

General Conditions of the Dutch Federation of Photographers

Section A - general

1. In these General Conditions the following are taken to mean:

Photographic work: photographic works as referred to in the 1912 Dutch Copyright Act, or other works in the sense of the 1912 Dutch Copyright Act which can be equated with the said photographic works.

Photograph: the physical carrier delivered by the Photographer to the Counter Party, on which a Photographic Work has been laid down (whether or not perceivable by eye), such as a transparency, print, duplicate, Polaroid, floppy-disk, any other optical or electromagnetic carrier or (electronically transmitted) data file.

Photographer: the user in the sense of article 6:231 of the Dutch Civil Code.

Counter Party: the Counter Party in the sense of article 6:231 of the Dutch Civil Code.

2. These General conditions are applicable to all legal relationships between a Photographer and a

Counter Party, including offers, commission (confirmations) and all verbal and/or written agreements, also after an agreement has been terminated, unless the parties have deviated from these conditions expressly and in writing. General Conditions which are employed by a Counter Party are expressly rejected by the Photographer.

3. Offers are entirely without obligation, unless the contrary is expressly stated. The Photographer has the right, up to two days after receipt of the acceptance of his offer, to withdraw this offer. The offer does not impose an obligation to deliver a part of the performance in return for a proportional price.

4. If no payment has been agreed upon, then the usual payment for the Photographer is applicable. If one cannot speak of a usual payment, then at least the Guide Prices of the Federation of Photographers, including the BUR (the most recent version which is filed with the District Court in Amsterdam) are applicable and these constitute a part of these General Conditions. Three months after the agreement has been concluded the Photographer has the right to pass interim changes to the Guide Prices on to the Counter Party.

5. Photographs are delivered in the building where the Photographer carries on his business. Photographs which are sent are at the risk of the Counter Party from the moment of dispatch up to the moment that the Photographs are received back undamaged by the Photographer.

6. If no delivery term has been agreed upon, this will be determined in reason by the Photographer. If the Photographer and the Counter Party agree that the delivery term be advanced, the Photographer has the right to increase the original payment by at least 50%.

7. If it has not been agreed that the Photograph remains in the possession of the Counter Party, the latter must return this immediately after use free of charge to the Photographer. Non-performance or non-timely performance of this obligation does not lead to the loss of any rights of the Photographer.

8. Photographs remain the property of the Photographer. The Counter Party only has the right to transfer the title if that has been expressly agreed or if this is evidenced by the nature of the agreement. Unless agreement to the contrary is made, the Counter Party has no rights to transfer of negatives or other original exposed material, or duplicates thereof. The copyright to the Photographs and the Photographic Works shall in any event remain that of the Photographer and no use whatsoever may be made of the Photographic Work in any manner whatsoever as long as the Counter Party has not paid any outstanding invoice from the Photographer or has not complied with any (other) obligation whatsoever which arises from any agreement whatsoever with the Photographer.

9. Complaints regarding the work done must be notified to the Photographer in writing as quickly as possible, but in any event within ten working days after delivery. The Photographer has the right to deliver good work after all to replace work which has been rejected within a reasonable term, unless this would lead to unreasonable damages for the Counter Party.

10. All deliveries, including a delivery of a part of a composite order, may be invoiced separately if a part of the composite order is of value as an individual part.

11. Payment must be made within 30 days after the invoice date. After this term has expired the Counter Party shall be in default and shall owe the statutory interest plus 2%. If the Counter Party is in default or if he fails in another manner in the performance of one or more of his obligations, including infringement of copyright, then all costs for obtaining payment outside or inside of court shall be for his account. If it is plausible that the Photographer has incurred higher costs or has performed additional work, which were reasonably necessary, then these are also eligible for reimbursement or compensation. The Counter Party shall check all invoices from the Photographer for correctness. If the Counter Party shall not have refused the invoice in writing with explicit and sufficient reason and shall not have returned the relevant invoice, both within 14 days from the date of the invoice, then the relevant invoice shall be considered binding between the parties and all rights of the Counter Party to dispute the invoice shall expire.

12. If the circulation, edition or number of copies sold of a publication or the mediabudget therefor, is under discussion and if this partly determines the applicable payment, the Photographer has the right to have the accounts of the Counter Party checked on this point by an accountant. If differences are found the costs of the accountant are for the account of the Counter Party. Additionally, the Counter Party shall pay to the Photographer the actual difference of the correct compensation that is owed to the Photographer on the basis of the said accountant's report, pursuant to invoicing by the Photographer.

13. The Counter Party shall make the payments owed to the Photographer without any deductions or any claims invoking set-off of debts, except for set-off against advances paid to the Photographer which are subject to the right of set-off by contract.

14. Any permission for the use of a Photographic Work by the Counter Party shall only be granted in writing and in advance in the form of a license under the terms and conditions as described in the offer and/or commission confirmation and/or relevant invoice. Only if the permission as granted for the use of a Photographic Work does not explicitly provide anything about the extent of such license, it is herewith provided that such license shall only include the right for a once-only use, in an unchanged form, for the benefit of the purpose, circulation and manner such as the parties intended according to the understanding of the Photographer, when the agreement was concluded. If permission has been given for use in electronic or other forms of image manipulation, the result may only be used following express permission from the Photographer. In the absence of a specific agreed manner of publication and/or described purpose and/or circulation, then only those powers which are included as standard in the (BUR) license or which otherwise necessarily result from the nature and scope of the agreement, are deemed to have been given.

15. All use of a Photograph which has not been agreed upon is considered as an infringement of the copyright of the Photographer. In the event of infringement the Photographer is entitled, without for the rest losing any rights, including the right to compensation of all direct and indirect damages and all actual judicial and extra judicial costs, to compensation amounting to at least three times the usual payment for the Photographer for such a form of use, with a minimum of EURO 300.

16. The name of the Photographer must be stated clearly alongside a Photograph which is used, or must be included in the publication with a reference to the Photograph. In the event of non-compliance with this condition, the Photographer shall be entitled to an extra payment, without for the rest losing any right (including the right to compensation of all direct and indirect damages and all actual judicial and extra judicial costs), of at least 100% of the amount owed for publication rights.

17. When a Photographic work is published the Counter Party must immediately, and at no charge, send an example of the publication as evidence to the Photographer.

18. The Counter Party, or any third party who publishes a Photographic Work, is responsible to the exclusion of others for obtaining permission of persons who are portrayed and other entitled parties. The Photographer is obliged to cooperate, to the extent that he is able, in tracing the persons referred to in this article.

19. The Photographer is not liable for damages which have arisen for the Counter Party, unless there is a case of gross negligence or purposeful action on the side of the Photographer or the persons he has engaged. The liability is in any event limited to the size of the invoice amount, or, if and to the extent that it concerns a liability that is covered by insurance, to the amount that is actually paid under such insurance.

20. Both the Photographer and the Counter Party have the right to immediately terminate the agreement in the case of bankruptcy or a moratorium of payments of the other party.

21. All cases in which these General Conditions are applicable are governed by Dutch law.

Section B - Commissions

22. A commission is established by the acceptance by the Counter Party of the offer by the Photographer which acceptance can appear from the Photographer sending a written commission confirmation to the Counter Party which the Counter Party does not return or, in the absence of which, from the factual knowledge by the Counter Party of the Photographer performing work in accordance with the offer whilst allowing the Photographer to do so.

23. The Photographer has the right to implement all things that have not been explicitly described in a commission according to his own technical and creative insight. Changes to the commission by the Counter Party for any reason whatsoever and pending the execution of the work, are for the risk and account of the Counter Party and shall be executed by the Photographer only upon receiving a separate offer for the additional work signed for agreement by the Counter Party.

24. If a commission is cancelled at any point in time and for any reason whatsoever, the Photographer is entitled to the agreed payment, less the costs that have not yet been incurred.

25. Unless explicitly agreed otherwise, the Photographer shall be free in his choice of suppliers or any other third party with whom the Photographer wants to work to achieve the execution of the commissioned work, including models and stylists.

Section C - free productions and deliveries from archives

26. Photographs which have been made available as a consignment for inspection and which are not used must be returned by the Counter Party within ten working days. Photographs which are used must be returned by the Counter Party within three months after receipt. If Photographs are kept for longer than the agreed period, then at least the following amounts are due per day: EURO 1.50 for each print or each duplicate, EURO 5 for each polaroid photograph, each transparency or negative.

27. Repair costs may be charged up to an amount of: a. EURO 40 if the number, the code or other information on the back of a Photograph or on the cover of a transparency have become illegible or have disappeared during the loan; b. EURO 20 if a transparency has not been chosen for publication but has been taken out of its cover.

28. If a Photograph has not been returned to the Photographer within four weeks after the agreed term (including the term referred to in article 26), it shall be considered as having been lost.

29. In the event of loss of or damage to a Photograph a payment shall be due amounting to: a minimum of EURO 685 for a transparency, negative or polaroid photograph; a minimum of EURO 100 for a print or a duplicate. Damage is also taken to mean the making of notes or reproduction indications on Photographs.