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## **General Terms and Conditions of GotPhoto**

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## 1. Content and Conclusion

- 1.1 **Parties and Agreement.** These General Terms and Conditions (hereinafter referred to as the "Terms") govern the contractual relationship between Fotografen Online Service GmbH, Hausvogteiplatz 12, 10117 Berlin, Germany ("GotPhoto") and its customers ("Photographer") with regard to the provision of online Services, as defined in Sections 2.1 "Services" and 2.2 "Add-On Services" below, which assist Photographers in offering and distributing its works and other services to its customers ("End Customers").
- 1.2 **Eligibility.** GotPhoto does not provide its services to consumers, but exclusively for the purposes of the Photographer's commercial or independent professional activity. If Photographer is an individual, Photographer represents and warrants that they are at least 18 years of age and are otherwise legally qualified to enter into and form contracts under applicable law. If Photographer is a business entity, Photographer represents and warrants that its agent agreeing to these Terms has authority to act and enter into contracts on behalf of that business entity.
- 1.3 **Entire Agreement.** The Terms constitute the entire agreement between GotPhoto and Photographer concerning Photographer's use of the Services. Photographer's terms and conditions – including those on Photographer's website or mobile application - do not bind GotPhoto unless GotPhoto has expressly agreed to their validity in writing. Agreements, in particular verbal subsidiary agreements, commitments, guarantees and other assurances by GotPhoto's employees, only become binding upon written confirmation by GotPhoto.
- 1.4 **Obligations in Electronic Business Transactions.** The provisions of § 312i para. 1 no. 1-3 BGB (German Civil Code) on general obligations in electronic business transactions are hereby waived
- 1.5 **Conclusion of Contract.** The Photographer can register on [www.gotphoto.co.uk](http://www.gotphoto.co.uk) for a free 14-day trial period to test the full range of Services and Add-On Services offered by GotPhoto. During the registration process the Photographer will be asked to accept these Terms by selecting the checkbox "*I have read and accepted the GTC*". Acceptance of these Terms is mandatory for the use of the Services and Add-On Services, any use of the Services and Add-On Services is subject to these Terms. The provision of a free trial account by GotPhoto establishes a contractual relationship between Photographer and GotPhoto, which is initially free of charge. At any time during the free trial period, the Photographer may opt for a user plan that continues to be free of charge or a user plan that is subject to a fee (in each event, Photographer's "Plan"). If the Photographer does not opt for a paid Plan by the end of the free trial period, the Photographer's account is automatically changed to a Plan that is free of charge and allows for a reduced range of features and functionalities. When ordering a paid Plan, Photographer's entries shall first be displayed again on an order page and Photographer can make corrections to its entries. By clicking the "Change Plan" button on the order page Photographer submits a legally binding offer for a paid Plan. Photographer will receive an e-mail confirming receipt of the order for the paid Plan. The contract for a paid Plan will be concluded when Photographer receives an e-mail from GotPhoto declaring acceptance of Photographer's order. Order confirmation and declaration of acceptance can be expressed in one and the same e-mail by GotPhoto.
- 1.6 **Retrievability of Contract Text.** The text of these Terms can be retrieved via [www.gotphoto.co.uk/gtc](http://www.gotphoto.co.uk/gtc) and is also available to the Photographer for download and local storage as a PDF. The free Adobe Acrobat Reader is required to view the PDF (<http://get.adobe.com/de/reader/>).
- 1.7 **Other details.** The contract is concluded in English.

## 2. Services from GotPhoto

- 2.1 **Services.** GotPhoto provides the Photographer with an online platform ("GotPhoto Online Platform"), with the help of which Photographer (i) can present itself and its services as a Photographer on the Internet with a subdomain chosen by Photographer (in the form selectedsubdomain.gotphoto.co.uk) or a top level domain registered and administered by Photographer ("Web Presence"), and (ii) can offer and sell its photos online in the form of photo products (photographic prints, posters, printed mugs, etc.) or as digital image files ("Online Shop"). GotPhoto's provision, through the GotPhoto Online Platform, of technical services and support for Studio's Web Presence and Online Shop are collectively referred to herein as the "Services." GotPhoto acts as a pure technical service provider of the Photographer. GotPhoto provides the Services to the Photographer for the Photographer's own business purposes as a photographer in the exercise of its commercial or independent professional activity. The transfer of use of the Services to third parties is prohibited. Details of the Services purchased by Photographer depend upon the bundle of Services included in the Plan selected by Photographer at the time of purchase or as updated by Photographer from time to time. GotPhoto owes Photographer only the provision of those Services which are included in the Photographer's current Plan.
- 2.2 **Add-On Services.** From time to time and at its discretion, GotPhoto may offer add-on services to Photographer for a fee in addition to what is paid by Photographer for its Plan, such as Image Editing Services or the provision of photographic products ("Add-On Services"). Insofar as Photographer purchases photographic products for its End Customer, Section 13 "Special Terms for Purchase of Photo Products" shall apply. Insofar as Photographer commissions Image Editing Services, Section 14. "Special Terms for Commissioning Image Editing Services" shall apply. For all other Add-On Services, additional terms may apply, which shall be reviewed and agreed upon by Photographer prior to purchasing the same. Upon acceptance by Photographer, the terms applicable to Add-On Services shall become part and parcel of these Terms.
- 2.3 **Uptime.** GotPhoto provides the Services to the Photographer with an uptime availability of 97 % on a monthly average during the operating period. Not included in the operating time are maintenance windows (e.g. installation of updates or upgrades) of up to 8 hours per calendar month announced by GotPhoto by e-mail. GotPhoto will endeavour to schedule maintenance work at night (24:00 to 5:00 CET). GotPhoto will notify the Photographer of planned maintenance work in due time.  
When calculating the uptime actually achieved, failures of the Services due to events outlined in Section 2.4 "Force Majeure and Unforeseeable Events" shall not be considered. Also disregarded are non-availabilities of the Services and blockages by GotPhoto, which GotPhoto may consider necessary for security reasons, provided that GotPhoto had taken reasonable precautions for the security of the service (e.g. denial of service attack, serious security vulnerability in a used third-party software without an available patch). The same applies to the installation of urgent security updates outside of scheduled maintenance windows, which is necessary to avoid significant disadvantages.
- 2.4 **Force Majeure and Unforeseeable Events.** GotPhoto shall be released from its obligation to provide the Services and any Add-On Services if and to the extent that the service provision is disrupted or fails due to circumstances beyond GotPhoto's control and for which GotPhoto is not responsible, for example **a)** operational disruptions of any kind, including disruptions due to a network failure at the respective internet provider, **b)** mobilisation, **c)** war, **d)** terrorist attack **e)** riot, **f)** strike, **g)** natural disasters, such as earthquakes, fire, floods, **h)** sabotage, **i)** direct and indirect consequences of pandemic or epidemic, such as quarantine, border closures or other sovereign or official interventions and measures, as well as **j)** any other events unforeseeable at the time of conclusion of the contract or unpreventable by GotPhoto, whether comparable to the aforementioned examples or not ("Force Majeure Event").

As soon as GotPhoto becomes aware of such Force Majeure Event, GotPhoto shall inform the Photographer thereof without undue delay in a suitable manner and shall keep Photographer updated during the time a Force Majeure Event continues. The Photographer undertakes to provide GotPhoto with contact details for this purpose and to keep those contact details up to date. GotPhoto shall use reasonable efforts to mitigate the impact of the Force Majeure Event. GotPhoto's obligations under the Terms shall be suspended until such time as the Force Majeure Event and its effects have ceased to prevent GotPhoto's performance of its contractual obligations under these Terms.

The contract term of the Photographer's current Plan will be automatically extended by the duration of the Force Majeure Event. Should the Force Majeure Event continue for a period longer than 30 business days, either party may terminate these Terms with immediate effect.

This Section 2.4 states GotPhoto's sole obligations and Photographer's exclusive remedy against GotPhoto for any type of claim related to a Force Majeure Event.

- 2.5 **Changes.** GotPhoto may change the Services (including the system requirements) for good cause. Such change may occur in particular if the change is necessary due to (i) a necessary adaptation to a new legal situation or jurisdiction, (ii) changed technical framework conditions (new browser versions or technical standards), or (iii) the protection of system security. In addition, GotPhoto may change the Services appropriately in the context of further development (e.g. deactivation of old functions, which have largely been replaced by new ones). If the change would significantly disturb the contractual balance between the parties, GotPhoto shall inform the Photographer of the change as a rule at least two months before it comes into force to give Photographer an opportunity to assess the changes and cancel its Plan. In this case, the Photographer may, as an exception, terminate any Plan with a minimum term within six weeks from receipt of the information to the date on which the planned change takes effect. Any other Plan may be terminated by Photographer in accordance with section 12.1 "Term and Termination". If Photographer does not terminate its Plan, this shall be deemed Photographer's acceptance of the Service changes and modifications. GotPhoto shall inform Photographer about the possibility of such deemed acceptance in the notice regarding the Service changes. In the event of termination in accordance with this Section 2.5 any remuneration paid in advance by Photographer for a Plan shall be refunded to Photographer by GotPhoto on a pro rata basis.

### 3. Intellectual Property Rights

**GotPhoto Proprietary Rights.** Photographer acknowledges that, as between Photographer and GotPhoto, all right, title and interest, including all intellectual property rights, in and to the GotPhoto Online Platform, the Services and Add-On Services, including without limitation, any and all APIs, software, documentation, images, video, content, logos, page headers, custom graphics, design and user interface elements, scripts, and other materials contained therein or provided in connection therewith, and all modifications, enhancements, and updates thereto, belong to GotPhoto and its affiliates or GotPhoto's partner companies and will remain vested in GotPhoto, its affiliates or partner companies. Photographer shall solely have the right to use the Services and Add-On Services in accordance with these Terms. Except as otherwise provided in these Terms, no additional rights are granted to Photographer.

### 4. Legal Relationship with End Customer

- 4.1 **End Customer Relationship.** The contractual partner of the End Customer is exclusively the Photographer, who acts towards them in its own name and on its own account. This shall also apply to the sale of photographs in print form or as digital image files. The Photographer is solely responsible for the arrangement of the legal relationship between the Photographer and the End Customer. In this respect, the Photographer shall be free to determine its conditions (pricing, general terms and conditions, etc.), but shall make the necessary agreements with the End Customer for the processing of payments in accordance with Section 8.6 "Payment Processing". Due to changes in payment processing (e.g. addition of new payment methods for End Customers), it may be necessary for the Photographer to adjust its agreements with the End Customer accordingly.
- 4.2 **Direct Services.** If GotPhoto wishes to offer services to the Photographer's End Customers in the future in connection with the Online Shop, which require a direct customer relationship between GotPhoto and the End Customers, GotPhoto shall obtain the Photographer's consent in advance. This can be done in writing, by e-mail or via the GotPhoto Online Platform.

- 4.3 **Sample Documents.** Insofar as GotPhoto provides the Photographer with templates or sample language for Studio's Web Presence or Online Shop (for example, general terms and conditions and privacy notices) (collectively, "Templates"), Photographer understands and agrees that this is done as a courtesy only and does not constitute legal advice. GotPhoto disclaims any representation or warranty that the Templates comply with the law or protect Photographer against potential claims from End Customers. **Photographer understands and agrees that it is Photographer's exclusive responsibility to ensure its agreements with End Customers comply with all applicable law and, if Photographer deems fit, Photographer will seek the professional advice of a qualified attorney to ensure the same.**
- 4.4 **Taxes and Levies.** The Photographer shall be responsible for determining whether and which taxes, customs duties or other levies are due in relation to End Customers and for paying the VAT shown in the End Customer invoices to the competent tax office. GotPhoto shall issue the invoices automatically in accordance with the Photographer's invoice information settings. Photographer shall be solely responsible to ensure that the invoice information settings provided to GotPhoto comply with applicable legal requirements. GotPhoto shall have no obligation to verify such compliance.
- 4.5 **No Refunds.** Once the End Customer has placed an order in the Photographer's Online Shop and such order has been processed correctly and without errors on the GotPhoto Online Plattform ("Processed Order"), the Photographer alone will bear the risk of the End Customer cancelling the Processed Order or requesting changes to the Processed Order. The Photographer shall pay all applicable fees for a Processed Order to GotPhoto, including, but not limited to, service fees, payment processing fees, fees for Add-On Services. GotPhoto will not refund any fees paid or waive the right to receive any fees payable for a Processed Order, if an End Customer cancels or requests changes to a Processed Order.

## 5. Duties and Obligations of Photographer

- 5.1 **GotPhoto User Account.** The Photographer will be required to create a user account ("GotPhoto User Account") with username and password in order to access some or all of the Services (collectively, Studio's "Account Credentials"). Photographer shall keep its Account Credentials confidential and safe, not make them accessible to third parties and report any loss or unauthorized access to GotPhoto without delay
- 5.2 **Account Information.** The Photographer is obliged to fill in all required mandatory fields and to provide GotPhoto with all GotPhoto User Account information correctly and completely, in particular all information for the imprint (e.g. summonable address) as well as the invoice information settings (e.g. VAT rate), and to update it immediately in the event of changes (e.g. relocation). Upon request by GotPhoto, the Photographer shall provide suitable proof of identity.
- 5.3 **Legal Compliance.** The Photographer is obliged to observe all applicable regulations and laws when using the Services, including without limitation, criminal, youth protection, copyright, trademark, competition, telemedia, privacy and data protection law. This applies in particular to
- a) the choice of Subdomain or Top Level Domain,
  - b) data protection consent and information obligations,
  - c) the general terms and conditions used by the Photographer towards End Customers, and
  - d) the posting of content (see also Section 6. "Content Posted by Photographer").
- 5.4 **Prohibitions.** The Photographer represents and warrants that it will refrain from,
- a) posting content that contains malware,
  - b) using the Services as a hosting service for content which is not directly attributable to its activity as a photographer (e.g. music archive, cinema films),
  - c) offering images in the Online Shop, which were not created by him, unless GotPhoto has given its consent in advance, which GotPhoto may not unreasonably withhold,
  - d) using the Services to send out spam emails, phishing emails or other fraudulent content.
- 5.5 **Sale of Personalized Photo Products.** The Photographer shall only offer photo products via the Online Shop which are specifically created for the End Customer or which are otherwise clearly tailored to the End Customer's personal requirements. End Customer is not entitled to cancel an order for the purchase of such personalized photo products.

- 5.6 **Backup Copies.** It shall be incumbent upon the Photographer to keep copies of the Photographer content (in particular texts and photos) posted by it and to make regular back-up copies. If the Photographer breaches this obligation, GotPhoto's liability for loss of data, for which GotPhoto is responsible, shall be limited to the amount of such damage as would have occurred, if the Photographer had made proper regular backups.
- 5.7 **Tax Relevant Data** The Photographer is responsible for storing data in accordance with the statutory requirements (in particular the provisions of commercial and tax law).

## 6. Photographer Content and Feedback

- 6.1 **Rights of Use.** The Photographer hereby grants GotPhoto a worldwide, non-exclusive, royalty-free right, limited to the term of these Terms, to use the photos, texts and other content ("Photographer Content") posted by the Photographer on the GotPhoto Online Platform, exclusively for the purpose of providing the Services and Add-On Services. This includes storing the Photographer Content on servers of a data centre used by GotPhoto, reproducing it to the extent required (e.g. in backups, creation of prints), editing it (e.g. creation of thumbnails) and making it publicly accessible.
- 6.2 **Third Party Consent.** The Photographer hereby warrants to GotPhoto that the Photographer holds all rights to the Photographer Content and has obtained all consents, which are necessary to grant GotPhoto the rights granted in these Terms. This includes rights of use under copyright law, trademark and other labelling rights, ancillary copyrights and any necessary consents from persons depicted.
- 6.3 **Legality; No Obligation to Audit.** Furthermore, the Photographer warrants to GotPhoto that the Photographer Content does not violate any applicable laws or other regulations, in particular under criminal law (e.g. prohibition of the dissemination of pornography), competition law and the law for the protection of minors. GotPhoto is not obliged to actively check or monitor the Photographer Content for its legality. However, if GotPhoto obtains positive knowledge of illegal Photographer Content or illegal activities of the Photographer, GotPhoto is entitled to temporarily interrupt the accessibility of the Services for the Photographer. Further details are set forth in Section 7 "Blocking" below.
- 6.4 **License to Use Feedback.** Photographer hereby grants to GotPhoto and its affiliates a worldwide, perpetual, irrevocable, royalty-free license to use and incorporate into the GotPhoto Online Platform, Services and Add-On Services any suggestion, enhancement, request, recommendation, correction or other feedback provided by Photographer, including feedback obtained by Photographer from End Customers, relating to the operation of the GotPhoto Online Platform, the Services or Add-On Services.

## 7. Blocking

- 7.1 **Blocking Due to Breach of Duty.** If the Photographer (i) defaults on its payment obligation or (ii) negligently and materially breaches its contractual obligations in any other way, GotPhoto shall be entitled to suspend the provision of Services in whole or in part until the breach of contract has ceased, e.g. by taking the Web Presence in the Online Shop offline or by blocking or deleting affected images (in any such event, "Blocking").
- Before blocking, GotPhoto shall inform the Photographer of the breach of contract in writing or by e-mail and request the Photographer to remedy the breach or to cease and desist the prohibited conduct ("Warning"), unless GotPhoto cannot reasonably be expected to do so (e.g. inability to pay of the Photographer). The Warning will generally be issued at least one week prior to Blocking, except in case of imminent danger (e.g. infringing content). In the Warning, GotPhoto will point out the impending suspension or, alternatively, GotPhoto will inform the Photographer of the suspension without undue delay. Blocking shall have no effect on the Photographer's obligation to pay GotPhoto's fees for the use of the Services. Blocking will be lifted as soon as the infringement has ended or the suspicion of an infringement is invalidated to the full conviction of GotPhoto.
- 7.2 **Other Cases.** Clause 7.1 shall also apply if (i) third parties approach GotPhoto with a plausible allegation that the Photographer's use of the Services is unlawful (e.g. Photographer Content infringes third party rights) or GotPhoto has evidence to this effect based on its own knowledge, or (ii) GotPhoto has evidence that the Photographer's GotPhoto User Account is being misused by third parties. The Blocking shall be limited, as far as possible, to the allegedly infringing or unlawful Photographer Content or activities.

## 8. Remuneration, Payment Processing and Settlement

- 8.1 **Remuneration.** Photographer shall pay GotPhoto all fees owed for the use of the Services based on Photographer's Plan and any Add-On Services purchased by Photographer.

- 8.2 **Subscription Plans.** The Services are offered on a subscription fee basis. The cost and provided service features depend on the Plan chosen by Photographer and will be communicated to Photographer at the time it purchases the Plan. If Photographer purchases a Plan, Photographer understands and agrees that, in addition to its first payment, Photographer's credit or debit card on file will be charged for additional subscription periods (e.g., once per month) without requiring further permission or confirmation from Photographer. In other words, Plans renew automatically unless cancelled in advance of the next payment period by Photographer.
- 8.3 **Fees.** Dependent upon the terms of Photographer's Plan, GotPhoto may charge the Photographer one or more of the following categories of fees: (i) annual or monthly hosting fees for the storage of photos, billed and payable on a subscription basis; (ii) service fees for the provision of the Online Shop and processing of End Customer orders for Photographer ("Service Fee"); (iii) payment processing fees and fines; (iv) fees for Add-On Services; and (v) licensing fees for specialized software, apps or plug-ins made available to Photographer through the GotPhoto Online Platform. Depending on the Plan, the Service Fee is a certain percentage of the gross amount charged to the End Customer for an order. If the fees are assessed on a pro rata (e.g., portion of total sales through the Online Shop) or cost-per-sale (e.g., fee for each product purchased by an End Customer in the Online Shop) basis, GotPhoto's calculation of the numbers of sales, total sales, and other bases for determining the associated fees shall be binding upon all parties.
- 8.4 **Plan Changes and Cancellation.** To change or cancel a Plan, the Photographer may either log into its GotPhoto User Account or email GotPhoto at [service@gotphoto.co.uk](mailto:service@gotphoto.co.uk). The change to a Plan with a higher fee is possible at any time. Switching to a lower Plan, including a subscription fee-free plan (where available), is possible, provided that changes and cancellations are made at least one (1) week prior to the end of the contract term of the current Plan if communicated via email and at least three (3) business days before the end of the contract term of the current Plan if changed within the Photographer's GotPhoto User Account. If Photographer's current Plan has a minimum term, then changes will not come into effect until the expiration of such minimum term.
- 8.5 **Fee Changes.** From time to time, it may be necessary for GotPhoto to change the fees and charges in effect, including for any Plan, and GotPhoto reserves the right, in its sole discretion, to do so. In the event of fee changes, GotPhoto will notify Photographer of the changes and give Photographer an opportunity to terminate the Photographer's Plan pursuant to Section 2.5. "Changes" above.
- 8.6 **Payment Processing.** GotPhoto works with third-party service providers (each, a "Payment Processor") to process payments for transactions which End Customers have made via the Photographer's Online Shop. The Photographer may be required to open an account with the Payment Processor ("Account") and accept the terms of the Payment Processor governing such Account. GotPhoto may facilitate the creation of Photographer's Account. Photographer agrees to give its consent, provide all documentations, and will make all declarations required to give GotPhoto access to data concerning Photographer's Account, and to initiate the settlement of fees owed to Photographer by End Customer ("End Customer Fees") as well as fees owed by Photographer to GotPhoto ("Transaction Fees") directly from such Account pursuant to these Terms and Studio's Plan. GotPhoto may act on Studio's behalf and instruct Payment Processor to process Photographer's data to settle End Customer Fees. At GotPhoto's request, Payment Processor may deduct from Photographer's Account Payment Processor fees and the Transaction Fees. Notwithstanding the foregoing, Photographer understands and agrees that it is solely responsible for its Account with the Payment Processor and for maintaining such Account in good standing.

GotPhoto will not have any liability to Photographer for any action or inaction of the Payment Processor (including, without limitation, Payment Processor's authorization of chargebacks, refunds, fines and penalties, Payment Processor fees, or reserves or other holds placed on Photographer's Account with Payment Processor). The risk of refund, chargeback, or other payment default by End Customers shall be borne by the Photographer. GotPhoto is not obliged to collect payments from End Customers or Payment Processor for Photographer.

- 8.7 **Payment Methods.** GotPhoto may enable Photographer to offer different payment methods to End Customers in Photographer's Online Shop. Available payment methods will be displayed in Photographer's GotPhoto User Account. In the event that GotPhoto decides to offer an additional payment method, such payment method will be added to the available payment methods displayed in Photographer's GotPhoto User Account. If GotPhoto stops providing a certain payment method for any reason, such payment method will be removed from the available payment methods listed in Photographer's GotPhoto User Account. All payments, regardless of the payment method utilized by End Customer, will be processed by Payment Processor in accordance with Section 8.4. "Payment Processing".

The provider of a payment method may impose specific requirements upon GotPhoto to offer such payment method. Requirements may include, but are not limited to, the use of a specific subdomain for the check-out pages in the Photographer's Online Shop, the mandatory display of the label "powered by fotograf.de / powered by GotPhoto" (or similar) in the Photographer's Online Shop and other obligations. Photographer agrees to follow GotPhoto's instructions and enable GotPhoto to comply with the requirements established by the payment method provider.

- 8.8 **Settlement.** Unless otherwise agreed in writing or as part of the terms of Photographer's Plan, GotPhoto invoices the Photographer on a monthly basis. For the term of this agreement, the Photographer authorises GotPhoto to collect all Transaction Fees owing from Photographer to GotPhoto from the Photographer's Account at the time the payment is received from the End Customer. The Photographer shall make all declarations and provide all cooperation required for the collection and transfer of Transaction Fees to GotPhoto.

In addition, GotPhoto will collect the subscription fee, fees for Add-On Services and any other additional fees (e.g., bank dispute fees) via the payment method (e.g., credit or debit card, bank transfer) on file for Photographer's GotPhoto Account. The foregoing collection via the stored payment method will also apply to any Transaction Fees, which cannot be collected from the Photographer's Account at the end of the month at the time of invoicing due to lack of funds. The Photographer shall make payment to the account of GotPhoto designated in the Online-Invoice within 14 days of the invoice being issued, without any deduction for GotPhoto and free of fees and charges. The date of receipt of funds by GotPhoto shall be decisive for the date of payment.

- 8.9 **Online-Invoice.** GotPhoto will issue digital invoices to Photographer and provide them as a downloadable and printable PDF file in the Photographer's GotPhoto User Account ("Online-Invoice"). GotPhoto shall issue the Online-Invoice to the Photographer in accordance with the VAT regulations. Photographer will be notified by e-mail of any new Online-Invoice raised. Photographer shall have no right to a digitally signed invoice. Invoices are due for payment within 14 calendar days.

- 8.10 **Net prices.** All fees are subject to the applicable statutory value added tax, unless explicitly stated otherwise.

- 8.11 **Default of Payment.** If the payment deadline is exceeded, GotPhoto shall be entitled to charge interest at a rate of 9 percentage points above the respective base interest rate from the date of default. The Photographer is in default the day after the due date of the invoice, without the need for a legal notice. GotPhoto reserves the right to claim further damage caused by the default.

If the Photographer is in default with the payment of due invoices for more than 6 weeks, GotPhoto reserves the right to block the Photographer's access to the Services. Before proceeding with such access restrictions GotPhoto will notify Photographer of the imminent danger thereof and how it can be prevented. GotPhoto will also notify the Photographer without undue delay once access to the Services is blocked, stating the reasons, and requesting the Photographer to settle the due claims. Access to the Services shall be restored as soon as Photographer has settled all outstanding and due claims of GotPhoto. Photographer shall remain liable to pay applicable fees during the period its access to the Services is blocked.

## 9. Data Protection

- 9.1 **Customer Data.** As between the Photographer and GotPhoto, the Photographer is the owner and controller of the data of Photographer's End Customers ("Customer Data") provided by the End Customer as part of a transaction with the Web Presence or Online Shop. To the extent GotPhoto has access to such Customer Data via the Services, GotPhoto shall treat the Customer Data as confidential information. Data provided by End Customer directly to GotPhoto shall not be considered Customer Data under this clause 9.

- 9.2 **Data Processing.** Insofar as the Customer Data is personal data, the following shall apply: GotPhoto processes the Customer Data as a service provider of Studio exclusively on behalf of and in accordance with Studio's instructions and solely for the purpose of providing the Services. GotPhoto shall take appropriate technical and organisational measures to protect the Customer Data. Studio shall remain responsible for the lawfulness of the collection, processing and use of the Customer Data in accordance with all applicable laws, including without limitation, consumer privacy legislation.
- 9.3 **Data Processing Agreement.** The processing of personal data shall be governed by the provisions of the data processing agreement ("DPA"), attached to these Terms as an appendix. The DPA can be accessed via [www.gotphoto.co.uk/dpa](http://www.gotphoto.co.uk/dpa). By using the Services and agreeing to be bound by these Terms, Studio represents and warrants that it has read and agrees to be bound by GotPhoto's Data Processing Agreement, which is incorporated into these Terms by reference.

## 10. Claims for Defects

- 10.1 **Freedom from Defects and Condition.** GotPhoto warrants the functionalities described and the availability of the Services in accordance with these Terms.
- GotPhoto is not responsible for the compatibility and usability of the Photographer's local IT infrastructure required to access the Services.
- GotPhoto shall not be liable to the Photographer for damage of any kind whatsoever caused by circumvention of the password protection and similar protective measures by way of "hacking" of the Services. GotPhoto and the Photographer agree that the security of these protective measures cannot be guaranteed due to the rapidly developing technical possibilities for unauthorised third parties to intervene on and via the Internet.
- 10.2 **Remedying Defects.** GotPhoto shall remedy defects in the Services within a reasonable period of time. GotPhoto shall have the right to provide the Photographer with temporary workaround options and to remedy the defect at a later time by adapting the underlying software, provided this is reasonable for the Photographer.
- 10.3 **Initial Impossibility.** The strict liability for initial defects pursuant to § 536a para. 1, Alt. 1 of the German Civil Code is excluded. The fault-based liability of GotPhoto remains unaffected by this.
- 10.4 **Statute of Limitations.** Claims for defects shall become statute-barred within twelve (12) months after the statutory commencement of the limitation period. Claims for fraudulent and intentional breach of contract remain unaffected.
- 10.5 **Statutory Regulation.** In all other respects, the statutory rules on liability for defects shall apply.

## 11. Indemnification

- 11.1 **Duty to Indemnify.** Photographer (the "Indemnitor") agrees to defend, indemnify, and hold harmless GotPhoto and its officers, directors, employees, agents, affiliates, and representatives (collectively, the "Indemnitees") from and against any and all third party claims, actions, demands, causes of action, and other proceedings (individually, "Claim", and collectively, "Claims"), all related costs, including but not limited to legal costs and fees, arising out of or relating to: (i) Photographer's breach of these Terms, including without limitations, any obligation, representation or warranty contained herein; (ii) Photographer's access to or use of the Services; (iii) Photographer's provision to GotPhoto or any of the Indemnitees of information or other data; (iv) Photographer's violation or alleged violation of any foreign or domestic, international, federal, state, or local law or regulation; (v) Photographer's interactions and transactions with End Customers, including its handling of Customer Data; or (v) Photographer's violation or alleged violation of any third party's copyrights, trademarks, or other intellectual or proprietary rights.

11.2 **Requirements.** As a prerequisite for the indemnification obligation pursuant to Section 11.1. "Duty to Indemnify" GotPhoto must (i) promptly inform Photographer in writing of any Claims asserted by a third party, (ii) give Photographer sole control over the conduct of all negotiations and litigation arising from a Claim, (iii) give Photographer, at its request and expense, reasonable assistance in connection with those negotiations and such Claims. The other Indemnitees shall each have the individual right, but not the obligation, to participate through counsel of their choice in any defense by Photographer of any Claim as to which Photographer is required to defend, indemnify, or hold harmless any, each, and/or all Indemnitees. Photographer shall not settle or compromise any Claim unless it unconditionally releases Indemnitees of all liabilities. Insofar as GotPhoto negligently fails to meet these requirements, the Photographer's indemnification obligation shall be reduced in accordance with GotPhoto's contributory negligence.

## 12. Limitation of Liability

- 12.1 The limitations in this clause 12. do not apply to (a) liability under the German Product Liability Act (ProdHaftG), (b) liability for fraudulent concealment of a defect, (c) liability based on a written guarantee by GotPhoto for the quality of the services owed or (d) liability for death, personal injury or health resulting from negligence.
- 12.2 Subject to the following provisions in this clause 12. GotPhoto's liability to the Photographer shall be limited to damages relating to or arising out of a breach of GotPhoto's contractual obligations under these Terms. The statutory requirements for such liability must be met.
- 12.3 Irrespective of the legal basis, GotPhoto shall only be liable for damages arising from the culpable violation of material contractual obligations and from the intentional or grossly negligent violation of other contractual obligations owed to the Photographer. Material contractual obligations are those obligations whose fulfilment is essential to the proper performance of the contract in the first place and on the fulfilment of which the Photographer regularly relies and may rely.
- 12.4 In the case of a simple negligent breach of material contractual obligations, GotPhoto's liability shall be limited to compensation for the foreseeable, typically occurring damage.
- 12.5 GotPhoto shall not be liable for a simple negligent breach of other, i.e. non-substantial, contractual obligations owed to the Photographer.
- 12.6 The foregoing limitations of liability shall also apply to GotPhoto's subcontractors or other persons for whose acts or omissions GotPhoto is responsible based on statutory provisions.
- 12.7 The statutory rules on the burden of proof remain applicable.

## 13. Term and Termination

- 13.1 **Term and Termination.** The contract begins with the provision of a trial account and is concluded for an indefinite period. Either party may terminate these Terms with two weeks' notice to the end of the term of the selected Plan, unless GotPhoto and Photographer have agreed to a different notice period in a written document.
- 13.2 **Termination for Cause.** Either party may terminate these Terms for cause upon two weeks' notice to the other party of a material breach if such breach remains uncured at the expiration of such period. For clarification purposes only, any delays or non-performance due to events outlined in Section 2.4 "Force Majeure and Unforeseeable Events" do not constitute a material breach of these Terms.
- 13.3 **Force Majeure.** At the occurrence of a Force Majeure Event the provisions of Section 2.4. apply.
- 13.4 **Form.** Notice of termination can be given
  - (a) by e-mail to [service@gotphoto.co.uk](mailto:service@gotphoto.co.uk) or
  - (b) in writing to Fotografen Online Service GmbH, Hausvogteiplatz 12, 10117 Berlin, Germany.
- 13.5 **Data at End of Contract.** At the end of the contract term, the Photographer can no longer access his/her Customer Data and Photographer Content. It is the Photographer's responsibility to export the master data of its End Customers before the end of the contract term using the export function of the Services and to store such data on its premises for further use. GotPhoto shall have no obligation to provide any further migration support (e.g. provision of certain data as an SQL dump or in a certain format). Upon termination of the contract, GotPhoto shall delete the Customer Data and Photographer Content, unless GotPhoto is required by law to retain them. If deletion of data is only possible with disproportionate effort (e.g. in backups), GotPhoto shall have the right to retain the data until such time the data is automatically overwritten or can be deleted manually, provided that such data is no longer used for business purposes and the confidentiality and security of the data is ensured.

## 14. Special Terms for Purchase of Photo Products

14.1 **Scope of Application.** Insofar as Photographer orders photos in print form (paper photo, poster, imprint on mugs, etc.) ("Photo Products") from GotPhoto via partner laboratories of GotPhoto, this clause 14 shall apply to the purchase of such Photo Products.

14.2 **Conclusion of Sales Contracts for Photo Products.** If an End Customer places an order in the Photographer's Online Shop for the purchase of Photo Products, this shall be deemed to be an offer by the Photographer to GotPhoto to purchase the corresponding Photo Products at the price listed in GotPhoto's current price list. The current price list can be viewed in the administration area of the Services. GotPhoto shall send the Photographer a corresponding order confirmation. This order confirmation will also constitute an acceptance of the offer by GotPhoto, unless the order confirmation states otherwise. GotPhoto shall use the partner laboratory selected by the Photographer to fulfil the order.

Photographer can cancel such orders at any time free of charge for which payment has not been received yet by GotPhoto or the Photographer. Orders for which the End Customers or the Photographer have selected a payment method that provides for payment of the order after production of the Photo Products has begun (eg., payment on account) cannot be cancelled free of charge. The Photographer has the option to activate and deactivate payment methods in his GotPhoto User Account.

14.3 **Delivery and Shipping Costs; Delay.** GotPhoto, respectively the partner laboratory, shall deliver the Photo Products directly to the End Customers, unless the Photographer placed an order itself or the End Customers chose the "collective shipping" function, where Photo Products are shipped collectively to the Photographer. Shipping costs will be charged in accordance with the GotPhoto price list, which can be viewed in the administration area of the Services.

Delivery periods and dates are only approximate unless GotPhoto has expressly designated them as binding in writing.

If a Force Majeure Event event makes it considerably more difficult or impossible to provide the Services owed by GotPhoto and if the hindrance is not only temporary, GotPhoto shall be entitled to withdraw from the contract. In the event of temporary hindrances due to a Force Majeure Event, the deadlines agreed for the provision of the Services shall be extended or the respective deadlines shall be postponed by the duration of the Force Majeure Event plus a reasonable restart period.

14.4 **Payment.** Photographer shall pay GotPhoto for the purchase of Photo Products pursuant to clause 8 "Remuneration, Payment Processing and Settlement".

14.5 **Warranty.** Any warranty rights shall be subject to the Photographer having duly complied with his statutory duties of inspection and notification of defects. Insofar as there is a defect in the Photo Products, for which GotPhoto is responsible, GotPhoto shall, at its discretion, remedy the defect or supply a replacement. GotPhoto does not provide any warranty for material defects caused by unsuitable or improper use, by faulty or negligent handling, nor for the consequences of improper modifications made by the Photographer or third parties without GotPhoto's consent. A warranty for defects which only insignificantly reduce the value or suitability of the Photo Products is excluded. A Photo Product is considered defective in quality if the Photographer can prove that at the time of the transfer of risk the Photo Product noticeably deviate from the contractually agreed type, quantity and quality. Risks of suitability and use shall be borne solely by the Photographer.

Further claims for defective Photo Products do not exist. Recourse to competing bases for claims, in particular, of a non-contractual nature, is excluded.

Any claims of the Photographer for delivery of defective Photo Products shall become time-barred one (1) year after the statutory commencement of the limitation period. Claims for fraudulent and intentional breach of contract shall remain unaffected. A replacement of the defective Photo Product or rectification of defects shall not lead to a restart of the limitation period.

14.6 **Purchase from Other Laboratories.** If the Photographer orders Photo Products from laboratories other than the partner laboratories, the contract for the purchase of the Photo Products shall be concluded directly between the Photographer and the respective laboratory. The terms and conditions of the respective laboratory shall then apply; GotPhoto merely transmits the Photographer's offer to the laboratory.

## 15. Special Terms for Commissioning Image Editing Services

15.1 **Scope of Application.** Insofar as Photographer commissions photo editing services (e.g., removal of backgrounds, color correction, creation of composites, etc) ("Image Editing Services") from GotPhoto directly or via partner companies of GotPhoto, this Section 15 shall apply to such Image Editing Services.

15.2 **Obligations of Photographer.** Photographer shall deliver the images to be edited in the appropriate resolution and quality. Photographer understands and agrees that the edited images will only be as high of quality as the originals provided by Photographer.

15.3 **Turnaround Time.** Delivery periods and dates provided to Photographer are only approximate unless GotPhoto has expressly designated them as binding in writing. If a Force Majeure Event makes it considerably more difficult or impossible to provide the Services owed by GotPhoto and if the hindrance is not only temporary, GotPhoto shall be entitled to cancel and/or terminate the Image Editing Services. In the event of temporary hindrances due to a Force Majeure Event, the deadlines agreed for the provision of the Image Editing Services shall be extended or the respective deadlines shall be postponed by the duration of the Force Majeure Event plus a reasonable restart period.

15.4 **Payment.** Photographer shall pay GotPhoto for the Image Editing Services pursuant to Section 8 "Remuneration, Payment Processing and Settlement".

15.5 **Disclaimer; Limitation of Liability.** The Image Editing Services are provided on an AS-IS basis. GotPhoto disclaims any warranty that the Image Editing Services will be of a specific quality, look or feel. Photographer uses the Image Editing Services at its own risk, and GotPhoto shall not be liable for any damages to Photographer, Photographer's relationships or contracts with its End Customers, Photographer's reputation, or any third parties arising out of or in relation to the Image Editing Services (e.g., if End Customers feel the images are "over-edited" or not edited enough.) Photographer's indemnification obligations shall extend to all third-party claims brought against GotPhoto relating to the Image Editing Services.

15.6 **Purchase from Other Companies.** If Photographer orders Image Editing Services from companies other than GotPhoto or GotPhoto's partner companies, the contract for the purchase of the Image Editing Services shall not be concluded between GotPhoto and Photographer but directly between Photographer and the respective company. The terms and conditions of the respective company shall then apply; GotPhoto merely transmits the Photographer's offer to the company.

## 16. Final Clauses

16.1 **Set-Off; Retention.** The Photographer shall not be entitled to set off any claims against claims of GotPhoto unless the counterclaim is undisputed or has been finally determined by a court of law. Furthermore, the Photographer is not entitled to withhold payments or to suspend other obligations incumbent upon it, unless GotPhoto is in material breach of obligations due under the same contractual relationship despite written warning and has not offered adequate security. § 215 BGB (German Civil Code) shall not apply.

16.2 **Applicable Law.** This contract shall be governed by German law. The UN Convention on Contracts for the International Sale of Goods is explicitly excluded.

16.3 **Place of Performance; Jurisdiction.** The place of performance for all obligations arising from the contractual relationship with the Photographer shall be the registered office of GotPhoto.

The Parties shall attempt to resolve any disputes arising out of or in connection with the legal relationship between them promptly in partnership and in good faith through negotiation.

If the parties are unable to settle the dispute by negotiation within 30 days after one party has requested the other party in writing to enter into negotiations, the competent courts located

closest to GotPhoto's registered office shall have jurisdiction over all disputes arising from or in connection with the legal relationship existing between GotPhoto and the Photographer. However, GotPhoto may, at its discretion, also sue the Photographer at the Photographer's place of jurisdiction.

- 16.4 **Partial Ineffectiveness.** Should any provision of these Terms be or become invalid in whole or in part, this shall not affect the validity of the remaining provisions of these Terms. The parties agree already now to replace the invalid provision with a legally permissible provision which most closely reflects the economic intention of the invalid provision. The previous sentence shall also apply in the event of an unintended omission in these Terms.
- 16.5 **Amendments.** These Terms may only be modified by a written amendment signed by an authorized executive of GotPhoto and Photographer, or by the unilateral amendment of these Terms by GotPhoto and Photographer's acceptance thereof.

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Last update: 1<sup>st</sup> July 2024