

Chocolate Fish Photos – General Terms and Conditions

I. General

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.
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.
3. If the Customer 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 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.
4. 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.

II. Photographic material supplied

1. 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.
2. 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. Any suggestions submitted by the Customer for modifications or adaptations shall be deemed to be individual services subject to separate remuneration.
4. The photographic material provided shall remain the Photographer's property notwithstanding the fact that damages may have been paid for this.
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 and technical editing.
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.

III. Utilization rights

1. The Customer shall fundamentally only receive simple utilization rights for one-time utilization.
2. 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. 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.
4. Any use, exploitation, dissemination, copying or publication going beyond that provided for in Section 3 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 CD-ROM, CDi, disks, hard disks, RAM, microfilms etc.) other than for the technical editing of the photographic material pursuant to III 3. 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.
5. 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 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.
6. 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.
7. 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.
8. The Customer must include a copyright notice next to each Image in the form of "Oliver Ross/Chocolate Fish Photos" or such other copyright notice as specified in the Invoice.

IV. Liability

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.

V. Fees

1. The agreed fee as specified in the Invoice shall apply and shall be subject to value added tax at the applicable rate.
2. The fee shall be payable for one-time use of the photographic material for the use agreed upon pursuant to III 3. or 2. herein. If the fee is also to cover further use, this shall require written confirmation.
3. 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.
4. The fee provided for in V. 1. herein shall be payable in full either prior to the delivery of any photographic material, or in accordance with the payment terms specified in the Invoice, 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.
5. 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.

VI. Return of photographic material

1. The photographic material shall be returned in the form in which it was supplied immediately after it has been published or used 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.
2. 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 such photographic material no later than one month of receipt in the absence of any other period stated on the consignment note. This period may only be extended with the Photographer's written consent.
3. 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 transport until the photographic material reaches the Photographer.

VII. Penalty, blocking, damages

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 equalling 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.
2. If the copyright notice is missing, incomplete (pursuant to III 8. herein), 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.
3. If the photographic material is not returned in time (blocking), the following penalty shall be payable upon the expiry of the period provided for in VI. 1 or 2 of these General Terms and Conditions:
 - € 0.25 per day and picture in the case of b/w or colour prints or duplicate slides
 - € 1.00 per day and picture for slides, negative and other unique material.
4. If the photographic material is damaged, destroyed or lost, the following compensation shall be payable, it being understood that the Photographer is under no obligation to prove the actual value of the loss:
 - € 40.00 per b/w or colour print or 35 mm duplicate slide
 - € 125.00 per medium or large-format duplicate slide
 - € 250.00 per original slide or negative or other unique material
 - € 500.00 per non-reproducible slide or negative or other unique materialIn the case of damage, the above rates shall be reduced depending on the extent of damage and the possibility for continued use of the material. Either Party shall be entitled to prove that actual loss is either greater or lower or that no loss at all has been sustained.
5. 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.
6. The payments anticipated in VII of these General Terms and Conditions shall not give rise to any rights of utilization.

VIII. Concluding Remarks

1. 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.
2. Any additions or modifications to these General Terms and Conditions shall be in writing only.
3. 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.
4. The place of fulfilment 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.

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<http://www.chocolate-fish.net/>