

GENERAL TERMS & CONDITIONS ARND BRONKHORST PHOTOGRAPHY

Clause 1. Definitions applying to these General Terms and Conditions

- **Aw:** Auteurswet 1912 [Dutch Copyright Act of 1912]
- **Photographer:** Arnd Bronkhorst Photography, established in Garderen, the Netherlands (Harderwijkerweg 45, 3886 AL) and registered at the Chamber of Commerce with no. 332 330 23.
- **Photographic Work:** photographic works as referred to in Article 10 section 1 subsection 9 Aw, or other works covered by the Aw that can be equated with the said photographic works.
- **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.

Clause 2. Application

1. These General Terms and Conditions apply to all legal relationships between a Photographer and Other Party, including offers, confirmations of orders 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.

Clause 3. Offer

1. Offers are entirely free of obligation unless expressly stated otherwise.
2. The Photographer has the right to withdraw his offer up to two working days after receiving acceptance of this offer.
3. The offer does not oblige the Photographer to deliver part of the agreement in return for a proportionate price.

Clause 4. Price

1. If the parties have not agreed a price, then the Photographer shall charge his usual rate.
2. If and insofar as there is no usual rate, the Photographer shall fix the rate in a reasonable and fair way, bearing in mind (i) the rates for similar commissions normally charged in the market between similar customers and similar suppliers, with reference to rates charged by the Photographer's colleagues, (ii) what in past cases was by right regarded as reasonable and fair, (iii) comparable rates charged by photographers in neighboring countries, and (iv) the scope and extent of the desired usage of the work by the Other Party.
3. If it is plausible that the Photographer had to spend more and/or had to carry out additional work within reason, then these costs and/or additional work shall also be payable by the Other Party.

Clause 5. Invoice and payment

1. The Other Party shall check that the invoice of the Photographer is accurate. If the Other Party has not rejected the invoice in writing and returned it to the Photographer within ten working days of its date, providing legally relevant reasons for doing so, then the invoice shall be deemed to be binding between the parties and the Other Party loses any right to put in a claim.
2. Payment shall be made within fourteen days of the date of the invoice.
3. The Other Party shall pay the amount due to the Photographer without any reduction or claim to compensation, except for the deduction of any advance payments agreed between the parties and previously made to the Photographer.
4. If the Photographer has not received the amount due within the period specified in 2 above, the Other Party is in breach and therefore liable for interest at the statutory rate plus 2%.
5. If the Other Party is in breach of any of its obligations under the agreement, including any infringement of copyright, then it is liable for all judicial and extra-judicial costs incurred in seeking compensation for the same.
6. Any use of the Photographic Work whatsoever is prohibited until the Other Party has paid any outstanding invoice of the Photographer or has otherwise complied with any other obligation arising from any agreement whatsoever with the Photographer.

Clause 6. Delivery

1. Digital files containing Photographic Works shall be delivered following proper consultation and in a manner agreed between both parties and are at the risk of the Other Party from the moment they are sent.
2. In case no delivery time or date has been agreed, the Photographer shall decide a reasonable period.
3. If the Photographer and the Other Party agree to fix the delivery at an earlier date, the Photographer is entitled to increase the price originally agreed by at least 50%.
4. Every delivery, including the delivery of any part of a commission, may be invoiced separately if any part of a commission can be valued separately.

Clause 7. Online purchase (webshop)(additional)

1. Prior to accepting the offer to buy an online product, the possibility is offered to download, view and save these Terms as a PDF. In addition, the box has been checked where the Other Party "actively" has agreed to these Terms.
2. After full and successful completion of the online payment procedure, direct access is given to the ordered photo(s), or at least delivery will take place immediately. At that time, the order can no longer be canceled and there is no right to a refund for monies paid. The other party explicitly agrees that the right of withdrawal does not apply.

3. Delivery is subject to immediate payment. Delivery takes place to the e-mail address specified by the Other Party. If the download does not work or if the Photo has not been received, the Photo can be sent manually after sending an email to info@arnd.nl.
4. It goes without saying that the photographer's copyrights (article 10), user rights (article 10) and moral rights (article 12) apply. For the avoidance of any doubt: the Photograph is for "private" use only, meaning the Photograph can be used by the rider only (no third parties), "in private" on social media or on the riders website, the watermark shall not be removed and no edits shall be made.

Clause 8. Complaints

1. Complaints regarding the Photographic Work supplied should be reported to the Photographer in writing as soon as possible, within a maximum of ten working days of its delivery.
2. 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.

Clause 9. Submission on approval

1. Digital files of Photographic Works submitted on approval which are not used should be erased or destroyed by the Other Party within ten working days after they were received.
2. In the event that digital files containing Photographic Works are retained beyond the agreed period, the Other Party shall compensate the Photographer for the damage he has suffered as a result.

Clause 10. Commission

1. A commission contract is an agreement in which the Photographer undertakes to the Other Party to make and/or supply Photographic Works.
2. A commission contract becomes binding when the offer of the Photographer is accepted by the Other Party. This acceptance can be confirmed by a written confirmation sent by the Photographer to the Other Party to be retained by the Other Party; or in the absence of the same, by the factual knowledge and permission of the Other Party to the carrying out of the work by the Photographer in accordance with the offer.
3. The Photographer is entitled to carry out every part of the commission contract not explicitly described according to his own technical and creative judgment.
4. Changes to the commission by the Other Party for whatever reason and pending the carrying out of the commission contract shall be at the expense of the Other Party. They will only be carried out by the Photographer once a separate offer for the additional costs has been signed in agreement by the Other Party, and returned to the Photographer.
5. In the event that a commission contract has been cancelled by the Other Party at whatever time and for whatever reason, the Photographer is entitled to receive the agreed price, minus costs not yet made.
6. Unless expressly agreed otherwise, the Photographer is at complete liberty to choose the suppliers and third parties with whom he will work in order to carry out the commission contract, including models and stylists.

Clause 11. Copyright & License

1. Copyright of the Photographic Works is owned by the Photographer.
2. Use by the Other Party of a Photographic Work requires prior written consent in the form of a licence the nature and scope of which is described by the Photographer in the offer and/or the confirmation of the commission and/or the relevant invoice.
3. If the scope of the licence is not specified, it shall not 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 interpretation of the Photographer.
4. In the absence of a specifically-agreed method of publication and/or described purpose and/or described circulation, the only authority deemed to have been conferred is that which is included in the licence as standard or which, given the nature and scope of the agreement, necessarily follows from this.
5. If the Photographer has given permission for image manipulation, electronically or otherwise, the result may only be used once explicit written consent has been obtained.
6. Upon publication of a Photographic Work the Other Party should immediately and free of charge provide the Photographer with a complimentary copy of the publication.
7. The Other Party shall not make any copies of the Photographic Works – digital or otherwise – other than those that are strictly required for the agreed usage on the Internet. At the completion of the agreed usage, the Other Party shall erase or destroy the used (working) copy(ies) of the Photographic Works.
8. The Other Party shall provide the Photographer with unlimited access free of charge to each part of its website on which the Photographic Work is reproduced. If special arrangements need to be made to achieve this, then the Other Party will ensure these are made.
9. Unless otherwise agreed, the Other Party is not entitled to grant sub-licences to a third party.

Clause 12. Infringement of copyright

1. Each unauthorized use of a Photographic Work is deemed to be an infringement of the Photographer's copyright.

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 of other damages (including the right to compensation of all direct and indirect damages and all judicial and extra-judicial costs actually incurred).

Clause 13. Moral rights

1. The Other Party shall always respect the moral rights of the Photographer in accordance with Article 25 (1)(c) and (d) Aw when reproducing or publishing a Photographic Work.
2. The name of the Photographer should be clearly credited alongside the Photographic Work used, or included elsewhere in the publication with reference to the Photographic Work, and/or reproducing the Photo or at least not to remove the watermark.
3. If the Other Party has obtained written consent to reproduce in whatever form the Photographic Work, it shall ensure that the name of the Photographer accompanies these reproductions.
4. In the case of digital/electronic copies, the Other Party shall also ensure that the entire metadata that was included in the digital file by the Photographer – information according to the EXIF, IPTC, XMP and ICC standards - shall be preserved.
5. Failure to comply with this condition entitles the Photographer to claim compensation of at least 100% of the licence fee usually charged by the Photographer for such a type of use, without losing any right to claim compensation of other damages (including the right to compensation for all direct and indirect damages and all judicial and extra-judicial costs actually incurred).

Clause 14. Third party rights

1. If the Other Party publishes a Photographic Work, it is solely responsible for obtaining the consent of those persons depicted and/or other legally entitled parties.
2. The Other Party indemnifies the Photographer from all claims relating to the same.
3. The Photographer is obliged to cooperate in tracing the persons referred to in this article.

Clause 15. Liability of the Photographer

1. The Photographer is not liable for any loss suffered by the Other Party unless such loss is caused by the gross negligence or deliberate act of the Photographer or any third party acting on his behalf.
2. Any liability is limited to the amount of the invoice with an maximum of € 1500,00 or if and insofar as damage is insured, up to the amount of the sum actually paid out under the insurance policy.

Clause 16. Bankruptcy

1. 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.
2. In the event of the bankruptcy of the Other Party, the Photographer has the right to terminate the licence, unless the consequences of doing so would be in breach of the principles of reasonableness and fairness.

Clause 17. Choice of law and forum

1. All matters governed by these General Terms and Conditions are subject to Dutch law.
2. The Vienna Sales Convention 1980 (CISG) shall not apply.
3. Parties first shall try to solve their dispute amicably.
4. Any dispute concerning the wording and explanation of these General Terms and Conditions and a legal relationship between the Photographer and the Other Party, that cannot amicably be solved, shall be brought before the court Gelderland, location Apeldoorn, the Netherlands.