

DuPho.

General terms and conditions of DuPho.

1. Definitions

In these General Terms & Conditions the following terms have the meanings referred to: Aw: Copyright Act [Auteurswet] 1912
Photographic Work: photographic works as referred to in Article 10, section 1, subsection 9 of the Aw, or other works covered by the Aw that can be equated with photographic works.
Photographer: the user as defined by Book 6, Article 231 of the Dutch Civil Code.
Other Party: the other party as defined by Book 6, Article 231 of the Dutch Civil Code.
Usage: copying and/or publication as defined by Article 1 in conjunction with Articles 12 and 13 of the Aw.

2. Application

These General Terms and Conditions apply to all legal relationships between a Photographer and Other Party, including offers, confirmations of assignments and oral or written agreements, even after the termination of an agreement, unless the parties have explicitly deviated from these Terms and Conditions in writing.

3. Price

3.1 If the parties have not agreed a price, the Photographer will fix the price in a reasonable and fair way, bearing in mind the scope and extent of the desired usage of the work by the Other Party.
3.2 Necessary costs and/or additional work must be paid by the Other Party.

4. Invoice and payment

4.1 Payment will be made within 14 days of the date of the invoice.
4.2 If the Photographer has not received the amount due within the period specified in 4.1, the Other Party will be in breach and therefore liable for interest at the statutory rate plus 2%.
4.3 If the Other Party is in breach of any of its obligations under the agreement, including any infringement of copyright, it will be liable for all judicial and extra-judicial costs incurred by the Photographer when acquiring payment.
4.4 All use of the Photographic Work, in any shape or form, is prohibited until the Other Party has paid any of the Photographer's invoices which might be outstanding.

5. Complaints

Complaints regarding the Photographic Work supplied must be reported to the Photographer in writing/by e-mail as soon as possible, within a maximum of ten working days of its delivery. The Photographer has the right to substitute the rejected work with good work within a reasonable period, unless this would cause disproportionate damage to the Other Party.

6. Assignment

6.1 The client will notify the photographer of any specific wishes which are important for the execution of the assignment in writing and in good time before the assignment commences.
6.2 The Photographer carries out the assignment according to his own technical and creative insight and is committed to meet the specific wishes of the client as referred to in the previous paragraph.
6.3 The assignment is at all times to be regarded as a best-efforts obligation and not as an obligation to achieve a result.
6.4 Changes to the assignment by the Other Party for whatever reason, are for the account of the Other Party and will only be implemented by the Photographer after a separate offer for the additional costs has been signed as approved by the Other Party and returned to the Photographer.
6.5 In the event of cancellation of an assignment contract by the Other Party, at any point in time and for whatever reason, the Photographer will be entitled to the agreed payment. In the event of cancellation, a non-professional client will only owe a reasonably determined part of the payment, bearing in mind the work already performed.

7. Delivery

Files are to be submitted in the agreed format and file type.

8. Illness/force majeure

8.1 The photographer is not liable for the non-fulfilment or late fulfilment of his/her obligations as a consequence of force majeure.
8.2 Force majeure not only means that which is referred to as such in law and jurisprudence, but all externally originating causes, whether foreseen or unforeseen, on which the photographer cannot exert any influence and as a result of which s/he is unable to fulfil his/her obligations, including illness and temporary and permanent incapacity for work
8.3 In the event of force majeure the photographer's obligations are to be assumed, in consultation with the client, by a fellow photographer who will be designated by the photographer.
8.4 If, in the event of force majeure, the photographer has already partially fulfilled his/her obligations, or will only partially be able to fulfil his/her obligations, s/he will be entitled to invoice separately the already delivered portion of the services, including the expenses incurred, and the client will be obliged to pay this invoice.

9. Copyright

The copyright of the Photographic Works is owned by the Photographer.

10. Licence

10.1 Permission to use a Photographic Work by the Other Party will be granted exclusively in writing/by e-mail in the form of a licence, of which the nature and scope is described by the Photographer in the offer and/or the confirmation of the assignment and/or the relevant invoice.
10.2 If the scope of the licence is not specified, it will never extend beyond the right to one single use, in original form and for a purpose, circulation and method as intended by the parties at the time they enter into the agreement, in accordance with the Photographer's interpretation.
10.3 Exclusive use must always be agreed explicitly in writing and is not covered by the right to use referred to in Article 10.2.
10.4 The Other Party is not permitted to transfer the right to use described in this article to third parties unless the Photographer has granted written permission in advance.
10.5 Unless otherwise agreed, the Other Party is not entitled to grant sub-licences to third parties.

11. Infringement of copyright

11.1 Any unauthorized use of a Photographic Work is deemed to be an infringement of the Photographer's copyright.
11.2 Any infringement entitles the Photographer to claim compensation of at least three times the licence fee usually charged by the Photographer for such type of use, without losing any right to claim compensation for other damage (including the right to compensation for all direct and indirect damage and all judicial and extra-judicial costs actually incurred).

12. Reference to name and Personality Rights

12.1 The name of the Photographer must be clearly credited alongside the Photographic Work used, or included elsewhere in the publication with reference to the Photographic Work.
12.2 In the event of the copying or publication of a Photographic Work the Other Party will, at all times, observe the Photographer's personality rights in accordance with Article 25, section 1, subsection c and d of the Aw.
12.3 In the event of any infringement of the Photographer's personality rights ex Article 25 of the Copyright Act, including the right to be named, the Other Party will owe compensation of at least 100% of the licence fee usually charged by the Photographer for such type of use, without losing any right to claim compensation for other damage (including the right to compensation for all direct and indirect damage and all judicial and extra-judicial costs actually incurred).

13. Liability and rights of third parties

13.1 The Photographer is authorised to enter into this Agreement and grant the aforementioned Licence.
13.2 The Photographer is not liable vis-à-vis the Other Party for claims by third parties and/or damage resulting from the use and publication of the Work, except in the event of gross negligence or intent on the part of the Photographer.
13.3 The Photographer's liability is, in any event, limited to the invoice amount or, if and insofar related to insured damage, to the amount of the sum actually paid out by the insurance.
13.4 If third parties give notice of, or submit, a claim vis-à-vis the Photographer and/or Other Party with regard to the Work, the Other Party and the Photographer will determine, on the basis of mutual consultation, whether they are going to submit a defence and how.

14. Bankruptcy/moratorium

The Photographer and the Other Party are each entitled to terminate the agreement with immediate effect if the Other Party becomes bankrupt or is granted a moratorium. In the event of the bankruptcy of the Other Party, the Photographer will have the right to terminate the licence.

15. Choice of law and forum

15.1 All matters governed by these General Terms and Conditions are subject to Dutch law.
15.2 Any dispute concerning the wording and explanation of these General Terms and Conditions and a legal relationship between the Photographer and the Other Party will be brought before the court with relevant jurisdiction in the Netherlands.

DuPho. | Dutch Professional Photographers

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The original Dutch version of these General Terms and Conditions has been filed with the Court of Amsterdam under reference number 12/2022