any personality rights or other rights of third parties, in particular trademark rights and rights to the company name as well as copyrights. The customer will not transmit any data containing immoral content.

2. If the customer's templates, graphics, scripts and programs are used on the computer system of the photographer, the customer shall ensure that they are free from any errors (e.g. viruses) which might impair or frustrate the performance of the services by the photographer. The same shall apply to services to be rendered by the photographer toward third parties.

3. The customer will observe the legal requirements regarding data protection and data security.

12.2 If the customer provides materials during the performance of the contract which might be subject to third party rights, the customer shall warrant toward the photographer, that they have obtained all necessary rights.

12.3 In case the customer violates their duties set forth in para. 1 or 2, the photographer shall, in addition to its other legal rights, be entitled, at its own choice, to temporarily remove any affected contents from the project with immediate effect (e.g. to not integrate any contents supplied by the customer in a wedding album, despite the latter's instructions). The same shall apply if the photographer is made aware by third parties that the customer has supplied contents in violation of the duties set forth in para. 1 and 2, unless the allegation of an infringement of the right is obviously incorrect.

## 13. Deadlines, Periods and Performance Impediments

13.1. Delivery dates or periods which can be agreed bindingly or non-bindingly, shall at least be agreed in text form (e.g. letter, fax or email).

13.2. If the customer's cooperation is necessary or agreed upon to enable the photographer to perform the services, any agreed delivery period will be extended by the period during which the customer has not complied with their obligation to cooperate, plus an adequate start-up period allowing the photographer to resume their services.



13.3. In case of any delays caused by

- a) changes of the requirements of the customer; or
- b) insufficient supplies made by the customer;

the periods of delivery or service will be extended accordingly.

13.4 If the customer orders not only minor changes or supplements, the deadlines and periods which are aligned to the original subject of the contract will become null and void.

#### 14. Adaptation of the Remuneration in Case of Subsequent Changes of the Scope of Services, Extra Work

14.1. If the parties agree on subsequent changes of the scope of services, the photographer shall be entitled to an adaptation of the remuneration. The adaptation of the remuneration will be based on the arithmetical basis of the remuneration regulations already agreed upon.

14.2. Notwithstanding the rights of the photographer as set forth in para. 1, the parties may provide for the effects on the amount of the remuneration and the agreed periods already when they agree on the performance of a subsequent change of the scope of services.

14.3. Extra work will be charged at a rate of € 200.00 (incl. VAT) for the active team per additional hour which has started.

#### 15. Prices, Maturities and Payment Terms

15.4. The contractually agreed prices shall prevail. Partial payments and down-payments are only possible, insofar as they were contractually agreed upon. The following maturities shall be deemed to be agreed for Shootings, unless otherwise agreed:

35 % after the placement of the order;

65 % after the sending of the online gallery in the web and the relevant acceptance of the photos by the customer.

15.5. Invoice shall be due for payment without deduction 14 days after the invoice date, unless otherwise agreed.

15.6. A payment shall only be deemed to be made when the photographer is able to dispose of the amount.

15.7. Our prices shall be deemed to be end-user prices, i.e. inclusive value added tax, if it applies.