

General Terms and Conditions of Business

A. Scope of the Terms and Conditions of Business

Image material of the HB Verlag (hereinafter referred to as: HBV) shall be made available exclusively on the basis of these Terms and Conditions of Business (T&Cs). The T&Cs shall also apply to all future deliveries, the electronic retrieval and the use of the images from the image databases and to the electronic transmission of such images, unless other conditions, which must be set out in writing, are expressly agreed.

Terms and Conditions of Business of the ordering party which differ from these T&Cs shall not be recognised and shall not form part of the contract, even if they are not expressly contradicted.

B. Use of the image material

1. Image material shall be issued, or can be electronically retrieved or transmitted, only for inspection purposes and shall be made available exclusively on a temporary basis. HBV shall decide whether original or duplicate image material shall be made available to the customer. No corresponding duty to provide information shall apply. The image material shall remain the property of HBV and, in the event that it is not used, must be returned or deleted from the electronic memory within one month at the latest. Any image material for which rights of use have been acquired must be returned immediately after use, at the latest, however, within three months from the date of the delivery note or retrieval or transmission of the data, or deleted from the electronic memory. Section D.4.c.) of these T&Cs shall remain unaffected in this respect. The customer shall bear the costs of returning the image material.
2. When using the area portal of the digital database of dpa Picture-Alliance, the customer shall ensure that HB Verlag and the name of the photographer as the image providers are mentioned separately from the image information given (image metadata). The customer must observe any restrictions on use and application set out in the image metadata. The customer shall be solely liable for any damage resulting from non-compliance and shall release HBV from any claims made by third parties. Furthermore, HBV reserves the explicit right to make claims for compensation against the customer in the event of non-compliance.
3. The customer shall check the image material after taking delivery in order to ensure that it is complete and free of any defects. Should the delivery be incomplete or any individual images be defective, the customer shall be obliged to inform us by telephone or in writing that the delivery is incomplete or to notify us of the defects ascertained within 72 hours of receiving the consignment or after data retrieval or transmission. The images upon which the complaint is based must be returned to HBV without delay. Any claims regarding defects that are omitted, incomplete or not submitted on time shall rule out grounds for complaint that the delivery is incomplete or defective, and any liability on the part of HBV for any costs which have already been incurred or costs incurred in the future.
4. Any use of the image material shall require prior written permission from HBV (declaration of release). This shall also apply to use of the image material as a model to work from for sketches, printing or for layout or presentation purposes and to the opening up of slide frames or transparencies.

5. The release of image material granted by HBV shall only entitle the recipient to use it on a single occasion and for the stated purpose, unless further use is expressly intended. The respective information and restrictions in the accompanying image information (image metadata) must be followed with regard to the type and location of use. Any use extending beyond the agreed scope shall once again be subject to a fee and must be authorised in advance.
6. The image material must not be passed on to third parties or duplicated, edited or altered without prior written permission from HBV. This includes the sale to third parties of links and other means of reference to these images on the Internet.
7. Exclusive rights or blocking periods must be agreed on a separate basis.

1 specimen copy of each publication must be sent to HBV immediately, unsolicitedly and free of charge. HBV must be informed of the number of copies printed.

C. Scope of the rights of use

1. Only the simple right of use of the photographic copyright shall ever be transferred.
2. The permission to use the image material granted by HBV shall not include the assurance that the persons depicted or the owners of the rights to depicted works of art or applied art or owners of trademark and other property rights have given permission to reproduce them publicly, especially for use as part of advertising measures. The customer shall be responsible for obtaining the necessary authorisations from third parties in individual cases. The customer shall itself observe the personal rights, copyrights, trademark rights and other property rights of depicted persons, works, objects or trademarks in respect of the regulations in the country in which the image material is to be used. This shall not apply if HBV has expressly guaranteed in writing that the necessary permission and/or rights have already been granted.
3. Image material, especially such material in which people are recognisable, may be used only in connection with the accompanying text. Image and text may not be used in a manner which distorts or misrepresents the meaning. The user shall at all times be obliged to observe the journalistic principles of the German Press Code or similar journalistic duties of care.
4. The customer shall release HBV from any claims on the part of third parties in this respect and shall bear the legal consequences itself in the event of an internal violation of the law.
5. Prior written permission from HBV shall be required for the following actions:
 - a. the reproduction and especially the digitalisation of the image material,
 - b. the storage of the image data in online databases or other electronic archives which are accessible to third parties,
 - c. the storage of image data on diskette, CD-ROM or similar data storage media,
 - d. any digital or other changes to or redesigning of the image material.

Should permission be granted to digitalise the image material, the names of the authors of the images and the name of HBV must be electronically linked to the image data; in addition, the customer must ensure that this link shall be retained during each data transmission, during the transfer of the image data to other data storage media, during reproduction on a screen and during any public reproduction, so that both the author of the image and HBV can be identified at all times. All digital images in electronic archives as well as on all external data storage media must be deleted completely as soon as the customer becomes obliged to return the image material or the contract is terminated.

6. When the image material is used, it must be marked clearly and unmistakably in the following form: HB Verlag/name of the photographer.
7. Any concession of rights of use shall take place subject to a condition precedent that the fee owed in respect of use be paid to HBV.

D. Fees and charges

1. Any use of the image material on offer shall be subject to the payment of a fee.
2. Should the time limit for returning the image material be exceeded, blocking charges shall become due. These amount to €30.00 per image per month commenced. A time limit shall be deemed to have been exceeded if:
 - a. supplied image material is withheld for more than one month without a declared use having taken place during this period,
 - b. image material, whose rights of use have been purchased, has not been used within 6 months and this has not been indicated to HBV within this period,
 - c. image material which has been used has not been returned or deleted within one month of being used.

The assertion of any damage caused by default shall not be affected by the blocking charge. The blocking charges shall not be counted as part of any fees for use. They shall not constitute any right of use or ownership.

3. HBV invoices shall be due and payable immediately after receipt and without any deductions. All amounts such as fees, costs and processing charges are net and do not include statutory value added tax and any artists' social security contributions due. If payment has not been received within 30 days of such payment becoming due, HBV shall be entitled to demand interest upon defaults in payment at a rate of 5% above the respective base rate of the European Central Bank or above a corresponding rate used in its place, and to levy fees for reminders amounting to €5.00 per reminder.

E. Liability and compensation

1. Upon receipt of the consignment, the customer shall become liable for loss of or damage to the image material provided, until such image material has been safely returned to HBV.
2. In the event of unauthorised use, duplication, amendment, editing, alteration, passing on or electronic storage of the image material or non-compliance with the copyright notice, the customer shall release HBV from all third-party claims arising as a result. In this case, HBV shall additionally be entitled to demand payment of a contractual penalty amounting to twice the normal fee for use, but not less than €200.00 per image. The assertion of any further claim for compensation shall remain unaffected by this.
3. Should images in the ordering party's sphere of risk go missing or should images be returned in a state which precludes further use, compensation shall be paid. Compensation amounts of €500.00 for each original image and €100.00 for each duplicate shall be deemed to have been agreed, without dpa-PA having to prove the level of the damage incurred in detail. The amounts shall be calculated on the basis of the loss of further use. The ordering party shall reserve the right to prove lesser damage in individual cases and HBV shall likewise expressly reserve the right to make further claims for compensation.

4. In the event that images which were returned in a defective state can be restored to a perfect condition through cleaning or other measures, the customer shall reimburse the costs incurred for this. In such cases, HBV shall be entitled to demand at least €100.00 per image as compensation, without having to prove the costs incurred, unless the customer is able to prove lesser damage.
5. Should lost image material subsequently be found, HBV shall be at liberty to recover this image material. In the event that such image material is recovered, any compensation paid shall be reimbursed minus any accumulated blocking charges.
6. The customer shall acquire neither ownership nor rights of use of the image material upon payment of compensation or a contractual penalty.

F. Liability of HBV

1. The customer's warranty rights against HBV shall be restricted to the contracting party's right to be given the opportunity to remedy any defects. Should it not be possible to remedy such defects or if attempts to do so should prove unsuccessful, the customer shall be entitled to withdraw from the contract. Further warranty claims shall be excluded.
 2. The liability of HBV to provide compensation shall be restricted or excluded as follows, in so far as it is at fault: HBV shall not be liable in the event of ordinary negligence on the part of its management bodies, legal representatives, employees and other vicarious agents and in the event of gross negligence on the part of its non-executive employees or vicarious agents unless essential contractual obligations have been breached. Liability for a grossly negligent breach of essential contractual obligations in respect of vicarious agents, unless they are executive employees, and with regard to the breach of essential contractual obligations without gross negligence shall however be limited to compensation for typically foreseeable damage, though not exceeding €50,000.00. The aforementioned liability exclusions and liability restrictions shall not apply in cases of culpable injury to life, body or health or in so far as liability applies in the case of material damage to privately used items or for personal injury even in the absence of negligence according to the German Product Liability Law. Any undertakings in respect of third parties which have their basis in this contract may not be given without the consent of HBV. Furthermore, the contractual partner shall undertake to participate actively in order to mitigate any damage.
 3. HBV shall not be liable in the event of errors in or disruptions to its service operations and delivery difficulties resulting from industrial action or in cases of force majeure. In the event of disruptions to its service operations or errors in its service operations for other reasons, HBV shall be liable according to the ruling in No. 2.
1. **Should one or more of the aforementioned provisions be or become ineffective, the validity of the remaining provisions shall not be affected as a result.**
 2. **The place of performance and place of jurisdiction for all claims arising from this contract shall be Stuttgart, Germany.**
 3. **The law of the Federal Republic of Germany shall apply to all legal relationships between dpa-PA and the customer; the United Nations Convention on Contracts for the International Sale of Goods shall be excluded.**