

# SCHALL & SCHNABEL

## STUDIO FOR PHOTOGRAPHY & CONCEPT

### GENERAL TERMS AND CONDITIONS OF DELIVERY AND BUSINESS

SCHALL & SCHNABEL PHOTOGRAPHY | PIERRE HORN & EILEEN HUHN

#### 1. GENERAL

1.1 The following General Terms and Conditions of Delivery and Business (hereinafter referred to as the General Terms and Conditions) shall apply to all of the Photographer's orders, offers, deliveries and services. The General 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.

1.2 Any alternative general terms and conditions on the part of the Customer are hereby rejected. Alternative general 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. Any additions or modifications to these General Terms and Conditions shall be in writing only.

1.3 The General Terms and Conditions shall apply to all photographic material with which the Customer is provided regardless of its degree of completion or technical form. They shall expressly also apply to photographic material transmitted electronically or digitally.

1.4 If any of the provisions contained herein are void, this shall have no effect on the validity of the remaining provisions.

#### 2. OBJECT OF AGREEMENT

2.1 Subject of the production contract is the production of images according to the specifications of the client and the granting of rights to use these images for the contractually stipulated purpose.

2.2 Any suggestions submitted by the Customer for modifications or adaptations shall be deemed to be individual services subject to separate remuneration.

2.3 The customer gives the photographer the necessary information for the job.

2.4 Agreed delivery dates shall be extended accordingly if an agreed date can not be met for reasons that are not represented by Schall & Schabel Photography.

#### 3. UTILIZATION RIGHTS

3.1 The Customer acknowledges that the photographic material provided by the Photographer constitutes copyright material as defined in § 2 (1) No. 5 of the German Copyright Act.

3.2 The Customer shall fundamentally only receive simple utilization rights for onetime utilization.

3.3 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.

3.4 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 Customer and in the publication, medium or data vehicle which has been stated by the Customer 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.

3.5 Any use, exploitation, dissemination, copying or publication going beyond that provided for in Section D above shall be subject to separate remuneration and require the Photographer's prior written approval. 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 CDROM, CDi, disks, hard disks, RAM, microfilms etc.) other than for the technical editing of the photographic material pursuant to 3.D 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 Customer'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.

3.6 Any modifications to the photographic material using photo composing, mounting or electronic means to produce a new copyright work shall require the Photographer's prior written approval and shall be designated as such. In addition, the photographic material may not be copied in drawing form, recreated photographically or used in any other manner as a motive.

3.7 The Customer 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.

3.8 All use, reproduction and transfer of the photographic material shall be subject to the condition that the copyright information stipulated by the Photographer be included in such a way that it can be clearly allocated to the picture in question.

3.8 All agreed usage rights are only applied after the full payment of the agreed fee and reimbursement of all costs.

#### 4. FEES

4.1 The agreed fee shall apply. If no fee has been agreed upon, the customary and reasonable fees are calculated. The fee shall be subject to value added tax at the applicable rate.

4.2 The fees and charges are payable upon submission of the photographs and be paid no later than within 2 weeks of the invoice.

4.3 The fee shall be payable for one-time use of the photographic material for the use agreed upon pursuant to 3 herein. If the fee is also to cover further use, this shall require written confirmation.

4.4 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 Customer.

#### 5. PENALTY AND DAMAGES LIABILITY

5.1 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.

5.2 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 minimum 50% of the agreed fee shall be payable. A penalty 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.

5.3 Any complaints concerning the content of the delivery or the content, quality or state of the photographic material shall be lodged within 8 days 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.

5.4 The Photographer 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 Customer 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 Customer shall be responsible for the legend as well as the context in which the photograph is used.

5.6 Warranty claims by the client due to any defect of the images that are already established are excluded. The warranty exclusion also applies to hidden defects.

5.7 The photographer is not liable for the application of his pictures.

#### 6. MISCELLANEOUS

6.1 The client sends unsolicited two deposit copies to the photographer.

6.2 The contractual relationships anticipated by these General Terms and Conditions shall be subject to German law including in the case of deliveries to foreign destinations.

6.3 The place of fulfillment and the legal venue shall be the Photographer's domicile.

6.4 If in doubt, the German terms and conditions apply.