

Dr. Christian Czychowski

General Contractual Terms for Photographic Design (GCT Photographic Design)

1. General

1.1 The following GCT apply exclusively to all agreements regarding photographic design work between the Photographic Designer and the Principal. This provision is to be upheld particularly if the Principal utilises the «Allgemeine Geschäftsbedingungen» (General Terms and Conditions of Trade) as established in German law and these contravene or deviate from the GCT set out here.

1.2 The GCT outlined here also apply if the Photographic Designer agrees without reservation to perform the commission of the Principal in the knowledge that it contains conditions which contravene or deviate from the conditions set out here.

1.3. Deviations from the conditions set out here are only valid if the Photographic Designer agrees to them expressly in writing.

2. Subject of Contract: Copyright and Right of Use

2.1 Any commission awarded to the Photographic Designer is deemed to be a contract for copyright work which grants right of use for the work which has been commissioned. The contract does not govern or apply to any assessment of the validity of the Photographic Designer's work with regard to competition law. Similarly, the contract does not govern or apply to the question of whether the Photographic Designer's work may be used or registered under copyright protection laws, especially as such laws apply to the individual. The Principal is responsible for research into the use of the work with regard to copyright protection. The only exception to this provision is that the Photographic Designer asserts that he/she is the original creator of his/her work and that in creating his/her work he/she has not infringed the copyright of any Third Party.

2.2 The photographic works may not be digitalised, altered (for example by montage, photo-technical defamiliarisation, colouring or any change in the reproduction of the image, such as publication in sections) or passed to a Third Party, either in original form or as reproductions, without the express agreement of the Photographic Designer. Any imitation, also of parts of the work, is forbidden. Infringement of this provision entitles the Photographic Designer to demand contractual compensation amounting to 100% of the agreed fee, or of the usual fee in accordance with the AGD Collective Agreement on Fees for Design Services (latest version), in addition to the agreed fee, which is to be paid as normal.

2.3 The Photographic Designer grants the Principal the necessary rights of use for the relevant purpose of the work. Unless otherwise agreed, in each case only simple (non-exclusive) rights of use are granted. Transfer of rights of use to any Third Party requires a separate written agreement.

2.4 The rights of use shall not be deemed to have passed to the Principal until the agreed fee has been paid in full.

2.5 The Photographic Designer is to be credited as the author of the work on all reproductions. This credit is to appear next to the work. Infringement of this provision entitles the Photographic Designer to demand contractual compensation amounting to 100% of the agreed fee, or of the usual fee in accordance with the AGD Collective Agreement on Fees for Design Services (latest version), in addition to the agreed fee.

2.6 Suggestions made by the Principal or any of his/her employees, or any other contribution made by the Principal or any of his/her employees, shall have no influence on the amount of the fee. Such suggestions or contributions do not substantiate any claim to joint copyright.

2.7 The photographic works may only be used to the extent agreed upon (in terms of time, space and content). Use of the work outside these restrictions (in terms of time, space and content) is not allowed, and infringement of this provision entitles the Photographic Designer to demand contractual compensation amounting to 100% of the agreed fee for such extended use, or of the usual fee in accordance with the AGD Collective Agreement on Fees for Design Services (latest version), in addition to the agreed fee.

2.8 Should the Photographic Designer agree to the digitalisation of his/her works in this agreement, the Principal is to ensure that when the works are digitally recorded and used the name of the Photographic Designer is electronically coupled with the photographic data, and that this photographic data is protected by effective technical means.

3. Fee

3.1 Photographic works, together with the granting of rights of use, form a single service. Unless otherwise agreed, payment is to proceed in accordance with the stipulations of the AGD Collective Agreement on Fees for Design Services. Fees are calculated as net amounts, and Value Added Tax is to be paid on these amounts in accordance with the legal requirements.

3.2 Should the time scheduled for shooting the photographs be exceeded significantly for reasons beyond the control of the Photographic Designer, then the lump sum payment agreed upon is to be increased proportionately. If payment per hour has been agreed upon, then the Photographic Designer is also to receive payment according to this rate for the period which exceeds the time scheduled for shooting.

3.3 The printing and production of photographs, together with all other activities that the Photographic Designer performs for the Principal, are to be charged to the Principal unless it has been expressly agreed otherwise.

3.4 Conclusion of the contract represents an agreement by both parties that payment should be made as follows for the ancillary expenses outlined below:

- Cost of materials and expenses for technical processing to be charged to the Principal separately according to the actual expenses involved.
- Travel expenses, including the cost of necessary insurance, are to be charged in the same way. Expenses for using a private car are calculated on the basis of a small family saloon at the rate approved by the German Automobile Association ADAC, currently € 0.54 per kilometre. Air travel is calculated on the basis of business class fare, train journeys on the basis of the first-class fare. Accommodation will be provided in a hotel of upper mid-range standard.

- Postproduction activities for digital productions are charged at the rate of € 17.50 per 15 minutes or portion thereof.

4. Due Date for Payment, Acceptance and Delay

4.1 The Photographic Designer is to choose the photographic works which he/she presents to the Principal for acceptance at the conclusion of his/her work. Payment is due upon delivery of the photographic works. Payment is to be effected immediately. If the work which has been commissioned is accepted in parts, then a proportionate partial payment is due upon the acceptance of each part. Should the commission extend over a long period or require high financial outlay on the part of the Photographic Designer, then payment of the fee shall be in appropriate instalments, i.e. $\frac{1}{3}$ of the total fee when the commission is awarded, $\frac{1}{3}$ after completion of 50% of the work, and $\frac{1}{3}$ upon delivery.

4.2 Acceptance may not be withheld for reasons associated with the structural or artistic character of the work. It is understood that the Photographic Designer is granted artistic freedom in executing the commission.

4.3 Should payment not be effected on the due date, then the Photographic Designer is entitled to demand interest as compensation at the rate of 8% over the current base rate of the European Central Bank p.a., while reserving the right to claim higher compensation upon production of appropriate evidence.

5. Additional Services, Ancillary and Travel Expenses

5.1 Additional services, such as the revision or alteration of the photographic work or the supervision of printing, shall be invoiced separately on the basis of the time involved, in accordance with the AGD Collective Agreement on Fees for Design Services (latest version).

5.2 The Photographic Designer is entitled, after reaching prior agreement with the Principal, to subcontract any work necessary for the fulfilment of the commission on behalf of and for the account of the Principal. The Principal undertakes to provide the Photographic Designer with the necessary authorisation for this purpose.

5.3 Should individual agreements for subcontracted work be concluded on behalf of and for the account of the Photographic Designer, the Principal undertakes to hold the Photographic Designer free from all liability resulting from such agreements (e.g. for film material, laboratory expenses, photographic models and travel expenses).

5.4 Expenses incurred by the Photographic Designer for ancillary technical costs, and in particular for special materials, etc, are to be refunded by the Principal.

5.5 Travel costs and expenses for travel undertaken in connection with the commission and with the prior agreement of the Principal are to be refunded by the Principal.

6. Ownership of Designs and Data, Loss of and Damage to Photographic Material

6.1 The rights to the photographic works hereby granted are rights of use, not ownership rights.

6.2 The originals are to be returned undamaged to the Photographic Designer after the agreed period of time or, if no agreement on this has been reached, after a reasonable period of time. In the event of loss or damage the Principal is to bear the costs incurred

in replacing the originals. Section 7.6 herein and any further claims for compensation remain unaffected by this provision.

6.3 Any data which is the property of the Photographic Designer, including such as may have been created during the fulfilment of this contract, remain the property of the Photographic Designer. The Photographic Designer is not obliged to provide the Principal with such data. Should the Principal require such data, a separate agreement is to be reached regarding the provision of this data to the Principal and payment for such data.

6.4 If the Photographic Designer provides the Principal with such data, this may only be modified with the prior consent of the Photographic Designer.

6.5 The dispatch of all photographic work as outlined in Sections 6.1 to 6.4 is to be at the risk of and for the account of the Principal.

6.6 Should the Principal be unable to return in perfect condition the material transferred to him/her on a temporary basis, he/she is to provide compensation. In such cases the Photographic Designer is entitled to demand € 1,000 for every original and € 200 for every duplicate. The Photographic Designer reserves the right to make a claim for higher compensation.

6.7 Should the period of time outlined in Section 6.2 not be adhered to, the Photographic Designer is entitled to demand a fee of € 2 per day for each original and € 1 per day for each duplicate, though this sum is not to exceed 5% of the contractual fee. The Photographic Designer reserves the right to make a claim for higher compensation.

7. Checking, Supervision of Production, Free Copies and Personal Promotional

7.1 Samples for checking must be made available to the Photographic Designer before reproduction.

7.2 The supervision of production by the Photographic Designer is only to proceed on the basis of a separate agreement. Should the Photographic Designer agree to supervise production, he/she is entitled to make all necessary decisions and issue relevant instructions on the basis of his/her personal judgement.

7.3 The Principal is to provide the Photographic Designer with 10 perfect sample copies of all reproduced work, free of charge. The Photographic Designer is entitled to use these samples and any and all work which has been created during the fulfilment of the contract for personal promotional purposes in any media, and to refer to his/her activities for the Principal in any other fashion.

8. Liability

8.1 The Photographic Designer is only liable for damages caused to objects, documents, films, displays, layouts, etc, which are placed in his/her care in the event of intent or gross negligence, except in the case of claims arising from injury to life, body or health; the Photographic Designer is also liable for such damages arising from contributory negligence. In other cases he/she is only liable for damages caused by contributory negligence insofar as an obligation is thereby neglected which is of particular importance for the achievement of the contractual aim (cardinal duty).

8.2 The Photographic Designer shall not accept any liability towards the Principal for work which is subcontracted to Third Parties on behalf of and for the account of the

Principal, unless the Photographic Designer is at fault in the selection of said subcontractor. In such cases the Photographic Designer is to be regarded solely as an agent.

8.3 In releasing photographic works for reproduction the Principal accepts responsibility for the technical and functional correctness of the product, text and image.

8.4 The Photographic Designer bears no liability for such photographic works released for reproduction by the Principal.

8.5 Complaints regarding apparent defects in the photographic work are to be brought to the attention of the Photographic Designer in writing within 14 days of delivery. It shall be deemed that this notice period has been met if the complaint is dispatched within 14 days.

9. Third Party Rights

Insofar as the Photographic Designer does not expressly warrant that individuals pictured in his/her photographic works or the holders of the copyright for objects pictured therein have granted approval for the utilisation of their images, the Principal undertakes to obtain the necessary approval of such Third Parties himself on an individual basis.

10. Creative Freedom, Execution of the Commission and Original Documents

10.1 This contract is executed on the basis of creative freedom. Complaints on the basis of artistic expression are excluded. Should the Principal require changes to be made during or after the execution of the commission, he/she is to bear any and all additional costs so incurred.

10.2 Should the execution of the commission be delayed due to causes for which the Principal is responsible, the Photographic Designer is entitled to demand an appropriate increase in payment. In the event of intent or gross negligence the Photographic Designer is also entitled to claim compensation. Further claims for compensation for delay shall remain unaffected by this provision.

10.3 The Principal warrants that he/she is authorised to use any original documents which he/she provides to the Photographic Designer. Should it emerge that he/she is not authorised to do so, in contravention of this provision, the Principal is to hold the Photographic Designer free from any claims for compensation by Third Parties.

11. Termination of Contract

Should the Principal terminate the contract before the due date, the Photographic Designer is to receive the agreed fee, with any deductions necessitated by any expenses which have been saved and by any executed or deliberately omitted substitute contracts (according to § 649 of German Civil Law). However, the parties to the contract hereby agree on the following lump-sum payment for work and expenses incurred up to the termination of contract: if the contract is terminated before work begins, 10% of the agreed sum or, if no agreement has been reached, 10% of the usual fee in accordance with the AGD Collective Agreement on Fees for Design Services (latest version). Naturally, individual agreements which override this provision are possible. The Principal is to provide evidence of lower actual performance or higher actual expenditure.

12. Final Provisions

12.1 If the Principal is a merchant or trader, the place of performance of the contract is the domicile of the Photographic Designer.

12.2 The contract is to be governed by the laws of the Federal Republic of Germany.