

## **GENERAL TERMS AND CONDITIONS**

### DREAMS FACTORY

#### **1. Definitions**

*Photographs*: all pictures, images, digital scans, design, artwork, paintings, montage drawings, or any other item which may be offered for the purposes of reproduction.

*Client*: any person or entity, who enters into a Contract with Photographer.

*Contract*: every offer, appointment, request, and agreement between Photographer and Client.

*Photographer*: Dreams Factory, a sole proprietorship of Arjan Bos, which is established in Klazienaveen and registered at the Dutch Chamber of Commerce under number 75841304.

*Conditions*: these general conditions.

*Parties*: Client and Photographer

#### **2. Agreement and acceptance of terms**

2.1. All Contracts between Photographer and Client are subject to the Conditions. All Clients who order any product or service from Photographer automatically agree to be bound by these Conditions.

#### **3. Offer and acceptance**

3.1. Each offer shall be made by Photographer by e-mail.

3.2. The offer loses its validity 14 days after the offer has been sent.

3.3. Client must explicitly accept the offer in writing by signing the offer and returning it to Photographer.

3.4. Any amendment and/or alteration to the offer requires prior written approval of Photographer.

3.5. Offers are non-binding, unless agreed upon timely and in writing.

3.6. Photographer has the right to withdraw the offer up to two working days after receiving acceptance of the offer.

3.7. When during the execution of the Contract, new information becomes available to Photographer that makes it not realistic to continue the execution, Photographer has the right to immediately terminate the cooperation without any additional obligation for Photographer.

#### **4. Price**

4.1. If Parties have not agreed on a price, then Photographer shall charge his usual rate. If there is no usual rate Photographer has the right to charge a reasonable and fair compensation for his products and services.

4.2. The prices used by the Photographer are exclusive of VAT.

4.3. If the offer is amended or altered by Client, Photographer is entitled to adjust and increase the price accordingly.

4.4. If Photographer has to spend more time working on the assignment and/or has to carry

out additional work, then Photographer is allowed to charge an additional fee and/or additional costs to Client.

#### **5. Payment**

5.1. Payment will be made by Client within 14 days of the date of the invoice.

5.2. If Parties have agreed on a price that exceeds € 200,- excl. VAT for the Photographs, a deposit of 2% of the full price shall be paid by Client in advance.

5.3. If Photographer has not received the payment due within the period specified in clause 5.1, Client is in breach and therefore liable for interest at the statutory rate plus 2%.

5.4. All costs incurred by Photographer, such as legal costs and extrajudicial and judicial costs, incurred in connection with late payments, shall be borne by Client. The extrajudicial costs are set at least at 15% of the invoice amount with a minimum amount of € 250.

#### **6. Delivery and creative process**

6.1. Photographer will provide Client with a schedule of the creative process and the date when the Photographs will be provided to Client. In case of any delay, Client will be timely informed.

6.2. In the situation that no delivery time or date has been agreed, photographer shall provide the Photographs as soon as possible but within a reasonable period.

6.3. Photographs are taken and edited at Photographers own creative discretion, unless expressly agreed upon otherwise.

6.4. During the creative process three sketches are provided to Client, who gets the opportunity to express a preference for one of the sketches. It is explicitly prohibited for Client to use these sketches and/or reveal the sketches to a third party.

6.5. During the creative process Client will have two revision rounds during which Client can give feedback on the edited Photographs.

6.6. If Client has the opinion that despite the two revision rounds, more adjustments have to be made, Client has to pay an additional fee for the additional work.

6.7. Photographer will deliver the final images via an online file transfer. From the moment the Photographs are delivered to Client, the Photographs concerned are at risk of the Client.

6.8. For a *time for print shoot*, Client will receive three physical prints of the Photographs unless expressly agreed upon otherwise. Digital files are not sent.

6.9. Photographer provides Client only with a selection of photographs taken and edited by Photographer.

#### **7. Cancellation**

- 7.1. If the invoice is not timely paid, Photographer has the right at its own discretion to either dissolve the Contract or suspend his obligations until the invoice has been paid by Client. Photographer shall inform Client about this.
- 7.2. If Client cancels the Contract prior to the execution, the Client shall be obliged to pay to Photographer 50% of the price which has been offered.
- 7.3. If Client cancels the Contract during the execution of the Contract, Client shall be obliged to pay the whole price which has been offered.
- 7.4. In case of cancellation, the additional costs incurred will also be charged to Client.

## **8. Copyright and ownership material**

- 8.1. All intellectual property rights, such as copyrights, to all Photographs are owned by and shall remain property of Photographer.
- 8.2. Unless otherwise agreed, Photographer can use the Photographs for his own promotional purposes, for example but not limited to, on his website and in his portfolio.
- 8.3. Client shall always respect the moral rights of Photographer in accordance with article 25 Auteurswet (Dutch Copyright Act) when using the Photographs.
- 8.4. Each unauthorized use of the Photograph is deemed to be an infringement of the Photographer's copyright.
- 8.5. Any infringement of the copyright and/or moral right of Photographer entitles the Photographer to claim compensation, including the right to claim compensation of other damages such as direct and indirect damages and all judicial and extra-judicial costs actually incurred.

## **9. License and use of the Photographs**

- 9.1. Use by Client of a Photograph requires prior written consent in the form of a license. The scope of the license is described by Photographer in the offer.
- 9.2. If the scope of the license is not specified it shall not extend beyond the right to one single use of the Photograph concerned, in original form and for non-business purpose.
- 9.3. It is expressly prohibited to edit the Photographs. This includes in any case, but is not limited to, placing filters over the Photographs.
- 9.4. Any use of the Photographs is prohibited until Client has paid any outstanding invoice to Photographer or has otherwise complied with any other obligation arising from and any other agreement with Photographer.
- 9.5. Unless otherwise agreed, Client is not entitled to grant sub-licences to a third party.
- 9.6. If Client wishes to use the Photographs for business purposes, Client requires prior written consent to do so in the form of a license.
- 9.7. The name of Photographer shall be clearly mentioned alongside the Photographs used or

included in the publication with reference to the Photographs.

## **10. Warranties and Indemnifications**

- 10.1. If Photographer edits a photo from a third party on the request of Client, Client is solely responsible for the proper use of the photo. Client indemnifies Photographer against all claims from third parties.
- 10.2. If Photographer suffers damage due to a delay on the part of Client, this damage shall be borne by Client.

## **11. Liability**

- 11.1. Any liability of Photographer is limited to damage that is a direct and clear result of a non-fulfilment or lack of fulfilment of any Contract.
- 11.2. Photographer has the right, if and as far as possible, to undo or/and limit the damage suffered by Client.
- 11.3. Client indemnifies Photographer against all claims from third parties, including reasonable costs of defense against such claims, which are associated or related to the Contract.
- 11.4. Any liability of Photographer is limited to the amount of the invoice or, if and insofar as damage is insured, up to the amount of the sum actually paid out under the insurance policy.

## **12. Complaints**

- 12.1. Complaints regarding Photographs should be reported to Photographer by sending an e-mail as soon as possible, but at least within a maximum of ten working days after the Photographs have been delivered.
- 12.2. After Photographer has received the complaint Photographer has the right to substitute the rejected work with an alternative work within a reasonable period of time.
- 12.3. If any complaint is submitted, Client does not have the right to suspend the payment obligation.

## **13. Other provisions**

- 13.1. Photographer reserves the right to change these Conditions.
- 13.2. In the event of a conflict between one or more provisions of the Conditions and one or more provisions of the Contract to which they apply, the provisions of the Contract take precedence.
- 13.3. Dutch law is applicable to the Terms and Conditions between Photographer and Client. In the event of a dispute, the court in Assen holds jurisdiction for this dispute.