

GENERAL TERMS AND CONDITIONS

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Definitions

- Aw: Copyright Act 1912
- Blickfänger: the user as defined in art. 6:231 of the Dutch Civil Code.
- Creative(s): the creator, photographer, director, animator, etc., engaged by Blickfänger as a third party for the execution of an assignment.
- Counterparty: the counterparty as defined in art. 6:231 of the Dutch Civil Code.
- Photographic Work(s): photographic works as referred to in Article 10 paragraph 1, subparagraph 9 Aw, or other works as defined in Aw, that are comparable to said photographic works.
- Film Work(s): film works as referred to in Article 10 paragraph 1, subparagraph 10 Aw, or other works as defined in Aw, that are comparable to said film works.
- Work(s): Photographic works, Film works, or other works as defined in art. 10 Aw.
- Image Carrier: the medium on which a Work is recorded (whether visually identifiable or not), such as a slide, negative, print, polaroid, or hard drive.
- Use: reproduction and/or publication as defined in arti-

Article 1 Applicability

1. These General Terms and Conditions apply to all legal relationships—including quotations, order confirmations, and oral or written agreements—between Blickfänger and its clients (customers) and between Blickfänger and Creatives.
2. Not only Blickfänger but also all individuals, whether affiliated with Blickfänger or third parties, involved in executing an assignment (such as Creatives) may invoke these General Terms and Conditions.
3. The applicability of any other conditions is expressly excluded.
4. In the event of any discrepancies between these General Terms and Conditions and the agreement, the provisions of the agreement shall prevail.

Article 2 The Offer

1. Quotations are entirely non-binding unless expressly stated otherwise in writing. A (combined) quotation does not obligate the delivery of part of the service at a proportional price.
 2. An agreement is established by written acceptance by the Counterparty of the offer from Blickfänger or by written acceptance by Blickfänger of the assignment provided by the Counterparty.
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GENERAL TERMS AND CONDITIONS

Article 3 The Assignment

1. Blickfänger will perform to the best of its abilities and execute the work with care in accordance with the agreements made with the Counterparty.
2. Blickfänger will keep the Counterparty informed of developments, progress, and changes regarding the assignment. The Counterparty is obliged to inform Blickfänger immediately about facts and circumstances and provide all necessary information relevant to the execution of the assignment.
3. Blickfänger reserves the right to implement any aspect not expressly described in the agreement at its own technical and creative discretion.
4. Blickfänger and the Counterparty may agree in writing to have the assignment quoted and executed in phases, with each completed phase billed separately.
5. Blickfänger does not vouch for the accuracy of information provided by the client and accepts no liability for damages resulting from the use of such information.
6. Article 7:407, paragraph 2—which establishes joint and several liability if two or more persons receive an assignment—is excluded.
7. Unless expressly agreed otherwise, Blickfänger is entirely free to select third parties and suppliers to carry out the assignment, such as but not limited to editors, directors, sound engineers, cameramen, models, and stylists.

Article 4 Modification and Cancellation of the Assignment

1. If during the execution of the work it becomes apparent that modifications or additions are necessary to achieve the desired result, the parties shall amend the agreement by mutual consultation in a timely manner. In such cases, Blickfänger is entitled to issue a new quotation with an adjusted price and/or delivery date. Changes to the assignment by the Counterparty will be entirely at the Counterparty's expense.
2. If it is likely that Blickfänger incurred higher costs and/or performed additional work that was reasonably necessary, such costs and/or additional work shall also be eligible for reimbursement by the Counterparty.
3. In case of cancellation of an assignment by the Counterparty at any time or for any reason, the Counterparty is liable for payment for the work already completed, as well as for the already incurred (production) costs, costs of engaged third parties, and the payment for the other agreed-upon work based on the daily rate established by Blickfänger.

GENERAL TERMS AND CONDITIONS

Article 5 Prices

1. Unless expressly agreed otherwise, Blickfänger's fee is not contingent on the outcome or result of the work.
2. All prices are exclusive of VAT.
3. In addition to its fee, Blickfänger may charge costs that are necessary for the execution of the assignment, such as transport costs, travel expenses, permit fees, location rental fees, and other expenses.
4. In the event of an interim change in costs, for example due to a legal requirement or an increase in wages or the price of engaged third parties, Blickfänger is entitled to adjust the agreed fee. In this case, the Counterparty has the right to terminate the agreement if the fee increase exceeds 10%.

Article 6 Delivery and Complaints

1. Delivery times specified by Blickfänger are determined based on the circumstances known to Blickfänger at the time of the agreement and are not considered final deadlines. Blickfänger is obliged to notify the Counterparty immediately if timely delivery becomes impossible.
2. If it has been agreed that the assignment will be carried out in phases, Blickfänger may require that the results of a phase be approved in writing by the Counterparty and that the corresponding payment be made before starting the next phase.
3. Upon completion of an assignment (or a phase thereof), the Counterparty is obliged to carefully inspect the results. Complaints about the delivered Work must be communicated in writing within 10 working days after delivery. A complaint does not release the Counterparty from its payment obligation. Following a complaint, the parties will consult, and in the case of a justified complaint, Blickfänger is obligated to correct the Work within a reasonable period or grant a price reduction.

Article 7 Licenses

1. Permission for the Use of a Work by the Counterparty is granted solely in writing and in advance in the form of a license as described in terms of nature and scope by Blickfänger in the quotation, agreement, or invoice.
2. If nothing is specified about the scope of the license or Use, the license will be limited to a one-time Use, in its original form, for a purpose, circulation, and manner as intended by the parties at the time of the agreement in accordance with Blickfänger's understanding.
3. If Blickfänger has granted permission for electronic or other forms of image manipulation, the result may only be used after explicit written approval.
4. Unless otherwise agreed in writing, Blickfänger reserves the right to use the Works for its own promotional purposes and publications, including but not limited to social media, promotional materials, magazine articles, business cards, website and blog, and advertisements.

GENERAL TERMS AND CONDITIONS

Article 8 Intellectual Property

1. The copyright on the Works executed by a Counterparty is vested in Blickfänger and/or the Creative.
2. The Counterparty that publishes a Work is solely responsible for obtaining permission from rights holders, such as those portrayed. The Counterparty indemnifies Blickfänger from all claims by third parties for alleged infringements of any intellectual property right.
3. When reproducing and publishing a Work, the Counterparty will always respect the photographer's moral rights as defined in article 25, paragraph 1, subparagraphs c and d Aw.
4. In the event of a breach of the aforementioned moral rights, Blickfänger is entitled to a fee of at least 100% of the customary license fee, without prejudice to any other damages suffered (including the right to reimbursement of all direct and indirect damages and all actual legal and extrajudicial costs).
5. For any use of a Photographic Work on the internet, the Counterparty will ensure that the dimensions of the Photographic Work do not exceed 800 by 600 pixels.

Article 9 Copyright Infringement

1. Any use of a Work that has not been agreed upon is considered a copyright infringement of Blickfänger and/or the Creative.
2. In the event of an infringement, Blickfänger and/or the Creative are entitled to compensation amounting to at least three times the standard licensing fee they typically charge for such use, without forfeiting any rights to compensation for additional damages (including the right to reimbursement for all direct and indirect damages and all actual legal and extrajudicial costs).

Article 10 Name Credit

1. The name of Blickfänger and the Creative must be clearly indicated with each use of a Work or included in the publication with a reference to the Work.
2. In the event of non-compliance with this requirement, Blickfänger and/or the Creative are entitled to a fee of at least 100% of the standard licensing fee typically charged by Blickfänger, without forfeiting any rights to compensation for additional damages (including the right to reimbursement for all direct and indirect damages and all actual legal and extrajudicial costs).
3. If the Counterparty has received written permission to reproduce the Work in any form, they are obligated to ensure that the name of Blickfänger and the Creative appears on these reproductions. For digital/electronic copies, the Counterparty is also required to ensure that the complete metadata – as embedded in the digital file by Blickfänger – remains intact, including information according to EXIF, IPTC, XMP, and ICC standards.

GENERAL TERMS AND CONDITIONS

Article 11 Force Majeure

Blickfänger is not obliged to fulfill any obligations if it is prevented from doing so due to force majeure. Force majeure includes, but is not limited to: fire, accident, illness, strike, riot, war, government measures, prolonged power outages, terrorism threats, and transportation disruptions.

Article 12 Invoice and Payment

1. Unless agreed otherwise in writing, payment must be made within 30 days of the invoice date; failure to do so results in default by operation of law (meaning without any warning or further notice of default).
2. In the event of default, the Counterparty is liable for interest on the invoice amount or the unpaid portion thereof, at a rate of 1% per month or part thereof, calculated from the due date until the date of payment.
3. Extrajudicial collection costs amount to at least 15% of the unpaid portion of the invoice amounts (including VAT).
4. If Blickfänger initiates a legal procedure (including arbitration or binding advice), the Counterparty is required to reimburse the actual costs associated with this procedure. These include the costs of attorneys, legal representatives, as well as the fees owed to arbitrators or binding advisors and court fees, even if these exceed any awarded legal costs under articles 237 et seq. of the Dutch Code of Civil Procedure.
5. This reimbursement of costs will be charged and owed by the Counterparty as soon as (internal or external) legal assistance is sought by Blickfänger – including in cases of copyright infringement – or when collection measures are taken by Blickfänger, without requiring any additional form of proof.
6. No use of the Work, in any form, is permitted as long as the Counterparty has any outstanding invoices from Blickfänger or otherwise has not fully fulfilled any obligation arising from any agreement with Blickfänger.

Article 13 Suspension and Termination

1. Blickfänger is entitled to suspend its obligations or terminate the agreement immediately if:
 - a. The Counterparty fails to fulfill the obligations of the agreement, or does so incompletely or untimely;
 - b. After concluding the agreement, Blickfänger receives information providing reasonable grounds to fear that the Counterparty will not fulfill its obligations;
 - c. The Counterparty is declared bankrupt, applies for suspension of payment, or any of its assets are seized.
2. In cases mentioned in section 1, Blickfänger's claims against the Counterparty are immediately due and payable.

GENERAL TERMS AND CONDITIONS

Article 14 Confidentiality

The Counterparty, Blickfänger, its Creatives, and any other engaged third parties are required to maintain confidentiality concerning all information of a confidential nature or information reasonably understood to be confidential.

Article 15 Liability of Blickfänger

1. If the execution of an assignment by Blickfänger results in liability, this liability is always limited to the amount paid out in the relevant case under Blickfänger's applicable liability insurance.
2. If no payment is made under the insurance mentioned in section 1, any liability of Blickfänger is limited to the amount of the fee charged for the execution of the assignment and, in any case, limited to a maximum of once the fee for the work performed under the relevant assignment over the last six months.
3. The limitations of liability in this article do not apply in cases of intentional or reckless misconduct by Blickfänger.
4. The Counterparty indemnifies Blickfänger against all claims from third parties regarding the execution of the assignment.
5. The liability limitation described in this article for Blickfänger is also stipulated for the benefit of third parties engaged for the execution of the assignment.
6. All claims and other rights against Blickfänger lapse one year after the day on which the Counterparty became or could reasonably have been aware of these rights and powers.

Article 16 Electronic Communication

1. The Counterparty and Blickfänger shall, as reasonably possible, use electronic means for delivering the Work and communication (such as email).
2. The Counterparty consents to electronic invoicing.
3. However, the use of email and the internet involves risks, such as (but not limited to) distortion, delay, interception, manipulation, and viruses. Blickfänger is not liable for damages resulting from the use of email and/or the internet.
4. In case of doubt regarding the content or transmission of a Work or email, data extracts from Blickfänger's computer systems are decisive.

Article 17 Choice of Law and Jurisdiction

1. The legal relationship between Blickfänger and the Counterparty is governed by Dutch law.
2. Disputes will be resolved exclusively by the competent court in the district where Blickfänger is established.