

Fotostudio Marina Raith

Kirchstrasse 14 • 83646 Wackersberg • Germany
Tel.: +49 8041/44 90 231 • Fax: +49 8041/75612
Mail: post@studio-raith.de • Internet: www.studio-raith.de

General Terms and Conditions Fotostudio Marina Raith

1. SCOPE

These General Terms and Conditions apply for orders of analogue (Dias) or digital graphic material from the archive of STUDIO MARINA RAITH, owner: Ms Marina Raith (hereinafter referred to as "STUDIO MARINA RAITH"). Included are orders by standard mail, phone, e-mail or by using the "Kontakt"-form of the Marina-Raith-webpage (www.studio-raith.de). These General Terms and Conditions apply for orders from the territory of the Federal Republic of Germany and also for orders from abroad.

2. INTENDED USE

- 2.1 In case of an order of graphic material the customer is required to specify concretely the intended/designated use. In case of advertising purposes the customer shall also name the relevant product. Any use of the materials is strictly subject to an explicit prior approval by STUDIO MARINA RAITH, concerning the intended/designated use mentioned by the customer.
- 2.2 "Low-Resolution-Material" from the Marina-Raith-webpage (www.studio-raith.de) must not be used for any publication and distribution.
- 2.3 Digitalisation of analogue graphic material and the forwarding of digital graphic material by means of data transmission or via data carriers is only permitted to the extent that this is required for the exploitation of the rights of use granted to the customer.
- 2.4 Should the customer intend to deviate from the specified intended/designated use the prior written approval of STUDIO MARINA RAITH is required.
- 2.5 The graphic material must not be edited, amended or modified in any form, without the prior written approval of STUDIO MARINA RAITH.

3. PERIOD OF USE/ RETURN OF MATERIAL/ INFORMATION DUTY

- 3.1 The graphic material remains the property of STUDIO MARINA RAITH and is only provided to the customer on loan (*leihweise*); after the period of time specified by STUDIO MARINA RAITH has lapsed it has to be either returned (analogue material) or deleted (digital material). In case that the customer, during the period of time specified by STUDIO MARINA RAITH at the time of delivery of the graphic material, has communicated his (the customer's) intention to make use of any such delivered material or to acquire rights of use therein, the customer has to return the material to STUDIO MARINA RAITH within a period of 60 days (upon delivery date); this obligation applies irrespective of any actual use of the material by the customer during such period.

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4. SCOPE OF RIGHTS LICENSED

- 4.1 The delivered material always remains the property of STUDIO MARINA RAITH.
- 4.2 Unless agreed otherwise in writing any provided material may only be used for one single publication and for the form of use and for the designated use as agreed between STUDIO MARINA RAITH and the customer only.
- 4.3 Any form of copying, electronic or other storage of the material for archival purposes of the customer is prohibited.
- 4.4 Forwarding any material or the grant or assignment of any rights in or to the material to third parties is prohibited.
- 4.5 Payment of damages does not involve the acquisition of any property or rights of use in or to material.
- 4.6 It is the customer's own duty and obligation to clear any and all necessary publication rights concerning the persons/people pictured on graphic material and photos, unless expressly confirmed by STUDIO MARINA RAITH in writing that an approval of the pictured persons/people was given.

5. CUSTOMER'S DUTIES, INDEMNIFICATION

- 5.1 The customer is obliged to comply with the policies for publishers (the press codices – "Pressekodex") set up by the Deutscher Presserat, and to observe all rights of third parties (moral rights, company right, copyright, and so forth). The customer must not, among other things, use the materials in a distorting way or otherwise deviating from what the parties have agreed.
- 5.2 In case of the customer's non-compliance with the aforementioned obligations and should third parties as a consequence pursue any claims against STUDIO MARINA RAITH, the customer will indemnify STUDIO MARINA RAITH and hold STUDIO MARINA RAITH harmless from and against any and all such claims of third parties; also the customer shall bear all costs incurred by STUDIO MARINA RAITH in such context.

6. NOTIFICATION OF DEFECTS

Obvious defects of the delivered materials need to be notified to STUDIO MARINA RAITH within a period of 14 days following delivery; if the customer is a merchant STUDIO MARINA RAITH is to be notified without undue delay by telephone or fax following delivery. Latent defects are to be notified within a period of 14 days following detection; if the customer is a merchant notification is to be given without undue delay following detection.

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7. WARRANTIES, LIABILITY, STATUTE OF LIMITATION

- 7.1 STUDIO MARINA RAITH does not give any warranty (*übernimmt keine Gewähr dafür*) that the use of the material will not infringe any moral rights of the pictured persons/people, any rights of third parties, and/or any company rights, and so forth. In case that third parties make any claims against the customer in the context of the use of the material the customer is obliged to liaise with STUDIO MARINA RAITH without undue delay and to coordinate any further legal steps.
- 7.2 Where delivered digital material shows a defective picture quality the customer may claim a replacement delivery. Where such defects cannot be fixed through such replacement delivery the customer has the right, at its own choice, to either rescind the contract (*Rücktritt vom Vertrag*) or claim a reduction of the compensation payable (*Minderung*). In any such cases, however, with the exception of cases of intent or gross negligence, damages claims against STUDIO MARINA RAITH are excluded.
- 7.3 In other liability cases, where STUDIO MARINA RAITH can be held responsible for normal negligence only, STUDIO MARINA RAITH can only be held liable in case of a breach of a material contractual duty. And in generally all liability cases, with the exception of cases of intent, STUDIO MARINA RAITH shall only be liable for the typical and foreseeable damage.
- 7.4 The restrictions of liability for damages pursuant to sections 7.2 and 7.3 do not apply for statutory product liability claims and/or for claims in relation to death or personal injury.
- 7.5 For all claims against STUDIO MARINA RAITH deriving from a non-compliance with contractual obligations or duties, with the exception of cases of intent, the statute of limitation term applicable under statutory law is reduced to a period of one year,

8. CUSTOMER'S LIABILITY FOR LOST OR DAMAGED MATERIAL

- 8.1 The customer will be held liable for any damage to the delivered analogue graphic material up until its return to and receipt by STUDIO MARINA RAITH. This also applies if, according to instructions of the customer, graphic material is sent by STUDIO MARINA RAITH to third parties.
- 8.2 If a delivered original graphic material can no longer be used due to a damage occurred to it or if a graphic material gets lost within the are of risk of the customer the customer has to pay a flat damage compensation in the amount of EUR 1,800.— per lost or damaged slide (*Dia*). The customer has the right, however, to prove a smaller actual damage incurred by STUDIO MARINA RAITH in the individual case.
- 8.3 If slides are unframed for technical reasons or if the labelling/marketing of slides is made illegible the customer has to restore the slide to its former condition. Otherwise, the customer has to bear the costs for such restoring.
- 8.4 Any further claims of STUDIO MARINA RAITH for reason of loss or damage to the delivered graphic materials are expressly reserved.

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The customer will indemnify STUDIO MARINA RAITH and hold STUDIO MARINA RAITH harmless from and against any and all claims of third parties resulting from any of the following:

- unauthorised use, modification, amendment or forwarding of material to third parties in whatever form or format,
- the granting of rights of use to third parties,
- the copying of digital data files or analogue copies of the contents of the pictures in data files, for archival purposes of the customer, and or the forwarding of any such copies to third parties.

In case of any of the aforementioned indemnification events, and/or in case of the customer's non-compliance with any obligation hereunder to delete data, the customer has to pay to STUDIO MARINA RAITH a contractual penalty in the amount of a fivefold of the agreed compensation payment; if no compensation payment was agreed the amount payable shall be the fivefold of the customary licence fee (*übliches Honorar*), however not less than a minimum penalty of EUR 800,-- per picture per single event. Any further claims of STUDIO MARINA RAITH are expressly reserved.

9. COPYRIGHT NOTICE, SPECIMEN COPY

9.1 STUDIO MARINA RAITH expressly requests that a copyright notice within the sense of sec. 13 of the German Copyright Act will be made/shown, safeguarding that there will be no uncertainty regarding the identity of the author. The customer is obliged to apply to/print on each and any picture or directly besides the picture the following copyright notice: "© Marina Raith, München". Any exceptions, e.g. for advertising purposes, need to be agreed in writing.

9.2 In case of a digital administration of data files concerning graphic material the customer is obliged to link the name of Marina Raith to the data files. The customer has to ensure that any such link will be maintained with the picture and that the photographer and author of the picture can be identified, in any case of forwarding, sending, presentation or communication to the public.

Where the customer does not comply with its obligation subject to section 9.1, concerning a due copyright notice, STUDIO MARINA RAITH is entitled to a 100 per cent. compensation premium; furthermore, the customer has to hold STUDIO MARINA RAITH harmless from and against any and all claims of third parties resulting from this non-compliance.

9.3 The customer is obliged to send to STUDIO MARINA RAITH, unsolicited and free of charge, in each case no later than two weeks following publication, one complete specimen copy.

10. DIGITAL PICTURE PROCESSING

Immediately after completion of a production the customer is obliged to delete any and all of the digital graphic material provided by STUDIO MARINA RAITH or manufactured by the customer itself.

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Sparkasse Bad Tölz • Kto.-Nr.: 810 44 96 86 • BLZ 700 543 06
BIC/Swift: DEUTDEDBMUC • IBAN: DE70700700240862730901
Ust.-Id.-Nr.: DE 127 536 604
Finanzamt Bad Tölz, Steuer-Nr. 104 260 20047

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11. COMPENSATION

- 11.1 Any and all use of graphic material or of any parts thereof is subject to a compensation requirement.
- 11.2 Any compensation payments will be agreed prior to use. The compensation amount to be agreed will always be dependant on the agreed forms of use and the agreed intended use. Any further usage requires an additional compensation agreement. Where no compensation agreement is existing a compensation equal to a customary licence fee of STUDIO MARINA RAITH shall be deemed agreed.
- 11.3 Any compensation amounts mentioned in offer letters, price lists or other documentation are meant to be net, excluding value added tax.

12. SERVICE CHARGES, COSTS, POSTAL CHARGES, PAYMENT TERMS

- 12.1 The customer is charged for the delivery of analogue material and digital high-resolution data. The applicable service charge is dependant on subject and range of work involved. The minimum service charge is EUR 35,--. Costs for scans and transfer/transportation of graphic material/ delivery of high-resolution data will be charged according to agreement; the minimum charge is EUR 40,--.
- 12.2 Extensive research work in non-digitalised archives will be charged separately.
- 12.3 Postal charges, air mail costs and courier costs are to be borne by the customer. The same applies to photographic and repro-technical costs.
- 12.4 Any and all compensation and cost amounts invoiced are to be paid to STUDIO MARINA RAITH within a period of one week upon receipt of invoice, including applicable value added tax, and without any deductions whatsoever.
- 12.5 Any final grant, transfer and/or assignment of any rights of use to the customer, as applicable, is always subject to the prior receipt of the compensation payment on the bank account of STUDIO MARINA RAITH.

13. PLACE OF VENUE, GOVERNING LAW

- 13.1 Place of fulfilment is Munich. If the customer is a merchant place of venue is Munich.
- 13.2 If the customer is not a merchant and has no jurisdiction within the territory of the Federal Republic of Germany the place of venue is also Munich.
- 13.3 The present agreement is governed by the laws of the Federal Republic of Germany.

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