

# Moritz Bernouilly

Documentation of Architecture and Contemporary Art

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## General terms and conditions for image production, the delivery of images and the granting of licenses

Status September 1, 2020

1. Validity of the general terms and conditions
  - 1.1. The production of pictures and the granting of rights of use take place exclusively on the basis of the following terms and conditions (AGB).
  - 1.2. Business conditions of the client that deviate from the following terms and conditions are not recognized. Such deviating business conditions also do not become part of the contract even if the photographer does not expressly contradict them.
  - 1.3. Contractual partner ("Client") is the person who instructs the photographer to take pictures, requests pictures from the archive or obtains usage rights (licenses).
2. Order processing
  - 2.1.1. The Client is required to ensure free access for the photographer to localities and objects that shall be photographed. He should also ensure that the localities and objects are in a condition that allows taking photographs and that the photographic works are not obstructed by building measures or other adverse conditions.
  - 2.1.2. The client is obliged to obtain all consent or release declarations required for the production and use of the images from the persons depicted and the rights holder for photographs of people and of locations and objects to which third-party copyrights, property rights and house rights or other rights of third parties apply. The consent or release declarations must also extend to the exploitation of the images by the photographer (Section 4.1.6.) And/or by third parties to whom the photographer grants usage rights or to whom he transfers such rights.
  - 2.1.3. If the photos are to be taken at a construction site or place where a heightened risk of accident exists or increased health risks cannot be excluded, the client has to provide for corresponding protective measures that permit the photographer to perform his work safely. The client is liable for any damage suffered by the photographer as a result of the failure to take the necessary safeguard measures or the non-compliance with statutory or regulatory protection requirements.
  - 2.1.4. If a photo shooting cannot be performed or completed on the scheduled date as a result of poor weather conditions, the current situation on the spot or for other reasons, the photographer shall be given the opportunity to proceed with the photo shooting at a later point in time.
  - 2.1.5. The photographer selects the pictures to be presented to the client for approval at the conclusion of production. Rights of use are granted only for those pictures the client accepts as being in conformity with the conditions of the contract.
  - 2.1.6. The processing time for the image files selected for acceptance by the client is five working days, unless expressly agreed otherwise in writing.
  - 2.1.7. The client is obliged to inspect the pictures submitted to him at the conclusion of production within a reasonable period of time and shall inform the photographer of any defects found. The notice of obvious defects must be given in writing within two weeks as from submission of the pictures, the notice of hidden defects must be given within a time-limit of two weeks as from time of determination of the defect. Timely dispatch of the notice of defect shall suffice to meet the notice period. In the event that the obligation to inspect and give notice of defects is violated, the pictures shall be deemed to be approved with regard to the relevant defect.
- 2.2. Fees and additional costs
  - 2.2.1. If the time provided for the photographic works is significantly exceeded for reasons beyond the photographer's control, the agreed overall fee shall be increased accordingly. If a time-based fee has been agreed upon, the photographer also receives payment at the agreed hourly or daily rate for the time period by which the photographic work is extended.
  - 2.2.2. Additional services, in particular the production of pictures beyond the extend that had been fixed at the inception of the contract, are to be remunerated separately based on the expenditure of time.
  - 2.2.3. In addition to the agreed fee, the client is to refund all additional expenses which the photographer has incurred in connection with the performance of the ordered services (e.g. for film material, digital image processing, traveling, overnight accommodation). Costs which the photograph will incur emerging from elaborately taken pictures (e.g. aerial photographs) or through the use of special technology (e.g. lifting platform, complex lighting installation) are as well to be reimbursed separately.
  - 2.2.4. The fee is due upon delivery of the pictures. Should a picture production be delivered in parts, the

- appropriate partial fee is due on delivery of each part. If the fulfillment of an order extends over a longer period, the photographer may require installment payments that conform with the work performed during each interval.
- 2.2.5. The additional costs are to refund as soon as they have been incurred by the photographer.
- 2.2.6. Value added tax in the respective statutory amount is to be added to the fees and costs payable by the client.
3. Request of archive pictures
- 3.1. Pictures from the photographer's archive that are requested by the client will be made available for viewing and selection for a period of one month, calculated from the date of the delivery note. If no license agreement is concluded within this period, all received analogue pictures and image carrying media provided by the photographer are to be returned until expiry of that period and all image data stored on the client's own data carriers must be deleted.
- 3.2. No usage rights are transferred with the temporary provision of pictures for viewing and selection. Every use requires the photographer's prior written declaration of release.
- 3.3. Any use of the pictures as model for sketches or for layout purposes as well as their presentation to customers already constitutes a fee-based use. Should slide frames or filmic face materials be opened, the photographer is entitled to charge a layout fee - notwithstanding the assertion of further claims for payment - even if the pictures have not been used.
- 3.4. The photographer may charge a service fee for the selection of photographs, calculated in accordance to the nature and extent of the expenditure incurred, which amounts to at least 30 €. The client is required to reimburse additionally forwarding expenses (packaging, postage) which includes any costs of specific forms of shipment (taxi, air freight, special messenger).
4. Purchase of usage rights
- 4.1. Licensing
- 4.1.1. The client acquires only the non-exclusive rights to use the pictures as contractually specified. Any ownership is not transferred. The client will acquire contractually granted rights of use as recently as full payment of the fee and reimbursement of all additional expenses is made.
- 4.1.2. Usage rights must be obtained for every use. Any use of the images is subject to a fee
- 4.1.3. The client acquires the rights of use to be granted under the contract only once the fee has been paid in full and all ancillary costs have been reimbursed. The client only acquires the online usage rights to be granted under the contract when technical protective measures are set up in accordance with Section 4.3.3.
- 4.1.4. The alteration of images is not permitted without the prior written consent of the photographer.
- 4.1.5. The transfer of usage rights acquired by the client to third parties requires the written agreement of the photographer. The same applies to the passing on of pictures to book, newspaper and magazine publishers. The photograph is entitled to make his approval for any intended usage by third parties dependent on the payment of an appropriate license fee.
- 4.1.6. The photographer remains entitled to use the pictures himself for all relevant purposes without any restriction in time, place or content, regardless of the extent of usage rights acquired by the client.
- 4.2. Copyright Notice / Credits
- 4.2.1. With every publication of the picture it is required to designate the photographer as author. The designation shall be positioned at the picture. The author's name is quoted: **Moritz Bernouilly / [www.moritzbernouilly.com](http://www.moritzbernouilly.com)**
- 4.3. Digital image processing
- 4.3.1. Image data may only be digitally archived by the client for his own purposes and only for the duration of the acquired usage rights. The storage of the image data in online data bases or other digital archives, which are accessible to third parties, requires a separate agreement between the photographer and the client.
- 4.3.2. The digital images provided to the client contain metadata, so-called IPTC data, with information about the photographer as the author and the modalities and conditions of use. It is not permitted to remove or change the metadata without the express prior written consent of the photographer.
- 4.3.3. The client must provide technical protective measures that restrict access to the images provided to him and

prevent the images he has reproduced on the Internet with the consent of the photographer from being integrated into third party Internet pages as embedded content, in particular by means of inline links and frames.

#### 4.4. Protective rights of third parties

4.4.1. If photographs of persons or objects are to be taken for which copyrights of others, ownership rights or other rights of third parties exist, it is incumbent on the client to obtain the necessary consent from the persons depicted or from the holder of the rights to create and use such images. This consent must also include the photographer's utilization of the images and/or its use by third parties which are granted rights of use by the photographer or to which he transfers those rights.

4.4.2. In the case of commissions, the client is obliged to obtain the consent or release declarations of the persons depicted and the rights holder required for the production and use of the images in the case of photos of people and of locations and objects in which third-party copyrights, property rights and house rights or other rights of third parties exist. The consent or release declarations must also extend to the exploitation of the images by the photographer (Section 4.1.6.) and / or by third parties to whom the photographer grants usage rights or to whom he transfers such rights.

4.4.3. The client has to release the photographer from any claims resulting from a violation of the obligation pursuant to section 7.1. The obligation to grant release shall not apply if the client proves evidence that he is not at fault.

4.4.4. The regulations under section 4.4.1. and section 4.4.2. apply as well if the persons or objects to be photographed are chosen by the photographer, provided that he informs the client about the choice he has made timely enough to enable the client to secure all necessary declarations of consent or to choose and provide other suitable persons or objects for the photographic work.

4.4.5. In so far as the client himself is the author or the owner of the object to be photographed, he has to accept the use of the pictures by the photographer (section 4.1.6.) just as much as the usage by third parties, which are granted rights of use by the photographer or to which the latter transfers those rights. The same applies in the event that the client is entitled to other protective rights to the object to be photographed.

#### 5. Liability and compensation for damages

5.1. The photographer is only liable for damage which is caused by him or his executing aides through wilful intent or gross negligence. This shall not apply if damage results from a contractual obligation, which is of essential importance to achieving the object of the contract (cardinal obligation), as well as damage resulting from injury to life, body or health, for which the photographer is also liable in case of slight negligence.

5.2. The photographer carries no liability for the method of use of his pictures. He is especially not liable for the admissibility of the use in regard to competition and trademark law.

5.3. Claims of the client arising from a breach of duty of the photographer or his executing aides become statute-barred within one year as of the start of the statutory limitation period. Excluded from this regulation are claims of compensation that are based on a breach of duty through wilful intent or gross negligence of the photographer or his executing aides as well as claims of compensation resulting from injury to life, body or health even if such claims are based on a slightly negligent breach of duty of the photographer or his executing aides; those claims for compensation are subject to the statutory periods.

#### 6. Contractual Penalty

6.1. In the event of unauthorized use or transmission of a picture by the client, the photographer is entitled to claim a contractual penalty amounting to the fivefold of the usage fee agreed upon. In the absence of an agreement, the payment of the contractual penalty is amounting to the fivefold of that usage fee which results from the application of the list of photographic fees issued by the Mittelstandsgemeinschaft Foto-Marketing (MFM), valid at the time of the unauthorized use. The photographer may alternatively demand a contractual penalty in the amount of the fivefold of his usual usage fee if he proves evidence that his fee, usually charged for the relevant usage, would be higher than the specified MFM photographic fee. Regardless of how the usage fee is calculated in a specific case, the contractual penalty amounts to at least 500 € per picture and individual case. The assertion of any further claims for damages remains unaffected.

6.2. Should a picture be published without designation of the photographer as author or should the designation

not be positioned at the picture (section 4.2.1.), section 6.1. shall apply in conformity, subject to the condition that the contractual penalty is not amounting to the fivefold but to 100 % of the usage fee, however, not less than 200 € per picture and individual case. The right of the photographer to assert higher claims for damages shall in this respect as well remain unaffected.

7. Statute and Place of Jurisdiction

7.1. The laws of the Federal Republic of Germany apply.

7.2. In the event that the client does not have a general place of jurisdiction within the Federal Republic of Germany or if he has moved his place of business or habitual residence outside the country after conclusion of the contract, the photographer's place of residence is agreed to be the legal venue.